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## ADDENDUM

Document 00910

ADDENDUM NO. 1

Date of Addendum: July 31, 2025

PROJECT NAME: Municipal Court Department - Replacement Facility

PROJECT NO: WBS No. D-160010-0001-4

PROPOSAL DATE: There is no change to the Proposal Date.

FROM: City of Houston, General Services Department  
900 Bagby, 2nd Floor, City Hall Annex  
Houston, Texas 77002  
Attn: Greg Kieschnick, Project Manager

TO: Prospective Proposers

This Addendum forms a part of the Proposal Documents and will be incorporated into the Contract, as applicable. Insofar as the original Project Manual and Drawings are inconsistent, this Addendum governs.

### PROPOSAL DOCUMENTS

1. Replace existing Request for Proposal with new Request for Proposal, that is dated 07-31-25.

END OF ADDENDUM NO. 1

DocuSigned by:

Richard Vella

Richard Vella

Assistant Director

Real Estate, Design & Construction Division

General Services Department

DATED: 7/31/2025

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00910-1  
02-22-2022



**REQUEST FOR PROPOSALS  
CONSTRUCTION MANAGER AT RISK SERVICES  
FOR THE FOLLOWING FEDERALLY FUNDED PROJECT:**

<u>Project Name</u>	<u>Project No.</u>	<u>MBE Goal</u>	<u>WBE Goal</u>
Municipal Court Department - Replacement Facility	D-160010-0001-4	18%	6%

**PROPOSAL SUBMITTAL DATE: Thursday, August 21, 2025 at 10:30 a.m.**

City of Houston  
General Services Department  
Real Estate, Design & Construction Division

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## 1. RFP PROCESS

### 1.1. Purpose

The City of Houston (“City”), General Services Department (“GSD”), on behalf of the Municipal Courts Department (“MCD”), is requesting proposals for the selection of a Construction Manager at Risk (“CMAR”) firm.

The City anticipates retaining a CMAR firm to provide the scope of services outlined in Document 2 of this RFP. Those firms, or joint ventures, that participate in this RFP process will be referred to as “Proposers”. Proposals from firms with substantial experience in preconstruction and construction services, particularly on projects with similar characteristics, will be prioritized during the selection process.

### 1.2. Federally Funded

This project is funded by the Federal Emergency Management Agency. The successful proposer will be required to comply with the federal requirements set out in the Sample Contract attached to this RFP.

### 1.3. Proposal Instructions

The City will utilize via Civcast at [https://www.civcastusa.com/bids\\_for\\_the\\_online\\_submission\\_of\\_proposals](https://www.civcastusa.com/bids_for_the_online_submission_of_proposals). Electronic Proposals are due at 10:30 a.m., local time on proposal date. Follow submittal instructions on <https://www.civcastusa.com/>.

Hard copies will not be accepted for this submission. The proposals will be opened, and the results will be posted on Civcast on the proposal date. The proposal results will be read aloud via Microsoft Teams dial up access on the same day at 11:00 am only. Microsoft Teams Number 1-936-755-1521 ID: 598 888 117#. All interested parties are invited to attend. The place and date of proposal opening may be changed in accordance with Sections 15-45(c) City of Houston Code of Ordinances (City Code).

All Proposers shall comply with Article II, Chapter 15, City of Houston Code of Ordinances.

The RFP and Addenda may only be obtained electronically on Civcast. For more information, go to the City’s website: <https://www.publicworks.houstontx.gov/contracting-services>

The proposal is due at the date and time set out below. Late submittals will not be accepted.

Date: Thursday, August 21, 2025  
Time: Accepted until 10:30 a.m.

### 1.4. Pre-Proposal Conference

A Pre-Proposal Conference will be conducted at the designated date, time, and location specified below. While attendance at this meeting is recommended, it is not compulsory; however, please be advised that meeting minutes will not be distributed.

Date: Tuesday, August 5, 2025  
Time: 2:30 pm.  
Location: Conference Room 382  
City Hall Annex  
900 Bagby St  
Houston, TX 77002

**1.5. Questions**

Please submit any inquiries related to this RFP to the following email address:

Richard A. Vella  
Assistant Director of Real Estate, Design & Construction  
General Services Department  
Email: [Richard.Vella@houstontx.gov](mailto:Richard.Vella@houstontx.gov)

c/o  
Greg Kieschnick  
Sr Project Manager  
General Services Department  
Email: [Gregory.Kieschnick@houstontx.gov](mailto:Gregory.Kieschnick@houstontx.gov)

All questions must be submitted by 5:00 p.m., Monday, August 11, 2025.

**1.6. Addenda**

All modifications or clarifications of this RFP will be issued in writing as an Addendum. Addenda will be posted on <https://www.civcastusa.com/>

The Proposers are permitted to rely solely on the information contained within this RFP, as amended by any Addenda. By submitting a proposal, Proposers will be regarded as having received all Addenda.

No Addendum will be issued later than Friday, August 15, 2025, except Addenda with minor clarifications, withdrawing the RFP, or postponing the submittal date.

### **1.7. Estimated RFP Timeline**

Pre-Proposal Conference	2:30 p.m., Tuesday, August 5, 2025
Questions Deadline	5:00 p.m., Monday, August 11, 2025
Addenda Deadline	Friday, August 15, 2025
Submittal Date	10:30 a.m., Thursday, August 21, 2025
Shortlisting Date	September, 2025
Anticipated Council Date	October, 2025
Anticipated Contract Notice to Proceed	November, 2025

## 2. SCOPE OF SERVICES

### 2.1. Project Description:

*Project Name:* Municipal Court Department (MCD) – Replacement Facility

*Location:* 61 Riesner St Garage, Houston, TX 77004, or Alternate Site, Houston, TX

*Estimated Construction Budget:* \$132,000,000

*Building Size:* Approximately 130,000 SF – 140,000 SF

*Parking Garage Spaces:* 550 spaces

The existing facility serves as the place where the laws of the City are interpreted and administered. The court is an essential and critical public facility fulfilling the necessary responsibility for the community.

The City's municipal courthouse is located at 1400 Lubbock Street, west of Interstate 45 and north of Buffalo Bayou and is located within the 100-year-old floodplain. In late August of 2017, the courthouse sustained severe levels of damage because of Hurricane Harvey due to overflowing floodwater from Buffalo Bayou entering at multiple locations.

The City's plan involves the complete demolition of the current facility and the underground tunnel connecting the courthouse with the building at 61 Riesner St. Following this, a new facility will be constructed. The new facility shall include at a minimum, state-of-the-art courtrooms, various office spaces, judges' chambers, and public restrooms.

The City's municipal courthouse, built in 1973, encompasses an area of 104,000 square feet and features a precast concrete wall panel and steel frame construction. The facility consists of two stories, along with a fully utilized basement that includes an exterior stairwell entrance with a 4-foot floodwall. Within the building, there are five municipal courtrooms, various office spaces, judges' chambers, a detention room, public restrooms, two elevators, and an engine room. The first floor is dedicated to courtrooms and public service areas.

### 2.2. Proposed Project Schedule

For planning purposes, the anticipated timeline for the project is:

CMAR Procurement	July 2025 - November, 2025
Pre-Construction Services	November 2025 - January 2027
Permitting	February 2027 – January 2028
Construction Phase	February 2028 – April 2031
Correction Period	12 months

### **2.3. LEED Certification**

Leadership in Energy and Environmental Design (LEED™) Certification will be considered for this project.

### **2.4. CMAR Services**

The CMAR shall function as a consultant to the owner during the pre-construction process:

- 2.4.1 Pre-Design
- 2.4.2 Schematic design
- 2.4.3 Design Development
- 2.4.4 Contract Document Phases.

The CMAR shall prepare the GMP and include a detailed schedule of values, reasonably inferred items, and other project-related items that may arise during construction. The CMAR shall ensure the drawings and specifications are consistent with the scope of work for the project and the GMP. The CMAR shall manage and control construction costs to not exceed the GMP; any costs exceeding the GMP that are not change orders are the responsibility of the CMAR.

For this project, the responsibilities of the CMAR shall include but are not limited to the following:

- 2.4.5 Provide consultation during the design phase with emphasis on coordination and constructability reports at each design phase.
- 2.4.6 Collaborate with the City and the architect to support the development of the project's control budget.

- 2.4.7 Provide construction cost estimates at the appropriate stages of design Program, Schematic, Design Development, 50% Contract Documents, 95% Contract Documents).
- 2.4.8 Provide assurance that the drawings and specifications are complete and detailed to the extent required to provide an accurate GMP through constant monitoring and modeling during the design development process.
- 2.4.9 Develop a construction phasing plan and prepare and manage a Master Schedule prepared on Microsoft Project; show critical path and update monthly over baseline.
- 2.4.10 Submit a Guaranteed Maximum Price (GMP) for the project.
- 2.4.11 Assume the risk for the construction phase of the project.

Refer to attached Document 7 - Contract Form for additional information.

### 3 EVALUATION PROCESS AND CRITERIA

#### 3.4 Evaluation Criteria

The Proposers will be ranked by an Evaluation Committee based on the following criteria and points:

##### 3.4.7 *Proposal Criteria and Points:*

Proposal completed in accordance with instructions	5 Points	100 Maximum Points
Proposer's Experience	20 Points	
Proposed Key Personnel's Experience	25 Points	
Pre-Construction Approach	25 Points	
Safety	5 Points	
Fee Proposal	20 Points	

#### 3.5 Oral Presentations

The City shall short-list a maximum of five proposers to participate in an interview/presentation. The Proposer's designated key personnel will be expected to participate in the interview/presentation. The Proposers will be notified in writing of the date/time and location of their oral presentation.

Each Proposer's team will be allocated five minutes before the scheduled interview to set up their presentation, with the necessary technology provided. The team will then have 30 minutes to present their proposal. Following each presentation, the Evaluation Committee will conduct a question-and-answer session lasting 15 minutes, during which they may ask specific questions related to the submitted proposal.

The presentation shall include but is not limited to the following:

- Introduction

- Highlight specific projects where the proposer successfully utilized the CMAR method. Detail the scope, scale, and any complexities faced, showcasing the proposer's ability to deliver on time and within budget.
- Highlight relevant Proposer's experience with FEMA compliance
- Highlight relevant project key personnel experience including CMAR delivery method.
- Demonstrate successful team synergy and dynamics with emphasis on communication and conflict resolution.
- Project Approach
  - Discuss and present the proposer's preconstruction approach.
  - Knowledge of existing site constraints and opportunities.
  - Knowledge and understanding of local context.
  - Knowledge of current industry trends.
  - Highlight ideas related to this project and include a constructability statement.
  - Demonstrate knowledge of FEMA procedure and requirements.

#### 4 PROPOSAL FORM – PART A

Proposals are to have clearly marked tabs that correspond to the sections of the Proposal. Total pages are limited by the Proposal form and additional pages set out in Proposal instructions. Other pages should not be included. The response boxes can be expanded to fit more information; however, the tables must remain the same size. Typically, font size shall be 8 pt. or larger.

##### **4.4 Proposer's General Information**

Is Proposal being submitted by a Joint Venture?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Proposer's legal name:		
Proposer's assumed names (if any):		
Proposer's local address:	Proposer's Headquarters Address (if different than local address):	
Contact Name for Proposal: Email address: Telephone number:	Federal Tax ID Number:	

#### **4.5 Joint Venture Firm(S) Information**

If submitting as a joint venture, the following information is required for each additional joint venture firm. Insert additional tables, if necessary.

Firm's legal name:			
Firm's assumed names (if any):			
Firm's local address:		Firm's Headquarters Address (if different than local address):	
Federal Tax ID Number:			

#### **4.6 Proposer's Construction Experience.**

Proposers should select **three** representative construction projects of similar size, scope, and delivery method. Recent projects completed within ten years or less are preferable. The three projects are not limited to projects of similar occupancy type.

Construction Firm Name:			
I. Project Name:			
Project Location:		Construction Delivery Method:	
Year Construction Completed (month/year): <i><u>NOTE:</u> If the project is not substantially complete at the time of submission, the PROPOSER will be awarded zero points.</i>		New Construction or Renovation	
Construction Cost:		Building Area Square Footage:	
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Architectural Firm:			
Names of Proposed Key Personnel Listed in Section 4.4 that Worked on this Project (if any):			
<i>Attach up to <u>two</u> pages of photographs behind this sheet.</i>			

**Proposer's Construction Experience (Continued)**

Construction Firm Name:			
II. Project Name:			
Project Location:		Construction Delivery Method:	
Year Construction Completed (month/year): <b><i>NOTE: If the project is not substantially complete at the time of submission, the PROPOSER will be awarded zero points.</i></b>		New Construction or Renovation	
Construction Cost:		Building Area Square Footage:	
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Architectural Firm:			
Names of Proposed Key Personnel Listed in Section 4.4 that Worked on this Project (if any):			
<i>Attach up to <u>two</u> pages of photographs behind this sheet.</i>			

**Proposer's Construction Experience (Continued)**

Construction Firm Name:			
II. Project Name:			
Project Location:		Construction Delivery Method:	
Year Construction Completed <b>(month/year):</b>  <b><u>NOTE:</u></b> <i>If the project is not substantially complete at the time of submission, the PROPOSER will be awarded zero points.</i>		New Construction or Renovation	
Construction Cost:		Building Area Square Footage:	
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Architectural Firm:			
Names of Proposed Key Personnel Listed in Section 4.4 that Worked on this Project (if any):			
<i>Attach up to <u>two</u> pages of photographs behind this sheet.</i>			

#### **4.7 Proposed Key Personnel**

List the Key Personnel proposed for this project. Include the Preconstruction Project Manager, Constructability/Document Coordination Reviewer, Estimator, Construction Project Manager, and the Project Superintendent

Proposal Project Role	Describe Functions of Project Role	Personnel Name	Corporate Title	Active Registrations / Certifications / Licenses	Years of Experience
Preconstruction Project Manager					
Constructability and Document Coordination Reviewer					
Estimator					
Construction Project Manager					
Project Superintendent					

#### 4.8 Preconstruction Project Manager's Experience

Proposers should select three representative construction projects of similar size, scope, and delivery method. Recent projects completed within ten years or less are preferable. The three projects are not limited to projects of similar occupancy type.

Preconstruction Project Manager Name:			
I. Project Name:			
Project Location:		Construction Delivery Method:	
Year Construction Completed (month/year): <i><b>NOTE:</b> If the project is not substantially complete at the time of submission, the PROPOSER will be awarded zero points.</i>		New Construction or Renovation	
Construction Cost:		Building Area Square Footage:	
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Architectural Firm:			
Project Role:			
Names of Proposed Key Personnel Listed in Section 4.4 that Worked on this Project (if any):			
<i>Attach up to <u>two</u> pages of photographs behind this sheet.</i>			

**Preconstruction Project Manager's Experience (Continued)**

Preconstruction Project Manager Name:			
II. Project Name:			
Project Location:		Construction Delivery Method:	
Year Construction Completed (month/year): <i><b>NOTE:</b> If the project is not substantially complete at the time of submission, the PROPOSER will be awarded zero points.</i>		New Construction or Renovation	
Construction Cost:		Building Area Square Footage:	
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Architectural Firm:			
Project Role:			
Names of Proposed Key Personnel Listed in Section 4.4 that Worked on this Project (if any):			
<i>Attach up to <u>two</u> pages of photographs behind this sheet.</i>			

**Preconstruction Project Manager's Experience (Continued)**

Preconstruction Project Manager Name:			
III. Project Name:			
Project Location:		Construction Delivery Method:	
Year Construction Completed (month/year): <i><b>NOTE:</b> If the project is not substantially complete at the time of submission, the PROPOSER will be awarded zero points.</i>		New Construction or Renovation	
Construction Cost:		Building Area Square Footage:	
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Architectural Firm:			
Project Role:			
Names of Proposed Key Personnel Listed in Section 4.4 that Worked on this Project (if any):			
<i>Attach up to <u>two</u> pages of photographs behind this sheet.</i>			

#### 4.9 Constructability/Document Coordination Reviewer's Experience

Proposers should select three representative construction projects of similar size, scope, and delivery method. Recent projects completed within ten years or less are preferable. The three projects are not limited to projects of similar occupancy type.

Constructability/Document Coordination Reviewer Name:			
I. Project Name:			
Project Location:		Construction Delivery Method:	
Year Construction Completed (month/year): <b><u>NOTE:</u></b> If the project is not substantially complete at the time of submission, the PROPOSER will be awarded zero points.		New Construction or Renovation	
Construction Cost:		Building Area Square Footage:	
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Architectural Firm:			
Project Role:			
Names of Proposed Key Personnel Listed in Section 4.4 that Worked on this Project (if any):			
Attach up to <u>two</u> pages of photographs behind this sheet.			

**Constructability/Document Coordination Reviewer's Experience (Continued)**

Constructability/Document Coordination Reviewer Name:			
II. Project Name:			
Project Location:		Construction Delivery Method:	
Year Construction Completed (month/year): <i><b>NOTE:</b> If the project is not substantially complete at the time of submission, the PROPOSER will be awarded zero points.</i>		New Construction or Renovation	
Construction Cost:		Building Area Square Footage:	
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Architectural Firm:			
Project Role:			
Names of Proposed Key Personnel Listed in Section 4.4 that Worked on this Project (if any):			
<i>Attach up to <u>two</u> pages of photographs behind this sheet.</i>			

**Constructability/Document Coordination Reviewer's Experience (Continued)**

Constructability/Document Coordination Reviewer Name:			
III. Project Name:			
Project Location:		Construction Delivery Method:	
Year Construction Completed (month/year): <i><b>NOTE:</b> If the project is not substantially complete at the time of submission, the PROPOSER will be awarded zero points.</i>		New Construction or Renovation	
Construction Cost:		Building Area Square Footage:	
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Architectural Firm:			
Project Role:			
Names of Proposed Key Personnel Listed in Section 4.4 that Worked on this Project (if any):			
<i>Attach up to <u>two</u> pages of photographs behind this sheet.</i>			

#### **4.10 Estimator' Experience.**

Proposers should select three representative construction projects of similar size, scope, and delivery method. Recent projects completed within ten years or less are preferable. The three projects are not limited to projects of similar occupancy type.

Estimator Name:			
I. Project Name:			
Project Location:		Construction Delivery Method:	
Year Construction Completed (month/year): <b><i>NOTE: If the project is not substantially complete at the time of submission, the PROPOSER will be awarded zero points.</i></b>		New Construction or Renovation	
Construction Cost:		Building Area Square Footage:	
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Architectural Firm:			
Project Role:			
Names of Proposed Key Personnel Listed in Section 4.4 that Worked on this Project (if any):			
<i>Attach up to <u>two</u> pages of photographs behind this sheet.</i>			

**Estimator's Experience (Continued)**

Estimator Name:			
II. Project Name:			
Project Location:		Construction Delivery Method:	
Year Construction Completed (month/year): <i><b>NOTE:</b> If the project is not substantially complete at the time of submission, the PROPOSER will be awarded <b>zero</b> points.</i>		New Construction or Renovation	
Construction Cost:		Building Area Square Footage:	
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Architectural Firm:			
Project Role:			
Names of Proposed Key Personnel Listed in Section 4.4 that Worked on this Project (if any):			
<i>Attach up to <b>two</b> pages of photographs behind this sheet.</i>			

**Estimator's Experience (Continued)**

Estimator Name:			
III. Project Name:			
Project Location:		Construction Delivery Method:	
Year Construction Completed <b>(month/year):</b> <b><u>NOTE:</u></b> <i>If the project is not substantially complete at the time of submission, the PROPOSER will be awarded <b>zero</b> points.</i>		New Construction or Renovation	
Construction Cost:		Building Area Square Footage:	
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Architectural Firm:			
Project Role:			
Names of Proposed Key Personnel Listed in Section 4.4 that Worked on this Project (if any):			
<i>Attach up to <b>two</b> pages of photographs behind this sheet.</i>			

#### **4.11 Construction Project Manager's Experience**

Proposers should select three representative construction projects of similar size, scope, and delivery method. Recent projects completed within ten years or less are preferable. The three projects are not limited to projects of similar occupancy type.

Construction Project Manager Name:			
I. Project Name:			
Project Location:		Construction Delivery Method:	
Year Construction Completed (month/year): <b><u>NOTE:</u></b> <i>If the project is not substantially complete at the time of submission, the PROPOSER will be awarded zero points.</i>		New Construction or Renovation	
Construction Cost:		Building Area Square Footage:	
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Architectural Firm:			
Project Role:			
Names of Proposed Key Personnel Listed in Section 4.4 that Worked on this Project (if any):			
Attach up to <b><u>two</u></b> pages of photographs behind this sheet.			

**Construction Project Manager Experience (Continued)**

Construction Project Manager Name:			
III. Project Name:			
Project Location:		Construction Delivery Method:	
Year Construction Completed (month/year): <i>NOTE: If the project is not substantially complete at the time of submission, the PROPOSER will be awarded zero points.</i>		New Construction or Renovation	
Construction Cost:		Building Area Square Footage:	
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Architectural Firm:			
Project Role:			
Names of Proposed Key Personnel Listed in Section 4.4 that Worked on this Project (if any):			
<i>Attach up to <u>two</u> pages of photographs behind this sheet.</i>			



**Construction Project Manager Experience (Continued)**

Construction Project Manager Name:			
III. Project Name:			
Project Location:		Construction Delivery Method:	
Year Construction Completed (month/year): <i><b>NOTE:</b> If the project is not substantially complete at the time of submission, the PROPOSER will be awarded zero points.</i>		New Construction or Renovation	
Construction Cost:		Building Area Square Footage:	
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Architectural Firm:			
Project Role:			
Names of Proposed Key Personnel Listed in Section 4.4 that Worked on this Project (if any):			
<i>Attach up to <b>two</b> pages of photographs behind this sheet.</i>			

#### **4.12 Construction Superintendent's Experience**

Proposers should select three representative construction projects of similar size, scope, and delivery method. Recent projects completed within ten years or less are preferable. The three projects are not limited to projects of similar occupancy type.

Construction Superintendent Name:			
I. Project Name:			
Project Location:		Construction Delivery Method:	
Year Construction Completed (month/year): <i><b>NOTE:</b> If the project is not substantially complete at the time of submission, the PROPOSER will be awarded zero points.</i>		New Construction or Renovation	
Construction Cost:		Building Area Square Footage:	
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Architectural Firm:			
Project Role:			
Names of Proposed Key Personnel Listed in Section 4.4 that Worked on this Project (if any):			
<i>Attach up to <u>two</u> pages of photographs behind this sheet.</i>			

**Construction Superintendent's Experience (Continued)**

Construction Superintendent Name:			
II. Project Name:			
Project Location:		Construction Delivery Method:	
Year Construction Completed (month/year): <i><b>NOTE:</b> If the project is not substantially complete at the time of submission, the PROPOSER will be awarded zero points.</i>		New Construction or Renovation:	
Construction Cost:		Building Area Square Footage:	
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Architectural Firm:			
Project Role:			
Names of Proposed Key Personnel Listed in Section 4.4 that Worked on this Project (if any):			
<i>Attach up to <u>two</u> pages of photographs behind this sheet.</i>			

**Construction Superintendent's Experience (Continued)**

Construction Superintendent Name:			
III. Project Name:			
Project Location:		Construction Delivery Method:	
Year Construction Completed (month/year): <i><b>NOTE:</b> If the project is not substantially complete at the time of submission, the PROPOSER will be awarded zero points.</i>		New Construction or Renovation	
Construction Cost:		Building Area Square Footage:	
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Architectural Firm:			
Project Role:			
Names of Proposed Key Personnel Listed in Section 4.4 that Worked on this Project (if any):			
<i>Attach up to <u>two</u> pages of photographs behind this sheet.</i>			

#### **4.13 Preconstruction Approach.**

Attach up to five pages describing the following:

- Describe the Proposer's concepts for working in a team relationship with the City of Houston, Architect, and Engineering Consultants during the Preconstruction Phase Services.
- Describe the methodology of reviewing construction documents, site conditions and proposed phasing. Discuss methods of documenting and proposing changes to construction documents.
- Describe the plan for complying with federal guidelines required by FEMA.
- Describe the plan for coordination of phasing, security, and operations.
- Describe the scheduling and estimating efforts during the preconstruction phase.
- Describe the subcontracting plan. Include the methodology of advertising, negotiating, and awarding contracts for subcontracted work.

#### **4.14 safety:**

If "No" is indicated below for the Safety Program Manual, the Proposal may not be evaluated.

Does your company have a Safety Program Manual?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
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#### **4.15 Required Forms.**

All Proposers must include with the PROPOSAL the following forms.

- Ownership Information Form – Document 00455  
<http://purchasing.houstontx.gov/forms.shtml>
- POP1 - Pay or Play Acknowledgement Form  
<http://www.houstontx.gov/obo/popforms.html>
- Debarment Certification (See Sample Contract Attachment 1 to Exhibit G)
- Byrd Anti-Lobbying Certification (See Sample Contract **Attachment 2** to Exhibit G)

## 5 PROPOSAL FORM – PART B

### 5.4 Fee Proposal

<i>CONSTRUCTION PHASE FEE FOR THE PROJECT SERVICES (see <a href="#">Section 2.10</a> of CMAR Contract – Document 7)</i>	_____ %
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**NOTE: THERE IS NO CONTRACTOR'S CONTINGENCY FOR THIS PROJECT. SUBMIT YOUR CONSTRUCTION PHASE FEE TAKING THIS INTO ACCOUNT.**

### 5.5 Signature of Authorized Representative.

#### **COMPANY NAME:**

\_\_\_\_\_  
Name:

Title:

Federal Tax ID No

## 6 TERMS AND CONDITIONS

### 6.4 No Contact Period and Gratuities

Neither Proposer nor any person acting on Proposer's behalf shall attempt to influence the outcome of the award by the offer, presentation or promise of gratuities, favors, or anything of value to any appointed or elected official or employee of the City of Houston or their families. All inquiries regarding the solicitation are to be directed to the designated City Representative identified in Section 1.5 of this RFP. Upon issuance of the solicitation, through the pre-award phase and up to the award, aside from Proposer's formal response to the solicitation, communications publicly made during the official pre-submittal meeting, written requests for clarification during the period officially designated for such purpose by the City Representative, neither Proposer nor persons acting on their behalf shall communicate with any appointed or elected official or employee of the City of Houston or their families through written or oral means in an attempt to persuade or influence the outcome of the award or to obtain or deliver information intended to or which could reasonably result in an advantage to any Proposer. However, nothing in this paragraph shall prevent a Proposer from making public statements to the City Council convened for a regularly scheduled session after the official selection has been made and placed on the City Council agenda for action, or to a City Council committee convened to discuss a recommendation regarding the solicitation.

### 6.5 False Information

Proposers who provide false or misleading information, whether intentional or not, in any documents presented to the City for consideration in the selection process shall be excluded.

### 6.6 Standard City Contract

This RFP is not to be construed as a contract or as a commitment of any kind. Successful Proposer(s) will be required to execute a standard City of Houston Construction Manager at Risk Contract. A copy of this document is included in this RFP packet.

### 6.7 City Policies and Ordinances

Proposers shall comply with the City of Houston Ordinances and policies and procedures relating to contracting with the City. The following is a partial list of applicable subject matters.

6.7.7 *MWBE Goals as set out on the cover page.*

[ARTICLE V. - MINORITY, WOMEN AND SMALL BUSINESS ENTERPRISES |](#)  
[Code of Ordinances | Houston, TX | Municode Library](#)

6.7.8 *City of Houston Fair Campaign Ordinance*

[https://purchasing.houstontx.gov/forms/Fair\\_Campaign\\_Ordinance.doc](https://purchasing.houstontx.gov/forms/Fair_Campaign_Ordinance.doc)

**6.7.9 Mayor's Drug Detection and Deterrence Policy and Procedures**

<http://www.houstontx.gov/execorders/1-31.pdf>

**6.7.10 Indebtedness to Taxing Authorities Ordinance**

[ARTICLE VIII. - CITY CONTRACTS; INDEBTEDNESS TO CITY | Code of Ordinances | Houston, TX | Municode Library](#)

**6.7.11 Pay or Play (POP) Program**

[City of Houston \(houstontx.gov\)](#)

**6.8 Compliance with Certain State Law Requirements.**

The Proposer will have to make the following certifications as part of contracting with the City

- 6.8.7 *Anti-Boycott of Israel.* Contractor certifies that Contractor is not currently engaged in, and agrees for the duration of this Contract not to engage in, the boycott of Israel as defined by Section 808.001 of the Texas Government Code.
- 6.8.8 *Anti-Boycott of Energy Companies.* Contractor certifies that Contractor is not currently engaged in, and agrees for the duration of this Contract not to engage in, the boycott of energy companies as defined by Section 809.001 of the Texas Government Code.
- 6.8.9 *Anti-Boycott of Firearm Entities or Firearm Trade Associations.* Contractor certifies that Contractor does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association or will not discriminate against a firearm entity or firearm trade association for the duration of this Contract, as defined by Section 2274.001 of the Texas Government Code.
- 6.8.10 *Certification of No Business with Foreign Terrorist Organizations.* For purposes of Section 2252.152 of the Texas Government Code, Contractor certifies that, at the time of this Contract neither Contractor nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Contractor, is a company listed by the Texas Comptroller of Public Accounts under Sections 2252.153 or 2270.0201 of the Texas Government Code as a company known to have contracts with or provide supplies to a foreign terrorist organization.

**6.9 Executive Order 1-56 Zero-Tolerance for Human Trafficking in the City Service Contracts and Purchasing**

The City has a zero tolerance for human trafficking, and, per Executive Order 1-56, City funds shall not be used to promote human trafficking. City Proposers are expected to comply with this Executive Order and notify the City's Chief Procurement Officer of any

information regarding possible violation by the Proposer or its subcontractors providing services or goods to the City. The Executive order is available on the City's website:

[Executive Orders \(houstontx.gov\)](http://houstontx.gov)

#### **6.10 Cost of RFP**

The City will not be responsible for costs incurred by anyone in the submittal of a proposal, or for any costs incurred prior to the execution of a formal contract.

#### **6.11 Confidential Information**

All responses shall be held confidential from other parties by the City to the extent allowable by law until after the selection process is completed. Proposers should be aware that at the completion of the selection process, the contents of their Proposal are subject to the provisions of the Texas Public Information Act and may be made public. Confidential and/or Sensitive information should not be included in the Proposal. The City has no obligation to return any materials provided, and they will become the property of the City's official files.

#### **6.12 Protest**

A protest shall be handled according to the City of Houston Policies / Procedures, Administrative Policies, Section 5 – Purchasing, 5-12 Protests – 03.04.2016:

<http://www.houstontx.gov/adminpolicies/5-12.pdf>

#### **6.13 Reservation of Rights.**

The City of Houston reserves the right to:

- 6.13.7 1. Evaluate the proposals submitted
- 6.13.8 2. Waive any irregularities
- 6.13.9 3. Request Proposers submit more detailed information
- 6.13.10 4. Interview Proposers
- 6.13.11 5. Accept any submittal or portion of a submittal
- 6.13.12 6. Reject any or all Proposers submitting proposals

#### **6.14 Preservation of Contracting Information**

The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this bid and the Proposer or vendor agrees that the contract can be terminated if the Proposer or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

#### **6.15 Prospective Proposer Responsibility**

The City will award contracts only to the responsible Proposer possessing the ability to perform successfully under the terms and conditions of a proposed procurement. The City's policy is to award contracts only to a prospective Proposer whom the City's contracting department has determined to be responsible, considering the following non-exhaustive factors:

- 6.15.7 Record of integrity and business ethics, including timely payments to subcontractors/subconsultants, business judgment, reputation, and reliability.
- 6.15.8 History of compliance with public policy and applicable laws, or the lack thereof.
- 6.15.9 Record of past performance, including but not limited to, poor performance, failure to achieve reasonable progress, or defaulting on existing or previous City of Houston contracts, if any.
- 6.15.10 Capacity to perform the required work or provide the required goods or services, which may include having (or having the ability to obtain) adequate financial and technical resources to perform the contract and any necessary equipment, facilities, organization, experience, efficiency, operational control, or technical skills, as applicable.
- 6.15.11 Financial responsibility, including the ability to provide adequate bonds and insurance, as applicable.
- 6.15.12 History of compliance with prevailing wage and other labor standards requirements.
- 6.15.13 Record of failure to make good faith efforts to meet MWBE goals.
- 6.15.14 Qualification and eligibility to receive an award under applicable laws and regulations, including any federal rules or regulations (e.g., 2 CFR Part 200).
- 6.15.15 Ineligibility due to being suspended or debarred by federal, state, city, or county governmental agencies.

## **6.16 Bid Bond Requirement**

The successful Proposer will be required to submit a bid bond equal to five percent of the estimated construction budget as set out in Document 2 – Scope of Services of this RFP prior to entering into a contract with the City. This bid guarantee will assure the City that the Proposer will enter into the Guaranteed Maximum Price (GMP) and execute the required bonds and insurance documents and that the Proposer has the financial means to accept and complete the project.

## **6.17 Delegation of Authority**

**State Law:** State law allows for the use of CMAR method in selecting a general contractor in the construction or alteration of public buildings. (Subchapter F, Chapter 2269 *Texas Government Code*)

§2269.056 – Requires the City's governing Body to determine which method other than competitive bidding offers the best value before utilizing such methods. §2269.053 allows the City to delegate authority under this Chapter. Per Motion 2007-297, the City Council delegated authority to the Director of the Building Services Department (City Council later renamed the Building Services Department to the General Services Department) to make the determination of which method offers the best value for a particular project. In this case, the Director of the General Services Department determined that CMAR offers the best value.

**7     SAMPLE CONTRACT FORM**

Contract No. \_\_\_\_\_

Ordinance No. \_\_\_\_\_

**CONSTRUCTION MANAGER AT RISK  
FOR THE**

**WBS No.: \_\_\_\_\_  
Version 6-23-25**

THIS **CONSTRUCTION MANAGER AT RISK CONTRACT**("Contract") is made on the Countersignature Date between the **CITY OF HOUSTON, TEXAS** ("City"), a home-rule municipal corporation, and \_\_\_\_\_ ("Construction Manager"), a (Insert State of incorporation) (insert type of entity e.g. corporation, limited partnership, limited liability company, etc.) authorized to do business in the State of Texas, (also referred to as "Party" individually or "Parties" collectively).

**1. PARTIES**

**1.1. Address**

1.1.1. The initial addresses of the Parties, which one Party may change by giving written notice of its changed address to the other Party, are as follows:

**City**

Director, General Services Department  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251

**Construction Manager**

The Parties agree as follows:

**1.2. Table Of Contents**

1.1.2. This Contract consists of the following sections:

**[THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK]**

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### **1.3. Signatures**

- 1.3.1. The Parties have executed this Contract in multiple copies, each of which is an original. Each person signing this Contract represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Contract. Each Party represents and warrants to the other that the execution and delivery of this Contract and the performance of such Party's obligations hereunder have been duly authorized, and that the Contract is a valid and legal Contract binding on such Party and enforceable in accordance with its terms. The Parties hereby agree that each Party may sign and deliver this Contract electronically or by electronic means and that an electronic transmittal of a signature, including but not limited to, a scanned signature page, will be as good, binding, and effective as an original signature.

#### **CONSTRUCTION MANAGER:**

---

Name:

Title:

Federal Tax ID No.:

#### **ATTEST/SEAL:**

**CITY OF HOUSTON, TEXAS**

---

City Secretary

#### **APPROVED:**

---

Director, General Services Department

---

Mayor

#### **COUNTERSIGNED BY:**

---

City Controller

#### **DATE COUNTERSIGNED:**

#### **APPROVED AS TO FORM:**

---

Sr. Assistant City Attorney

L.D. File No.: \_\_\_\_\_

## 2. DEFINITIONS

As used in this Contract, the terms, words, and phrases are defined in this Article. If words, terms, or phrases are not defined in this Article, they shall have the meanings given in the General Conditions. The meanings given to words, terms, and phrases in this Contract and the General Conditions shall apply in the other Contract Documents unless otherwise defined in the specific Contract Document in which the term, word, or phrase is used. If not defined in any document, the words, terms, and phrases shall have their usual and customary meaning.

- 2.1. **Additional Preconstruction Phase Services:** The services described in Section 5.7.
- 2.2. **Agreed Estimate** means the estimate of construction cost, excluding the fee for Construction Manager's profit and general overhead, for the Project or a portion thereof agreed to by the Director and Construction Manager in writing.
- 2.3. **Base Contract:** This document to which the exhibits are attached and is one of the documents comprising the Contract that provides the Work description, phases of services, the documents that are incorporated into the Contract, payment terms, and other terms.
- 2.4. **Basic Preconstruction Phase Services:** The services described in Section 5.6.
- 2.5. **Bonds:** Performance Bond, Payment Bond, Maintenance Bond, Bid/Proposal Bond and other Surety instruments executed by Surety. When in singular form, it refers to individual instrument. See General Conditions Article 11. This definition replaces and supersedes the definition of "Bonds" contained in Article 1 of the General Conditions.
- 2.6. **Business Day:** Any calendar day except Saturdays, Sundays and Legal Holidays.
- 2.7. **Change Order:** Written instrument prepared by the City and signed by Director and Construction Manager, specifying the following: (1) a change in the Construction Phase Work, (2) a change in Contract Price, (3) a change in GMP, or (4) a change in Contract Time. The value of a Change Order is the net amount after offsetting all deductions against all additions affected by the Change Order. This definition replaces and supersedes the definition of "Change Order" contained in Article 1 of the General Conditions.
- 2.8. **Change in Law or Change in Applicable Law:** Any amendment, modification, superseding act, deletion, addition or change in or to Applicable Law (excluding changes to Tax laws where Taxes are based upon Construction Manager's inventory, revenue, income, profits/losses or cost of finance or withholding Tax) that occurs and takes effect after the Effective Date, provided that Construction Manager did not know that the amendment, modification, superseding act, deletion, addition or change in or to Applicable Law would occur following the Effective Date.
- 2.9. **Construction Manager or CM:** Person or firm identified in the preamble of this Contract including its successors, its authorized representatives, its Subcontractors, Suppliers, and anyone for whose acts any of the foregoing Construction Manager may be legally or contractually liable, including their officers, directors, employees, representatives, agents, and contractors.

- 2.10. **Construction Phase Fee** means the fee for Construction Manager's profit and general overhead, calculated as the lesser of \_\_\_\_\_ % of the Agreed Estimate determined prior to advertising for subcontractor bids in accordance with Section 5.6.5 or \_\_\_\_\_ % of the estimated Cost of the Work as determined before construction work begins and as set out in the GMP. In no instance will the Construction Phase Fee increase with actual costs. The Construction Phase Fee is converted to a Lump Sum for the scope of work set out in the GMP when the Guaranteed Maximum Price is executed by the Director and the Construction Manager
- 2.11. **Construction Phase Services or Construction Phase:** The implementation and execution of the construction work required by the GMPs. The Construction Phase of the Work may be divided into different stages with each stage having different start and completion dates.
- 2.12. **Contract or Contract Documents:** See Article 4. This definition replaces and supersedes the definitions of "Contract" and "Agreement" contained in Article 1 of the General Conditions.
- 2.13. **Contract Price:** The monetary amount stated in the GMP (or if there are multiple GMPs, the total of all GMPs), Modifications and/or amendments, if any. This definition replaces and supersedes the definition of "Contract Price" contained in Article 1 of the General Conditions.
- 2.14. **Contract Standards:** The standards, terms, conditions, methods, techniques and practices imposed or required by: (1) Applicable Law; (2) good engineering and construction practice; (3) the baseline design documents or Program, if any; (4) the insurance requirements; (5) good operating practice, (6) applicable equipment manufacturers' and suppliers' requirements and recommendations; and (7) any other standard, term, condition or requirement provided in the Contract to be observed by Construction Manager.
- 2.15. **Contract Time:** The number of days stated in the Contract or any GMP to complete the Work, plus days authorized by Modification. This definition replaces and supersedes the definition of "Contract Time" contained in Article 1 of the General Conditions.
- 2.16. **Contractor:** As used in the General Conditions, means Construction Manager as defined in this Article, including its successors and its authorized representatives, except to the extent the context of the terms referring to "contractor" indicates that the Contractor is a contractor other than Construction Manager, such as an "other contractor" or a "separate contractor." This definition replaces and supersedes the definition of "Contractor" contained in Article 1 of the General Conditions.
- 2.17. **Cost of the Work:** The costs defined in Section 8.6.
- 2.18. **Date of Commencement of the Work:** Date established in a Notice to Proceed on which Contract Time will commence for the Work that is the subject of such Notice to Proceed. This date will not be changed by failure of Construction Manager, or persons or entities for whom Construction Manager is responsible, to act. This definition replaces and supersedes the definition of Date of Commencement of the Work contained in Article 1 of the General Conditions.

- 2.19. **Day:** Whether capitalized or not, unless otherwise specifically provided, means calendar day, including weekends and legal holidays. In the case of plural "days", those days will be consecutive.
- 2.20. **Defect Correction Period:** The period during which Construction Manager shall be obligated to replace or correct deficiencies in Products and/or the Work, which period shall be one year following Substantial Completion and acceptance of the Work, or discrete phase thereof, unless the applicable manufacturer or subcontractor, if any, provides a longer correction period, in which event the longer correction period shall apply. This definition replaces and supersedes the definition of Defect Correction Period contained in Article 1 of the General Conditions.
- 2.21. **Design Consultant:** Person or firm, under contract with the City, to provide professional services during Preconstruction Phase and Construction Phase and its authorized representatives. This definition replaces and supersedes the definition of Design Consultant in Article 1 of the General Conditions.
- 2.22. **Director:** The Director of the General Services Department or the person he or she designates. This definition replaces and supersedes the definition of Director in Article 1 of the General Conditions.
- 2.23. **Direct Salary Expense or DSE:** The direct salary rates of Construction Manager's employees directly engaged on the Work, plus the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions, and similar contributions and/or benefits. Direct salary rates in effect for the duration of this Contract are shown in Exhibit B for the positions listed in Exhibit B, and such rates shall be deemed to include the cost of all contributions and benefits and shall be used as the Direct Salary Expense for such positions without any additional markup.
- 2.24. **Effective Date:** The date the City Controller Countersign's this Contract.
- 2.25. **Force Majeure:** Catastrophic storms or floods, tornadoes, hurricanes, earthquakes and other acts of God, wars, civil disturbances, terrorist attacks, revolts, riots, insurrections, hostilities, strikes (excluding strikes of a Party's employees), sabotage, commercial embargoes, epidemics, fires, explosions, Changes in Law and actions of a Governmental Authority that were not requested, promoted, or caused by the affected Party; provided that the act or event (i) delays or renders impossible the affected Party's performance of its obligations under this Contract; (ii) is beyond the reasonable control of the affected Party, not due to its fault or negligence, and was not reasonably foreseeable; and (iii) could not have been prevented or avoided by the affected Party through the exercise of due diligence. For avoidance of doubt, Force Majeure will not include any of the following: (a) economic hardship, (b) changes in market conditions, (c) late delivery or failure of equipment, unless the delay or failure is caused by Force Majeure, (d) labor availability, strikes of a Party's employees, or other similar labor actions, or (e) nonperformance or delay by Construction Manager or its Subcontractors, unless the nonperformance or delay is otherwise caused by Force Majeure. This definition replaces and supersedes the definition of Force Majeure in Article 1 of the General Conditions.
- 2.26. **General Conditions:** The terms and conditions set forth in Exhibit A of the Contract, which may include terms and conditions that are substantially the same as those found in the

Base Contract and, therefore, shall be read together and interpreted by City and Construction Manager to eliminate conflict between the two. However, should a conflict exist after Director and Construction Manager have used best efforts to reconcile the conflict, the provision most favorable to the City shall prevail.

- 2.27. **General Conditions Costs:** Construction Manager's on-site management, administrative personnel, equipment, utilities, and incidental work, including field labor and materials. General Conditions Costs includes, but is not limited to: (i) Construction Manager Labor Costs for its project manager, assistant or deputy project manager, superintendents and assistant superintendents; (ii) Costs of materials and equipment not incorporated or to be incorporated into the completed construction; and (iii) Other costs including but not limited to testing fees and utilities, internet, cell phones, project vehicles, on-site computers, printers, monitors, and other electronic equipment. permits; mobilization; de-mobilization; field engineers and helpers, professional surveyor; field office; field office furnishings; office supplies; field office maintenance and repair; copiers and supplies; storage; communication devices (telephone, radio, etc.); project signs; construction fence – install/remove/maintain; access construction; general clean-up; finish areas clean-up; dumpsters; temporary water service; temporary electrical service; temporary lighting; temporary telephone; temporary weather protection; temporary fire protection; equipment start and testing; monthly ice and cups, monthly toilets; monthly water; and quality control. (For further detail and identification of General Conditions Costs, refer to Section 8.6.
- 2.28. **Governmental Authority:** Any federal, state, county, local or municipal governmental body; any governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or governmental tribunal. Notwithstanding the foregoing, Governmental Authority shall not include the Director or his or her designees or the City Engineer. This definition replaces and supersedes the definition of Governmental Authority contained in Article 1 of the General Conditions.
- 2.29. **Guaranteed Maximum Price or GMP:** The amount agreed upon by Director and Construction Manager as the maximum cost to City for the Work for the Construction Phase Services, including the Cost of the Work and the Construction Phase Fee for the Construction Phase Services. There may be one or more GMPs or amendments to GMP(s) to accomplish various stages of the Work
- 2.30. **Guaranteed Maximum Price Proposal or Proposal:** The proposal submitted by Construction Manager to the Director, the requirements of which are set forth in Section 5.6.
- 2.31. **Milestone:** A specified date by which Construction Manager is required to complete a designated portion or segment of the Work.
- 2.32. **Minor Change in the Work:** A written change in the Work ordered by Director that does not change Contract Price, Guaranteed Maximum Price, or Contract Time, and that is consistent with the general scope of the Contract. This definition replaces and supersedes the definition of Minor Change in the Work contained in Article 1 of the General Conditions.
- 2.33. **Notice of Noncompliance:** A written notice by Director to Construction Manager regarding construction non-conformance, defective nonconforming work or indeterminate

condition that does not meet the Contract requirements is identified and requires physical repair, rework, scrap or use as-is disposition. The Notice of Noncompliance establishes a time by which Construction Manager shall correct the defective or nonconforming work. This definition replaces and supersedes the definition of Notice of Noncompliance contained in Article 1 of the General Conditions.

- 2.34. **Notice to Proceed or NTP:** A written notice by the Director to Construction Manager establishing (a) Date of Commencement of the Work for a phase or stage of Construction or (b) the date Construction Manager is to begin performing a phase of Preconstruction Phase Services. This definition replaces and supersedes the definition of Notice to Proceed contained in Article 1 of the General Conditions.
- 2.35. **Owner:** Refers to the City.
- 2.36. **Preconstruction Phase Services or Preconstruction Phase:** All services required to fulfill the Basic Preconstruction Phase and Additional Preconstruction Phase Services, whether performed before or after construction begins.
- 2.37. **Project Schedule:** A schedule for Construction Phase Services as defined in Section 5.8.4 and the Specifications or otherwise approved by the Director.
- 2.38. **Project Team:** City, Construction Manager, any separate contractors employed by City and other consultants employed for the purpose of programming, design, and construction of the Project. The constitution of the Project Team may vary at different phases of the Project. The Project Team will be designated by the Director and may be modified by the Director.
- 2.39. **Work:** As defined in Article 3 and including entire Preconstruction Phase and Construction Phase required by the Contract, including all labor, Products, and services required or reasonably inferable to complete the work in accordance with the Contract. The term "reasonably inferable" takes into consideration the understanding of the Parties that not every detail will be shown on the Drawings and included in the Specifications. The Work may constitute the whole or a portion of the Project. This definition replaces and supersedes the definition of Work contained in Article 1 of the General Conditions.

### **3. SCOPE OF WORK**

- 3.1. The Work is described in the title of this Contract and is located at \_\_\_\_\_. As generally described below:  

---

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- 3.2. In accordance with the Contract, Construction Manager shall procure, construct, deliver, erect, commission, start-up, and test the complete work required under the Contract and shall provide all the necessary material, labor, supervision, machinery, equipment, facilities, tools, supplies, services, structures, and work. The Work, as defined herein, includes all things reasonably inferable from the Contract and all things necessary to produce the stated result even though no mention thereof is made in the Contract.

- 3.3. Construction Manager shall perform the services to further the interests of City and the Work.

#### **4. CONTRACT DOCUMENTS**

##### **4.1. Contract Documents Defined**

- 4.1.1. The "Contract Documents" or "Contract" are all of the documents describing the complete relationship between the City and Construction Manager for the Work, including, at a minimum: this Base Contract and all Exhibits, Construction Manager's GMP Proposals and forms submitted with the GMP Proposals, the Drawings and Specifications referenced in a GMP, addenda, Modifications, GMPs and exhibits attached to a GMP, any Notice to Proceed, and any other documents specifically included in these documents by reference.

##### **4.2. Interpretation**

- 4.2.1. The Contract Documents are intended to be complementary, and what is set forth in any one document is as binding as if set forth in each document. The Parties recognize that amendments and Modifications may provide for specific modification to the terms and conditions of other Contract Documents, in which case, the modified terms and conditions shall govern, as expressly set forth in the amendment or Modification. However, all terms and conditions of such other Contract Documents that are not expressly modified or deleted by an amendment or Modification shall remain in effect. Unless stated otherwise in this Contract, if a conflict between the sections of this Base Contract and the exhibits arises, the sections control over the exhibits. In the event of a conflict among the Drawings and Specifications referenced in a GMP, Construction Manager shall fulfill the greater of the requirements. In the event of any conflict,

ambiguity, or discrepancy among the Contract Documents, the precedence in resolving such conflicts, ambiguities, or discrepancies shall be as follows:

- 4.2.1.1. Base Contract as modified by an amendment, if any;
  - 4.2.1.2. General Conditions as modified by an amendment, if any;
  - 4.2.1.3. Exhibits attached to Base Contract as modified by an amendment, if any;
  - 4.2.1.4. Guaranteed Maximum Price agreed upon by the Director and Construction Manager including all exhibits as amended by amendments or Modifications, if any;
  - 4.2.1.5. GMP Proposals.
- 4.2.2. References to sections, paragraphs, articles, or other provisions shall be deemed to mean those contained in this Base Contract, unless specified otherwise.

## **5. DUTIES OF CONSTRUCTION MANAGER**

### **5.1. Generally**

- 5.1.1. The City is entering into this Contract in reliance on Construction Manager's special abilities in preconstruction and construction phase services and in performing its obligations under this Contract. Construction Manager accepts the relationship of trust and confidence established between it and the City by this Contract. Construction Manager shall use its best efforts, skill, judgment, and abilities to perform the services hereunder and to further the interests of City in accordance with City's requirements and procedures. Construction Manager represents that it has no obligations or impediments of any kind that will limit or prevent performance of the services required under this Contract.

### **5.2. Designated Representative**

- 5.2.1. Construction Manager shall designate a representative in writing, subject to the Director's reasonable approval, for the Contract, Preconstruction Phase and Construction Phase who is authorized to act on Construction Manager's behalf regarding the Work. Any individual designated as the representative of Construction Manager under this Contract shall have sufficient qualifications and experience to serve as Construction Manager's representative and shall be vested with the authority to act on behalf of Construction Manager, to receive notices on behalf of Construction Manager, to make binding decisions with respect to the performance of the Work, and to bind Construction Manager with respect to any certification to be made by Construction Manager under this Contract. The designated representative shall be the Director's primary contact for the performance of the Work and shall be available, as required, for the benefit of the City and the Work.

5.2.2. Construction Manager shall not replace such representative(s) without 30 days' advance written notice to Director and reasonable approval of the Director. Upon written notice from the Director utilizing reasonable discretion, Construction Manager shall replace the individual designated as its representative under this Contract.

**5.3. Coordination of Performance**

5.3.1. Construction Manager shall establish and implement procedures for communication and coordination among the Project Team, Subcontractors, Other Contractors, Design Consultant and all other entities performing the Work.

**5.4. Key Personnel**

5.4.1. Construction Manager will retain the individuals set out in Exhibit B throughout the performance of this Contract:

5.4.2. Construction Manager acknowledges that City is materially relying upon Construction Manager's promises to use these individuals in the performance of this Contract. Construction Manager shall not remove or replace these individuals from these areas of responsibility without the written consent of Director, which shall not be unreasonably withheld. Upon removal, any such individuals shall be immediately replaced. Any replacement shall be with an individual who has work experience and qualities equal to or better than the individual being replaced and who is acceptable to Director, evidenced by written approval by the Director.

**5.5. Fast Track**

5.5.1. If the Director elects to "fast-track" or develop the Work in multiple stages, Construction Manager shall organize and perform its services as appropriate to each stage. In such circumstances, the Director may elect to have each stage of the Work have a unique schedule for completion.

**5.6. Basic Preconstruction Phase Services**

Construction Manager shall perform and complete the following Basic Preconstruction Phase Services:

5.6.1. *Budget and Cost Consultation.* Construction Manager shall:

5.6.1.1. Provide, throughout the duration of the Preconstruction Phase, updates of ongoing cost and budget impacts as well as cost consultation services.

5.6.1.2. Prepare and be responsible for all construction cost estimates.

5.6.1.3. Advise the other members of the Project Team immediately if at any time the Construction Manager has knowledge or belief that the previously established cost or schedule goals will not be met

and make recommendations to the Project Team for corrective action.

- 5.6.1.4.** Provide cost estimates at the completion of each of the following design submittal milestones: (1) schematic design, (2) design development, (3) 50% construction documents, and (4) 95% construction documents. Construction Manager shall complete estimates within two weeks of the date such submittals are provided to Construction Manager. The estimate shall include quantity take-offs assembly and installation costs to include all materials, labor, and physical plant. In addition, the estimate shall include the costs breakdowns for optional or recommended changes to the scope set out in the drawings or specifications for review and consideration by the design consultant and Director.

**5.6.2. *Review of Design and Construction Drawings and Specifications***

- 5.6.2.1.** Review all drawings and specifications for constructability and coordination of documents at the completion of each of the following design submittal milestones: (1) Schematic Design, (2) Design Development, (3) 50% Construction Documents, and (4) 95% Construction Documents. Review and constructability report shall be completed in a period of two weeks of the date such submittals are provided to Construction Manager. A written constructability report shall be submitted to Director for approval.
- 5.6.2.2.** Advise Project Team of inconsistencies, defects, or omissions in the drawings and specifications, and recommend alternative solutions.
- 5.6.2.3.** Submit a report recommending reasonable adjustments in the scope of the Work, including but not limited to: construction feasibility; quality; availability of materials and labor; cost factors, including costs of alternative materials or designs, costs of operation and maintenance, preliminary budgets, and possible cost savings; and any other matters necessary to accomplish the Work in accordance with the schedule and construction budget established by Director.

**5.6.3. *Existing Site Conditions***

- 5.6.3.1.** City has given the Construction Manager unrestricted access to the existing improvements and conditions on the Work site and has given the Construction Manager the opportunity to visually investigate the existing conditions. Construction Manager will perform a thorough visual, non-destructive, and concise review of the site to become familiar with the existing conditions of the facility building systems and components. Construction Manager may recommend destructive demolition or building utility interruptions to accurately determine the scope of the work as Additional Preconstruction Phase Services. Construction Manager shall

perform the review prior to submitting any Guaranteed Maximum Price Proposal. Construction Manager's submission of a Guaranteed Maximum Price Proposal shall be a representation that it has completed a review of existing site conditions and considered them in establishing the Guaranteed Maximum Price ("GMP"). Construction Manager shall not be entitled to a claim for an adjustment in time or price under the General Conditions for conditions that it discovered or ought to have reasonably discovered using best practices during its visual and non-destructive review.

5.6.4. *Agreed Estimate*

5.6.4.1. After receipt of the 95% construction documents estimate and prior to commencing bidding under Section 5.6.5, the Director and Construction Manager shall negotiate the Agreed Estimate for the Project or a portion thereof. The Parties shall document this agreement in writing.

5.6.5. *Construction Planning and Bidding*

5.6.5.1. Schedule, conduct, and record the minutes of pre-bid conferences with interested bidders, subcontractors, material suppliers, and equipment suppliers, as required.

5.6.5.2. Coordinate and develop with Design Consultant the bid package and work scope description that represents the entirety of the Work.

5.6.5.3. In accordance with Texas Government Code Section 2269.255(a), as amended from time to time, publicly advertise and solicit either competitive bids or competitive sealed proposals from potential Subcontractors for the performance of all major elements of the Work. Construction Manager shall receive and open all Subcontractor bids or proposals. Construction Manager and Director shall review all Subcontractors' bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process to individuals other than those employed by the Construction Manager, City, or Design Consultant. All bids and proposals shall be made available to the public after the award of the subcontract or not later than the seventh day after the date of final selection of bids or proposals, whichever is later. If Construction Manager reviews, evaluates, and recommends to City a bid or proposal from a Subcontractor, but City requires a bid or proposal from another Subcontractor to be accepted, then, pursuant to the terms of the Contract, City shall compensate Construction Manager by a change in price, time, or Guaranteed Maximum Price for any additional cost and risk that Construction Manager incurs because of City's requirement that another subcontractor's bid or proposal be accepted. Construction manager may not self-perform any major element of the Work.

- 5.6.5.4. Before submitting Guaranteed Maximum Price proposal, submit a summary of subcontractor bids and any amounts added to subcontractor bids by Construction Manager in a format acceptable to the Director. In addition, provide a detailed breakdown of anticipated General Condition costs.
- 5.6.6. *Guaranteed Maximum Price Proposal*
  - 5.6.6.1. When the Cost of the Work has been bid and costs agreed upon, Construction Manager shall submit a Guaranteed Maximum Price Proposal to the Director in the form attached to this Contract as Exhibit C. There may be multiple Guaranteed Maximum Price Proposals for the Work as specified by Director. If there are multiple GMP Proposals, it may result in multiple GMPs or amendments to existing GMP(s), as determined by the Director. Based on Work requirements and the development of the Work design, Director, at his or her sole option and discretion, may reasonably specify a different format than that contained in Exhibit C. The Proposal shall include the following:
    - 5.6.6.1.1. a Schedule of Values showing a breakdown of the Guaranteed Maximum Price of the Work, including the estimated Cost of the Work, and the Construction Phase Fee;
    - 5.6.6.1.2. a list of drawings and specifications, including all addenda, used in preparation of the GMP Proposal;
    - 5.6.6.1.3. a list of Cash Allowances;
    - 5.6.6.1.4. a list of the clarifications and assumptions made by Construction Manager in the GMP Proposal;
    - 5.6.6.1.5. a list of the Alternates used in calculating the Guaranteed Maximum Price;
    - 5.6.6.1.6. the proposed Contract Time, including dates for Notice to Proceed, Date of Commencement of the Work, Date of Substantial Completion (which may be expressed in terms of amount of time after a Notice to Proceed is issued), Date of Final Completion, and any other milestone dates upon which the Proposal is based;
    - 5.6.6.1.7. Construction Phase Fee;
    - 5.6.6.1.8. Performance, payment and maintenance bonds;
    - 5.6.6.1.9. Insurance certificates;
    - 5.6.6.1.10. MWBE Plan and other related documents as requested by the Director;

- 5.6.6.11. Drug Policy compliance documents;
  - 5.6.6.12. Pay or Play compliance documents; and
  - 5.6.6.13. any other items required by Director.
- 5.6.6.2. Construction Manager shall not include contingency amounts in the proposed Guaranteed Maximum Price, and the proposed Guaranteed Maximum Price shall be based on the cost of actual bids, proposals, and subcontracts for the Work where they exist, or if they do not exist, then on the Construction Manager's best good faith estimate of what the costs for those portions of the Work will be.
- 5.6.6.3. Construction Manager is not bound to a Guaranteed Maximum Price unless there are sufficient Allocated Funds, and the Director accepts the Proposal. Construction Manager shall not withdraw the Proposal for 60 days. If Director accepts a Proposal for any phase of the Work, the Proposal shall be incorporated into this Contract As if it were executed at the time this Contract was executed, subject to the Allocated Funds.
- 5.6.6.4. Director, at his or her sole discretion, may reject the Proposal (with no liability to City except for accrued but unpaid invoices for services properly authorized by the Director), or attempt to renegotiate the Proposal with Construction Manager (with the right to cease negotiations at any time and reject the GMP Proposal). If the Director ultimately rejects all Proposals for the Work, this Contract shall terminate upon five days' advance written notice from the Director to Construction Manager. City shall have no liability to any of Construction Manager's subcontractors in the event of such termination. Construction Manager shall include a provision in each subcontract that is legally sufficient to eliminate any legal or equitable liability the City may have for such termination as to the subcontractors. If the City terminates the Contract in its entirety without proceeding with any portion of the Construction Phase services, then the City will not owe Construction Manager anything under this Contract for construction.
- 5.6.6.5. Construction Manager shall not be entitled to an increase in the Guaranteed Maximum Price for Work that is not detailed in the Contract but is reasonably inferable, in the Director's sole discretion, from the Contract. If an item or system is either shown or specified, Construction Manager shall provide, at no extra cost to the City, all labor, material and equipment required for the proper installation of such item or system and needed to make a complete operating installation, whether or not detailed or specified, omitting only such parts as are specifically excepted by the Director.

## **5.7. Additional Preconstruction Phase Services**

- 5.7.1. Additional Preconstruction Phase Services shall be performed by the Construction Manager, if authorized by the Director, in addition to Construction Manager's services required under this Contract and shall be paid for by the City as provided for in Section 8.3. Additional Preconstruction Phase Services shall only be provided when necessary and related to the purposes of this Contract, when authorized in writing by the Director, and when sufficient funding has been allocated for such services.

## **5.8. Construction Phase Services**

- 5.8.1. *Generally*

- 5.8.1.1. Construction Manager shall render and perform Construction Phase Services for the City in accordance with the Contract, GMP(s), Drawings and Specifications incorporated into GMP(s), and all other applicable Contract Standards and Codes. Construction Manager's responsibility for the Construction Phase Services includes the responsibility to employ properly qualified, licensed and skilled subcontractors in the various aspects of the Construction Phase Services, and to perform all services reasonably inferable from the Contract Documents.

- 5.8.2. *Construction Phase Notice to Proceed*

- 5.8.2.1. The Construction Phase shall commence upon the date specified in a Notice to Proceed issued by Director after the Director's approval of a GMP and shall continue until Final Completion of all Work set out in a GMP. Construction Phase services may be performed in multiple stages with multiple GMPs and Notice to Proceeds. Preconstruction Phase Services may overlap Construction Phase Services. Construction Manager shall not incur any costs for construction of the Work prior to issuance by Director of the Notice to Proceed with Construction Phase Services.

- 5.8.3. *Project Control*

- 5.8.3.1. The Construction Manager shall supervise and pay for the Work in strict accordance with the Contract. Construction Manager shall timely award and enter into, as a general contractor, all subcontracts necessary and appropriate to provide all labor and materials for the Work in accordance with the requirements of Texas Government Code Section 2269.255 and 2269.256. Construction Manager may not self-perform any major element of the Work.

- 5.8.3.2. City reserves the right to perform work related to the Project and to award separate contracts for work related to the Project.

- 5.8.3.3. The Construction Manager shall review drawings and specifications, including any geotechnical data/reports that are available, and notify the Design Consultant and Director of any defects or omissions in the drawings and specifications it discovers with respect to the existing conditions. Upon discovering a defect or omission in the drawings or specifications or other Contract Document, Construction Manager shall submit a written request within ten days from discovery for an explanation or decision to the Design Consultant and the Director. Construction Manager shall cooperate with the Director and Design Consultant to resolve the discovered defects or omissions so as not to unnecessarily impede the progress of the Work. Should the defect be determined as Work that is reasonably inferable from the Contract or should have been reasonably discovered during the Preconstruction Phase, Construction Manager shall proceed with the Work and the Construction Manager shall be responsible for all resulting costs, including the cost of redoing or remedying the Work and resulting time delays. Any claims for concealed or unknown conditions must comply with the requirements of Section 7.5 of the General Conditions.
- 5.8.3.4. The Construction Manager shall monitor the Work of the subcontractors and coordinate with the Project Team to complete the Work for a cost not to exceed the Guaranteed Maximum Price and attain Substantial Completion by the date(s) required by the Guaranteed Maximum Price.
- 5.8.3.5. The Construction Manager shall maintain a competent, full-time staff at the Work site to coordinate and provide general direction over the Work and progress of the subcontractors on the Project. Project must be supervised by Construction Manager whenever work is being performed or when Work site is open.
- 5.8.3.6. Construction Manager shall establish on-site organization of personnel and clearly defined lines of authority to effectuate the overall plans of the Project Team.
- 5.8.3.7. Construction Manager shall establish and implement procedures for coordination among the Project Team, Subcontractors, separate contractors, Design Consultants, and other consultants with respect to all aspects of the construction of the Project.
- 5.8.3.8. Construction Manager shall establish and maintain a numbering and tracking system for all Work records, including Modifications, requests for information, submittals, and supplementary instructions, and shall provide updated records at each meeting with City as requested.

5.8.4. *Project Schedule*

- 5.8.4.1.** Construction Manager shall submit construction schedules in accordance with Section 3.15 of the General Conditions and the Specifications.

5.8.5. *Meetings*

- 5.8.5.1.** Construction Manager shall schedule and conduct regular Work progress meetings and fully advise the Project Team of the Work status regarding schedule, costs, quality, and changes. Construction Manager shall distribute an agenda in advance of Work progress meetings to Project Team members. In addition, Construction Manager shall record and distribute the minutes of each meeting to Project Team members. The minutes shall identify critical activities that require action and proposed completion dates for each activity.

- 5.8.5.2.** In addition to regularly scheduled Work progress meetings, Construction Manager shall schedule and conduct interim meetings with other members of the Project Team as required to maintain Work progress. Construction Manager shall record and distribute the minutes of each interim meeting to Project Team members. The minutes shall identify critical activities that require action and proposed completion dates for each activity.

5.8.6. *Progress and Completion*

This Section 8.1.6 below supersedes and replaces Section 8.1.6 of the General Conditions.

- “8.1.6 Except in connection with safety or protection of persons or the Work or property at the site or adjacent to the site, and except as otherwise indicated in the Contract, all the Work at the site will be performed Monday through Saturday between the hours of 7:00 a.m. and 7:00 p.m. Contractor may not perform work between 7:00 p.m. and 7:00 a.m., on a Sunday, or on a Legal Holiday, without giving Director 24-hour prior written notice and receiving written consent of Director. Construction Manager shall credit the City by Change Order for inspection, and other City-required services for overtime work or work performed on Sundays or Legal Holidays. The amount Construction Manager credits the City will be actual costs for such services.”

5.8.7. *Cost Control*

- 5.8.7.1.** Construction Manager shall maintain cost accounting records in good form and in accordance with generally accepted accounting practices on all Work expenditures. Allow the City unrestricted access to such records and preserve them for a period of seven

years after the City makes final payment to Construction Manager for the Work.

- 5.8.7.2. Construction Manager shall provide to Director the subcontractors' schedule of values, subcontractors' sworn statements and waivers of lien, subcontract or purchase order, contract and disbursement summaries, change order listings and change orders, and budget cost summary reports as reasonably required by Director.
- 5.8.7.3. Construction Manager shall promptly identify all significant variances between estimated costs and actual costs, and promptly report such variances to the Director along with recommendations for action monthly.

5.8.8. *Documents, Shop Drawings, and Submissions*

- 5.8.8.1. Construction Manager shall request interpretations from the Design Consultant, with the Director's consent, regarding the design intent of the Contract in order to perform Construction Manager's obligations under this Contract.
- 5.8.8.2. Construction Manager shall, in collaboration with the other members of the Project Team, establish and implement procedures for expediting the processing of Design Consultants' approval of shop drawings and other submissions. Construction Manager shall receive and review all shop drawings and other submissions for conformance with the Contract. Construction Manager shall coordinate shop drawings and other submissions with the Contract and other related documents prior to transmitting them to other members of the Project Team.
- 5.8.8.3. Construction Manager shall keep a daily log of Project construction activities available to the other members of the Project Team in accordance with the General Conditions.
- 5.8.8.4. Construction Manager shall maintain at the Work site and make available to Director a current set of record drawings, the Contract, updated records of subcontracts, drawings, samples purchases, materials, equipment, maintenance and operating manuals and instructions, and other construction related documents, including all changes and revisions, a directory of personnel, Project correspondence, inspection procedures (as prepared by others), testing laboratory procedures (as prepared by others), contract changes, time extensions, progress payment data, final acceptance procedures, and instructions from City.
- 5.8.8.5. Construction Manager shall provide Director, at his or her request, with complete and unaltered copies of all subcontracts, including any amendments.

5.8.9. *City Provided Materials*

- 5.8.9.1.** If requested by the Director, Construction Manager shall coordinate delivery, unload, store, protect, and install City-procured material and equipment, if any.

5.8.10. *Prevailing Wage Rates*

- 5.8.10.1.** The prevailing Wage Rates effective on the date of execution of the first GMP are applicable to all GMPs issued under this Contract.

5.8.11. *Warranties*

In addition to the warranties set forth in Article 12 of the General Conditions, with respect to any parts and goods it furnishes, Construction Manager warrants:

- 5.8.11.1.** that all items are free of defects in title, design, material, and workmanship and new unless otherwise provided by this Contract;

- 5.8.11.2.** that each item meets or exceeds the manufacturer's specifications and requirements for the equipment, structure, or other improvement in which the item is installed;

- 5.8.11.3.** that each replacement item is new, in accordance with original equipment manufacturer's specifications, and of a quality at least as good as the quality of the item which it replaces; and

- 5.8.11.4.** no item or its use infringes any patent, copyright, or proprietary right.

- 5.8.11.5.** Construction Manager further warrants that the Work will be free of concentrations of polychlorinated biphenyl ("PCB"), and other substances, defined as hazardous by the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA") or any other applicable law or regulation.

- 5.8.11.6.** Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered non-conforming work. Construction Manager's warranty excludes remedy for damage or defect caused by abuse by person or persons other than those for whom Construction Manager is responsible, improper or insufficient maintenance by the City, improper operation, or normal wear and tear under normal usage. If required by the Director, Construction Manager shall furnish satisfactory evidence as to kind, quality, title of Products and that Products conform to the requirements of the Contract.

- 5.8.11.7.** In the event of a defect in a specified Product, either during construction or warranty period, Construction Manager shall take

appropriate measures with the manufacturer of the Product to assure correction or replacement of the defective Product with minimum delay.

- 5.8.11.8.** Construction Manager warrants that title to all work covered by its invoice will pass to the City upon incorporation in the Work or upon Construction Manager's receipt of payment, whichever occurs first. Such title shall be free of all liens, claims, security interests or other interests ("Encumbrances") and if not, upon written demand from the Director, Construction Manager shall immediately take legal action necessary to remove Encumbrances.
- 5.8.11.9.** Warranty periods shall be for not less than one year, or such longer period as required by the Contract Documents and shall run from Date of Substantial Completion of the Work.

5.8.12. *Manufacturer's Specifications.*

This Section 3.17 below replaces and supersedes Section 3.17 of the General Conditions

- "3.17 Construction Manager shall handle, store, and Install Products and perform all work in the manner required by Product manufacturer. Should the Contract and manufacturer's instructions conflict, Construction Manager shall report conflict to it's Construction Manager's subcontractors for resolution prior to proceeding with the affected work.
- 3.17.1 References in the Contract to the manufacturer's specifications, directions, or recommendations, mean manufacturer's current published documents in effect as of date of receipt of bids, or in the case of a Modification, as of date of Modification."

5.8.13. *Subcontractors/Suppliers*

- 5.8.13.1.** Construction Manager shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. The Director may reasonably object to Construction Manager's selection of any Subcontractor and the Director may require Construction Manager to change any Subcontractor previously approved.
- 5.8.13.2.** If the Director objects to a subcontractor after approval of the GMP and the subcontractor (1) is recommended to Director by Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, then Construction Manager may request a Change Order for the difference between subcontract amount of the

subcontractor recommended by Construction Manager and the subcontract amount of the replacement subcontractor.

**5.8.13.3.** Subcontracts or other Contracts shall conform to the applicable payment and other provisions of the Contract and shall not be awarded based on cost-plus a fee.

**5.8.13.4.** Construction Manager shall have the Work performed under written subcontracts or by other appropriate written Contracts. Construction Manager shall identify all Subcontractors Suppliers, and other personnel who will perform services on the Work. After execution of the GMP by City, Construction Manager shall not remove, replace, or substitute such persons or entities as assigned to the Work, except with approval of the Office of Business Opportunity when impacting any MWSBE subcontractors and suppliers, and with the Director's written consent, after which Construction Manager shall promptly update its list of Subcontractors. The Director's written consent may not be unreasonably withheld. Construction Manager shall not enter into a subcontract with any entity with whom the Director has a reasonable objection.

**5.8.13.5.** Construction Manager shall require Subcontractors, to the extent of the work to be performed by the Subcontractors, to be bound to Construction Manager by the terms of the Contract and to assume toward Construction Manager all the obligations and responsibilities that Construction Manager, by the Contract, assumes toward City. Each subcontract shall preserve and protect the rights of City under the Contract with respect to the work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights and shall allow the Subcontractor, unless specifically provided otherwise in the subcontract, the benefit of all rights, remedies, and redress against Construction Manager. Where appropriate, Construction Manager shall require each Subcontractor to enter into similar Contracts with sub-subcontractors. Construction Manager shall make available to each proposed Subcontractor prior to the execution of the subcontract, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract that may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed sub-subcontractors. Construction Manager shall provide City with a copy of each subcontract upon request.

**5.8.13.6.** Construction Manager shall coordinate, monitor, and inspect the work of its Subcontractors and suppliers to ensure conformance with the Contract Documents. If the City performs other work on the Project or at the site with Other Contractors under the City's control, Construction Manager agrees to reasonably cooperate

and coordinate its activities with those of such Other Contractors so that the Project can be completed in an orderly and coordinated manner without disruption.

- 5.8.13.7.** Each subcontract is assigned by Construction Manager to City effective only after termination of this Contract and effective only for those subcontracts that Director accepts by notifying the Subcontractor in writing. Construction Manager agrees to execute such additional documents as Director may request to confirm such assignments. Construction Manager shall include a provision in each subcontract recognizing the rights of City pursuant to the foregoing contingent assignment. Despite such acceptance by Director of any such assignment, City shall not be liable for anything under such subcontract prior to the acceptance by Director of the assignment or for any liability of Construction Manager to the Subcontractor. Acceptance of any such assignment shall not relieve Construction Manager or the Subcontractor of their responsibilities and liabilities for any Work performed prior to Director's acceptance of such assignment.
- 5.8.13.8.** Nothing contained in the Contract shall create any obligations or liabilities owed by City to any Subcontractor or Supplier. City shall have no liability or responsibility for the performance of any Subcontractor or Supplier, even if Director designated, required, identified or approved such Subcontractor or Supplier of any tier.

5.8.14. *Change Orders*

This Section 7.1.2 supersedes and replaces Section 7.1.2 of the General Conditions.

**7.1.2** The following types of Change Orders require City Council approval.

- 7.1.2.1 A single Change Order that exceeds \_\_\_\_ percent of all GMPs approved by the Director.
- 7.1.2.2 A Change Order which, when added to previous Change Orders, exceeds \_\_\_\_ percent of all GMPs approved by the Director.
- 7.1.2.3 A Change Order, in which the total value of increases outside of the general scope of work approved by City Council, when added to increases outside the general scope of work approved by City Council in previous Change Orders, exceeds 40 percent of all GMPs approved by the Director, even if the net increase to the Original Contract Price is \_\_\_\_ percent or less.

In this context, "increase" means an increase in quantity resulting from the addition of locations not within the scope of work approved

by City Council, or the addition of types of goods or services not bid as unit price items.”

5.8.15. *Adjustments in Contract Price.*

This Section 7.3 supersedes and replaces Section 7.3 of the General Conditions.

“7.3.1     Adjustments in Contract Price are accomplished by Change Order and are based on one of the following methods:

    7.3.1.1    mutual acceptance of fixed price, properly itemized and supported by sufficient data to permit evaluation;

    7.3.1.2    unit prices stated in the Contract or subsequently agreed upon;

    7.3.1.3    as provided in Section 7.3.2.

7.3.2     If Construction Manager does not agree with a change in Contract Price or Contract Time or the method for adjusting them specified in the Work Change Directive within 21 days from date of the Work Change Directive’s issuance, method and adjustment are determined by Director.

    7.3.2.1    If Director determines a method and adjustment in Contract Price under Section 7.3.2, Construction Manager shall provide, in a form as Director may prescribe, appropriate supporting data for items submitted under Section 7.3.2. Failure to submit the data within 21 days of request for the data by Director shall constitute waiver of a claim.

    7.3.2.2    Unless otherwise provided in the Contract, costs for the purposes of this Section 7.3.2 are calculated in accordance with Sections 8.6 through 8.11 of the Base Contract plus the Construction Phase Fee.

7.3.3     If the City deletes or makes a change, which results in a net decrease in Contract Price, the City is entitled to a credit calculated in accordance with Section 7.12.1 and Section 7.12.2. When both additions and credits covering related work or substitutions are involved in a change, allowance for overhead and profit is the Construction Phase Fee.

7.3.4     When Construction Manager agrees with the determination made by Director concerning adjustments in Contract Price and Contract Time, or the Parties otherwise reach agreement upon the adjustments, the agreement will be immediately recorded by Change Order.

## **5.9. Compliance with laws**

- 5.9.1. Construction Manager shall comply with all applicable federal, state, and City laws, ordinances, rules and regulations, including the requirements set out in Exhibit G,. Nothing herein shall be construed to require that Construction Manager ensures that the Contract are prepared in accordance with applicable laws.
- 5.9.2. Construction Manager shall comply with the Americans with Disabilities Act as amended (ADA) and Texas Architectural Barriers Act and all regulations relating to either Act.
- 5.9.3. Construction Manager shall give all required notices and comply with all Applicable Laws. The Work, including documents that are the responsibility of Construction Manager, shall be in accordance with all Applicable Laws. If Construction Manager performs any services or Work that is contrary to Applicable Laws, Construction Manager shall investigate, correct and provide suitable remedies for such services or Work at its expense and shall be liable for all costs, delays, and damages attributable thereto, including any damage to other work or other property arising from or relating to the corrective Work.

## **5.10. Minority and Women Business Enterprise Compliance**

This Section supersedes and replaces Sections 3.5.2 through 3.5.6 of the General Conditions.

- “3.5.2 Construction Manager shall comply with the City’s Minority and Women Business Enterprise (“MWBE”) programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances, and the applicable Office of Business Opportunity’s (“OBO”) Policies and Procedures. During the performance of Construction Phase Services, Construction Manager shall make good faith efforts to award subcontracts or supply Contracts in at least \_\_\_\_\_ % of the GMP(s) to MBE firms and \_\_\_\_\_ % of the GMP(s) to WBE firms. Construction Manager may use up to 4% SBE participation to meet a portion of the MBE or WBE goals set out in this Section. If Construction Manager is a certified MBE or WBE, Construction Manager may count toward goals the work that it commits to perform with its own work force, capped at 50% of the total advertised goal.
- 3.5.3 For this Section, “Contract Year” means a 12-month period during the term of the contract commencing on the Countersignature Date of this Contract and each anniversary thereof. If the term of this Contract exceeds one Contract Year and Construction Manager’s MWBE participation level in a Contract Year is less than the Stated MWBE goal(s), then within 30 calendar days of the end of each Contract Year Construction Manager must provide a written explanation to both the Director and Office of Business Opportunity Director (“OBO Director”) of the following: (1) the discrepancy between Construction Manager’s MWBE participation level and the Stated MWBE goal(s); (2) the reason for the discrepancy, and (3) Construction Manager’s good faith efforts (in accordance with the City’s policy) towards achieving the Stated MWBE goal(s). As part of the good faith efforts assessment, the OBO Director may

consider Construction Manager's failure to timely submit the notice or explanation required by this provision, and the OBO Director may impose sanctions or other penalties on Construction Manager for said failures in accordance with this Section of this Contract, Chapter 15 of the Code of Ordinances, OBO's policies and procedures, and the City's good faith efforts policy.

3.5.4 The OBO Director, in consultation with the Director, may review, at any time during the Term of this Contract, Construction Manager's progress toward attainment of the Stated MWBE goal(s), by reviewing the percentage of work to MWBE subcontractors and the payments Construction Manager has made to such MWBE subcontractors. If the OBO Director determines that Construction Manager is not in compliance with this Section of this Contract, Chapter 15 of the Code of Ordinances, OBO's policies and procedures, and the City's good faith efforts policy, the OBO Director may:

3.5.4.1 After consultation with the Director and the Chief Procurement Officer, determine whether any of the following actions should be taken and notify Construction Manager of such determination:

3.5.4.1.1 Enter a written Contract with Construction Manager allowing Construction Manager to cure the noncompliance matter;

3.5.4.1.2 Suspend Construction Manager from engaging in any contract with the City for a period up to, but not to exceed, five years, pursuant to Section 15-88 of the City's Code of Ordinances, as may be amended from time to time; or

3.5.4.1.3 Take any other appropriate remedy.

The determination of the OBO Director is final.

3.5.4.2 Make a recommendation to the Director and the Chief Procurement Officer, to:

3.5.4.2.1 Withhold payment or reimbursement under this Contract;

3.5.4.2.2 Make a finding that Construction Manager is in default or has breached this Contract;

3.5.4.2.3 Determine not to renew this Contract;

3.5.4.2.4 Terminate for cause this Contract; or

3.5.4.2.5 Take any other appropriate remedy.

3.5.5 Construction Manager shall maintain records showing;

- 3.5.5.1 Subcontracts and supply Contracts with Minority Business Enterprises;
  - 3.5.5.2 Subcontracts and supply Contracts with Women Business Enterprises;
  - 3.5.5.3 Subcontracts and supply Contracts with Small Business Enterprises (if any);
  - 3.5.5.4 Written confirmation from MWBE subcontractors and suppliers that they are participants on the contract; and
  - 3.5.5.5 Specific efforts to identify and award subcontracts and supply Contracts to MWBEs. Construction Manager shall submit periodic reports of its efforts under this Section to the OBO Director in the form and at the times he or she prescribes.
- 3.5.6 Construction Manager shall ensure that all subcontracts with MWBE subcontractor and suppliers contain the following terms:
- 3.5.6.1 [Name of MWBE subcontractor] shall permit representatives of the City of Houston, at all reasonable times, to perform (1) audits of the books and records of the subcontractor, and (2) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep such books and records available for such purpose for at least four years after the end of its performance under this subcontract. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.
  - 3.5.6.2 Within five business days of execution of this subcontract, Construction Manager [prime contractor] and Subcontractor shall designate, in writing, to the City of Houston's OBO Director ("the OBO Director") an agent for receiving any notice required or permitted to be given pursuant to Chapter 15 of the Houston City Code of Ordinances, along with the street, mailing address, phone number, and email address of such agent.
  - 3.5.6.3 After reasonable attempt(s) to resolve disputes between the parties involving the terms, covenants, or conditions of this subcontract, a request for dispute resolution may be submitted to the Director. The Director may prescribe procedures to provide dispute resolution services in accordance with the requirements of Chapter 15 of the Houston City Code of ordinances.

## **5.11. Drug Detection and Deterrence**

This Section supersedes and replaces Section 3.8 of the General Conditions.

- "3.8.1 It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal

drugs or alcohol by Construction Managers while on City Premises is prohibited. Construction Manager shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for contractors, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Contract and is on file in the City Secretary's Office.

- 3.8.2 Before the City signs this Contract, Construction Manager shall file with the Contract Compliance Officer for Drug Testing ("CCODT"):

- 3.8.2.1** A copy of its drug-free workplace policy;
- 3.8.2.2** The Drug Policy Compliance Agreement substantially in the form set forth in Exhibit D, together with a written designation of all safety impact positions; and
- 3.8.2.3** If applicable, (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit E.

- 3.8.3 If Construction Manager files a written designation of safety impact positions with its Drug Policy Compliance Contract, it also shall file every 6 months during the performance of this Contract or on completion of this Contract if performance is less than six months, a Drug Policy Compliance Declaration in a form substantially similar to Exhibit F. Construction Manager shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each six-month period of performance and within 30 days of completion of this Contract. The first six-month period begins to run on the date the City issues its Notice to Proceed or if no Notice to Proceed is issued, on the first day Construction Manager begins work under this Contract.

- 3.8.4 Construction Manager also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Construction Manager's employee work force.

- 3.8.5 Construction Manager shall require that its subcontractors comply with the Executive Order, and Construction Manager shall secure and maintain the required documents for City inspection."

## 5.12. **Pay or Play**

- 5.12.1. Section 3.5.7 of the General Conditions applies to all services performed under the Contract.

## 5.13. **Representations and Warranties**

In addition to the warranties and representations set out in other sections of the Contract including the General Conditions, as well as the warranties imposed upon Construction Manager under all Applicable Laws, Construction Manager warrants the following:

- 5.13.1. Construction Manager has not engaged in any illegal collusion or conspiracy or any other illegality in connection with the selection process or performance of this Contract.
- 5.13.2. Construction Manager and all of its employees warrant that the information provided to City about the qualifications, including financial information and past performance, is accurate, has not materially changed, and does not omit information that would materially affect those qualifications, and that Construction Manager is financially sound, fully solvent, fully qualified and experienced to perform the type of Work to be performed under this Contract.
- 5.13.3. Construction Manager agrees and acknowledges that City is entering into this Contract in reliance on Construction Manager's represented expertise and ability to provide construction manager at risk services. Construction Manager agrees to use its best efforts, skill, judgment, and abilities to perform its obligations, and to further the interests of City in accordance with City's requirements and procedures.
- 5.13.4. Construction Manager is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation/incorporation and qualified to conduct business in Texas, is financially secure, and in respect of which no action relating to insolvency, liquidation or general suspension of payments by Construction Manager has, to the knowledge of Construction Manager, been taken.
- 5.13.5. Construction Manager represents and agrees that the individual executing this Contract on behalf of Construction Manager is duly authorized to act for and bind Construction Manager to its terms and no other consent of any trustee or holder of any indebtedness or other obligation of Construction Manager or any other party to any other Contract with Construction Manager is required. In addition, no governmental authorization, approval, order, license, permit, franchise or consent, and no registration, declaration or filing with any Governmental Authority is required on the part of Construction Manager in connection with the execution, delivery and performance of the Contract, except those that have already been obtained or which Construction Manager anticipates will be timely obtained in the ordinary course of performance of the Contract. This Contract constitutes the legal, valid, binding and enforceable obligation of Construction Manager.
- 5.13.6. Construction Manager represents and agrees that there are no obligations, commitments, or impediments of any kind that will limit or prevent performance of its obligations under this Contract, including but not limited to, strikes, lockouts or other labor disputes pending, or threatened or scheduled to occur,

with respect to any of the factories, offices or other facilities of any of Construction Manager's Suppliers or vendors or proposed Subcontractors.

- 5.13.7. Construction Manager agrees that there are no disputes or legal proceedings between Construction Manager and City.
- 5.13.8. Construction Manager represents and warrants to City that Construction Manager has:
  - 5.13.8.1. carefully reviewed, studied and analyzed the CPM Milestone Schedule, program requirements and budget;
  - 5.13.8.2. visited the Work site;
  - 5.13.8.3. taken such other steps as may be necessary to ascertain the nature and location of the Work and the general and local conditions that affect the Work or the cost thereof;
  - 5.13.8.4. investigated the labor situation, including the availability of all necessary labor and materials;
  - 5.13.8.5. carefully reviewed, studied and analyzed Construction Manager's design and manufacturing capabilities and capacities; the likely availability of required materials for completion of the Work; and the schedules and availability of transportation resources to the Work site, and

that Construction Manager is fully capable of performing the Work and meeting the CPM Milestone Schedule within the budget and in accordance with the Contract and for agreed compensation.

- 5.13.9. Without diminishing the other obligations of Construction Manager, Construction Manager represents and agrees that it will perform its services under no circumstances with less than the usual and customary standards of Construction Manager's profession or business and in compliance with all Applicable Laws and in strict accordance with the Contract. Construction Manager agrees to bear the full cost (and pay for any related damages) of correcting Construction Manager's Work and services (and those of its Subcontractors and Suppliers) that are not in strict conformance with the Contract or Applicable Laws or that are otherwise defective or negligently performed and any related damages or other harm. The term defective work or similar terms when used in the Contract include Work that is not fully ready for occupancy with all equipment and systems operative as intended (so that a Certificate of Substantial Completion cannot be issued by the Director) and in strict conformance with the Contract (or reasonably inferable from them), or that is otherwise defective or negligently performed.
- 5.13.10. Construction Manager acknowledges its responsibility to coordinate the Work with that of any Other Contractors and consultants for other work within the Project, or in the proximity of the Project. Construction Manager expressly agrees to schedule and coordinate its Work with such Other Contractors so as

to assist them, permit the Project to be completed on schedule, and so as not to interfere with Other Contractors working on other City projects.

- 5.13.11. Construction Manager represents and agrees to perform its services under the Contract in an expeditious and economical manner consistent with good business practices and the interests of City in accordance with the Project Schedule. Time is of the essence for this Contract.
- 5.13.12. The representations and warranties of Construction Manager contained in the Contract are true and correct on the date hereof and shall remain true and correct during the term of this Contract.

## **6. TIME**

Time limits stated in the Contract are of the essence. Construction Manager is responsible for schedule development, updating and reporting throughout the Work; including Preconstruction Phase Services and Construction Phase Services. Construction Manager shall comply in all regards with requirements set forth in the Contract.

### **6.1. Construction Phase Services**

- 6.1.1. The Construction Phase shall be deemed to commence on the Date of Commencement of the Work specified in a Construction Phase Notice to Proceed issued by Director after approval of the GMP.
- 6.1.2. Construction Manager shall achieve Substantial Completion of the Work on or before the date agreed to in the GMP, subject to time extensions granted by Change Orders.
- 6.1.3. The times set forth for completion of the Work in the Notice to Proceed with Construction Phase Services and the GMP are an essential element of the Contract. The Director may elect, at his or her option, to stage or "fast-track" portions of the Work. City shall issue a separate Notice to Proceed or Change Order for each stage and each stage shall have a separate Date of Substantial Completion and Construction Manager shall be subject to the imposition of liquidated damages for failure of Construction Manager to meet the time period set out in each GMP.

### **6.2. Liquidated Damages**

- 6.2.1. *Liquidated Damages Generally.* Additional liquidated damages provisions are set forth in Section 9.12 of the General Conditions. References to the Supplementary Conditions set out in Section 9.12 of the General Conditions are changed to refer to Section 6.2.2.
- 6.2.2. *Liquidated Damages.* Liquidated damages shall be assessed for delay by Construction Manager except that City shall be entitled to recover all its actual, direct, and consequential damages in the event and to the extent liquidated damages are determined to be unenforceable, and City shall also be entitled

to City's remedies under the General Conditions. Liquidated damages for each of the Project milestones are as follows:

6.2.2.1. *Construction Phase.* The amount of liquidated damages payable by Construction Manager or Surety for each day of delay of the construction phase beyond Contract Time for each stage, are \_\_\_\_\_ per day.

## 7. CITY'S RESPONSIBILITIES

### 7.1. Preliminary Budget and Schedule

7.1.1. City shall provide a preliminary budget and schedule for the Work

### 7.2. Material Testing Services

7.2.1. City shall provide and pay for materials, structural, mechanical, chemical, and other laboratory tests, as recommended by the Construction Documents.

### 7.3. Construction Inspection

7.3.1. City may designate one or more construction inspectors of its choice. Such construction inspectors shall be given access to the Work as requested or needed. The provision of the inspections by City shall not reduce or lessen in any respect Construction Manager's responsibilities for the Work. Construction Manager shall remain fully and solely responsible for performing the Work in accordance with the Contract.

## 8. PAYMENTS

### 8.1. Generally

8.1.1. In addition to the payment terms set forth in this Article, the general requirements for payment, including the procedures and timing for the Applications for Payment for Construction Manager's work, are set forth in the General Conditions.

### 8.2. Basic Preconstruction Phase Services Fee

8.2.1. Subject to the Allocated Funds, for properly performed and completed Basic Preconstruction Phase Services, City shall pay Construction Manager in the lump sum amounts set out below:

Milestone	Total Lump Sum Fee
Approval of Cost Estimate and Constructability Report at Schematic Design	\$ _____
Approval of Cost Estimate and Constructability Report at Design Development	\$ _____
Approval of Cost Estimate and Constructability Report at 50% Construction Documents	\$ _____
Approval of Cost Estimate and Constructability Report at 95% Construction Documents	\$ _____
GMP Proposal Submission	\$ _____
<b>Total Basic Preconstruction Phase Services</b>	<b>\$ _____</b>

- 8.2.2. City will pay Construction Manager on the basis of invoices showing the percentage of services performed during the preceding month for each stage of Basic Preconstruction Phase based upon the allocation of the Basic Preconstruction Phase set forth above. The Basic Preconstruction Phase Fee shall be deemed to be full compensation to Construction Manager for all Basic Preconstruction Phase Services, including all costs, overhead, and profit.
- 8.2.3. All payment requests for Basic Preconstruction Phase Services shall be submitted on an Application for Payment and Schedule of Values approved by the Director and include all required attachments identifying payments to Construction Manager, as well as to all Subcontractors.
- 8.2.4. Construction Manager shall not be entitled to an increase in the amount of Basic Preconstruction Phase Services set forth in this Section because of Project Schedule extensions or delays, or changes in the scope of the proposed Project, unless such extensions, delays, or changes are material and solely caused by the City as determined by the Director in the Director's reasonable, sole discretion.

### **8.3. Additional Preconstruction Phase Services Fee**

- 8.3.1.** For Additional Preconstruction Phase Services provided by personnel of the Construction Manager, as described in Section 5.7, but excluding Reimbursable Expenses and Additional Preconstruction Phase Services of subcontractors, compensation to the Construction Manager shall be the billable rates set out in Exhibit B for each personnel classification (where the total salary cost is calculated by multiplying billable rates times the necessary hours to complete the Additional Preconstruction Phase Service) incurred in the interest of the Work.
- 8.3.2.** For Additional Preconstruction Phase Services as described in Section 5.7 provided by subcontractors under contract with the Construction Manager, compensation to the Construction Manager shall be a multiple of 1.1 times the Subcontract Cost incurred in the interest of the Work.
- 8.3.3. Compensation for Additional Preconstruction Phase Services shall not exceed \$ \_\_\_\_\_ unless increased by additional allocation after execution of this Contract.

### **8.4. Reimbursable Expenses**

- 8.4.1.** Reimbursable Expenses means only those reasonable costs necessarily incurred by Construction Manager in performing Additional Preconstruction Phase Services. A maximum amount for each Reimbursable Expense shall be proposed by Construction Manager at the time that Reimbursable Expenses are requested by the Construction Manager and shall be negotiated and agreed upon by Construction Manager and the Director prior to such expenses being incurred. The compensation for each Reimbursable Expense shall not exceed the agreed upon maximum amount. Reimbursable Expenses are to be paid by the actual expenditures Construction Manager is legally required to pay in the interest of the Project.
- 8.4.2. Construction Manager may incur up to \$ \_\_\_\_\_ in Reimbursable Expenses during the Preconstruction Phase Services Phase, unless the Director approves an additional amount subject to the Allocated Funds.

### **8.5. Construction Phase Service Payments**

- 8.5.1. Pursuant to the terms of this Contract, City shall pay Construction Manager for Construction Manager's proper and complete performance of the Construction Phase, the Cost of the Work and the Construction Phase Fee, up to the limit of the applicable GMP in accordance with the payment provisions of this Base Contract and the General Conditions. Payment by City shall be deemed full compensation to Construction Manager for the performance of the Construction Phase. In the General Conditions, references to adjustments in "cost" or "costs" refer to Cost of the Work as defined below, and references to Construction Manager's "overhead" and "profit" refer to Construction Phase Fee.

- 8.5.2. Construction Manager shall not receive any fee for Work deleted by Modifications. The Construction Phase Fee shall be compensation in full to Construction Manager for all overhead and profit and all costs not otherwise recoverable.
- 8.5.3. The sum of the Cost of the Work and Construction Phase Fee is guaranteed by Construction Manager not to exceed whatever Guaranteed Maximum Price Director and Construction Manager may agree upon in writing, subject to additions and deductions by Change Order as provided in the Contract for proper completion of all Construction Phase Services. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs that would cause the Guaranteed Maximum Price to be exceeded shall be paid by Construction Manager without reimbursement by City. No Change Order shall affect the Guaranteed Maximum Price unless the Change Order specifies the exact total change to the Guaranteed Maximum Price. All references in Article 7 and Section 8.2.1.2 of the General Conditions to the Contract Price shall be deemed to include references to the Guaranteed Maximum Price.
- 8.5.4. If the sum of the Cost of the Work and the Construction Phase Fee for the Construction Phase is less than the Guaranteed Maximum Price for such Services, then all such savings shall be returned to City through a deductive Change Order..
- 8.5.5. If actual cost of Cash Allowances is less than the amount set out in the GMP, then such savings shall be returned to City through a deductive Change Order..
- 8.5.6. Subject to the Allocated Funds, in full consideration of Construction Manager's full and proper performance of all Construction Phase Services, the City shall pay the Construction Phase Fee. Notwithstanding anything in the Contract to the contrary, Construction Manager shall not earn a Construction Phase Fee on the lump sum price of the Preconstruction Phase Services.
- 8.5.7. Construction Phase Fee is inclusive of Construction Manager's profit, general overhead and all expenses in connection with maintaining and operating Construction Manager's main office and any branch office including, the following but not limited thereto:
  - 8.5.7.1. Salaries of persons employed in the main or branch offices of Construction Manager whose time is devoted to the general conduct of Construction Manager's business for the Work, such as project executives, operations managers, contract administrators, office managers, stenographers, plan clerks, file clerks, and draftsmen except to the extent that their time is actually spent on the Project and are identified on Exhibit B.
  - 8.5.7.2. Outside services and their expenses for estimating, personnel, accounting, budget control, audit and management information systems (other than Preconstruction Phase Services) relating to accounting in Construction Manager's office and even if at the Work site, except as specifically identified herein.

- 8.5.7.3. Interest on Construction Manager's capital or on money borrowed by Construction Manager, including the capital employed by Construction Manager in the performance of the Work.
  - 8.5.7.4. Amounts required to be paid by Construction Manager for Federal and/or State income and franchise taxes.
- 8.5.8. In addition to the payment procedures described in the General Conditions, the following payment procedures shall apply and control in the event of any inconsistency or conflict with the General Conditions:
- 8.5.8.1. The Schedule of Values may be revised from time to time to adjust allocations of costs to various line items as the costs become better known, but such adjustment shall be subject to the approval of the Director, which shall not be unreasonably withheld. Under no circumstances shall the Schedule of Values exceed GMP(s) for the Work. The Construction Phase Fee, labor and expenses for General Conditions Work, shall be shown as separate line items on the Schedule of Values.
  - 8.5.8.2. The Schedule of Values submitted shall maintain the originally established value for each classification line item and shall contain any revisions to costs or cost estimates for each such classification. The format and tracking method of the original Schedule of Values and of all updates thereto shall be subject to the approval of the Director.
  - 8.5.8.3. Payment for Construction Phase Fee shall be in the same proportion as the total fee as the amount requested for the Cost of the Work relative to the total Cost of the Work used in deriving the Guaranteed Maximum Price.
  - 8.5.8.4. Construction Manager shall submit a monthly cost breakdown, including cost elements for staff labor and expenses over the duration of the construction period for approval on time and material phases of the work. Payment for Construction Manager's General Conditions shall be made monthly per the approved breakdown.
  - 8.5.8.5. With each Application for Payment, Construction Manager shall submit certified payrolls, invoices and any other evidence required by the Director to demonstrate that payments already made by Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by Construction Manager plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Phase Fee.
  - 8.5.8.6. Payment for the Cost of the Work shall be made based on percentages of completion of each portion of the Work listed in Schedule of Values as of the end of the period covered by the Application for Payment, in accordance with the General Conditions

and the Certificate for Payment procedure set forth in Sections 9.5, 9.6, and 9.7 of the General Conditions. All references in Sections 9.5, 9.6, and 9.7 of the General Conditions to the Contract Price shall be deemed to include references to the GMP.

- 8.5.8.7. Retainage as specified in the General Conditions will be applied to the entire amount requested in GMP, as applicable.
- 8.5.8.8. At all times, the estimated cost of performing the uncompleted and unpaid portion of the Work shall not exceed the unpaid balance of the Guaranteed Maximum Price (less retainage on Work previously completed).
- 8.5.8.9. Payments to Subcontractors shall be made based on the same percentage of Work completed that is allocable to that Subcontractor including applicable retainage.
- 8.5.8.10. With each Application for Payment, Construction Manager shall submit a certified release of all claims, known or that should reasonably be known, stating "In consideration for the payment requested herein and upon receipt of such payment, Construction Manager waives and releases all claims of every sort against City relating to or arising out of the Work performed, except for such claims as have been properly submitted in writing in accordance with the Contract." The final request for payment shall not be made until Construction Manager delivers to City a complete release by Construction Manager of all claims of any sort arising out of the performance of the Work, affidavits from Subcontractors indicating they have been paid in full, other than amounts remaining to be paid to Construction Manager for Work performed by that Subcontractor (which amounts shall be stated), a complete release of all claims from all Subcontractors (except that, as to amounts remaining to be paid to that Subcontractor, such release may be made contingent upon City making payment to Construction Manager) and an affidavit that so far as Construction Manager has knowledge or information, the release includes and covers all materials and services over which Construction Manager has control, but Construction Manager may, if any Subcontractor refuses to furnish a required affidavit or release, furnish a bond satisfactory to Director to indemnify City against any claim and any related costs, including attorneys' fees. If any claim remains unsatisfied after all payments are made, Construction Manager shall refund to City all moneys City may be compelled to pay in discharging such claim, including all costs and reasonable attorneys' fees, and City shall have all remedies at law and in equity.
- 8.5.8.11. The aggregate total of payments to Construction Manager for Construction Phase Services shall not exceed the total of the actual Cost of the Work as verified by Director from Construction Manager's final accounting plus the applicable Construction Phase Fee as certified for payment in accordance with the Contract, but in

no event more than the Guaranteed Maximum Price and approved Change Orders to Guaranteed Maximum Price. If payments made to Construction Manager exceed that which is due and owing pursuant to this Article, then Construction Manager shall promptly refund such excess to City.

- 8.5.9. In addition to the City's other rights and any provision hereof to the contrary notwithstanding and to the extent reasonably necessary to protect itself, City shall not be obligated to make any payment (whether a progress payment or final payment) to Construction Manager hereunder if any one or more of the following conditions exist:
  - 8.5.9.1. Construction Manager is in breach or default under this Contract;
  - 8.5.9.2. Any part of such payment is attributable to Work, which is not performed in accordance with this Contract; provided, however, such payment shall be made as to the part thereof attributable to services which were performed in accordance with this Contract.
  - 8.5.9.3. Construction Manager has failed to make payments promptly to Subcontractors or other third parties used in connection with the Work for which City has made payment to Construction Manager; or
  - 8.5.9.4. If Director determines that the amount remaining under the Guaranteed Maximum Price will not be sufficient to complete the Work in accordance with this Contract, no additional payments will be due Construction Manager hereunder unless and until Construction Manager, at Construction Manager's sole cost, performs a sufficient portion of the remaining Work so that such portion of the amount remaining under the Guaranteed Maximum Price is determined by City to be sufficient to so complete the then remaining Work.
- 8.5.10. Nothing contained herein requires the City to pay Construction Manager an aggregate amount exceeding the Guaranteed Maximum Price or to make payment if in the City's belief the cost to complete the Work would exceed the Guaranteed Maximum Price less previous payments to Construction Manager.
- 8.5.11. No partial payment made hereunder shall be, or shall be construed to be, final acceptance or approval of that part of the Work to which such partial payment relates, or a release of Construction Manager of any of Construction Manager's obligations hereunder or liabilities with respect to such Work.
- 8.5.12. Construction Manager shall promptly pay all bills validly due and owing for labor and material performed and furnished by Construction Manager-Related Entities in connection with the performance of the Preconstruction and Construction Phase Services.
- 8.5.13. In addition to the requirements set out in Exhibit G, City shall have the right to verify and, notwithstanding the requirements of the General Conditions, audit

for a period of seven years after final payment for the Construction Phase Services, the details set forth in Construction Manager's billings, certificates, accountings, cost data, and statements, including all underlying costs and expenses in the Cost of the Work, either before or after payment therefor, by (1) inspecting the books and records of Construction Manager with respect to the Project during normal business hours; (2) examining any reports with respect to this Project; (3) interviewing Construction Manager's business employees; (4) visiting the Work site; and (5) other reasonable actions. City shall have the right to audit all costs, the basis for those costs, and all underlying expenses relating to Construction Manager's performance herein, including but not limited to, the Cost of the Work, particularly, without limitation, labor rates and hourly salary rates set forth in Exhibit B.

- 8.5.14. Construction Manager shall establish and maintain a reasonable accounting system that enables the City to readily identify Construction Manager's assets, expenses, costs of goods, and use of funds. The City and its authorized representatives shall have the right to audit, to examine, and to make copies of or extracts from all financial and related records (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to this Contract kept by or under the control of Construction Manager, including, but not limited to those kept by Construction Manager, its employees, agents, assigns, successors, and subcontractors. Such records shall include, but not be limited to, accounting records, written policies and procedures; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; contract amendments and change order files; back charge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence.
- 8.5.15. In addition to the requirements set out in Exhibit G, Construction Manager shall, at all times during the term of this Contract and, notwithstanding the requirements of the General Conditions, for a period of seven years after the termination or completion of this Contract, maintain such records, together with such supporting or underlying documents and materials. Construction Manager shall at any time requested by the City, whether during or after completion of this Contract, and at Construction Manager's own expense make such records available for inspection and audit (including copies and extracts of records as required) by the City. Such records shall be made available to the City during normal business hours at Construction Manager's office or place of business and subject to a three-day written notice. In the event that no such location is available, then the financial records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location that is convenient for the City.
- 8.5.16. Construction Manager shall ensure the City has these rights with Construction Manager's employees, agents, assigns, successors, and subcontractors, and the obligations of these rights shall be explicitly included in any Subcontracts formed between Construction Manager and any Subcontractors to the extent that those Subcontracts relate to fulfillment of Construction Manager's

obligations to the City. Costs of any audits conducted under the authority of this right to audit and not addressed elsewhere will be borne by the City unless the audit identifies overpricing or overcharges (of any nature) by Construction Manager to the City in excess of one-half of one percent (.5%) of the total contract billings, Construction Manager shall reimburse the City for the costs of the audit up to the amount of overpricing or overcharges. Construction Manager shall be given a reasonable opportunity to review and dispute in writing such findings, and the Director shall consider such information if provided to the City. If the audit discovers substantive findings related to fraud, misrepresentation, or non-performance, the City may recoup the costs of the audit work from Construction Manager. Any adjustments and/or payments that must be made as a result of any such audit or inspection of Construction Manager's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of the City's findings to Construction Manager.

- 8.5.17. The acceptance by Construction Manager or Construction Manager's successors of final payment under this Contract, shall constitute a full and complete release of City from any and all claims, demands, and causes of action whatsoever which Construction Manager or Construction Manager's successors have or may have against City under the provisions of this Contract except those previously made in writing and identified by Construction Manager as unsettled at the time of the final request for payment in a document captioned "Unsettled Claims" included with Construction Manager's final request for payment.

## **8.6. Cost of the Work**

- 8.6.1. *Definition.* The term Cost of the Work, or Cost of Work, are Direct and Indirect Costs of Construction Phase Services which Construction Manager necessarily incurs to properly perform the Work in strict compliance with the Contract. Cost of Work does not include the Construction Phase Fee. Cost of the Work includes only the items set forth in this Section 8.6, which shall be subject to verification by audit.

- 8.6.1.1. *Direct Costs* are the necessary costs to furnish and install the permanent elements of the Work, such as structure, exterior envelope, interior finishes, vertical transportation, mechanical electrical and plumbing systems, etc. Direct costs include, but are not limited to, labor, materials and equipment costs for permanent work, and (i) performed by subcontractor and supplier, and. Direct Costs may include Alternates, Unit Price work, and Cash Allowances.

- 8.6.1.2. *Indirect Costs – or General Conditions Costs*, are field office overhead and costs normally arising from performing the General Requirements.

- 8.6.2. *Labor Costs.*

This section applies to Indirect Costs.

- 8.6.2.1. Actual hourly wages paid to construction workers directly employed by Construction Manager who perform Construction Phase Services at the Work site or, with the Director's prior written consent, at off-site workshops. For hourly workers employed by Construction Manager, Construction Manager shall provide certified payrolls and any other documentation requested by Director to verify wages and hours, and compliance with the City's wage rates. The City requires Construction Manager to document actual wages and labor burden separately. Actual wages paid may include premium payments for overtime work or night work for time actually spent in the performance of the Work when such premium payments have been demonstrated to be in accordance with Construction Manager's normal business practice and is included in the GMP. Premium time shall not accrue prior to the completion of 40 hours per week of work by any given individual.
    - 8.6.2.1.1. Actual costs paid or incurred by Construction Manager for labor costs arising out of taxes, insurance, and benefits which are (i) required by law, (ii) required by collective bargaining Contracts, (iii) or as otherwise customary so long as such costs are based on the actual wages of construction workers properly included in the Cost of the Work as defined herein and are approved in advance by the Director.
  - 8.6.2.2. Direct Salary Expense (DSE) rates of Construction Manager's supervisory and administrative personnel as referenced in Exhibit B multiplied by actual hours worked. Supervisory and administrative personnel shall be stationed at the Work site or offices other than the Work site with Director's written approval. If required by Director, Construction Manager shall provide such documentation as requested by Director to verify amount of time worked. The Director may approve an increase to the DSE set out in Exhibit B at the time of GMP approval.
  - 8.6.2.3. Actual out-of-town travel expenses of Construction Manager's personnel incurred directly and solely in support of the Work with prior written approval of the Director or specifically identified in the GMP but only to the extent permitted by City's policies on reimbursement for travel.
- 8.6.3. *Consumables and Temporary Facilities.*
- This section applies to Indirect Costs.
- 8.6.3.1. Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by Construction Manager at the site and fully consumed in the performance of the Work; and if not fully consumed, then the cost shall be based on the

cost of the item less its fair market value. Cost of items previously used by Construction Manager shall mean fair market value prior to use on the Work. The cost for hand and small tools shall not exceed 3% of the direct payroll costs for employees of Construction Manager. Construction Manager shall provide monthly accounting of the direct payroll costs versus the cost for hand and small tools.

8.6.4. *Equipment Rental.*

This section applies to Indirect Costs.

8.6.4.1. Rental charges for temporary facilities, machinery, equipment, excluding hand tools which are provided at the Work site, whether rented from Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. The aggregate rental charges for an item used on this Work (including the rental charges for items used to replace it) shall not under any circumstances exceed 100% of the value of that item or 100% of any applicable option purchase price, whichever is lower established at the time of GMP.

8.6.4.1.1. Machinery and equipment owned by Construction Manager or any person affiliated with or owned or controlled by Construction Manager or person affiliated with Construction Manager shall not be charged at more than the market rate for such equipment in the Houston area or 90% of current published rental rates of the Associated Equipment Dealers, for such equipment, whichever is less established at the time of GMP.

8.6.5. *Debris Removal.* Costs of removal of debris from the Work site. This section applies to Indirect Costs.

8.6.6. *Clean-up.* Area specific site periodic and final clean up, not previously included, and in accordance with all Applicable Laws and regulations. This section applies to Indirect Costs.

8.6.7. *Subcontractor Costs.* Payments actually made by Construction Manager to Subcontractors for execution of the Work in accordance with the requirements of their contracts with Construction Manager, but only for contracts to the extent they are paid on a lump sum basis and they have been specifically consented to in writing by Director. Consent to such contracts shall not create any liability for City and shall not excuse Construction Manager from complying with the terms of this Contract.

8.6.8. *Alternates.* Alternates identified in the GMP.

8.6.9. *Unit Priced Work.* Unit Price work identified in the GMP.

8.6.10. *Cash Allowances.* Cash Allowances identified in the GMP.

8.6.11. *General Condition Costs.* General Condition Costs other than those included in other paragraphs of Section 8.6.

**8.6.12. *Miscellaneous Costs***

8.6.12.1. Costs of postage and parcel delivery charges, standard and reasonable telephone service at the Work site and reasonable expenses of the Work site office, incurred directly and solely in support of the Work, and all incurred at the Work site.

8.6.12.2. Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which Construction Manager is liable. Notwithstanding, City is a home-rule municipal corporation and Construction Manager shall avail itself of all exemptions which may exist for such taxes based on City's status.

8.6.12.3. Fees and assessments for building permits and for other permits and inspections that Construction Manager is required by the Contract to pay for or obtain.

8.6.12.4. Premiums for insurance and bonds to the extent directly attributable to this Contract. The City is only responsible for the costs associated with insurance coverage and limits, and bonds directly required by the Contract. Any costs associated with insurance or bonds beyond the requirements of this Contract will be the responsibility of Construction Manager.

8.6.12.5. Testing fees pursuant to the Contract, except those related to defective or nonconforming Work for which reimbursement is excluded.

8.6.12.6. Utility company charges including meter fees, tap fees and utility consumption charges.

8.6.12.7. Costs of cell phones and vehicles, not otherwise included in the DSE, for those employees approved by the Director.

8.6.12.8. Costs of on-site computers, printers, monitors, software, internet service, maintenance and other electronic equipment approved in advance and in writing by the Director, used solely for the Work.

8.6.12.9. Intellectual property royalties and licenses for items specifically required by the Contract which are, or will be, incorporated into the Work. If a particular design, process, or product of a particular manufacturer is required by City, then costs of payments made in accordance with legal judgments against Construction Manager resulting from suits for such infringement, payments of settlements made with City's written consent, and reasonable legal fees related to the infringement are eligible as a Cost of the Work and shall not be included in the calculation of Construction Phase Fee or the Guaranteed Maximum Price (but shall still be subject to the limit

covered by the Appropriated Funds). Notwithstanding the foregoing, if Construction Manager had reason to believe the required design, process, or product is an infringement, such payments and fees shall not be a Cost of the Work and Construction Manager shall be responsible for such payments, fees and losses unless Construction Manager notifies Director of the potential infringement promptly before proceeding and in writing.

8.6.12.10. Subcontractor default insurance.

8.6.12.11. Other costs approved in advance in writing by Director at his or her sole option and discretion.

## **8.7. Costs Not Included in the Cost of the Work**

The Cost of the Work shall not include the items listed in this Section:

- 8.7.1. Profit, profit expectations and costs associated with profit sharing plans such as personnel bonuses, incentives, and rewards, company stock options, or any other like expenses of Construction Manager.
- 8.7.2. General overhead and all expenses in connection with maintaining and operating Construction Manager's main office and any branch office other than the Work site office.
- 8.7.3. Except as provided in Section 8.6.2, salaries and other compensation of Construction Manager's personnel stationed at Construction Manager's principal office or offices other than the Work site office. Any legal, accounting, professional, or other similar costs incurred by Construction Manager, including costs incurred in connection with the negotiation of this Contract or other documents related to this Contract, compliance with this Contract, prosecution or defense of any dispute, mediation, arbitration, litigation, or other proceeding related to or arising from the Work.
- 8.7.4. Capital expenses, including interest on Construction Manager's capital employed for the Work.
- 8.7.5. Markup imposed by Construction Manager on other direct costs such as reimbursable expenses and pass-through costs from Construction Manager and its Subcontractors and Suppliers.
- 8.7.6. The cost of insurance deductibles and self-insured retentions payable by Construction Manager, and all uninsured losses and costs, whether due to the failure of Construction Manager or any Subcontractor to procure and maintain insurance as and to the extent required by the Contract, or otherwise. Costs for insurance not required under this Contract or above the limits set out in this Contract except for Subcontractor default insurance which is allowed under Section 8.6.14.10.
- 8.7.7. Costs set out in Sections 9.5.8.

- 8.7.8. Costs due in whole or in part to the fault or negligence of Construction Manager, Subcontractors, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including but not limited to costs of the correction of damaged, defective or nonconforming Work, disposal and replacement of materials and equipment incorrectly ordered or supplied, and correction of damage to property.
- 8.7.9. Costs incurred by Construction Manager resulting from the failure of Construction Manager or its Subcontractors to coordinate their work with that of City and its Other Contractors, if any, after agreeing to schedules therefore.
- 8.7.10. Any costs arising out of the intentional acts of Construction Manager, its Subcontractors, or any person or entity for whom any of them may be liable, including, without limitation, costs related to defective, rejected, or nonconforming Work within the Contract Time.
- 8.7.11. Costs including, but not limited to, the failure to perform of any Subcontractor or the bankruptcy or insolvency of any Subcontractor.
- 8.7.12. Costs for licenses, re-inspections and improperly timed permits and inspections that are the responsibility of Construction Manager to obtain.
- 8.7.13. Costs related to warranty work over and above the warranty work indicated in the Contract.
- 8.7.14. Any sales, use taxes that the City is exempt, income, franchise, and similar taxes paid by Construction Manager. Any fines, penalties, sanctions, or other levies assessed by any governmental body against Construction Manager.
- 8.7.15. Costs of entertainment including meals, costs associated with Construction Manager sponsored ceremonies, safety incentives and gifts, etc.
- 8.7.16. Liquidated damages imposed by City.
- 8.7.17. Costs that would cause the Guaranteed Maximum Price to be exceeded.
- 8.7.18. Any other cost not specifically and expressly described in this Contract as a Cost of the Work.
- 8.7.19. Notwithstanding anything in the Contract to the contrary, the Lump Sum fee for Construction Manager's Preconstruction Phase and/or other costs or expenses for Construction Manager's Preconstruction Phase shall not be included in the Cost of the Work.

## **8.8. Discounts, Rebates and Refunds of the Cost of the Work**

The Cost of the Work to be paid by City shall be credited with the following items:

- 8.8.1. Proceeds of the sale of all tools, surplus materials, construction equipment, and temporary structures which have been charged to the Work other than by way of rental, and remaining after completion, whether such sale is made to

the City, Construction Manager, or to some other party; and any such sale, if made to others than the City, shall be at fair market price. Upon completion of the Work or when no longer required, all tools, construction equipment and materials charged to the Cost of the Work shall be sold by Construction Manager (unless turned-over to the City as set forth above) and Construction Manager shall use its best efforts to obtain the highest price in respect of such sales.

- 8.8.2. If City makes funds available to Construction Manager, discounts earned by Construction Manager through advance or prompt payments. Construction Manager shall provide sufficient advance notice of available discounts and the need for funds to be available to the City for the City to obtain the benefit of the discounts. Construction Manager shall obtain all possible trade and time discounts on bills for furnished material and shall pay said bills within the highest discount periods. Construction Manager shall purchase materials for this Work in such quantities as will provide the most advantageous prices to the City.
- 8.8.3. Reasonable market value as approved by the Director at the time of removal of all materials, tools, and equipment actually purchased for the Work and charged as a Cost of the Work and which is retained by Construction Manager upon completion of the Work.
- 8.8.4. Rebates, discounts, or commissions allowed to and collected by Construction Manager from suppliers of materials or from Subcontractors, together with all other refunds, returns, or credits received for return of materials, or on bond premiums, dividends or other compensation received from the surety or insurance and sales taxes.
- 8.8.5. Construction Manager shall reimburse City for deposits made by City and not returned to City due to the negligent or intentional acts of Construction Manager. Should Construction Manager not promptly reimburse City upon demand, City may recover such amount from Construction Manager, including, but not limited to, by deducting the amount from payments due to Construction Manager.

#### **8.9. Limit of Appropriation**

- 8.9.1. The City's duty to pay money to Construction Manager under the Contract is limited in its entirety by the provisions of this Section.
- 8.9.2. In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated \$ \_\_\_\_\_ ("Original Allocation") to pay money due under the Contract. The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for the Contract, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:
  - 8.9.2.1. The City makes a Supplemental Allocation by issuing to Construction Manager a Service Release Order, or similar form

approved by the City Controller, containing the language set out below. When necessary, the Supplemental Allocation shall be approved by motion or ordinance of City Council.

### **NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS"**

By signature below, the City Controller certifies that, upon the request of the responsible director, the supplemental sum set out below has been allocated for the purposes of the Agreement out of funds appropriated for this purpose by the City Council of the City of Houston. This Supplemental Allocation has been charged to such appropriation.

\$ \_\_\_\_\_

8.9.2.2. The Original Allocation plus all supplemental allocations are the Allocated Funds. The City shall never be obligated to pay any money under the Contract in excess of the Allocated Funds. Construction Manager must assure itself that sufficient allocations have been made to pay for services it provides. If Allocated Funds are exhausted, Construction Manager's only remedy is suspension or termination of its performance under the Contract, and it has no other remedy in law or in equity against the City and no right to damages of any kind.

8.9.3. The Director shall have the authority to reallocate funding between and among the various categories of Preconstruction Phase Services, Reimbursable Expenses, and Construction Phase Services.

## **9. BONDS AND INSURANCE**

### **9.1. Bonds**

9.1.1. Prior to commencement of the Construction Phase Services and concurrently with submission of the Guaranteed Maximum Price Proposal, Construction Manager shall

9.1.2. provide performance, payment, and maintenance bonds on forms prescribed by City, in accordance with the requirements set forth in the General Conditions. The penal sum of the payment, performance, and maintenance bonds shall be equal to the Guaranteed Maximum Price.

### **9.2. Insurance**

9.2.1. In addition to the insurance coverage set out in Section 11.2 of the General Conditions, Construction Manager shall provide the following coverage:

(Coverage)	(Limit of Liability)
<p>Property and Casualty Coverage: "All Causes of Loss" Builder's Risk Form for directing physical change to building or plant construction on the Work site and/or all land improvements including all work. (Including but not limited to earthquake, flood, boiler, and machinery including testing, damage to existing or adjoining property, time element coverage, collapse, soft costs (management, architecture, financial costs, pre-opening costs, etc.), transit coverage, off-site storage).</p>	<p>100% of Contract Price, including change orders</p>

- 9.2.2. Prior to commencing the Preconstruction Phase Services, Construction Manager shall be required to purchase and maintain the insurance coverages as set forth above and in Article 11 of the General Conditions; provided however, that Construction Manager may delay purchase and maintenance of Owner's and Contractor's Protective Liability, Installation Floater, Property and Casualty Coverage, and environmental insurance, if any until submission of Guaranteed Maximum Price Proposal. Construction Manager shall not commence Construction Phase Services unless all insurance coverage required above and set forth in Article 11 of the General Conditions are in full force and effect.
- 9.2.3. Construction Manager shall not request payment, and City shall not be required to pay for Construction Manager's insurance coverage that is more than the required coverage amounts specified in this Contract and in Article 11 of the General Conditions except as allowed in Section 8.6.14.10, and City shall be entitled to repayment of any amounts paid more than what City is required to pay. The additional costs for coverages in addition to those coverages specifically required by this Contract shall be the sole responsibility of Construction Manager.

## **10. PROJECT TERMINATION AND SUSPENSION**

- 10.1. This Contract may be terminated as provided in the General Conditions.
- 10.2. The first two sentences of Section 14.1.5 of the General Conditions are deleted. The remainder of Section 14.1.5 of the General Conditions applies as set forth in the General Conditions.
- 10.3. Termination of the Contract shall not relieve Construction Manager or any of its employees, Subcontractors, or Suppliers, or of liability for violations of this Contract or for

any act or omission or negligence of Construction Manager. In the event of termination, Construction Manager hereby consents to employment by City of a substitute contractor to complete the Work.

- 10.4. As of the date of termination of this Contract, Construction Manager shall furnish to Director all statements, accounts, reports, and other materials as are required hereunder or as have been prepared by Construction Manager in connection with Construction Manager's responsibilities hereunder. City shall have the right to use the ideas therein contained for the completion of the services described by this Contract, and for completion of the Work, or otherwise.

## **11. MISCELLANEOUS PROVISIONS**

The Miscellaneous Provisions. The Miscellaneous Provisions set out in the General Conditions apply to all phases of the Work under this Contract.

### **11.1. Independent Contractor**

- 11.1.1. Construction Manager recognizes that it is engaged as an independent contractor and acknowledges that City will have no responsibility to provide transportation, insurance or other fringe benefits normally associated with employee status. Construction Manager, in accordance with its status as an independent contractor, covenants and agrees that it shall conduct itself consistent with such status that it will neither hold itself out as nor claim to be an officer, partner, employee or agent of City by reason hereof, and that it will not by reason hereof make any claim, demand or application to or for any right or privilege applicable to an officer, partner, employee or agent of City, including, but not limited to, unemployment insurance benefits, social security coverage or retirement benefits. Construction Manager hereby agrees to make its own arrangements for any of such benefits as it may desire and agrees that it is responsible for all income taxes required by applicable law.
- 11.1.2. Construction Manager, in accordance with its status as an independent contractor, shall be liable to City for acts and omissions of Construction Manager and Construction Manager's Subcontractors and Suppliers of any tier, and their agents, employees and parties in privity of contract with any of them and anyone acting on behalf of any of them, and any other persons performing any of the Work directly or indirectly under contract with Construction Manager.

### **11.2. Captions**

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

### **11.3. Non-Waiver**

- 11.3.1. If either party fails to require the other to perform a term of this Contract, that failure does not prevent the party from later enforcing that term and all other

terms. If either party waives the other's breach of a term, that waiver does not waive a later breach of this Contract.

- 11.3.2. No delays, omissions or approvals by the Director, or by any other employee or agent of the City, or any part of Construction Manager's performance, waive compliance with this Contract or establish a standard of performance other than that required by this Contract and by law. The Director is not authorized to vary the terms of this Contract.

#### **11.4. Enforcement**

- 11.4.1. The City Attorney or his or her designee may enforce all legal rights and obligations under this Contract without further authorization. Construction Manager shall provide to the City Attorney all documents and records that the City Attorney requests to assist in determining Construction Manager's compliance with this Contract, with the exception of those documents made confidential by federal or State law or regulation.

#### **11.5. Ambiguities**

- 11.5.1. If any term of this Contract is ambiguous, it shall not be construed for or against any party on the basis that the party did or did not write it.

#### **11.6. Survival**

- 11.6.1. Construction Manager shall remain obligated to the City under all clauses of this Contract that expressly or by their nature extend beyond the expiration or termination of this Contract, including but not limited to, the warranty, insurance and indemnity provisions.

#### **11.7. Publicity**

- 11.7.1. Construction Manager shall make no announcement or release of information concerning this Contract unless the release has been submitted to and approved, in writing, by the Director.

#### **11.8. Dispute Resolution**

- 11.8.1. See Article 7 of the General Conditions for a description of dispute resolution procedures, which are applicable to Preconstruction and Construction Phase Services of the Contract.

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## **EXHIBIT A: GENERAL CONDITIONS**

**Document 00700  
GENERAL CONDITIONS  
OCTOBER 28, 2024 EDITION**

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## **ARTICLE 1** **GENERAL PROVISIONS**

### **1.1      *DEFINITIONS.***

- 1.1.1      **Agreement:** Document signed by the Parties and binding the Parties, containing the name of Contractor, title and location of the Work, Original Contract Time, Original Contract Price, enumeration of documents included in the Contract, and other provisions.
- 1.1.2      **Applicable Law:** All laws, treaties, ordinances, judgments, decrees, injunctions, writs, orders, codes, rules, regulations, permits, and interpretations of any Governmental Authority having jurisdiction over the Parties, the Project, the Work, the Contract, and each other document delivered hereunder or in connection herewith.
- 1.1.3      **Bonds:** Performance Bond, Payment Bond, Maintenance Bond, and other Surety instruments executed by Surety. When in singular form, refers to individual instrument.
- 1.1.4      **Business Enterprise:** Any business entity registered in a program authorized by 49 C.F.R. § 26 (where applicable) or City Code of Ordinances, Chapter 15, Article II, relating to Equal Opportunity Employment and taking affirmative action to ensure that applicants are employed and employees are treated without regard to race, religion, color, sex, national origin, or age. The term “Business Enterprise” may include any Disadvantaged Business Enterprise (“DBE”), Minority Business Enterprise (“MBE”), Woman Business Enterprise (“WBE”), Small Business Enterprise (“SBE”), Person with Disability Enterprise (“PDBE”), and any Historically Underutilized Business (“HUB”).
- 1.1.5      **Business Enterprise Policy:** Contract documents and applicable policies relating to Business Enterprises and authorized under 49 C.F.R. § 26 or City Code of Ordinances, Chapter 15, Article V.
- 1.1.6      **Cash Allowance:** An estimated sum of money to be used only for a limited class of expenditures such as utility relocation costs, fees for special licenses or permits, or other “pass-through” costs that would be the same for any contractor. Cash Allowances may not be used to purchase goods or services that are not specified in the Contract. The unspecified items must be purchased according to the terms of Article 7.
- 1.1.7      **Change Order:** Written instrument prepared by the City and signed by Director or his designee and Contractor, specifying the following:
  - 1.1.7.1      a change in the Work;
  - 1.1.7.2      a change in Contract Price, if any; and
  - 1.1.7.3      a change in Contract Time, if any.

The value of a Change Order is the net amount after offsetting all deductions against all additions effected by the Change Order.

- 1.1.8 City: The City of Houston, a home rule municipality located principally within Harris County, Texas, including its successors and its authorized representatives.
- 1.1.9 City Engineer: The City Engineer, or the City employee representing the City Engineer, designated in the Agreement and authorized to represent the City, or successors.
- 1.1.10 City Indemnified Parties: The City and its officials, officers, directors, representatives, agents, employees, consultants and separate contractors.
- 1.1.11 Conditions of the Contract: General Conditions and Supplementary Conditions.
- 1.1.12 Construction Manager: Person or firm under contract with the City as its authorized representative to oversee and administer construction of the Work, and who may perform the role of Project Manager and Inspector, as designated by Director in writing.
- 1.1.13 Contract: The Agreement, documents enumerated in and incorporated into the Agreement, Modifications, and amendments.
- 1.1.14 Contract Price: The monetary amount stated in the Agreement adjusted by Change Order, and increases or decreases in Unit Price Quantities, if any.
- 1.1.15 Contract Time: The number of days stated in the Agreement to substantially complete the Work, plus days authorized by Change Order.
- 1.1.16 Contractor: Person or firm identified as such in the Agreement including its successors and its authorized representatives.
- 1.1.17 Date of Commencement of the Work: Date established in Notice to Proceed on which Contract Time will commence. This date will not be changed by failure of Contractor, or persons or entities for whom Contractor is responsible, to act.
- 1.1.18 Date of Substantial Completion: Date that construction, or portion thereof designated by Director, is certified by Director to be substantially complete.
- 1.1.19 Defect Correction Period: The period during which the Contractor shall be obligated to replace or correct deficiencies in Products and/or the Work, which period shall be one year following the Date of Substantial Completion and acceptance of the Work, or discrete phase thereof, subject to an Extended Defect Correction Period as provided in Paragraph 12.1.7, unless the applicable manufacturer or Subcontractor, if any, provides a longer correction period, in which event the longer correction period shall apply.

- 1.1.20 Design Consultant: Person or firm, under contract with the City, to provide professional services during construction and its authorized representatives. If a Design Consultant is not employed for services during construction, Project Manager will perform duties of Design Consultant designated in the Contract in addition to usual duties of Project Manager.
- 1.1.21 Director: The Director of the City Department for which this Work is being performed, or any person designated in writing by such a Director to perform one or more of the Director's duties under this Contract.
- 1.1.22 Documents: notes, manuals, notebooks, plans, computations, computer databases and diskettes, software, tabulations, exhibits, reports, underlying data, charts, analyses, maps, letters, models, forms, photographs, the original tracings of all drawings and plans, and other work products (and any modifications or improvements to them) that Contractor prepares or provides under this Contract.
- 1.1.23 Drawings: Graphic and pictorial portions of the Contract that define the character and scope of the Work.
- 1.1.24 Extra Unit Price: Unit Prices, which may be required for completion of the Work. These Unit Prices and Unit Price Quantities are in the Contract and are included in Original Contract Price.
- 1.1.25 Force Majeure: catastrophic storms or floods, tornadoes, hurricanes, earthquakes, unusually severe weather, and other acts of God, wars, civil disturbances, acts of government in its sovereign capacity that were not requested, promoted, or caused by the affected Party, terrorist attacks, revolts, riots, insurrections, hostilities, strikes (excluding strikes of a Party's employees), sabotage, commercial embargoes, epidemics or pandemics, quarantine restrictions, fires, explosions, changes in Applicable Law, discovery of Pollutants or Pollutant Facilities at the site; provided that the act or event:
- (i) delays or renders impossible the affected Party's performance of its obligations under this Contract;
  - (ii) is beyond the reasonable control of the affected Party, not due to its fault or negligence, and was not reasonably foreseeable; and
  - (iii) could not have been prevented or avoided by the affected Party through the exercise of due diligence.

For avoidance of doubt, Force Majeure will not include any of the following:

- (a) economic hardship;
- (b) changes in market conditions;

- (c) late delivery or failure of equipment, unless the delay or failure is caused by Force Majeure;
  - (d) labor availability, strikes of a Party's employees, or other similar labor actions; or
  - (e) nonperformance or delay by Contractor or its Subcontractors, unless the nonperformance or delay is otherwise caused by Force Majeure.
- 1.1.26 Furnish: To supply, pay for, deliver to the site, and unload.
- 1.1.27 General Requirements: The sections of Division 01 Specifications that specify administrative and procedural requirements and temporary facilities required for the Work.
- 1.1.28 Good Faith Efforts: Steps taken to achieve an MBE, WBE, SBE, or PDBE goal or other requirements which, by their scope, intensity, and usefulness, demonstrate the bidder's responsiveness to fulfill the business opportunity objective, as well as the Contractor's responsibility to put forth measures to meet or exceed the MBE, WBE, SBE, or PDBE goal (Contract Goal). These steps apply from before a contract's award, through its duration, and after its conclusion, in the event the Contractor has been unsuccessful in meeting the Contract Goal. These efforts are required whether a Goal Oriented Contract or a Regulated Contract, as defined in the Office of Business Opportunity's Policy & Procedures Manual, available at <http://www.houstontx.gov/obo>.
- 1.1.29 Good Industry Practice: The generally accepted practices, methods, skill, care, techniques, and standards employed by experienced and skilled contractors with respect to the construction of work or facilities, or portions of work or facilities, like the Project described in the Contract, and good and workmanlike performance.
- 1.1.30 Governmental Authority: Any federal, foreign, state, local or municipal governmental body; any governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or governmental tribunal. Notwithstanding the foregoing, Governmental Authority shall not include the Director or his designees, or the City Engineer.
- 1.1.31 Inspector: City's employee or agent authorized to assist with inspection of the Work.
- 1.1.32 Install: Unpack, assemble, erect, place, anchor, apply, work to dimension, finish, cure, clean, protect, and similar operations.
- 1.1.33 Legal Holiday: Day established by the City Council as a holiday.
- 1.1.34 Major Unit Price Work: An individual Unit Price item,

- 1.1.34.1 whose value is greater than five percent of Original Contract Price,
- 1.1.34.2 whose value becomes greater than five percent of Original Contract Price as the result of an increase in quantity, or
- 1.1.34.3 whose value is \$100,000, whichever is least.
- 1.1.35 Minor Change in the Work: A written change in the Work, ordered by Director, that does not change Contract Price or Contract Time, and that is consistent with the general scope of the Contract.
- 1.1.36 Modification: Change Order, Work Change Directive, or Minor Change in the Work.
- 1.1.37 Notice of Noncompliance: A written notice by the City to Contractor regarding defective or nonconforming work that does not meet the Contract requirements, and that establishes a time by which Contractor shall correct the defective or nonconforming work.
- 1.1.38 Notice to Proceed: A written notice by the City to Contractor establishing Date of Commencement of the Work.
- 1.1.39 Office of Business Opportunity: any reference to, or use of, the "Office of Affirmative Action" shall mean the Office of Business Opportunity, or any such future name to which it is changed.
- 1.1.40 Original Contract Price: The monetary amount originally stated in the Agreement.
- 1.1.41 Parties: Contractor and the City. When in singular form, refers to Contractor or the City.
- 1.1.42 Pollutant: Any materials subject to the Texas Solid Waste Disposal Act.
- 1.1.43 Pollutant Facility: Any facility regulated by the State of Texas to protect the health and environment from contamination by Pollutants, including without limitation, landfills, oil and gas production and storage facilities, wastewater facilities, waste injection wells, and storage tanks (including drums).
- 1.1.44 Product: Materials, equipment, or systems incorporated into the Work or to be incorporated into the Work.
- 1.1.45 Product Data: Illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by Contractor to illustrate a Product.
- 1.1.46 Project: Total construction, of which the Work performed under the Contract may be the whole or a part, and which may include construction by the City or by separate contractors.

- 1.1.47 Project Manager: Director's authorized representative for administration of the Work. Titles used within the City's departments may be different than those used in this definition.
- 1.1.48 Provide: Furnish and Install, complete, ready for intended use.
- 1.1.49 Samples: Physical examples that illustrate Products, or workmanship, and establish standards by which the Work is judged.
- 1.1.50 Shop Drawings: Drawings, diagrams, schedules, and other data specially prepared for the Work by Contractor, Subcontractor or Supplier, to illustrate a portion of the Work.
- 1.1.51 Specifications: Documents consisting of written General Requirements and any other requirements for Products, standards, and workmanship for the Work, and performance of related services, including without limitation Divisions 01 through 50, and other specifications required by Director. All specifications are amended to include, under the Measurement and Payment Section, the following sentence: "Work described as Incidental Work shall not be paid as a separate unit price item."
- 1.1.52 Stipulated Price: Single lump sum amount stated in the Contract for completion of the Work, or for designated portion of the Work.
- 1.1.53 Subcontractor: Person or firm that has direct or indirect contract with Contractor or with another Subcontractor to perform a portion of the Work and its authorized representatives.
- 1.1.54 Substantial Completion: The date when the Contractor meets the conditions listed in Section 9.9.
- 1.1.55 Superintendent: Employee of Contractor having authority and responsibility to act for and represent Contractor.
- 1.1.56 Supplementary Conditions: Part of Conditions of the Contract that amends or supplements General Conditions.
- 1.1.57 Supplier: Manufacturer, distributor, materialman, or vendor having a direct agreement with Contractor or Subcontractor for Products, or services and its authorized representatives.
- 1.1.58 Surety: Corporate entity that is bound by one or more Bonds, and is responsible for completion of the Work, including the correction period, and for payment of debts incurred in fulfilling the Contract. Surety shall include co-surety or reinsurer, as applicable.
- 1.1.59 Underground Facilities: Pipes, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments and encasements containing such facilities that exist below ground level.

- 1.1.60 Unit Price: An amount stated in the Contract for an individual, measurable item of work, which, when multiplied by actual quantities incorporated into the Work, amounts to full compensation for completion of the item, including work incidental to it.
- 1.1.61 Unit Price Quantities: Quantities indicated in the Contract that are approximations made by the City for contracting purposes.
- 1.1.62 Work: Entire construction required by the Contract, including all labor, Products, and services provided by Contractor to fulfill Contractor's obligations. The Work may constitute the whole or a portion of the Project.
- 1.1.63 Work Change Directive: A written change in the Work, ordered by Director, that is within the general scope of the Contract and consisting of additions, deletions, or other revisions. A Work Change Directive will state proposed basis for adjustment, if any, in Contract Price or Contract Time, or both.

## 1.2 *EXECUTION, CORRELATION, AND INTENT.*

- 1.2.1 Execution of the Contract by Contractor is conclusive that Contractor has visited the Work site, become familiar with local conditions under which the Work will be performed, and fully informed itself as to conditions and matters which can affect the Work or costs. Contractor further agrees that it has carefully correlated personal observations with requirements of the Contract.
- 1.2.2 The Contract and Modifications have been read and carefully considered by Contractor, who understands and agrees to their sufficiency for the Work. The Contract may not be more strongly construed against the City than against Contractor and Surety.
- 1.2.3 Contractor shall include all items necessary for proper execution and completion of the Work.
- 1.2.4 Reference to standard specifications, manuals, or codes of a technical society, organization, or association, or to laws or regulations of a Governmental Authority, whether specific or implied, mean the latest edition in effect as of date of receipt of bids, except as may be otherwise specifically stated in the Contract.
- 1.2.5 No provision of any referenced standard, specification, or manual changes the duties and responsibilities of the City, City Engineer, Contractor, Design Consultant or Director from those set forth in the Contract. Nor do these provisions assign to Design Consultant any duty or authority to supervise or direct performance of the Work or any duty or authority to undertake any actions contrary to provisions of the Contract.
- 1.2.6 Organization of Specifications into divisions, sections, and articles and arrangement of Drawings does not control Contractor in dividing the Work among Subcontractors or in establishing the extent of work to be performed by any trade.

1.2.7 Unless otherwise defined in the Contract, words which have well known construction industry technical meanings are used in the Contract in accordance with these recognized meanings.

1.3 **OWNERSHIP AND USE OF DOCUMENTS; CONFIDENTIALITY.**

- 1.3.1 City-Provided Documents. All Documents provided to Contractor or any Subcontractor or Supplier by the City are and shall at all times remain the property of City or the City's consultants or Other Contractors. Contractor shall not make use of any Documents for any other project or for any purpose other than as necessary for completion of the Work or in connection with the Project. The City grants to the Contractor a limited, non-exclusive license to use the Documents, but only with respect to the Work and the Project. Contractor shall within 14 days following Final Completion of the Work or termination of this Contract delete, and cause all of its Subcontractors and Suppliers to delete, all Documents in electronic form, and return all Documents in paper form or any other medium of expression possessed by Contractor or any of its Subcontractors and Suppliers to the Director. Contractor shall, if requested by the City, certify to the City in writing that all of the Documents in any medium of expression provided to or through the Contractor have been deleted or returned to the Director. Contractor may, subject to its confidentiality obligations in this Contract, retain 1 record set of the Documents.
- 1.3.2 Contractor shall include in all its contracts with Subcontractor and Suppliers all terms and conditions as necessary to bind Subcontractors and Suppliers to the terms of this Section 1.3.
- 1.3.3 Ownership and Use of Work Product. Contractor acknowledges that during the course of, or as a result of, the performance of the Work, Contractor or its Subcontractors and Suppliers may create or have created for the Project certain Drawings, Specifications, Shop Drawings or similar documents, and the designs reflected in them ("Work Product"). Contractor grants, and shall cause its Subcontractors and Suppliers to grant, to the City an irrevocable, perpetual non-exclusive and royalty-free license to use, modify, and copy the Work Product, and any designs or Architectural Works reflected in the Work Product, for any purpose relating to the Project, its use or the Work.
- 1.3.4 The ownership, vesting, assignment and licenses in this Section 1.3 are in addition to any other transfer of intellectual property rights to the City in the Contract or at law.
- 1.3.5 Confidentiality: Contractor and its Subcontractors and Suppliers shall implement all such measures as reasonably necessary to prevent disclosure of any Documents and Work Product, and the designs and Architectural Works reflected in them, to any person or entity not working for or through Contractor on the Work or the Project. The City and Contractor agree that in the event of any pending or actual violation of this confidentiality provision, that monetary damages would be inadequate and

that the City shall be entitled to injunctive relief prohibiting or limiting disclosure of such confidential information without posting bond.

- 1.3.6 The terms of this Section 1.3 shall survive completion of the Work or termination of this Contract for any reason including, without limitation, Contractor's termination for cause.

1.4 *INTERPRETATION.*

- 1.4.1 Specifications are written in an imperative streamlined form and are directed to Contractor, unless noted otherwise. When written in this form, the words "shall be" are included by inference where a colon (:) is used within sentences or phrases.
- 1.4.2 In the interest of brevity, the Contract frequently omits modifying words such as "all" and "any" and articles such as "the" and "an," but an absent modifier or article is not intended to affect interpretation of a statement.

**ARTICLE 2  
THE CITY**

2.1 *LIMITATIONS OF THE CITY'S OFFICERS AND EMPLOYEES.* No officer or employee of the City may authorize Contractor to perform an act or work contrary to the Contract.

2.2 *DUTIES OF THE CITY.*

- 2.2.1 If a building permit is required, the City will process an application for, and Contractor shall purchase the building permit before Date of Commencement of the Work.
- 2.2.2 The City will make available to Contractor a reproducible set of Drawings. Additional copies will be furnished, on Contractor's request, at the cost of reproduction.
- 2.2.3 When necessary for performance of the Work, the City will provide surveys describing physical characteristics, legal limitations, legal description of site, and horizontal and vertical control adequate to lay out the Work.
- 2.2.4 Information or services that the City is required to provide under the Contract will be provided by the City with reasonable promptness to avoid delay in orderly progress of the Work.
- 2.2.5 The Contract imposes no implied duty on the City. The City does not warrant any plans or specifications associated with the Contract.
- 2.2.6 Except as expressly stated in this Article, the City owes no duty to the Contractor or any subcontractor.

2.3 **AVAILABILITY OF LAND AND USE OF SITE.**

- 2.3.1 The City will furnish, as indicated in the Contract, rights of way, land on which the Work is to be performed, and other land designated in the Contract for use by Contractor unless otherwise provided in the Contract.
- 2.3.2 Contractor shall confine operations at site to those areas permitted by law, ordinances, permits, and the Contract, and may not unreasonably encumber site with materials or equipment.
- 2.3.3 In addition to land provided by the City under Paragraph 2.3.1, Contractor shall provide all land and access to land that may be required for use by Contractor for temporary construction facilities or for storage of materials and equipment, and shall indemnify the City during its use of the land as stated in Section 3.25.

2.4 **THE CITY'S RIGHT TO STOP THE WORK.** If Contractor fails to carry out the Work in accordance with the Contract, or fails to correct work which is not in accordance with requirements of the Contract as required in Section 12.1, the City may, by Notice of Noncompliance, order Contractor to stop the Work or any portion of the Work until the cause for the order has been eliminated. However, the right of the City to stop the Work will not give rise to a change in the Contract Price or Contract Time for Contractor for delay or disruption, or to a duty on the part of the City to exercise this right for the benefit of Contractor or any other person or entity, except to the extent required by Section 6.2. If Contractor corrects the defective or nonconforming work within the time established in Notice of Noncompliance, Director will give written notice to Contractor to resume performance of the Work.

2.5 **THE CITY'S RIGHT TO CARRY OUT WORK.**

- 2.5.1 If Contractor fails to carry out work in accordance with the Contract, and fails within the period established in a Notice of Noncompliance to correct the nonconforming work, the City may, after expiration of the required period, correct the deficiencies without prejudice to other remedies the City may have, including rights of the City under Section 14.1.
  - 2.5.1.1 When the City corrects deficiencies, Director will issue an appropriate Change Order and deduct from payments then or thereafter due Contractor the cost of correcting the deficiencies, including compensation for Design Consultant's and Construction Manager's additional services and expenses made necessary by such default, neglect, or failure. If payments, then or thereafter due Contractor, are not sufficient to cover these amounts, Contractor shall pay the difference to the City.
- 2.5.2 Notwithstanding the City's right to carry out work, maintenance and protection of the Work remains Contractor's responsibility, as provided in the Contract.

## **ARTICLE 3** **CONTRACTOR**

### **3.1      *RESPONSIBILITIES.***

- 3.1.1      Contractor shall maintain an office with agent in the greater City of Houston area during the Contractor's performance under the Contract. Contractor shall file its street address with Director.
- 3.1.2      Contractor and Contractor's employees shall not give or lend money or anything of value to an officer or employee of the City. Should this Paragraph 3.1.2 be violated, Director may terminate the Contract under Section 14.1.

### **3.2      *REVIEW OF CONTRACT AND FIELD CONDITIONS BY CONTRACTOR.***

- 3.2.1      Contractor shall carefully study and compare documents contained in the Contract with each other and with information furnished by the City pursuant to Section 2.2 and shall immediately report, in writing, any errors, inconsistencies, or omissions to Director. If work is affected, Contractor shall obtain a written interpretation or clarification from Director before proceeding with the affected work. However, Contractor will not be liable to the City for failure to report an error, inconsistency, or omission in the Contract unless Contractor had actual knowledge or should have had knowledge of the error, inconsistency, or omission.
- 3.2.2      Contractor shall take field measurements and verify field conditions, and shall carefully compare the conditions and other information known to Contractor with the Contract, before commencing activities. Contractor shall immediately report, in writing, to Director for interpretation or clarification of discrepancies, inconsistencies, or omissions discovered during this process.
- 3.2.3      Contractor shall make a reasonable attempt to understand the Contract before requesting interpretation from Director.

### **3.3      *SUPERVISION AND CONSTRUCTION PROCEDURES.***

- 3.3.1      Contractor shall supervise, direct, and inspect the Work competently and efficiently, devoting the attention and applying the skills and expertise as necessary to perform the Work in accordance with the Contract. Contractor is solely responsible and has control over construction means, methods, techniques, sequences, and procedures of construction; for safety precautions and programs in connection with the Work; and for coordinating all work under the Contract.
- 3.3.2      Regardless of observations or inspections by the City or City's consultants, Contractor shall perform and complete the Work in accordance with the Contract and submittals approved pursuant to Section 3.18. The City is not liable or responsible to Contractor or Surety for work performed by

Contractor that is not in accordance with the Contract regardless of whether discovered during construction or after acceptance of the Work.

**3.4 SUPERINTENDENT.**

- 3.4.1 Contractor shall employ a competent Superintendent and necessary assistants who shall be present at the site during performance of the Work. Communications given to Superintendent are binding on the Contractor. The City may, by written notice, require Contractor to remove from the Work the Contractor's Superintendent to whom Director makes reasonable objection and replace the Contractor's Superintendent immediately.
- 3.4.2 Contractor shall notify the City in writing of its intent to replace the Superintendent. Contractor may not replace the Superintendent if Director makes a reasonable objection in writing.

**3.5 LABOR; MINORITY AND WOMEN BUSINESS ENTERPRISE COMPLIANCE.**

- 3.5.1 Contractor shall provide competent, qualified personnel to survey and lay out the Work and perform construction as required by the Contract. The City may, by written notice, require Contractor to remove from the Work any employee of Contractor or Subcontractors to whom Director makes reasonable objection.
- 3.5.2 Contractor shall comply with the City's Minority and Women Business Enterprise ("MWBE") programs set out in this Contract and in the Supplementary Conditions, and as set out in Chapter 15, Article V of the City of Houston Code of Ordinances, and the applicable Office of Business Opportunity's ("OBO") Policies and Procedures. When Original Contract Price is greater than \$1,000,000, Contractor shall make Good Faith Efforts to award subcontracts or supply agreements in at least the percentages set out in the Supplementary Conditions for Business Enterprise Policy ("Stated MWBE goal(s)"). If the Contractor is a certified MBE or WBE, Contractor may count toward goals the work that it commits to perform with its own work force, capped at 50% of the total advertised goal. Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with OBO and will comply with them.
- 3.5.3 For purposes of this Paragraph, "Contract Year" means a 12-month period during the term of the contract commencing on the Countersignature Date of this Contract and each anniversary thereof. If the term of this Contract exceeds one Contract Year and Contractor's MWBE participation level in a Contract Year is less than the Stated MWBE goal(s), then within 30 calendar days of the end of each Contract Year, Contractor must provide a written explanation to both the Director and Office of Business Opportunity Director ("OBO Director") of the following: (1) the discrepancy between Contractor's MWBE participation level and the Stated MWBE goal(s); (2) the reason for the discrepancy; and (3) Contractor's good faith efforts (in accordance with the City's policy) towards achieving the Stated MWBE goal(s). As part of the good faith efforts assessment, the OBO Director may consider Contractor's failure to timely submit the notice or explanation

required by this provision and the OBO Director may impose sanctions or other penalties on Contractor for said failures in accordance with this Section of this Contract and Chapter 15 of the Code of Ordinances, OBO's policies and procedures, and the City's good faith efforts policy.

- 3.5.4 The OBO Director, in consultation with the Director may review, at any time during the Term of this Contract, the Contractor's progress toward attainment of the Stated MWBE goal(s), by reviewing the percentage of work to MWBE subcontractors and the payments Contractor has made to such MWBE subcontractors. If the OBO Director determines that Contractor is not in compliance with this Section of this Contract, Chapter 15 of the Code of Ordinances, OBO's policies and procedures, and the City's good faith efforts policy, the OBO Director may:
  - 3.5.4.1 After consultation with the Director and the Chief Procurement Officer, determine whether any of the following actions should be taken and notify Contractor of such determination:
    - 3.5.4.1.1 Enter a written agreement with Contractor allowing Contractor to cure the noncompliance matter;
    - 3.5.4.1.2 Suspend Contractor from engaging in any contract with the City for a period up to, but not to exceed, five years, pursuant to Section 15-86 of the City's Code of Ordinances, as may be amended from time to time; or
    - 3.5.4.1.3 Take any other appropriate remedy.
  - 3.5.4.2 Make a recommendation to the Director and the Chief Procurement Officer, to:
    - 3.5.4.2.1 Withhold payment or reimbursement under this Contract;
    - 3.5.4.2.2 Make a finding that Contractor is in default or has breached this Contract;
    - 3.5.4.2.3 Determine not to renew this Contract;
    - 3.5.4.2.4 Terminate for cause this Contract; or
    - 3.5.4.2.5 Take any other appropriate remedy.
- 3.5.5 Contractor shall maintain records showing:
  - 3.5.5.1 Subcontracts and supply agreements with Minority Business Enterprises;
  - 3.5.5.2 Subcontracts and supply agreements with Women Business Enterprises;

- 3.5.5.3 Subcontracts and supply agreements with Small Business Enterprises (if any);
  - 3.5.5.4 Written confirmation from MWBE subcontractors and suppliers that they are participants on the contract; and
  - 3.5.5.5 Specific efforts to identify and award subcontracts and supply agreements to MWBEs. Contractor shall submit periodic reports of its efforts under this Section to the OBO Director in the form and at the times he or she prescribes.
- 3.5.6 Contractor shall ensure that all subcontracts with MWBE subcontractors and suppliers contain the following terms:
- 3.5.6.1 [Name of MWBE subcontractor] shall permit representatives of the City of Houston, at all reasonable times, to perform (1) audits of the books and records of the subcontractor, and (2) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep such books and records available for such purpose for at least four years after the end of its performance under this subcontract. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.
  - 3.5.6.2 Within five business days of execution of this subcontract, Contractor [prime contractor] and Subcontractor shall designate, in writing, to the City of Houston's OBO Director ("the OBO Director") an agent for receiving any notice required or permitted to be given pursuant to Chapter 15 of the Houston City Code of Ordinances, along with the street, mailing address, phone number, and email address of such agent.
  - 3.5.6.3 After reasonable attempt(s) to resolve disputes between the parties involving the terms, covenants, or conditions of this subcontract, a request for dispute resolution may be submitted to the OBO Director. The OBO Director may prescribe procedures to provide dispute resolution services in accordance with the requirements of Chapter 15 of the Houston City Code of Ordinances.
- 3.5.7 The requirements and terms of the City of Houston Pay or Play Program, as set out in Executive Order 1-7, as revised from time to time, are incorporated into the Contract for all purposes. Contractor has reviewed Executive Order 1-7 and shall comply with its terms and conditions. IF CONTRACTOR DOES NOT PAY IN ACCORDANCE WITH THE PAY OR PLAY PROGRAM WITHIN 30 DAYS OF THE DATE DIRECTOR SENDS CONTRACTOR WRITTEN NOTIFICATION, CITY CONTROLLER MAY DEDUCT FUNDS UP TO THE AMOUNT OWED FROM ANY PAYMENTS OWED TO CONTRACTOR UNDER THIS CONTRACT, AND CONTRACTOR WAIVES ANY RE COURSE.

**3.6 PREVAILING WAGE RATES.**

- 3.6.1 Contractor shall comply with governing statutes providing for labor classification of wage scales for each craft or type of laborer, worker, or mechanic.
- 3.6.2 Prevailing wage rates applicable to the Work may be one or a combination of the following wage rates identified in Division 00:
  - 3.6.2.1 Federal Wage Rate General Decisions
    - 3.6.2.1.1 Highway Rates
    - 3.6.2.1.2 Building Rates
    - 3.6.2.1.3 Heavy Construction Rates
    - 3.6.2.1.4 Residential Rates
  - 3.6.2.2 City Prevailing Wage Rates
    - 3.6.2.2.1 Building Construction Rates
    - 3.6.2.2.2 Engineering Construction Rates
    - 3.6.2.2.3 Asbestos Worker Rates
- 3.6.3 Each week Contractor shall submit to the City's Mayor's Office of Business Opportunity certified copies of payrolls showing classifications and wages paid by Contractor, Subcontractors, and Suppliers for each employee under the Contract, for any day included in the Contract.

**3.7 LABOR CONDITIONS.**

- 3.7.1 In the event of labor disputes affecting Contractor or Contractor's employees, Contractor shall utilize all possible means to resolve disputes in order that the Work not be delayed to any extent. These means will include seeking injunctive relief and filing unfair labor practice charges, and any other action available to Contractor.
- 3.7.2 When Contractor has knowledge that any actual or potential labor dispute is delaying or is threatening to delay timely performance of the Work, Contractor shall immediately notify the City in writing. No changes in Contract Price or Contract Time will be permitted for costs or delays or disruptions as a result of jurisdictional or labor disputes.

**3.8 DRUG DETECTION AND DETERRENCE.**

- 3.8.1 It is the policy of the City to achieve a drug-free work force and to provide a workplace that is free from the use of illegal drugs and alcohol. It is also the policy of the City that manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on

the City's premises is prohibited. By executing the Contract, Contractor represents and certifies that it meets and will comply with all requirements and procedures set forth in the Mayor's Policy on Drug Detection and Deterrence, City Council Motion No. 92-1971 ("Mayor's Policy") and the Mayor's Drug Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31, (Revised) ("Executive Order"). Mayor's Policy is on file in the office of the City Secretary.

- 3.8.1.1 The Executive Order applies to the City's contracts for labor or services except the following:
  - 3.8.1.1.1 contracts authorized by Emergency Purchase Orders,
  - 3.8.1.1.2 contracts in which imposition of requirements of the Executive Order would exclude all potential bidders or proposers, or would eliminate meaningful competition for the Contract,
  - 3.8.1.1.3 contracts with companies that have fewer than 15 employees during any 20-week period during a calendar year and no safety impact positions,
  - 3.8.1.1.4 contracts with non-profit organizations providing services at no cost or reduced cost to the public, and
  - 3.8.1.1.5 contracts with federal, state, or local governmental entities.
- 3.8.1.2 Prior to execution of the Contract, Contractor shall have filed with the City:
  - 3.8.1.2.1 a Drug Policy Compliance Agreement form (Attachment "A" to the Executive Order), and
  - 3.8.1.2.2 a copy of Contractor's drug free workplace policy, and
  - 3.8.1.2.3 a written designation of all safety impact positions, if applicable, or a Contractor's Certification of a No Safety Impact Positions form (Attachment "C" to the Executive Order).
- 3.8.1.3 Every six months during performance of the Contract and upon completion of the Contract, Contractor shall file a Drug Policy Compliance Declaration form (Attachment "B" to the Executive Order). The Contractor shall submit the Drug Policy Compliance Declaration within 30 days of expiration of each six-month period of performance and within 30 days of completion of the Contract. The first six-month period shall begin on Date of Commencement of the Work.
- 3.8.1.4 Contractor shall have a continuing obligation to file updated designation of safety impact positions when additional safety impact positions are added to Contractor's employee workforce during performance of the Work.
- 3.8.1.5 Contractor shall require its Subcontractors and Suppliers to comply with the Mayor's Policy and Executive Order. Contractor is responsible for

securing and maintaining required documents from Subcontractors and Suppliers for the City inspection throughout the term of the Contract.

- 3.8.1.6 Failure of Contractor to comply with requirements will be a material breach of the Contract entitling the City to terminate in accordance with Section 14.1.

**3.9 MATERIALS & EQUIPMENT.**

- 3.9.1 Unless otherwise provided in the Contract, Contractor shall provide and assume full responsibility for Products, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, transportation, temporary facilities, supplies, and other facilities and incidentals necessary for Furnishing, performing, testing, starting up, and completing the Work.

- 3.9.1.1 Contractor, Subcontractors, and Suppliers shall use Ultra Low Sulfur Diesel Fuel in all diesel operating vehicles and motorized equipment utilized in performing the Work. Ultra Low Sulfur Diesel Fuel is defined as diesel fuel having 15 ppm or the applicable standard set by state or federal law or rules and regulations of the Texas Commission on Environmental Quality, or the Environmental Protection Agency, whichever is less in sulfur content. Off-road Ultra Low Sulfur Diesel Fuel may be used in lieu of on-road Ultra Low Sulfur Diesel Fuel. Contractor shall provide, upon request by the City, proof that Contractor, Subcontractors, and Suppliers are using Ultra Low Sulfur Diesel Fuel.

- 3.9.2 Contractor shall provide Products that are:

- 3.9.2.1 new, unless otherwise required or permitted by the Contract; and
- 3.9.2.2 of specified quality.

If required by the City, Contractor shall furnish satisfactory evidence, including reports of required tests, as to kind and quality of Products.

- 3.9.3 Contractor shall store Products in a safe, neat, compact, and protected manner. Contractor shall also store Products delivered during the work, along the right of way:

- 3.9.3.1 so as to cause the least inconvenience to property owners, tenants, and general public; and
- 3.9.3.2 so as not to block access to, or be closer than, three feet to any fire hydrant.

- 3.9.4 Contractor shall protect trees, lawns, walks, drives, streets, and other improvements that are to remain, from damage. If private or public property

is damaged by Contractor, Contractor shall, at its sole expense, restore the damaged property to at least its original condition.

3.9.5 Contractor shall obtain Director's approval for storage areas used for Products for which payment has been requested under Paragraph 9.6.1. Contractor shall provide the City access to the storage areas for inspection purposes. Products, once paid for by the City, become the property of the City and may not be removed from place of storage, without Director's written permission except for a movement to the site. Contractor's Installation Floater, required under Section 11.2, shall cover all perils, including loss or damage to Products during storage, loading, unloading, and transit to the site.

**3.10 PRODUCT OPTIONS AND SUBSTITUTIONS.**

- 3.10.1 For Products specified by reference standards or by description only, Contractor may provide any Product meeting those standards or description.
- 3.10.2 For Products specified by naming one or more manufacturers with provision for substitutions or equal, Contractor may submit a request for substitution for any manufacturer not named.
- 3.10.3 Director will consider requests for substitutions only within the first 15 percent of Contract Time, or first 90 days after date of Notice to Proceed, whichever is less.
- 3.10.4 Contractor shall document each request for substitution with complete data substantiating compliance of proposed substitution with the Contract.
- 3.10.5 A request for substitution constitutes a representation that Contractor:
- 3.10.5.1 has investigated the proposed Product and determined that it meets or exceeds the quality level of the specified Product;
  - 3.10.5.2 shall provide the same warranty for the substitution as for the specified Product;
  - 3.10.5.3 shall coordinate installation of the proposed substitution and make changes to other work which may be required for the Work to be completed, with no additional cost or increase in time to the City;
  - 3.10.5.4 confirms that cost data is complete and includes all related costs under the Contract;
  - 3.10.5.5 waives claim for additional costs or time extensions that may subsequently become apparent; and

3.10.5.6 shall provide review or redesign services by a design consultant with appropriate professional license and shall obtain re-approval and permits from authorities.

3.10.6 Director will not consider and will not approve substitutions when:

3.10.6.1 they are indicated or implied on Shop Drawing or Product Data submittals without separate written request; or

3.10.6.2 acceptance will require revision to the Contract.

3.10.7 Director may reject requests for substitution, and such decision will be in his/her sole discretion.

**3.11 CASH ALLOWANCES.**

3.11.1 Contract Price includes Cash Allowances as identified in the Contract.

3.11.2 The City will pay the actual costs of Cash Allowance item exclusive of profit, overhead or administrative costs. If actual costs exceed the Cash Allowance, Director must approve a Change Order for the additional costs.

**3.12 WARRANTY OF TITLE AND RISK OF LOSS.**

3.12.1 Contractor warrants that title to all work covered by Contractor's request for payment passes to the City upon incorporation into the Work or upon Contractor's receipt of payment, whichever occurs first. Transfer of title to Work will be without prejudice to City's right to reject Defective Work, or any other right in the Contract. The Contractor further warrants that the title is free of all liens, claims, security interests or other interests ("Encumbrances"). If not, upon written demand from the City, Contractor shall immediately take legal action necessary to remove Encumbrances.

3.12.2 Notwithstanding passage of title as provided in Section 3.12, Contractor will bear the risk of loss and damage to the Work until the Date of Substantial Completion of the Work.

**3.13 TAXES.**

3.13.1 Contractor shall pay all sales, consumer, use, and similar taxes, which are in effect or scheduled to go into effect on or before bids are received, related to work provided by Contractor.

3.13.2 Contractor shall obtain, and require Subcontractors and Suppliers to obtain, necessary permits from the state and local taxing authorities to perform contractual obligations under the Contract, including sales tax permits.

3.13.3 The City is exempt from the Federal Transportation and Excise Tax. Contractor shall comply with federal regulations governing the exemptions.

- 3.13.4 Products incorporated into the Work are exempt from state sales tax according to provisions of the TEX. TAX CODE ANN. CH. 151, Subsection H.
- 3.14 *PERMITS, FEES, AND NOTICES.* Unless otherwise provided in the Contract, Contractor shall secure and pay for all construction permits, licenses, and inspections:
- 3.14.1 necessary for proper execution and completion of the Work; and
  - 3.14.2 legally required at time bids are received.
- 3.15 *CONSTRUCTION SCHEDULES.*
- 3.15.1 On receipt of Notice to Proceed, Contractor shall promptly prepare and submit construction schedule for the Work for Director's review. The schedule must reflect the minimum time required to complete the Work not to exceed Contract Time.
  - 3.15.2 Contractor shall give 24-hour written notice to Director before commencing work or resuming work where work has been stopped. Contractor shall also give the same notice to inspectors.
  - 3.15.3 Contractor shall incorporate milestones specified in Summary of Work Specification into the construction schedule. Contractor's failure to meet a milestone, as determined by Director, may be considered a material breach of the Contract.
  - 3.15.4 Each month, Contractor shall submit to Director a copy of an updated construction schedule indicating actual progress, incorporating applicable changes, and indicating courses of action required to assure completion of the Work within Contract Time.
  - 3.15.5 Contractor shall keep a current schedule of submittals that coordinates with the construction schedule, and shall submit the initial schedule of submittals to Director for approval.
- 3.16 *DOCUMENTS AND SAMPLES AT THE SITE.*
- 3.16.1 Contractor shall maintain at the site, and make available to the City, one record copy of Drawings, Specifications, and Modifications. Contractor shall maintain the documents in good order and marked currently to record changes and selections made during construction. In addition, Contractor shall maintain at the site, approved Shop Drawings, Product Data, Samples, and similar submittals, which will be delivered to Director prior to issuance of a Certificate of Final Completion as required in Paragraph 9.11.4.
  - 3.16.2 Contractor shall maintain all books, documents, papers, accounting records, and other relevant documentation pursuant to the Work and shall make the books, documents, papers, and accounting records available to representatives of the City for review and audits during the Contract term

and for the greater of three years following Date of Substantial Completion or until all litigation or audits are fully resolved.

- 3.16.3 Contractor shall provide to City Attorney all documents and records that City Attorney deems necessary to assist in determining Contractor's compliance with the Contract, with the exception of those documents made confidential by federal or state law or regulation.

**3.17 MANUFACTURER'S SPECIFICATIONS.**

- 3.17.1 Contractor shall handle, store, and Install Products and perform all work in the manner required by Product manufacturer. Should the Contract and manufacturer's instructions conflict, Contractor shall report conflict to Director for resolution prior to proceeding with the affected work.
- 3.17.2 References in the Contract to the manufacturer's specifications, directions, or recommendations, mean manufacturer's current published documents in effect as of date of receipt of bids, or in the case of a Modification, as of date of Modification.

**3.18 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES.**

- 3.18.1 Shop Drawings, Product Data, and Samples are not part of the Contract. The purpose of Contractor submittals is to demonstrate, for those portions of the Work for which submittals are required, the way Contractor proposes to conform to information given and design concept expressed in the Contract.
- 3.18.2 Contractor shall submit to Project Manager for review the Shop Drawings, Product Data, and Samples, which are required by the Contract. Review by Project Manager is subject to limitations of Paragraph 4.1.4. Contractor shall transmit the submittals to the Project Manager with reasonable promptness and in a sequence, so as to cause no delay in the Work or in activities of the City or of separate contractors. Contractor shall transmit submittals in time to allow a minimum of 30 days for Project Manager's review prior to date Contractor needs reviewed submittals returned. This time may be shortened for a particular job requirement if approved by Project Manager in advance of submittal.
- 3.18.3 Contractor shall certify that the content of submittals conforms to the Contract without exception by affixing Contractor's approval stamp and signature. By certifying and submitting Shop Drawings, Product Data, and Samples, Contractor represents, and Contractor's stamp of approval shall state, that Contractor has determined and verified materials, quantities, field measurements, and field construction criteria related to the submittal, and has checked and coordinated information contained within the submittals with requirements of the Contract.
- 3.18.4 Contractor may not perform any work requiring submittal and review of Shop Drawings, Product Data, or Samples until the submittal has been

returned with appropriate review decision by the Project Manager. Contractor shall perform work in accordance with the review.

- 3.18.5 If Contractor performs any work requiring submittals prior to review and acceptance of the submittals by Project Manager, such work is at Contractor's risk and the City is not obligated to accept work if the submittals are later found to be unacceptable.
- 3.18.6 If, in the opinion of Project Manager, the submittals are incomplete, or demonstrate an inadequate understanding of the Work or lack of review by the Contractor, then submittals may be returned to the Contractor for correction and resubmittal.
- 3.18.7 Contractor shall direct specific attention in writing and on the resubmitted Shop Drawings, Product Data, or Samples to any additional proposed revisions, other than those revisions requested by Project Manager on previous submittals.
- 3.18.8 Contractor is not relieved of responsibility for deviations from requirements of the Contract by Project Manager's review of Shop Drawings, Product Data, or Samples unless Contractor has specifically informed Project Manager in writing of the deviation at the time of the submittal, and Project Manager has given written approval of the deviation.
- 3.18.9 When professional certification of performance criteria of Products is required by the Contract, the City may rely upon accuracy and completeness of the calculations and certifications.
- 3.18.10 For Product colors or textures to be selected by the City, Contractor shall submit all samples together to allow preparation of a complete selection schedule.
- 3.18.11 Contractor shall submit informational submittals, on which Project Manager is not expected to take responsive action, as required by the Contract.
- 3.18.12 Submittals made by Contractor which are not required by the Contract may be returned to Contractor without action.

**3.19 CULTURAL RESOURCES AND ENDANGERED SPECIES.**

- 3.19.1 Contractor may not remove or disturb, or cause to be removed or disturbed, any historical, archaeological, architectural, or other cultural artifacts, relics, vestiges, remains, or objects of antiquity. If Contractor discovers one of these items, Contractor shall immediately notify Director and further comply with the requirements of 13 Tex. Admin. Code Chs. 25 and 26 (2002), or successor regulation. Contractor shall protect site and cultural resources from further disturbance until professional examination can be made or until clearance to proceed is authorized in writing by Director.

- 3.19.2 Should either threatened or endangered plant or animal species be encountered, Contractor shall cease work immediately in the area of encounter and notify Director.
- 3.20 **CUTTING AND PATCHING.**
- 3.20.1 Contractor is responsible for necessary cutting, fitting, and patching to accomplish the Work and shall suitably support, anchor, attach, match, and trim or seal materials to work of other contractors. Contractor shall coordinate the Work with work of other contractors to minimize conflicts, as provided in Article 6.
- 3.20.2 Contractor may not endanger work by cutting, digging, or other action, and may not cut or alter work of other contractors except by written consent of Director and affected contractor.
- 3.21 **CLEANING.**
- 3.21.1 Contractor shall perform daily cleanup of all dirt, debris, scrap materials and other disposable items resulting from Contractor's operations, whether on-site or off-site. Unless otherwise authorized in writing by Director, Contractor shall keep all streets, access streets, driveways, areas of public access, walkways, and other designated areas clean and open at all times.
- 3.21.2 Failure of Contractor to maintain a clean site, including access streets, is the basis for Director to issue a Notice of Noncompliance. Should compliance not be attained within the time period in the Notice of Noncompliance, Director may authorize necessary cleanup to be performed by others and the cost of the cleanup will be deducted from monies due Contractor.
- 3.21.3 Contractor shall legally dispose off-site, all waste materials and other excess materials resulting from Contractor's operations.
- 3.22 **SANITATION.** Contractor shall provide and maintain sanitary facilities at site for use of all construction forces under the Contract. Newly-constructed or existing sanitary facilities may not be used by Contractor.
- 3.23 **ACCESS TO WORK AND TO INFORMATION.**
- 3.23.1 Contractor shall provide the City, Design Consultant, testing laboratories, and governmental agencies which have jurisdictional interests, access to the Work in preparation and in progress wherever located. Contractor shall provide proper and safe conditions for the access.
- 3.23.2 If required by Director, Contractor shall furnish information concerning character of Products and progress and manner of the Work, including information necessary to determine cost of the Work, such as number of employees, pay of employees, and time employees worked on various classes of the Work.

3.24 **TRADE SECRETS.** Contractor will not make any claim of ownership of trade secrets as to products used in the Work, or preparation of any mixture for the Work. Director will at all times have the right to demand and Contractor shall furnish information concerning materials or samples of ingredients of any materials used, or proposed to be used, in preparation of concrete placed or other work to be done. Mixtures, once agreed on, shall not be changed in any manner without knowledge and consent of Director. The City will make its best efforts to protect confidentiality of proprietary information.

3.25 **INDEMNIFICATION.**

3.25.1 **CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THE CONTRACT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:**

3.25.1.1 **CONTRACTOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED SUBPARAGRAPHS 3.25.1.1 through 3.25.1.3, "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;**

3.25.1.2 **THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT;**

3.25.1.3 **THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT.**

**CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THE CONTRACT AND FOR FOUR YEARS AFTER THE CONTRACT TERMINATES. CONTRACTOR SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.**

3.25.2 **NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE LIABILITY OF CONTRACTOR FOR THE CITY'S CONCURRENT NEGLIGENCE SHALL NOT EXCEED \$1,000,000.**

**3.26      *RELEASE AND INDEMNIFICATION – PATENT, COPYRIGHT, TRADEMARK, AND TRADE SECRET INFRINGEMENT.***

- 3.26.1    UNLESS OTHERWISE SPECIFICALLY REQUIRED BY THE CONTRACT, CONTRACTOR AGREES TO AND SHALL RELEASE AND DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE “CITY”) FROM ALL CLAIMS OR CAUSES OF ACTION BROUGHT AGAINST THE CITY BY ANY PARTY, INCLUDING CONTRACTOR, ALLEGING THAT THE CITY’S USE OF ANY EQUIPMENT, SOFTWARE, PROCESS, OR DOCUMENTS CONTRACTOR FURNISHES DURING THE TERM OF THE CONTRACT INFRINGES ON A PATENT, COPYRIGHT, OR TRADEMARK, OR MISAPPROPRIATES A TRADE SECRET. CONTRACTOR SHALL PAY ALL COSTS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS’ FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS, AND INTEREST) AND DAMAGES AWARDED.
- 3.26.2    CONTRACTOR SHALL NOT SETTLE ANY CLAIM ON TERMS WHICH PREVENT THE CITY FROM USING THE EQUIPMENT, SOFTWARE, PROCESS, OR PRODUCT WITHOUT THE DIRECTOR’S PRIOR WRITTEN CONSENT.
- 3.26.3    UNLESS OTHERWISE SPECIFICALLY REQUIRED BY THE CONTRACT, WITHIN 60 DAYS AFTER BEING NOTIFIED OF THE CLAIM, CONTRACTOR SHALL, AT ITS OWN EXPENSE, EITHER:
- 3.26.3.1    OBTAIN FOR THE CITY THE RIGHT TO CONTINUE USING THE EQUIPMENT, SOFTWARE, PROCESS, OR PRODUCT, OR
- 3.26.3.2    IF BOTH PARTIES AGREE, REPLACE OR MODIFY THEM WITH COMPATIBLE AND FUNCTIONALLY EQUIVALENT PRODUCTS.

IF NONE OF THESE ALTERNATIVES IS REASONABLY AVAILABLE, THE CITY MAY RETURN THE EQUIPMENT, SOFTWARE, OR PRODUCT, OR DISCONTINUE THE PROCESS, AND CONTRACTOR SHALL REFUND THE PURCHASE PRICE.

**3.27      *INDEMNIFICATION PROCEDURES.***

- 3.27.1    Notice of Indemnification Claims. If the City or Contractor receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving party shall give written notice to the other Party within 10 days. The notice must include the following:
- 3.27.1.1    a description of the indemnification event in reasonable detail,
- 3.27.1.2    the basis on which indemnification may be due, and

3.27.1.3 the anticipated amount of the indemnified loss.

This notice does not estop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 10-day period, it does not waive any right to indemnification except to the extent that Contractor is prejudiced, suffers loss, or incurs expense because of the delay.

3.27.2 Defense of Indemnification Claims.

3.27.2.1 Assumption of Defense. Contractor may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Contractor shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, Contractor must advise the City as to whether or not it will defend the claim. If Contractor does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnified loss.

3.27.2.2 Continued Participation. If Contractor elects to defend the claim, the City may retain separate counsel to participate in, but not control, the defense and to participate in, but not control, any settlement negotiations. Contractor may settle the claim without the consent or agreement of the City, unless it:

3.27.2.2.1 would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City;

3.27.2.2.2 would require the City to pay amounts that Contractor does not fund in full; or

3.27.2.2.3 would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

**3.28 CONTRACTOR DEBT. IF CONTRACTOR, AT ANY TIME DURING THE TERM OF THIS CONTRACT, INCURS A DEBT, AS THE WORD IS DEFINED IN SECTION 15-122 OF THE HOUSTON CITY CODE OF ORDINANCES, IT SHALL IMMEDIATELY NOTIFY CITY CONTROLLER IN WRITING. IF CITY CONTROLLER BECOMES AWARE THAT CONTRACTOR HAS INCURRED A DEBT, IT SHALL IMMEDIATELY NOTIFY CONTRACTOR IN WRITING. IF CONTRACTOR DOES NOT PAY THE DEBT WITHIN 30 DAYS OF EITHER SUCH NOTIFICATION, CITY CONTROLLER MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FROM ANY PAYMENTS OWED TO CONTRACTOR UNDER THIS CONTRACT, AND CONTRACTOR WAIVES ANY RE COURSE THEREFOR. CONTRACTOR SHALL FILE A NEW AFFIDAVIT OF OWNERSHIP, USING THE FORM**

**DESIGNATED BY CITY, BETWEEN FEBRUARY 1 AND MARCH 1 OF EVERY YEAR DURING THE TERM OF THE CONTRACT.**

**3.29 PRESERVATION OF CONTRACTING INFORMATION.**

- 3.29.1 The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Contract and the Contractor agrees that this Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter. If the requirements of Subchapter J, Chapter 552, Texas Government Code, apply to this Contract, then for the duration of this Contract (including the initial term, any renewal terms, and any extensions), Contractor shall preserve all Contracting Information, as defined by Section 552.003 of the Texas Government Code, related to this Contract as provided by the records retention requirements applicable to the City pursuant to federal or state law or regulation, city ordinance or city policy, which record retention requirements include but are not limited to those set forth in Chapters 201 and 205 of the Texas Local Government Code and Texas Administrative Code Title 13, Chapter 7. Within five business days after receiving a request from the Director, Contractor shall provide any Contracting Information related to this Contract that is in the custody or possession of Contractor. Upon the expiration or termination of this Contract, Contractor shall, at the Director's election, either (a) provide, at no cost to the City, all Contracting Information related to this Contract that is in the custody or possession of Contractor, or (b) preserve the Contracting Information related to this Contract as provided by the records retention requirements applicable to the City pursuant to federal or state law or regulation, city ordinance or city policy.
- 3.29.2 If Contractor fails to comply with any one or more of the requirements of this Section, PRESERVATION OF CONTRACTING INFORMATION, or Subchapter J, Chapter 552, Texas Government Code, then, in accordance with and pursuant to the processes and procedures set forth in Sections 552.373 and 552.374 of the Texas Government Code, the Director shall provide notice to the Contractor and may terminate this Contract. To effect final termination, the Director must notify Contractor in writing with a copy of the notice to the CPO. After receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Contract, and promptly cancel all orders or subcontracts chargeable to this Contract.

**ARTICLE 4  
ADMINISTRATION OF THE CONTRACT**

**4.1 CONTRACT ADMINISTRATION.**

- 4.1.1 Director will provide administration of the Contract and Director is authorized to issue Change Orders, Work Change Directives, and Minor Changes in the Work.
- 4.1.2 Director may act through Project Manager, Design Consultant, or Inspector. When the term "Director" is used in the Contract, action by the

Director is required unless Director delegates his authority in writing. When the term "City Engineer" is used in the Contract, action by the City Engineer is required and such authority may not be delegated. Notwithstanding anything to the contrary in the Contract, wherever the Contract states that the City Engineer will make a decision, the City Engineer's decision is final and binding on both Parties.

The City does not have control over or charge of, and is not responsible for, supervision, construction, and safety procedures enumerated in Section 3.3. The City does not have control over or charge of and is not responsible for acts or omissions of Contractor, Subcontractors, or Suppliers.

- 4.1.3 The City and Design Consultant may attend project meetings and visit the site to observe progress and quality of the Work. The City and Design Consultant are not required to make exhaustive or continuous on-site inspections to check quality or quantity of the Work.
- 4.1.4 Project Manager will review and approve or take other appropriate action on Contractor's submittals, but only for limited purpose of checking for conformance with information given and design concept expressed in the Contract.
- 4.1.5 Project Manager's review of the submittals is not conducted for purpose of determining accuracy and completeness of other details, such as dimensions and quantities, or for substantiating instructions for installation or performance of Products, all of which remain the responsibility of Contractor.
- 4.1.6 Project Manager's review of submittals does not relieve Contractor of its obligations under Section 3.3, Section 3.18, and Article 12. Review does not constitute approval of safety precautions or, unless otherwise specifically stated by Project Manager in writing, of construction means, methods, techniques, sequences, or procedures. Project Manager's review of a specific item does not indicate approval of an assembly of which the item is a component.
- 4.1.7 Based on field observations and evaluations, Director will process Contractor's progress payments, certify amounts due Contractor, and issue Certificates for Payment in the amount certified.
- 4.1.8 Contractor will assemble and provide Director all written warranties and related documents required by the Contract.
- 4.1.9 Upon written request by Contractor or Director, City Engineer will resolve matters of interpretation of or performance of the Contract. City Engineer's decisions are final and binding on the Parties.
- 4.1.10 Director or City Engineer may reject work which does not conform to the Contract.

- 4.1.11 When Director considers it necessary to implement the intent of the Contract, Director may require additional inspection or testing of work in accordance with Paragraphs 13.6.3 and 13.6.4, whether such work is fabricated, Installed, or completed.
- 4.2 ***COMMUNICATIONS IN ADMINISTRATION OF THE CONTRACT.*** Except as otherwise provided in the Contract or when authorized by Director in writing, Contractor shall communicate with Project Manager. Contractor shall communicate with Design Consultant, Design Consultant's subconsultants, and separate contractors through Project Manager. The City will communicate with Subcontractors and Suppliers through Contractor.
- 4.3 ***CONDITION PRECEDENT TO SUIT; WAIVER OF ATTORNEY FEES AND INTEREST.***
  - 4.3.1 A final decision by the City Engineer is a condition precedent to file suit in any jurisdiction in connection with this Contract.
  - 4.3.2 Neither the City nor Contractor may recover attorney fees for any claim brought in connection with this Contract.

## **ARTICLE 5** **SUBCONTRACTORS AND SUPPLIERS**

- 5.1 ***AWARD OF SUBCONTRACTS OTHER CONTRACTS FOR PORTIONS OF THE WORK.***
  - 5.1.1 Contractor may not contract with a Subcontractor, Supplier, person, or entity that the Director has made a reasonable and timely objection to.
  - 5.1.2 If the Director has a reasonable objection to person or entity proposed by Contractor, Contractor shall propose another with whom the Director has no reasonable objection.
  - 5.1.3 Contractor shall execute contracts with approved Subcontractors, Suppliers, persons, or entities before the Subcontractors or Suppliers begin work under the Contract. All such contracts must be executed and sent to the OBO Director and Contracting Department within 30 days after the date of the Notice to Proceed and must include provisions set forth in Article 3 and Article 5 of this Document.
  - 5.1.4 Contractor shall notify Director in writing of any proposed change of Subcontractor, Supplier, person, or entity previously accepted by the City.
  - 5.1.5 Contractor shall make timely payments to Subcontractors and Suppliers for performance of the Contract. Contractor shall protect, defend, and indemnify the City from any claim or liability arising out of Contractor's failure to make the payments. Disputes relating to payment of Business Enterprise Subcontractors or Suppliers will be submitted to arbitration in same manner as other disputes under Business Enterprise subcontracts. Failure of Contractor to comply with decisions of arbitrator may be

determined by Director a material breach leading to termination of the Contract.

**5.2 CONTRACTOR RESPONSIBILITY FOR SUBCONTRACTORS.**

- 5.2.1 Contractor is responsible to the City, as may be required by laws and regulations, for all acts and omissions of Subcontractors, Suppliers, and other persons and organizations performing or furnishing any of the Work under direct or indirect contract with Contractor.
- 5.2.2 Contractor shall make available to each proposed Subcontractor, prior to execution of subcontract, copies of the Contract to which Subcontractor is bound by this Section 5.2. Contractor shall notify Subcontractor of any terms of proposed subcontract which may be at variance with the Contract.
- 5.2.3 The City's approval of Subcontractor or Suppliers does not relieve Contractor of its obligation to perform, or to have performed to the full satisfaction of the City, the Work required by the Contract.
- 5.2.4 Unless there is a contractual relationship between Contractor and a Subcontractor or Supplier to the contrary, Contractor shall withhold no more retainage from Subcontractors or Suppliers than City withholds from Contractor under this Contract. However, once a Subcontractor or Supplier completes performance, Contractor shall release all retainage to that Subcontractor or Supplier regardless if City continues to retain under this Contract.
- 5.2.5 Prior to a Subcontractor or Supplier commencing performance for Contractor, Contractor shall meet with that Subcontractor or Supplier to provide instructions on invoicing procedures, dispute resolution procedures, and statutory rights, such as claim filing procedures under the McGregor Act. Subcontractors and Suppliers must certify to the Director that Contractor has fulfilled the requirements of this Section.

**ARTICLE 6  
CONSTRUCTION BY THE CITY OR BY SEPARATE CONTRACTORS**

**6.1 THE CITY'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS.** The City may perform on-site construction operations related to the Work and as part of the Project with the City's workforce or with separate contractors.

**6.2 COORDINATION.**

- 6.2.1 The City will coordinate activities of the City's workforce and of each separate contractor with work of Contractor, and Contractor shall cooperate with the City and separate contractors.
- 6.2.1.1 Contractor shall participate with other separate contractors and the City in reviewing their construction schedules when directed to do so by the Project Manager. Contractor shall make revisions to construction schedule and Contract Price deemed necessary after joint review and mutual

agreement. Construction schedules shall then constitute schedules to be used by Contractor, separate contractors, and the City, until subsequently revised.

- 6.2.2 Contractor shall afford to the City and to separate contractors reasonable opportunity for introduction and storage of their materials and equipment, and for performance of their activities.
- 6.2.3 If part of Contractor's work depends on proper execution of construction or operations by the City or a separate contractor, Contractor shall, prior to proceeding with that portion of the Work, inspect the other work and promptly report to Director apparent discrepancies or defects in the other construction that would render it unsuitable for the proper execution of the Work. Failure of Contractor to report apparent discrepancies or defects in the other construction shall constitute acknowledgment that the City's or separate contractor's completed or partially completed construction is fit and proper to receive Contractor's work, except as to discrepancies or defects not then reasonably discoverable.

**6.3 MUTUAL RESPONSIBILITY.**

- 6.3.1 The Design-Build Contractor's subconsultant and the Director if required bears the costs caused by delays, by improperly timed activities, or by nonconforming construction.
- 6.3.2 Contractor shall promptly remedy damage caused by Contractor to completed or partially completed construction or to property of the City or separate contractor.
- 6.4 **THE CITY'S RIGHT TO CLEAN UP.** If dispute arises among Contractor, separate contractors, and the City as to responsibility under their respective contracts for maintaining premises and surrounding area free from waste materials and rubbish as described in Section 3.21, the City may clean up and allocate cost among those responsible, as determined by Director.

**ARTICLE 7**  
**CHANGES IN THE WORK**

**7.1 CHANGES.**

- 7.1.1 Changes in scope of the Work, subject to limitations in Article 7 and elsewhere in the Contract, may be accomplished without invalidating the Contract, or without notifying Surety by:
  - 7.1.1.1 Change Order;
  - 7.1.1.2 Work Change Directive; or
  - 7.1.1.3 Minor Change in the Work.
- 7.1.2 The following types of Change Orders require City Council approval.

- 7.1.2.1 A single Change Order that exceeds five percent of Original Contract Price.
- 7.1.2.2 A Change Order which, when added to previous Change Orders, exceeds five percent of Original Contract Price.
- 7.1.2.3 A Change Order, in which the total value of increases outside of the general scope of work approved by City Council, when added to increases outside the general scope of work approved by City Council in previous Change Orders, exceeds 40 percent of the Original Contract Price, even if the net increase to the Original Contract Price is five percent or less.

In this context, "increase" means an increase in quantity resulting from the addition of locations not within the scope of work approved by City Council, or the addition of types of goods or services not bid as unit price items.

Nothing in this Section is intended to permit an increase of the Contract Price in excess of the limit set out in TEX. LOC. GOV'T CODE ANN. §252.048 or its successor statute, if applicable.

- 7.1.3 Contractor shall proceed promptly to execute changes in the Work provided in Modifications, unless otherwise stated in the Modification.
- 7.1.4 No change in the requirements of this Contract, whether an addition to, deletion from, suspension of, or modification to this Contract, including any Work, will be the basis for an adjustment or any change in the Contract Price, Contract Time, any Work, Payment Schedule, or any other obligations of Contractor or right of City under this Contract unless and until the addition, deletion, suspension, or modification has been authorized by a Modification executed and issued in accordance with and in strict compliance with the requirements of Article 7 or Article 8. Contractor will not perform any change in the Work unless and until the Modification is authorized. No course of conduct, dealings, or oral agreement between the Parties, nor express or implied acceptance of additions, deletions, suspensions, or modifications to this Contract, including any Work, and no claim that City has been unjustly enriched by any addition, deletion, suspension, or modification to this Contract, whether or not there is in fact any unjust enrichment, will be the basis for the Contractor to seek an adjustment in the Contract Price, Contract Time, any Work, Payment Schedule, or any other obligations of Contractor under this Contract.
- 7.1.5 Modifications agreed pursuant to Article 7 or Article 8 will constitute a full and final settlement and accord and satisfaction of all effects of the change reflected in the Modification and any supporting documents and will be deemed to compensate Contractor fully for the change. Accordingly, Contractor expressly waives and releases any and all claims (whether in contract, tort, or otherwise) and any and all right to make a claim or demand or to take any action or proceeding against City for any other consequences arising out of, relating to, or resulting from the change reflected in the Modification, whether the consequences result directly or indirectly from

the change reflected in the Modification, including any claims or demands that any Modification or number of Modifications, individually or in the aggregate, have impacted the unchanged Work.

## 7.2 WORK CHANGE DIRECTIVES.

- 7.2.1 To the extent permitted by law, a Work Change Directive cannot change Contract Price or Contract Time, but is evidence that the Parties agree that a change, ordered by directive, will be incorporated in a subsequently issued Change Order as to its effect, if any, on Contract Price or Contract Time.
- 7.2.2 Failure by Contractor to commence work identified in a Work Change Directive within the time specified by Director, or to complete the work in a reasonable period of time, may be determined by Director to be a material breach of Contract.
- 7.2.3 A Work Change Directive is used in the absence of total agreement of the terms of a Change Order. Interim payments are made in accordance with Paragraph 9.6.1.
- 7.2.4 If Contractor signs a Work Change Directive, then Contractor agrees to its terms including adjustment in Contract Price and Contract Time or method for determining them. Agreement by the Parties to adjustments in Contract Price and Contract Time are immediately recorded as a Change Order.
- 7.2.5 Director, by Work Change Directive, may direct Contractor to take measures as necessary to expedite construction to achieve Date of Substantial Completion on or before expiration of Contract Time. When the Work is expedited solely for convenience of the City and not due to Contractor's failure to prosecute timely completion of the Work, then Contractor is entitled to an adjustment in Contract Price equal to actual costs determined in accordance with Article 7.

## 7.3 ADJUSTMENTS IN CONTRACT PRICE.

- 7.3.1 Adjustments in Contract Price are accomplished by Change Order and are based on one of the following methods:
  - 7.3.1.1 mutual acceptance of fixed price, properly itemized and supported by sufficient data to permit evaluation;
  - 7.3.1.2 unit prices stated in the Contract or subsequently agreed upon;
  - 7.3.1.3 cost to be determined in a manner agreed upon by the Parties and mutually acceptable fixed or percentage fee; or
  - 7.3.1.4 as provided in Paragraph 7.3.2.
- 7.3.2 If Contractor does not agree with a change in Contract Price or Contract Time or the method for adjusting them specified in the Work Change

Directive within 21 days from date of the Work Change Directive's issuance, method and adjustment are determined by Director.

7.3.2.1 If Director determines a method and adjustment in Contract Price under Paragraph 7.3.2, Contractor shall provide, in a form as Director may prescribe, appropriate supporting data for items submitted under Paragraph 7.3.2. Failure to submit the data within 21 days of request for the data by Director shall constitute waiver of a claim.

7.3.2.2 Unless otherwise provided in the Contract, costs for the purposes of this Paragraph 7.3.2 are limited to the following:

7.3.2.2.1 costs of labor, including labor burden as stated below for social security, unemployment insurance, customary and usual fringe benefits required by agreement or custom, and Workers' Compensation insurance;

7.3.2.2.1.1 the maximum labor burden applied to costs of labor for changes in the Work is 55 percent;

7.3.2.2.2 costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;

7.3.2.2.3 rental costs of machinery and equipment, exclusive of hand tools, whether rented from Contractor or others, with prior approval of Director;

7.3.2.2.4 costs of premiums for Bonds and insurance and permit fees related to the change in the Work;

7.3.2.2.5 additional costs of direct supervision of work and field office personnel directly attributable to the change; and

7.3.2.2.6 allowances for overhead and profit as stated below.

7.3.2.2.6.1 the maximum allowances for overhead and profit on increases due to Change Orders:

	Overhead	Profit
to Contractor for change in the Work performed by Subcontractors:	10 percent	0 percent
to first tier Subcontractors for change in the Work performed by its Subcontractors:	10 percent	0 percent
to Contractor and Subcontractor for change in the Work performed by their respective firms:	10 percent	5 percent

7.3.2.2.6.2 for changes in the Work performed by Contractor and Subcontractors, allowance for overhead and profit are applied to an amount equal to cost of all additions less cost of all deletions to the Work. Allowance for overhead to Contractor and first tier Subcontractors on changes performed by Subcontractors are applied to an amount equal to the sum of all increases to the Work by applicable Subcontractors.

- 7.3.3 If the City deletes or makes a change, which results in a net decrease in Contract Price, the City is entitled to a credit calculated in accordance with Paragraph 7.3.1, Paragraph 7.3.2, Subparagraph 7.3.2.1, and Subparagraphs 7.3.2.2.1 through 7.3.2.2.5. When both additions and credits covering related work or substitutions are involved in a change, allowance for overhead and profit is figured on the basis of a net increase, if any, with respect to that change in accordance with Subparagraph 7.3.2.2.6.
- 7.3.4 When Contractor agrees with the determination made by Director concerning adjustments in Contract Price and Contract Time, or the Parties otherwise reach agreement upon the adjustments, the agreement will be immediately recorded by Change Order.
- 7.4 **MINOR CHANGES IN THE WORK.** A Minor Change in Work is binding on the Parties. Contractor shall acknowledge, in a written form acceptable to Director, that there is no change in Contract Time or Contract Price and shall carry out the written orders promptly.
- 7.5 **CONCEALED OR UNKNOWN CONDITIONS.**
- 7.5.1 Concealed or unknown physical conditions include utility lines, other man made structures, storage facilities, Pollutants and Pollutant Facilities, and

the like, but do not include conditions arising from Contractor operations, or failure of Contractor to properly protect and safeguard subsurface facilities.

- 7.5.2 If conditions are encountered at the site which are Underground Facilities or otherwise concealed or unknown conditions which differ materially from (i) those indicated by the Contract; or (ii) conditions which Contractor could have discovered through site inspection, geotechnical testing), or otherwise, then Contractor will give written notice to Director no later than five days after Contractor's first observation of the condition and before condition is disturbed. Contractor's failure to provide notice constitutes a waiver of a Change Order.
- 7.5.3 Director will promptly investigate concealed or unknown conditions. If Director determines that conditions at the site are not materially different and that no change in Contract Price or Contract Time is justified, Director will notify Contractor in writing, stating reasons. If Director determines the conditions differ materially and cause increase or decrease in Contractor's cost or time required for performance of part of the Work, Contractor may request a change in accordance with Section 7.6.

## 7.6 CONTRACTOR REQUESTED CHANGES.

- 7.6.1. At any time prior to rendering a written decision regarding the Contractor's requested changes and any threatened or actual litigation, the Director may refer the Contractor's claim to non-binding mediation. Should the Director's designee or the Contractor decide not to go to non-binding mediation, then such consideration of the Contractor's requested changes shall proceed according to this Section.
- 7.6.2 To the extent the Contractor believes the Work has changed and there is no Modification relating to the change, as a condition precedent to recovery, the Contractor must provide notice of the change to the Director no later than 10 Days after the commencement of the events giving rise to the change. The notice must include: (i) a description of the change; (ii) the estimated cost impact; and (iii) backup documentation necessary to support the request. To the extent the Director believes there is a change to increase the Contract Price, the Director will issue a Modification in accordance with this Article 7. To the extent the Director does not believe there is a change, or the change has been submitted untimely, the Director has the sole discretion to deny the request or request additional information which must be provided by the Contractor no later than 10 Days from the Director's request.
- 7.6.3 The Contractor may only apply for a Modification if submitted in the required manner and provided that one or more of the events listed below occurred and was not caused, in whole or in part, by the Contractor:
- 7.6.3.1 delay in receiving a permit required for the Work to proceed from a government authority having jurisdiction over the Work,

provided that the Contractor applied for the permit in a timely manner;

- 7.6.3.2 change in Applicable Laws that could not have been reasonably foreseen by Contractor;
- 7.6.3.3 the actual units of work installed exceed the original estimated quantity of any applicable Unit Price work;
- 7.6.3.4 a request by the City to accelerate the Project Schedule;
- 7.6.3.5 a request by the City to extend the Project Schedule;
- 7.6.3.6 an order by the City to stop the Work;
- 7.6.3.7 suspension of the Work by the City;
- 7.6.3.8 termination of the Contract;
- 7.6.3.9 an event of Force Majeure or City-caused delay to the extent permitted under Section 8.2;
- 7.6.3.10 as permitted under Section 7.5;
- 7.6.3.11 a suspension of the Work by the City, as provided in Section 14.3; or
- 7.6.3.12 as otherwise expressly permitted by the Contract.

- 7.7 ***REVIEW AND DETERMINATION BY CITY ENGINEER.*** If Contractor does not agree with a decision of the Director under Article 7, Article 8, or otherwise pursuant to authority under the Contract, Contractor may request in writing that the City Engineer review the Director's decision provided that such request is made within 90 days following such Director decision. In such case, the City Engineer shall review the Director's decision and determine whether there has been a change as well as the method and amount of adjustment of the Contract Price and the Contract Time. City Engineer may request additional supporting data from Contractor. Contractor shall, within 10 days after receipt of City Engineer's request, submit additional supporting data requested by City Engineer. The City Engineer's decision shall be final and binding on both parties. Pending the City Engineer's determination, unless otherwise agreed in writing, Contractor shall proceed diligently with the performance of the Contract and the City will continue to make payments in accordance with the Contract.

Contractor's failure to timely submit a request for review as provided in this Section shall result in Director's decision being final and binding.

## **ARTICLE 8** **TIME**

### **8.1 PROGRESS AND COMPLETION.**

- 8.1.1 Time is of the essence in the Contract. By executing the Contract, Contractor agrees that Contract Time is a reasonable period for performing the Work.
- 8.1.2 Computation of Time: In computing any period of time prescribed or allowed by the General Conditions, the day of the act, event, or default after which designated period of time begins to run is not to be included. Last day of the period so computed is to be included, unless it is a Sunday or Legal Holiday, in which event the period runs until end of next day which is not a Sunday or Legal Holiday. Sundays and Legal Holidays are considered to be days and are to be included in all other time computations relative to Contract Time.
- 8.1.3 Contractor may not commence the Work prior to the effective date of insurance and Bonds required by Article 11.
- 8.1.4 Contractor shall proceed expeditiously and without interruption, with adequate forces, and shall achieve Date of Substantial Completion within Contract Time.
- 8.1.5 Should progress of the Work fall behind construction schedule, except for reasons stated in Paragraph 8.2.1, Contractor shall promptly submit at the request of Project Manager, updated construction schedule to Director for approval. Contractor's failure to submit updated schedule may, at Director's discretion, constitute a material breach of the Contract. Contractor shall take action necessary to restore progress by working the hours, including night shifts and lawful overtime operations as necessary, to achieve Date of Substantial Completion within Contract Time.
- 8.1.6 Except in connection with safety or protection of persons or the Work or property at the site or adjacent to the site, and except as otherwise indicated in the Contract, all the Work at the site will be performed Monday through Saturday between the hours of 7:00 a.m. and 7:00 p.m. Contractor may not perform work between 7:00 p.m. and 7:00 a.m., on a Sunday, or on a Legal Holiday, without giving Director 24-hour prior written notice and receiving written consent of Director.

### **8.2 DELAYS AND EXTENSIONS OF TIME.**

- 8.2.1 Contractor may request extension of Contract Time from the Director for a delay in performance of Work that arises from Force Majeure or City-caused delay to the extent the Contractor requests in writing the extension of time no later than 10 Days after the commencement of the delay. To the

extent the Contractor timely requests an extension of the Contract Time under this Section, the Contract Time will be extended but only if the Contractor establishes a critical path delay, and any such extension shall not exceed the delay in the critical path of the Project Schedule.

8.2.1.1 For any reason other than those listed in the change order provisions, if the Contractor's work is delayed in any manner or respect, the Contractor shall have no claim for damages and shall have no right of additional compensation from the City by reason of any delay or increased expense to the Contractor's work, except for an extension of time as provided in this provision.

8.2.1.2 No increase in Contract Price is allowed for delays or hindrances to the Work, except for direct and unavoidable extra costs to Contractor caused by failure of the City to provide information and services, or to make land and materials available, when required of the City under the Contract.

8.2.2. Contractor may only request an extension of Contract Time for delay described in Paragraph 8.2.1 if:

8.2.2.1 the delay is not caused by failure of Contractor or any of its Subcontractors or Suppliers to perform (or cause to be performed) or make progress for a cause not within its control;

8.2.2.2 the cause of the delay was not reasonably anticipated and is beyond control of Contractor;

8.2.2.3 the delay has been mitigated by all reasonably available efforts; and

8.2.2.4 Contractor can fully document and prove the impact of the event on Contractor's critical path of planned Work in the Project Schedule.

8.2.3 The Contractor's sole remedy for claimed delay, Force Majeure, loss of productivity or disruption of any nature (whether by a singular event or cumulative events), regardless of cause, shall be an extension of the Contract Time commensurate with the days of delay to the Project Schedule critical path caused by such delay as determined by the Director in Paragraph 8.2.1.

8.2.4 Adjustments to Contract Time are accomplished by Change Order.

## **ARTICLE 9 PAYMENTS AND COMPLETION**

### **9.1 UNIT PRICE WORK.**

9.1.1 Where the Contract provides that all or part of the Work is based on Unit Prices, the Original Contract Price includes, for all Unit Price work, an

amount equal to the sum of Unit Prices times Unit Price Quantities for each separately identified item of Unit Price work.

- 9.1.2 Each Unit Price includes an amount to cover Contractor's overhead and profit for each separately identified item.
- 9.1.3 The Contractor may not make a claim against the City for excess or deficiency in Unit Price Quantities provided in the Contract, except as provided in Paragraph 9.1.4. Payment at the prices stated in the Contract is in full for the completed Work. Contractor is not entitled to additional payment for materials, supplies, labor, tools, machinery and all other expenditures incidental to satisfactory completion of the Work.
- 9.1.4 Director may increase or decrease quantities of the Work within limitations stated in Paragraph 7.1.2. Contractor is entitled to payment for actual quantities of items provided at Unit Prices set forth in the Contract.
- 9.1.5 Where the final quantity of work performed by Contractor on Major Unit Price Work item differs by more than 25 percent from quantity of the item stated in the Contract, a Party may request an adjustment in Unit Price, for the portion that differs by more than 25 percent, by a Change Order under Section 7.3.

**9.2 *ESTIMATES FOR PAYMENT, UNIT PRICE WORK.***

- 9.2.1 Following the day of each month indicated in the Contract, Project Manager will prepare a Certificate for Payment for the preceding monthly period based on estimated units of work completed. Prior to preparing Certificate of Payment, Contractor shall have submitted to Director, on a form approved by the Director of the Office of Business Opportunity, evidence satisfactory to the Director of payments made to Subcontractors and Suppliers for the month preceding the month for which the Certificate for Payment is prepared, including evidence of electronic submission of certified payrolls.
  - 9.2.2 Before final completion, Director will review and confirm with Contractor the actual final installed Unit Price quantities and the Director will make a final determination of the final installed quantities. If the Contractor disagrees with the Director's determination, the Contractor may request a City Engineer's decision in accordance with Section 7.7. City Engineer's determination of actual final installed Unit Price quantities will be final and binding upon the Parties, and included in the final Certificate for Payment and any previous underpayments and overpayments will be reconciled with the actual final Unit Price quantities.
- 9.3 ***STIPULATED PRICE WORK.*** For work contracted on a Stipulated Price basis, 10 days before submittal of first Application for Payment, Contractor shall submit to Director a Schedule of Values allocated to various portions of the Work, prepared in the form and supported by the data as Director may require to substantiate its

accuracy. This schedule, as approved by Director, is used as a basis for approval of Contractor's Applications for Payment.

**9.4 APPLICATIONS FOR PAYMENT, STIPULATED PRICE WORK.**

- 9.4.1 For work contracted on a Stipulated Price basis, Contractor shall submit Applications for Payment to Director each month on a form acceptable to Director in accordance with Schedule of Values. Application must indicate percentages of completion of each portion of the Work listed in Schedule of Values as of the end of the period covered by the Application for Payment.
- 9.4.2 Applications for Payment must be supported by substantiating data as Director may require and must reflect retainages as provided below. Evidence satisfactory to the Director of payments made to Subcontractors and Suppliers for the month preceding the month for which the Application for Payment is submitted must accompany each Application for Payment on a form approved by the Director of the Office of Business Opportunity. Evidence of electronic submission of certified payrolls must be included. Application must be sworn and notarized.

**9.5 CERTIFICATES FOR PAYMENT.**

- 9.5.1 Director will, within 10 days after the date specified in the Contract for Unit Price work, or upon receipt of Contractor's Application for Payment for Stipulated Price work, issue a Certificate for Payment for work based on amount which Director determines is properly due, with copy to Contractor.
- 9.5.2 Unless otherwise provided in the Contract, payment for completed work and for properly stored Products is conditioned upon compliance with procedures satisfactory to Director to protect the City's interests. Procedures will include applicable insurance, storage, and transportation to site for materials and equipment stored off-site. Contractor is responsible for maintaining materials and equipment until Date of Substantial Completion.
- 9.5.3 Contractor shall document its use of Ultra Low Sulfur Diesel Fuel by providing invoices and receipts evidencing Contractor's use.

**9.6 COMPUTATIONS OF CERTIFICATES FOR PAYMENT.**

- 9.6.1 Subject to the provisions of the Contract, the amount of each Certificate for Payment is calculated as follows:
  - 9.6.1.1 that portion of Contract Price allocated to completed work as determined by:
    - 9.6.1.1.1 multiplying the percentage of completion of each portion of the Work listed in the Schedule of Values by the value of that portion of the Work, or

- 9.6.1.1.2 multiplying Unit Price quantities Installed times the Unit Prices listed in the Contract;
- 9.6.1.2 plus progress payments for completed work that has been properly authorized by Modifications;
- 9.6.1.3 less retainage of five percent;
- 9.6.1.4 plus actual costs, properly substantiated by certified copies of invoices and freight bills, of non-perishable materials and equipment delivered and properly stored, if approved in advance by Project Manager, less 15 percent;
- 9.6.1.5 less any previous payments by the City.

**9.7 DECISIONS TO WITHHOLD CERTIFICATION.**

- 9.7.1 Director may decline to certify payment and may withhold payment in whole or in part to the extent reasonably necessary to protect the City if, in Director's opinion, there is reason to believe that:
  - 9.7.1.1 nonconforming work has not been remedied;
  - 9.7.1.2 the Work cannot be completed for unpaid balance of Contract Price;
  - 9.7.1.3 there is damage to the City or another contractor;
  - 9.7.1.4 the Work will not be completed within Contract Time and that unpaid balance will not be adequate to cover actual and liquidated damages;
  - 9.7.1.5 probable evidence that third party claims will be filed in court, in arbitration, or otherwise;
  - 9.7.1.6 Contractor has failed to make payments to Subcontractors or Suppliers for labor, material, or equipment; or
  - 9.7.1.7 Contractor has persistently failed to carry out work in accordance with the Contract.
  - 9.7.1.8 Contractor has not paid Subcontractors or Suppliers because of a payment dispute; or
  - 9.7.1.9 Contractor has failed to provide satisfactory evidence described in Paragraphs 9.2.1, 9.4.2, and 9.8.2.
- 9.7.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.
- 9.7.3 Director may decline to certify payment and may withhold request for payment in whole or in part upon failure of Contractor to submit initial

construction schedule or monthly schedule updates, as required in Paragraphs 3.15.1 and 3.15.3.

**9.8 PROGRESS PAYMENTS.**

- 9.8.1 The City will make payment, in an amount certified by Director, within 20 days after Director has issued a Certificate for Payment.
- 9.8.2 The City has no obligation to pay or to facilitate the payment to a Subcontractor or Supplier, except as may otherwise be required by law. Contractor shall comply with the prompt payment requirements of Chapter 2251 of the Texas Government Code. State law requires payment of Subcontractors and Suppliers by Contractor within 7 calendar days of Contractor's receipt of payment from the City, unless there is a payment dispute between Contractor and a Subcontractor or Supplier evidenced on a form approved by the Director of Mayor's Office of Business Opportunity and submitted to the Director each month with Application for Payment or Estimate for Payment. **CONTRACTOR SHALL DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF CONTRACTOR'S FAILURE TO MAKE THESE PAYMENTS.**
- 9.8.2.1 The City may, upon request and at the discretion of Director, furnish to Subcontractor information regarding percentages of completion or the amounts applied for by Contractor, and action taken thereon by the City because of work done by the Subcontractor.
- 9.8.2.2 Contractor shall prepare and submit to Director a Certification of Payment to Subcontractors and Suppliers form to be attached to each monthly Estimate for Payment or Application for Payment.
- 9.8.3 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Work by the City, does not constitute acceptance of work which is not in accordance with the Contract.

**9.9 DATE OF SUBSTANTIAL COMPLETION.**

9.9.1 All of the following shall have occurred in order for the Contractor to achieve Substantial Completion, in addition to other prerequisites to Substantial Completion in the Contract:

9.9.1.1 the Work, or designated portion of the Work, has been completed in accordance with the requirements of the Contract, except for Work on the Punchlist to be finally completed;

9.9.1.2 Director has verified upon inspection that the Punchlist contains all items needed for completion or correction;

9.9.1.3 the Project is available for full operation and use and is capable of being safely and reliably operated in accordance with the requirements of the Contract and in accordance with Applicable Law;

9.9.1.4 Contractor has obtained all City-required certificates of occupancies or certificates of compliances for such Work;

9.9.1.5 Contractor has assigned and provided to City all Warranties in accordance with the Contract; and

9.9.1.6 Contractor has performed all other obligations required under the Contract for Substantial Completion.

The City Engineer shall determine when the Work, or designated portion of the Work, has achieved Substantial Completion, and their decision shall be final and binding.

9.9.2 When Contractor considers the Work, or a portion thereof designated by Director, to be substantially complete, Contractor shall prepare and submit to Project Manager a comprehensive punch list of items to be completed or corrected. Failure to include an item on the punch list does not alter the responsibility of Contractor to comply with the Contract.

9.9.2.1 By submitting the punch list to Project Manager, Contractor represents that work on the punch list will be completed within the time provided for in Paragraph 9.9.5.

9.9.3 Upon receipt of Contractor's punch list, Project Manager will inspect the Work, or designated portion thereof, to verify that the punch list contains all items needing completion or correction. If Project Manager's inspection discloses items not on Contractor's punch list, the items must be added to the punch list of items to be completed or corrected. If Project Manager's inspection reveals that Contractor is not yet substantially complete, Contractor shall complete or correct the deficiencies and request another inspection by Project Manager. The City may recover the costs of re-inspection from Contractor.

9.9.4 Prior to Director issuing a Certificate of Substantial Completion, Contractor shall also provide:

9.9.4.1 Certificate of Occupancy for new construction, or Certificate of Compliance for remodeled work, as applicable;

9.9.4.2 compliance with Texas Accessibility Standards through state inspection of the Work, if required. If Contractor calls for inspection in a timely manner and the inspection is delayed through no fault of Contractor, and Director so confirms, Director may, upon request by Contractor, add the inspection to the punch list in Paragraph 9.9.2 and issue a Certificate of Substantial Completion;

9.9.4.3 complete necessary training to City's personnel; and

9.9.4.4 delivery of:

9.9.4.4.1 O&M and warranty manuals; and

9.9.4.4.2 as-built drawings.

9.9.5 When the Work, or designated portion thereof, is determined by Director to be sufficiently complete in accordance with the Contract so the City can occupy or utilize the Work, or designated portion thereof, for the purpose for which it is intended, Director will prepare a Certificate of Substantial Completion that incorporates the punch list in Paragraph 9.9.2 and establishes:

9.9.5.1 the Date of Substantial Completion;

9.9.5.2 responsibilities of the Parties for security, maintenance, heating, ventilating and air conditioning, utilities, damage to the Work, and insurance; and

9.9.5.3 fixed time within which Contractor shall complete all items on punch list of items to be corrected accompanying the certificate.

9.9.6 Unless otherwise provided by the Contract or in the Certificate of Substantial Completion, all general warranties and manufacturer's warranties required by the Contract shall commence on the later of:

9.9.6.1 the Date of Substantial Completion; or

9.9.6.2 if an item is not completed on the Date of Substantial Completion, the date of completion of the item.

9.9.7 After Date of Substantial Completion and upon application by Contractor and approval by Director, the City may make payment, reflecting adjustment in retainage, if any, as follows: 9.9.7.1 with the consent of Surety, the City may increase payment to Contractor to 96 percent of Contract Price, less value of items to be completed and accrued liquidated damages.

9.9.8 Contractor shall complete or correct the items in Paragraph 9.9.2 within the time period set out in the Certificate of Substantial Completion. If Contractor fails to do so, the City may issue a Notice of Noncompliance and proceed according to Section 2.5.

**9.10 PARTIAL OCCUPANCY OR USE.**

- 9.10.1 The City may occupy or use any completed or partially completed portion of the Work at any stage, provided the occupancy or use is consented to by Contractor and Contractor's insurer and authorized by public authorities having jurisdiction over the Work. Consent of Contractor to partial occupancy or use may not be unreasonably withheld.
- 9.10.2 Immediately prior to the partial occupancy or use, Project Manager and Contractor shall jointly inspect the area to be occupied or portion of the Work to be used to determine and record condition of the Work.
- 9.10.3 Partial occupancy or use of a portion of the Work does not constitute acceptance of work not in compliance with requirements of the Contract.

**9.11 FINAL COMPLETION AND FINAL PAYMENT.**

- 9.11.1 Contractor shall review the Contract and inspect the Work prior to Contractor notification to Director that the Work is complete and ready for final inspection. Contractor shall submit affidavit that the Work has been inspected and that the Work is complete in accordance with requirements of the Contract.
- 9.11.2 Project Manager will make final inspection within 15 days after receipt of Contractor's written notice that the Work is ready for final inspection and acceptance. If Project Manager finds the Work has been completed in accordance with the Contract, Contractor shall submit items set out in Paragraph 9.11.4 and, for stipulated price contracts, a final Application for Payment. Director will, within 10 days, issue Certificate of Final Completion stating that to the best of Director's knowledge, information, and belief, the Work has been completed in accordance with the Contract, and will recommend acceptance of the Work by City Council.
- 9.11.3 Should work be found not in compliance with requirements of the Contract, Director will notify Contractor in writing of items of noncompliance. Upon inspection and acceptance of the corrections by Project Manager, compliance with all procedures of Paragraph 9.11.2, and Contractor's submission of the items set out in Paragraph 9.11.4, the Director will issue Certificate of Final Completion to Contractor as provided in Paragraph 9.11.2.
- 9.11.4 Contractor shall submit the following items to Director before Director will issue a Certificate of Final Completion:

- 9.11.4.1 affidavit that payrolls, invoices for materials and equipment, and other indebtedness of Contractor connected with the Work, less amounts withheld by the City, have been paid or otherwise satisfied. If required by Director, Contractor shall submit further proof including waiver or release of lien or claims from laborers or Suppliers of Products;
- 9.11.4.2 certificate evidencing that insurance required by the Contract to remain in force after final payment is currently in effect, will not be canceled or materially changed until at least 30 days written notice has been given to the City;
- 9.11.4.3 written statement that Contractor knows of no substantial reason that insurance will not be renewable to cover correction and warranty period required by the Contract;
- 9.11.4.4 consent of Surety to final payment;
- 9.11.4.5 copies of Shop Drawings, Product Data, Samples, and similar submittals; and
- 9.11.4.6 copies of record documents, maintenance manuals, tests, inspections, and approvals.

Upon Director's issuance of a Certificate of Final Completion, Contractor may request increase in payment to 99 percent of Contract Price, less accrued liquidated damages.

- 9.11.5 If Contractor fails to submit required items in Paragraph 9.11.4 within 10 days of Project Manager's inspection of the Work under Paragraph 9.11.2 or Paragraph 9.11.3, Director may, but is not obligated to:
  - 9.11.5.1 deduct liquidated damages accrued from monies held;
  - 9.11.5.2 proceed to City Council for acceptance of the Work, minus some or all of the items Contractor fails to submit under Paragraph 9.11.4; and,
  - 9.11.5.3 upon acceptance by City Council of the portion of the Work completed, make final payment as set out in Paragraph 9.11.8.
- 9.11.6 If final completion is materially delayed through no fault of Contractor, or by issuance of Change Orders affecting date of final completion, and Director so confirms, the City may, upon application by Contractor and certification by Director, and without terminating the Contract, make payment of balance due for that portion of the Work fully completed and accepted.
- 9.11.7 If remaining balance due for work not corrected is less than retainage stipulated in the Contract, Contractor shall submit to Director written consent of Surety to payment of balance due for that portion of the Work fully completed and accepted, prior to certification of the payment. The

payment is made under terms governing final payment, except that it does not constitute waiver of claims.

- 9.11.8 The City will make final payment to Contractor within 30 days after acceptance of the Work by City Council, subject to limitations, if any, as stated in the Contract.
- 9.11.9 Acceptance of final payment by Contractor shall constitute a waiver of all claims, whether known or unknown, by Contractor, except those previously made in writing and identified by Contractor as unsettled at the time of final payment.

**9.12 LIQUIDATED DAMAGES.**

- 9.12.1 Contractor, Surety, and the City agree that failure to complete the Work within Contract Time will cause damages to the City and that actual damages from harm are difficult to estimate accurately. Therefore, Contractor, Surety, and the City agree that Contractor and Surety are liable for and shall pay to the City the amount stipulated in Supplementary Conditions as liquidated damages, and that the amount of damages fixed therein is a reasonable forecast of just compensation for harm to the City resulting from Contractor's failure to complete the Work within Contract Time. The amount stipulated will be paid for each day of delay beyond Contract Time until Date of Substantial Completion.
- 9.12.2 Contractor shall pay the City an amount equal to \$1,200.00 per diesel operating vehicle or piece of motorized equipment per incident of high sulfur diesel fuel usage.

**ARTICLE 10**  
**SAFETY PRECAUTIONS**

- 10.1 SAFETY PROGRAMS.** Contractor is responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with performance of the Contract. Contractor shall submit a safety program to Director prior to mobilizing for the Work, and is solely responsible for safety, efficiency, and adequacy of ways, means, and methods, and for damage which might result from failure or improper construction, maintenance, or operation performed by Contractor.

**10.2 POLLUTANTS AND POLLUTANT FACILITIES.**

- 10.2.1 If Contractor encounters material on-site which it reasonably believes to be a Pollutant or facilities which it reasonably believes to be a Pollutant Facility, Contractor shall immediately stop work in affected area and immediately notify Director, confirming the notice thereafter in writing.
- 10.2.2 If Director determines that the material is a Pollutant or facility is a Pollutant Facility, work in affected area may not be resumed except by Modification, and only if the work would not violate applicable laws or regulations.

10.2.3 If Director determines that the material is not a Pollutant or a facility is not a Pollutant Facility, work in affected area will be resumed upon issuance of a Modification.

10.2.4 Contractor is not required to perform, unless authorized by Change Order, work relating to Pollutants or Pollutant Facilities except for that work relating to Pollutants or Pollutant Facilities specified in the Contract.

**10.3 *SAFETY OF THE ENVIRONMENT, PERSONS, AND PROPERTY.***

10.3.1 Contractor shall take reasonable precautions for safety and shall provide reasonable protection to prevent damage, injury, or loss from all causes, to:

10.3.1.1 employees performing work on-site, and other persons who may be affected thereby;

10.3.1.2 work, including Products to be incorporated into the Work, whether in proper storage, under control of Contractor or Subcontractor; and

10.3.1.3 other property at or adjacent to the site, such as trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal or replacement in course of construction.

10.3.2 Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on safety of persons, property, or environment.

10.3.2.1 Contractor shall comply with requirements of Underground Facility Damage Prevention and Safety Act, TEX. UTIL. CODE ANN. Ch. 251 (Vernon Supp. 2002).

10.3.2.2 Contractor shall comply with all safety rules and regulations of the Federal Occupational Health and Safety Act of 1970 and subsequent amendments (OSHA).

10.3.3 Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection of persons and property, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent sites and utilities.

10.3.4 Contractor shall designate responsible member of Contractor's organization at site whose duty is prevention of accidents. This person will be Contractor's Superintendent unless otherwise designated by Contractor in writing to Director.

10.3.5 Contractor shall prevent windblown dust and may not burn or bury trash debris or waste products on-site. Contractor shall prevent environmental

pollution, including but not limited to particulates, gases and noise, as a result of the Work.

- 10.3.6 When use or storage of hazardous materials or equipment, or unusual methods are necessary for execution of the Work, Contractor shall exercise utmost care and carry on the activities under supervision of properly qualified personnel.
  - 10.3.7 Contractor shall promptly remedy damage and loss to property referred to in Subparagraph 10.3.1.2 and Subparagraph 10.3.1.3, caused in whole or in part by Contractor, or Subcontractors, which is not covered by insurance required by the Contract. Contractor is not required to remedy damage or loss attributable to the City, Design Consultant, or other contractors.
- 10.4 **EMERGENCIES.** In emergencies affecting safety of persons or property, Contractor shall act at Contractor's discretion to prevent imminent damage, injury, or loss. Additional compensation or extension of time claimed by Contractor because of emergencies are determined as provided in Article 7.

## **ARTICLE 11 INSURANCE AND BONDS**

**11.1 GENERAL INSURANCE REQUIREMENTS.**

- 11.1.1 With no intent to limit Contractor's liability under indemnification provisions set forth in Section 3.25 and Section 3.26, Contractor shall provide and maintain in full force and effect during term of the Contract and all extensions and amendments thereto, at least the following insurance and available limits of liability.
- 11.1.2 If any of the following insurance is written as "claims made" coverage and the City is required to be carried as additional insured, then Contractor's insurance shall include a two-year extended discovery period after last date that Contractor provides any work under the Contract.
- 11.1.3 Aggregate amounts of coverage, for purposes of the Contract, are agreed to be amounts of coverage available during fixed 12-month policy period.

**11.2 INSURANCE TO BE PROVIDED BY CONTRACTOR.**

- 11.2.1 **Risks and Limits of Liability.** Contractor shall maintain the insurance coverages in the listed amounts, as set out in Table 1.
- 11.2.2 **Insurance Coverage.** At all times during the term of this Contract and any extensions or renewals, Contractor shall provide and maintain insurance coverage that meets the Contract requirements. Prior to beginning performance under the Contract, at any time upon the Director's request, or each time coverage is renewed or updated, Contractor shall furnish to the Director current certificates of insurance and other policy documents, as necessary, evidencing adequate coverage meeting the Contract requirements.

- 11.2.3 Form of insurance. The form of the insurance shall be approved by the Director and the City Attorney; such approval (or lack thereof) shall never (a) excuse non-compliance with the terms of this Section, or (b) waive or estop the City from asserting its rights to terminate this Contract. The policy issuer shall (1) have a Certificate of Authority to transact insurance business in Texas, or (2) be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+, and a Best's Financial Size Category of Class VI or better, according to the most current Best's Key Rating Guide. Each insurer is subject to approval by the City in City's sole discretion as to conformance with these requirements.
- 11.2.4 Additional Insured. The City shall be an Additional Insured under this Contract, and all policies except Worker's Compensation shall extend coverage to the City as an Additional Insured.
- 11.2.5 Deductibles. Contractor assumes and bears any claims or losses to extent of deductible amounts and waives any claim it may ever have for same against the City, its officers, agents, or employees.
- 11.2.6 Notice. CONTRACTOR SHALL GIVE 30 DAYS' ADVANCE WRITTEN NOTICE TO THE DIRECTOR IF ANY OF ITS INSURANCE POLICIES ARE CANCELED OR NON-RENEWED. Within the 30-day period, Contractor shall provide other suitable policies in order to maintain the required coverage. If Contractor does not comply with this requirement, the Director, at his or her sole discretion, may immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default.
- 11.2.7 Waiver of Subrogation. Contractor waives any claim or right of subrogation to recover against the City, its officers, agents, or employees. Each insurance policy must provide a Waiver of Subrogation in favor of the City.
- 11.2.8 Primary Insurance. Each policy, except Workers' Compensation, must apply as primary insurance to any other insurance available to the Additional Insured with respect to claims arising hereunder.
- 11.2.9 Liability for Premium. Contractor is solely responsible for payment of all insurance premium requirements hereunder and the City is not obligated to pay any premiums.
- 11.2.10 Additional Requirements for Workers' Compensation Insurance Coverage. Contractor shall, in addition to meeting the obligations set forth in Table 1, maintain throughout the term of the Contract Workers' Compensation coverage as required by statute, and Contractor shall specifically comply with requirements set forth in Paragraph 11.2.10. The definitions set out below shall apply only for purposes of this Paragraph 11.2.10.
  - 11.2.10.1 Definitions.
    - 11.2.10.1.1 Certificate of Coverage: A copy of certificate of insurance, or coverage agreement ((DWC081,

DWC082, DWC083, or DWC084), showing statutory Workers' Compensation insurance coverage for Contractor's, Subcontractor's, or Supplier's employees providing services for the duration of the Contract.

- 11.2.10.1.2 Duration of the Work: Includes the time from Date of Commencement of the Work until Contractor's work under the Contract has been completed and accepted by City Council.
- 11.2.10.1.3 Persons providing services for the Work (Subcontractor in Texas Labor Code § 406.096): includes all persons or entities performing all or part of services Contractor has undertaken to perform on the Work, regardless of whether that person contracted directly with Contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of the entity, or employees of entity which furnishes persons to provide services on the Work. Services include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to the Work. Services do not include activities unrelated to the Work, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.
- 11.2.10.2 Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of coverage agreements, which meets the statutory requirements of TEX. LAB. CODE ANN., Section 401.011(44) for employees of Contractor providing services on the Work, for duration of the Work.
- 11.2.10.3 Contractor shall provide a Certificate of Coverage to the City prior to being awarded the Contract.
- 11.2.10.4 If coverage period shown on Contractor's original Certificate of Coverage ends during duration of the Work, Contractor shall file new Certificate of Coverage with the City showing that coverage has been extended.
- 11.2.10.5 Contractor shall obtain from each person providing services on the Work, and provide to Director:
  - 11.2.10.5.1 Certificate of Coverage, prior to that person beginning work on the Work, so the City will have

on file Certificates of Coverage showing coverage for all persons providing services on the Work; and

- 11.2.10.5.2 no later than seven days after receipt by Contractor, new Certificate of Coverage showing extension of coverage, if coverage period shown on current Certificate of Coverage ends during the duration of the Work.
- 11.2.10.6 Contractor shall retain all required Certificates of Coverage for the duration of the Work and for one year thereafter.
- 11.2.10.7 Contractor shall notify Director in writing by certified mail or personal delivery, within 10 days after Contractor knew or should have known, of any change that materially affects provision of coverage of any person providing services on the Work.
- 11.2.10.8 Contractor shall post on-site a notice, in text, form and manner prescribed by Texas Workers' Compensation Commission, informing all persons providing services on the Work that they are required to be covered, and stating how person may verify coverage and report lack of coverage.
- 11.2.10.9 Contractor shall contractually require each person with whom it contracts to provide services on the Work to:
  - 11.2.10.9.1 provide coverage, based on proper reporting of classification codes, payroll amounts and filing of any coverage agreements, which meets statutory requirements of TEX. LAB. CODE ANN., Section 401.011(44) for all its employees providing services on the Work, for the duration of the Work;
  - 11.2.10.9.2 provide to Contractor, prior to that person's beginning work on the Work, a Certificate of Coverage showing that coverage is being provided for all employees of the person providing services on the Work, for the duration of the Work;
  - 11.2.10.9.3 provide Contractor, prior to the end of the coverage period, a new Certificate of Coverage showing extension of coverage, if the coverage period shown on the current Certificate of Coverage ends during the duration of the Work;
  - 11.2.10.9.4 obtain from each other person with whom it contracts, and provide to Contractor: (1) Certificate of Coverage, prior to other person's beginning work on the Work; and (2) new Certificate of Coverage showing extension of

coverage, prior to end of coverage period, if coverage period shown on the current Certificate of Coverage ends during duration of the Work.

11.2.10.9.5 retain all required Certificates of Coverage on file for the duration of the Work and for one year thereafter;

11.2.10.9.6 notify Director in writing by certified mail or personal delivery within 10 days after person knew, or should have known, of change that materially affects provision of coverage of any person providing services on the Work; and

11.2.10.9.7 contractually require each person with whom it contracts to perform as required by Subparagraph 11.2.10.1 through Subparagraph 11.2.10.7, with Certificates of Coverage to be provided to person for whom they are providing services.

11.2.10.10 By signing the Contract or providing or causing to be provided a Certificate of Coverage, Contractor is representing to the City that all employees of Contractor who will provide services on the Work will be covered by Workers' Compensation coverage for the duration of the Work, that coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with appropriate insurance carrier. Contractor is not allowed to self-insure Workers' Compensation. Contractor may be subject to administrative penalties, criminal penalties, civil penalties, or other civil actions for providing false or misleading information.

11.2.10.11 Contractor's failure to comply with Paragraph 11.2.10 is a breach of the Contract by Contractor, which entitles the City to declare the Contract void if Contractor does not remedy breach within 10 days after receipt of notice of breach from Director.

11.2.11 Subcontractor Insurance Requirements: Contractor shall provide on behalf of or require, as applicable, all Subcontractors and Suppliers to obtain Commercial General Liability, Workers' Compensation, Employer's Liability, and Automobile Liability coverage that meets all the requirements of Section 11.2, including the Additional Insured and Waiver of Subrogation requirements. Insurance limits shall be no less than the listed amounts, as set out in Table 1. Contractor shall comply with all requirements set out under Paragraph 11.2.10 as to Workers' Compensation Insurance for all Subcontractors and Suppliers.

**TABLE 1**

TABLE 1 REQUIRED COVERAGE	
Coverage	Limit of Liability
Workers' Compensation	Texas Statutory Limits for Workers' Compensation
Employer's Liability	Bodily Injury by Accident \$500,000 (each accident) Bodily Injury by Disease \$500,000 (policy limit) Bodily Injury by Disease \$500,000 (each employee)
Commercial General Liability: Including Broad Form Property Damage, Contractual Liability, Explosion, Underground and Collapse, Bodily Injury, Personal Injury, Products, and Completed Operations (for a period of one year following completion of the Work).	\$1,000,000 Limit (each occurrence), subject to general aggregate of \$2,000,000 Products and Completed Operations \$2,000,000 aggregate
Owner's and Contractor's Protective Liability	\$1,000,000 each Occurrence/ aggregate
Installation Floater (Unless alternative coverage approved by City Attorney)	Value of stored material or equipment, listed on Certificates of Payments, but not yet incorporated into the Work
Automobile Liability Insurance: (For automobiles furnished by Contractor in course of his performance under the Contract, including Owned, Non-owned, and Hired Auto coverage)	\$1,000,000 combined single limit each occurrence for (1) Any Auto or (2) All Owned, Hired, and Non-Owned Autos
Excess Coverage	\$1,000,000 each occurrence/ aggregate in excess of limits specified for Commercial General Liability, and Automobile Liability
Aggregate Limits are per 12-month policy period unless otherwise indicated.	

11.2.12 Workers' Compensation and Employer's Liability Insurance, including occupational disease coverage, in accordance with the benefits afforded by the statutory worker's compensation acts applicable to the state, territory, or district of hire, supervision, or place of accident. Sole proprietorships with no employees falling within the jurisdiction of any statutory worker's compensation act must so certify to City in writing. In addition, the following requirement shall be met.

11.2.12.1 This insurance is to cover liability arising out the Contractor's employment of workers and anyone for whom the Contractor may be liable for workers' compensation claims. Worker's compensation insurance is required, and no "alternative" form of insurance is permitted.

- 11.2.13 Commercial General Liability shall cover liability arising from premises, ongoing operations, and completed operations. In addition, the following exclusions / limitations or their equivalents are prohibited to be included:
- 11.2.13.1 amendment of Insured Contract Definition;
  - 11.2.13.2 any endorsement modifying the Employer's Liability exclusion;
  - 11.2.13.3 Classification or Business Description;
  - 11.2.13.4 Construction Defect Completed Operations;
  - 11.2.13.5 Contractual Liability Limitation;
  - 11.2.13.6 Damage to Work Performed by Subcontractors On Your Behalf;
  - 11.2.13.7 Explosion, Collapse and Underground Property Damage Hazard;
  - 11.2.13.8 "Insured vs. Insured" except Named Insured vs. Named Insured;
  - 11.2.13.9 Known, Continuous or Progressive Injury or Damage;
  - 11.2.13.10 limitation of Coverage to Designated Premises, Project or Operation;
  - 11.2.13.11 Noncumulation;
  - 11.2.13.12 Prior Injury or Prior Damage or Prior Work;
  - 11.2.13.13 Punitive, Exemplary or Multiplied Damages (unless such endorsement has an exception where insurance for such damages is permitted by law);
  - 11.2.13.14 Subsidence;
  - 11.2.13.15 Work Height; and
  - 11.2.13.16 any other exclusion or limitation reasonably unacceptable to City.
- 11.2.14 Business Automobile Liability Insurance covering damages because of bodily injury or property damage caused by an accident and resulting from the ownership, maintenance, or use (i) of any auto, including owned, non-owned (including City vehicles if Contractor drives such vehicle), leased, rented, and hired autos, including coverage for loading and unloading, used in the performance of this Contract, and (ii) any mobile equipment subject to compulsory insurance or financial responsibility laws or other motor vehicle insurance laws, with a combined single limit of not less than the amount stated in Table 1.

- 11.2.15 Excess/Umbrella Liability Insurance is acceptable to use in conjunction with primary coverage to meet required limits of insurance. This insurance shall follow form of the underlying coverages and/or it shall be excess over and be no less broad than all coverages and conditions described above, including but not limited to the required additional insured status, designated construction project(s) and/or location(s) general aggregate, waiver of subrogation, notice of cancellation, and prohibited exclusions or limitations, and shall be primary to and not seek contribution from any other insurance or self-insurance (primary, umbrella, contingent, or excess) maintained by the City Indemnified Parties.
- 11.2.16 It is further expressly agreed by Contractor that any and all premiums and deductibles, and/or any other charges due with respect to the policies of insurance, shall be assumed by and for the account of Contractor. If Contractor elects to self-insure any insurance required in Table 1, City shall maintain all rights and obligations between themselves as if Contractor maintained the insurance with a commercial insurer including but not limited to Additional Insured status, Primary and Non-Contributory Liability, Waivers of Rights of Recovery, Other Insurance Clauses, and any other extensions of coverage required in this Table 1. Contractor shall pay from its assets the costs, expenses, damages, claims, losses and liabilities, including attorneys' fees and necessary litigation expenses at least to the extent that an insurance company would have been obligated to pay those amounts if Contractor had maintained the insurance pursuant to this Table 1. All deductibles and/or retentions shall be paid by, assumed by, for the account of, and at the Contractor's sole risk. The Contractor shall not be reimbursed for same.
- 11.2.17 City must be notified immediately upon knowledge of possible damage claims that might cause a reduction below 75% of any aggregate limit of any policy.
- 11.2.18 Contractor is fully responsible for loss and damage to its property on the Site, including tools and equipment, and shall take the necessary precautions to prevent damage to or vandalism, theft, burglary, pilferage and unexplained disappearance of property. Any insurance covering the Contractor's or its Subcontractor's property shall be the Contractor's and its Subcontractor's sole and complete means for recovery for any such loss. To the extent any loss is not covered by Contractor's insurance or subject to any deductible or co-insurance, the Contractor and its Subcontractors shall not be reimbursed for same. If the Contractor or its Subcontractors choose to self-insure this risk, it is expressly agreed that the Contractor hereby waives, and shall cause its Subcontractors to waive, any claim for damage or loss to said property in favor of the City Indemnified Parties.
- 11.3 *PROOF OF INSURANCE.*
- 11.3.1 Prior to commencing services and at all times during the term of the Contract, Contractor shall furnish City Engineer with Certificates of Insurance accurately reflecting insurance coverage meeting requirements

and that is available during term of the Contract. If requested in writing by City Engineer, Contractor shall furnish City Engineer with copies of Contractor's actual insurance policies. Failure of Contractor to provide Certificates of Insurance or copies of insurance policies, if requested, may be deemed, at City Engineer's or City Attorney's discretion, a material breach of the Contract.

- 11.3.2 Notwithstanding the proof of insurance requirements, Contractor shall continuously maintain in effect required insurance coverage set forth under Section 11.2. Failure of Contractor to comply with this requirement does constitute a material breach by Contractor allowing the City, at its option, to immediately suspend or terminate work, or exercise any other remedy allowed under the Contract. Contractor agrees that the City has not waived or is not estopped to assert a material breach of the Contract because of any acts or omissions by the City regarding its review or non-review of insurance documents provided by Contractor, its agents, employees, or assigns.
- 11.3.3 Contractor shall provide updated certificates of insurance to the Director upon request. The Contractor shall be responsible for delivering a current certificate of insurance in the proper form to the Director as long as Contractor is required to furnish insurance coverage under Article 11.
- 11.3.4 Every certificate of insurance Contractor delivers in connection with this Contract shall:
  - 11.3.4.1 be less than 12 months old;
  - 11.3.4.2 include all pertinent identification information for the Insurer, including the company name, policy number, NAIC number, and authorized signature;
  - 11.3.4.3 include in the Certificate Holder Box the Project name and reference numbers, contractor's email address, and indicate the name and address of the Project Manager;
  - 11.3.4.4 include the Contractor's email address in the Certificate Holder Box;
  - 11.3.4.5 include the Project reference numbers on the City address so the Project reference number is visible in the envelope window; and
  - 11.3.4.6 be appropriately marked to accurately identify all coverages and limits of the policy, effective and expiration dates, and waivers of subrogation in favor of the City as required by the Contract.

#### **11.4 PERFORMANCE AND PAYMENT BONDS.**

- 11.4.1 For Contracts over the value of \$25,000, Contractor shall provide Bonds on the City's standard forms covering faithful performance of the Contract

and payment of obligations arising thereunder as required in the Contract pursuant to Chapter 2253 of the Government Code. The Bonds must be for 100 percent of Original Contract Price and in accordance with conditions stated on standard City Performance and Payment Bond and Statutory Payment Bond forms. Bonds may be obtained from Contractor's usual source and cost for the Bonds are included in Contract Price.

- 11.4.2 Bonds must be provided to the City within 10 days of Contractor's execution of the Contract. Contractor may not commence the Work prior to the effective date of insurance and Bonds required by this Article 11.
- 11.5 **MAINTENANCE BONDS** – One-year Maintenance Bond. Contractor shall provide Bond on standard City One-year Maintenance Bond form, providing for Contractor's correction, replacement, or restoration of any portion of the Work which is found to be not in compliance with requirements of the Contract during the Defect Correction Period. The Maintenance Bond must be for 100 percent of the Original Contract Price.
- 11.6 **SURETY.**
- 11.6.1 A Bond that is given or tendered to the City pursuant to the Contract must be executed by a surety company that is authorized and admitted to write surety Bonds in the State of Texas.
- 11.6.2 If a Bond is given or tendered to the City pursuant to the Contract in an amount greater than 10 percent of Surety's capital and surplus, Surety shall provide certification that Surety has reinsured that portion of the risk that exceeds 10 percent of Surety's capital and surplus. The reinsurance must be with one or more reinsurers who are duly authorized, accredited, or trusted to do business in the State of Texas. The amount reinsured by reinsurer may not exceed 10 percent of reinsurer's capital and surplus. The amount of allowed capital and surplus must be based on information received from State Board of Insurance.
- 11.6.3 If the amount of a Bond is greater than \$100,000, Surety shall:
- 11.6.3.1 also hold certificate of authority from the United States Secretary of Treasury to qualify as surety on obligations permitted or required under federal law; or,
- 11.6.3.2 Surety may obtain reinsurance for any liability in excess of \$100,000 from reinsurer that is authorized and admitted as a reinsurer in the State of Texas and is the holder of a certificate of authority from the United States Secretary of the Treasury to qualify as surety or reinsurer on obligations permitted or required under federal law.
- 11.6.4 Determination of whether Surety on the Bond or the reinsurer holds a certificate of authority from the United States Secretary of the Treasury is based on information published in Federal Register covering the date on which Bond was executed.

- 11.6.5 Each Bond given or tendered to the City pursuant to the Contract must be on City forms with no changes made by Contractor or Surety, and must be dated, executed, and accompanied by power of attorney stating that the attorney in fact executing such the bond has requisite authority to execute such Bond. The Bonds must be dated and must be no more than 30 days old.
  - 11.6.6 Surety shall designate in its Bond, power of attorney, or written notice to the City, an agent resident in Harris County to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of the suretyship.
  - 11.6.7 Contractor shall furnish information to a payment bond beneficiary as required by TEX. GOV'T CODE ANN. CH. 2253.
- 11.7 ***DELIVERY OF BONDS.*** Contractor shall deliver required Bonds to the City within time limits stated in Notice of Intent to Award and prior to Date of Commencement of the Work.

## **ARTICLE 12** **WARRANTIES AND CORRECTION OF THE WORK**

- 12.1 ***WARRANTIES.***
  - 12.1.1 Contractor represents and warrants that the Work will (referred to individually as "Warranty" or collectively as "Warranties"): (i) be carried out consistent with Good Industry Practices; (ii) conform to the Contract, Applicable Codes and Standards, Applicable Law; and (iii) be performed in a good and workmanlike manner. Contractor further represents and warrants that any Products furnished by Contractor under this Contract are (a) in compliance with all Specifications; (b) new and have not been previously used; (c) approved for substitution, if applicable; (d) free of concentrations on polychlorinated biphenyl (PCB) and other substances defined as hazardous by the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) or any other applicable law or regulation. Work that does not conform to any of the Warranties is defective ("Defective") and contains a defect ("Defect"). Contractor's warranty excludes remedy for damage or defect caused after Substantial Completion by, normal wear and tear under normal usage, or claim that hazardous material was incorporated into the Work, if that material was specified in the Contract.
  - 12.1.2 All Work will be subject to inspection, by City or its representatives, at all times to determine whether the Work conforms to the requirements of this Contract. If required by the Director, Contractor shall furnish satisfactory evidence as to kind, quality, and title of Products, and that Products conform to requirements of the Contract. Contractor shall furnish City with reasonable access to all locations where Work is in progress, including locations not on Site. If any Work is Defective prior to Substantial Completion, then Contractor will, at its own expense, promptly correct the Defective Work, whether by repair, replacement or otherwise. Contractor

bears all correction costs of Defective Work including additional testing and inspections, and compensation for Design Consultant's services and expenses made necessary thereby. The decision of Director shall be final and binding as to whether the Work is conforming or Defective, and Contractor will comply with the instructions of City while pursuing any Dispute. If Contractor fails to repair or replace any Defective Work within one week, then City may (in addition to any other remedies that it has under this Contract, under Applicable Law, or in equity) repair or replace the Defective Work and the reasonable expense for repair or replacement will be paid by Contractor or deducted from any amounts due.

- 12.1.3 No Obligation to Inspect. City's right to conduct inspections will not obligate City to do so. Neither the exercise of City of any the right, nor any failure on the part of City to discover or reject Defective Work, will be construed to imply an acceptance of the Defective Work or a waiver of the Defect.
- 12.1.4 Cost of Uncovering and Disassembling Work. Prior to Substantial Completion, City may request that Contractor uncover previously covered Work to permit City and its representatives to inspect the Work. If the uncovered Work is found to be Defective, then Contractor will correct the Defective Work and will bear the cost of uncovering and recovering the Defective Work, as well as the cost of repair or replacement of the Defective Work. All costs of access, including the cost of disassembling, dismantling, or making safe finished Work for the purpose of inspection, and reassembling the portions (and any delay associated therewith), will be borne by Contractor if Contractor did not provide City with an opportunity to inspect the Work or if the City has a reasonable belief that the Work is Defective.
- 12.1.5 Correction of Work after Substantial Completion. If, during the Defect Correction Period, any Work is found to be Defective, Contractor will, at its sole cost and expense, immediately and on an expedited basis, correct the Defective Work ("Corrective Work"). City will provide Contractor with access to the Project reasonably sufficient to perform its Corrective Work, so long as the access does not materially interfere with construction or operation of any portion of the Project or facilities and subject to any reasonable security or safety requirements of City. This obligation under this Paragraph survives acceptance of the Work under the Contract and termination of the Contract.
- 12.1.6 City Right to Correct or Complete Defective Work. If Contractor fails to perform the Corrective Work within a reasonable period of time not to exceed 48 hours from receipt of a Notice of Noncompliance or other written notice, then City may (in addition to any other remedies that it has under this Contract, under Applicable Law, or in equity) correct the Defective Work, and Contractor will be liable to City for all reasonable costs, losses, damages, and expenses incurred by City including compensation for any design consultant's additional services and expenses made necessary by such default, neglect, or failure in connection with correcting the Defective Work and arising out of or relating to the Defective Work and will pay City (directly or by offset, at City's sole discretion), an amount equal to the

reasonable costs, losses, damages, and expenses; provided, however, if the Defective Work materially affects the construction, operation, or use of the Project or presents an imminent threat to the safety or health of any person and City knows of the Defective Work, City may (in addition to any other remedies that it has under this Contract, under Applicable Law, or in equity) correct the Defective Work without giving prior notice to Contractor, and, in that event, Contractor will be liable to City for all reasonable costs, losses, damages, and expenses incurred by City in connection with correcting the Defective Work and arising out of or relating to the Defective Work and will pay City (directly or by offset, at City's sole discretion), an amount equal to the reasonable costs, losses, damages, and expenses.

- 12.1.7 Extended Defect Correction Period for Corrective Work. With respect to any Corrective Work performed, the Defect Correction Period for the Corrective Work will be extended for an additional one year from the date of the completion of the Corrective Work; provided, however, in no event will the Defect Correction Period for the Corrective Work be less than the original Defect Correction Period. The one-year correction period does not establish a duration for the Contractor's general warranty. The City retains the right to recover damages from the Contractor as long as may be permitted by the applicable statute of limitations or statute of repose.
- 12.1.8 No Limitation. Nothing contained in this Section will be construed to establish a period of limitation with respect to other obligations which Contractor might have under the Contract. Establishment of the Defect Correction Period relates only to the specific obligation of Contractor to perform Corrective Work, and has no relationship to the time within which the obligation to comply with this Contract may be sought to be enforced, nor to the time within which proceedings may be commenced to establish Contractor's liability with respect to Contractor's obligations other than specifically to perform Corrective Work.
- 12.1.9 Assignability of Warranties. The Warranties made in this Contract will be for the benefit of City and its successors and assigns and the respective successors and assigns of any of them, and are fully transferable and assignable.
- 12.1.10 If Contractor fails to carry out the Work in accordance with the Contract, or fails to correct Defective Work, the City may, by Notice of Noncompliance or other written notice, order Contractor to stop the Work or any portion of the Work until the cause for the order has been eliminated. However, the right of the City to stop the Work will not give rise to a claim for delay or to a duty on the part of the City to exercise this right for the benefit of Contractor or any other person or entity. If Contractor corrects the defective or nonconforming work within the time established in the notice, Director will give written notice to Contractor to resume performance of the Work.
- 12.1.11 City Right to Perform Work and Contractor Delay. To address any delay in the Project Schedule that is caused by Contractor, City may at any time, but is not required to, supplement all or part of Contractor's workforce at

Contractor's cost with City's own separate contractors and that work shall become part of the Work, and Contractor will have no right to make any claims against the other contractor or City related to the Work. Notwithstanding anything to the contrary in this Contract, City will at all times maintain the absolute right to issue a deductive change order and self-perform all or any portion of the Work.

- 12.1.12 Notwithstanding the City's right to correct or complete Defective Work, maintenance and protection of the Work remains Contractor's responsibility, as provided in the Contract.
  - 12.1.13 The City shall have the right to reject Work that does not conform to the Contract. City shall also have the right to require special inspection or testing of the Work, whether or not such Work is then fabricated, installed, or completed. Neither City's right to act under this Section nor any decision by City either to exercise or not to exercise such right shall give rise to any duty or responsibility of City to Contractor or to any other person or entity, or result in a waiver of any of City's rights or relieve Contractor of its obligations
  - 12.1.14 Contractor bears cost of correcting Work originally installed by Contractor, the City, or by separate contractors and damaged by Contractor's correction or removal of Contractor's work.
- 12.2 **ACCEPTANCE OF NONCONFORMING WORK.** Instead of requiring its removal and correction, if Director prefers to accept work which is not in accordance with requirements of the Contract, Director may do so only by issuance of Change Order. Director will determine Contract Price reduction. The reduction will become effective even if final payment has been made and the Contractor will be required to pay any amounts to City after final payment to the extent that final payment has been made.

## **ARTICLE 13** **MISCELLANEOUS PROVISIONS**

- 13.1 **GOVERNING LAW AND VENUE.** This Contract shall be construed and interpreted in accordance with the applicable laws of the State of Texas and City of Houston. Venue for any disputes relating in any way to this Contract shall lie exclusively in Harris County, Texas in State or Federal Courts.
- 13.2 **SUCCESSORS.** The Contract binds and benefits the Parties and their legal successors and permitted assigns; however, this Section 13.2 does not alter the restrictions on assignment and disposal of assets set out in Paragraph 13.3.1. The Contract does not create any personal liability on the part of any officer or agent of the City.
- 13.3 **BUSINESS STRUCTURE AND ASSIGNMENTS.**
  - 13.3.1 Contractor may not assign the Contract at law or otherwise, or dispose of all or substantially all of its assets, without Director's prior written consent. Nothing in this Section, however, prevents the assignment of accounts receivable or the creation of a security interest as described in Chapter 9

of the Texas Business & Commerce Code. In the case of such an assignment, Contractor shall immediately furnish the City with proof of the assignment and the name, telephone number, and address of the assignee and a clear identification of the fees to be paid to the assignee.

- 13.3.2 Any series, as defined by the TEX. BUS. ORG. CODE ANN., affiliate, subsidiary, or successor to which Contractor assigns or transfers assets shall join in privity and be jointly and severally liable under this Contract.

**13.4 WRITTEN NOTICE.**

- 13.4.1 All notices required or permitted by the Contract must be in writing and must be effected by hand delivery; registered or certified mail, return receipt requested; or other Director approved method with confirmation copy mailed to receiving Party. Notice is sufficient if made or addressed with proper postage to the address and method stated in the Agreement for each Party ("Notice Address"). The notice is deemed delivered on the earlier of:
- 13.4.1.1 the date the Notice is actually received; or
- 13.4.1.2 the third day following deposit in a United States Postal Service post office or receptacle.

**13.5 RIGHTS AND REMEDIES.**

- 13.5.1 Duties and obligations imposed by the Contract and rights and remedies available thereunder are in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.
- 13.5.2 No act or failure to act by the City is a waiver of rights or duties afforded under the Contract, nor is the act or failure to act constitute approval of or acquiescence in a breach of the Contract. No waiver, approval or acquiescence is binding unless in writing and signed by Director.

**13.6 TESTS AND INSPECTIONS.**

- 13.6.1 Contractor shall give Director, Construction Manager, Commissioning Agent, and Design Consultant timely notice of the time and place where tests and inspections are to be made. Contractor shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- 13.6.2 The City will employ and pay for services of an independent testing laboratory to perform inspections or acceptance tests required by the Contract except:
- 13.6.2.1 inspections or tests covered by Paragraph 13.6.3;
- 13.6.2.2 those otherwise specifically provided in the Contract; or

- 13.6.2.3 costs incurred in connection with tests or inspections conducted pursuant to Paragraph 12.1.2.
- 13.6.3 Contractor is responsible for and shall pay all costs in connection with inspection or testing required in connection with Director's acceptance of a Product to be incorporated into the Work, or of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation into the Work.
- 13.6.4 Neither observations by the City, Construction Manager, or Design Consultant, nor inspections, tests, or approvals by others, relieves Contractor from Contractor's obligations to perform the Work in accordance with the Contract.
- 13.7 *INTEREST.* No interest will accrue on late payments by the City except as provided under Chapter 2251 of the Government Code.
- 13.8 *PARTIES IN INTEREST.* The Contract does not bestow any rights upon any third party, but binds and benefits the Parties only.
- 13.9 *ENTIRE CONTRACT.* The Contract merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No other agreements, assurances, conditions, covenants, express or implied, or other terms of any kind, exist between the Parties regarding the Contract.
- 13.10 *WRITTEN AMENDMENT.* Changes to the Contract that cannot be effected by Modifications, must be made by written amendment, which will not be effective until approved by City Council.
- 13.11 *COMPLIANCE WITH LAWS.*
  - 13.11.1 Contractor shall comply with the Americans with Disabilities Act of 1990 as amended (ADA) and Texas Architectural Barriers Act and all regulations relating to either Act.
  - 13.11.2 Contractor shall comply with all applicable federal, state, and city laws, rules and regulations.
- 13.12 *SEVERABILITY.* If any part of the Contract is for any reason found to be unenforceable, all other parts remain enforceable to the extent permitted by law.
- 13.13 *COMPLIANCE WITH CERTAIN STATE LAW REQUIREMENTS.*
  - 13.13.1 Anti-Boycott of Israel. Contractor certifies that Contractor is not currently engaged in, and agrees for the duration of this Contract not to engage in, the boycott of Israel as defined by Section 808.001 of the Texas Government Code.
  - 13.13.2 Anti-Boycott of Energy Companies. Contractor certifies that Contractor is not currently engaged in, and agrees for the duration of this Contract not to

engage in, the boycott of energy companies as defined by Section 809.001 of the Texas Government Code.

- 13.13.3 Anti-Boycott of Firearm Entities or Firearm Trade Associations. Contractor certifies that Contractor does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, or will not discriminate against a firearm entity or firearm trade association for the duration of this Contract, as defined by Section 2274.001 of the Texas Government Code.
  - 13.13.4 Certification of No Business with Foreign Terrorist Organizations. For purposes of Section 2252.152 of the Code, Contractor certifies that, at the time of this Contract neither Contractor nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Contractor, is a company listed by the Texas Comptroller of Public Accounts under Sections 2252.153 or 2270.0201 of the Code as a company known to have contracts with or provide supplies or to a foreign terrorist organization.
- 13.14 ***ZERO TOLERANCE POLICY FOR HUMAN TRAFFICKING & RELATED ACTIVITIES.*** The requirements and terms of the City of Houston's Zero Tolerance Policy for Human Trafficking and Related Activities, as set forth in Executive Order 1-56, as revised from time to time, are incorporated into this Contract for all purposes. Contractor has reviewed Executive Order 1-56, as revised, and shall comply with its terms and conditions as they are set out at the time of this Contract's effective date. Contractor shall notify the City's Chief Procurement Officer, City Attorney, and the Director of any information regarding possible violation by the Contractor or its subcontractors providing services or goods under this Contract.

## **ARTICLE 14** **TERMINATION OR SUSPENSION OF THE CONTRACT**

14.1 ***TERMINATION BY THE CITY FOR CAUSE.***

- 14.1.1 Each of the following acts or omissions of Contractor or occurrences shall constitute an "Event of Default" under the Contract:
  - 14.1.1.1 Contractor refuses or fails to supply enough properly skilled workers or proper Products;
  - 14.1.1.2 Contractor disregards laws, ordinances, rules, regulations, or orders of a public authority having jurisdiction;
  - 14.1.1.3 Contractor is guilty of material breach of any duty or obligation of Contractor under the Contract, including, but not limited to, failure to submit certified payrolls electronically or filing bankruptcy;
  - 14.1.1.4 Contractor has had any other contract with the City terminated for cause at any time subsequent to the effective date of the Contract as set out in the Agreement; or

- 14.1.1.5 Contractor fails to utilize Ultra Low Sulfur Diesel Fuel, as required in Subparagraph 3.9.1.1.
- 14.1.2 If an Event of Default occurs, City Engineer may, at his option and without prejudice to any other rights or remedies which the City may have, deliver a written notice to Contractor and Surety describing the Event of Default and giving the Contractor 10 days to cure the Event of Default. If after the cure period, Contractor has failed or refused to cure the Event of Default, then City Engineer may deliver a second written notice to Contractor giving notice of the termination of the Contract or of the termination of Contractor's performance under the Contract ("Notice of Termination"). If City Engineer issues a Notice of Termination, then Director may, subject to any prior rights of Surety and any other rights of the City under the Contract or at law:
  - 14.1.2.1 exercise rights under the Bond; or
  - 14.1.2.2 take possession of the site and all materials, equipment, tools, and construction equipment and machinery on the site owned by Contractor; and
  - 14.1.2.3 finish the Work by whatever reasonable method Director may deem expedient.
- 14.1.3 After Contractor's receipt of a Notice of Termination, and except as otherwise directed in writing by Director, Contractor shall:
  - 14.1.3.1 stop the Work on the date and to the extent specified in the Notice of Termination;
  - 14.1.3.2 place no further orders or subcontracts for Products or services;
  - 14.1.3.3 terminate all orders and subcontracts to the extent that they relate to performance of work terminated;
  - 14.1.3.4 assign to the City, in the manner, at the times, and to the extent directed by Director, all rights, title, and interest of Contractor, under the terminated supply orders and subcontracts. The City may settle or pay claims arising out of termination of the orders and subcontracts;
  - 14.1.3.5 settle all outstanding liabilities and all claims arising out of the termination of supply orders and subcontracts with approval of Director;
  - 14.1.3.6 take action as may be necessary, or as Director may direct, for protection and preservation of property related to the Work that is in possession of Contractor, and in which the City has or may acquire an interest;

- 14.1.3.7 secure the Work in a safe state before leaving the site, providing any necessary safety measures, shoring, or other devices; and
- 14.1.4 If the City terminates the Contract or terminates Contractor's performance under the Contract for any one or more of the reasons stated in Paragraph 14.1.1, Contractor may not receive any further payment until the Work is complete, subject to Paragraph 14.1.5.
- 14.1.5 If the unpaid balance of Contract Price exceeds the costs of finishing the Work, including liquidated damages and other amounts due under the Contract, the balance will be paid to Contractor. If the costs of finishing the Work exceed the unpaid balance, Contractor shall, within 10 days of receipt of written notice setting out the amount of the excess costs, pay the difference to the City. The amount to be paid to Contractor or the City will be certified by Director in writing, and this obligation for payment shall survive termination of the Contract or termination of Contractor's performance under the Contract. Termination of the Contractor for cause shall not relieve the Surety from its obligation to complete the project.

**14.2 TERMINATION BY THE CITY FOR CONVENIENCE.**

- 14.2.1 Director may, without cause and without prejudice to other rights or remedies of the City, give Contractor and Surety a Notice of Termination with seven days' written notice.
- 14.2.2 After receipt of the Notice of Termination, and except as otherwise approved by Director, Contractor shall conform to requirements of Paragraph 14.1.3.
- 14.2.3 After receipt of the Notice of Termination, Contractor shall submit and substantiate to the City its termination change order request, in forms required by Director. The change order request will be submitted and substantiated to the City promptly, but no later than six months from the effective date of termination, unless one or more extensions are granted by Director in writing. If Contractor fails to submit its termination change order request within the time allowed, in accordance with Paragraph 14.2.4, City Engineer will determine, on the basis of available information, the amount, if any, due to Contractor because of termination, and City Engineer's determination is final and binding on the Parties. The City will then pay to Contractor the amount so determined.
- 14.2.4 Director will determine, on the basis of information available to Director, the amount due, if any, to Contractor for the termination as follows:
  - 14.2.4.1 Contract Price for all work performed in accordance with the Contract up to the date of termination determined in the manner prescribed for monthly payments in Article 9, except no retainage is withheld by the City either for payment determined by percentage of completion or for materials and equipment delivered to the site, in storage or in transit.

14.2.4.2 Reasonable termination expenses, including costs for settling and paying Subcontractor and Supplier claims arising out of termination of the Work, reasonable cost of preservation and protection of the City's property after termination, if required, and the cost of Claim preparation. Termination expenses do not include field or central office overhead, salaries of employees of Contractor, or litigation costs, including attorneys' fees.

No amount is allowed for anticipated profit or central office overhead on uncompleted work, or any cost or lost profit for other business of Contractor alleged to be damaged by the termination.

- 14.2.5 Contractor shall promptly remove from the site any construction equipment, tools, and temporary facilities, except the temporary facilities which Director may wish to purchase and retain.
- 14.2.6 Contractor shall cooperate with Director during the transition period.
- 14.2.7 The City will take possession of the Work and materials delivered to the site, in storage, or in transit, as of date or dates specified in the Notice of Termination, and is responsible for maintenance, utilities, security, and insurance, as stated in Notice of Termination.

**14.3 SUSPENSION BY THE CITY FOR CONVENIENCE.**

- 14.3.1 Director may, without cause, after giving Contractor and Surety 24-hour prior written notice, order Contractor to suspend, delay, or interrupt the Work in whole or in part for a period of time as Director may determine.
- 14.3.2 An adjustment will be made in Contract Time equivalent to the time of suspension.
- 14.3.3 Adjustment will be made to Contract Price for increases in the cost of performance of the Work, including profit on increased cost of performance caused by suspension, delay, or interruption of the Work, in accordance with Section 7.3. No adjustment will be made to the extent that:
  - 14.3.3.1 performance was, or would have been, suspended, delayed, or interrupted by another cause for which Contractor is responsible; or
  - 14.3.3.2 adjustment is made or denied under another provision of the Contract.

**14.4 TERMINATION BY CONTRACTOR.**

- 14.4.1 Contractor may terminate the Contract if the Work is stopped for a period of 30 days through no act or fault of Contractor, directly related to one of these events:

- 14.4.1.1 issuance of an order of a court or other public authority having jurisdiction;
- 14.4.1.2 act of government, such as a declaration of national emergency which makes material unavailable; or
- 14.4.1.3 if repeated suspensions, delays, or interruptions by the City as described in Section 14.3 constitute, in the aggregate, more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less;

No termination will be effective for the above reasons if Contractor delivers written notice to Director describing the reason for termination, giving the proposed termination date, and granting the City a reasonable opportunity to respond and cure any City default before termination is effective.

- 14.4.2 If the Contract is terminated pursuant to this Section 14.4, Contractor shall comply with the requirements of Paragraphs 14.2.2 through 14.2.7.

[END OF DOCUMENT]

**EXHIBIT B: KEY PERSONNEL AND HOURLY RATES**

**EXHIBIT C: GUARANTEED MAXIMUM PRICE FORM**

**GUARANTEED MAXIMUM PRICE [insert number if multiple GMPs]**

Subject to the terms and conditions of Contract No. \_\_\_\_\_, Construction Manager and the City agree as follows:

Construction Manager shall perform the Work generally described below and more specifically described in the Drawings and Specifications incorporated herein subject to the clarifications and assumptions set out herein for an amount not to exceed the GMP set out below.

<b>Description of work to be Performed under this GMP</b>	
---	--

<b>Estimated Cost of Work</b>		\$ _____
The following Cash Allowances are included in the Estimated Cost of Work above:	\$ _____ \$ _____	
The following Alternates are included in the Estimated Cost of Work above:	\$ _____ \$ _____	
<b>Construction Phase Fee</b>  ____ % of the lesser of the Agreed Estimate or the estimated Cost of the Work set out above. This will be a lump sum amount to be paid out as a percentage of completion.		\$ _____

1. The GMP for the Work or the portion of the Work set out in this GMP, includes all Claims, work, and Change Orders in existence before the date of signing this GMP.
2. The Drawings and Specifications upon which this GMP is based are set forth in Exhibit 6.
3. In the event of a conflict among the Drawings and Specifications, Construction Manager shall fulfill the greater of the requirements.

4. The Clarifications & Assumptions made by Construction Manager are set forth in Exhibit 3. The clarifications and assumption do not alter the Contract or Document 00700-General Conditions.
5. Construction Manager shall achieve Substantial Completion within \_\_\_\_ days from issuance of Notice to Proceed.
6. Construction Manager waives all rights to an extension of time or delay damages for any events or circumstances prior to the date of signing this GMP.
7. The following exhibits are incorporated into the GMP:
  - Exhibit 1 – Schedule of Values
  - Exhibit 2 – Project Team and Burden Rates
  - Exhibit 3 – Clarifications & Assumptions
  - Exhibit 4 – Insurance
  - Exhibit 5 – Bonds
  - Exhibit 6 – List of Drawings and Specifications
  - Exhibit 7 – MWBE Plan

### **Signatures**

The Parties have executed this GMP in multiple copies, each of which is an original. Each person signing this GMP represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this GMP. Each Party represents and warrants to the other that the execution and delivery of this GMP and the performance of such Party's obligations hereunder have been duly authorized, and that the GMP is a valid and legal GMP binding on such Party and enforceable in accordance with its terms. The Parties hereby agree that each Party may sign and deliver this GMP electronically or by electronic means and that an electronic transmittal of a signature, including but not limited to, a scanned signature page, will be as good, binding, and effective as an original signature.

#### **CONSTRUCTION MANAGER:**

---

Name:

Title:

Federal Tax ID No.:

**CITY: OF HOUSTON, TEXAS**

---

Director, General Services Department

## EXHIBIT D: DRUG POLICY COMPLIANCE AGREEMENT

I, \_\_\_\_\_,

(Name)

(Title)

of \_\_\_\_\_

(Contractor)

have authority to bind Contractor with respect to its bid, offer or performance of any and all contracts it may enter into with the City of Houston; and that by making this Agreement, I affirm that the Contractor is aware of and by the time the Agreement is authorized and approved by the City Council, City of Houston, Contractor will be bound by and agree to designate appropriate safety impact positions for company employee positions, and to comply with the following requirements before the City issues a Notice to Proceed:

1. Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for the Contractor that meet the criteria and requirements established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Drug Policy) and the Mayor's Drug Detection and Deterrence Procedures for Contractors (Executive Order No. 1-31).
2. Obtain a facility to collect urine samples consistent with Health and Human Services (HHS) guidelines and an HHS certified drug testing laboratory to perform the drug tests.
3. Monitor and keep records of drug tests given and the results; and upon request from the City of Houston, provide confirmation of such testing and results.
4. Submit semi-annual Drug Policy Compliance Declarations.

I affirm on behalf of the Contractor that full compliance with the Mayor's Drug Policy and Executive Order No. 1-31 is a material condition of the Agreement with the City of Houston,

I further acknowledge that falsification, failure to comply with or failure to timely submit declarations and/or documentation in compliance with the Mayor's Drug Policy and/or Executive Order No. 1-31 will be considered a breach of the Agreement with the City and may result in the Agreement not being authorized and approved by the City Council, City of Houston or termination of the Agreement by the City of Houston.

---

(Date)

Contractor

---

Signature

---

Title

**EXHIBIT E: CERTIFICATION OF NO SAFETY IMPACT POSITIONS**

**THE STATE OF TEXAS**  
**THE COUNTY OF HARRIS**

**§**  
**§**  
**§**

**KNOW ALL MEN BY THESE PRESENTS:**

**BEFORE ME**, the undersigned authority, on this day personally appeared

---

\_\_\_\_\_  
(Affiant)  
who being by me duly sworn on his oath stated that he is

\_\_\_\_\_  
(Title)  
of

---

—  
Contractor  
and that no employee safety impact positions, as defined in §5.17 of Executive Order No. 1-31, will be involved in performing the Contractor services as provided in the Agreement. Contractor agrees and covenants that it shall immediately notify the City of Houston Director of Personnel if any safety impact positions are established to provide services in performing this City Agreement.

\_\_\_\_\_  
(Affiant's Signature)

SWORN AND SUBSCRIBED before me by

\_\_\_\_\_  
(Affiant)  
on \_\_\_\_\_.  
(Date)

\_\_\_\_\_  
Notary Public in and for the State of TEXAS

\_\_\_\_\_  
(Print or type Notary Public name)

**EXHIBIT F: DRUG POLICY COMPLIANCE DECLARATION****BEFORE ME**, the undersigned authority, on this day personally appeared

\_\_\_\_\_  
 (Affiant)  
 who being by me duly sworn on his oath stated that he is

\_\_\_\_\_  
 (Title)  
 of

\_\_\_\_\_  
 (Contractor)  
 the Contractor named and referred to within the Agreement; that Affiant is fully competent and authorized to give this affidavit and that Affiant has personal knowledge and full authority to make the following declarations:

This reporting period covers the preceding 6 months from \_\_\_\_\_ to \_\_\_\_\_, 20\_\_\_\_

Initials	A written Drug Free Workplace Policy has been implemented and employees notified. The policy meets the criteria established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Policy)
Initials	Written drug testing procedures have been implemented in conformity with the Mayor's Drug Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31. Employees have been notified of such procedures
Initials	Collection/testing has been conducted in compliance with federal Health and Human Services (HHS) guidelines
Initials	Appropriate safety impact positions have been designated for employee positions performing on the City of Houston contract. The number of employees in safety impact positions during this reporting period is _____.
Initials	From _____ to _____ the following testing has occurred: (Start date) (End date)

	Reasonable Random	Post Suspicion	Accident
<u>Total</u>			
Number Employees Tested	_____	_____	_____
Number Employees Positive	_____	_____	_____
Percent Employees Positive	_____	_____	_____

\_\_\_\_\_  
 Initials Any employee who tested positive was immediately removed from the City worksite consistent with the Mayor's Policy and Executive Order No. 1-31.  
 \_\_\_\_\_  
 Initials I affirm that falsification or failure to submit this declaration timely in accordance with established guidelines will be considered a breach of contract.  
 I declare under penalty of perjury that the affirmations made herein and all information contained in this declaration are within my personal knowledge and are true and correct.

SWORN AND SUBSCRIBED before me by \_\_\_\_\_ (Affiant's Signature)  
on \_\_\_\_\_

-  
(Affiant)

(Date)

---

Notary Public in and for the State of TEXAS

\_\_\_\_\_  
(Print or type name)  
My Commission Expires:

**EXHIBIT G: FEDERAL PROVISIONS**  
**Version 06/24/2024**

**1. General**

- 1.1. Contractor must comply with the following federal provisions, as applicable, as a condition of this City of Houston ("City") Agreement. For purposes of this Exhibit, the following terms have the meanings set forth in this Exhibit.
  - 1.1.1. "Agreement" means the Agreement, Contract, Addendum, or Purchase Order to which this Exhibit is attached.
  - 1.1.2. "Contractor" means Contractor, Construction Manager, subrecipient, or Vendor as defined in the Agreement to which this Exhibit is attached.
  - 1.1.3. "Federal Agency" means any relevant federal agency overseeing or administering the funding set forth in the Agreement to which this Exhibit is attached as a source of funding.
- 1.2. Contractor also acknowledges that the City is using federal funds attached to a federal program ("Program") for all or a portion of this Agreement. Contractor therefore shall, in addition to those set forth in this Exhibit, comply with any specific terms and conditions as set forth in Federal Agency guidance documents, FAQs, websites, or similar documents as required by the Director or CPO, and any specific terms and conditions set forth in the grant as specified by the Director or CPO ("Funding Law, Regulations and Guidelines").
- 1.3. Contractor also shall provide for compliance with the federal laws, rules, regulations, interpretive guidance and other materials set forth in this Exhibit in any agreements it enters into with other parties relating to the federal funds.
- 1.4. Contractor acknowledges that federal financial assistance will be used to fund all or a portion of this Agreement. Contractor shall comply with all applicable federal law, regulations, executive orders, federal policies, procedures and directives as well as any guidance issued by Federal Agency relating to the Program and Funding Law, Regulations and Guidelines. Federal regulations applicable to this funding include but are not limited to the following:
  - 1.4.1. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.
  - 1.4.2. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference

- 1.4.3. Generally applicable federal environmental laws and regulations
- 1.5. Contractor acknowledges that the Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the City, Contractor, or any other party pertaining to any matter resulting from this Agreement.
- 1.6. Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to Contractor's actions pertaining to this Agreement. False statements or claims may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.
2. **Use of Funds.** Contractor understands and agrees that the funds disbursed under this funding may only be used for the Program and in compliance with the Program and the Funding Law, Regulations and Guidelines.
3. **Award Amount.** The amount of funding dedicated to this Agreement is limited to the amount set out in the attached Agreement, unless otherwise agreed to by the Parties, in writing.
4. **Period of Performance.** The Period of Performance of this Agreement will be on the countersignature date of the City Controller on the Agreement, or in the case of Purchase Orders on the date of issuance of the Purchase Order by the City, which must be after the Contractor signs this Exhibit, and conclude on or before the ending date of the grant, unless the grant is extended and the Parties mutually agree to an extension under the Agreement.
5. Contractor shall not use the Department of Homeland Security (DHS) or any Federal Government or Federal Agency seal(s), logos, crests, or reproductions of flags or likenesses of DHS or any Federal Government or Federal Agency officials without specific DHS or any Federal Government or Federal Agency pre-approval.
6. **Access to Records.** The following access to records requirements apply to this Agreement:
  - 6.1. Contractor agrees to provide the City, any Federal Agency Administrator, the Texas Department of Emergency Management, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. Contractor shall keep its books, documents, papers, and records available for this purpose for at least seven years after this Agreement terminates or expires. This provision does not limit the applicable statute of limitations.
  - 6.2. Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

- 6.3. Contractor agrees to provide the Federal Agency or its authorized representatives access to construction or other work sites pertaining to the work being completed under this Agreement.
- 6.4. In compliance with the Disaster Recovery Act of 2018, the City and Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the Federal Agency or its authorized representatives or the Comptroller General of the United States.
- 6.5. Within ten days of written request by the City, Contractor agrees to provide the City all relevant documentation pertaining to the Program and this Agreement to confirm compliance with Federal requirements, ensure the Program is achieving its purpose, and to respond to audits, as necessary.

7. **Environmental Compliance** – Applicable only to Agreements over \$150,000.

- 7.1. Contractor shall comply with all applicable standards, ordered, or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251 et seq.).
- 7.2. Contractor shall report all violations to the City's Purchasing Agent/Chief Procurement Office or designee (CPO), and understands and agrees that the City, through its designated representative, will, in turn, report each violation as required to assure notification to the Federal Agency, and the appropriate Environmental Protection Agency Regional Office.
- 7.3. Contractor shall include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

8. **Contract Work Hours and Safety Standards Act** – Applicable only to Agreements over \$100,000.

- 8.1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- 8.2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subparagraph 8.1 of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 8.1 of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of

the overtime wages required by the clause set forth in paragraph 8.1 of this section.

- 8.3. Withholding for unpaid wages and liquidated damages. The federal agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 8.2 of this section.
- 8.4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph 8.1 through 8.4 of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 8.1 through 8.4 of this section.

9. **Equal Employment Opportunity.** During the performance of this Agreement, Contractor agrees as follows:

- 9.1. Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. "Contractor" will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:
  - 9.1.1. Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- 9.2. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- 9.3. Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation

information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

- 9.4. Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 9.5. Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 9.6. Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 9.7. In the event of Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 9.8. Contractor will include the portion of the sentence immediately preceding paragraph 9.1 and the provisions of paragraphs 9.1 through 9.8 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. Contractor will take such action with respect to any subcontract or purchase order as the Federal Agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

- 9.9. The City further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the Contractor so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.
- 9.10. The City agrees that it will assist and cooperate actively with the Federal Agency, and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the Federal Agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering Federal Agency in the discharge of the City or Federal Agency's primary responsibility for securing compliance.
- 9.11. The City further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the City agrees that if it fails or refuses to comply with these undertakings, the Federal Agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

**10. Procurement of Recovered Materials.**

- 10.1. In the performance of this Agreement, Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:
  - 10.1.1. Competitively within a timeframe providing for compliance with the Agreement performance schedule;
  - 10.1.2. Meeting Agreement performance requirements; or
  - 10.1.3. At a reasonable price.
- 10.2. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

- 10.3. Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

## **11. Domestic Preference Requirements**

- 11.1. Domestic Preference Requirement – 2 C.F.R. §200.322

- 11.1.1. As appropriate and to the extent consistent with law, Contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this paragraph must be included in all subcontracts and purchase orders for work or products under this Agreement. For purposes of this paragraph:

- 11.1.1.1. “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

- 11.1.1.2. “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

## **12. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment**

- 12.1. As used in this paragraph, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy, #405-143-1 Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services.

### **12.2. Prohibitions**

- 12.2.1. Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after August 13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

- 12.2.2. Unless an exception in this paragraph applies, Contractor and its Subcontractors shall not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Agency to:

- 12.2.2.1. Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- 12.2.2.2. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- 12.2.2.3. Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
- 12.2.2.4. Provide, as part of its performance of this Agreement, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

### 12.3. Exceptions

- 12.3.1. This paragraph does not prohibit contractors, such as Contractor, from providing—
  - 12.3.1.1. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
  - 12.3.1.2. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
- 12.3.2. By necessary implication and regulation, the prohibitions also do not apply to:
  - 12.3.2.1. Covered telecommunications equipment or services that:
    - Are not used as a substantial or essential component of any system; and
    - Are not used as critical technology of any system.
  - 12.3.2.2. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

12.3.2.3. That which 2 C.F.R. Section 200.216 does not apply.

12.4. Reporting requirement

12.4.1. In the event Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during performance of the Services set forth in this Agreement, or Contractor is notified of such by a Subcontractor at any tier or by any other source, Contractor shall report the information in the manner stated below to the recipient or subrecipient, unless elsewhere in this Agreement are established procedures for reporting the information.

12.4.2. Contractor shall report the following information pursuant to paragraph 12.5:

12.4.2.1. Within one business day from the date of such identification or notification: The Contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

12.4.2.2. Within 10 business days of submitting the information above: Any further available information about mitigation actions undertaken or recommended. In addition, Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

12.5. Subcontracts. Contractor shall insert the substance of this clause, including this paragraph 12.5, in all subcontracts and other contractual instruments.

13. **Remedies.** If any work performed and/or goods delivered by Contractor fails to meet the requirements of the Agreement, any other applicable standards, codes or laws, or otherwise breaches the terms of the Agreement, the CPO may in his or her sole discretion:

13.1. elect to have Contractor re-perform or cause to be re-performed, at Contractor's sole expense, any of the work which failed to meet the requirements of the contract;

- 13.2. in the case of goods, reject the goods and require Contractor to provide replacement goods that meet the needs of the City and the terms of the Agreement;
- 13.3. hire another contractor to perform the work and deduct any additional costs incurred by the City as a result of substituting contractors from any amounts due to Contractor; or
- 13.4. pursue and obtain any and all other available legal or equitable remedies.

This Section shall in no way be interpreted to limit the City's right to pursue and obtain any and all other available legal or equitable remedies against Contractor.

**14. Suspension and Debarment.**

- 14.1. Federal regulations restrict the City from contracting with parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities, where the contract is funded in whole or in part with federal funds. Accordingly, a contract or subcontract must not be made with any parties listed on the SAM Exclusions list. SAM Exclusions is the list maintained by the General Services Administration that contains the name of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under certain statutory or regulatory authority. Contractor can verify its status and the status of its principals, affiliates, and subcontractors at [www.SAM.gov](http://www.SAM.gov).
- 14.2. This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000 and, if applicable, 45 C.F.R. § 75.213. As such, Contractor is required to verify that none of its principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- 14.3. Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and, if applicable, 45 C.F.R. § 75.213, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- 14.4. This certification, found in Attachment 1 of this Exhibit, is a material representation of fact relied upon by the State of Texas and the City. If it is later determined that Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and, if applicable, 45 C.F.R. § 75.213, in addition to remedies available to the State of Texas and the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- 14.5. Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and, if applicable, 45 C.F.R. § 75.213, while this offer is valid and throughout the period of this purchase order. Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**15. Byrd Anti-Lobbying Amendment.**

- 15.1. A contractor who applies or bids for an award or receives a Contract/Purchase Order of \$100,000 or more shall submit to the City's Chief Procurement Officer or designee the required certification as set out in Attachment 2 of this Exhibit. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

**16. Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms.**

- 16.1. If Contractor intends to subcontract any portion of the work covered by this Agreement, Contractor must take all necessary affirmative steps to assure that small and minority businesses, women's business enterprises and labor surplus area firms are solicited and used when possible. Affirmative steps must include:
- 16.1.1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
  - 16.1.2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
  - 16.1.3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
  - 16.1.4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
  - 16.1.5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

17. **Changes**. The Director may modify the scope of services or quantity and type of goods by giving written notification to Contractor, subject to the funds allocated by the City to this Agreement. The notice takes effect immediately upon receipt by Contractor.
18. **Protections for Whistleblowers**.
  - 18.1. In accordance with 41 U.S.C. § 4712, Contractor may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.
  - 18.2. The list of persons and entities referenced in the paragraph above includes the following:
    - 18.2.1. A member of Congress or a representative of a committee of Congress;
    - 18.2.2. An Inspector General;
    - 18.2.3. The Government Accountability Office;
    - 18.2.4. A Treasury employee responsible for contract or grant oversight or management;
    - 18.2.5. An authorized official of the Department of Justice or other law enforcement agency;
    - 18.2.6. A court or grand jury; or
    - 18.2.7. A management official or other employee of recipient, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct.
  - 18.3. Contractor shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.
19. **Increasing Seat Belt Use in the United States**. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Contractor is encouraged to adopt and enforce on-the-job

seat belt policies and programs for its employees when operating Contractor-owned, rented, or personally-owned vehicles.

20. **Reducing Text Messaging While Driving.** Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Contractor is encouraged to adopt and enforce policies that ban text messaging while driving.
21. **Publications.** Any publications produced with funds from this award must display the following language noting the funds for the project came from federal funds.

Any publications produced with funds from this award or pertaining to projects or programs administered with funds from this award must be approved by the City prior to publication.

22. **Debts Owed to the City.**

- 22.1. Any funds paid to Contractor (1) in excess of the amount to which Contractor is finally determined to be authorized to retain under the terms of its award from Treasury; (2) that are determined by the Treasury Office of Inspector General to have been misused; or (3) that are determined by Treasury to be subject to a repayment obligation pursuant to section 603(e) of the Act and have not been repaid by the Contractor shall constitute a debt to the City and to the Federal government.
  - 22.2. Any debts determined to be owed the City must be paid promptly by Contractor for repayment to the federal government.
  - 22.3. A debt is delinquent if it has not been paid by the date specified in the City's initial written demand for payment, unless other satisfactory arrangements have been made or if the Contractor knowingly or improperly retains funds that are a debt as defined in this paragraph. The City will take any actions available to it to collect such a debt.
23. **Disclaimer.** The United States expressly disclaims any and all responsibility or liability to Recipient and Contractor or third persons for the actions of Recipient, Contractor, or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any contract, or subcontract under this award. The acceptance of this award by Recipient and Contractor does not in any way establish an agency relationship between the United States and Recipient or Contractor.
  24. Contractor understands that the City's obligation for payment under this Agreement is limited in its entirety by the provisions of this Agreement for the performance of services under this Agreement; unless additional funds are approved by City Council through supplemental allocations to pay for the services, the City shall have no obligation to pay Contractor. Contractor must look to these designated funds only and to no other funds for the City's payment under this Agreement, and that the City is permanently excused from making payments due under this Agreement if, for whatever reason, there is a lack of funds.

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## **EXHIBIT G, ATTACHMENT 1: DEBARMENT CERTIFICATION**

### **(CERTIFICATION REGARDING DEBARMENT SUSPENSION AND OTHER RESPONSIBILITY MATTERS - PRIMARY COVERED TRANSACTIONS)**

This Agreement is a covered transaction for purposes of the debarment and suspension regulations implementing Executive Order 12549, Debarment and Suspension (1986) and Executive Order 12689, Debarment and Suspension (1989) at 2 C.F.R. Part 3000 (Non-procurement Debarment and Suspension) and, if applicable, 45 C.F.R. § 75.213. As such, Contractor is required to confirm that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

#### **INSTRUCTIONS FOR CERTIFICATION**

- 1) By signing this Agreement, Contractor, also sometimes referred to herein as a prospective primary participant, is providing the certification set out below.
- 2) The inability of a contractor to provide the certification required below will not necessarily result in denial of participation in the covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the City's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
- 3) The certification in this clause is a material representation of fact upon which reliance was placed when the City determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the City, the City may terminate this transaction for cause or default.
- 4) The prospective primary participant shall provide immediate written notice to the City if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 5) The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal and voluntarily excluded, as used in this certification, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549.
- 6) The prospective primary participant agrees by signing the Agreement that it shall not knowingly enter into any lower tier covered transactions with a person who is proposed for debarment under 48 C.F.R. part 9, subpart 9.4, debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction. If it is later determined that the prospective primary participant knowingly entered into such a transaction, in addition to other remedies available to the City, the City may terminate this transaction for cause or default.
- 7) The prospective primary participant further agrees by signing this Agreement that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility

and Voluntary Exclusion - Lower Tier Covered Transaction," as available through the United States Department of Homeland Security, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

- 8) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 C.F.R. part 9, subpart 9.4, debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.
- 9) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

## **CERTIFICATION**

- 1) The prospective primary participant certifies to the best of its knowledge and belief that it and its principals:
- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any Federal department or agency;
  - (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;
  - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
  - (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- 2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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Company Name

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Name and Title

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Signature

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Date

**EXHIBIT G, ATTACHMENT 2: BYRD ANTI-LOBBYING CERTIFICATION**

**(CERTIFICATION FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS)**

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Contractors shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31.U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

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Name of Contractor

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RFP, ITB, EPO or PO No., or Project  
Name

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Signature

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Printed Name

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Title

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Date