



**REQUEST FOR QUALIFICATIONS
FOR
DESIGN/BUILD SERVICES**

NORTHSIDE HEALTH CENTER RENOVATION

Qualifications Submittal Date
Thursday, October 27, 2016

City of Houston
General Services Department
Design & Construction Division

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REQUEST FOR QUALIFICATIONS FOR DESIGN-BUILD SERVICES

Project Name: Northside Health Center Renovation

1 – RFQ PROCESS

1.1 PURPOSE

The City of Houston (City), General Services Department (GSD), on behalf of the Houston Health Department (HHD), is requesting Statement of Qualifications (SOQ) for the selection of a Design-Build Team for this project.

The City anticipates retaining design/build services to provide the Scope of Services outlined in Document 2 of this RFQ. The Design/Build Team and team members with significant experience in planning, design, and construction of projects with similar characteristics will be given prime consideration for this project. Those firms or joint ventures that participate in this RFQ process will be referred to as “Respondents”. “Respondent” and its sub-consultants shall be referred to collectively as the “Design-Build Team”. The successful firm or joint venture will be referred to, in the RFQ, as the “Design-Build Firm”.

1.2 SUBMITTAL INSTRUCTIONS

Respondents shall submit six hard copies and six electronic copies (CD or flash-drive) of the SOQ Submittals (see Document 4), in a sealed box labeled with the Respondent’s name, name of the Project, and General Services Department. SOQ Submittals are due at the date, time, and location set out below. Late submittals will not be accepted.

Date: Thursday, October 27, 2016

Time: Accepted until 2:00 PM

Location: City Secretary, 900 Bagby, Room P101, Houston, TX

1.3 PRE-SUBMITTAL MEETING

A pre-submittal meeting will be held at the date, time, and location set out below. Attendance at the meeting is recommended, but not mandatory; however, meeting minutes will not be issued.

Date: Tuesday, October 11, 2016

Time: 11:00 a.m.

Location: City Hall Annex, 900 Bagby Street, 2nd Floor

1.4 QUESTIONS

Please email questions concerning this RFQ to:

Richard A. Vella
Chief of Design & Construction / Assistant Director
General Services Department
Email: Richard.Vella@houstontx.gov

c/o Ted Haag
Project Manager
Email: Kermit.Haag@houstontx.gov

All questions must be submitted before noon on Monday, December 5, 2016.

1.5 ADDENDA

All modifications or clarifications of this RFQ will be issued in writing as an Addendum. Addenda will be posted at www.houstontx.gov/generalservices/Advertisements. Respondents may only rely on information set out in this RFQ, as modified by Addenda. By submitting an SOQ, Respondents will be deemed to have received all Addenda.

No Addendum will be issued later than noon on Wednesday, December 7, 2016, except Addenda with minor clarifications, withdrawing the RFQ, or postponing the Qualifications Submittal Date.

1.6 ESTIMATED RFQ TIMELINE

Pre-Submittal Meeting:	11:00 a.m., October 11, 2016
Questions Deadline:	Noon, December 5, 2016
Addenda Deadline:	Noon, December 7, 2016
SOQ Submittal Date:	2:00 p.m., October 27, 2016
Anticipated Selection Date:	December, 2016
Contract Notice to Proceed:	February, 2016



REQUEST FOR QUALIFICATIONS FOR DESIGN-BUILD SERVICES

Project Name: Northside Health Center Renovation

2 – SCOPE OF SERVICES

2.1 PROJECT DESCRIPTION

Project Name: Northside Health Center Renovation

Location: 8504 Schuller Rd

Estimated Construction Budget: \$3.2 Million (including FF&E, Security, Technology and Moving Services)

The existing 32,531 s.f. Northside Health Center will be renovated. This facility houses a series of public programs to include a TB clinic, HIV Clinic, Dental Clinic, Women, Infants, and Children (WIC) Program and a Family Planning Clinic. The project will be done in phases or after normal business hours and will include but not limited to replacing all vinyl composition tile (VCT) floors with stained and polished concrete; painting the interior of the entire building; replacing ceiling system, windows and doors; construct concrete parking area expansion; replacing site parking light poles and fixtures. Contractor will be responsible for removing, storing and reinstalling all furniture, all hangings, file cabinets etc. Contractor is responsible for working with the COH security company directly to schedule security services for all work at the building that falls outside of normal security coverage hours. This renovation will ensure that the facility is brought into compliance with all current ADA compliance requirements. Perform all necessary investigation, design and improvements necessary to bring the entire HVAC and controls system up to current standards and also provide a certified test, adjust and balancing. The Design/Build Team (D/B) shall comply with Houston Health Department's (HHD) Design Guidelines, which identify the individual spaces required, with detailed requirements of each space.

2.2 PROPOSED PROJECT SCHEDULE

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

Design-Build Services Procurement	September 2016 – January 2017
Design Phase	February 2017 – October 2017
Permit and GMP Phase	November 2017 – December 2017
Construction Phase	January 2018 – December 2018
Warranty Phase	January 2019 – January 2020

2.3 CONSTRUCTION DELIVERY METHOD

The project will utilize the **Design-Build** delivery method.

2.4 DESIGN-BUILD SERVICES

- Assess and verify existing conditions and site conditions
- Review and verify design standard requirements and/or program
- Survey existing facilities to aid in establishing design criteria
- Design to a **Certified Level** in the Leadership in Energy & Environmental Design (LEED) Green Building Rating System™ of the US Green Building Council (USGBC)
- Coordinate and document for LEED Certification
- Provide specifications for furniture, fixtures and all equipment (FF&E), as required
- Design and specify security systems, in coordination with GSD Security Division
- Design and specify technology systems per City of Houston HITS department requirements
- Provide computer-aided design and drafting (CADD) documentation
- Arrange, conduct, and record Design Phase meetings, including Client requested and/or special meetings
- Coordinate with the Civic Art program, if needed
- Provide construction cost estimates at various milestones during the design process
- Provide value engineering, as needed
- Actively participate in constructability reviews
- Prepare bid documents
- Provide permitting services
- Actively assist with procurement process, including bidding activities
- Perform construction phase services, including construction administration
- Provide commissioning activities
- Assist in warranty reviews and meetings, and project closeout activities

2.5 PRE-CONSTRUCTION PHASE

The pre-construction services shall include: pre-design, schematic design, design development, and construction documents, cost estimating, constructability review, value engineering, and additional pre-construction services authorized by the City.

Programming & Pre-Design

This project will involve pre-design and programming services, which will include an analysis of the existing Northside Health Center. The assessment will be based on the Facility Condition Assessment (FCA), site visits, and the Houston Health Department (HHD) goals and objectives. Cost projections associated with the renovation of the Northside Health Center Building, as well as an executive summary with recommended implementation strategies, will be included in the pre-design services. The Design/Build Team will deliver a detailed scope of work based on the assessment, prepare budget estimates, develop description of proposed building systems, and issue a report.

Schematic Design

The schematic design will use the assessment and detailed scope of work to develop the required functions for the project. It should include estimated square footage of each usage type and any elements that achieve the project goals. The Design-Build Team will provide a cost estimate at the end of schematic design to establish a baseline budget. The baseline budget will be reviewed with the City and verified with HHD project requirements. The Design-Build Team will track changes to the baseline budget throughout the design process. The Design/Build Team will alert the City immediately of any impact to a baseline budget. Budget costs are estimated on assemblies per the specification sections and not on gross building square footage. Deliverables for approval are: schematic design drawings outline specifications using the CSI Master Format, cost estimate, project schedule.

Design Development

Design development is a continuation and refinement of the approved schematic design including, but not limited to: construction assemblies, expanded specifications, expanded cost estimate. This phase lays out mechanical, electrical, plumbing, structural, and architectural details. This phase will produce a detailed estimate that should fall within 5% of the final GMP. Deliverables are; design development drawings, detail development for all assemblies, developed specifications, cost estimate and project schedule.

Construction Documents

Construction documents involve the development of contract package. On approval of the design development package, the Design-Build Team will complete construction drawings, performance and specifications manual, and final details for all assemblies. In addition, this phase will include a detailed master schedule and the final cost estimate for GMP purpose.

All permit discrepancies, HHD and GSD review comments must be resolved and corrections incorporated into the final contract documents before submission of a complete construction documents package.

The Design-Build Team shall solicit bids, prepare and submit a Guaranteed Maximum Price Proposal to the City.

2.6 CONSTRUCTION PHASE

Pre-Construction Phase services may overlap Construction Phase services. Design-Build Team shall furnish administration and management services necessary to perform the work. Design/Build Team shall construct work in accordance with the contract documents and General Conditions. Refer to attached Document 6 - Contract Form for additional information.



REQUEST FOR QUALIFICATIONS FOR DESIGN-BUILD SERVICES

Project Name: Northside Health Center Renovation

3 – EVALUATION PROCESS AND CRITERIA

3.1 EVALUATION PROCESS

The Respondents will be evaluated as follows:

Step One: Statement of Qualifications – An evaluation committee will review and evaluate Respondent’s SOQ, based on the evaluation criteria set out below. Respondents can receive up to **200** points for the SOQ. A maximum of five firms will be short-listed to participate in Step Two.

Step Two: Interviews/Presentations – Short-listed Respondents will be required to participate in an interview/presentation. The interview/presentation will be evaluated based on evaluation criteria set out below. The Respondent can receive up to **200** points for the interview/presentation.

The apparent successful Respondent will be the Respondent that is most qualified based on the combined SOQ and interview/presentation scores.

3.2 EVALUATION CRITERIA FOR STEP ONE

The SOQs will be evaluated as follows:

0. SOQ completed in accordance with instructions. (8 Points Maximum)
1. Respondent’s Experience (66 Points Maximum) – reference Sections 1.1 and 1.2 of SOQ
2. Proposed Key Personnel’s Experience (66 Points Maximum) – reference Sections 2.1 – 2.9 of SOQ
3. Proposed Key Personnel’s Office Locations (8 Points Maximum) – reference Section 3.1 of SOQ
4. Design Implementation Plan (24 Points Maximum) – reference Sections 4.1 of SOQ
5. Proposed Design Team Sub-Consultants Experience (28 Points Maximum) – reference Sections 5.1 - 5.3 of SOQ.

3.3 EVALUATION CRITERIA FOR STEP TWO

The Proposed Key Personnel should make a twenty minute presentation covering the following topics:

- Introduction
- Highlight relevant project experience of Proposed Key Personnel and/or Design-Build Team, including work with this Construction Delivery Method
- Ideas Related to this Project

Following the presentation, the Evaluation Committee Members will ask questions. The Interviews/Presentations will be scored as follows:

1. Overall Presentation (50 points maximum)
2. Key Personnel and Design-Build Team Qualifications and Experience (50 points maximum)
3. Approach to this project (100 points maximum)

REQUEST FOR OF QUALIFICATIONS (RFQ)

FOR DESIGN-BUILD SERVICES

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4 - STANDARD FORM STATEMENT OF QUALIFICATIONS FOR DESIGN-BUILD SERVICES

SOQ's are to be bound with clearly marked tabs that correspond to the sections of the SOQ. Total pages are limited by the SOQ form and additional pages set out in SOQ instructions. Other pages should not be included.

0.1 RESPONDENT'S GENERAL INFORMATION

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

REQUEST FOR OF QUALIFICATIONS (RFQ)

FOR DESIGN-BUILD SERVICES

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0.2 ADDITIONAL FIRM GENERAL INFORMATION. *Provide the following information for the firm providing Design-Build Services. 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:			

REQUEST FOR OF QUALIFICATIONS (RFQ)

FOR DESIGN-BUILD SERVICES

Project Name: Northside Health Center Renovation

1.1 RESPONDENT'S DESIGN TEAM EXPERIENCE. *Respondents should select three representative design projects of a similar size scope. Recent projects are preferable. The response boxes can be expanded to fit more information however; original overall table must remain the same size.*

Architectural Services Firm Name:			
I. Project Name:			
Project Location:			
Year Completed:		LEED Certification Level:	
Construction Costs:			
Contractor:			
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Services Provided:			
Names of Proposed Key Personnel that worked on this project (if any):			
Additional Information:			

Attach up to two pages of photographs behind this sheet.

REQUEST FOR OF QUALIFICATIONS (RFQ)

FOR DESIGN-BUILD SERVICES

Project Name: Northside Health Center Renovation

Architectural Services Firm Name:			
II. Project Name:			
Project Location:			
Year Completed:		LEED Certification Level:	
Construction Costs:			
Contractor:			
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Services Provided:			
Names of Proposed Key Personnel that worked on this project (if any):			
Additional Information:			
<i>Attach up to two pages of photographs behind this sheet.</i>			
Architectural Services Firm Name:			

REQUEST FOR OF QUALIFICATIONS (RFQ)

FOR DESIGN-BUILD SERVICES

Project Name: Northside Health Center Renovation

III. Project Name:			
Project Location:			
Year Completed:		LEED Certification Level:	
Construction Costs:			
Contractor:			
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Services Provided:			
Names of Proposed Key Personnel that worked on this project (if any):			
Additional Information:			
<i>Attach up to two pages of photographs behind this sheet.</i>			

REQUEST FOR OF QUALIFICATIONS (RFQ)

FOR DESIGN-BUILD SERVICES

Project Name: Northside Health Center Renovation

1.2 RESPONDENT'S CONSTRUCTION TEAM EXPERIENCE. *Respondents should select three representative construction projects of a similar size and scope. Recent projects are preferable. The response boxes can be expanded to fit more information however; original overall table must remain the same size.*

Construction Firm Name:			
I. Project Name:			
Project Location:			
Year Completed:		LEED Certification Level:	
Construction Costs:			
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Architectural Firm:			
Names of Proposed Key Personnel that worked on this project (if any):			
Additional Information:			
<i>Attach up to two pages of photographs behind this sheet.</i>			

REQUEST FOR OF QUALIFICATIONS (RFQ)

FOR DESIGN-BUILD SERVICES

Project Name: Northside Health Center Renovation

Construction Firm Name:			
II. Project Name:			
Project Location:			
Year Completed:		LEED Certification Level:	
Construction Costs:			
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Architectural Firm:			
Names of Proposed Key Personnel that worked on this project (if any):			
Additional Information:			

Attach up to two pages of photographs behind this sheet.

REQUEST FOR OF QUALIFICATIONS (RFQ)

FOR DESIGN-BUILD SERVICES

Project Name: Northside Health Center Renovation

Construction Firm Name:			
III. Project Name:			
Project Location:			
Year Completed:		LEED Certification Level:	
Construction Costs:			
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Architectural Firm:			
Names of Proposed Key Personnel that worked on this project (if any):			
Additional Information:			

Attach up to two pages of photographs behind this sheet.

REQUEST FOR OF QUALIFICATIONS (RFQ)

FOR DESIGN-BUILD SERVICES

Project Name: Northside Health Center Renovation

2.1 PROPOSED DESIGN TEAM KEY PERSONNEL. *List the Design Team personnel proposed for this project. Include the Project Manager, Project Architect/Project Designer,(if applicable), and Construction Administrator.*

SOQ Project Role	Personnel Name	Corporate Title	Active Registrations/Certifications	Years of Experience

REQUEST FOR OF QUALIFICATIONS (RFQ)

FOR DESIGN-BUILD SERVICES

Project Name: Northside Health Center Renovation

2.2 EXPERIENCE OF DESIGN TEAM PROJECT MANAGER. *List up to 10 projects of a similar size and scope.*

Design Team Project Manager:				
Project Name and City:	Client	Construction Cost	Project Similarities	Project Role

REQUEST FOR OF QUALIFICATIONS (RFQ)

FOR DESIGN-BUILD SERVICES

Project Name: Northside Health Center Renovation

2.3 EXPERIENCE OF DESIGN TEAM PROJECT ARCHITECT/PROJECT MANAGER. *Respondent should select three representative projects of a similar size and scope. These projects do not have to match projects in Section 1.1 Respondent's Design Team Experience. Recent projects are preferable. If the Respondent proposes a Project Designer, in addition to the Project Architect/Project Manager, insert three additional charts for the Project Designer's experience.*

Design Project Architect/Project Manager:			
I. Project Name:			
Project Location:			
Year Completed:		LEED Certification Level:	
Construction Costs:			
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Project Role:			
Additional Information:			
<i>Attach up to two pages of photographs behind this sheet.</i>			

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Design Project Architect/Project Manager:			
II. Project Name:			
Project Location:			
Year Completed:		LEED Certification Level:	
Construction Costs:			
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Project Role:			
Additional Information:			

Attach up to two pages of photographs behind this sheet.

REQUEST FOR OF QUALIFICATIONS (RFQ)

FOR DESIGN-BUILD SERVICES

Project Name: Northside Health Center Renovation

Design Project Architect/Project Manager:			
III. Project Name:			
Project Location:			
Year Completed:		LEED Certification Level:	
Construction Costs:			
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Project Role:			
Additional Information:			

Attach up to two pages of photographs behind this sheet.

REQUEST FOR OF QUALIFICATIONS (RFQ)

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2.4 EXPERIENCE OF DESIGN PROJECT CONSTRUCTION ADMINISTRATOR. *List up to 10 projects of a similar size and scope.*

Design Project Construction Administrator				
Project Name and City:	Client	Construction Cost	Project Similarities	Project Role

REQUEST FOR OF QUALIFICATIONS (RFQ)

FOR DESIGN-BUILD SERVICES

Project Name: Northside Health Center Renovation

2.5 PROPOSED CONSTRUCTION TEAM KEY PERSONNEL. *List the Construction Team personnel proposed for this project. Include the Project Manager, Project Estimator, and Superintendent.*

SOQ Project Role	Personnel Name	Corporate Title	Active Registrations/Certifications	Years of Experience

REQUEST FOR OF QUALIFICATIONS (RFQ)

FOR DESIGN-BUILD SERVICES

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2.6 EXPERIENCE OF CONSTRUCTION PROJECT MANAGER *List up to 10 projects of a similar size and scope.*

Construction Project Manager:				
Project Name and City:	Client	Construction Cost	Project Similarities	Project Role

REQUEST FOR OF QUALIFICATIONS (RFQ)

FOR DESIGN-BUILD SERVICES

Project Name: Northside Health Center Renovation

2.7 EXPERIENCE OF CONSTRUCTION PROJECT ESTIMATOR *List up to 10 projects of a similar size and scope.*

Construction Project Estimator:				
Project Name and City:	Client	Construction Cost	Project Similarities	Project Role

REQUEST FOR OF QUALIFICATIONS (RFQ)

FOR DESIGN-BUILD SERVICES

Project Name: Northside Health Center Renovation

2.8 EXPERIENCE OF CONSTRUCTION SUPERINTENDENT *List up to 10 projects of a similar size and scope.*

Construction Project Superintendent:				
Project Name and City:	Client	Construction Cost	Project Similarities	Project Role

REQUEST FOR OF QUALIFICATIONS (RFQ)

FOR DESIGN-BUILD SERVICES

Project Name: Northside Health Center Renovation

3.1 RESPONDENT’S KEY PERSONEL OFFICE LOCATIONS. *List office location for design and construction team key personnel. Local offices are preferred.*

SOQ Project Role	Personnel Name	Corporate Title	Office Location	City

REQUEST FOR OF QUALIFICATIONS (RFQ)

FOR DESIGN-BUILD SERVICES

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4.1 DESIGN IMPLEMENTATION PLAN. *Provide a brief narrative describing;*

- *Document quality assurance/quality control for the entire set of drawings and specifications. Describe the process used to ensure coordination of disciplines, details, and specifications.*
- *Describe process for ensuring that all COH and constructability comments are addressed during design.*
- *Collaboration between design and construction team. Describe collaborative process during design. Address material selections for cost and availability, and project estimates.*

One page is included below. Respondent may insert up to four additional pages. A maximum of five pages is allowed.

REQUEST FOR OF QUALIFICATIONS (RFQ)
FOR DESIGN-BUILD SERVICES
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A large, empty rectangular box with a black border, intended for the contractor to provide their Statement of Qualifications. The box is currently blank.

REQUEST FOR OF QUALIFICATIONS (RFQ)

FOR DESIGN-BUILD SERVICES

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5.1 PROPOSED DESIGN TEAM SUB-CONSULTANTS. *Provide information for the Sub-Consultants; MEP, and Civil. Local firms are preferred.*

Sub-Consultant's Legal Name	Office Location (City)	Responsibilities and Scope of Work	Approximate % of design work on this project	Indicate Yes or No if Worked with Lead Architect	Indicate MBE or WBE (if applicable)

5.2 MWBE COMPLIANCE PLAN. *Indicate intent to meet 24% goal on the Design and 28% on Construction. If "No" is indicated below, SOQ will not be evaluated. Respondent must demonstrate in Section 5.1 how it intent to meet the goal.*

Project Goal 24/28 Participation met as indicated above:	<input type="checkbox"/> Yes	<input type="checkbox"/> No
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REQUEST FOR OF QUALIFICATIONS (RFQ)

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5.3 DESIGN SUB-CONSULTANT’S EXPERIENCE. *List up to 5 projects for each Sub-Consultant that highlights projects of a similar size and scope.*

Project Sub-Consultant:					
Project Name and City:	Client	Construction Cost	Year Designed	Project Similarities	Project Role

Project Sub-Consultant:					
Project Name and City:	Client	Construction Cost	Year Designed	Project Similarities	Past Project Role

REQUEST FOR OF QUALIFICATIONS (RFQ)

FOR DESIGN-BUILD SERVICES

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6.1 NOT APPLICABLE FOR THIS PROJECT

7.1 REQUIRED FORMS. *All Respondents must include with the SOQ the following forms.*

- Ownership Information Form,
<http://purchasing.houstontx.gov/forms.shtml>
- POP1 - Pay or Play Acknowledgement Form
<http://www.houstontx.gov/obo/payorplay/pop1.pdf>



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5 – TERMS AND CONDITIONS

5.1 NO CONTACT PERIOD AND GRATUITIES

Neither Respondents nor any person acting on Respondent'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 1.4 of this RFQ. Upon issuance of the solicitation, through the pre-award phase and up to the award, aside from Respondent'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 Respondents 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 Respondent. However, nothing in this paragraph shall prevent a Respondent 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.

5.2 FALSE INFORMATION

Respondents 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. Any false or misleading information in these documents would, in effect, render the entire document suspect and therefore useless.

5.3 STANDARD CITY CONTRACT

The Architect will be required to execute a standard City of Houston professional services agreement. A copy of this document is included in this RFQ packet.

5.4 CITY POLICIES & ORDINANCES

Respondents 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.

1. Equal Employment Opportunity
<https://purchasing.houstontx.gov/forms.html>
2. MWBE Goal of 24% Design/28% Construction Participation
<https://houston.mwdbe.com>
3. City of Houston Ownership Information Form
<http://purchasing.houstontx.gov/forms.html>
4. Mayor's Drug Detection and Deterrence Policy and Procedures
<http://www.houstontx.gov/execorders/1-31.pdf>
5. Pay or Play (POP) Program
<http://www.houstontx.gov/obo/popforms.html>

5.5 CONTRACT NEGOTIATIONS

This RFQ is not to be construed as a contract or as a commitment of any kind. If this RFQ results in a contract offered by the City; a specific scope of work, fees, and other contractual matters will be determined during contract negotiations. To ensure that the appropriate staff is assigned to the project the City may require the inclusion of a "key persons clause" a part of the contract negotiations.

5.6 COST OF SOQ

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

5.7 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. Respondents should be aware that at the completion of the selection process, the contents of their SOQs 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 SOQ.

5.8 PROTEST

1. 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>

5.9 The City of Houston reserves the right to:

1. Evaluate the qualifications submitted;
2. Waive any irregularities;
3. Request Respondents submit more detailed information;
4. Accept any submittal or portion of a submittal; and/or
5. Reject any or all Respondent’s submitting qualifications.

DESIGN BUILD AGREEMENT

BETWEEN

THE CITY OF HOUSTON

**Northside Health Center Renovation
WBS No. H-000010-0001-3**

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EXHIBITS

- A. Guaranteed Maximum Price Proposal
- B. Direct Salaries Expense Hourly Billing Rates
- C. General Conditions of the Contract
- D. General Requirements
- E. Other Documents
- F. Non-MWBE Submittal Documents
- G. MWBE, MBE and SBE Submittal Documents
- H. *Intentionally Omitted*
- I. Project Schedule

**DESIGN BUILD AGREEMENT
BETWEEN CITY AND DESIGN BUILD CONTRACTOR**

This Design Build Agreement ("Agreement") is entered into and effective as of the Effective Date, by and between the **CITY OF HOUSTON, TEXAS**, a home-rule city (the "City") and _____ ("Design Build Contractor"), a corporation authorized to do business in the State of Texas (also referred to as "Party" individually or "Parties" collectively).

The City is: The City of Houston, Texas

Address for Written Notice: 900 Bagby Street, 2nd Floor, Houston, TX 77002

Design Build Contractor, also referred to as "Contractor" is _____.

Address for Written Notice: _____

E-mail address: _____

The Project is: Northside Health Center Renovation

Project Location: 8504 Schuller Rd
Houston, Texas 77093

Project No: WBS No. H-000010-0001-3

City Engineer is: Humberto Bautista, P.E.

Address for Written Notice: 900 Bagby Street, 2nd Floor, Houston, TX 77002

The Project Architect is: _____.

BACKGROUND

WHEREAS, the City issued a Request for Qualifications ("RFQ") on _____, for a qualified design-build team interested in providing the design and construction services required at 8504 Schuller Rd Houston, Texas 77093;

WHEREAS, the Design Build Contractor teamed up with _____ ("Project Architects") and responded to the RFQ;

WHEREAS, the City has selected Design Build Contractor and its Architect to perform the Work as defined in this Agreement;

NOW THEREFORE, for and in consideration of the mutual covenants, agreements, and benefits to the Parties herein named, it is agreed as follows:

ARTICLE 1 SCOPE OF WORK

In accordance with the Agreement, as described below, Design Build Contractor shall design, engineer, procure, construct, deliver, erect, commission, start-up, and test the complete work required under the Contract Documents for the Project 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 Documents and all things necessary to produce the stated result even though no mention thereof is made in the Contract Documents.

ARTICLE 2 CONTRACT DOCUMENTS

2.1 The Agreement consists of the following documents (the "Contract Documents"). The Contract Documents are incorporated into this Agreement for all purposes.

- 2.1.1 This document itself (the "Agreement");
- 2.1.2 Exhibit "A" – Guaranteed Maximum Price (GMP)
- 2.1.3 Exhibit "B" - Direct Salary Expense (DSE) & Hourly Billing Rates for Design Build Team.
- 2.1.4 Exhibit "C" – General Conditions.
Document 00700 - General Conditions of the Contract ("General Conditions");
- 2.1.5 Exhibit "D" - General Requirements. The following documents are incorporated herein:
 - Schedule 01145 Use of Premises
 - Schedule 01255 Change Order Procedures
 - Schedule 01292 Schedule of Values
 - Schedule 01312 Coordination and Meetings
 - Schedule 01325 Construction Schedule
 - Schedule 01330 Submittal Procedures
 - Schedule 01340 Shop Drawings, Product Data, and Samples
 - Schedule 01422 Reference Standards
 - Schedule 01450 Contractor's QC
 - Schedule 01454 Testing Lab Services
 - Schedule 01502 Mobilization
 - Schedule 01504 Temporary Facilities and Controls
 - Schedule 01610 Basic Product Requirements
 - Schedule 01630 Product Substitution Procedures
 - Schedule 01731 Cutting and Patching
 - Schedule 01755 Starting Systems
 - Schedule 01770 Closeout Procedures
 - Schedule 01782 Operations and Maintenance
 - Schedule 01785 Project Record Document
- 2.1.6 Exhibit "E" - Other Documents. The following documents are incorporated herein:
 - Document 00501 – Resolution of Corporation,
 - Document 00620 – Affidavit of Insurance,
 - Document 00624 – Affidavit of Compliance with Affirmative Action Program,
 - Document 00805 –Equal Employment Opportunity Program Requirements,.
 - Document 00820 – Wage Rates for Engineering Construction,
 - Document 00821 – Wage Rates for Building Construction, and
 - Document 00840 – POP 1: Pay or Play Program Requirements.

- 2.1.7 Exhibit “F” – Non-MWBE Submittal Documents. The following documents are incorporated here:
- Document 00601 – Drug Policy Compliance Agreement,
 - Document 00602 – Contractors Drug-free Workplace Policy,
 - Document 00604 – History of OSHA Actions and List of On-the-Job Injuries,
 - Document 00605 – List of Safety Impact Positions,
 - Document 00610 – Performance Bond,
 - Document 00611 – Statutory Payment Bond,
 - Document 00612 – One-year maintenance Bond,
 - Document 00620 – Affidavit of Insurance (with Certificate of Insurance and endorsements attached),
 - Document 00622 – Name and Qualifications of Proposed Superintendent (Design Build Contractor creates this document),
 - Document 00624 – Affidavit of Compliance with Affirmative Action Program,
 - Document 00630 – POP 2: Certification of Agreement to Comply with Pay or Play Program,
 - Document 00631 – POP 3: List of Participating Subcontractors, and
 - Document 00808 –Minority and Woman-Owned Business Enterprises (MWBE), Persons with Disabilities Business Enterprise (PDBE), and Small Business Enterprise (SBE) Program.
- 2.1.8 Exhibit “G” – MWBE, MBE, and SBE Submittal Documents. The following documents are incorporated herein:
- Document 00600 – List of Proposed Subcontractors and Suppliers, and
 - Document 00805 – Equal Employment Opportunity Program Requirements.
- 2.1.9 *Intentionally Omitted.*
- 2.1.10 Exhibit “I” – Project Schedule
- 2.1.11 *Intentionally Omitted.*
- 2.1.12 Guaranteed Maximum Price Proposal agreed upon by the Director and Design Build Contractor;
- 2.1.13 Construction Documents approved by the Director; and
- 2.1.14 Modifications.

ARTICLE 3 DEFINITIONS

As used in this Agreement, the terms, words, and phrases are defined in this Article 3. If words, terms, or phrases are not defined in Article 3, they shall have the meanings given in the General Conditions. The meanings given to words, terms, and phrases in this Agreement 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.

3.1 **“Additional Pre-Construction Phase Services”** means the services set out in Section 5.10.

3.2 **“Agreement”** shall have the meaning assigned to it in the first paragraph of this Agreement and consist of the Contract Document set forth in Section 2.1. The Agreement is referred to in the General Conditions as “Contract”.

3.3 **“Applicable Law”** means 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 Documents, and each other document delivered hereunder or in connection herewith.

3.4 “**Basic Pre-Construction Phase Services**” means the services set out in Sections 5.2 through 5.9.

3.5 Intentionally omitted

3.6 “**City Engineer**” means the City Engineer of the General Services Department or his written designee, as may be modified in writing by the City Engineer from time to time.

3.7 “**Construction Contract Administration**” or “**CCA**” means those duties and services set forth in Section 7.3.

3.8 “**Construction Contract Administration Fee**” means the fee set out in Section 12.7.3.

3.9 “**Construction Cost Limitation**” or “**CCL**” means the maximum monetary amount payable to Design Build Contractor for all Construction Phase Services, materials, labor and other work required for completion of the Work in accordance with the Contract Documents. The CCL may be adjusted by agreement of the Director and Design Build Contractor for changes in the scope of the Project before acceptance of the Guaranteed Maximum Price Proposal. Each state of construction may have a separate CCL for such items related to that stage, the total of which shall not exceed the amount in Section 12.3. The CCL does not include Design Build Contractor’s Pre-Construction Phase Services Fee, City’s Construction Contingency, or Allowances.

3.10 “**Construction Documents**” means those portions of the Contract Documents prepared by or for Design Build Contractor consisting of Drawings, diagrams, illustrations, schedules, reports, charts, analysis, maps, models, Specifications, the original reproducible of all Drawings and other submittal documents or other data that show the scope, extent, and character of the Work to be used for construction and further described in Section 5.6.

3.11 “**Construction Phase Fee**” means the fee set out in Section 12.7.2.

3.12 “**Construction Phase Services**” or “**Construction Phase**” means the implementation and execution of the construction work required by the Contract Documents. Construction Phase Services or Construction Phase includes Construction Contract Administration. The Construction Phase of the Project may be divided into different stages with each stage having different start and completion dates.

3.13 “**Contract Sum**” shall have the meaning assigned to it in Section 12.1.2.

3.14 “**CPM Milestone Schedule**” means the schedule described in Section 4.3.

3.15 “**Cost of the Work**” means the costs defined in Section 12.8.

3.16 “**Design Build Contractor’s Contingency**” means the amount defined in Section 10.1.

3.17 “**Design Consultant**” means any licensed professionals or firms engaged by City as an independent consultant(s) for the Project.

3.18 *Intentionally omitted.*

3.19 “**Design Development Documents**” means those documents described in Section 5.5.1 of this Agreement.

3.20 “**Direct Salary Expense**” or “**DSE**” is defined as the direct salary rates of Design Build Contractor’s and Project Architect’s employees and consultants directly engaged on the Project, 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. For the purpose of this Agreement, the cost of the contributions and benefits is established as equal to ___ of direct salaries. Direct salary rates in effect for the duration of this Agreement 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. .

3.21 “**Director**” means the Director of the General Services Department (“GSD”) or his written designee, as may be modified in writing by the GSD Director from time to time.

3.22 “**Effective Date**” shall be the date the City Controller Countersign’s this Agreement.

3.23 “**Estimated Construction Cost**” or “**ECC**” means the total estimated cost of all elements of the Project that are the responsibility of Design Build Contractor, including, without limitation, all alternates, Allowances and contingencies designed and specified by Design Build Contractor. Estimated Construction Cost does not include Pre-Construction Phase Services Fees, the cost of the land, rights-of-way, or any costs that are the responsibility of City.

3.24 “**General Conditions**” means the General Conditions of the Contract identified in Section 2.1 which may include terms and conditions that are substantially the same as those found in this Agreement and therefore shall be read together and interpreted by City and Design Build Contractor to eliminate conflict between the two. However, should a conflict exist, after City Engineer and Design Build Contractor have used best efforts to reconcile the conflict, the provision most favorable to the City shall prevail.

3.25 “**Governmental Authority**” means 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.

3.26 “**Guaranteed Maximum Price**” or “**GMP**” means the amount in the GMP Proposal accepted by the City Engineer as the maximum cost to City for construction of the Work in accordance with the Contract Documents.

3.27 “**Guaranteed Maximum Price Proposal**” or “**GMP Proposal**” means the proposal submitted by Design Build Contractor to the City Engineer, the requirements of which are set forth in Article 6 of this Agreement.

3.28 “**Other Documents**” means the documents identified in Exhibit E and Section 2.16.

3.29 “**Pre-Construction Phase Services**” means all professional services required to fulfill the Basic Pre-Construction Phase and Additional Pre-Construction Phase Services, including, but not limited to, pre-design, Schematic Design, Design Development, and Construction Documents and services and Work described in Article 5, whether performed before or after construction actually begins.

- 3.30 “**Pre-Construction Phase Services Fee**” means the fees set out in Section 12.4.
- 3.31 “**Program**” means all those quantitative and qualitative requirements for the Project that must be met or satisfied by the design and construction of the Project.
- 3.32 “**Project**” is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by City or by separate contractors.
- 3.33 “**Project Architect**” means the registered architect employed by Design Build Contractor to perform all or part of the Pre-Construction Phase Services or the Construction Contract Administration Services in accordance with the Contract Documents. The Project Architect and its professional consultants are required to be qualified to perform the Pre-Construction Phase Services and the Construction Contract Administration Services, and be licensed in the State of Texas in their respective professions.
- 3.34 “**Project Schedule**” means a schedule for Pre-Construction and Construction Phase Services as defined in Section 01325 of the Specifications or otherwise approved by the City Engineer.
- 3.35 “**Project Team**” means City, Design Build Contractor, Project Architect, 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 City Engineer and may be modified from time-to-time by the City Engineer.
- 3.36 “**Proprietary Rights**” shall have the meaning assigned to it in Section 5.11.1.
- 3.37 “**Reimbursable Expenses**” mean those expenses set forth in Section 12.6.
- 3.38 “**Schematic Design Phase**” means the preparation of the Schematic Design Documents as set forth in Section 5.4.
- 3.39 “**Schematic Design Documents**” means Drawings and Other Documents illustrating the scale and relationship of the Project components and further described in Section 5.4.
- 3.40 “**Total Project Cost**” or “**TPC**” means the total budget established for the Project by the City Engineer at the end of the design development phase (subject to subsequent modification by the City Engineer), which includes but is not limited to Pre-Construction Phase Services Fee, Construction Phase Services Fee, the Cost of the Work, and Allowances.
- 3.41 “**TPDES**” means Texas Pollution Discharge Elimination System.
- 3.42 “**Work**” means the provision of all services, labor, materials, supplies, and equipment, that are required, or reasonably inferable, to complete the Project in accordance with the requirements of the Contract Documents. 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.

ARTICLE 4

DESIGN BUILD CONTRACTOR’S GENERAL RESPONSIBILITIES

- 4.1 Design Build Contractor shall perform all services and any other Contract Documents requirements, as well as those services and any other things reasonably inferable from the Contract Documents.
- 4.2 Design Build Contractor shall perform the Work to further the interests of City and the Project.

4.3 Within 7 days of receipt of the Notice to Proceed with Pre-Construction Phase Services, Design Build Contractor shall submit for the City Engineer's review and acceptance a Critical Path Method (CPM) Milestone Schedule to clearly delineate the Pre-Construction Phase Services set forth in Section 5 herein. The CPM Milestone Schedule shall encompass the entire Project duration, including:

- .1 performance of Pre-Construction Phase Services and the Construction Phase Services with limited detail for Construction Phase Services and
- .2 with sufficient total Project float to allow minimum Construction Phase float as specified.

In accordance with Section 6.8, Design Build Contractor shall provide a schedule with details meeting the requirements of Paragraph 3.15 of the General Conditions and Section 01325 of the Specifications for the entire Work.

4.4 The CPM Milestone Schedule for the Pre-Construction Phase of the Project shall include 14 days at the end of each phase for the City Engineer's review, approval of design drawings and specifications and 63 days for approval of authorities having jurisdiction over the Project.

4.5 Upon acceptance of the CPM Milestone Schedule, it shall become the baseline for evaluating Design Build Contractor's performance of the Work. Design Build Contractor shall monitor the progress of the Work in relation to the CPM Milestone Schedule and provide the City Engineer with monthly updates and status reports as outlined in the Specifications. Modifications to the CPM Milestone Schedule shall not be effective or binding upon City without written consent from the City Engineer.

4.6 Design Build Contractor shall designate a representative in writing who is authorized to act on Design Build Contractor's behalf regarding the Project and who is also authorized to bind Design Build Contractor. Design Build Contractor shall not replace such representative without 30 days advance written notice to City Engineer.

4.7 Design Build Contractor shall establish and implement procedures for communication and coordination among the Project Team, Subcontractors, separate contractors, and all other entities performing the Work.

4.8 Design Build Contractor 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.

4.9 If the City Engineer elects to "fast-track" or develop the Project in multiple stages, Design Build Contractor shall organize and perform its services as appropriate to each stage. In such circumstances, the City Engineer may elect to have each stage of the Project have a unique schedule for completion and a specific Construction Cost Limitation (CCL).

4.10 For those portions of the Work that Design Build Contractor will not self-perform, Design Build Contractor shall have such Work performed under written subcontracts or by other appropriate written agreements. Design Build Contractor shall identify all Subcontractors Suppliers, and other personnel who will perform Work on the Project, if different from those companies set forth in Section 4.24. After execution of the Agreement by City, Design Build Contractor shall not remove, replace, or substitute such persons or entities as assigned to the Project, except with the City Engineer's written consent, after which Design Build Contractor shall promptly update its list of Subcontractors. The City Engineer's written consent may not be unreasonably withheld. Design Build Contractor shall not subcontract or enter into any

agreement to perform Work on the Project with any entity to whom the City Engineer has a reasonable objection.

- 4.10.1 For any Work that Design Build Contractor proposes to perform with its own labor forces, Design Build Contractor shall first obtain the approval of the City Engineer. The City Engineer may, at its option, require Design Build Contractor to submit a bid for such Work on a competitive lump sum or unit price bid basis and obtain competitive lump sum bids or unit price bids from multiple proposed Subcontractors for such Work. If other bids are lower than Design Build Contractor's, the City Engineer may at its option require that Design Build Contractor award a subcontract for such Work to a Subcontractor. Except as may be otherwise provided, the City Engineer may require Design Build Contractor to obtain multiple bids for any portions of the Work and may determine which portions of the Work will be performed by Subcontractors.
- 4.10.2 Design Build Contractor shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. The City Engineer may reasonably object to the Design Build Contractor's selection of any Subcontractor, provided that the Contract Price and/or Project Schedule shall be adjusted to the extent that the City's decision impacts Design Build Contractor's cost and/or time of performance.
- 4.10.3 If City Engineer requires, Design Build Contractor shall obtain bids and proposals from potential Subcontractors and Suppliers and shall submit to the City Engineer copies of all bids and other proposals. Design Build Contractor shall advise City Engineer the name of Subcontractors it proposes to use if other than those set forth in Section 4.24. The City Engineer will determine with the advice of Design Build Contractor which bids will be accepted. Design Build Contractor shall not contract with anyone if Design Build Contractor has not first given notice to the City Engineer or if the City Engineer has an objection to that person or entity.
- 4.10.4 Design Build Contractor shall coordinate the activities of all Subcontractors. If the City performs other work on the Project or at the Site with separate contractors under the City's control, the Design Build Contractor agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without disruption.
- 4.10.5 City Engineer may require Design Build Contractor to change any Subcontractor previously approved.
- 4.10.6 If a Guaranteed Maximum Price has been established and a specific bidder, among those whose bids are delivered by Design Build Contractor to City (1) is recommended to City Engineer by Design Build Contractor; (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, but City Engineer requires that another bid be accepted or if City Engineer requires Design Build Contractor to change any Subcontractor previously approved then Design Build Contractor may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the Subcontractor recommended to City Engineer by Design Build Contractor or previously approved by City Engineer and the amount of the Subcontract or other agreement ultimately signed with the Subcontractor designated by City Engineer.

- 4.10.7 Subcontracts or other agreements shall conform to the applicable payment and other provisions of the Contract Documents, and shall not be awarded on the basis of cost plus a fee without the prior written approval of the City Engineer.
- 4.10.8 Except for the design subcontracts which do not include any construction work as approved by City Engineer, by appropriate agreement, Design Build Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to Design Build Contractor by the terms of the Contract Documents, and to assume toward Design Build Contractor all the obligations and responsibilities that Design Build Contractor, by these Documents, assumes toward City. Each subcontract agreement shall preserve and protect the rights of City under the Contract Documents 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 agreement, the benefit of all rights, remedies and redress against Design Build Contractor. Where appropriate, Design Build Contractor shall require each Subcontractor to enter into similar agreements with sub-subcontractors. Design Build Contractor shall make available to each proposed Subcontractor prior to the execution of the subcontract agreement, 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 agreement 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. Design Build Contractor shall provide City with a copy of each subcontract agreement upon request.
- 4.10.9 Each subcontract agreement is assigned by Design Build Contractor to City effective only after termination of this Agreement and effective only for those subcontract agreements that City Engineer accepts by notifying the Subcontractor in writing. Design Build Contractor agrees to execute such additional documents as City Engineer may request to confirm such assignments. Design Build Contractor shall include a provision in each subcontract agreement recognizing the rights of City pursuant to the foregoing contingent assignment. Despite such acceptance by City Engineer of any such assignment, City shall not be liable for anything under such subcontract prior to the acceptance by City Engineer of the assignment or for any liability of Design Build Contractor to the Subcontractor. Acceptance of any such assignment shall not relieve Design Build Contractor or the Subcontractor of their responsibilities and liabilities for any Work performed prior to City Engineer's acceptance of such assignment.
- 4.10.10 Nothing contained in the Contract Documents 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 City Engineer designated, required, identified or approved such Subcontractor or Supplier of any tier.
- 4.11 Design Build Contractor is an independent contractor and not an agent of City. Design Build Contractor shall be liable to City for acts and omissions of Design Build Contractor and Design Build Contractor'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 Design Build Contractor, including any design professionals and their consultants and sub-consultants of any tier.

4.12 Design Build Contractor acknowledges that City will rely upon Design Build Contractor for proper performance of this Agreement. Design Build Contractor and all of its design professionals and their consultants, the Subcontractors and Suppliers and their agents and 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 Design Build Contractor is financially sound, fully solvent, and experienced in and fully qualified to perform the type of Work to be performed under this Agreement.

4.13 Design Build Contractor represents that it has: (a) visited the Project site, (b) 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, and (c) investigated the labor situation, including the availability of all necessary labor and materials.

4.14 Design Build Contractor acknowledges its responsibility to coordinate the Work with that of any separate contractors and consultants for other work within the Project, or in the proximity of the Project. Design Build Contractor expressly agrees to schedule and coordinate its Work with such separate 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.

4.15 The design services required by this Agreement shall be performed by qualified architects, engineers, or other design professionals in accordance with all Applicable Laws, including but not limited to, Chapter 2267, Subchapter G of the Texas Government Code. The contractual obligations of such professional persons or entities are undertaken and performed in the interest of Design Build Contractor and City to fulfill its obligations under this Agreement. The architects, engineers, or other design professional(s) selected and used by Design Build Contractor shall be fully licensed in the State of Texas.

4.16 City and Design Build Contractor agree and acknowledge that City is entering into this Agreement in reliance on Design Build Contractor's represented expertise and ability to provide design-build services. Design Build Contractor 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.

4.17 Without diminishing the other obligations of Design Build Contractor, Design Build Contractor represents and agrees that it will perform its services under no circumstances with less than the usual and customary standards of Design Build Contractor's profession or business and in compliance with all Applicable Laws and in strict accordance with the Contract Documents. Design Build Contractor agrees to bear the full cost (and pay for any related damages) of correcting Design Build Contractor's Work and services (and those of its Subcontractors and Suppliers) that are not in strict conformance with the Contract Documents 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 Documents 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 City Engineer) and in strict conformance with the Contract Documents (or reasonably inferable from them), or that is otherwise defective or negligently performed.

4.18 Design Build Contractor represents and agrees that all persons connected with Design Build Contractor who are directly in charge of its services are duly registered and/or licensed under the laws, rules, and regulations of any authority having jurisdiction over the Project if registration or licensing is required.

4.19 Design Build Contractor represents and agrees to perform its services under the Contract Documents 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 Agreement.

4.20 Design Build Contractor 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 Agreement.

4.21 Design Build Contractor represents and agrees that the individual executing this Agreement on behalf of Design Build Contractor is duly authorized to act for and bind Design Build Contractor to its terms.

4.22 Except for the obligation of City to pay Design Build Contractor certain fees, costs, and expenses pursuant to this Agreement, City has no liability to Design Build Contractor or to anyone claiming through or under Design Build Contractor by reason of the execution or performance of this Agreement.

4.23 Design Build Contractor shall give all required notices and comply with all Applicable Laws. The Work, including documents that are the responsibility of Design Build Contractor, shall be in accordance with all Applicable Laws. If Design Build Contractor performs any Work that is contrary to Applicable Laws, Design Build Contractor shall investigate, correct and provide suitable remedies to such 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.

4.24 Design Build Contractor will retain the following people for the following areas of responsibility throughout the performance of this Agreement:

<u>Person</u>	<u>Area of Responsibility</u>

Design Build Contractor acknowledges that City is materially relying upon Design Build Contractor's promises to use these persons in the performance of this Agreement. Design Build Contractor shall not remove or replace these persons from these areas of responsibility without the written consent of City Engineer, which shall not be unreasonably withheld. Upon removal, any such persons shall be immediately replaced. Any replacement shall be with a person who has work experience and qualities equal to or better than the person being replaced and who is acceptable to City Engineer, evidenced by written approval by the City Engineer.

4.25 Design Build Contractor shall establish, implement, and follow a quality assurance and quality control program for the Work during all phases. Design Build Contractor shall provide City Engineer with a copy of the written quality assurance and quality control program.

4.26 In addition to the warranties and representations set out in other sections of the Contract Documents, as well as the warranties imposed upon Design Build Contractor under all Applicable Laws, Design Build Contractor warrants the following:

4.26.1 Design Build Contractor 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 Design Build Contractor has, to the knowledge of Design Build Contractor, been taken.

- 4.26.2 The execution, delivery and performance of the Contract Documents by Design Build Contractor has been duly authorized by all necessary corporate action on the part of Design Build Contractor and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Design Build Contractor or any other party to any other agreement with Design Build Contractor.
 - 4.26.3 This Agreement has been duly executed and delivered by Design Build Contractor. This Agreement constitutes the legal, valid, binding and enforceable obligation of Design Build Contractor.
 - 4.26.4 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 Design Build Contractor in connection with the execution, delivery and performance of the Contract Documents, except those that have already been obtained or which Design Build Contractor anticipates will be timely obtained in the ordinary course of performance of the Contract Documents.
 - 4.26.5 To the best of Design Build Contractor's knowledge, there are no 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 Design Build Contractor's Suppliers or subvendors or proposed Subcontractors.
 - 4.26.6 Design Build Contractor represents and warrants to City that Design Build Contractor has carefully reviewed, studied and analyzed the CPM Milestone Schedule, Specifications, any geotechnical reports related to the Project, the Project Site, Design Build Contractor's own design and manufacturing capabilities and capacities, and the likely availability of required materials for completion of the Work, and the schedules and availabilities of transportation resources to the Project Site, and that Design Build Contractor is fully capable of performing the Work and meeting the CPM Milestone Schedule for the Contract Sum in accordance the Contract Documents and for agreed compensation.
 - 4.26.7 Design Build Contractor is (or will be prior to performing any Work on the Project Site) the holder of all licenses required to permit it to operate or conduct its business now and as contemplated by the Contract Documents.
 - 4.26.8 Design Build Contractor has not engaged in any illegal collusion or conspiracy or any other illegality in connection with the selection process or performance of this Agreement.
 - 4.26.9 There are no disputes or legal proceedings between Design Build Contractor and City.
 - 4.26.10 The representations and warranties of Design Build Contractor contained in the Agreement are true and correct on the date hereof, and shall remain true and correct during the term of this Agreement.
- 4.27 Access and Coordination.
- 4.27.1 The City grants Design Build Contractor and Project Architect and their personnel, subcontractors and agents, reasonable non-exclusive access to and over and across the Project location, during the term of this Agreement for the sole purpose of performing the Work; provided that no subcontractors or agents may enter the Project location without the primary

contractor's personnel present, unless such agents or subcontractors have been previously approved by the Director. Access is limited to only those portions of the Project location in which Work is being performed. All Design Build Contractor and Project Architect personnel, subcontractors and agents may be required to receive security clearance from the City and abide by all City safety and security rules, regulations and personnel as such may be amended from time-to-time.

4.27.2 Coordination. Design Build Contractor or Project Architect shall give the Director reasonable prior notice of its need to gain access to the Project location and coordinate all access with the Director so as to minimize any impact on the City's operations and to ensure security. The Design Build Contractor and Director shall coordinate with the directors of the departments that may be impacted by the Work to minimize disruption to that department's operations during and after the Work.

4.28 MWBE, MBE and SBE Compliance

4.28.1 Contractor shall comply with the City's Minority and Women Business Enterprise ("MWBE"), Minority Business Enterprise ("MBE"), and Small Business Enterprise ("SBE") programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances. The required forms are attached as **Exhibit "G"** and incorporated here. Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with the City's Office of Business Opportunities ("OBO") and will comply with them.

4.28.1.1 During Pre-Construction Phase Services, Contractor shall make good faith efforts to award subcontracts or supply agreements in at least 24% of the value of the Pre-Construction Phase Services to MWBE firms.

4.28.1.2 During the Construction Phase Services, Contractor shall make good faith efforts to award subcontracts or supply agreements in at least 18% of the value of Construction Phase services to MBE firms and 10% of the value of Construction Phase services to WBE firms. The Contractor may use up to 4% SBE participation to meet a portion of the MBE or WBE goals set out in this Paragraph.

4.28.2 Contractor shall require written subcontracts with all MWBE, MBE and SBE subcontractors and shall ensure the subcontracts contain the following terms:

- (a) "(MWBE subcontractor) shall not delegate or subcontract more than 50% of the work under this subcontract to any other subcontractor or supplier without the express written consent of the City of Houston's OBO Director ("the OBO Director")."
- (b) "(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 (4) 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."
- (c) "Within five business days of execution of this subcontract, Contractor (*prime contractor*) and (*MWBE subcontractor*) shall designate in writing to 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 and mailing address and phone number of such agent."

ARTICLE 5
PRE-CONSTRUCTION PHASE SERVICES

5.1 **The Pre-Construction Phase Services.** The Pre-Construction Phase Services shall commence upon the date specified in a Notice to Proceed with Pre-Construction Phase Services issued by the City Engineer and shall continue through completion of the Construction Documents. Design Build Contractor is not entitled to reimbursement for any costs incurred for Pre-Construction Phase Services performed before issuance of the Notice to Proceed. Pre-Construction Phase Services may overlap Construction Phase Services. Design Build Contractor shall perform the Pre-Construction Phase Services as provided in this Article 5 and elsewhere in the Contract Documents.

5.2 **General Responsibilities**

5.2.1 Design Build Contractor shall designate in writing a representative who is responsible for the day-to-day management of the Pre-Construction Phase Services. The designated representative shall be City Engineer's primary contact during the Pre-Construction Phase Services of the Project and shall be available, as required, for the benefit of the Project and City. The designated representative shall be authorized to act on behalf of and bind Design Build Contractor in all matters related to Pre-Construction Phase Services. The designated representative may not be changed without the City Engineer's approval, which may not be unreasonably withheld.

5.2.2 Design Build Contractor shall enter into separate agreements with the Project Architect and other qualified professionals, as required, for performance of the Pre-Construction Phase Services. Design Build Contractor certifies that the Project Architect and all other professional consultants have been or will be selected on the basis of competence and qualifications pursuant to Texas Government Code Section 2254.004. Design Build Contractor shall not perform any architectural or engineering services directly, unless Design Build Contractor is licensed in the State of Texas to perform such services. All drawings, specifications, and other design documents shall bear the seal of the licensed professional who prepared them in accordance with Applicable Laws.

5.2.3 Design Build Contractor is solely responsible for all of its obligations regarding the Project Architect and shall pay for the services of the Project Architect. In addition, Design Build Contractor is solely responsible for all other professional service providers performing Work under the Contract Documents, and shall pay for such providers from the fees for the Agreement. However, Design Build Contractor shall ensure that City is identified as an intended beneficiary in all the agreements entered into by or on behalf of Design Build Contractor, and Design Build Contractor shall ensure that the Project Architect and all other professional service providers and others who are parties to such agreements acknowledge in writing by way of their agreements with Design Build Contractor that they owe all their duties and obligations to City as well as to Design Build Contractor for the Pre-Construction Phase Services provided for the Project and that City has the right and standing to enforce those agreements. Nothing in the Contract Documents shall create any contractual obligation from City to the Project Architect, other design professionals, or others who are parties to such agreements.

5.2.4 Design Build Contractor is responsible for performing and managing the Pre-Construction Phase Services so as to ensure that the Project, as designed, is constructed for an amount that is within the CCL. The obligation to design the Project to achieve the Program objectives regarding scope and cost shall continue through completion and acceptance of all of

the Work. Any adjustment to the Program objectives during the Pre-Construction Phase to the scope, or quality considered necessary to comply with the CCL or the Program shall be mutually agreed upon by Design Build Contractor and the City Engineer or otherwise accomplished pursuant to the terms of this Agreement and shall be considered normal to that process.

5.2.5 Design Build Contractor shall submit for the approval by the City Engineer, the names of all proposed consultants for Pre-Construction Phase Services, including the Project Architect and any of its consultants. The City Engineer may not unreasonably withhold his approval. Design Build Contractor shall provide the City Engineer with a copy of the fully executed written contract authorizing services by any consultant. All contracts shall provide that the consultants are bound to Design Build Contractor in the same manner and extent as Design Build Contractor is bound to City.

5.2.6 *Intentionally omitted.*

5.2.7 Design Build Contractor warrants to City the sufficiency and completeness of all Pre-Construction Phase Services performed and that all drawings, specifications, and other information furnished or provided by Design Build Contractor is free from errors and omissions. **IT IS UNDERSTOOD THAT CITY IS AT ALL TIMES RELYING UPON DESIGN BUILD CONTRACTOR'S SKILL AND KNOWLEDGE IN PERFORMING THE PRE-CONSTRUCTION PHASE SERVICES.**

5.2.8 The City Engineer shall have the right to reject defective Pre-Construction Phase Services or Construction Phase Services, or any defective Work. In accordance with the Contract Documents, Design Build Contractor shall correct any such defects at Design Build Contractor's expense. If any portion of the Work is damaged or defective due to an error or omission in the Pre-Construction Phase Services or any other failure to comply with the Contract Documents, including errors or omissions in the drawings, specifications, or Other Documents prepared or furnished by Design Build Contractor, Design Build Contractor shall promptly correct the failure to comply, including any related damages or defects, at no cost to City. Should Design Build Contractor refuse or neglect to correct the damages or defects within the time set out in a Notice of Non-Compliance issued by the City Engineer, City may cause the damages or defects to be corrected and Design Build Contractor shall reimburse City for all expenses incurred to correct the damages or defects.

5.2.9 The City Engineer may elect to stage or "fast-track" construction of the Project in different stages. Stages may overlap. Design Build Contractor shall perform Pre-Construction Phase Services in staged construction as appropriate to each phase of construction, which may result in differing schedules and/or reviews for the completion of each phase or stage of planned construction. The City Engineer may elect to establish a different CCL for each phase or stage.

5.2.10 Design Build Contractor's Basic Pre-Construction Phase Services are those services described in Section 5.2 through Section 5.9. During the Pre-Construction Basic Services and as necessary in Construction Phase, Design Build Contractor shall provide the following services as applicable"

- a. Pre-design services
- b. Architectural services
- b. Structural engineering services
- c. Mechanical and plumbing engineering services
- d. Electrical engineering services
- e. Construction cost estimating
- f. Other services required by the Contract Documents

5.2.11 Design Build Contractor, at the City Engineer's request, shall attend public meetings and hearings concerning the development and schedule of the Project.

5.2.12 Design Build Contractor shall provide recommendations and information to City Engineer and the Project Architect regarding the assignment of responsibilities for safety precautions and programs, temporary Project facilities, equipment, materials, and services for common use of the Subcontractors. Design Build Contractor shall verify that appropriate safety provisions are included in the Construction Documents.

5.2.13 Design Build Contractor, except at Design Build Contractor's sole financial risk, shall not proceed to any subsequent phase of Pre-Construction Phase Services until the City Engineer has authorized Design Build Contractor to proceed in writing.

5.2.14 Design Build Contractor shall attend bi-weekly status meetings with the City Engineer throughout the Pre-Construction Phase to discuss progress of the Work and schedule updates, together with any other status meetings as the City Engineer may designate to review the Work. Frequent Project Team meetings are anticipated prior to City Engineer's acceptance of the GMP and during completion of the Construction Documents.

5.3 **Pre-Design Phase**

5.3.1 . The scope of work for this project includes Facilities Condition Assessment repairs and other items. The Design Build Contractor will inspect the existing building, review the items in the report, evaluate the proposed items, provide estimates for each item and make scope of work recommendations taking the available funding into consideration. Design Build Contractor shall submit a report documenting its findings.

5.3.2 Design Build Contractor shall analyze the existing site and building. The analysis shall include, visual review of the existing structure and mechanical system, and the existing building envelope. The Design Build Contractor shall review existing documents including the Facilities Condition Assessment , environmental reports, existing "As Built" drawings, and previous building assessments along with on-site observations. 5.3.3 Design Build Contractor shall review and assess the impact of Applicable Laws on the Work.

5.3.4 Design Build Contractor shall review and understand standards and requirements in the Contract Documents and perform all Work in accordance with those standards and requirements.

5.3.5 Before proceeding to the Schematic Design Phase, Design Build Contractor shall obtain the City Engineer's written approval of the preliminary Construction Cost Estimate and written authorization to proceed.

5.3.6 *Intentionally Omitted.*

5.3.7 Design Build Contractor shall file on behalf of City all applications for utility commitments and furnish any additional information necessary to obtain utility commitments.

5.3.8 *Intentionally omitted.*

5.3.9 *Intentionally omitted.*

5.3.10 Provide recommendations and information to the Project Team on:

- a. Building systems including but not limited to, plumbing, building code compliance, and construction feasibility;
- b. selection and availability of materials and labor;
- c. time requirements for installation and construction;
- d. assignment of responsibilities for safety precautions and programs;
- e. temporary Project facilities;
- f. equipment, materials and services for common use of Design Build Contractor and City's separate contractors, if any;
- g. cost factors, including costs of alternative materials or designs, preliminary budgets, and possible cost savings;
- h. recognizing and tracking the resolution of conflicts in the proposed drawings and specifications;
- i. methods of delivery of materials, system, and equipment; and
- j. any other matters necessary to accomplish the Project in accordance with the Project Schedule.

5.4 Schematic Design Phase

5.4.1 Based on City's criteria and needs, schedule and construction budget requirements, including the Program, Design Build Contractor shall prepare and submit for approval by City Engineer six (6) copies of Schematic Design Documents consisting of Drawings and Other Documents illustrating the scale and relationship of Project components. Along with the Schematic Design Documents, Design Build Contractor shall prepare and submit to City Engineer a preliminary Estimated Construction Cost ("ECC") based on current area, volume or similar conceptual estimating techniques. Design Build Contractor shall develop appropriate alternative approaches to design and construction of the Project based on the approved pre-design documents, any adjustments to the Program authorized by the City Engineer. In addition, Design Build Contractor shall review such alternative approaches with the City Engineer. The Schematic Design Documents shall include the following:

- a. General statement of proposed structural system or systems in sufficient detail to demonstrate that repair requirements have been accommodated and to provide a valid basis for the preliminary ECC;
- b. General statement of proposed signing and electrical systems in sufficient detail to demonstrate the accommodation of repair requirements and to provide a valid basis for the preliminary ECC;
- c. Scaled drawings of the site plan;
- d. General listing of the types, quantities and sizes of the infrastructure improvements included in the design; and
- e. Preliminary ECC of the Project, based on proposed systems and quantities.

5.4.2 On or about the time of the scheduled submission for the deliverables under Section 5.4.1, Design Build Contractor and City Engineer shall meet and confer about the submissions, with Design Build Contractor identifying during the meeting, including but not limited to, the evolution of the design and any changes or deviations that have taken place from City's criteria

and needs. Minutes of the meeting shall be maintained by Design Build Contractor and provided to all attendees for review and approval.

5.5 **Design Development Phase**

5.5.1 Based on the approved Schematic Design Documents and any adjustments in City's criteria and needs, schedule or budget, authorized by City Engineer in writing in accordance with the Contract Documents, Design Build Contractor shall prepare, for approval by City Engineer, Design Development Documents consisting of Drawings and Other Documents to fix and describe the size and character of the Project as to architectural, structural, civil, mechanical and electrical systems, landscape architecture, materials, and such other elements as may be appropriate. Design Build Contractor shall advise City Engineer of any adjustments to the preliminary ECC. Completion of Design Development shall indicate that Design Build Contractor has substantially solved the details of the design solution and is prepared to start Construction Documents. Design Build Contractor shall furnish to the City Engineer six (6) copies of the Design Development Documents. The Design Development Documents shall include, but not be limited to, the following where applicable:

- a. Scaled drawings of the site plan, elevations, and sections and/or details necessary to demonstrate the schematic design;
- b. Plan layout of the proposed structural system showing preliminary main member sizes;
- c. Plan layouts, each on separate sheets, of the proposed electrical systems in sufficient detail to show equipment, fixtures, lighting, devices, and distribution/gathering systems;
- d. Outline specifications of principal materials, systems, and equipment proposed for inclusion into the Project; and
- e. Updated ECC of the Project in sufficient detail to demonstrate its inclusiveness and the proposed level of quality throughout all aspects of the Project. (The ECC shall affirm adherence to the CCL).

5.5.2 On or about the time of the scheduled submission for the Design Development Documents under Subsection 5.5.1, Design Build Contractor and City Engineer shall meet and confer about the submissions, with Design Build Contractor identifying during the meeting, including but not limited to, the evolution of the design and any significant changes or deviations that have taken place from work product previously delivered, as well as any changes to the Project budget or preliminary Project schedule. Minutes of the meeting shall be maintained by Design Build Contractor and provided to all attendees for review and approval.

5.6 **Construction Documents Phase**

5.6.1 Based on the approved Design Development Documents and any further adjustments to the Program and the CCL, as authorized in writing by the City Engineer, Design Build Contractor shall prepare Construction Documents consisting of Drawings and Specifications, setting forth in detail the requirements for the construction of the Project within the approved CCL. Design Build Contractor shall submit the Construction Documents to the City Engineer for approval. The Construction Documents shall (1) be consistent with the intent of Project programming and City's needs and criteria as stated in the Contract Documents and the Notice to Proceed except for deviations approved in writing by City Engineer that clearly identifies the deviations as

deviations and that City Engineer approves such deviations; (2) provide information for the use of those in the building trades; (3) include documents customarily required for regulatory agency approvals; and (4) strictly comply with all Applicable Laws and the Contract Documents.

5.6.2 The Construction Documents shall be consistent in all material respects with Design Build Contractor's prior design proposals to City and within the approved Guaranteed Maximum Price Proposal, if any.

5.6.3 Design Build Contractor shall advise City Engineer regarding construction phasing, scheduling, construction contract time period, and any other construction conditions considered appropriate for the Project.

5.6.4 Design Build Contractor shall furnish and deliver to the City Engineer six (6) copies of complete printed sets of Construction Documents.

5.6.5 Following the City Engineer's approval of the Construction Documents, Design Build Contractor shall deliver to the City Engineer Computer-aided Design and Drafting ("CADD") system copies of the Construction Documents in the format and media specified by the City Engineer.

5.6.6 Approval by City Engineer of Construction Documents or other items required by the Contract Documents shall not relieve Design Build Contractor of its responsibility for preparing such items in strict accordance with the Contract Documents.

5.7 Review Drawings

5.7.1 Design Build Contractor, at its sole expense, shall provide City with the required number of design document review sets at each required phase of completion. Design Build Contractor shall provide digital versions (including CADD) of design documents when requested and in the format and media requested by the City Engineer.

5.7.2 Design Build Contractor shall review all requests for corrections and amendments in the design documents. Design Build Contractor shall object in writing to the City Engineer if any corrections or amendments would violate Applicable Laws or breach the requirements of the Contract Documents. Design Build Contractor shall incorporate into the documents the corrections and amendments as the City Engineer requests at each phase review, unless Design Build Contractor objects to the requests in writing and the City Engineer agrees to such objections. Design Build Contractor shall be responsible for making all requested corrections and amendments in accordance with Applicable Law and the requirements of the Contract Documents. Any additional cost incurred because of Design Build Contractor's failure to incorporate the City Engineer's requested corrections and amendments shall be borne by Design Build Contractor.

5.7.3 Design Build Contractor shall identify to the City Engineer in writing anything in Design Build Contractor's drawings and specifications and any drawings, sketches, instructions, information, requirements, procedures, requests for action, and other data supplied to Design Build Contractor (by the City Engineer or any other party) that Design Build Contractor regards as unsuitable, improper, or inaccurate in connection with the purposes for which the documents or data are furnished. Design Build Contractor shall be solely responsible for the use of the documents or data unless Design Build Contractor advises the City Engineer in writing that in its opinion such documents or data are unsuitable, improper or inaccurate, and the City Engineer

instructs Design Build Contractor in writing to proceed in accordance with the documents or data as originally given.

5.7.4 Design Build Contractor shall pay all costs for drawings, specifications, and other design and construction documents used by Design Build Contractor and its consultants, Subcontractors, and all documents produced for review by the City Engineer.

5.8 Design Document Review Sets and Estimated Construction Cost Reports

5.8.1 Design Build Contractor shall provide the following design review document sets along with ECC reports at the indicated phase of completion as part of Pre-Construction Services and at no additional cost to City:

<u>Phase</u>	<u>Number of Sets (unless notified otherwise)</u>
- Pre-Design Report	6
- Schematic Design Documents	6
- Design Development Documents	6
- 50% Construction Documents	6
- 95% Construction Documents	6
- 100% Construction Documents	6
- GMP Proposal Documents	3
- As-built Documents (per 7.2.10)	3

5.9 Budget and Cost Consultation

5.9.1 Design Build Contractor is responsible for preparing and updating all ECCs and distributing them to the Project Team throughout the duration of the Project. Design Build Contractor shall provide all calculations and support for the ECC.

5.9.2 Design Build Contractor shall provide ECC reports, organized in Construction Specifications Institute format (using the most current Industry Specifications Standard format) for each portion of the Work, at the required stages of completion of the Schematic Design Phase, Design Development Phase, and Construction Document Phase of the Project. Detailed estimates of the ECC reports for the Design Development Phase and Construction Document Phase shall come from cost quantity surveys based on unit prices for labor, materials, overhead and profit.

5.9.3 Design Build Contractor shall provide continuous cost consultation services throughout the duration of the Project, including identification and tracking of decisions that affect the scope or quality of the Project, as well as provide ongoing updates of their cost and budget impact. Design Build Contractor shall notify the Project Team in writing immediately if Design Build Contractor has reason to believe that the most current ECC will exceed the CCL or not meet Project schedule requirements and recommend reasonable strategies for bringing the Project in line with the CCL and the Project schedule.

5.9.4 Design Build Contractor shall promptly identify and report all variances between ECCs and actual costs during the Construction Phase, to the Project Team along with recommendations for action no more than two business days after acquiring such information.

5.10 Additional Pre-Construction Phase Services

5.10.1 Provision of Additional Pre-Construction Services shall apply only when necessary, as determined by the City Engineer in his sole discretion and as authorized in writing by the City Engineer related to the purpose of the Agreement, and when sufficient funding is allocated for such services. City, as provided in Article 12 of the Agreement, shall pay for the following Additional Pre-Construction Phase Services, in addition to the compensation for Basic Pre-Construction Services, if authorized by the City Engineer in writing:

- 5.10.1.1 Provide financial, feasibility or other special studies;
- 5.10.1.2 Provide planning surveys, site evaluations, environmental studies or comparative studies of prospective sites;
- 5.10.1.3 Prepare special surveys, studies and submissions required for approvals by governmental authorities or others having jurisdiction over the Project;
- 5.10.1.4 Provide services relative to future facilities, systems, and equipment that are not intended to be constructed during the Contract Administration Services;
- 5.10.1.5 Intentionally left blank.
- 5.10.1.6 Provide analyses of owning and operating costs, or detailed quantity surveys, inventories of material, equipment, and labor;
- 5.10.1.7 Make revisions in drawings, specifications, or Other Documents when the revisions are inconsistent with written approvals or instructions previously given, or during Construction Documents Phase, making revisions to Construction Documents required by the enactment or revision of codes, laws, or regulations subsequent to the preparation of the Construction Documents or due to other causes not within the control of Design Build Contractor;
- 5.10.1.8 Prepare Drawings, Specifications, supporting data and provide other services in connection with a change to approved Construction Documents to the extent that such services are in excess of the Basic or other Additional Pre-Construction Services required of Design Build Contractor pursuant to the Contract Documents, as determined by the City Engineer in his sole discretion; provided that such changes are not necessitated by an act or omission of Design Build Contractor. In the event a Change Order is caused by an act or omission of Design Build Contractor, Design Build Contractor is required to prepare the Drawing, Specifications, and supporting data at no expense to City;
- 5.10.1.9 Provide land survey services to supplement any legal description and site information provided by City, and to include, but not be limited to, as applicable to the Project, grades of streets, alleys, pavements, adjoining property; rights-of-way, restrictions, easements, encroachments, deed restrictions, contours of the site, locations, dimensions and complete data pertaining to existing buildings, other improvements and trees, as well as information concerning available services and utility lines both public and private, above and below grade, including inverts and depths, in accordance with the Project requirements. Design Build Contractor, if authorized by the City Engineer, shall commission a signed and sealed survey prepared by a registered land surveyor acceptable to the City Engineer;
- 5.10.1.10 Provide geotechnical investigation and engineering services beyond that required for the design of the Project in Basic Pre-Construction Phase Services. Such services may include, as applicable to the Project, test borings, test pits,

soil bearing values, percolation tests and similar investigations and engineering services with reports and appropriate recommendations in accordance with the Project requirements. Design Build Contractor, if authorized by the City Engineer, shall commission the completion of a signed and sealed geotechnical investigation by a registered geotechnical Subcontractor acceptable to the City Engineer;

- 5.10.1.11 Provide cultural resource reconnaissance or surveying services as defined in the General Rules of Practice and Procedures, Chapter 41 of the Texas Antiquities Committee, to supplement the site information provided by City and to identify potential historic or prehistoric sites in the Project areas affected by improvements planned as part of the Project. Performance of the reconnaissance, if authorized by the City Engineer, shall be in accordance with procedures promulgated by the Texas Antiquities Committee in conformance with the Antiquities Code of Texas, and signed by a professional archaeologist acceptable to the Texas Antiquities Committee and the City Engineer. For the purpose of this Agreement, the City Engineer is authorized to approve the archaeologist's permit applications for the cultural resource reconnaissance or surveys on behalf of City;
- 5.10.1.12 Provide data processing and photographic production techniques when used in connection with another Additional Pre-Construction Phase Service; and
- 5.10.1.13 Design Build Contractor will provide a preliminary phasing/sequencing plan to include construction zones, site access, and staging access.
- 5.10.1.14 Any other Additional Pre-Construction Phase Services mutually agreed to by City Engineer and Design Build Contractor.

5.11 **Ownership and Use of the Documents**

5.11.1 For the consideration set forth in this Agreement, all designs, Drawings, Specifications, documents (including Construction Documents), models, electronic data and other work products, including all copyrights, patents, trademarks, trade secrets, and any other proprietary rights therein (all of the foregoing referred to as "Proprietary Rights"), furnished or produced hereunder by Design Build Contractor, its agents, employees, contractors, and Subcontractors (collectively "Authors") are instruments of service for this Project and are the property of City worldwide whether or not the Construction Phase of the Project is commenced or completed. City is entitled to possession of such Proprietary Rights upon completion of the Project, termination of this Agreement, or City's request, whichever occurs first. Design Build Contractor shall make all necessary arrangements to convey and assign all such Proprietary Rights to City. Design Build Contractor shall execute all documents required by the City Engineer to further evidence this assignment and ownership. If requested by the City Engineer, Design Build Contractor shall place a conspicuous notation on any documents, including Contract Documents indicating that City owns the Proprietary Rights.

5.11.2 Design Build Contractor shall cooperate with City in registering, creating, and enforcing Proprietary Rights arising under this Agreement. Design Build Contractor further agrees to provide City with reasonable assistance necessary to perfect City's interests in intellectual property created under this Agreement. This shall include, but not be limited to, the execution of all documents necessary for copyright registration.

5.11.3 No Contract Documents may be used by Design Build Contractor or any Subcontractor or Supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of City Engineer.

5.11.4 Design Build Contractor, Subcontractors, and Suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and Other Documents appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and Other Documents prepared by or for City. Design Build Contractor may retain copies of the Contract Documents for its archives at its own expense.

5.11.5 Submission or distribution of documents to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of City's copyrights or other reserved rights.

5.11.6 Design Build Contractor shall pay royalties and license fees. Design Build Contractor shall defend suits or claims for infringement of patent rights and shall save City harmless from damages, liability, costs, and loss (including attorneys' fees related thereto or to enforcement of this Subsection) on account thereof, except that City shall be responsible for such loss only when a particular design, process or product of a particular manufacturer is required by City over the written objection of Design Build Contractor. However, if Design Build Contractor has reason to believe the use of a required design, process or product is an infringement of a patent, Design Build Contractor shall be responsible for such loss (including attorneys' fees related thereto or to the enforcement of this Subsection) unless such information is promptly given to City.

5.11.7 Proprietary Rights developed, written, or produced under this Agreement for use as a contribution to a collective work; a part of a motion picture or other audiovisual work; a translation, a supplementary work; a compilation, an instructional text, a test, answer material for a test, or an atlas are "works made for hire."

5.12 **Pre-Existing Conditions and Design Errors and Omissions**

5.12.1 Design Build Contractor acknowledges that it was afforded unrestricted access to the existing improvements and conditions on the Project site and it has thoroughly investigated those conditions. The results of Design Build Contractor's investigation shall be deemed to be taken into account in establishing the Guaranteed Maximum Price of the Work. Therefore, Design Build Contractor may not make and is not entitled to any claim for any adjustment to the Contract Time, Pre-Construction Phase Services Fee, or the GMP arising from Project conditions that Design Build Contractor discovered or, in the exercise of reasonable care, should have discovered in Design Build Contractor's investigation of the Project site. Nothing in this Section should be construed to require Design Build Contractor to perform destructive testing.

5.12.2 Before proceeding with the Construction Phase Services, Design Build Contractor shall review the Drawings, Specifications, and other Construction Documents and notify City Engineer of any errors, omissions, or discrepancies in the Construction Documents of which it is aware. Design Build Contractor is responsible for discovering and correcting any defect, error, omission, conflict, inconsistency, failure to comply with the Contract Documents, or lack of clarity in the Construction Documents. Design Build Contractor shall be responsible for all costs, including the cost of redoing or remedying the Work, including materials and time delays resulting from any defect, error, omission, conflict, inconsistency, lack of clarity, or failure to comply with the Contract Documents in the Construction Documents.

ARTICLE 6
GUARANTEED MAXIMUM PRICE PROPOSAL

6.1 When the City Engineer determines that the design of the Project is sufficiently developed and documented to allow detailed pricing whether in whole or in part, the City Engineer shall instruct Design Build Contractor to prepare and submit a Guaranteed Maximum Price (“GMP”) Proposal to the City Engineer. Design Build Contractor shall within ten days prepare and submit a GMP Proposal in the form attached as **Exhibit “A”** to this Agreement. If the construction is divided into stages, the GMP Proposal shall provide a GMP for each stage and the sum of the GMPs shall not exceed the CCLs for the Work. If the total amount of the Design Build Contractor’s GMP Proposal exceeds the CCL, for any stage of the Project, then Design Build Contractor shall redesign the Project, or that stage of the Project in which the GMP Proposal exceeded the CCL, at no additional charge to City so that the GMP Proposal will not exceed the CCL. Design Build Contractor’s GMP Proposal shall include the following:

- a. the proposed Guaranteed Maximum Price for the Project or if the Project is divided into stages, for each stage of the Project;
- b. a Schedule of Values showing a breakdown of the Guaranteed Maximum Price for the Project (and for each stage if the Project is divided into stages), including the Cost of the Work, Design Build Contractor’s contingency, and the Construction Phase Fee (see Section 01292 Schedule of Values);
- c. a list of the Drawings and Specifications, including all addenda, which were used in preparation of Design Build Contractor’s GMP Proposal;
- d. a list of Cash Allowances as permitted by the General Conditions and a statement of their basis;
- e. a list of the clarifications and assumptions made by Design Build Contractor in the GMP;
- f. a list of Alternates used to calculate the Guaranteed Maximum Price, if any;
- g. Design Build Contractor’s Contingency;
- h. Construction Phase Fee;
- i. the proposed Contract Time, including dates for Notice to Proceed, Date of Substantial Completion and Date of Final Completion, and any other milestone dates upon which the GMP Proposal is based; and
- j. any other items required by City Engineer.

Deviations from City’s Program, or final approval of the Construction Documents shall be disclosed in the GMP Proposal. The City Engineer, at his sole option and discretion, may specify different requirements for the GMP Proposal. Design Build Contractor may not withdraw its GMP Proposal for 60 days following submission to the City Engineer.

6.2 Upon submission of Design Build Contractor’s GMP Proposal, Design Build Contractor and City Engineer shall meet and confer to review Design Build Contractor’s Proposal. Design Build Contractor shall, upon receipt of City Engineer’s request, make appropriate adjustments to Design Build Contractor’s GMP Proposal. Design Build Contractor shall review development of the GMP Proposal with the City Engineer on an ongoing basis to address clarifications of scope and pricing, distribution of contingencies, schedule, assumptions, exclusions, and other matters relevant to the establishment of a GMP.

6.3 The GMP Proposal shall allow for all changes and refinements in the Drawings and Specifications through completion of the Construction Documents, except for material changes in scope as determined by the City Engineer.

6.4 *Intentionally left blank.*

6.5 Included with and incorporated into its GMP Proposal, Design Build Contractor shall provide three (3) complete bound sets of the drawings, specifications, sketches, instructions, requirements, materials, equipment specifications and other information or documents that fully describe the Project as developed at the time of the GMP Proposal and that are relevant to the establishment of the GMP. The GMP Proposal shall reference and incorporate the bound supporting documents.

6.6 The GMP Proposal and the supporting documents are complementary, and, in the event of an irreconcilable conflict between or among them, the interpretation that provides for the higher quality of material or workmanship shall prevail over all other interpretations.

6.7 In submitting the GMP Proposal, Design Build Contractor represents that it will provide every item, system, or element of Work that is identified, shown or specified in the GMP Proposal or the supporting documents, along with all necessary or ancillary materials and equipment for their complete operating installation, unless specifically excepted by the City Engineer.

6.7.1 Upon the City Engineer's acceptance of the GMP Proposal, Design Build Contractor shall not be entitled to any increase in the Guaranteed Maximum Price due to the continued refinement of the Construction Documents or the absence or addition of any detail or specification that may be required in order to complete the construction of the Project as described in and reasonably inferable from the Contract Documents, the GMP Proposal or the supporting documents used to establish the GMP. Any costs that exceed the GMP shall be borne solely by Design Build Contractor without reimbursement by City. Design Build Contractor is responsible for all designs, including incidental designing/detailing as required by the Specifications.

6.8 Prior to commencement of the Construction Phase Services and concurrently with submission of the Guaranteed Maximum Price Proposal, Design Build Contractor shall submit for the City Engineer's acceptance a schedule for the performance of Construction Phase Services as specified by the City Engineer. The Construction Phase schedule shall include reasonable periods of time for the City Engineer's review and acceptance of design drawings and submissions and for approval of authorities having jurisdiction over the Project. Upon acceptance of the GMP Proposal by the City Engineer, the Construction Phase Schedule may not be modified except for good cause as approved by the City Engineer at the City Engineer's sole discretion.

6.9 Prior to commencement of the Construction Phase Services and concurrently with submission of the Guaranteed Maximum Price Proposal, Design Build Contractor shall submit the documents required in **Exhibit "G"** to the Office of Business Opportunities and City Engineer.

6.10 The GMP Proposal shall adopt and incorporate all of the terms and conditions of this Agreement as well as all attachments to this Agreement. In the event of a conflict between any term of the GMP Proposal and the terms of this Agreement and its attachments, the terms of this Agreement and its attachments shall control.

6.11 The City Engineer may accept or reject the GMP Proposal or attempt to negotiate its terms with Design Build Contractor. Upon acceptance by the City Engineer of the GMP Proposal in writing, both the City Engineer and Design Build Contractor shall execute the GMP Proposal and the terms of the GMP Proposal, including the Guaranteed Maximum Price and the supporting documents. The Guaranteed Maximum Price and the supporting documents shall become part of the Agreement between City and Design Build Contractor. If the City Engineer rejects the GMP Proposal or Design Build Contractor and City Engineer are unable or unwilling to agree on a GMP, the City Engineer may terminate this Agreement in accordance with Article 14, in which case all Schematic Design Documents, Design Development

Documents and Construction Documents prepared by Design Build Contractor shall be transferred to and assigned to the City for its ownership and use as it sees fit in accordance with Section 5.11.

6.12 Following the City Engineer's acceptance of the GMP Proposal, Design Build Contractor shall continue to monitor the development of the Construction Documents so that when complete, the Construction Documents adequately incorporate and resolve qualifications, assumptions, clarifications, exclusions, and value engineering issues identified in the GMP Proposal. During the Construction Documents phase, Design Build Contractor and Project Architect shall jointly deliver a monthly status report to the City Engineer describing the progress on the incorporation of all qualifications, assumptions, clarifications, exclusions, value engineering issues, and all other matters relevant to the establishment of the Guaranteed Maximum Price into the Construction Documents.

6.13 Design Build Contractor shall pay all sales, consumer, use, and other taxes required to be paid by Design Build Contractor in accordance with Applicable Laws. Design Build Contractor shall be entitled to an equitable adjustment of the GMP if it is required to pay or bear the burden of any new federal, state, local sales or use tax, or any rate increase of an existing sales or use tax adopted through statute, court decision, written ruling, or regulation enacted or issued after acceptance of the GMP Proposal. This equitable adjustment does not apply to tax increases issued or enacted before acceptance of the GMP Proposal even if taking effect after the acceptance of the GMP Proposal and does not apply to tax increases borne solely by Subcontractors or Suppliers.

ARTICLE 7 CONSTRUCTION PHASE SERVICES

7.1 **The Construction Phase.** The Construction Phase shall be deemed to commence upon the date specified in a Notice to Proceed issued by City Engineer after the City Engineer's approval of the GMP Proposal and shall continue until Final Completion of all Work. Pre-Construction Phase Services may overlap Construction Phase Services. Design Build Contractor shall not incur any costs for construction of the Work prior to issuance by City Engineer of the Notice to Proceed with Construction Phase Services. Design Build Contractor shall perform the following Construction Phase Services:

7.2 General Responsibilities

7.2.1 Construct the Work in accordance with the Contract Documents and as required by the General Conditions attached hereto as Exhibit "C" and Specifications within the time required by the Project Schedule approved by the City Engineer.

7.2.2 Designate in writing a representative who is responsible for the day-to-day management of the Construction Phase Services. The designated representative shall be City Engineer's primary contact during the Construction Phase and shall be available as required for the benefit of the Project and City. The designated representative shall be authorized to act on behalf of and bind Design Build Contractor in all matters related to Construction Phase Services, including, but not limited to, execution of Change Orders and applications for payment.

7.2.3 Attend City's regularly scheduled Project progress meetings and fully advise the Project Team of the Project status regarding schedule, costs, quality, and changes.

7.2.4 In addition to attending City's regularly scheduled Project progress meetings, Design Build Contractor shall schedule, direct, and attend interim progress meetings with other members of the Project Team as required to maintain Project progress. Design Build Contractor shall record and

distribute the minutes of each meeting to each Project Team member. The minutes shall identify critical activities that require action and completion dates for each activity.

7.2.5 Coordinate delivery, unload, store, protect, and install City-procured material and equipment, if any.

7.2.6 Obtain building permits and special permits for permanent improvements as required by law and the Construction Documents. Assist City or Project Architect to obtain all approvals required from authorities having jurisdiction over the Project. Modify design documents as necessary for permitting.

7.2.7 Coordinate, monitor, and inspect the work of Subcontractors and others to ensure conformance with the Construction Documents.

7.2.8 Design Build Contractor shall keep City Engineer informed of the progress and quality of the Work.

7.2.9 Intentionally Omitted.

7.2.10 In accordance with the Contract Documents, Design Build Contractor shall maintain and, as a condition to the City Engineer's issuance of a Certificate of Substantial Completion, deliver the required record documents that describe changes or deviations from the Construction Documents, which occurred during construction and that reflect the actual "as-built" conditions of the completed Work, including CADD files for such "as built" documents in the format and medium acceptable to the City Engineer.

7.3 Construction Contract Administration

Design Build Contractor shall furnish all administration and management services necessary to perform the Work, including, but not limited to, all services as set forth below:

7.3.1 Design Build Contractor shall inspect the Project site to determine the progress and quality of the Work and to determine if the Work is proceeding in accordance with the Contract Documents. Design Build Contractor shall inspect the progress and quality of the Work and find, report to the City Engineer, and correct defects and deficiencies in the Work. Design Build Contractor shall provide daily written reports to the City Engineer of its on-site inspections within three business days after the on-site inspections.

7.3.2 Design Build Contractor shall provide start-up or mock-up reviews for significant work activities and accompany City as requested for formal inspections of the Work. Design Build Contractor shall provide written reports of all testing and inspections to the City Engineer within three business days after the on-site observation.

7.3.3 Design Build Contractor shall establish and maintain a numbering and tracking system for all the Project records, including changes, requests for information, and supplementary instructions. In addition, Design Build Contractor shall provide updated records at each City meeting and when requested.

7.3.4 Design Build Contractor shall administer and attend all regular progress and special meetings scheduled by City Engineer and shall promptly provide meeting minutes to all parties within seven days.

7.3.5 Design Build Contractor shall promptly respond to questions from the City Engineer.

7.3.6 All proposed changes to Drawings and Specifications, regardless of how initiated, shall be fully described in the document depicting them as to scope of work added, removed, or changed. Revision of the original copies of the Construction Documents is allowed to show changes, provided that all revisions are separately recorded by way of media acceptable to the City Engineer; CADD in an appropriate media. Revisions shall be clearly indicated and the inclusion of a current revision date shall be on the reproducible copy. Changes to the Specifications shall be consecutively numbered and dated. All changes to Drawings or Specifications shall be identified by date of change, revision number, and other customary identification references. Areas changed on Drawings shall be “clouded” to show each change. Clouds designating previous changes shall be removed so that only the most recent changes appear as clouded.

7.3.7 Design Build Contractor shall participate in concealed space inspections, systems start-up inspections, substantial completion, and final completion inspections. Design Build Contractor shall also participate in City’s final walk through inspection one year after Date of Final Completion.

7.3.8 Design Build Contractor shall assist City with checking “as-built” drawings during the course of the Work and shall review final “as-built” documents for completeness and compliance with the requirements of the Contract Documents.

7.3.9 Design Build Contractor, as a condition precedent to the City Engineer’s issuance of a Certificate of Substantial Completion, shall provide “as-built” record drawings (one set of mylars, two sets blueines (one full size “E” and one 11”x17”), and CADD drawings in a format approved by the City Engineer) and all operating and maintenance instructions and manuals.

7.3.10 Design Build Contractor shall submit all manuals, brochures, drawings, and other close-out documentation in conformance with the requirements of the Agreement. Design Build Contractor shall cause Project Architect to review such submissions for conformance with the requirements of the Contract Documents.

ARTICLE 8 TIME

8.1 General

8.1.1 Time limits stated in the Contract Documents are of the essence. Design Build Contractor is responsible for schedule development, updating and reporting throughout the Project; including Pre-Construction Phase Services and Construction Phase Services. Design Build Contractor shall comply in all regards with requirements set forth in the Specifications. The anticipated date for submitting a GMP shall be calendar days after the Notice to Proceed (Pre Construction Phase) is issued by City Engineer.

8.2 Time of Completion

8.2.1 The Construction Phase shall be deemed to commence on the Date of Commencement of the Work specified in a Notice to Proceed (Construction Phase) issued by City Engineer after approval of the GMP Proposal.

8.2.2 Design Build Contractor shall achieve Final Completion of the Work on or before the date agreed to in the GMP Proposal, subject to time extensions granted by Change Order.

8.2.3 **The times set forth for completion of the work in the Notice to Proceed with Construction and the GMP Proposal are an essential element of the Agreement.** The City Engineer 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 substantial completion date and a separate liquidated damages amount.

8.3 **Liquidated Damages**

Liquidated damages shall be calculated in accordance with the General Conditions.

ARTICLE 9 CITY’S RESPONSIBILITIES

9.1 City will provide a preliminary budget and schedule for the Project. The budget will include the CCL, contingencies for changes in the Work during construction and other costs that are the responsibility of City. The schedule will set forth City’s specified CPM format.

9.2 City, at City’s cost, will secure the services of existing facility surveys and laboratory testing. Design Build Contractor shall provide City with parameters for inclusion in City’s instructions to the providers.

9.3 City shall arrange and pay for materials, structural, mechanical, chemical, and other laboratory tests, as required by the Construction Documents.

9.4 City shall examine the design documents submitted by Design Build Contractor and has the right to provide comments in writing to Design Build Contractor concerning corrections or amendments to such documents. City may obtain independent review of the design documents by its own Design Consultant. City does not have any obligation to discover any defects in design documents and has no obligation to correct or amend them. Unless otherwise stated in the Contract Documents, City shall furnish within a reasonable time information, services, and approvals required of City.

9.5 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 Design Build Contractor’s responsibilities for the Work. Design Build Contractor shall remain fully and solely responsible for the Drawings, Specifications, and other Construction Documents furnished or provided by Design Build Contractor, and for performing the Work in accordance with the Contract Documents.

ARTICLE 10 DESIGN BUILD CONTRACTOR’S CONTINGENCY

10.1 **Design Build Contractor’s Contingency**

10.1.1 The Design Build Contractor’s Contingency means the dollar amount set out in the Guaranteed Maximum Price Proposal that includes (but is not limited to) costs that Design Build Contractor incurs as a result of: (a) its Subcontractors’ failure to perform or insolvency; (b) fines

or penalties imposed by any governmental body for its negligent acts; (c) it or its Subcontractors' failure to coordinate their work with that of the City or its contractors after agreeing to a schedule; and (d) it or its Subcontractors' acts of negligence for costs related to defective, rejected, or nonconforming Work, materials, or equipment. The Design Build Contractor's Contingency shall not exceed ____ percent (____%) the proposed Cost of Work.

10.1.2 Any balance in Design Build Contractor's Contingency remaining at the end of the Project shall be returned to City as savings.

ARTICLE 11 CONTRACT SAVINGS, ALLOWANCES, REBATES AND REFUNDS

11.1 If the allowable, final, verified, audited amount of the Cost of the Work plus the Construction Phase Fee is less than the Guaranteed Maximum Price, the entire difference shall be credited to City as savings and an appropriate deductive Change Order shall be issued reducing the Guaranteed Maximum Price by the amount of such savings. When the Project is substantially complete, City may recognize any savings achieved to that point by issuing a deductive Change Order for the saved amount.

11.2 Items provided as Allowances shall be clearly identified in the Construction Documents and the GMP Proposal. The cost of Allowances is determined in accordance with the General Conditions. Any Claim by Design Build Contractor for an adjustment to an Allowance amount included in the Guaranteed Maximum Price shall be made within 30 days after the issuance of the Construction Documents. Design Build Contractor is entitled to any increase in the Contract Sum for increases to Allowance amount that is initially based on estimates provided by Design Build Contractor. City is entitled to retain 100% of the balance of any unused Allowance amounts.

11.3 City is entitled to deduct amounts for the following items from any Application for Payment or from the request for Final Payment submitted by Design Build Contractor:

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

11.3.2 Discounts earned by Design Build Contractor through advance or prompt payments funded by City. Design Build Contractor shall obtain all possible trade and time discounts on bills for material furnished, and shall pay bills within the highest discount periods. Design Build Contractor shall purchase materials for the Project in quantities that provide the most advantageous prices to City. Design Build Contractor shall secure the maximum available warranties for all labor, materials, supplies, equipment, etc. that is incorporated into the Work.

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

11.3.4 Deposits made by City and forfeited due to the fault of Design Build Contractor.

11.3.5 Balances remaining on any Allowances, Design Build Contractor’s Contingency, or any other identified contract savings.

11.4 City is entitled to recognize and recover 100% of any savings identified by cost review or audit at any time, prior to final payment.

**ARTICLE 12
PAYMENTS**

12.1 General Requirements

12.1.1 The general requirements for payment for Design Build Contractor’s Services are set forth in Article 9 of the General Conditions.

12.1.2 The Contract Sum consists of the Basic Pre-Construction Service Fee, the Additional Preconstruction Service Fee (if any), Reimbursable Expenses (if any), the Cost of the Work, and the Construction Phase Fee.

12.2 Pre-Construction Phase Payments

12.2.1 Payments for Pre-Construction Phase Services shall be made monthly based on the percentage of completion of Design Build Contractor’s required services for each phase of the Pre-Construction Phase Services in accordance with the schedule in Section 12.4.

12.2.2 All payment requests for Pre-Construction Phase Services shall be submitted on an Application for Payment and Schedule of Values approved by City Engineer and includes all required attachments identifying payments to Project Architect, as well as to all Subcontractors.

12.3 Construction Cost Limitation

The Construction Cost Limitation for the Project is \$_____.

12.4 Basic Pre-Construction Phase Services Fee

12.4.1 Subject to Section 12.11, for properly performed and completed Basic Pre-Construction Phase Services, City shall pay Design Build Contractor a Pre-Construction Phase Services Fee in the amount of \$_____ plus reimbursable expenses, as set out in Section 12.6, allocated as follows:

.1	Pre-Design:	\$ _____
.2	Schematic Design	\$ _____
.3	Design Development Phase	\$ _____
.4	Construction Document Phase.....	\$ _____
.5	Construction Administration Phase	\$ _____
.6	Preconstruction Management Services	\$ _____
.7	Total.....	\$ _____

12.4.2 City will pay Design Build Contractor on the basis of invoices showing the percentage of services performed and materials purchased during the preceding month for each phase of Pre-Construction Phase Services based upon the allocation of the Basic Pre-Construction Phase Fee set forth above. The Basic Pre-Construction Phase Fee shall be deemed to be full compensation to Design Build Contractor for all Basic Pre-Construction Phase Services, including all costs, overhead, and profit.

12.5 **Additional Pre-Construction Services Fee**

12.5.1 Subject to Section 12.11, the fee for Additional Pre-Construction Phase Services of Design Build Contractor, as described in Section 5.10, but excluding Reimbursable Expenses, shall be _____ the Direct Salary Expense of Design Build Contractor's employees and consultants' employees incurred in the interest of Project. The hourly Billing Rates in effect for the duration of this Agreement are shown in Exhibit "B". Additional Pre-Construction Phase Services Fee shall not be incurred without prior written consent of the City Engineer and shall not exceed \$_____.

12.6 **Reimbursable Expenses**

12.6.1 Reimbursable Expenses means only those reasonable costs necessarily incurred by Design Build Contractor in performing Pre-Construction Phase Services. A maximum amount for each Reimbursable Expense shall be proposed by Design Build Contractor at the time that Reimbursable Expenses are requested by the Design-Build Contractor and shall be negotiated and agreed upon by Design Build Contractor and the City Engineer prior to such expenses being incurred. The compensation for each Reimbursable Expense shall not exceed the agreed upon maximum amount including a 10% mark-up. Reimbursable Expenses are to be paid by the actual expenditures Design Build Contractor is legally required to pay in the interest of the Project.

12.6.1.1 The Design Build Contractor may incur up to \$_____in pre-approved Reimbursable Expenses during Pre-Design and Schematic Design of the Pre-Construction Services.

12.6.1.2 If authorized in advance in writing by the City Engineer, the expense of transportation in connection with the Project, living expenses in connection with out-of-town travel, long distance communications, and fees paid for securing approval of authorities having jurisdiction affecting the Project;

12.6.1.3 Expense of reproductions, postage and handling of drawings, specifications, and Other Documents, excluding reproductions for the office use of Design Build Contractor and Design Build Contractor's consultants, and number of sets of submittal documents required by the Agreement for review by the City Engineer;

12.6.1.4 If authorized in advance by the City Engineer, the expense of renderings, models, and mock-ups; and

12.6.1.5 If authorized in advance by the City Engineer, the expense of filing documents for governmental approval, except for building permits, required for the Project.

12.7 **Construction Phase**

12.7.1 Pursuant to the terms of this Agreement, City shall pay Design Build Contractor for Design Build Contractor's Construction Phase proper and complete performance of the Construction Phase Services, the Cost of the Work and the Construction Phase Fee, up to the limit of the Guaranteed Maximum Price in accordance with the payment provisions found in Section 9 of the General Conditions. Payment by City shall be deemed full compensation to Design Build Contractor for the performance of the Construction Phase.

12.7.2 Design Build Contractor's Construction Phase Fee shall be _____ % of the Cost of the Work. Design Build Contractor shall not receive any fee for Work deleted by Modifications. The Construction Phase Fee shall be compensation in full to Design Build Contractor for all overhead and profit, and all costs not otherwise recoverable.

12.7.3 The sum of the Cost of the Work and Design Build Contractor's Construction Phase Fee and Construction Contract Administration Fee are guaranteed by Design Build Contractor not to exceed whatever Guaranteed Maximum Price City Engineer and Design Build Contractor may agree upon in writing, subject to additions and deductions by Change Order as provided in the Contract Documents. 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 Design Build Contractor 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.

12.8 **Cost of the Work**

12.8.1 Definition

12.8.1.1 The term "Cost of the Work" shall mean costs necessarily incurred by Design Build Contractor in the proper performance of the construction Work. Such costs shall be at rates and amounts not higher than the standard paid at the place of the Project except with the prior written consent of City Engineer to that specific rate or amount being higher than the standard. Cost of the Work shall not include costs not necessarily incurred or incurred at higher than permitted rates or amounts. The Cost of the Work shall include only the items set forth below in this Section 12.8:

12.8.2 Labor Costs

12.8.2.1 The actual wages of construction workers directly employed by Design Build Contractor to perform the construction of the Work at the Project site or, with City Engineer's written agreement, at off-site workshops. Design Build Contractor shall provide certified payrolls and any other documentation requested by City to verify wages and hours. The wages paid to construction workers will be subject to verification by audit.

12.8.2.2 Direct Salary Expense (DSE) rates of Design Build Contractor's supervisory and administrative personnel as referenced in Exhibit "B" multiplied by actual hours worked. Supervisory and administrative personnel shall be stationed at the Project site or offices other than the Project site with City's written agreement. If required by City, Design Build Contractor shall provide such documentation requested by City to verify amount of time worked.

12.8.2.3 Actual costs paid or incurred by Design Build Contractor for labor costs arising out of taxes, insurance, and benefits which are (i) required by law, (ii) required by collective bargaining agreements, (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 City Engineer. The total cost of these items shall be subject to verification by audit.

12.8.3 Subcontractor Costs

12.8.3.1 Payments actually made by Design Build Contractor to Subcontractors for prosecution of the Work in accordance with the requirements of their agreements with Design Build Contractor, but only for agreements to the extent they have been specifically consented to in writing by City Engineer. Consent to such agreements shall not create any liability for City and shall not excuse Design Build Contractor from complying with the terms of this Agreement.

12.8.4 Costs of Materials and Equipment Incorporated in the Completed Construction

12.8.4.1 Costs, including transportation, of materials and equipment incorporated or to be incorporated into the Work.

12.8.4.2 Costs of materials described in the preceding Subsection 12.8.4.1 in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. City shall be entitled to take possession of excess materials not incorporated into the Work, or at City Engineer's option, Design Build Contractor shall sell such materials and deduct the gross proceeds from the Cost of the Work.

12.8.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

12.8.5.1 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 Design Build Contractor 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 salvage value. Cost for items previously used by Design Build Contractor shall mean fair market value. The cost for hand and small tools shall not exceed 3% of the direct payroll costs for employees of Design Build Contractor.

12.8.5.2 Rental charges for temporary facilities, machinery, equipment, excluding hand tools which are provided at the Project site, whether rented from Design Build Contractor 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 Project (including the rental charges for items used to replace it) shall not under any circumstances exceed 75% of the value of that item or 75% of any applicable option purchase price, whichever is lower. Machinery and equipment owned by Design Build Contractor or any person

affiliated with or owned or controlled by Design Build Contractor or persons affiliated with Design Build Contractor 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.

- 12.8.5.3 Costs of removal of debris from the Project site.
- 12.8.5.4 Costs of postage and parcel delivery charges, standard and reasonable telephone service at the Project site and reasonable petty cash expenses of the Project site office, incurred directly and solely in support of the Work, and all incurred at the Project site.
- 12.8.5.5 That portion of the reasonable travel and subsistence expenses of Design Build Contractor's personnel that are consistent with the City's travel policies and incurred while traveling solely in the discharge of duties directly connected with the Work, but not including travel expenses or commuting expenses incurred within Houston and its extra-territorial jurisdiction.

12.8.6 Miscellaneous Costs

- 12.8.6.1 Premiums for insurance and bonds but only to the extent such premiums cover insurance and bonds directly attributable to this Agreement and the Work.
- 12.8.6.2 Sales, use or similar taxes imposed by a Governmental Authority that are related to the Work and for which Design Build Contractor is liable. Notwithstanding, City is a home-rule municipal corporation and Design Build Contractor shall avail itself of all exemptions which may exist for such taxes based on City's status.
- 12.8.6.3 Fees and assessments for building permits and for other permits, licenses and inspections that Design Build Contractor is required by the Contract Documents to pay for or obtain.
- 12.8.6.4 Fees of testing laboratories for tests required by the Contract Documents and the terms and conditions of Document 00700-General Conditions, except those related to defective or nonconforming Work for which reimbursement is excluded.
- 12.8.6.5 Other costs incurred in the performance of the Work if and to the extent agreed to in advance in writing by City Engineer.

12.9 **Costs Not Included in the Cost of the Work**

12.9.1 The Cost of the Work shall not include the items listed in this Section 12.9:

- 12.9.1.1 Except as provided in Section 12.8.2, salaries and other compensation of Design Build Contractor's personnel stationed at Design Build Contractor's principal office or offices other than the Project site office.

- 12.9.1.2 Expenses of Design Build Contractor's principal office and offices other than the Project Site office.
- 12.9.1.3 Overhead and general expenses, except as may be expressly included in Sections 12.8.2 and 12.8.3.
- 12.9.1.4 Design Build Contractor's capital expenses, including interest on Design Build Contractor's capital employed for the Work.
- 12.9.1.5 Rental costs of machinery and equipment, except as specifically provided in Section 12.8.5.2.
- 12.9.1.6 Costs due in whole or in part to the fault or negligence of Design Build Contractor, 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 making good damage to property.
- 12.9.1.7 Costs of entertainment.
- 12.9.1.8 Costs incurred or that should have been incurred for Pre-Construction Phase Services.
- 12.9.1.9 Any legal, accounting, professional, or other similar costs incurred by Design Build Contractor, including costs incurred in connection with the prosecution or defense of any dispute, mediation, arbitration, litigation, or other proceeding related to or arising from the Project.
- 12.9.1.10 Any sales, use, income, franchise, and similar taxes paid by Design Build Contractor. Any fines, penalties, sanctions, or other levies assessed by any governmental body against Design Build Contractor.
- 12.9.1.11 The cost of any and all insurance deductibles payable by Design Build Contractor and costs due to the failure of Design Build Contractor or any Subcontractor to procure and maintain insurance as and to the extent required by the Contract Documents.
- 12.9.1.12 Any cost not specifically and expressly described in Section 12.8.
- 12.9.1.13 Costs that would cause the Guaranteed Maximum Price to be exceeded.
- 12.9.1.14 All 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 Design Build Contractor.
- 12.9.1.15 Legal and administrative costs to review and negotiate this Agreement and all other Contract Documents.

- 12.9.1.16 Costs incurred by Design Build Contractor resulting from the failure of Design Build Contractor or its Subcontractors to coordinate their work with that of City and its contractors, if any, after agreeing to schedules therefore.
- 12.9.1.17 Liquidated damages imposed by City.
- 12.9.1.18 Any costs arising out of the intentional acts or negligence of Design Build Contractor, its Subcontractors, or any person or entity for whom they may be liable, including, without limitation, costs related to defective, rejected, or nonconforming Work within the Contract Time.
- 12.9.1.19 Costs including, but not limited to, the failure to perform of any Subcontractor or the bankruptcy or insolvency of any Subcontractor.
- 12.9.1.20 Costs for licenses.

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

- 12.9.2.1 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, the Design Build Contractor, 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 the Construction Manager shall use its best efforts to obtain the highest price in respect of such sales.
- 12.9.2.2 If City makes funds available to Construction Manager, discounts earned by the Design Build Contractor through advance or prompt payments. Design Build Contractor shall provide sufficient advance notice of available discounts and the need for funds to be available to City Engineer for City to obtain the benefit of the discounts. The Design Build Contractor shall obtain all possible trade and time discounts on bills for material furnished, and shall pay said bills within the highest discount periods. The Design Build Contractor shall purchase materials for this Project in such quantities as will provide the most advantageous prices to the City.
- 12.9.2.3 Reasonable market value as approved by the City Engineer 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 the Design Build Contractor upon completion of the Work.
- 12.9.2.4 Rebates, discounts, or commissions allowed to and collected by the Design Build Contractor from suppliers of materials or from Subcontractors, together with all other refunds, returns, or credits received for return of materials, or on bond premiums, or insurance and sales taxes.

12.9.2.5 Design Build Contractor shall reimburse City for deposits made by City and not returned to City due to the negligent or intentional acts of the Design build Contractor. Should Design Build Contractor not promptly so reimburse City upon demand, City shall be entitled to recover said amount from Design Build Contractor, including, but not limited to, by deducting the amount from payments due the Design Build Contractor.

12.10 Applications for Payment

The procedures and timing for the Applications for Payment shall be determined by Article 9 of the General Conditions.

12.11 Limit of Appropriation

12.11.1 The City's duty to pay money to Design Build Contractor for any purpose under this Agreement is limited in its entirety by the provisions of this Section.

12.11.2 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 allocated the sum of \$_____ as Appropriated Funds to pay money due under this Agreement for Pre-Construction and Construction Phase Services, as may be required ("Original Appropriation"). The executive and legislative officers of the City, in their discretion, may appropriate additional funds for this Agreement ("Supplemental Appropriation"), but they are not obligated to do so.

12.11.3 The aggregate of all sums duly authorized by City to be allocated to pay money due under the Agreement, including all Supplemental Appropriations, constitute the Appropriated Funds. The City shall never be obligated to pay any money under this Agreement in excess of the Appropriated Funds. Contractor must assure itself that sufficient Appropriated Funds have been made to pay for services it provides. If Appropriated Funds are exhausted, Design Build Contractor's only remedy is suspension or termination of its performance under this Agreement and Design Build Contractor has no other remedy in law or in equity against the City and no right to damages of any kind. If Appropriated Funds are exhausted and City would otherwise owe Design Build Contractor additional payments for continuing Work, Design Build Contractor has the right to suspend performance of the Work by 7 days' advance written notice to City Engineer describing the cause and Design Build Contractor's planned suspension. Once Appropriated Funds have been increased, Design Build Contractor shall resume Work and may be entitled to equitable adjustment in accordance with Section 14.3.3 of Document 00700-General Conditions. If after more than 180 days Appropriated Funds have not been increased, Design Build Contractor shall have the right to terminate its performance under Section 14.4 of the Document 00700-General Conditions. However, termination shall not relieve Design Build Contractor of its continuing obligations to City already incurred.

ARTICLE 13 BONDS AND INSURANCE

13.1 Prior to commencement of the Construction Phase Services and concurrently with submission of the Guaranteed Maximum Price Proposal, Design Build Contractor shall provide performance and payment bonds on forms prescribed by City, in accordance with the requirements set forth in the General Conditions. The penal sum of the payment and performance bonds shall be equal to the Guaranteed Maximum Price.

13.2 Design Build Contractor shall cause its design professional(s) to purchase and maintain professional liability, errors and omissions insurance, covering the Pre-Construction Phase Services and Construction Phase Services provided under this Agreement, as is acceptable to and approved by the City Engineer. The insurance shall have minimum policy limits of \$1,000,000 in the aggregate and \$1,000,000 per claim or such higher limits as may be otherwise required in the Contract Documents. The premium for the insurance will be at no expense to the City. Design Build Contractor shall cause its design professional(s) to maintain the insurance throughout the course of the Work and for a minimum of two years following Date of Substantial Completion. The design professional(s) professional liability insurance policy(ies) is required to be furnished to the City Engineer prior to performance. No policy providing the insurance shall be cancelled, materially altered, or allowed to expire without 30 days prior written notice to City Engineer.

13.3 Prior to commencing the Work, Design Build Contractor shall be required to purchase and maintain the insurance coverages set forth in Article 11 of the General Conditions; provided however, that Design Build Contractor may delay purchase and maintenance of Owner's and Contractor's Protective Liability, Installation Floater, and Property and Casualty Coverage until submission of Guaranteed Maximum Price Proposal. The Design Build Contractor shall not commence Construction Phase Services unless all insurance coverages set forth in Article 11 of the General Conditions are in full force and effect.

13.4 Design Build Contractor shall not request payment, and City shall not be required to pay for Design Build Contractor's additional general liability insurance, builder's all risk insurance or any other form of insurance coverage that is in excess of the required coverage amounts specified in this Agreement and in Article 11 of the General Conditions, and City shall be entitled to repayment of any amounts paid in excess of what City is required to pay. The additional costs for coverages in addition to those coverages specifically required by this Agreement shall be the sole responsibility of Design Build Contractor.

ARTICLE 14 PROJECT TERMINATION AND SUSPENSION

14.1 This Agreement may be terminated as provided in the General Conditions.

14.2 Termination of the Agreement shall not relieve Design Build Contractor or any of its employees, Subcontractors, Suppliers, or consultants of liability for violations of this Agreement or for any act or omission or negligence of Design Build Contractor. In the event of termination, Design Build Contractor hereby consents to employment by City of a substitute contractor to complete the Work.

14.3 As of the date of termination of this Agreement, Design Build Contractor shall furnish to City Engineer all statements, accounts, reports, Drawings, Specifications, Contract Documents and other materials as are required hereunder or as have been prepared by Design Build Contractor in connection with Design Build Contractor's responsibilities hereunder. City shall have the right to use the ideas and designs therein contained for the completion of the services described by this Agreement, and for completion of the Project, or otherwise.

ARTICLE 15 MISCELLANEOUS PROVISIONS

15.1 **The Miscellaneous Provisions.** The Miscellaneous Provisions set out in the General Conditions apply to all phases of the Work under this Agreement. References to sections, paragraphs, articles or other provisions shall be deemed to mean those contained in this Agreement Form unless specified otherwise.

15.2 **The Contract Documents.** The Contract Documents shall not be construed more strongly against City than against Design Build Contractor.

15.3 **Captions.** The captions of paragraphs and sections in the Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction of the Contract Documents.

15.4 **Waivers.** No delay or omission by either of the Parties hereto in exercising any right or power accruing upon the non-compliance or failure of performance by the other Party hereto of any of the provisions of the Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the Parties hereto of any of the covenants, conditions or agreements hereof to be performed by the other Party hereto shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

15.5 **The Duties of Design Build Contractor** are not diminished by any approval of City, nor shall Design Build Contractor be released from any liability by any approval of City.

15.6 **Audit.** City shall have the right to verify and audit for a period of three years after final payment for the Construction Phase or date of termination, the details for both Pre-construction Phase Services and Construction Phase Services set forth in Design Build Contractor's billings, certificates, accountings, cost data, and statements, either before or after payment therefore, by (1) inspecting the books and records of Design Build Contractor during normal business hours, such books and records to be made readily available to City; (2) examining any reports with respect to this Project; (3) interviewing Design Build Contractor's employees; (4) visiting the Project site; and (5) other reasonable action. City shall have the right to audit all costs, the basis of those costs, and all underlying expenses relating to Design Build Contractor's performance, including but not limited to the Cost of the Work, particularly, without limitation, Section 12.8.2.

15.7 **Dispute Resolution.** See Section 4.4 of the General Conditions for a description of dispute resolution procedures, which may be applicable to all phases of the Agreement.

15.8 **Independent Contractor.** Design Build Contractor 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. Design Build Contractor, 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. Design Build Contractor 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.

15.9 **Labor.** Section 3.4 of the General Conditions apply to all Work performed under the Contract Documents.

15.10 **Drug Detection and Deterrence.** Section 3.7 of the General Conditions applies to all Work performed under the Contract Documents.

15.11 **Subcontractors.** Section 5.1 of the General Conditions applies to the payment of Project Architect and Subcontractors.

15.12 **Pay or Play.** Design Build Contractor agrees to comply with the City's Pay or Play Program as described in Section 3.5.4 of the General Conditions.

15.13 **DESIGN BUILD CONTRACTOR'S DEBT.** IF DESIGN BUILD CONTRACTOR, AT ANY TIME DURING THE TERM OF THIS AGREEMENT, INCURS A DEBT, AS THE WORD IS DEFINED IN SECTION 15-122 OF THE HOUSTON CITY CODE OF ORDINANCES, IT SHALL IMMEDIATELY NOTIFY THE CITY CONTROLLER IN WRITING. IF THE CITY CONTROLLER BECOMES AWARE THAT DESIGN BUILD CONTRACTOR HAS INCURRED A DEBT, IT SHALL IMMEDIATELY NOTIFY DESIGN BUILD CONTRACTOR IN WRITING. IF DESIGN BUILD CONTRACTOR DOES NOT PAY THE DEBT WITHIN THIRTY (30) DAYS OF EITHER SUCH NOTIFICATION, THE CITY CONTROLLER MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FROM ANY PAYMENTS OWED TO DESIGN BUILD CONTRACTOR UNDER THIS AGREEMENT, AND DESIGN BUILD CONTRACTOR WAIVES ANY RECOURSE THEREFOR.

15.14 **Assignments.** This Agreement is a personal service contract for the services of Design Build Contractor, and Design Build Contractor's interest in this Agreement, duties hereunder and/or fees due hereunder may not be assigned or delegated to a third party, except as provided by the Texas Business and Commerce Code.

15.15 **Entire Agreement; Modifications; Conflicts.** This Agreement supersedes all prior agreements, written or oral, between Design Build Contractor and City and shall constitute the entire Agreement and understanding between the parties with respect to the subject matter hereof. This Agreement and each of its provisions shall be binding upon the Parties and may not be waived, modified, amended or altered except by a writing signed by City and Design Build Contractor. If there is a conflict between this Agreement and the Document 00700-General Conditions, then the provision which provides the greatest benefit to City shall govern.

15.16 **Severability.** In case any provision hereof shall, for any reason, be held invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid or unenforceable provision had not been included herein.

15.17 **Terms.** Terms used in the Contract Documents shall have the meanings stated in the Agreement, Document 00700-General Conditions, or other Contract Documents.

15.18 **Governing Law.** This Agreement and all of the rights and obligations of the Parties hereto and all of the terms and conditions hereof shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas. Venue for litigation shall be located in Harris County, Texas.

15.19 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted assigns and successors.

[REST OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, intending to be bound, the Parties have entered into this Agreement as of the Effective Date.

DESIGN BUILD CONTRACTOR:
_____.

CITY:
THE CITY OF HOUSTON, TEXAS

By _____
Name: _____
Title: _____
Tax ID NO. _____

By _____
Mayor

ATTEST:

ATTEST:

By _____
Corporate Secretary

By _____
City Secretary

APPROVED:

Scott Minnix
Director, General Services Department

APPROVED AS TO FORM:

Sr. Assistant City Attorney
L.D. File No. _____

COUNTERSIGNED:

City Controller

DATE COUNTERSIGNED:

("Effective Date")

EXHIBIT "A"

GUARANTEED MAXIMUM PRICE

_____ (“Design/Build Contractor”) hereby submits to the City of Houston Texas (“the City”) pursuant to the provisions of the Design/Build Contractor Agreement by and between the City and Design/Build Contractor dated _____, a Guaranteed Maximum Price (“GMP”) for the Project (as defined in the Agreement) based on the Contract Documents (as defined by the Agreement), as follows:

1. Cost of the Work \$ _____

a. The following Cash Allowances are included in the Cost of the Work above:

1. _____

2. _____

b. The following Alternates are included in the Cost of the Work above:

1. _____

2. _____

2. Construction Phase Fee (____ %): \$ _____
Percentage of (Cost of the Work)

3. Design/Build Contractor’s Contingency \$ _____
Percentage of Cost of the Work (____% max. per Agreement)

4. Guaranteed Maximum Price (GMP) \$ _____
(GMP = 1 + 2 + 3)

For GMP Proposal Cost Breakdown see Exhibit 1 attached hereto.

5. The GMP for the Project includes all Claims, Work, and Change Orders in existence before date of signing this GMP.
6. The Contract Documents upon which the GMP is based are set forth in Exhibit 6 attached hereto.
7. Design/Build Contractor shall provide complete performance of the Work for the GMP. In the event of a conflict among the Contract Documents, the Design/Build Contractor shall fulfill the greater of the requirements set forth in the Agreement, the Document 00700 – General Conditions, the Specifications, the Drawings, the Project criteria, and needs of the City.
8. The Clarifications & Assumptions made by the Design/Build Contractor are set forth in Exhibit 3.
9. Design/Build Contractor shall achieve Substantial Completion within _____ days after a Notice to Proceed is issued.
10. Design/Build Contractor waives all rights to an extension of time or delay damages for any events or circumstances prior to the date of signing this GMP.

The following exhibits are incorporated into the GMP:

1. Exhibit 1 – Schedule of Values
2. Exhibit 2 – Project Team and Burden Rates
3. Exhibit 3 – Clarifications & Assumptions
4. Exhibit 4 – Insurance
5. Exhibit 5 – Bonds
6. Exhibit 6 – Contract Documents
7. Exhibit 7 – Project Schedule
8. Exhibit 8 – Addendum(a) and Rider(s)

The insurance and bonds for this Guaranteed Maximum Price form have been reviewed as to form by the undersigned legal assistant and have been found to meet established Legal Department criteria. Legal Department has not reviewed the content of this document or its exhibits, except for Exhibit 4 and Exhibit 5.

Legal Assistant

Date

CITY ENGINEER

DESIGN/BUILD CONTRACTOR

(__ __) _____
(CRC) Humberto Bautista, P.E.

Date of Signing: _____

Signature: _____

Name: _____

Title: _____

Date of Signing: _____

EXHIBIT "B"

DIRECT SALARIES EXPENSE HOURLY BILLING RATES

EXHIBIT "C"

GENERAL CONDITIONS OF THE CONTRACT

EXHIBIT "D"

GENERAL REQUIREMENTS

The following documents, as they may be updated from time-to-time, are incorporated herein:

- Schedule 01145 Use of Premises
- Schedule 01255 Change Order Procedures
- Schedule 01292 Schedule of Values
- Schedule 01312 Coordination and Meetings
- Schedule 01325 Construction Schedule
- Schedule 01330 Submittal Procedures
- Schedule 01340 Shop Drawings, Product Data, and Samples
- Schedule 01422 Reference Standards
- Schedule 01450 Contractor's QC
- Schedule 01454 Testing Lab Services
- Schedule 01502 Mobilization
- Schedule 01504 Temporary Facilities and Controls
- Schedule 01610 Basic Product Requirements
- Schedule 01630 Product Substitution Procedures
- Schedule 01731 Cutting and Patching
- Schedule 01755 Starting Systems
- Schedule 01770 Closeout Procedures
- Schedule 01782 Operations and Maintenance
- Schedule 01785 Project Record Document

EXHIBIT "E"
OTHER DOCUMENTS

The following documents, as they may be updated from time-to-time, are incorporated herein:

- Document 00500 – Form of Business,
- Document 00501 – Resolution of Corporation,
- Document 00620 – Affidavit of Insurance,
- Document 00624 – Affidavit of Compliance with Affirmative Action Program,
- Document 00805 – Equal Employment Opportunity Program Requirements,
- Document 00820 – Wage Rates for Engineering Construction,
- Document 00821 – Wage Rates for Building Construction, and
- Document 00840 – POP 1: Pay or Play Program Requirements.

EXHIBIT "F"

NON-MWBE SUBMITTAL DOCUMENTS

The following documents, as they may be updated from time-to-time, are incorporated herein:

- Document 00601 – Drug Policy Compliance Agreement,
- Document 00602 – Contractors Drug-free Workplace Policy,
- Document 00604 – History of OSHA Actions and List of On-the-Job Injuries,
- Document 00605 – List of Safety Impact Positions,
- Document 00610 – Performance Bond,
- Document 00611 – Statutory Payment Bond,
- Document 00612 – One-year maintenance Bond,
- Document 00620 – Affidavit of Insurance (with Certificate of Insurance and endorsements attached),
- Document 00622 – Name and Qualifications of Proposed Superintendent (Design Build Contractor creates this document),
- Document 00624 – Affidavit of Compliance with Affirmative Action Program,
- Document 00630 – POP 2: Certification of Agreement to Comply with Pay or Play Program,
- Document 00631 – POP 3: List of Participating Subcontractors, and
- Document 00808 –Minority and Woman-Owned Business Enterprises (MWBE), Persons with Disabilities Business Enterprise (PDBE), and Small Business Enterprise (SBE) Program.

EXHIBIT "G"
MWBE, MBE AND SBE SUBMITTAL DOCUMENTS

The following documents, as they may be updated from time-to-time, are incorporated herein:

- Document 00600 – List of Proposed Subcontractors and Suppliers, and
- Document 00805 – Equal Employment Opportunity Program Requirements.

EXHIBIT "H"

Intentionally Omitted

EXHIBIT "I"

PROJECT SCHEDULE

Schedule for Pre-Construction Services is 270 days from Notice to Proceed (NTP).