Document 00910

ADDENDUM NO. 01

Date of Addendum: 09/30/2021

PROJECT NAME: Southwest Multi-Service Center Renovation

PROJECT NO: WBS No.: H-00080-0001-4

SUBMITTAL DATE: October 14, 2021 (There is no change to the Submittal Date.)

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

TO: Prospective Respondents

This Addendum forms a part of the Request for Qualifications (RFQ) and will be incorporated into the Contract, as applicable. Insofar as the original RFQ is inconsistent, this Addendum governs.

CHANGES TO RFQ

1. Replace RFQ document "SWMSC Reno RFQ" in its entirety with "SWMSC Reno RFQ R1" that adds Section 1 and 2.

CLARIFICATIONS

2. Question: *What is the total SF for this project?*
   Answer: Refer to RFQ Section 2 - Scope of Services, 2.1 Project Description: 24,000 s.f.

END OF ADDENDUM NO. 01

DATED: 09/30/2021

Richard Vella
Assistant Director
Real Estate, Design & Construction Division
General Services Department

REQUEST FOR QUALIFICATIONS
FOR
DESIGN-BUILD SERVICES

SOUTHWEST MULTI-SERVICE CENTER RENOVATION

Submittal Date

Thursday, October 14, 2021

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

Design MWBE Goal: 24%
Construction MBE Goal: 19%
Construction WBE Goal: 11%

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REQUEST FOR QUALIFICATIONS FOR DESIGN-BUILD SERVICES

Project Name: Southwest Multi-Service Center Renovation
Project Number: H-000080-0001-4

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 qualifications (RFQ) for the selection of a Design-Build Team for this Project in accordance with Texas Government Code Chapter 2269, Subchapter G.

The City anticipates retaining a Design-Build Team to provide the Scope of Services outlined in Document 2 of this RFQ. The Design-Build Team 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 "Respondent(s)". Respondent and its Sub-Consultants shall be referred to collectively as the "Design-Build Team".

This RFQ represents Step 1 of the procurement process and establishes the process for soliciting and evaluating Statements of Qualifications (SOQs) from those entities (Respondents) interested in serving as the Design Build Team. The City will conduct a Pre-Submittal meeting via audio conferencing for this solicitation. Please refer to the submittal instructions for exact details of time and access number for audio conferencing. At the conference, the City will present an overview of the Project scope, including the procurement process, schedule, and required forms for the Project. Attendance is highly recommended. The SOQs will be reviewed and evaluated in accordance with this RFQ to develop a Shortlist (maximum of 5) of Respondents deemed the most qualified to execute the Design-Build Project on behalf of the City. Firms shortlisted will receive an invitation to proceed to Oral Interview/Presentation and submit a construction phase fee proposal, Step Two of the process. During Step 2 of the procurement process the City will evaluate the shortlisted firms based on the established criteria for Oral Interview/Presentation

1.2 SUBMITTAL INSTRUCTIONS

Step 1 - Statement of Qualifications (SOQ)

Respondents shall submit **six** hard copies and **one** electronic copy (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 14, 2021**
Time:	**Accepted until 10:30 a.m.**
Location:	**City Secretary, 900 Bagby, Room P101, Houston, TX 77002**

Step 2 - Proposal – RFP for Short Listed Respondents Only

Short listed Respondents will be invited to submit a proposal (see Document 5) in a sealed envelope labeled with the Respondent's name, name of the Project, and General Services Department. Proposals are due at the date, time, and location set out below. Late proposals will not be accepted.

Date:	**Thursday, November 18, 2021**
Time:	**Accepted until 10:30 a.m.**
Location:	**City Secretary, 900 Bagby, Room P101, Houston, TX 77002**

1.3 PRE-SUBMITTAL MEETING

A Pre-submittal meeting will be held at the date, time, and location set out below. Participation in the meeting is not mandatory; however, it is recommended as meeting minutes will not be issued.

Date:	**Tuesday, October 5, 2021**
Time:	**10:30 a.m.**
Location:	**Microsoft Teams video conference meeting.**
Conference Number:	**936-755-1521**
Conference ID:	**375 094 200#**

1.4 PRE-PROPOSAL MEETING

A Pre-proposal meeting will be held at the date, time, and location set out below. Participation in the meeting is mandatory for the invited proposers.

Date:	**Tuesday, November 9, 2021**
Time:	**10:30 a.m.**
Location:	**Microsoft Teams video conference meeting.**
Conference Number:	**936-755-1521**
Conference ID:	**757 198 461#**

1.5 QUESTIONS

Email questions concerning this RFQ to:

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

c/o
Greg Quintero
Senior Project Manager
Email: greg.quintero@houstontx.gov

All questions must be submitted before **12:00 p.m.** on **Thursday, October 7, 2021**

1.6 ADDENDA

All modifications or clarifications of this RFQ will be issued in writing as an Addendum. Addenda will be posted at

https://www.houstontx.gov/generalservices/advertisements.html

Respondents may only rely on information set out in this RFQ, as modified by Addenda. By submitting a proposal, Respondents will be deemed to have received all Addenda.

No Addendum will be issued later than **Monday, October 11, 2021,** except Addenda with minor clarifications, withdrawing the RFQ, or postponing the Submittal Date.

1.7 ESTIMATED TIMELINE

Pre-Submittal Meeting:	10:30 a.m.,	Tuesday, **October 5, 2021**
Questions Deadline:	12:00 p.m.,	Thursday, **October 7, 2021**
Addenda Deadline:		Monday, **October 11, 2021**
Submittal Date:	10:30 a.m.,	Thursday, **October 14, 2021**
Short List Notification Date:		**November 5, 2021**
Pre-Proposal Meeting:	10:30 a.m.,	Tuesday, **November 9, 2021**
Proposal Date:	10:30 a.m.,	Thursday, **November 18, 2021**
Anticipated Selection Date:		**November 2021**
Anticipated Award Date:		**January 2022**
Contract Notice to Proceed:		**January 2022**

REQUEST FOR QUALIFICATIONS FOR DESIGN-BUILD SERVICES
Project Name: Southwest Multi-Service Center Renovation
Project Number: H-000080-0001-4

2 – SCOPE OF SERVICES

2.1 PROJECT DESCRIPTION

Project Name:	**Southwest Multi-Service Center Renovation**
Location:	**6400 High Star Drive, Houston, TX, 77074**
Estimated Project Budget:	**$1,400,000.00**

The 24,000 s.f. facility will remain occupied during this project. The Design-Build Team shall phase the project, coordinate and provide a swing space, and relocate furniture and obstacles as necessary that might otherwise impede construction. Scope of work includes, but is not limited to:

1. Repair damaged drywall and repaint interior surfaces throughout. Touch up paint as necessary at WIC area that was recently renovated.
2. Replace plastic laminate surfaces at breakroom millwork.
3. Replace plastic laminate countertops at breakroom millwork with quartz countertops.
4. Provide and install chair railing in all corridors, classrooms, and hallways.
5. Provide and install corner guards on all drywall corners excluding WIC, HPL, and main corridors.
6. Replace wall protection in auditorium & classrooms with decorative protection panels.
7. Remove stove and "extend" millwork (approx. 4 linear feet) in the kitchen.
8. Demolish VCT and prepare floor as necessary less WIC area that was recently renovated.
9. Replace all VCT with stained/polished concrete less WIC area that was recently renovated.
10. Provide and install rubber base including at HPL less WIC area that was recently renovated.
11. Replace restroom mirrors in all public restrooms.
12. Provide and install pamphlet holders.
13. Refurbish auditorium folding partitions.
14. Professionally clean base at interior masonry and seal.
15. Professionally clean floor tile grout.
16. Provide and install visual display units at Auditorium, Seniors, Break room, Waiting area, and Lobby.

17. Provide and install wayfinding signage (entry signage at program areas).
18. Provide and install wayfinding signage (interior room identification signs).
19. Replace corridor high bay (metal halide) fixtures or retrofit with LED lamps/kits.
20. Provide and install a paging system.
21. Upgrade the MDF room including new mini split AC system.
22. Power wash building exterior.
23. Power wash parking lot and sidewalks.
24. Restripe parking lot and repaint all markings and curbs.
25. Add TAS parking "penalty signs" per current TAS administrative rules.
26. Refresh landscaping including removing palm tree stumps, dead plantings and trees. Reset displaced hardscape coping.
27. Provide and install miscellaneous site improvements including new trash receptacles.
28. Replace continuous perimeter sealant joint at base of building.
29. Paint exterior ferrous metal (doors, canopy framing) excluding downspouts and gutters.
30. Repair and paint wrought iron fencing at community garden area.
31. Provide and install an automatic sliding parking lot entry gate operator and card reader.
32. Provide and install additional parking area security cameras.
33. Replace four air handling units, associated condensers, and test & balance.
34. Provide City approved third party CxA for HVAC scope.

2.2 PROPOSED PROJECT SCHEDULE

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

Design-Build Services Procurement	09/2021 – 01/2022
Pre-Construction Services	01/2022 – 07/2022
Permitting	06/2022 – 09/2022
Construction Phase	09/2022 – 06/2023
Warranty Phase	06/2023 – 06/2024

2.3 CONSTRUCTION DELIVERY METHOD

The Project will utilize the Design-Build (DB) delivery method.

2.4 LEED CERTIFICATION

The project will not seek Leadership in Energy & Environmental Design (LEED) Certification but will utilize sustainable practices.

2.5 DESIGN-BUILD SERVICES

Pre-Construction Phase

Design-Build (DB) has been selected as the delivery method for this project and binds the DB Team to deliver the Project within a Guaranteed Maximum Price (GMP). The DB Team shall provide a construction cost estimate at each milestone of the pre-construction phase. The pre-construction phase milestones are:

- Schematic Design

- Design Development
- 50% Contract Documents
- 95% Contract Documents

The DB Team shall obtain a building permit, prepare, and submit the GMP. The GMP shall include a detailed schedule of values, a contingency line item to account for reasonably inferred items and other Project-related items that may arise during the construction phase. The DB Team shall manage and control design and construction costs to not exceed the GMP; any costs exceeding the GMP that are not change orders are the financial responsibility of the DB Team.

Construction and Post-Construction Phases

- The DB Team shall provide construction administration and management services necessary for the Project. The DB Team shall construct the work in accordance with the contract documents and General Conditions. The DB Team shall be responsible for commissioning (Cx) procedures and documentation, close-out documentation, as-built documentation, maintenance plans, post-construction observations, one-year warranty walkthrough, and follow-up.
- Refer to attached Document 7 – Contract Form for additional information.

2.6 ADDITIONAL INFORMATION

Existing Drawings

- Existing drawings when provided are **for information only.**

REQUEST FOR QUALIFICATIONS
FOR DESIGN-BUILD SERVICES
Project Name: Southwest Multi-Service Center Renovation
Project Number: H-000080-0001-4

3 – EVALUATION PROCESS AND CRITERIA

3.1 EVALUATION CRITERIA

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

0. SOQ completed in accordance with instructions. (**5** Points Maximum)

1. Respondent's Experience (**30** Points Maximum) – Reference Document 4 – SOQ, Sections 1.1 – 1.2

2. Proposed Key Personnel's Experience (**35** Points Maximum) – Reference Document 4 – SOQ, Sections 2.1 – 2.11

3. Proposed Design Team Consultants' Experience (**10** Points Maximum) – Reference Document 4 – SOQ, Sections 3.1 – 3.3

4. Project Approach (**5** Points Maximum) – Reference Document 4 – SOQ, Section 4.1.

3.2 FEE PROPOSALS AND INTERVIEWS/PRESENTATIONS

A maximum of five Respondents may be short listed to submit proposals and participate in interviews/presentations. Respondents will be notified in writing of the date/time and location of their interview. Respondents shall submit their proposal in accordance with the instructions set out in Document 1 – RFQ Process. The Respondent's designated Key Personnel will be expected to participate in the interview/presentation.

Fee Proposal (15 Point Maximum) – Reference Document 5 – Standard Fee Proposal Form for Design-Build Services. This will be added to the SOQ points for a potential grand total of 100 points.

Each team will have five minutes prior to the scheduled interview time to set up for the presentation (Smart Board available). Next, the team will have 30 minutes to make a presentation. Following each presentation, the Evaluation Committee will conduct a 15-minute question and answer session. Specific questions may be asked about the submitted Statement of Qualifications and Proposal.

The presentation shall include the following:

1. Introduction

    a. Highlight relevant Respondent's experience including Design-Build delivery method.
    b. Highlight relevant Project Experience of Key Personnel including Design-Build delivery method.
    c. Demonstrate successful team synergy and dynamics.

2. Project Approach

    a. Discuss and present Respondent's preconstruction approach.
    b. Highlight ideas related to this project, and include a constructability statement. Examples of innovation solutions applicable to this project are encouraged.

REQUEST FOR QUALIFICATIONS (RFQ)
FOR DESIGN-BUILD SERVICES
Project Name / Number: Southwest Multi-Service Center Renovation / H-000080-0001-4

4 - 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. The response boxes can be expanded to fit more information; however, the tables must remain the same size. Typically, font size shall be 8 pt. or larger.

0.1 RESPONDENT'S GENERAL INFORMATION

Is SOQ being submitted by a Joint Venture?	☐ Yes ☐ 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 QUALIFICATIONS (RFQ)
FOR DESIGN-BUILD SERVICES
Project Name / Number: Southwest Multi-Service Center Renovation / H-000080-0001-4

0.2 JOINT VENTURE FIRM(S) INFORMATION. *If submitting as a joint venture, the following information is required for each additional joint venture firm. Insert additional tables, if necessary.*

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

REQUEST FOR QUALIFICATIONS (RFQ)
FOR DESIGN-BUILD SERVICES
Project Name / Number: Southwest Multi-Service Center Renovation / H-000080-0001-4

1.1 RESPONDENT'S DESIGN TEAM EXPERIENCE. *Respondents should select **three** representative projects of similar size and scope. Recent projects completed within ten years or less are preferable. The three projects are not limited to projects of similar occupancy type.*

Architectural Services Firm Name:			
I. Project Name:			
Project Location:			
Year Construction Completed (**month/year**): ***NOTE:*** *If the project is not substantially complete at the time of submission, the respondent will be awarded **zero** points.*		LEED Certification Level:	Renovation or New:
Construction Cost:		Building Area (Sq. Ft.):	
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Services Provided:			
Names of Proposed Key Personnel Listed in Section 2.1 that Worked on this Design Project (if any):			
Attach up to two pages of photographs behind this sheet.			

REQUEST FOR QUALIFICATIONS (RFQ)

FOR DESIGN-BUILD SERVICES

Project Name / Number: Southwest Multi-Service Center Renovation / H-000080-0001-4

1.1

Firm Name:			
II. Project Name:			
Project Location:			
Year Construction Completed (**month/year**): ***NOTE:*** *If the project is not substantially complete at the time of submission, the respondent will be awarded **zero** points.*		LEED Certification Level:	Renovation or New:
Construction Costs:		Building Area (Sq. Ft.):	
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Services Provided:			
Names of Proposed Key Personnel Listed in Section 2.1 that Worked on this Design Project (if any):			
Attach up to two pages of photographs behind this sheet.			

REQUEST FOR QUALIFICATIONS (RFQ)

FOR DESIGN-BUILD SERVICES

Project Name / Number: Southwest Multi-Service Center Renovation / H-000080-0001-4

1.1

Firm Name:			
III. Project Name:			
Project Location:			
Year Construction Completed (**month/year**): ***NOTE:*** *If the project is not substantially complete at the time of submission, the respondent will be awarded **zero** points.*		LEED Certification Level:	Renovation or New:
Construction Cost:		Building Area (Sq. Ft.):	
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Services Provided:			
Names of Proposed Key Personnel Listed in Section 2.1 that Worked on this Design Project (if any):			
Attach up to two pages of photographs behind this sheet.			

1.2 RESPONDENT'S CONSTRUCTION TEAM EXPERIENCE.

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

Construction Firm Name:			
I. Project Name:			
Project Location:		Construction Delivery Method:	
Year Construction Completed (**month/year**): ***NOTE:*** *If the project is not substantially complete at the time of submission, the respondent will be awarded **zero** points.*		New Construction or Renovation:	
Construction Cost:		Building Area (Sq. Ft.):	
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Architectural Firm:			
Names of Proposed Key Personnel Listed in Section 3.1 that Worked on this Design Project (if any):			
Attach up to two pages of photographs behind this sheet.			

1.2

Construction Firm Name:			
II. Project Name:			
Project Location:		Construction Delivery Method:	
Year Construction Completed (**month/year**): ***NOTE:*** *If the project is not substantially complete at the time of submission, the respondent will be awarded **zero** points.*		New Construction or Renovation:	
Construction Cost:		Building Area (Sq. Ft.):	
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Architectural Firm			
Names of Proposed Key Personnel Listed in Section 3.1 that Worked on this Design Project (if any):			
Attach up to two pages of photographs behind this sheet.			

1.2

Construction Firm Name:			
III. Project Name:			
Project Location:		Construction Delivery Method:	
Year Construction Completed (**month/year**): ***NOTE:*** *If the project is not substantially complete at the time of submission, the respondent will be awarded **zero** points.*		New Construction or Renovation:	
Construction Cost:		Building Area (Sq. Ft.):	
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Architectural Firm			
Names of Proposed Key Personnel Listed in Section 3.1 that Worked on this Design Project (if any):			
Attach up to two pages of photographs behind this sheet.			

2.1 PROPOSED DESIGN TEAM KEY PERSONNEL. *List the Design Team personnel proposed for this project. Include the names of the Project Architect, Project Manager, Project Designer, and the Construction Administrator.*

SOQ Project Role	Personnel Name	Firm Name/Corporate Title	Active Licenses / Registrations / Certifications	Years of Experience
Project Architect				
Project Manager				
Project Designer				
Construction Administrator				

2.2 EXPERIENCE OF PROJECT ARCHITECT.

*Respondents should select **three** representative design projects of similar size and scope for the Project Architect. These projects do not have to match projects in Section 1.1- Respondent's Design Team Experience. Recent projects completed within ten years or less are preferable. The three projects are not limited to projects of similar occupancy type.*

Project Architect's Name:			
I. Project Name:			
Project Location:			
Year Construction Completed (**month/year**): ***NOTE:*** *If the project is not substantially complete at the time of submission, the respondent will be awarded **zero** points..*		LEED Certification Level:	Renovation or New:
Construction Cost:		Building Area (Sq. Ft.):	
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Project Duties Performed by the Project Architect:			
Names of Proposed Key Personnel Listed in Section 2.1 that Worked on this Design Project (if any):			
Attach up to two pages of photographs behind this sheet.			

2.2

Project Architect's Name:			
II. Project Name:			
Project Location:			
Year Construction Completed (**month/year**): ***NOTE:*** *If the project is not substantially complete at the time of submission, the respondent will be awarded **zero** points.*		LEED Certification Level:	Renovation or New:
Construction Cost:		Building Area (Sq. Ft.):	
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Project Duties Performed by the Project Architect:			
Names of Proposed Key Personnel Listed in Section 2.1 that Worked on this Design Project (if any):			
Attach up to two pages of photographs behind this sheet.			

2.2

Project Architect's Name:			
III. Project Name:			
Project Location:			
Year Construction Completed (**month/year**): ***NOTE:*** *If the project is not substantially complete at the time of submission, the respondent will be awarded **zero** points.*		LEED Certification Level:	Renovation or New:
Construction Cost:		Building Area (Sq. Ft.):	
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Project Duties Performed by the Project Architect:			
Names of Proposed Key Personnel Listed in Section 2.1 that Worked on this Design Project (if any):			
Attach up to two pages of photographs behind this sheet.			

2.3 EXPERIENCE OF PROJECT MANAGER. *Respondents should select **three** representative design projects of similar size and scope for the Project Manager. These projects do not have to match projects in Section 1.1- Respondent's Design Team Experience. Recent projects completed within ten years or less are preferable. The three projects are not limited to projects of similar occupancy type.*

Project Manager's Name:			
I. Project Name:			
Project Location:			
Year Construction Completed (**month/year**): ***NOTE:*** *If the project is not substantially complete at the time of submission, the respondent will be awarded **zero** points.*		LEED Certification Level:	Renovation or New:
Construction Cost:		Building Area (Sq. Ft.):	
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Project Duties Performed by the Project Manager:			
Names of Proposed Key Personnel Listed in Section 2.1 that Worked on this Design Project (if any):			
Attach up to two pages of photographs behind this sheet.			

2.3

Project Manager's Name:			
II. Project Name:			
Project Location:			
Year Construction Completed (**month/year**): ***NOTE:*** *If the project is not substantially complete at the time of submission, the respondent will be awarded **zero** points.*		LEED Certification Level:	Renovation or New:
Construction Cost:		Building Area (Sq. Ft.):	
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Project Duties Performed by the Project Manager:			
Names of Proposed Key Personnel Listed in Section 2.1 that Worked on this Design Project (if any):			
Attach up to two pages of photographs behind this sheet.			

2.3

Project Manager's Name:			
III. Project Name:			
Project Location:			
Year Construction Completed (**month/year**): ***NOTE:*** *If the project is not substantially complete at the time of submission, the respondent will be awarded **zero** points.*		LEED Certification Level:	Renovation or New:
Construction Cost:		Building Area (Sq. Ft.):	
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Project Duties Performed by the Project Manager:			
Names of Proposed Key Personnel Listed in Section 2.1 that Worked on this Design Project (if any):			
Attach up to two pages of photographs behind this sheet.			

2.4 EXPERIENCE OF PROJECT DESIGNER. *Respondents should select **three** representative design projects of similar size and scope for the Project Designer. These projects do not have to match projects in Section 1.1- Respondent's Design Team Experience. Recent projects completed within ten years or less are preferable. The three projects are not limited to projects of similar occupancy type.*

Project Designer's Name:			
I. Project Name:			
Project Location:			
Year Construction Completed (**month/year**): ***NOTE:*** *If the project is not substantially complete at the time of submission, the respondent will be awarded **zero** points.*		LEED Certification Level:	Renovation or New:
Construction Cost:		Building Area (Sq. Ft.):	
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Project Duties Performed by the Project Designer:			
Names of Proposed Key Personnel Listed in Section 2.1 that Worked on this Design Project (if any):			
Attach up to two pages of photographs behind this sheet.			

2.4

Project Designer's Name:			
II. Project Name:			
Project Location:			
Year Construction Completed (**month/year**): ***NOTE:*** *If the project is not substantially complete at the time of submission, the respondent will be awarded **zero** points.*		LEED Certification Level:	Renovation or New:
Construction Cost:		Building Area (Sq. Ft.):	
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Project Duties Performed by the Project Designer:			
Names of Proposed Key Personnel Listed in Section 2.1 that Worked on this Design Project (if any):			
Attach up to two pages of photographs behind this sheet.			

REQUEST FOR QUALIFICATIONS (RFQ)

FOR DESIGN-BUILD SERVICES

Project Name / Number: Southwest Multi-Service Center Renovation / H-000080-0001-4

2.4

Project Designer's Name:			
III. Project Name:			
Project Location:			
Year Construction Completed (**month/year**): ***NOTE:*** *If the project is not substantially complete at the time of submission, the respondent will be awarded **zero** points.*		LEED Certification Level:	Renovation or New:
Construction Cost:		Building Area (Sq. Ft.):	
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Project Duties Performed by the Project Designer:			
Names of Proposed Key Personnel Listed in Section 2.1 that Worked on this Design Project (if any):			
Attach up to two pages of photographs behind this sheet.			

2.5 EXPERIENCE OF PROJECT CONSTRUCTION ADMINISTRATOR. *Respondents should select **three** representative design projects of similar size and scope for the Project Construction Administrator. These projects do not have to match projects in Section 1.1- Respondent's Design Team Experience. Recent projects completed within ten years or less are preferable. The three projects are not limited to projects of similar occupancy type.*

Project Construction Administrator's Name:			
I. Project Name:			
Project Location:			
Year Construction Completed (**month/year**): ***NOTE:*** *If the project is not substantially complete at the time of submission, the respondent will be awarded **zero** points.*		LEED Certification Level:	Renovation or New:
Construction Cost:		Building Area (Sq. Ft.):	
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Project Duties Performed by the Project Construction Administrator:			
Names of Proposed Key Personnel Listed in Section 2.1 that Worked on this Design Project (if any):			
Attach up to two pages of photographs behind this sheet.			

2.5

Project Construction Administrator's Name:			
II. Project Name:			
Project Location:			
Year Construction Completed (**month/year**): ***NOTE:*** *If the project is not substantially complete at the time of submission, the respondent will be awarded **zero** points.*		LEED Certification Level:	Renovation or New:
Construction Cost:		Building Area (Sq. Ft.):	
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Project Duties Performed by the Project Construction Administrator:			
Names of Proposed Key Personnel Listed in Section 2.1 that Worked on this Design Project (if any):			
Attach up to two pages of photographs behind this sheet.			

2.5

Project Construction Administrator's Name:			
III. Project Name:			
Project Location:			
Year Construction Completed (**month/year**): ***NOTE:*** *If the project is not substantially complete at the time of submission, the respondent will be awarded **zero** points.*		LEED Certification Level:	Renovation or New:
Construction Cost:		Building Area (Sq. Ft.):	
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Project Duties Performed by the Project Construction Administrator:			
Names of Proposed Key Personnel Listed in Section 2.1 that Worked on this Design Project (if any):			
Attach up to two pages of photographs behind this sheet.			

2.6 PROPOSED CONSTRUCTION TEAM KEY PERSONNEL. *List the Key Personnel proposed for this project. Include the Preconstruction Project Manager, Constructability/Document Coordination Reviewer, Estimator, Construction Project Manager, and the Project Superintendent.*

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

2.7 EXPERIENCE OF PRECONSTRUCTION PROJECT MANAGER.

*Respondents should select **three** representative projects of similar size, scope, and delivery method for the Preconstruction Project Manager. These projects do not have to match projects in Section 1.2- Respondent's Construction Team Experience. Recent projects completed within ten years or less are preferable. The three projects are not limited to projects of similar occupancy type.*

Preconstruction Project Manager's Name:			
I. Project Name:			
Project Location:		Construction Delivery Method:	
Year Construction Completed (**month/year**): ***NOTE:** If the project is not substantially complete at the time of submission, the respondent will be awarded **zero** points.*		New Construction or Renovation:	
Construction Cost:		Building Area (Sq. Ft.):	
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Architectural Firm:			
Project Duties Performed by the Preconstruction Project Manager:			
Names of Proposed Key Personnel Listed in Section 3.1 that Worked on this Project (if any):			
*Attach up to **two** pages of photographs behind this sheet.*			

REQUEST FOR QUALIFICATIONS (RFQ)
FOR DESIGN-BUILD SERVICES
Project Name / Number: Southwest Multi-Service Center Renovation / H-000080-0001-4

2.7

Preconstruction Project Manager's Name:			
II. Project Name:			
Project Location:		Construction Delivery Method:	
Year Construction Completed (**month/year**): ***NOTE:*** *If the project is not substantially complete at the time of submission, the respondent will be awarded* ***zero*** *points.*		New Construction or Renovation:	
Construction Cost:		Building Area (Sq. Ft.):	
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Architectural Firm:			
Project Duties Performed by the Preconstruction Project Manager:			
Names of Proposed Key Personnel Listed in Section 3.1 that Worked on this Project (if any):			
Attach up to ***two*** *pages of photographs behind this sheet.*			

2.7

Preconstruction Project Manager's Name:			
III. Project Name:			
Project Location:		Construction Delivery Method:	
Year Construction Completed (**month/year**): ***NOTE:*** *If the project is not substantially complete at the time of submission, the respondent will be awarded* ***zero*** *points.*		New Construction or Renovation:	
Construction Cost:		Building Area (Sq. Ft.):	
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Architectural Firm:			
Project Duties Performed by the Preconstruction Project Manager:			
Names of Proposed Key Personnel Listed in Section 3.1 that Worked on this Project (if any):			
Attach up to ***two*** *pages of photographs behind this sheet.*			

2.8 EXPERIENCE OF CONSTRUCTABILITY/DOCUMENT COORDINATION REVIEWER

*Respondents should select **three** representative projects of similar size, scope, and delivery method for the Constructability/Document Coordination Reviewer. These projects do not have to match projects in Section 1.2- Respondent's Construction Team Experience. Recent projects completed within ten years or less are preferable. The three projects are not limited to projects of similar occupancy type.*

Constructability/Document Coordination Reviewer's Name:			
I. Project Name:			
Project Location:		Construction Delivery Method:	
Year Construction Completed (**month/year**): ***NOTE:*** *If the project is not substantially complete at the time of submission, the respondent will be awarded **zero** points.*		New Construction or Renovation:	
Construction Cost:		Building Area (Sq. Ft.):	
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Architectural Firm:			
Project Duties Performed by the Constructability/Document Coordination Reviewer:			
Names of Proposed Key Personnel Listed in Section 3.1 that Worked on this Project (if any):			
*Attach up to **two** pages of photographs behind this sheet.*			

2.8

Constructability/Document Coordination Reviewer's Name:			
II. Project Name:			
Project Location:		Construction Delivery Method:	
Year Construction Completed (**month/year**): ***NOTE:*** *If the project is not substantially complete at the time of submission, the respondent will be awarded* ***zero*** *points.*		New Construction or Renovation:	
Construction Cost:		Building Area (Sq. Ft.):	
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Architectural Firm:			
Project Duties Performed by the Constructability/Document Coordination Reviewer:			
Names of Proposed Key Personnel Listed in Section 3.1 that Worked on this Project (if any):			
Attach up to ***two*** *pages of photographs behind this sheet.*			

2.8

Constructability/Document Coordination Reviewer's Name:			
III. Project Name:			
Project Location:		Construction Delivery Method:	
Year Construction Completed (**month/year**): ***NOTE:*** *If the project is not substantially complete at the time of submission, the respondent will be awarded* ***zero*** *points.*		New Construction or Renovation:	
Construction Cost:		Building Area (Sq. Ft.):	
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Architectural Firm:			
Project Duties Performed by the Constructability/Document Coordination Reviewer:			
Names of Proposed Key Personnel Listed in Section 3.1 that Worked on this Project (if any):			
Attach up to ***two*** *pages of photographs behind this sheet.*			

2.9 EXPERIENCE OF ESTIMATOR

*Respondents should select **three** representative projects of similar size, scope, and delivery method for the Estimator. These projects do not have to match projects in Section 1.2- Respondent's Construction Team Experience. Recent projects completed within ten years or less are preferable. The three projects are not limited to projects of similar occupancy type.*

Estimator's Name:			
I. Project Name:			
Project Location:		Construction Delivery Method:	
Year Construction Completed (**month/year**): ***NOTE:*** *If the project is not substantially complete at the time of submission, the respondent will be awarded **zero** points.*		New Construction or Renovation:	
Construction Cost:		Building Area (Sq. Ft.):	
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Architectural Firm:			
Project Duties Performed by the Estimator:			
Names of Proposed Key Personnel Listed in Section 3.1 that Worked on this Project (if any):			
*Attach up to **two** pages of photographs behind this sheet.*			

2.9

Estimator's Name:			
II. Project Name:			
Project Location:		Construction Delivery Method:	
Year Construction Completed (**month/year**): ***NOTE:*** *If the project is not substantially complete at the time of submission, the respondent will be awarded* ***zero*** *points.*		New Construction or Renovation:	
Construction Cost:		Building Area (Sq. Ft.):	
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Architectural Firm:			
Project Duties Performed by the Estimator:			
Names of Proposed Key Personnel Listed in Section 3.1 that Worked on this Project (if any):			
Attach up to ***two*** *pages of photographs behind this sheet.*			

2.9

Estimator's Name:			
III. Project Name:			
Project Location:		Construction Delivery Method:	
Year Construction Completed (**month/year**): ***NOTE:*** *If the project is not substantially complete at the time of submission, the respondent will be awarded* ***zero*** *points.*		New Construction or Renovation:	
Construction Cost:		Building Area (Sq. Ft.):	
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Architectural Firm:			
Project Duties Performed by the Estimator:			
Names of Proposed Key Personnel Listed in Section 3.1 that Worked on this Project (if any):			
Attach up to ***two*** *pages of photographs behind this sheet.*			

2.10 EXPERIENCE OF CONSTRUCTION PROJECT MANAGER

*Respondents should select **three** representative projects of similar size, scope, and delivery method for the Construction Project Manager. These projects do not have to match projects in Section 1.2- Respondent's Construction Team Experience. Recent projects completed within ten years or less are preferable. The three projects are not limited to projects of similar occupancy type.*

Construction Project Manager's Name:			
I. Project Name:			
Project Location:		Construction Delivery Method:	
Year Construction Completed (**month/year**): ***NOTE:*** *If the project is not substantially complete at the time of submission, the respondent will be awarded **zero** points.*		New Construction or Renovation:	
Construction Cost:		Building Area (Sq. Ft.):	
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Architectural Firm:			
Project Duties Performed by the Construction Project Manager:			
Names of Proposed Key Personnel Listed in Section 3.1 that Worked on this Project (if any):			
*Attach up to **two** pages of photographs behind this sheet.*			

2.10

Construction Project Manager's Name:			
II. Project Name:			
Project Location:		Construction Delivery Method:	
Year Construction Completed (**month/year**): ***NOTE:*** *If the project is not substantially complete at the time of submission, the respondent will be awarded* ***zero*** *points.*		New Construction or Renovation:	
Construction Cost:		Building Area (Sq. Ft.):	
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Architectural Firm:			
Project Duties Performed by the Construction Project Manager:			
Names of Proposed Key Personnel Listed in Section 3.1 that Worked on this Project (if any):			
Attach up to ***two*** *pages of photographs behind this sheet.*			

2.10

Construction Project Manager's Name:			
III. Project Name:			
Project Location:		Construction Delivery Method:	
Year Construction Completed (**month/year**): ***NOTE:*** *If the project is not substantially complete at the time of submission, the respondent will be awarded* ***zero*** *points.*		New Construction or Renovation:	
Construction Cost:		Building Area (Sq. Ft.):	
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Architectural Firm:			
Project Duties Performed by the Construction Project Manager:			
Names of Proposed Key Personnel Listed in Section 3.1 that Worked on this Project (if any):			
Attach up to ***two*** *pages of photographs behind this sheet.*			

2.11 EXPERIENCE OF CONSTRUCTION SUPERINTENDENT

*Respondents should select **three** representative projects of similar size, scope, and delivery method for the Construction Superintendent. These projects do not have to match projects in Section 1.2- Respondent's Construction Team Experience. Recent projects completed within ten years or less are preferable. The three projects are not limited to projects of similar occupancy type.*

Construction Superintendent's Name:			
I. Project Name:			
Project Location:		Construction Delivery Method:	
Year Construction Completed (**month/year**): ***NOTE:*** *If the project is not substantially complete at the time of submission, the respondent will be awarded **zero** points.*		New Construction or Renovation:	
Construction Cost:		Building Area (Sq. Ft.):	
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Architectural Firm:			
Project Duties Performed by the Construction Superintendent:			
Names of Proposed Key Personnel Listed in Section 3.1 that Worked on this Project (if any):			
*Attach up to **two** pages of photographs behind this sheet.*			

2.11

Construction Superintendent's Name:			
II. Project Name:			
Project Location:		Construction Delivery Method:	
Year Construction Completed (**month/year**): ***NOTE:*** *If the project is not substantially complete at the time of submission, the respondent will be awarded* ***zero*** *points.*		New Construction or Renovation:	
Construction Cost:		Building Area (Sq. Ft.):	
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Architectural Firm:			
Project Duties Performed by the Construction Superintendent:			
Names of Proposed Key Personnel Listed in Section 3.1 that Worked on this Project (if any):			
Attach up to ***two*** *pages of photographs behind this sheet.*			

2.11

Construction Superintendent's Name:			
III. Project Name:			
Project Location:		Construction Delivery Method:	
Year Construction Completed (**month/year**): ***NOTE:*** *If the project is not substantially complete at the time of submission, the respondent will be awarded* ***zero*** *points.*		New Construction or Renovation:	
Construction Cost:		Building Area (Sq. Ft.):	
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Architectural Firm:			
Project Duties Performed by the Construction Superintendent:			
Names of Proposed Key Personnel Listed in Section 3.1 that Worked on this Project (if any):			
Attach up to ***two*** *pages of photographs behind this sheet.*			

REQUEST FOR QUALIFICATIONS (RFQ)
FOR DESIGN-BUILD SERVICES
Project Name / Number: Southwest Multi-Service Center Renovation / H-000080-0001-4

3.1 PROPOSED DESIGN TEAM CONSULTANTS. *Provide information for all proposed Design Team Consultants for the project in the table below. Add rows as necessary. Local firms are preferred. Experience and representative design projects are only required for MEP Consultants in Section 3.3. If MEP is more than one firm, provide 3 additional tables for each firm.*

Design Consultant Type	Firm's Legal Name	Office Location (City)	Responsibilities and Scope of Work	Approximate % of work on this project	Indicate MBE or WBE (if applicable)
MEP					

3.2 MWBE COMPLIANCE PLAN. *Indicate intent to meet 24% goal. If "No" is indicated below, SOQ will not be evaluated. Respondent must demonstrate in Section 3.1 how it intends to meet the goal.*

Project Goal 24% participation met as indicated above?	☐ Yes ☐ No

3.3 EXPERIENCE OF MEP CONSULTANT

*. Respondents should select **three** representative design projects of similar size and scope for the MEP Consultant. These projects do not have to match projects in Section 1.1- Respondent's Design Team Experience. Recent projects completed within ten years or less are preferable. The three projects are not limited to projects of similar occupancy type.*

MEP Firm Name:			
I. Project Name:			
Project Location:			
Year Construction Completed (**month/year**): ***NOTE:*** *If the project is not substantially complete at the time of submission, the respondent will be awarded **zero** points.*		LEED Certification Level:	Renovation or New:
Construction Cost:		Building Area (Sq. Ft.):	
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Services Provided:			
Attach up to two pages of photographs behind this sheet.			

3.3

MEP Firm Name:			
II. Project Name:			
Project Location:			
Year Construction Completed (**month/year**): ***NOTE:*** *If the project is not substantially complete at the time of submission, the respondent will be awarded **zero** points.*		LEED Certification Level:	Renovation or New:
Construction Cost:		Building Area (Sq. Ft.):	
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Services Provided:			
Attach up to two pages of photographs behind this sheet.			

REQUEST FOR QUALIFICATIONS (RFQ)

FOR DESIGN-BUILD SERVICES

Project Name / Number: Southwest Multi-Service Center Renovation / H-000080-0001-4

3.3

MEP Firm Name:			
III. Project Name:			
Project Location:			
Year Construction Completed (**month/year**): ***NOTE:*** *If the project is not substantially complete at the time of submission, the respondent will be awarded **zero** points.*		LEED Certification Level:	Renovation or New:
Construction Cost:		Building Area (Sq. Ft.):	
Name, Phone Number and Email of Owner's Representatives:			
Project Description:			
Services Provided:			
Attach up to two pages of photographs behind this sheet.			

4.1 PROJECT APPROACH. *Attach up to **two** pages describing the following:*

a. Knowledge and understanding of local context
b. Current industry trends
c. Relevant innovative concepts
d. Existing site constraints and opportunities for the design of facilities with similar service types.

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

- Ownership Information Form - 00455
  http://purchasing.houstontx.gov/forms.shtml

- POP1 - Pay or Play Acknowledgement Form - 00460
  http://www.houstontx.gov/obo/popforms.html

5 - STANDARD FEE PROPOSAL FORM

FOR DESIGN-BUILD SERVICES

5 FEE PROPOSAL FORM

CONSTRUCTION PHASE FEE FOR THE PROJECT SERVICES (see Section 3.11 of DESIGN-BUILD Contract – Document 7)	**_____%**
DESIGN-BUILD Contingency (see Section 3.16 of DESIGN-BUILD Contract – Document 7)	**3 %**

Contractor Name: _____

Note: Pre-Construction Fee will be negotiated with apparent successful Proposer.

REQUEST FOR QUALIFICATIONS FOR DESIGN-BUILD SERVICES
Project Name: Southwest Multi-Service Center Renovation
Project Number: H-000080-0001-4

6 – TERMS AND CONDITIONS

6.1 NO CONTACT PERIOD AND GRATUITIES

Neither Respondent 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 Respondent 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.

6.2 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.

6.3 STANDARD CITY CONTRACT

The successful Respondent will be required to execute a standard City of Houston Design-Build Agreement. A copy of this document is included in this RFQ packet.

6.4 CITY POLICIES & ORDINANCES

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

1. Equal Employment Opportunity

   https://purchasing.houstontx.gov/forms/EEOC.doc

2. Design MWBE Goal of 24%, Construction MBE Goal of 19%, and Construction WBE Goal of 11%

   https://houston.mwdbe.com

3. City of Houston Fair Campaign Ordinance

   https://purchasing.houstontx.gov/forms/Fair_Campaign_Ordinance.doc

4. Mayor's Drug Detection and Deterrence Policy and Procedures

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

5. Indebtedness to Taxing Authorities Ordinance

   http://purchasing.houstontx.gov/index.html

6. Pay or Play (POP) Program

   http://www.houstontx.gov/obo/payorplay

6.5 COMPLIANCE WITH CERTAIN STATE LAW REQUIREMENTS

Anti-Boycott of Israel. Contractor certifies that Contractor is not currently engaged in, and agrees for the duration of this Agreement not to engage in, the boycott of Israel as defined by Section 808.001 of the Texas Government Code.

Anti-Boycott of Energy Companies. Contractor certifies that Contractor is not currently engaged in, and agrees for the duration of this Agreement not to engage in, the boycott of energy companies as defined by Section 809.001 of the Texas Government Code.

Anti-Boycott of Firearm Entities or Firearm Trade Associations. Contractor certifies that Contractor does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, or will not discriminate against a firearm entity or firearm trade association for the duration of this Agreement, as defined by Section 2274.001 of the Texas Government Code.

Certification of No Business with Foreign Terrorist Organizations. For purposes of Section 2252.152 of the Texas Government Code, Contractor certifies that, at the time of this Agreement neither Contractor nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Contractor, is a company listed by the Texas Comptroller of Public Accounts under Sections 2252.153 or 2270.0201 of the Texas Government Code as a company known to have contracts with or provide supplies to a foreign terrorist organization.

6.6 EXECUTIVE ORDER 1-56 ZERO-TOLERANCE FOR HUMAN TRAFFICKING IN THE CITY SERVICE CONTRACTS AND PURCHASING

The City has a zero tolerance for human trafficking, and, per Executive Order 1-56, City funds shall not be used to promote human trafficking. City vendor are expected to comply with this Executive Order and notify the City's Chief Procurement Officer of any information regarding possible violation by the vendor or its subcontractors providing services or goods to the City. The Executive order is available on the City's website: http://www.houstontx.gov/execorders/1-56.pdf.

6.7 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 personnel" clause as part of the contract negotiations.

6.8 COST OF RFQ

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

6.9 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 RFQs are subject to the provisions of the Texas Public Information Act and may be made public. Confidential and/or sensitive information should not be included in the proposal. The City has no obligation to return any materials provided; therefore, they will become the property of the City's official files.

6.10 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

6.11 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. Interview Respondents
5. Accept any submittal or portion of a submittal
6. Reject any or all Respondents submitting qualifications.

6.12 PRESERVATION OF CONTRACTING INFORMATION

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

6.13 PROSPECTIVE VENDOR RESPONSIBILITY

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

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

Outline Agreement No.: _____

Ordinance No.: _____

DESIGN-BUILD AGREEMENT

BETWEEN

THE CITY OF HOUSTON

AND

_____

SOUTHWEST MULTI-SERVICE CENTER RENOVATION

WBS No. H-000080-0001-4

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Signature Page…… 45

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 is:	_____
Address for Written Notice:	_____
E-mail address:	_____
The Project is:	**Southwest Multi-Service Center Renovation**
Project Location:	**6400 High Star Dr., Houston, TX 77074**
Project No:	**H-000080-0001-4**
City Engineer is:	Obioma Nwakanma, P.E
Address for Written Notice:	900 Bagby Street, 2nd Floor, Houston, TX 77002

BACKGROUND

WHEREAS, the City issued a Request for Proposals ("RFP") on _____, for a qualified design-build contractor interested in providing the design and construction services required at _____.

WHEREAS, the Design-Build Contractor responded to the RFP.

WHEREAS, the City has selected a Design-Build **Contractor** 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, the 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:

Section 01145 Use of Premises
Section 01255 Change Order Procedures
Section 01292 Schedule of Values
Section 01312 Coordination and Meetings
Section 01325 Construction Schedule
Section 01330 Submittal Procedures
Section 01340 Shop Drawings, Product Data, and Samples
Section 01422 Reference Standards
Section 01450 Contractor's QC
Section 01454 Testing Lab Services
Section 01502 Mobilization
Section 01504 Temporary Facilities and Controls
Section 01610 Basic Product Requirements
Section 01630 Product Substitution Procedures
Section 01731 Cutting and Patching
Section 01755 Starting Systems
Section 01770 Closeout Procedures
Section 01782 Operations and Maintenance
Section 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 MWSBE 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,
Document 00622 – Name and Qualifications of Proposed Superintendent (Design Build Contractor creates this document),
Document 00624 – Affidavit of Compliance with MWSBE 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 Exhibit “I” – Project Schedule

2.1.10 Guaranteed Maximum Price Proposal agreed upon by the Director and Design-Build Contractor.

2.1.11 Construction Documents approved by the Director; and

2.1.12 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 5.9**.

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 5.8.**

3.5 "**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.

3.6 "**Construction Contract Administration**" or "**CCA**" means those duties and services set forth in **Section 7.3**.

3.7 "**Construction Contract Administration Fee**" means the fee set out in **Section 12.7.2**.

3.8 "**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.

3.9 "**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 5.5**.

3.10 **"Construction Phase Fee"** means the fee set out in **Section 12.7.2**.

3.11 "**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.

3.12 **"Contract Sum"** shall have the meaning assigned to it in **Section 12.1.2**.

3.13 **"CPM Milestone Schedule"** means the schedule described in **Section 4.3**.

3.14 "**Cost of the Work**" means the costs defined in **Section 12.8**.

3.15 " **Design-Build Contractor's Contingency**" means the amount defined in **Section 10.1**.

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

3.17 "**Design Development Documents**" means those documents described in **Section 5.4** of this Agreement.

3.18 "**Direct Salary Expense**" or "**DSE**" is defined as the direct salary rates of Design-Build Contractor'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. .

3.19 "**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.

3.20 **"Effective Date"** shall be the date the City Controller Countersign's this Agreement.

3.21 "**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.

3.22 **"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.

3.23 "**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.

3.24 "**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.

3.25 "**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.

3.26 "**Other Documents**" means the documents identified in **Exhibit "E"** and **Section 2.1.6**.

3.27 "**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, Schematic Design, Design Development, and Construction Documents and services and Work described in **Article 5**, whether performed before or after construction actually begins.

3.28 "**Pre-Construction Phase Services Fee**" means the fees set out in **Sections 12.4, 12.5 and 12.6.**

3.29 "**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.

3.30 "**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.

3.31 "**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.

3.32 "**Project Team**" means City, Design-Build Contractor, 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.

3.33 "**Proprietary Rights**" shall have the meaning assigned to it in **Section 5.10.1**.

3.34 "**Reimbursable Expenses**" mean those expenses set forth in **Section 12.6**.

3.35 "**Schematic Design Phase**" means the preparation of the Schematic Design Documents as set forth in **Section 5.3**.

3.36 "**Schematic Design Documents**" means Drawings and Other Documents illustrating the scale and relationship of the Project components and further described in **Section 5.3**.

3.37 "**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.

3.38 "**TPDES**" means Texas Pollution Discharge Elimination System.

3.39 "**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 **Article 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 6.7**, Design-Build Contractor shall provide a schedule with details meeting the requirements of **Section 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 2269, 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:

Person	**Area of Responsibility**

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 vendors 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 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 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 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 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 Design-Build 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 herein. Design-Build 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, Design-Build 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, Design-Build Contractor shall make good faith efforts to award subcontracts or supply agreements in at least **19 %** of the value of Construction Phase services to MBE firms and **11 %** of the value of Construction Phase services to WBE firms. The Design-Build Contractor may use up to 4% SBE participation to meet a portion of the MBE or WBE goals set out in this Section.

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

4.28.2.1 "(*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")."

4.28.2.2 "(*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."

4.28.2.3 "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 other qualified professionals, as required, for performance of the Pre-Construction Phase Services. Design-Build Contractor certifies that the 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. 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 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 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. 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 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.**

5.2.7 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.

5.2.8 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.

5.2.9 Design-Build Contractor's Basic Pre-Construction Phase Services are those services described in **Section 5.2** through **Section 5.8**. During the Pre-Construction Basic Services and as necessary in Construction Phase, Design-Build Contractor shall provide the following services as applicable"

a. 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

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

5.2.11 Design-Build Contractor shall provide recommendations and information to City Engineer 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.

5.2.12 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.

5.2.13 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 **Schematic Design Phase**

5.3.1 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. 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.

5.3.2 On or about the time of the scheduled submission for the deliverables under **Section 5.3.1**, 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.

5.4 Design Development Phase

5.4.1 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).

5.4.2 On or about the time of the scheduled submission for the Design Development Documents 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 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.

5.5 **Construction Documents Phase**

5.5.1 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 a Project Manual (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.

5.5.2 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.

5.5.3 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.

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

5.5.5 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.

5.5.6 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.

5.6 **Review Drawings**

5.6.1 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.

5.6.2 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.

5.6.3 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.

5.6.4 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.

5.7 **Design Document Review Sets and Estimated Construction Cost Reports**

5.7.1 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:

Phase	**Number of Sets**
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

5.8 **Budget and Cost Consultation**

5.8.1 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.

5.8.2 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.

5.8.3 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.

5.8.4 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.

5.9 **Additional Pre-Construction Phase Services**

5.9.1 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:

5.9.1.1 Prepare Elevation Certificates required for approvals by governmental authorities or other agencies having jurisdiction over the Project;

5.9.1.2 Provide services relative to future facilities, systems, and equipment that are not intended to be constructed during the Contract Administration Services;

5.9.1.3 Provide analyses of owning and operating costs, or detailed quantity surveys, inventories of material, equipment, and labor;

5.9.1.4 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;

5.9.1.5 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;

5.9.1.6 Provide data processing and photographic production techniques when used in connection with another Additional Pre-Construction Phase Service; and

5.9.1.7 Design-Build Contractor will provide a preliminary phasing/sequencing plan to include construction zones, site access, and staging access.

5.9.1.8 Any other Additional Pre-Construction Phase Services mutually agreed to by City Engineer and Design-Build Contractor.

5.10 **Ownership and Use of the Documents**

5.10.1 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.

5.10.2 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.

5.10.3 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.

5.10.4 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.

5.10.5 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.

5.10.6 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 Section) 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 Section) unless such information is promptly given to City.

5.10.7 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."

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

5.11.1 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.

5.11.2 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 if 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 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.

6.5 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.

6.6 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.

6.6.1 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.

6.7 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.

6.8 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.

6.9 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.

6.10 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 5.10.**

6.11 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 shall 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.

6.12 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 Schedule and attend regular Project progress meetings and fully advise the Project Team of the Project status regarding schedule, costs, quality, and changes. Design-Build Contractor shall record and distribute the minutes of each meeting to each Project Team member

7.2.4 In addition to 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 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 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

(two sets of full sized prints, and CADD drawings / PDFs 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.

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 **180 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.

9.6 If available, City shall provide electronic CAD files for existing site plans and applicable elevations and sections for all existing buildings covered under this contract

9.7 City shall provide all drawings, specifications and design documents from similar projects previously designed and permitted in 2015.

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 **_____%** 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 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	Schematic Design	$_____
.2	Design Development Phase	$_____
.3	Construction Document Phase	$_____
.4	Construction Administration Phase	$_____
.5	Preconstruction Management Services	$_____
.6	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 5.9, but excluding Reimbursable Expenses, shall be a multiple of ____ times 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 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, 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 Section 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 Design Build Contractor (unless turned-over to the City as set forth above) and the Design Build Contractor 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 Design Build Contractor, 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 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.

Signatures

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

ATTEST/SEAL (if a corporation):
WITNESS (if not a corporation):

By:_____
Name:
Title:

Federal Tax Identification No. _____

DESIGN-BUILD CONTRACTOR:

By:_____
Name:
Title:

ATTEST/SEAL:

_____
City Secretary

CITY:
THE CITY OF HOUSTON, TEXAS
Signed by:

_____
Mayor

APPROVED:

_____
Director, General Services Department

COUNTERSIGNED BY:

_____
City Controller

APPROVED AS TO FORM:

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

DATE COUNTERSIGNED:

_____

Form Date: 9-1-21

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

_____

Obioma Nwakanma, P.E.

Date of Signing: _____

DESIGN-BUILD CONTRACTOR

_____

Signature: _____

Name: _____

Title: _____

Date of Signing: _____

EXHIBT "B"

DIRECT SALARIES EXPENSE HOURLY BILLING RATES

"Direct Salary Expense" or "DSE" is defined as the direct salary rates of Construction Manager's employees 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 for the "Pre-Construction" and the "Construction Phase" is equal to ____% of the direct salaries.
The Pre-Construction "Total Billable" is equal to DSE plus ____% of the DSE

Pre-Construction Staff	Role or Title	Direct Salary (Hourly Rate)	Direct Salary Expense (Includes burden)	Total Billable (Includes OH&P)
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -

Pre-Construction Staff	Role or Title	Direct Salary (Hourly Rate)	Direct Salary Expense (Includes burden)
			$ -
			$ -
			$ -
			$ -
			$ -
			$ -
			$ -
			$ -
			$ -
			$ -

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:

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

EXHIBIT "E"

OTHER DOCUMENTS

The following documents, as they may be updated from time-to-time, 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.

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, (Design Build Contractor creates this document),
- 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 _____days from Notice to Proceed (NTP).

EXHIBIT C

DESIGN-BUILD

August 30, 2021 EDITION

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ARTICLE 1 - GENERAL PROVISIONS

1.1 *DEFINITIONS*

1.1.1 *Agreement:* Document signed by the Parties and binding the Parties, containing the name of Design-Build Contractor, title and location of the Project, enumeration of documents included in the Contract, and other provisions.

1.1.2 *Allowance*: An estimated sum of money to be used only for a limited class of expenditures such as utility relocation costs, fees for special licenses or permits, or other "pass-through" costs that would be the same for any contractor. Cash Allowances may not be used to purchase goods or services that are not specified in the Contract, and exclude profit, overhead, and administrative costs. The unspecified items must be purchased according to the terms of **Article 7**.

1.1.3 *Bonds:* Performance Bond, Payment Bond, Maintenance Bond, and other Surety instruments executed by Surety. When in singular form, refers to individual instrument.

1.1.4 *Business Enterprise*: Any business entity registered in a program authorized by 49 C.F.R. § 26 (where applicable) or City Code of Ordinances, Chapter 15, Article II, relating to Equal Opportunity Employment and taking affirmative action to ensure that applicants are employed and employees are treated without regard to race, religion, color, sex, national origin, or age. The term "Business Enterprise" may include any Disadvantaged Business Enterprise ("DBE"), Minority Business Enterprise ("MBE"), Woman Business Enterprise ("WBE"), Small Business Enterprise ("SBE"), Person with Disability Enterprise ("PDBE"), and any Historically Underutilized Business ("HUB").

1.1.5 *Business Enterprise Policy:* Contract documents and applicable policies relating to Business Enterprises and authorized under 49 C.F.R. § 26 or City Code of Ordinances, Chapter 15, Article II.

1.1.6 *Certificate of Final Completion:* The certificate issued and signed by City Engineer pursuant to **Section 9.8**.

1.1.7 *Certificate of Substantial Completion:* The certificate issued and signed by City Engineer pursuant to **Section 9.6**.

1.1.8 *Change Order:* Written instrument prepared by City and signed by City Engineer and Design-Build Contractor, specifying the following:

1. a change in the Work;
2. a change in Guaranteed Maximum Price; and
3. a change in Contract Time, if any.

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

1.1.9 *City*: The City of Houston, a home rule municipality located principally within Harris County, Texas, including its successors and its authorized representatives.

1.1.10 *City Engineer:* City Engineer or the City employee representing the City Engineer, designated in the Agreement and authorized to represent City, or successors.

1.1.11 *Claim:* Written demand or written assertion by one Party seeking adjustment of the Contract, payment of money, extension of time, or other relief under the Contract and includes, but is not limited to, claims for materials, labor, equipment, delay, changes, adjustments, substitutions, fees, and third party claims. The Party making the Claim has the responsibility to substantiate the Claim.

1.1.12 *Conditions of the Contract:* Document 00700-General Conditions.

1.1.13 *Contract:* The entire and integrated written agreement between City and Design-Build Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

1.1.14 *Contract Documents:* This Agreement, Document 00700-General Conditions, Special Conditions (if any), Drawings, Specifications, the Project Manual, all Addenda issued prior to the Effective Date, all documents listed in the Agreement and in the Modifications as being incorporated into the Agreement or the Contract Documents, Modifications, and written amendments duly authorized and signed by City and Design-Build Contractor. The Contract Documents form the contract between City and Design-Build Contractor, and the Contract Documents represent the entire and integrated agreement between the Parties and supersede prior negotiations,

representation, and agreements between the Parties, whether written or oral.

1.1.15 *Contract Time:* The time period stated in an approved Guaranteed Maximum Price proposal to substantially complete the portion of the Work described in the approved Guaranteed Maximum Price proposal, plus days authorized by Change Order. Contract Time may be delineated by Stages or Phases.

1.1.16 *Date of Commencement of the Work:* Date established in Notice to Proceed with a Construction Phase on which Contract Time will commence. This date will not be changed by failure of Design-Build Contractor, or persons or entities for whom Design-Build Contractor is responsible, to act.

1.1.17 *Date of Final Completion or "Final Completion":* The date upon which all Work has been completed to City Engineer's satisfaction and is certified by City Engineer to be at Final Completion.

1.1.18 *Date of Substantial Completion:* Date that a Construction Phase, or portion thereof designated by City Engineer, is certified by City Engineer to be substantially complete.

1.1.19 *Design-Build Contractor:* Person or firm identified as such in the Agreement including its successors and its authorized representatives.

1.1.20 *Drawings:* Graphic and pictorial portions of the Contract Documents that define the character and scope of the Work. Until otherwise identified with more specificity in a Modification, the Drawings are the most recent Drawings prepared by the Design-Build Contractor and accepted by City.

1.1.21 *Extra Unit Price:* Unit Prices, which may be required for completion of the Work.

1.1.22 *Final Completion:* Final Completion occurs when Design-Build Contractor fulfills all requirements for achieving Final Completion as set forth in the Contract Documents, including **Section 9.8**, and City Engineer issues a Certificate of Final Completion.

1.1.23 *Furnish:* To supply, initially pay for, deliver to the site, and unload.

1.1.24 *General Requirements:* The sections of Division 01 Specifications that specify administrative and procedural requirements and temporary facilities required for the Work.

1.1.25 *Good Faith Efforts (GFE)*: Steps taken to achieve an MBE, WBE, SBE, or PDBE goal or other requirements which, by their scope, intensity, and usefulness, demonstrate the bidder's responsiveness to fulfill the business opportunity objective, as well as theDesign-Build Contractor's responsibility to put forth measures to meet or exceed the MBE, WBE, SBE, or PDBE goal. These steps apply from before a contract's award, through its duration, and after its conclusion, in the event the Design-Build Contractor has been unsuccessful in meeting the Contract MBE, WBE, PDBE, or SBE goals. These efforts are required whether a Goal Oriented Contract or a Regulated Contract, as defined in the Office of Business Opportunity's Policy and Procedures Manual.

1.1.26 *Guaranteed Maximum Price (GMP):* The amount agreed upon by City and Design-Build Contractor as the maximum cost to City for the Workdefined in the GMP, including the Cost of the Work and the Design-Build Contractor's Construction Phase Fee for the Work defined in the GMP.

1.1.27 *Inspector:* City's employee or agent authorized to assist with inspection of the Work.

1.1.28 *Install:* Unpack, assemble, erect, place, anchor, apply, work to dimension, finish, cure, clean, protect, and similar operations.

1.1.29 *Legal Holiday:* Day established by City Council as a holiday.

1.1.30 *Minor Change in the Work*: A written change in the Work, ordered by City Engineer, that does not change Guaranteed Maximum Price or Contract Time, and that is consistent with the general scope of the Contract

1.1.31 *Modification:* Change Order, Work Change Directive, or Minor Change in the Work, all of which are required to be in writing.

1.1.32 *Notice of Noncompliance:* A written notice by City Engineer to Design-Build Contractor regarding defective or nonconforming work that does not meet the Contract requirements, and that establishes a time by which Design-Build Contractor shall correct the defective or nonconforming work.

1.1.33 *Notice to Proceed* or *NTP:* An authorization issued by City Engineer to Design-Build Contractor authorizing Design-Build Contractor to commence performing the portion of the Work, per the Notice to Proceed.

1.1.34 *Parties:* Design-Build Contractor and City. "Party," in singular form, refers to Design-Build Contractor or City, as appropriate.

1.1.35 *Pollutant:* Any materials subject to the Texas Solid Waste Disposal Act.

1.1.36 *Pollutant Facility:* Any facility regulated by the State of Texas to protect the health and environment from contamination by Pollutants, including without limitation, landfills, oil and gas production and storage facilities, wastewater facilities, waste injection wells, and storage tanks (including drums).

1.1.37 *Product:* Materials, equipment, or systems permanently incorporated into the Work (or to be incorporated into the Work) and materials, tools, equipment or systems temporarily used in performance of the Work. Products may include existing construction or components intended for reuse.

1.1.38 *Product Data:* Illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by Design-Build Contractor to illustrate a Product.

1.1.39 *Project:* Total construction, of which the Work performed under the Contract may be the whole or a part, and which may include construction by City or by separate contractors.

1.1.40 *Project or Program Manager:* Professionals, or firms employing professionals, engaged by City to be the City Engineer's authorized representative for administration of the Work. Titles used within City's departments may be different from those used in this definition. Unless otherwise designated by City Engineer, references in the Contract Documents to the Project or Program Manager shall refer to City Engineer. More than one Program Manager may be under contract with City.

1.1.41 *Provide:* Furnish and Install, complete, ready for intended use.

1.1.42 *Safety Impact Position:* A Design-Build Contractor's employment position involving duties that if performed with inattentiveness, errors in judgment, or diminished coordination, dexterity, or composure may result in mistakes that could present a real and/or imminent threat to the personal health or safety of the employee, co-workers, and/or the public.

1.1.43 *Samples:* Physical examples that illustrate Products, or workmanship, and establish standards by which the Work is judged.

1.1.44 *Shop Drawings:* Drawings, diagrams, schedules, and other data specially prepared for the Work by Design-Build Contractor, Subcontractor or Supplier, to illustrate a portion of the Work.

1.1.45 *Specifications:* Divisions 01 through 17 that are incorporated into the Agreement, consisting of written General Requirements and requirements for Products, standards, and workmanship for the Work, and performance of related services.

1.1.46 *Subcontractor:* All trade contractors, separate contractors, consultants, and subcontractors entering into contracts ("Subcontracts") with the Design-Build Contractor for the performance of the Work. The relationship between the Design-Build Contractor and the Subcontractors shall be that of a general contractor to its subcontractors unless otherwise approved in advance in writing by City Engineer, or except when City enters into a separate contract directly with a Subcontractor.

1.1.47 *Substantial Completion:* Substantial Completion occurs when Design-Build Contractor fulfills all the requirements for achieving Substantial Completion of a Construction Phase as set forth in the Contract Documents, including **Section 9.6**, and City Engineer issues a Certificate of Substantial Completion.

1.1.48 *Superintendent:* Employee of Design-Build Contractor Design-Build Contractor having authority and responsibility to act for and represent Design-Build Contractor.

1.1.49 *Supplementary Conditions:* Part of the Conditions of the Contract that amends or supplements General Conditions.

1.1.50 *Supplier:* Manufacturer, distributor, materialman, or vendor having a direct agreement with Design-Build Contractor or Subcontractor for Products, or services and its authorized representatives.

1.1.51 *Surety:* Corporate entity that is bound by one or more Bonds and is responsible for completion of the Work, including the correction period, and for payment of debts incurred in fulfilling the contract. Surety shall include co-surety or reinsurer, as applicable.

1.1.52 *Ultra Low Sulfur Diesel Fuel:* As defined in **Section 3.9.1.1**.

1.1.53 *Underground Facilities:* Pipes, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments and encasements containing such facilities that exist below ground level.

1.1.54 *Unit Price:* An amount stated in the Contract for an individual, measurable item of work, which, when multiplied by actual quantity incorporated into the Work, amounts to full compensation for completion of the item, including work incidental to it.

1.1.55 *Unit Price Quantities:* Quantities indicated in the Contract that are approximations made by City for contracting purposes.

1.1.56 *Work:* All services, supervision, labor, materials, supplies, equipment, Products and other items for a Construction Phase required to perform this Agreement (whether completed or partially completed) in strict accordance with the Contract Documents (as such may be modified or amended), including all things reasonably inferable from the Contract Documents and all of the foregoing provided or to be provided by Design-Build Contractor to fulfill Design-Build Contractor's obligations under the Contract Documents.

1.1.57 *Work Change Directive:* A written change in the Work, ordered by City Engineer, that is within the general scope of the Contract and consisting of additions, deletions, or other revisions. A Work Change Directive will state the proposed basis for adjustment, if any, in or Guaranteed Maximum Price, or Contract Time, or both.

1.2 ***EXECUTION, CORRELATION, AND INTENT***

1.2.1 The Construction Documents have been read and carefully considered by Design-Build Contractor who understands and agrees to their sufficiency for the Work. Design-Build Contractor represents that it is not aware of any insufficiency or defect in the Contract Documents. Execution of the Contract by Design-Build Contractor is conclusive that it has visited the Work site, become familiar with local conditions under which the Work will be performed, and fully informed itself as to conditions and matters that can affect the Work or costs. Design-Build Contractor further agrees that it has carefully correlated personal observations with requirements of the Contract. The Contract Documents shall not be more strongly construed against City than against Design-Build Contractor and Surety.

1.2.2 Design-Build Contractor shall include all items necessary for proper execution and completion of the Work in strict accordance with Contract Documents and reasonably inferable therefrom.

1.2.3 Reference to standard specifications, manuals, or codes of a technical society, organization, or association, or to laws or regulations of a governmental authority, whether specific or implied, mean the latest edition in effect as of date of written agreement as to the Guaranteed Maximum Price for the portion of the Work covered by that Guaranteed Maximum Price, except as may be otherwise specifically stated in the Contract Documents.

1.2.4 No provision of any referenced standard, specification, or manual changes the duties and responsibilities of City or City Engineer from those set forth in the Contract Documents.

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

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

1.2.7 Any ambiguity or uncertainty in Drawings, Specifications, Addenda, and Modifications shall be interpreted and construed by City Engineer and City Engineer's decision shall be final and binding upon all parties.

1.2.8 Where the words "directed," "required," "permitted," "ordered," "designated," "prescribed," or words of like import are used, it shall mean the direction, requirement, permission, order, designation, or prescription of City Engineer unless explicitly stated otherwise. The words "approved," "acceptable," "satisfactory," or words of like import, shall mean approved by, or acceptable to, or satisfactory to City Engineer, unless explicitly stated otherwise.

1.2.9 Reference to a specific requirement of a cited standard shall include all general requirements of the entire cited standard pertinent to the specific reference.

1.2.10 When the Contract Documents use the capitalized term "Contractor," that term shall be deemed to refer to Design-Build Contractor unless otherwise indicated.

1.3 *OWNERSHIP AND USE OF DOCUMENTS*

1.3.1 Drawings, Specifications, and other documents prepared by City or by Design-Build Contractor are instruments of service through which the Work to be executed by Design-Build Contractor is described. Design-Build Contractor may retain one Contract record set.

1.3.2 Neither Design-Build Contractor, Subcontractor, nor Supplier will own or claim a copyright to documents contained in the Contract Documents or any part of the Contract.

1.3.3 Documents contained in the Contract Documents, prepared by City or by Design-Build Contractor, and copies furnished to Design-Build Contractor, are for use solely with respect to the Work. They may not be used by Design-Build Contractor, Subcontractors or Suppliers on other projects or for additions to the Work, outside the scope of the Work, without the specific written consent of City Engineer.

1.3.4 Design-Build Contractor, Subcontractors, and Suppliers are granted a limited license to use and reproduce applicable portions of the Contract Documents appropriate to and for use in execution of their Work under the Contract Documents.

1.4 *INTERPRETATION*

1.4.1 Specifications are written in an imperative streamlined form and are directed to Design-Build Contractor, unless noted otherwise. When written in this form, words "shall be" are included by inference where a colon (:) is used within sentences or phrases.

1.4.2 In the interest of brevity, the Contract frequently omits modifying words such as "all" and "any" and articles such as "the" and "an", but an absent modifier or article is not intended to affect interpretation of a statement.

ARTICLE 2 - CITY

2.1 *LIMITATIONS OF CITY'S OFFICERS AND EMPLOYEES*

2.1.1 No officer or employee of City may authorize Design-Build Contractor to perform an act or work contrary to the Contract Documents, except as otherwise provided in the Contract.

2.2 *DUTIES OF CITY*

2.2.1 If a building permit is required, the City will process an application for, and Design-Build Contractor shall purchase and obtain the building permit before Date of Commencement of the Work or applicable Construction Phase of the Work.

2.2.2 City will make available to Design-Build Contractor a reproducible set of Drawings. Additional copies will be furnished, on Design-Build Contractor's request, at the cost of reproduction.

2.2.3 When necessary for performance of the Work, City will provide surveys describing physical characteristics, legal limitations, legal description of site, and horizontal and vertical control adequate to lay out the Work.

2.2.4 Information or services that City is required to provide under the Contract will be provided by City with reasonable promptness to avoid delay in orderly progress of the Work.

2.2.5 The Contract imposes no implied duty on the City. The City does not warrant any plans or specifications associated with the Contract.

2.2.6 Except as expressly stated in this Article, the City owes no duty to the Design-Build Contractor or any Subcontractor or Supplier.

2.3 *AVAILABILITY OF LAND AND USE OF SITE*

2.3.1 City will furnish, as indicated in the Contract Documents, rights-of-way, land on which the Work is to be performed, and other land designated in the Contract for use by Design-Build Contractor unless otherwise provided in the Contract.

2.3.2 Design-Build Contractor shall confine operations at site to those areas permitted by law, ordinances, permits, and the Contract Documents, and

shall not unreasonably encumber the Project site with materials or equipment.

2.3.3 In addition to land provided by City under **Section 2.3**, City shall provide all land and access to land that may be required for use by Design-Build Contractor for temporary construction facilities or for storage of materials and Design-Build Contractor equipment, and Design-Build Contractor shall indemnify City during its use of the land as stated in **Section 3.25**.

2.4 *CITY'S RIGHT TO STOP THE WORK*

2.4.1 If Design-Build Contractor fails to carry out the Work in accordance with the Contract Documents, or fails to correct Work that is not in accordance with requirements of the Contract Documents as required in **Section 12.1.1** and **Section 12.2**, City may, by Notice of Noncompliance, order Design-Build Contractor to stop the Work or any portion of the Work until the cause for the order has been eliminated. However, the right of City to stop the Work will not give rise to a Claim for delay or an increase in compensation or to a duty on the part of City to exercise this right for the benefit of Design-Build Contractor or any other person or entity, except to the extent required by **Section 6.2**. If Design-Build Contractor corrects the defective or nonconforming work within the time established in Notice of Noncompliance, City Engineer will give written notice to Design-Build Contractor to resume performance of the Work.

2.5 *CITY'S RIGHT TO CARRY OUT WORK*

2.5.1 If Design-Build Contractor fails to carry out work in accordance with the Contract Documents, and fails within the period established in a Notice of Noncompliance to correct the nonconforming work, City may, after expiration of the required period, correct the deficiencies without prejudice to other remedies City may have, including rights of City under **Section 14.1**.

2.5.1.1 When City corrects deficiencies, City Engineer will issue an appropriate Change Order and deduct from payments then or thereafter due Design-Build Contractor the cost of correcting the deficiencies, including compensation for other design consultants and City Engineer's additional services and expenses made necessary by such default, neglect, or failure. This action by City and amounts charged to Design-Build Contractor are both subject to prior approval of City Engineer. If payments, then or thereafter due Design-Build Contractor are not sufficient to cover these amounts, Design-Build Contractor shall pay the difference to City. Costs of correcting deficiencies which would have otherwise been reimbursable to Design-Build Contractor, as determined by the City Engineer in his sole discretion, shall not be deducted from sums otherwise due Design-Build Contractor, but shall be considered a Cost of the Work, as determined by the City Engineer in his sole discretion, in determining Guaranteed Maximum Price and any savings shall revert to the City.

2.5.2 Notwithstanding City's right to carry out Work, maintenance and protection of the Work remains Design-Build Contractor's responsibility, as provided in the Contract Documents.

2.6 *CITY'S RIGHT TO REJECT WORK*

2.6.1 City shall have the right to reject Work that does not conform to the Contract Documents. City shall also have the right to require special inspection or testing of the Work, whether or not such Work is then fabricated, installed, or completed. Neither City's right to act under this Section nor any decision by City either to exercise or not to exercise such right shall give rise to any duty or responsibility of City to Design-Build Contractor or to any other person or entity, or result in a waiver of any of City's rights or relieve Design-Build Contractor of its obligations.

ARTICLE 3 DESIGN-BUILD CONTRACTOR

3.1 *RESPONSIBILITIES*

3.1.1 Design-Build Contractor shall maintain an office with agent in the greater City of Houston area during Design-Build Contractor's performance under the Contract. Design-Build Contractor shall file its street address with City Engineer. Design-Build Contractor may use the job site office of Design-Build Contractor to meet this requirement.

3.1.2 Design-Build Contractor and Design-Build Contractor's employees shall not give or lend money or anything of value to an officer or employee of City. Should this Paragraph 3.1.2 be violated, City Engineer may terminate the Contract under **Section 14.1**.

3.1.3 Design-Build Contractor shall submit to City Engineer written monthly progress reports ("Progress Reports"). Such Progress Reports shall be submitted to City Engineer on forms approved by City Engineer with each Application for Payment. Such monthly reports shall include: (i) an updated Project Schedule, including a description of any deviations from City's approved Project Schedule; (ii) a complete cost report, including a description of deviations from the line items contained in the Guaranteed Maximum Price for that particular Construction Phase of the Project and a description of the amounts committed against Allowances, if any; (iii) a report of all Subcontractor Change Orders and pending claims; (iv) a description of problems, claims, disputes of any sort and potential problems, claims, or disputes of any sort arising in connection relating to the Work, including potential delays, materials and supplies availability, disputes with Subcontractors or suppliers, and similar items; (v) a statement indicating methods of overcoming any past delay; (vi) all past and an estimate of all future cash flow requirements; and (vii) any additional information as may be reasonably required by City Engineer.

3.2 ***REVIEW OF CONTRACT AND FIELD CONDITIONS BY DESIGN-BUILD CONTRACTOR***

3.2.1 Design-Build Contractor shall carefully prepare and study the Contract Documents and any information furnished by City and shall immediately report, in writing, any known or reasonably inferable errors, inconsistencies, or omissions to City Engineer. If Work is affected, Design-Build Contractor shall obtain a written interpretation or clarification from City Engineer before proceeding with the affected Work.

3.2.2 Design-Build Contractor shall take field measurements and verify field conditions, and shall carefully compare the conditions and other information known to Design-Build Contractor with the Contract Documents, before commencing activities. Design-Build Contractor shall immediately report, in writing, to City Engineer for interpretation or clarification of discrepancies, inconsistencies, or omissions discovered during this process.

3.3 ***SUPERVISION AND CONSTRUCTION PROCEDURES***

3.3.1 Design-Build Contractor shall supervise, direct, and inspect the Work competently and efficiently, devoting the attention and applying the skills and expertise as necessary to perform the Work in accordance with the Contract Documents. Design-Build Contractor is solely responsible for and has control over construction means, methods, techniques, sequences, and procedures of construction; for safety precautions and programs in connection with the Work; and for coordinating all Work under the Contract.

3.3.2 Regardless of observations or inspections by City or City's consultants, Design-Build Contractor shall perform and complete the Work in accordance with the Contract Documents and submittals approved pursuant to **Section 3.18**. City is not liable or responsible to Design-Build Contractor or Surety for Work performed by Design-Build Contractor that is not in accordance with the Contract Documents regardless of whether such nonconformities are discovered during construction or after acceptance of the Work.

3.4 ***SUPERINTENDENT***

3.4.1 Design-Build Contractor shall employ a competent Superintendent and necessary assistants who shall be present at the site during performance of the Work. Communications given to Superintendent are binding on the Design-Build Contractor.

3.4.2 Design-Build Contractor shall notify City Engineer in writing of its intent to replace the Superintendent. Design-Build Contractor shall not replace the Superintendent if City Engineer makes a reasonable objection in writing.

3.5 ***LABOR***

3.5.1 Design-Build Contractor shall provide competent, qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. City may, by written notice, require Design-Build Contractor to remove from the Work any employee of Design-Build Contractor or Subcontractors to whom City Engineer makes reasonable objection.

3.5.2 Design-Build Contractor shall comply with the applicable Business Enterprise Policy set out in this Agreement.

3.5.3 When the Guaranteed Maximum Price is greater than $1,000,000, Design-Build Contractor shall make Good Faith Efforts to award subcontracts or supply agreements in at least the percentages set out in **Section of the Agreement** for Business Enterprise

Policy. Design-Build Contractor acknowledges that it has reviewed the requirements for Good Faith Efforts on file with the City's Mayor's Office of Business Opportunity and shall comply with them.

3.5.3.1 Design-Build Contractor shall require written subcontracts with Business Enterprises and shall submit all disputes with Business Enterprises to voluntary mediation. Business Enterprise subcontracts complying with City Code of Ordinances Chapter 15, Article II must contain the terms set out in **Section 3.5.3.2**. If Design-Build Contractor is an individual person, as distinguished from a corporation, partnership, or other legal entity, and the amount of the subcontract is $50,000 or less, the subcontract must also be signed by the attorneys of the respective parties.

3.5.3.2 Design-Build Contractor shall ensure that subcontracts with Business Enterprise firms are clearly labeled "**THIS CONTRACT IS SUBJECT TO MEDIATION**" and contain the following terms:

1. (Business Enterprise) may not delegate or subcontract more than 50 percent of work under this subcontract to any other subcontractor without the express written consent of the Director.
2. (Business Enterprise) shall permit representatives of City of Houston, at all reasonable times, to perform (1) audits of the books and records of the Subcontractors and Suppliers, and (2) inspections of all places where work is to be undertaken in connection with this subcontract. (Business Enterprise) shall keep the books and records available for this purpose for at least four years after the end of its performance under this subcontract. Nothing in this paragraph shall affect the time for bringing a cause of action nor the applicable statute of limitations.
3. Within five business days of execution of this subcontract, Design-Build Contractor and (Business Enterprise) shall designate in writing to the 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 the agent.

3.5.3 The requirements and terms of the City of Houston Pay or Play Program, as set out in Executive Order 1-7 and Ordinance 2007-0534, are incorporated into the Contract for all purposes. Design-Build Contractor shall comply with the terms and conditions of the Pay or Play Program as they are set out at the time of City Council approval of this agreement. IF DESIGN-BUILD CONTRACTOR DOES NOT PAY IN ACCORDANCE WITH THE PAY OR PLAY PROGRAM WITHIN 30 DAYS OF THE DATE CITY ENGINEER SENDS DESIGN-BUILD CONTRACTOR WRITTEN NOTIFICATION, CITY CONTROLLER MAY DEDUCT FUNDS UP TO THE AMOUNT OWED FROM ANY PAYMENTS OWED TO DESIGN-BUILD CONTRACTOR UNDER THIS AGREEMENT, AND DESIGN-BUILD CONTRACTOR WAIVES ANY RECOURSE.

3.6 ***PREVAILING WAGE RATES***

3.6.1 Design-Build Contractor shall comply with governing statutes providing for labor classification of wage scales for each craft or type of laborer, worker, or mechanic.

3.6.1.1 Prevailing wage rates applicable to the Work shall be as stated in the Agreement, and as bound in the Project Manual.

3.6.1.2 Prevailing wage rates applicable to the Work may be one or the other of the following wage rates (Federal or City) identified in the Agreement:

1. Federal Wage Rate General Decisions
    1. Highway Rates
    2. Building Rates
    3. Heavy Construction Rates
    4. Residential Rates
2. City Prevailing Wage Rates
    1. Building Construction Rates
    2. Engineering Construction Rates
    3. Asbestos Worker Rates

3.6.2 Each week Design-Build Contractor shall submit to Mayor's Office of Business Opportunity certified copies of payrolls showing classifications and wages paid by Design-Build Contractor, Subcontractors, and Suppliers for each

employee under the Contract, for any day included in the Contract.

3.7 ***LABOR CONDITIONS***

3.7.1 In the event of labor disputes affecting Design-Build Contractor or Design-Build Contractor's employees, Design-Build Contractor shall utilize all reasonable means to resolve disputes in order that the Work not be delayed to any extent. These means will include seeking injunctive relief and filing unfair labor practice charges, and any other action available to Design-Build Contractor.

3.7.2 When Design-Build Contractor has knowledge that any actual or potential labor dispute is delaying or is threatening to delay timely performance of the Work, Design-Build Contractor shall immediately notify City Engineer in writing. No Claims will be accepted by City Engineer for costs incurred as a result of jurisdictional or labor disputes.

3.8 ***DRUG DETECTION AND DETERRENCE***

3.8.1 It is the policy of City to achieve a drug-free work force and to provide a workplace that is free from the use of illegal drugs and alcohol. It is also the policy of City that manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on City's premises is prohibited. By executing the Contract, Design-Build Contractor represents and certifies that it meets and will comply with all requirements and procedures set forth in the Mayor's Policy on Drug Detection and Deterrence, City Council Motion No. 92-1971 ("Mayor's Policy") and the Mayor's Drug Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31, (Revised) ("Executive Order"). Mayor's Policy is on file in the office of City Secretary. Copies of Executive Order may be obtained at the location specified in the Advertisement for Proposals.

3.8.1.1 The Executive Order applies to City's contracts for labor or services except the following:

1. contracts authorized by Emergency Purchase Orders,
2. contracts in which imposition of requirements of the Executive Order would exclude all potential bidders or proposers, or would eliminate meaningful competition for the Contract,
3. contracts with companies that have fewer than 15 employees during any 20-week period during a calendar year and no safety impact positions,
4. contracts with non-profit organizations providing services at no cost or reduced cost to the public, and
5. contracts with federal, state, or local governmental entities.

3.8.1.2 Prior to execution of the Contract, Design-Build Contractor shall have filed with City:

1. a Drug Policy Compliance Agreement form (Attachment "A" to the Executive Order), and
2. a copy of Design-Build Contractor's drug free workplace policy, and
3. a written designation of all safety impact positions, if applicable, or a Design-Build Contractor's Certification of a No Safety Impact Positions form (Attachment "C" to the Executive Order).

3.8.1.3 Every six months during performance of the Contract and upon completion of the Contract, Design-Build Contractor shall file a Drug Policy Compliance Declaration form (Attachment "B" to the Executive Order). The Design-Build Contractor shall submit the Drug Policy Compliance Declaration within 30 days of expiration of each six-month period of performance and within 30 days of the Date of Final Completion of the Work. The first six-month period shall begin on Date of Commencement of the Work.

3.8.1.4 Design-Build Contractor shall have a continuing obligation to file updated designation of safety impact positions when additional safety impact positions are added to Design-Build Contractor's employee workforce during performance of the Work.

3.8.1.5 Design-Build Contractor shall require its Subcontractors and Suppliers to comply with the Mayor's Policy and Executive Order. Design-Build Contractor is responsible for securing and maintaining required documents from Subcontractors and Suppliers for City inspection throughout the term of the Contract.

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

3.9 ***MATERIALS & EQUIPMENT***

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

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

3.9.2 Design-Build Contractor shall provide Products that are:

1. new, unless otherwise required or permitted by the Contract, and
2. of specified quality.

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

3.9.3 Design-Build Contractor shall store Products in a safe, neat, compact, and protected manner. Design-Build Contractor shall also store Products:

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

Design-Build Contractor shall protect trees, lawns, walks, drives, streets, and other improvements that are to remain, from damage. If private or public property is damaged by Design-Build Contractor, Design-Build Contractor shall, at its sole expense, restore the damaged property to at least its original condition.

3.9.3.1 Design-Build Contractor shall obtain City Engineer's approval for storage areas used for Products for which payment has been requested under **Section 9.1.8**. Design-Build Contractor shall provide City access to the storage areas for inspection purposes. Products, once paid for by City, become the property of City and may not be removed from place of storage, without City Engineer's written permission except for a movement to the site. Design-Build Contractor's Installation Floater, required under **Section 11.2**, shall cover all perils, including loss or damage to Products during storage, loading, unloading, and transit to the site.

3.10 ***PRODUCT OPTIONS AND SUBSTITUTIONS***

3.10.1 For Products specified by reference standards or by description only, Design-Build Contractor may provide any Product meeting those standards or description.

3.10.2 For Products specified by naming one or more manufacturers with provision for substitutions or equal, Design-Build Contractor may submit a request for substitution for any manufacturer not named.

3.10.3 City Engineer will consider requests for substitutions only within the first 15 percent of Contract Time or first 90 days after date of Notice to Proceed of a Construction Phase, whichever is less.

3.10.4 Design-Build Contractor shall document each request for substitution with complete data substantiating compliance of proposed substitution with the Contract.

3.10.5 A request for substitution constitutes a representation that Design-Build Contractor:

1. has investigated the proposed Product and determined that it meets or exceeds the quality standard of the specified Product;
2. shall provide the same warranty for the substitution as for the specified Product;
3. shall coordinate installation of the proposed substitution and make changes to other work which may be required for the Work to be

completed, with no additional cost or increase in time to City;

4. confirms that cost data is complete and includes all related costs under the Contract Documents;
5. waives related Claim for additional costs or time extensions that may subsequently become apparent; and
6. shall provide review or redesign services by a design consultant with appropriate professional license and shall obtain re-approval and permits from authorities.

3.10.6 City Engineer will not consider and will not approve substitutions when:

1. they are indicated or implied on Shop Drawing or Product Data submittals without separate written request; or
2. acceptance will require revision to the Contract Documents.

3.10.7 City Engineer may reject requests for substitution, and his decision will be final and binding on the Parties.

3.11 *ALLOWANCES*

3.11.1 The Guaranteed Maximum Price for each Construction Phase may include Allowances as identified in the Contract Documents.

3.11.2 City will pay the actual costs of Allowance item and they will not be considered a Cost of the Work. If actual costs exceed the Allowance, City Engineer must approve a Change Order for the additional costs.

3.12 *WARRANTY*

3.12.1 Design-Build Contractor warrants to City that Products furnished under the Contract are:

1. free of defects in title;
2. of good quality;
3. new, unless otherwise required or permitted by the Contract Documents; and
4. free from defects and in strict conformance with the requirements of the Contract Documents.

If required by City Engineer, Design-Build Contractor shall furnish satisfactory evidence as to kind, quality and title of Products, and that Products conform to requirements of the Contract Documents.

3.12.2 In the event of a defect in a Product, either during construction or warranty period, Design-Build Contractor shall take appropriate action with manufacturer of Product to assure correction or replacement of defective Product with minimum delay.

3.12.3 Design-Build Contractor warrants that the Work is free of defects not inherent in the quality required or permitted, and that the Work does conform with the requirements of the Contract Documents. Design-Build Contractor further warrants that the Work has been performed in a good and workmanlike manner.

3.12.3.1 If required in writing by the City Engineer, Design-Build Contractor shall furnish satisfactory evidence, including reports or required tests, as to kind, quality and title of Products, and that Products conform to requirements of the Contract Documents.

3.12.3.2 In the event of a defect in a Product, either during construction or correction period, Design-Build Contractor shall take appropriate action with the manufacturer of the Product to assure correction or replacement of the defective Product with minimum delay.

3.12.4 Design-Build Contractor warrants that the Work is free of concentrations on polychlorinated biphenyl (PCB) and other substances defined as hazardous by the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) or any other applicable law or regulation.

3.12.5 Work not conforming to requirements of **Section 3.12**, including substitutions not properly approved and authorized, may be considered nonconforming work.

3.12.6 Design-Build Contractor's warranty excludes remedy for damage or defect caused by:

3.12.6.1 improper or insufficient maintenance by City;
3.12.6.2 normal wear and tear under normal usage; or
3.12.6.3 claim that hazardous material was incorporated into the Work, if that

material was specified in the Contract Documents.

3.12.7 Design-Build Contractor warrants that title to all Work covered by Design-Build Contractor's request for payment passes to City upon incorporation into the Work or upon Design-Build Contractor's receipt of payment, whichever occurs first. Design-Build Contractor further warrants that the title is free of all liens, claims, security interests or other interests ("Encumbrances"). If not, upon written demand from City Engineer, Design-Build Contractor shall immediately take legal action necessary to remove Encumbrances.

3.13 *TAXES*

3.13.1 Design-Build Contractor shall pay all applicable sales, consumer, use, and similar taxes, which are related to work provided by Design-Build Contractor and to which any sales or use tax exemption is not applicable.

3.13.2 Design-Build Contractor shall obtain, and require Subcontractors and Suppliers to obtain, necessary permits from applicable state and local taxing authorities to perform contractual obligations under the Contract, including sales tax permits (to the extent any sales or use tax exemption is not applicable).

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

3.13.4 Products incorporated into the Work are exempt from state sales tax according to provisions of the TEX. TAX CODE ANN. CH. 151, Subsection H.

3.14 *PERMITS, FEES, AND NOTICES*

3.14.1 Unless otherwise provided in the Contract, Design-Build Contractor shall secure and pay for all construction permits, licenses, and inspections.

3.14.1.1 necessary for proper execution and completion of the Work; and

3.14.1.2 legally required at time the Guaranteed Maximum Price for a construction Phase is approved by the City Engineer.

3.14.2 The Design-Build Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities bearing on performance of the Work, including Design-Build Contractor's or Subcontractor's licenses; neither City nor its agents, nor City's consultants, shall be responsible for monitoring Design-Build Contractor's compliance with this requirement.

3.15 *CONSTRUCTION SCHEDULES*

3.15.1 Upon receipt of a Notice to Proceed for a particular Construction Phase, Design-Build Contractor shall promptly prepare and submit a construction schedule for such Construction Phase for City Engineer's review. The schedule must reflect the minimum time required to complete the Work of the Construction Phase, not to exceed Contract Time.

3.15.2 Design-Build Contractor shall give 24-hour written notice to City Engineer before commencing work or resuming work where work has been stopped. Design-Build Contractor shall also give the same notice to inspectors.

3.15.3 Design-Build Contractor shall incorporate milestones specified in Section 01326 (Construction Sequencing) of the Specifications into the construction schedule. Design-Build Contractor's failure to meet a milestone, as determined by City Engineer, may be considered a material breach of the Contract. Such failure shall not be a material breach of the Contract if Design-Build Contractor has submitted a updated construction schedule reasonably acceptable to the City Engineer under **Section 8.1.5** hereof and is complying therewith.

3.15.4 Each month, Design-Build Contractor shall submit to City Engineer a copy of the updated construction schedule indicating actual progress, incorporating applicable changes, and indicating courses of action required to assure completion of each Construction Phase of the Work within Contract Time.

3.15.5 Design-Build Contractor shall keep a current schedule of all submittals that correlates with the schedules for each Construction Phase, and shall submit the initial schedule of submittals and any subsequent changes to City Engineer for approval.

3.16 *DOCUMENTS AND SAMPLES AT THE SITE*

3.16.1 Design-Build Contractor shall maintain at the site, and make available to City Engineer, one record copy of Drawings, Specifications, and Modifications. Design-Build Contractor shall maintain the documents in good order and marked currently to record changes and selections made during construction. In addition, Design-Build Contractor shall maintain at the site, approved Shop Drawings, Product Data, Samples, and similar submittals, which will be delivered to City Engineer prior to final inspection as required in **Section 9.8.4**.

3.16.2 Design-Build Contractor shall maintain all books, documents, papers, accounting records, and other relevant documentation pursuant to the Work and shall make the books, documents, papers, and accounting records available to representatives of City for review and audits during the Contract term and for the greater of three years following Date of Substantial Completion of each Construction Phase or until all litigation or audits are fully resolved.

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

3.17 *MANUFACTURER'S SPECIFICATIONS*

3.17.1 Design-Build Contractor shall handle, store, protect, and Install Products and perform all Work in the manner required by Product manufacturer. Should the Contract and manufacturer's instructions conflict, Design-Build Contractor shall report conflict to City Engineer for resolution prior to proceeding with the affected portions of the Work.

3.17.2 References in the Contract Documents to the manufacturer's specifications, directions, or recommendations, mean manufacturer's current published documents in effect as of date of receipt of a Guaranteed Maximum Price proposal, or in the case of a Modification, as of date of Modification.

3.18 *SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES*

3.18.1 Shop Drawings, Product Data, and Samples are not part of the Contract. The purpose of Design-Build Contractor submittals is to demonstrate, for those portions of the Work for which submittals are required, the way Design-Build Contractor proposes to conform to information given and design concept expressed in the Contract Documents.

3.18.2 Design-Build Contractor shall submit to City Engineer, if required by City Engineer for review the Shop Drawings, Product Data, and Samples, which are required by the Contract Documents. Review by City Engineer is subject to limitations of **Section 4.1.4**. Design-Build Contractor shall transmit the submittals to the City Engineer with reasonable promptness and in a sequence, so as to cause no delay in the Work or in activities of City or of separate contractors. Design-Build Contractor shall transmit submittals in time to allow a minimum of 30 days for City Engineer's review prior to date Design-Build Contractor needs reviewed submittals returned. This time may be shortened for a particular job requirement if approved by City Engineer in advance of submittal.

3.18.3 Design-Build Contractor shall certify that the content of submittals conforms to the Contract without exception by affixing Design-Build Contractor's approval stamp and signature. By certifying and submitting Shop Drawings, Product Data, and Samples, Design-Build Contractor represents, and Design-Build Contractor's stamp of approval shall state, that Design-Build Contractor has determined and verified materials, quantities, field measurements, and field construction criteria related to the submittal, and has checked and coordinated information contained within the submittals with requirements of the Contract Documents and for compatibility with other submittals.

3.18.4 Design-Build Contractor shall not perform any work requiring submittal and review of Shop Drawings, Product Data, or Samples until the submittal has been returned with appropriate review decision by the City Engineer. Design-Build Contractor shall perform Work in accordance with the review.

3.18.5 If Design-Build Contractor performs any Work requiring submittals prior to review and acceptance of the submittals by City Engineer, such Work is at Design-Build Contractor's risk and City is not obligated to accept work if the submittals are later found to be unacceptable.

3.18.6 If, in the opinion of City Engineer, the submittals are incomplete, or demonstrate an inadequate understanding of the Work or lack of

review by the Design-Build Contractor, then submittals may be returned to the Design-Build Contractor for correction and resubmittal.

3.18.7 Design-Build Contractor shall direct specific attention in writing and on the resubmitted Shop Drawings, Product Data, or Samples to any additional proposed revisions, other than those revisions requested by City Engineer on previous submittals.

3.18.8 Design-Build Contractor is not relieved of responsibility for deviations from requirements of the Contract Documents by City Engineer's review or approval of Shop Drawings, Product Data, or Samples unless Design-Build Contractor has specifically informed City Engineer in writing of the deviation at the time of the submittal, and City Engineer has given written approval of the deviation.

3.18.9 When professional certification of performance criteria of Products is required by the Contract Documents, City may rely upon accuracy and completeness of the calculations and certifications.

3.18.10 For Product colors or textures to be selected by City, Design-Build Contractor shall submit all samples together to allow preparation of a complete selection schedule.

3.18.11 Design-Build Contractor shall submit informational submittals, on which City Engineer is not expected to take responsive action, as required by the Contract Documents.

3.18.12 Submittals made by Design-Build Contractor which are not required by the Contract Documents may be returned to Design-Build Contractor without action.

3.19 ***CULTURAL RESOURCES AND ENDANGERED SPECIES***

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

3.19.2 Should either threatened or endangered plant or animal species be encountered, Design-Build Contractor shall cease work immediately in the area of encounter and notify City Engineer.

3.20 ***CUTTING AND PATCHING***

3.20.1 Design-Build Contractor is responsible for necessary cutting, fitting, and patching to accomplish the Work and shall suitably support, anchor, attach, match, and trim or seal materials to work of other contractors. Design-Build Contractor shall coordinate the Work with work of other contractors to minimize conflicts, as provided in **Article 6**.

3.20.2 Design-Build Contractor shall not endanger work by cutting, digging, or other action, and may not cut or alter work of other contractors except by written consent of City Engineer and affected contractor.

3.20.3 If authorized by City, cutting shall be accurately located and neatly done. Unnecessary cutting shall be avoided. Patching shall be done by skilled mechanics experienced in the particular type of work involved. Patching work shall conform to the standards of the Drawings and Specifications where applicable, and where not specified, such work shall conform to the highest standards of the trade. Finished patching in the work of a separate contractor shall be acceptable to the contractor whose work has been patched.

3.20.4 Design-Build Contractor shall leave all holes, chases, and other openings in its construction required by other contractors for the installation of their work, provided such openings are accurately located by the party requiring them before the execution of the construction. Design-Build Contractor shall afford other contractors a reasonable opportunity to locate such openings.

3.21 ***CLEANING***

3.21.1 Design-Build Contractor shall perform daily cleanup of all dirt, debris, scrap materials and other disposable items resulting from Design-Build Contractor's operations, whether on-site or off-site. Unless otherwise authorized in writing by City Engineer, Design-Build Contractor shall keep all streets, access streets, driveways, areas of public

access, walkways, and other designated areas clean and open at all times.

3.21.2 Failure of Design-Build Contractor to maintain a clean site, including access streets, is the basis for City Engineer to issue a Notice of Noncompliance. Should compliance not be attained within the time period in the Notice of Noncompliance, City Engineer may authorize necessary cleanup to be performed by others and the cost of the cleanup will be deducted from monies due Design-Build Contractor.

3.21.3 Design-Build Contractor shall legally dispose off site all waste products and debris resulting from Design-Build Contractor's on site and off site operations.

3.22 *SANITATION*

3.22.1 Design-Build Contractor shall provide and maintain sanitary facilities at site for use of all construction forces under the Contract. Newly-constructed or existing sanitary facilities may not be used by Design-Build Contractor.

3.23 *ACCESS TO WORK AND TO INFORMATION*

3.23.1 Design-Build Contractor shall provide City, City's Design Consultant(s), testing laboratories, and governmental agencies that have jurisdictional interests, access to the Work in preparation and in progress wherever located. Design-Build Contractor shall provide proper and safe conditions for the access.

3.23.2 If required by City Engineer, Design-Build Contractor shall furnish information concerning character of Products and progress and manner of the Work, including information necessary to determine cost of the Work, such as number of employees, pay of employees, and time employees worked on various classes of the Work.

3.24 *TRADE SECRETS*

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

3.25 *RELEASE AND INDEMNIFICATION*

3.25.1 DESIGN-BUILD CONTRACTOR AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S CONCURRENT (BUT NOT SOLE) NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCT'S LIABILITY OR STRICT STATUTORY LIABILITY. DESIGN-BUILD CONTRACTOR HEREBY COVENANTS AND AGREES NOT TO SUE THE CITY FOR ANY CLAIMS, DEMANDS, OR CAUSES OF ACTION DIRECTLY OR INDIRECTLY RELATED TO ITS RELEASE UNDER THIS SECTION. FOR THE AVOIDANCE OF DOUBT, THIS COVENANT NOT TO SUE DOES NOT APPLY TO CLAIMS FOR BREACH OF THIS AGREEMENT.

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

3.25.2.1 DESIGN-BUILD CONTRACTOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 3.25.2.1 THROUGH 3.25.2.3, "DESIGN-BUILD CONTRACTOR") ACTUAL OR

ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;

3.25.2.2 THE CITY'S AND DESIGN-BUILD CONTRACTOR'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER DESIGN-BUILD CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND

3.25.2.3 THE CITY'S AND DESIGN-BUILD CONTRACTOR'S ACTUAL OR ALLEGED CONCURRENT STRICT PRODUCTS LIABILITY, WHETHER DESIGN-BUILD CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT.

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

3.25.3 THE INDEMNIFICATION OBLIGATIONS UNDER SECTION 3.25.2 SHALL NOT BE LIMITED IN ANY WAY BY THE LIMITS OF ANY INSURANCE COVERAGE OR ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION, OR BENEFITS PAYABLE BY, FOR, OR TO DESIGN-BUILD CONTRACTOR OR ANY SUBCONTRACTOR, SUPPLIER, OR ANY OTHER INDIVIDUAL OR ENTITY UNDER ANY INSURANCE POLICY, WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS, OR OTHER EMPLOYEE BENEFITS ACTS.

3.25.4 NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE LIABILITY OF DESIGN-BUILD CONTRACTOR FOR THE CITY'S CONCURRENT NEGLIGENCE SHALL NOT EXCEED $1,000,000.

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

3.26.1 UNLESS OTHERWISE SPECIFICALLY REQUIRED BY THE CONTRACT, DESIGN-BUILD CONTRACTOR AGREES TO AND SHALL RELEASE AND DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL CLAIMS OR CAUSES OF ACTION BROUGHT AGAINST THE CITY BY ANY PARTY, INCLUDING DESIGN-BUILD CONTRACTOR, ALLEGING THAT THE CITY'S USE OF ANY EQUIPMENT, SOFTWARE, PROCESS, OR DOCUMENTS DESIGN-BUILD CONTRACTOR FURNISHES DURING THE TERM OF THE CONTRACT INFRINGES ON A PATENT, COPYRIGHT, OR TRADEMARK, OR MISAPPROPRIATES A TRADE SECRET. DESIGN-BUILD CONTRACTOR SHALL PAY, SUBJECT TO REIMBURSEMENT IF ALLOWED UNDER THE AGREEMENT, ALL COSTS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS, AND INTEREST) AND DAMAGES AWARDED.

3.26.2 DESIGN-BUILD CONTRACTOR SHALL NOT SETTLE ANY CLAIM ON TERMS WHICH PREVENT THE CITY FROM USING THE EQUIPMENT, SOFTWARE, PROCESS, OR PRODUCT WITHOUT THE CITY ENGINEER'S PRIOR WRITTEN CONSENT.

3.26.3 UNLESS OTHERWISE SPECIFICALLY REQUIRED BY THE CONTRACT, WITHIN 60 DAYS AFTER BEING NOTIFIED OF THE CLAIM, DESIGN-BUILD CONTRACTOR SHALL, AT ITS OWN EXPENSE, EITHER:

3.26.3.1 OBTAIN FOR THE CITY THE RIGHT TO CONTINUE USING THE EQUIPMENT, SOFTWARE, PROCESS, OR PRODUCT, OR

3.26.3.2 IF BOTH PARTIES AGREE, REPLACE OR MODIFY THEM WITH COMPATIBLE AND FUNCTIONALLY EQUIVALENT PRODUCTS.

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

3.27 *INDEMNIFICATION PROCEDURES*

3.27.1 *Notice of Indemnification Claims*. If City or Design-Build Contractor receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving party shall give written notice to the other Party within 10 days. The notice must include the following:

3.27.1.1 a description of the indemnification event in reasonable detail,

3.27.1.2 the basis on which indemnification may be due, and

3.27.1.3 the anticipated amount of the indemnified loss.

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

3.27.2 Defense of Indemnification Claims.

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

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

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

2 would require City to pay amounts that Design-Build Contractor does not fund in full; or

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

3.28 PRESERVATION OF CONTRACTING INFORMATION

3.28.1 The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and the Design-Build Contractor agrees that this Agreement can be terminated if the Design-Build Contractor knowingly or intentionally fails to comply with a requirement of that subchapter. If the requirements of Subchapter J, Chapter 552, Texas Government Code, apply to this Agreement, then for the duration of this Agreement (including the initial term, any renewal terms, and any extensions), Design-Build Contractor shall preserve all Contracting Information, as defined by Section 552.003 of the Texas Government Code, related to this Agreement as provided by the records retention requirements applicable to the City pursuant to federal or state law or regulation, city ordinance or city policy, which record retention requirements include but are not limited to those set forth in Chapters 201 and 205 of the Texas Local Government Code and Texas Administrative Code Title 13, Chapter 7. Within five business days after receiving a request from the Director, Design-Build Contractor shall provide any Contracting Information related to this Agreement that is in the custody or possession of Design-Build Contractor. Upon the expiration or termination of this Agreement, Design-Build Contractor shall, at the Director’s election, either (a) provide, at no cost to the City, all Contracting Information related to this Agreement that is in the custody or possession of

Design-Build Contractor, or (b) preserve the Contracting Information related to this Agreement as provided by the records retention requirements applicable to the City pursuant to federal or state law or regulation, city ordinance or city policy.

3.28.2 If Design-Build Contractor fails to comply with any one or more of the requirements of this Section, *PRESERVATION OF CONTRACTING INFORMATION*, or Subchapter J, Chapter 552, Texas Government Code, then, in accordance with and pursuant to the processes and procedures set forth in Sections 552.373 and 552.374 of the Texas Government Code, the Director shall provide notice to the Design-Build Contractor and may terminate this Agreement. To effect final termination, the Director must notify Design-Build Contractor in writing with a copy of the notice to the City's Chief Procurment Officer. After receiving the notice, Design-Build Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement, and promptly cancel all orders or subcontracts chargeable to this Agreement.

ARTICLE 4 - ADMINISTRATION OF THE CONTRACT

4.1 ***CONTRACT ADMINISTRATION***

4.1.1 City Engineer will provide administration of the Contract, and, subject to **Section 7.1.2**, City Engineer is authorized to issue Change Orders, Work Change Directives, and Minor Changes in the Work.

4.1.1.1 City Engineer may act through its Design Consultant(s), or Inspector. When the term "City Engineer" is used in the Contract, action by City Engineer is required unless City Engineer delegates his authority in writing.

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

4.1.3 City Engineer and City's Design Consultant(s) may attend project meetings and visit the site to observe progress and quality of the Work. City Engineer and its Design Consultant(s) are not required to make exhaustive or continuous on-site inspections or to check quality or quantity of the Work.

4.1.4 City Engineer will review and approve or take other appropriate action on Design-Build Contractor's submittals, but only for limited purpose of checking for conformance with information given and design concept expressed in the Contract.

4.1.4.1 City Engineer's review of the submittals is not conducted for purpose of determining accuracy and completeness of other details, such as dimensions and quantities, or for substantiating instructions for installation or performance of Products, all of which remain the responsibility of Design-Build Contractor.

4.1.4.2 City Engineer's and City's Design Consultant's review and/or approval of submittals shall not relieve Design-Build Contractor of Design-Build Contractor's obligations to perform the Work in strict conformance with the Contract Documents, including without limitation Design-Build Contractor's obligations under **Sections 3.3, 3.10, 3.12, 3.16 and 3.18 of these Document 00700-General Conditions** and shall not constitute approval of safety precautions or, unless otherwise specifically stated by City Engineer or City's Design Consultant(s), of any construction means, methods, techniques, sequences, or procedures. City Engineer's or City's Design Consultant's review and/or approval of a specific item shall not indicate approval of an assembly of which the item is a component.

4.1.4.3 City's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

4.1.5 Based on field observations and evaluations, City Engineer will process Design-Build Contractor's progress payments, certify amounts due Design-Build Contractor, and issue Certificates for Payment in the amount certified.

4.1.6 Design-Build Contractor shall deliver to City Engineer for his review and records, written warranties and related documents required by the Contract Documents and assembled by Design-Build Contractor.

4.1.7 Upon written request by Design-Build Contractor or City, City Engineer will resolve matters of interpretation of or performance of the Contract, which are not Claims. City Engineer's decisions are final and binding on the Parties.

4.1.8 City Engineer may reject Work that does not conform to the Contract.

4.1.9 When City Engineer considers it necessary to implement the intent of the Contract, City Engineer may require additional inspection or testing of work in accordance with Sections 13.6.3 and 13.6.4 of the Specifications, whether such work is fabricated, Installed, or completed.

4.1.10 Except as expressly stated in this Article or other provisions of this Contract, the City owes no duty to the Design-Build Contractor or any subcontractor.

4.2 ***COMMUNICATIONS IN ADMINISTRATION OF THE CONTRACT***

4.2.1 Except as otherwise provided in the Contract Documents or when authorized by City Engineer in writing, Design-Build Contractor shall communicate with City Engineer. Design-Build Contractor shall communicate with City's Design Consultant(s), , and separate contractors through City Engineer. City Engineer will communicate with Subcontractors and Suppliers through Design-Build Contractor, but City Engineer is entitled to communicate directly with Subcontractors and Suppliers at any time to obtain information.

4.3 ***CLAIMS AND DISPUTES***

4.3.1 *Documentation by City Engineer:* Design-Build Contractor shall submit Claims, including those alleging an error or omission by City or City's Design Consultant(s), to City Engineer.

4.3.2 *Decision of City Engineer:* Upon submission of Claim by Design-Build Contractor, City Engineer will resolve Claims in accordance with Section 4.4. c

4.3.3 *Time Limits on Claims:* Claims by Design-Build Contractor shall be made within 90 days after the occurrence of the event giving rise to such Claim. Claims by Design-Build Contractor not made within the time required in the required manner shall be deemed waived by Design-Build Contractor.

4.3.4 *Continuing the Contract Performance:* Pending final resolution of a Claim including referral to non-binding mediation, unless otherwise agreed in writing, Design-Build Contractor shall proceed diligently with the performance of the Contract and City will continue to make payments in accordance with the Contract Documents.

4.3.4.1 Pending final resolution of a Claim including referral to non-binding mediation, Design-Build Contractor is responsible for safety and protection of physical properties and conditions at the Project site.

4.3.5 *Claims for Concealed or Unknown Conditions:* Concealed or unknown physical conditions may include utility lines, other man-made structures, storage facilities, Pollutants and Pollutant Facilities, and the like, but do not include conditions discovered or that should have been discovered through reasonable visual site inspection, geotechnical testing, geotechnical information available to Design-Build Contractor, or otherwise, or that do not materially differ from those indicated in the Contract Documents, or information provided by City or those that should reasonably be anticipated, arising from Design-Build Contractor's operations, or failure of Design-Build Contractor to properly protect and safeguard subsurface facilities, or that do not materially differ from those indicated in the Contract Documents, or information provided by City or those that should reasonably be anticipated. Subject to the foregoing, concealed conditions also include naturally-occurring soil conditions outside the range of soil conditions identified through geotechnical investigations, but do not include conditions arising from groundwater, rain, or flood.

4.3.5.1 If conditions are encountered at the site which are Underground Facilities or otherwise concealed or unknown conditions as defined in **Section 4.3.5**, then Design-Build Contractor will give written notice to City Engineer no later than five days after Design-Build Contractor's first observation of the condition and before condition is disturbed. Design-Build Contractor's failure to provide notice constitutes a waiver of a Claim.

4.3.5.2 City Engineer will promptly investigate concealed or unknown conditions. If City Engineer determines that conditions at the site are not materially different and that no change in the Guaranteed Maximum Price or Contract Time is justified, City Engineer will notify Design-Build Contractor in writing, stating reasons. If City Engineer determines the conditions differ materially and cause increase or decrease in Design-Build Contractor's cost or time required for performance of part of the Work, City Engineer will recommend an adjustment in the Guaranteed Maximum Price, or Contract Time, or all, as provided in **Article 7**. Opposition by a Party to City

Engineer's determination must be made within 21 days after City Engineer has given notice of the decision. If the Parties cannot agree on adjustment to the Guaranteed Maximum Price or Contract Time, adjustment is subject to further proceedings pursuant to **Section 4.4.**

4.3.6 *Claims for Additional Cost:* If Design-Build Contractor wishes to make a Claim for increase in or Guaranteed Maximum Price, Design-Build Contractor shall give written notice before proceeding with work for which Design-Build Contractor intends to submit a Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under **Section 10.4**.

4.3.6.1 Design-Build Contractor may file a Claim in accordance with **Section 4.4** if Design-Build Contractor believes it has incurred additional costs, for the following reasons:

1 written interpretation of City Engineer contrary to the terms of the Contract Documents;
2 order by City Engineer to stop the Work when Design-Build Contractor is not at fault;
3 suspension of the Work by City Engineer when Design-Build Contractor is not at fault;
4 errors or omissions in the Drawings or Specifications that are not the responsibility of Design-Build Contractor; or
5 City's non-compliance with another provision of the Contract Documents.

4.3.6.2 No increase in the Guaranteed Maximum Price is allowed for delays or hindrances to the Work, except for direct and unavoidable extra costs to Design-Build Contractor that qualify as a Cost of the Work caused by failure of City to perform City's obligations under the Contract Documents. Any increase claimed is subject to the provisions of **Section 4.4** and **Article 7**.

4.3.6.3 City is not liable for Claims for delay when Date of Substantial Completion of a Construction Phase occurs prior to expiration of Contract Time.

4.3.7 *Claims for Additional Time:* If Design-Build Contractor wishes to make a Claim for an increase in Contract Time, Design-Build Contractor shall give written notice as provided in **Section 8.2**. In case of continuing delay, only one Claim is necessary.

4.4 ***RESOLUTION OF CLAIMS AND DISPUTES***

4.4.1 City Engineer will review Claims and take one or more of the following preliminary actions within 30 days of receipt of Claim:

1 submit a suggested time to meet and discuss the Claim with claimant;
2 reject Claim, in whole or in part, stating reasons for rejection;
3 recommend approval of the Claim by the other Party;
4 suggest a compromise; or
5 take other actions as City Engineer deems appropriate to resolve the Claim.

4.4.2 City Engineer may request additional supporting data from claimant. Party making Claim shall, within 10 days after receipt of City Engineer's request, submit additional supporting data requested by City Engineer.

4.4.3 At any time prior to rendering a written decision regarding a Claim, City Engineer may refer Claim to non-binding mediation. If Claim is resolved, City Engineer will prepare and obtain all appropriate documentation.

4.4.3.1 If Claim is not referred to non-binding mediation, City Engineer will render a written decision within 75 days of receipt of the Claim, or a time mutually agreed upon by the Parties in writing. City Engineer may notify Surety and request Surety's assistance in resolving a Claim. City Engineer's decision is final and binding on the Parties.

4.5 **CONDITION PRECEDENT TO SUIT; *WAIVER OF ATTORNEY FEES AND INTEREST***

4.5.1 A final decision by the City Engineer is a condition precedent to file suit in any jurisdiction for a claim made in connection with this Contract.

4.5.2 Neither the City nor Design-Build Contractor may recover attorney fees for any claim brought in connection with this Contract.

4.5.3 Neither the City nor the Design-Build Contractor may recover interest for any damages claim brought in connection with this Contract except as allowed by TEXAS LOCAL GOVERNMENT CODE Chapter 2251.

4.6 *INTERIM PAYMENT WAIVER & RELEASE*

4.6.1 In accordance with **section 4.3**, the Design-Build Contractor shall use due diligence in the discovery and submission of any Claim against the City related to the Design-Build Contractor's work.

4.6.2 The Design-Build Contractor shall submit any Claim to the City not later than the 90th day after the occurrence of the event giving rise to the Claim.

4.6.3 Any failure to timely comply with the requirements of **section 4.6.2** waives and releases any Claim when the Design-Build Contractor submits an application for payment after the 90th day.

4.6.4 This waiver does not cover any retainage. In case of any conflict of law, this language shall be revised to the minimum extent necessary to avoid legal conflict. This waiver is made specifically for the benefit of the City.

ARTICLE 5 - SUBCONTRACTORS AND SUPPLIERS

5.1 *AWARD OF SUBCONTRACTS OTHER CONTRACTS FOR PORTIONS OF THE WORK*

5.1.1 Design-Build Contractor may not contract with a Subcontractor, Supplier, person, or entity that City Engineer has made a reasonable and timely objection to.

5.1.2 If City Engineer has a reasonable objection to person proposed by Design-Build Contractor, Design-Build Contractor shall propose another with whom City Engineer has no reasonable objection.

5.1.3 Design-Build Contractor shall execute contracts with approved Subcontractors and Suppliers, persons or entities before the Subcontractors, Suppliers, persons or entity begins work under the Contract.

5.1.4 Design-Build Contractor shall notify City Engineer in writing of any proposed change of Subcontractor or Supplier, person or entity previously approved by City Engineer.

5.1.5 Design-Build Contractor shall make timely payments to Subcontractors, Suppliers, persons and entities for performance of the Contract Documents. DESIGN-BUILD CONTRACTOR SHALL PROTECT, DEFEND, AND INDEMNIFY CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF DESIGN-BUILD CONTRACTOR'S FAILURE TO MAKE PAYMENTS. Disputes relating to payment of MWBE, PDBE and SBE Subcontractors, Suppliers, persons, or entities will be submitted to mediation in the same manner as other disputes under those subcontracts. Failure of Design-Build Contractor to comply with decisions of mediator may be determined by City Engineer a material breach leading to termination of the Contract.

5.2 *DESIGN-BUILD CONTRACTOR RESPONSIBILITY FOR SUBCONTRACTORS*

5.2.1 Design-Build Contractor is responsible to City, as may be required by laws and regulations, for all acts and omissions of Subcontractors, Suppliers, and other persons and organizations performing or furnishing any of the Work under direct or indirect contract with Design-Build Contractor.

5.2.2 Design-Build Contractor shall make available to each proposed Subcontractor, prior to execution of subcontract, copies of the Contract to which Subcontractor is bound by this **Section 5.2**. Design-Build Contractor shall notify Subcontractor of any terms of proposed subcontract which may be at variance with the Contract.

5.2.3 City Engineer's approval of Subcontractor or Suppliers does not relieve Design-Build Contractor of its obligation to perform, or to have performed to the full satisfaction of City, the Work required by the Contract.

5.2.4 Unless there is a contractual relationship between Design-Build Contractor and a Subcontractor or Supplier to the contrary, Design-Build Contractor shall withhold no more retainage from Subcontractors or Suppliers than City withholds from Design-Build Contractor under this Contract. However, once a Subcontractor or Supplier completes performance, Design-Build Contractor shall release all retainage to

that Subcontractor or Supplier regardless if City continues to retain under this Contract.

5.2.5 Prior to a Subcontractor or Supplier commencing performance for Design-Build Contractor, Design-Build Contractor shall meet with that Subcontractor or Supplier to provide instructions on invoicing procedures, dispute resolution procedures, and statutory rights, such as Section 2253 of the Texas Government Code. Subcontractors and Suppliers must certify to the City Engineer that Design-Build Contractor has fulfilled the requirements of this Section.

ARTICLE 6 - CONSTRUCTION BY CITY OR BY SEPARATE CONTRACTORS

6.1 *THE CITY'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS*

6.1.1 City shall have the right to perform on-site construction operations related to the Work and as part of the Project with its own forces or with separate contractors.

6.2 *COORDINATION*

6.2.1 City will coordinate activities of City's workforce and of each separate contractor with work of Design-Build Contractor, and Design-Build Contractor shall cooperate with City and separate contractors.

6.2.1.1 Design-Build Contractor shall participate with other separate contractors and City in reviewing their construction schedules when directed to do so by the City Engineer. Design-Build Contractor shall make revisions to construction schedule and Guaranteed Maximum Price deemed necessary after joint review and mutual agreement. Construction schedules shall then constitute schedules to be used by Design-Build Contractor, separate contractors, and City, until subsequently revised.

6.2.2 Design-Build Contractor shall afford to City and separate contractors reasonable opportunity for introduction and storage of their materials and equipment, and for performance of their activities.

6.2.3 If part of Design-Build Contractor's work depends on proper execution of construction or operations by City or a separate contractor, Design-Build Contractor shall, prior to proceeding with that portion of the Work, inspect the other work and promptly report to City Engineer apparent discrepancies or defects in the other construction that would render it unsuitable for the proper execution of the Work. Failure of Design-Build Contractor to report apparent discrepancies or defects in the other construction shall constitute acknowledgment that City's or separate contractor's completed or partially completed construction is fit and proper to receive Design-Build Contractor's work, except as to discrepancies or defects not then reasonably discoverable.

6.3 *MUTUAL RESPONSIBILITY*

6.3.1 The responsible Party bears the costs caused by delays due to improperly timed activities, or by nonconforming construction.

6.3.2 Design-Build Contractor shall promptly remedy damage caused by Design-Build Contractor to completed or partially completed construction or to property of City or separate contractor.

6.3.3 Claims or disputes between Design-Build Contractor and other City contractors, or subcontractors of other City contractors, working on the Project shall be submitted to binding mediation in accordance with Construction Industry Arbitration and Mediation Rules of the American Arbitration Association upon demand by any party to the dispute or by City. City is not required to arbitrate and is not bound by the result of any such mediation.

6.4 *CITY'S RIGHT TO CLEAN UP*

6.4.1 If a dispute arises among Design-Build Contractor, separate contractors, and City as to responsibility under their respective contracts for maintaining premises and surrounding area free from waste materials and rubbish as described in **Section 3.21**, City may clean up and allocate cost among those responsible, as determined by City Engineer.

ARTICLE 7 - CHANGES IN THE WORK

7.1 *CHANGES*

7.1.1 Changes in scope of the Work, subject to limitations in **Article 7** and elsewhere in the Contract, may be accomplished without invalidating the Contract, or without notifying Surety by:

1 Change Order;
2 Work Change Directive; or

3 Minor Change in the Work.

7.1.2 The following types of Change Orders require City Council approval:

1 a single Change Order that exceeds ten percent of the Guaranteed Maximum Price,

2 a Change Order which, when added to previous Change Orders, exceeds ten percent of the Guaranteed Maximum Price,

3 a Change Order, in which the total value of increases outside of the general scope of work approved by City Council, when added to increases outside the general scope of work approved by City Council in previous Change Orders, exceeds 40 percent of the Guaranteed Maximum Price, even if the net increase to the Guaranteed Maximum Price is ten percent or less. In this context, "increase" means an increase in quantity resulting from the addition of locations not within the scope of work approved by City Council, or the addition of types of goods or services not bid as unit price items.

Nothing in this Paragraph is intended to permit an increase of the Guaranteed Maximum Price in excess of the limit set out in TEX. LOC. GOV'T CODE ANN. §252.048 or its successor statute.

7.1.3 Design-Build Contractor shall proceed promptly to perform changes in the Work provided in Modifications, unless otherwise stated in the Modification.

7.2 *WORK CHANGE DIRECTIVES*

7.2.1 A Work Change Directive cannot change the Guaranteed Maximum Price or Contract Time, but is evidence that the Parties agree that a change, ordered by directive, will be incorporated in a subsequently issued Change Order as to its effect, if any, on the Guaranteed Maximum Price or the Contract Time.

7.2.2 Failure by Design-Build Contractor to commence work identified in a Work Change Directive within the time specified by City Engineer, or to complete the work in a reasonable period of time, may be determined by City Engineer to be a material breach of the Contract.

7.2.3 A Work Change Directive is used in the absence of total agreement of the terms of a Change Order. Interim payments are made in accordance with **Section 9.3.1**. Design-Build Contractor may include a request for payment for undisputed Work under a Work Change Directive with Applications for Payment submitted in accordance with the Contract Documents.

7.2.4 If Design-Build Contractor signs a Work Change Directive, then Design-Build Contractor agrees to its terms including adjustment in the Guaranteed Maximum Price and Contract Time or method for determining them. Agreement by the Parties to adjustments in the Guaranteed Maximum Price or Contract Time shall immediately be recorded as a Change Order.

7.2.5 City Engineer, by Work Change Directive, may direct Design-Build Contractor to take measures as necessary to expedite construction to achieve Date of Substantial Completion on or before expiration of Contract Time. When the Work is expedited solely for convenience of City and not due to Design-Build Contractor's failure to prosecute timely completion of the Work, then Design-Build Contractor is entitled to an adjustment in the Guaranteed Maximum Price equal to actual Cost of the Work described in **Section 12.8 of the Agreement**. The Design-Build Contractor's agreed to fee, as defined in **Section 12.7.2 of the Agreement**, shall be applied to the incremental increase in the Cost of the Work, if any, resulting from any such Work Change Directive.

7.3 *ADJUSTMENTS IN CONTRACT TIME OR GUARANTEED MAXIMUM PRICE*

7.3.1 Adjustments in the Guaranteed Maximum Price or Contract Time shall be accomplished only by Change Order after the parties have agreed to amending the approved GMP Proposal in **Article 7** herein and under **Article 12 of the Agreement**. All changes must be documented with properly itemized and supported by sufficient data to permit evaluation.

7.3.2 If the City Engineer deletes or makes a change which results in a net decrease in the GMP, City is entitled to a credit by Design-Build Contractor in the GMP and the Cost of the Work.

7.3.3 Unless otherwise provided in the Contract Documents, maximum allowances for overhead and profit due to changes in the Work, whether additive or deductive, are limited by the following:

1 to first tier Subcontractors for change in the Work performed by its Subcontractors: 10% Overhead and 0% Profit.

2 to first tier Subcontractors for change in the Work performed by their respective firms: 10% Overhead and 5% Profit.

7.4 *MINOR CHANGES IN THE WORK*

7.4.1 A Minor Change in Work is binding on the Parties. Design-Build Contractor shall acknowledge, in a written form acceptable to City Engineer, that there is no change in Contract Time or Guaranteed Maximum Price and shall carry out the written orders promptly.

7.5 *CHANGES IN APPLICABLE LAW*

7.5.1 To the extent that a change in Applicable Law enacted after the Guaranteed Maximum Price for an affected Phase is agreed upon affects to a material extent Design-Build Contractor's time or cost of performing the Work for the affected Construction Phase, Design-Build Contractor shall give City Engineer written notice within 90 Days of the effective date of such a change in Applicable Law, setting forth the details of the change in Applicable Law and Design-Build Contractor's good faith determination of its impact on Design-Build Contractor's performance obligations under the Contract Documents. The City Engineer will investigate such change in Applicable Law and, if the City Engineer determines that it causes an increase or decrease in Design-Build Contractor's cost of, or time required for, performance of the Work for the affected Construction Phase and that the notice was given timely, City and Design-Build Contractor shall enter into a Change Order in accordance with the provisions of **Article 7** herein.

ARTICLE 8 – TIME

8.1 *PROGRESS AND COMPLETION*

8.1.1 Time is of the essence in the Contract. By executing a Guaranteed Maximum Price Proposal and any Guaranteed Maximum Price contract amendment or change order, as determined by the City, Design-Build Contractor agrees that Contract Time is a reasonable period for performing the Work.

8.1.2 *Computation of Time:* In computing any period of time prescribed or allowed by the Document 00700-General Conditions, the day of the act, event, or default after which designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Sunday or Legal Holiday, in which event the period runs until end of the next day that is not a Sunday or Legal Holiday. Sundays and Legal Holidays are considered to be days and are to be included in all other time computations relative to Contract Time.

8.1.2.1 Design-Build Contractor shall provide City Engineer an accounting of inclement weather delay days.

8.1.2.2 City Engineer may grant an extension of Contract Time due to inclement weather where the Design-Build Contractor establishes an actual delay impacting the critical path of the Construction Schedule and otherwise complies with the requirements of **Article 8**.

8.1.3 Design-Build Contractor may not commence the Construction Phase Work prior to the effective date of insurance and Bonds required by **Article 11**.

8.1.4 Design-Build Contractor shall proceed expeditiously and without interruption, with adequate forces, and shall achieve Substantial Completion within the Contract Time.

8.1.5 Should progress of the Work fall behind construction schedule, except for reasons stated in **Section 8.2.1**, Design-Build Contractor shall promptly submit at the request of City Engineer, updated construction schedule to City Engineer for approval. Design-Build Contractor's failure to submit updated schedule may, at City Engineer's discretion, constitute a material breach of the Contract. Design-Build Contractor shall take action necessary to restore progress by working the hours, including night shifts and lawful overtime operations as necessary, to achieve Date of Substantial Completion within Contract Time.

8.1.6 Except in connection with safety or protection of persons or the Work or property at the site or adjacent to the site, and except as otherwise indicated in the Contract, all the Work at the site will be performed Monday through Saturday between the hours of 7:00 a.m. and 7:00 p.m. Design-Build Contractor shall not perform work between 7:00 p.m. and 7:00 a.m., on a Sunday, or on a Legal Holiday,

without giving City Engineer 24 hour prior written notice and receiving written consent of City Engineer, which consent shall not unreasonably be withheld.

8.2 *DELAYS AND EXTENSIONS OF TIME*

8.2.1 Design-Build Contractor may request extension of Contract Time for a delay in performance of work that arises from causes beyond Design-Build Contractor's control and without fault or negligence of Design-Build Contractor. Examples of these causes are:

1 acts of God or of the public enemy,
2 acts of government in its sovereign capacity,
3 fires,
4 floods,
5 epidemics,
6 quarantine restrictions,
7 strikes,
8 freight embargoes,
9 unusually severe weather; and
10 discovery of Pollutants or Pollutant Facilities at the site.

8.2.2 For any reason other than those listed in **Section 4.3.6.2**, if the Design-Build Contractor's work is delayed in any manner or respect, the Design-Build Contractor shall have no claim for damages and shall have no right of additional compensation from the City by reason of any delay or increased expense to the Design-Build Contractor's work, except for an extension of time as provided in this provision.

8.2.3 Design-Build Contractor may request and may be entitled to an extension of Contract Time for delay only if:

1 delay is not caused by failure of Design-Build Contractor or any of its Subcontractors or Suppliers to perform (or cause to be performed) or make progress for a cause within its control; and
2 cause of the delay was not reasonably anticipated and is beyond control of Design-Build Contractor; and
3 the delay has been mitigated by all reasonable available efforts; and
4 Design-Build Contractor can fully document and prove the impact of the event on Design-Build Contractor's critical path of planned Work in the Project Schedule.

8.2.4 Claims relating to Contract Time must be made in accordance with **Section 4.3.7**.

8.2.5 Claims for extending or shortening Contract Time are based on written notice promptly delivered by Design-Build Contractor to City Engineer. A Claim must accurately describe occurrence generating the Claim, and a statement of probable effect on progress of the Work.

8.2.6 Claims for extension of Contract Time are considered only when a Claim is filed within the time limits stated in Section 4.3.3.

8.2.7 Written notice of a Claim must be accompanied by claimant's written statement that adjustment claimed is entire adjustment to which claimant is entitled as a result of the occurrence of the event. When the Parties cannot agree, Claims for adjustment in Contract Time are determined by City Engineer in accordance with **Section 4.4**.

8.2.8 Adjustments to Contract Time shall be accomplished only by Change Order.

ARTICLE 9 - PAYMENTS AND COMPLETION

9.1 *APPLICATION FOR PAYMENT*

9.1.1 Ten days before submittal of the first Application for Payment for a Construction Phase of Work, Design-Build Contractor shall submit to City Engineer a Schedule of Values accurately allocating the Guaranteed Maximum Price for such Construction Phase to the various portions of the Work for such Construction Phase, prepared in the form and supported by the data as City Engineer may require to substantiate its accuracy. The Schedule of Values shall contain, at a minimum, separate line items for the close out of the Work for such Construction Phase, the delivery of record "as-built" drawings, delivery of operation and maintenance manuals, delivery of warranty documents, and final cleanup. The Schedule of Values shall be balanced and not contain any "front end loading." The Schedule of Values, as approved by City Engineer, shall be used as a basis for approval of Design-Build Contractor's Applications for Payment.

9.1.2 Design-Build Contractor shall submit Applications for Payment to City Engineer each month on a form acceptable to City Engineer in accordance with Schedule of Values. Each Application for

Payment shall indicate percentages of completion of each portion of the Work listed in Schedule of Values as of the end of the period covered by the Application for Payment. The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

9.1.3 Each Schedule of Values submitted with an Application for Payment shall include the originally established value for each Work classification line item or subcontract and shall identify, by the addition of new data rows immediately below the previously accepted data rows, any revisions to the costs or cost estimates for each Work classification or subcontract. The format and tracking method of the original Schedule of Values and of all updates shall be subject to approval by City Engineer. At all times, the estimated cost of performing the uncompleted and unpaid portion of the Work, including Design-Build Contractor's Construction Phase Fee, shall not exceed the unpaid balance of the Guaranteed Maximum Price, less retainage on Work previously completed.

9.1.4 If previously unpaid, the Pre-Construction Services costs shall be identified separately in each Application for Payment.

9.1.5 Design-Build Contractor shall deliver to City Engineer three copies of each itemized Application for Payment in such detail as is required by City Engineer. Applications for Payment must be supported by such substantiating data as City Engineer may require and shall reflect retainages as provided in the Contract Documents. The Application for Payment must be sworn to and notarized.

9.1.6 Before submitting the next Application for Payment (and with the Application for Final Payment), Design-Build Contractor shall submit any evidence required by City Engineer to verify the Cost of the Work and to demonstrate that the cash disbursements already made by Design-Build Contractor on account of the Cost of the Work are equal to or exceed (1) progress payments already received by Design-Build Contractor; less (2) that portion of those payments attributable to Design-Build Contractor's Construction Phase Fee; plus (3) payrolls for the period covered by the most recent Application for Payment; less (4) retainage provided for in the Contract Documents applicable to prior progress payments. This documentation of the most recent Application for Payment, if required by City Engineer, shall have a summary sheet (in two copies) that descriptively itemizes all expenses and individuals. No payment is required to be made for Work for which Design-Build Contractor fails to provide required documentation.

9.1.7 Each Application for Payment shall be based upon the Cost of the Work and the most recent Schedule of Values submitted by Design-Build Contractor in accordance with the Contract Documents and accepted by City Engineer.

9.1.8 Applications for Payment shall show the Cost of the Work actually incurred by Design-Build Contractor through the end of the period covered by the Application for Payment and for which Design-Build Contractor has made or intends to make actual payment prior to the next Application for Payment and the percentage completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage completion shall be the lesser of (1) the percentage of that portion of the Work that has actually been completed or (2) the percentage obtained by dividing (a) the Cost of the Work that has actually been incurred by Design-Build Contractor on account of that portion of the Work for which Design-Build Contractor has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the Schedule of Values.

1 The City Engineer, at his sole discretion, may authorize payment of stored materials up to a value of eighty five percent (85%) of the actual invoice amount properly substantiated by certified copies of invoices and freight bills of non-perishable material and equipment delivered and properly stored. Design-Build Contractor must obtain approval from City Engineer for authorization to bill for stored materials in advance of the request for payment.

9.1.9 Each Application for Payment, including the Application for Final Payment shall constitute a certification by Design-Build Contractor to City that the Work has progressed to the point indicated and the Work represented has actually been performed; the quality of the Work covered in the Application for Payment is in accordance with the Contract Documents; Design-Build Contractor is entitled to payment in the amount requested; Design-Build Contractor remains capable of performing the Contract to completion; and Design-Build Contractor

is current in payment with Subcontractors and Suppliers.

9.1.10 Design-Build Contractor shall promptly and in all events before interest charges accrue to the Subcontractor pay each of its Subcontractors, upon receipt of payment from City, out of the amount paid to Design-Build Contractor on account of such Subcontractor's work, the amount to which such Subcontractor is entitled in accordance with the terms of Design-Build Contractor's Subcontract with such Subcontractor. Design-Build Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to its sub-subcontractors in similar manner. City shall have no obligation to pay or to be responsible in any way for payment to any Subcontractor or Supplier.

9.1.11 With each Application for Payment, Design-Build Contractor shall submit a certified "waiver and release." The waiver and release shall state: "In consideration for the payment received, Design-Build Contractor waives all claims of every sort against City arising out of the Work performed through the effective date of the Application for Payment, except for retainage and such claims as have been properly submitted in accordance with the provisions of the Contract Documents or claims that can be made timely within the requirements of the Contract Documents."

9.1.12 Retainage shall be five percent (5%) of the Cost of the Work and the Design-Build Contractor's Construction Phase Fee for each Phase of the Work. There shall be no retainage on the Design-Build Contractor's building permit cost, bond and insurance cost, or the Preconstruction Services. Otherwise, City shall be entitled to withhold retainage from all Applications for Payment by Design-Build Contractor. Retainage is not held by City for the benefit of any others and shall be deemed amounts not yet earned by or owed to Design-Build Contractor.

9.1.13 In addition to other rights under the Contract Documents and Applicable Law, City Engineer, in its discretion, may retain amounts owing to Design-Build Contractor as City deems appropriate to protect City's interest. Design-Build Contractor shall not receive payments from City for any amounts Design-Build Contractor retains from its Subcontractors, and Design-Build Contractor shall immediately return to City any amounts paid to Design-Build Contractor on behalf of any Subcontractor or Supplier or other which Design-Build Contractor does not pass on as payment before the next Application for Payment. In the event City withholds all or any portion of the Design-Build Contractor's payments under this Section or under **Section 9.4** hereof, City shall provide specific written accounting for same and shall allocate specific amounts for each reason justifying withholding. Such explanation shall be provided at the time payments would otherwise be due and sums withheld shall be paid when each such reason for withholding same has been cured to the reasonable satisfaction of the City.

9.1.14 Materials and services utilized in the construction of the Project may be exempted from state and local taxes. Design-Build Contractor is responsible for taking full advantage of all tax exemptions applicable to the Project. City will deduct from the Applications for Payment and from the Request for Final Payment any taxes paid for materials or services that were entitled to tax exemption.

9.1.15 The Design-Build Contractor is subject to the assessment of liquidated damages as provided in the Contract Documents. Amounts assessed as liquidated damages, and other amounts to which City is entitled by way of setoff or recovery, may be deducted from any monies otherwise due Design-Build Contractor.

9.1.16 Design-Build Contractor's records shall be kept on the basis of generally accepted accounting principles in accordance with cost accounting standards issued by the Federal Office of Management and Budget Cost Accounting Standards Board consistently applied and organized by each Application for Payment period.

9.1.17 Applications for Payment must be supported by substantiating back-up data as required by the City Engineer and must reflect retainages as required herein. Evidence satisfactory to the City Engineer of payments made to Subcontractors and Suppliers for the month preceding the month for which the Application for Payment is submitted must accompany each Application for Payment on a form approved by the Director of the Mayor's Office of Business Opportunity. The Application must be sworn and notarized.

9.2 ***CERTIFICATES FOR PAYMENT***

9.2.1 Prior to issuing each Application for Payment under **Section 9.1**, Design-Build Contractor shall submit a "Draft" Application for Payment that is valid and has all required documentation no later than the 25th of the same month with Work projected through the end of the month. Within five (5) days of receipt of the

Draft, the City Engineer shall review the Draft and provide the Design-Build Contractor with any adjustments to the progress of the Work or amount requested, within reason. The Design-Build Contractor shall make agreed to corrections to the Draft and submit to the City a "Final" Application for Payment that is valid and has all required documentation within five (5) days from receipt of the City Engineer's adjustments. Upon receipt of the Final Application for Payment, the City shall make payment to the Design-Build Contractor not later than thirty (30) days from receipt. If, and in the event, the City Engineer holds all or part of a Final Application for Payment for one or more reasons, the City Engineer will issue a written explanation apportioning the amount withheld to each such cause.

9.2.1.1 With its draft Application for Payment, Design-Build Contractor shall submit to City Engineer on a form approved by the Director of Mayor's Office of Business Opportunity, evidence satisfactory to the City Engineer of payments made to Subcontractors and Suppliers for the month preceding the month for which the Application for Payment is prepared.

9.2.2 Unless otherwise provided in the Contract Documents, payment for completed Work and for properly stored Products is conditioned upon compliance with procedures satisfactory to and agreed to by City Engineer to protect City's interests. Procedures will include applicable insurance, storage, and transportation to the site (with suitable on site storage and protection) for Products stored off site and proper documentation for such delivered Products, including certified copies of invoices and freight bills. Design-Build Contractor is responsible for maintaining materials and equipment until the Date of Substantial Completion.

9.2.3 Design-Build Contractor shall document its use of Low Sulfur Diesel Fuel by providing invoices and receipts evidencing Design-Build Contractor's use.

9.3 ***COMPUTATIONS OF CERTIFICATES FOR PAYMENT***

9.3.1 Subject to the provisions of the Contract Documents, the amount of each Certificate for Payment is calculated as follows:

1 Take that portion of the Guaranteed Maximum Price for a Construction Phase properly allocated to completed Work for such Construction Phase based upon the percentage completion of each portion of the Work as set forth above. Pending final determination of cost to City of changes in the Work, amounts not in dispute may be included after increases and decreases have been netted out against each other, even though the Guaranteed Maximum Price has not yet been adjusted by Change Order.

2 Add the Design-Build Contractor's Construction Phase Fee.

3 Subtract the amount of retainage and such other amounts as City is entitled to withhold.

4 Subtract the aggregate of the previous payments made by City.

5 Subtract the shortfall, if any, indicated by Design-Build Contractor in the documentation required to substantiate prior Applications for Payment or Design-Build Contractor's payment of Costs of the Work covered by pervious payments, or resulting from errors subsequently discovered by City Engineer in such documentation.

6 Subtract amounts, if any, for which City has withheld or nullified an Application for Payment.

9.4 ***DECISIONS TO WITHHOLD CERTIFICATION***

9.4.1 City Engineer may decline to issue a Certificate for Payment and may withhold payment in whole or in part to the extent reasonably necessary to protect City if, in City Engineer's opinion, there is reason to believe that:

1 nonconforming work has not been remedied;

2 the Work cannot be completed for unpaid balance of the Guaranteed Maximum Price;

3 there is damage to City or another contractor;

4 Design-Build Contractor has persistently failed to complete the Work in accordance with the Project Schedule or the Work will not be completed within Contract Time and that unpaid balance will not be adequate to cover actual and liquidated damages;

5 evidence that third party claims will probably be filed in court, in mediation, or otherwise;

6 Design-Build Contractor has failed to make payments to Subcontractors or Suppliers or other third parties related to the Work;

7 Design-Build Contractor has failed to carry out the Work in accordance with the Contract Documents;

8 The payment request has insufficient documentation to support the amount of payment requested;

9 Design-Build Contractor fails to obtain, maintain or renew insurance coverage as required by the Contract Documents;

10 Design-Build Contractor is in breach or default under the Contract Documents or any loss or damage may result from negligence by Design-Build Contractor or any Subcontractor or failure of Design-Build Contractor or any Subcontractor to perform their obligations under the Contract Documents;

11 Design-Build Contractor has not paid Subcontractors or Suppliers because of a payment dispute; or,

12 Design-Build Contractor has failed to provide satisfactory evidence described in **Sections 9.1.16, 9.2.1.1, and 9.5.2**.

9.4.2 When the above reasons for withholding a Certificate for Payment are removed, certification will be made for amounts previously withheld.

9.4.3 City Engineer may decline to issue a Certificate for Payment and may withhold request for payment in whole or in part upon failure of Design-Build Contractor to submit initial construction schedule or monthly schedule updates, as required in **Section 3.15** or elsewhere in the Contract Documents.

9.4.4 City shall at any time during regular business hours have the right to inspect and copy the books and records (however kept) of Design-Build Contractor for verification of Work done, costs, bids, estimates, markups, payments due, amounts claimed, obligations owed Subcontractors or Suppliers, or any other aspect of Design-Build Contractor's obligations as they relate to the Project. At City Engineer's request, Design-Build Contractor, shall promptly provide evidence satisfactory to City of Design-Build Contractor's compliance with the Contract Documents. Design-Build Contractor shall require its Subcontractors and Suppliers to comply with this Section, and similarly require their sub-subcontractors and Suppliers of any tier, to comply with this Section.

9.5 ***PROGRESS PAYMENTS***

9.5.1 The City will make payment, in an amount certified by City Engineer, within 20 days after City Engineer has issued a Certificate for Payment.

9.5.2 City has no obligation to pay or to facilitate the payment to any Subcontractor, Supplier, person or entity, except as may otherwise be required by law. Design-Build Contractor shall comply with the prompt payment requirements of Chapter 2251 of the Texas Government Code. However, Design-Build Contractor shall pay Subcontractors and Suppliers within 7 calendar days of Design-Build Contractor's receipt of payment from City unless there is a payment dispute between Design-Build Contractor and a Subcontractor or Supplier evidenced on a form approved by the Director of Mayor's Office of Business Opportunity and submitted to the City Engineer each month with its Application for Payment.

9.5.2.1 City may, upon request and at the discretion of City Engineer, furnish to Subcontractor information regarding percentages of completion or the amounts applied for by Design-Build Contractor, and action taken thereon by City because of Work done by the Subcontractor.

9.5.2.2 Design-Build Contractor shall prepare and submit to City Engineer a Certification of Payment to Subcontractors, Suppliers, persons and entities form to be attached to each monthly Application for Payment.

9.5.3 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Work by City, does not constitute acceptance of work that is not in accordance with the Contract Documents.

9.6 ***DATE OF SUBSTANTIAL COMPLETION***

9.6.1 When Design-Build Contractor considers that a Construction Phase, or a portion thereof designated by City Engineer, to be substantially complete, Design-Build Contractor shall prepare and submit to City Engineer a comprehensive punch list of items to be completed or corrected. Failure to include an item on the punch list does not alter the responsibility of Design-Build Contractor to comply with the Contract Documents.

9.6.1.1 By submitting the punch list to City Engineer, Design-Build Contractor represents that work on the punch list will be completed within the time provided for in **Section 9.6.4.3**.

9.6.2 Upon receipt of Design-Build Contractor's punch list, City Engineer will inspect the Work, or designated portion thereof, to verify that the punch list contains all items needing completion or correction. If City Engineer's inspection discloses items not on Design-Build Contractor's punch list, the items must be added to the punch list of items to be completed or corrected. If City Engineer's inspection reveals that Design-Build Contractor is not yet substantially complete, Design-Build Contractor shall complete or correct the deficiencies and request another inspection by City Engineer. City may recover the costs of re-inspection from Design-Build Contractor. City Engineer will use reasonable efforts to inspect the Construction Phase within a reasonable time following receipt of Design-Build Contractor's punch list, and if City Engineer disagrees that Substantial Completion has been achieved, City Engineer will provide written notice as to what remains before Substantial Completion is achieved (but City Engineer shall not be prohibited from identifying other deficiencies later).

9.6.3 Prior to City Engineer's issuing a Certificate of Substantial Completion for the Work or other portion of the Work designated by City Engineer, Design-Build Contractor shall also provide:

.1 Certificate of Occupancy (a temporary Certificate of Occupancy is acceptable provided Design-Build Contractor promptly and diligently proceeds to obtain a permanent Certificate of Occupancy without conditions) for new construction, or Certificate of Compliance for remodeled work, as applicable;

.2 deliver all operations and maintenance manuals for the Project to City and have them approved by City and provide all training required under the Contract Documents. It is mutually understood and agreed that the Design-Build Contractor will make every effort to deliver the operation and maintenance manuals prior to the building or partial building substantial completion date but the requirement for the delivery of all operation manuals shall not be the sole reason for the delay in the issuance of the Certificate of Substantial Completion; and

.3 compliance with Texas Accessibility Standards through state inspection of the Work, if required. If Design-Build Contractor calls for inspection in a timely manner and the inspection is delayed through no fault of the Design-Build Contractor, and City Engineer so confirms, City Engineer may, upon request by Design-Build Contractor, add the inspection to the punch list in **Section 9.6.2** and issue a Certificate of Substantial Completion.

9.6.4 When the Work, or designated portion thereof, is determined by City Engineer to be sufficiently complete in accordance with the Contract Documents so City can occupy or utilize the Construction Phase, or designated portion thereof, for the purpose for which it is intended, and all other conditions and requirements are satisfied, City Engineer will prepare a Certificate of Substantial Completion that incorporates the punch list in **Section 9.6.2** and establishes:

1 Date of Substantial Completion;

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

3 fixed time within which Design-Build Contractor shall complete all items on punch list to be corrected or completed accompanying the certificate.

9.6.5 Warranties required by the Contract shall commence on the Date of Substantial Completion of each Construction Phase unless otherwise provided by City Engineer in Certificate of Substantial Completion. Warranties shall not commence on items not yet completed until the Date of Final Completion.

9.6.6 Design-Build Contractor shall complete or correct the items in **Section 9.6.2** within the time period set out in the Certificate of Substantial Completion. If Design-Build Contractor fails to do so, City may issue a Notice of Noncompliance and exercise all of its legal remedies under the Contract Documents, including those remedies set forth in **Section 2.5**.

9.6.7 Design-Build Contractor shall keep the premises free from accumulation of waste materials or rubbish caused by Design-Build Contractor's operations. At the completion of the Work, Design-Build Contractor shall remove from and about the Project Design-Build Contractor's tools, construction

equipment, machinery, surplus materials, waste materials and rubbish.

9.6.8 Immediately prior to the review of a portion of the Work for Substantial Completion, Design-Build Contractor shall remove all waste materials, rubbish, Design-Build Contractor's tools, construction equipment, machinery and surplus materials from the area to be inspected. Design-Build Contractor shall also remove all protective coatings, temporary work, barriers and other protective devices.

1 Finished spaces that are to be inspected shall be cleaned as required to remove all stains, dirt and dust. Glass shall be cleaned on both faces, and carpet shall be vacuumed.

2 Unfinished spaces such as mechanical and electrical equipment rooms that are to be inspected shall be "broom clean."

3 Mechanical work such as duct work, unit heaters, finned tube radiation and its covers, air conditioning units, grilles and registers shall be cleaned as required to remove all stains, dirt and dust.

4 Electrical work shall be cleaned as necessary to remove all stains, dirt and dust.

9.6.9 Design-Build Contractor shall maintain the Work in a clean condition until City determines the Date of Substantial Completion for the Construction Phase. After the Date of Substantial Completion of the Construction Phase, Design-Build Contractor is responsible for removing waste materials, rubbish, dirt and dust caused by its continued operations.

9.6.10 Prior to final acceptance, or prior to City's partial or complete occupancy of a portion of the Work, Design-Build Contractor shall do the following: (1) clean all spaces of the Work so that they are ready for City's occupancy without additional cleaning; (2) remove from the Project site all temporary buildings of facilities for that Work unless needed for other portions of the Work; (3) replace filters in air handling equipment according to the Specifications; and (4) replace burned out lamps. This obligation is in addition to and not by way of limitation of Design-Build Contractor's obligation to prove the Project complete and ready to use in all respects by the time limits set forth in the Contract Documents.

9.6.11 After the Date of Substantial Completion of a Construction Phase and upon application by Design-Build Contractor and approval by City Engineer, City may make payment, reflecting adjustment in retainage, if any, as follows: with the consent of Surety, the City may increase payment to Design-Build Contractor up to 96 % of the Guaranteed Maximum Price, less the value of items to be completed and accrued liquidated damages.

9.7 ***PARTIAL OCCUPANCY OR USE***

9.7.1 City may occupy or use any completed or partially completed portion of the Work that is less than a completed Construction Phase of the Work, provided the occupancy or use is consented to by Design-Build Contractor and Design-Build Contractor's insurer and authorized by public authorities having jurisdiction over the Work. Consent of Design-Build Contractor to partial occupancy or use may not be unreasonably withheld.

1 Occupancy by City of a completed Construction Phase of the Work shall not require any consent.

9.7.2 Immediately prior to the partial occupancy or use, City Engineer and Design-Build Contractor shall jointly inspect the area to be occupied or portion of the Work to be used to determine and record condition of the Work.

9.7.3 Partial occupancy or use of a portion of the Work does not constitute acceptance of Work not in compliance with requirements of the Contract Documents.

9.8 ***FINAL COMPLETION AND FINAL PAYMENT***

9.8.1 Design-Build Contractor shall review the Contract and inspect the Work prior to Design-Build Contractor notification to City Engineer that the Work is complete and ready for final inspection. Design-Build Contractor shall submit an affidavit that Design-Build Contractor has inspected the Work and that the Work is complete in accordance with the requirements of the Contract Documents.

9.8.2 City Engineer will make final inspection within 15 days after receipt of Design-Build Contractor's written notice that the Work is ready for final inspection and acceptance. If City Engineer finds the Work has been completed in accordance with the Contract, Design-Build Contractor shall submit items set out in **Section 9.8.4** and a final Application for Payment. Within 30 days of receipt of the items set

out in **Section 9.8.4**, the City Engineer may perform an audit to determine the accuracy of Design-Build Contractor's accounting of the Costs of the Work and the Final Application for Payment. City Engineer will, within 10 days thereafter, either notify the Design-Build Contractor that the Design-Build Contractor has not achieved Final Completion of the Construction Phase as provided in **Section 9.8.3** or issue a Certificate of Final Completion stating that to the best of City Engineer's knowledge, information, and belief, the Work has been completed in accordance with the Contract. If there is only one Construction Phase, City Engineer will recommend acceptance of the Work and recommend release of the remaining retainage by City Council. If there is more than one Construction Phase, the Parties shall confer upon the issuance of each Certificate of Final Completion to determine whether it is appropriate to seek City Council acceptance of the Work and release of the remaining retainage held for the particular Construction Phase that is certified as complete. Failing mutual agreement of the Parties to seek City Council acceptance and release of the remaining retainage, City shall continue to hold the remaining retainage for the particular Construction Phase until such time as the Parties mutually agree to seek City Council acceptance and release of the remaining retainage for such Construction Phase.

9.8.3 Should Work be found not in compliance with requirements of the Contract Documents, City Engineer will notify Design-Build Contractor in writing of items of noncompliance. Upon inspection and acceptance of the corrections by City Engineer, compliance with all procedures of **Section 9.8.2**, and Design-Build Contractor's submission of the items set out in **Section 9.8.4**. City Engineer will issue Certificate of Final Completion to Design-Build Contractor's as provided in **Section 9.8.2**.

9.8.4 Design-Build Contractor shall submit the following items to City Engineer before City Engineer will issue a Certificate of Final Completion:

1 affidavit that payrolls, invoices for materials and equipment, and other indebtedness of Design-Build Contractor connected with the Phase of the Work, less amounts withheld by City, have been paid or otherwise satisfied. If required by City Engineer, Design-Build Contractor shall submit further proof including waiver or release of lien or claims from Subcontractors, Suppliers, laborers (which may be conditioned upon City making payment to Design-Build Contractor);

2 certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, will not be canceled or materially changed until at least 30 days written notice has been given to City ;

3 written statement that Design-Build Contractor knows of no substantial reason that insurance will not be renewable to cover correction and warranty period required by the Contract Documents;

4 consent of Surety to final payment;

5 copies of record documents, maintenance manuals, tests, inspections, and approvals and deliver the required record documents that describe changes or deviations from the Contract Documents, which occurred during construction and that reflect the actual "as-built" conditions of the completed Work;

6 compliance with Texas Accessibility Standards through state inspections of the Work, if required.

9.8.5 If Design-Build Contractor fails to submit required items in **Section 9.8.4** within 10 days of City Engineer's inspection of the Work under **Section 9.8.2** or **Section 9.8.3**, City Engineer may, but is not obligated to:

1 deduct liquidated damages accrued from monies held;

2 proceed to City Council for acceptance of the Work, minus some or all of the items Design-Build Contractor fails to submit under **Section 9.8.4**; and,

3 upon acceptance by City Council of the portion of the Work completed, either make final payment as set out in **Section 9.8.8** or request that City Attorney interplead the balance due to Design-Build Contractor under the Contract into the registry of a court of appropriate jurisdiction.

9.8.6 If final completion is materially delayed through no fault of Design-Build Contractor, or by

issuance of Change Orders affecting Date of Final Completion, and City Engineer so confirms, City may, upon application by Design-Build Contractor and certification by City Engineer, and without terminating the Contract, make payment of balance due for that portion of the Work fully completed and accepted.

9.8.7 Upon City Engineer's issuance of a Certificate of Final Completion, Design-Build Contractor may request an increase in payment up to 99% of the Guaranteed Maximum Price of the Construction Phase, less accrued Liquidated Damages.

9.8.8 If remaining balance due for work not corrected is less than retainage stipulated in the Contract, Design-Build Contractor shall submit to City Engineer written consent of Surety to payment of balance due for that portion of the Work fully completed and accepted, prior to certification of the payment. The payment is made under terms governing final payment, except that it does not constitute waiver of Claims.

9.8.9 Final Payment. The City will make final payment to Design-Build Contractor within 30 days after the issuance of the Certificate of Final Completion by City Engineer and acceptance of the Work by City Council, subject to limitations, if any, as stated in the Contract Documents. City is entitled to deduct from any payment any amounts owed by Design-Build Contractor to City, including accrued liquidated damages.

9.8.10 Acceptance of final payment by Design-Build Contractor shall constitute a waiver of all Claims, whether known or unknown, by Design-Build Contractor, except those previously made in writing and identified by Design-Build Contractor as unsettled at time of final Application for Payment.

9.9 *LIQUIDATED DAMAGES*

9.9.1 Design-Build Contractor and the City agree that failure to complete Work within the Contract Time will cause damages to the City and that actual damages from harm are difficult to estimate accurately. Therefore, Design-Build Contractor and City agree that Design-Build Contractor and Surety are liable for and shall pay to the City $1,200.00 per day as liquidated damages, and that the amount of damages fixed therein is a reasonable forecast of just compensation for harm to the City resulting from Design-Build Contractor's failure to complete the Work within the Contract Time. The amount stipulated will be paid for each day of delay beyond Contract Time until the Date of Substantial Completion.

9.9.2 Design-Build Contractor shall pay the City an amount of $1200.00 per day for each operating vehicle or each piece of motorized equipment using high or low sulfur diesel fuel in anyway on the Work site.

ARTICLE 10 - SAFETY PRECAUTIONS

10.1 *SAFETY PROGRAMS*

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

10.2 *POLLUTANTS AND POLLUTANT FACILITIES*

10.2.1 If Design-Build Contractor encounters material on-site that it reasonably believes to be a Pollutant or facilities that it reasonably believes to be a Pollutant Facility, Design-Build Contractor shall immediately stop work in affected area and immediately notify City Engineer, confirming the notice thereafter in writing.

10.2.2 If City Engineer determines that the material is a Pollutant or facility is a Pollutant Facility, work in affected area may not be resumed except by Modification, and only if the work would not violate applicable laws or regulations.

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

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

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

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

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

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

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

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

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

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

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

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

10.3.5 Design-Build Contractor shall prevent windblown dust and shall not burn or bury trash debris or waste products on-site or use sewers for disposal of trash or debris. Design-Build Contractor shall prevent unlawful and other environmental pollution, including but not limited to particulates, gases and noise, as a result of the Work.

10.3.6 When use or storage of hazardous materials or equipment, or unusual methods are necessary for execution of the Work, Design-Build Contractor shall exercise utmost care and carry on the activities under supervision of properly qualified personnel.

10.3.7 Design-Build Contractor shall promptly remedy damage and loss to property referred to in **Sections 10.3.1.2** and **10.3.1.3**, caused in whole or in part by Design-Build Contractor, or Subcontractors, which is not covered by insurance required by the Contract. Design-Build Contractor is not required to remedy damage or loss attributable to City, City's consultant, or other contractors.

10.4 ***EMERGENCIES***

10.4.1 In emergencies affecting safety of persons or property, Design-Build Contractor shall act at Design-Build Contractor's discretion to prevent imminent damage, injury, or loss. Additional compensation or extension of time claimed by Design-Build Contractor because of emergencies are determined as provided in **Articles 7 and 8**.

ARTICLE 11 - INSURANCE AND BONDS

11.1 ***GENERAL INSURANCE REQUIREMENTS***

11.1.1 With no intent to limit Design-Build Contractor's liability under indemnification and other provisions set forth in this Contract, Design-Build Contractor shall provide and maintain in full force and effect during term of the Contract and all extensions and amendments thereto, at least the following insurance and available limits of liability.

11.1.2 If any of the following insurance is written as "claims made" coverage and City is required to be carried as additional insured, then Design-Build Contractor's insurance shall include a two-year extended discovery period after last date that

Design-Build Contractor provides any work under the Contract.

11.1.3 Aggregate amounts of coverage, for purposes of the Contract, are agreed to be amounts of coverage available during fixed 12-month policy period.

11.1.4 Design-Build Contractor shall be liable to City for any required coverage that City does not have or costs, damage, losses, or liability incurred by City (including attorneys' fees) due to Design-Build Contractor's failure to purchase and maintain required insurance.

11.2 ***INSURANCE TO BE PROVIDED BY DESIGN-BUILD CONTRACTOR***

11.2.1 *Risks and Limits of Liability:* Design-Build Contractor shall provide at a minimum insurance coverage and limits of liability set out in Table 1, with no gaps in coverage between primary and excess coverage.

11.2.1.1 If Limit of Liability for Excess Coverage is $2,000,000 or more, Limit of Liability for Employer's Liability may be reduced to $500,000.

11.2.2 *Form of Policies:* Insurance may be in one or more policies of insurance, form of which is subject to approval by City Engineer. It is agreed, however, that nothing City Engineer does or fails to do with regard to insurance policies relieves Design-Build Contractor from its duties to provide required coverage and City Engineer's actions or inactions will never be construed as waiving City's rights.

11.2.3 *Issuers of Policies:* Issuer of any policy shall have:

1 a Certificate of Authority to transact business in Texas, or

2 have a Best's rating of at least B+ and a Best's Financial Size Category of Class VI or better, according to the most current edition of Best's Key Rating Guide, and the issuer must be an eligible nonadmitted insurer in the State of Texas.

Each insurer is subject to approval by City Engineer in City Engineer's sole discretion as to conformance with these requirements, pursuant to **Section 11.2.2**.

11.2.4 *Insured Parties:* Each policy, except those for Workers' Compensation and Owner's and Contractor's Protective Liability, must name City, its officers, agents, and employees as additional insured parties on original policy and all renewals or replacements during term of the Contract. City's status as additional insured under Design-Build Contractor's insurance does not extend to instances of sole negligence of City unmixed with any fault of Design-Build Contractor.

11.2.5 *Deductibles:* Design-Build Contractor assumes and bears any claims or losses to extent of deductible amounts and waives any claim it may ever have for same against City, its officers, agents, or employees. All Design-Build Contractor insurance claim deductibles are a Cost of the Work to the extent such deductibles are paid by Design-Build Contractor.

11.2.6 *Cancellation:* Design-Build Contractor shall notify the Director in writing 30 days prior to any cancellation or material change to Design-Build Contractor's insurance coverage. Within the 30 day period, Design-Build Contractor shall provide other suitable policies in lieu of those about to be canceled or nonrenewed so as to maintain in effect the required coverage. If Design-Build Contractor does not comply with this requirement, the City Engineer, at his or her sole discretion, may:

1 immediately suspend Contractor from any further performance under this Contract and begin procedures to terminate for default, or

2 purchase the required insurance with City funds and deduct the cost of the premiums from amounts due to Design-Build Contractor under this Contract.

11.2.7 *Subrogation:* Each policy except Owner's and Contractor's Protective Liability must contain endorsement to the effect that issuer waives any claim or right in nature of subrogation to recover against City, its officers, agents, or employees.

11.2.8 *Endorsement of Primary Insurance:* Each policy, except Workers' Compensation policies must contain an endorsement that the policy is primary insurance to any other insurance available to additional insured with respect to claims arising under the Contract Documents.

11.2.9 *Liability for Premium:* Design-Build Contractor is solely responsible for payment to insurers of all insurance premium requirements hereunder and the City is not obligated to pay any premiums to insurers.

11.2.10 *Additional Requirements for Workers' Compensation Insurance Coverage:* Design-Build Contractor shall, in addition to meeting the obligations set forth in Table 1, maintain throughout the term of the Contract Workers' Compensation coverage as required by statute, and Design-Build Contractor shall specifically comply with requirements set forth in **Section 11.2.10**. The definitions set out below shall apply only for purposes of this **Section 11.2.10**.

11.2.10.1 Definitions:

1 *Certificate of Coverage:* A copy of certificate of insurance, or coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory Workers' Compensation insurance coverage for Design-Build Contractor's, Subcontractor's, or Supplier's employees providing services for the duration of the Contract.

2 *Duration of the Work:* Includes the time from Date of Commencement of the Work until Design-Build Contractor's work under the Contract has been completed and accepted by City Council.

3 *Persons providing services for the Work;* as required under Section 406.096 of the Texas Labor Code, as may be amended from time to time, for employees of Design-Build Contractor and Subcontractor employees

11.2.10.2 Design-Build Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for employees of Design-Build Contractor providing services on the Work, for duration of the Work.

11.2.10.3 Design-Build Contractor shall provide a Certificate of Coverage to City prior to beginning performance.

11.2.10.4 If coverage period shown on Design-Build Contractor's original Certificate of Coverage ends during duration of the Work, Design-Build Contractor shall file new Certificate of Coverage with City showing that coverage has been extended.

11.2.10.5 Design-Build Contractor shall obtain from each person providing services on the Work, and provide to City Engineer:

1 Certificate of Coverage, prior to that person beginning work on the Work, so City will have on file Certificates of Coverage showing coverage for all persons providing services on the Work; and

2 no later than seven days after receipt by Design-Build Contractor, new Certificate of Coverage showing extension of coverage, if coverage period shown on current Certificate of Coverage ends during the duration of the Work.

11.2.10.6 Design-Build Contractor shall retain all required Certificates of Coverage for the duration of the Work and for one year thereafter.

11.2.10.7 Design-Build Contractor shall notify City Engineer in writing by certified mail or personal delivery, within 10 days after Design-Build Contractor knew or should have known, of any change that materially affects provision of coverage of any person providing services on the Work.

11.2.10.8 Design-Build Contractor shall post on-site a notice, in text, form and manner prescribed by Texas Workers' Compensation Commission, informing all persons providing services on the Work that they are required to be covered, and stating how person may verify coverage and report lack of coverage.

11.2.10.9 Design-Build Contractor shall contractually require each person with whom it contracts to provide services on the Work to:

1 provide coverage, based on proper reporting of classification codes, payroll amounts and filing of any coverage agreements, which meets statutory requirements of Texas Labor Code, Section 401.011(44) for all its employees providing services on the Work, for the duration of the Work;

2 provide to Design-Build Contractor, prior to that person's beginning work on the Work, a Certificate of Coverage showing that coverage is being provided for all employees of

the person providing services on the Work, for the duration of the Work;

3 provide Design-Build Contractor, prior to the end of the coverage period, a new Certificate of Coverage showing extension of coverage, if the coverage period shown on the current Certificate of Coverage ends during the duration of the Work;

4 obtain from each other person with whom it contracts, and provide to Design-Build Contractor: (1) Certificate of Coverage, prior to other person's beginning work on the Work; and (2) new Certificate of Coverage showing extension of coverage, prior to end of coverage period, if coverage period shown on the current Certificate of Coverage ends during duration of the Work.

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

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

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

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

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

11.2.11 *Subcontractor Insurance Requirements:* Design-Build Contractor shall require Subcontractors and Suppliers to obtain Commercial General Liability, Workers' Compensation, Employer's Liability and Automobile Liability coverage that meets all the requirements of **Section 11.2**. The amount must be commensurate with the amount of the subcontract, but not less than $500,000 per occurrence. Design-Build Contractor shall require all Subcontractors with whom it contracts directly, whose subcontracts exceed $100,000, to provide proof of all insurance coverage meeting the above requirements. Design-Build Contractor shall deliver such certificates of insurance to City. Design-Build Contractor shall comply with all requirements set out under **Section 11.2**.10 as to Workers' Compensation Insurance for all Subcontractors and Suppliers.

TABLE 1

REQUIRED COVERAGE

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

11.3 *PROOF OF INSURANCE*

11.3.1 Prior to commencing the Construction Work and at the request of City Engineer at any time during the term of the Construction Contract, Design-Build Contractor shall furnish City Engineer with Certificates of Insurance, along with Affidavit from Design-Build Contractor confirming that Certificate accurately reflects insurance coverage that is available during term of the Contract. Additionally, Design-Build Contractor shall furnish the City Engineer with endorsement forms CG24040509-Waiver of Transfer of Rights of Recovery against Others; CA04030604-Additional Insured Endorsement; CAT353-Business Auto Extension Endorsement; WC 42304A-Workers Compensation Waiver of Transfer of Rights of Recovery against Others, or others that may be approved by City Engineer. If requested in writing by City Engineer, Design-Build Contractor shall furnish City Engineer with certified copies of Design-Build Contractor's actual insurance policies. Failure of Design-Build Contractor to provide certified copies, as requested, may be deemed, at City Engineer's or City Attorney's discretion, a material breach of the Contract.

11.3.2 Notwithstanding the proof of insurance requirements, Design-Build Contractor shall continuously maintain in effect required insurance coverage set forth in **Section 11.2**. Failure of Design-Build Contractor to comply with this requirement does constitute a material breach by Design-Build Contractor allowing City, at its option, to immediately suspend or terminate Design-Build Contractor from performing the Work, or exercise any other remedy allowed under the Contract Documents. Design-Build Contractor agrees that City has not waived or is not estopped to assert a material breach of the Contract because of any acts or omissions by City regarding its review or non-review of insurance documents provided by Design-Build Contractor, its agents, employees, or assigns.

11.4 *PERFORMANCE AND PAYMENT BONDS*

11.4.1 For Contracts over the value of $25,000, Design-Build Contractor shall provide Bonds on City's standard forms covering faithful performance of the Contract and payment of obligations arising thereunder as required in the Contract pursuant to Chapter 2253 of the Texas Government Code except for the Preconstruction Services. The Bonds must be for 100 percent of Guaranteed Maximum Price, or if a Guaranteed Maximum Price has not been determined, in the amount of the Project Budget, and in accordance with conditions stated on standard City Performance and Payment Bond and Statutory Payment Bond forms. Bonds may be obtained from Design-Build Contractor's usual source if it meets the requirements of the Contract Documents and is acceptable to City Engineer, and cost for the Bonds are included in the Guaranteed Maximum Price.

11.5 *MAINTENANCE BONDS*

11.5.1 *One-year Maintenance Bond:* Design-Build Contractor shall provide Bond on standard City One-year Maintenance Bond form, providing for Design-Build Contractor's correction, replacement, or restoration of any portion of the Work which is found to be not in compliance with requirements of the Contract during one-year correction period required in **Section 12.2**. The Maintenance Bond must be for 100% of the Guaranteed Maximum Price.

11.6 *SURETY*

11.6.1 A Bond that is given or tendered to City pursuant to the Contract must be executed by a surety company that is authorized and admitted to write surety Bonds in the State of Texas.

11.6.2 If a Bond is given or tendered to City pursuant to the Contract in an amount greater than 10 percent of Surety's capital and surplus, Surety shall provide certification that Surety has reinsured that portion of the risk that exceeds 10 percent of Surety's capital and surplus. The reinsurance must be with one or more reinsurers who are duly authorized, accredited, or trusted to do business in the State of Texas. The amount reinsured by reinsurer may not exceed 10 percent of reinsurer's capital and surplus. The amount of allowed capital and surplus must be based on information received from State Board of Insurance.

11.6.3 If the amount of a Bond is greater than $100,000, Surety shall:

1 also hold certificate of authority from the United States Secretary of Treasury to qualify as surety on obligations permitted or required under federal law; or,

2 Surety may obtain reinsurance for any liability in excess of $100,000 from reinsurer that is authorized and admitted as a reinsurer in the State of Texas and is the holder of a certificate of authority from the United States Secretary of the

Treasury to qualify as surety or reinsurer on obligations permitted or required under federal law.

11.6.4 Determination of whether Surety on the Bond or the reinsurer holds a certificate of authority from the United States Secretary of the Treasury is based on information published in Federal Register covering the date on which Bond was executed.

11.6.5 Each Bond given or tendered to City pursuant to the Contract must be on City forms with no changes made by Design-Build Contractor or Surety, and must be dated, executed, and accompanied by power of attorney stating that the attorney in fact executing such the bond has requisite authority to execute such Bond. The Bonds must be dated and must be no more than 30 days old.

11.6.6 Surety shall designate in its Bond, power of attorney, or written notice to City , an agent resident in Harris County to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of the suretyship.

11.6.7 Design-Build Contractor shall furnish information to a payment bond beneficiary as required by TEX. GOV'T CODE ANN. CH. 2253.

11.7 *DELIVERY OF BONDS*

11.7.1 Design-Build Contractor shall deliver required Bonds to City within time limits stated in the Contract Documents or such earlier date as required by City Engineer and in any event prior to Date of Commencement of the Work.

ARTICLE 12 - UNCOVERING AND CORRECTION OF THE WORK

12.1 *UNCOVERING OF THE WORK*

12.1.1 If a portion of the Work has been covered that City Engineer has not specifically asked to observe prior to its being covered, City Engineer may request to see such work and it must be uncovered by Design-Build Contractor. If such work is in accordance with the Contract Documents, the costs of uncovering and covering such Work that qualify as Costs of the Work are charged to City by Change Order in accordance with **Article 7**. If such Work is not in accordance with the Contract Documents, Design-Build Contractor shall pay for uncovering and shall correct the nonconforming Work promptly after receipt of Notice of Noncompliance to do so.

12.2 *CORRECTION OF THE WORK*

12.2.1 Design-Build Contractor shall promptly remove work rejected by City Engineer as failing to conform to requirements of the Contract Documents, whether observed before or after the Date of Substantial Completion of a Construction Phase and whether fabricated, Installed, or completed.

12.2.2 Design-Build Contractor bears the costs of correcting the rejected or nonconforming work including additional testing and inspections, and compensation for City's consultant's services and expenses made necessary thereby.

12.2.3 If within one year after Date of Substantial Completion of a Construction Phase or after the date of commencement of warranties established under **Section 9.6.5**, or by other applicable special warranty required by the Contract, whichever is later in time, any of the Work is found not to be in accordance with the requirements of the Contract, Design-Build Contractor shall correct such work promptly after receipt of Notice of Noncompliance to do so.

12.2.4 The one-year correction period for portions of the Work completed after Date of Substantial Completion of a Construction Phase will begin on the date of acceptance of that portion of the Work. This obligation under this Section survives acceptance of the Work under the Contract and termination of the Contract.

12.2.5 The one-year correction period does not establish a duration for the Design-Build Contractor's general warranty under Section 3.12 and other obligations under the Contract. City retains the right to recover damages from the Design-Build Contractor as long as may be permitted by the applicable statutes of limitations and repose.

12.2.6 If Design-Build Contractor does not proceed with correction of the nonconforming work within the reasonable time fixed by Notice of Noncompliance, City may correct nonconforming work or remove nonconforming work and store salvageable Products at Design-Build Contractor's expense. Design-Build Contractor shall pay the costs of correction of nonconforming work and removal and storage of salvageable Products to City. If Design-Build Contractor does not pay costs of the correction or removal and storage within 10 days after written notice, City may sell the Products at auction or at private sale. City will account for proceeds thereof after deducting costs and damages that would have

been borne by Design-Build Contractor, including compensation for services of city's consultant and necessary expenses. If the proceeds of sale do not cover costs that Design-Build Contractor should have borne, Design-Build Contractor shall pay the value of the deficiency to City.

12.2.7 Design-Build Contractor shall pay the cost of correcting work originally installed by Design-Build Contractor, City, or by separate contractors and damaged by Design-Build Contractor's correction or removal of Design-Build Contractor's Work.

12.3 *ACCEPTANCE OF NONCONFORMING WORK*

12.3.1 If City Engineer prefers to accept work which is not in accordance with requirements of the Contract Documents, City Engineer may do so only by issuance of Change Order, instead of requiring its removal and correction. City Engineer and the Design-Build Contractor will mutually agree on the Guaranteed Maximum Price reduction. The reduction will become effective even if final payment has been made.

ARTICLE 13 - MISCELLANEOUS PROVISIONS

13.1 *GOVERNING LAWS*

13.1.1 This Agreement shall be construed and interpreted in accordance with the applicable laws of the State of Texas and City of Houston.

13.1.2 Venue for any disputes relating in any way to this Agreement shall lie exclusively in Harris County, Texas.

13.2 *SUCCESSORS*

13.2.1 The Contract binds and benefits the Parties and their legal successors and permitted assigns; however, this **Section 13.2.1** does not alter the restrictions on assignment and disposal of assets set out in **Section 13.3**. The Contract does not create any personal liability on the part of any officer or agent of City.

13.3 *BUSINESS STRUCTURE AND ASSIGNMENTS*

13.3.1 Design-Build Contractor may not assign the Contract at law or otherwise, or dispose of all or substantially all of its assets without City Engineer's prior written consent. Nothing in this Section, however, prevents the assignment of accounts receivable or the creation of a security interest as described in §9.406 of the Texas Business & Commerce Code. In the case of such an assignment, Design-Build Contractor shall immediately furnish City with proof of the assignment and the name, telephone number, and address of the assignee and a clear identification of the fees to be paid to the assignee.

13.3.2 Any series, as defined by the TEX. BUS. ORG. CODE ANN., affiliate, subsidiary, or successor to which Design-Build Contractor assigns or transfers assets shall join in privity and be jointly and severally liable under this Contract. Design-Build Contractor shall not delegate any portion of its performance under this Agreement without the City Engineer's prior written consent.

13.4 *WRITTEN NOTICE*

13.4.1 All notices required or permitted by the Contract must be in writing and must be effected by hand delivery; registered or certified mail, return receipt requested; or facsimile with confirmation copy mailed to receiving Party. Notice is sufficient if made or addressed with proper postage to the address stated in the Agreement for each Party ("Notice Address") or faxed to the facsimile number stated in the Agreement for each Party. The notice is deemed delivered on the earlier of:

1 the date the Notice is actually received;
2 the third day following deposit in a United States Postal Service post office or receptacle; or
3 the date the facsimile is sent unless the facsimile is sent after 5:00 p.m. local time of the recipient and then it is deemed received on the following day.

Any Party may change its Notice Address or facsimile number at any time by giving written notice of the change to the other Party in the manner provided for in this Section at least 15 days prior to the date the change is effected.

13.5 *RIGHTS AND REMEDIES*

13.5.1 Duties and obligations imposed by the Contract and rights and remedies available thereunder are in addition to and not a limitation of duties,

obligations, rights, and remedies otherwise imposed or available by law.

13.5.2 No act or failure to act by City or Design-Build Contractor is a waiver of rights or duties afforded them under the Contract, nor does the act or failure to act constitute approval of or acquiescence in a breach of the Contract. No waiver, approval or acquiescence is binding unless in writing and, in the case of City, signed by City Engineer.

13.6 *TESTS AND INSPECTIONS*

13.6.1 Design-Build Contractor shall give City Engineer and City's consultant(s) timely notice of the time and place where tests and inspections are to be made. Design-Build Contractor shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

13.6.2 City will employ and pay for services of an independent testing laboratory to perform inspections or acceptance tests required by the Contract Documents except:

1 inspections or tests covered by **Section 13.6.3**;
2 those otherwise specifically provided in the Contract Documents; or
3 costs incurred in connection with tests or inspections conducted pursuant to **Section 12.2.2**.

13.6.3 Design-Build Contractor is responsible for and shall initially pay all costs in connection with inspection or testing required in connection with City Engineer's acceptance of a Product to be incorporated into the Work, or of materials, mix designs, or equipment submitted for approval prior to Design-Build Contractor's purchase thereof for incorporation into the Work.

13.6.4 Neither observations by City Engineer or City's consultant(s), nor inspections, tests, or approvals by others, relieves Design-Build Contractor from Design-Build Contractor's obligations to perform the Work in accordance with the Contract Documents.

13.6.5 If testing, inspection, or approval reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, Design-Build Contractor shall bear all costs made necessary by such failure, including those of repeated procedures and compensation for City's services and expenses.

13.7 *INTEREST*

13.7.1 No interest will accrue on late payments by City except as provided under Chapter 2251 of the Government Code.

13.8 *PARTIES IN INTEREST*

13.8.1 The Contract does not bestow any rights upon any third party, but binds and benefits the Parties only.

13.9 *ENTIRE CONTRACT*

13.9.1 The Contract merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No other agreements, assurances, conditions, covenants, express or implied, or other terms of any kind, exist between the Parties regarding the Contract.

13.10 *WRITTEN AMENDMENT*

13.10.1 Changes to the Contract that cannot be made by Modifications, must be made by written amendment, which will not be effective until approved by City Council.

13.11 *COMPLIANCE WITH LAWS*

13.11.1 Design-Build Contractor shall comply with the Americans with Disabilities Act of 1990 as amended (ADA) and Texas Architectural Barriers Act and all regulations relating to either statute.

13.11.2 Design-Build Contractor shall comply with all applicable federal, state, and City laws, ordinances, rules and regulations.

13.12 *ENFORCEMENT*

13.12.1 City Attorney or designee will have the right to enforce all legal rights and obligations under the Contract without further authorization.

13.13 *SEVERABILITY*

13.13.1 If any part of the Contract is for any reason found to be unenforceable, all other parts remain enforceable to the extent permitted by law unless the result materially prejudices either Party.

13.14 *COMPLIANCE WITH CERTAIN STATE LAW REQUIREMENTS.*

13.14.1 *Anti-Boycott of Israel*. Design-Build Contractor certifies that Design-Build Contractor is not currently engaged in, and agrees for the duration of this Agreement not to engage in, the boycott of Israel as defined by Section 808.001 of the Texas Government Code.

13.14.2 *Anti-Boycott of Energy Companies*. Design-Build Contractor certifies that Design-Build Contractor is not currently engaged in, and agrees for the duration of this Agreement not to engage in, the boycott of energy companies as defined by Section 809.001 of the Texas Government Code.

13.14.2 *Anti-Boycott of Firearm Entities or Firearm Trade Associations*. Design-Build Contractor certifies that Design-Build Contractor does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, or will not discriminate against a firearm entity or firearm trade association for the duration of this Agreement, as defined by Section 2274.001 of the Texas Government Code.

13.14.3 *Certification of No Business with Foreign Terrorist Organizations*. For purposes of Section 2252.152 of the Texas Government Code, Design-Build Contractor certifies that, at the time of this Agreement neither Design-Build Contractor nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Design-Build Contractor, is a company listed by the Texas Comptroller of Public Accounts under Sections 2252.153 or 2270.0201 of the Texas Government Code as a company known to have contracts with or provide supplies to a foreign terrorist organization.

13.15 ZERO TOLERANCE POLICY FOR HUMAN TRAFFICKING & RELATED ACTIVITIES

13.15.1 The requirements and terms of the City of Houston's Zero Tolerance Policy for Human Trafficking and Related Activities, as set forth in Executive Order 1-56, as revised from time to time, are incorporated into this Agreement for all purposes. Design-Build Contractor has reviewed Executive Order 1-56, as revised, and shall comply with its terms and conditions as they are set out at the time of this Agreement's effective date. Design-Build Contractor shall notify the City's Chief Procurement Officer, City Attorney, and the Director of any information regarding possible violation by the Design-Build Contractor or its subcontractors providing services or goods under this Agreement.

ARTICLE 14 - TERMINATION OR SUSPENSION OF THE CONTRACT

14.1 *TERMINATION BY THE CITY FOR CAUSE*

14.1.1 Each of the following acts or omissions of Design-Build Contractor or occurrences shall constitute an "Event of Default" under the Contract:

1 Design-Build Contractor refuses or fails to supply enough properly skilled workers or proper Products;

2 Design-Build Contractor disregards laws, ordinances, rules, regulations, or orders of a public authority having jurisdiction;

3 Design-Build Contractor is guilty of material breach of any duty or obligation of Design-Build Contractor under the Contract;

4 Design-Build Contractor has had any other contract with City terminated for cause at any time subsequent to the effective date of the Contract as set out in the Agreement; or,

5 Design-Build Contractor fails to utilize Ultra Low Sulfur Diesel Fuel, as required in **Section 3.9.1.1**.

14.1.2 If an Event of Default occurs, City Engineer may, at its option and without prejudice to any other rights or remedies which City may have, deliver a written notice to Design-Build Contractor and Surety describing the Event of Default and giving the Design-Build Contractor 10 days to cure the Event of Default. If after the 10 day cure period, Design-Build Contractor has failed or refused to cure the Event of Default, then City Engineer may deliver a second written notice to Design-Build Contractor and Surety giving notice of the termination of the Contract or of the termination of Design-Build Contractor's performance under the Contract ("Notice of Termination"). If City Engineer issues a Notice of Termination, then City Engineer may, subject to any prior rights of Surety and any other rights of City under the Contract Documents or at law:

1 request that Surety take over and restart the Work within thirty (30) days of termination and complete the Work within a reasonable period of time as established by the City Engineer; or

2 take possession of the site and all materials, equipment, tools, and construction equipment and machinery on the site owned by Design-Build Contractor; and

3 finish the Work by whatever reasonable method City Engineer may deem expedient.

14.1.3 After Design-Build Contractor's receipt of a Notice of Termination, and except as otherwise directed in writing by City Engineer, Design-Build Contractor shall:

1 stop the Work on the date and to the extent specified in the Notice of Termination;

2 place no further orders or subcontracts for Products or services;

3 suspend all orders and subcontracts to the extent that they relate to performance of work terminated;

4 assign to City, in the manner, at the times, and to the extent directed by City Engineer, all rights, title, and interest of Design-Build Contractor, under the terminated supply orders and subcontracts. City may settle or pay claims arising out of termination of the orders and subcontracts;

5 settle all outstanding liabilities and all claims arising out of the termination of supply orders and subcontracts with approval of City Engineer;

6 take action as may be necessary, or as City Engineer may direct, for protection and preservation of property related to the Work that is in possession of Design-Build Contractor, and in which City has or may acquire an interest; and

7 secure the Work in a safe state before leaving the site, return all rented equipment, providing any necessary safety measures, shoring, or other devices.

14.1.4 If City terminates the Contract or terminates Design-Build Contractor's performance under the Contract for any one or more of the reasons stated in **Section 14.1.1**, Design-Build Contractor may not receive any further payment until the Work is complete, subject to **Section 14.1.5**.

14.1.5 If the unpaid balance of the Guaranteed Maximum Price exceeds the costs of finishing the Work, including liquidated damages and other amounts due under the Contract, the balance will be paid to City. If the costs of finishing the Work exceed the unpaid balance, Design-Build Contractor shall, within 10 days of receipt of written notice setting out the amount of the excess costs, pay the difference to City. The amount to be paid to Design-Build Contractor or City will be certified by City Engineer in writing, and this obligation for payment shall survive termination of the Contract or termination of Design-Build Contractor's performance under the Contract. Termination of the Design-Build Contractor for cause shall not relieve the Surety from its obligation to complete the Project.

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

14.2.1 City Engineer may, without cause and without prejudice to any other rights or remedies of City, give Design-Build Contractor and Surety a Notice of Termination with seven days written notice.

14.2.2 After receipt of City's Notice of Termination, and except as otherwise approved by City Engineer, Design-Build Contractor shall conform to requirements of Section 14.1.3.

14.2.3 After receipt of the Notice of Termination, Design-Build Contractor shall submit to City its termination Claim, in forms required by City Engineer. The Claim will be submitted to City promptly, but no later than six months from the effective date of termination, unless one or more extensions are granted by City Engineer in writing. If Design-Build Contractor fails to submit its termination Claim within the time allowed, in accordance with Section 14.2.4, City Engineer will determine, on the basis of available information, the amount, if any, due to Design-Build Contractor because of termination, and City Engineer's determination is final and binding on the Parties. City will then pay to Design-Build Contractor the amount so determined.

14.2.4 City Engineer will determine, on the basis of information available to City Engineer, the

amount due, if any, to Design-Build Contractor for the termination as follows:

1 Payment for all Work performed in accordance with the Contract Documents up to the date of termination determined in the manner prescribed for monthly payments in **Article 9** and other applicable Contract Documents, except no retainage is withheld by City with respect to the terminated Work either for payment determined by percentage of completion or for materials and equipment delivered to the site, in storage or in transit.

2 Reasonable termination expenses that would qualify as Cost of the Work, including, to the extent they qualify as Costs of the Work, costs for settling and paying Subcontractor and Supplier claims arising out of termination of the Work under their respective Subcontracts and purchase orders, reasonable cost of preservation and protection of City's property after termination if required, and the cost of Claim preparation Termination expenses do not include field or central office overhead, salaries of employees of Design-Build Contractor or litigation costs (including, but not limited to, attorneys' fees).

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

14.2.5 Design-Build Contractor shall promptly remove from the site any construction equipment, tools, and temporary facilities not needed for Work not terminated, except the temporary facilities that City Engineer may wish to purchase and retain.

14.2.6 Design-Build Contractor shall cooperate with City Engineer during the transition period.

14.2.7 City will take possession of the Work and materials delivered to the site, in storage, or in transit, as of date or dates specified in the Notice of Termination, and is responsible for maintenance, utilities, security, and insurance, as stated in Notice of Termination.

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

14.3.1 City Engineer may, without cause, after giving Design-Build Contractor and Surety 24-hour prior written notice, order Design-Build Contractor to suspend, delay, or interrupt the Work in whole or in part for such period of time as City Engineer may determine.

14.3.2 An adjustment will be made in Contract Time equivalent to the time of suspension.

14.3.3 Adjustment will be made to Guaranteed Maximum Price for increases in the Cost of the Work, caused by such suspension, delay, or interruption of the Work plus a proportionate increase in the Design-Build Contractor's Construction Phase Fee in accordance with **Section 7.3**. No adjustment shall be made to the extent that:

1 performance was, or would have been, suspended, delayed, or interrupted by another cause for which Design-Build Contractor is responsible; or

2 adjustment is made or denied under another provision of the Contract.

14.4 ***TERMINATION BY DESIGN-BUILD CONTRACTOR***

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

1 issuance of an order of a court or other public authority having jurisdiction;

2 act of government, such as a declaration of national emergency that makes material unavailable; or,

3 if repeated suspensions, delays, or interruptions by City as described in **Section 14.3** constitute, in the aggregate, more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less;

Design-Build Contractor shall deliver written notice to City Engineer describing the reason for termination,

giving the proposed termination date, and granting City a reasonable opportunity to respond and cure any City default before termination is effective.

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

END OF DOCUMENT