

**EXHIBIT D**

**CITY OF SAN ANTONIO**

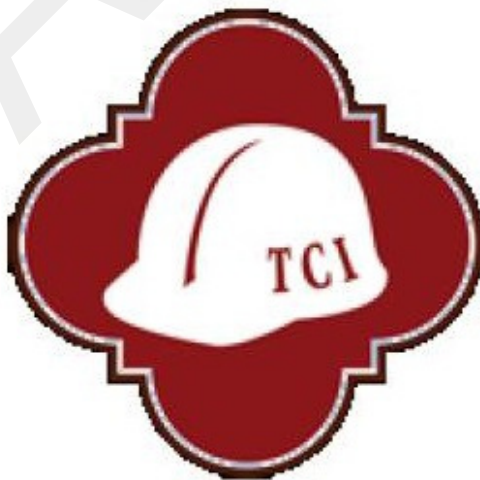
**DESIGN-BUILD CONTRACT**

**For Horizontal Projects**

for

**Project / Contract Name Here**

**Project Number Here**



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

**DESIGN-BUILD CONTRACT**

**ARCHITECTURAL AND ENGINEERING**

**DESIGN AND CONSTRUCTION SERVICES**

**FOR THE**

**PROJECT / CONTRACT NAME HERE PROJECT**

**PROJECT NUMBER: PROJECT NUMBER HERE**

This **DESIGN-BUILD CONTRACT** (hereafter referred to as “Contract”) is made and entered into by and between the City of San Antonio, a Texas municipal corporation (hereafter referred to as “City” or “City”) and **Consultant Name**, with its principal place of business at **Business Principal Location** (hereafter referred to as “Design-Builder”). (City and Design-Builder individually are referenced to herein as “a Party” and collectively referenced to herein as “the Parties”).

This Contract for the engineering, construction and related services of a project identified as the: **Project / Contract Name Here** Project, Project No. **Project Number Here**, in the City of San Antonio, County of Bexar, Texas (hereafter referred to as “the Project”) is being executed by City, pursuant to City Charter, Ordinances, and Resolutions of the San Antonio City Council, and by Design-Builder.

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## ARTICLE I. DEFINITIONS

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

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

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

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

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

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

Document issued by Design-Builder, issued only with City's consent, at the stage in the progress of the work when the work, or designated portion of the work defined by City, is sufficiently complete in accordance with the Contract so that City may occupy or use the work for its intended use. Said Certificate of Substantial Completion Form is attached hereto, incorporated herein by reference and marked as EXHIBIT M: Schedule of Values; Summary spreadsheet and backup documents; certificate of Substantial Completion.

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

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

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

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

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

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

**I.7 CLAIM.**

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

**I.8 COMPENSATION.**

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

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

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

**I.10 CONTRACTOR.**

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

**I.11 CONSTRUCTION WORK.**

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

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

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

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

## **I.13 DESIGN-BUILDER.**

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

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

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

**I.14 DESIGN CRITERIA CONSULTANT.**

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

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

**I.15 DESIGN DOCUMENTS.**

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

**I.16 DESIGN SERVICES.**

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

**I.17 DIRECTOR.**

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

**I.18 FINAL COMPENSATION/PAYMENT**

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

**I.19 FINAL COMPLETION.**

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



as an addition to **ARTICLE IX** of City's General Conditions for Design/Build Contracts.

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

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

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

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

**I.22 MANAGEMENT FEE.**

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

**I.23 PARTY.**

City or Design-Builder individually herein.

**I.24 PARTIES.**

City and Design-Builder collectively herein.

**I.25 PASS THROUGH COSTS.**

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

**I.26 PROGRAMMING DOCUMENTS.**

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

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

**I.27 PROJECT DOCUMENTS.**

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

**I.28 PROJECT.**

Services to be provided by Design-Builder pursuant to this Design-Build Contract for the design and construction of the **Project / Contract Name Here, Project Number Here**, in San Antonio, Texas, as further set out in the Scope of Services attached hereto, incorporated by reference and labeled as [EXHIBIT I: Design-Build Scope of Services and Hourly Rate with Schedule of Values.](#)

**I.29 PROJECT MILESTONE.**

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

**I.30 SAMSA.**

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

**I.31 SCHEDULE OF VALUES.**

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

**I.32 SUB-CONSULTANT.**

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

**I.33 SUBCONTRACTOR.**

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

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

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

**I.34 SUBSTANTIAL COMPLETION.**

As stated herein and as an addition to **ARTICLE IX.7** of City General Conditions for City of San Antonio Design/Build Contracts:

**I.35 SUPPLIER.**

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

**I.36 WORK PACKAGES.**

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

**END OF ARTICLE I**

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

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

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

## II.5 PREPARATION OF SITE INFORMATION.

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

## II.6 RETENTION OF GEOTECHNICAL CONSULTANTS.

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

## II.7 QUALITY OF DESIGN SERVICES.

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

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

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

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

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

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

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

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

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

## END OF ARTICLE II



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

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

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

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

Based on its study and analysis, and no later than ten (10) days after the effective date of the Contract, Design-Builder shall prepare and submit to City a written report detailing Design-Builder's understanding and analysis of the Project requirements and identifying any design, construction, scheduling, budgetary, operational or other problems which may result from said requirements. The written report of Design-Builder also shall include proposed solutions, including design alternatives if appropriate, addressing each of the identified problems. Design-Builder shall review such report with City and shall implement such changes as City may require.

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

Design-Builder shall, within twenty (20) calendar days after award of the Contract and prior to City's issuance of a written Notice to Proceed, submit for City's approval the baseline Design Schedule, addressing each stage of design shown in [EXHIBIT J: Design Tasks and Deliverables for Horizontal Projects](#), attached hereto and incorporated herein by reference, for the performance of Design-Builder's Design Services, which shall include allowance for ten (10) calendar days for City's review of submissions and for approvals of authorities having jurisdiction over the Project. This Schedule shall, upon approval by City, be considered incorporated and made a part of this Contract, attached hereto, incorporated herein by reference and labeled as [EXHIBIT G: Design-Builder's Design Schedule and Design Fee Schedule](#).

The Design Schedule, when approved by City, shall not, except for good cause, be exceeded by Design-Builder. Should Design-Builder at any time during the course of performing the Contract, have reason to believe that it will be unable to meet any completion date in accordance with the Design Schedule, it immediately shall notify City in writing, stating the reason for the delay, the party responsible for the delay (if any) and the steps being taken to remedy or minimize the impact of the delay. Failure of Design-Builder to submit such notification shall constitute a waiver by Design-



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

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

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

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

**III.5.1** The Architect and/or Engineer, whose work product and services are the subject of this Contract for professional services in connection with the Design-Build Contract for The Project with the City of San Antonio, Texas, agrees to INDEMNIFY AND HOLD CITY, ITS ELECTED OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES HARMLESS against any and all claims by third parties, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature including, but not limited to, personal injury (including death), property damage or other harm for which recovery of damages is sought that may arise out of or be occasioned or caused by Architect's/Engineer's negligent act, error or omission, or the negligent act or omission of any agent, officer, director, representative, employee, or Sub-Architect/Sub-Engineer of Architect/Engineer and its respective officers, agents, employees, directors and representatives while in the exercise of performance of the services, rights or duties in connection with The Project under this Contract. The indemnity provided for in this **ARTICLE III.5** shall not apply to any liability resulting from the negligence of City, its officers, agents or employees, in instances where such negligence causes personal injury, death or property damage. In the event Architect/Engineer and City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of the State of Texas without, however, waiving any governmental immunity available to City under Texas law and without waiving any defenses of the parties under Texas law; and

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

**END OF ARTICLE III**

## ARTICLE IV. CONSTRUCTION DOCUMENTS

### IV.1 TIME FOR PREPARATION.

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

### IV.2 THE CONSTRUCTION DOCUMENTS.

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

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

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

### IV.4 Design-Builder shall submit the Design Documents to City and obtain City's acceptance and approval of the Design Documents at the percentage of completion levels stated in [ARTICLE IV.1](#) herein. Design-Builder shall submit **set number W**

(**FSDD-N**) full size and **1/2set number W (HSDD-N)** half size sets of the Design Documents and two (2) sets of any accompanying any reports to City. All models and other documents also shall be provided to City in electronic format to be determined by City.

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

**IV.5.1** Design-Builder shall submit **set number W (FSDD-N)** full size and **1/2set number W (HSDD-N)** half size sets of the Design Documents and **set num Specs W (set num SpecsN)** set(s) of the approved Specifications and any reports to City's designated representative, for use by City. All models and documents also shall be provided to City in electronic format, to be determined by City.

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

**END OF ARTICLE IV**

## **ARTICLE V. CONSTRUCTION SERVICES**

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

SAMPLE

**EXHIBIT A DESIGN-BUILDER SHALL PERFORM ALL CONSTRUCTION WORK NECESSARY TO CONSTRUCT THE PROJECT IN ACCORDANCE WITH THIS CONTRACT AND TO RENDER THE PROJECT AND ALL ITS COMPONENTS OPERATIONAL AND FUNCTIONALLY AND LEGALLY USABLE FOR THEIR INTENDED PURPOSE, INCORPORATING ALL OF THE CONSTRUCTION TASKS AND DELIVERABLES CONTAINED IN [EXHIBIT K: CONSTRUCTION TASKS AND DELIVERABLES FOR HORIZONTAL PROJECTS](#)**

, attached hereto and incorporated herein by reference.

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

**END OF ARTICLE V**

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

### VI.1 BASELINE CONSTRUCTION SCHEDULE.

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

### VI.2 NOTICE TO PROCEED.

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

### VI.3 TIME FOR COMPLETION.

Design-Builder shall commence Work on the Commencement Date and the Work shall be carried out regularly and without interruption. Design-Builder shall substantially complete the Construction Work, to include the Project Milestone, per the schedule provided for this Project, which the schedule shall become part of **EXHIBIT H:** Design-Builder's Baseline Pre-Construction and Construction Schedules hereto, or such other date as later may be designated by Change Order (hereafter referred to as the "**Scheduled Substantial Completion Date**"). The number of calendar days between the effective date of the Contract and the Scheduled Substantial Completion Date is defined as the "Contract Time." Design-Builder shall achieve Final Completion of the Construction Work no later than **thirty (30)** calendar days after achieving Substantial Completion.

### VI.4 PROJECT MILESTONES.

Prior to Design-Builder reaching the established Project Milestone date, City and Design-Builder shall negotiate the terms and conditions of City taking partial occupancy of the defined core scope items if City so elects to take partial occupancy.

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

- VI.4.1** Consent of Design-Builder to any partial occupancy or use shall not be unreasonably withheld. The state of the progress of the Work shall be determined by written agreement between City and Design-Builder.
- VI.4.2** Immediately prior to such partial occupancy or use by City, City and Design-Builder shall inspect the Project Milestone area in order to determine and record the condition of the Work.
- VI.4.3** Unless expressly agreed upon in writing, City's partial occupancy or City's use of a portion of or portions of the Project Milestone Work shall not constitute City's acceptance of Work not complying with the requirements of the Contract Documents.
- VI.4.4** Upon Design-Builder meeting the Project Milestone completion date and City taking partial occupancy or use of the area of the Project comprising the Project Milestone, City may assume responsibility for maintenance, security and insuring that portion of the Work put into use and accepted by City through notification of such responsibility in writing to Design-Builder.
- VI.4.5** Partial occupancy or use by City does not constitute Substantial Completion and said partial occupancy or use by City starts only those warranty period(s) accepted in writing by City.

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

Design-Builder acknowledges and agrees that City would be damaged by a delay in substantial completion and that such damages are uncertain and difficult to ascertain. If Design-Builder fails to achieve Substantial Completion by the Substantial Completion Date, the Parties further agree that the stipulated amount of **Liquidated Damages - Substantial Completion DOLLARS and ZERO/100 Dollars (\$LiqDamagSC\$\$)**, per day for each and every calendar day of unexcused delay in achieving Substantial Completion beyond the Scheduled Completion Date is a reasonable stipulated amount. Any sums due and payable hereunder by Design-



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

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

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

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

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

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

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

**END OF ARTICLE VI**

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

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

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

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

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

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

Pursuant to [ARTICLE I.2.5](#) of City’s General Conditions for Design/Build Contracts, Design-Builder, within ten (10) days prior to City’s issuance of the initial Notice to Proceed for construction, shall submit to City its Baseline Construction Schedule, Preliminary Schedule of Shop Drawing and Sample Submittals and its Preliminary/Baseline Schedule of Values for all of the Work, which shall constitute Design-Builder’s schedule for completing the Construction Work by the Scheduled Completion Date. The Baseline Construction Schedule shall reflect the performance of all Construction Work on weekdays and non-holidays. The Baseline Construction Schedule shall be a detailed critical path management (“CPM”) schedule in a form acceptable to City. Per [ARTICLE III.10](#) of City’s General Conditions for Design/Build Contracts, and [EXHIBIT L: Project Management Tasks and Deliverables](#) herein, the Work Progress Schedule and successive updates shall be revised at minimum monthly and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project. Each such Work Progress Schedule revision shall be furnished to City. Strict compliance with the requirements of this Paragraph shall be a condition precedent for payment to Design-Builder, and failure to strictly comply with said requirements shall constitute a material breach of the Contract. City, without Design-Builder’s concurrence and at City’s option, may withhold any payment to Design-Builder for any fees due and owing Design-Builder until Design-Builder submits its monthly Work Progress Schedule. No claim for an

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

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

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

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

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

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

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

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

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

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

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

Per this [ARTICLE VII.8](#) and [ARTICLE III.4](#) of the City’s General Conditions for Design/Build Contracts, Design-Builder shall assume all labor responsibility for all personnel assigned to or contracted with for the performance of the Construction Work and agrees strictly to comply with all its obligations as employer, with respect to said personnel under all applicable labor laws.

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

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

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

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

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

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

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

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

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

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

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

**END OF ARTICLE VII**

## ARTICLE VIII. CONTRACT PRICE

### VIII.1 PRECONSTRUCTION SERVICES.

**VIII.1.1** The Preconstruction Services phase of this Project shall be completed as described in [EXHIBIT C](#): Design-Builder's Fee Proposal. The cost/price to City for Design-Builder's Preconstruction Services shall include all labor and material costs related to the Design Phase services not already addressed under Design-Builder's Design Fee including, but not limited to:

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

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



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

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

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

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

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

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



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

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

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

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

The Contract Price is the Not-to-Exceed amount of **Contract Price in Words AND ZERO/100 Dollars (\$ContractPrice.00)**, shall consist of the Design Services Fee, Pre-Construction Services Fee, and the Guaranteed Maximum Price (GMP) for Construction work, which shall include the Design Services Fee, which shall be adjusted once GMP is established, as set out herein. The quantities of the various elements of the Work to be done and material to be furnished are determined by Design-Builder. It is expressly understood and agreed by City and Design-Builder that the Contract Price, including authorized adjustments, is the total amount payable by City to Design-Builder and shall cover the cost for all design, as listed in [ARTICLE VIII.1.1](#) herein, and all Work required to complete the Project in accordance with the Contract Documents, regardless of what the final measurement of quantities is determined to be.

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

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

**VIII.8.1** The GMP shall consist of Design-Builder's Preconstruction Fee, the Project's Design Services Fee, AFFP (if any) and the Cost of the Construction Work, as defined in [EXHIBIT N: GMP Summary and GMP Proposal](#) the Contract, plus Design-Builder's Management Fee. City agrees to perform its responsibilities so as to assist Design-Builder to facilitate the completion of the Construction Work and represents to Design-Builder that there will be sufficient funds available to pay Design-Builder up to the **GMP's not to exceed amount of Guaranteed Max Price AND ZERO/100 Dollars (\$\$GMP.00)**, as adjusted by any Change Order. The GMP, unless changed by amendment or Change Order, represents the absolute limit of obligation or liability that City may ever have, insofar as the cost for design and full and final completion of the Construction Work and the total of all payments to Design-Builder or its Subcontractors are concerned. Should additional amounts be required to be expended over and above the GMP, to achieve completion of the Construction Work, including Project construction and payment to Design-Builder, in accordance with this Contract, liability for and payment of such additional amounts shall solely be the responsibility of Design-Builder and its Contract Surety herein, and City never shall be liable for same. Should the final Cost of the design, the Construction Work and Design-Builder's compensation total less than the GMP, or any approved revision thereof, the difference shall inure to the benefit of City and no claim for all or any portion of said difference shall be valid against or payable by City. City's limitation of obligation or liability set out in this [ARTICLE VIII.1.1](#) shall be incontrovertible and unequivocal; any term or provision of this Contract, the Exhibits, attachments or provisions incorporated by reference in or to this Contract or of any Subcontract executed in furtherance of the anticipated Construction Work

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

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

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

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

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

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

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

insurance and any other compensation paid by City to Design-Builder exceed the GMP or Fixed Price Proposal, as applicable, as adjusted by Change Order(s).

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

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

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

Construction Work under [ARTICLE IX](#) of the General Conditions for City of San Antonio Design/Build Contracts.

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

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



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

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

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

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

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

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

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



**VIII.11.6 REIMBURSABLE EXPENSES.**

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

- a. Travel outside SAMSA. Reimbursement for travel costs shall be limited to costs directly associated with Design-Builder's performance under the Contract. Travel costs are limited to the per diem rates set annually by the Federal Government's General Services Administration. Design-Builder shall provide detailed receipts for all reimbursable charges. City does not pay for Design-Builder's travel within SAMSA.
- b. Mailing, courier services and copies of documents requested by City in writing in excess of the copies to be provided under [EXHIBIT I: Design-Build Scope of Services and Hourly Rate with Schedule of Values](#) of this Contract. These costs, if any, shall not exceed the amount noted in Exhibit H herein, without further approval of City. Design-Builder shall bear these costs unless agreed to, in writing, by City.
- c. Graphics, physical models, and presentation boards requested by City in writing in excess of the copies to be provided under [EXHIBIT I: Design-Build Scope of Services and Hourly Rate with Schedule of Values](#) of this Contract. These costs shall not exceed the amount noted in Exhibit H herein without further approval of City. Design-Builder shall bear these costs unless agreed to, in writing, by City.
- d. City does not allow a markup on any of the above cited reimbursable items in this [ARTICLE VIII.11](#) and only will reimburse approved hard costs incurred.
- e. Any and all cost or expense not specifically allowed pursuant to [ARTICLE VIII](#) herein.

**VIII.12** Any and all cash discounts, rebates, or refunds relating to payments made by Design-Builder shall accrue to City and shall be credited or paid to City at its election.

**VIII.13** City may, at its option, offset any amounts due and payable under this Contract against any debt (including taxes) lawfully due to City from Design-Builder, regardless of whether the amount due arises pursuant to the terms of this Contract or otherwise and regardless of whether or not the debt due to City has been reduced to judgment by a court.

**VIII.14 CONTRACT SAVINGS, ALLOWANCES, REBATES AND REFUNDS.**

**VIII.14.1** If the allowable, final, verified, audited amount for the cost of Design-Builder's General Conditions, Cost of Work, Allowance items and any extended contingency is less than the amount established for each of those itemized categories in the approved GMP, the entire difference shall be credited to the City as savings and the final Design-Build contract amount shall be adjusted accordingly. When buyout of the Project is at least eighty five percent (85%) complete, City may recognize any savings achieved to that point by issuing a deductive change order for the saved amount.

**VIII.14.2** Items to be provided for through City's Allowances under the GMP shall clearly be identified in the Construction Documents and the GMP. The Cost of Work included in the Allowances shall be determined through negotiation between City and Design-Builder. Any claim by the Design-Builder for an adjustment to an Allowance amount included in the GMP, based on the cost of Allowance work, shall be made within a reasonable time after the issuance of the Construction Documents for the Allowance item(s). Design-Builder shall not be entitled to any increase in its cost of Construction Workforce increases to Allowance amounts that initially were based on estimates provided by Design-Builder. City shall be entitled to retain one hundred percent (100%) of the balance of any unused Allowance amount.

**VIII.14.3** City shall be entitled to deduct amounts for the following items from any of Design-Builder's Application for Payment or from Design-Builder's Request for Final Payment:

- a. The fair market value of all tools, surplus materials, construction equipment and temporary structures charged to the Work (other than rental items) but were not consumed during construction or retained by City. Upon completion of the Work or when no longer required, Design-Builder shall either credit City for the fair market value (as approved by City) for all surplus tools, construction equipment and materials retained by Design-Builder or, at City's sole option, use commercially reasonable efforts to sell the surplus tools, construction equipment and materials for the highest available price and credit the proceeds to City;
- b. Discounts earned by Design-Builder through advance or prompt payments funded by City. Design-Builder shall obtain all possible trade and item discounts on bills for materials furnished and shall pay bills within the highest discount periods. Design-Builder shall

purchase Project materials in quantities that provide the most advantageous prices to;

- c. Rebates, discounts or commissions obtained by Design-Builder from material suppliers, Sub-Consultants and/or Subcontractors, together with all other refunds, returns or credits received for materials, bond premiums, insurance and sales taxes;
- d. Deposits made by City and forfeited due to the fault of Design-Builder; and
- e. Balances remaining on any/all Project Allowances, any balance remaining on the Project contingency or the balance on any other identified Contract savings are and remain the sole property of City.

#### **VIII.15 SUBCONTRACTOR MARKUP.**

Overhead and profit from Subcontractor Change Orders shall be calculated as follows: the maximum that will be allowed for combined overhead and profit, expressed as a percentage of the actual cost of the Change Order, shall be as set forth in [ARTICLES VIII.15.1 – VIII.15.4](#). However, the percentage of the Management Fee and Design Fee allowed to Design-Builder by City, which shall be set at or below the Management Fee and Design Fee percentages as negotiated in the GMP, depending on the nature, extent or complexity of the change.

**VIII.15.1** For the Subcontractor, for Work performed by the Subcontractor's own forces, **five percent (5%)** of the cost is the maximum overhead and profit that shall be allowed to be charged City for a Change Order;

**VIII.15.2** For the Subcontractor, for Work performed by the Subcontractor's Sub-Subcontractor, **five percent (5%)** of the amount of the direct cost of the Work is due to the Sub-Subcontractor is the maximum overhead and profit that shall be allowed to be charged City for a Change Order.

**VIII.15.3** For each Sub-Subcontractor involved, for Work performed by that Sub-Subcontractor's own forces, **five percent (5%)** of the cost is the maximum overhead and profit that shall be allowed to be charged City for a Change Order.

**VIII.15.4** For each Sub-Subcontractor, for Work performed by the Sub-Subcontractor's Sub-Subcontractor, **five percent (5%)** of the direct cost of the Work is due to the Sub-Subcontractor is the maximum overhead and profit that shall be allowed to be charged City for a Change Order.

SAMPLE

**END OF ARTICLE VIII**

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

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

City shall pay the Contract Price to Design-Builder in accordance with the procedures set forth in this [ARTICLE IX](#) and, for purposes of the Construction Work, the applicable provisions of [ARTICLE IX](#) of City's General Conditions for Design/Build Contracts to the extent they do not conflict with this [ARTICLE IX](#).

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

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

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

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

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

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

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

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

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

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

Payments for Construction Work shall be made in accordance with [ARTICLE IX](#) of City's General Conditions for Design/Build Contracts.

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

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

**IX.8 RIGHT TO AUDIT.**

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

**IX.16 WITHHOLDING OF PAYMENT.**

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



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

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

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

In addition to the grounds for withholding payment, as set forth in [ARTICLE IX.16](#) herein, City and Design-Builder further agree as follows:

- IX.17.1** Prior to beginning Design Services on the Project, Design-Builder shall submit to City a Design Services Schedule of Values, allocating Design-Builder's allocated percentage of the Not-To-Exceed Contract Price to the design phase of the Project. During the Design Services phase, Design-Builder shall invoice, at minimum, monthly to City and each

submitted invoice shall reflect the percentage of completion of Design Services. Upon completion of Design Services, Design-Builder shall include its allocated Design Services total costs in Design-Builder's Guaranteed Maximum Price Proposal.

**IX.17.2** Prior to City's approval of the Guaranteed Maximum Price or Fixed Price Proposal, as applicable, Design-Builder shall submit to City a Schedule of Values allocating the Guaranteed Maximum Price or Fixed Price Proposal, as applicable, to the various portions of the Construction Work and the Design Services fee addressed in [ARTICLE IX.17.1](#) herein. Such Schedule of Values shall be prepared in such form, with such detail and supported by such data as City may require substantiating its accuracy. Design-Builder shall not imbalance nor artificially inflate any element of its Schedule of Values. The violation of this provision by Design-Builder shall constitute a material breach of this Contract. The Schedule of Values only shall be utilized as a basis for evaluating Design-Builder's request(s) for payment and only shall constitute such basis after it has been acknowledged in writing by City.

**IX.17.3** Each request for payment for Construction Work shall include a certification by Design-Builder of the percentage of Work completion, as of the date of such request for payment, of those portions of the Construction Work as identified in the Schedule of Values. Design-Builder shall furnish to City such documentation or other supporting data as City may request in order to verify the percentage of completion certified by Design-Builder.

**IX.17.4** City shall have no obligation to make payment to Design-Builder for any Design Services or Construction Work where the amount, for which such payment is requested, is in excess of the amount allocated in the Schedule of Values for Construction Work based upon the percentage of completion as of the date of the request for payment.

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

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

Contract Documents, or due to any payment City has a right to withhold or not certify under the Contract Documents.

SAMPLE

**END OF ARTICLE IX**

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

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

**X.1.1 PROVIDE PROJECT INFORMATION.**

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

**X.1.2 REVIEW OF DOCUMENTS.**

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

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

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

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

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

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

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

**X.1.6 TIMELY PERFORMANCE.**

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

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

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

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

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

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

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

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

**X.1.10 APPROVALS AND EASEMENTS.**

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

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

In the event Design-Builder fails or refuses to perform the Construction Work in strict accordance with the Contract, or otherwise is in breach of this Contract in any way, City may, at its option, direct Design-Builder to stop the Work, in accordance with [ARTICLE II.2.6](#) of City's General Conditions for Design/Build Contracts, and/or direct Design-Builder to carry out the Work in accordance with [ARTICLE II.2.7](#) of City's General Conditions for Design/Build Contracts and Design-Builder warrants that it will comply with any direction given by City under this [ARTICLE X.1.10](#).

**X.1.12 QUALITY ASSURANCE.**

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

**END OF ARTICLE X**

## **ARTICLE XI. PROJECT DOCUMENTATION**

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

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

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

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

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

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

## **END OF ARTICLE XI**

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

- XII.1** All work products (electronically or manually generated) including, but not limited to, cost estimates, studies, design analyses, original drawings, Computer Aided Drafting and Design (CADD) electronic files and other related documents prepared specifically in the performance of this Contract (hereafter collectively referred to as “Project Documents”) are to be and remain the property of the City and are to be delivered to the City before final payment is made to Design-Builder. In the event the Projects Documents are altered, modified or adapted with or without the written consent of Design-Builder, Design-Builder will not unreasonably withhold the delivery of the Project Documents to City.
- XII.2** When applicable and required by state law, all completed documents submitted by Design-Builder, its Sub-Consultants and its Subcontractors for final approval or issuance of a permit shall bear the seal with signature and the date adjacent thereto of a Texas registered professional Architect and/or Engineer for all plans, Work and Deliverables prepared by them for this Contract.
- XII.3** All previously owned documents, including drawings, estimates, specifications, and all other documents and data not related to this Project will remain the property of Design-Builder as instruments of service. However, Design-Builder understands and agrees that City shall have free access to all such information with the right to make and retain copies of previously owned Project-related drawings, estimates, specifications and all other documents and data. Any reuse of Design-Builder’s previously owned documents without specific written verification or adaptation by Design-Builder will be at City’s sole risk and without liability or legal exposure to Design-Builder.
- XII.4** Design-Builder acknowledges and agrees that, upon payment, City exclusively shall own any and all information in whatsoever form and character produced and/or maintained in accordance with, pursuant to, or as a result of this Contract and shall be used as City desires and documents. All said information, including original drawings, estimates, specifications and all other documents and data, shall be delivered to City at no additional cost to City upon request, termination or completion of this Contract without restriction on City’s future use. However, any reuse by City without specific written verification or adaptation by Design-Builder will be at City’s sole risk and without liability or legal exposure to Design-Builder.
- XII.5** Design-Builder agrees and covenants to protect any and all proprietary rights of City in any materials provided to Design-Builder. Such protection of proprietary rights by Design-Builder shall include, but not be limited to, the inclusion in any copy intended for publication of copyright mark reserving all rights to City. Additionally, any materials provided to Design-Builder by City shall not be released to any third party



without the written consent of City and shall be returned intact to City upon termination or completion of this Contract or if instructed to do so by City.

- XII.6** **DESIGN-BUILDER HEREBY ASSIGNS ALL STATUTORY AND COMMON LAW COPYRIGHTS TO ANY COPYRIGHTABLE WORK THAT, IN PART OR IN WHOLE, WAS PRODUCED FROM THIS CONTRACT TO CITY, INCLUDING ALL EQUITABLE RIGHTS. NO REPORTS, MAPS, DOCUMENTS OR OTHER COPYRIGHTABLE WORKS PRODUCED IN WHOLE OR IN PART BY THIS CONTRACT SHALL BE SUBJECT OF AN APPLICATION FOR COPYRIGHT BY DESIGN-BUILDER. ALL REPORTS, MAPS, PROJECT LOGOS, DRAWINGS OR OTHER COPYRIGHTABLE WORK PRODUCED UNDER THIS CONTRACT SHALL BECOME THE PROPERTY OF CITY (EXCLUDING ANY PRIOR OWNED INSTRUMENT OF SERVICES, UNLESS OTHERWISE SPECIFIED HEREIN). DESIGN-BUILDER SHALL, AT ITS EXPENSE, INDEMNIFY CITY AND DEFEND ALL SUITS OR PROCEEDINGS INSTITUTED AGAINST CITY AND PAY ANY AWARD OF DAMAGES OR LOSS RESULTING FROM AN INJUNCTION AGAINST CITY, INsofar AS THE SAME ARE BASED ON ANY CLAIM THAT MATERIALS OR WORK PROVIDED UNDER THIS CONTRACT CONSTITUTE AN INFRINGEMENT OF ANY PATENT, TRADE SECRET, TRADEMARK, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHTS.**
- XII.7** Design-Builder may make copies of any and all documents and items for its files. Design-Builder shall have no liability for changes made to or use of the drawings, specifications and other documents made by Engineers or persons other than Design-Builder. Design-Builder appropriately shall mark all changes or modifications on all drawings, specifications and other documents made by Architects, Engineers and/or persons other than Design-Builder, including electronic copies.
- XII.8** Copies of documents that may be relied upon by City are limited to the printed copies (also known as hard copies) and PDF electronic versions that are sealed and signed by Design-Builder. Files in editable electronic media format of text, data, graphics or other types, that are furnished by Design-Builder to City only are for convenience of City. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. However, any reuse without specific written verification or adaptation by Design-Builder will be at City's sole risk and without liability or legal exposure to Design-Builder.

**XII.9** Notwithstanding anything to the contrary contained herein, all previously owned intellectual property of Design-Builder including, but not limited to, any computer software (object code and source code), tools, systems, equipment or other information used by Design-Builder or its Suppliers in the course of delivering the Services hereunder, and any know-how, methodologies or processes used by Design-Builder to provide the services or protect deliverables to City including, without limitation, all copyrights, trademarks, patents, trade secrets and any other proprietary rights inherent therein and appurtenant thereto, shall remain the sole and exclusive property of Design-Builder or its Suppliers.

**END OF ARTICLE XII**

### **ARTICLE XIII. INDEMNITY REQUIREMENTS**

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

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

**XIII.2** Design-Builder shall comply with the Indemnification provision in **ARTICLE III.18** of the General Conditions for City of San Antonio Design/Build Contracts.

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

**END OF ARTICLE XIII**

## ARTICLE XIV. INSURANCE REQUIREMENTS

**XIV.1** Prior to the commencement of any work under this Project, Design-Builder shall purchase and maintain insurance, as set forth in **ARTICLE XI** of City's General Conditions for Design/Build Contracts, and any Supplementary General Conditions or Special Conditions, if applicable.

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

**XIV.1.2** City reserves the right to review the insurance requirements of **ARTICLE XI** of City's General Conditions for Design/Build Contracts during the effective period of this Contract and to modify insurance coverage and limits when deemed necessary and prudent by the City of San Antonio's Risk Manager based upon changes in statutory law, court decisions or circumstances surrounding this Contract. In no instance will City allow modification whereby City may incur increased risk.

**END OF ARTICLE XIV**

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

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

**END OF ARTICLE XV**

**ARTICLE XVI. DESIGNATED REPRESENTATIVES OF PARTIES****XVI.1 CITY'S DESIGNATED REPRESENTATIVE.**

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

**City's Designated Rep**

**XVI.2 DESIGN-BUILDER'S DESIGNATED REPRESENTATIVES:****XVI.2.1 DESIGN-BUILDER'S DESIGNATED SENIOR REPRESENTATIVE**

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

**DB Senior Rep**

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

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

**Design Builder's Rep**

**END OF ARTICLE XVI**

## **ARTICLE XVII. MISCELLANEOUS PROVISIONS**

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

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

**XVII.2** Records of expenses pertaining to additional services and services performed on the basis of a Worker Wage Rate or Monthly Salary Rate shall be kept on the basis of generally accepted accounting principles and in accordance with cost accounting standards promulgated by the Federal Office of Management and Budget Cost Accounting Standards Board and shall be available for audit by City or City's authorized representative on reasonable notice.

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

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

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

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

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

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

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

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

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

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

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

The Contract Documents form the entire and integrated Contract between City and Design-Builder and supersede all prior negotiations, representations or agreements, either written or oral. This Contract and each of its provisions shall be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by Design-Builder and City.

#### **XVII.7 CAPTIONS.**

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

#### **XVII.8 NOTICES.**

In addition to the written Notice Provision in **ARTICLE XIV.4** of the General Conditions for City of San Antonio Design/Build Contracts, all notices, consents, approvals, demands, requests or other communications relied on by the parties shall be in writing. Written notice shall be deemed to have been given when:

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

Notices are deemed effective upon:

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



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

Notices of claims or disputes or other legal notices required by this Contract shall be sent to the following persons at the indicated locations. The parties may make reasonable changes in the person or place designated for receipt of notices upon advance written notice to the other party.

If to City:

If to Design-Builder:

City of San Antonio

**Consultant Name**

Transportation & Capital **Business Principal Location**  
Improvements

Attention: Mike Frisbie, P.E., Director

P. O. Box 839966

San Antonio, Texas 78283-3966

## **XVII.9 SEVERABILITY.**

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

**XVII.10 ILLEGAL DUMPING.**

Design-Builder shall ensure that it and all of its Sub-Consultants, Subcontractors and assigns prevent illegal dumping of litter in accordance with Title 5, Texas Health and Safety Code, Chapter 365.

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

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

SAMPLE

**END OF ARTICLE XVII**

**DESIGN-BUILD CONTRACT SIGNATURE PAGE**

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

**City****Design-Builder****CITY OF SAN ANTONIO, TEXAS****Consultant Name**

By: \_\_\_\_\_

By: \_\_\_\_\_

**City Manager's Name****Design-Build Signatory Name**

City Manager

**DB Senior Rep****Design-Build Signatory Title**

APPROVED AS TO FORM:

By: \_\_\_\_\_

**City Attorney's Name**

City Attorney

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

## EXHIBIT A PROGRAMMING DOCUMENTS

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

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

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

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

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

SAMPLE

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

SAMPLE

## EXHIBIT D SBEDA PLAN

SAMPLE

## **EXHIBIT E PAYMENT AND PERFORMANCE BOND FORMS**

SAMPLE



**PAYMENT BOND**

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

Know all men by these presents:

1. That we \_\_\_\_\_  
as Principal, and \_\_\_\_\_  
as Sureties, do hereby acknowledge ourselves to be held and firmly bound unto City of San Antonio, a municipal corporation of the county of Bexar and State of Texas in the sum of  
\$ \_\_\_\_\_  
for payment of which sum well and truly to be made in and unto said City of San Antonio, we do hereby bind and obligate ourselves, our heirs, executors, administrators, assigns, and successors, jointly and severally;
2. THE CONDITIONS OF THIS BOND, HOWEVER, ARE SUCH THAT WHEREAS,  
the said \_\_\_\_\_  
hereinafter called Contractor or Principal, has made and does this day make and enter into a certain contract in writing with said City of San Antonio, for the construction and completion for said City of certain structures, work and improvements generally described  
as \_\_\_\_\_  
(Insert Name of Project and Location)  
and for the performance and observance of diverse other matters and things in connection with said work, and, interalia, therein entered into covenants and agreements to promptly pay all persons supplying labor, materials and services in the prosecution of the work provided for in said contract; all as more fully described in said contract and its included instruments which are expressly made a part of this obligation;
3. NOW THEREFORE, if Contractor, the Principal party to this obligation shall promptly make payment to all persons supplying labor and materials in the prosecution of the work provided for in said contract, and any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the surety being hereby waived, then this obligation shall be and become null and void, but otherwise to remain in full force and effect: and it is hereby further understood and agreed that this bond shall be a continuous obligation against the principal and each member of said principal party hereto, and each and all sureties hereon, and that successive recoveries may be had thereon for each and every breach of this bond until the full amount thereof shall have been exhausted;

and the liability of the sureties on this bond shall not be in any manner released or diminished by any changes in the work which may be authorized or directed by City, nor by the exercise or failure to exercise by or on behalf of City any right or remedy provided by the contract or specifications or by any law or ordinances.

4. It is further understood that this obligation is incurred pursuant to Chapter 2253 of the Texas Government Code, and that this obligation is for the benefit and sole protection of all persons supplying labor and materials in the prosecution of said contract.
5. IN TESTIMONY WHEREOF, witness our hands and the seal of any incorporated surety hereon this \_\_\_\_\_ day of \_\_\_\_\_ A.D. 20\_\_\_\_\_.

Contractor

By: \_\_\_\_\_  
(Typed Name)

\_\_\_\_\_  
(Signature)

Surety

By: \_\_\_\_\_  
(Typed Name)

\_\_\_\_\_  
(Signature)

(SEAL)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Address of Surety for Service Purposes

**PERFORMANCE BOND**

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

Know all men by these presents:

1. That we \_\_\_\_\_  
as Principal, and \_\_\_\_\_  
as Sureties, do hereby acknowledge ourselves to be held and firmly bound unto City of San Antonio, a municipal corporation of the county of Bexar and State of Texas in the sum of  
\$ \_\_\_\_\_  
for payment of which sum well and truly to be made in and unto said City of San Antonio, we do hereby bind and obligate ourselves, our heirs, executors, administrators, assigns, and successors, jointly and severally:
2. THE CONDITIONS OF THIS BOND, HOWEVER, ARE SUCH THAT WHEREAS,  
the said \_\_\_\_\_  
hereinafter called Contractor or Principal, has made and does this day make and enter into a certain contract in writing with said City of San Antonio, for the construction and completion for said City of certain structures, work and improvements generally described  
as \_\_\_\_\_  
(Insert Name of Project and Location)  
and for the performance and observance of diverse other matters and things in connection with said work; all as more fully described in said contract and its included instruments which are expressly made a part of this obligation.
3. NOW THEREFORE, if Contractor, the Principal party to this obligation shall faithfully construct and complete said structures, work and improvements, and shall observe, perform and comply with all the terms, conditions, stipulations, undertakings and provisions of said contract and all included instruments, according to their intent and purpose insofar as the same relate to or are incident to the construction and completion of said structures, work and improvements then and thereupon this obligation shall be and become null and void, but otherwise to remain in full force and effect; and it is hereby further understood and agreed that this bond shall be a continuous obligation against the principal and each

member of said principal party hereto, and each and all sureties hereon, and that successive recoveries may be had hereon for each and every breach of this bond until the full amount thereof shall have been exhausted; and the liability of the sureties on this bond shall not be in any manner released or diminished by any changes in the work which may be authorized or directed by City, nor by the exercise or failure to exercise by or on behalf of City any right or remedy provided by the contract or specifications or by any law or ordinance.

4. It is further understood that this obligation is incurred pursuant to Chapter 2253 of the Texas Government Code as amended, and all liabilities on this bond shall be determined in accordance with the provisions of said Chapter to the same extent as if it were copied at length herein.

5. IN TESTIMONY WHEREOF, witness our hands and the seal of any incorporated surety hereon this \_\_\_\_\_ day of \_\_\_\_\_ A.D. 20\_\_\_\_\_.

Contractor

By: \_\_\_\_\_  
(Typed Name)

\_\_\_\_\_  
(Signature)

Surety

By: \_\_\_\_\_  
(Typed Name)

\_\_\_\_\_  
(Signature)

(SEAL)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Address of Surety for Service Purposes

**EXHIBIT F DESIGN-BUILDER'S DESIGN SCHEDULE AND DESIGN FEE  
SCHEDULE**

SAMPLE

## **EXHIBIT G DESIGN-BUILDER'S BASELINE PRE-CONSTRUCTION AND CONSTRUCTION SCHEDULES**

SAMPLE

**EXHIBIT H   DESIGN-BUILD SCOPE OF SERVICES AND HOURLY RATE WITH  
SCHEDULE OF VALUES**

SAMPLE

## **EXHIBIT I DESIGN TASKS AND DELIVERABLES FOR HORIZONTAL PROJECTS**

SAMPLE



## **EXHIBIT J CONSTRUCTION TASKS AND DELIVERABLES FOR HORIZONTAL PROJECTS**

### **1. CONSTRUCTION TASKS AND DELIVERABLES**

Design-Builder shall provide construction services from mobilization through Project completion and warranty period.

#### **1.1. Construction services will include but not be limited to:**

**1.1.1. Construction Design and Planning**

**1.1.2. Scheduling and Cost control**

**1.1.3. Subcontracting and Procurement**

**1.1.4. Project Coordination**

**1.1.5. Testing, Material Testing Coordination and Inspection**

#### **1.2. COORDINATION**

Design-Builder shall provide reasonable opportunities to subcontractors for the performance of their work and coordinate scheduling of activities by all subcontractors working on the Project.

### **2. CONSTRUCTION DESIGN AND PLANNING**

#### **2.1. OVERALL PHASING AND STAGING PLANS**

**2.1.1.** Prior to detailed work on construction phasing, prepare for review by City conceptual construction sequencing and traffic management plans indicating for each phase the flow of vehicular and pedestrian traffic (traffic management), temporary barricades, drainage and roadways, traffic control and protection, and project schedule milestones. Graphic drawing accompanied with descriptive text for each proposed phase of construction is a minimum requirement.

**2.1.2.** Prior to actual construction prepare for review by the City detailed construction sequencing and traffic management plans indicating for each phase the flow of vehicular and pedestrian traffic (traffic management), temporary barricades, drainage and roadways, traffic control and protection and project schedule milestones. Overall phasing plans for each phase of construction with detail notes accompanied with each disciplines' separate detail drawings prepared for each phase of construction is a

minimum requirement.

- 2.1.3.** The Project will involve significant construction improvements in a physically constrained, heavily traveled environment. Design-Builder shall meet with City to review working hour and roadway lane restriction requirements.
- 2.1.4.** Design-Builder shall develop staged construction, traffic handling and temporary -signage plans for various phases of construction. These plans shall be submitted to City for review and acceptance.
- 2.1.5.** Design-Builder shall verify that the Project is constructible and that traffic impacts are minimized and public safety is not compromised.

## **2.2. PHASING / SEQUENCING REQUIREMENTS**

### **2.2.1. Facility/Site Events**

- a.** Schedule construction operations to allow existing and adjacent facilities and businesses to remain in uninterrupted service during scheduled operations. Do not perform any construction operation prior to receiving a review and acceptance from City, which also will coordinate with the affected event organizers.
- b.** Schedule construction operations to allow existing residents continuous access to their property during scheduled operations.
- c.** Provide temporary dust proof enclosures and protection as required to sequence construction and maintain event operations.

## **2.3. REQUIREMENTS FOR ALTERNATIVES TO PHASING AND SEQUENCING OBJECTIVES**

- 2.3.1.** Design-Builder is encouraged to seek alternative approaches of phasing and sequencing that can save time and/or money that may require adjustments to the any specified City objectives.
- 2.3.2.** Design-Builder is required to meet all specified City objectives unless City gives prior written approval for alternative approaches.
- 2.3.3.** Design-Builder shall make a written request for alternative approaches prior to initiating any effort involving these alternative approaches. The request shall:
  - a.** Indicate how the alternative approaches will save time and/or money;
  - b.** Detail the operational impacts of the alternative approaches and

demonstrate the viability of any operational adjustments that are required;

- c. Convey to City the nature of alternative approaches in sufficient detail to enable the City to understand all significant implications of the alternative approaches; and
- d. Demonstrate compliance with performance criteria detailed in the Program Criteria Document and any subsequent direction provided to Design-Builder.

## **2.4. HAUL ROUTES**

Design-Builder shall be responsible for developing construction haul routes for the Project. Design-Builder shall meet with City to discuss haul route requirements and impacts to traffic and ground transportation facilities. Design-Builder shall prepare haul route plans and submit them to City for review and acceptance.

## **2.5. ROADWAYS AND PARKING**

The following are City objectives to be achieved in phasing sequencing of roadway and parking activities for adjacent businesses:

- 2.5.1. Electrical power shall not be disturbed to offices, entrances, exits, and lighting.
- 2.5.2. Integrity of the parking perimeter shall not be compromised.
- 2.5.3. Queuing areas must be in place for entrances and exits.
- 2.5.4. Clear signage for entry and exit of the parking shall be in place at all times.

## **2.6. NOTICE OF CHANGES**

Establish a procedure to give adequate notice to tenants (event organizers, concessionaires, etc.) of changes that may impact them.

## **2.7. CONSTRUCTION QUALITY CONTROL PROGRAM**

Establish a Construction quality control program organized to address as a minimum the following items:

- 2.7.1. Quality control organization.
- 2.7.2. Work progress schedule.

- [illegible]

**3.2.2.** Notices shall be approved by City.

**3.2.3.** If the notice is in the form of signage, such signage shall be mounted by Design-Builder approximately five (5) business days before work is set to begin and removed promptly once work is completed.

#### **4. TESTING AND INSPECTION**

**4.1.** To ensure compliance with City's construction specifications, testing/Inspection Agencies shall be employed by Design-Builder for necessary special inspections. Design-Builder shall coordinate with City as required for the following activities:

**4.1.1.** Field Testing and Inspection: the performance of all testing, observation, and inspection required by City specifications.

#### **4.2. REPORTS**

Written report of each test/inspection, including complete details of conditions, methods, and results, signed by Texas professional engineer.

#### **4.3. REFERENCE STANDARDS**

Where products or workmanship is specified by reference to a document not included in the Contract Documents, comply with the requirements of the document, except where more stringent requirements are specified compliance with the more stringent requirement is necessary.

#### **4.4. DATE OF ISSUE**

Latest edition published as of date of contract documents except where a specific date is specified herein or established by code.

#### **5. OFF-SITE STORAGE**

With prior approval by City and in the event Design-Builder elects to store materials at an off-site location, abide by the following conditions, unless otherwise agreed to in writing by City.

**5.1.** Store materials in a commercial warehouse meeting the criteria stated below.

**5.2.** Provide insurance coverage adequate not only to cover materials while in storage, but also in transit from the off-site storage areas to the Project Site. Copies of duly authenticated certificates of insurance, made out to insure the State agency which is signatory to the Contract, must be filed with City's representative.

- 5.3.** Inspection by City's representative is allowed at any time. City's inspectors must be satisfied with the security, control, maintenance, and preservation measures.
- 5.4.** Materials for this Project are physically separated and marked for the Project in a sectioned off area. Only materials which have been approved through the submittal process are to be considered for payment.
- 5.5.** City reserves the right to reject materials at any time prior to final acceptance of the complete Contract if they do not meet Contract requirements, regardless of any previous progress payment made.
- 5.5.1.** With each monthly payment estimate, submit a report to City listing the quantities of materials already paid for and still stored in the off-site location.
- 5.5.2.** Make warehouse records, receipts and invoices available to City's representatives, upon request, to verify the quantities and their disposition.
- 5.6.** In the event of Contract termination or default by Design-Builder, the items in storage off-site, upon which payment has been made, will be promptly turned over to City or City's agents at a location near the jobsite as directed by City. The full provisions of performance and payment bonds on this Project cover the materials off-site in every respect as though they were stored on the Project Site

## **EXHIBIT K PROJECT MANAGEMENT TASKS AND DELIVERABLES**

### **1. PROJECT MANAGEMENT TASKS AND DELIVERABLES**

#### **1.1. COMPREHENSIVE SERVICE**

**1.1.1.** Design-Builder shall provide a comprehensive service in the execution of the Project, as defined by the Contract terms and conditions herein. City shall participate in the Project, as defined by the Contract terms and conditions, as the overall success of the Project is a shared responsibility of City and Design-Builder.

**1.1.2.** The requirements and guidelines below apply to Design-Builder. All procedures, quality control programs and deliverable requirements are to apply to all of Design-Builder's team members. Project Management Plans, Document Control Logs, team structure charts and the like shall encompass all of Design-Builder's team members together in one (1) document, not in separate documents. This shall include the work of even minor Subcontractors and Sub-Consultants.

#### **1.2. PROJECT MANAGEMENT PLAN**

**1.2.1.** Design-Builder shall provide a written Project Management Plan outlining the overall level of Project effort. Elements of this Plan shall continually be updated throughout Design-Builder process and will create both a forward looking and the key tools to track performance of the Project. At a minimum, the Plan shall be composed of the following elements summarized herein and explained in subsequent paragraphs.

- a.** Programming Document
- b.** Project Team Structure
- c.** Quality Assurance Plan
- d.** Document Control Procedure
- e.** Archiving of Program Procedure
- f.** Project Schedule
- g.** Project Cost Estimate

**1.2.2.** The first version of Design-Builder's Project Management Plan Shall be provided to City for approval within thirty (30) calendar days of Design-Builder contract award. Design-Builder shall allow fourteen (14) calendar days for review by City.

### **1.3. PROGRAMMING DOCUMENT**

The initial Programming Document, attached hereto and made a part of this document by reference and labeled as **EXHIBIT B: Programming Documents**, shall be provided by City and fully be developed and updated by Design-Builder, as described in **EXHIBIT J: Design Tasks and Deliverables for Horizontal Projects**.

### **1.4. DESIGN-BUILDER'S PROJECT TEAM STRUCTURE**

**1.4.1.** Design-Builder shall submit a written Identification of Project Team Structure, indicating Key Project Personnel, as provided to and accepted by City during the selection process. Design-Builder shall indicate actual lines of reporting and responsibility and shall include matrix reporting, as applicable. **Key Project Personnel** are defined as individuals that interface directly with City or cover critical technical expertise. Executive, ceremonial or figurehead positions should not be indicated; only individuals with actual authority and responsibility and who will make tangible contributions to the Project should be included in Design-Builder's Project Team Structure.

**1.4.2.** City shall be notified at least twenty (20) calendar days in advance of any proposed changes in Design-Builder's Key Project Personnel and City reserves the right to approve Design-Builder's proposed replacements.

**1.4.3.** Key Project Personnel shall be available to City during normal business hours. Design-Builder shall inform City, via e-mail, at least ten (10) calendar days in advance of any known scheduled absence of Key Project Personnel expected to exceed three (3) calendar days. For sudden or unscheduled absences, such as illnesses of Key Project Personnel, Design-Builder shall inform City by telephone, as soon as is practical, if the absent individual was expected to be available for consultation or meetings.

### **1.5. QUALITY ASSURANCE PROGRAM**

**1.5.1.** Design-Builder shall develop and submit to City an effective Quality Assurance Program outlining the methods and procedures that will be used to develop detailed Design and Construction Quality Control programs, to assure that all design work, materials and completed construction conform to all applicable City, state and federal requirements. Design-Builder's Quality Assurance Program shall describe the established and approved instructions and procedures for both design and construction of the Project. The data contained in these procedures shall include or reference acceptance or rejection criteria.



- 1.5.2.** Design-Builder shall submit the written Design Quality Control Program, indicating specific responsible parties, to City for approval within thirty (30) Calendar Days of the Contract award.
- 1.5.3.** Design-Builder shall submit the written Construction Quality Control Program, indicating specific responsible parties, to City for approval, at minimum, thirty (30) calendar days prior to the start of any of Design-Builder's production, construction or off-site fabrication.
- 1.5.4.** The Quality Control Programs shall apply to Design-Builder, its Sub-Consultants and Subcontractors. If Design-Builder's Sub-Consultants and/or Subcontractors have additional Quality Control procedures, those entities shall submit their additional Quality Control procedures to City for approval, at minimum, thirty (30) calendar days prior to the start of that Sub-Consultant's or Subcontractor's work effort.
- 1.5.5.** The Design Quality Control Program shall be organized to address, at minimum, the following items:
- a.** Quality control organization.
  - b.** Work progress schedule.
  - c.** Submittal schedule.
  - d.** Procedures covering, as a minimum, the coordination, checking and sign-off procedures for drawings specifications, calculations and reports.
  - e.** Documentation of quality control activities.
  - f.** Requirements for corrective action when quality control and/or acceptance criteria are not met.
  - g.** Testing & Inspection procedures

## **1.6. DOCUMENT CONTROL**

- 1.6.1.** Design-Builder shall maintain a Document Control Log for all Project documents, including Contract documents, sketches and renderings, models, correspondence, reports, meeting minutes and relevant e-mail. Design-Builder shall provide this log to City monthly or more frequently, if requested by City.
- 1.6.2.** Design-Builder shall submit a written procedure for Document Control, indicating what will be logged and how to maintain the log, as well as indicating specific responsible parties (by title), to City for City's approval within thirty (30) calendar days of the award of this Contract.

## **1.7. DOCUMENT ARCHIVING**

- 1.7.1.** Design-Builder shall take reasonable precautions to safeguard the Project intellectual property during the course of the Project. These precautions shall include backing-up and storing offsite all in-progress and completed project electronic documents at minimum once a week. Hard copy documents and physical objects, such as models, shall promptly be scanned or digitally photographed as soon after their creation as practicable. Design-Builder shall store the resulting electronic records along with the abovementioned Project electronic documents.
- 1.7.2.** Design-Builder shall submit a written procedure for archiving of Project intellectual property, indicating specific responsible parties (by title), to City for approval within thirty (30) calendar days of the award of this Contract.

## **1.8. COST ESTIMATE/PLANNING**

- 1.8.1.** As one of the first steps on the program, Design-Builder shall work with City to establish Project cost targets. After establishing a cost target for a particular program component, Design-Builder shall break it into sufficient detail, as appropriate, to provide design guidance for the design team.
- 1.8.2.** Upon completion of the Schematic Design Documents (0-30%), Design-Builder shall submit a construction cost estimate that verifies the design does not exceed the design-to-budget target amount.
- 1.8.3.** Upon completion of City's review of the Schematic Design Documents (0-30%) and the associated cost estimate, City shall have the right at its sole discretion to:
- a.** direct Design-Builder to proceed with progressing the design to Design Development completion;
  - b.** remove the Project element from the contract and pursue other delivery methods, including, but not limited to, issuing a Request for Proposals for completion of design and construction; or
  - c.** terminate the contract.
- 1.8.4.** Cost Estimate/Proposal at Design Development Documents (31-70%).
- 1.8.5.** Design-Builder shall submit a revised construction cost estimate/proposal verifying the design does not exceed the design-to-budget target amount and any approved changes. That submitted cost estimate/proposal may be converted to a Guaranteed Maximum Price (GMP) for construction, if

mutually agreed upon by Design-Builder and City at that time.

**1.8.6.** If City and Design-Builder cannot agree upon a GMP, City reserves the right at its sole discretion to:

- a.** direct Design-Builder to proceed with progressing the design to Construction Document completion;
- b.** remove the Project element from the contract and pursue other delivery methods, including, but not limited to, issuing a Request for Proposals for completion of design and construction; or
- c.** terminate the Contract.

**1.1.1.** Cost Estimate/Proposal at Construction Documents (100%).

**1.8.7.** If City and Design-Builder have not previously agreed to a GMP for completion of the Project element through construction, Design-Builder shall submit a revised construction cost estimate/proposal that verifies the design does not exceed the design-to budget target amount and any approved changes. This cost estimate/proposal could be converted to a Guaranteed Maximum Price (GMP) for construction, if mutually agreed upon by Design-Builder and City at this time.

**1.8.8.** If City and Design-Builder cannot agree upon a GMP, City reserves the right at its sole discretion to:

- a.** remove the Project element from the contract and pursue other delivery methods, including, but not limited to, issuing the design for competitive bids; or
- b.** terminate the Contract.

## **1.9. TERMINATING THE CONTRACT**

If the parties cannot agree upon a GMP for construction, and the design work is complete (100% Construction Documents), Design-Builder shall be required to provide bid-able documents. In other words, the design documents shall be in the condition of a bid set suitable for advertising and receiving competitive bids.

## **1.10. REQUIRED SUBMITTALS**

Required submittals shall include:

### **1.10.1. Project Management Plan**

**1.10.2. Design-Builder's Program Team Structure****1.10.3. Quality Control Program****1.10.4. Document Control Procedure****1.10.5. Archiving Procedure****1.10.6. Proposed Action Item Log****1.10.7. Cost Estimate****1.11. REVIEW COMMENT RESPONSE**

**1.11.1.** At each submittal stage, within ten (10) calendar days, City shall provide a list of written comments. Design-Builder promptly shall respond in writing to City's comments within ten (10) calendar days of receipt, unless agreed to otherwise in writing by City. Design-Builder's responses must be thorough and specifically address City's issue(s) in question. Design-Builder shall note specific actions already taken or Design-Builder's planned actions with a completion time commitment. Such responses, such as "done" or "will comply" are not acceptable responses for Design-Builder to submit to City.

**1.11.2.** In some cases, City's comments to Design-Builder may be given in a workshop setting or as document mark-ups. In such cases, Design-Builder shall be expected to document the original comment(s), as well as respond to all such comments, as noted above.

**1.11.3.** Each review of Design-Builder's submittal shall comply with the following review durations:

- a.** Design studies, reports, drawings and specifications shall be reviewed by City and City's designated third parties, comments shall be prepared and returned to Design-Builder within ten (10) calendar days after receipt by City. City shall endeavor to better the review period of 10 Business Days as they understand that a shorter review period may improve the schedule.
- b.** Cost estimates and pricing submittals shall be reviewed by City and/or City's designated third parties, comments shall be prepared and City shall return its comments to Design-Builder within ten (10) calendar days after receipt by City. City shall work to better the review period of ten (10) calendar days, as it understands a shorter review period may improve the Project schedule.

- c. Design-Builder shall advise City how Design-Builder intends to address all comments received from City and/or City's designated third parties and return Design-Builder's comments to City within ten (10) calendar days after receipt from City.
- d. City is responsible to manage and enforce the design review durations outlined above with all third party reviewers, unless authority to do so is specifically delegated to Design-Builder.

## **2. CITY'S PARTICIPATION AND RESPONSIBILITIES**

### **2.1. CITY'S PARTICIPATION**

City reserves the right to participate in any and all design activities of Design-Builder, Design-Builder's Sub-Consultants and Subcontractors, with the exception of meetings or discussions of a contractual nature between Design-Builder and its Sub-Consultants, Subcontractors, Legal Counsel and the like. Design-Builder shall inform City of all work sessions, coordination meetings, scheduled conference calls and similar design activities, sufficiently in advance to allow City's participation.

### **2.2. DESIGN-BUILDER PROVISIONS FOR CITY**

- 2.2.1. Design-Builder shall provide City full access to all in-progress work, including access to Document Control Logs, relevant Office and Project Procedures and Project files. Design-Builder shall provide a copy of any work related to the Project to City upon City's request, whether finished or in-progress, provided that such requests do not limit Design-Builder team's completion of the Work in a timely fashion.
- 2.2.2. Similarly, City shall be allowed direct access to any key individual on Design-Builder's team performing Work related to the Project, for the purposes of soliciting information, provided such access by City does not limit Design-Builder team's completion of the Work in a timely fashion.

### **2.3. CITY'S RESPONSIBILITIES**

- 2.3.1. City has performed the programming and other early planning studies that serve as the foundation for the Program Criteria Document.
- 2.3.2. City has provided the Programming Documents, attached hereto, incorporated herein and labeled as **EXHIBIT B: Programming Documents**, which shall serve as the basis for Design-Builder's design.
- 2.3.3. City shall primarily be responsible for Public Affairs, Media Relations and Community Outreach concerning this Project. Design-Builder shall

provide support services for all Public Affairs, Media Relations and Community Outreach, to the extent delegated and authorized by City and based upon direction provided by City.

### **3. PROJECT COMMUNICATIONS**

**3.1.** Formal correspondence, communication and direction between City and Design-Builder shall be restricted to be between City's Project Manager and Design-Builder's Project Manager, unless specifically delegated to others in writing. If so delegated, the limits of authority to be delegated to others shall be established in writing.

### **3.2. PROJECT DATA GATHERING**

**3.2.1.** Design-Builder is experienced in the Project type it has contracted to perform and is aware of all relevant issues that must be addressed. Design-Builder shall be proactive in soliciting all necessary design information.

**3.2.2.** Requests to meet with Facility/Site or City personnel that normally are not one of Design-Builder contacts shall be coordinated with the City's Project Manager.

**3.2.3.** Provide written reports of all meetings and other data gathering exercises, whether with Facility/Site or other City personnel, or with outside entities or data sources within 10 Business Days.

### **3.3. ACTION ITEMS**

**3.3.1.** Design-Builder shall maintain an electronic Action Item Log of all "action items" that have been identified either internally or by City. An "action item" is defined as a Project issue requiring special attention, management oversight or off-project input. An "action item" is not an item or a list of things yet to be done that are a normal part of the progress of the Project. The Action Item Log shall regularly be maintained and distributed to City.

**3.3.2.** Design-Builder shall submit a sample of the proposed Action Item Log to City for City's approval within thirty (30) calendar days of the award of this contract.

### **3.4. MINUTES AND REPORTS**

Design-Builder shall take and publish coherent minutes and/or reports on every formal meeting, work session or site visit that Design-Builder, its Sub-Consultant and/or Subcontractors participates in, even if Design-Builder is not the meeting chair or coordinator. Design-Builder shall transmit minutes and/or

reports to City within ten (10) calendar days of the meeting, work session or site visit.

### **3.5. OTHER PROJECT DOCUMENTS**

**3.5.1.** Design-Builder shall prepare all written Project documents, such as reports, meeting minutes, etc., using Microsoft Word, latest version, unless otherwise agreed upon by City. The utilized font shall be 11 point Times New Roman or Arial, as supplied with the latest Microsoft Windows Operating System.

**3.5.2.** All Project documents, except drawings and presentation materials, shall be on letter sized paper. Absolutely no legal-sized paper shall be utilized or is allowed.

**EXHIBIT L SCHEDULE OF VALUES; SUMMARY SPREADSHEET AND BACKUP  
DOCUMENTS; CERTIFICATE OF SUBSTANTIAL COMPLETION**

SAMPLE



## EXHIBIT M GMP SUMMARY AND GMP PROPOSAL

SAMPLE

## **EXHIBIT N DESCRIPTION OF DESIGN-BUILDER'S GENERAL CONDITION COSTS**

SAMPLE

**ARTICLE XVIII. ATTORNEY FEES**

The Parties hereto expressly agree, in the event of litigation, all Parties waive rights to payment of attorneys' fees that otherwise might be recoverable, pursuant to the Texas Civil Practice and Remedies Code Chapter 38, Texas Local Government Code §271.153, the Prompt Payment Act, common law or any other provision for payment of attorney's fees.

SAMPLE

**END OF ARTICLE XVIII**

**END OF GENERAL CONDITIONS**

## **SPECIAL CONDITIONS FOR DESIGN-BUILD HORIZONTAL PROJECTS**

1. **ARTICLE III.2.4** is hereby ADDED to [ARTICLE V.2](#) **REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY DESIGN-BUILDER.**

**III.2.4** Upon discovery of differing site conditions, Design-Builder shall, before such discovered conditions and/or structures are disturbed, promptly notify City in writing of such differing site conditions. Differing site conditions are defined as subsurface or latent physical and/or structural conditions at the Site differing materially from those indicated in the Plans, Specifications and other Contract Documents or newly discovered and previously unknown physical conditions at the Site of an unusual nature differing materially from those geophysical conditions typically encountered in the type Work being performed and generally being recognized as not indigenous to the San Antonio, Bexar County, Texas environs.

City promptly shall investigate the reported physical and/or structural conditions and shall determine whether or not the physical and/or structural conditions do materially so differ and thereby cause an increase or decrease in Design-Builder's cost of and/or time required for performance of any part of the Work under this Contract. In the event that City reasonably determines that the physical and/or structural conditions materially so differ, a negotiated and equitable adjustment shall be made to the Contract Time and/or Contract Sum and a Change Order promptly shall be issued by City.

- a. No claim of Design-Builder under this **ARTICLE III.2.4** shall be allowed unless Design-Builder has given the written notice called for above, prior to disturbing the discovered conditions and/or structures.
- b. No Contract adjustment shall be allowed under this **ARTICLE III.2.4** for any effects caused on unchanged work.

## 2. **ARTICLE III.4.7 MATERIAL TESTING.**

Appends **ARTICLE III.4.7** of City's Design-Build General Conditions.

Materials not meeting Contract requirements or that do not produce satisfactory results will be rejected by City, unless City approves corrective actions. Upon rejection, Design-Builder immediately shall remove and replace rejected materials. If Design-Builder does not comply with these requirements, City may remove and replace defective material and all costs incurred by City for testing, removal and replacement of rejected materials shall be deducted from any money due or owed to Design-Builder.

The source of each of the materials shall be approved by City before delivery is started and, at the option of City, may be sampled and tested by City for determining compliance with the governing specifications before delivery is started. If it is found after trial that the sources of the materials previously approved do not produce uniform and satisfactory products, or if the product from any source proves unacceptable at any time, Design-Builder shall furnish materials from other approved sources. Only materials conforming to the requirements of the Contract Documents and approved by City shall be used by Design-Builder in the work. All materials being used by Design-Builder are subject to inspection or test at any time during preparation or use. Any material which has been tested and accepted at the source of supply may be subjected to a check test after delivery and all materials which, when retested, do not meet the requirements of the specifications will be rejected. No material which, after approval, has in any way become unfit for use shall be used in the Work.

If, for any reason, Design-Builder selects a material which is approved for use by City by sampling, testing or other means, and Design-Builder decides to change to a different material requiring additional sampling and testing by City for approval, Design-Builder shall pay for any expense incurred by City for such additional sampling and testing and the costs incurred by City shall be deducted from any money due or owed to Design-Builder.

## 3. **ARTICLE IV.3.8 CHANGE IN UNIT PRICES**

Appends **ARTICLE IV.3.8** of City's Design-Build General Conditions.

Unit prices established in the Contract documents only may be modified when a Change Order or Field Work Directive causes a material change in quantity to a Major Bid Item. A "**Major Bid Item**" is defined as a single bid item that constitutes a minimum of five percent (5%) of the total contract value. A material change in quantity is defined as an increase or decrease of twenty five percent (25%) or more of the units of an individual bid item or an increase or decrease of twenty five percent (25%) or more of the dollar value of a lump sum bid item. Revised unit pricing shall only apply to the quantity of a

Major Bid Item in excess of a twenty five percent (25%) increase or decrease of the original Contract quantity.

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

#### **4. ARTICLE VII.2.6 ALLOWABLE MARKUPS**

Added to [ARTICLE IX.2](#) of City's Design-Build General Conditions.

**VII.2.6** Maximum allowable markups for Change Order pricing, when said pricing is not determined through unit prices, are established as follows:

**a. Labor.**

Design-Builder shall be allowed the documented payroll rates for each hour laborers and foremen actually engaged in the Work. Design-Builder shall be allowed to receive an additional twenty five percent (25%) as compensation, based on the total wages paid said laborers and foremen. No charge shall be made by Design-Builder for organization or overhead expenses. For costs of premiums on public liability and workers compensation insurance(s), Social Security and unemployment insurance taxes, an amount equal to fifty five percent (55%) of the sum of the labor cost, excluding the twenty five percent (25%) documented payroll rate compensation allowed herein, shall be the established maximum allowable labor burden cost. No charge for superintendence will be made unless considered necessary and approved by City or a Change Order includes an extension of the Contract Time.

**b. Materials.**

Design-Builder shall be allowed to receive the actual cost, including freight charges, for materials used in performance of the Work, including an additional twenty five percent (25%) of the actual cost as compensation. When material invoices indicate an available discount, the actual cost shall be determined as the invoiced price less the available discount.

**c. Equipment.**

For Design-Builder-owned machinery, trucks, power tools or other equipment, necessary for use on Change Order work, the Rental Rate Blue

Book for Construction Equipment (hereafter referred to as “Blue Book”) rate, as modified by the following, will be used to establish Design-Builder’s allowable hourly rental rates. Equipment used shall be at the rates in effect for each section of the Blue Book at the time of use. The following formula shall be used to compute the hourly rates:

$$H = \frac{M \times R1 \times R2}{176} + OP$$

where:

H	=	Hourly Rate
M	=	Monthly Rate
R1	=	Rate Adjustment Factor
R2	=	Regional Adjustment Factor
OP	=	Operating Costs

If Design-Builder-owned machinery and/or equipment is not available and equipment is rented from an outside source, the hourly rate shall be established by dividing the actual invoice cost by the actual number of hours the equipment is involved in the Work. City reserves the right to limit the hourly rate to comparable Blue Book rates. When the invoice specifies that the rental rate does not include fuel, lubricants, repairs and servicing, the Blue Book hourly operating cost shall be allowed to be added for each hour the equipment operates. The allowable equipment hourly rates shall be paid for each hour that the equipment is involved in the Work and an additional maximum of fifteen percent (15%) may be added as compensation.

**d. Sub-Consultant and Subcontractor Markups.**

Design-Builder will be allowed administrative cost only when extra work, ordered by City, is performed by a sub-consultant or Subcontractor. The maximum allowable payment for administrative cost will not exceed five percent (5%) of the total sub-consultant/Subcontractor work. Off-duty peace officers and patrol cruisers shall be considered as Subcontractors, with regard to consideration of allowable Design-Builder markups.

**5. VII.3.5K FIELD WORK DIRECTIVE ALLOWABLE MARKUPS.**

Adds **ARTICLE VII.3.5K** to City’s Design-Build General Conditions.

**VII.3.5k** Maximum allowable markups for Field Work Directives shall follow the allowable markups established in **ARTICLE VII.2.6** herein.



**6. VIII.2.2A STANDBY EQUIPMENT COSTS.**

Added to **ARTICLE VIII.2.2** of City's Design-Build General Conditions.

**VIII.2.2A** Design-Builder shall be entitled to standby costs only when directed to standby in writing by City. Standby costs may include actual documented Project overhead costs of Design-Builder, consisting of administrative and supervisory expenses incurred at the Project Site. Standby equipment costs shall not be allowed during periods when the equipment would otherwise have been idle.

For Projects determined by City on a project-by-project basis, with Design-Builder working a six (6) day work week, with a Working Day measured from sunrise to sundown Monday through Saturday, no more than eight (8) hours of standby time shall be paid during a 24-hour day, no more than forty eight (48) hours shall be paid per week for standby time and no more than two hundred and eight (208) hours per month shall be paid of standby time. Standby time shall be computed at fifty percent (50%) of the rates found in the Blue Book and shall be calculated by dividing the monthly rate found in the Blue Book by 208, then multiplying that total by the regional adjustment factor and the rate adjustment factor. Operating costs shall not be charged by Design-Builder.

**7. X.11 ROAD CLOSURES AND DETOUR ROUTES.**

Adds **ARTICLE X.11** to City's Design-Build General Conditions.

**X.11** Design-Builder shall not begin construction of the Project or close any streets until adequate barricades and detour signs have been provided, erected and maintained in accordance with the detour route and details shown on the Project Plans. Design-Builder shall notify City forty eight (48) hours in advance of closing any street to through traffic. Local traffic shall be permitted the use of streets under construction whenever feasible.

**8. X.12 USE OF CITY STREETS.**

Adds **ARTICLE X.12** to City's Design-Build General Conditions.

**X.12** Design-Builder shall confine the movements of all steel-tracked equipment to the limits of the Project Site and any such equipment shall not be allowed use of City's streets unless being transported on pneumatic-tired vehicles. Any damage to City's streets caused by Design-Builder and/or Design-Builder's equipment, either outside the limits of the Project site or within the limits of the Project site but not within the limits of the current phase then being constructed, shall be repaired by Design-Builder at its own expense and as

prescribed by City's specifications and direction. If Design-Builder cannot or refuses to repair street damage caused by Design-Builder and/or Design-Builder's equipment, City may perform the repairs and all expenses incurred by City in performing the repairs shall be deducted for any money due or owed to Design-Builder.

**9. X.13 MAINTENANCE OF TRAFFIC.**

Adds **ARTICLE X.12** to City's Design-Build General Conditions.

**X.13** In accordance with the approved traffic control plan and as specified in the Contract, Design-Builder shall:

- a. keep existing roadways open to traffic or construct and maintain detours and temporary structures for safe public travel;
- b. maintain the Work in passable condition, including proper drainage, to accommodate traffic;
- c. provide and maintain temporary approaches and crossings of intersecting roadways in a safe and passable condition;
- d. construct and maintain necessary access to adjoining property as shown in the plans or as directed by City; and
- e. furnish, install and maintain traffic control devices in accordance with the Contract.

The cost of maintaining traffic will be subsidiary to the Project and will not directly be paid for by City, unless otherwise stated in the Plans and Specifications. City will notify Design-Builder if Design-Builder fails to meet the above traffic requirements. City may perform the work necessary for compliance, but any action by City shall not change the legal responsibilities of Design-Builder, as set forth in the Contract Documents. Any costs incurred by City for traffic maintenance shall be deducted from money due or owed to Design-Builder.

**10. X.14 ABATEMENT AND MITIGATION OF EXCESSIVE OR UNNECESSARY CONSTRUCTION NOISE.**

Adds **ARTICLE X.14** to City's Design Build General Conditions.

**X.14** Design-Builder shall ensure abatement and mitigation of excessive or unnecessary construction noise to the satisfaction of City and as prescribed by all applicable state and local laws.

**11. X.15 INCIDENTAL WORK, CONNECTIONS, AND PASSAGEWAYS.**

Adds **ARTICLE X.15** to City's Design-Build General Conditions.

- X.15** Design-Builder shall perform all incidental Work necessary to complete and comply with this Contract including, but not limited to the following:
- a.** Design-Builder shall make and provide all suitable reconnections with existing improvements (generally excluding new connections with or relocation of utility services, unless specifically provided for otherwise in the Contract Documents) as are necessarily incidental to the proper completion of the Project;
  - b.** Design-Builder shall provide passageways or leave open such thoroughfares in the Work Site as may be reasonably required by City; and
  - c.** Design-Builder shall protect and guard same at its own risk and continuously shall maintain the Work Site in a clean, safe and workmanlike manner.

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**END OF SPECIAL CONDITIONS**