

October 24, 2024
Item No. 9.6.
Wells CMAR Contract

Sponsor: Jennifer Cain, Director Capital Projects

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on a Construction Manager at Risk (CMAR) Contract with Garney Companies, Inc. for the Water Wells 10,11,12 and Collection Line project. The budget for this project is \$51,500,000.

Relationship to Strategic Goals:

Core Services and Infrastructure

Recommendation(s): Staff recommends approval.

Summary: This project involves the design and construction three new water wells and a collection line in the well field. Each well will have a pumping capacity of 3,300 gpm and will be operated using Motor Control Cabinet, Variable Frequency drive, and a generator for backup power. The project will also building internal access roads and power distribution. The project will also build approximately 12,000 linear feet of collection line between the three wells and the tie in point along Sandy Point Road. Coordination with BTU, Union Pacific and TXDOT is needed for power, access, and utility work. Land acquisition will be needed for easements.

The Construction Manager at Risk (CMAR) for pre-construction and construction phase services was solicited via Request for Qualifications (RFQ) on September 12, 2024. Four (4) responses were submitted to RFQ #24-084 and two (2) were invited to submit for the RFP #24-035. Both respondents to the RFP were interviewed. After evaluation and interviews, Garney Companies, Inc. was selected as the most qualified, best value for the city based on the published selection criteria.

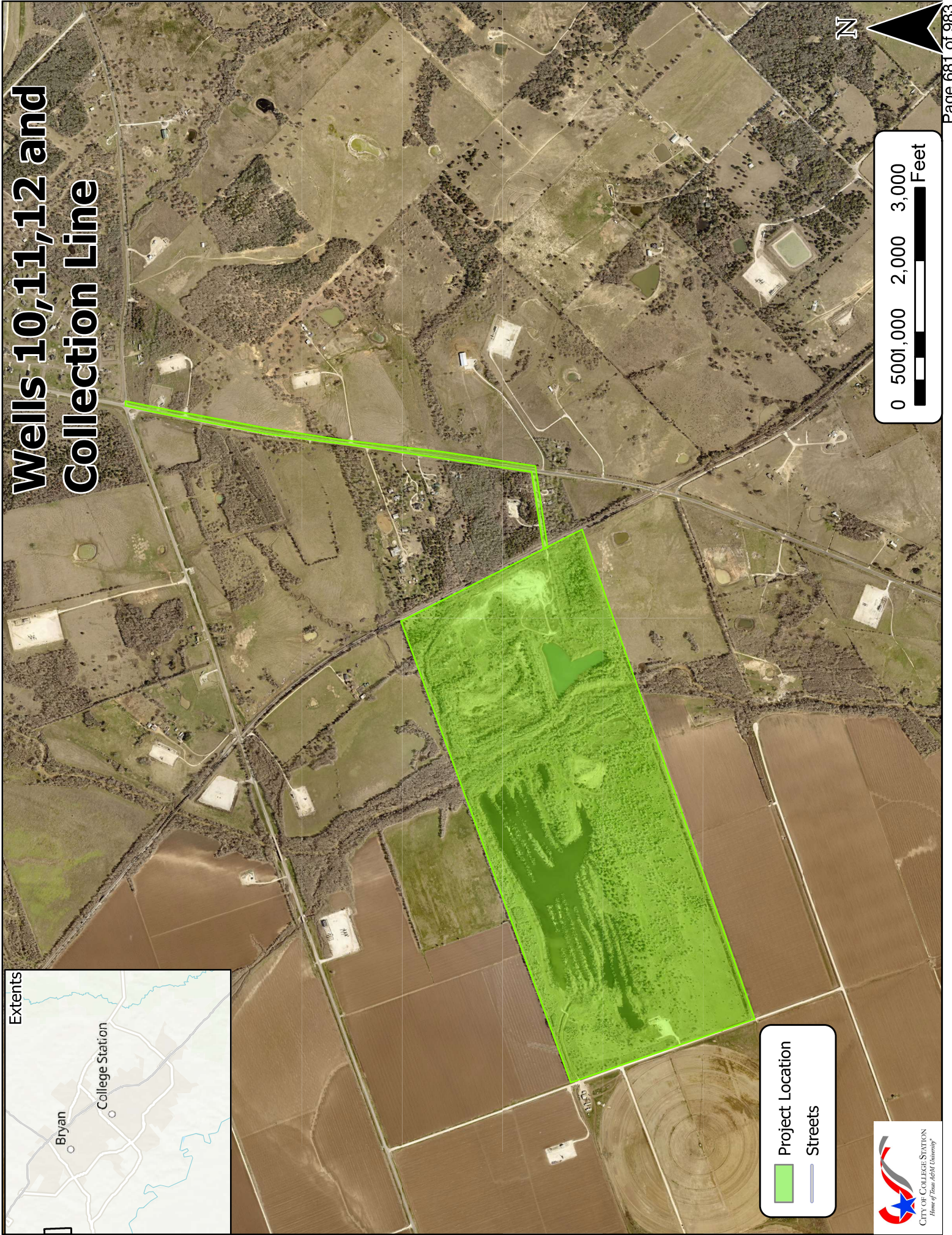
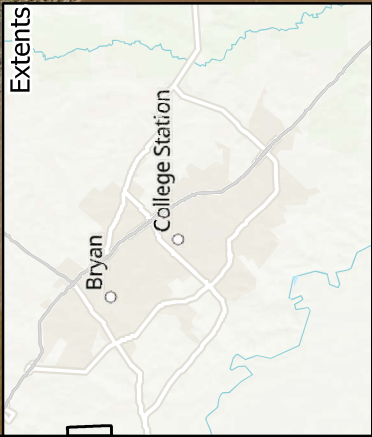
Garney Companies, Inc. will provide pre-construction services (construction reviews, materials coordination, cost estimating, etc.) during the design phase. Garney will also be providing construction phase services. Construction will be bid out through the CMAR and presented to City Council for approval as a Guaranteed Maximum Price (GMP) for each construction phase(s) of the project. The project is proposed to begin construction in early 2025 and will be complete before August 2028.

Budget & Financial Summary: A combined budget of \$69,300,000 is available in the Water Capital Improvement Projects Fund. A combined total of \$8,431,807 has been expended or committed to date, leaving a balance of \$60,868,193 for this CMAR Contract and any remaining project expenses.

Attachments:

1. Wells 10,11,12 and Collection Location Map
2. Wells CMAR Contract Vendor Signed

Wells 10,11,12 and Collection Line



Project Location

Streets

The legend consists of a green square next to the text 'Project Location' and a grey line next to the text 'Streets'.





CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: 25300059 PROJECT #: WA2400 BID/RFP/RFQ#: RFP 24-084

Project Name / Contract Description: CMAR Contract for New Water Wells 10, 11 and 12 Project

Name of Contractor: Garney Companies, Inc.

CONTRACT TOTAL VALUE: \$ _____ Grant Funded Yes No
If yes, what is the grant number: _____

Debarment Check Yes No N/A Davis Bacon Wages Used Yes No N/A
Section 3 Plan Incl. Yes No N/A Buy America Required Yes No N/A
Transparency Report Yes No N/A

NEW CONTRACT RENEWAL # N/A CHANGE ORDER # N/A OTHER N/A

BUDGETARY AND FINANCIAL INFORMATION (Include number of bids solicited, number of bids received, funding source, budget vs. actual cost, summary tabulation)
Four (4) proposals were received. The budget for this project is \$51,500,000.00.

Account code WSWOC

(If required)*
CRC Approval Date*: _____ Council Approval Date*: 10/24/2024 Agenda Item No*: TBD

--Section to be completed by Risk, Purchasing or City Secretary's Office Only--

Insurance Certificates: DDV Performance Bond: N/A Payment Bond: N/A Info Tech: N/A

SIGNATURES RECOMMENDING APPROVAL

DEPARTMENT DIRECTOR/ADMINISTERING CONTRACT _____ DATE _____

ASST CITY MGR – CFO _____ DATE _____

LEGAL DEPARTMENT _____ DATE _____

APPROVED & EXECUTED

CITY MANAGER _____ DATE _____

N/A

MAYOR (if applicable) _____ DATE _____

N/A

CITY SECRETARY (if applicable) _____ DATE _____

**CITY OF COLLEGE STATION
STANDARD FORM OF AGREEMENT
BETWEEN CITY AND CONSTRUCTION MANAGER AT RISK**

This Agreement is entered into by and between the **City of College Station**, a Texas home-rule municipal corporation (the “City”) and Garney Companies, Inc., a Texas Corporation (the “Contractor”) for the delivery of Construction Manager at Risk preconstruction and construction services, and installation of the following City Project: New Water Wells 10, 11 and 12, as more particularly described in Paragraph 2.17 of this Agreement.

**ARTICLE I.
GENERAL CONDITIONS**

1. GENERAL PROVISIONS

1.01 Relationship of the Parties. The Contractor accepts the relationship of trust and confidence established with the City by this Agreement, and covenants with the City to furnish the Contractor’s reasonable skill and judgment and to cooperate with the Engineer in furthering the interests of the City for the Project. The Contractor shall furnish construction administration and management services and use the Contractor’s best efforts to perform the Project in an expeditious and economical manner consistent with the interests of the City. The City shall endeavor to promote harmony and cooperation among the City, Engineer, Contractor and other persons or entities employed by the City for the Project.

1.02 Structure of the Agreement. This Agreement addresses Contractor’s preconstruction and construction phase services. Sections 1 through 22 of this Article I address primarily construction phase responsibilities. Section 23 of this Article I addresses Contractor’s general responsibilities including preconstruction phase consulting and advisory services.

2. DEFINITIONS

2.01 Unless specifically defined, words used in this Agreement shall be interpreted according to their common usage or meaning to result in the most reasonable application. Unless otherwise designated, the following specific definitions (and others specifically defined in other paragraphs of this Agreement) shall apply whether a term or phrase appears in capital letters or in bolded, italicized, or underlined print.

2.02 Addenda. Addenda are written or graphic instruments issued prior to or at the execution of the Contract, which modify or interpret the proposal documents, including Drawings and Specifications, by additions, deletion, clarification, or corrections. Addenda will become part of the Agreement Documents when the Agreement is executed.

2.03 Approved, Approved Equal and Approved Equivalent, or Equal relate to the substitution of materials, equipment or procedure approved in writing by the Engineer prior to receipt of proposals. The substitution procedure process to be followed prior to receipt of competitive sealed proposals is described in the instruction to proposers.

2.04 Calendar Day or Day. A “calendar day” or “day” is any day of the week or month, no

days being excepted, and further, unless specifically designated as a “working day,” a day described in this Agreement is a calendar day.

2.05 City or Owner. Whenever the word “City” is used, it shall mean and be understood as referring to the City of College Station, Texas, acting by and through its City Council or Representative. The terms “Owner” and “City” are synonymous as used in this Agreement.

2.06 City’s Representative. Whenever the words “City’s Representative” or “Representative” are used, it shall mean and be understood as referring to the City Manager or their delegate, who shall act as the City’s agent. The City’s Representative may inspect and issue instructions but shall not directly supervise the Contractor. The City’s inspector has authority to reject the Work for failure to comply with the Agreement Documents and/or applicable laws.

2.07 Agreement Documents. The term “Agreement Documents” shall mean those documents listed in Paragraph 3. The Agreement Documents form the Agreement for Construction. The Agreement represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Agreement may be amended or modified only by a written Modification. The Agreement Documents shall not be construed to create a contractual relationship of any kind (1) between the Engineer and Contractor, (2) between the City and a Subcontractor or Sub-subcontractor, (3) between the City and Engineer or (4) between any persons or entities other than the City and Contractor. The Engineer shall be entitled, however, to performance and enforcement of obligations of the Contractor under the Agreement intended to facilitate performance of the Engineer’s duties.

2.08 Contractor. Whenever the word “Contractor” is used, it shall mean the person(s), partnership, or corporation or other business entity executing this Agreement with the City and that has agreed to perform the work described in this Agreement and the Agreement Documents. The word Contractor has the same meaning as construction manager at risk as described in Section 2269.251 of the Texas Government Code.

2.09 Agreement Time. The “Agreement Time” is the period of time which is established in the Agreement Documents for Substantial Completion of the Work. This period of time is not subject to adjustment or extension without the written permission of the City.

2.10 Drawings. The Drawings are the graphic and pictorial portions of the Agreement Documents showing the design, location, and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

2.11 Extra Work. The term “Extra Work” shall mean and include work that is **not** covered or contemplated by the Agreement Documents but that may be required by the City’s Representative and approved by the City in writing *before* the work being done by the Contractor.

2.12 Final Completion. The term “Final Completion” shall mean that all the work has been completed, all final punch list items have been inspected and satisfactorily completed, all payments to materialmen and subcontractors have been made, all documentation and warranties have been submitted, and all closeout documents have been executed and approved by the City.

2.13 Interpretation of Phrases. Whenever the words “directed”, “permitted”, “designated”, “required”, “considered necessary”, “prescribed”, or words of like import are used, it is understood that the direction, requirement, permission, order, designation, or prescription of the City’s Representative is intended. Similarly, the words “approved”, “acceptable”, “satisfactory”, or words of like import shall mean approved by, accepted by, or satisfactory to the City’s Representative. In the interest of brevity, the Agreement Documents may omit modifying words such as “all” or “any” and articles such as “the” and “an”, but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

2.14 Nonconforming work. The term “nonconforming work” shall mean work or any part thereof that is rejected by the City’s Representative as not conforming with the Agreement Documents.

2.15 Notice to Proceed. A notice that may be given by the City to the Contractor that directs the Contractor to start the Work.

2.16 Parties. The “parties” are the City and the Contractor.

2.17 Project. The term “Project” shall mean and include: (a) the City’s New Water Wells 10, 11, and 12 project; and (b) all that is required to obtain a final product that is acceptable to the City for said project. The term “Work” shall have like meaning. The Project is the total construction of which the Work performed under the Agreement and Agreement Documents may be the whole or a part and which may include construction by the City or by separate contractors. All provisions of this Agreement pertain and relate to the successful completion of the Project herein described and no other development or construction project (past or present) of the City or Contractor.

2.18 Punch List. A comprehensive list prepared by the Contractor before Substantial Completion to establish all items to be completed or corrected; this list may be supplemented by the Engineer or the City.

2.19 Specifications. The Specifications are that portion of the Agreement Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services. Organization of the Specifications into divisions, sections and articles, and arrangement of drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. Specifications are attached hereto as **Exhibit D** and are incorporated herein for all purposes.

2.20 Subcontractor. The term “subcontractor” shall mean and include only those hired by and having a direct contact with Contractor for performance of work on the Project. The City shall have no responsibility to any subcontractor employed by a Contractor for performance of work on the Project, and all subcontractors shall look exclusively to the Contractor for any payments due.

2.21 Substantial Completion. The terms “Substantial Completion” and “Substantially Completed” mean that in the opinion of the City’s Representative the Project (communicated through the procedure described in this section 2.21), including all systems and improvements, is in a condition to serve its intended purpose but still may require minor miscellaneous work and

adjustment. Substantial Completion notice shall be given in writing by the City Manager or the City's Director of Capital Projects stating the existence of the requirements of this section 2.21 and the date Substantial Completion was accomplished. Final payment of the Agreement Price, including retainage, however, shall be withheld until Final Completion and acceptance of the work by the City. Acceptance by the City shall not impair or waive any warranty obligation of Contractor.

2.22 Work. The term "Work" means the construction and services required by the Agreement Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project. The Work includes all labor, parts, supplies, skill, supervision, transportation, services, and other facilities and things necessary, proper or incidental to the carrying out and completion of the terms of the Agreement Documents and all other items of cost or value needed to produce, construct and fully complete the Work identified by the Agreement Documents.

2.23 Working Day. A "working day" means any day not including Saturdays, Sundays, or legal holidays recognized by the City, and further, unless designated as a "working day," a day described in this Agreement is a calendar day.

2.24 Other Specifically Defined Terms. The parties agree as follows:

(a) "**Agreement Sum,**" as described in Paragraph 15.01, is the total amount payable by the City to the Contractor for performance of the Work under the Agreement Documents, including authorized adjustments.

(b) "**Application for Payment,**" as described in Paragraph 15.03, means an itemized application for payment made by the Contractor and submitted to the Engineer for operations completed in accordance with the Schedule of Values and an updated project schedule for the Work.

(c) "**Change Order,**" as described in Paragraphs 13.02, means a written instrument prepared by the City and reviewed by the Engineer, which, when finalized, is signed by the City, Contractor and Engineer, stating their agreement upon all of the following: (i) a Change in the Work; (ii) the amount of the adjustment, if any, in the Agreement Sum; and (iii) the extent of the adjustment, if any, in the Agreement Time.

(d) "**Change in Work,**" as described in Paragraphs 13.01-13.03, means an authorized change in the Work made the basis of a Change Order, Construction Change Directive, or order for a minor change in the Work.

(f) "**Construction Change Directive,**" as described in Paragraph 13.03, means a written order prepared by the Engineer and signed by the City and Engineer, directing a Change in the Work before an agreement on adjustment, if any, in the Agreement Sum or Agreement Time, or both.

(g) “**Guaranteed Maximum Price,**” as described in Paragraphs 23.03 and 26.02, means the sum of the estimated Cost of the Work and the Contractor’s Fee.

(h) “**Milestone Dates,**” as described in Paragraph 5.11, mean the dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Agreement Documents.

(i) “**Product Data,**” as described in Paragraph 5.13, means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

(j) “**Samples,**” as described in Paragraph 5.13, mean physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

(k) “**Schedule of Values,**” as described in Paragraph 15.02, means a written submission by the Contractor to the Engineer for approval (to be submitted by the Contractor before the first Application for Payment), which submitted schedule fairly allocates the various portions of the Work, and is prepared in such form and supported by such data to substantiate its accuracy as reasonably required by the Engineer.

(l) “**Shop Drawings,**” as described by Paragraph 5.13, mean drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

2.25 General Interpretation. Unless otherwise stated in the Agreement Documents, words which have well-known technical, or construction industry meanings are used in the Agreement Documents in accordance with such recognized meanings. Unless otherwise designated in this Agreement, the past, present, or future tense shall each include the other, the masculine or feminine gender shall each include the other, and the singular and plural number shall each include the other where necessary for a correct meaning. Unless otherwise designated, the numbered paragraph and subparagraph provisions of this Agreement will be referred to as numbered “paragraphs” or “subparagraphs,” however, it shall be understood that should “section” and “subsection” be used as a descriptive term to identify a specific provision of this Agreement, those terms are synonymous with “paragraph” and “subparagraph” in this Agreement.

3. THE AGREEMENT DOCUMENTS

3.01 The Agreement Documents and their priority shall be as follows:

- (a) This signed Agreement.
- (b) Addendum to this Agreement.
- (c) General Conditions.

- (d) Special Conditions.
- (e) Technical specifications.
- (f) Drawings.
- (g) Instructions to Bidders and any other notices to Bidders or Contractor.
- (h) Performance bond, Payment bonds, Bid bonds and Special bonds.
- (i) Contractor's Proposal.

3.02 Distribution of Agreement Documents. The Contractor shall distribute copies of the plans and specifications to suppliers and subcontractors as necessary. The Contractor shall keep one (1) copy of the plans and specifications accessible at the work site with the latest revisions noted thereon.

3.03 Prohibition of Re-Use. All drawings, specifications, and copies thereof furnished by the City shall not be re-used on other work, and with the exception of one (1) copy of the signed Agreement Documents, all documents, including sets of the plans and specifications and "as built" drawings, are to be returned to the City on request at the completion of the work. All Agreement Documents, models, mockups, or other representations are the property of the City. In the event of inconsistencies within or between parts of the Agreement Documents, the Contractor shall (a) provide the better quality or greater quantity of Work, or (b) comply with the more stringent requirement, either or both in accordance with the City's interpretation.

4. OWNER OR CITY

4.01 Owner or City. The Owner is the person or entity identified as such in the Agreement. The term "Owner" means the City of College Station acting by and through its City Council or the City's Representative. The terms "Owner" and "City" are synonymous as used in this Agreement.

4.02 Presence of City or Engineer. The presence of the City or Engineer at the Work site does not imply acceptance or approval of Work.

4.03 Information and Services Required of the City. Information or services reasonably necessary for the Work and under the City's control shall be furnished by the City with reasonable promptness when requested in writing by the Contractor. In any instance where information or services from the City or Engineer is required, Contractor shall promptly notify the Engineer in writing, with a copy to the City, of the particular need. **Absent such notification, any claim based upon lack of such information or services shall be waived.**

4.04 City's Right to Stop the Work. If the Contractor fails to correct Work which is not in accordance with the requirements of the Agreement Documents as required by Paragraph 20.02 or fails to carry out Work in accordance with the Agreement Documents, the City may: (a) issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated, however, the right of the City to stop the Work shall not give rise to a duty on the part of the City to exercise this right for the benefit of the Contractor or any other person or entity; (b) terminate this Agreement; and/or (c) seek authorized remedies for a default of this Agreement.

4.05 City's Right to Carry out the Work.

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

(b) After the Work is complete, the City may make emergency repairs to the Work, if necessary, to prevent further damage, or if the Contractor does not promptly respond to a notice of condition requiring repairs. Contractor shall be responsible to City for this cost if the repairs are due to the Contractor's defective Work. If payments then or thereafter due the Contractor are not sufficient to cover such costs, the Contractor shall pay the difference to the City.

4.06 City's Right to Use or Occupy.

(a) The City shall have the right to occupy or use without prejudice to the right of either party, any completed or largely completed portions of the Project, notwithstanding the time for completing the entire Work or such portions may not have expired. Such occupancy and use shall not constitute Substantial Completion or Final Completion of the Work and shall not constitute acceptance of any Work not in accordance with the Agreement Documents.

(b) If such prior use delays the completion of the Project, the Contractor shall be entitled to extension of time, which claim shall be in writing with supporting data attached.

(c) Insurance and Bonds regarding property insurance requirements are required in the event of such occupancy pursuant to Section 19.

5. CONTRACTOR

5.01 Contractor. The Contractor is the person or entity identified as such in the Agreement. The term "Contractor" means the Contractor or the Contractor's authorized representative.

5.02 Contractor to Perform the Work. The Contractor shall perform the Work in accordance with the requirements of the Agreement Documents and Sections 2269.255 through 2269.258 of the Texas Government Code regarding the conduct and activities of a Construction Manager at Risk.

5.03 Engineer Activities and Tests. The Contractor shall not be relieved of obligations to perform the Work in accordance with the Agreement Documents either by activities or duties of the Engineer in the Engineer's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

5.04 Review of Agreement Documents and Field Conditions by Contractor.

(a) The Contractor shall carefully study and compare the Agreement, Conditions of the Contract, Drawings, Specifications, Addenda, and Modifications and shall at once report to the Engineer any error, inconsistency, or omission the Contractor discovers. These obligations are for the purpose of facilitating construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Agreement Documents; however, any errors, inconsistencies or omissions discovered by the Contractor shall be reported promptly to the Engineer as a request for information in such form as the Engineer may require. If the Contractor performs, authorizes, or directs any construction activity knowing it involves a recognized error, inconsistency or omission in the Agreement Documents without such notice to the Engineer, the Contractor shall assume responsibility for such activity and shall pay the total amount of the attributable costs for correction. Contractor shall not be liable to City or Engineer for any damage resulting from such error, inconsistency or omission which Contractor should not have discovered, or which Contractor did discover and at once so reported. Contractor shall not authorize or perform Work without approved Drawings and Specifications.

(b) If the Contractor fails to perform the obligations of Paragraph 5.04(a), the Contractor shall pay such costs and damages to the City as would have been avoided if the Contractor had performed such obligations.

(c) The Contractor shall not be entitled to additional compensation for the “rework portion” of any additional work caused by its failure to carefully study and compare the Agreement Documents prior to execution of the Work.

(d) The Contractor shall make a reasonable attempt to interpret the Agreement Documents before asking the Engineer for assistance in interpretation. The Contractor shall not ask the Engineer for observance of work prior to the Contractor’s field superintendent’s personal inspection of the Work and their determination that the Work complies with the Agreement Documents. The Contractor shall arrange meetings prior to commencement of the Work of all major Subcontractors to allow the Subcontractor(s) to ask for any interpretation it may require.

(e) If, in the opinion of the Engineer, the Contractor does not make a reasonable effort to comply with the above requirements of the Agreement Documents and this causes the Engineer or its Consultants to expend an unreasonable amount of time in the discharge of the duties imposed on the Engineer by the Agreement Documents, then the Contractor shall bear the cost of compensation for the Engineer’s additional services made necessary by such failure. The Engineer will give the Contractor prior notice of intent to bill for additional services related to above requirements before additional services are performed.

(f) If the Contractor has knowledge that any of the products or systems specified will perform in a manner that will limit the Contractor’s ability to satisfactorily perform with Work or to honor Contractor’s Warranty, Contractor shall promptly notify the Engineer, in writing, providing substantiation for Contractor’s position. Any necessary changes, including substitution of materials, shall be accomplished by appropriate Modification.

5.05 Supervision And Construction Procedures.

(a) The Contractor shall perform, supervise, and direct the Work for the Project, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Agreement Documents give other specific instructions concerning these matters. If the Agreement Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences, or procedures may not be safe, the Contractor shall give timely written notice to the City and Engineer, and the Contractor shall not proceed with that portion of the Work without further written instructions from the Engineer.

(b) The Contractor shall be responsible to the City for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors for the Project. It is understood and agreed that the relationship of the Contractor to City shall be that of an independent contractor. Nothing contained herein or inferable here from shall be deemed or construed to (1) make Contractor the agent, servant or employee of the City, or (2) to create any partnership, joint venture, or other association between City and Contractor. Any direction or instruction by City or any of its authorized representatives in respect of the Work shall relate to the results the City desires to obtain from the Work and shall in no way affect Contractor's independent contractor status described herein.

(c) The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

(d) Contractor shall execute the Work in a good and workmanlike manner, continuously and diligently in accordance with generally accepted industry standards of construction management and practice for construction of projects similar to the Project, using qualified, careful and efficient workers and in conformity with the provisions of this Agreement and the other Agreement Documents.

5.06 Labor And Materials.

(a) Unless otherwise provided in the Agreement Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities, goods, fixtures, and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

(b) The Contractor may make substitutions only with the consent of the City, after evaluation by the Engineer and in accordance with a Change Order.

(c) The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

5.07 Warranty.

(a) The Contractor warrants to the City and Engineer that facilities, materials, goods, fixtures, and equipment furnished under the Agreement will be of good quality and new unless otherwise required or permitted by the Agreement Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Agreement Documents and recognized industry standards. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance (unless such maintenance is Contractor's responsibility), improper operation, or normal wear and tear. If required by the Engineer, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials, goods, and equipment. The warranties set out in this Paragraph are not exclusive of any other warranties or guarantees set out in other places in the Agreement Documents or implied under applicable law.

(b) Before final payment, Contractor shall furnish any manufacturer warranties required by the Agreement Documents.

(c) When deemed necessary by the City, and prior to installation of any items specifically made subject to a performance standard or regulatory agency standard under any provision of the Agreement Documents, Contractor shall furnish proof of conformance to the Engineer. Proof of Conformance shall be in the form of (1) an affidavit from the manufacturer certifying that the item is in conformance with the applicable standard, (2) an affidavit from a testing laboratory certifying that the product has been tested within the past year and is in conformance with the appreciated standard, or (3) such further reasonable proof as required by the Engineer.

(d) The warranties of Contractor provided in Subparagraph 5.7(a) shall in no way limit or abridge the warranties of the suppliers of equipment and system which are to comprise a portion of the Work and all of such warranties shall be in form and substance as required by the Agreement Documents. Contractor shall take no action or fail to act in any way which results in the termination or expiration of such third-party warranties or which otherwise results in prejudice to the rights of City under such warranties. Contractor agrees to provide all notices required for the effectiveness of such warranties and shall include provisions in the contracts with the providers and manufacturers of such systems and equipment whereby the City shall have a direct right, but not a duty, of enforcement of such warranty obligations.

(e) In the event of failure of materials, goods, fixtures, equipment, products, services, or workmanship, either during construction or the warranty period (which shall be two (2) years from the Date of Final Completion, except where a longer period is specified), the

Contractor shall take appropriate measures to assure correction or replacement of the defective items, whether notified by the City or Engineer.

(f) Approximately eleven (11) months after Substantial Completion, the Contractor shall accompany the City and Engineer on a complete inspection of the Project and be responsible for correcting any observed or reported deficiencies within thirty (30) calendar days.

5.08 Permits, Fees and Notices.

(a) Unless otherwise provided in the Agreement Documents, the Contractor shall secure and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work which are secured after execution of the Agreement, and which are legally required when bids are received or negotiations concluded. All connection charges, assessments or inspection fees as may be imposed by any city or utility company are included in the Agreement Sum and shall be the Contractor's responsibility.

(b) The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders and all other requirements of public authorities applicable to performance of the Work. The Contractor shall procure and obtain all bonds (including without limitation performance and payment bonds) required of the City or the Contractor by the Agreement Documents. In connection with such bonds, the Contractor shall prepare all applications, supply all necessary back-up material, and furnish the surety with any required information. The Contractor shall also obtain and pay all charges for all approvals for street closing and other similar matters as may be necessary or appropriate from time to time for the performance of the Work.

(c) It is not the Contractor's responsibility to ascertain that the Agreement Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes or should have observed that portions of the Agreement Documents are contrary therewith, the Contractor shall promptly notify the Engineer and City in writing, and necessary changes shall be accomplished by appropriate Modification.

(d) If the Contractor performs Work which it knows or should have known to be contrary to applicable laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Engineer and City, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs.

(e) The Contractor shall be responsible for timely notification to and coordination with all utility companies regarding the provision of or revising of services to the Project. The Contractor shall inform the Engineer at once when the City's participation is required. Connections for temporary and permanent utilities required for the Work are the responsibility of the Contractor. Payment for temporary and/or permanent utility services through Final Completion of the Work shall be the responsibility of the Contractor.

5.09 Allowances.

(a) The Contractor shall include in the Agreement Sum all allowances stated in the Agreement Documents. These stated allowances represent the cost estimate of the materials, goods, fixtures, and equipment delivered and unloaded at the Project site. The Contractor's installation, labor, overhead, profit, and other expenses contemplated for the allowance for material, goods, fixtures, and equipment shall be included in an allowance only when called for in the Agreement Documents. The Contractor shall purchase the allowance for materials, goods, fixtures, and equipment as directed by the Engineer based on the lowest responsive bids of at least three (3) competitive bids. If the actual cost of the materials, goods, fixtures, and equipment delivered and unloaded at the Project site is more or less than all the allowance estimates, upon City approval, the Agreement Sum will be adjusted accordingly by Change Order.

(b) The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Paragraph 5.09(a), and (2) changes in Contractor's costs, subject to the limitations set forth at Paragraph 13.1(a)(1).

(c) Materials, goods, fixtures, and equipment under an allowance shall be selected with reasonable promptness by the City to avoid delays in the Work (provided that if a decision is needed by a certain date to avoid delay, Contractor shall notify Engineer in writing sufficiently in advance of the needed date to allow reasonable time for selections).

5.10 Superintendent. The Contractor shall employ a competent superintendent (approved by the City) and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing by e-mail or by communication with a secure electronic signature. Other communications shall be similarly confirmed on written request in each case. Notwithstanding the foregoing, Contractor shall keep on the job the superintendent approved by City who shall not be transferred from the Project without City's consent (which shall not be unreasonably withheld). However, such obligation to furnish the superintendent shall not be construed (1) to preclude the promotion within Contractor's organization of any person assigned to the Project or (2) to give rise to any liability of Contractor if any person assigned to the Project leaves Contractor's employ. If City reasonably determines that any employee of Contractor or of its Subcontractors is careless or not qualified to perform the Work assigned to him, and City and Contractor cannot, after a diligent and good faith attempt, agree what action should be taken with respect to the removal or reassignment of such employee, the Contractor shall promptly remove such employee from the Project and replace such employee. At all times while procurement activities are being performed in Contractor's office, Contractor shall appoint an individual (approved by City, acting reasonably) authorized to act on behalf of Contractor and with whom City may consult at all reasonable times, and who shall be authorized to receive the instructions, requests, and decisions of City. All of Contractor's and Subcontractor's personnel shall comply with all applicable health, safety, risk management, and loss prevention rules and policies of applicable industry and regulatory standards. Contractor shall, at its own expense, remove from the Project any person who fails to comply with such rules and instructions in any material respect.

5.11 Contractor's Construction Schedules.

(a) The Contractor shall, promptly after executing the Contract, develop a detailed construction schedule based on the schedule developed during the pre-construction phase that served as the basis for the guaranteed maximum price proposal reasonably defining a plan for completing the Work within the required time. The format and detail of the schedule shall be in keeping with the size and complexity of the Project, and the schedule and all updates shall be subject to approval of the City and Engineer. The schedule and any updates shall not exceed time limits current under the Agreement Documents including granted time extensions and shall be revised at appropriate intervals as reasonably required by the City and Engineer, shall be related to the entire Project (if more than one Agreement is involved in the Project), and shall provide for expeditious and practicable execution of the Work. All updated schedules shall address the subject of how the Contractor intends to overcome any delays previously encountered. The Contractor shall submit to the Engineer with each monthly Application for Payment, a copy of the updated construction schedule as a prerequisite for approval of Applications for Payment.

(b) The Contractor shall prepare and keep current, for the Engineer's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Engineer reasonable time to review submittals.

(c) The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the City and Engineer.

(d) The process of approving Contractor's schedules and updates to Contractor's schedules shall not constitute a warranty by the City that any non-Contractor milestones or activities will occur as set out in the Contractor's schedules. Approval of a Contractor's schedule does not constitute a commitment by the City to furnish any City-furnished information or material any earlier than City would otherwise be obligated to furnish that information or material under the Agreement Documents. Failure of the Work to proceed in the sequence scheduled by Contractor shall not alone serve as the basis for a Claim for additional compensation or time. In the event there is interference with the Work, which is beyond its control, Contractor shall attempt to reschedule the Work in a manner that will hold the additional time and costs to a minimum. The construction schedules shall be in a detailed format satisfactory to the City and the Engineer and shall also: (1) provide a graphic representation of all activities and events that will occur during performance of Work; (2) identify each phase of construction and occupancy; and (3) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Agreement Documents (hereinafter referred to as Milestone Dates). If not accepted, the construction schedules shall be promptly revised by the Contractor in accordance with the recommendations of the City and Engineer and re-submitted for acceptance. The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedules and shall promptly advise the City of any delays or potential delays. The accepted construction schedules shall be updated to reflect actual conditions as set forth in Paragraph 5.11(a), if requested, by either the City or Engineer. In the event any schedule indicates any delays, the Contractor shall propose an

affirmative plan to correct the delay. In no event shall any schedule constitute an adjustment in the Agreement Time, any Milestone Date, or the Agreement Sum unless any such adjustment is agreed to by the City and authorized pursuant to Change Order.

5.12 Documents And Samples at The Site. The Contractor shall maintain at the site for the City one record copy of the Drawings, Specifications, Addenda, Change Orders, and other Modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Engineer and shall be delivered to the Engineer for submittal to the City upon completion of the Work.

5.13 Shop Drawings, Product Data and Samples.

(a) Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

(b) Product Data means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

(c) Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

(d) Shop Drawings, Product Data, Samples, and similar submittals are not Agreement Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Agreement Documents the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Agreement Documents. Review by the Engineer is subject to the limitations of Paragraph 9.02(g). Informational submittals upon which the Engineer is not expected to take responsive action may be so identified in the Agreement Documents. Submittals which are not required by the Agreement Documents may be returned by the Engineer without action.

(e) The Contractor shall review for compliance with the Agreement Documents, approve and submit to the Engineer Shop Drawings, Product Data, Samples, and similar submittals required by the Agreement Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the City or of separate contractors. Submittals which are not marked as reviewed for compliance with the Agreement Documents and approved by the Contractor may be returned by the Engineer without action.

(f) By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Agreement Documents. If, in the opinion of the

Engineer, the shop drawings indicate a lack of study and the review by the Contractor is incomplete or indicate an inadequate understanding of the Work covered by the shop drawings, prior to submittal to the Engineer, the shop drawings will be returned, unchecked, to the Contractor for correction of any/all of these deficiencies for subsequent resubmittal.

(g) The Contractor shall perform no portion of the Work for which the Agreement Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Engineer.

(h) The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Agreement Documents by the Engineer's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Engineer in writing of such deviation at the time of submittal and (1) the Engineer has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Engineer's approval thereof.

(i) The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Engineer on previous submittals. In the absence of such written notice the Engineer's approval of a resubmission shall not apply to such revisions.

(j) The Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering unless such services are specifically required by the Agreement Documents for a portion of the Work or unless the Contractor needs to provide such services to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional (including a licensed architect or engineer) related to systems, materials, goods, fixtures, or equipment are specifically required of the Contractor by the Agreement Documents, the City and the Engineer will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by such a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Engineer. The City and the Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided the City and Engineer have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Paragraph 5.13(j), the Engineer will review, approve, or take other appropriate action on submittals only for the limited purpose of checking for conformance with

information given and the design concept expressed in the Agreement Documents. The Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Agreement Documents.

(k) Adequate copies of Shop Drawings for civil, process/mechanical, architectural, structural, mechanical, and electrical work shall be submitted to the Engineer for review.

(l) The Contractor shall submit complete Drawings, Data and Samples to the Engineer at least thirty (30) days prior to the date the Contractor needs the reviewed submittals returned. The Contractor shall be prepared to submit color samples on any key items within sixty (60) days of the execution of the Contract. Once samples of all key items are received, the Engineer will finalize color selections.

(m) The Contractor shall submit the number of hard/physical copies of Samples which the Contractor and its Subcontractor(s) need for their use PLUS two (2) additional sets for the Engineer, one (1) additional set for the City. Product data submittals shall be made digitally to Subcontractor(s), the Engineer, and the City. Where Shop Drawings are involved, the Contractor shall submit digital versions to Subcontractor(s), the Engineer, and City. After final review and correction of the submittal, Contractor shall send a corrected digital set to the Subcontractor(s), Engineer and City.

(n) The Contractor shall provide composite drawings within three (3) months of Agreement signing showing how all piping, ductwork, lights, conduit, equipment, etc. will fit into the ceiling space allotted, including clearances required by the manufacturer, by code, or in keeping with good construction industry standards and practice. Space for all trade elements must be considered on the same drawing. Drawings shall be at ¼ inch per foot minimum scale and shall include invert elevations and sections required to meet the intended purpose.

5.14 Use of Project Site.

(a) The Contractor shall confine operations at the Project site to areas permitted by law, ordinances, permits and the Agreement Documents and shall not unreasonably encumber the site with materials or equipment.

(b) The Contractor's access to the Project site, parking, field office location, material and equipment storage, and confinement of said areas shall be coordinated with, and approved by the City before the Contractor's mobilization on the site. Once agreed upon, the Contractor shall not adjust or increase any of the above areas without prior consent by the City.

5.15 Cutting And Patching.

(a) The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

(b) The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the City or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the City or a separate contractor except with written consent of the City and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the City or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

5.16 Cleaning Up.

(a) The Contractor shall keep the premises and surrounding area mowed and free from accumulation of weeds and waste materials or rubbish caused by operations under the Agreement. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials. The Contractor shall be responsible for protection of the Work and shall repair or replace damaged work at Substantial Completion of the Work. The Contractor shall remove all temporary protections at the completion of the Work.

(b) If the Contractor fails to clean up as provided in the Agreement Documents, the City may do so, and the cost thereof shall be charged to the Contractor.

(c) Prior to the Engineer's inspection for Substantial Completion, the Contractor shall: clean exterior surfaces exposed to view; remove temporary labels, stains, and foreign substances; polish transparent and glossy surfaces; clean goods, equipment, and fixtures to a sanitary condition; clean roofs; clean the Project site; sweep paved areas and rake clean other surfaces; and remove trash and surplus materials from the Project site.

5.17 Access To Work. The Contractor shall provide the City and Engineer access to the Work in preparation and progress wherever located.

5.18 Royalties, Patents and Copyrights. The Contractor shall pay all royalties and license fees required for the Project. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the City and Engineer harmless from loss on account thereof (as described in Section 6), but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Agreement Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the City or Engineer. However, if the Contractor has reason to believe that the required design, process, or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Engineer.

6. INDEMNIFICATION AND RELEASE

6.01 Contractor Not Providing Architectural or Engineering Services. When the Contractor is not providing architectural or engineering services for the Project (such as

when such services are not required by the Agreement Documents for a portion of the Work, or when the Contractor does not need to provide such services to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures), then the following indemnity and release provisions apply:

CONTRACTOR SHALL PROTECT, DEFEND, HOLD HARMLESS AND INDEMNIFY THE CITY FROM ANY AND ALL CLAIMS, DEMANDS, EXPENSES, LIABILITY OR CAUSES OF ACTION FOR INJURY TO ANY PERSON, INCLUDING DEATH, AND FOR DAMAGE TO ANY PROPERTY, TANGIBLE OR INTANGIBLE, OR FOR ANY BREACH OF AGREEMENT ARISING OUT OF OR IN ANY MANNER CONNECTED WITH THE WORK DONE BY ANY PERSON UNDER THIS AGREEMENT. IT IS THE INTENT OF THE PARTIES THAT THIS PROVISION SHALL EXTEND TO, AND INCLUDE, ANY AND ALL CLAIMS, CAUSES OF ACTION OR LIABILITY CAUSED BY THE CONCURRENT, JOINT AND/OR CONTRIBUTORY NEGLIGENCE OF THE CITY, AN ALLEGED BREACH OF AN EXPRESS OR IMPLIED WARRANTY BY THE CITY OR WHICH ARISES OUT OF ANY THEORY OF STRICT OR PRODUCTS LIABILITY. THERE SHALL BE NO ADDITIONAL INDEMNIFICATION OTHER THAN AS SET FORTH IN THIS SECTION. ALL OTHER PROVISIONS REGARDING THE SAME SUBJECT MATTER SHALL BE DECLARED VOID AND OF NO EFFECT.

The indemnification contained above shall include but not be limited to the following specific instances:

- (a) The City is damaged due to the act, omission, mistake, fault or default of the Contractor.
- (b) In the event of any claims for payment for goods or services brought by any material suppliers, mechanics, laborers, or other subcontractors.
- (c) In the event of any and all injuries to or claims of adjacent property owners caused by the Contractor, its agents, employees, and representatives.
- (d) In the event of any damage to the floor, walls, etc., caused by the Contractor's personnel or equipment during installation.
- (e) The removal of all debris related to the Work.
- (f) The acts and omissions of the subcontractors.
- (g) The Contractor's failure to comply with applicable federal, state, or local regulations, that touch upon or concern the maintenance of a safe and protected working environment and the safe use and operation of machinery and equipment in that working environment, no matter where fault or responsibility lies.

Contractor's indemnification obligations in this Paragraph 6.01 shall survive termination, completion, abandonment and final payment.

REGARDING THIS RELEASE, THE CONTRACTOR ASSUMES FULL RESPONSIBILITY FOR THE WORK TO BE PERFORMED HEREUNDER, AND HEREBY RELEASES, RELINQUISHES, AND DISCHARGES THE CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION OF EVERY KIND AND CHARACTER, INCLUDING THE COST OF DEFENSE THEREOF, FOR ANY INJURY TO OR DEATH OF ANY PERSON (WHETHER EMPLOYEES OF EITHER PARTY OR OTHER THIRD PARTIES) AND ANY LOSS OF OR DAMAGE TO ANY PROPERTY (WHETHER PROPERTY OF EITHER OF THE PARTIES HERETO, THEIR EMPLOYEES, OR OF THIRD PARTIES) THAT IS CAUSED BY OR ALLEGED TO BE CAUSED BY, ARISING OUT OF, OR IN CONNECTION WITH THE CONTRACTOR'S WORK TO BE PERFORMED HEREUNDER. THIS RELEASE SHALL APPLY REGARDLESS OF WHETHER SAID CLAIMS, DEMANDS, AND CAUSES OF ACTION ARE COVERED IN WHOLE OR IN PART BY INSURANCE, AND IN THE EVENT OF INJURY, DEATH, PROPERTY DAMAGE, OR LOSS SUFFERED BY THE CONTRACTOR, ANY SUBCONTRACTOR, OR ANY PERSON OR ORGANIZATION DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM TO PERFORM OR FURNISH WORK ON THE PROJECT, THIS RELEASE SHALL APPLY REGARDLESS OF WHETHER SUCH INJURY, DEATH, LOSS, OR DAMAGE WAS CAUSED IN WHOLE OR IN PART BY THE INTENTIONAL OR WILLFUL ACT, NEGLIGENCE, OR GROSS NEGLIGENCE OF THE CITY.

6.02 Contractor Providing Architectural or Engineering Services. When the Contractor is providing architectural or engineering services for the Project (such as when those services are required by the Agreement Documents for a portion of the Work, or when the Contractor needs to provide those services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures), then the following indemnity and release provisions shall apply pursuant to section 271.904 of the Texas Local Government Code, as amended, and other authority.

THE CONTRACTOR, AS THE INDEMNITOR, SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY AGAINST LIABILITY FOR ALL DAMAGE OR LIABILITY (INCLUDING ALL MONETARY DAMAGES AND JUDGMENTS, LEGAL OR EQUITABLE RELIEF, COSTS, EXPENSES, COURT COSTS, INTEREST, REASONABLE ATTORNEY'S FEES, AND JUST AND LAWFUL OFFSETS AND CREDITS) REGARDING THE PROJECT TO THE EXTENT THAT SAID DAMAGE OR LIABILITY IS CAUSED BY OR RESULTS FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER, AND COMMITTED BY SAID INDEMNITOR OR SAID INDEMNITOR'S AGENT, CONSULTANT UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH SAID INDEMNITOR EXERCISES CONTROL; HOWEVER, THIS INDEMNITOR OBLIGATION EXPRESSLY DOES NOT APPLY WHEN THE DAMAGE, LIABILITY, CLAIM OR JUDGMENT IS BASED WHOLLY OR PARTLY ON THE NEGLIGENCE OF, FAULT OF, OR BREACH OF CONTRACT BY THE CITY, THE CITY'S EMPLOYEE OR AGENT, OR OTHER PERSON OR ENTITY OVER WHICH THE CITY EXERCISES CONTROL.

REGARDING THIS RELEASE, THE CONTRACTOR ASSUMES FULL RESPONSIBILITY FOR THE WORK TO BE PERFORMED HEREUNDER, AND HEREBY RELEASES, RELINQUISHES, AND DISCHARGES THE CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION OF EVERY KIND AND CHARACTER, INCLUDING THE COST OF DEFENSE THEREOF, FOR ANY INJURY TO OR DEATH OF ANY PERSON (WHETHER EMPLOYEES OF EITHER PARTY OR OTHER THIRD PARTIES) AND ANY LOSS OF OR DAMAGE TO ANY PROPERTY (WHETHER PROPERTY OF EITHER OF THE PARTIES HERETO, THEIR EMPLOYEES, OR OF THIRD PARTIES) THAT IS CAUSED BY OR ALLEGED TO BE CAUSED BY, ARISING OUT OF, OR IN CONNECTION WITH THE WORK ON THE PROJECT PERFORMED BY THE CONTRACTOR, ANY SUBCONTRACTOR, OR ANY PERSON OR ORGANIZATION DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM TO PERFORM OR FURNISH WORK ON THE PROJECT. THIS RELEASE SHALL APPLY REGARDLESS OF WHETHER SAID CLAIMS, DEMANDS, AND CAUSES OF ACTION ARE COVERED IN WHOLE OR IN PART BY INSURANCE. IN THE EVENT OF INJURY, DEATH, PROPERTY DAMAGE, OR LOSS SUFFERED BY THE CONTRACTOR, ANY SUBCONTRACTOR, OR ANY PERSON OR ORGANIZATION DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM TO PERFORM OR FURNISH WORK ON THE PROJECT, THIS RELEASE SHALL NOT APPLY WHEN SUCH INJURY, DEATH, LOSS, OR DAMAGE WAS CAUSED IN WHOLE OR IN PART BY THE INTENTIONAL OR WILLFUL ACT, NEGLIGENCE, OR GROSS NEGLIGENCE OF THE CITY.

Notwithstanding anything stated to the contrary in this Paragraph 6.02, it is required that: (a) the City shall be included as an additional insured under the Contractor's general liability, business automobile liability, and excess/umbrella liability insurance policies, and the Contractor shall provide any and all defenses to the City as provided by those policies; and (b) a licensed engineer or registered architect performing the professional services of an engineer or architect under the Agreement on behalf of the Contractor, shall perform those professional services (i) with the professional skill and care ordinarily provided by competent Texas engineers or architects practicing under the same or similar circumstances and professional license, and (ii) as expeditiously as is prudent considering the ordinary professional skill and care of a competent Texas engineer or architect.

Contractor's indemnification obligations in this Paragraph 6.02 shall survive termination, completion, abandonment and final payment.

7. REPRODUCIBLE RECORD DRAWINGS

7.01 Drawings. Required as part of Final Completion of the Project, the Contractor shall submit one (1) complete set of drawings with all changes made during construction, including concealed mechanical, electrical, and plumbing items.

8. ANTITRUST VIOLATIONS

8.01 Antitrust Violations. To permit the City to recover damages suffered in antitrust violations, Contractor hereby assigns to City any and all claims for overcharges associated with this Agreement which are under the antitrust laws of the United States, 15 U.S.C.A., Sec. 1 et. seq. (1973). The Contractor shall include this provision in its agreements with each Subcontractor and supplier. Each Subcontractor shall include such provision in agreements with sub-subcontractors and suppliers.

9. ADMINISTRATION OF THE CONTRACT

9.01 Engineer.

(a) The Engineer is the person lawfully licensed to practice engineering or an entity lawfully practicing engineering identified as such in the Agreement. The term “Engineer” means the Engineer or the Engineer’s authorized representative, or such successor Engineer as City may appoint by written notice to Contractor from time to time.

(b) City shall notify Contractor when the duties, responsibilities, or limitations of authority of the Engineer have been modified.

(c) If the employment of the Engineer is terminated, the City may elect to appoint a replacement Engineer, or at its option, elect to complete the Project using another consultant or representative to perform the balance of the Engineer’s functions on the Work.

(d) Except as herein expressly provided, the Contractor shall not be relieved of its obligation to perform the Work in strict accordance with the Agreement Documents by the activities or duties of the Engineer.

9.02 Engineer’s Administration of the Contract.

(a) Certain portions of the administration of the Agreement will be performed by the Engineer. The Engineer shall not have the authority to act on behalf of the City unless such authority is expressly granted in the Agreement Documents or the City’s engagement agreement with the Engineer, nor shall such authority be implied from any act or representation of the Engineer. The City is free to elect to have some of the administration duties set out for the Engineer to perform under the Agreement Documents performed by a construction manager or by employees of the City.

(b) The Engineer, as a representative of the City, will visit the site at intervals appropriate to the stage of the Contractor’s operations (1) to become generally familiar with and to keep the City informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the City against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Agreement Documents. However, the Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Engineer will neither have control over or charge of, nor be responsible for, the construction means, methods,

techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Agreement Documents, except as provided in Paragraph 5.05(a) In no event shall City or any other party have control over, be in charge of, or be responsible for construction means, methods, techniques, sequences, procedures, or for safety precautions and programs in connection with the Work, since these are solely Contractor's responsibilities. City will not be responsible for the Contractor's failure to carry out the Work in accordance with the Agreement Documents. City will not have control over, be in charge of, and will not be responsible for the acts or omissions of Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

(c) The Engineer will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Agreement Documents. The Engineer will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

(d) Communications Facilitating Agreement Administration. Except as otherwise provided in the Agreement Documents or when direct communications have been specially authorized, the City and Contractor shall endeavor to communicate with each other through the Engineer about matters arising out of or relating to the Contract. Communications by and with the Engineer's consultants shall be through the Engineer. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the City.

(e) Based on the Engineer's evaluations of the Contractor's Applications for Payment, the Engineer will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

(f) The Engineer and the City (the City in consultation with the Engineer), both have the authority to reject Work that does not conform to the Agreement Documents. Whenever the City or Engineer considers it necessary or advisable for implementation of the intent of the Agreement Documents, the City or Engineer will have authority to require additional inspection or testing of the Work in accordance with Paragraph 21.01 whether or not such Work is fabricated, installed or completed. However, neither this authority of the City or Engineer, nor a decision made reasonably and in good faith either to exercise or not to exercise such authority, shall give rise to create or imply the existence of a duty or responsibility of the City or Engineer to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

(g) The Engineer will review and approve or take other appropriate action upon the Contractor's submittals regarding this Agreement for the Project, including Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Agreement Documents. The Engineer's action will be taken with such reasonable promptness, but no

longer than fifteen (15) business days, as to cause no delay in the Work or in the activities of the City, Contractor or separate contractors, while allowing sufficient time in the Engineer's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Agreement Documents. The Engineer's review of the Contractor's submittals shall not relieve the Contractor of its obligations. The Engineer's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Engineer, of any construction means, methods, techniques, sequences, or procedures. The Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

(h) Upon direction of the City, the Engineer will prepare Change Proposal Requests, Change Orders, and Construction Change Directives, and may authorize minor changes in the Work as provided in Paragraph 13.04.

(i) The Engineer will conduct inspections to determine the date or dates of Substantial Completion and the date of Final Completion, will receive and forward to the City, for the City's review and records, written warranties and related documents required by the Agreement and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Agreement Documents.

(j) If the City and Engineer agree, the Engineer will provide one or more Project representatives to assist in carrying out the Engineer's responsibilities at the site. The duties, responsibilities, and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Agreement Documents.

(k) The Engineer will interpret and decide matters concerning performance under, and requirements of, the Agreement Documents on written request of either the City or Contractor. The Engineer's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of the Engineer shall be furnished in compliance with this Paragraph 9.02(k), then delay shall not be recognized on account of failure by the Engineer to furnish such interpretations until thirty (30) days after written request is made for them.

(l) Interpretations and decisions of the Engineer will be consistent with the intent of and reasonably inferable from the Agreement Documents and will be in writing or in the form of drawings.

10. CLAIMS AND DISPUTES

10.01 Definition. A Claim is any demand or assertion by the Contractor that it should be paid more money than the Agreement Sum, as adjusted under the Change Order provisions herein, by the City because of action or inaction on the part of City, Engineer, or any party for whom City is responsible, or any party with whom City has separately contracted for other portions of the

Project, including but not limited to any demand or assertion that Contractor's performance has been delayed, interrupted or interfered with, that Contractor's performance has been accelerated, constructively accelerated, or suspended, that Contractor's performance has been wrongfully terminated, that the Agreement Documents have been misinterpreted, that there has been a failure of payment, that Contractor has encountered concealed or unknown conditions, that Contractor has encountered hazardous materials, that there are problems with the Agreement Documents, or the timing of engineering or architectural approvals or decisions, that actions of the City have been intentionally wrongful or deceptive in any way to the Work, that the amount of time or money granted in a Construction Change Directive is inadequate, that an item treated as a minor change in the Work should have been treated as a Change Order, that a time extension granted was inadequate, or that Contractor is entitled to any other relief, on any legal theory, related to the Agreement Documents or Work. Nothing contained in this subparagraph shall be construed as creating any Contractor right to make a claim, where no such right otherwise exists.

10.02 Notice Requirement. Within fourteen (14) calendar days of the first occurrence of an event that Contractor has any reason to believe might result in a Claim, or within fourteen (14) calendar days of Contractor's discovery of the first occurrence of the event that Contractor has any reason to believe might result in a Claim (if the first occurrence of the event was willfully hidden from the Contractor), the Contractor shall file a written document clearly captioned "Notice of Claim" with City and Engineer. The notice shall clearly set out the specific matter of complaint, and the impact of damages which may occur or have occurred as a result thereof, to the extent the impact or damages can be assessed at the time of the notice. If the impact or damages cannot be assessed as of the date of the notice, the notice shall be amended at the earliest date that is reasonably possible. Furthermore, the following matters are required:

- (a) Any Claim or portion of a Claim that has not been made the specific subject of a notice strictly in accordance with the requirements of this Paragraph shall be waived. It is imperative that City have timely, specific notice of any subject, the impact of which City may be in a position to mitigate.
- (b) No course of conduct or dealings between the parties, nor implied acceptance of alteration or additions to the Agreement Documents or Work, or changes to the Agreement Documents or Work schedule, shall be the basis for any claim for an increase in the Agreement Sum or change in the Agreement Time.

10.03 Claims Handling During Construction. After receipt of a Notice of Claim, the City may elect to refer the matter to the Engineer or another party for review. Contractor will attend meetings called to review and discuss the Claim and mitigation of the problem and shall furnish any reasonable factual backup of the Claim requested. The City may also elect to defer consideration of the Claim until the Work is completed, in which case the same review options shall be available to the City at the completion of the Work. At any stage, the City is entitled to refer a Claim to mediation under the Construction Industry Mediation Rules of the American Arbitration Association, and if this referral is made, Contractor will take part in the mediation process. The filing, mediation or rejection of a Claim does not entitle Contractor to stop performance of the Work. The Contractor shall proceed diligently with performance of the Work during the pendency of any claim, except in the event of termination or Work stoppage directed by City. Agreements

reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof, as follows regarding the alternative dispute resolution requirements of this Agreement:

No suit shall be filed by a Party regarding a dispute arising under or related to this Agreement unless the Parties first attempt to submit the dispute to mediation pursuant to Chapter 2009 of the Texas Government Code and Chapter 154 of the Texas Civil Practice and Remedies Code. Notwithstanding anything to the contrary stated in this Agreement, however, a Party may file suit solely for injunction or mandamus relief regarding an aforesaid dispute without first submitting that dispute to mediation. The mediation shall be held in Brazos County, Texas within 30 days of a Party sending notice to the other Party requesting mediation, unless otherwise agreed in writing by the Parties. Each Party shall pay its own expenses incurred for the mediation, including attorney fees, mediator fees, and travel expenses. The mediator shall be selected by the Parties' agreement; however, should they fail to agree on a mediator, the dispute shall be submitted to the following public institution for assignment of a mediator and the holding of the mediation at that institution: Aggie Dispute Resolution Program, Texas A&M University School of Law, 1515 Commerce Street, Fort Worth, Texas 76102-6509 (800-733-9529 telephone).

10.04 Claims Handling Following Construction. The acceptance of final payment shall constitute a waiver of Claims by the Contractor which have not previously been identified in a timely Notice of Claim and specifically reserved in the final Application for Payment.

10.05 Claims for Concealed or Unknown Conditions. Only if conditions are encountered at the Project site which are (a) subsurface and not revealed or otherwise generally documented in a geotechnical report or other engineering or professional report or document, or otherwise concealed physical conditions which differ materially from those indicated in the Agreement Documents or (b) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Agreement Documents, then Contractor shall be entitled to make a Claim if it can satisfy all of the other requirements of Section 9.

10.06 Claims for Additional Cost. If the Contractor wishes to make a Claim for an increase in the Agreement Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Paragraph 18.04.

10.07 Calculating Claim Amount. In calculating the amount of any Claim, the following standards will apply:

- (a) No indirect or consequential damages will be allowed.
- (b) All damages must be directly and specifically shown to be caused by a proven wrong. No recovery shall be based on a comparison of planned expenditures to total actual expenditures, or on estimated losses of profits, or materials or labor efficiency, or on a

comparison of planned manloading to actual manloading, or any other analysis that is used to show damages indirectly.

(c) Damages are limited to extra costs specifically shown to have been directly caused by a proven wrong.

(d) The maximum daily limit on any recovery for delay shall be the amount established by the Contractor for job overhead costs, defined in the Schedule of Values, divided by the total number of calendar days of Agreement Time called for in the original Contract. Absent an overhead amount in the Schedule of Values, the amount estimated by the Contractor for job overhead costs shall be used.

(e) The maximum amount of all Claims proven by the facts to be due to the Contractor against the City under this Agreement is expressly agreed by the parties not to exceed in any event or set of circumstances an aggregate total of five percent (5%) of the Agreement Sum.

10.08 Liquidated and Other Damages.

(a) The amount of liquidated damages (as hereafter described) for the Contractor's failure to meet the deadlines for Substantial and/or Final Completion are fixed and agreed on by the parties because of the impracticability and extreme difficulty in fixing and ascertaining the actual damages that the City would in such an event sustain. The amounts to be charged are agreed to be damages the City would sustain and shall be retained by the City from current periodic estimates for payment or from final payment. As a result of the difficulty in estimation, calculation and ascertainment of City's damages due to a failure of Contractor to achieve timely completion of the Work, if the Contractor should neglect, fail, or refuse to either Substantially Complete or Finally Complete the Work within the time herein specified, or any proper extension thereof granted by the City's Representative pursuant to the terms of the Agreement Documents, then the Contractor does hereby agree as part of the consideration for the awarding of this Agreement that the City may permanently withhold from the Contractor's total compensation the sum of Zero and no /100 DOLLARS (\$ 00.00) for each and every calendar day that the Contractor shall be in default after the time stipulated for Substantial Completion not as a penalty, but as liquidated damages for the breach of this Agreement. It being specifically understood that the assessment of liquidated damages may be made for any failure to meet either or both deadlines specified for Substantial Completion and/or Final Completion.

(b) Regarding all other conduct, acts, or omissions of the Contractor (being separate and distinct from the liquidated damage authorizing conduct of the Contractor described in Subparagraph (a) above) which constitute a breach or default of this Agreement, the City may pursue the recovery of all remedies, claims and causes of action (whether legal, equitable, or mixed), and all damages allowed by law, including without limitation: Agreement termination; the recovery of all actual and consequential damages; and the recovery of its incurred attorney's fees, expenses, court costs, interest, and all just and lawful offsets and credits.

(c) Notwithstanding anything to the contrary stated in this Agreement, any conduct, act, or omission committed by the Contractor which constitutes a breach or default of this Agreement shall survive the: (1) City's acceptance of the Work performed under this Agreement; and (2) termination of the Agreement.

11. SUBCONTRACTORS

11.01 Definitions.

(a) A Subcontractor is a person or entity who has a direct agreement with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

(b) A Sub-subcontractor is a person or entity who has a direct or indirect agreement with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

11.02 Award of Subcontracts and Other Contracts for Portions of the Work.

(a) Unless otherwise stated in the Agreement Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the City through the Engineer the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) and copies of all executed subcontract(s) proposed for each principal portion of the Work of the Project. The Engineer will promptly reply (but in no event longer than 30 days from said written notice) to the Contractor in writing stating whether or not the City or the Engineer, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the City or Engineer to reply promptly shall constitute notice of no reasonable objection.

(b) The Contractor shall not have a contractual agreement for the Project with a proposed person or entity to whom the City or Engineer has made reasonable and timely objection. The Contractor shall not be required to have a contractual agreement with anyone to whom the Contractor has made reasonable objection.

(c) If the City or Engineer has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the City or Engineer has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Agreement Sum and Agreement Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Agreement Sum or Agreement Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

(d) The Contractor shall not change an approved Subcontractor, person or entity previously selected if the City or Engineer makes reasonable objection to such substitute.

(e) The Contractor shall submit the list of proposed Subcontractors on a form approved by the City.

(f) The Contractor and Subcontractors are required to visit the site and completely familiarize themselves with the existing conditions prior to the submission of Proposal(s). No additional increase in the Agreement amount will be provided when existing or known conditions require a certain amount of work to comply with the intent of the Agreement Documents.

11.03 Subcontractual Relations. By appropriate written agreement with the Subcontractor, the Contractor shall require each Subcontractor, to the extent of the Work for the Project to be performed by the Subcontractor, to be bound by the terms of the Agreement Documents, and to assume all obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by the Contract Documents, assumes toward the City and Engineer. Each subcontract agreement shall preserve and protect the rights of the City and Engineer under the Agreement Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Agreement Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Agreement Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

11.04 Contingent Assignment of Subcontracts.

(a) Each subcontract agreement for a portion of the Work for the Project shall be assigned in writing by the Contractor to the City provided that the:

1. assignment is effective only after termination of the Agreement by the City for cause pursuant to Paragraph 22.02 and only for those subcontract agreements which the City accepts by notifying the Subcontractor and Contractor in writing; and
2. assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Agreement.

(b) City shall only be responsible for compensating Subcontractor for Work done or materials furnished after the date City gives written notice of its acceptance of the assigned subcontract agreement.

(c) Each Subcontract and assignment shall provide that the City shall only be responsible to the Subcontractor for those services and materials furnished by the

Subcontractor subsequent to the City's exercise of any rights under this contingent assignment.

11.05 Responsibility. Contractor shall be fully responsible for the performance of its Subcontractor, including those selected or approved by the City.

12. CONSTRUCTION BY CITY OR BY SEPARATE CONTRACTORS

12.01 City's Right to Perform Construction and to Award Separate Contracts.

(a) The City reserves the right to perform other construction work, maintenance, and repair work near or adjacent to the Project site during the time period of the Work. City may perform other Work with separate contractors. City shall have access to the site at all times.

(b) When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Agreement Documents in each case shall mean the Contractor who executes each separate City-Contractor Agreement.

12.02 Mutual Responsibility.

(a) The Contractor shall afford the City and separate contractors' reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Agreement Documents.

(b) If part of the Contractor's Work depends for proper execution or results upon construction or operations by the City or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Engineer discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor to so report shall constitute an acknowledgment that the City's or separate contractors completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

(c) The City shall be reimbursed by the Contractor for costs incurred by the City which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Contractor.

(d) The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the City or separate contractors as provided in Paragraph 18.02(e).

(e) The City and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Paragraph 5.15.

12.03 City's Right to Clean Up. If a dispute arises among the Contractor, separate contractors and the City as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the City may clean up and the Engineer will allocate the cost among those responsible.

13. CHANGES IN THE WORK

13.01 General.

(a) Changes in the Work may be accomplished after execution of the Agreement, and without invalidating the Agreement, by Change Order, Construction Change Directive or order for a minor change in the Work. The Agreement Sum and/or Agreement Time may be increased for changes in the Work if the provisions of this Paragraph have been met.

1. No change in the Agreement Sum and/or Agreement Time will be allowed for a change in the Work unless prior to performing the changed Work, the Contractor has provided the City in writing a proposal for any change in price and/or change in Agreement Time caused by the change in Work, and a Change Order is subsequently executed. A field directive or field order shall not be recognized as having any impact upon the Agreement Sum or the Agreement Time, and Contractor shall have no Claim therefore, unless it shall, prior to complying with the directive and in any event within fourteen (14) calendar days of receiving the directive, submit a change proposal to the City, and a Change Order is subsequently executed, or Contractor satisfies the requirements of Paragraph 10. Contractor's proposal shall be subject to City's acceptance and remain irrevocable for a period of sixty (60) calendar days after receipt by City. Thereafter, Contractor reserves the right to resubmit such change proposal upon different pricing and time of performance terms.

(b) A Change Order shall be based upon agreement among the City, Contractor, and Engineer. A Construction Change Directive requires agreement by the City and Engineer and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Engineer alone.

(c) Changes in the Work shall be performed under applicable provisions of the Agreement Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work. Except as permitted in Paragraph 13.03, a change in the Agreement Sum or the Agreement Time shall be accomplished only by Change Order.

(d) The Contractor, upon receipt of written notification by the Engineer of a proposed item of change in the Work, shall prepare as soon as possible a Change Proposal in such form or forms as directed by the City. The parties further agree as follows:

1. Each separate Change Proposal shall be numbered consecutively and shall include material costs, labor costs, fees, overhead and profit. The Change Proposal

shall specify all costs related to the proposed change in the Work, including any disruption or impact on performance.

2. The Subcontractor's itemized accounting shall be included with the Change Proposal.

3. If a Change Proposal is returned to the Contractor for additional information or if the scope of the proposed change in the Work is modified by additions, deletions or other revisions, the Contractor shall revise the Change Proposal accordingly and resubmit the revised Change Proposal to the City and Engineer.

4. A revised Change Proposal shall bear the original Change Proposal number suffixed by the letter "R" to designate a revision in the original Change Proposal. If additional revisions to a revised Change Proposal are necessary, each subsequent revision shall be identified by an appropriate numeral suffix immediately following the "R" suffix.

5. Upon written approval of a Change Proposal by the City, the City will prepare a Change Order authorizing such Change in Work.

6. The Contractor shall request extensions of the Agreement Time due to changes in the Work only at the time of submitting its Change Proposal. **Contractor's failure to do so shall represent a waiver of any right to request a time extension.**

13.02 Change Orders.

(a) The Contractor makes a written request for a Change Order by submitting a written Change Proposal. A Change Order is a written instrument prepared by the City and reviewed by the Engineer. When finalized, a Change Order is signed by the City, Contractor and Engineer, stating their agreement upon all of the following:

1. change in the Work; and
2. the amount of the adjustment, if any, in the Agreement Sum; and
3. the extent of the adjustment, if any, in the Agreement Time.

(b) Pursuant to Section 252.048(d) of the Texas Local Government Code:

1. The Guaranteed Maximum Price ("GMP") may not be increased by more than twenty-five percent (25%). Written change orders that do not exceed twenty-five percent (25%) of the original agreement amount may be made or approved by the City Manager or their delegate if the change order is less than Fifty Thousand Dollars (\$50,000.00). Changes in excess of Fifty Thousand Dollars (\$50,000.00) must be approved by the City Council prior to commencement of the services or work.

2. For construction contracts funded in whole or in part by Certificates of Obligations, an Agreement with a GMP of \$1 million or more may not be increased by more than twenty-five percent (25%). If a change order for a construction Agreement funded in whole or in part with certificates of obligation that has a GMP of less than \$1 million increases the Agreement amount to \$1 million or more, subsequent change orders may not increase the revised Agreement amount by more than twenty-five percent (25%). Written change orders may be made or approved by the City Manager or their delegate if the change order is less than Fifty Thousand Dollars (\$50,000.00). Changes in excess of Fifty Thousand Dollars (\$50,000.00) must be approved by the City Council prior to commencement of the services or work.

(c) Methods used in determining adjustments to the Agreement Sum may include those named below:

1. mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
2. unit prices stated in Agreement Documents or subsequently agreed upon;
3. a determination in a manner agreed upon by the parties and a mutually acceptable fixed fee, or the percentage fee established at Subparagraph 13.03(f), or
4. as provided in Subparagraph 13.3(g).

(d) Agreement on any Change Order shall constitute a final settlement of all Claims by the Contractor directly or indirectly arising out of or relating to the Change in Work which is the subject of the Change Order, including, but not limited to, all direct and indirect costs and impact costs associated with such change and any and all adjustments to the Agreement Sum and the Agreement Time.

13.03 Construction Change Directives.

(a) A Construction Change Directive is a written order prepared by the Engineer and signed by the City and Engineer, directing a change in the Work prior to an agreement on adjustment, if any, in the Agreement Sum or Agreement Time, or both. The City may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Agreement consisting of additions, deletions or other revisions, the Agreement Sum and Agreement Time being adjusted accordingly.

(b) A Construction Change Directive shall be used in the absence of a total agreement on the terms of a Change Order.

(c) The Construction Change Directive shall include a unilateral change in the Agreement Sum and/or Agreement Time reflecting the City's view of the appropriate change in the Agreement Sum and/or Agreement Time for the Change in Work covered by the Construction Change Directive. Until an agreement is reached by the City and

Contractor on these issues for a Change Order, the changes in Agreement Sum and Agreement Time set out in the Construction Change Directive shall be used for Schedule of Values, payment and scheduling purposes.

(d) Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Engineer of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Agreement Sum or Agreement Time.

(e) A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Agreement Sum and Agreement Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

(f) In the absence of an agreement between City and Contractor on the proper change to the Agreement Sum or Agreement Time because of a change in the Work, Contractor may treat the matter as a Claim under Section 10. In such event, the Contractor shall be entitled to recover only the amount by which the Cost of the Work has been reasonably increased over the Cost of Work without the change in the Work, plus five percent (5%).

(g) Pending final determination of the cost of a Construction Change Directive to the City, amounts not in dispute may be included in Applications for Payment. The amount of credit to be allowed by the Contractor to the City for a deletion or change which results in a net decrease in the Agreement Sum shall be actual net cost as confirmed by the Engineer. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

13.04 Minor Changes in the Work. The Engineer will have authority to order minor changes in the Work not involving adjustment in the Agreement Sum or extension of the Agreement Time and not inconsistent with the intent of the Agreement Documents. Such changes shall be effected by written order and shall be binding on the City and Contractor. The Contractor shall carry out such written orders promptly.

13.05 Changes Funded by Allowances. Allowances balances may be used to fund changes in the Work. The Contractor will not be allowed an overhead and profit mark-up when changes in the Work are funded by one of the Allowances.

14. TIME

14.01 Definitions.

(a) Unless otherwise provided, Agreement Time is the period of time, including authorized adjustments, allotted in the Agreement Documents for Substantial Completion of the Work.

(b) The date of commencement of the Work is the date established in the Agreement. The date shall not be postponed by the failure to act of the Contractor or of persons, or entities for whom the Contractor is responsible.

(c) The date of Substantial Completion is the date certified by the Engineer in accordance with Paragraph 16.

14.02 Progress and Completion.

(a) Time limits stated in the Agreement Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Agreement Time is a reasonable period for performing the Work.

(b) The Contractor shall not knowingly, except by agreement or instruction of the City in writing, prematurely commence operations on the Project site or elsewhere prior to Contractor obtaining all bonds required by the Agreement and before the effective date of insurance required by Section 19 to be furnished by the Contractor and City. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Agreement Documents or a Notice to Proceed given by the City, the Contractor shall notify the City in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

(c) The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Agreement Time.

14.03 Delays and Extensions of Time.

(a) If the Contractor is delayed in performing Work that is critical to the overall completion of the Work by an act or neglect of the City or Engineer, or a separate contractor employed by the City, or by changes ordered in the Work, or by labor disputes, unavoidable casualties, including fire, or by unusually adverse weather conditions, as defined below, then the Agreement Time shall be extended for a reasonable time to reflect the impact of the delay on Work critical to achieve Substantial Completion within the Agreement Time, provided the performance of the Work was not delayed by any other cause for which the Contractor is not entitled to an extension in the Agreement Time under the Agreement Documents. Adjustments in the Agreement Time will be permitted for a delay only to the extent such delay is not caused or could not have been anticipated by the Contractor and could not be limited or avoided by the Contractor's timely notice to the City of the delay, and only if Contractor satisfies the conditions of Paragraph 14.03(b). Contractor has the burden to prove that any of the foregoing alleged causes of delay significantly impacted construction progress on the critical path, as a condition precedent to any extension of Agreement Time.

(b) Weather delays include "rain days" (days with rainfall in excess of one-tenth of an inch) during the term of this Agreement that exceed the average number of rain days for

such term for this locality, both as determined by the National Weather Service Forecast Office for Easterwood Airport in College Station, Texas (KCLL/CLL).

(c) On or before the fifteenth (15) day of each month of the Work, Contractor shall submit in writing a request for all time extensions to which it believes itself to be entitled for the preceding month, other than time extensions for changes in Work, which are to be submitted in accordance with the requirements of Paragraph 13. If Contractor's request for time extension for changes in the Work is denied and Contractor wishes to pursue the matter, Contractor shall submit in writing a request for that extension by the fifteenth (15) day of the month following the denial. **Any claim for time extension not submitted under the terms of this Subparagraph shall be waived.**

(d) City, after consultation with the Engineer, may grant time extensions to the extent it believes them to be proper. Time extensions granted by the City may be incorporated into schedules for completion of the Work. In the event that Contractor believes that it is entitled to additional time extensions beyond those granted by the City, it may make a claim for them provided it can meet the requirements of Paragraph 10.

15. PAYMENTS AND COMPLETION

15.01 Agreement Sum. The Agreement Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the City to the Contractor for performance of the Work under the Agreement Documents.

15.02 Schedule of Values. Before the first Application for Payment, the Contractor shall submit to the Engineer a Schedule of Values fairly allocating the various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as reasonably required by the Engineer. Once approved by the Engineer and updated for changes in the Work, the Schedule of Values shall be used as a basis for reviewing the Contractor's Applications for Payment and is not to be taken as evidence of market or other value. The Schedule of Values shall not overvalue early job activities. The Contractor's Fee shall be shown as a single separate item. The Schedule of Values shall follow the trade divisions of the Specification so far as practicable.

In order to facilitate the review of Applications for Payment, the Schedule of Values shall be submitted on forms approved by the City, and shall include the following:

(a) Contractor's costs for Contractor's Fee, bonds and insurance, mobilization, etc., shall be named as individual line items.

(b) Contractor's costs for various construction items shall be detailed. For example, concrete work shall be subdivided into footings, grade beams, floor slabs, paving, etc. These subdivisions shall appear as individual line items.

(c) On major subcontracts, such as mechanical, electrical, and plumbing, the Schedule of Values shall indicate line items and amounts in detail (for example: underground, major equipment, fixtures, installation of fixtures, start up, etc.)

(d) Costs for subcontract Work shall be named without any addition of Contractor's costs for overhead, profit or supervisions.

(e) Where payment for stored materials may be requested prior to installation, material and labor shall be named as separate line items.

(f) Sample pages from an approved Schedule of Values are included following this document.

15.03 Applications for Payment.

(a) At the time specified in the Agreement, the Contractor shall submit to the Engineer an itemized Application for Payment for operations completed in accordance with the Schedule of Values and an updated project schedule for the Work. Such application shall be notarized and supported by such data fully evidencing and substantiating the Contractor's right to payment. The City requires the submission of copies of requisitions, billings, and invoices from the Contractor, Subcontractor(s) and material suppliers, all self-performed billings and invoices, all applicable payrolls, etc. Applications for Payment should also reflect retainage (if applicable). Unless otherwise agreed, the Contractor shall submit requests for payment in quadruplicate originals using for the "top sheets", originals of APPLICATION AND CERTIFICATE FOR PAYMENT; continuation sheets showing in detail the amounts requested, etc., may be submitted on CONTINUATION SHEET(S) in a format approved by the Engineer. All blank spaces must be completed, and the signatures of the Contractor and Notary Public shall be original on each form. By submitting its Application for Payment, the Contractor certifies that the individual signing the application is authorized to do so. Additionally, if the Contractor prepares its Application for Payment utilizing "Excel" spreadsheet software, it shall submit a "thumb drive" or otherwise make such spreadsheet available electronically with each application for payment to facilitate the City's and Engineer's review of the application.

1. Such applications may not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

(b) Unless otherwise provided in the Agreement Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the City, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing, so long as such location, materials, and equipment also have bond and insurance coverage on Contractor's bonds and insurance policies. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the City to establish the City's title to such materials and equipment or otherwise protect the City's interest, and shall include the costs of applicable insurance, storage, and transportation to the site for such materials and equipment stored off the site. Upon payment by the City of the invoiced cost, title to all such materials and equipment shall irrevocably pass to the City. The Contractor warrants

that title to all materials and equipment covered by an Application for Payment will pass to City upon the receipt of payment by the Contractor. Such title shall be free and clear of all liens, claims, security interests or encumbrances. No work, materials or equipment covered by an Application for Payment shall be subject to an agreement under which an interest is retained, or encumbrance is attached by the seller, the Contractor, or other party.

(c) The Contractor warrants that title to all Work covered by an Application for Payment will pass to the City no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the City shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

15.04 Certificates for Payment.

(a) The Application for Payment will be reviewed first by the Engineer who will certify to the City that portion, if any, of the Application for Payment it has determined is properly due. In the event that the Engineer believes that payment should be withheld, in whole or in part, it will notify the City and Contractor of the basis of this view as provided in Subparagraph 15.05(a).

(b) The issuance of a Certificate for Payment will constitute a representation by the Engineer to the City, based on the Engineer's evaluation of the Work and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Engineer's knowledge, information and belief, the quality of the Work is in accordance with the Agreement Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Agreement Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Agreement Documents prior to completion and to specific qualifications expressed by the Engineer. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Engineer has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the City to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Agreement Sum.

(c) The issuance of a Certificate of Payment shall constitute a recommendation to the City in respect to the amount to be paid. This recommendation is not binding on the City if City knows of other reasons under the Agreement why payment should be withheld.

(d) The Engineer will affix their signature to the same form described in Paragraph 15.04(a). to signify their certification of payment provided the application is otherwise satisfactory.

15.05 Decisions to Withhold Certification.

(a) The Engineer may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the City, if in the Engineer's opinion the representations to the City required by Paragraph 15.04(b) cannot be made. If the Engineer is unable to certify payment in the amount of the Application, the Engineer will notify the Contractor and City as provided in Paragraph 15.04(a). If the Contractor and Engineer cannot agree on a revised amount, the Engineer will promptly issue a Certificate for Payment for the amount for which the Engineer is able to make such representations to the City. The Engineer may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Engineer's opinion to protect the City from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Paragraph 5.05(b), because of:

1. defective Work not remedied;
2. third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the City is provided by the Contractor;
3. failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
4. reasonable evidence that the Work cannot be completed for the unpaid balance of the Agreement Sum;
5. damage to the City or another contractor;
6. reasonable evidence that the Work will not be completed within the Agreement Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
7. persistent failure to carry out the Work in accordance with the Agreement Documents.

(b) When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

15.06 Progress Payments.

(a) After the Engineer has issued a Certificate for Payment, the City, upon the City's review and written approval of the Certificate for Payment, shall endeavor to make payment in the manner and within the time provided in the Agreement Documents, and shall so notify the Engineer. If the City believes the Contractor is not current in its legitimate obligations to suppliers, laborers and/or Subcontractors on the Project, City may (but is not obligated to) withhold payment until it receives partial or final releases, or other reasonable proof from the Contractor that this situation does not exist.

(b) The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the City, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. City is not obligated to monitor payments to Subcontractors or Sub-subcontractors, and nothing in this paragraph shall create any right on the part of a Subcontractor or Sub-subcontractor against City.

(c) The Engineer will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Engineer and City on account of portions of the Work done by such Subcontractor.

(d) Neither the City nor Engineer shall have an obligation to pay or to see to the payment of money to a Subcontractor or Sub-subcontractor.

(e) Payment to material suppliers shall be treated in a manner similar to that provided in Paragraphs 15.06(b), 15.06(c) and 15.06(d).

(f) A Certificate for Payment, a progress payment, the issuance of Substantial or Final Completion, or partial or entire use or occupancy of the Project by the City shall not constitute acceptance of Work not in accordance with the Agreement Documents.

15.07 Failure of Payment. If the City incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, the City shall have an absolute right to offset such amount against the Agreement Sum under this Contract, and may, in the City's sole discretion, elect either to: (1) deduct an amount equal to that to which the City is entitled, or (2) issue a written notice to the Contractor reducing the GMP by an amount equal to that to which the City is entitled.

16. SUBSTANTIAL COMPLETION

16.01 General. When the Contractor considers that the Work, or a portion thereof which the City agrees to accept separately, is substantially complete, the Engineer and City shall review the punch list prepared by Contractor and supplement the list as necessary. Failure to include an item on such

list does not alter the responsibility of the Contractor to complete all Work in accordance with the Agreement Documents.

(a) The Contractor's superintendent shall participate in the preparation of the Contractor's punch list that is submitted to the Engineer and City for supplementation. Upon receipt, the Engineer and City shall perform a spot review to determine the adequacy and completeness of the Contractor's punch list. Should the Engineer or City determine that the Contractor's punch list lacks sufficient detail or requires extensive supplementation, the punch list will be returned to the Contractor for further inspection and revision. The date of Substantial Completion will be delayed until the punch list submitted is a reasonable representation of the work to be done.

(b) Upon receipt of an acceptable Contractor's punch list, the Contractor's superintendent shall accompany the Engineer, its Consultants, and the City (at its discretion) during their inspections and the preparation of their supplements to the Contractor's punch list. The superintendent shall record or otherwise take note of all supplementary items. The Engineer shall endeavor to furnish to the Contractor typed, hand written or recorded supplements to the punch list in a prompt manner; however, any delay in the Contractor's receiving said supplements from the Engineer shall not be cause for a claim for additional cost or extension of time.

16.02 Inspection. When the Contractor notifies Engineer and City that it has completed or corrected items on the punch list, the Engineer and City at its discretion will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Engineer's and City's inspection discloses any item, whether or not included on the Contractor's punch list, which is not sufficiently complete in accordance with the Agreement Documents so that the City can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Engineer. In such case, the Contractor shall then submit a request for another inspection by the Engineer and City to determine Substantial Completion. Any further inspections by the Engineer and City for the purpose of determining the Project is Substantially Complete shall be at Contractor's cost and the City may deduct such cost from any amount payable to Contractor hereunder.

16.03 Certificate of Substantial Completion. When the Work or designated portion thereof is substantially complete, and upon the City's concurrence of the same, the Engineer will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the City and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Agreement Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

16.04 Approval of Certificate. The Certificate of Substantial Completion shall be submitted to the City and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance, the City, in its sole discretion, may, but is not required to, make

payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Agreement Documents. If retainage is not released at Substantial Completion, applicable retainage amounts will be released by City upon Contractor obtaining Final Completion.

16.05 Insurance. The Contractor shall keep all required insurance in full force, and utilities on, until the Certificate of Substantial Completion is issued, and accepted by the City in writing, regardless of the stated date of Substantial Completion. Acceptance shall not be unreasonably withheld.

16.06 Partial Occupancy or Use.

(a) The City may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Paragraph 19.03(a) and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the City and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Agreement Documents.

(b) Immediately prior to such partial occupancy or use, the City, Contractor, and Engineer shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

(c) Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Agreement Documents.

17. FINAL COMPLETION AND FINAL PAYMENT

17.01 General. Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the City and Engineer shall endeavor to promptly make such inspection and, when the City and Engineer finds the Work acceptable under the Agreement Documents and the Agreement fully performed, the Engineer shall endeavor to promptly issue a final Certificate for Payment stating that to the best of the Engineer's knowledge, information and belief, and on the basis of the Engineer's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Agreement Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Engineer's final Certificate for Payment will constitute a further representation that conditions listed in Paragraph 17.02 as precedent to the Contractor's being entitled to final payment have been fulfilled.

Prior to final payment, the Contractor shall submit digitally (mylars for all Water/Wastewater projects as specified in project specifications and bid documents) to the Engineer the following completed forms:

1. Contractor's Affidavit of Payment of Debts and Claims;
2. Contractor's Affidavit of Release of Liens;
3. Consent of Surety to Final Payment (if applicable);
4. Subcontractor's Unconditional Releases – each signed and notarized on a single piece of paper;
5. Maintenance and inspection manuals – three (3) sets of each bound in a 3 inch “D-slant” ring binder;
6. Final list of subcontractors;
7. one (1) complete set of marked-up copies of the Drawings and Specifications accurately showing the Project as constructed. Such Specifications and Drawings shall be marked to show all changes and modifications that have been incorporated into the Work as performed;
8. other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the City; and
9. any other “Closeout Documents” required under the Agreement Documents.

17.02 Format. Documents identified as affidavits must be notarized. All manuals will contain an index listing the information submitted. The index sections will be divided and identified by tabbing each section as listed in the index. Upon request, the Engineer will furnish the Contractor with blank copies of the forms listed above. Final payment, constituting the entire unpaid balance of the Agreement Sum shall be endeavored to be paid by the City to the Contractor within sixty (60) days after Substantial Completion of the Work, unless otherwise stipulated in the Certificate of Completion, provided the Agreement is fully performed, and Final Certificate of Payment has been issued by the Engineer. The City may accept certain portions of the Work as being complete prior to the acceptance of the entire Project. If certain areas are accepted by the City as being completed, and if the Contractor has completed all of the requirements for final payment of the portion of Work, the City may, but is not required to, release retainage for that area/portion of Work. Amounts of retainage shall be agreed upon by both City and Contractor prior to final acceptance of these areas.

17.03 Delay. If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Engineer so confirms, the City shall, upon application by the Contractor and certification by the Engineer, and without terminating the Contract, make payment of the balance

due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Agreement Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Engineer prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

17.04 Acceptance of Payment. Acceptance of final payment by the Contractor shall constitute a waiver of claims by Contractor except for any Claims then pending that comply with the requirements of Section 10.

17.05 Time for Final Completion. Contractor shall achieve Final Completion within 30 calendar days of the date of Substantial Completion, failing which, Contractor shall provide a full-time on-site superintendent until Final Completion at its own cost and not as a cost of the Work.

18. Protection of Persons and Property.

18.01 Safety Precautions and Programs. The Contractor shall be responsible for initiating, maintaining, and supervising all necessary safety precautions and programs in connection with the performance of the Contract.

18.02 Safety of Persons and Property.

(a) The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

1. employees on the Work, Project site, and other persons who may be affected thereby including but not limited to the City's employees, invitees and the general public;
2. the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
3. other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation or replacement in the course of construction.

(b) The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities (including without limitation all State, federal, and local governmental authorities or agencies with regulatory or supervisory jurisdictional authority regarding the land or activities of the Project, including the City) bearing on safety of persons or property or their protection from damage, injury or loss.

(c) The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including

posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

(d) When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. When use or storage of explosives or other hazardous materials or equipment or unusual construction methods are necessary, the Contractor shall give the City and Engineer reasonable advance notice of the presence or use of such materials, equipment, or methods.

(e) The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Agreement Documents) to property referred to in Paragraphs 18.02(a)(2) and 18.02(a)(3) caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Paragraphs 18.02(a), except damage or loss attributable to acts or omissions of the City or Engineer or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Paragraph 6.06.

(f) The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the City and Engineer.

(g) The Contractor shall not load or permit any part of the construction, Work or site to be loaded so as to endanger its safety.

(h) Suspension of all or a portion of the Work, for any reason, shall not relieve the Contractor of its obligations under Paragraph 18.02.

(i) The Contractor shall promptly report in writing to the City and Engineer all accidents arising out of or in connection with the Work which cause death, personal injury, or property damage, giving full details and statement of any witnesses. In addition, if death, serious personal injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to City and Engineer.

(j) The Contractor shall be responsible for the protection and security of the Work and the Project, until it receives written notification that the Substantial Completion of the Work has been accepted by the City unless otherwise provided in the Certificate of Substantial Completion.

18.03 Hazardous Materials. Contractor agrees that it shall not transport to, use, generate, dispose of, or install at the Project site any Hazardous Substance (as defined in 18.03(c)), except in accordance with applicable Environmental Laws. Further, in performing the Work, Contractor shall not cause any release of Hazardous Substances into, or contamination of, the environment,

including the soil, the atmosphere, any water course or ground water, except in accordance with applicable Environmental Laws (as hereafter defined at Paragraph 18.03(c)). In the event Contractor engages in any of the activities prohibited in this Paragraph 18.03. **to the fullest extent permitted by law, Contractor hereby indemnifies and holds City, Engineer and all of their respective officers, agents and employees harmless from and against any and all claims, damages, losses, causes of action, suits, and liabilities of every kind, including, but not limited to, expenses of litigation, court costs, punitive damages and attorneys' fees, arising out of, incidental to or resulting from the activities prohibited in this Paragraph 18.03.**

(a) In the event Contractor encounters on the Project site any Hazardous Substance, or what Contractor may reasonably believe to be a Hazardous Substance, and which is being introduced to the Work, or exists on the Project site, in a manner violative of any applicable Environmental Laws (see special definition below), Contractor shall immediately stop work in the area affected and report the condition to City and Engineer in writing. The Work in the affected area shall not thereafter be resumed except by written authorization of City if in fact a Hazardous Substance has been encountered and has not been rendered harmless. In the event Contractor fails to stop the Work upon encountering a Hazardous Substance at the Project site, to the fullest extent permitted by law, Contractor hereby indemnifies and holds City, Engineer and all of their respective officers, agents and employees harmless from and against any and all claims, damages, losses, causes of action, suits, and liabilities of every kind, including, but not limited to, expenses of litigation, court costs, punitive damages and attorneys' fees, arising out of, incidental to or resulting from Contractor's failure to stop the Work.

(b) City and Contractor may enter into a separate Agreement and/or Change Order for Contractor to remediate and/or render harmless the Hazardous Substance, but Contractor shall not be required to remediate and/or render harmless the Hazardous Substance absent such Agreement. Contractor shall not be required to resume work in any area affected by the Hazardous Substance until such time as the Hazardous Substance has been remediated and/or rendered harmless.

(c) For purposes of this Agreement, the term "Hazardous Substance" shall mean and include any element constituent, chemical, substance, compound, or mixture, which are defined as a hazardous substance by any local, state or federal law, rule, ordinance, by-law, or regulation pertaining to environmental regulation, contamination, clean-up or disclosure, including, without limitation, The Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), The Resource Conservation and Recovery Act ("RCRA"), The Toxic Substances Control Act ("TSCA"), The Clean Water Act ("CWA"), The Clean Air Act ("CAA"), the Marine Protection Research and Sanctuaries Act ("MPRSA"), The Occupational Safety and Health Act ("OSHA"), The Superfund Amendments and Reauthorization Act of 1986 ("SARA"), or other state superlien or environmental clean-up or disclosure statutes including all state and local counterparts of such laws (all such laws, rules and regulations being referred to collectively as "Environmental Laws"). It is the Contractor's responsibility to comply with Paragraph 18 based on the law in effect at the time its services are rendered and to comply with any

amendments to those laws for all services rendered after the effective date of any such amendments.

18.04 Emergencies. In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Paragraph 10 and Paragraph 13.

19. INSURANCE AND BONDS

19.01 General. The Contractor shall procure and maintain at its sole cost and expense for the duration of this Agreement insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the Work hereunder by the Contractor, its agents, representatives, volunteers, employees or subcontractors. The policies, coverages, limits and endorsements required are as set forth below.

During the term of this Agreement Contractor's insurance policies shall meet the minimum requirements of this section.

19.02 Types. Contractor shall have the following types of insurance:

- (a) Commercial General Liability ("CGL").
- (b) Business Automobile Liability.
- (c) Excess Liability – required for Agreement amounts exceeding \$1,000,000.
- (d) Builder's Risk – provides coverage for contractor's labor and materials for a project during construction that involves a structure such as a building or garage, builder's risk policy shall be written on "all risks" form.
- (e) Workers' Compensation/Employer's Liability.
- (f) Professional Liability
- (g) Contractors' Pollution Legal Liability, Asbestos Legal Liability, and Errors and Omissions coverage.
- (h) Surety bonds as required and described in this Agreement.

19.03 General Requirements Applicable to All Policies. The following General requirements applicable to all policies shall apply:

- (a) Insurance is to be placed with insurers authorized to conduct business in the state of Texas with a current A.M. Best rating of no less than A: VII, unless otherwise accepted in writing by the City. The insurance policies provided by the insurance company/companies are to be underwritten on forms that have been authorized by the Texas Department of Insurance or ISO. Original endorsements affecting coverage required by this Agreement shall be furnished with the certificates of insurance.
- (b) Self-insured retentions must be declared to and approved by the City in writing. The City may require the Contractor to purchase coverage with a lower retention

or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City. The CGL and any policies, including Excess liability policies, may not be subject to a self-insured retention (“SIR”) or deductible that exceeds \$25,000 unless approved in writing by City. All deductibles and SIRs shall be the sole responsibility of Contractor or subcontractor who procured such insurance and shall not apply to the Indemnified Additional Insured Parties. City may deduct from any amounts otherwise due Contractor to fund the SIR/deductible. Policies shall NOT contain any self-insured retention (SIR) provision that limits the satisfaction of the SIR to the Named Insured. The policy must also provide that Defense costs, including the Allocated Loss Adjustment Expenses, will satisfy the SIR or deductible. City reserves the right to obtain a copy of any policies and endorsements.

- (c) "Claims Made" policies are not accepted.
- (d) Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the City of College Station.
- (e) For any claims related to this project, the Contractor’s insurance coverage shall be primary and non-contributory insurance coverage at least as broad as ISO CG 20 01 04 13 regarding the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Contractor’s insurance and shall not contribute to it. This requirement shall also apply to any Excess or Umbrella liability policies.
- (f) Contractor hereby agrees to waive rights of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers’ Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents, and subcontractors.
- (g) Contractor shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this Agreement and a copy of the Declarations and Endorsements Pages of the CGL and any Excess policies listing all policy endorsements. All certificates and endorsements and copies of the Declarations & Endorsements pages are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the Work beginning shall not waive the Contractor’s obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

- (h) Contractor shall require and verify that all subcontractors maintain insurance meeting all requirements stated in this Agreement, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a form at least as broad as CG 20 38 04 13.
- (i) CGL & Excess/Umbrella liability policies for any construction related work, including, but not limited to, maintenance, service, or repair work, shall continue coverage for a minimum of five (5) years for Completed Operations liability coverage. Such Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of the Work and related obligations thereafter.
- (j) City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.
- (k) The City of College Station, its officers, officials, employees, agents, and volunteers are to be covered as additional insureds on the Business Automobile Liability policy, the Excess Liability/Umbrella policy, and the CGL policy, with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of the Contractor. The coverages shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, agents, or volunteers. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance, at least as broad as ISO Form:
 - a. CG 20 10 and CG 11 85; **or**
 - b. **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 forms (if later revisions used).
- (l) Contractor shall provide the following Surety Bonds:
 - a. Bid Bond
 - b. Performance Bond
 - c. Payment Bond
 - d. Maintenance Bond

The Payment Bond and the Performance Bond shall be in a sum equal to the Guaranteed Maximum Price (GMP) or the final total dollar value of the Project, whichever is greater, and shall be increased by rider if Project value increases. If the Performance Bond provides for a two-year warranty and provides coverage for other warranty terms as required by the Agreement, then a separate Maintenance Bond is not necessary. If the warranty period specified in the Agreement is for longer than two years, a Maintenance Bond equal to 10% of the final total dollar value of the Project is required. Bonds shall be duly executed by a responsible corporate surety, authorized to issue such bonds in the State of Texas, secured through an authorized agent with an office in Texas, and approved by the City.

19.04 Commercial General Liability. The following Commercial General Liability requirements shall apply:

- (a) Limit of \$5,000,000.00 per occurrence for bodily injury and property damage with an annual aggregate limit of \$10,000,000.00 which limits shall be endorsed to be per Project.
- (b) Coverage shall be at least as broad as ISO form GC 00 01.
- (c) No coverage shall be excluded from the standard policy without notification of individual exclusions being attached for the City's review and acceptance.
- (d) The coverage shall not exclude the following: premises/operations with separate aggregate; independent contracts; products/completed operations; contractual liability (insuring the indemnity provided herein) Host Liquor Liability, Personal & Advertising Liability; and Explosion, Collapse, and Underground coverage.

19.05 Business Automobile Liability. The following Business Automobile Liability requirements shall apply:

- (a) Business Automobile Liability insurance shall be written by a carrier rated "A: VII" or better in accordance with the current A.M. Best Key Rating Guide.
- (b) Minimum Combined Single Limit of \$5,000,000.00 per occurrence for bodily injury and property damage.
- (c) The Business Auto Policy must show Symbol 1 in the Covered Autos Portion of the liability section in Item 2 of the declarations page.
- (d) The coverage shall include owned autos, leased or rented autos, non-owned autos, any autos and hired autos.
- (e) Pollution Liability coverage shall be provided by endorsement MCS-90, with a limit of \$1,000,000.00 and \$2,000,000.00 policy aggregate where such exposures exist.

19.06 Excess Liability. The following Excess Liability requirements shall apply:

- (a) The Contractor may use Umbrella or Excess Liability Policies to provide the liability limits as required in this Agreement. This form of insurance will be acceptable provided that all Primary and Umbrella or Excess Liability Policies shall provide all the insurance coverages required by this Agreement, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements.
- (b) The Umbrella or Excess policies shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also

apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Contractor's primary and excess liability policies are exhausted.

19.07 Additional Insured.

Those policies set forth in Paragraphs 19.04 Commercial (General) Liability, 19.05 Business Automobile Liability and 19.06 Excess Liability shall contain an endorsement listing the City as Additional Insured and further providing that the Contractor's policies are primary to any self-insurance or insurance policies procured by the City. The additional insured endorsement shall be in a form acceptable to the City. Waiver of subrogation in a form acceptable to the City shall be provided in favor of the City on all policies obtained by the Contractor in compliance with the terms of this Agreement. Contractor shall be responsible for all deductibles which may exist on any policies obtained in compliance with the terms of this Agreement. All coverage for subcontractors shall be subject to the requirements stated herein. All Certificates of Insurance and endorsements shall be furnished to the City's Representative at the time of execution of this Agreement, attached hereto as **Exhibit C**, and approved by the City before Work commences.

19.08 Builder's Risk

Until the Work is completed and accepted by the City, the Contractor shall purchase and maintain builder's risk insurance upon the entire Work at the Project site to the full insurable value thereof. The Contractor shall maintain Builder's Risk (Course of Construction) insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the Project and no coinsurance penalty provisions. The builder's risk insurance shall also cover portions of the Work stored off site after written approval of the City of the value established in the approval, and also portions of the Work in transit. This insurance shall include the interests of the City, the Contractor, subcontractors, and sub-subcontractors in the Work and shall insure against the perils of fire, wind, storm, hail, lightning, and extended coverage including flood and earthquake and shall include all-risk insurance for physical loss or damage, including, without duplication of coverage, theft, vandalism and malicious mischief. The insurance shall cover reasonable compensation for City's Consultant's services and expenses required as a result of an insured loss. This must be an all-risk policy incorporating the following language:

Permission is given for the Project insured hereunder to become occupied, the insurance remaining in full force and effect until such time as the Project has been accepted by the City, all as currently approved by the Texas Board of Insurance Commissioners.

The insurance policy and related Certificate of Insurance must specifically state that the: (a) Contractor is a named insured party for the insurance coverage described; and (b) City is an additional and named insured party for the insurance coverage described. The deductible under the policy, including that for flood shall not exceed \$100,000.00 without the written approval of the City.

Contractor may submit evidence of Builder's Risk insurance in the form of Course of Construction

coverage. Such coverage shall name the City as a loss payee as their interest may appear.

If the Project does not involve new or major reconstruction, at the option of the City, an Installation Floater insurance policy coverage, and/or an endorsement for such coverage, may be acceptable. For such projects, a Property Installation Floater insurance policy coverage, and/or an endorsement for such coverage, shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater insurance policy coverage, and/or an endorsement for such coverage, and the related Certificate of Insurance, shall: (a) provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at the City's site; and (b) comply with the above provision in this Paragraph 19.08 which require that the: (i) Contractor is a named insured party for the insurance coverage described; and (ii) City is an additional and named insured party for the insurance coverage described.

19.09 Workers' Compensation/Employer's Liability Insurance. The following Workers' Compensation Insurance requirements shall apply.

- (a)** Pursuant to the requirements set forth in Title 28, Section 110.110 of the Texas Administrative Code, all employees of the Contractor, all employees of any and all subcontractors, and all other persons providing services on the Project must be covered by a workers' compensation insurance policy: either directly through their employer's policy (the Contractor's or subcontractor's policy) or through an executed coverage agreement on an approved Texas Department of Insurance Division of Workers' Compensation (DWC) form. Accordingly, if a subcontractor does not have their own policy and a coverage agreement is used, contractors and subcontractors must use that portion of the form whereby the hiring contractor agrees to provide coverage to the employees of the subcontractor. The portion of the form that would otherwise allow them not to provide coverage for the employees of an independent contractor may not be used.
- (b)** Workers' Compensation/Employer's Liability insurance shall include the following terms:

 - 1.** Employer's Liability minimum limits of \$1,000,000.00 for each accident/each disease/each employee are required.
 - 2.** "Texas Waiver of Our Right to Recover From Others Endorsement, WC 42 03 04" shall be included in this policy.
 - 3.** Texas must appear in Item 3A of the Workers' Compensation coverage or Item 3C must contain the following: All States except those listed in Item 3A and the States of NV, ND, OH, WA, WV, and WY.
- (c)** Pursuant to the explicit terms of Title 28, Section 110.110(c) (7) of the Texas Administrative Code, the bid specifications, this Agreement, and all subcontracts on this Project must include the following terms and conditions in the following

language, without any additional words or changes, except those required to accommodate the specific document in which they are contained or to impose stricter standards of documentation:

“A. Definitions:

Certificate of coverage (“certificate”) – An original certificate of insurance, a certificate of authority to self-insure issued by the Division of Workers’ Compensation, or a coverage agreement (DWC-81, DWC-83, or DWC-84), showing statutory workers’ compensation insurance coverage for the person’s or entity’s employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the Work on the project until the Contractor’s/person’s Work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project (“subcontractors” in § 406.096 [of the Texas Labor Code]) - includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent Contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. “Services” include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. “Services” does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

B. The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the project, for the duration of the project.

C. The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

D. If the coverage period shown on the Contractor’s current certificate of coverage ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

E. The Contractor shall obtain from each person providing services on a project, and provide to the governmental entity:

(1) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

(2) no later than seven calendar days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

F. The Contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

G. The Contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 calendar days after the Contractor knew or should have known, or any change that materially affects the provision of coverage of any person providing services on the project.

H. The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Division of Workers' Compensation, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

I. The Contractor shall contractually require each person with whom it contracts to provide services on a project, to:

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

(2) provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;

(3) provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(4) obtain from each other person with whom it contracts, and provide to the Contractor:

(a) A certificate of coverage, prior to the other person beginning

work on the project; and

(b) A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

(6) notify the governmental entity in writing by certified mail or personal delivery, within 10 calendar days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

(7) Contractually require each person with whom it contracts to perform as required by paragraphs (a) - (g), with the certificates of coverage to be provided to the person for whom they are providing services.

J. By signing this Agreement, or providing, or causing to be provided a certificate of coverage, the Contractor is representing to the governmental entity that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project; that the coverage will be based on proper reporting of classification codes and payroll amounts; and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

K. The Contractor's failure to comply with any of these provisions is a breach of agreement by the Contractor that entitles the governmental entity to declare the Agreement void if the Contractor does not remedy the breach within ten calendar days after receipt of notice of breach from the governmental entity."

19.10 Professional Liability.

Professional liability with limits no less than \$2,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.

19.11 Contractors' Pollution Legal Liability.

Contractors' Pollution Legal Liability, Asbestos Legal Liability, and Errors and Omissions liability coverage with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.

19.12 Property Insurance.

- (a) Partial occupancy or use in accordance with Paragraph 16.06 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The City and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance.
- (b) The City, at the City's option, may purchase and maintain such insurance as will insure the City against loss of use of the City's property due to fire or other hazards, however caused.
- (c) If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the City shall, at City's option, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.
- (d) If during the Project construction period the City insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the City shall waive all rights for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.
- (e) A loss insured under City's property insurance shall be adjusted by the City and made payable to the City for the insureds, as their interests may appear, subject to requirements of Paragraph 19.03. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.
- (f) If after such loss no other special agreement is made and unless the City terminates the Agreement for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Section 13.
- (g) The City shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the City's exercise of this power; if such objection is made, the dispute shall be resolved as provided in Section 10.
- (h) If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

19.12 Performance Bond and Payment Bond.

(a) Pursuant to applicable provisions of Chapters, 2253, 2254, and 2269 of the Texas Government Code, for all public works contracts with governmental entities: a payment bond is required if the Agreement Amount exceeds \$50,000, a performance bond is required if the Agreement Amount exceeds \$100,000, and below those amounts, the City may require payment and/or performance bonds for the Project in the exercise of its lawful discretion and best business judgment. The City and Contractor agree that, both a performance and payment bond are required to be properly obtained by the Contractor and timely delivered to the City as described by this Agreement, and such bonds shall be executed in accordance with all requirements of Article 7.19-1 of the Texas Insurance Code, as amended, the authority described in this Agreement, and all other applicable law, and furthermore, the following is required regarding said bonds:

1. The Contractor shall execute the required performance and payment bonds:
(a) for the full Agreement Amount in the form and scope described in the bond forms attached hereto as **Exhibit B**; or (b) pursuant to Section 2269.258(a) of the Texas Government Code, if a fixed Agreed Amount or Guaranteed Maximum Price has not been determined at the time the Agreement is awarded, the penal sums of said performance and payment bonds delivered to the City must each be in an amount equal to the construction budget for the Project, as specified in the City's request for proposals or qualifications.
2. The bond surety on said bonds shall be authorized under the laws of the State of Texas to provide a performance and payment bond, and each bond shall have attached proof of authorization of the surety to act regarding all obligations described in each respective bond.
3. The Contractor shall provide original, sealed, and complete counterparts of said executed bonds in the forms required by the Agreement Documents, which are attached as **Exhibit B**, together with valid original powers of attorney, at the time of execution of this Agreement and prior to the commencement of Work. Copies of said executed bonds shall be attached hereto as **Exhibit B**.
4. The required performance and payment bonds shall remain in effect for a minimum period of two (2) years after Final Completion of the Work and shall be extended for any warranty work to cover the warranty period.
5. If at any time during the performance of this Agreement in the required period thereafter, either or both of said bonds become invalid or ineffective for any reason, the Contractor shall promptly supply within ten (10) days of such invalidity or ineffectiveness a full and complete replacement bond or bonds as the case may be, that shall assure performance or payment as required by this Agreement.
6. Regarding the delivery of said bonds by the Contractor to the City, and pursuant to Section 2269.258(b) of the Texas Government Code: (a) the Contractor shall deliver said bonds not later than the 10th day after the date the Contractor

executes the Agreement; or (b) alternatively and subject to the lawful discretion and best business judgment of the City, the Contractor may be allowed by the City to furnish and deliver to the City a bid bond or other financial security which is acceptable to the City to ensure that the Contractor will furnish the required performance and payment bonds when a guaranteed maximum price is established under this Agreement.

(b) The Contractor may make such changes and alterations as the City may require in the Work or any part thereof without affecting the validity of this Agreement and any accompanying bond. If such changes or alterations diminish the quantity or quality of the Work to be done, they shall not constitute the basis for any claim for damages or anticipated profits. If the City makes changes or alterations that render useless any Work already done or material already used in said Work, then the City shall compensate the Contractor for any material or labor so used, and for any actual loss occasioned by such change due to actual expenses incurred in preparation for the work as originally planned, provided that said compensation does not constitute additional compensation to that which has been already paid by the City to the Contractor for any Work associated with said changes or alterations.

20. UNCOVERING AND CORRECTION OF WORK

20.01 Uncovering of Work.

(a) If a portion of the Work is covered contrary to the City's or Engineer's request or to requirements specifically expressed in the Agreement Documents, it must, if required in writing by the City or Engineer, be uncovered for the City's and Engineer's examination and be replaced at the Contractor's expense without change in the Agreement Time.

(b) If a portion of the Work has been covered which the City or Engineer has not specifically requested to examine prior to its being covered, the City or Engineer may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Agreement Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the City's expense. If such Work is not in accordance with the Agreement Documents, correction shall be at the Contractor's expense.

20.02 Correction of Work.

(a) Before or After Substantial Completion. The Contractor shall promptly correct Work rejected by the Engineer or failing to conform to the requirements of the Agreement Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections and compensation for the Engineer's services and expenses made necessary thereby, shall be at the Contractor's expense.

(b) After Substantial Completion. In addition to the Contractor's obligations under Paragraph 5.07, if, within two (2) years after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Paragraph 16.06(a), or by terms of an applicable special warranty required by the Agreement Documents, any of the Work is found to be not in accordance with the requirements of the Agreement Documents, the Contractor shall correct it promptly after receipt of written notice from the City to do so unless the City has previously given the Contractor a written acceptance of such specific condition. The City shall endeavor to give such notice promptly after discovery of the condition. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the City or Engineer, the City may correct it in accordance with Paragraph 4.05. The "prompt" correction of defective work by the Contractor after receipt of notification from the City as described above shall be defined as follows:

1. The Contractor shall make written response to the City within twenty-four (24) hours of receipt of the City's notice acknowledging receipt of the notice and providing the proposed schedule to conduct corrective work. Corrective work shall not interfere with the City's normal operation and use of the Project, unless expressly approved by the City;
2. For corrective work which is not a life safety issue, or which will not, by the nature of the defect, cause subsequent damage to the Project, corrective work shall be completed within fourteen (14) calendar days;
3. For corrective work which by its nature may cause subsequent damage to the Project, corrective work required to prevent subsequent damage shall be completed within twenty-four (24) hours, and if such work is a temporary repair, permanent repair of the corrective work shall be completed within seven (7) calendar days. The Contractor shall also correct all subsequent damage caused by such corrective work;
4. For corrective work which affects services to, and ordinary use of the Project, corrective work shall be completed within twenty-four (24) hours, and if such work is a temporary repair, permanent repair of the corrective work shall be completed within seven (7) calendar days; and
5. The time frames stated above for completion of permanent corrective work shall be equitably adjusted as required for legitimate delays caused by weather delays, material acquisition and other factors beyond the Contractor's direct control.
6. The two-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work.
7. These obligations under Subparagraph 20.02(b) shall survive acceptance of the Work under the Agreement and termination of the Contract. The period for any

Work corrected pursuant to Paragraph 20.02 shall be extended for a period of two years after the date said corrective work is completed.

(c) The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Agreement Documents and are neither corrected by the Contractor nor accepted by the City.

(d) The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the City or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Agreement Documents.

1. Where non-conforming Work is found, the entire area of Work involved shall be corrected unless the Contractor can completely define the limits to the Engineer's satisfaction. Additional testing, sampling, or inspecting needed to define nonconforming Work shall be at the Contractor's expense, and performed by the City's testing laboratory if such services are reasonably required by the Engineer. All corrected Work shall be retested at the Contractor's expense. Extra architectural or other services required to analyze non-conforming Work shall be paid for by the Contractor.

(e) Nothing contained in Paragraph 20.02 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Agreement Documents. Nothing contained in Paragraph 20.02 is intended to limit or modify any obligations under the law or under the Agreement Documents, including any warranty obligations, expressed or implied.

20.03 Acceptance of Nonconforming Work. If the City prefers to accept Work which is not in accordance with the requirements of the Agreement Documents, the City may do so instead of requiring its removal and correction, in which case the Agreement Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

21. TEST AND INSPECTIONS

21.01 Tests and Inspections.

(a) Tests, inspections, and approvals of portions of the Work required by the Agreement Documents (or by laws, ordinances, rules, regulations, or orders of public authorities having jurisdictional, regulatory, or supervisory authority regarding the land or activities of the Project) shall be made at appropriate times. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory employed by the City for this purpose, or with the

appropriate public authority. City shall bear the normal costs of these services, but not any excess costs attributable to Contractor-caused scheduling problems, or other Contractor error. The Contractor shall give the Engineer timely notice of when and where tests and inspections are to be made so the Engineer may observe such procedures.

(b) If the Engineer, City or said public authorities determine that portions of the Work require additional testing, inspection or approval not included under Paragraph 21.01, the Engineer will, upon written authorization from the City, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the City, and the Contractor shall give timely notice to the Engineer of when and where tests and inspections are to be made so that the Engineer may be present for such procedures. Such costs, except as provided in this Paragraph 21.01, shall be at the City's expense.

(c) If such procedures for testing, inspection, or approval under this Section 21 reveal failure of the portions of the Work to comply with requirements established by the Agreement Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Engineer's services and expenses shall be at the Contractor's expense.

(d) Required certificates of testing, inspection or approval shall, unless otherwise required by the Agreement Documents, be secured by the Contractor, and promptly delivered to the Engineer.

(e) If the Engineer is to observe tests, inspections or approvals required by the Agreement Documents, the Engineer will do so promptly and, where practicable, at the normal place of testing.

(f) Tests or inspections conducted pursuant to the Agreement Documents shall be made promptly to avoid unreasonable delay in the Work.

22. TERMINATION OR SUSPENSION OF THE CONTRACT

22.01 Termination by the Contractor.

(a) The Contractor may terminate the Agreement if the Work is stopped for a period of one hundred-twenty (120) consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect Agreement with the Contractor, for any of the following reasons:

1. issuance of an order or decision of a court or other public authority (including without limitation any State, federal, or local governmental authority or agency with regulatory or supervisory jurisdictional authority regarding the land or activities of the Project, including the City) having jurisdiction which requires all Work to be stopped;

2. an act of government, such as a declaration of national emergency which requires all Work to be stopped; or

3. because the Engineer has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Paragraph 15.04(a), or because the City has not made payment on a Certificate for Payment within the time stated in the Agreement Documents, provided notice is given as required under Subparagraph 15.04(a).

(b) The Contractor may terminate the Agreement if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect Agreement with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the City as described in Paragraph 22.03 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

(c) If the Work is stopped for one hundred-twenty (120) consecutive days for any reason described in Paragraph 22.01(a) or 22.01(b), the Contractor may, upon sixty (60) days' written notice to the City and Engineer, terminate the Agreement and recover from the City payment for Work already satisfactorily performed by Contractor.

(d) Notwithstanding anything to the contrary contained herein or in the other Agreement Documents, the City shall not be responsible for damages for loss of anticipated profits on Work not performed on account of any termination described in Subparagraphs 22.01(a), 22.01(b) and 22.01(c).

22.02 Termination by the City with or without Cause.

(a) The City may terminate the Agreement if the Contractor:

1. refuses or fails to timely supply enough properly skilled workers, or proper materials or equipment, to perform the Work of the Project;

2. fails to make a payment to Subcontractors for materials, equipment, or labor in accordance with the respective agreements between the Contractor and the Subcontractors for the Work of the Project;

3. disregards or fails to comply with any law, ordinance, rule, regulation, decision, or order regarding the Project that is issued by a court or other public authority (including without limitation a State, federal, or local governmental authority or agency, including the City) with regulatory, supervisory, or jurisdictional authority regarding the land or activities of the Project;

4. commits conduct, an act, or omission which constitutes a breach or default of the Agreement or the Agreement Documents;

5. fails to furnish the City, upon request, with assurances satisfactory to the City evidencing the Contractor's ability to complete the Work in compliance with all the requirements of the Agreement or Agreement Documents;

6. fails to proceed continuously and diligently with the construction and completion of the Work, except as permitted under the Agreement or Agreement Documents; or

7. fails to provide all policies of insurance, permits, and/or bonds required to be obtained by the Contractor for the Project pursuant to the Agreement or Agreement Documents.

(b) When any of the above Paragraph 22.02(a) reasons exist, the City may, without prejudice to any other rights or remedies of the City and after giving the Contractor and the Contractor's surety, if any and applicable, seven (7) days' written notice, terminate the engagement and appointment of the Contractor under this Agreement, and may, subject to any prior rights of an applicable surety:

1. take possession of the Project site and of all materials, equipment, tools, and construction equipment and machinery thereon owned or possessed by the Contractor;

2. accept assignment of subcontracts pursuant to Paragraph 11.04;

3. make demand upon Contractor's applicable surety, if any, to complete the Work;

4. finish the Work by whatever reasonable method the City may deem, in its sole discretion and best business judgment, to be expedient or advisable; and/or

5. initiate and complete litigation against the Contractor, and against all other necessary or desired parties (including Contractor's sureties and insurance carriers), for the recovery of all remedies, claims and causes of action (whether legal, equitable, or mixed), and all damages, as allowed by law and this Agreement, including without limitation: Agreement termination; the recovery of all actual and consequential damages; the recovery of certain liquidated damages under this Agreement; and the recovery of the City's incurred attorney's fees, expenses, court costs, interest, and all just and lawful offsets and credits

(c) When the City terminates the Agreement for a reason stated in Paragraph 22.02(a), the Contractor shall not be entitled to receive further payment until the Work is finished.

(d) If the unpaid balance of the Agreement Sum exceeds costs of finishing the Work, including compensation for the Engineer's services and expenses made necessary thereby, and other damages incurred by the City and not expressly waived, including attorney's fees, such excess shall be paid to the Contractor. If such costs and damages exceed the

unpaid balance, the Contractor shall pay the difference to the City. This obligation for payment shall survive termination of the Contract.

(e) If a Performance Bond has been furnished and the Contractor is declared by the City to be in default under the Agreement, the Surety shall promptly, and in no event more than 30 days, remedy the default by commencing and continuing to perform the remaining work of the Agreement in accordance with its terms and conditions, or by obtaining a bid or bids for the Work in accordance with the Agreement's terms and conditions. At City's election, upon determination by the City and the Surety of the lowest responsible bidder, the Surety will complete the Work or will arrange for an Agreement between such bidder and the City and make available sufficient funds to pay the cost of completion less the balance of the Agreement Sum, but not exceeding the Penal Sum of the bond. The phrase "balance of the Agreement Sum" as used herein shall mean the total amount payable by the City to the Contractor under the Agreement, including any adjustments thereto made in accordance with the terms and conditions of this Agreement, and amendments thereto less the amount previously paid by the City to the Contractor.

(f) Also, notwithstanding anything to the contrary herein stated, the City may terminate this Agreement pursuant to one or more of the circumstances and procedures stated in Paragraph 30 for City termination of this Agreement.

22.03 Suspension by the City for Convenience.

(a) The City may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the City may determine.

(b) If City suspends the Contractor's performance for convenience, an adjustment shall be made to the Agreement Sum as calculated under Section 13 and shall include profit. No adjustment shall be made to the extent:

1. that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
2. that an equitable adjustment is made or denied under another provision of the Agreement.

22.04 Termination by the City for Convenience.

(a) The City may, at any time, terminate the Agreement, in whole or in part, for the City's convenience and without cause.

(b) Upon receipt of written notice from the City of such termination for the City's convenience, the Contractor shall:

1. cease operations as directed by the City in the notice;

2. take actions necessary, or that the City may direct, for the protection and preservation of the Work; and

3. except for Work not so terminated and/or directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts, and purchase orders and enter into no further subcontracts and purchase orders.

(c) In the event of a termination under Paragraph 22.04, the Contractor shall be paid the value of its Work to the date of termination plus such sums as are reasonably required to cover the cost to Contractor, its Subcontractors, and suppliers, to shut down the Project. City shall not be responsible for damages for loss of anticipated profits on Work not performed on account of any termination.

(d) Upon determination by a court of competent jurisdiction that termination of the Contract, pursuant to Paragraph 22.02 was wrongful, such termination will be deemed converted to a termination for convenience pursuant to Paragraph 22.04, and Contractor's remedy for wrongful termination shall be limited to the recovery of the payments permitted for termination for convenience as set forth in Paragraph 22.04.

23. GENERAL CONTRACTOR'S RESPONSIBILITIES.

23.01 General. The Contractor shall perform all services described in this Agreement to be performed by the Contractor. The services to be provided under Paragraphs 23.02 and 23.03 constitute the Preconstruction Phase services. If the City and Contractor agree, the Construction Phase may commence before the Preconstruction Phase is completed, in which case both phases will proceed concurrently.

23.02 Preconstruction Phase.

(a) Preliminary Evaluation. The Contractor shall provide a preliminary evaluation of the City's program and Project budget requirements, each in terms of the other.

(b) Consultation. The Contractor with the Engineer shall jointly schedule and attend regular meetings with the City. The Contractor shall consult with the City and Engineer regarding site use and improvements and the selection of materials, building systems and equipment. The Contractor shall provide constructability reviews to include recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost, including estimates of alternative designs or materials, preliminary budgets and possible economies. The Contractor shall provide bidability reviews to include recommendations on design discipline coordination and clarifications that will improve the ability of the City to receive competitive bids for the complete cost to construct the Project.

(c) Preliminary Project Schedule. When Project requirements described in Paragraph 24.01(a) have been sufficiently identified, the Contractor shall prepare, and periodically

update, a preliminary Project schedule for the Engineer's review and the City's approval. The Contractor shall coordinate and integrate the preliminary Project schedule with the services and activities of the City, Engineer and Contractor. As design proceeds, the preliminary Project schedule shall be updated to indicate proposed activity sequences and durations, Milestone Dates for receipt and approval of pertinent information, submittal of a Guaranteed Maximum Price proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, City's occupancy requirements showing portions of the Project having occupancy priority, and proposed date of Substantial Completion. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Contractor shall make appropriate recommendations to the City and Engineer.

(d) Phased Construction. The Contractor shall make recommendations to the City and Engineer regarding the phased issuance of Drawings and Specifications to facilitate phased construction of the Work, if such phased construction is appropriate for the Project, taking into consideration such factors as economies, time of performance, availability of labor and materials, and provisions for temporary facilities.

(e) Preliminary Cost Estimates. When the City has sufficiently identified the Project requirements and the Engineer has prepared other basic design criteria, the Contractor shall prepare, for the review of the Engineer and approval of the City, a preliminary cost estimate of the complete and fully functional Project utilizing area, volume, or similar conceptual estimating techniques.

- 1.** When preliminary design documents have been prepared by the Engineer and approved by the City, the Contractor shall prepare, for the review of the Engineer and approval of the City, a more detailed estimate with supporting data. During the preparation of the detailed design documents, the Contractor shall update and refine this estimate in real time with the design's development through the use of a trend log or other tool.

- 2.** The Contractor shall prepare a detailed estimate with supporting data for review by the Engineer and approval by the City when the detailed design documents are fifty percent (50%) complete, ninety percent (90%) complete (unless the Guaranteed Maximum Price has been established), and at any other appropriate intervals agreed to by the City, Engineer and Contractor.

- 3.** If any estimate submitted to the City exceeds previously approved estimates or the City's budget, the Contractor shall make appropriate recommendations to the City and Engineer.

- 4.** All cost estimates shall include the references and attachments captured in Paragraph 23.03(d).

(f) Subcontractors and Suppliers. The Contractor shall seek to develop subcontractor interest in the Project and shall furnish to the City and Engineer for their information a list of possible subcontractors, including suppliers who are to furnish materials or equipment

fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Engineer will promptly reply in writing to the Contractor if the Engineer or City know of any objection to such subcontractor or supplier. The receipt of such list shall not require the City or Engineer to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the City or Engineer later to object to or reject any proposed subcontractor or supplier.

(g) Long-Lead-Time Items. The Contractor shall recommend to the City and Engineer a schedule for procurement of long-lead-time items which will constitute part of the Work as required to meet the Project schedule. If such long-lead-time items are procured by the City, they shall be procured on terms and conditions acceptable to the Contractor. Upon the City's acceptance of the Contractor's Guaranteed Maximum Price proposal, all contracts for such items shall be assigned by the City to the Contractor, who shall accept responsibility for such items as if procured by the Contractor. The Contractor shall expedite the delivery of long-lead-time items.

(h) Extent of Responsibility. The Contractor does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The recommendations and advice of the Contractor concerning design alternatives shall be subject to the review and approval of the City and the City's professional consultants. It is not the Contractor's responsibility to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if the Contractor recognizes that portions of the Drawings and Specifications are at variance therewith, the Contractor shall promptly notify the Engineer and City in writing.

(i) Equal Employment Opportunity and Affirmative Action. The Contractor shall comply with applicable laws, regulations, and special requirements of the Agreement Documents regarding equal employment opportunity and affirmative action programs.

23.03 Guaranteed Maximum Price Proposal and Agreement Time.

(a) When the Drawings and Specifications are sufficiently complete, the Contractor shall propose a Guaranteed Maximum Price (depending on Project requirements, at the City's request, multiple Guaranteed Maximum Price packages may be provided to phase or group the work, however, all packages shall be totaled together to arrive at the final Guaranteed Maximum Price), which shall be the sum of the estimated Cost of the Work and the Contractor's Fee. Provided, however, Contractor understands such estimates are relied upon by the City in making various Project determinations, and, therefore, should Contractor's Guaranteed Maximum Price proposal exceed the City's applicable budget by more than 10%, all pre-construction services rendered thereafter to render the Project within 10% of the budget by Contractor shall be at the sole cost of the Contractor.

(b) As the Drawings and Specifications may not be finished at the time the Guaranteed Maximum Price proposal is prepared, the Contractor shall provide in the Guaranteed Maximum Price for further development of the Drawings and Specifications by the Engineer that is consistent with the Agreement Documents and reasonably inferable

therefrom. Such further development does not include such things as changes in scope, systems, kinds, and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

(c) The estimated Cost of the Work shall include the Contractor's contingency, being a sum established by the Contractor for its exclusive use to cover costs arising under Paragraph 23.03(b) and other costs which are properly reimbursable as Cost of the Work but not the basis for a Change Order.

(d) Basis of Guaranteed Maximum Price. The Contractor shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include:

1. A list of the Drawings and Specifications, including all addenda thereto and the Conditions of the Contract, which were used in preparation of the Guaranteed Maximum Price proposal.
2. A list of allowances and a statement of their basis.
3. A list of the clarifications and assumptions made by the Contractor in the preparation of the Guaranteed Maximum Price proposal to supplement the information contained in the Drawings and Specifications.
4. The proposed Guaranteed Maximum Price, including a statement of the estimated cost organized by trade categories, allowances, contingency, and other items and the Fee that comprise the Guaranteed Maximum Price.
5. The Date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based, and a schedule of the Construction Documents issuance dates upon which the date of Substantial Completion is based.
6. A list of any exclusions.

(e) The Contractor shall meet with the City and Engineer to review the Guaranteed Maximum Price proposal and the written statement of its basis. In the event that the City or Engineer discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Contractor, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

(f) Unless the City accepts the Guaranteed Maximum Price proposal in writing on or before the date specified in the proposal for such acceptance and so notifies the Contractor, the Guaranteed Maximum Price proposal shall not be effective without written acceptance by the Contractor and the City.

(g) Prior to the City's acceptance of the Contractor's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, the Contractor shall not incur any cost to be reimbursed as part of the Cost of the Work, except as the City may specifically authorize in writing.

(h) Upon acceptance by the City of the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price and its basis shall be set forth in Amendment No. 1. The Guaranteed Maximum Price shall be subject to additions and deductions by a change in the Work as provided in the Agreement Documents, and the Date of Substantial Completion shall be subject to adjustment as provided in the Agreement Documents.

(i) The City shall authorize and cause the Engineer to revise the Drawings and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in Amendment No. 1. Such revised Drawings and Specifications shall be furnished to the Contractor in accordance with schedules agreed to by the City, Engineer and Contractor. The Contractor shall promptly notify the Engineer and City if such revised Drawings and Specifications are inconsistent with the agreed-upon assumptions and clarifications.

23.04 Construction Phase.

(a) General. The Construction Phase shall commence on:

1. the City's acceptance of the Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, and
2. the City's first authorization to the Contractor to:
 - (i)** award a subcontract, or
 - (ii)** undertake construction Work with the Contractor's own forces, or
 - (iii)** issue a purchase order for materials or equipment required for the Work.

(b) Administration.

1. Notwithstanding anything to the contrary stated in this Agreement, and regarding any Contractor self-performed work authorized for the Project pursuant to this Agreement, it is expressly agreed by the parties that any Contractor self-performed work for the Project must be awarded, if at all, pursuant to the following procedure: (i) first, a written proposal must be submitted by the Contractor to the City for said work, before any competitive bid procedure is thereafter conducted for that proposed and subject work of the Project; (ii) next, a lawful competitive bid procedure shall be conducted to third-parties (not the Contractor) for that proposed and subject work of the Project; (iii) next, an analysis shall be conducted by the City and the Contractor regarding the Contractor's written proposal for the proposed self-performed work and the competitive bids received from third-parties for the proposed and subject Project work, in order for the City, using its discretion and best business judgment, to determine the lowest cost and best construction solution for said work; and (iv) finally and upon the aforesaid analysis conducted by the City, an award by the City in writing is made to the Contractor for the

proposed Contractor self-performed work because that solution was determined by the City to represent the lowest cost and best construction solution for said proposed work for the Project.

2. Those portions of the Work that the Contractor does not customarily perform with its own personnel shall be performed under subcontracts or by other appropriate agreements with the Contractor. The Contractor shall obtain public bids in accordance with the applicable requirements of Chapter 2269 of the Texas Government Code from Subcontractors and from suppliers of materials or equipment fabricated to a special design for the Work from the list previously reviewed and, after analyzing such bids, shall deliver such bids to the City and Engineer. The City will then determine, with the non-binding advice and comment of the Contractor and Engineer, which bids will be accepted. The City may designate specific persons or entities from whom the Contractor shall obtain bids; however, if the Guaranteed Maximum Price has been established, the City may not prohibit the Contractor from obtaining bids from other qualified bidders.

3. If the Guaranteed Maximum Price has been established and a specific bidder among those whose bids are delivered by the Contractor to the City and Engineer (1) is recommended to the City by the Contractor; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid which conforms to the requirements of the Agreement Documents without reservations or exceptions, but the City requires that another bid be accepted, then the Contractor may require that a change in the Work be issued to adjust the Agreement Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the City by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the City.

4. Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform to the payment provisions of Paragraphs 28.01(h) and 28.01(i) and shall not be awarded on the basis of cost plus a fee without the prior consent of the City.

5. The Contractor shall schedule and conduct meetings with appropriate Subcontractors at which the City, Engineer, Contractor and appropriate Subcontractors can discuss the status of the Work. The Contractor shall prepare and promptly distribute meeting minutes.

6. Promptly after the City's acceptance of the Guaranteed Maximum Price proposal, the Contractor shall prepare a schedule in accordance with Paragraph 5.11, General Conditions, including the City's occupancy requirements.

7. The Contractor shall provide monthly written reports to the City and Engineer on the progress of the entire Work. The Contractor shall maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as the City may reasonably require. The log shall be available to the City and

Engineer. The Contractor shall promptly inform City in writing of any circumstance or development that is likely to delay Substantial Completion of the Project in accordance with the schedule.

8. The Contractor shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Contractor shall identify variances between actual and estimated costs and report the variances to the City and Engineer at regular intervals.

(c) Professional Services. Paragraph 5.013(j), General Conditions shall apply to both the Preconstruction and Construction Phase.

(d) Hazardous Materials. Paragraph 18.03, General Conditions shall apply to both the Preconstruction and Construction Phases.

END OF GENERAL CONDITIONS

ARTICLE II.
ADDITIONAL CONDITIONS

24. CITY'S RESPONSIBILITIES

24.01 Information And Services

- (a)** The City shall provide information in a timely manner regarding the requirements of the Project, including a program which sets forth the City's objectives, constraints, and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.
- (b)** The City shall establish and update an overall budget for the Project, based on consultation with the Contractor and Engineer, which shall include contingencies for changes in the Work and other costs which are the responsibility of the City.
- (c)** Structural And Environmental Tests, Surveys and Reports. In the Preconstruction Phase, the City shall furnish the following with reasonable promptness and at the City's expense. Except to the extent that the Contractor knows of any inaccuracy, or should have reasonably discovered such error or inaccuracy, the Contractor shall be entitled to rely upon the accuracy of any such information, reports, surveys, drawings, and tests described in Paragraphs 24.01(d) through 24.01(g) but shall exercise customary precautions relating to the performance of the Work.
- (d)** Reports, surveys, drawings, and tests concerning the conditions of the site which are required by law.
- (e)** Surveys describing physical characteristics, legal limitations, and utility locations for the site of the Project, and a written legal description of the site.
- (f)** The services of a geotechnical engineer when such services are requested by the Contractor and are reasonably required by the scope of the Project, as determined by the City or Engineer. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.
- (g)** Structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports which are required by law.
- (h)** The services of other consultants when such services are reasonably required by the scope of the Project, as determined by the City or Engineer, and are requested by the Contractor.

24.02 City's Designated Representative. The City shall designate in writing City's Representative who shall have express authority, subject to the limitations set forth in the General Conditions, to bind the City with respect to all matters requiring the City's approval or authorization. This City's Representative shall have the authority to make decisions on behalf of the City concerning estimates and schedules, construction budgets, and changes in the Work, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Contractor. Except as otherwise provided in Paragraph 9.02(a), General Conditions, the Engineer does not have such authority.

24.03 Engineer. The City shall retain an Engineer to provide basic services, including normal civil, process mechanical, architectural, structural, mechanical, instrumentation, and electrical engineering services, and any other disciplines as required. The City must authorize, in writing, and cause the Engineer to provide additional service, requested by the Contractor which must necessarily be provided by the Engineer for the Preconstruction and Construction Phases of the Work. The Contractor has no authority to request services from the Engineer on the City's behalf. Such services shall be provided in accordance with time schedules agreed to by the City, Engineer and Contractor. Upon request of the Contractor, the City shall furnish to the Contractor a copy of the City's Agreement with the Engineer.

25. COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES.

The City shall compensate and make payments to the Contractor for Preconstruction Phase services as follows:

25.01 Compensation.

(a) For the services described in Paragraphs 23.02 and 23.03, the Contractor's compensation shall be calculated as follows:

(State basis of compensation, whether a stipulated sum, multiple of Direct Personnel Expense, actual cost, etc. Include a statement of reimbursable cost items as applicable.)

Stipulated lump sum of \$324,450.00

(b) If compensation is based on a multiple of Direct Personnel Expense, Direct Personnel Expense is defined as the direct salaries of the Contractor's personnel engaged in the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

25.02 Payments.

(a) The City shall endeavor to make payments monthly (as described below) following presentation of the Contractor’s invoice and supporting documents and, where applicable, shall be in proportion to services performed and the amounts of Work substantiated by Contractor’s supporting documentation.

(b) The City will endeavor to make payments no later than thirty (30) calendar days from the date the Contractor’s invoice is approved by the City, unless otherwise agreed in writing by the parties.

(c) The City stipulates that it is an exempt organization as defined by the Limited Sales, Excise and Use Tax Act and, as such, is exempt from the payment of the sales tax on materials and supplies used in the performance of this Agreement. The Contractor shall issue exemption certificates to its Subcontractors and suppliers in lieu of said sales tax for all such materials and supplies, complying with all applicable State Comptroller’s Rulings.

26. COMPENSATION FOR CONSTRUCTION PHASE SERVICES.

The City shall compensate the Contractor for Construction Phase services as follows:

26.01 Compensation. For the Contractor’s performance of the Work as described in Paragraph 23.04, the City shall pay the Contractor in current funds the Agreement Sum consisting of the Cost of the Work as defined in Paragraph 28 and the Contractor’s Fee determined as follows:

(State a lump sum, percentage of actual Cost of the Work or other provision for determining the Contractor’s Fee and explain how said Fee is to be adjusted for changes in the Work.)

General Conditions – 8% of the Cost of the Work

Construction Manager at Risk Fee– 9% of the Cost of the Work

26.02 Guaranteed Maximum Price. The sum of the Cost of the Work and the Contractor’s Fee for the Work are guaranteed by the Contractor not to exceed the amount provided in Amendment No. 1, subject to additions and deductions by changes in the Work as provided in the Agreement Documents. Such maximum sum as adjusted by approved changes in the Work is referred to in the Agreement Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement paid by the City. In the event the Cost of Work plus the Contractor’s Fee is less than the Guaranteed Maximum Price (“GMP”), the savings shall accrue one hundred percent (100%) to the City.

(Insert specific provisions if the Contractor is to participate in any savings.)

The parties agree that any cost savings shall accrue one hundred percent (100%) to the City.

26.03 Changes in the Work.

(a) Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of Amendment No. 1 may be determined by any of the methods named in Paragraph 13.01(b), General Conditions, subject to the limitations provided in the General Conditions.

(b) In calculating adjustments to subcontracts (except those awarded with the City's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Paragraph 13.01(b)(3), General Conditions and the term "costs" as used in Paragraph 13.03(f), General Conditions shall have the meanings assigned to them in the General Conditions and shall not be modified by this Section 26. Adjustments to subcontracts awarded with the City's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

(c) In calculating adjustments to the Contract, the terms "cost" and "costs" as used in the above-referenced provisions of the General Conditions shall mean the Cost of the Work as defined in Section 27 of this Agreement, and the term "and a reasonable allowance for overhead and profit" shall mean the Contractor's Fee as defined in Paragraph 26.01 of this Agreement.

(d) If no specific provision is made in Paragraph 26.01 for adjustment of the Contractor's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Paragraph 26.01 will cause substantial inequity to the City or Contractor, the Contractor's Fee shall be equitably adjusted on the basis of the Fee established for the original Work.

27. COST OF THE WORK FOR CONSTRUCTION PHASE.

27.01 Costs to be Reimbursed. The term "Cost of the Work" shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than those customarily paid at the place of the Project except with prior consent of the City. The Cost of the Work shall include only the items set forth in this Section 27.

27.02 Labor Costs.

(a) Wage Rates. Pursuant to Section 2258.023(a) of the Texas Government Code, wage rates paid by the Contractor and any subcontractor on this Project shall be not less than the general prevailing rate of per diem wages for work of a similar character in this locality as specified in the schedule of general prevailing rates of per diem wages attached hereto as **Exhibit A.**

(b) Statutory Penalty. Pursuant to Section 2258.023(b) of the Texas Government Code, if the Contractor or any subcontractor violates the requirements of this section the Contractor or subcontractor as the case may be shall pay the City **Sixty Dollars (\$60.00)** for each worker employed for each calendar day or part of the day that the worker is paid less than the stipulated wage rates.

(c) Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the City’s agreement, at off-site workshops.

(d) Wages or salaries of the Contractor’s supervisory and administrative personnel when stationed at the site with the City’s agreement.

Classification	Name
N/A	N/A

(If it is intended that the wages or salaries of certain personnel stationed at the Contractor’s principal office or offices other than the site office shall be included in the Cost of the Work, such personnel shall be identified above)

(e) Wages and salaries of the Contractor’s supervisory or administrative personnel engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work. Further, the time for performance does not necessitate overtime work and the City shall not be required to reimburse the “premium time” portion of any overtime payments by Contractor, unless otherwise approved, in writing, in advance by the City.

(f) Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments, and benefits required by law or collective bargaining agreements, and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided that such costs are based on wages and salaries included in the Cost of the Work under Paragraphs 27.02(a) through 27.02(d).

27.03 Subcontract Costs. Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts.

27.04 Costs of Materials and Equipment Incorporated in the Completed Construction.

(a) Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.

(b) Costs of materials described in the preceding Paragraph 27.04(a) in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to the City at the completion of the Work or, at the City's option, shall be sold by the Contractor; amounts realized, if any, from such sales shall be credited to the City as a deduction from the Cost of the Work.

27.05 Costs of Other Materials and Equipment, Temporary Facilities and Related Items.

(a) Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Contractor at the site and fully consumed in the performance of the Work; and cost less salvage value on such items if not fully consumed, whether sold to others or retained by the Contractor. Cost for items previously used by the Contractor shall mean fair market value.

(b) Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Contractor at the site, whether rented from the Contractor or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the City's prior approval.

(c) Costs of removal of debris from the site.

(d) Reproduction costs, postage and express delivery charges, telephone at the site and reasonable petty cash expenses of the site office.

(e) That portion of the reasonable travel and subsistence expenses of the Contractor's personnel incurred while traveling in discharge of duties connected with the Work.

27.06 Miscellaneous Costs.

(a) That portion directly attributable to this Agreement of premiums for insurance and bonds.

(If charges for self-insurance are to be included, specify the basis of reimbursement.)

(b) Fees and assessments for the building permit and for other permits, licenses, and inspections for which the Contractor is required by the Agreement Documents to pay.

(c) Fees of testing laboratories for tests required by the Agreement Documents, except those related to nonconforming Work other than that for which payment is permitted by Paragraph 27.08.

(d) Royalties and license fees paid for the use of a particular design, process or product required by the Agreement Documents; the cost of defending suits or claims for infringement of patent or other intellectual property rights arising from such requirement by the Agreement Documents; payments made in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements made with the City's consent; provided, however, that such costs of legal defenses, judgment and settlements shall not be included in the calculation of the Contractor's Fee or the Guaranteed Maximum Price and provided that such royalties, fees and costs are not excluded by the last sentence of Paragraph 6.01, General Conditions or other provisions of the Agreement Documents.

(e) Data processing costs related to the Work.

(f) Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility to the City set forth in this Agreement.

27.07 Other Costs. Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the City.

27.08 Included. The costs described in Paragraphs 27.01 through 27.07 shall be included in the Cost of the Work notwithstanding any provision of General Conditions of the Agreement which may require the Contractor to pay such costs, unless such costs are excluded by the provisions of Paragraph 27.09.

27.09 Costs not to be Reimbursed.

(a) The Cost of the Work shall not include:

1. Salaries and other compensation of the Contractor's personnel stationed at its principal office or offices other than the site office, except as specifically provided in Paragraphs 27.02(a) and 27.02(b).
2. Expenses of the Contractor's principal office and offices other than the site office, except as specifically provided in Paragraph 27.01.
3. Overhead and general expenses, except as may be expressly included in Paragraph 27.01.
4. The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work.
5. Rental costs of machinery and equipment, except as specifically provided in Paragraph 27.05(b).
6. Costs due to the negligence of the Contractor or to its failure to fulfill a specific responsibility to the City set forth in this Agreement.

7. Costs incurred in the performance of Preconstruction Phase Services.
8. Except as provided in Paragraph 27.07, any cost not specifically and expressly described in Paragraph 27.01.
9. Costs which would cause the Guaranteed Maximum Price to be exceeded.

27.10 Discounts, Rebates and Refunds.

(a) Cash discounts obtained on payments made by the Contractor shall accrue to the City if (1) before making the payment, the Contractor included them in an Application for Payment and received payment therefor from the City, or (2) the City has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the City, and the Contractor shall make provisions so that they can be secured.

(b) Amounts which accrue to the City in accordance with the provisions of Paragraph 27.010(a) shall be credited to the City as a deduction from the Cost of the Work.

27.11 Accounting Records. The Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control systems shall be satisfactory to the City. The City and the City's accountants shall be afforded access to the Contractor's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda, and other data relating to this Project, and the Contractor shall preserve these for a period of four (4) years after final payment, or for such longer period as may be required by law.

28. CONSTRUCTION PHASE.

28.01 Progress Payments.

(a) Based upon Applications for Payment submitted to the Engineer by the Contractor, in a form acceptable to City and the Engineer, and Certificates for Payment approved by the City and issued by the Engineer, the City shall endeavor to make progress payments on account of the Agreement Sum to the Contractor as provided below and elsewhere in the Agreement Documents.

(b) The period covered by each Application for Payment shall be one (1) calendar month ending on the last day of the month.

(c) Provided an Application for Payment is received by the Engineer not later than the 30th day of a month, the City, upon approval of the Application for Payment, shall endeavor to make payment to the Contractor not later than the 30th day of the following month. If an Application for Payment is received by the Engineer after the application date fixed above, payment shall endeavor to be made by the City not later than thirty (30) days

after the Engineer receives the Application for Payment and after the City approves the Application for Payment.

(d) With each Application for Payment, the Contractor shall submit detailed payrolls, detailed petty cash accounts, detailed receipted invoices or detailed invoices with check vouchers attached and any other evidence required by the City or Engineer to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

(e) Each Application for Payment shall be based upon the most recent schedule of values submitted by the Contractor in accordance with the Agreement Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Contractor's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the City and Engineer may require. This schedule, unless objected to by the City or Engineer, shall be used as a basis for reviewing the Contractor's Applications for Payment.

(f) Applications for Payment shall show the percentage completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed or (2) the percentage obtained by dividing (a) the expense which has actually been incurred by the Contractor on account of that portion of the Work for which it has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

(g) Subject to other provisions of the Agreement Documents, the amount of each progress payment shall be computed as follows:

- 1.** First, take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Next, pending final determination of cost to the City of changes in the Work, amounts not in dispute may be included as provided in Paragraph 13.03(g), General Conditions, even though the Guaranteed Maximum Price has not yet been adjusted by Change Order;

- 2.** Next, add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work or, if approved in advance by the City, suitably stored off the site at a location agreed upon in writing;

- 3.** Next, add the Contractor's Fee, less retainage of: (i) ten percent (10%) where the GMP is less than \$400,000; or (ii) five percent (5%) where the GMP is

\$400,000 or more. Next, the Contractor's Fee shall be computed upon the Cost of the Work described in the two preceding Paragraphs at the rate stated in Paragraph 25.01(a) or, if said Fee is stated as a fixed sum in that Paragraph, said Fee shall be an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in the two preceding Paragraphs bears to a reasonable estimate of the probable Cost of the Work upon its completion;

4. Next, subtract the aggregate of previous payments made by the City;

5. Next, subtract the shortfall, if any, indicated by the Contractor in the documentation required by Paragraph 28.01(d) to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the City's accountants in such documentation;

6. Next, subtract amounts, if any, for which the City or Engineer has withheld or nullified a Certificate for Payment as provided in Paragraph 15.05, General Conditions.

(h) Except with the City's prior approval, payments to Subcontractors shall be subject to retention of not less than five percent (5%). The City and Contractor shall agree upon a mutually acceptable procedure for review and approval of payments and retention for subcontracts.

(i) Except with the City's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

(j) In taking action on the Contractor's Applications for Payment, the Engineer shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Engineer has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Paragraph 28.01(d) or other supporting data, that the Engineer has made exhaustive or continuous on-site inspections or that the Engineer has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the City, will be performed by the City's accountants acting in the sole interest of the City.

28.02 Final Payment.

(a) Final payment shall be made by the City to the Contractor when (1) the Agreement has been fully performed by the Contractor except for its responsibility to correct punch list items or nonconforming Work, as provided in Paragraph 20.02(b), General Conditions, and to satisfy other requirements, if any, which necessarily survive final payment; (2) a

final Application for Payment and a final accounting for the Cost of the Work have been submitted by the Contractor and reviewed by the City's accountants; and (3) a final Certificate for Payment has then been approved by the City and issued by the Engineer; such final payment shall endeavor to be made by the City not more than 30 days after the issuance of the Engineer's final Certificate for Payment, or as follows:

(b) The amount of the final payment shall be calculated as follows:

1. First, take the sum of the Cost of the Work substantiated by the Contractor's final accounting and the Contractor's Fee, but not more than the Guaranteed Maximum Price;
2. Next, subtract amounts, if any, for which the Engineer withholds or the City is entitled to withhold under this Agreement, in whole or in part, a final Certificate for Payment as provided in Paragraph 15.05(a), General Conditions or other provisions of the Agreement Documents;
3. Next, subtract the aggregate of previous payments made by the City.

If the aggregate of previous payments made by the City exceeds the amount due the Contractor, the Contractor shall reimburse the difference to the City.

(c) The City's accountants will endeavor to review and report in writing on the Contractor's final accounting within sixty (60) days after delivery of the final accounting to the Engineer by the Contractor, together with all backup documentation reasonably required by the City. Based upon such Cost of the Work as the City's accountants shall report to be substantiated by the Contractor's final accounting, and provided the other conditions of Paragraph 28.02(a) have been met, the Engineer will endeavor within seven days after receipt of the written report of the City's accountants, either issue to the City a final Certificate for Payment with a copy to the Contractor or notify the Contractor and City in writing of the Engineer's reasons for withholding a certificate as provided in Paragraph 15.05(a), General Conditions. The time periods stated in this Section 28 supersedes those stated in Paragraph 15.04(a), General Conditions.

(d) If the City's accountants report the Cost of the Work as substantiated by the Contractor's final accounting to be less than claimed by the Contractor, the Contractor shall be entitled to proceed in accordance with Section 29 without a further decision of the Engineer. Unless agreed to otherwise, a demand for mediation of the disputed amount shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Engineer's final Certificate for Payment. Failure to make such demand within this 30-day period shall result in the substantiated amount reported by the City's accountants becoming binding on the Contractor. Pending a final resolution of the disputed amount, the City shall pay the Contractor the amount certified in the Engineer's final Certificate for Payment.

If, subsequent to final payment and at the City's request, the Contractor incurs costs described in Paragraph 27.01 and not excluded by Paragraph 27.09(a) to correct nonconforming Work or (2) arising from the resolution of disputes, the City shall reimburse

the Contractor such costs and the Contractor's Fee, if any, related thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Contractor has participated in savings, the amount of such savings shall be recalculated, and appropriate credit given to the City in determining the net amount to be paid by the City to the Contractor.

29. DISPUTE RESOLUTION.

29.01 Dispute Resolution. During both the Preconstruction and Construction Phases, claims, disputes or other matters in question between the parties to this Agreement shall be resolved as provided in Paragraph 10, General Conditions, except that, during the Preconstruction Phase, no decision by the Engineer shall be a condition precedent to mediation.

30. TERMINATION OR SUSPENSION.

30.01 Termination Before Establishing Guaranteed Maximum Price.

(a) Before execution by both parties of Amendment No. 1 establishing the Guaranteed Maximum Price, the City may terminate this Agreement at any time without cause, and the Contractor may terminate this Agreement for any of the reasons described in Paragraph 22.01(a), General Conditions.

(b) If the City or Contractor terminates this Agreement pursuant to Paragraph 9.01 prior to commencement of the Construction Phase, the Contractor shall be equitably compensated for Preconstruction Phase Services performed prior to receipt of notice of termination; provided, however, that the compensation for such services shall not exceed the compensation set forth in Paragraph 25.01(a).

(c) If the City or Contractor terminates this Agreement pursuant to Paragraph 30.01 after commencement of the Construction Phase, the Contractor shall be paid, in addition to the compensation provided in Paragraph 30.1(b), an amount calculated as follows:

1. First, take the Cost of the Work incurred by the Contractor;
2. Next, add the Contractor's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Paragraph 26.01 or, if said Fee is stated as a fixed sum in that Paragraph, an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
3. Next, subtract the aggregate of previous payments made by the City on account of the Construction Phase.

The City shall also pay the Contractor fair compensation, either by purchase or rental at the election of the City, for any equipment owned by the Contractor which the City elects to retain and which is not otherwise included in the Cost of the Work under Paragraph 30.01(c)(1). To the extent that the City elects to take

legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in Section 30, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the City may require for the purpose of fully vesting in the City the rights and benefits of the Contractor under such subcontracts or purchase orders.

Subcontracts, purchase orders and rental agreements entered into by the Contractor with the City's written approval prior to the execution of Amendment No. 1 shall contain provisions permitting assignment to the City as described above. If the City accepts such assignment, the City shall reimburse the Contractor with respect to all valid and properly payable costs arising under the subcontract, purchase order or rental agreement except those which would not have been reimbursable as Cost of the Work if the agreement had not been terminated. If the City elects not to accept the assignment of any subcontract, purchase order or rental agreement which would have constituted a Cost of the Work had this agreement not been terminated, the Contractor shall terminate such subcontract, purchase order or rental agreement and the City shall pay the Contractor the costs necessarily and reasonably incurred by the Contractor by reason of such termination, but in no event to include any overhead or profit on work not performed.

30.02 Termination Subsequent to Establishing Guaranteed Maximum Price. Subsequent to execution by both parties of Amendment No. 1, the Agreement may be terminated as provided in Section 22, General Conditions.

(a) In the event of such termination by the City, the amount payable to the Contractor pursuant to Paragraph 22.01(c), General Conditions shall not exceed the amount the Contractor would have been entitled to receive pursuant to Paragraphs 30.01(a) and 30.01(c) of this Agreement.

(b) In the event of such termination by the Contractor, the amount to be paid to it under Paragraph 22.01(c), General Conditions shall not exceed the amount the Contractor would have been entitled to receive under Paragraphs 30.01(b) and 30.01(c) above. In no event shall Contractor nor any supplier or subcontractor be entitled to any fee or lost profits for work not performed.

30.03 Suspension. The Work may be suspended by the City as provided in Paragraph 22, General Conditions, and in such case, the Guaranteed Maximum Price, if established, shall be increased as provided in Paragraph 22.03(b), General Conditions, except that the term "cost of performance of the Contract" in that Paragraph shall be understood to mean the Cost of the Work and the term "profit" shall be understood to mean the Contractor's Fee as described in Paragraphs 26.01 and 26.03(d) of this Agreement.

31. OTHER CONDITIONS AND SERVICES.

31.01 Licensing, Permits, Registrations, and Approvals. Contractor represents to the City that it has, and will keep in effect at all times during the term of this Agreement, any licenses, permits, registrations, and approvals which are legally required for the Contractor to practice its trade.

31.02 Authority to Do Business. The Contractor represents that it has a certificate of authority authorizing it to do business in the State of Texas, a registered agent and registered office during the duration of this Agreement.

31.03 Authority to Contract. Each party represents that it has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective entity. However, notwithstanding anything stated to the contrary in this Agreement, the parties acknowledge and agree that this Agreement is subject to the proper application of, and to all protections afforded to the City pursuant to, the doctrine of governmental immunity under Texas law.

31.04 Invalidity. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable by a court or other tribunal of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.

31.05 Prioritization. Contractor and City agree that City is a political subdivision of the State of Texas and is thus subject to certain laws. Because of this there may be documents or portions thereof added by Contractor to this Agreement as exhibits that conflict with such laws, or that conflict with the terms and conditions herein excluding the additions by Contractor. In either case, the applicable law or the applicable provision of this Agreement excluding such conflicting addition by Contractor shall prevail. The parties understand this section comprises part of this Agreement without necessity of additional consideration.

31.06 Presumption Against Waiver. No waiver by either party hereto of any one or more defaults by the other party hereto in the performance of this Agreement shall be construed as a waiver of any future defaults whether of a like or different character. No waiver of a default of this Agreement occurs if the non-defaulting party fails to immediately declare a default or otherwise delays in taking any action regarding a default committed by the defaulting party of this Agreement.

31.07 City's Reserved Rights. The City shall have the rights by its officers, employees, or agents to examine and inspect the Contractor Work regarding the Project and the business records and financial records of the Contractor regarding the Project, at any time, to verify Contractor's compliance with the terms of this Agreement. Any approval by City or acceptance of the Contractor's Work shall not waive any obligation of the Contractor to correct defective work or to later provide additional business records or financial records regarding portions of the Project approved or accepted by the City.

31.08 Benefit. Subject to a proper application of the doctrine of governmental immunity under Texas law, this Agreement shall be binding upon and inure to the benefit of the parties hereto and

their respective successors and assigns where permitted by this Agreement. Nothing in this Paragraph shall be construed to waive the conditions elsewhere contained in this Agreement applicable to assignment by the Contractor. Nothing contained in this Agreement shall be construed to confer any benefit upon any subcontractor or any other third party.

31.09 Headings, Gender, Number. The headings are used in this Agreement for convenience and reference purposes only and are not intended to define, limit, or describe the scope or intent of any provision of this Agreement and shall have no meaning or effect upon its interpretation.

31.10 Agreement Read. The parties acknowledge that they have had the opportunity to consult with counsel of their choice, have read, understand, and intend to be bound (subject to the proper application of the doctrine of governmental immunity under Texas Law) by the terms and conditions of this Agreement.

31.11 Written Notice. Written notice shall be deemed to have been served only if the writing is hand-delivered to the addressees and addresses set out below, or if delivered by courier or delivered by United States Postal Service mail (certified USPS mail delivery required) to that address:

City: City of College Station
Capital Projects: Casey Rhodes
P.O. Box 9960, C.S. TX 77842

Contractor: Garney Companies, Inc.
Chad Sharbono
1772 W. Sam Houston Prkwy N. Houston, TX 77043

31.12 Extent of Contract. This Agreement (and its attached or incorporated documents and exhibits) represents the entire and integrated agreement between the City and the Contractor regarding the Project and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the City and Contractor. If anything in any document or exhibit attached to or incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

Ownership and Use of Documents. Article I, General Conditions, shall apply to both the Preconstruction and Construction Phases.

31.13 Governing Law. The parties expressly agree that: (a) this Agreement shall be governed and interpreted pursuant to the laws of the State of Texas; (b) the Performance, Work, and all matters pertaining to this Agreement and the Project shall be expressly performed in Brazos County, Texas, United States of America; and (c) venue in any lawsuit or legal proceeding regarding or relating to this Agreement or Project shall be in a court of competent jurisdiction in Brazos County, Texas, United State of America, or the appropriate United States District Court designated for Brazos County.

31.14 Assignment. Subject to a proper application of the doctrine of governmental immunity under Texas law, the City and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Agreement Documents. Neither party to the Agreement shall assign the Agreement in whole or in part without the written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

31.15 Effective Date. This Agreement goes into effect when duly approved by all the parties hereto and is contingent upon Contractor obtaining and maintaining the insurance and bonds required herein throughout the duration of the Project and applicable warranty periods.

31.16 Verification or Representations Regarding Certain Statutory Matters. To the extent applicable, this Agreement is subject to the following:

(a) **No Boycott of Israel.** Pursuant to applicable provisions of Chapter 2271 of the Texas Government Code, the Contractor verifies that it (1) does not boycott Israel, and (2) will not boycott Israel during the term of this Agreement;

(b) **No Boycott of Firearms.** Pursuant to applicable provisions of Chapter 2274 of the Texas Government Code, the Contractor verifies that it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and (2) will not discriminate during the term of the Agreement against a firearm entity or firearm trade association;

(c) **No Boycott of Energy Companies.** Pursuant to applicable provisions of Chapter 2276 of the Texas Government Code, the Contractor verifies that it (1) does not boycott energy companies, and (2) will not boycott energy companies during the term of this Agreement; and

(d) **Conflicts Disclosure.** Before the approval of this Agreement, and in timely performance with the statutes hereafter described, the Contractor has submitted to the City: (1) a properly executed Form CIQ/Conflicts of Interest Questionnaire pursuant to Chapter 176 of the Texas Local Government Code and other authority; and (2) a properly executed Form 1295/Texas Ethics Commission Certificate of Interested Parties pursuant to Section 2252.908 of the Texas Government Code.

31.17 Virtual Payment Method. For increased payment and financial information security, the Contractor must use the City's approved virtual payment card system or digital payment system for all payments, storing, and modifications of financial information used for City payments to the Contractor. Any related reasonable fees paid by the Contractor for use of the virtual payment card system or digital payment system may be passed through to the City.

31.18 Fraud Reporting. To reduce the risk of fraud and to protect the Contractor's financial information from fraud, the Contractor must report to the City in writing at

VendorInvoiceEntry@cstx.gov if the Contractor reasonably suspects or knows if any of their financial information has been subject to fraudulent activity or suspected fraudulent activity.

List of Exhibits

- A. Davis Bacon Wage Rates
- B. Performance and Payment Bonds
- C. Certificates of Insurance and Endorsements
- D. Technical Specifications & Plans

GARNEY COMPANIES, INC.

CITY OF COLLEGE STATION

By: BILL WILLIAMS

By: _____

Printed Name: BILL WILLIAMS

City Manager: _____

Title: Executive Vice President

Date: _____

Date: 10/17/2024

APPROVED:

City Attorney
Date: _____

Assistant City Manager/CFO
Date: _____

ELECTRONIC

SEPTEMBER 12, 2024

PROPOSAL FOR:

CITY OF COLLEGE STATION

RFP # 24-084

**CONSTRUCTION MANAGER AT RISK FOR
WATER WELLS 10, 11, AND 12 AND PIPELINES**

SUBMITTED TO:

CITY OF COLLEGE STATION, TEXAS
PO BOX 9960
1101 TEXAS AVE.
COLLEGE STATION, TX 77840

SUBMITTED BY:

GARNEY CONSTRUCTION, INC.
BILL WILLIAMS
1772 W. SAM HOUSTON PARKWAY N
HOUSTON, TX 77043



**BUILDING SUSTAINABLE FUTURES WITH THE
WORLD'S MOST PRECIOUS RESOURCES—**

WATER AND PEOPLE.®



TAB A

RATES AND EXPENSES

RATES AND EXPENSES

1// Proposed cost for the anticipated general conditions costs over an anticipated 28-month construction period.

Garney’s proposed GC cost are 8.0% of the Cost of Work. These costs are projected out over a 28-month construction period for Phase 2 of the proposed project. The project team is highlighted in the **Organizational Chart (Tab B) and Attachment A (Tab C)** included in this proposal. This GC fee covers all expenses related to oversight, equipment, office facilities and jobsite needs to facilitate the construction management team specifically proposed for this project. All insurance and bonds including Builders Risk are included in this 8.0% GC fee as seen in Attachment A and in the Appendices as well.

Garney, also, proposes a preconstruction (Phase 1) costs of \$324,450.00 for the proposed project for a 6-month period spanning from November 2024 to April 2025. As of April 2025, the Phase 2 GC’s costs will begin. This preconstruction cost includes a team including all Garney team members as included in the organizational chart as well as two team members from Weisinger Inc. **The Weisinger Inc. team members bring great value to the preconstruction phase due to their expertise in well drilling and development.**

MANHOURS INCLUDED IN THE GENERAL CONDITIONS	
TEAM MEMBERS	MANHOURS
Chad Sharbono	1,213
Daniel Murray	2,427
Sam Parrack	4,853
Blake Rabel	4,853
Marcus Kirk	1,213
Ben Snider	1,213

2// Proposed CMAR fee to cover all non-project related overhead and profit associated with delivery of this project.

Garney’s proposed CMAR fee is 9% of the Cost of Work. This fee covers all the non-project related overhead and profit associated with the project delivery. In addition to profit, this fee covers all corporate overhead to support the project such as invoice processing and payment, weekly payroll processing, AR expenses to process and track owner payments, and all additional corporate support including but not limited to IT and technical GPS/ Drone support.

3// General conditions and construction fee is presented as a % of the total anticipated construction cost below.

PRECONSTRUCTION FEE	\$324,450.00	0.74%
COST OF WORK ITEMS	\$44,003,228.72	83.0%
GENERAL CONDITIONS COSTS	\$3,536,480.69	8.0%
CMAR FEE	\$3,960,290.59	9.0%
TOTAL CONSTRUCTION COST	\$51,500,00.00	100%



TAB C

TIMELINE

TIMELINE NARRATIVE

The preliminary schedule that follows outlines the current anticipated activities, durations, and necessary sequence.

IMMEDIATE PRECONSTRUCTION ACTIVITIES KICKOFF

Preconstruction activities will begin immediately after the award to Garney. From there, the preconstruction services will be kicked off with pointed and focused meetings centered around any pending permits, land acquisitions with a common goal of finalizing the 30% plans and specifications. Timely identification of the aforementioned items and understanding any gaps in permitting, land acquisitions, and specifications will enable the project team to refocus and maximize their efficiencies on items which will drive the projects budget and schedule.

EARLY WORK FOR WELL SITES

With the creation of the 30% plans and specifications, we intend to solicit the necessary scopes of work to break ground on the well sites which include the survey, BMP's, site and easement clearing, site access and access roads, earthen plateau well pads, and electrical utilities with their construction beginning the end of March 2025. These scopes directly follow the contract execution of the 30% early work packages and with enough time to secure and approve the necessary submittals. Procurement and release of these works early in the design carries no risk to the Project Team but enables the overall program schedule to be condensed. Early progress on the well sites enables the drilling subcontractor to initiate the three (3) 3,000 minimum LF drills by July of 2025.

60% DESIGN UNDERWAY, EARLY RELEASES

Concurrent to the 30% work packages executing work on site, the 60% design will be well underway, which will further condense the overall schedule and enable early release of the longer lead items, previously identified within the initial stages of the preconstruction phase as seen in the Design Workshop and Long Lead Item activities.

DETAILED DESIGN MINIMIZES CHANGES

The rest of the packages will be constructed around requiring more detailed design to minimize any unforeseen changes and subsequent change orders. After a thorough review of the overall COCS timeline, coupled with the various stages of design progress, the remaining work packages are able to be released and phased in a manner that optimizes and streamlines the more critical scopes of works being tunnels and both the collection and primary pipeline construction.

COST MODEL, SCHEDULE UPDATES

Throughout the various levels of design, both the cost model and the program schedule will be updated and shared with the COCS. At the 90% design milestone, and prior to the design reaching 100%, the GMP for the project will be developed as will the schedule. With our current forecast, we anticipate the GMP to be submitted and approved by June 4, 2025.

MANAGING CONSTRUCTION RISKS EFFECTIVELY

One item which is not easy to convey within the project schedule is how the construction risks are managed and minimized within each construction package. A good example of how Garney will manage quality and schedule risks and reduce exposure to the Project Team is by generating the well drilling package to also capture the scope of procuring and setting the pumps and motors after the well drilling is complete. Crafting this specific package and others with a similar approach will put more scope on a single entity but will control the risk of schedule and budgetary delays due to unforeseen and unexpected conditions. Crafting bid packages with this approach will create an atmosphere where contractors are held accountable for their quality while providing a more turn-key scope of work.

CMAR PROPOSAL SCHEDULE

ID	Task Name	Duration	Start	Finish	2 '24	Q3 '24	Q4 '24	Q1 '25	Q2 '25	Q3 '25	Q4 '25	Q1 '26	Q2 '26	Q3 '26	Q4 '26	Q1 '27	Q2 '27	Q3 '27	Q4 '27	Q1 '28	Q2 '28	Q3 '28	Jul
1	City of College Station - RFP #24-084 - CMAR PROPOSAL SCHEDULE	993 days	Thu 8/8/24	Sat 4/1/28																			
2	Proposal and Award	61 days	Thu 8/8/24	Thu 10/31/24																			
3	RFP Release	1 day	Thu 8/8/24	Thu 8/8/24																			
4	Pre-Proposal Meeting	1 day	Wed 8/21/24	Wed 8/21/24																			
5	Proposal Submission Date	1 day	Thu 9/12/24	Thu 9/12/24																			
6	Interviews with Proposers	2 days	Wed 9/25/24	Thu 9/26/24																			
7	Contract Evaluations and Negotiations/Scope Clarifications and Finalization	5 days	Mon 10/7/24	Fri 10/11/24																			
8	Earliest Award by City	5 days	Mon 10/21/24	Fri 10/25/24																			
9	Notice to Proceed/Approval	1 day	Thu 10/31/24	Thu 10/31/24																			
10	Engineering, Permitting and Land Acquisition	54 days	Tue 11/12/24	Thu 2/6/25																			
11	Land Acquisition	54 days	Tue 11/12/24	Thu 2/6/25																			
12	Land Procurement	54 days	Tue 11/12/24	Thu 2/6/25																			
13	Route Assessment and Finalization	4 days	Tue 11/12/24	Fri 11/15/24																			
14	Easement Layout	4 days	Tue 11/12/24	Fri 11/15/24																			
15	Land Procurement - Pipeline	50 days	Mon 11/18/24	Thu 2/6/25																			
16	Land Procurement - Well Sites	0 days	Mon 11/18/24	Mon 11/18/24																			
17	Survey	50 days	Mon 11/18/24	Thu 2/6/25																			
18	Phase I - Preconstruction	182 days	Fri 11/1/24	Tue 7/29/25																			
19	Design	182 days	Fri 11/1/24	Tue 7/29/25																			
20	Phases	182 days	Fri 11/1/24	Tue 7/29/25																			
21	Phase 1	47 days	Fri 11/1/24	Fri 1/17/25																			
22	Design Work Shops	25 days	Mon 11/11/24	Tue 12/17/24																			
23	Long Lead Items	44 days	Fri 11/1/24	Tue 1/14/25																			
24	Exercise and Test - Preliminary Well Data	31 days	Mon 11/25/24	Fri 1/17/25																			
25	30% Plans and Specs	15 days	Mon 11/25/24	Tue 12/17/24																			
26	Well, Well Pad and Site Layout Design	1 day	Mon 11/25/24	Mon 11/25/24																			
27	TCEQ and other Permit Review	30 days	Tue 11/26/24	Fri 1/17/25																			
28	TCEQ and other Permit Acquisitions	15 days	Wed 12/18/24	Thu 1/16/25																			
29	Cost Model Update	15 days	Wed 12/18/24	Thu 1/16/25																			
30	Conceptual Schedule Update	110 days	Mon 1/20/25	Mon 6/23/25																			
31	60% Design	20 days	Mon 2/17/25	Fri 3/14/25																			
32	50% Design	20 days	Mon 2/17/25	Fri 3/14/25																			
33	Design Work Shops	20 days	Mon 3/17/25	Fri 4/11/25																			
34	60% Design	20 days	Mon 3/17/25	Fri 4/11/25																			
35	Finalized Well Design	20 days	Mon 3/17/25	Fri 4/11/25																			
36	Pumps, Motors and VFD Finalized	20 days	Mon 3/17/25	Fri 4/11/25																			
37	60% Design Milestone	0 days	Mon 4/11/25	Fri 4/11/25																			
38	Cost Model Update	15 days	Mon 4/14/25	Fri 5/2/25																			

Project: COCS - Preliminary CMAR Schedule

Task: Project Summary, Inactive Task, Inactive Milestone, Summary

Task Legend: Task (Blue bar), Split (Dotted bar), Milestone (Diamond), Summary (Bracket)

Task Legend: Manual Task (Grey bar), Duration-only (Light blue bar), Manual Summary Rollup (Dark blue bar), Manual Summary (Light grey bar)

Task Legend: Start-only (Light blue bar), Finish-only (Light blue bar), External Tasks (Light blue bar), External Milestone (Light blue bar)

Task Legend: Deadline Progress (Green arrow), Manual Progress (Blue bar)

ID	Task Name	Duration	Start	Finish	2 '24	Q3 '24	Q4 '24	Q1 '25	Q2 '25	Q3 '25	Q4 '25	Q1 '26	Q2 '26	Q3 '26	Q4 '26	Q1 '27	Q2 '27	Q3 '27	Q4 '27	Q1 '28	Q2 '28	Q3 '28	Q4 '28	Q1 '29	Q2 '29	Q3 '29	Q4 '29		
39	Conceptual Schedule Update	15 days	Mon 4/14/25	Fri 5/2/25																									
40	Early Materials and Work Procurement	110 days	Mon 1/20/25	Mon 6/23/25																									
41	Wells and Associated Scopes	100 days	Mon 1/20/25	Mon 6/9/25																									
42	Well Site Access Road Construction	30 days	Mon 1/20/25	Fri 2/28/25																									
43	Well Site Electrical Service - Site Utility	30 days	Mon 1/20/25	Fri 2/28/25																									
44	Well Construction, Materials and Associated Devices	30 days	Mon 1/20/25	Fri 2/28/25																									
45	Pumps, Motors and Electrical	30 days	Mon 4/14/25	Fri 5/23/25																									
46	Misc. Well Site Piping	30 days	Mon 4/14/25	Fri 5/23/25																									
47	SWPPP and BMP Installation	30 days	Mon 1/20/25	Fri 2/28/25																									
48	Pump/Site Building	30 days	Mon 4/14/25	Fri 5/23/25																									
49	Construction Staking	30 days	Mon 1/20/25	Fri 2/28/25																									
50	Clearing and Grubbing Procurement	30 days	Mon 1/20/25	Fri 2/28/25																									
51	Contract Execution - 30% Packages	10 days	Mon 3/3/25	Fri 3/14/25																									
52	Contract Execution - 60% Packages	10 days	Mon 5/26/25	Mon 6/9/25																									
53	Submittals	70 days	Mon 3/17/25	Mon 6/23/25																									
54	Pipeline	100 days	Mon 1/20/25	Mon 6/9/25																									
55	Pipe Procurement	30 days	Mon 4/14/25	Fri 5/23/25																									
56	Large Diameter Valve Procurement	30 days	Mon 4/14/25	Fri 5/23/25																									
57	Tunnel Installation Procurement	30 days	Mon 4/14/25	Fri 5/23/25																									
58	SWPPP and BMP Installation	30 days	Mon 1/20/25	Fri 2/28/25																									
59	Construction Staking	30 days	Mon 1/20/25	Fri 2/28/25																									
60	Clearing and Grubbing Procurement	30 days	Mon 1/20/25	Fri 2/28/25																									
61	Contract Execution - 30% Packages	10 days	Mon 3/3/25	Fri 3/14/25																									
62	Contract Execution - 60% Packages	10 days	Mon 5/26/25	Mon 6/9/25																									
63	Submittals	20 days	Mon 5/26/25	Mon 6/23/25																									
64	90% Design	75 days	Mon 4/14/25	Tue 7/29/25																									
65	Design Progression	30 days	Mon 4/14/25	Fri 5/23/25																									
66	GMP Preparation	3 days	Fri 5/16/25	Tue 5/20/25																									
67	GMP Approval/Construction Contract/NTP	10 days	Wed 5/21/25	Wed 6/4/25																									
68	100% Design Milestone	0 days	Fri 5/23/25	Fri 5/23/25																									
69	Cost Model Reconciliation	21 days	Mon 5/26/25	Tue 6/24/25																									
70	Schedule Update	20 days	Mon 5/26/25	Mon 6/23/25																									
71	Schedule Delivery	1 day	Tue 6/24/25	Tue 6/24/25																									
72	Work Solicitations and Contracting	45 days	Mon 5/26/25	Tue 7/29/25																									
73	Pipeline and Well Collection Package	45 days	Mon 5/26/25	Tue 7/29/25																									
74	Tunnels - Well Collection and Pipeline	45 days	Mon 5/26/25	Tue 7/29/25																									
75	Phase II - Construction	574 days	Mon 3/31/25	Mon 6/28/27																									
76	Administrative	1 day	Wed 8/13/25	Wed 8/13/25																									

Project: COCS - Preliminary CMAR Schedule

Task: Manual Task

Split: Inactive Task

Milestone: Inactive Milestone

Summary: Inactive Summary

Project Summary

Manual Task

Duration-only

Manual Summary Rollup

Manual Summary

Start-only

Finish-only

External Tasks

External Milestone

Deadline

Progress

Manual Progress

ID	Task Name	Duration	Start	Finish	2 '24	Q3 '24	Q4 '24	Q1 '25	Q2 '25	Q3 '25	Q4 '25	Q1 '26	Q2 '26	Q3 '26	Q4 '26	Q1 '27	Q2 '27	Q3 '27	Q4 '27	Q1 '28	Q2 '28	Q3 '28	Q4 '28	Q1 '29	Q2 '29	Q3 '29	Q4 '29	
77	Notice to Proceed	1 day	Wed 8/13/25	Wed 8/13/25																								
78	Manufacturing	250 days	Thu 8/28/25	Wed 8/26/26																								
79	Electrical Submittal	30 days	Thu 8/28/25	Thu 10/9/25																								
80	Electrical/Process Equipment	200 days	Fri 10/10/25	Wed 7/29/26																								
81	Pump, VFD and Motor Submittals	21 days	Fri 10/10/25	Fri 11/7/25																								
82	Well Pump Manufacturing	220 days	Fri 10/10/25	Wed 8/26/26																								
83	VFD Manufacturing	200 days	Fri 10/10/25	Wed 8/26/26																								
84	Motor Manufacturing	200 days	Fri 10/10/25	Wed 7/29/26																								
85	Site Work	60 days	Mon 3/31/25	Mon 6/23/25																								
86	Construction Staking	30 days	Mon 3/31/25	Fri 5/9/25																								
87	Site Utilities/Electrical	45 days	Mon 3/31/25	Mon 6/2/25																								
88	Site Access, Access Roads and Related Construction	60 days	Mon 3/31/25	Mon 6/23/25																								
89	Clearing, Temporary Entrances and Temporary Access gates	50 days	Mon 3/31/25	Mon 6/9/25																								
90	SWPPP Installation	30 days	Mon 3/31/25	Fri 5/9/25																								
91	Tunnels	69 days	Thu 8/14/25	Wed 11/19/25																								
92	Little Brazos River Tunnel	30 days	Thu 8/14/25	Thu 9/25/25																								
93	UPRR Tunnel	15 days	Fri 9/26/25	Thu 10/16/25																								
94	TX-OSR Tunnel	12 days	Fri 10/17/25	Mon 11/3/25																								
95	FM 1687 (Sandy Point Road)	12 days	Tue 11/4/25	Wed 11/19/25																								
96	Well Sites and Well Construction	433 days	Tue 6/24/25	Fri 3/5/27																								
97	Pad Construction - Elevated Earth Plateaus - Three (3) Sites	40 days	Tue 6/24/25	Tue 8/19/25																								
98	Well Sites - Exterior Improvements	50 days	Wed 8/20/25	Wed 10/29/25																								
99	Well Drilling - Three Wells (3,000' min depth)	175 days	Wed 7/23/25	Tue 4/7/26																								
100	Process Equipment and Electrical	180 days	Wed 4/8/26	Tue 12/15/26																								
101	Setting Pumps and Motors	21 days	Wed 12/16/26	Wed 1/13/27																								
102	Mechanical Piping Installation	37 days	Thu 1/14/27	Fri 3/5/27																								
103	Well Collection Lines	46 days	Mon 9/15/25	Mon 11/17/25																								
104	Well 11 Collection Line (2,200 LF Approx.)	12 days	Mon 9/15/25	Tue 9/30/25																								
105	Well 12 Collection Line - Bart Rd. Junction (3,000 LF Approx.)	25 days	Wed 10/1/25	Tue 11/4/25																								
106	Well 10 Collection Line (1,100 LF Approx.)	9 days	Wed 11/5/25	Mon 11/17/25																								
107	Pipeline Construction	421 days	Mon 9/15/25	Fri 5/7/27																								
108	Mobilization	7 days	Mon 9/15/25	Tue 9/23/25																								
109	Prove-outs and Trainings	7 days	Wed 9/24/25	Thu 10/2/25																								
110	Remove Topsoil, Pipe Delivery and Staging	20 days	Fri 10/3/25	Thu 10/30/25																								
111	Pipeline Installation (6,500 LF Approx.)	133 days	Tue 10/14/25	Wed 4/29/26																								
112	Station 0+00 to 5+30	5 days	Tue 10/14/25	Mon 10/20/25																								
113	Station 5+30 to 6+30 - UPRR Tunnel	12 days	Tue 10/21/25	Wed 11/5/25																								
114	Station 6+30 to 9+50	5 days	Thu 11/6/25	Wed 11/12/25																								

Project: COCS - Preliminary CMAR Schedule

Task: Manual Task

Split: Inactive Task

Milestone: Inactive Milestone

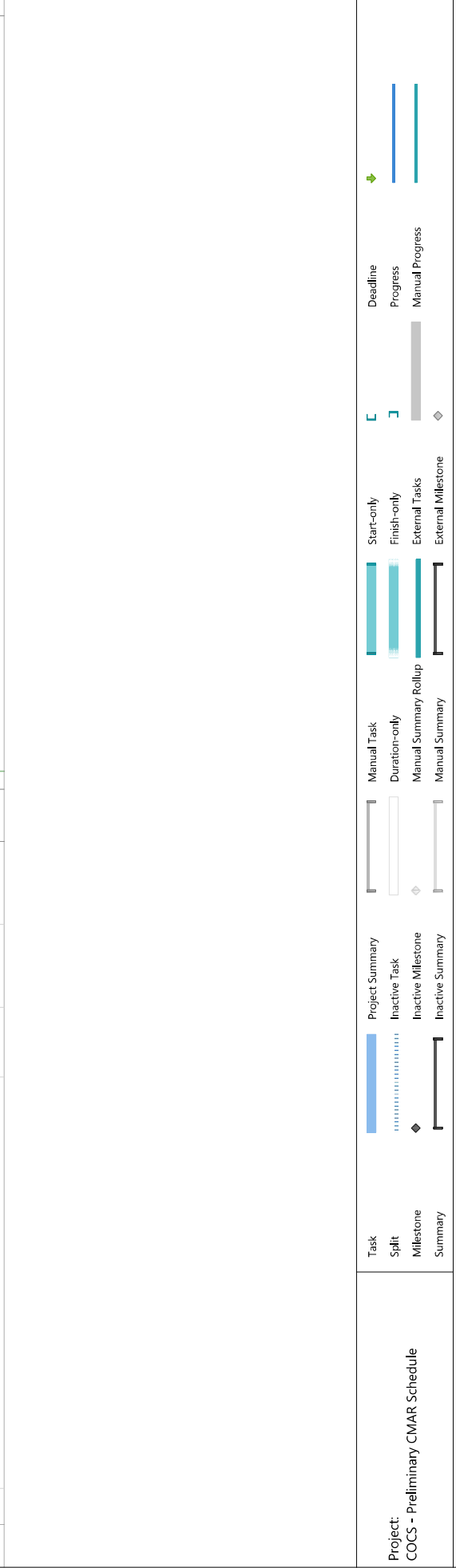
Summary: Inactive Summary

Task Legend: Manual Task, Duration-only, Manual Summary Rollup, Manual Summary, Project Summary, Inactive Task, Inactive Milestone, Inactive Summary

Task Legend: Start-only, Finish-only, External Milestone, External Milestone

Task Legend: Deadline, Progress, Manual Progress

ID	Task Name	Duration	Start	Finish	2'24 May	Q3'24 Jul	Q4'24 Sep	Q1'25 Jan	Q2'25 Mar	Q3'25 May	Q4'25 Jul	Q1'26 Sep	Q2'26 Nov	Q3'26 Jan	Q4'26 Mar	Q1'27 May	Q2'27 Jul	Q3'27 Sep	Q4'27 Nov	Q1'28 Jan	Q2'28 Mar	Q3'28 May	Q4'28 Jul	
115	Station 9+50 to 10+50 - TX-OSR Tunnel	12 days	Thu 11/13/25	Tue 12/2/25																				
116	Station 10+50 to 48+10	27 days	Wed 12/3/25	Mon 1/19/26																				
117	Station 48+10 to 49+00 - FM 1687 Tunnel	10 days	Tue 1/20/26	Mon 2/2/26																				
118	Station 49+00 to Connection to Existing System	10 days	Tue 2/3/26	Mon 2/16/26																				
119	Connection to Existing System	10 days	Tue 2/17/26	Mon 3/2/26																				
120	Appurtenance Construction	22 days	Fri 2/27/26	Mon 3/30/26																				
121	Restoration and Final Works, Punch list	22 days	Tue 3/31/26	Wed 4/29/26																				
122	Precommissioning Testing - Wells and Pipeline	289 days	Tue 3/31/26	Fri 5/7/27																				
123	Hydrostatic Testing - Pipeline	30 days	Tue 3/31/26	Mon 5/11/26																				
124	Internal Startup	37 days	Thu 1/14/27	Fri 3/5/27																				
125	Internal Commissioning - Wells and Pipeline	15 days	Mon 3/8/27	Fri 3/26/27																				
126	Substantial Completion	0 days	Fri 3/26/27	Fri 3/26/27																				
127	Final Completion	0 days	Fri 5/7/27	Fri 5/7/27																				
128	Commissioning - Project	81 days	Mon 3/8/27	Mon 6/28/27																				
129	Startup	20 days	Mon 3/8/27	Fri 4/2/27																				
130	Commissioning	20 days	Mon 4/5/27	Fri 4/30/27																				
131	Final Commissioning	20 days	Mon 5/3/27	Fri 5/28/27																				
132	Owner/Operator Trainings	5 days	Mon 5/3/27	Fri 5/7/27																				
133	Substantial Completion	0 days	Mon 5/3/27	Mon 5/3/27																				
134	Final Completion	20 days	Tue 6/1/27	Mon 6/28/27																				
135	Warranty Inspection/Corrective Action - 11 Months post Substantial	334 e days	Mon 5/3/27	Sat 4/1/28																				
136	No Later Than Completion Date - Well Permit Expiration	0 days	Thu 8/10/28	Thu 8/10/28																				



Project: COCS - Preliminary CMAR Schedule



APPENDICES

APPENDICES

▶ **TABLE OF CONTENTS**

Financial Conditions

Bid Bond

Offerer's Proposal Form

Receipt of Addenda

Certification Form

Attachment A - General Conditions Details



FINANCIAL CONDITIONS // CAPABLE OF DELIVERING AUDITED FINANCIAL STATEMENTS WITHIN 30 DAYS

Garney has the financial strength and stability you can trust to successfully execute this project. We acknowledge the requirement to provide audited financial statements within 90 days if requested by the COCS. Additionally, we have provided a letter of reference from our bank certifying our financial strengths.



April 15, 2024

RE: Garney Holding Company & its Subsidiaries

To whom it may concern;

At the request of our customer, Garney Holding Company, we have obtained the following information for you. Garney and its subsidiary companies has been a customer of Commerce Bank since 2009.

Recent balances in the deposit and related investment accounts of those entities have been maintained at a low 9-figure average, and the accounts have been handled in a proper manner. Our experience with Garney, which includes the extension of credit in a low 8-figure range, has been excellent.

We have a favorable opinion of Garney Holding Company and its subsidiary companies and consider them in good standing on all accounts.

If you have any questions or wish to receive additional information, please let me know. I can be reached directly at (816) 234-2124, or by email at brett.gray@commercebank.com.

Best Regards,

A handwritten signature in blue ink, appearing to read "Brett Gray", written over a light blue horizontal line.

Brett Gray
Sr Vice President

ANY STATEMENT MADE HERIN BY OR ON BAHALF OF COMMERCE BANK REGARDING THE RESPONSIBILITY OR STANDING OF ANY PERSON OR ENTITY, OR REGARDING THE VALUE OF ANY SECURITIES OR THER PROPERTY, IS FOR INFORMATIONAL PURPOSES ONLY AND IS **MADE WITHOUT ANY WARRANTIES OR REPRESENTATIONS WHATSOEVER**, INCLUDING WARRANTIES AND REPRESENTATIONS CONCERNING COMPI.ETFENESS OR ACCURACY. COMMERCE BANK SPECIFICALLY DISCLAIMS ANY RESPONSIBILITY FOR COMPLETING, CORRECTING OR UPDATING ANY OF THE INFORMATION CONTAINED HEREIN.

BID BOND

THE STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF BRAZOS

§

§

That we, Garney Companies, Inc., as Principal (the CMAR), and The Continental Insurance Company / Liberty Mutual *, as Surety, a corporation organized and existing under the laws of the State of PA / MA, licensed to do business in the State of Texas and admitted to write bonds, as a Surety, (the Surety), are hereby held and firmly bound unto the City of College Station, Texas, as the Obligee (the City), and its successors and assigns, in the Penal Sum of Five Percent (5%) of Fifty One Million Five Hundred Thousand and no/100 Dollars (\$ 51,500,000.00), the Construction Budget, for a total Penal Sum of Two Million Five Hundred Seventy Five Thousand and no/100 Dollars (\$ 2,575,000.00), for the City's Construction Manager at Risk (the CMAR) contract to build: the City's Water Wells 10, 11, and 12 and related pipelines to the tie-in location with the City's water transmission system (the Project), for payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, pursuant to the obligations and payment of this Bid Bond (the Bond) as follows:

Principal has submitted a proposal to City for the construction of the Project in accordance with plans and specifications in the bid documents on file with the City and under an invitation for bids or proposals; and

The condition of this obligation is if the Principal's bid or proposal is accepted, and the CMAR contract for the work be awarded to Principal by the City, and if Principal enters into the CMAR contract and submits for the performance of the work and payment for the work as required by law, Payment and Performance Bonds upon the City's acceptance and approval of the Guaranteed Maximum Price as detailed in the agreement documents with bond riders that increases the amount of all Payment and Performance Bonds is required for each additional Guaranteed Maximum Price that is issued, then this obligation will be null and void. Otherwise, it will remain in full force and effect.

The Surety is not liable for a greater amount under this agreement than the difference between the amount of Principal's bid or proposal and the lowest amount in excess of that bid or proposal for which the City may be able to award the contract within a reasonable time.

The Principal and Surety have signed and sealed this instrument on the respective dates written below their signatures and have attached a current Power of Attorney as required by this Bond.

*Insurance Company

PRINCIPAL EXECUTION:

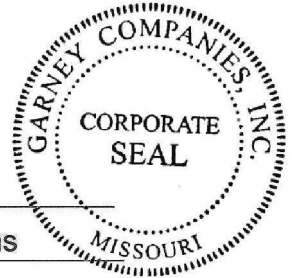
ATTEST, SEAL OF Principal: (if a corporation)

WITNESS: (if not a corporation)

By: Nikia Steppins
Name: Nikia Steppins
Title: Assistant Secretary
Date: 10/11/24

Garney Companies, Inc.
(Name of Principal)

By: [Signature]
Name: William D. Williams
Title: Executive Vice President
Date: 10/11/24



Address of Principal:
1772 W. Sam Houston Pkwy N
Houston, TX 77043

SURETY EXECUTION:

ATTEST, SEAL OF SURETY: (if a corporation)

WITNESS: (if not a corporation)

By: Debbie Lewis
Name: Debbie Lewis
Title: Witness
Date: October 10, 2024

The Continental Insurance Company /
Liberty Mutual Insurance Company
(Name of Surety)

By: [Signature]
Name: K. Zerounian
Title: Attorney-In-Fact
Date: October 10, 2024



Address of Surety:
Continental: 151 N. Franklin Street, Chicago, IL 60606
Liberty: 175 Berkeley Street, Boston, MA 02116

**ACCEPTANCE BY CITY:
REVIEWED:**

**THE FOREGOING PERFORMANCE
BOND IS ACCEPTED ON BEHALF OF
THE CITY OF COLLEGE STATION,
TEXAS:**

City Attorney's Office

City Manager

Date: _____

Date: _____

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Francisco)

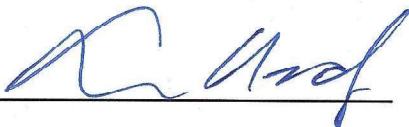
On October 10, 2024 before me, M. Moody, Notary Public
(insert name and title of the officer)

personally appeared K. Zerounian,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature  (Seal)

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That The Continental Insurance Company, a Pennsylvania insurance company, is a duly organized and existing insurance company having its principal office in the City of Chicago, and State of Illinois, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

M Moody, Susan Hecker, K Zerounian, Janet C Rojo, Betty L Tolentino, Kevin Re, Brian F Cooper, Robert P Wrixon, Virginia L Black, Maureen O'Connell, Susan M Exline, Julia Ortega, Thuyduong Le, Brittany Kavan, Misty R Henjc, Courtney Chew, Maria De Los Angeles Reynoso, Tina K Nierenberg

of Walnut Creek, CA, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind them thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the insurance company and all the acts of said Attorney, pursuant to the authority hereby given is hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the Authorizing By-Laws and Resolutions printed at the bottom of this page, duly adopted, as indicated, by the Board of Directors of the insurance company.

In Witness Whereof, The Continental Insurance Company has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 3rd day of November, 2023.



The Continental Insurance Company

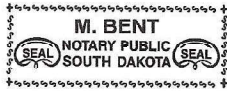
Larry Kasten

Larry Kasten

Vice President

State of South Dakota, County of Minnehaha, ss:

On this 3rd day of November, 2023, before me personally came Larry Kasten to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is a Vice President of The Continental Insurance Company, a Pennsylvania insurance company, described in and which executed the above instrument; that he knows the seal of said insurance company; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said insurance company and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said insurance company.



My Commission Expires March 2, 2026

M. Bent

M. Bent

Notary Public

CERTIFICATE

I, D. Johnson, Assistant Secretary of The Continental Insurance Company, a Pennsylvania insurance company, do hereby certify that the Power of Attorney herein above set forth is still in force, and further certify that the By-Law and Resolutions of the Board of Directors of the insurance company printed below this certificate are still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said insurance company this 10th day of October, 2024.



The Continental Insurance Company

D. Johnson

D. Johnson

Assistant Secretary

Authorizing By-Laws and Resolutions

ADOPTED BY THE BOARD OF DIRECTORS OF THE CONTINENTAL INSURANCE COMPANY:

This Power of Attorney is made and executed pursuant to and by authority of the following resolution duly adopted by the Board of Directors of the Company at a meeting held on May 10, 1995.

“RESOLVED: That any Senior or Group Vice President may authorize an officer to sign specific documents, agreements and instruments on behalf of the Company provided that the name of such authorized officer and a description of the documents, agreements or instruments that such officer may sign will be provided in writing by the Senior or Group Vice President to the Secretary of the Company prior to such execution becoming effective.

This Power of Attorney is signed by Larry Kasten, Vice President, who has been authorized pursuant to the above resolution to execute power of attorneys on behalf of The Continental Insurance Company.

This Power of Attorney is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of the Company by unanimous written consent dated the 25th day of April, 2012.

“Whereas, the bylaws of the Company or specific resolution of the Board of Directors has authorized various officers (the “Authorized Officers”) to execute various policies, bonds, undertakings and other obligatory instruments of like nature; and

Whereas, from time to time, the signature of the Authorized Officers, in addition to being provided in original, hard copy format, may be provided via facsimile or otherwise in an electronic format (collectively, “Electronic Signatures”), Now therefore be it resolved: that the Electronic Signature of any Authorized Officer shall be valid and binding on the Company.”

This Power of Attorney may be signed by digital signature and sealed by a digital or otherwise electronic-formatted corporate seal under and by the authority of the following Resolution adopted by the Board of Directors of the Company by unanimous written consent dated the 27th day of April, 2022:

“RESOLVED: That it is in the best interest of the Company to periodically ratify and confirm any corporate documents signed by digital signatures and to ratify and confirm the use of a digital or otherwise electronic-formatted corporate seal, each to be considered the act and deed of the Company.”

Go to www.cnasurety.com > Owncr / Obligee Services > Validate Bond Coverage, if you want to verify bond authenticity.



This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

Certificate No: 8212015 - 024125

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Betty L. Tolentino, Brian Cooper, Brittany Kavan, Courtney Chew, Forrest Chamberlain, Janet C. Rojo, Julia Ortega, K. Zerounian, Kevin Re, M. Moody, Maria D. Reynoso, Maureen O'Connell, Misty R. Hemje, Robert P. Wrixon, Susan Hecker, Susan M. Exline, Thuyduong Le, Tina K. Nierenberg, Virginia L. Black

all of the city of Walnut Creek state of CA each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 24th day of June, 2024.



Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

By: David M. Carey, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

State of PENNSYLVANIA
County of MONTGOMERY ss

On this 24th day of June, 2024 before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Plymouth Meeting, Pennsylvania, on the day and year first above written.



Commonwealth of Pennsylvania - Notary Seal
Teresa Pastella, Notary Public
Montgomery County
My commission expires March 28, 2025
Commission number 1128044
Member, Pennsylvania Association of Notaries

By: Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV - OFFICERS: Section 12. Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII - Execution of Contracts: Section 5. Surety Bonds and Undertakings.

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation - The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization - By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 10th day of October, 2024.



By: Renee C. Llewellyn, Assistant Secretary

For bond and/or Power of Attorney (POA) verification inquiries, please call 610-832-8240 or email HOSUR@libertymutual.com.

OFFEROR'S PROPOSAL FORM

Date: September 12, 2024

PROPOSAL FROM: Garney Companies, Inc.

PROPOSAL TO: City Of College Station
1101 Texas Ave.
College Station, TX 77842

The Undersigned proposes to furnish all labor, services, materials, tools and necessary equipment for Water Wells 10, 11, and 12 and related project components, and to perform the work required for the construction of said project at the location set out by the Plans and Specifications, in strict accordance with the Proposal/Contract Documents.

In submitting this proposal, it is understood that this proposal may not be altered or withdrawn for ninety (90) days, and that the Owner has reserved the right to reject any and all proposals.

The Undersigned certifies that this proposal is made in good faith, without collusion or connection with any other person, persons, partnership, company, firm, association, or corporation offering proposals on this work, for the following sums:

1. GENERAL CONDITIONS

List Offeror's proposed cost for General Conditions to accommodate the onsite staff as percentage of construction cost. These items will include, but not be limited to, office trailers, phones, furniture, copiers, computers, software, supplies, cleaning, move in/move out, printing expenses, site personnel's radios, pagers, phones, etc., required equipment, insurance premiums, and other items specifically provided for in **Attachment 1**:

Percent % 8.0%

2. CONSTRUCTION MANAGER AT RISK FEE

List Offeror's proposed fee as a percentage of construction cost, including all overhead and profit:

Percent % 9.0%

RECEIPT OF ADDENDA

I hereby acknowledge receipt of the following Addenda: Addendum No. 1 - RFP (CMAR) No. 24-084

by submitting a proposal, each offeror authorizes city to perform all investigations into the offeror’s background, capabilities, prior experience and other factors pertaining to offeror’s performance of the work, as city deems necessary in its sole discretion, and for that purpose, submission of a proposal shall act as offeror’s specific authorization to persons and entities contacted by city in connection with such investigations (“evaluating parties”) to provide city with the information requested by city and to discuss and express opinions concerning offeror. further, by submission of a proposal, offeror agrees to fully and forever waive and release any claim (known or unknown) it has or may have against the city, architect, engineer, the evaluating parties and their respective attorneys, employees, consultants, representatives, and agents which in any way arise out of or are connected to the: (i) administration, evaluation, or recommendation (or lack thereof) of any proposal; (ii) waiver of any requirements under the proposal/contract documents; and (iii) acceptance or rejection of any proposal and award of the contract.


OFFEROR’S NAME: William D. Williams

OFFEROR’S SIGNATURE: 

Bill D. Williams

CERTIFICATION

The undersigned affirms that they are duly authorized to execute the City of College Station Construction Agreement, that this proposal has not been prepared in collusion with any other Offeror, and that the contents of this proposal have not been communicated to any other Offeror prior to the official opening of this proposal. Additionally, subject to Section 2269.254 of the Code, the undersigned affirms that the firm is willing to sign the enclosed City of College Station Construction Agreement.

Signed By:  Title: Executive Vice President

Typed Name: William D. Williams Company Name: Garney Companies, Inc.

Phone No.: (816) 741-4600 Fax No.: (816) 741-4488

Email: bwilliams@garney.com

Proposal Address: 1772 W. Sam Houston Parkway, N. Houston TX 77043
P.O. Box or Street City State Zip

Order Address: 1772 W. Sam Houston Parkway, N. Houston TX 77043
P.O. Box or Street City State Zip

Remit Address: 1772 W. Sam Houston Parkway, N. Houston TX 77043
P.O. Box or Street City State Zip

Federal Tax ID No.: 44-0658613

Date: September 12, 2024

NOTE: This form and acknowledged addendums (*if applicable*) must be submitted with final proposals.

END OF RFP NO. 24-084

*****DO NOT MODIFY THIS FORM*****

**ATTACHMENT A
GENERAL CONDITIONS DETAIL**

DESCRIPTION	QTY	UNIT	\$ Cost/Unit Including All Burden & Insurance, Etc.	TOTAL
On Site Project Management				
Project Executive	7	MO	\$39,173.33	\$274,213.33
Project Manager	14	MO	\$33,280.00	\$465,920.00
Superintendent(s)	28	MO	\$27,560.00	\$771,680.00
Asst. Superintendent		MO		
Office Engineer(s)	28	MO	\$27,386.67	\$766,826.67
Project Expeditor		MO		
Scheduler	7	MO	\$25,133.33	\$175,933.33
Project Support Staff		MO		
Cost Engineer		MO		
Safety Manger	7	MO	\$25,826.67	\$180,786.67
Bonds and Insurance				
GL, Auto, WC & Builders Risk	1	LS	\$133,900.00	\$133,900.00
Payment & Performance Bonds	1	LS	\$ 355,670.69	\$355670.69
Temporary Project Construction and Utilities for CM Staff				
Dumpsters or CM staff	28	MO	\$500.00	\$14,000.00
Monthly Telephone Service		MO		
Project Water	28	MO	\$250.00	\$4,200.00
Temporary Toilets	28	MO	\$1,000.00	\$28,000.00
Temporary Fire Protection	14	MO	\$3000.00	\$42,000.00
Telephone System Installation		LS		
Ceremonies		LS		
Field Offices & Office Supplies for CM Staff				
Job Photos and Videos	28	MO	\$1,500.00	\$42,000.00
CM Project Specific Signage	1	LS	\$3750.00	\$3750.00
Postage and Deliveries		MO		
Mobilization for Office Trailers	1	LS	\$5000.00	\$5,000.00
Monthly Office Rental Costs	28	MO	\$4500.00	\$126,000.00
Storage Trailers	28	MO	\$1,000.00	\$28,000.00
Field Office Equipment	28	MO		
Vehicles including Fuel, Maintenance & Ins		MO		
Safety Equipment	28	MO	\$1,500.00	\$42,000.00
First Aid Supplies		MO		
Job Office Supplies	28	MO	\$250.00	\$7,000.00
Janitorial Supplies	28	MO	\$200.00	\$5,600.00
Project Computers and Software		MO		
Field Office Furniture	28	MO	\$500.00	\$14,000.00
Copy Machine and Supplies	28	MO	\$250.00	\$7,000.00
Communications Equipment	28	MO	\$1,500.00	\$42,000.00
Advertising	5	MO	\$200.00	\$1,000.00
TOTAL GENERAL CONDITIONS				\$3,536,480.69

