

# Purchasing Contract Checklist



|                                 |   |
|---------------------------------|---|
| Date Started                    | 4/8/2026  |
| Started By                      | Foley, Ashley   |
| Department                      | Fire  |
| Contract Subject *              | Design and Build Services for the Replacement of Existing HVAC System for City of Bryan Fire Station No. 2 Contract |
| Vendor Name *                   | SpawGlass   |
| Amount *                        | \$ 1,450,000.00   |
| Category                        | Construction  |
| Is this a Change Order *        | <input type="radio"/> Yes <input checked="" type="radio"/> No   |
| Contract Reviewed by Purchasing | <input checked="" type="radio"/> Yes <input type="radio"/> No   |
| Contract Reviewed by Legal      | <input checked="" type="radio"/> Yes <input type="radio"/> No <i>RC</i>   |
| Is this a Blanket Contract      | <input type="radio"/> Yes <input checked="" type="radio"/> No   |
| Is this a Contract Renewal      | <input type="radio"/> Yes <input checked="" type="radio"/> No   |
| HUB Vendor                      | <input type="radio"/> Yes <input checked="" type="radio"/> No   |
| Is this Grant Funded *          | <input type="radio"/> Yes <input checked="" type="radio"/> No   |
| Insurance Required              | <input checked="" type="radio"/> Yes <input type="radio"/> No   |
| Insurance Received              | <input type="radio"/> Yes <input checked="" type="radio"/> No   |
| Bonds Required                  | <input checked="" type="radio"/> Yes <input type="radio"/> No   |
| Bonds Received                  | <input checked="" type="radio"/> Yes <input type="radio"/> No   |
| Form 1295 Required              | <input checked="" type="radio"/> Yes <input type="radio"/> No   |
| Form 1295 Received              | <input type="radio"/> Yes <input checked="" type="radio"/> No   |
| Contractor Signed Contract      | <input checked="" type="radio"/> Yes <input type="radio"/> No   |
| Uploaded Contract               | RFQ No. 26-015 Spawglass Contract.pdf   |
|                                 | 2.11MB  |

**Uploaded Bid Documents**

**Notes**

Please review the above. If any change need to be made type details of the changes in the comments box below and click the "Reject" button.

**Manager Signature**

Sign

**Manager Signature \***

Sign

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**AGREEMENT FOR DESIGN BUILD SERVICES FOR THE REPLACEMENT  
OF EXISTING HVAC SYSTEM FOR CITY OF BRYAN FIRE STATION NO. 2  
BETWEEN  
THE CITY OF BRYAN AND SPAWGLASS CONSTRUCTION CORPORATION,  
INC.**

This Agreement for Design Build Services (“Agreement”) is effective as of \_\_\_\_\_, (the “Effective Date”), by and between the City of Bryan (“City”), a Texas home-rule municipal corporation, and SpawGlass Construction Corporation, Inc. (“Contractor”), a Texas corporation and wholly-owned subsidiary of SpawGlass Holding, L.P., for the design/construction for the replacement of existing HVAC System for City of Bryan Fire Station No. 2 located at 2502 Maloney Ave. For purposes of this Agreement, City and Contractor are collectively referred to as the “Parties”, and each individually as a “Party”.

**NOW, THEREFORE**, in consideration of the mutual covenants and obligations contained herein and for other good and valuable consideration, City and Contractor agree as follows:

**ARTICLE 1  
SCOPE OF WORK**

1.1 Contractor has overall responsibility for and shall provide complete Pre-Construction Phase and Construction Phase Services and furnish all Design Services, materials, equipment, tools and labor as necessary or reasonably inferable to complete the Work, or any phase of the Work, in accordance with the terms of this Agreement

1.2 The total cumulative amount of this Agreement shall not exceed One Million Four Hundred Fifty Thousand Dollars (\$1,450,000) (the “Maximum Contract Amount.”).

**ARTICLE 2  
DEFINITIONS**

The following capitalized terms have the meaning assigned herein:

2.1 **“Additional Design Services”** shall have the meaning set forth in Section 5.9.6.

2.2 **“Amount Available for the Construction Contract” or “AACC”** means the maximum monetary amount budgeted by City for all Construction Phase services, materials, labor, and other work required of Contractor for completion of the Work in accordance with this Agreement. The AACC includes, without limitation, the General Conditions Costs, the Cost of the Work, the Construction Phase Fee, and Contractor’s

Contingency. The AACC may be adjusted by the City for changes in the scope of the Project before or after acceptance of the Guaranteed Maximum Price Proposal. The AACC does include Contractor's Pre-Construction Phase Fee.

2.3 **"Applicable Law"** shall mean all local, state and federal laws, ordinances, codes, rules, regulations, and specifications, including without limitation environmental laws, regulations and standards, safety and building codes, that are (1) currently applicable to Contractor's performance of the Work and to all goods and services to be provided to City under this Agreement or (2) scheduled to become applicable with the passage of time.

2.4 **"Architect/Engineer"** or **"A/E"** refers to the professional firm employed by Contractor as architect/engineer of record for the Project, and its consultants.

2.5 **"City's Specifications"** means the construction and contract administration requirements and standards detailed in Exhibit "C" attached to this Agreement, consisting of Division 1 of the Specifications.

2.6 **"Contract Documents"** means this Agreement and all exhibits and attachments listed, contained or referenced in this Agreement specifically including the Uniform General Conditions, Supplementary General Conditions and Special Provisions, and City's Specifications; the Drawings, Specifications, details and other documents developed by A/E or City's consultants, if any, and accepted by City which describe the Project, all Addenda issued prior to the Effective Date of this Agreement, the Guaranteed Maximum Price Proposal when accepted by City and executed by the parties, all Change Orders issued after the Effective Date of this Agreement to be submitted by the Architect/Engineer employed by the Contractor in response to the Request for Qualifications issued by City for the Project. These Contract Documents form the entire and integrated contract between City and Contractor and supersede all prior negotiations, representations or agreements, written or oral.

2.7 **"Contractor's Contingency"** has the meaning set forth in Paragraph 11.3.

2.8 **"Contractor's Personnel"** shall have the meaning set forth in Section 3.10.

2.9 **"Construction Documents"** means, collectively, the Uniform General Conditions, Supplementary General Conditions and Special Provisions, Specifications, details, Change Orders and other documents prepared by A/E, its consultants, and by City's consultants, that describe the scope and quality of the Project and the materials, supplies, equipment, systems and other elements that are required for construction of the Project that are accepted by City.

2.10 **"Construction Phase Fee"** means the amount set forth in Paragraph 4 of Exhibit "A" attached to this Agreement.

2.11 **"Construction Phase Services"** means the coordination, implementation and execution of the Work required by this Agreement, which are further defined in Article 8.

2.12 **"Cost of the Work"** means those costs described in Paragraph 11.2.

- 2.13 **“Design Services”** means any and all engineering, architectural, and other design services required to be provided by Contractor pursuant to this Agreement, which are further defined in Section 5.9.
- 2.14 **“Direct Construction Cost”** shall have the meaning set forth in Article 11.
- 2.15 **“Drawings”** means the product of A/E which graphically depicts the Work.
- 2.16 **“Estimated Construction Cost”** or **“ECC”** means the amount calculated by Contractor for the total cost of all elements of the Work based on this Agreement available at the time(s) that the ECC is prepared. The ECC shall be based on current market rates with reasonable allowance for overhead, profit and price escalation and shall include and consider, without limitation, all alternates and contingencies, designed and specified by A/E and the cost of labor and materials necessary for installation of City furnished equipment. The ECC shall include all the cost elements included in the AACC, as defined above, and shall represent Contractor’s best current estimate of the Guaranteed Maximum Price it will propose for the Project based on the information then available. The ECC shall not include Contractor’s Pre-Construction Phase Fee, A/E’s Fees, the cost of the land and rights-of-way, or any other costs that are the direct responsibility of City.
- 2.17 **“General Conditions Cost”** means costs incurred and minor work performed by Contractor without the need for competitive bids/proposals. The allowable General Conditions items are limited in Paragraph 11.1 and are further described on Exhibit “D”. The maximum allowable General Conditions Cost payable to Contractor during the Construction Phase of the Project is set out in Exhibit “A” attached to this Agreement.
- 2.18 **“Guaranteed Maximum Price”** or **“GMP”** means the amount proposed by Contractor and accepted by City as the maximum cost to City for construction of the Project in accordance with this Agreement. The GMP includes Contractor’s Construction Phase Fee, the General Conditions Cost, the Cost of the Work, and Contractor’s Contingency amount.
- 2.19 **“Monthly Salary Rate”** means the amount agreed to by City that can be used throughout the Construction Phase to account for the monthly salary costs of Contractor’s salaried personnel assigned to the Project. A Monthly Salary Rate must be established for each salaried person and must be approved in writing by City in advance of any Application for Payment for that person. The agreed upon Monthly Salary Rate is included in Exhibit “G” attached to this Agreement.
- 2.20 **“Pre-Construction Phase Fee”** means the amount set forth in Paragraph 3 of Exhibit “A” attached to this Agreement.
- 2.21 **“Pre-Construction Phase Services”** means the participation, documentation and execution of Contractor’s Pre-Construction Phase deliverables as required by this Agreement and further defined in Article 5.
- 2.22 **“Project Manager”** refers to the City staff or professional management firm selected by the City Manager as the City’s representative for the Project, and its employees and consultants.

2.23 **“Project Team”** means City, Project Manager, Contractor, A/E and consultants, any separate Contractors employed by City, and others employed for the purpose of programming, design, and construction of the Project. The members of the Project Team will be designated in writing by City and may be modified from time to time in writing by City.

2.24 **“Reimbursable Services”** are the services specifically identified in Paragraph 5.9.7 that are provided by the Contractor in conjunction with the delivery of Pre-Construction Services under this Agreement.

2.25 **“Specifications”** means the written product of A/E that establishes the quality and/or performance of products utilized in the Work and processes to be used, including testing and verification for producing the Work.

2.26 **“Subcontractor”** means a person or entity who has an agreement with Contractor to perform any portion of the Work. The term Subcontractor does not include any person or entity hired directly by City.

2.27 **“Work”** means the provision of all construction services, labor, materials, supplies, and equipment that are required of Contractor to complete the Project in strict accordance with the requirements of this Agreement. Work includes, but is not limited to, the Construction Phase Services, additional work required by Change Orders, and any other work reasonably inferable from this Agreement. The term “reasonably inferable” takes into consideration the understanding of the parties that some details necessary for completion of the Work may not be shown on the Drawings or included in the Specifications, but they are a requirement of the Work if they are a usual and customary component of the Work or otherwise necessary for complete installation and operation of the Work.

2.28 **“Work Progress Schedule”** or **“WPS”** shall have the meaning given in Paragraph 5.3.1.

### **ARTICLE 3 GENERAL CONTRACTOR’S RESPONSIBILITIES**

3.1 Contractor shall perform all services specifically allocated to it by the Contract Documents as well as those services reasonably inferable from the Contract Documents as necessary for completion of the Work and the Project. Contractor agrees to perform these services using its best efforts, skills, judgments and abilities.

3.2 Contractor shall collaborate and coordinate with A/E and endeavor to further the interests of City and the Project. Contractor shall furnish Pre-Construction Phase Services and Construction Phase Services and complete the Project in an expeditious and economical manner consistent with the interests of City and in accordance with the Work Project Schedule.

3.3 Contractor shall designate a representative authorized to act on Contractor’s behalf with respect to the Project.

3.4 Contractor shall establish procedures for communication and coordination

among the Project Team, Subcontractors, separate contractors, and others with respect to all aspects of the construction of the Project, and implement such procedures.

3.5 Contractor shall utilize CMiC project management software application as the primary system for all project documentation through all phases of the Project.

3.6 If City elects to “fast-track” or develop the Project in multiple stages, Contractor shall organize and perform its services as appropriate to each stage. Each stage of the Project may have a unique schedule for completion and a specific AACC, at City’s discretion.

3.7 Contractor shall identify to City the employees and other personnel that it will assign to the Project. Contractor shall also identify any consultants that will be performing services for the Project. After execution of this Agreement by City, Contractor shall not remove or replace the persons or entities assigned to the Project except with City’s written consent, which consent shall not be unreasonably withheld. Contractor shall not assign to the Project or contract with any person or entity to which City has a reasonable objection. Contractor shall promptly update the list of persons and consultants if they change during the course of the Project.

3.8 Contractor shall, at City’s request, promptly repair replace, or re-perform any defects in Service or Products without additional cost, expense or liability to City and to the reasonable satisfaction of City; or, at City’s sole discretion, City may repair, replace, or re-perform (either self-performed by City or performed by a third party of City’s choosing) any defects in Contractor’s Services or Products and invoice Contractor for any associated cost.

3.9 Contractor or its designated subcontractors shall perform background checks on all personnel performing Services under this Agreement prior to performing Services including a minimum county level criminal records searches seven years from date of hire, National Sex Offender searches, Social Security traces, employment history verifications, and, if applicable, professional or trade license verifications and any site specific requirements of City. Contractor shall comply with all Federal, State and local employment and immigration laws, terms, provisions, regulations and rulings (“Employment and Immigration Laws”) and any person assigned to perform Services hereunder shall meet employment eligibility requirements of Employment and Immigration Laws. Upon receipt of a written request from City, Contractor shall certify in writing as to Contractor's compliance with Employment and Immigration Laws. Contractor will be responsible for all employee-related tax, levy, benefits, health insurance, pension, withholding, accrual, payment, reporting and other obligations of employers for its employees under Applicable Law (“Employee Obligations”). Contractor will indemnify and hold harmless City from and against all Losses (defined below) which arise in any manner out of or in connection with any one or more aspects of Contractor’s respective Employee Obligations or violation of any Employment and Immigration Laws.

3.10 Contractor is an independent contractor with full and complete responsibility for all of its employees, agents, subcontractors or any person for whom Contractor is responsible (“Contractor Personnel”). Contractor shall:

- (a) Employ and direct Contractor Personnel, as is required to perform the Services;

(b) Exercise full and complete authority over Contractor Personnel; and

(c) Have the sole right to hire and discharge Contractor Personnel.

3.11 Nothing herein is intended or shall be deemed to constitute, create, give effect to or otherwise recognize a partnership, joint venture, or formal business entity of any kind or create a fiduciary, agency or similar relationship between the parties, and the rights and obligations of the parties shall be limited to those expressly set forth in this Agreement.

3.12 Contractor and Contractor Personnel are not the representatives of City for any purpose and Contractor does not have the right, power or authority (and Contractor shall not represent itself as having any right, power or authority) in any capacity to represent, act for, bind, or otherwise create or assume any obligation on behalf of City for any purpose whatsoever or otherwise to act as the representative of City.

3.13 Contractor shall supply an adequate number of trained and competent Contractor Personnel to perform the Services. Contractor shall be responsible for the good order and behavior of Contractor Personnel while on the Properties. The Contractor's supervisors shall have authority to represent the Contractor in fulfilling its obligations under this Agreement. If City, in the exercise of its reasonable discretion, deems any Contractor Personnel unacceptable or unsatisfactory, Contractor, at its expense, shall remove such Contractor Personnel from the Services being performed for City and shall supply replacements.

#### **ARTICLE 4 CITY'S RESPONSIBILITIES**

4.1 Pursuant to Texas Gov't Code Sec. 2269.305, the City shall select or designate an architect or engineer independent of the Contractor to act as the City's representative for the duration of the project.

4.2 City will provide the AACC and general schedule for the Project. The AACC provided by City will be established with due consideration for separate contingencies for changes in the Project during construction, and for other Project costs that are the responsibility of City. The general schedule will set forth City's plan for milestone dates and completion of the Project.

4.3 City, at its sole cost, will procure the Furniture, Fixtures, and Equipment (FF&E) through a third-party contractor for the City, if necessary as part of the final design as agreed upon by the Parties.

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

4.5 City shall furnish all legal, accounting, auditing, and insurance counseling services for itself as may be necessary for the Project.

4.6 City shall furnish required information and services and shall render approvals and decisions as expeditiously as is consistent with reasonable skill and care and the orderly progress of Contractor's services and of the Work.

4.7 City may designate one or more construction inspectors (or hire third-party inspectors) to ensure construction in compliance of drawings and specifications, who shall be given access to the Work as requested or needed. The provision of inspection services by City shall not reduce or lessen Contractor's responsibility for the Project. Contractor is fully and solely responsible for constructing the Project in strict accordance with this Agreement.

4.8 City shall have the right to reject any defective Work on the Project. Should Contractor refuse or neglect to correct any such Work within a reasonable time after notice, City may have the Work corrected and recover all expenses incurred from Contractor on demand.

## **ARTICLE 5 PRE-CONSTRUCTION SERVICES PHASE**

The Pre-Construction Phase shall be deemed to commence upon the date specified in a Notice to Proceed with Pre-Construction Phase Services issued by City and shall continue through completion of the Construction Documents and procurement of all major Subcontractor agreements. Contractor is not entitled to reimbursement for any costs incurred for Pre-Construction Phase Services performed before issuance of the Notice to Proceed. Pre-Construction Phase Services may overlap Construction Phase Services. Contractor shall perform the following Pre-Construction Phase Services:

### **5.1 General Coordination.**

5.1.1 Contractor's Pre-Construction Phase Services team shall attend Project Team meetings with City representatives including consulting firms and A/E at regularly scheduled intervals throughout the Pre-Construction Phase. Frequent Project Team meetings are anticipated prior to City acceptance of the GMP and during completion of the Construction Documents.

5.1.2 Review and understand the standards and requirements in City's Specifications and perform all services in accordance with those standards and requirements.

5.1.3 Visit the site and inspect the existing facilities, systems, and conditions to ensure an accurate understanding of the existing conditions as required.

5.1.4 Participate as a member of the Project Team in the development of the Program of Requirements, if such program has not been developed prior to the Effective Date of this Agreement.

5.1.5 Provide recommendations and information to the Project Team on: site usage and site improvements; building systems, equipment and construction feasibility; selection and availability of materials and labor; time requirements for installation and construction; assignment of responsibilities for safety precautions and programs; temporary Project facilities; equipment, materials and services for common use of Contractor and City's separate contractors, if any; cost factors, including costs of alternative materials or designs, preliminary budgets, and possible cost savings; recognizing and tracking the resolution of conflicts in the proposed Drawings and Specifications; methods of delivery of materials, systems, and equipment; and any other matters necessary to accomplish the Project in accordance with the Work Progress Schedule (as defined below) and the AACC.

5.1.6 Assist City in selecting and directing the services of existing facility surveys, testing and balancing, environmental surveys, or other special consultants hired by City to develop additional information for the design or construction of the Project.

5.1.7 At City's request, attend public meetings and hearings concerning the development and schedule of the Project.

5.1.8 Contractor shall use all Construction Documents returned to A/E from the Subcontractor proposers.

## 5.2 **Constructability Program**

5.2.1 Implement and conduct a constructability program to identify and document Project cost and schedule savings opportunities. The constructability program shall follow accepted industry practices and be reviewed by City at design milestones. Whenever the term "value engineering" is used in conjunction with this Agreement or the Project, it has its commonly accepted meaning within the construction industry and does not imply the practice of professional engineering without a license. If any value engineering activities constitute the professional practice of engineering, then such activities shall be performed by an engineer licensed in Texas.

5.2.2 Prepare a "Constructability Report" that identifies items that, in Contractor's opinion, may negatively impact construction of the Project. The Constructability Report shall address the overall coordination of Project Drawings, Specifications, details, and schedules and identify discrepancies that may generate Change Orders or claims once Project construction commences. Contractor shall provide City with an update to the Constructability Report at every milestone meeting during the Pre-Construction Phase.

5.2.3 Provide and implement a system for tracking questions, resolutions,

decisions, directions and other information matters that arise during the development of the Drawings and Specifications for the Project. The decision tracking system shall be in a format approved by City and updated by Contractor at least monthly during the Pre-Construction Phase.

### **5.3 Scheduling**

5.3.1 Develop a Work Progress Schedule (WPS) for Project Team review and City's approval that coordinates and integrates activities on the Project, including Contractor's services, A/E's design services, the work of other consultants and suppliers, and City's activities with the anticipated construction schedules for other contractors. The WPS must identify all major milestones through Project Final Completion. The WPS shall be created and maintained in accordance with City's Specifications.

5.3.2 Contractor shall update the WPS throughout the Pre-Construction and Construction Phases as described in City's requirements and Specifications.

5.3.3 The WPS shall include other detailed schedule activities as directed by City including, but not limited to, City managed work under separate contracts such as equipment, furniture and furnishings, telephones, project security, property protection, life-safety systems, integration with central campus monitoring systems, information and instructional technology data-transmission systems, and computer technology systems.

### **5.4 Budget and Cost Consultation**

5.4.1 Contractor is responsible for the construction budget and for preparing and updating all procurement and Estimated Construction Costs (ECC) and distributing them to the Project Team throughout the duration of the Project.

5.4.2 Contractor shall prepare and update an Estimated Construction Cost report at the completion of Schematic Design, Design Development, fifty percent (50%) and seventy-five (75%), and one hundred percent (100%) completion stages of the Construction Documents phase of the Project. [Project Manager to determine which milestones during construction documents to require ECC] The GMP Proposal, when submitted, will have as its basis a current ECC report. The ECC report for Schematic Design shall be a detailed estimate organized in the most current Construction Specifications Institute, Master Format. The ECC reports for the Design Development and Construction Documents phases shall be detailed estimates derived from cost quantity surveys based on unit prices for labor, materials, overhead and profit, organized in the most current Construction Specifications Institute, Master Format for each portion of the Work.

5.4.3 Contractor shall provide continuous cost consultation services throughout the duration of the Project, including identification and tracking of decisions that affect the scope or quality of the Project and providing ongoing updates of their cost and budget impact. Advise the Project Team immediately if Contractor has reason to believe that the most current ECC will exceed the AACC or not meet WPS requirements and recommend reasonable strategies for bringing the Project in line with the AACC and the WPS.

5.4.4 Contractor shall promptly identify all variances between estimated costs and actual costs during the Construction Phase, and shall promptly report such variances to the Project Team, in a format acceptable to the City, along with recommendations for action, but in any event no more than two (2) business days after acquiring such information.

5.4.5 Should any ECC exceed or fall significantly below the approved AACC, City and Contractor shall negotiate changes to the Project scope, requirements, or the AACC as required.

## **5.5 Coordination of Design and Construction Contract Documents**

5.5.1 Review all Drawings, Specifications, and other Construction Documents as they are developed by A/E during the Schematic Design, Design Development, and Construction Documents design phases of the Project.

5.5.2 Consult with City and A/E on the selection of materials, equipment, component systems, and types of construction used on the Project. Advise City on site use, construction feasibility, availability of labor and materials, procurement time requirements, and construction coordination.

5.5.3 Advise City of any error, inconsistency, or omission discovered in the Drawings, Specifications, and other Construction Documents.

5.5.4 Advise City on reasonable adjustments in the Project scope, quality, or other options for keeping the Project cost within the AACC.

5.5.5 Review the Construction Documents for compliance with all applicable laws, rules and regulations, the Contract Documents, and City requirements.

## **5.6 Construction Planning and Subcontractor Buyout Strategy**

5.6.1 Identify equipment or material requiring extended delivery times and advise City on expedited procurement of those items. Advise City and A/E on the preparation of performance specifications and requests for technical proposals for the procurement and installation of systems and components and for the procurement of long lead items. If requested by City, and subject to City's prior written approval, issue requests for technical proposals to qualified sources and receive proposals and assist in their evaluation.

5.6.2 Make recommendations to the Project Team regarding organization of the Construction Documents to facilitate the bidding and awarding of construction subcontracts in a manner that promotes the interests of the Project and City. These recommendations may include, but are not limited to, phased or staged construction or multiple separate contracts. The recommendations shall take into consideration such factors as time of performance, type and scope of work, availability of labor and materials, overlapping trade jurisdictions, provisions for temporary facilities, comparisons of factory and on-site production costs, shipping costs, code restrictions, and other constraints.

5.6.3 Review the Construction Documents with the Project Team to eliminate areas of conflict and overlap in the work to be performed by the various Subcontractors or City's separate contractors.

5.6.4 Develop a bid/proposal package strategy in coordination with A/E that addresses the entire scope of each phase and stage of the Project. In developing the bid/proposal package strategy, Contractor shall identify all bid/proposal packages on which Contractor intends to submit a self-performance bid/proposal. The bid/proposal package strategy shall be reviewed with City on a regular basis and revised throughout the buyout of the Project so as to best promote the interests of the Project and City.

5.6.5 Assist City, City's other consultants, and City's separate contractors in obtaining risk management, code, and regulatory agency reviews and approvals for the Project including, without limitation, the local fire department, and City's insurance provider.

5.6.6 Coordinate with the City's third-party contractor, the procurement of Furniture, Fixtures, and Equipment Packages (FF&E) and integrate the delivery and installation schedule of the FF&E within the completion date for the project and within the AACC outlined herein. Said coordination shall include, but not limited to the inclusion of project team members dedicated to the operations and maintenance of the facility in order to effectively prioritize the long-term performance of the fixture and equipment packages.

5.6.7 Recommend to City and A/E any Quality Assurance tests to be performed, and assist City in selecting testing laboratories and consultants, without assuming direct responsibility for the performance of such laboratories and consultants.

5.6.8 Review the Construction Documents to ensure that they contain adequate provision for job site areas required for construction, all temporary facilities necessary for performance of the Work, and provisions for all of the job site facilities necessary to manage, inspect, and supervise construction of the Project.

5.6.9 Provide an analysis of the types and quantities of labor required for the Project and review the appropriate categories of labor required for critical phases or stages. Make recommendations that minimize the adverse effects of labor shortages.

5.6.10 Consult with and make recommendations to City on the acquisition schedule for fixtures, furniture, and equipment, and coordinate with City as may be required to meet the WPS.

## **5.7 Obtaining Bids/Proposals for the Project**

5.7.1 Contractor shall solicit competitive lump sum bids/proposals from trade contractors or subcontractors for the performance of all major elements of the Project other than the minor work that may be included in General Conditions. Criteria for determining the bid/proposal that provides the best

value to City shall be established by the Project Team and included in the request for bids/proposals. Contractor shall notify City in advance in writing of the date it will receive the bids/proposals.

5.7.2 Contractor may seek to self-perform portions of the Project identified for self-performance in the bid/proposal strategy. Contractor must submit a bid/proposal for the self-performance work in the same manner as all other trade contractors or Subcontractors. City will, at its sole discretion, determine whether Contractor's bid/proposal provides the best value for City, and its determination shall be final.

For scope of work bid packages typically performed by subcontractors, Contractor may "self-perform" such work on a cost-plus fee (Not-To-Exceed 7.5%) basis subject to an agreed upon guaranteed maximum price for the "self-performed work". The Contractor shall bid their proposed Guaranteed Maximum Price for the work to be "self-performed" against at least two other interested trade contractors. Any subcontract for "self-performed work" will provide for payment in an amount equal to the Cost of the Work (as defined in this Agreement) and will not exceed the agreed upon subcontract guaranteed maximum price. All terms and provisions of any subcontract for "self-performed work" will be consistent with the terms and conditions of this Agreement with the exception of the agreed upon Fee percentage. All savings under any such subcontract for "self-performed work" shall be applied to reduce the Cost of the Work under this Agreement and the Guaranteed Maximum Price of this Agreement. For purposes of defining "self-performed work" subject to this contract provision, any division of Contractor, or any separate Contractor or subcontractor that is partially owned or wholly owned by the Contractor or any of their employees or employee's relatives will be considered a related party entity and will be subject to this provision regarding "self-performed work". If the Contractor acquires competitive bids/proposals for the "self-performed work" the City at its sole determination may allow the "self-performed work" to be performed on a lump sum. Otherwise, no self-performed work will be allowed to be performed on a lump sum basis.

5.7.3 Contractor shall identify every Subcontractor it intends to use on the Project, self-performed work, to City in writing, in a format acceptable to City, and deliver to City at least ten (10) days before entering into any subcontract. Contractor shall not use any Subcontractor to which City has a reasonable objection. Contractor shall not be required to subcontract with any Subcontractor to which it has reasonable objection. Following City's acceptance of a Subcontractor, that Subcontractor shall not be changed without City's written consent, which shall not be unreasonably withheld.

5.7.4 If a selected trade contractor or Subcontractor fails to execute a subcontract after being selected in accordance with this Paragraph or defaults in the performance of its work, Contractor may, in consultation with City and without further advertising, fulfill the subcontract requirements itself or select a replacement trade contractor or subcontractor to do so.

## 5.8 Safety

5.8.1 In accordance with the UGC (Article 6), Contractor is responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Project. The safety program shall comply with all applicable requirements of the Occupational Safety and Health Act of 1970 and all other applicable federal, state and local laws and regulations.

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

## 5.9 Design Services

### 5.9.1 General Responsibilities

5.9.1.1 Contractor recognizes and accepts a fiduciary relationship of trust and confidence hereby established between Contractor and City and agrees that it shall at all times in good faith use its best efforts to advance City's interests and agrees to perform the Design Services and the Construction Work in the highest professional manner.

5.9.1.2 Contractor shall designate in writing a representative who is responsible for the day-to-day management of the Design Services.

5.9.1.3 The designated representative shall be the City's primary contact during the design phase of the Project and shall be available as required for the benefit of the Project and the City. The designated representative shall be authorized to act on behalf of and to bind the Contractor in all matters related to Design Services. The designated representative shall not be changed without advance written approval from the City, which approval shall not be unreasonably withheld.

5.9.1.4 Contractor shall engage the services of an Architect/Engineer and other qualified professionals as required for performance of the Design Services. Contractor shall not perform any architectural or engineering services directly unless Contractor is licensed in Texas to perform such services. All drawings, specifications, change orders, and other design documents shall bear the seal of the licensed professional who prepared them in accordance with the applicable laws and regulations of the State of Texas.

5.9.1.5 Contractor shall be solely responsible for all obligations to the Architect/Engineer and shall pay for the services of the Architect/Engineer and all other professional service providers out of the fees for this Agreement. Contractor agrees and acknowledges that City is entering into this Agreement in reliance on Architect/Engineer's represented professional abilities with respect to performing Architect/Engineer's services, duties, and obligations under this Agreement. Architect/Engineer agrees to use Architect/Engineer's

professional efforts, skill, judgment, and abilities in performing Architect/Engineer's services. Architect/Engineer shall perform its services diligently and shall endeavor to further the interest of the City in accordance with City's requirements and procedures.

5.9.1.6 Contractor's contract with the Architect/Engineer shall include the following language: "The Architect/Engineer shall perform its services in accordance with the professional skill and care ordinarily provided by competent architects and engineers practicing in the same or similar locality and under the same or similar circumstances and professional license; and as expeditiously as is prudent considering the ordinary professional skill and care of a competent architect and engineer (the "Standard of Care"). Subject to this Standard of Care, Architect/Engineer shall interpret and apply applicable national, federal, state, municipal, and State of Texas building and accessibility laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction in effect at the time the services are provided. There are no obligations, commitments, or impediments of any kind known to the Architect/Engineer that will limit or prevent performance by Architect/Engineer of its services. Architect/Engineer hereby agrees to correct, at its own cost, any of its services, and the services of its consultants, that do not meet the standard of care."

5.9.1.7 Nothing in this Agreement shall create any contractual obligation between the City and the Architect/Engineer or other design professionals not hired directly by the City.

5.9.1.8 The Contractor shall be responsible for managing the Design Services so as to ensure that the Project, as designed, can be constructed for an amount that is within the Amount Available for the Construction Contract and will achieve the energy and operational savings required by the Contract. The obligation to design the Project so as to achieve the Program of Requirements objectives of scope and cost shall continue through completion and acceptance of Construction Documents. Any adjustment to the scope or quality considered necessary to comply with the Amount Available for the Construction Contract or the Program of Requirements during the design phase shall be mutually agreed upon and shall be considered normal to that process.

5.9.1.9 The Contractor shall submit the names of all proposed consultants for Design Services, including the Architect/Engineer and any of its consultants, for approval by the City, which approval shall not be unreasonably withheld. The Contractor, if requested, shall provide City with a copy of the fully executed contract or agreement authorizing services by any such consultant.

5.9.1.10 The Design Services shall incorporate current technology as appropriate to the stated mission of the institution and the programmed functional activities that is compatible with any existing facility and acceptable to the City.

5.9.1.11 All Design Services for the Project shall be provided in accordance with the Program of Requirements which are incorporated herein by reference, and any other criteria applicable to the needs of the institution.

5.9.1.12 The Contractor warrants to City the sufficiency and completeness of all Design Services performed and that all drawings, specifications, and other information furnished or provided by Contractor shall be free from material errors and omissions. Approval or acceptance of any Design Services by City shall not in any way release Contractor from any duty, responsibility or liability for such services, it being understood that City is at all times relying upon Contractor's skill and knowledge in performing the Design Phase Services.

5.9.1.13 City shall have the right to reject any defective Design Services or other defective Work on the Project of which City becomes aware and Contractor shall promptly correct any such defect at Contractor's expense. Should any portion of the Project Work be damaged or defective due to an error or omission in the Design Services, including errors or omissions in any plans, drawings, specifications, and other construction document materials prepared or furnished by Contractor, Contractor shall promptly correct any such damage or defect at no additional cost to the City. Should the Contractor refuse or neglect to correct any such damage or defect within a reasonable time after notice, City may cause the damage or defect to be corrected and withhold payment or collect monetary damages equal to the cost of replacing or repairing the defective Work.

5.9.1.14 City may elect, at its option, to stage or to "fast-track" construction of the Project in different stages. Such stages may or may not overlap. Contractor shall perform Design Services in staged packages as appropriate to each stage of construction which may result in differing schedules and reviews for the completion of each design stage and for each stage of planned construction. The City may elect, at its option, to establish a different Amount Available for the Construction Contract for each such stage.

5.9.1.15 At each stage of the Design Services, Contractor shall provide the following services as appropriate:

- Architectural Services
- Landscape Architectural Services
- Civil Engineering Services
- Structural Engineering Services
- Mechanical Engineering Services
- Electrical Engineering Services
- Construction Cost Estimating
- Other Consultants as Required by Project

5.9.1.16 Basic Design Services include incorporations of the 2018 International Energy Conservation Code and City of Bryan

amendments. Architect/Engineer shall provide the City with a copy of the COMcheck reports showing compliance (see: [energycodes.gov](http://energycodes.gov)) for the building envelope, lighting, and mechanical systems. City shall have the ability to direct A/E to exceed code for a more energy efficient building, if desired.

5.9.1.17 Contractor shall not proceed to any subsequent stage of Design Services until City has authorized Contractor to proceed in writing, except at the Contractor's sole financial risk.

5.9.1.18 The Architect/Engineer, as a part of Design Services, shall provide life cycle cost analysis of major systems and materials to optimize the operating, maintenance and initial costs.

5.9.1.19 Omitted

5.9.1.20 Participation of Contractor or its subcontractors and suppliers in contributions to the model(s) shall not constitute the performance of design services.

5.9.1.21 During the design process the model(s) shall, at a minimum be utilized for Design Anchoring, Design Reviews, Space Tracking, Cost Estimation, 3D Coordination, Fabrication and Facilities Management Data.

5.9.1.22 During the construction process it is intended that the contractor utilize the model(s) for 3D Coordination, fabrication and Facilities Management Data.

5.9.1.23 Omitted

5.9.1.24 The Architect/Engineer shall incorporate into the model(s), Drawings and Specifications such changes as are necessary to satisfy the City's written review comments or published meeting minutes, any of which may be appealed in writing for good cause.

5.9.1.25 The Contractor shall visit the site to become sufficiently familiar with the existing facilities, systems and conditions to ensure that the Project as designed will functionally interface with the existing conditions as required.

5.9.1.26 The Contractor shall review laws applicable to the design and construction of the Project and advise the City if any program requirement may cause a violation of such laws.

## **5.9.2 Schematic Design Stage**

5.9.2.1 Based on the approved Program of Requirements and the Amount Available for the Construction Contract authorized by the City, the Contractor shall develop sufficient alternative approaches to design and construction of the Project and review them with the City. The Contractor shall prepare Schematic Design documents and a preliminary Estimated Construction Costs and submit them to the City for approval. The Estimated Construction Costs shall affirm adherence to the Amount Available for the Construction Contract.

5.9.2.2 Architect/Engineer shall provide all services necessary to perform the services of this phase (preparation of model(s), relevant data, decision support model views and Schematic Design Documents).

5.9.2.3 Before proceeding to the Design Development Stage, the Contractor shall obtain City's written authorization to proceed and the City's approval of the preliminary Estimated Construction Costs.

## **5.9.3 Design Development Stage**

5.9.3.1 Based on the approved Schematic Design documents and any adjustments to the Program of Requirements, or Amount Available for the Construction Contract authorized by the City, the Contractor shall prepare Design Development documents derived from the model(s) in accordance with City's written requirements to further define and finalize the size and character of the Project and prepare a detailed Estimated Construction Costs and submit them to the City for approval. The Design Development Documents shall fix and describe the size and character of the entire Project, including site work, architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate. The detailed Estimated Construction Costs shall confirm adherence to the Amount Available for the Construction Contract.

5.9.3.2 Omitted

5.9.3.3 Omitted

5.9.3.4 Before proceeding into the Construction Document Stage, the Contractor shall obtain City's written approval of the Design Development Documents and the Amount Available for the Construction Contract

#### **5.9.4 Construction Documents Stage**

5.9.4.1 Based on the approved Design Development Documents and any further adjustments to the Program of Requirements or the Amount Available for the Construction Contract as authorized by the City, the Contractor shall prepare, for approval by the City, Construction Documents consisting of Drawings, Schedules, and Specifications derived from the model(s) in accordance with City's written requirements setting forth in detail the requirements for construction of the Project. The Construction Documents shall provide for the construction of the Project within the approved Final Amount Available for the Construction Contract.

5.9.4.2 Omitted

5.9.4.3 The Construction Documents shall be consistent in all material respects with Contractor's prior design proposals to City.

5.9.4.4 The Contractor shall advise the City regarding construction phasing and scheduling, the construction contract time period, and such other construction conditions considered appropriate for the Project.

5.9.4.5 The Contractor shall assist and advise the City in connection with the City's responsibility and procedures for obtaining approval of authorities having jurisdiction over the Project.

5.9.4.6 Following City's written approval of the Construction Documents, Contractor shall not be entitled to any adjustment in the approved Amount Available for the Construction Contract except for changes in Project scope or quality which materially increase or decrease the cost to construct the Project that are ordered by City in writing in accordance with the Uniform General and Supplementary Conditions.

#### **5.9.5 Review Drawings**

5.9.5.1 The Contractor, shall provide City with the required number of design document review sets at each required stage of completion.

5.9.5.2 The Contractor shall incorporate into the documents such corrections and amendments as the City requests at each stage of review, unless the Contractor objects to such changes in writing and City agrees to the objections. Any additional cost incurred due to Contractor's failure to incorporate City's requested corrections and amendments shall be borne by the Contractor.

5.9.5.3 Contractor shall identify to City in writing anything in Contractor's drawings and specifications and any drawings, plans,

sketches, instructions, information, requirements, procedures, requests for action, and other data supplied to Contractor (by City or any other party) that Contractor regards as unsuitable, improper, or inaccurate in connection with the purposes for which such documents or data are furnished. Contractor shall be solely responsible for the use of such documents or data unless Contractor advises City in writing that in its opinion such documents or data are unsuitable, improper, or inaccurate and City instructs the Contractor in writing to proceed in accordance with the documents or data as originally given.

5.9.5.4 The Contractor shall pay all costs for plans, specifications, and other design and construction documents used by the Contractor and its consultants and by the City, except for changes generated solely by City.

5.9.5.5 If any of the plans, specifications, and other design and construction documents or other work materials produced or used by Contractor pursuant to this Agreement are damaged or destroyed by fire or other casualty, Contractor shall prepare and provide City with new copies of any such documents or materials, at no additional cost to City, unless Contractor or City has a complete and undamaged set thereof.

## **5.9.6 Additional Design Services**

5.9.6.1 Additional Design Services are services outside the original scope of the project and shall be provided by the Contractor and paid for in accordance with this Agreement by the City if authorized in writing by the City. Prior to commencing any Additional Design Service, Contractor shall submit to the City an Additional Design Services proposal in a form acceptable to the City. The Additional Design Services proposal shall describe in detail the nature or scope of the Additional Design Services, the basis upon which Contractor believes that such services are Additional Design Services, the maximum amount of fees and reimbursable expenses for performance of the Additional Design Services, and a proposed schedule for the performance of the Additional Design Services. Contractor shall proceed with the Additional Design Services only after written acceptance by City of the Additional Design Services proposal.

5.9.6.2 Upon acceptance by City, each Additional Design Services Proposal and the services performed by Contractor pursuant to such Additional Design Services proposal shall become part of this Agreement and shall be subject to all the terms and conditions of this Agreement, as fully and completely as though the same had been

included in this Agreement as a Pre-Construction Phase Fee at the original execution of this Agreement.

### **5.9.7 Reimbursable Services**

5.9.7.1 Reimbursable Services shall be provided by the Contractor and paid for in accordance with this Agreement by the City. These include actual not-to-exceed expenditures made by the Contractor and the Contractor's consultants incurred solely and directly in connection with Contractor's performance of its services hereunder for the following expenses:

5.9.7.1.1 Fees paid for securing approval of authorities having jurisdiction over the Project.

5.9.7.1.2 Professional models and renderings produced for presentations when requested by the City.

5.9.7.1.3 Cost of site survey and geotechnical investigations.

5.9.7.1.4 Other items agreed to by the City in writing.

5.9.7.2 Expenses not allowed for reimbursement include, telephone charges, cell phone and PDA charges, FAX service, alcoholic beverages, laundry, car washes, valet service, entertainment, and any non-project related items.

5.9.7.3 City shall pay a mark-up not to exceed five percent (5%) on those reimbursable identified in 5.9.7.1.1 through 5.9.7.1.4 above. A mark-up shall not be paid on lodging, meals, or travel expenses. Contractor shall submit receipts for all reimbursable expenses along with any reimbursement request.

5.9.7.4 City must authorize all Reimbursable Services in writing prior to the performance of the reimbursable item. Charges for Reimbursable Services must not exceed the established category amounts unless written authorization is obtained from the City.

## **ARTICLE 6 PRE-CONSTRUCTION PHASE FEE**

6.1 The Pre-Construction Phase Fee is the total compensation payable to Contractor for the performance of Pre-Construction Phase Services, except for Additional Pre-Construction Phase Services approved in advance and in writing by City. The Pre-Construction Phase Fee shall be a lump sum amount based on the AACC established in this Agreement.

6.2 Except as specifically allowed by City, Contractor shall not be entitled to any increase in the Pre-Construction Phase Fee for any costs, expenses, liabilities or other obligations arising from the performance of Pre-Construction Phase Services.

6.3 Intentionally omitted.

6.4 If the scope of the Pre-Construction Phase Services is changed materially, the Pre-Construction Phase Fee shall be equitably adjusted. If the AACC is changed materially before acceptance of the GMP Proposal, the Pre-Construction Phase Fee shall be adjusted in writing in proportion to the change in the AACC. There shall be no adjustments in the Pre-Construction Phase Fee following acceptance of the GMP Proposal.

6.5 For Additional Pre-Construction Phase Services that are approved in advance and in writing by City, Contractor shall be entitled to additional compensation computed as follows:

6.5.1 A pre-established lump sum amount; or

6.5.2 The hourly cost of Contractor's employees or consultants who actually perform the Additional Services based on the employee's Worker Wage Rate or prorated Monthly Rate plus the actual cost of allowable expenses incurred in the performance of the Additional Pre- Construction Phase Services, plus an overhead and profit markup as listed in section 10.8 of the Uniform General Conditions.

6.5.3 As otherwise agreed in advance and in writing.

## **ARTICLE 7 GUARANTEED MAXIMUM PRICE PROPOSAL**

7.1 At the conclusion of the Construction Document phase the Contractor shall prepare and submit a Guaranteed Maximum Price Proposal to City based on the Construction Document phase documents and review comments. The GMP Proposal shall be delivered to the City within three (3) weeks of the Construction Document review meeting or a date established by the City. The GMP Proposal must be prepared in accordance with the guidelines established by City and delivered in the format specified by City in Exhibit "E" attached to this Agreement. City, at its sole option and discretion, may specify different requirements for the GMP Proposal. Contractor shall not withdraw its Guaranteed Maximum Price Proposal for ninety (90) days following submission to City.

7.2 In developing the GMP Proposal, Contractor shall coordinate efforts with A/E to identify qualifications, clarifications, assumptions, exclusions, value engineering and any other factors relevant to establishment of a GMP. Contractor shall review development of the GMP Proposal with City on an ongoing basis to address

clarifications of scope and pricing, distribution of contingencies, schedule, assumptions, exclusions, and other matters relevant to the establishment of a GMP.

7.3 The GMP Proposal must include a written description of how it was derived that specifically identifies the clarifications and assumptions made by Contractor in the GMP and the monetary amounts attributable to them. The GMP Proposal shall include, without limitation, a breakdown of Contractor's estimated General Conditions Costs and estimated Cost of the Work organized by trade and MasterFormat 2004; contingency amounts; the Construction Phase Fee; and the proposed Contract Time, including dates for Notice to Proceed, Substantial Completion and Final Completion.

7.4 The Guaranteed Maximum Price Proposal shall allow for reasonably expected changes and refinements in the Drawings and Specifications through completion of the Construction Documents, except for material changes in scope.

7.5 The GMP Proposal shall include a Contractor's Contingency amount as defined in Section 11.3.

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

7.7 The GMP Proposal and all supporting documents shall identify and describe all items, assumptions, costs, contingencies, schedules, and other matters necessary and relevant for proper execution and completion of the Work and for establishment of the GMP. The GMP Proposal and the supporting documents are complementary and, in the event of an irreconcilable conflict between or among them, the interpretation that provides for the higher quality or quantity of material and/or workmanship shall prevail over all other interpretations.

7.8 In submitting the GMP Proposal, Contractor represents that it will provide every item, system or element of performance that is identified, shown or specified in the GMP Proposal or the supporting documents, along with all necessary or ancillary materials and equipment for their complete operating installation, unless specifically excepted by City. Upon City's written acceptance of the GMP Proposal, Contractor shall not be entitled to any increase in the GMP due to the continued refinement of the Construction Documents or the absence or addition of any detail or specification that may be required in order to complete the construction of the Project as described in and reasonably inferable from the GMP Proposal or the supporting documents used to establish the GMP. Any costs that exceed the GMP shall be borne solely by the Design/Build Contractor without reimbursement by the City. Design/Build Contractor is responsible for all design, including incidental designing/detailing as required by the Specifications for shop drawing purposes, except for design provided by City's independent design consultants, if any.

7.9 Prior to commencement of the Construction Phase Services and concurrently with submission of the Guaranteed Maximum Sum Proposal, the Design/Build Contractor shall submit for the City's acceptance a schedule for the performance of

Construction Phase Services as specified. The Construction Phase Schedule shall include reasonable periods of time for the City's review and acceptance of design drawings and submissions and for approval of authorities having jurisdiction over the Project. Upon acceptance of a Guaranteed Maximum Sum Proposal by the City, the Construction Phase Schedule shall not be modified except for good cause as approved by the City at the City's sole option and discretion.

7.10 The GMP Proposal shall adopt and incorporate all of the terms and conditions of this Agreement and all attachments to this Agreement. Any proposed deviation from the terms and conditions of this Agreement must be clearly and conspicuously identified to City in writing and specifically accepted in writing by City. In the event of a conflict between any term of the GMP Proposal that was not clearly and conspicuously identified and approved by City and the terms of this Agreement and its attachments, the terms of this Agreement and its attachments shall control.

7.11 City may accept or reject the Guaranteed Maximum Price Proposal or attempt to negotiate its terms with Contractor. Upon acceptance by City of the GMP Proposal in writing, both parties shall execute the GMP Proposal which shall become part of this Agreement. If City rejects the GMP Proposal or the parties are unable or unwilling to agree on a GMP, City may terminate this Agreement as provided in Article 15.

7.12 Omitted

7.13 Contractor shall be entitled to an equitable adjustment of the GMP if it is required to pay or bear the burden of any new federal, state, or local tax, or any rate increase of an existing tax, except taxes on income, adopted through statute, court decision, written ruling, or regulation taking effect after acceptance of the GMP Proposal. This equitable adjustment does not apply to tax increases borne solely by Subcontractors.

7.14 The parties may agree to convert the GMP to a lump sum contract amount at any time after Contractor has received bids or proposals from trade contractors or Subcontractors for the performance of all major elements of the Project. In proposing a lump sum amount, Contractor shall consider the buyout savings, any unused contingency amounts and the trade package contracts that have not been finalized. In preparing a lump sum conversion proposal, Contractor must provide the following information:

7.14.1 The stage of completion of the Project;

7.14.2 The trade packages that have been completely bought out;

7.14.3 The trade packages remaining that have not been bought out;

7.14.4 A complete line-item breakdown of the calculations used to establish a lump sum amount based on the GMP Schedule of Values;

7.14.5 An accounting of all savings amounts that are to be returned to City as part of the lump sum calculation; and

7.14.6 Any other Project information requested by City.

7.15 Contractor shall document the actual Cost of the Work at buyout as compared to the Guaranteed Maximum Price Proposal and shall report this information to City monthly and with Contractor's recommendation for selection of a bid/proposal for each subcontracting package.

## **ARTICLE 8 CONSTRUCTION PHASE SERVICES**

The Construction Phase shall be deemed to commence upon the date specified in a written Notice to Proceed issued by City after approval of the Guaranteed Maximum Price Proposal and shall continue until Final Completion of all Work. Pre-Construction Phase Services may overlap Construction Phase Services. Contractor shall not incur any Subcontractor costs for construction of the Project prior to issuance by City of written authorization to commence such Work. Contractor shall perform the following Construction Phase Services:

8.1 Construct the Work in strict accordance with this Agreement and as required by the UGC, Special Conditions and Provisions, and City's Specifications within the time required by the Work Progress Schedule approved by City.

8.2 Organize and maintain a competent, full-time staff at the Project site with clearly defined lines of authority and communication as necessary to coordinate construction activities, monitor and direct progress of the Work, and further the goals of the Project Team.

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

8.4 Attend regularly scheduled Project progress meetings and fully advise the Project Team of the Project status including schedule, costs, quality, and changes.

8.5 In addition to attending regularly scheduled Project progress meetings, Contractor shall schedule, direct and attend interim progress meetings (i.e., commissioning meetings, coordination meetings, pre-installation meetings) with other members of the Project Team as required to maintain Project progress. Contractor shall record and distribute the minutes of each meeting to each Project Team member. The minutes shall identify critical activities that require action and the dates by which each activity must be completed.

8.6 Coordinate delivery and installation of City and City procured material and equipment.

8.7 In accordance with City's UGC, provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation, and all other facilities and services necessary for the proper execution and completion of the Work in strict accordance with the requirements of the Construction Documents.

8.8 Obtain building permits and special permits for permanent improvements as required by law or the Construction Documents. Assist City or A/E in obtaining all approvals required from authorities having jurisdiction over the Project.

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

8.10 Be responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work. Contractor shall keep City informed of the progress and quality of the Work.

8.11 Contractor shall promptly correct any defective Work at Contractor's sole expense, unless City specifically agrees to accept the Work in writing.

8.12 Warrant that the materials and equipment provided for the Project will be of good quality and new unless otherwise required or permitted by the Construction Documents; that the construction will be free from faults and defects; and that the construction will conform to the requirements of the Construction Documents. Contractor shall be responsible for correcting all items that do not comply with the Construction Documents at its sole expense without cost to City.

8.13 In accordance with the UGC's provisions regarding record documents and City's Specifications, Contractor shall maintain and deliver the required documents that describe changes or deviations from the Construction Documents that occurred during construction and that reflect the actual "Record Drawings" of the completed Work.

8.14 The Architect/Engineer, and his related consultants, shall inspect the Project site at intervals appropriate to the type and stage of construction progress and as otherwise required by this Agreement to observe the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. On the basis of such onsite observations, the Architect/Engineer shall observe the progress and quality of the Work, and shall endeavor to guard the City against defects and deficiencies in the Work.

8.15 In addition to site visits for general observation, the Architect/Engineer shall visit the site for specific purposes related to certification of progress payments, start-up or mock-up reviews for significant work activities and for formal inspections of the Work. The Architect/Engineer shall provide written reports of all site visits to the City and the Contractor within three business days following the visit.

8.16 The Architect/Engineer's certification of Contractor's Estimate for Partial Payment for Construction Phase Services shall constitute a representation by the Architect/Engineer to the City, based on the Architect/Engineer's observations at the site as provided in this Agreement and on the data comprising the Contractor's Estimate for Partial Payment that the Work has progressed to the point indicated; that, to the best of the Architect/Engineer's knowledge, information and belief, the quality of the work is in accordance with the Contract Documents. However, the certification of a Contractor's Estimate for Partial Payment shall not be a representation that the Architect/Engineer has made any examination to ascertain how and for what purpose the Contractor has used the moneys paid on account of the Contract Sum.

8.17 The Architect/Engineer, with the approval of the City, shall interpret the technical requirements of the Contract Documents. The Project Architect shall render interpretations necessary for the proper execution or progress of the Work with reasonable promptness on written request of either the City or the Contractor, and shall render written recommendations to the City within a reasonable time on matters relating to the execution or progress of the Work or the interpretation of the Contract Documents.

8.18 The Architect/Engineer shall provide consultation for the purpose of clarification and interpretation of the intent and scope of the Construction Documents. Architect/Engineer's interpretations and recommendations shall be consistent with the intent of and reasonably inferable from the Contract Documents. Architect/Engineer's interpretations shall be made in written and/or graphic form including, if necessary or appropriate, supplemental documents to amplify or clarify portions of the Construction Documents.

8.19 The Architect/Engineer shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for conformance with the design concept of the Work set forth in the Contract Documents, and shall respond to Contractor's inquiries and questions and provide such supplemental information as appropriate. One copy of each submittal, Shop Drawing, Product Data, etc., shall be provided to the City.

8.20 Architect/Engineer shall provide assistance in the review of the Contractor's requests for change orders or claims for additional time or costs, and make recommendations to City as to such requests or claims. The Architect/Engineer shall prepare revised Contract Drawings, where appropriate, to illustrate and document the work required by the change.

8.21 All proposed changes to drawings, plans and specifications, regardless of how initiated, shall be fully described in the document depicting them as to scope of work added, removed, or changed. The revised Construction Documents shall be derived from revised model(s). Such revisions shall be clearly indicated and a current revision date shall be included. Changes to the specifications shall be made by consecutively numbered and dated revision addenda. All changes to design documents or specifications will be identified by date of change, revision number and other customary identification references. Areas changed on drawings will be "clouded" to show each change. Clouds designating previous changes will be removed so that only the most recent changes will be clouded.

8.22 The Architect/Engineer shall participate in concealed space inspections (in-wall and above ceiling), systems start-up inspections, Substantial Completion and Pre-Final Inspections to determine the Dates of Substantial Completion, and Final Completion. The Architect/Engineer shall also participate in the City's final walk-thru inspection one (1) year after Final Completion. In association with each observation, Architect/Engineer and its consultants shall prepare a list of items that Architect/Engineer, its consultants and City have observed as deficiencies in the Work, requiring remedial work or replacement. The Architect/Engineer shall assemble, transcribe and distribute the official punch list(s) to all affected parties, and thereafter review the corrected and/or replaced work and assist in verification of correction of all items.

8.23 The Architect/Engineer shall review, for conformance with the Contract Documents, Contractor's submission of guarantees and warranties.

8.24 The Architect/Engineer shall assist the City in checking record prints during the course of the Work in association with certifying progress payments and shall review final as-built documents for completeness and compliance with Contract requirements.

8.25 Architect/Engineer throughout construction shall maintain and keep current the model(s) and construction documents by incorporating all Addenda, RFIs, ASIs, Change Orders and any modifications recorded by the Contractor on the Record Drawings and Specifications maintained at the job site. The Architect/Engineer shall label the revised drawings and specifications as "Record Drawings" and "Record Specifications" and shall deliver copies to the City for record purposes, as follows:

- Specifications: Provide two (2) electronic sets of fully conformed Record Specifications incorporating all changes on disc type media or portable drive in PDF and MS Word format.
- Drawings: Provide two (2) electronic sets of Record Drawings incorporating all changes on disc type media or portable drive in DWG (references attached) and PDF format.
- Model(s): Provide two (2) electronic sets of all models incorporating all changes on disc type media or portable drive in native and IFC file format.
- Label all media indicating the project name and project number as well as an index file listing the contents on the media.
- All electronic documents shall be named in a manner that is acceptable to the City.

8.26 The Contractor shall prepare and administer the construction punch list until all punch list items have been resolved to the City's satisfaction.

8.27 The Architect/Engineer shall review Contractor's submission of operating and maintenance instructions, and all manuals, brochures, drawings, and other close-out documentation including warranty information furnished by the Contractor for conformance with the requirements of the Construction Documents.

## **ARTICLE 9 CONSTRUCTION PHASE FEE**

Contractor's Construction Phase Fee is the maximum amount payable to Contractor for any cost or profit expectation incurred in the performance of the Work that is not specifically identified as being eligible for reimbursement by City elsewhere in this Agreement. References in the Uniform General and Supplementary Conditions (UGC) to Contractor's "overhead" and "profit" mean Contractor's Construction Phase Fee. The Construction Phase Fee includes, but is not limited to, the following items:

9.1 All profit, profit expectations, and costs associated with profit sharing plans such as personnel bonuses, incentives, and rewards; company stock options; or any other like expenses of Contractor.

9.2 Salaries of Contractor's officers, project manager(s), estimators, schedulers,

and all other employees not stationed at the Project site and performing services directly related to the Project.

9.3 Any and all overhead, labor or general expenses of any kind unless specifically allowed under General Conditions. These costs include, but are limited to: costs for the purchase, lease, rental of or allowance for vehicles and their maintenance, radios/communication equipment, jobsite computers, software and other costs associated with the use of software programs, and specialized telephone systems, including cellular/digital phones, smartphones and PDA's; trade or professional association dues; cost for hiring and/or relocation of any of Contractor's personnel; and travel, per diem and subsistence expense of Contractor, its officers or employees except as specifically allowed under the General Conditions.

9.4 Any financial costs incurred by Contractor including the cost of capital or interest on capital, regardless of whether it is related to the Project, and costs associated with construction warranty reserves.

9.5 Any legal, accounting, professional, or other similar costs incurred by Contractor, including costs incurred in connection with the prosecution or defense of any dispute, mediation, arbitration, litigation, or other such proceeding related to or arising from the Project.

9.6 Any Federal and/or State income and franchise taxes paid by Contractor. Any fines, penalties, sanctions or other levies assessed by any governmental body against Contractor.

9.7 Any cost arising out of a breach of this Agreement or the fault, failure, or negligence of Contractor, its Subcontractors, or any person or entity for whom they may be liable. These costs include, without limitation: costs to remedy defective, rejected, or nonconforming work, materials or equipment; costs due to failure to coordinate the Work or meet WPS milestones; costs arising from Contractor's contractual indemnification obligations; liquidated or actual damages imposed by City or City for failure to complete the Work within the Contract Time; costs due to the bankruptcy or insolvency of any Subcontractor; and damage or losses to persons or property.

9.8 The cost of any and all insurance deductibles payable by Contractor, but only in such cases where the Contractor's actions or negligence gave rise to the claim, and costs due to the failure of Contractor or any Subcontractor to procure and maintain insurance as and to the extent required by this Agreement. In circumstances where the Contractor or its subcontractor's actions or negligence were not the causes of the claim, then the deductible becomes a part of the allowable cost of work.

9.9 Any and all costs that would cause the Guaranteed Maximum Price to be exceeded.

9.10 Any and all costs not specifically identified as an element of the Direct Construction Cost.

## **ARTICLE 10 PAYMENTS**

10.1 **General Requirements** Contractor acknowledges and agrees that a condition precedent to City's payment of compensation to Contractor is authorization from City to remit payment to Contractor.

10.1.1 Each Schedule of Values submitted with an Application for Payment shall include the originally established value for each work classification line item or subcontract and shall identify any revisions to the costs or cost estimates for each work classification or subcontract. The format and tracking method of the original Schedule of Values and of all updates shall be subject to approval by City. At all times, the estimated cost of performing the uncompleted and unpaid portion of the Work, including Contractor's overhead and profit, shall not exceed the unpaid balance of the GMP less the retainage held by City on Work previously completed.

10.1.2 Expenses of transportation and overnight living expenses in connection with City approved out-of-state travel shall be identified separately in each Application for Payment. All travel must be approved in writing and in advance by City to be eligible for payment.

10.1.3 Expenses specifically excluded from reimbursement include telephone charges, FAX services, alcoholic beverages, laundry service, valet service, entertainment expenses, and any non-Project related items. Tips are included in the per diem rates.

10.1.4 Retainage, as specified in the UGC Paragraph 9.3.2 will be withheld from the entire amount approved in an Application for Payment including the Cost of the Work, General Conditions, and Contractor's Construction Phase Fee. Retainage will not be withheld from payments for Pre-Construction Phase Services.

10.1.5 City is a political subdivision of the State of Texas and materials and services utilized in the construction of the Project may be exempted from state and local taxes. Contractor is responsible for taking full advantage of all tax exemptions applicable to the Project. City will deduct from the Applications for Payment and from the Request for Final Payment any taxes paid for materials or services that were entitled to tax exemption.

10.1.6 This Agreement is subject to the assessment of liquidated damages against Contractor as set forth in the Supplementary General Conditions and Special Provisions, SP-14: Failure to Complete on Time in Exhibit "C" attached to this Agreement. Amounts assessed as liquidated damages, and other amounts to which City or City is entitled by way of setoff or recovery, may be deducted from any moneys due Contractor.

10.1.7 City shall have the right to withhold from payments due Contractor such sums as are necessary to protect City or City against any loss or damage which may result from negligence by Contractor or any Subcontractor or failure of Contractor or any Subcontractor to perform their obligations under this Agreement.

10.1.8 Notwithstanding any other contractual provision to the contrary, City

shall not be obligated to make any payment to Contractor under any of the following circumstances:

10.1.8.1 Contractor persistently fails to perform the Work in accordance with the Contract Documents or is otherwise in material breach or default under this Agreement;

10.1.8.2 The payment request includes services not performed in accordance with the Construction Documents; provided, however, City shall pay for those services performed in accordance with the Construction Documents;

10.1.8.3 The payment request has insufficient documentation to support the amount of payment requested for Project costs; provided, however, City shall pay for allowable Project costs for which there is sufficient documentation;

10.1.8.4 Contractor is in violation of prevailing wage requirements or has failed to make payments promptly to Subcontractors or other third parties used in connection with any services or materials for which City has made payment to Contractor;

10.1.8.5 If City, in its good faith judgment, determines the unpaid balance of the GMP, less retainage, is not sufficient to complete the Work in accordance with the Construction Documents;

10.1.8.6 Contractor failed to complete the Work in accordance with the Work Progress Schedule requirements or if City, in its good faith judgment, determines that the remaining Work will not be completed within the agreed timeframe;

10.1.8.7 Contractor is insolvent, makes a general assignment for the benefit of its creditors or otherwise seeks protection under the laws and regulations of the bankruptcy courts; or

10.1.8.8 Contractor fails to obtain, maintain or renew insurance coverage as required by this Agreement.

10.1.9 No partial payment made by City shall constitute, or be construed to constitute, final acceptance or approval of the work to which the partial payment relates or of the documentation provided in support of the partial payment. No partial payment made by City shall constitute, or be construed to constitute, a release of Contractor from any of its obligations or liabilities with respect to the Project.

10.1.9.1 City shall have the right to verify and audit the details of Contractor's billings, certificates, accountings, cost data, and statements, either before or after payment, by (1) inspecting the books and records of Contractor during normal business hours; (2) examining any reports with respect to the Project; (3) interviewing Contractor's employees; (4) visiting the Project site; and (5) any other

reasonable action. Contractor's records shall be kept on a basis generally accepted accounting principles.

## **10.2 Pre-Construction Phase Payments**

10.2.1 Payments for Pre-Construction Phase Services shall be made monthly based on the percentage completion of the Contractor's required services for each stage of development of the Construction Documents and the procurement of Subcontractor bids/proposals in accordance with Exhibit "A," Scope of Services, Fees, Costs and Other Contract Variables.

10.2.2 Refer to Article 5.9.7 "Reimbursable Services".

10.2.3 All payment requests for Pre-Construction Phase Services shall be sent to City's Project Manager.

## **10.3 Construction Phase Payments**

10.3.1 Payments for Construction Phase Services shall be made as provided for in the UGC and City's Specifications. Payment for approved Change Orders shall be made as part of Contractor's Application for Payment.

10.3.1.1 Contractor's Construction Phase Fee shall be shown as a separate line item on the Schedule of Values. Payment of Contractor's Construction Phase Fee shall be made with each Application for Payment in the same proportion as the percentage completion of the Cost of the Work of the Project.

10.3.1.2 For General Conditions Costs, Contractor's Application for Payment shall be submitted on a Schedule of Values approved by the City and include complete copies of all receipts, invoices with check vouchers or other evidence of payment, payrolls, and any and all other evidence which City or its designated representatives shall deem necessary to support the amount requested. This information is subject to audit, and payment for these costs is dependent on City's receipt of accurate and complete records of all transactions. City may reduce the amount requested for General Conditions Costs in any Application for Payment if City, in its good faith judgment, determines that the unpaid balance of the General Conditions line item in the Schedule of Values is not sufficient to fund necessary General Conditions Costs for the remainder of the Project.

10.3.1.3 Pay requests for Subcontractor work included in an Application for Payment shall not exceed the percentage of Work allocated to that Subcontractor for each respective Schedule of Values work classification which has been actually completed and shall not exceed the total value of the subcontract amount.

10.3.1.4 Contractor's Request for Final Payment shall not be made until all Work is completed and all requirements of the Contract Documents have been satisfied including, without limitation: delivery to City and City of a complete release of all liens and claims arising

out of the Work; written consent of the surety to release of final payment; and an affidavit that, to the best of Contractor's information, knowledge and belief, the release includes and covers all materials and services over which Contractor has control and for which a lien could be filed and that all known debts and claims arising from the Project have been satisfied. Alternatively, Contractor may, at its sole expense, furnish a bond satisfactory to City to indemnify City against any lien arising out of the Work. If any lien is asserted against City after all payments are made, Contractor shall reimburse City for all damages and costs City or City may incur in discharging such lien, including all court costs and reasonable attorneys' fees, and City or City shall retain all other remedies available to it at law and in equity.

10.3.1.5 City shall have no obligation to make Final Payment until a complete and final accounting of all the Direct Construction Cost has been submitted by Contractor and has been audited and verified by City.

10.3.1.6 Nothing contained herein shall require City to pay Contractor an aggregate amount for Construction Phase Services that exceeds the Guaranteed Maximum Price or to make any payment if, in City's belief, the cost to complete the Work would exceed the Guaranteed Maximum Price less previous payments to Contractor. The total amount of all Construction Phase payments to Contractor shall not exceed the actual verified Direct Construction Cost for the Project plus Contractor's Construction Phase Fee.

10.3.1.7 The acceptance by Contractor or Contractor's successors of Final Payment under this Agreement, shall constitute a full and complete release of City and City from any and all claims, demands, and causes of action whatsoever that Contractor, its Subcontractors, suppliers and consultants or any of their successors or assigns have or may have against City and City arising from the Project or any provision(s) of this Agreement except for those previously made in writing and identified by Contractor as unsettled at the time of the Request for Final Payment.

## **ARTICLE 11 DIRECT CONSTRUCTION COST**

Direct Construction Cost means the sum of the amounts that Contractor actually and necessarily incurs constructing the Project in strict compliance with the Construction Documents. Direct Construction Cost includes only the cost categories set forth in this Article and does not include the Pre-Construction Phase Fees or the Construction Phase Fees unless specifically noted.

References in the UGC to adjustments in "cost" or "costs" mean the Direct Construction Cost.

## 11.1 General Conditions Costs

Contractor is entitled to receive payment for the actual cost of the allowable General Conditions items incurred after receipt of a Notice to Proceed with Construction from City through Substantial Completion of the Project, plus thirty (30) calendar days. Contractor is not entitled to reimbursement for General Conditions Costs incurred before receipt of the Notice to Proceed. General Conditions Costs incurred after Substantial Completion, plus thirty (30) calendar days, must be approved in advance by City.

Allowable General Conditions items are identified below and in Exhibit "D" attached to this Agreement. These items shall be included in the General Conditions Cost amount shown as a line item in the Guaranteed Maximum Price Proposal and as detailed on the Schedule of Values. Items not specifically included below or in Exhibit "D" will not be allowed as General Condition Costs.

11.1.1 Personnel Costs. The actual worker wage rate for Contractor's hourly employees and the agreed upon Monthly Salary Rate listed in Exhibit G of Contractor's salaried personnel who are identified to City in advance and in writing but only for the time they are working on the Project with City's prior consent.

11.1.2 Costs of long-distance telephone calls, telegrams, postage, package delivery and courier service, internet, and telephone service located on the job site, and reasonable expenses of Contractor's jobsite office if incurred at the Project site and directly and solely in support of the Work.

11.1.3 Costs of materials, supplies, temporary facilities, equipment, and hand tools (except those customarily owned by construction workers), supplied to the Project site by Contractor, if such items are fully consumed in the construction of the Work and are included in the list of allowable General Condition line items. Cost for used items shall be based on fair market value and may include transportation, installation, and minor maintenance costs, and removal costs. If an item is not fully consumed in the construction of the Work, its cost shall be based on actual cost of the item less its fair market salvage value.

11.1.4 Rental charges for temporary facilities, equipment, and hand tools (except those customarily owned by construction workers), supplied to the Project site by Contractor, provided they are included in the list of allowable General Condition line items. Rental rates may include transportation, installation, and minor maintenance costs, and removal costs. For tools, machinery or construction equipment rented directly from Contractor, the rental rate, including freight and delivery costs and all operating expenses except labor, shall be approved in advance by City.

11.1.5 The aggregate rental cost of any item charged to City shall not exceed ninety percent (90%) of the purchase price and maintenance cost of the item. If the anticipated aggregate rental cost for an item of equipment exceeds ninety percent (90%) of the purchase and maintenance price, Contractor shall purchase the equipment and turn it over to City upon Final Completion of the Work.

11.1.6 Permit and inspection fees that are not subject to exemption.

11.1.7 Premiums and deductibles for insurance and bonds to the extent directly attributable to this Project.

11.1.8 Governmental sales and use taxes directly attributable to the General Conditions Items that are not subject to exemption. Taxes paid on materials or services that were entitled to tax exemption will not be reimbursed by City as Direct Construction Costs.

## **11.2 Cost of the Work**

Contractor is entitled to receive payment for the actual cost of the allowable Cost of the Work items incurred after receipt of City's written authorization to commence the Construction Phase Work through Final Completion of the Project. Contractor is not entitled to reimbursement for Cost of the Work costs incurred before receipt of City's written authorization. Cost of the Work includes the following:

11.2.1 Costs of materials and equipment purchased directly by Contractor and incorporated into or consumed in the performance of the Work, including transportation charges, and a reasonable and customary allowance for waste and spoilage. Payment for stored materials is subject to the UGC.

11.2.2 Costs of site debris removal and disposal in accordance with all applicable laws and regulations if not otherwise specifically provided for under the General Conditions Costs.

11.2.3 Payments made to Subcontractors and their vendors, or suppliers by Contractor for the subcontract work in accordance with the Construction Documents and the requirements of the subcontracts with the Subcontractors, vendors, or suppliers.

11.2.4 Payments earned by Contractor for self-performed subcontract work, other than General Conditions work, in accordance with the Construction Documents and the terms of this Agreement and approved by City.

11.2.5 Testing fees borne by Contractor pursuant to the UGC.

11.2.6 Intellectual property royalties and licenses for items specifically required by the Construction Documents which are, or will be, incorporated into the Work.

## **11.3 Contractor's Contingency**

11.3.1 The Guaranteed Maximum Price Proposal shall include a Contractor's Contingency amount to be used to fund increases in the Direct Construction Cost of the Project identified through the refinement, development, and completion of the Construction Documents or procurement of the Work.

11.3.2 Any re-allocation of funds from Contractor's Contingency to cover

increases in the Direct Construction Cost must be approved by City in advance and in writing, such approval not to be unreasonably withheld. In written requests to use Contractor's Contingency, Contractor shall provide detailed documentation of the scope of work affected and the bases for any increases in costs.

11.3.3 Contractor's Contingency is specifically not to be used for Contractor rework, cost increases caused by lack of coordination or communication with A/E or trade Subcontractors.

11.3.4 As the Construction Documents are finalized and the buyout of the Work progresses, Contractor's Contingency amount shall be reduced by mutual agreement of City and Contractor. Any balance in Contractor's Contingency fund remaining at the end of the Project shall be returned to City as savings.

## **ARTICLE 12 CONTRACT SAVINGS, REBATES & REFUNDS**

12.1 If the allowable amount of the General Conditions Costs, Cost of the Work, and Contractor's Contingency is less than the amount established for each of those categories in the originally approved Guaranteed Maximum Price Proposal, the entire difference shall be credited to City as savings, and the final Contract Sum shall be adjusted accordingly. When buyout of the Project is at least 85% complete, City may recognize any savings achieved to that point by issuing a deductive change order for the saved amount.

12.2 City shall be entitled to deduct amounts for the following items from any Application for Payment or from the Request for Final Payment submitted by Contractor:

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

12.2.2 Discounts earned by Contractor through advance or prompt payments funded by City. Contractor shall obtain all possible trade and time discounts on bills for material furnished, and shall pay bills within the highest discount periods. Likewise, late payment fees on any vendor invoice shall not be charged to the City. Contractor shall purchase materials for the Project in quantities that provide the most advantageous prices to City.

12.2.3 Rebates, discounts, or commissions obtained by Contractor from material suppliers or Subcontractors, together with all other refunds, returns, or credits received for materials, and sales taxes.

12.2.4 Deposits made by City and forfeited due to the fault of Contractor.

12.2.5 Balances remaining on Contractor's Contingency or any other identified contract savings. City shall be entitled to recover any net savings realized between the GMP and the buyout price for subcontracting work once the buyout is complete. During the buyout Contractor may use savings from one procurement effort to offset overages in other procurement efforts, so long as the total Cost of the Work proposed in the GMP does not increase.

12.3 City shall be entitled to recognize and recover 100% of any savings identified by cost review or audit at any time, before or after Final Payment, including profit and overhead.

### **ARTICLE 13 OWNERSHIP AND USE OF DOCUMENTS**

13.1 Drawings, Specifications, and other documents, including those in electronic form, prepared by Architect/Engineer, its Consultants or other Consultants retained by City for the Project, which describe the Work to be executed by Contractor (collectively referred to as the "Construction Documents") are and shall remain the property of City, whether the Project for which they are made is executed or not.

13.2 Contractor shall be permitted to retain one record set. Neither Contractor nor any Subcontractor, sub-Subcontractor, or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications, and other documents prepared by Architect/Engineer or its Consultants. All copies of Construction Documents, except Contractor's record set, shall be returned or suitably accounted for to Architect/Engineer on request and upon completion of the Work. The Drawings, Specifications and other documents prepared by Architect/Engineer and its Consultants, along with copies thereof furnished to Contractor, are for use solely with respect to this Project. The drawings, Specifications or other documents are not to be used by Contractor or any Subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of City. Any such use without written authorization shall be at the sole risk and liability of Contractor. Contractor, Subcontractors, and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect/Engineer and its Consultants appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by Architect/Engineer and its Consultants. Submittal or distribution to meet official regulatory requirements or for other purposes, in connection with this Project, is not to be construed as publication.

### **ARTICLE 14 TIME**

#### **14.1 TIME LIMITS STATED ARE OF THE ESSENCE OF THIS AGREEMENT AND THE OTHER CONTRACT DOCUMENTS.**

14.2 Unless otherwise approved, City and Contractor shall perform their respective obligations under this Agreement as expeditiously as is consistent with reasonable skill and care and the orderly progress of the Work.

14.3 Prior to commencement of the Construction Phase Services and concurrently with submission of the Guaranteed Maximum Price Proposal, Contractor shall submit an up-to-date WPS for the performance of Construction Phase Services as specified. The WPS shall include reasonable periods of time for City's and A/E's review and approval of shop drawings and submissions and for the approval of other authorities having jurisdiction over the Project.

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

**14.5 THE TIMES SET FORTH FOR COMPLETION OF THE WORK IN THE NOTICE TO PROCEED AND THE GMP PROPOSAL ARE ESSENTIAL ELEMENTS OF THIS AGREEMENT.**

14.6 The Construction Phase shall be deemed to commence on the date specified in a written Notice to Proceed issued by City after approval of the Guaranteed Maximum Price Proposal.

14.7 Fast Track/Multiple Completion Times. City may elect, at its option, to stage or "fast-track" portions of the Work. In such event, City, in its sole discretion, may issue a separate written Notice to Proceed or Change Order for each such stage. Each such stage, at City's sole option, may have a separate substantial completion date and a separate liquidated damages amount. If City elects to "fast-track" or develop the Project in multiple stages, Contractor shall organize and perform its services as appropriate to each stage. Each stage of the Project may have a unique schedule for completion and a specific AACC, at City's discretion.

14.8 **Force Majeure.** Time is of the essence in the performance of this Agreement. However, neither Party is liable for reasonable delays in performing its obligations under this Agreement to the extent the delay is caused by Force Majeure, defined as acts of God, wars, acts of terrorism, floods, fires, natural catastrophes, acts of government, epidemics, pandemics, or public health crisis (whether arising from existing or unknown pathogens or contagions), that directly impacts the City or Contractor. An event of Force Majeure shall extend the period of performance until after the causes of delay or failure have been removed, provided the non-performing party does the following: (a) Informs the other party in writing within three (3) business days of the existence of such event of Force Majeure; its anticipated effect, and estimated time of suspension of performance; and (b) Uses due diligence to remove the effects of the Force Majeure as quickly as possible, and exercises all reasonable due diligence to continue performance notwithstanding the Force Majeure. The term Force Majeure does not include any changes in general economic conditions such as inflation; interest rates; economic downturn or other factors of general application; or an event that merely makes performance more difficult, expensive, or impractical. Contractor is not relieved from performing its obligations under this Agreement due to a strike or work slowdown of its employees. Contractor shall employ only fully trained and qualified personnel during a strike.

**ARTICLE 15**  
**PROJECT TERMINATION AND SUSPENSION**

15.1 City may terminate, in whole or in part, this Agreement (i) immediately upon written notice if Contractor does not cure any material breach within the cure period identified in the written notice thereof from City or (ii) immediately upon written notice for any non-curable material breach. City may cancel this Agreement for any reason by providing Contractor thirty (30) days prior written notice of its intent to terminate the Agreement. In the event of termination by either party, written notice of termination will be sent to the other party by certified mail with return receipt to the address in Paragraph 8 of Exhibit A. Notice of termination must include date of notice, termination effective date, and cure period (if applicable).

15.2 This Agreement may be terminated by City during the Pre-Construction Phase upon at least three (3) business days written notice to Contractor in the event that the Project is to be temporarily or permanently abandoned.

15.3 This Agreement may be terminated by City at the GMP Proposal stage upon at least three (3) business days written notice to Contractor in the event that the parties are unable or unwilling to agree on a GMP Proposal.

15.4 In the event of termination that is not the fault of Contractor, Contractor shall be entitled to compensation for all services performed to the termination date provided Contractor has delivered to City such statements, accounts, all reports, documents and other materials as required by City together with all reports, documents, and other materials prepared by Contractor prior to termination. Upon such payment, City and City shall have no further obligation to Contractor.

15.5 Termination of this Agreement shall not relieve Contractor or any of its employees, Subcontractors, or consultants of liability for violations of this Agreement or for any act or omission, or negligence, of Contractor related to the Project. In the event of a termination, Contractor expressly acknowledges the right of City and City to employ a substitute contractor to complete the services under this Agreement.

15.6 In the event of termination, City shall have the right to use any documents or other materials prepared for the Project and the ideas and designs they contain for the completion of the services described by this Agreement, for completion of the Project, or for any other purpose.

15.7 If the Project is suspended or abandoned in whole or in part for more than ninety (90) consecutive days during the Pre-Construction Phase, Contractor shall be compensated for all services performed prior to receipt of written notice from City of such suspension or abandonment. If the Project is resumed after being suspended for more than ninety (90) consecutive days, Contractor's compensation for Pre-Construction Services shall be equitably adjusted if, in City's reasonable opinion, such adjustment is warranted.

**ARTICLE 16**  
**PRE-EXISTING CONDITIONS & DESIGN ERRORS AND OMISSIONS**

16.1 Contractor acknowledges (see Acknowledgement Form in Exhibit C, Supplementary General Conditions and Special Provisions) that it has been provided

unrestricted access to the existing improvements and conditions on the Project site and that it has thoroughly investigated those conditions. Contractor's investigation will be instrumental in preparing its Guaranteed Maximum Price Proposal for the Work. Contractor shall not make or be entitled to any claim for any adjustment to the Contract Time or the Contract Sum for Pre-Construction Phase Services or for Construction Phase Services arising from Project conditions that Contractor discovered or, in the exercise of reasonable care, should have discovered in Contractor's investigation.

16.2 Contractor acknowledges that as part of its Pre-Construction Phase Services it shall participate in the development and review of the Construction Documents. Contractor's participation in the design development process will be instrumental in preparing its Guaranteed Maximum Price Proposal for the Work. Before submitting its Guaranteed Maximum Price Proposal, the Contractor shall review the drawings, specifications and other Construction Documents and notify City of any errors, omissions or discrepancies in the documents of which it is aware. Contractor shall not make or be entitled to any claim for any adjustment to the Contract Time or the Contract Sum for errors or omissions in the Construction Documents that Contractor discovered or, in the exercise of reasonable care, should have discovered in Contractor's Pre-Construction Phase design review process that Contractor did not bring to the attention of City and A/E in a timely manner.

## **ARTICLE 17 BONDS AND INSURANCE**

17.1 Upon execution of this Agreement, Contractor shall provide a security bond on the form attached as Exhibit "F" in the amount of five percent (5%) of the AACC. The surety for a security bond shall meet the same requirements as set forth for payment and performance bonds.

17.2 The Contractor may require Subcontractors to provide a Performance Bond and Labor & Materials Payment Bond (or use of an alternate insurance in lieu of bonding such as Subcontractor Default Insurance, SDI), each in the amount payable under the Subcontract, from a surety company authorized to do business in the State of Texas. The Contractor may utilize SDI as an alternative surety program. SDI is considered cost of the work reimbursed at a fixed rate of 1.50% of the subcontract value for enrolled subcontractors. If a Subcontractor doesn't qualify for a Bond or SDI, contractor reserves the right to go to the next responsible qualified bidder.

17.3 Any premium adjustments on any of the Contractor provided insurance shall be the sole liability or benefit of the Contractor. City shall have no obligation for payment of deductibles, self-insurance retentions, retrospective rating adjustments of any of the general liability insurance provided by the Contractor.

17.4 Upon acceptance by City of a Guaranteed Maximum Price Proposal, Contractor shall provide performance and payment bonds on forms prescribed by City and in accordance with the requirements set forth in the UGC. The penal sum of the payment and performance bonds shall be equal to the GMP. If construction is phased or staged with different Guaranteed Maximum Prices established at different times, the penal sum of the bonds shall be increased at the start of each stage or phase based on the cumulative total value of all Guaranteed Maximum Prices in effect.

17.5 Contractor shall not commence work under this Agreement until it has obtained all required insurance and until evidence of the required insurance has been reviewed and approved in writing by City. The required insurance shall include coverage for City's property in the care, custody, and control of Contractor prior to construction, during construction and during the warranty period. The insurance shall be evidenced by delivery to City of certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates, and compliance with all applicable required provisions prior to the start of the Project Work. Upon request, City, and/or its agents, shall be entitled to receive without expense, copies of the policies and all endorsements. The Contractor shall update all expired policies prior to submission for monthly payment and during the contract warranty period. Failure to update policies shall be reason for withholding of payment until renewal is provided to City. City's review of the insurance shall not relieve nor decrease the liability of the Contractor. Failure to maintain insurance coverage, as required, is grounds for Suspension of Work for Cause pursuant to Article 13 of the UGC. The Contractor will be notified of the date on which the Builder's Risk insurance policy may be terminated through Substantial Completion (defined in the UGC) notices, acceptance notices and/or other means as deemed appropriate by City. Prior to commencing any work under this Agreement, Contractor shall provide evidence of the following insurance coverages written on an occurrence basis by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company or otherwise acceptable to City:

17.5.1 Workers' Compensation. Workers' Compensation Insurance with limits as required by the Texas Workers' Compensation Act, with the policy endorsed to provide a waiver of subrogation as to the City and Employer's Liability insurance of not less than:

- \$1,000,000 each accident
- \$1,000,000 disease each employee
- \$1,000,000 disease policy limit

Workers' Compensation Insurance Coverage must meet the statutory requirements of Tex. Lab. Code, §401.011(44), and those specific to construction projects for public entities as required by Tex. Lab. Code, §406.096.

17.5.2 General Liability Coverage. Commercial General Liability Insurance, including Independent Contractor's liability, Products and Completed Operations and Contractual Liability, covering, but not limited to, the liability assumed under the indemnification provisions of the Contract Documents, fully insuring Contractor's (or subcontractors) liability for bodily injury and property damage with a combined bodily injury (including death) and property damage minimum limit of:

- \$5,000,000 per occurrence
- \$10,000,000 general aggregate
- \$100,000 Damage to Premises Rented to You; and
- Coverage shall be on an "occurrence" basis.

The policy shall cover liability arising from premises, operations, products-completed operations, property damage, bodily injury, explosion, collapse, and underground hazards. The policy shall include endorsement CG2503 Amendment-Aggregate Limits of Insurance (Per Project) or its equivalent.

If the Work involves any activates within fifty (50) feet of any railroad, railroad protective insurance as may be required by the affected railroad, written for not less than the limits required by such railroad.

17.5.3 Contractor's Pollution Legal Liability and/or Asbestos Legal Liability and/or Errors and Omissions Coverage (if project involves environmental hazards). Asbestos Abatement Liability Insurance, including coverage for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos containing materials. \*This requirement applies if the Project Work includes asbestos containing materials.

The combined single limit for bodily injury and property damage will be a minimum of \$1,000,000 per occurrence or each claim if on a claims-made basis. Coverage may be evidenced through a combined professional liability and pollution liability.

\*Specific Requirement for Claims-Made Form: Required period of coverage will be determined by the following formula: Continuous coverage for life of the Job Order Work, plus years (to provide coverage for the warranty period), and an extended discovery period for a minimum of five (5) years which shall begin at the end of the warranty period.

Employer's liability limits for asbestos abatement will be:

- \$1,000,000 each accident;
- \$1,000,000 disease each employee; and
- \$1,000,000 disease policy limit.

If this Agreement is for asbestos abatement only, the All-Risk Builder's Risk or All-Risk Installation Floater is not required.

17.5.4 Automobile Coverage. Automobile Liability Insurance, covering owned, hired, and non-owned vehicles, with a combined bodily injury (including death) and property damage minimum limit of \$5,000,000 each claim. No aggregate shall be permitted for this type of coverage. Such insurance is to include coverage for loading and unloading hazards.

17.5.5 Builder's Risk Coverage. All Risk Builder's Risk Insurance (or All Risk Installation Floater for instances in which the work involves solely the installation of equipment). Coverage shall be All-Risk, including, but not limited to, Fire, Extended Coverage, Vandalism and Malicious Mischief, Flood, Earth movement, Convective storm, named windstorm, Theft, and damage resulting from faulty workmanship, design or materials with limits equal to the completed value of the project. If applicable, installation floater, limit shall be equal to 100 percent of the Project Work contract sum. The policy shall be written jointly in the names of the City, the Contractor, and subcontractors shall be named as additional insured. The policy shall have endorsements as follows:

17.5.5.1 This insurance shall be primary as to coverage and not contributing insurance with any permanent insurance maintained on the property.

17.5.5.2 This insurance shall not contain an occupancy clause suspending or reducing coverage should the City occupy, or begin beneficial occupancy before the City has accepted final completion.

17.5.5.3 Loss, if any, shall be adjusted with and made payable to the City as Trustee for the insureds as their interests may appear; the right of subrogation under the Builder's Risk policy shall be waived as to the City. The City shall be named as Loss Payee. For renovation projects or projects that involve portions of work contained within an existing structure, refer elsewhere in the scope for possible additional Builder's Risk insurance requirements.

17.5.5.4 For City furnished equipment or materials that will be in the care, custody, or control of Contractor, Contractor will be responsible for damage and loss.

17.5.6 Umbrella Coverage. "Umbrella" Liability Insurance. The Contractor shall obtain, pay for, and maintain umbrella liability insurance, during the contract term, insuring the Contractor (or subcontractor) for an amount specified in this Agreement, but not less than \$2,000,000 per occurrence aggregate, that provides coverage at least as broad as and applies in excess and follows form of the primary liability coverages required hereinabove. The policy shall provide "drop down" coverage where underlying primary insurance coverage limits are insufficient or exhausted.

17.5.7 Crime Coverage. Commercial Crime Insurance with minimum limit of \$500,000 per occurrence with third party coverage.

17.5.8 Professional Liability to include coverage for Architects and Engineers, if applicable, Architects and Engineers Professional Insurance with minimum limits of \$2,000,000 in the aggregate and \$2,000,000 each claim.

17.5.9 Policies must include the following clauses, as applicable:

17.5.9.1 This insurance shall not be canceled, materially changed, or non-renewed until after thirty (30) days prior written notice has been given to City.

17.5.9.2 It is agreed that the Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City for liability arising out of operations under the Contract Documents with the City.

17.5.9.3 The Automobile Liability, Commercial General Liability, professional, and pollution coverage insurance shall list the City, their respective officials, directors, employees, representatives, and volunteers as additional insureds as respects operations and activities of, or on behalf of the named insured performed under contract with the City. The additional insured status must cover completed operations as well.

17.5.9.4 The Workers' Compensation, Employers' Liability policy, Comprehensive Automobile Liability and Commercial General Liability insurance will provide a waiver of subrogation in favor of City.

17.5.9.5 If the contractor maintains broader coverage and/or higher limits than the minimums listed herein, the City shall be entitled to the broader coverage and/or higher limits maintained by the Contractor.

17.5.9.6 By requiring insurance herein, the City does not represent that coverage and limits will necessarily be adequate to protect Contractor, and such coverage and limits shall not be deemed as a limitation on Contractor's liability under the indemnities granted to the City in this contract.

17.5.10 Without limiting any of the other obligations or liabilities of the Contractor, the Contractor shall require each subcontractor performing Project Work under this Agreement, at the subcontractor's own expense, to maintain during the term of this Agreement, insurance as noted in Exhibit H Contractor may include its Subcontractors as additional insureds on its own coverage as prescribed under these requirements. Contractor's certificate of insurance shall note in such event that Subcontractors are included as additional insureds and that Contractor agrees to provide workers' compensation for Subcontractors and their employees. The Contractor shall obtain and monitor the certificates of insurance from each subcontractor in order to assure compliance with the insurance requirements. The Contractor must retain the certificates of insurance for the duration of this Agreement plus five (5) years and shall have the responsibility of enforcing these insurance requirements among its subcontractors. The City shall be entitled, upon request and without expense, to receive copies of these certificates.

By requiring such minimum insurance, City shall not be deemed or construed to have assessed the risk that may be applicable to Contractor under this Agreement. Contractor shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. Contractor is not relieved of any liability or other obligations assumed pursuant to the Contract Documents by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types.

The Construction Manager reserves the right to implement a Contractor's Controlled Insurance Program ("CCIP") covering Construction Manager's General Liability, Workers' Compensation and Umbrella insurance obligations that meet the City's insurance requirements.

17.6 Contractor shall not cause or allow any of its required insurance to be canceled nor permit any insurance to lapse during the term of this Agreement. No policy will be canceled without unconditional written notice to City at least ten days before the effective date of the cancellation. If Contractor fails to obtain, maintain or renew any insurance required by this Agreement, City may obtain insurance coverage directly and recover the cost of that insurance from Contractor or deduct such cost of insurance from Contractor's fee.

17.7 City reserves the right to review the insurance requirements set forth in this Article during the effective period of this Agreement and to make reasonable adjustments to the insurance coverages and their limits when deemed necessary and prudent by City based upon changes in statutory law, court decisions, or the claims history of the industry in general and the claims history of Contractor.

City shall be entitled, upon request, and without expense, to receive complete copies of the policies with all endorsements and may make any reasonable requests for deletion, or revision or modification of particular policy terms, conditions, limitations, or exclusions, except where policy provisions are established by law or regulation binding upon the parties or the underwriter of any of such policies. Damages caused by Contractor and not covered by insurance shall be paid by Contractor upon demand, or, to the extent of unpaid fees, shall be deducted by City from Contractor's fee.

17.8 The cost of premiums for any additional insurance coverage desired by Contractor in excess of that required by this Agreement, the UGC or the other Contract Documents shall be borne solely by Contractor out of its fees and not included in the GMP Proposal as a Direct Construction Cost.

17.9 If the Guaranteed Maximum Price is increased by Change Orders by more than 5% the Contractor shall provide revised bonds and insurance that reflect the new project amount.

## **ARTICLE 18 DISPUTE RESOLUTION**

18.1 **DISPUTES.** All Contractor claims for damages or additional compensation for alleged extra work, changed conditions or any other grounds, regardless of their nature, when they occur, or whether they occur during the design or construction phase shall be made in writing and in the same manner as provided in the Contract Documents. City will not be liable to the Contractor on account of any claim not timely or properly presented. Notwithstanding anything to the contrary contained herein, no interruption, cessation, postponement or delay in the cause whatsoever, including disputes, shall relieve the Contractor of its duty to timely perform, or give rise to any right to damages or additional compensation from City except to the extent resolution of the claim shall be reflected by a Change Order and/or a Supplemental Agreement in writing executed by City and Contractor in which a reimbursement is confirmed by City with respect to the work performed by Contractor hereunder and the Contractor hereby expressly waives and releases any other or further right to damages or additional compensation.

18.1.1 In the event of any dispute under this Contract, the parties agree to work in good faith to resolve such disputes; provided, however, in the event a dispute remains unresolved after both parties engage in the resolution process, City's determination in regard to any dispute shall be final.

18.1.2 Nothing in the Contract Documents shall prevent or be construed as a waiver of a Party's right to seek redress on any disputed matter in a court of competent jurisdiction.

18.1.3 If applicable, nothing in the Contract Documents shall waive or be construed to waive the state's sovereign immunity.

18.1.4 Neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of a claim constitute grounds for the suspension of performance by Contractor, in whole or in part. City and Contractor agree that any periods set forth in this Agreement for notice and cure of defaults are not waived, delayed, or suspended by this Paragraph 18.1.

## **ARTICLE 19 INDEMNITY**

19.1 To the fullest extent permitted under state law, Contractor shall indemnify and save harmless City for any and all Losses (as defined below), of whatever nature and however caused, which results from or arises out of Contractor's or its officers, directors, shareholders, employees, agents, subcontractors, vendors, suppliers, representatives, affiliates, successors, assigns, or any person for whom Contractor is responsible for, acts or omissions or breach of Applicable Laws. "Loss(es)" includes any claim, including third party claims, liability, loss, demand, suit, cause of action, settlement payment, cost and expense (including reasonable attorney's fees and investigation expenses), interest, award, judgment, damages (including punitive damages), diminution in value, liens, fines, fees and penalties. In the event of any such Losses arising out of the Contract Documents, City shall have the right to withhold from any payments due or to become due to the Contractor an amount sufficient, in its sole discretion, to protect and indemnify it from any and all such Losses.

**19.1.1 LIMITATION OF LIABILITY. CITY WILL NOT BE LIABLE TO CONTRACTOR, FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES, INCLUDING LOST PROFITS, REGARDLESS OF THE FORM OF THE ACTION OR THEORY OF RECOVERY, EVEN IF CITY HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES.**

19.2 Contractor shall protect and indemnify City from and against all claims, damages, judgments and losses arising from infringement or alleged infringement of any United States patent, or copyright that arise out of any of the work performed by Contractor or the use by Contractor, City at the direction of Contractor, of any article or material. Upon becoming aware of a suit or threat of suit for patent or copyright infringement, City or Contractor shall promptly notify Contractor and Contractor shall be given full opportunity to negotiate a settlement. Contractor does not warrant against infringement by reason of City's or A/E's design of articles or their use in combination with other materials or in the operation of any process. In the event of litigation, City agree to cooperate reasonably with Contractor and the parties shall be entitled, in connection with any such litigation, to be represented by counsel at their own expense.

19.3 The indemnities contained in this Agreement shall survive the termination of this Agreement for any reason whatsoever.

## **ARTICLE 20 SPECIAL WARRANTIES**

20.1 Notwithstanding anything to the contrary contained in this Agreement, City and Contractor agree and acknowledge City is entering into this Agreement in reliance on Contractor's represented expertise and ability to provide construction management services. Contractor agrees to use its best efforts, skill, judgment, and abilities to perform its obligations and to further the interests of City in accordance with City's requirements and procedures.

20.2 Contractor represents and agrees that it will perform its services in accordance with the usual and customary standards of Contractor's profession or business and in compliance with all applicable, federal, state, and municipal, laws, regulations, codes, ordinances, or orders and with those of any other body having jurisdiction over the Project. Contractor agrees to bear the full cost of correcting Contractor's negligent or improper work and services, those of its consultants and Subcontractors, and any harm caused by the negligent or improper work or services.

20.3 Contractor's duties shall not be diminished by any approval by City nor shall Contractor be released from any liability by any approval by City, it being understood that City are ultimately relying upon Contractor's skill and knowledge in performing the services required hereunder.

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

20.5 Contractor represents and agrees to advise City of anything of any nature in any drawings, specifications, plans, sketches, instructions, information, requirements, procedures, and other data supplied to Contractor (by City or any other party) that is, in its opinion, unsuitable, improper, or inaccurate for the purposes for which the document or data is furnished.

20.6 Contractor represents and agrees to perform its services under this Agreement in an expeditious and economical manner consistent with good business practices and the interests of City.

20.7 Contractor represents and agrees that there are no obligations, commitments, or impediments of any kind that will limit or prevent performance of its obligations under this Agreement.

20.8 Contractor represents and agrees that the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and to bind Contractor to its terms.

20.9 Except for the obligation of City to pay Contractor certain fees, costs, and expenses pursuant to the terms of this Agreement, City shall have no liability to Contractor or to anyone claiming through or under Contractor by reason of the execution or performance of this Agreement. Notwithstanding any obligation or liability of City to Contractor, no present or future affiliate of City or any agent, officer, director, employee, of City, or under City has or shall have any personal liability to Contractor or to anyone claiming through or under Contractor by reason of the execution or performance of this Agreement.

20.10 Contractor represents and warrants the following: (i) Contractor has complied and will comply with all Applicable Laws in performing the Services described herein; (ii) Contractor's Services and deliverables do not currently and shall not infringe upon or violate any trademarks, copyrights, trade secrets, patents, contractual rights or other

proprietary rights of any other party; (iii) Contractor has the capability, experience, certifications, financial stability and means required to perform the Services; and (iv) Contractor has procured any and all necessary permits, licenses and insurance coverage required to perform the Services under this Agreement.

## **ARTICLE 21**

### **CERTIFICATION OF NO ASBESTOS CONTAINING MATERIALS OR WORK**

21.1 Contractor shall provide a certification statement, included with each materials submittal, stating that no asbestos containing materials or work is included within the scope of the proposed submittal.

21.2 Contractor shall ensure that Texas Department of State Health Services licensed individuals, consultants, or companies are used for any required asbestos work including asbestos inspection, asbestos abatement plans/specifications, asbestos abatement, asbestos project management, and third-party asbestos monitoring.

21.3 Contractor shall provide at Substantial Completion, a notarized certificate to City and A/E stating that no asbestos containing materials or work was provided, installed, furnished or added to the Project.

21.4 Contractor shall take whatever measures it deems necessary to ensure that all employees, suppliers, fabricators, materialmen, subcontractors, or their assigns comply with this requirement.

21.5 A person is prohibited by law from installing Asbestos Containing Building Materials (ACBM) or ACBM replacement parts in a public building unless it is demonstrated that there is no alternative material or part (25 TAC §296.191(o)(1)). All materials used on this Project shall be certified as non-ACBM. Contractor shall ensure compliance with the following acts from all of its Subcontractors and assigns:

21.5.1 Asbestos Hazard Emergency Response Act and the Regulations promulgated under the Act (AHERA—40 CFR 763, Subpart E);

21.5.2 National Emission Standards for Hazardous Air Pollutants (NESHAP—EPA 40 CFR 61, Subpart M, National Emission Standard for Asbestos);

21.5.3 Texas Asbestos Health Protection Rules (TAHPR—Tex. Admin. Code Title 25, Part 1, Ch. 296, Subchapter K, Asbestos Management in a Public Building, Commercial Building, or Facility)

21.6 Every Subcontractor shall provide a notarized statement that no ACBM has been used, provided, or left on this Project.

21.7 Contractor shall obtain and review material data safety sheets (MSDS) for all building materials or replacement parts listed in *but not limited to* 25 TAC §296.191(o)(2) to ensure that no ACBM is used in the Project. Contractor shall provide, in hard copy and electronic form, all necessary MSDS of all products used in

the construction of the Project to the City, along with the certification or affidavit required in Section 21.3 above.

21.8 At Final Completion Contractor shall provide a notarized certification statement that no ACBM was used during construction of the Project.

## **ARTICLE 22 BUSINESS ETHICS EXPECTATION**

22.1 During the course of pursuing contracts with City and while performing contract work in accordance with this Agreement, Contractor agrees to maintain business ethics standards aimed at avoiding any impropriety or conflict of interest which could be construed to have an adverse impact on the City's best interests.

22.2 Contractor shall take reasonable actions to prevent any actions or conditions which could result in a conflict with City's best interests. These obligations shall apply to the activities of Contractor's employees, agents, subcontractors, subcontractors' employees and other persons under their control.

22.3 Contractor's employees, agents, and subcontractors (and their representatives) shall not make or offer, or cause to be made or offered, any cash payments, commissions, employment, gifts valued at \$50 dollars or more, entertainment, free travel, loans, free work, substantially discounted work, or any other considerations to City's representatives, employees, or their relatives.

22.4 Contractor's employees, agents, and subcontractors (and their relatives) shall not receive or accept any cash payments, commissions, employment, gifts valued at \$50 dollars or more, entertainment, free travel, loans, free work, or substantially discounted work or any other considerations from representatives of contractors, subcontractors, or material suppliers or any other individuals, organizations, or businesses receiving funds in connection with the Project.

22.5 Contractor agrees to notify City within forty-eight (48) hours of any instance where the Contractor becomes aware of a failure to comply with the provisions of this Article.

22.6 Upon request by City, Contractor agrees to provide a certified Management Representation Letter executed by a Contractor representative selected by City in a form agreeable to City stating that the representative is not aware of any situations violating the business ethics expectations outlined in this Agreement or any similar potential conflict of interest situations.

22.7 Contractor agrees to include provisions similar to this Article in all contracts with subcontractors receiving more than \$25,000 in funds in connection with the Project.

## **ARTICLE 23**

## MISCELLANEOUS PROVISIONS

23.1 Assignment. This Agreement is for the services of Contractor, and Contractor's interest in this Agreement, its duties, and/or the fees due to Contractor may not be assigned or delegated to a third party.

23.2 Records Requirements. Records of expenses pertaining to Additional Services shall be kept on the basis of generally accepted accounting principles and in accordance with cost accounting standards promulgated by the Federal Office of Management and Budget Cost Accounting Standards Board and shall be available for audit by City or City's authorized representative on reasonable notice.

23.3 Disclosure of Interested Parties. Contractor must submit a disclosure of interested parties form to the City, as applicable under Section 2252.908 of the Texas Government Code, for any contract that requires approval by City Council. The disclosure must be submitted at the time the Contractor submits the signed contract to the City on a form prescribed by the Texas Ethics Commission. For further information please go to the Texas Ethics Commission website via the following link: <https://www.ethics.state.tx.us/filinginfo/1295/>.

23.4 Franchise Tax Certification. If Contractor is a taxable entity subject to the Texas Franchise Tax (Chapter 171, Texas Tax Code), then Contractor certifies it is not currently delinquent in the payment of any franchise taxes or that Contractor is exempt from the payment of franchise taxes.

23.5 Undocumented Workers. The Contractor agrees not to knowingly employ any undocumented workers as defined in Tex. Govt. Code Sec. 2264.001.

23.6 Business with Foreign Terrorist Organizations. Pursuant to Texas Government Code 2252.152, contracts with companies engaged in business with Iran, Sudan, or foreign terrorist organizations are prohibited; a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Government Code Sections 806.051, 807.051, or 2252.153.

23.7 Boycott of Israel. Pursuant to Government Code 2271.002, a governmental entity may not enter into a contract with a company for goods or services unless the contract contains written verification the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the Contract.

23.8 Entire Agreement; Modifications. This Agreement supersedes all prior agreements, written or oral, between Contractor and City and shall constitute the entire agreement and understanding between the parties with respect to the Project. This Agreement and each of its provisions shall be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by Contractor and City.

23.9 Captions. The captions of paragraphs in this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

23.10 Governing Law and Venue. This Agreement is construed under and in

accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Brazos County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Brazos County, Texas.

23.11 Waivers. No delay or omission by either party in exercising any right or power arising from non-compliance or failure of performance by the other party with any of the provisions of this Agreement shall impair or constitute a waiver of any such right or power. A waiver by either party of any covenant or condition of this Agreement shall not be construed as a waiver of any subsequent breach of that or of any other covenant or condition of this Agreement.

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

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

23.14 Illegal Dumping. Contractor shall ensure that it and all of its Subcontractors and assigns prevent illegal dumping of litter in accordance with Title 5, *Texas Health and Safety Code*, Chapter 365.

23.15 Notices. All notices, consents, approvals, demands, requests, or other communications relied on by the parties shall be in writing. Written notice shall be deemed to have been given when delivered in person to the designated representative of Contractor or City for whom it is intended; or sent by U.S. Mail to the last known business address of the designated representative; or transmitted by fax machine to the last known business fax number of the designated representative. Mail notices are deemed effective upon receipt or on the third business day after the date of mailing, whichever is sooner. Fax notices are deemed effective the next business day after faxing. Such notices of claims or disputes or other legal notices required by this Agreement shall be sent to the persons and at the locations set forth in Exhibit "A" attached to this Agreement.

23.16 No Liens. In accordance with Applicable Laws, Contractor will not and will not permit its personnel or approved subcontractors to file any laborers', mechanic's or material men's liens or any security interests on or against property or realty of City to secure payment under this Agreement. If any liens or interests arise as a result of Contractor's action or inaction, Contractor will remove the liens at its sole cost and expense within ten (10) business days. Contractor shall defend, indemnify, hold harmless and protect City against any and all liens of any kind as relating to the Services provided hereunder.

23.17 Discrimination. Neither party will discriminate in any unlawful manner. The parties shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sexual

orientation, gender identity, sex, or national origin. Moreover, these regulations require that the parties take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sexual orientation, gender identity, sex, national origin, protected veteran status, or disability.

23.18 Public Information. Contractor acknowledges that City is obligated to strictly comply with the Public Information Act, Chapter 552, *Texas Government Code*, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law. Upon City's written request, Contractor will provide specified public information exchanged or created under this Agreement that is not otherwise excepted from disclosure under chapter 552, Texas Government Code, to City in a non-proprietary format acceptable to City. As used in this provision, "public information" has the meaning assigned Section 552.002, *Texas Government Code*, but only includes information to which City has a right of access.

23.19 The Contractor shall apply basic safeguarding requirements and procedures to protect the Contractor's information systems whenever the information systems store, process or transmit any information, not intended for public release, which is provided by or generated for the City. This requirement does not include information provided by the City to the public or simple transactional information, such as that necessary to process payments. These requirements and procedures shall include, at a minimum, the security control requirements "reflective of actions a prudent business person would employ", which are outlined in the Federal Acquisition Regulations FAR 52.204-21(b) and codified in the Code of Federal Regulations at 48 C.F.R. § 52.204-21(b) (2016).

23.19.1 Contractor shall include the substance of this clause in subcontracts under City contract information residing in or transiting through its information system this contract (including subcontracts for the acquisition of commercial items other than commercially available off-the-shelf items) in which the subcontractor may have.

23.20 Execution. This Agreement may be executed in one or more counterparts. Each counterpart shall be deemed an original, but all counterparts together constitute one and the same instrument.

23.21 List of Exhibits

The following exhibits are fully incorporated into this Agreement by reference:

- Ex. A. Scope of Services, Fees, Costs, and other Contract Variables
- Ex. B. Uniform General Conditions of Construction Contract
- Ex. C. Supplementary General Conditions and Special Provisions
- Ex. D. Allowable General Conditions Line Items
- Ex. E. Guaranteed Maximum Price (GMP) Proposal
- Ex. F. Security Bond
- Ex. G. Personnel Titles and Monthly Rates
- Ex. H. Subcontractor Insurance Requirements
- Ex. I. SpawGlass Design-Build Qualifications Response (incorporated by reference only)
- Ex. J. City of Bryan Request for Qualifications No. 26-015

[SIGNATURES PROVIDED ON FOLLOWING PAGE]

CITY OF BRYAN

PREPARED AND RECOMMENDED:

\_\_\_\_\_  
Marcus Walker, Parks Operations  
and Facilities Manager

Date: \_\_\_\_\_

APPROVED FOR PROCESSING:

\_\_\_\_\_  
Mike Riggins, Parks, Recreation  
and Facilities Director

Date: \_\_\_\_\_

\_\_\_\_\_  
Hugh R. Walker, Deputy City Manager

Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Thomas A. Leeper, City Attorney

Date: \_\_\_\_\_

APPROVED FOR COUNCIL:

\_\_\_\_\_  
Andrew Nelson, City Manager

Date: \_\_\_\_\_

APPROVED

\_\_\_\_\_  
Bobby Gutierrez, Mayor

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Melissa Brunner, City Secretary

Date: \_\_\_\_\_

CONTRACTOR:

By: 

Printed Name: GARRETT WHEATON

Title: VICE PRESIDENT

Date: 04/08/2026

**EXHIBIT “A” TO THE AGREEMENT  
SCOPE OF SERVICES, FEES, COSTS, AND OTHER  
CONTRACT VARIABLES**

1. Scope of Services

Project Description:

Provide Design/Build services for the renovation or replacement of the existing HVAC system at City of Bryan Fire Station No. 2, located at 414 Lawrence Street in Bryan, Texas 77801. The Design/Build team shall furnish all required design services, including the development of Schematic Design (SD), Design Development (DD), and Construction Document (CD) drawings. The construction scope will include demolition and removal of the existing HVAC system as required, followed by the installation of a new DX HVAC system and all associated components. Work shall also include any necessary plumbing modifications to support new equipment, additional electrical services needed to power and control the HVAC system, and the installation of concrete pads for exterior mechanical equipment. The project shall incorporate any exterior wall or roof penetrations required for new mechanical routing, along with proper waterproofing and sealing to maintain building envelope integrity. Any architectural finishes disturbed during demolition or installation shall be repaired and restored to match existing adjacent conditions.

At the end of Schematic Design, the scope of work and the Owner’s budget shall be evaluated in comparison with the fees listed herein. Should the Owner increase the scope of work and/or the budget, then the design fees may also need to be re-evaluated.

2. Guaranteed Maximum Price

The anticipated Guaranteed Maximum Price for the Project at the time this Agreement is executed is:

“One Million, Four Hundred Fifty Thousand Dollars” (\$1,450,000.00)

3. Pre-Construction Phase Fee

A. For Pre-Construction Phase Services, City shall pay Contractor a Pre- Construction Phase Fee in accordance with the following schedule:

|                              |                     |
|------------------------------|---------------------|
| Schematic Design Stage       | <u>\$46,541.10</u>  |
| Design Development Stage     | <u>\$46,541.10</u>  |
| Construction Documents Stage | <u>\$46,541.10</u>  |
| Bid Proposal Stage           | <u>\$15,513.70</u>  |
| Total                        | <u>\$155,137.00</u> |

4. Construction Phase Fee

- A. For Construction Phase Services, based on the anticipated GMP established at the time of this Agreement, City shall pay Contractor a stipulated Construction Phase Fee amount of:

“One Hundred Twenty-Five Thousand Three Hundred Four Dollars”  
(\$125,304.00)

The above Construction Phase Fee includes a fee for Construction Contract Administration Services in the amount of:

“Five Thousand Dollars” (\$5,000.00)

- B. If the City agrees to an increase or decrease in the Guaranteed Maximum Price, the Construction Phase Fee shall be equitably adjusted.

5. Reimbursable Services

- |  |                                |
|--|--------------------------------|
| A. Site Survey:                          | Not to Exceed \$ <u>N/A</u>    |
| B. Geotechnical Investigation:           | Not to Exceed \$ <u>N/A</u>    |
| C. Registered Accessibility Specialist   | Not to Exceed \$ <u>N/A</u>    |
| D. Hazardous Material Abatement Services | Not to Exceed \$ <u>2,000</u>  |
| E. Commissioning Services                | Not to Exceed \$ <u>21,000</u> |
| F. Rendering(s) and/or Scale Model:      | Not to Exceed \$ <u>N/A</u>    |
| G. Drawing Reproduction                  | Not to Exceed \$ <u>N/A</u>    |

Maximum Reimbursable Expense Amount: \$23,000

6. Time of Completion

The anticipated date for achieving Substantial Completion of the Project at the time this Agreement was executed is July, 2027. (and is based on a Construction NTP provided by August 28<sup>th</sup>, 2026.) Assumes owner contract is received by April 15<sup>th</sup>, 2026.

7. Liquidated Damages

For each consecutive calendar day after the date of Substantial Completion, plus any extensions of time granted by Change Order, that the Work is not substantially completed, Contractor shall pay to City, within ten (10) days following written demand, the amount of:

Eight Hundred and No/100 Dollars (\$800/day);

not as a penalty but as liquidated damages representing the parties' estimate at the time of contract execution of the damages that City or City will sustain for late completion and once paid shall represent City's sole and exclusive remedy for late completion. City and

City may also recover the liquidated damages from any money due or that becomes due Contractor.

The parties stipulate and agree that the actual damages sustained by City and City for late completion of the Project will be uncertain and difficult to ascertain, that calculating City's and City's actual damages would be impractical, unduly burdensome, and cause unnecessary delay, and that the amount of daily liquidated damages set forth above is a reasonable estimate.

Payment of the liquidated damages does not preclude recovery by City or City of other damages or losses under other provisions of the Contract, except for claims related to delays in Substantial Completion. City's right to receive liquidated damages shall not affect City's right to terminate the Agreement as provided in the General Conditions or elsewhere in the Contract Documents, nor shall termination of the Agreement release Contractor from the obligation to pay the liquidated damages.

Liquidated damages are to be based upon the substantial completion date agreed to and included in Exhibit E provided with the GMP proposal.

8. Names and Addresses for Notices:

If to City of Bryan:  
City of Bryan  
Attn: Mike Riggins  
P.O. Box 1000  
Bryan, TX 77805

If to Contractor:  
SpawGlass Construction Corp.  
Attn: Garrett Wheaton  
4030 State Hwy 6 S. Suite 300  
College Station, TX 77845

The parties may make reasonable changes in person or place designated for receipt of notices upon advance written notice to the other party.

9. Representatives of the Parties.

A. City's Designated Representatives.

1) City designates the individual listed below or his designee as its Engineer Representative to act in the City's behalf with respect to the Project is:

Jayson Barfknecht,  
Public Works Director  
City of Bryan

P.O. Box 1000  
Bryan, Texas 77805  
979-209-5900

2) City designate the individual listed below or his designee as the City's Designated Project Management Representative, said individual having the authority and responsibility for day-to-day Project management activities as set forth in this Contract.

Marcus Walker  
City of Bryan  
P.O. Box 1000  
Bryan, Texas 77805  
(979) 209-5520

- B. The Contractor's designated representative authorized to act on the Contractor's behalf and bind the Contractor with respect to the Project is:

Garett Wheaton  
SpawGlass Construction Corp.  
4030 State Hwy 6 S. Suite 300  
College Station TX 77845  
(979) 401-3270

- C. The parties may make reasonable changes in their designated representatives upon advance written notice to the other party and in accordance with Contract Request for Qualifications No. 26-015 "Design/Build Services for the Replacement of Existing HVAC System for City of Bryan Fire Station No. 2".

**EXHIBIT “B” TO THE AGREEMENT  
UNIFORM GENERAL CONDITIONS  
OF CONSTRUCTION CONTRACTS**



**CITY OF BRYAN**  
*The Good Life, Texas Style.™*

**PREPARED BY:**

CITY OF BRYAN

**May 2020**

# Uniform General Conditions for Construction Contracts

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## Article 1. Definitions

Unless the context clearly requires another meaning, the following terms have the meaning assigned herein.

- 1.1 *Addendum/Addenda* means formally issued written or graphic modifications and/or interpretations of the Construction Documents that may add to, delete from, clarify or correct the description and/or scope of the Work. Addenda are issued during the bidding phase of the project.
- 1.2 *Application for Payment* means Contractor's monthly partial invoice for payment that includes any portion of the Work that has been completed for which an invoice has not been submitted and performed in accordance with the requirements of the Contract Documents. The Application for Payment accurately reflects the progress of the Work, is itemized based on the Schedule of Values, bears the notarized signature of Contractor, and shall not include subcontracted items for which Contractor does not intend to pay.
- 1.3 *Application for Final Payment* means Contractor's final invoice for payment that includes any portion of the Work that has been completed for which an invoice has not been submitted, amounts owing to adjustments to the final Contract Sum resulting from approved change orders, and release of remaining Contractor's retainage.
- 1.4 *Architect/Engineer (A/E)* means a person registered as an architect pursuant to Tex. Occ. Code Ann., Ch. 1051, as a landscape architect pursuant to Tex. Occ. Code Ann., Ch. 1052, a person licensed as a professional engineer pursuant Tex. Occ. Code Ann., Ch. 1001, and/or a firm employed by City or Design-Build Contractor to provide professional architectural or engineering services and to exercise overall responsibility for the design of a Project or a significant portion thereof, and to perform the contract administration responsibilities set forth in the Contract.
- 1.5 *Authority Having Jurisdiction* means a federal, state, local, or other regional department, or an individual such as a fire marshal, building official, electrical inspector, utility provider or other individual having statutory authority.
- 1.6 *Baseline Schedule* means the initial time schedule prepared by Contractor for City's information and acceptance that conveys Contractor's and Subcontractors' activities (including coordination and review activities required in the Contract Documents to be performed by A/E and City), durations, and sequence of work related to the entire Project to the extent required by the Contract Documents. The schedule clearly demonstrates the critical path of activities, durations and necessary predecessor conditions that drive the end date of the schedule. The Baseline Schedule shall not exceed the time limit current under the Contract Documents.
- 1.7 *Certificate of Final Completion* means the certificate issued by A/E that documents, to the best of A/E's knowledge and understanding, Contractor's completion of all

Contractor's Punchlist items and pre-final Punchlist items, final cleanup and Contractor's provision of Record Documents, operations and maintenance manuals, and all other closeout documents required by the Contract Documents.

- 1.8 *Certificate of Substantial Completion* means the certificate executed by the A/E, City and Contractor that documents to the best of A/E's and City's knowledge and understanding, Contractor's sufficient completion of the work in accordance with the Contract, so as to be operational and fit for the use intended.
- 1.9 *Change Order* means a written modification of the Contract between City and Contractor, signed by City, Contractor, and A/E.
- 1.10 *City* means a Texas home-rule municipal corporation identified in the Contract as City.
- 1.11 *Close-out Documents* mean the product brochures, submittals, product/equipment maintenance and operations instructions, manuals, and other documents/warranties, record documents, affidavit of payment, release of lien and claim, and as may be further defined, identified, and required by the Contract Documents.
- 1.12 *Contract* means the entire agreement between City and Contractor, including all of the Contract Documents.
- 1.13 *Contract Date* is the date when the agreement between City and Contractor becomes effective.
- 1.14 *Contract Documents* mean those documents identified as a component of the agreement (Contract) between City and Contractor. These may include, but are not limited to, Drawings; Specifications; General, Supplementary General, and Special Conditions; and all pre-bid and/or pre-proposal addenda.
- 1.15 *Contract Sum* means the total compensation payable to Contractor for completion of the Work in accordance with the terms of the Contract.
- 1.16 *Contract Time* means the period between the start date identified in the Notice to Proceed with construction and the Substantial Completion date identified in the Notice to Proceed or as subsequently amended by a Change Order.
- 1.17 *Contractor* means the individual, corporation, limited liability company, partnership, firm, or other entity contracted to perform the Work, regardless of the type of construction contract used, so that the term as used herein includes a Construction Manager-at-Risk or a Design-Build firm as well as a general or prime Contractor. The Contract Documents refer to Contractor as if singular in number.
- 1.18 *Construction Documents* mean the Drawings, Specifications, and other documents issued to build the Project. Construction Documents become part of the Contract Documents when listed in the Contract or any Change Order.
- 1.19 *Construction Manager-at-Risk*, in accordance with Tex. Gov't Code, Ch. 2166, means a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for construction, rehabilitation, alteration, or repair of a facility at the contracted price as a general contractor and provides consultation to City regarding construction during and after the design of the facility.

- 1.20 *Date of Commencement* means the date designated in the Notice to Proceed for Contractor to commence the Work.
- 1.21 *Day* means a calendar day unless otherwise specifically stipulated.
- 1.22 *Design-Build* means a project delivery method in which the detailed design and subsequent construction is provided through a single contract with a Design-Build firm; a team, partnership, or legal entity that includes design professionals and a builder. The Design-Build Project delivery shall be implemented in accordance with Tex. Gov't Code Chapter 2269, subchapters G and H, accordingly.
- 1.23 *Drawings* mean that product of A/E which graphically depicts the Work.
- 1.24 *Final Completion* means the date determined and certified by A/E and City on which the Work is fully and satisfactorily complete in accordance with the Contract.
- 1.25 *Final Payment* means the last and final monetary compensation made to Contractor for any portion of the Work that has been completed and accepted for which payment has not been made, amounts owing to adjustments to the final Contract Sum resulting from approved change orders, and release of Contractor's retainage.
- 1.26 *Liquidated Damages* reflect the daily monetary compensation, as designated in the Contract, to be paid to City by Contractor for losses/damages incurred by City as a result of Contractor's failure to achieve the contractual dates for Substantial Completion and/or Final Completion of the Project.
- 1.27 *Notice to Proceed* means written document informing Contractor of the dates beginning Work and the dates anticipated for Substantial Completion.
- 1.28 *Open Item List* means a list of work activities, Punchlist items, changes or other issues that are not expected by City and Contractor to be complete prior to Substantial Completion.
- 1.29 *City* means a Texas home-rule municipal corporation identified in the Contract as City.
- 1.30 *Project* means all activities necessary for realization of the Work. This includes design, contract award(s), execution of the Work itself, and fulfillment of all Contract and warranty obligations.
- 1.31 *Project Manager (PM)* refers to the City staff or professional management firms selected by the City manager as the City's representative for the Project, and its employees and consultants. The PM will act on the City's behalf and to undertake certain activities as specifically outlined in the Contract. PM is the only party authorized to direct changes to the scope, cost, or time of the Contract.
- 1.32 *Proposed Change Order (PCO)* means a document that informs Contractor of a proposed change in the Work and appropriately describes or otherwise documents such change including Contractor's response of pricing for the proposed change.
- 1.33 *Punchlist* means a list of items of Work to be completed or corrected by Contractor after Substantial Completion. Punchlists indicate items to be finished, remaining Work to be performed, or Work that does not meet quality or quantity requirements as required in the Contract Documents.

- 1.34 *Record Documents* mean the drawing set, Specifications, and other materials maintained by Contractor that documents all addenda, Architect's Supplemental Instructions, Change Orders and postings and markings that record the as-constructed conditions of the Work and all changes made during construction.
- 1.35 *Request for Information (RFI)* means a written request by Contractor directed to A/E or City for a clarification of the information provided in the Contract Documents or for direction concerning information necessary to perform the Work that may be omitted from the Contract Documents.
- 1.36 *Samples* mean representative physical examples of materials, equipment, or workmanship used to confirm compliance with requirements and/or to establish standards for use in execution of the Work.
- 1.37 *Schedule of Values* means the detailed breakdown of the cost of the materials, labor, and equipment necessary to accomplish the Work as described in the Contract Documents, submitted by Contractor for approval by City and A/E.
- 1.38 *Shop Drawings* mean the drawings, diagrams, illustrations, schedules, performance charts, brochures, and other data prepared by Contractor or its agents which detail a portion of the Work.
- 1.39 *Site* means the geographical area of the location of the Work.
- 1.40 *Special Conditions* mean the documents containing terms and conditions which may be unique to the Project. Special Conditions are a part of the Contract Documents and have precedence over the Uniform General Conditions and Supplementary General Conditions.
- 1.41 *Specifications* mean the written product of A/E that establishes the quality and/or performance of products utilized in the Work and processes to be used, including testing and verification for producing the Work.
- 1.42 *Subcontractor* means a business entity that enters into an agreement with Contractor to perform part of the Work or to provide services, materials, or equipment for use in the Work.
- 1.43 *Submittal Register* means a list provided by Contractor of all items to be furnished for review and approval by A/E and City and as identified in the Contract Documents including anticipated sequence and submittal dates.
- 1.44 *Substantial Completion* means the date determined and certified by Contractor, A/E, and City when the Work, or a designated portion thereof, is sufficiently complete, in accordance with the Contract, so as to be operational and fit for the use intended.
- 1.45 *Supplementary General Conditions* mean procedures and requirements that modify the Uniform General Conditions. Supplementary General Conditions, when used, have precedence over the Uniform General Conditions.
- 1.46 *Unit Price Work* means the Work, or a portion of the Work, paid for based on incremental units of measurement.
- 1.47 *Unilateral Change Order (ULCO)* means a Change Order issued by City without the complete agreement of Contractor, as to cost and/or time.

- 1.48 *Work* means the administration, procurement, materials, equipment, construction and all services necessary for Contractor, and/or its agents, to fulfill Contractor's obligations under the Contract.
- 1.49 *Work Progress Schedule* means the continually updated time schedule prepared and monitored by Contractor that accurately indicates all necessary appropriate revisions as required by the conditions of the Work and the Project while maintaining a concise comparison to the Baseline Schedule.

## **Article 2. Regulations and Other Laws Governing Construction**

- 2.1 Environmental Regulations. Contractor shall conduct activities in compliance with applicable laws and regulations and other requirements of the Contract relating to the environment and its protection at all times. Unless otherwise specifically determined, City is responsible for obtaining and maintaining permits related to stormwater run-off. Contractor shall conduct operations consistent with stormwater run-off permit conditions. Contractor is responsible for all items it brings to the Site, including hazardous materials, and all such items brought to the Site by its Subcontractors and suppliers, or by other entities subject to direction of Contractor. Contractor shall not incorporate hazardous materials into the Work without prior approval of City, and shall provide an affidavit attesting to such in association with request for Substantial Completion inspection.
- 2.2 Venue for Suits. The venue for any suit arising from the Contract will be in a court of competent jurisdiction in Brazos County, Texas, or as may otherwise be designated in the Supplementary General Conditions.
- 2.3 Licensing of Trades. Contractor shall comply with all applicable provisions of State law related to license requirements for skilled tradesmen, contractors, suppliers and or laborers, as necessary to accomplish the Work. In the event Contractor, or one of its Subcontractors, loses its license during the term of performance of the Contract, Contractor shall promptly hire or contract with a licensed provider of the service at no additional cost to City.
- 2.4 Royalties, Patents, and Copyrights. Contractor shall pay all royalties and license fees, defend suits or claims for infringement of copyrights and patent rights, and shall hold City harmless from loss on account thereof, 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 Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by City or A/E. However, if Contractor has reason to believe that the required design, process, or product is an infringement of a copyright or a patent, Contractor shall be responsible for such loss unless such information is promptly furnished to A/E.
- 2.5 State Sales and Use Taxes. City qualifies for exemption from certain State and local sales and use taxes pursuant to the provisions of Tex. Tax Code, Ch. 151. Upon request from Contractor, City shall furnish evidence of tax exempt status. Contractor may claim exemption from payment of certain applicable State taxes by complying with such procedures as prescribed by the State Comptroller of Public Accounts. City acknowledges not all items qualify for exemption. City is not obligated to reimburse Contractor for taxes paid on items that qualify for tax exemption.

## **Article 3. General Responsibilities of City and Contractor**

- 3.1 City's General Responsibilities. City is the entity identified as such in the Contract and

referred to throughout the Contract Documents as if singular in number.

- 3.1.1 Preconstruction Conference. Prior to, or concurrent with, the issuance of Notice to Proceed with construction, a conference will be convened for attendance by City, Contractor, A/E and appropriate Subcontractors. The purpose of the conference is to establish a working understanding among the parties as to the Work, the operational conditions at the Project Site, and general administration of the Project. Topics include communications, schedules, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, maintaining required records and all other matters of importance to the administration of the Project and effective communications between the Project team members.
- 3.1.2 City's Project Manager. Prior to the start of construction, City will identify City's Project Manager, (PM) if named, who has the express authority to act and bind City to the extent and for the purposes described in the various Articles of the Contract, including responsibilities for general administration of the Contract.
  - 3.1.2.1 Unless otherwise specifically defined elsewhere in the Contract Documents, PM is the single point of contact between City and Contractor. Notice to PM, unless otherwise noted, constitutes notice to City under the Contract.
  - 3.1.2.2 All directives on behalf of City will be conveyed to Contractor and A/E by PM in writing.
  - 3.1.2.3 PM will furnish or cause to be furnished, free of charge, the number of complete sets of the Drawings, Specifications, and addenda as provided in the Supplementary General Conditions or Special Conditions.
  - 3.1.2.4 The PM will establish the protocol for planning, scheduling and documenting progress meetings with provisions for absence of various project team members that have a key role in these duties.
- 3.1.3 City Supplied Materials and Information.
  - 3.1.3.1 City will furnish to Contractor those surveys describing the physical characteristics, legal description, limitations of the Site, Site utility locations, and other information used in the preparation of the Contract Documents.
  - 3.1.3.2 City will provide information, equipment, or services under City's control to Contractor with reasonable promptness.
- 3.1.4 Availability of Lands. City will furnish, as indicated in the Contract, all required rights to use the lands upon which the Work occurs. This includes rights-of-way and easements for access and such other lands that are designated for use by Contractor. Contractor shall comply with all City identified encumbrances or restrictions specifically related to use of lands so furnished. City will obtain and pay for easements for permanent structures or permanent changes in existing facilities,
- 3.1.5 Limitation on City's Duties.
  - 3.1.5.1 City will not supervise, direct, control or have authority over or be

responsible for Contractor's means, methods, technologies, sequences or procedures of construction or the safety precautions and programs incident thereto. City is not responsible for any failure of Contractor to comply with laws and regulations applicable to the Work. City is not responsible for the failure of Contractor to perform or furnish the Work in accordance with the Contract Documents. Except as provided in Section 2.5, City is not responsible for the acts or omissions of Contractor, or any of its Subcontractors, suppliers or of any other person or organization performing or furnishing any of the Work on behalf of Contractor.

3.1.5.2 City will not take any action in contravention of a design decision made by A/E in preparation of the Contract Documents, when such actions are in conflict with statutes under which A/E is licensed for the protection of the public health and safety.

3.2 Role of Architect/Engineer. Unless specified otherwise in the Contract between City and Contractor, A/E shall provide general administration services for City during the construction phase of the project. Written correspondence, requests for information, and Shop Drawings/submittals shall be directed to A/E for action. A/E has the authority to act on behalf of City to the extent provided in the Contract Documents, unless otherwise modified by written instrument, which will be furnished to Contractor by City, upon request.

3.2.1 Site Visits.

3.2.1.1 A/E will make visits to the Site at intervals as provided in the A/E's Contract with City, to observe the progress and the quality of the various aspects of Contractor's executed Work and report findings to City.

3.2.1.2 A/E has the authority to interpret Contract Documents and inspect the Work for compliance and conformance with the Contract. Except as referenced in Paragraph 3.1.5.2, City retains the sole authority to accept or reject Work and issue direction for correction, removal, or replacement of Work.

3.2.2 Clarifications and Interpretations. It may be determined that clarifications or interpretations of the Contract Documents are necessary. Upon direction by City, such clarifications or interpretations will be provided by A/E consistent with the intent of the Contract Documents. A/E will issue these clarifications with reasonable promptness to Contractor as A/E's supplemental instruction ("ASI") or similar instrument. If Contractor believes that such clarification or interpretation justifies an adjustment in the Contract Sum or the Contract Time, Contractor shall so notify City in accordance with the provisions of Article 11.

3.2.3 Limitations on Architect/Engineer Authority. A/E is not responsible for:

3.2.3.1 Contractor's means, methods, techniques, sequences, procedures, safety, or programs incident to the Project, nor will A/E supervise, direct, control or have authority over the same;

3.2.3.2 The failure of Contractor to comply with laws and regulations applicable to the furnishing or performing the Work;

3.2.3.3 Contractor's failure to perform or furnish the Work in accordance with the Contract Documents; or

3.2.3.4 Acts or omissions of Contractor, or of any other person or organization performing or furnishing any of the Work.

3.3 Contractor's General Responsibilities. Contractor is solely responsible for implementing the Work in full compliance with all applicable laws and the Contract Documents and shall supervise and direct the Work using the best skill and attention to assure that each element of the Work conforms to the Contract requirements. Contractor is solely responsible for all construction means, methods, techniques, safety, sequences, coordination, procedures and protection of the installed work as part of the contract until substantial completion of the project. Contractor remains responsible for the care and protection of materials and Work in the areas where punch list items are completed until Final Completion.

3.3.1 Project Administration. Contractor shall provide Project administration for all Subcontractors, vendors, suppliers, and others involved in implementing the Work and shall coordinate administration efforts with those of A/E and City in accordance with these general conditions and other provisions of the Contract, and as outlined in the preconstruction conference. Contractor's Project Administration includes periodic daily reporting on weather, work progress, labor, materials, equipment, obstructions to prosecution of the work, accidents and injuries in accordance with the Contract and transmitted no less frequently than on a weekly basis.

3.3.2 Contractor's Management Personnel. Contractor shall employ a competent person or persons who will be present at the Project Site during the progress of the Work to supervise or oversee the work. The competent persons are subject to the approval of City. Contractor shall not change approved staff during the course of the project without the written approval of City unless the staff member leaves the employment of Contractor. Contractor shall provide additional quality control, safety and other staff as stated in the Supplementary General Conditions.

3.3.3 Labor. Contractor shall provide competent, suitably qualified personnel to survey, lay-out, and construct the Work as required by the Contract Documents and maintain good discipline and order at the Site at all times.

3.3.4 Services, Materials, and Equipment. Unless otherwise specified, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities, incidentals, and services necessary for the construction, performance, testing, start-up, inspection and completion of the Work.

3.3.5 Contractor General Responsibility. For City furnished equipment or material that will be in the care, custody, and control of Contractor, Contractor is responsible for damage or loss. City shall deliver to Contractor a complete list and respective values of such materials or equipment and make an equitable adjustment to the contract amount for any increase in cost of Builder's Risk insurance.

3.3.6 Non-Compliant Work. Should A/E and/or City identify Work as non-compliant with the Contract Documents, A/E and/or City shall communicate the finding to

Contractor, and Contractor shall correct such Work at no additional cost to the City. The approval of Work by either A/E or City does not relieve Contractor from the obligation to comply with all requirements of the Contract Documents.

3.3.7 Subcontractors. Contractor shall not employ any Subcontractor, supplier or other person or organization, whether initially or as a substitute, against whom City shall have reasonable objection. City will communicate such objections in writing within ten (10) days of receipt of Contractor's intent to use such Subcontractor, supplier, or other person or organization. Contractor is not required to employ any Subcontractor, supplier or other person or organization to furnish any of the work to whom Contractor has reasonable objection. Contractor shall not substitute Subcontractors without the acceptance of City. Pursuant to Tex. Gov't Code § 2269.256(b), if the Contractor reviews, evaluates and recommends that the City accept a bid or proposal from a Subcontractor but the City requires another bid or proposal to be accepted, City shall compensate the Contractor by a change in price, time or guaranteed maximum cost for any additional cost or risk the Contractor will incur because of City's requirement to select another bid or proposal rather than the one recommended.

3.3.7.1 All Subcontracts and supply contracts shall be consistent with and bind the Subcontractors and suppliers to the terms and conditions of the Contract Documents including provisions of the Contract between Contractor and City.

3.3.7.2 Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with Contractor. Require all Subcontractors, suppliers and such other persons and organizations performing or furnishing any of the Work to communicate with City only through Contractor. Contractor shall furnish to City a copy, at City's request, of each first-tier subcontract promptly after its execution. Contractor agrees that City has no obligation to review or approve the content of such contracts and that providing City such copies in no way relieves Contractor of any of the terms and conditions of the Contract, including, without limitation, any provisions of the Contract which require the Subcontractor to be bound to Contractor in the same manner in which Contractor is bound to City.

3.3.8 Continuing the Work. Contractor shall carry on the Work and adhere to the progress schedule during all disputes, disagreements, or alternative resolution processes with City. Contractor shall not delay or postpone any Work because of pending unresolved disputes, disagreements or alternative resolution processes, except as City and Contractor may agree in writing.

3.3.9 Cleaning. Contractor shall at all times, keep the Site and the Work clean and free from accumulation of waste materials or rubbish caused by the construction activities under the Contract. Contractor shall ensure that the entire Project is thoroughly cleaned prior to requesting Substantial Completion inspection and, again, upon completion of the Project prior to the final inspection.

3.3.10 Acts and Omissions of Contractor, its Subcontractors, and Employees. Contractor shall be responsible for acts and omissions of his employees and all its Subcontractors, their agents and employees. City may, in writing, require

Contractor to remove from the Project any of Contractor's or its Subcontractor's employees whom City finds to be careless, incompetent, unsafe, uncooperative, disruptive, or otherwise objectionable.

3.3.11 Acts or Omissions. Contractor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any acts or omissions of Contractor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND CITY AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

3.3.12 Infringements.

3.3.12.1 Contractor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF CONTRACTOR PURSUANT TO THIS CONTRACT. CONTRACTOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.

3.3.12.2 Contractor shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without Contractor's written approval, (iii) any modifications made to the product by Contractor pursuant to Customer's specific instructions, (iv) any intellectual property right owned by or licensed to Customer, or (v) any use of the product or service by Customer that is not in conformity with the terms of any applicable license agreement.

3.3.12.3 If Contractor becomes aware of an actual or potential claim, or Customer provides Contractor with notice of an actual or potential

claim, Contractor may (or in the case of an injunction against Customer, shall), at Contractor's sole option and expense; (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing.

3.3.12.4 Taxes/Workers' Compensation/Unemployment Insurance—Including Indemnity.

3.3.12.4.1 CONTRACTOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, CONTRACTOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF CONTRACTOR'S AND CONTRACTOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. CONTRACTOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE CUSTOMER AND/OR THE STATE SHALL NOT BE LIABLE TO CONTRACTOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.

3.3.12.4.2 CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS CITY, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED

DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND CITY AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

- 3.3.12.5 The provisions of this indemnification are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.
- 3.3.12.6 Contractor shall promptly advise City in writing of any claim or demand against City or against Contractor which involves City and known to Contractor and related to or arising out of Contractor's activities under this Contract.
- 3.3.13 Ancillary Areas. Operate and maintain operations and associated storage areas at the site of the Work in accordance with the following:
- 3.3.13.1 Confine all Contractor operations, including storage of materials and employee parking upon the Site of Work, to areas designated by City.
- 3.3.13.2 Contractor may erect, at its own expense, temporary buildings that will remain its property. Remove such buildings and associated utility service lines upon completion of the Work, unless Contractor requests and City provides written consent that it may abandon such buildings and utilities in place.
- 3.3.13.3 Use only established roadways or construct and use such temporary roadways as may be authorized by City. Do not allow load limits of vehicles to exceed the limits prescribed by appropriate regulations or law. Provide protection to road surfaces, curbs, sidewalks, trees, shrubbery, sprinkler systems, drainage structures and other like existing improvements to prevent damage and repair any damage thereto at the expense of Contractor.
- 3.3.13.4 City may restrict Contractor's entry to the Site to specifically assigned entrances and routes.
- 3.3.14 Separate Contracts. City reserves the right to award other contracts in connection with other portions of the Project under these same or substantially similar contract conditions, including those portions related to insurance and waiver of subrogation. City reserves the right to perform operations related to the Project with City's own forces.
- 3.3.15 Under a system of separate contracts, the conditions described herein continue to apply except as may be amended by change order.
- 3.3.16 Contractor shall cooperate with other contractors or forces employed on the Project by City, including providing access to Site and Project information as requested.

- 3.3.17 City shall be reimbursed by Contractor for costs incurred by City which are payable to a separate contractor because of delays, improperly timed activities, or defective construction by Contractor. City will equitably adjust the Contract by Change Order for costs incurred by Contractor because of delays, improperly timed activities, and damage to the Work or defective construction by a separate contractor.

## Article 4. Bonds and Insurance

- 4.1 Construction Bonds. Contractor is required to tender to City, prior to commencing the Work, performance and payment bonds, as required by Tex. Gov't Code, Ch. 2253. On Construction Manager-at-Risk and Design-Build Projects the City shall require a security bond, as described in Subsection 4.1.2 below.

- 4.1.1 Bond Requirements. Each bond shall be executed by a corporate surety or sureties authorized to do business in the State of Texas and acceptable to City, on City's form, and in compliance with the relevant provisions of the Texas Insurance Code. If any bond is for more than ten (10) percent of the surety's capital and surplus, City may require certification that the company has reinsured the excess portion with one or more reinsurers authorized to do business in the State. A reinsurer may not reinsure for more than ten (10) percent of its capital and surplus. If a surety upon a bond loses its authority to do business in the State, Contractor shall, within thirty (30) days after such loss, furnish a replacement bond at no added cost to City.

- 4.1.1.1 A Performance bond is required if the Contract Sum is in excess of \$100,000. The performance bond is solely for the protection of City. The performance bond is to be for the Contract Sum to guarantee the faithful performance of the Work in accordance with the Contract Documents. The form of the bond shall be approved by the Office of the Attorney General of Texas. The performance bond shall be effective through Contractor's warranty period. See Attachment "A" for standard bond form.

- 4.1.1.2 A Payment bond is required if the Contract price is in excess of \$25,000. The payment bond is to be for the Contract Sum and is payable to City solely for the protection and use of payment bond beneficiaries. The form of the bond shall be approved by the Office of the Attorney General of Texas. See Attachment "B" for standard bond form.

- 4.1.2 Security Bond. The security bond provides protection to City if Contractor presents an acceptable guaranteed maximum price ("GMP") to City and 1) fails to execute the GMP; or 2) fails to deliver the required payment and performance bonds within the time period stated below.

- 4.1.3 When Bonds Are Due.

- 4.1.3.1 Security bonds are due within ten (10) days of signing a Construction Manager-at-Risk or Design-Build Contract.

- 4.1.3.2 Payment and performance bonds are due within ten (10) days of

Contractor's receipt of a fully executed GMP on a Construction Manager-at-Risk project or the Contract Sum for a Design-Build project, or within ten (10) days of Contractor's receipt of a fully executed Contract on competitively bid or competitive sealed proposal projects.

- 4.1.4 Power of Attorney. Each bond shall be accompanied by a valid power of attorney (issued by the surety company and attached, signed and sealed with the corporate embossed seal, to the bond) authorizing the attorney-in-fact who signs the bond to commit the company to the terms of the bond, and stating any limit in the amount for which the attorney can issue a single bond.
- 4.1.5 Bond Indemnification. The process of requiring and accepting bonds and making claims there under shall be conducted in compliance with Tex. Gov't Code, Ch. 2253. IF FOR ANY REASON A STATUTORY PAYMENT OR PERFORMANCE BOND IS NOT HONORED BY THE SURETY, CONTRACTOR SHALL FULLY INDEMNIFY AND HOLD CITY HARMLESS OF AND FROM ANY COSTS, LOSSES, OBLIGATIONS OR LIABILITIES IT INCURS AS A RESULT.
- 4.1.6 Furnishing Bond Information. City shall furnish certified copies of the payment bond and the related Contract to any qualified person seeking copies who complies with Tex. Gov't Code § 2253.026.
- 4.1.7 Claims on Payment Bonds. Claims on payment bonds must be sent directly to Contractor and his surety in accordance with Tex. Gov't Code § 2253.041. All payment bond claimants are cautioned that no lien exists on the funds unpaid to Contractor on such Contract, and that reliance on notices sent to City may result in loss of their rights against Contractor and/or his surety. City is not responsible in any manner to a claimant for collection of unpaid bills, and accepts no such responsibility because of any representation by any agent or employee.
- 4.1.8 Payment Claims when Payment Bond not Required. The rights of Subcontractors regarding payment are governed by Tex. Prop. Code §§ 53.231 – 53.239 when the value of the Contract between City and Contractor is less than \$25,000.00. These provisions set out the requirements for filing a valid lien on funds unpaid to Contractor as of the time of filing the claim, actions necessary to release the lien and satisfaction of such claim.
- 4.1.9 Sureties. A surety shall be listed on the US Department of the Treasury's Listing of Approved Sureties maintained by the Bureau of Financial Management Service (FMS), [www.fms.treas.gov/c570](http://www.fms.treas.gov/c570), stating companies holding Certificates of Authority as acceptable sureties on Federal bonds and acceptable reinsuring companies (FMS Circular 570).
- 4.2 Insurance Requirements. Contractor shall carry insurance in the types and amounts indicated in this Article for the duration of the Contract. The insurance shall be evidenced by delivery to City of certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions. Upon request, City, and/or its agents, shall be entitled to receive without expense, copies of the policies and all endorsements. Contractor shall update all expired policies prior to submission for monthly payment. Failure to update policies shall be reason for withholding of payment until renewal is provided to City.

- 4.2.1 Contractor shall provide and maintain all insurance coverage with the minimum amounts described below until the end of the warranty period unless otherwise stated in Supplementary General Conditions or Special Conditions. Failure to maintain insurance coverage, as required, is grounds for suspension of Work for cause pursuant to Article 13.
- 4.2.2 Contractor shall deliver to City true and complete copies of certificates and corresponding policy endorsements prior to the issuance of any Notice to Proceed.
- 4.2.3 Failure of City to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of City to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
- 4.2.4 The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to City in the Contract Documents.
- 4.2.5 The insurance coverage and limits established herein shall not be interpreted as any representation or warranty that the insurance coverage and limits necessarily will be adequate to protect Contractor.
- 4.2.6 Coverage shall be written on an occurrence basis by companies authorized and admitted to do business in the State of Texas and rated A-VII or better by A.M. Best Company or similar rating company or otherwise acceptable to City.

4.2.6.1 Insurance Coverage Required.

- 4.2.6.1.1 Workers' Compensation. Insurance with limits as required by the Texas Workers' Compensation Act, with the policy endorsed to provide a waiver of subrogation in favor of City, employer's liability insurance of not less than:

\$1,000,000 each accident;

\$1,000,000 disease each employee; and

\$1,000,000 disease policy limit.

- 4.2.6.1.2 General Liability Coverage. Commercial General Liability Insurance, including Independent Contractor's liability, Products and Completed Operations and Contractual Liability, covering, but not limited to, the liability assumed under the indemnification provisions of the Contract Documents, fully insuring Contractor's (or subcontractors) liability for bodily injury and property damage with a combined bodily injury (including death) and property damage minimum limit of:

\$1,000,000 per occurrence

\$1,000,000 general aggregate

\$1,000,000 products and completed operations

\$1,000,000 personal and advertising injury

\$1,000,000 damage to premises

\$50,000 Damage to Premises Rented to You; and

Coverage shall be on an “occurrence” basis.

The policy shall include coverage extended to apply to completed operations and explosion, collapse, and underground hazards. The policy shall include endorsement CG2503 Amendment of Aggregate Limits of Insurance (per Project) or its equivalent.

If the Work involves any activities within fifty (50) feet of any railroad, railroad protective insurance as may be required by the affected railroad, written for not less than the limits required by such railroad.

- 4.2.6.1.3 Asbestos Abatement Liability Insurance, including coverage for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos containing materials. \*This requirement applies if the Work or the Project includes asbestos containing materials.

The combined single limit for bodily injury and property damage will be a minimum of \$1,000,000 per occurrence.

\*Specific requirement for claims-made form: Required period of coverage will be determined by the following formula: continuous coverage for life of the Contract, plus one (1) year (to provide coverage for the warranty period), and an extended discovery period for a minimum of five (5) years which shall begin at the end of the warranty period.

Employer’s liability limits for asbestos abatement will be:

\$1,000,000 each accident;  
\$1,000,000 disease each employee; and  
\$1,000,000 disease policy limit.

**If this Contract is for asbestos abatement only, the All Risk (Special Form) builder’s risk or All Risk (Special Form) installation floater (e) is not required.**

- 4.2.6.1.4 Comprehensive Automobile Liability Insurance, covering owned, hired, and non-owned vehicles, with a minimum combined single limit for bodily injury (including death) and property damage of \$2,000,000 per accident. No aggregate shall be permitted for this type of coverage.

Such insurance is to include coverage for loading and unloading hazards.

4.2.6.1.5 All Risk (Special Form) Builder's Risk Insurance, if applicable (or All Risk (Special Form) installation floater for instances in which the project involves solely the installation of material and/or equipment). Coverage shall be All Risk (Special Form), including, but not limited to, fire, extended coverage, vandalism and malicious mischief, theft and, if applicable, flood, earth movement, convective storm, and named windstorm. Builder's risk and installation floater limits shall be equal to 100 percent of the Contract Sum plus, if any, existing property and City-furnished equipment specified by City. The policy shall be written jointly in the names of City and Contractor. Subcontractors shall be named as additional insureds. The policy shall have endorsements as follows:

4.2.6.1.5.1 This insurance shall be specific as to coverage and not contributing insurance with any permanent insurance maintained on the property.

4.2.6.1.5.2 This insurance shall not contain an occupancy clause suspending or reducing coverage should City partially occupy the Site and before the parties have determined Substantial Completion.

4.2.6.1.5.3 Loss, if any, shall be adjusted with and made payable to City as trustee for the insureds as their interests may appear. City shall be named as loss payee.

4.2.6.1.5.4 For renovation projects or projects that involve portions of Work contained within an existing structure, refer to Supplementary General and Special Conditions for possible additional builder's risk insurance requirements.

4.2.6.1.5.5 For City furnished equipment or materials that will be in care, custody or control of Contractor, Contractor will be responsible for damage and loss.

4.2.6.1.5.6 For those properties located within a Tier 1 or 2 windstorm area, named storm coverage must be provided with limits specified by City.

4.2.6.1.5.7 For those properties located in flood prone areas, flood insurance coverage must be provided with limits specified by City.

4.2.6.1.5.8 Builder's risk insurance policy shall remain

in effect until Substantial Completion.

4.2.6.1.6 “Umbrella” Liability Insurance. Contractor shall obtain, pay for and maintain umbrella liability insurance during the Contract term, insuring Contractor for an amount of not less than amount specified in the Supplementary General Conditions or Special Conditions that provides coverage at least as broad as and applies in excess and follows form of the primary liability coverages required hereinabove. The policy shall provide “drop down” coverage where underlying primary insurance coverage limits are insufficient or exhausted.

4.2.7 Policies must include the following clauses, as applicable:

4.2.7.1 This insurance shall not be canceled, materially changed, or non-renewed except after thirty (30) days written notice has been given to City.

4.2.7.2 It is agreed that Contractor’s insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by City for liability arising out of operations under the Contract with City.

4.2.7.3 City, its officials, directors, employees, representatives, and volunteers are added as additional insureds as respects operations and activities of, or on behalf of the named insured performed under Contract with City. The additional insured status must cover completed operations as well. This is not applicable to workers’ compensation policies.

4.2.7.4 A waiver of subrogation in favor of City shall be provided in all policies.

4.2.8 Without limiting any of the other obligations or liabilities of Contractor, Contractor shall require each Subcontractor performing work under the Contract, at Subcontractor’s own expense, to maintain during the term of the Contract, the same stipulated minimum insurance including the required provisions and additional policy conditions as shown above. As an alternative, Contractor may include its Subcontractors as additional insureds on its own coverage as prescribed under these requirements. Contractor’s certificate of insurance shall note in such event that Subcontractors are included as additional insureds and that Contractor agrees to provide workers’ compensation for Subcontractors and their employees. Contractor shall obtain and monitor the certificates of insurance from each Subcontractor in order to assure compliance with the insurance requirements. Contractor must retain the certificates of insurance for the duration of the Contract plus five (5) years and shall have the responsibility of enforcing these insurance requirements among its Subcontractors. City shall be entitled, upon request and without expense, to receive copies of these certificates.

4.2.9 Workers’ compensation insurance coverage must be provided for all workers at all tier 1 levels and meet the statutory requirements of Tex. Lab. Code § 401.011(44) and specific to construction projects for public entities as required by Tex. Lab. Code § 406.096.

- 4.2.10 If the Contractor maintains broader coverage and/or higher limits than the minimums listed herein, the City shall be entitled to the broader coverage and/or higher limits maintain by the Contractor.
- 4.2.11 By requiring insurance herein, the City does not represent that coverage limits will necessarily be adequate to protect the Contractor, and such coverage and limits shall not be deemed as a limitation on Contractor's liability.

## **Article 5. Construction Documents, Coordination Documents, and Record Documents**

### **5.1 Drawings and Specifications.**

- 5.1.1 Copies Furnished. Contractor will be furnished, free of charge, the number of complete sets of the Drawings, Specifications, and Addenda as provided in the Supplementary General Conditions or Special Conditions. Additional complete sets of Drawings and Specifications, if requested, will be furnished at reproduction cost to the entity requesting such additional sets. Electronic copies of such documents will be provided to Contractor without charge.
- 5.1.2 Ownership of Drawings and Specifications. All Drawings, Specifications and copies thereof furnished by A/E are to remain A/E's property. These documents are not to be used on any other project, and with the exception of the Contract record set and electronic versions needed for warranty operations, are to be returned to the A/E, upon request, following completion of the Work.
- 5.1.3 Interrelation of Documents. The Contract Documents as referenced in the Contract between City and Contractor are complimentary, and what is required by one shall be as binding as if required by all.
- 5.1.4 Resolution of Conflicts in Documents. Where conflicts may exist within the Contract Documents, the documents shall govern in the following order: (a) Change Orders, addenda, and written amendments to the Contract; (b) the Contract; (c) Drawings; (d) Specifications (but Specifications shall control over Drawings as to quality of materials and workmanship); and (e) other Contract Documents. Among categories of documents having the same order of precedence, the term or provision that includes the latest date shall control and more specific requirements shall govern over general requirements. Contractor shall notify A/E and City for resolution of the issue prior to executing the Work in question.
- 5.1.5 Contractor's Duty to Review Contract Documents. In order to facilitate its responsibilities for completion of the Work in accordance with and as reasonably inferable from the Contract Documents, prior to commencing the Work, Contractor shall examine and compare the Contract Documents, information furnished by City, relevant field measurements made by Contractor and any visible or reasonably anticipated conditions at the Site affecting the Work. This duty extends throughout the construction phase prior to commencing each particular work activity and/or system installation.
- 5.1.6 Discrepancies and Omissions in Drawings and Specifications.
- 5.1.6.1 Promptly report to City and to A/E the discovery of any apparent error, omission or inconsistency in the Contract Documents prior to execution of the Work.

- 5.1.6.2 It is recognized that Contractor is not acting in the capacity of a licensed design professional, unless it is performing as a Design- Build firm.
- 5.1.6.3 It is further recognized that Contractor's examination of Contract Documents is to facilitate construction and does not create an affirmative responsibility to detect errors, omissions or inconsistencies or to ascertain compliance with applicable laws, building codes or regulations, unless it is performing as a Design- Build firm or a Construction Manager-at-Risk.
- 5.1.6.4 When performing as a Design-Build firm, Contractor has sole responsibility for discrepancies, errors, and omissions in the Drawings and Specifications.
- 5.1.6.5 When performing as a Construction Manager-at-Risk, Contractor has a shared responsibility with A/E for discovery and resolution of discrepancies, errors, and omissions in the Contract Documents. In such case, Contractor's responsibility pertains to review, coordination, and recommendation of resolution strategies within budget constraints.
- 5.1.6.6 Contractor has no liability for errors, omissions, or inconsistencies unless Contractor knowingly failed to report a recognized problem to City or the Work is executed under a Design-Build or Construction Manager-at-Risk Contract as outlined above. Should Contractor fail to perform the examination and reporting obligations of these provisions, Contractor is responsible for avoidable costs and direct and/or consequential damages.

5.2 Requirements for Record Documents. Contractor shall:

- 5.2.1 Maintain at the Site one copy of all Drawings, Specifications, addenda, approved submittals, Contract modifications, and all Project correspondence. Keep current and maintain Drawings and Specifications in good order with postings and markings to record actual conditions of Work and show and reference all changes made during construction. Provide City and A/E access to these documents.
- 5.2.2 Maintain the Record Documents including Drawings, Specifications and other materials which reflect the actual field conditions and representations of the Work performed, whether it be directed by addendum, Change Order or otherwise. Make available all records prescribed herein for reference and examination by City and its representatives and agents.
- 5.2.3 Update the Record Documents at least monthly prior to submission of periodic partial pay estimates. Failure to maintain current Record Documents constitutes cause for denial of a progress payment otherwise due.
- 5.2.4 Prior to requesting Substantial Completion inspection Contractor shall furnish a copy of its marked-up Record Documents and a preliminary copy of each instructional manual, maintenance and operating manual, parts catalog, wiring diagrams, spare parts, specified written warranties and like publications, or parts for all installed equipment, systems, and like items and as described in the Contract Documents. (Unexecuted samples of the aforementioned documentation may be reviewed by City when the absence of substantial completion transactions preclude execution; however, Contractor remains obligated to provide fully

executed copies of such materials prior to final payment.)

- 5.2.5 Once determined acceptable by City with input from A/E, provide one (1) reproducible copy and one (1) electronic media copy of all Record Documents, unless otherwise required by the Supplementary General Conditions or Special Conditions.
- 5.2.6 Contractor shall be responsible for updating the Record Documents for all Contractor initiated documents and changes to the Contract Documents due to coordination and actual field conditions, including RFIs.
- 5.2.7 A/E shall be responsible for updating the Record Documents for any addenda, Change Orders, A/E supplemental instructions and any other alterations to the Contract Documents generated by A/E or City.

## **Article 6. Construction Safety**

- 6.1 General. It is the duty and responsibility of Contractor and all of its Subcontractors to be familiar with, enforce and comply with all requirements of Public Law No. 91- 596, 29 U.S.C. § 651 et. seq., the Occupational Safety and Health Act of 1970, (OSHA) and all amendments thereto. Contractor shall prepare a safety plan specific to the Project and submit it to City and A/E prior to commencing Work. In addition, Contractor and all of its Subcontractors shall comply with all applicable laws and regulations of any public body having jurisdiction for safety of persons or property to protect them from damage, injury or loss and erect and maintain all necessary safeguards for such safety and protection.
- 6.2 Notices. Contractor shall provide notices as follows:
  - 6.2.1 Notify owners of adjacent property including those that own or operate utility services and/or underground facilities, and utility owners, when prosecution of the Work may affect them or their facilities, and cooperate with them in the protection, removal, relocation and replacement, and access to their facilities and/or utilities.
  - 6.2.2 Coordinate the exchange of material safety data sheets (MSDSs) or other hazard communication information required to be made available to or exchanged between or among employers at the site in connection with laws and regulations. Maintain a complete file of MSDSs for all materials in use on site throughout the construction phase and make such file available to City and its agents as requested.
- 6.3 Emergencies. In any emergency affecting the safety of persons or property, Contractor shall act to minimize, mitigate, and prevent threatened damage, injury or loss.
  - 6.3.2 Have authorized agents of Contractor respond immediately upon call at any time of day or night when circumstances warrant the presence of Contractor to protect the Work or adjacent property from damage or to take such action pertaining to the Work as may be necessary to provide for the safety of the public.
  - 6.3.3 Give City and A/E prompt notice of all such events.
  - 6.3.4 If Contractor believes that any changes in the Work or variations from Contract Documents have been caused by its emergency response, promptly notify City within seventy-two (72) hours of the emergency response event.

- 6.3.5 Should Contractor fail to respond, City is authorized to direct other forces to take action as necessary and City may deduct any cost of remedial action from funds otherwise due Contractor.
- 6.4 Injuries. In the event of an incident or accident involving outside medical care for an individual on or near the Work, Contractor shall notify City and other parties as may be directed promptly, but no later than twenty-four (24) hours after Contractor learns that an event required medical care.
- 6.4.1 Record the location of the event and the circumstances surrounding it, by using photography or other means, and gather witness statements and other documentation which describes the event. Supply City and A/E with an incident report no later than thirty-six (36) hours after the occurrence of the event. In the event of a catastrophic incident (one (1) fatality or three (3) workers hospitalized), barricade and leave intact the scene of the incident until all investigations are complete. A full set of incident investigation documents, including facts, finding of cause, and remedial plans shall be provided within one (1) week after occurrence, unless otherwise directed by legal counsel. Contractor shall provide City with written notification within one week of such catastrophic event if legal counsel delays submission of full report.
- 6.5 Environmental Safety. Upon encountering any previously unknown potentially hazardous material, or other materials potentially contaminated by hazardous material, Contractor shall immediately stop work activities impacted by the discovery, secure the affected area, and notify City immediately.
- 6.5.1 Bind all Subcontractors to the same duty.
- 6.5.2 Upon receiving such notice, City will promptly engage qualified experts to make such investigations and conduct such tests as may be reasonably necessary to determine the existence or extent of any environmental hazard. Upon completion of this investigation, City will issue a written report to Contractor identifying the material(s) found and indicate any necessary steps to be taken to treat, handle, transport or dispose of the material.
- 6.5.3 City may hire third-party Contractors to perform any or all such steps.
- 6.5.4 Should compliance with City's instructions result in an increase in Contractor's cost of performance, or delay the Work, City will make an equitable adjustment to the Contract Sum and/or the time of completion, and modify the Contract in writing accordingly.
- 6.6 Trenching Plan. When the project requires excavation which either exceeds a depth of four (4) feet, or results in any worker's upper body being positioned below grade level, Contractor is required to submit a trenching plan (see Supplementary General Conditions and Special Provisions, Exhibit SP-3, City of Bryan Record of Excavation) to City prior to commencing trenching operations unless an engineered plan is part of the Contract Documents. The plan is required to be prepared and sealed by a professional engineer registered in the State of Texas, and hired or employed by Contractor or Subcontractor to perform the work.
- 6.7 Traffic Control. The contractor is responsible for traffic control. The contractor shall provide, as a submittal, a Traffic Control Plan sealed by a Professional Engineer Licensed in the State of Texas. The contractor's traffic control plan and schedule shall be completed for review during the pre-construction meeting. No notice to proceed will be issued until the traffic control plan is approved through the appropriate authorities. The contractor

shall update the traffic control plan as required during construction. All traffic control shall comply with the Texas Manual of Uniform Traffic Control Devices.

The contractor's plan must be approved by the City Project Manager prior to beginning work.

## Article 7. Quality Control

7.1 Materials & Workmanship. Contractor shall execute Work in a good and workmanlike matter in accordance with the Contract Documents. Contractor shall develop and provide a quality control plan specific to this Project and acceptable to City. Where Contract Documents do not specify quality standards, complete and construct all Work in compliance with generally accepted construction industry standards. Unless otherwise specified, incorporate all new materials and equipment into the Work under the Contract.

7.2 Testing.

7.2.1 City is responsible for coordinating and paying for routine and special tests required to confirm compliance with quality and performance requirements, except as stated below or otherwise required by the Contract Documents. Contractor shall provide the following testing:

7.2.1.1 Any test of basic material or fabricated equipment included as part of a submittal for a required item in order to establish compliance with the Contract Documents.

7.2.1.2 Any test of basic material or fabricated equipment offered as a substitute for a specified item on which a test may be required in order to establish compliance with the Contract Documents.

7.2.1.3 Preliminary, start-up, pre-functional and operational testing of building equipment and systems as necessary to confirm operational compliance with requirements of the Contract Documents.

7.2.1.4 All subsequent tests on original or replaced materials conducted as a result of prior testing failure.

7.2.2 All testing shall be performed in accordance with standard test procedures by an accredited laboratory, or special consultant as appropriate, acceptable to City. Results of all tests shall be provided promptly to City, A/E, and Contractor.

7.2.3 Non-Compliance (Test Results). Should any of the tests indicate that a material and/or system does not comply with the Contract requirements, the burden of proof remains with Contractor, subject to:

7.2.3.1 Contractor selection and submission of the laboratory for City acceptance.

7.2.3.2 Acceptance by City of the quality and nature of tests.

7.2.3.3 All tests taken in the presence of A/E and/or City, or their representatives.

7.2.3.4 If tests confirm that the material/systems comply with Contract Documents, City will pay the cost of the test.

- 7.2.3.5 If tests reveal noncompliance, Contractor will pay those laboratory fees and costs of that particular test and all future tests, of that failing Work, necessary to eventually confirm compliance with Contract Documents.
- 7.2.3.6 Proof of noncompliance with the Contract Documents will make Contractor liable for any corrective action which City determines appropriate, including complete removal and replacement of non-compliant work or material.
- 7.2.4 Notice of Testing. Contractor shall give City and A/E timely notice of its readiness and the date arranged so City and A/E may observe such inspection, testing, or approval.
- 7.2.5 Test Samples. Contractor is responsible for providing Samples of sufficient size for test purposes and for coordinating such tests with their Work Progress Schedule to avoid delay.
- 7.2.6 Covering Up Work. If Contractor covers up any Work without providing City an opportunity to inspect, Contractor shall, if requested by City, uncover and recover the work at Contractor's expense.

### 7.3 Submittals.

- 7.3.1 Contractor's Submittals. Contractor shall submit with reasonable promptness consistent with the Project schedule and in orderly sequence all Shop Drawings, Samples, or other information required by the Contract Documents, or subsequently required by Change Order. Prior to submitting, Contractor shall review each submittal for general compliance with Contract Documents and approve submittals for review by A/E and City by an approval stamp affixed to each copy. Submittal data presented without Contractor's stamp will be returned without review or comment, and any delay resulting from failure is Contractor's responsibility.
  - 7.3.1.1 Contractor shall within twenty-one (21) days of the effective date of the Notice To Proceed with construction, submit to City and A/E, a submittal schedule/register, organized by specification section, listing all items to be furnished for review and approval by A/E and City. The list shall include Shop Drawings, manufacturer's literature, certificates of compliance, materials Samples, materials colors, guarantees, and all other items identified throughout the Specifications.
  - 7.3.1.2 Contractor shall indicate the type of item, Contract requirements reference, and Contractor's scheduled dates for submitting the item along with the requested dates for approval answers from A/E and City. The submittal register shall indicate the projected dates for procurement of all included items and shall be updated at least monthly with actual approval and procurement dates. Contractor's Submittal Register must be reasonable in terms of the review time for complex submittals. Contractor's submittal schedule must be consistent with the Work Progress Schedule and identify critical submittals. Show and allow a minimum of fifteen (15) calendar day's duration after receipt by A/E and City for review and approval. If resubmittal required, allow a minimum of an additional fifteen (15) calendar days for review. Submit the updated Submittal Register with each request for progress payment. City may establish routine review procedures and schedules for submittals at the

preconstruction conference and/or elsewhere in the Contract Documents. If Contractor fails to update and provide the Submittal Register as required, City may, after seven (7) days' notice to Contractor withhold a reasonable sum of money that would otherwise be due Contractor.

7.3.1.3 Contractor shall coordinate the Submittal Register with the Work Progress Schedule. Do not schedule Work requiring a submittal to begin prior to scheduling review and approval of the related submittal. Revise and/or update both schedules monthly to ensure consistency and current project data. Provide to City the updated Submittal Register and schedule with each application for progress payment. Refer to requirements for the Work Progress Schedule for inclusion of procurement activities therein. Regardless, the Submittal Register shall identify dates submitted and returned and shall be used to confirm status and disposition of particular items submitted, including approval or other action taken and other information not conveniently tracked through the Work Progress Schedule.

7.3.1.4 By submitting Shop Drawings, Samples or other required information, Contractor represents that it has determined and verified all applicable field measurements, field construction criteria, materials, catalog numbers and similar data to the extent possible from existing conditions and design information provided by A/E prior to fabrication; and has checked and coordinated each Shop Drawing and Sample with the requirements of the Work and the Contract Documents.

7.3.2 Review of Submittals. A/E and City review is only for conformance with the design concept and the information provided in the Contract Documents. Responses to submittals will be in writing. The approval of a separate item does not indicate approval of an assembly in which the item functions. The approval of a submittal does not relieve Contractor of responsibility for any deviation from the requirements of the Contract unless Contractor informs A/E and City of such deviation in a clear, conspicuous, and written manner on the submittal transmittal and at the time of submission, and obtains City's written specific approval of the particular deviation.

7.3.3 Correction and Resubmission. Contractor shall make any corrections required to a submittal and resubmit the required number of corrected copies promptly so as to avoid delay, until submittal approval. Direct attention in writing to A/E and City, when applicable, to any new revisions other than the corrections requested on previous submissions.

7.3.4 Limits on Shop Drawing Review. Contractor shall not commence any Work requiring a submittal until review of the submittal under Subsection 7.3.2. Construct all such work in accordance with reviewed submittals. Comments incorporated as part of the review in Subsection 7.3.2 of Shop Drawings and Samples is not authorization to Contractor to perform extra work or changed work unless authorized through a Change Order. A/E's and City's review, if any, does not relieve Contractor from responsibility for defects in the Work resulting from errors or omissions of any kind on the submittal, regardless of any approval action. A/E or City shall not make formal changes to the Contract Documents via the submittal process. Changes to the Construction Documents shall be accomplished via Section 3.2.2 and Article 10 changes.

7.3.5 No Substitutions Without Approval. City and A/E may receive and

consider Contractor's request for substitution when Contractor agrees to reimburse City for review costs and satisfies the requirements of this section. If Contractor does not satisfy these conditions, City and A/E will return the request without action except to record noncompliance with these requirements. City will not consider the request if Contractor cannot provide the product or method because of failure to pursue the Work promptly or coordinate activities properly. Contractor's request for a substitution may be considered by City and A/E when:

- 7.3.5.1 The Contract Documents do not require extensive revisions; and
- 7.3.5.2 Proposed changes are in keeping with the general intent of the Contract Documents and the design intent of A/E and do not result in an increase in cost to City; and
- 7.3.5.3 The request is timely, fully documented, properly submitted and one or more of the following apply:
  - 7.3.5.3.1 Contractor cannot provide the specified product, assembly or method of construction within the Contract Time;
  - 7.3.5.3.2 The request directly relates to an "or-equal" clause or similar language in the Contract Documents;
  - 7.3.5.3.3 The request directly relates to a "product design standard" or "performance standard" clause in the Contract Documents;
  - 7.3.5.3.4 The requested substitution offers City a substantial advantage in cost, time, energy conservation or other considerations, after deducting additional responsibilities City must assume;
  - 7.3.5.3.5 The specified product or method of construction cannot receive necessary approval by an authority having jurisdiction, and City can approve the requested substitution;
  - 7.3.5.3.6 Contractor cannot provide the specified product, assembly or method of construction in a manner that is compatible with other materials and where Contractor certifies that the substitution will overcome the incompatibility;
  - 7.3.5.3.7 Contractor cannot coordinate the specified product, assembly or method of construction with other materials and where Contractor certifies they can coordinate the proposed substitution; or
  - 7.3.5.3.8 The specified product, assembly or method of construction cannot provide a warranty required by the Contract Documents and where Contractor certifies that the proposed substitution provides the required warranty.
  - 7.3.5.3.9 The manufacture of the specified product has been removed from production due to cancellation or obsolescence.

7.3.6 Unauthorized Substitutions at Contractor's Risk. Contractor is financially

responsible for any additional costs or delays resulting from unauthorized substitution of materials, equipment or fixtures other than those specified. Contractor shall reimburse City for any increased design or contract administration costs resulting from such unauthorized substitutions.

#### 7.4 Field Mock-up.

7.4.1 Mock-ups shall be constructed prior to commencement of a specified scope of work to confirm acceptable workmanship.

7.4.1.1 As a minimum, field mock-ups shall be constructed for roofing systems, exterior veneer / finish systems, glazing systems, and any other Work requiring a mock-up as identified throughout the Contract Documents. Mock-ups for systems not part of the Project scope shall not be required.

7.4.1.2 Mock-ups may be incorporated into the Work if allowed by the Contract Documents and if acceptable to City. If mock-ups are freestanding, they shall remain in place until otherwise directed by City.

7.4.1.3 Contractor shall include field mock-ups in their Work Progress Schedule and shall notify City and A/E of readiness for review sufficiently in advance to coordinate review without delay.

#### 7.5 Inspection During Construction.

7.5.1 Contractor shall provide sufficient, safe, and proper facilities, including equipment as necessary for safe access, at all reasonable times for observation and/or inspection of the Work by City and its agents. "Reasonable times" of inspection allow for sufficient monitoring of the quality of materials and installation without substantially impeding the progress of the Work.

7.5.2 Contractor shall not cover up any Work with finishing materials or other building components prior to providing City and its agents an opportunity to perform an inspection of the Work.

7.5.2.1 Should corrections of the Work be required for approval, Contractor shall not cover-up corrected Work until City indicates approval.

7.5.2.2 Contractor shall provide notification of at least five (5) working days or otherwise as mutually agreed, to City of the anticipated need for a cover-up inspection. Should City fail to make the necessary inspection within the agreed period, Contractor may proceed with cover-up Work, but is not relieved of responsibility for Work to comply with requirements of the Contract Documents.

## Article 8. Construction Schedules

8.1 Contract Time. **TIME IS AN ESSENTIAL ELEMENT OF THE CONTRACT.** The Contract Time is the time between the dates indicated in the Notice to Proceed for commencement of the Work and for achieving Substantial Completion. The Contract Time can be modified only by Change Order. Failure to achieve Substantial Completion within the Contract Time as otherwise agreed to in writing will cause damage to City and may subject Contractor to liquidated damages as provided in the Contract Documents. If Contractor fails to achieve Final Completion within sixty (60) calendar days after

Substantial Completion or a mutually agreed upon longer period of time between Contractor and City, Contractor shall be responsible for City's additional inspection, project management, and maintenance cost to the extent caused by Contractor's failure to achieve Final Completion.

8.2 Notice to Proceed. City will issue a Notice to Proceed which shall state the dates for beginning Work and for achieving Substantial Completion of the Work.

8.3 Work Progress Schedule. Refer to Supplementary General Conditions or Special Conditions for additional schedule requirements. Unless indicated otherwise in those documents, Contractor shall submit their initial Work Progress Schedule for the Work in relation to the entire Project not later than twenty-one (21) days after the effective date of the Notice to Proceed to City and A/E. Unless otherwise indicated in the Contract Documents, the Work Progress Schedule shall be computerized Critical Path Method (CPM) with fully editable logic. This initial schedule shall indicate the dates for starting and completing the various aspects required to complete the Work, including mobilization, procurement, installation, testing, inspection, delivery of Close-out Documents and acceptance of all the Work of the Contract. When acceptable to City, the initially accepted schedule shall be the Baseline Schedule for comparison to actual conditions throughout the Contract duration.

8.3.1 Schedule Requirements. Contractor shall submit electronic and paper copy of the initial Work Progress Schedule reflecting accurate and reliable representations of the planned progress of the Work, the Work to date if any, and of Contractor's actual plans for its completion. Contractor shall organize and provide adequate detail so the schedule is capable of measuring and forecasting the effect of delaying events on completed and uncompleted activities.

8.3.1.1 Contractor shall resubmit initial schedule as required to address review comments from A/E and City until such schedule is accepted as the Baseline Schedule.

8.3.1.2 Submittal of a schedule, schedule revision or schedule update constitutes Contractor's representation to City of the accurate depiction of all progress to date and that Contractor will follow the schedule as submitted in performing the Work.

8.3.2 Schedule Updates. Contractor shall update the Work Progress Schedule and the Submittal Register monthly, as a minimum, to reflect progress to date and current plans for completing the Work, while maintaining original schedule as Baseline Schedule and submit paper and electronic copies of the update to A/E and City as directed, but as a minimum with each request for payment. City has no duty to make progress payments unless accompanied by the updated Work Progress Schedule. Show the anticipated date of completion reflecting all extensions of time granted through Change Order as of the date of the update. Contractor may revise the Work Progress Schedule when in Contractor's judgment it becomes necessary for the management of the Work. Contractor shall identify all proposed changes to schedule logic to City and to A/E via an executive summary accompanying the updated schedule for review prior to final implementation of revisions into a revised Baseline Schedule. Schedule changes that materially impact City's operations shall be communicated promptly to City and shall not be incorporated into the revised Baseline Schedule without City's consent.

8.3.3 The Work Progress Schedule is for Contractor's use in managing the Work and

submittal of the schedule, and successive updates or revisions, is for the information of City and to demonstrate that Contractor has complied with requirements for planning the Work. City's acceptance of a schedule, schedule update or revision constitutes City's agreement to coordinate its own activities with Contractor's activities as shown on the schedule.

8.3.3.1 Acceptance of the Work Progress Schedule, or update and/or revision thereto does not indicate any approval of Contractor's proposed sequences and duration.

8.3.3.2 Acceptance of a Work Progress Schedule update or revision indicating early or late completion does not constitute City's consent, alter the terms of the Contract, or waive either Contractor's responsibility for timely completion or City's right to damages for Contractor's failure to do so.

8.3.3.3 Contractor's scheduled dates for completion of any activity or the entire Work do not constitute a change in terms of the Contract. Change Orders are the only method of modifying the Substantial Completion Date(s) and Contract Time.

8.4 Ownership of Float. Unless indicated otherwise in the Contract Documents, Contractor shall develop its schedule, pricing, and execution plan to provide a minimum of ten (10) percent total float at acceptance of the Baseline Schedule. Float time contained in the Work Progress Schedule is not for the exclusive benefit of Contractor or City, but belongs to the Project and may be consumed by either party as needed on a first-used basis. Float is for planning purposes only and is anticipated to be used during the course of construction. Unused float does not in any way obligate the contractor to deliver the project earlier than the agreed upon substantial completion date. Time needed for change orders that add scope to the project will not be applied to float without Contractor's consent.

8.5 Completion of Work. Contractor is accountable for completing the Work within the Contract Time stated in the Contract, or as otherwise amended by Change Order.

8.5.1 If, in the judgment of City, the work is behind schedule and the rate of placement of work is inadequate to regain scheduled progress to insure timely completion of the entire work or a separable portion thereof, Contractor, when so informed by City, shall immediately take action to increase the rate of work placement by:

8.5.1.1 An increase in working forces.

8.5.1.2 An increase in equipment or tools.

8.5.1.3 An increase in hours of work or number of shifts.

8.5.1.4 Expedite delivery of materials.

8.5.1.5 Other action proposed if acceptable to City.

8.5.2 Within ten (10) days after such notice from City, Contractor shall notify City in writing of the specific measures taken and/or planned to increase the rate of progress. Contactor shall include an estimate as to the date of scheduled progress recovery and an updated Work Progress Schedule illustrating Contractor's plan for achieving timely completion of the Project. Should City deem the plan of

action inadequate, Contractor shall take additional steps or make adjustments as necessary to its plan of action until it meets with City's approval.

8.6 Modification of the Contract Time.

8.6.1 Delays and extension of time as hereinafter described are valid only if executed in accordance with provisions set forth in Article 10.

8.6.2 When a delay defined herein as excusable prevents Contractor from completing the Work within the Contract Time, Contractor is entitled to an extension of time. City will make an equitable adjustment and extend the number of days lost because of excusable delay or Weather Days, as measured by Contractor's progress schedule. All extensions of time will be granted in calendar days. In no event, however, will an extension of time be granted for delays that merely extend the duration of non-critical activities, or only consume float without delaying the project Substantial Completion date(s).

8.6.2.1 A "Weather Day" is a day on which Contractor's current schedule indicates Work is to be done, and on which inclement weather and/or related site conditions prevent Contractor from performing seven (7) continuous hours of Work on the critical path between the hours of 7:00 a.m. and 6:00 p.m. Weather days are excusable delays. When weather conditions at the site prevent work from proceeding, Contractor shall immediately notify City for confirmation of the conditions. At the end of each calendar month, submit to City and A/E a list of Weather Days occurring in that month along with documentation of the impact on critical activities. Based on confirmation by City, any time extension granted will be issued by Change Order. If Contractor and City cannot agree on the time extension, City may issue a ULCO for fair and reasonable time extension.

8.6.2.2 Excusable Delay. Contractor is entitled to an equitable adjustment of the Contract Time, issued via change order, for delays caused by the following:

8.6.2.2.1 Errors, omissions and imperfections in design, which A/E corrects by means of changes in the Drawings and Specifications.

8.6.2.2.2 Unanticipated physical conditions at the Site, which A/E corrects by means of changes to the Drawings and Specifications or for which City directs changes in the Work identified in the Contract Documents.

8.6.2.2.3 Failure of City to have secured property, right-of-way or easements necessary for Work to begin or progress.

8.6.2.2.4 Changes in the Work that effect activities identified in Contractor's schedule as "critical" to completion of the entire Work, if such changes are ordered by City or recommended by A/E and ordered by City.

8.6.2.2.5 Suspension of Work for unexpected natural events, Force

Majeure (sometimes called “acts of God”), civil unrest, strikes or other events which are not within the reasonable control of Contractor.

8.6.2.2.6 Suspension of Work for convenience of City, which prevents Contractor from completing the Work within the Contract Time.

8.6.2.2.7 Administrative delays caused by activities or approval requirements related to an Authority Having Jurisdiction.

8.6.3 Contractor’s relief in the event of such delays is the time impact to the critical path as determined by analysis of Contractor’s schedule. In the event that Contractor incurs additional direct costs because of the excusable delays other than described in Subparagraph 8.6.2.2.4 and within the reasonable control of City, the Contract price and Contract Time are to be equitably adjusted by City pursuant to the provisions of Article 10.

8.7 No Damages for Delay. Contractor has no claim for monetary damages for delay or hindrances to the work from any cause, including without limitation any act or omission of City.

8.8 Concurrent Delay. When the completion of the Work is simultaneously delayed by an excusable delay and a delay arising from a cause not designated as excusable, Contractor may not be entitled to a time extension for the period of concurrent delay.

8.9 Other Time Extension Requests. Time extensions requested in association with changes to the Work directed or requested by City shall be included with Contractor’s proposed costs for such change. Time extensions requested for inclement weather are covered by Paragraph 8.6.2.1 above. If Contractor believes that the completion of the Work is delayed by a circumstance other than for changes directed to the Work or weather, they shall give City written notice, stating the nature of the delay and the activities potentially affected, within five (5) days after the onset of the event or circumstance giving rise to the excusable delay. Contractor shall provide sufficient written evidence to document the delay. In the case of a continuing cause of delay, only one claim is necessary. State claims for extensions of time in numbers of whole or half days.

8.9.1 Within ten (10) days after the cessation of the delay, Contractor shall formalize its request for extension of time in writing to include a full analysis of the schedule impact of the delay and substantiation of the excusable nature of the delay. All changes to the Contract Time or made as a result of such claims is by Change Order, as set forth in Article 10.

8.9.2 No extension of time releases Contractor or the Surety furnishing a performance or payment bond from any obligations under the Contract or such a bond. Those obligations remain in full force until the discharge of the Contract.

8.9.3 Contents of Time Extension Requests. Contractor shall provide with each Time Extension Request a quantitative demonstration of the impact of the delay on project completion time, based on the Work Progress Schedule. Contractor shall include with Time Extension Requests a reasonably detailed narrative setting forth:

8.9.3.1 The nature of the delay and its cause; the basis of Contractor’s claim of entitlement to a time extension.

8.9.3.2 Documentation of the actual impacts of the claimed delay on the critical

path indicated in Contractor's Work Progress Schedule, and any concurrent delays.

8.9.3.3 Description and documentation of steps taken by Contractor to mitigate the effect of the claimed delay, including, when appropriate, the modification of the Work Progress Schedule.

8.9.4 City's Response. City will respond to the Time Extension Request by providing to Contractor written notice of the number of days granted, if any, and giving its reason if this number differs from the number of days requested by Contractor.

8.9.4.1 City will not grant time extensions for delays that do not affect the Contract Substantial Completion date.

8.9.4.2 City will respond to each properly submitted Time Extension Request within fifteen (15) days following receipt. If City cannot reasonably make a determination about Contractor's entitlement to a time extension within that time, City will notify Contractor in writing. Unless otherwise agreed by Contractor, City has no more than fifteen (15) additional days to prepare a final response. If City fails to respond within forty-five (45) days from the date the Time Extension Request is received, Contractor is entitled to a time extension in the amount requested.

8.10 Failure to Complete Work Within the Contract Time. **TIME IS AN ESSENTIAL ELEMENT OF THE CONTRACT.** Contractor's failure to substantially complete the Work within the Contract Time or to achieve Substantial Completion as required will cause damage to City. These damages shall be liquidated by agreement of Contractor and City, in the amount per day as set forth in the Contract Documents.

8.11 Liquidated Damages. City may collect liquidated damages due from Contractor directly or indirectly by reducing the Contract Sum in the amount of liquidated damages stated in the Supplementary General Conditions and Special Provisions, SP-14: FAILURE TO COMPLETE ON TIME.

## Article 9. Payments

9.1 Schedule of Values. Contractor shall submit to City and A/E for acceptance a Schedule of Values accurately itemizing material and labor for the various classifications of the Work based on the organization of the specification sections and of sufficient detail acceptable to City. The accepted Schedule of Values will be the basis for the progress payments under the Contract.

9.1.1 No progress payments will be made prior to receipt and acceptance of the Schedule of Values, provided in such detail as required by City, and submitted not less than twenty-one (21) days prior to the first request for payment. The Schedule of Values shall follow the order of trade divisions of the Specifications and include itemized costs for general conditions, costs for preparing close out documents, fees, contingencies, and City cash allowances, if applicable, so that the sum of the items will equal the Contract price. As appropriate, assign each item labor and/or material values, the subtotal thereof equaling the value of the work in place when complete.

9.1.1.1 City requires that the Work items be inclusive of the cost of the Work items only. Any contract markups for overhead and profit,

general conditions, etc., shall be contained within separate line items for those specific purposes which shall be divided into at least two (2) lines, one (1) for labor and one (1) for materials.

9.1.2 Contractor shall retain a copy of all worksheets used in preparation of its bid or proposal, supported by a notarized statement that the worksheets are true and complete copies of the documents used to prepare the bid or proposal. Make the worksheets available to City at the time of Contract execution. Thereafter Contractor shall grant City during normal business hours access to said copy of worksheets at any time during the period commencing upon execution of the Contract and ending one year after final payment.

9.2 Progress Payments. Contractor will receive periodic progress payments for Work performed, materials in place, suitably stored on Site, or as otherwise agreed to by City and Contractor. Payment is not due until receipt by City or his designee of a correct and complete Pay Application in electronic and/or hard copy format as set forth in Supplementary General Conditions, Special Conditions, and certified by A/E. Progress payments are made provisionally and do not constitute acceptance of work not in accordance with the Contract Documents. City will not process progress payment applications for Change Order Work until all parties execute the Change Order.

9.2.1 Preliminary Pay Worksheet. Once each month that a progress payment is to be requested, the Contractor shall submit to A/E and City a complete, clean copy of a preliminary pay worksheet or preliminary pay application, to include the following:

9.2.1.1 Contractor's estimate of the amount of Work performed, labor furnished and materials incorporated into the Work, using the established Schedule of Values;

9.2.1.2 An updated Work Progress Schedule including the executive summary and all required schedule reports;

9.2.1.3 Such additional documentation as City may require as set forth in the Supplementary General Conditions or elsewhere in the Contract Documents; and

9.2.1.4 Construction payment affidavit.

9.2.2 Contractor's Application for Payment. As soon as practicable, but in no event later than seven (7) days after receipt of the preliminary pay worksheet, A/E and City will meet with Contractor to review the preliminary pay worksheet and to observe the condition of the Work. Based on this review, City and A/E may require modifications to the preliminary pay worksheet prior to the submittal of an Application for Payment, and will promptly notify Contractor of revisions necessary for approval. As soon as practicable, Contractor shall submit its Application for Payment on the appropriate and completed form, reflecting the required modifications to the Schedule of Values required by A/E and/or City. Attach all additional documentation required by City and/or A/E, as well as an affidavit affirming that all payrolls, bills for labor, materials, equipment, subcontracted work and other indebtedness connected with Contractor's Application for Payment are paid or will be paid within the time specified in Tex. Gov't Code, Ch. 2251. No Application for Payment is complete unless it fully reflects all required modifications, and attaches all required documentation including Contractor's affidavit.

- 9.2.3 Certification by Architect/Engineer. Within five (5) days or earlier following A/E's receipt of Contractor's formal Application for Payment, A/E will review the Application for Payment for completeness, and forward it to City. A/E will certify that the application is complete and payable, or that it is incomplete, stating in particular what is missing. If the Application for Payment is incomplete, Contractor shall make the required corrections and resubmit the Application for Payment for processing.
- 9.3 City's Duty to Pay. City has no duty to pay the Contractor except on receipt by City of: 1) a complete Application for Payment certified by A/E; 2) Contractor's updated Work Progress Schedule; and 3) confirmation that Contractor's record documentation at the Site is kept current.
- 9.3.1 Payment for stored materials and/or equipment confirmed by City and A/E to be on-site or otherwise properly stored is limited to eighty-five (85) percent of the invoice price or eighty-five (85) percent of the scheduled value for the materials or equipment, whichever is less.
- 9.3.2 Retainage. City will withhold from each progress payment, as retainage, five (5) percent of the total earned amount, the amount authorized by law, or as otherwise set forth in the Supplementary General Conditions or Special Conditions. Retainage is managed in conformance with Tex. Gov't Code, Ch. 2252, Subch. B.
- 9.3.2.1 Contractor shall provide written consent of its surety for any request for reduction or release of retainage.
- 9.3.2.2 At least sixty-five (65) percent of the Contract, or such other discrete Work phase as set forth in Subsection 11.1.6 or Work package delineated in the Contract Documents, must be completed before City can consider a retainage reduction or release.
- 9.3.2.3 Contractor shall not withhold retainage from their Subcontractors and suppliers in amounts that are any percentage greater than that withheld in its Contract with City under this subsection, unless otherwise acceptable to City.
- 9.3.3 Price Reduction to Cover Loss. City may reduce any Application for Payment, prior to payment to the extent necessary to protect City from loss on account of actions of Contractor including, but not limited to, the following:
- 9.3.3.1 Defective or incomplete Work not remedied;
- 9.3.3.2 Damage to Work of a separate Contractor;
- 9.3.3.3 Failure to maintain scheduled progress or reasonable evidence that the Work will not be completed within the Contract Time;
- 9.3.3.4 Persistent failure to carry out the Work in accordance with the Contract Documents;
- 9.3.3.5 Reasonable evidence that the Work cannot be completed for the unpaid portion of the Contract Sum;

9.3.3.6 Intentionally omitted.

9.3.3.7 Failure to include the appropriate amount of retainage for that periodic progress payment.

9.3.4 Title to all material and Work covered by progress payments transfers to City upon payment.

9.3.4.1 Transfer of title to City does not relieve Contractor and its Subcontractors of the sole responsibility for the care and protection of materials and Work upon which payments have been made until substantial completion, responsibility for the care and protection of materials and Work in areas where punch list items are completed until final completion or the restoration of any damaged Work, or waive the right of City to require the fulfillment of all the terms of the Contract.

9.4 Progress Payments. Progress payments to Contractor do not release Contractor or its surety from any obligations under the Contract.

9.4.1 Upon City's request, Contractor shall furnish manifest proof of the status of Subcontractor's accounts in a form acceptable to City.

9.4.2 Pay estimate certificates must be signed by a corporate officer or a representative duly authorized by Contractor.

9.4.3 Provide copies of bills of lading, invoices, delivery receipts or other evidence of the location and value of such materials in requesting payment for materials.

9.4.4 For purposes of Tex. Gov't Code § 2251.021(a)(2), the date the performance of service is complete is the date when City approves the Application for Payment.

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

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

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

9.5.3 Inspection by City's representative is allowed at any time. City's inspectors must be satisfied with the security, control, maintenance, and preservation measures.

9.5.4 Materials for this Project are physically separated and marked for the Project in a sectioned-off area. Only materials which have been approved through the submittal process are to be considered for payment.

9.5.5 City reserves the right to reject materials at any time prior to final acceptance of the complete Contract if they do not meet Contract requirements regardless of any previous progress payment made.

9.5.6 With each monthly payment estimate, submit a report to City and A/E listing the

quantities of materials already paid for and still stored in the off-site location.

- 9.5.7 Make warehouse records, receipts and invoices available to City's representatives, upon request, to verify the quantities and their disposition.
- 9.5.8 In the event of Contract termination or default by Contractor, the items in storage off-site, upon which payment has been made, will be promptly turned over to City or City's agents at a location near the jobsite as directed by City. The full provisions of performance and payment bonds on this Project cover the materials off-site in every respect as though they were stored on the Project Site.

9.6 Time for Payment by Contractor Pursuant to Tex. Gov't Code § 2255.022.

- 9.6.1 Contractor who receives a payment from a governmental entity shall pay Subcontractor the appropriate share of the payment not later than the tenth (10<sup>th</sup>) day after the date Contractor receives the payment.
- 9.6.2 The appropriate share is overdue on the eleventh (11<sup>th</sup>) day after the date Contractor receives the payment.

## Article 10. Changes

10.1 Change Orders. A Change Order issued after execution of the Contract is a written order to Contractor, signed by City, Contractor, and A/E, authorizing a change in the Work or an adjustment in the Contract Sum or the Contract Time. The Contract Sum and the Contract Time can only be changed by Change Order. A Change Order signed by Contractor indicates his agreement therewith, including the adjustment in the Contract Sum and/or the Contract Time. City may issue a written authorization for Contractor to proceed with Work of a Change Order in advance of final execution by all parties in accordance with Section 11.9.

10.1.1 City, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, and the Contract Sum and the Contract Time will be adjusted accordingly. All such changes in the Work shall be authorized by Change Order or ULCO, and shall be performed under the applicable conditions of the Contract Documents. If such changes cause an increase or decrease in Contractor's cost of, or time required for, performance of the Contract, an equitable adjustment shall be made and confirmed in writing in a Change Order or a ULCO.

10.1.2 It is recognized by the parties hereto and agreed by them that the Specifications and Drawings may not be complete or free from errors, omissions and imperfections or that they may require changes or additions in order for the Work to be completed to the satisfaction of City and that, accordingly, it is the express intention of the parties, notwithstanding any other provisions in this Contract, that any errors, omissions or imperfections in such Specifications and Drawings, or any changes in or additions to same or to the Work ordered by City and any resulting delays in the Work or increases in Contractor's costs and expenses arising out of such errors, shall not constitute or give rise to any claim, demand or cause of action of any nature whatsoever in favor of Contractor, whether for breach of Contract, or otherwise; provided, however, that City shall be liable to Contractor for the sum stated to be due Contractor in any Change Order approved and signed by both parties, it being agreed hereby that such sum, together with any extension of time contained in said Change Order, shall constitute full compensation to Contractor for all costs, expenses and damages to Contractor.

- 10.1.3 Procedures for administration of Change Orders shall be established by City and stated in Supplementary General Conditions, Special Conditions, or elsewhere in the Contract Documents.
- 10.1.4 No verbal order, verbal statement, or verbal direction of City or his duly appointed representative shall be treated as a change under this article or entitle Contractor to an adjustment.
- 10.1.5 Contractor agrees that City or any of its duly authorized representatives shall have access and the right to examine any directly pertinent books, documents, papers, and records of Contractor. Further, Contractor agrees to include in all its subcontracts a provision to the effect that Subcontractor agrees that City or any of its duly authorized representatives shall have access to and the right to examine any directly pertinent books, documents, papers and records of such Subcontractor relating to any claim arising from the Contract, whether or not the Subcontractor is a party to the claim. The period of access and examination described herein which relates to appeals under the Disputes article of the Contract, litigation, or the settlement of claims arising out of the performance of the Contract shall continue until final disposition of such claims, appeals or litigation.
- 10.2 Unit Prices. If unit prices are stated in the Contract Documents or subsequently agreed upon, and if the quantities originally contemplated are so changed in a Proposed Change Order that application of the agreed unit prices to the quantities of work proposed will cause substantial inequity to City or Contractor, the applicable unit prices shall be equitably adjusted as provided in the Supplementary General Conditions or Special Conditions or as agreed to by the parties and incorporated into a Change Order.
- 10.3 Claims for Additional Costs.
- 10.3.1 If Contractor wishes to make a claim for an increase in the Contract Sum not related to a requested change, they shall give City and A/E written notice thereof within twenty-one (21) days after the occurrence of the event giving rise to such claim, but, in any case before proceeding to execute the Work considered to be additional cost or time, except in an emergency endangering life or property in which case Contractor shall act in accordance with Subsection 6.2.1. No such claim shall be valid unless so made. If City and Contractor cannot agree on the amount of the adjustment in the Contract Sum, it shall be determined as set forth under Article 14. Any change in the Contract Sum resulting from such claim shall be authorized by a Change Order or a ULCO.
- 10.3.2 If Contractor claims that additional cost is involved because of, but not limited to, 1) any written interpretation of the Contract Documents, 2) any order by City to stop the Work pursuant to Article 13 where Contractor was not at fault, or 3) any written order for a minor change in the Work issued pursuant to Section 10.4, Contractor shall make such claim as provided in Subsection 10.3.1.
- 10.3.3 Should Contractor or his Subcontractors fail to call attention of A/E to discrepancies or omissions in the Contract Documents, but claim additional costs for corrective Work after Contract award, City may assume intent to circumvent competitive bidding for necessary corrective Work. In such case, City may choose to let a separate Contract for the corrective Work, or issue a ULCO to require performance by Contractor. Claims for time extensions or for extra cost resulting from delayed notice of patent Contract Document discrepancies or omissions will not be considered by City.
- 10.4 Minor Changes. A/E, with concurrence of City, will have authority to order minor changes

in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time. Such changes shall be effected by written order which Contractor shall carry out promptly and record on as-built record documents.

- 10.5 Concealed Site Conditions. Contractor is responsible for visiting the Site and being familiar with local conditions such as the location, accessibility, and general character of the Site and/or building. If, in the performance of the Contract, subsurface, latent, or concealed conditions at the Site are found to be materially different from the information included in the Contract Documents, or if unknown conditions of an unusual nature are disclosed differing materially from the conditions usually inherent in Work of the character shown and specified, City and A/E shall be notified in writing of such conditions before they are further disturbed or subsequent related work proceeds. Upon such notice, or upon its own observation of such conditions, A/E, with the approval of City, will promptly make such changes in the Drawings and Specifications as they deem necessary to conform to the different conditions, and any increase or decrease in the cost of the Work, or in the time within which the Work is to be completed, resulting from such changes will be adjusted by Change Order, subject to the prior approval of City.
- 10.6 Extension of Time. All changes to the Contract Time shall be made as a consequence of requests as required under Section 8.6, and as documented by Change Order as provided under Section 10.1.
- 10.7 Administration of Change Order Requests. All changes in the Contract shall be administered in accordance with procedures approved by City, and when required, make use of such electronic information management system(s) as City may employ.
  - 10.7.1 Routine changes in the construction Contract shall be formally initiated by A/E by means of a PCO form detailing requirements of the proposed change for pricing by Contractor. This action may be preceded by communications between Contractor, A/E and City concerning the need and nature of the change, but such communications shall not constitute a basis for beginning the proposed Work by Contractor. Except for emergency conditions described below, approval of Contractor's cost proposal by A/E and City will be required for authorization to proceed with the Work being changed. City will not be responsible for the cost of Work changed without prior approval and Contractor may be required to remove Work so installed.
  - 10.7.2 All proposed costs for change order Work must be supported by itemized accounting of material, equipment and associated itemized installation costs in sufficient detail, following the outline and organization of the establish Schedule of Values, to permit analysis by A/E and City using current estimating guides and/or practices. Photocopies of Subcontractor and vendor proposals shall be furnished unless specifically waived by City. Contractor shall provide written response to a change request within twenty-one (21) days of receipt.
  - 10.7.3 Any unexpected circumstance which necessitates an immediate change in order to avoid a delay in progress of the Work may be expedited by verbal communication and authorization between Contractor and City, with written confirmation following within twenty-four (24) hours. A limited scope not-to-exceed estimate of cost and time will be requested prior to authorizing Work to proceed. Should the estimate be impractical for any reason, City may authorize the use of detailed cost records of such work to establish and confirm the actual costs and time for documentation in a formal Change Order.
  - 10.7.4 Emergency changes to save life or property may be initiated by Contractor alone (see Section 6.3) with the claimed cost and/or time of such work to be fully

documented as to necessity and detail of the reported costs and/or time.

- 10.7.5 The method of incorporating approved Change Orders into the parameters of the accepted Schedule of Values must be coordinated and administered in a manner acceptable to City.
- 10.8 Pricing Change Order Work. The amounts that Contractor and/or its Subcontractor adds to a Change Order for profit and overhead will also be considered by City before approval is given. The amounts established hereinafter are the maximums that are acceptable to City.
- 10.8.1 For Work performed by its forces, Contractor will be allowed their actual costs for materials, the total amount of wages (including benefits) paid for labor, plus the total cost of State and Federal payroll taxes and of workers' compensation and comprehensive general liability insurance, plus additional bond and builders risk insurance cost if the change results in an increase in the premium paid by Contractor. To the total of the above costs, Contractor will be allowed to add a percentage as noted below to cover overhead and profit combined. Allowable percentages for overhead and profit on any specific change shall not exceed fifteen (15) percent for the first \$10,000 of value for self-performed work or portion thereof, ten (10) percent for the second \$10,000 of value for self-performed work or portion thereof and seven and a half (7.5) percent for any value of the self-performed work that exceeds \$20,000.
- 10.8.2 For subcontracted Work each affected Subcontractor shall figure its costs, overhead and profit as described above for Contractor's Work, all Subcontractor costs shall be combined, and to that total Subcontractor cost Contractor will be allowed to add a maximum mark-up of ten (10) percent for the first \$10,000 of subcontracted Work value or portion thereof, seven and half (7.5) percent for the second \$10,000 of subcontracted Work value or portion thereof, and five (5) percent for any value of the subcontracted Work exceeding \$20,000.
- 10.8.3 On changes involving both additions and deletions, percentages for overhead and profit will be allowed only on the net addition. City does not accept and will not pay for additional Contract cost identified as indirect or consequential damages.
- 10.8.4 For Contracts based on a Guaranteed Maximum Price (GMP), the Construction Manager-at-Risk or Design Builder shall NOT be entitled to a percentage mark-up on any Change Order Work unless the Change Order increases the Guaranteed Maximum Price.
- 10.9 Unilateral Change Order (ULCO). City may issue a written ULCO directing a change in the Work prior to reaching agreement with Contractor on the adjustment, if any, in the Contract price and/or the Contract Time.
- 10.9.1 City and Contractor shall negotiate for appropriate adjustments, as applicable, to the Contract Sum or the Contract Time arising out of a ULCO. As the changed Work is performed, Contractor shall submit its costs for such Work with its Application for Payment beginning with the next Application for Payment within thirty (30) days of the issuance of the ULCO. The Parties reserve their rights as to the disputed amount, subject to Article 14.
- 10.10 Final Resolution of Changes. Upon execution of a Change Order and /or a ULCO by City, Contractor and A/E, all costs and time issues regarding that change are final and not subject to additive adjustments.

## Article 11. Project Completion and Acceptance

### 11.1 Closing Inspections.

11.1.1 Substantial Completion Inspection. When Contractor considers the entire Work or part thereof Substantially Complete, it shall notify City in writing that the Work will be ready for Substantial Completion inspection on a specific date. Contractor shall include with this notice Contractor's Punchlist to indicate that it has previously inspected all the Work associated with the request for inspection, noting items it has corrected and included all remaining work items with date scheduled for completion or correction prior to final inspection. The failure to include any items on this list does not alter the responsibility of Contractor to complete all Work in accordance with the Contract Documents. If any of the items on this list prevents the Project from being used as intended, Contractor shall not request a Substantial Completion Inspection. City and its representatives will review the list of items and schedule the requested inspection, or inform Contractor in writing that such an inspection is premature because the Work is not sufficiently advanced or conditions are not as represented on Contractor's list.

11.1.1.1 Prior to the Substantial Completion inspection, Contractor shall furnish a copy of its marked-up Record Documents and a preliminary copy of each instructional manual, maintenance and operating manual, parts catalog, wiring diagrams, spare parts, specified written warranties, and like publications or parts for all installed equipment, systems, and like items as described in the Contract Documents. Delivery of these items is a prerequisite for requesting the Substantial Completion inspection.

11.1.1.2 On the date requested by Contractor, or as mutually agreed upon pending the status of the Open Items List, A/E, City, Contractor, and other City representatives as determined by City will jointly attend the Substantial Completion inspection, which shall be conducted by City or their delegate. If City determines that the Work is Substantially Complete, City will issue a Certificate of Substantial Completion to be signed by A/E, City, and Contractor establishing the date of Substantial Completion and identifying responsibilities for security, maintenance, insurance and utilities. A/E will provide with this certificate a consolidated list of Punchlist items (the pre-final Punchlist including all items noted by the various inspecting parties) for completion prior to final inspection. This list may include items in addition to those on Contractor's Punchlist, which the inspection team deems necessary to correct or complete prior to final inspection. The failure to include any items on this list does not alter the responsibility of Contractor to complete all Work in accordance with the Contract Documents. If City occupies the Project upon determination of Substantial Completion, Contractor shall complete all corrective Work at the convenience of City, without disruption to City's use of the Project for its intended purposes.

11.1.2 Final Inspection. Contractor shall complete the list of items identified on the pre-final Punchlist prior to requesting a final inspection. Unless otherwise specified, or otherwise agreed in writing by the parties as documented on the

Certificate of Substantial Completion, Contractor shall complete and/or correct all Work within thirty (30) days of the Substantial Completion date. Upon completion of the pre-final Punchlist work, Contractor shall give written notice to City and A/E that the Work will be ready for final inspection on a specific date. Contractor shall accompany this notice with a copy of the updated pre-final Punchlist indicating resolution of all items. On the date specified or as soon thereafter as is practicable, City, A/E and Contractor will inspect the Work. A/E will submit to Contractor a final Punchlist of open items that the inspection team requires corrected or completed before final acceptance of the Work.

- 11.1.2.1 Correct or complete all items on the final Punchlist before requesting Final Payment. Unless otherwise agreed to in writing by the parties, complete this work within seven (7) days of receiving the final Punchlist. Upon completion of the final Punchlist, notify A/E and City in writing stating the disposition of each final Punchlist item. A/E, City, and Contractor shall promptly inspect the completed items. When the final Punchlist is complete, and the Contract is fully satisfied according to the Contract Documents City will issue a certificate establishing the date of Final Completion. Completion of all Work is a condition precedent to Contractor's right to receive Final Payment.
- 11.1.3 Annotation. Any Certificate issued under this Article may be annotated to indicate that it is not applicable to specified portions of the Work, or that it is subject to any limitation as determined by City.
- 11.1.4 Purpose of Inspection. Inspection is for determining the completion of the Work, and does not relieve Contractor of its overall responsibility for completing the Work in a good and competent fashion, in compliance with the Contract. Work accepted with incomplete Punchlist items or failure of City or other parties to identify Work that does not comply with the Contract Documents or is defective in operation or workmanship does not constitute a waiver of City's rights under the Contract or relieve Contractor of its responsibility for performance or warranties.
- 11.1.5 Additional Inspections.
  - 11.1.5.1 If City's inspection team determines that the Work is not substantially complete at the Substantial Completion inspection, City or A/E will give Contractor written notice listing cause(s) of the rejection. Contractor will set a time for completion of incomplete or defective work acceptable to City. Contractor shall complete or correct all work so designated prior to requesting a second Substantial Completion inspection.
  - 11.1.5.2 If City's inspection team determines that the Work is not complete at the final inspection, City or A/E will give Contractor written notice listing the cause(s) of the rejection. Contractor will set a time for completion of incomplete or defective work acceptable to City. Contractor shall complete or correct all Work so designated prior to again requesting a final inspection.
  - 11.1.5.3 The Contract contemplates three (3) comprehensive inspections: the Substantial Completion inspection, the Final Completion inspection, and the inspection of completed final Punchlist items. The cost to City of additional inspections resulting from the Work not being ready for one or more of these inspections is the responsibility of Contractor. City

may issue a ULCO deducting these costs from Final Payment. Upon Contractor's written request, City will furnish documentation of any costs so deducted. Work added to the Contract by Change Order after Substantial Completion inspection is not corrective Work for purposes of determining timely completion, or assessing the cost of additional inspections.

11.1.6 Phased Completion. The Contract may provide, or Project conditions may warrant, as determined by City, that designated elements or parts of the Work be completed in phases. Where phased completion is required or specifically agreed to by the parties, the provisions of the Contract related to closing inspections, occupancy, and acceptance apply independently to each designated element or part of the Work. For all other purposes, unless otherwise agreed by the parties in writing, Substantial Completion of the Work as a whole is the date on which the last element or part of the Work completed receives a Substantial Completion certificate.

Final Completion of the Work as a whole is the date on which the last element or part of the Work completed receives a Final Completion certificate.

11.2 City's Right of Occupancy. City may occupy or use all or any portion of the Work following Substantial Completion, or at any earlier stage of completion. Should City wish to use or occupy the Work, or part thereof, prior to Substantial Completion, City will notify Contractor in writing and identify responsibilities for security, maintenance, insurance and utilities. Work performed on the premises by third parties on City's behalf does not constitute occupation or use of the Work by City for purposes of this Article. All Work performed by Contractor after occupancy, whether in part or in whole, shall be at the convenience of City so as to not disrupt City's use of, or access to occupied areas of the Project.

### 11.3 Acceptance and Payment

11.3.1 Request for Final Payment. Following the certified completion of all work, including all final Punchlist items, cleanup, and the delivery of record documents, Contractor shall submit a certified Application for Final Payment and include all sums held as retainage and forward to A/E and City for review and approval.

11.3.2 Final Payment Documentation. Contractor shall submit, prior to or with the Application for Final Payment, final copies of all close out documents, maintenance and operating instructions, guarantees and warranties, certificates, Record Documents and all other items required by the Contract. Contractor shall submit evidence of return of access keys and cards, evidence of delivery to City of attic stock, spare parts, and other specified materials. Contractor shall submit consent of surety to Final Payment form and an affidavit (see Attachment "C") that all payrolls, bills for materials and equipment, subcontracted work and other indebtedness connected with the Work, except as specifically noted, are paid, will be paid, after payment from City or otherwise satisfied within the period of time required by Tex. Gov't Code, Ch. 2251. Contractor shall furnish documentation establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of claims and liens arising out of the Contract. Contractor may not subsequently submit a claim on behalf of Subcontractor or vendor unless Contractor's affidavit notes that claim as

an exception.

- 11.3.3 Architect/Engineer Approval. A/E will review a submitted Application for Final Payment promptly but in no event later than ten (10) days after its receipt. Prior to the expiration of this deadline, A/E will either: 1) return the Application for Final Payment to Contractor with corrections for action and resubmission; or 2) accept it, note their approval, and send to City.
- 11.3.4 Offsets and Deductions. City may deduct from the Final Payment all sums due from Contractor. If the Certificate of Final Completion notes any Work remaining, incomplete, or defects not remedied, City may deduct the cost of remedying such deficiencies from the Final Payment. On such deductions, City will identify each deduction, the amount, and the explanation of the deduction on or by the twenty-first (21<sup>st</sup>) day after City's receipt of an approved Application for Final Payment. Such offsets and deductions shall be incorporated via a final Change Order, including a ULCO as may be applicable.
- 11.3.5 Final Payment Due. Final Payment is due and payable by City, subject to all allowable offsets and deductions, on the thirtieth (30<sup>th</sup>) day following City's approval of the Application for Payment. If Contractor disputes any amount deducted by City, Contractor shall give notice of the dispute on or before the thirtieth (30<sup>th</sup>) day following receipt of Final Payment. Failure to do so will bar any subsequent claim for payment of amounts deducted.
- 11.3.6 Effect of Final Payment. Final Payment constitutes a waiver of all claims by City, relating to the condition of the Work except those arising from:
- 11.3.6.1 Faulty or defective Work appearing after Substantial Completion (latent defects);
  - 11.3.6.2 Failure of the Work to comply with the requirements of the Contract Documents;
  - 11.3.6.3 Terms of any warranties required by the Contract, or implied by law; or
  - 11.3.6.4 Claims arising from personal injury or property damage to third parties.
- 11.3.7 Waiver of Claims. Final payment constitutes a waiver of all claims and liens by Contractor except those specifically identified in writing and submitted to City prior to the application for Final Payment.
- 11.3.8 Effect on Warranty. Regardless of approval and issuance of Final Payment, the Contract is not deemed fully performed by Contractor and closed until the expiration of all warranty periods. Issuance of Final Payment does not alter Contractor's contractual obligations during the warranty period.

## Article 12. Warranty and Guarantee

- 12.1 Contractor's General Warranty and Guarantee. Contractor warrants to City that all Work is executed in accordance with the Contract, complete in all parts and in accordance with approved practices and customs, and of the required finish and workmanship. Contractor further warrants that unless otherwise specified, all materials and equipment incorporated in the Work under the Contract are new. City may, at its option, agree in writing to waive

any failure of the Work to conform to the Contract, and to accept a reduction in the Contract price for the cost of repair or diminution in value of the Work by reason of such defect. Absent such a written agreement, Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute and is not waived by any inspection or observation by City, A/E or others, by making any progress payment or final payment, by the use or occupancy of the Work or any portion thereof by City, at any time, or by any repair or correction of such defect made by City.

12.2 Warranty Period. Except as may be otherwise specified or agreed, Contractor shall repair all defects in materials, equipment, or workmanship appearing within one year from the date of Substantial Completion of the Work. If Substantial Completion occurs by phase, then the warranty period for that particular Work begins on the date of such occurrence, or as otherwise stipulated on the Certificate of Substantial Completion for the particular Work.

12.3 Limits on Warranty. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:

12.3.1 Modification or improper maintenance or operation by persons other than Contractor, Subcontractors, or any other individual or entity for whom Contractor is not responsible, unless City is compelled to undertake maintenance or operation due to the neglect of Contractor.

12.3.2 Normal wear and tear under normal usage after acceptance of the Work by City.

12.4 Events Not Affecting Warranty. Contractor's obligation to perform and complete the Work in a good and workmanlike manner in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of defective Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:

12.4.1 Observations by City and/or A/E;

12.4.2 Recommendation to pay any progress or final payment by A/E;

12.4.3 The issuance of a certificate of Substantial Completion or any payment by City to Contractor under the Contract Documents;

12.4.4 Use or occupancy of the Work or any part thereof by City;

12.4.5 Any acceptance by City or any failure to do so;

12.4.6 Any review of a Shop Drawing or sample submittal; or

12.4.7 Any inspection, test or approval by others.

12.5 Separate Warranties. If a particular piece of equipment or component of the Work for which the Contract requires a separate warranty is placed in continuous service before Substantial Completion, the warranty period for that equipment or component will not begin until Substantial Completion, regardless of any warranty agreements in place between suppliers and/or Subcontractors and Contractor. City will certify the date of service commencement in the Substantial Completion certificate.

12.5.1 In addition to Contractor's warranty and duty to repair, Contractor expressly assumes all warranty obligations required under the Contract for specific building

components, systems and equipment.

- 12.5.2 Contractor may satisfy any such obligation by obtaining and assigning to City a complying warranty from a manufacturer, supplier, or Subcontractor. Where an assigned warranty is tendered and accepted by City which does not fully comply with the requirements of the Contract, Contractor remains liable to City on all elements of the required warranty not provided by the assigned warranty.
- 12.6 Correction of Defects. Upon receipt of written notice from City, or any agent of City designated as responsible for management of the warranty period, of the discovery of a defect, Contractor shall promptly remedy the defect(s), and provide written notice to City and designated agent indicating action taken. In case of emergency where delay would cause serious risk of loss or damage to City, or if Contractor fails to remedy within thirty (30) days, or within another period agreed to in writing, City may correct the defect and be reimbursed the cost of remedying the defect from Contractor or its surety.
- 12.7 Certification of No Asbestos Containing Materials or Work. Contractor shall ensure compliance with the Asbestos Hazard Emergency Response Act (AHERA– 40 C.F.R § 763-99(7)) from all Subcontractors and materials suppliers, and shall provide a notarized certification to City that all equipment and materials used in fulfillment of their Contract responsibilities are non-Asbestos Containing Building Materials (ACBM). This certification must be provided no later than Contractor’s application for Final Payment.

## **Article 13. Suspension and Termination**

- 13.1 Suspension of Work for Cause. City may, at any time without prior notice, suspend all or any part of the Work, if after reasonable observation and/or investigation, City determines it is necessary to do so to prevent or correct any condition of the Work, which constitutes an immediate safety hazard, or which may reasonably be expected to impair the integrity, usefulness or longevity of the Work when completed.
- 13.1.1 City will give Contractor a written notice of suspension for cause, setting forth the reason for the suspension and identifying the Work suspended. Upon receipt of such notice, Contractor shall immediately stop the Work so identified. As soon as practicable following the issuance of such a notice, City will initiate and complete a further investigation of the circumstances giving rise to the suspension, and issue a written determination of the findings.
- 13.1.2 If it is confirmed that the cause was within the control of Contractor, Contractor will not be entitled to an extension of time or any compensation for delay resulting from the suspension. If the cause is determined not to have been within the control of Contractor, and the suspension has prevented Contractor from completing the Work within the Contract Time, the suspension is an excusable delay and a time extension will be granted through a Change Order.
- 13.1.3 Suspension of Work under this provision will be no longer than is reasonably necessary to remedy the conditions giving rise to the suspension.
- 13.2 Suspension of Work for City’s Convenience. Upon seven (7) days written notice to Contractor, City may at any time without breach of the Contract suspend all or any portion of the Work for a period of up to thirty (30) days for its own convenience. City will give Contractor a written notice of suspension for convenience, which sets forth the number of suspension days for which the Work, or any portion of it, and the date on which the suspension of Work will cease. When such a suspension prevents Contractor from completing the Work within the Contract Time, it is an excusable delay. A notice of

suspension for convenience may be modified by City at any time on seven (7) days written notice to Contractor. If City suspends the Work for its convenience for more than sixty (60) consecutive days, Contractor may elect to terminate the Contract pursuant to the provisions of the Contract.

### 13.3 Termination by City for Cause.

13.3.1 Upon written notice to Contractor and its surety, City may, without prejudice to any right or remedy, terminate the Contract and take possession of the Site and of all materials, equipment, tools, construction equipment, and machinery thereon owned by Contractor under any of the following circumstances:

13.3.1.1 Persistent or repeated failure or refusal, except during complete or partial suspensions of work authorized under the Contract, to supply enough properly skilled workmen or proper materials;

13.3.1.2 Persistent disregard of laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, including City;

13.3.1.3 Persistent failure to prosecute the Work in accordance with the Contract, and to ensure its completion within the time, or any approved extension thereof, specified in the Contract;

13.3.1.4 Failure to remedy defective work condemned by City;

13.3.1.5 Failure to pay Subcontractors, laborers, and material suppliers pursuant to Tex. Gov't Code, Ch.2251;

13.3.1.6 Persistent endangerment to the safety of labor or of the Work;

13.3.1.7 Failure to supply or maintain statutory bonds or to maintain required insurance, pursuant to the Contract;

13.3.1.8 Any material breach of the Contract; or

13.3.1.9 Contractor's insolvency, bankruptcy, or demonstrated financial inability to perform the Work.

13.3.2 Failure by City to exercise the right to terminate in any instance is not a waiver of the right to do so in any other instance.

13.3.3 Should City decide to terminate the Contract under the provisions of Section 14.3, it will provide to Contractor and its surety thirty (30) days prior written notice.

13.3.4 Should Contractor or its surety, after having received notice of termination, demonstrate to the satisfaction of City that Contractor or its surety are proceeding to correct such default with diligence and promptness, upon which the notice of termination was based, the notice of termination may be rescinded in writing by City. If so rescinded, the Work may continue without an extension of time.

13.3.5 If Contractor or its surety fails, after written notice from City to commence and continue correction of such default with diligence and promptness to the satisfaction of City within thirty (30) days following receipt of notice, City may arrange for completion of the Work and deduct the cost of completion from the unpaid Contract Sum.

- 13.3.5.1 This amount includes the cost of additional City costs such as A/E services, other consultants, and contract administration.
  - 13.3.5.2 City will make no further payment to Contractor or its surety unless the costs to complete the Work are less than the Contract balance, then the difference shall be paid to Contractor or its surety. If such costs exceed the unpaid balance, Contractor or its surety will pay the difference to City.
  - 13.3.5.3 This obligation for payment survives the termination of the Contract.
  - 13.3.5.4 City reserves the right in termination for cause to take assignment of all the Contracts between Contractor and its Subcontractors, vendors, and suppliers. City will promptly notify Contractor of the contracts City elects to assume. Upon receipt of such notice, Contractor shall promptly take all steps necessary to effect such assignment.
- 13.4 Conversion to Termination for Convenience. In the event that any termination of Contractor for cause under Section 13.3 is later determined to have been improper, the termination shall automatically convert to a termination for convenience under Section 13.5 and Contractor's recovery for termination shall be strictly limited to the payments allowable under Section 13.5.
- 13.5 Termination for Convenience of City. City reserves the right, without breach, to terminate the Contract prior to, or during the performance of the Work, for any reason. Upon such an occurrence, the following shall apply:
  - 13.5.1 City will immediately notify Contractor and A/E in writing, specifying the reason for and the effective date of the Contract termination. Such notice may also contain instructions necessary for the protection, storage or decommissioning of incomplete work or systems, and for safety.
  - 13.5.2 Upon receipt of the notice of termination, Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due at that point in the Contract:
    - 13.5.2.1 Stop all work.
    - 13.5.2.2 Place no further subcontracts or orders for materials or services.
    - 13.5.2.3 Terminate all subcontracts for convenience.
    - 13.5.2.4 Cancel all materials and equipment orders as applicable.
    - 13.5.2.5 Take action that is necessary to protect and preserve all property related to the Contract which is in the possession of Contractor.
  - 13.5.3 When the Contract is terminated for City's convenience, Contractor may recover from City payment for all Work executed. Contractor may not claim lost profits on other work or lost business opportunities.
- 13.6 Termination By Contractor. If the Work is stopped for a period of ninety (90) days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials

unavailable, through no act or fault of Contractor or Subcontractor or their agents or employees or any other persons performing any of the Work under a contract with Contractor, then Contractor may, upon thirty (30) additional days written notice to City, terminate the Contract and recover from City payment for all Work executed, but not lost profits on other work or lost business opportunities. If the cause of the Work stoppage is removed prior to the end of the thirty (30) day notice period, Contractor may not terminate the Contract.

- 13.7 Settlement on Termination. When the Contract is terminated for any reason, at any time prior to one hundred eighty (180) days after the effective date of termination, Contractor shall submit a final termination settlement proposal to City based upon recoverable costs as provided under the Contract. If Contractor fails to submit the proposal within the time allowed, City may determine the amount due to Contractor because of the termination and pay the determined amount to Contractor.

## **Article 14. Dispute Resolution**

- 14.1 Unresolved Contractor Disputes. All disputes against City that arise from this Contract or any Project shall be resolved in accordance with the procedures and limitations of the Texas Local Government Code, Subchapter I, Chapter 271.151 et seq., City's General Conditions, and the Contract.
- 14.2 Alternative Dispute Resolution Process. City may establish a dispute resolution process to be utilized. In the event, a dispute remains unresolved after both parties engage in the dispute resolution process, the City Manager's determination in regard to any dispute shall be final.
- 14.3 Nothing herein shall hinder, prevent, or be construed as a waiver of City's right to seek redress on any disputed matter in a court of competent jurisdiction.

## **Article 15. Miscellaneous**

- 15.1 Supplementary General and Special Conditions. When the Work contemplated by City is of such a character that the foregoing Uniform General Conditions of the Contract cannot adequately cover necessary and additional contractual relationships, the Contract may include Supplementary General and Special Conditions as described below:
- 15.1.1 Supplementary General Conditions may describe the standard procedures and requirements of contract administration followed by City covered by the Uniform General Conditions, where necessary, provided the expansion does not weaken the character or intent of the Uniform General Conditions. Supplementary General Conditions are of such a character that it is to be anticipated that City will normally use the same, or similar, conditions to supplement each of its several projects.
- 15.1.2 Special Conditions shall relate to a particular Project and be unique to that Project but shall not weaken the character or intent of the Uniform General Conditions.
- 15.2 Federally Funded Projects. On Federally funded projects, City may waive, suspend or modify any Article in these Uniform General Conditions which conflicts with any Federal statute, rule, regulation or procedure, where such waiver, suspension or modification is essential to receipt by City of such Federal funds for the Project. In the case of any Project wholly financed by Federal funds, any standards required by the enabling Federal statute, or any Federal rules, regulations or procedures adopted pursuant thereto, shall be controlling.

15.3 Internet-based Project Management Systems. At its option, City may administer its design and construction management through an Internet-based management system. In such cases, Contractor shall conduct communication through this media and perform all Project related functions utilizing this database system. This includes correspondence, submittals, Requests for Information, vouchers or payment requests and processing, amendment, Change Orders and other administrative activities.

15.3.1 Accessibility and Administration.

15.3.1.1 When used, City will make the software accessible via the Internet to all Project team members.

15.3.1.2 City shall administer the software.

15.3.2 Training. When used, City shall provide training to the Project team members.

15.4 Right to Audit Contractor's Records. By execution of the Contract, Contractor grants City the right to audit, examine, inspect and/or copy, at City's election at all reasonable times during the term of this Contract and for a period of four (4) years following the completion or termination of the Work, all of Contractor's written and electronically stored records and billings relating to the performance of the Work under the Contract Documents. The audit, examination or inspection may be performed by a City designee, which may include its internal auditors or an outside representative engaged by City. Contractor agrees to retain its records for a minimum of four (4) years following termination of the Contract, unless there is an ongoing dispute under the Contract, then, such retention period shall extend until final resolution of the dispute, with full access allowed to authorized representatives of City upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

15.4.1 As used in these General Conditions, "Contractor written and electronically stored records" shall include any and all information, materials and data of every kind and character generated as a result of the work under this Contract. Example of Contractor written and electronically stores records include, but are not limited to: accounting data and reports, billings, books, general ledgers, cost ledgers, invoices, production sheets, documents, correspondences, meeting notes, subscriptions, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, reports, drawings, receipts, vouchers, memoranda, time sheets, payroll records, policies, procedures, Subcontractor agreements, Supplier agreements, rental equipment proposals, federal and state tax filings for any issue in question, along with any and all other agreements, City of Bryan's General Conditions, sources of information and matters that may, in City's sole judgment, have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Contract Documents.

15.4.2 City agrees that it shall exercise the right to audit, examine or inspect Contractor's records only during regular business hours. Contractor agrees to allow City and/or City's designee access to all of the Contractor's Records, Contractor's facilities and current or former employees of Contractor, deemed necessary by City or its designee(s), to perform such audit, inspection or examination. Contractor also agrees to provide

adequate and appropriate work space necessary for City or its designees to conduct such audits, inspections or examinations.

15.4.3 Contractor shall include this Section 15 in any Subcontractor, supplier or vendor contract.

15.5 List of Attachments

The following attachments are fully incorporated into this General Conditions by

reference:

**Att. A. Performance Bond**

**Att. B. Payment Bond**

**Att. C. Contractor's All Bills Paid Affidavit – City of Bryan**

**ATTACHMENT “A”  
PERFORMANCE BOND**

Bond No. \_\_\_\_\_

**PERFORMANCE BOND**

STATE OF TEXAS  
COUNTY OF \_\_\_\_\_

**KNOW ALL MEN BY THESE PRESENTS** That \_\_\_\_\_ of the City of \_\_\_\_\_, County of \_\_\_\_\_, and State of \_\_\_\_\_, as principal, and \_\_\_\_\_ authorized under the laws of the State of Texas to act as surety on bonds for principals, are held and firmly bound unto the City of Bryan of Brazos County, Texas (Owner), in the penal sum of \_\_\_\_\_ (\$ \_\_\_\_\_) for the payment whereof, the said Principal and Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally by these presents:

**WHEREAS**, the Principal has entered into a certain written contract with the Owner, dated the day \_\_\_\_\_ of \_\_\_\_\_, 20\_\_\_\_, to furnish all labor, materials and equipment necessary for completing

**Design Build Services for the Replacement of Existing HVAC System for City of Bryan Fire Station No. 2**

which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

**NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH**, that if the said Principal shall faithfully perform said Contract and shall in all respects duly and faithfully observe and perform all and singular the covenants, conditions and agreements in and by said contract agreed and covenanted by the Principal to be observed and performed, and according to the true intent and meaning of said Contract and the Plans and the Specifications hereto annexed, then this obligation shall be void; otherwise to remain in full force and effect;

**PROVIDED, HOWEVER**, that this bond is executed pursuant to the provisions of Chapter 2253, Government Code, Vernon's Texas Civil Statutes and all liabilities on this bond shall be determined in accordance with the provisions of said Code to the same extent as if it were copied at length herein.

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract, or to the work performed thereunder, or the plans, specifications or drawings accompanying the same, shall in anywise affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work to be performed thereunder. Performable and enforceable in Brazos County, Texas.

**IN WITNESS WHEREOF**, the said Principal and Surety have signed and sealed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Surety

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

---

The name and address of the Resident Agent of Surety is:

---

---

Corporation Seal if Corporation.

Bonding Company Seal if Bonding Company.

**ATTACHMENT “B”  
PAYMENT BOND**

**PAYMENT BOND**

**STATE OF TEXAS  
COUNTY OF**

**KNOW ALL MEN BY THESE PRESENTS** That \_\_\_\_\_ of the City of \_\_\_\_\_, County of \_\_\_\_\_, and State of \_\_\_\_\_, as principal, and \_\_\_\_\_ authorized under the laws of the State of Texas to act as surety on bonds for principals, are held and firmly bound unto the City of Bryan of Brazos County, Texas (Owner), in the penal sum of \_\_\_\_\_ (\$ \_\_\_\_\_) for the payment whereof, the said Principal and Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally by these presents:

**WHEREAS**, the Principal has entered into a certain written contract with the Owner, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, to furnish all labor, materials and equipment necessary for completing

**Design Build Services for the Replacement of Existing HVAC System for City of Bryan Fire Station No. 2**

which Contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

**NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH**, that if the said Principal shall pay all claimants supplying labor and materials to him or a subcontractor in the prosecution of the work provided for in said contract, then, this obligation shall be void; otherwise to remain in full force and effect;

**PROVIDED, HOWEVER**, that this bond is executed pursuant to the provisions of Chapter 2253, Government Code, Vernon's Texas Civil Statutes and all liabilities on this bond shall be determined in accordance with the provisions of said Code to the same extent as if it were copied at length herein.

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract, or to the work performed thereunder, or the plans, specifications or drawings accompanying the same, shall in anywise affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work to be performed thereunder. Performable and enforceable in Brazos County, Texas.

**IN WITNESS WHEREOF**, the said Principal and Surety have signed and sealed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Surety

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

The name and address of the Resident Agent of Surety is:

---

---

Corporation Seal if Corporation.

Bonding Company Seal if Bonding Company.

**ATTACHMENT "C"**  
**CONTRACTOR'S ALL BILLS PAID AFFIDAVIT – CITY OF BRYAN**



Final Bills Paid Affidavit, then CONTRACTOR will be liable for prosecution by law, as well as remaining financially responsible for full payment of ANY and ALL BILLS.

CONTRACTOR further understands that this Final Bills Paid Affidavit is being given pursuant to and in accordance with Sections 53.085 of the Texas Property Code and that the intentional, knowing, or reckless making of a false or misleading statement in this Affidavit constitutes an offense under said Section and is a Class A misdemeanor.

CONTRACTOR further agrees, by the signing of the Final Bills Paid Affidavit, that this statement is true and correct, and that this AFFIDAVIT may be used against CONTRACTOR in any and all proceedings at law, civil or criminal.

CONTRACTOR Signature:

\_\_\_\_\_

If D/B/A, Show Business Name:

\_\_\_\_\_

TITLE:

\_\_\_\_\_

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_.

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

My Commission Expires: \_\_\_\_\_

**End of Uniform General Conditions**

**EXHIBIT “C” TO THE AGREEMENT  
SUPPLEMENTARY GENERAL CONDITIONS AND SPECIAL PROVISIONS**

**Supplementary General Conditions and Special Provisions for  
Design Build Services for the Replacement of Existing HVAC System  
for City of Bryan Fire Station No. 2  
RFQ # 26-015**



**CITY OF BRYAN**  
*The Good Life, Texas Style.™*

**PREPARED BY: CITY OF BRYAN**

**Supplementary General Conditions and Special Provisions  
RFQ #26-015**

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# **SUPPLEMENTARY GENERAL CONDITIONS**

**RFQ #26-015**

## DISCLOSURE REQUIREMENTS

Chapter 176 of the Texas Local Government Code mandates the public disclosure of certain information concerning persons doing business or seeking to do business with the City of Bryan, including affiliations and business and financial relationships such persons may have with City of Bryan officers. An explanation of the requirements of Chapter 176, applicable forms and a complete text of the new law are available at:

<http://www.bryantx.gov/purchasing-services/#vendorethics>

If you are unable to obtain such information online, please contact the City of Bryan Purchasing Department, 2611 N. Earl Rudder Fwy, Texas 77803 or call (979) 209-5500.

**BY DOING BUSINESS OR SEEKING TO DO BUSINESS WITH THE CITY OF BRYAN, YOU ACKNOWLEDGE THAT YOU HAVE BEEN NOTIFIED OF THE REQUIREMENTS OF CHAPTER 176 OF THE TEXAS LOCAL GOVERNMENT CODE AND THAT YOU ARE SOLELY RESPONSIBLE FOR COMPLYING WITH THEM.**

## DISCLOSURE OF INTERESTED PARTIES

Section 2252.908 of the Government Code states that a governmental entity or state agency may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency. The law applies only to a contract of a governmental entity or state agency that either (1) requires an action or vote by the governing body of the entity or agency before the contract may be signed or (2) has a value of at least \$1MM. The disclosure requirement applies to a contract entered into on or after January 1, 2016. The process as implemented by the Texas Ethics Commission is as follows:

1. A business entity must use the application to enter the required information on Form 1295 and print a copy of the form and a separate certification of filing that will contain a unique certification number.
2. An authorized agent of the business entity must sign the printed copy of the form and have the form notarized. The completed Form 1295 and certification of filing must be filed with the city "at the time the business entity submits the signed contract" to the city.
3. The city must notify the Commission, using the Commission's filing application, of the receipt of the filed Form 1295 and certification of filing not later than the 30th day after the date the contract binds all parties to the contract.

For more information regarding how to file Form 1295, please click on the following link:

<https://www.ethics.state.tx.us/filinginfo/1295>

**FELONY CONVICTION NOTIFICATON**

Any person and/or business entity that enters into a contract with the City of Bryan must give advance notice to the City if any employee or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony. The notice must also describe the role that the employee, owner, or operator will perform in executing the contract. The City may require substitution of employees in the performance of the contract. The City may terminate a contract with a person or business entity if the City determines that the person or business entity failed to give notice as required by this clause, misrepresented the conduct resulting in the conviction, or failed to substitute personnel at City's request.

I, the undersigned agent for the firm named below, certify that the information concerning notification of felony convictions has been reviewed by me and the following information furnished is true to the best of my knowledge.

**Vendor's Name:**

\_\_\_\_\_ \_\_\_\_\_  
**Authorized Company Official's Name (Printed)** **Date**

**A.** My firm is not owned or operated by anyone who has been convicted of a felony nor does it have any employees who have been convicted of a felony:

**Signature of Company Official:**

\_\_\_\_\_

**B.** My firm has employee(s) or is owned or operated by the following individual(s) who has/have been convicted of a felony:

\_\_\_\_\_ \_\_\_\_\_  
\_\_\_\_\_ \_\_\_\_\_

**Signature of Company Official:**

\_\_\_\_\_

**C.** Provide a general description of the conduct resulting in the conviction of a felony.

\_\_\_\_\_  
\_\_\_\_\_

**Signature of Company Official:**

\_\_\_\_\_

**D.** Describe the role that the person(s) convicted of a felony will play in the performance of the contract.

\_\_\_\_\_  
\_\_\_\_\_

**Signature of Company Official:**

\_\_\_\_\_

# **SPECIAL PROVISIONS**

**DESIGN BUILD SERVICES FOR THE REPLACEMENT OF EXISTING HVAC SYSTEM FOR  
CITY OF BRYAN FIRE STATION NO. 2  
RFQ #26-015**

**SP-1: Testing and Study Receipt Acknowledgement**

See form on the following page.

**TESTING AND STUDY ACKNOWLEDGEMENT OF RECEIPT**

Date: \_\_\_\_\_

I hereby acknowledge the receipt of the following documents (testing reports, environmental, etc.) from the City regarding the Design Build Services for the Replacement of Existing HVAC System for City of Bryan Fire Station No. 2 that include:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Signature of Contractor

**SP-2: SUBMITTALS:** The Contractor shall submit to the City's Project Manager for review and approval all items required in the specifications and the following items prior to beginning work:

- a. Organizational chart showing the Project Superintendent and all subcontractors planned for the project.
- b. Work Plan indicating sequence and schedule
- c. Material Storage Location(s)
- d. Subcontractors to be used if applicable
- e. Traffic Control Plan
- f. Storm Water Pollution Control Plan
- g. Concrete Mix Design
- h. Materials
- i. Residential Notification

Each submittal shall include a cover sheet with the following identifying information:

1. Submittal Number and Revision (beginning with Submittal No. 1, and Revision 0)
2. Project Name and COB Project Number
3. Contractor Name
4. Nature of Submittal: product, materials, traffic control plan, schedule, etc.
5. Supplier or Manufacturer of materials submitted (if applicable)
6. Pertinent Drawing Number (if applicable)
7. Pertinent Detail (if applicable)
8. Specification Number
9. Deviations (identify any deviations from the contract documents)

Submittals delivered electronically may include this information in the content of the transmittal e- mail.

**SP-3: CITY OF BRYAN RECORD OF EXCAVATION**

SEE THE FOLLOWING PAGE FOR FORM.

City of Bryan  
**Record of Excavation**

**Instructions:** This record must be prepared for each excavation in a readable, descriptive, and accurate manner. All necessary signatures must be present and approved prior to commencement of work. This record must be retained for (3) years.

Division: \_\_\_\_\_ Date of Excavation: \_\_\_\_\_

Period that the Excavation is open: (dates) \_\_\_\_\_

Specific Location: \_\_\_\_\_ Purpose: \_\_\_\_\_

Class of soil determined to be: (check one) A  B  C   
 (See Appendix A to Subpart P)

Soil test used: \_\_\_\_\_

Visual:  Layered  Cohesive  Granular  Gravel   
 Utilities Water drains from sides or bottom  
 Manual:  Plasticity  Dry Strength  Thumb Penetration

- |  |                              |                             |
|--|------------------------------|-----------------------------|
| 1. All public utility systems notified?                        | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 2. Received permit to dig before digging?                      | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Time: _____ Date: _____  |                              |                             |
| Person: _____  |                              |                             |
| 3. Hazardous atmosphere tested?                                | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 4. Constructed means of egress from excavation?                | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 5. Controlled exposure to vehicle traffic?                     | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 6. Controlled exposure to falling loads?                       | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 7. Warning system for mobile equipment?                        | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 8. Determined emergency rescue equipment needed and available? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 9. Prepared for hazards of water accumulation?                 | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 10. Verified stability of adjacent structure?                  | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 11. Constructed protection from loose rock and soil daily      | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 12. Scheduled a worksite inspection plan?                      | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 13. Prepared for fall protection?                              | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

**Excavation Diagram: (Include length, width, depth)**

**Diagram / Explain type of excavation protection: (Be specific and note distances)**

**Competent Person in Charge of Excavation:**

---

Signature

---

Date

#### **SP-4: POLICY UTILITY INSTALLATION NOTIFICATION**

It is the policy of the City of Bryan Public Works Services Department and its Divisions that all city work forces and/or city contractors performing work involving the installation of underground utilities provide adequate notification to utility companies prior to the commencement of any excavation activity.

Notification of all utility companies shall occur at least 2 Working Days in advance of the planned excavation activity in accordance with Chapter 251 of the State of Texas Utilities Code, Title 5. A record of the notification time, date, and person contacted shall be made and retained for the City of Bryan's records. City work forces under the direction of the Director of Public Works, shall forward a copy of this notification record to the Public Works Services Department's office. Contractors performing work under the direction of the Engineering Division shall forward a copy of the notification record to the City Engineer's office so that it may be filed in the Engineering Division's files. A form entitled "Utility Installation Notification Check-Off List" shall be used to maintain a record of notification activities.

If a utility company that has been duly notified fails to respond to a request for locating their underground facilities within the prescribed period, City of Bryan work forces and/or contractors are advised that they must notify the utility company and/or companies that work will commence on the planned underground excavation within 1 Working Day. It is the responsibility of the various utilities to respond to a request that its lines be located.

In no event should a city work force and/or contractor delay its work activities for a period exceeding 3 Working Days. If an underground utility company has not responded within the prescribed 3 Working Days, city work forces and/or its contractors are advised to commence the underground excavation activity. After the above described notification period has expired, all responsibility for underground utility breaks and/or ruptures become the responsibility of the owning utility company.

The following procedure will be followed when an emergency excavation of underground facilities is required. If the emergency condition will permit notification time, city work forces and/or contractors shall notify all utility companies that an emergency condition exists that may involve underground facilities owned by the utility company. The nature, location and commencement time of the planned excavation work necessary to resolve the emergency condition will be communicated to the utility companies. The utility company or companies shall advise the agency conducting the emergency excavation of the time necessary for them to respond to a location request. City work forces and/or contractors (agencies making emergency excavation) shall not be required to delay emergency repairs for a period exceeding the time to respond indicated by the utility company or companies. In the event that the emergency condition does not provide city work forces and/or contractors time for notification, emergency work will be completed and any damage to underground facilities will be reported to the owning utility company immediately following completion of the emergency work activity. Damage information reported to the utility company involved shall include the type of damage, location, time that the damage occurred, name of city department and/or contractor along with address and telephone number. All damage to facilities resulting from an emergency condition that did not allow notification time for underground locations will be considered the responsibility of the owning utility company.

**UTILITY INSTALLATION  
NOTIFICATION CHECK-OFF  
LIST**

**CONTRACTOR** \_\_\_\_\_

**PROJECT NO. / SUBDIVISION** \_\_\_\_\_

| UTILITY                  | DATE/TIME<br>UTILITY<br>CALLED | DATE/TIME<br>UTILITY<br>RESPONDED | NAME OF<br>UTILITY<br>CONTACT |
|--------------------------|--------------------------------|-----------------------------------|-------------------------------|
| Texas One Call           |                                |                                   |                               |
| Frontier                 |                                |                                   |                               |
| C.O.B. Engineering Dept. |                                |                                   |                               |
| C.O.B. Water Services    |                                |                                   |                               |
| BTU                      |                                |                                   |                               |
| SuddenLink Cablevision   |                                |                                   |                               |
| Atmos Gas                |                                |                                   |                               |

Miscellaneous: \_\_\_\_\_

**TELEPHONE NUMBERS FOR LOCATION OF CABLES & LINES**

|                                     |                                |
|-------------------------------------|--------------------------------|
| Texas One Call                      | 811                            |
| AT&T                                | 1-800-225-5288                 |
| Sprint                              | 1-866-866-7509                 |
| Frontier                            | 1-800-921-8101                 |
| Southwestern Gas Pipeline           | 903-536-7012                   |
| Bryan Woodbine Gathering            | 979-776-0121                   |
| BWOC                                | 972-934-3800                   |
| Exxon Pipeline Company              | 1-800-537-5200                 |
| Energy Transfer                     | 1-800-375-5702 or 210-404-2730 |
| Atmos Gas                           | 1-800-545-6005                 |
| SuddenLink Cablevision              | 877-778-2486                   |
| Wickson Crk. Spec. Utility District | 979-589-3030                   |

## **SP-5: STATE AND CITY SALES TAXES**

The Contractor's attention is directed to Texas House Bill 11 (72<sup>nd</sup> Legislature, 1<sup>st</sup> C.S.), which amended the Texas Tax Code Section 151.311. This amendment provides that by the Contractor entering into a separate contract, the Contractor will become a seller of materials purchased for the project, which will obviate paying taxes on materials incorporated into the project.

As a seller, the Contractor purchases materials and issues a resale certificate instead of paying the sales tax at the time of purchase. The City, as an exempt entity, will provide the Contractor with an exemption certificate at the time of the "sale" of the materials to the City, thereby precluding the City, and Contractor, from paying the sales tax on the materials.

Services are not tax exempt. The Contractor will be required to pay all appropriate taxes for all services as set forth herein.

For purpose of these Contract Documents, the following definitions are provided for materials and services:

Materials: Materials are those items that are tax exempt and are physically incorporated into the facility constructed for the City. Materials include, but are not limited to, purchased items such as the filters, pumps, valves, pipe, fittings, concrete, asphalt, road-base and sub- base, electrical equipment, building components, etc.

Services: Services are those items that are not tax exempt and are items used by the Contractor but that are not physically incorporated into the City's facility and/or are items which are consumed by construction. Services include, but are not limited to items, such as supplies, tools, concrete form, scaffolding, temporary storage buildings, the purchase or rental or lease of equipment, skill and labor, etc.

For further information concerning taxes as they related to materials and services, the Contractor shall refer to House Bill 11 and/or contact the Texas Comptroller of Public Accounts, Austin, Texas.

**SALES TAX EXEMPTION  
CERTIFICATE**

01-339  
(Back)  
(7/01/0  
9)

**TEXAS SALES AND USE TAX EXEMPTION CERTIFICATION**

|  |  |
|--|--|
| Name of purchaser, firm or agency<br>City of Bryan                   |  |
| Address (street & number, P.O. Box or Route number<br>P. O. BOX 1000 | Phone (Area code and number)<br>(979) 209-5030 |
| City, State, ZIP code<br>BRYAN, TEXAS 77805                          |  |

I, the purchaser named above, claim an exemption from payment of sales and use taxes for the purchase of taxable items described below or on the attached order or invoice form:

CONTRACTOR:

Street Address: \_\_\_\_\_ City, State, ZIP Code: \_\_\_\_\_

Description of items to be purchased or on the attached order or invoice:

All labor, materials, supplies and equipment purchased for and consumed or incorporated in the City of Bryan Construction.

Project: \_\_\_\_\_

Project Manager: \_\_\_\_\_

CIP No.: \_\_\_\_\_

Purchaser claims this exemption for the following reason:

**FORM TO FILLED OUT AND SUPPLIED TO CONTRACTOR  
UPON PROJECT START**

|                       |       |      |
|-----------------------|-------|------|
| Purchaser's Signature | Title | Date |
|-----------------------|-------|------|

NOTE: This certificate cannot be issued for the purchase, lease, or rental of a motor vehicle.  
THIS CERTIFICATE DOES NOT REQUIRE A NUMBER TO BE VALID.  
Sales and Use Tax "Exemption Numbers" or "Tax Exempt" Numbers do not exist.

This certificate should be furnished to the supplier. Do not send the completed certificate to the Comptroller of Public Accounts.

## **SP- 6: STORMWATER POLLUTION PREVENTION**

The Contractor shall comply with the TCEQ Construction General Permit No. TXR 150000 and maintain appropriate SWPPP documentation on site.

The Contractor shall take precaution to prevent the deposition of mud from the construction site on adjoining property, roads, streets and alleys during construction. These shall remain in a clean and usable condition. The contractor is responsible for providing erosion control measures during all phases of construction. Appropriate use of silt fence and storm sewer inlet protection is the contractor's responsibility and should be maintained throughout the projects duration. The contractor shall place plastic, wood, or another barrier between spoils and paved areas to prevent embedding into the pavement.

For waterline or sewer line construction, the Contractor shall keep adjacent streets and/or alleys in a clean and usable condition as the job progresses. All sedimentation control measures shall be maintained in an effective operating condition during construction. This will prevent removal of sediment and mud from the project by wind or water.

## **SP-7: FINAL CLEANUP**

Upon the completion of the work and before acceptance and final payment will be made, the Contractor shall clean and remove from the site of the work all surplus and discarded materials, temporary structures, and debris of every kind. All equipment shall be removed from the job site after completion or acceptance of the construction work. If excavated material is placed on private property, it shall be the Contractor's responsibility to provide the City Project Manager with a written statement signed by the property owner stating that the property owner requested the material and is satisfied with the condition in which the property was left. All excavated material containing any oil based products or asphaltic products must be disposed of at a licensed sanitary landfill. All brush that is not burned must be disposed of at a licensed compost facility. The Contractor will be allowed to burn debris on-site, provided that he obtains a permit to burn said debris from the City of Bryan Fire Marshall twenty-four (24) hours in advance of any burning. Permits will be issued on a day to day basis only and the Contractor shall be totally responsible for any damage incurred due to burning. No brush, oil- based soil, or asphaltic products will be allowed to be placed on private property. Material is not to be placed in floodplain without prior approval by the City's Floodplain Administrator. The Contractor shall be totally responsible for any damage incurred due to illegal dumping. He shall leave the site of the work in a neat and orderly condition equal to that which originally existed. Surplus and waste materials removed from the site of the work shall be disposed of at a licensed sanitary landfill or as directed by the City Project Manager. No payment will be made for this work, its cost being subsidiary to the various bid items.

## **SP-8: AUTHORITY AND DUTIES OF INSPECTORS**

Inspectors will be authorized to inspect all work done and all materials furnished. In case of any dispute arising between the Contractor and the Inspector as to the materials furnished or the manner of performing the work, the Inspector will have authority to reject materials or suspend work until the question at issue can be referred to and decided by the City Engineer. The Inspector will not, however, be authorized to revoke, alter, enlarge, or release any requirement of these specifications, not to approve or accept any portion of work, nor to issue instructions contrary to the Plans and specifications. He will in no case act as foreman, nor perform other duties for the Contractor, nor interfere with the management of the work.

## **SP-9: PROJECT SAFETY**

The Contractor will adhere to all safety rules and regulations pertaining to trenching and excavation work as stated in the OSHA standard 29CFR 1926, Subpart P, Excavation. Texas Health and Safety Code, Title 9, Subtitle A, Chapter 756, Subchapter C, 756.021, 756.022 and 756.023 are also applicable while performing trench and excavation work as a part of this contract.

Where trench depths or other excavations exceed a depth of 5 feet, the Contractor must use protective devices as specified on OSHA Standard 29 CFR Part 1926, Subpart P and appendices thereto. A trench shoring plan in accordance with Vernon's Health and Safety Code Section 756.021 shall be submitted by the Contractor prior to issuance of a work order for this project. All soil for this project shall be classified as type "C" soil. The "Record of Excavation" form, included in this contract, is to be filled out by the Contractor at the time of excavation.

The Contractor will be required to furnish and erect adequate protective devices (barricades, warning signs, lights, etc.) to ensure safe conditions once construction has begun. Barricades shall be painted in a color that will be visible at night.

The Contractor shall submit a Traffic Control Plan to the City Engineer, which must be approved before the Contractor begins work. The City Engineer reserves the right to change the Traffic Control Plan at any time.

The Contractor will be held responsible for all damage to the work due to failure of barricades, signs, lights, and watchmen to protect it. Under any and all circumstances signs, barricades, lights, and other traffic control devices shall conform to the requirements of the Texas Manual on Uniform Traffic Control Devices with respect to design, application and maintenance.

#### **SP-10: BASIC SAFEGUARDING OF CONTRACTOR INFORMATION SYSTEMS**

The Contractor shall apply basic safeguarding requirements and procedures to protect the Contractor's information systems whenever the information systems store, process or transmit any information, not intended for public release, which is provided by or generated for the City. This requirement does not include information provided by the City to the public or simple transactional information, such as that necessary to process payments. These requirements and procedures shall include, at a minimum, the security control requirements "reflective of actions a prudent business person would employ" which are outlined in the Federal Acquisition Regulations FAR 52.204-21(b) and codified in the Code of Federal Regulations at 48 C.F.R. § 52.204-21(b) (2016).

Contractor shall include the substance of this clause in subcontracts under this contract (including subcontracts for the acquisition of commercial items other than commercially available off-the-shelf items) in which the subcontractor may have City contract information residing in or transiting through its information system.

#### **SP-11: PERMITS AND LICENSES**

The Contractor shall obtain all permits and licenses, and give all notices necessary and incident to the due and lawful prosecution of the work. All City of Bryan fees for permits will be waived.

#### **SP-12: SANITARY PROVISIONS**

The Contractor shall establish and enforce among his employees such regulations in regard to cleanliness and disposal of garbage and waste as will tend to prevent the inception and spread of infectious or contagious diseases and to prevent effectively the creation of a nuisance about the work on any property either public or private, and such regulations as are required by the City Engineer shall be put into immediate force and effect by the Contractor. The necessary sanitary conveniences for the use of laborers on the work, properly secluded from public observation, shall be constructed and maintained by the Contractor in such manner and at such points as will be approved by the City Engineer, and their use shall be strictly enforced by the Contractor. All sanitary laws and regulations of the State of Texas and the City of Bryan shall be strictly complied with.

#### **SP-13: SAMPLE CERTIFICATE OF INSURANCE**

[See Following Page]



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

|          |                |                               |                |
|----------|----------------|-------------------------------|----------------|
| PRODUCER | <b>EXAMPLE</b> | CONTACT NAME                  |                |
|          |                | PHONE (A/C, No, EXT):         | FAX (A/C, No): |
|          |                | E-MAIL ADDRESS:               |                |
|          |                | INSURER(S) AFFORDING COVERAGE | NAIC #         |
| INSURED  | INSURER A :    |                               |                |
|          | INSURER B :    |                               |                |
|          | INSURER C :    |                               |                |
|          | INSURER D :    |                               |                |
|          | INSURER E :    |                               |                |
|          | INSURER F :    |                               |                |

COVERAGES                      CERTIFICATE NUMBER:                      REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE   | ADOL SUBR (NSD, WVD) | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY)  | LIMITS   |
|----------|---|----------------------|---------------|-------------------------|--|--|
|          | <b>COMMERCIAL GENERAL LIABILITY</b><br><input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR   |                      |               |                         |  | EACH OCCURRENCE \$ 1,000,000<br>DAMAGE TO RENTED PREMISES (Per occurrence) \$ 50,000<br>MED EXP (Any one person) \$ 5,000<br>PERSONAL & ADV INJURY \$ 1,000,000<br>GENERAL AGGREGATE \$ 2,000,000<br>PRODUCTS - COMP/OP AGG \$ 1,000,000 |
|          | GEN'L AGGREGATE LIMIT APPLIES PER:<br><input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC<br>OTHER:  |                      |               |                         |  |  |
|          | <b>AUTOMOBILE LIABILITY</b><br><input checked="" type="checkbox"/> ANY AUTO<br><input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS<br><input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS |                      |               |                         |  | COMBINED SINGLE LIMIT (Per accident) \$ 1,000,000<br>BODILY INJURY (Per person) \$<br>BODILY INJURY (Per accident) \$<br>PROPERTY DAMAGE (Per accident) \$   |
|          | <b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR<br><input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE  |                      |               |                         |  | EACH OCCURRENCE \$<br>AGGREGATE \$   |
|          | DED    RETENTION \$   |                      |               |                         |  | \$   |
|          | <b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b><br>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)<br>If yes, describe under DESCRIPTION OF OPERATIONS below   |                      |               |                         | <input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER | E.L. EACH ACCIDENT \$ 500,000<br>E.L. DISEASE - EA EMPLOYEE \$ 500,000<br>E.L. DISEASE - POLICY LIMIT \$ 500,000   |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

City of Bryan shall be named as additional insured on all Commercial General Liability policies. Workers Compensation and Employer's Liability policies to include a Waiver of Subrogation in favor of the City of Bryan. (All endorsements must be provided when available.)

|  |  |
|--|--|
| <b>CERTIFICATE HOLDER</b><br>City of Bryan<br>Attn: Risk Management Department<br>P.O. Box 1000<br>Bryan, Tx 77805 | <b>CANCELLATION</b><br>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.<br><br>AUTHORIZED REPRESENTATIVE |
|--|--|

**SP-14: FAILURE TO COMPLETE ON TIME**

The time of completion is the essence of the contract. For each working or calendar day that any work shall remain uncompleted (including any remaining items of work 30 days beyond Substantial Completion) after the time specified in the Proposal and the Contract, or the increased time granted by the City, or as increased by work or materials ordered as provided in Section 8.6, the sum per day given in the following schedule, unless otherwise specified in the Special Provisions, will be deducted from the monies due the Contractor, not as a penalty but as administrative costs.

| AMOUNT OF CONTRACT<br>\$ TO \$ | AMOUNT OF<br>ADMINISTRATIVE<br>COSTS PER DAY<br>\$ |
|--------------------------------|--|
| 0 to 9,999                     | 200  |
| 10,000 to 24,999               | 300  |
| 25,000 to 49,999               | 400  |
| 50,000 to 99,999               | 500  |
| 100,000 to 499,999             | 600  |
| 500,000 to 999,999             | 700  |
| 1,000,000 to 1,999,999         | 800  |
| 2,000,000 to 19,999,999        | 1,000  |
| 20,000,000 – 39,999,999        | 2,000  |

The time for the Substantial and Final Completion of the work described herein are reasonable times for the completion of each, taking into consideration all conditions, including but not limited to the average climatic conditions and usual industrial conditions prevailing in this locality. The amount of administrative damages for the Contractor's failure to meet the deadlines for Substantial and/or Final Completion are fixed and agreed on by the Contractor 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 Engineer, 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 as shown on the table above for each and every calendar day that the Contractor shall be in default after the time stipulated for Substantial Completion and/or Final Completion, not as a penalty, but as administrative costs incurred by the City as a result of the Contractor's delay. It is specifically understood that the assessment of administrative costs may be made for any failure to meet either or both of the deadlines specified for Substantial Completion and/or Final Completion.

The sum of money thus deducted for such delay, failure or non-completion is not to be considered as a penalty, but shall be deemed, taken and treated as reasonable administrative costs, since it would be impracticable and extremely difficult to fix the actual losses incurred by the City as a result of the Contractor's delay.

**END OF SUPPLEMENTARY GENERAL CONDITIONS AND SPECIAL PROVISIONS.**

**EXHIBIT “D” TO THE AGREEMENT  
ALLOWABLE GENERAL CONDITIONS LINE ITEMS**

On-Site Project Management Staff

Persons as identified in the approved Guaranteed Maximum Price proposal Out-of-State  
Project Specific Travel\*

Bonds and

Insurance  
Builder’s Risk  
Insurance  
Professional Liability / EO  
Coverage  
General Liability Insurance  
Contractor Payment and Performance  
Bonds Other Project Insurance as  
Required by Contract  
Subcontractor bonds or Subcontractor  
Default Insurance

Temporary Project

Utilities  
Temporary  
Toilets  
Temporary Fire  
Protection  
Dumpsters  
Project Electricity and Water  
Fencing, Covered Walkways and Barricades  
Monthly Telephone /Internet Service (Field Offices Only, No Cell Phones, PDAs)  
Telephone / Internet System Installation (Field Offices Only, No Cell Phones  
or PDAs) Temporary Water Distribution and Meters (Field Offices Only)  
Temporary Electrical Distribution and Meters (Field Offices Only)  
Site Erosion Control (BMP) and Project Entrance(s)

Field Offices & Office Supplies

|  |  |
|--|--|
| Partnering Costs                             | First Aid Supplies                     |
| Job Photos/Videos                            | Reprographic Services Project Specific |
| Signage                                      | Monthly Office Supplies                |
| Postage/Special Shipping                     | Remote Parking Expenses                |
| Project Record Drawings                      | Project Reference Manuals              |
| Project Milestone Event(s)*                  | Move-In/Out and Office Setup           |
| Employee Identification System               | Drinking Water and                     |
| Accessories Small Tools and Storage Trailers | Office Clean-Up/Janitorial             |
| Services Monthly Office Trailer Rental Costs | Security                               |

System/Watchman  
Safety Material and Equipment

- \* Specific justification and all estimated costs shall be submitted and approved by the City prior to any travel or event.

**EXHIBIT “E” TO THE AGREEMENT  
GUARANTEED MAXIMUM PRICE (GMP) PROPOSAL**

The Design-Build Contractor hereby submits to City of Bryan, Texas the following Guaranteed Maximum Price Proposal for the [Project Name], Project No. [Project Number], based on Plans and Specifications dated [Date on Drawings Month Day, Year].

1. A not-to-exceed amount for the Cost of the Work pursuant to the Agreement: (\$ \_\_\_\_\_)  
(In Numerals)
  
2. A not-to-exceed amount for the General Conditions Costs pursuant to the Agreement: (\$ \_\_\_\_\_)  
(In Numerals)
  
3. A not-to-exceed amount for the Design-Build Contractor’s Contingency pursuant to the Agreement:  
(\$ \_\_\_\_\_)(In Numerals)
  
4. A lump sum amount for Contractor’s Construction Phase Fee, pursuant to the Agreement is:  
(\$ \_\_\_\_\_)(In Numerals)
  
5. TOTAL OF ITEMS 1 THROUGH 4  
This amount is the Guaranteed Maximum Price (GMP) which the Contractor hereby guarantees to the City for constructing the [Project Name], [System Member], [City], Texas, Project No. [Project Number] complete in place and operational. All attached breakdowns shall total this GMP amount:  
(\$ \_\_\_\_\_)(In Numerals)
  
6. CONSTRUCTION TIME:  
The undersigned agrees to complete all Work in the following number of calendar days from the Notice to Proceed:  
( \_\_\_\_\_)(In Numerals)

This GMP Proposal will not be withdrawn for a period of sixty (60) days from the date of receipt of this offer by the City.

The Contractor further agrees to pay, as Liquidated Damages, the sum of [Liquidated Damages Amount from UGC, Article 8] per calendar day for failure to complete the work within the contracted time in accordance with the Agreement between City and Contractor.

BY SIGNING BELOW, the Parties have executed and bound themselves to this Proposal.

**CITY OF BRYAN**

**PREPARED AND RECOMMENDED:**

\_\_\_\_\_  
Marcus Walker, Parks Operations  
and Facilities Manager

Date: \_\_\_\_\_

**APPROVED FOR PROCESSING:**

\_\_\_\_\_  
Mike Riggins, Parks, Recreation  
and Facilities Director

Date: \_\_\_\_\_

\_\_\_\_\_  
Hugh R. Walker, Deputy City Manager

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Thomas A. Leeper, City Attorney

Date: \_\_\_\_\_

**APPROVED FOR COUNCIL:**

\_\_\_\_\_  
Andrew Nelson, City Manager

Date: \_\_\_\_\_

**APPROVED**

\_\_\_\_\_  
Bobby Gutierrez, Mayor

Date: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Melissa Brunner, City Secretary

Date: \_\_\_\_\_

**CONTRACTOR:**

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

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT “F” TO THE AGREEMENT**  
**Security Bond**

**SECURITY BOND**

Surety Bond No. \_\_\_\_\_

STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENTS:

§

COUNTY OF \_\_\_\_\_ §

That we, \_\_\_\_\_, as Principal, and \_\_\_\_\_, as Surety, are hereby held and firmly bound unto City of Bryan, Texas as Obligee in the penal sum of Five Percent (5%) of \_\_\_\_\_ (\$ \_\_\_\_\_), the Amount Available for the Construction Contract (AACC) for the Project defined herein below, for payment whereof the said Principal and Surety bind themselves, their heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

Whereas the Principal has executed a contract with Obligee dated \_\_\_\_\_, \_\_\_\_\_ (the "Contract"), for \_\_\_\_\_, Project No. \_\_\_\_\_ (the "Project").

NOW THEREFORE, the condition of this obligation is such that, if the aforesaid Principal shall execute a Guaranteed Maximum Price Proposal acceptable to all parties, the said Principal will, within the time required by the Contract, give Performance and Payment Bonds, as required by the Contract, to secure the performance of the terms and conditions of the Contract, then this obligation to be void; otherwise the Principal and Surety will pay to the Obligee the difference in money between the amount of the Guaranteed Maximum Price Proposal of the said Principal and the amount for which the Obligee legally contracts with another party to perform the work if the latter amount be in excess of the former, but in no event shall liability hereunder exceed the penal sum hereof.

IN WITNESS WHEREOF, the above bounden parties have executed this instrument under their several seals this day of \_\_\_\_\_ in the year \_\_\_\_\_, the name and corporate seal of each corporate party being hereto affixed, and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

(SEAL)

Principal

ATTEST:

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

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

\_\_\_\_\_  
(Typed Name and Title)

\_\_\_\_\_  
(Typed Name and Title)

(SEAL)

Surety

ATTEST:

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

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

\_\_\_\_\_  
(Typed Name and Title)

\_\_\_\_\_  
(Typed Name and Title)

**EXHIBIT "G" TO THE AGREEMENT  
PERSONNEL TITLES AND MONTHLY RATES**

**The Construction Manager for this project will assemble the following information from its assigned staff or any subcontractor team members associated with the project. The categories of personnel indicated should be edited to include only those expected to be actually working on this project. When preparing this schedule, you are expected to adhere to the position classifications and titles presented to the greatest extent possible. Additional listings and/or position classifications may be added as needed or required by the project.**

Firm/Position Classification

Monthly Billing Rate

**Design-Build Contractor**

|  |                  |
|--|------------------|
| Superintendent                             | <u>\$ 14,550</u> |
| Project Manager                            | <u>\$16,550</u>  |
| Assistant Project Manager/ Assistant Supt. | <u>\$10,250</u>  |

**EXHIBIT “H” TO THE AGREEMENT  
Subcontractor Insurance Requirements**

The following are the standard types, minimum amounts and forms of insurance required under this Subcontract, they shall be obtained, endorsed, and maintained at Subcontractor's sole expense. The policies of insurance shall be in such form and shall be issued by such company or companies as may be satisfactory to Contractor (minimum carrier rating shall be A VII). If Contract Documents require more extensive insurance coverage applicable to Subcontractor, the Contract Documents shall prevail. Certificate(s) of Insurance along with copies of all endorsements required herein shall be delivered to Contractor **prior to site mobilization or commencement of Subcontractor's work**. The insurance obligations of Subcontractor are fully binding on anyone hired by Subcontractor and Subcontractor's Agent. To the extent permitted by applicable law, Subcontractor shall comply with the following:

### 1. General Liability

Subcontractor shall provide commercial general liability insurance on a policy form no less broad than **ISO CG 00 01**. Limits shall be **not less than**:

**[\$1,000,000] Each Occurrence**  
**[\$1,000,000] Personal & Adv. Injury**  
**[\$2,000,000] General Aggregate**  
**[\$2,000,000] Products-Completed Operations Aggregate**

- a. **General aggregate shall be project-specific and be affirmed on the policy.**
- b. Coverage shall apply on a **primary and non-contributory basis** for the Additional Insureds noted below and be affirmed on the policy.
- c. **Waiver of Subrogation** shall be in favor of indemnitees and Additional Insureds noted below and shall be affirmed on the policy.
- d. **Only Occurrence Based general liability policies are acceptable**, Claims-made general liability policies are not acceptable.
- e. Completed operations coverage shall be maintained for the period of time Subcontractor may be held contractually liable for its work.
- f. There shall be no exclusion for the following:
  - 1) Your scope of work
  - 2) Residential or habitational construction
  - 3) EIFS, or exclusion applying to similar systems
  - 4) Subsidence or earth movement exclusions
  - 5) Prior work exclusions
  - 6) Cross-liability exclusion, except for Named Insureds
  - 7) Breach of contract exclusions
  - 8) No action-over or similar employee-injury exclusion
  - 9) No exclusion for bodily injury for contractor of any tier
  - 10) Work from heights
  - 11) Occurrences causing continuous or progressively deteriorating injury or damage
  - 12) Damage to work performed by subcontractors on your behalf.
  - 13) No absolute pollution exclusion, only standard ISO pollution exclusion
  - 14) Only standard ISO definition for insurance contract
- g. There shall be no change to the standard ISO 00 01 employer's liability exclusion regarding the exception for contractually assumed liability.
- h. There shall be no exclusion or changes to the standard ISO 00 01 policy wording for the definition of "insured contract". Such ISO wording includes the assumption of the tort liability of another.

i. Any professional liability exclusion must contain an exception for construction means and methods.

j. **Additional Insureds** shall be as follows:

**SpawGlass Construction Corp., its parent, subsidiary, and affiliated companies, predecessors and successors; Project Owner and indemnitees required to be indemnified in the Prime Contract; And each of their respective officers, directors, partners, employees, agents or representatives, volunteers, elected boards or officials and other consultants;**

- 1) Additional Insureds shall be added to the policy by way of **ISO Endorsement CG 20 10 11 85, or CG 20 10 10 01 plus CG 20 37 10 01, or equivalent.**
- 2) Additional Insured Endorsements shall accompany the Certificate of Insurance.
- 3) Additional Insured status shall apply to both ongoing and completed operations.
- 4) Additional Insured status shall not be limited to comparative negligence, sole negligence, or vicarious liability of the Contractor.
- 5) Additional Insured status shall be maintained for the term of the subcontract plus the period of time Subcontractor may be held legally liable for its work or the work performed on its behalf.
- 6) Additional insured status shall be for the full limits of Subcontractor's policies and not be limited to minimum limits required herein.
- 7) Contractor reserves the right, at its sole and subjective discretion, to reject any additional insured endorsement that it deems not equivalent to what is required herein.
- 8) Subcontractor must include these Additional Insured requirements (Section 1 of this Attachment) in the contracts of its subcontractors and vendors.

## 2. **Workers' Compensation Insurance**

Subcontractor must have statutory Workers' Compensation coverage for the State in which the Project is located and the states in which any subcontractor is domiciled.

- a. Shall be obtained for all subcontracts and in accordance with state statute.
- b. Other States coverage shall be included.
- c. Jones Act coverage shall be included, if applicable.
- d. USL&H coverage shall be included, if applicable.
- e. Policy shall contain a Maritime Coverage Endorsement, if applicable.
- f. Policy shall include a **Waiver of Subrogation Endorsement** in favor of indemnitees and Additional Insureds (listed in Section 1 of this Attachment).
- g. If Subcontractor is an employee leasing firm, utilizes an employee leasing firm, or will supply equipment with an operator, the workers' compensation coverage applying to that employee shall contain an Alternate Employers Endorsement on NCCI Form WC 00 03 01 A, naming **SpawGlass Construction Corp.**, its parent, subsidiary and affiliated companies, predecessors and successors;
- h. Subcontractor and its insurer waive all rights against Contractor and Owner, and their agents, officers, directors and employees for recovery of damages to the extent those damages are covered by the workers compensation policy obtained by Subcontractor pursuant to this Exhibit H.

## 3. **Employers Liability Insurance**

Limits shall be **not less than:**

**\$ [1,000,000] each accident**

**\$ [1,000,000] disease – each employee**

**\$ [1,000,000] disease – policy limit**

#### 4. Automobile Liability Insurance

Limits shall be **not less than:**

**[\$1,000,000] Combined Single Limit**

- a. Coverage shall apply to **any auto**, including all owned, hired, and non-owned vehicles used by Subcontractor, its employees, agents, subcontractors, or suppliers.
- b. **Waiver of Subrogation** shall be in favor of indemnitees and Additional Insureds noted in Section 1 of this Attachment and shall be affirmed on the policy.
- c. If Subcontractor's work involves the transport of pollutants, policy shall be endorsed with **Pollution Liability - Broadened Pollution for Covered Autos ISO CA 99 48 10 01**.
- d. If Subcontractor's work is **within fifty feet of any railroad**, policy shall be endorsed with **ISO CA 20 70**.
- e. Contractor, owner and any other party required under the General Contract shall be included as an additional insured under the business auto liability policy. Subcontractor and its insurer waive all rights against Contractor and Owner and their agents, officers, directors and employers for recovery of damages to the extent those damages are covered by the business auto liability insurance policy obtained by Subcontractor pursuant to this Exhibit H.

#### 5. Excess/Umbrella Liability Insurance

Subcontractor's limits shall be **not less than:**

**\$ [2,000,000] each occurrence**

**\$ [2,000,000] aggregate**

For Tower Crane, Crawler Cranes, and Mobile Cranes, limits of liability shall be **not less than:**

**[\$5,000,000] Each Occurrence**

**[\$10,000,000] General Aggregate**

(Limits may be obtained via combination of primary and excess coverage.)

- a. Coverage shall apply as excess to Subcontractor's policies, including, but not limited to, its general liability, automobile liability, and employers liability policies.
- b. Completed Operations coverage shall be maintained for the period of time Subcontractor may be held legally liable for its work.
- c. Coverage shall be on a **follow-form** basis.
- d. Coverage shall apply on a **primary and non-contributory basis** for the Additional Insureds noted in Section 1 of this Attachment and be affirmed on the policy.
- e. **Waiver of Subrogation** shall be in favor of indemnitees and Additional Insureds noted in Section 1 of this Attachment and shall be affirmed on the policy.
- f. **Additional Insured** requirement of Section 1 of this Attachment shall also apply and shall be affirmed on the policy.
- g. Subcontractor acknowledges that they are purchasing excess/umbrella insurance on behalf of Contractor and that such coverage shall be subject to vertical exhaustion before any other primary, umbrella, excess, any other insurance, or self-insurance programs of the Contractor or Owner will be triggered.

#### 6. Pollution Liability Insurance

This is required for all entities that have the potential to release pollutants into the environment. Limits of liability for the scopes listed below shall be **not less than:**

**[\$1,000,000] each occurrence**

**[\$2,000,000] annual aggregate**

- Exterior Envelope Subcontractors
- Plumbing: Gas, Sanitary Sewer, Flushing Chemicals
- HVAC: Cooling Tower Chemicals, Flushing Chemicals
- Earthwork
- Utilities: Gas, Sanitary Sewer

Limits of liability for the scopes listed below shall be **not less than**:

**[\$2,000,000] each occurrence**

**[\$3,000,000] annual aggregate**

- Abatement
  - Demolition
  - Fuel Storage/Gas Station
- a. Coverage shall apply to:
    - 1) Bodily injury and property damage arising from a pollution incident or event in connection with Subcontractor's activities
    - 2) Clean-up costs
    - 3) Remediation expenses (including costs for investigation, sampling, characterization, and monitoring)
    - 4) Legal & defense costs
    - 5) Natural resource damages
    - 6) Transportation of pollutants on and off the project site
    - 7) Non-owned disposal site liability (if Subcontractor's scope of work, or work performed on its behalf, includes the responsibility for manifesting and disposing of contaminated material or waste from its activities)
  - b. Such insurance shall include coverage for silica, mold and fungi.
  - c. Such insurance shall include contractual liability coverage applicable to the indemnity provisions of this Subcontract, and shall not contain a cross-suits exclusion, except for Named Insureds.
  - d. If coverage is written on a claims-made basis, the retro date shall be on or before the date Subcontractor commenced the Work.
  - e. Policy shall add the **Additional Insureds** noted in Section 1 by way of endorsement.
  - f. Coverage and Additional Insured status shall remain in full force and effect for the term of the subcontract plus the period of time Subcontractor may be held legally liable for its work or the work performed on its behalf.
  - g. **Waiver of Subrogation** shall be in favor of Additional Insureds noted in Section 1 and shall be affirmed on the policy by way of endorsement.

## **7. Professional Liability Insurance**

- a. This is required for subcontractors providing professional services, design services, or drawings by a registered engineer.

Limits of liability for the scopes listed below shall be **not less than**:

**[\$1,000,000] each claim**

**[\$2,000,000] annual aggregate**

- Mobile Crane, Crawler Crane, & Tower Crane

- Material Hoists Foundation and Tie-Off Points Engineering
- Fall Protection Engineering/ Tie-Off Points
- Forming/Shoring Systems for Concrete Structures
- Load Bearing Masonry Walls
- Structural Steel Engineering
- Curtainwall Systems
- Drywall, when Load Bearing Metal Stud Walls and/or Deflection criteria on Metal Stud Walls
- Elevator and Escalator
- Fire Suppression
- Delegated Design - Mechanical, Electrical & Plumbing
- Fire Alarm System
- Security
- Segmented Block/Retaining Walls Engineering
- Temporary Shoring Engineering for subgrade excavation

- b. Coverage shall apply to any negligent acts, errors, or omissions arising from Subcontractor's professional services.
- c. The retro date on the policy shall be prior to the commencement of Work.
- d. Coverage shall be maintained for the term of the subcontract plus the period of time Subcontractor may be held legally liable for its work or the work performed on its behalf.
- e. Subcontractor and its architects, engineers, design professionals, subconsultants, and subcontractors shall provide prompt notice to Contractor of any claim asserted, the entry of any settlement, or rendering of any judgment which may be covered by this policy and which exceeds twenty-five percent (25%) of available policy limits of the policy.
  - 1) In the event of such claim asserted, entry of any settlement, or rendering of any judgment, Contractor may require Subcontractor and its architects, engineers, design professionals, and subcontractors to obtain additional professional liability insurance coverage so that coverage available is not less than the amounts specified above.
- f. Coverage shall not be limited to dollar amounts of the Work or this agreement.

**8. Riggers Liability Insurance (required if work involves rigging including, but not limited to, moving, erecting, storing, hoisting, or lowering)**

Limits shall be **not less than:**  
**[\$5,000,000] each occurrence**  
**[\$10,000,000] aggregate**

- a. Increased limits may be required depending on the value of equipment being lifted or moved for Owner or others.

**9. Railroad Protective Liability (required if work is within 50 feet either side of a railroad)**

Limits and terms of such coverage shall be not less than those set forth by the railway operator.  
 If subcontractor doesn't have any scope of work within 50 feet either side of the railroad, then this coverage is not required.

**10. Builders Risk Property Insurance**

- a. Subcontractor shall be responsible for its pro-rata share of any applicable deductible for builders risk claims.

- b. Subcontractor waives, and shall require all subcontractors to the lowest tier to waive, all rights against each other and against the Contractor, Owner, Subcontractor, and all other persons or entities providing labor or material to the Project as required by the Contract Documents for damages caused by fire or other perils to the extent covered by Builder's Risk relating to the Project, except such rights as any of them may have to the proceeds of such insurance.

**11. Watercraft Protection and Indemnity Insurance (required if Subcontractor's work involves the use of watercraft not covered by general liability policy)**

Limits shall be **not less than** those set forth below, or the value of the watercraft, whichever is greater:

**[\$5,000,000] each occurrence**

- a. Coverage shall apply to all the crew members as well as passengers.

**12. General Provisions**

- a. Policy terms, limits and coverages provided by Subcontractor shall equal or exceed any requirements specified in the Contract Documents or required by law, but in no event shall they be less than required herein.
- b. Subcontractor shall provide evidence of compliance by way of **ACORD 25 Insurance Certificate** which transmittal shall **include all policy endorsements required herein**.
- c. Certificate shall show all **liability limits in US Dollars**.
- d. Subcontractor must provide no less than **thirty (30) days** written notice to Contractor prior to any cancellation, non-renewal of any insurance required herein, or any reduction in or impairment of insurance limits.
- e. Waiver of Subrogation in favor of indemnitees and Additional Insureds as outlined in Section 1 applies to any insurance required hereunder or otherwise maintained by Subcontractor.
- f. Any self-insured retentions on any of the coverages required above must be clearly disclosed on the Certificate of Insurance and are subject to Contractor's approval.
- g. Contractor maintains the right to require a proper form of collateral for any self-insured retention.
- h. Subcontractor's insurance, whether or not specified or required herein, shall be **primary and non-contributory** to any insurance maintained by the indemnitees and the Additional Insureds as outlined in Section 1.
- i. Contractor has the right to receive certified copies of any Subcontractor insurance policies upon written request.
- j. Acceptance of Subcontractor's insurance certificate will not relieve any of Subcontractor's responsibilities under the subcontract and shall not constitute a waiver of Subcontractor's obligation to provide insurance in accordance with and as required by the subcontract agreement.
- k. Contractor has the right to withhold payment to Subcontractor until such time as subcontractor complies with the insurance requirements.
- l. Failure to comply with the requirements of this Exhibit H shall be deemed a material breach of the Subcontractor's obligations under the subcontract agreement.

**13. EVIDENCE OF INSURANCE**

Prior to commencement of Subcontractor's Work, Subcontractor shall submit to Contractor Certificates of insurance with applicable endorsements showing the insurance required in this Exhibit. Upon Contractor's request, Subcontractor shall furnish certified copies of required insurance policies and, if requested, shall furnish updated policies thereafter. Prior to expiration of any of the insurance policies, Subcontractor shall submit to Contractor updated certificates of insurance. There shall be no cancellation, material modification or reduction of coverage without 30 days' prior written notice to Contractor by Subcontractor.

Contractor shall have the right, but not the obligation, to prohibit Subcontractor or any subcontractor from entering the Project site until such certificates or other evidence of insurance has been placed in full compliance with these requirements as received and approved by Contractor. Failure to maintain the required insurance may result in termination of this Subcontract at Contractor's option. If Subcontractor fails to maintain the insurance as set forth herein, Contractor shall have the right, but not the obligation, to purchase and bill Subcontractor for the insurance.

Any failure of Contractor to require or obtain evidence of the insurance required hereunder shall not be deemed a waiver of such requirement. Subcontractor's obligation to procure insurance shall be independent of all other obligations under this Subcontract.

14. **SUB-SUBCONTRACTOR'S INSURANCE**

- a. Subcontractor must include these insurance requirements in the agreements of its lower-tier subcontractors, vendors, suppliers, and service providers. This is inclusive of any requirements for additional insured status as outlined in Section 1. A third party's obtaining the required insurance shall in no manner lessen or affect Subcontractors obligations or liability as set forth herein or otherwise imposed by law.

**EXHIBIT “I” TO THE AGREEMENT  
SPAUGLASS DESIGN-BUILD QUALIFICATIONS RESPONSE**

SpawGlass Design Build Qualifications response submitted 12/18/25 is hereby incorporated by reference.

**EXHIBIT "J" TO THE AGREEMENT  
CITY OF BRYAN REQUEST FOR QUALIFICATIONS NO. 26-015**



City of Cedar Park Fire Station 1

CITY OF BRYAN

# FIRE STATION 2 HVAC REPLACEMENT

RFQ# 26-015

December 18, 2025 | 2:00 p.m.



*Providing the Absolute Best Construction Experience*



Texas A&M University Corps Dorm Renovation - Completed with DBR Engineering

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# REQUEST FOR QUALIFICATIONS

## Design/Build Services for the Replacement of Existing HVAC System for City of Bryan Fire Station No. 2

RFQ# 26-015



# CITY OF BRYAN

*The Good Life, Texas Style.™*

Date Posted:  
November 21, 2025

**Statement of Qualifications Due Date:**  
**Thursday, December 18, 2025 @ 2:00 PM CST**

**Publicly Acknowledged via zoom:**  
<https://us02web.zoom.us/j/85948016863?pwd=oB1e5tkcqhTVZBubePFwuN2DepzGQI.1>

**MEETING ID: 859 4801 6863**

**PASSCODE: 840743**

**DIAL IN: 1-346-248-7799**



December 18, 2025  
 Ms. Phebe Mosley, Purchasing Manager  
 City of Bryan - Purchasing Department  
 2611 N. Earl Rudder FWY  
 Bryan, TX 77803



RE: Design and Construction of Fire Station 2 HVAC Replacement - RFQ#26-015

Dear Ms. Mosley,

The SpawGlass/DBR design-build team is pleased to present our qualification for the delivery of the Fire Station 2 HVAC Replacement for the City of Bryan. SpawGlass and DBR have previously completed 16 projects across the state of Texas together totaling and excess of \$229,000,000 such as the \$123,000,000 Texas A&M Design Build Corps Dorm Renovation. SpawGlass has previous experience with the City of Bryan and have a great relationship that we would like to bring to this project.

SpawGlass has been performing construction services in the Bryan-College Station area since 1972, and SpawGlass' Brazos Valley office has worked on nine local projects in the last three years. Having completed over \$216 Million in design-build projects in Bryan/College Station alone, we are a proven local design-build contractor.

Founded in 1972, DBR has evolved into the premier MEP engineering firm in Texas, providing mechanical, electrical, and plumbing engineering services, as well as building commissioning, integrated technology, and security system consulting. Now, more than 50 years later, DBR has a team of over 200 professionals in seven cities across the State of Texas. While our history guides our growth, our talented team of consultants are focused on the future. We are helping to create healthy and comfortable environments that will stand the test of time.

SpawGlass' unique approach includes the following:

**Our Team** - The SpawGlass team follows an organized, disciplined approach to construction, but equally important, we have the right team to deliver that approach. Our team will leverage our team continuity and proven tools for success from past projects.

**Local Team and Office** - Our on-site teams live and work here in town; they are readily available during construction and are physically here to serve you even after the project is completed.

If I can provide any clarification for you about our qualifications, please do not hesitate to contact me on my cell phone (281-924-8657) or by email (Garett.Wheaton@SpawGlass.com). We are excited about the chance to continue our work for the City of Bryan,

Sincerely,

Garrett Wheaton  
 Vice President of Operations



Legends Event Center Grand Opening- Bryan, TX

## FIRM INTRODUCTION

1. Briefly introduce your Firm, providing a summary of the administration, organization, and staffing of your Firm, including multiple offices, if applicable. Provide an organizational chart indicating the positions and names of the core management team to undertake this engagement.

Founded in 1953 by Louis Spaw and Frank Glass, SpawGlass is a 100-percent employee-owned and operated construction services provider headquartered in Selma, Texas with more than 700 employees statewide. Our Brazos Valley office is part of our Houston Division, which was incorporated under SpawGlass Construction Corp. in the State of Texas in 1993. SpawGlass Construction Corp. is a wholly-owned subsidiary of SpawGlass Holding, L.P., which is owned by more than 370 employee shareholders and led by a board of directors. Our employee owners range from administrative staff and field laborers to executive management. All of our proposed team members are employee owners with a personal investment in your project and your success. SpawGlass has 10 office locations throughout Texas: Brazos Valley, Houston, Golden Triangle, Austin, Corpus Christi, New Braunfels, North Texas, San Antonio (2) and South Texas. Please see the organizational chart for our core management team for your project on the following page.

If your firm has multiple office locations, specify the location you propose to service the City's account.

SpawGlass will manage this project from our local office, in College Station, TX. This can be beneficial to City of Bryan as the need for out of town labor, materials and equipment is greatly reduced. Having a local office also ensures a more efficient decision-making process. We take pride in offering our clients a local team that is invested in the success and growth of the City of Bryan and helping to make it a Wonderful Place to Live and Work.

3. Describe the experience of the Firm in the last thirty-six (36) months in performing services in similar size and scope. Particular emphasis will be placed on Firms that have recently performed design and/or installation of HVAC split systems in commercial facilities.

Please find on the following pages a list of services in similar size and scope performed within the past (36) months.



**16** Projects with DBR Engineering Consultants totaling over \$229,000,000 projects over 17 years.



# ORGANIZATIONAL CHART



## Management



**AARON BRADFORD**  
DIVISION PRESIDENT  
SpawGlass



**GARETT WHEATON**  
VICE PRESIDENT, OPERATIONS  
SpawGlass



**BRENT MOE, P.E.**  
PARTNER-IN-CHARGE  
DBR Engineering

## Preconstruction/Estimating



**ANDREW KERBOW**  
CHIEF ESTIMATOR  
SpawGlass



**SARAH ACCURSO**  
CONTRACT ADMINISTRATOR  
SpawGlass


## Construction



**JOSH FARRIS**  
PROJECT MANAGER  
SpawGlass



**ZACH ROMERO**  
ASSISTANT PROJECT MANAGER  
SpawGlass



**JERCOLBY GAMBLE**  
SUPERINTENDENT  
SpawGlass

## Consultant Team

**JAMES KUBALA, P.E. LEED AP**  
MECHANICAL PRACTICE AREA LEADER  
DBR Engineering

**C. BUTCH GILBERT, P.E.**  
ELECTRICAL PRACTICE AREA LEADER  
DBR Engineering

**ANTHONY JASPAL, P.E., CPD**  
PLUMBING PRACTICE AREA LEADER  
DBR Engineering



# SPAWGLASS BUILDS... FIRE STATIONS

Our team of construction professionals are ready to leverage their unique qualifications to deliver functional, essential facilities that provide optimal community resources for the City of Bryan.



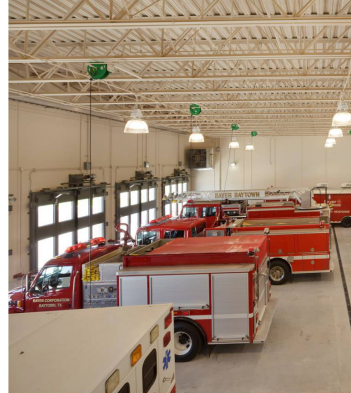
## City of Cedar Park Fire Station #1

This one-level, 9,126-square-foot fire station is equipped to house an eight-person fire crew and the shift battalion chief. The facility includes three dispatch rooms for emergency response, each with six computer monitors and a paging system to alert the public of emergency situations. The facility also includes a kitchen, conference rooms, community room, living room, storage area, laundry area, weight room with rubber flooring, shower room and bunker room. Two apparatus bays shelter a quint and a heavy rescue truck.



## Bayer Baytown Plant Fire Station and EOC

The primary function of this 19,200-square-foot, two-level facility is to serve as the Bayer Baytown plant-wide fire station. Secondary functions of the building include command center, shelter-in-place, emergency operations and hurricane shelter. The first level includes a vehicle bay for firefighting equipment, kitchen, emergency operations center, offices and storage rooms. The second level includes a large training room, locker area, large storage room and mechanical room.



## City of Orange Central Fire Station

The two-level, 20,272-square-foot City of Orange Central Fire Station houses sleeping quarters for eight, seven vehicle bays and an emergency operations center. The facility also includes an administrative area, kitchen, break room, training room, conference room and locker room.

 **135,000**

SQUARE FEET OF FIRE STATIONS AND FIRE TRAINING FACILITIES

 **20**

YEARS BUILDING FIRE STATIONS AND FIRE TRAINING FACILITIES

 **\$65M**

TOTAL CONTRACT VALUE OF FIRE STATIONS AND FIRE TRAINING FACILITIES

 **58**

ACRES OF FIRE STATIONS AND FIRE TRAINING FACILITIES

**AUSTIN COUNTY FIRE DEPARTMENT | SEALY, TX**

New Building | 9,500 sf

**BEXAR COUNTY ESD NO. 6 | SAN ANTONIO, TX**

Fire Station | New Building

**CITY OF ALIEF | ALIEF, TX**

Fire Station No. 2, New Building | 9,905 sf

**CITY OF ALVIN | ALVIN, TX**

Fire and EMS Station No. 1, New Building | 30,732 sf

**CITY OF ARANSAS PASS | ARANSAS PASS, TX**

Fire Station, New Building

**CITY OF ATASCOCITA | ATASCOCITA, TX**

Fire Station No. 1, New Building | 15,650 sf  
Volunteer Fire Station No. 3 | Addition/Renovation | 12,000 sf

**CITY OF BRENHAM | BRENHAM, TX**

Fire Dept. Training Center, Addition/Renovation | 16,000 sf  
Fire Station No. 2, New Building | 10,000 sf

**CITY OF CLEVELAND | CLEVELAND, TX**

Central Fire Station, Addition/Renovation | 3,600 sf

**CITY OF COPPELL | COPPELL, TX**

Fire Station No. 3, Addition/Renovation | 6,693 sf

**CITY OF CORPUS CHRISTI | CORPUS CHRISTI, TX**

Fire Station No. 10, New Building | 13,092 sf  
Fire Station No. 8, New Building | 13,092 sf

**CITY OF CROSBY | CROSBY, TX**

Fire Stations No. 1 & No. 2, New Buildings | 26,222 sf

**CITY OF DEER PARK | DEER PARK, TX**

New EMS Annex, New Building | 9,371 sf

**CITY OF DESOTO | DESOTO, TX**

Fire Department Training Center, Renovation | 5,926 sf  
Fire Station No. 263, Renovation | 12,932 sf

**CITY OF EAGLE PASS | EAGLE PASS, TX**

Fire & Police Station, Addition/Renovation | 34,491 sf

**CITY OF EDINBURG | EDINBURG, TX**

Fire Dept. Emergency Operations Center, Addition/Renovation | 4,900 sf  
Fire Station No. 5 | New Building | 12,800 sf

**CITY OF EL PASO | EL PASO, TX**

Fire Station No. 38, New Building | 10,000 sf  
Fire Station No. 36, Addition/Renovation

**CITY OF FRIENDSWOOD | FRIENDSWOOD, TX**

Fire Station No. 4, New Building | 7,000 sf  
Fire Station No. 1 | New Building | 20,300 sf

**CITY OF GREENVILLE | GREENVILLE, TX**

Fire Dept. Admin., EOC, and Fire Training, New Building | 12,000 sf

**CITY OF GROVES | GROVES, TX**

Fire Station/EMS, New Building | 12,000 sf

**CITY OF HEMPSTEAD | HEMPSTEAD, TX**

Central Fire Station, New Building | 12,500 sf





# TAB A

## COMPETENCE AND QUALIFICATIONS



Texas A&M Plant Pathology Building, College Station, TX

### DEMONSTRATE THE COMPETENCE AND QUALIFICATIONS OF THE INDIVIDUAL WHO WILL BE DIRECTLY RESPONSIBLE FOR THE MANAGEMENT AND DELIVERY OF THE PROPOSED WORK.

1. Identify the project manager and each individual who will work as part of this engagement. Include resumes for each person to be assigned. Include any professional designations and affiliations, certifications, and licenses, etc.

The SpawGlass/DBR design-build team is pleased to offer our services for the design and construction of the Fire Station 2 HVAC Replacement. We have assembled an experienced design-build team of qualified and accredited professionals for your Fire Station 2 HVAC Replacement project. Each firm and individual has relevant experience with the City of Bryan, similar facilities as well as associated infrastructure and amenities.

Our design-build team includes the following firms.

- Construction Manager/  
Design-Build Team Lead:  
SpawGlass Construction
- MEP Engineering: DBR Engineering Consultants, Inc

Firm bios, key personnel and resumes are included on the following pages.

We are confident this team is the RIGHT team for the City of Bryan Fire Station 2 HVAC Replacement design-build project, and we can't wait to begin!

#### SpawGlass Construction

CONSTRUCTION MANAGER  
DESIGN-BUILD TEAM LEAD



SpawGlass has been building in the Brazos Valley since 1972, and we opened a local office here in 2017. Over the past five years, we have put in place over \$256 million worth of work in the Bryan-College Station area alone. Our team has extensive project experience working with local municipalities and entities. Our greatest compliment is being asked to continue a relationship with a client on future projects. We like to think it speaks to our personalized approach to construction that the majority of our work comes from repeat clients.

We are experts in design build construction services, and we thrive in the collaborative environment. SpawGlass has completed 42 design-build projects with a contract value totaling over \$753 million in the past ten years using our proven design-build methodology. Additionally, as a firm, we have over \$1 billion in government/municipal projects.

SpawGlass with the City of Bryan has completed the Legends Event Center and Exterior Amenities project package; to our knowledge SpawGlass is the only construction firm that has design-build experience with the City of Bryan.

#### SpawGlass Project Team

For your City of Bryan Fire Station 2 HVAC Replacement project, we have proposed a local Project Manager and Superintendent who has experience managing day-to-day activities on the jobsite along with quality control and safety. Resumes for key team members detailing their experience and qualifications are included following our organizational chart.



Josh Farris, Project Manager

Josh will ensure constant coordination of work between the jobsite, the City of Bryan, DBR's design team and subcontractors; and provide continual cost control to align budget constraints and scope of work.





Zach Romero, Assistant Project Manager  
Zach will support the project team through meeting coordination, change management, quality, submittal oversight and administrative requirements.



Jercolby Gamble, Superintendent  
Jercolby will oversee all construction activities on the jobsite, managing subcontractors, and leading safety and quality control programs.

Josh, Zach and Jercolby will have the complete support of the SpawGlass Brazos Valley Office including Sarah Accurso, Garrett Wheaton and Aaron Bardford



Sarah Accurso, Contract Administrator  
Sarah will maintain insurance documentation, manage sensitive information and prepare and submit subcontracts.



Garrett Wheaton, Vice President of Operations  
Garrett will conduct all project review meetings and make regular visits to the jobsite to review project progress, quality and compliance with contractual requirements. He is available at any time to discuss the project direction, schedule and performance of our team..



Aaron Bradford, President, Houston Division  
Aaron's responsibilities will include providing executive directives and company commitments. He is available at any time to discuss the project direction, and performance of our team.

## DBR Engineering Consultants, Inc

### MEP ENGINEERING



DBR provides an alternative to traditional firms by providing better opportunities for our people and as a result, a better experience for our clients.

Founded in 1972, DBR has evolved into the premier MEP engineering firm in Texas, providing mechanical, electrical, and plumbing engineering services, as well as building commissioning, integrated technology, and security system consulting.

DBR's steady growth has been fueled by loyal clients who appreciate our willingness to listen, open-minded approach to problem-solving, and relentless commitment to service.

Now, more than 50 years later, DBR has a team of over 200 professionals in seven cities across the State of Texas. While our history guides our growth, our talented team of consultants are focused on the future. We are helping to create healthy and comfortable environments that will stand the test of time.

SpawGlass and DBR have worked together on 16 projects totalling over \$229,000,000. Both firms have other previous experience with the City of Bryan. Additionally,

### DBR Engineering Project Team



Brent Moe, PE  
Partner-in-Charge



James Kubala, PE, LEED AP  
Mechanical Practice Area Leader



C. Butch Gilbert, PE  
Electrical Practice Area Leader



Anthony Jaspal, PE, CPD  
Plumbing Practice Area Leader

# JERCOLBY GAMBLE

SUPERINTENDENT | EMPLOYEE OWNER

As superintendent, Jercolby will be responsible for the day-to-day activities in the field. This includes the safety and organization of field operations, documentation of daily activities, inspection of work for quality conformance and ensuring all activities align with the project schedule.

Jercolby is well-liked and respected by clients because of his positive attitude and strong work ethic. He will leverage his recent, relevant TxDOT experience with his attentiveness to safety, schedule and quality to meet project goals and objectives.

## SSC SERVICES ILSB BUS SHELTERS AND WALKING PATHS

College Station, TX | \$1,766,925 | 600 Yards

The new walking paths project consist of installation of (8) new bus shelters and construction of a walking path on an active campus.

## TEXAS DEPARTMENT OF TRANSPORTATION FOUNDATION REPAIR BRYAN DHQ

Bryan, TX | \$1,021,271 | 21,768 SF

Install helical piles to reinforce the existing foundation and lift it at the located differential settlement points. Additionally, include the construction of a new sidewalk, and install a trench storm drain system along with a French drain to improve drainage

## SSC SERVICE - COX MCFERRIN TRAINING ROOM RENOVATIONS

College Station, TX | \$619,868 | 1,500 SF

Renovation of the existing Hydrotherapy pools and room, add a new custom metal storage facility to Reed Arena. Included a renovation to the existing Athletic Training Room, Dr.'s Office, Trainer Offices, and Lounge as well.

## SSC SERVICE - TEMPORARY TRACK & FIELD THROWS

College Station, TX | \$490,000

Demolition and relocation of the track and field equipment/netting inclusive of newly built concrete pads for throwing event areas.

## SSC SERVICE - TEMPORARY TRACK & FIELD THROWS

College Station, TX | \$474,252

Demolition of the entire track and field area in preparation for a new track.

## MUMFORD ISD CAFETERIA AND CLASSROOM RENOVATIONS

Mumford, TX | \$289,685 | 4,500 SF

This project consisted of converting an existing cafeteria into new classroom spaces on a Mumford ISD campus. The new workstations constructed by SpawGlass would be used as a future home for economics classes. Work on this project included electrical, plumbing, cabinetry, masonry, sheetrock, painting and the installation of doors and hardware.

## SSC SERVICE - MITCHELL TENNIS COURT RESURFACING

College Station, TX | \$578,893

This project consisted of the injection of epoxy in the existing cracks on the tennis courts and then resurfacing of all (12) tennis courts.



## YEARS OF EXPERIENCE

12 years in Industry

3 years with SpawGlass

## TRAINING

OSHA 30

First Aid & CPR

## REFERENCE

SSC Services for Education

David Ritter

979-219-0774

David.Ritter@SSCServ.com



Local  
Superintendent!



# ZACH ROMERO

## ASSISTANT PROJECT MANAGER | EMPLOYEE OWNER

As assistant project manager, Zach will review, process and track all submittals, RFIs and shop drawings; maintain, track, update and manage the contract drawings, review specifications and as-built drawings; assist with documentation of required inspections and testing procedures; and create, assemble and submit all required project closeout documentation.

### SSC SERVICES ILSB BUS SHELTERS AND WALKING PATHS

College Station, TX | \$1,766,925 | 600 Yards

The new walking paths project consist of installation of (8) new bus shelters and construction of a walking path on an active campus.

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Install helical piles to reinforce the existing foundation and lift it at the located differential settlement points. Additionally, include the construction of a new sidewalk, and install a trench storm drain system along with a French drain to improve drainage

### SSC SERVICE - COX MCFERRIN TRAINING ROOM RENOVATIONS

College Station, TX | \$619,868 | 1,500 SF

Renovation of the existing Hydrotherapy pools and room, add a new custom metal storage facility to Reed Arena. Included a renovation to the existing Athletic Training Room, Dr.'s Office, Trainer Offices, and Lounge as well.

### SSC SERVICE - TEMPORARY TRACK & FIELD THROWS

College Station, TX | \$490,000

Demolition and relocation of the track and field equipment/netting inclusive of newly built concrete pads for throwing event areas.

### SSC SERVICE - TEMPORARY TRACK & FIELD THROWS

College Station, TX | \$474,252

Demolition of the entire track and field area in preparation for a new track.

### MUMFORD ISD CAFETERIA AND CLASSROOM RENOVATIONS

Mumford, TX | \$289,685 | 4,500 SF

This project consisted of converting an existing cafeteria into new classroom spaces on a Mumford ISD campus. The new workstations constructed by SpawGlass would be used as a future home for economics classes. Work on this project included electrical, plumbing, cabinetry, masonry, sheetrock, painting and the installation of doors and hardware.

### SSC SERVICE - MITCHELL TENNIS COURT RESURFACING

College Station, TX | \$578,893

This project consisted of the injection of epoxy in the existing cracks on the tennis courts and then resurfacing of all (12) tennis courts.



### YEARS OF EXPERIENCE

12 years in Industry

4 years with SpawGlass

### TRAINING

OSHA 30

First Aid & CPR

Journeyman Electrician

### REFERENCE

Craig Valka

Texas A&M University Athletics

832.492.0650

valka@athletics.tamu.edu



Local Office



# JOSH FARRIS

## PROJECT MANAGER | EMPLOYEE OWNER

As project manager, Josh will provide leadership throughout the project including oversight of the budget, schedule, risk management measures and subcontractor relations. Josh will also serve as a resource to the project team and the City of Bryan ensuring satisfaction starting in preconstruction and following through to project completion.

### SSC SERVICES ILSB BUS SHELTERS AND WALKING PATHS

College Station, TX | \$1,766,925 | 600 Yards

The new walking paths project consist of installation of (8) new bus shelters and construction of a walking path on an active campus.

### TEXAS A&M CORPS DORM RESTROOM RENOVATION

College Station, TX | \$1,806,605 | 1,485 SF

A fast-paced renovation of three restrooms located in three separate buildings in the existing Corps of Cadets dormitories. Project scope includes extensive underslab and overhead utility rework, the removal of all existing finishes and walls back to structure, and a rebuild back to a similar configuration with fully-enclosed, individual toilet compartments and fully-enclosed, individual shower compartments, including custom fiberglass doors and frames and ceramic tile walls and floors.

### CITY OF TEMPLE TWO PARKING GARAGES

Temple, TX | \$19,230,365 | 58,000 SF

New construction of two parking garages in downtown Temple; one garage consist of 35,000 SF and the other 23,000SF with consideration for working in the heart of an active and occupied area without disruption to daily activities and neighboring operations

### FROST BANK IN-LINE - BRIARCREST

Bryan, TX | Confidential | 3,600 SF

The Frost inline branch bank build out consist of three offices, two conference rooms, workstations, work rooms, a break room, restrooms, a lobby and waiting area, and a secure vestibule.

### BRIARCREST RETAIL CENTER

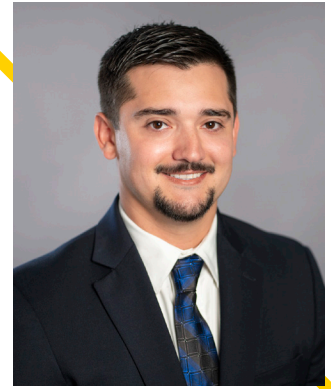
Bryan, TX | \$1,026,885 | 6,000 SF

Construction of a new single-level retail shell space on an existing parking lot, including demolition of existing concrete and high mast sign, earthwork and site utilities, and construction of a new prefabricated metal building with new windows and storefront entry systems.

### FROST TOWER POINT FINANCIAL CENTER

College Station, TX | Confidential | 13,154 SF

New construction of the first branch bank for Frost to be built in Brazos Valley with scope for the two-level banking and office building consisting of numerous glass storefront elevations, a metal panel façade, and extensive use of prefabricated, movable DIRT'T interior wall systems



### YEARS OF EXPERIENCE

6 years in the Industry  
6 years with SpawGlass

### EDUCATION

B.S. Construction Science, Texas  
A&M University

### TRAINING

First Aid/CPR  
National Utilities Contractors  
Association (NUCA) Trench Safety  
OSHA 30-Hour

### REFERENCE

Sam Lampe  
Senior Project Manager  
Project Control  
210-336-8837  
SLampe@ProjectControl.com



Local Project  
Manager!

# SARAH ACCURSO

CONTRACT ADMINISTRATOR | EMPLOYEE OWNER

Sarah is detail-oriented, organized, and a great communicator. She will support the project team as needed and perform administrative duties, such as insurance documentation, management of sensitive information with confidentiality requirements, preparation and submittal of certified payroll and maintenance of project meeting calendars. Sarah will assist in document preparation for project meetings and maintaining as-built drawings, RFIs and submittals.

## SSC SERVICES ILSB BUS SHELTERS AND WALKING PATHS

College Station, TX | \$1,766,925 | 600 Yards

Currently underway the new walking paths project consist of installation of (8) new bus shelters and construction of a walking path on an active campus.

## TEXAS DEPARTMENT OF TRANSPORTATION FOUNDATION REPAIR BRYAN DHQ

Bryan, TX | \$1,021,271 | 21,768 SF

Install helical piles to reinforce the existing foundation and lift it at the located differential settlement points. Additionally, include the construction of a new sidewalk, and install a trench storm drain system along with a French drain to improve drainage

## BRYAN TEXAS UTILITIES TRAINING ROOM RENOVATION

Bryan, TX | \$197,500 | 1,000SF

This project consisted of interior renovations within an unoccupied office portion of an existing warehouse at the Bryan Texas Utilities Site. Inclusive of a new training classroom with ancillary facilities such as new unisex handicapped toilet; new janitors closet; new ADA coffee bar.

## CITY OF BRYAN LEGENDS EVENT CENTER AND EXTERIOR AMENITIES

Bryan, TX | \$43,306,956 | 122,416 SF

New event facility with eight competition-level basketball courts that can convert into sixteen volleyball courts, full-size catering kitchen, concessions area, e-gaming area, indoor turf care and multiple flex spaces. Exterior amenities include (4) sand volleyball courts, artificial turf lawn, retaining walls, hardscape, site lighting, pedestrian bridge, boathouse foundation, boat ramp, and floating dock

## CITY OF TEMPLE TWO PARKING GARAGES

Temple, TX | \$19,230,365 | 58,000 SF

New construction of two parking garages in downtown Temple; one garage consist of 35,000 SF and the other 23,000SF with consideration for working in the heart of an active and occupied area without disruption to daily activities and neighboring operations

## COLLEGE STATION ISD CAREER AND TECHNICAL EDUCATION (CTE) CENTER – PHASE I

College Station, TX | \$6,574,279 | 24,800 SF

New construction of pre-engineered metal building to house student animal projects, support areas and a practice arena for animal showing

## TEXAS A&M UNIVERSITY CHEMISTRY BUILDING 1972 WING RENOVATIONS

College Station, TX | \$11,507,554; \$5,740,684 | 20,835 SF 1st and 2nd Floors; 55,285 SF Ground Floor

Renovation of the first and second levels included replacement of and/or upgrades to the MEP infrastructure and the chilled water system; new lab casework, fume hoods and architectural finishes; and the addition of conference rooms, offices. Ground floor renovation included new and renovated labs, offices and student study areas and installation of a cold room.



## YEARS OF EXPERIENCE

7 years in Industry

7 years with SpawGlass

## EDUCATION

M.A. Sport & Human Performance, Sam Houston State University; B.S. Kinesiology with a minor in Health, Sam Houston State University

## TRAINING

OSHA10

## REFERENCE

Frank Clark, Jr.  
Business Liaison and Special Projects  
City of Bryan  
979-209-5006



Local



Experience with  
City of Bryan and  
DBR Engineering



# GARETT WHEATON, LEED AP, AC

VP, OPERATIONS/PROJECT EXECUTIVE | EMPLOYEE OWNER

Garett is a strong and collaborative leader with a proven track record of project success. He will ensure your project is executed with the best team, within the budget and per the defined schedule. He will be actively involved in preconstruction and operations to ensure the project remains on track and meets owner expectations. His disciplined approach, communication skills and dedication to quality construction will offer the best leadership to ensure this project's success. He is available at any time to discuss the project direction, schedule and performance of our staff.



## SSC SERVICES ILSB BUS SHELTERS AND WALKING PATHS

College Station, TX | \$1,766,925 | 600 Yards

Currently underway the new walking paths project consist of installation of (8) new bus shelters and construction of a walking path on an active campus.

## TEXAS DEPARTMENT OF TRANSPORTATION FOUNDATION REPAIR BRYAN DHQ

Bryan, TX | \$1,021,271 | 21,768 SF

Install helical piles to reinforce the existing foundation and lift it at the located differential settlement points. Additionally, include the construction of a new sidewalk, and install a trench storm drain system along with a French drain to improve drainage

## BRYAN TEXAS UTILITIES TRAINING ROOM RENOVATION

Bryan, TX | \$197,500 | 1,000SF

This project consisted of interior renovations within an unoccupied office portion of an existing warehouse at the Bryan Texas Utilities Site. Inclusive of a new training classroom with ancillary facilities such as new unisex handicapped toilet; new janitors closet; new ADA coffee bar.

## CITY OF BRYAN LEGENDS EVENT CENTER AND EXTERIOR AMENITIES

Bryan, TX | \$43,306,956 | 122,416 SF

New event facility with eight competition-level basketball courts that can convert into sixteen volleyball courts, full-size catering kitchen, concessions area, e-gaming area, indoor turf care and multiple flex spaces. Exterior amenities include (4) sand volleyball courts, artificial turf lawn, retaining walls, hardscape, site lighting, pedestrian bridge, boathouse foundation, boat ramp, and floating dock

## TEXAS A&M UNIVERSITY CHEMISTRY BUILDING 1972 WING RENOVATIONS

College Station, TX | \$11,507,554; \$5,740,684 | 20,835 SF 1st and 2nd Floors; 55,285 SF Ground Floor

Renovation of the first and second levels included replacement of and/or upgrades to the MEP infrastructure and the chilled water system; new lab casework, fume hoods and architectural finishes; and the addition of conference rooms, offices. Ground floor renovation included new and renovated labs, offices and student study areas and installation of a cold room.

## TEXAS A&M UNIVERSITY PLANT PATHOLOGY AND MICROBIOLOGY BUILDING

College Station, TX | \$39,749,796 | 86,895 SF

New facility housing 16,500 SF of research lab space, 4,500 SF of teaching lab space, seven plant simulation growth chambers, a 300-seat auditorium and a 4,000-square-foot rooftop greenhouse

## TEXAS A&M UNIVERSITY CORPS DORM RENOVATION

College Station, TX | \$123,018,603 | 720,000 SF

Complete demolition and rebuild of nine, four-level dormitories, totaling 306,000 SF; Supporting Facilities totaling 64,000 SF; and renovation of the 350,000 SF of quad/plaza

## YEARS OF EXPERIENCE

22 years in the Industry

22 years with SpawGlass

## EDUCATION

B.S. Agricultural Systems Management, Texas A&M University

## TRAINING

LEED Accredited Professional

OSHA 30-Hour

American Institute of Constructors Associate Constructor (AC) Certification (Level 1)

## REFERENCE

Frank Clark, Jr.

City of Bryan

979-209-5112

fclark@bryantx.gov



Local



Experience with City of Bryan and DBR Engineering



# ANDREW KERBOW

CHIEF ESTIMATOR | EMPLOYEE OWNER



Andrew will provide budgets, GMP pricing, and solicit subcontractor bids while assisting with constructability reviews and value analysis. Andrew brings added value to the preconstruction process, having served in various roles across his career. He will provide value management recommendations to help the team meet the target budget. Andrew maintains strong relationships within the local subcontractor community, helping to ensure competitive pricing and maximum participation.

## CITY OF BRYAN LEGENDS EVENT CENTER EXTERIOR AMENITIES

Bryan, TX | \$5,104,578 | 130,680 SF

Construction of exterior amenities to include four sand volleyball courts, artificial turf lawn, retaining walls, hardscape, site lighting, pedestrian bridge, boathouse foundation, boat ramp, and floating dock.

## CITY OF BRYAN LEGENDS EVENT CENTER

Bryan, TX | \$38,202,378 | 112,000 SF

Anchor facility in redevelopment of old Bryan Municipal Golf Course. The facility offers 8 competition-level basketball courts, convertible into sixteen volleyball courts. It provides overhead, automated basketball goals, volleyball nets, and court divider curtains for customizable event spaces. Additionally, it features a full-size catering kitchen, concessions area, dedicated e-gaming space, indoor turf, and multiple flexible areas.

## COLLEGE STATION ISD CTE COMPLEX - PHASE I

College Station, TX | \$5,200,000 | 24,800 SF

New construction of 24,800 SF educational facility that will house student animal projects, support areas and a practice arena for animal showing. The project includes PEMB on a supported slab, new MEP services & Systems, animal pens, masonry, miscellaneous steel, site utilities, earthwork and a septic system along with other scopes of work.

## TEXAS A&M UNIVERSITY JOHN D. WHITE '70 – ROBERT L. WALKER '58 MUSIC ACTIVITIES CENTER

College Station, TX | \$30,830,386 | 70,733 SF

New construction of a music facility featuring four rehearsal halls, including the 9,400 SF Aggie band hall; 32 individual soundproof practice rooms; nearly 1,000 music instrument lockers, a student lounge and staff offices with an artificial turf practice field

## FROST TOWER POINT FINANCIAL CENTER

College Station, TX | Confidential | 13,154 SF

New construction of the first branch bank for Frost to be built in Brazos Valley with scope for the two-level banking and office building consisting of numerous glass storefront elevations, a metal panel façade, and extensive use of prefabricated, movable DIRT interior wall systems

## TEXAS A&M UNIVERSITY CORPS DORM RENOVATION

College Station, TX | \$123,018,603 | 720,000 SF

Complete demolition and rebuild of nine, four-level dormitories, totaling 306,000 SF; Supporting Facilities totaling 64,000 SF; and renovation of the 350,000 SF of quad/plaza

## YEARS OF EXPERIENCE

23 years in the Industry  
10 years with SpawGlass

## EDUCATION

B.S. Construction Science,  
Texas A&M University

## TRAINING

First Aid/CPR  
OSHA 30-Hour

## REFERENCE

Greg Beal  
Frost Bank  
210-220-6796  
gregory.beal@frostbank.com



Local



Experience with  
City of Bryan and  
DBR Engineering



# AARON BRADFORD

PRESIDENT, HOUSTON DIVISION | EMPLOYEE OWNER

Throughout his career, Aaron has led projects with complex scope and building systems, allocating resources and providing management support to project teams. As division president, Aaron ensures compliance with contract responsibilities, reviews and approves management and resource commitment, and gives final negotiating and approval authority on behalf of the SpawGlass team. He is available at any time to discuss the project direction, and performance of our staff.

## **BEN TAUB HOSPITAL EMERGENCY CENTER RENOVATION**

Houston, TX | \$36,567,056 | 87,100 SF

Renovation of existing emergency and radiology departments within the Texas Medical Center to provide 101 new patient treatment spaces, support spaces, and integrated radiology capabilities. The project also consolidated the inpatient radiology department's footprint, enhancing efficiency. All work was completed within an active Level 1 trauma center while the facility remained fully operational

## **CITY OF HOUSTON NORTHSIDE HEALTH CENTER RENOVATION**

Houston, TX | \$2,976,508 | 32,531 SF

Phased renovation of an active healthcare facility during normal business hours, including replacement of flooring, ceilings, walls, doors, exterior building and parking lot light poles and fixtures; new furniture, interior paint, millwork, signage, landscaping, concrete curbs and parking lot asphalt; and renovation of all restrooms and HVAC system

## **HOUSTON METHODIST HOSPITAL PRIMARY CONSTRUCTION MANAGER-AT-RISK CONTRACT**

Houston, TX | ~\$91,561,000 (to date)

Various projects of various sizes consisting of a wide variety of scopes from MEP upgrades to roof replacement to renovation of operating rooms, imaging suites, and patient exam rooms with all work performed in an active and occupied hospital

## **HOUSTON METHODIST CLEAR LAKE HOSPITAL LABOR AND DELIVERY UNIT RENOVATION**

Nassau Bay, TX | \$6,992,161 | 19,000 SF

Renovation of an existing unit consisting of 19 patient rooms, staff support spaces and waiting room, including improvements to bring all areas up to current code, enlargement of the bathrooms to accommodate walk-in showers and bathroom sinks, upgraded controls, new isolation room and nurse station, and reconfiguration of multiple rooms and spaces

## **TEXAS A&M UNIVERSITY JOHN D. WHITE '70 – ROBERT L. WALKER '58 MUSIC ACTIVITIES CENTER**

College Station, TX | \$30,830,386 | 70,733 SF

New construction of a music facility featuring four rehearsal halls, including the 9,400 SF Aggie band hall; 32 individual soundproof practice rooms; nearly 1,000 music instrument lockers, a student lounge and staff offices with an artificial turf practice field

## **HARRIS COUNTY PRECINCT 4 SERVICE CENTER PHASE II**

Tomball, TX | \$12,694,623 | 77,000 SF

New construction of a 23,000-square-foot vehicle maintenance center; three 15,000-square-foot equipment/vehicle open canopies; gravel yard with a 4,000-square-foot open canopy and four large concrete bins; and a 5,000-square-foot equipment/vehicle open canopy; vehicle maintenance center includes three offices, locker room with showers, vehicle maintenance work bays, welding shop



## **YEARS OF EXPERIENCE**

22 years in the Industry

21 years with SpawGlass

## **EDUCATION**

B.S. Construction Management,  
Texas A&M University

## **TRAINING**

American Institute of  
Constructors Associate  
Constructor (AC) Certification  
(Level 1)

ASHE Healthcare Construction  
Certificate (HCC)

LEED Green Associate

OSHA 100-Hour





## BRENT MOE <sup>PE</sup>

**PARTNER IN CHARGE**

### REGISTRATIONS

Texas PE License: 117260

### EDUCATION

BS | Architectural Engineering  
Kansas State University | 2008

### AFFILIATIONS

Association for Learning Environments (A4LE)

### ADDITIONAL INFORMATION

16 Years of Experience  
With DBR since 2009

### ROLE

As Partner in Charge, Brent ensures your designs will be handed to you on time. Brent will lead and work alongside the project team to coordinate disciplines. Brent will be involved from the initial planning stages to the close out of the project. His engineering design work includes lighting, power distribution, emergency generating systems, medium voltage systems, as well as fire alarm and security systems.

### RELEVANT PROJECT EXPERIENCE

#### **CITY OF PEARLAND | PEARLAND, TX**

- Fire Station No. 4, New Building | 20,850 sf
- Fire Station No. 7, New Building | 11,000 sf
- Fire Station No. 8, New Building | 18,000 sf

#### **CITY OF BRENHAM | BRENHAM, TX**

Fire Station No. 2, New Building | 10,000 sf

#### **CITY OF MISSOURI CITY | MISSOURI CITY, TX**

Fire Station No. 6, New Building

#### **CITY OF MONTGOMERY | MONTGOMERY, TX**

- Fire Station No. 54, New Building
- Fire Station No. 55, New Building

#### **CITY OF GROVES | GROVES, TX**

Fire Station, New Building | 14,650 sf

#### **CITY OF HUMBLE | HUMBLE, TX**

Fire Station No. 2, New Building | 12,000 sf

#### **CITY OF ALVIN | ALVIN, TX**

Fire and EMS Station No. 1, New Building

#### **CITY OF CRANDALL | CRANDALL, TX**

Fire Station, New Building | 10,703 sf

#### **CITY OF MCKINNEY | MCKINNEY, TX**

Fire Dept. Headquarters, New Building



## JAMES KUBALA PE, LEED AP

**MECHANICAL PRACTICE AREA LEADER**

### REGISTRATIONS

Texas PE License: 110046

### EDUCATION

BS | Mechanical Engineering  
Texas Tech University / Midland College, 2007

### ADDITIONAL INFORMATION

18 Years of Experience  
With DBR since 2007

### ROLE

James is responsible for the mechanical design of your project. He will collaborate with others on his team, including the Project Manager, to design and strategically align your mechanical component with the other pieces of your project. James will work hard to ensure his designs are well thought and on time.

### RELEVANT PROJECT EXPERIENCE

#### CITY OF CONROE | CONROE, TX

- Fire Station No. 8, New Building | 10,200 sf
- Fire Station No. 7, New Building | 11,500 sf

#### CITY OF BRENHAM | BRENHAM, TX

Fire Station No. 2, New Building | 10,000 sf

#### CITY OF FRIENDSWOOD | FRIENDSWOOD, TX

Fire Station No. 4, New Building | 7,000 sf

#### CITY OF HOUSTON | HOUSTON, TX

- Fire Station No. 20, Renovation | 7,400 sf
- Fire Station No. 37, New Building | 10,800 sf | **USGBC LEED SILVER**

#### CITY OF PASADENA | PASADENA, TX

- Fire Station No. 3, New Building | 9,500 sf
- Fire Station No. 4, New Building | 9,500 sf

#### CITY OF SPRING | SPRING, TX

- Fire Station No. 71, New Building | 25,398 sf
- Fire Station No. 77, New Building | 12,160 sf
- Fire Station No. 78, New Building | 12,160 sf
- Fire Station No. 79, New Building | 12,160 sf

#### CITY OF THE WOODLANDS | THE WOODLANDS, TX

- Central Fire Station, New Building | 26,620 sf
- Fire Station No. 7, New Building | 12,175 sf
- Fire Station No. 8, New Building | 12,175 sf

#### CITY OF GEORGETOWN | GEORGETOWN, TX

Fire Station No. 1, Addition/Renovation | 15,000 sf

#### CITY OF EL PASO | EL PASO, TX

- Fire Station No. 36, New Building | 12,055 sf
- Fire Station No. 38, New Building | 10,000 sf



## C. BUTCH GILBERT <sup>PE</sup>

### ELECTRICAL PRACTICE AREA LEADER

#### REGISTRATIONS

Texas PE License: 65945

Journeyman's Electrical License: 23344

#### EDUCATION

BS | Industrial Engineering

Texas A&M University | 1980

#### ADDITIONAL INFORMATION

46 Years of Experience

With DBR since 1990

#### ROLE

Butch is responsible for your project's electrical design. As a registered professional engineer and journeyman electrician, he understands both the design and functional requirements of an electrical system. His work includes lighting, power distribution, emergency generating systems, medium voltage systems, fire alarm, and uninterruptible power supply systems. Butch's extensive experience and understanding will guarantee that he is continually looking out for your best interest as he designs.

#### RELEVANT PROJECT EXPERIENCE

##### **CITY OF PASADENA | PASADENA, TX**

- Fire Station No. 5, New Building | 14,000 sf
- Fire Station No. 4, New Building | 9,500 sf
- Fire Station No. 3, New Building | 9,500 sf

##### **CITY OF FRIENDSWOOD | FRIENDSWOOD, TX**

Fire Station No. 4, New Building | 7,000 sf

##### **CITY OF GROVES | GROVES, TX**

Fire Station, New Building | 14,650 sf

##### **CITY OF HOUSTON | HOUSTON, TX**

- Fire Station No. 20, Renovation | 7,400 sf
- Fire Station No. 37, New Building | 10,800 sf | **USGBC LEED SILVER**

##### **CITY OF PEARLAND | PEARLAND, TX**

- Fire Station No. 4, New Building | 20,850 sf
- Fire Station No. 8, New Building | 18,000 sf

##### **CITY OF HUMBLE | HUMBLE, TX**

Fire Station No. 2, New Building | 12,000 sf

##### **CITY OF MISSOURI CITY | MISSOURI CITY, TX**

Fire Station No. 6, New Building

##### **CITY OF EL PASO | EL PASO, TX**

- Fire Station No. 36, New Building | 12,055 sf
- Fire Station No. 38, New Building | 10,000 sf



## ANTHONY JASPAL PE, CPD

### PLUMBING PRACTICE AREA LEADER

#### REGISTRATIONS

Texas PE: 95728

#### EDUCATION

BS | Architectural Engineering  
Milwaukee School of Engineering | 2000

#### AFFILIATIONS

Houston Chapter Past President of  
American Society of Plumbing Engineers  
(ASPE)

#### ADDITIONAL INFORMATION

25 Years of Experience  
With DBR since 2014

#### ROLE

Anthony has personally prepared or overseen the production of plumbing drawings and specifications for hundreds of new construction and renovation projects of varying size, budget, and complexity. His insistence on organization and attention to detail ensures a meticulously combed-over final product. He is trustworthy and reliable; and when he says he will get the job done right, you know he will.

#### RELEVANT PROJECT EXPERIENCE

##### **CITY OF CONROE | CONROE, TX**

- Fire Station No. 7, New Building | 11,500 sf

##### **CITY OF BRENHAM | BRENHAM, TX**

Fire Station No. 2, New Building | 10,000 sf

##### **CITY OF CRANDALL | CRANDALL, TX**

Fire Station, New Building | 10,703 sf

##### **CITY OF GROVES | GROVES, TX**

Fire Station, New Building | 14,650 sf

##### **CITY OF PEARLAND | PEARLAND, TX**

- Fire Station No. 4, New Building | 20,850 sf

- Fire Station No. 8, New Building | 18,000 sf

##### **CITY OF HUMBLE | HUMBLE, TX**

Fire Station No. 2, New Building | 12,000 sf

##### **CITY OF MISSOURI CITY | MISSOURI CITY, TX**

Fire Station No. 6, New Building

##### **CITY OF GEORGETOWN | GEORGETOWN, TX**

Fire Station No. 1, Addition/Renovation | 15,000 sf

##### **CITY OF EL PASO | EL PASO, TX**

- Fire Station No. 36, New Building | 12,055 sf

- Fire Station No. 38, New Building | 10,000 sf

##### **HAYS COUNTY ESD 6 | DRIPPING SPRINGS, TX**

Fire Station No. 74, New Building | 15,000 sf



Texas A&M Chemistry Building Renovation, College Station, TX

2. Describe the organization of the proposed team, detailing the level of involvement, field of expertise, and estimated hours for each member of the team.

### Team Member Involvement

| Firm      | Team Member      | Role  | Level of Involvement  | Hours Per Week                            |
|-----------|------------------|---|---|---|
| SpawGlass | Aaron Bradford   | President, Houston Division                 | Executive oversight for entire design-build team                          | As needed                                 |
| SpawGlass | Garett Wheaton   | Vice President of Operations, Brazos Valley | Local oversight and support for entire design-build team                  | 8 hours design;<br>2 hours construction   |
| SpawGlass | Josh Farris      | Project Manager                             | Team leader/construction management                                       | 24 hours design;<br>16 hours construction |
| SpawGlass | Zach Romero      | Assistant Project Manager                   | Onsite management of daily construction activities                        | 8 hours design;<br>40 hours construction  |
| SpawGlass | Jercolby Gamble  | Superintendent                              | Onsite management of daily construction activities                        | 8 hours design;<br>40 hours construction  |
| SpawGlass | Andrew Kerbow    | Chief Estimator                             | Preconstruction cost estimating, constructability reviews, value analysis | As Needed                                 |
| DBR       | Brent Moe        | Partner in Charge                           | Oversight of the Design Team  | 16 hours design;<br>2 hours construction  |
| DBR       | James Kubala     | Mechanical Practice Area Leader             | Technical Design & Weekly Site Visits                                     | 40 hours design;<br>4 hours construction  |
| DBR       | C. Butch Gilbert | Mechanical Practice Area Leader             | Technical Design & Weekly Site Visits                                     | 40 hours design;<br>4 hours construction  |
| DBR       | Anthony Jaspal   | Mechanical Practice Area Leader             | Technical Design & Weekly Site Visits                                     | 40 hours design;<br>4 hours construction  |

3. Describe what municipal staff support you anticipate for the project.

We anticipate municipal staff will provide assistance with communication to current tenants regarding project activities. This support will help ensure that all stakeholders are kept informed, minimize disruptions, and foster transparency throughout the project's implementation.

4. Address any performance related litigation that your Firm may be, or has been, involved in over the last five (5) years.

There are no past or pending litigation or claims filed against SpawGlass that would affect our performance under a contract with the City of Bryan.

5. Identify if your Firm has had any contracts terminated due to non-performance over the last five (5) years.

SpawGlass has never defaulted, failed to complete any work or otherwise been discharged prior to completion of a project.

6. Identify adverse actions sanctioned by any regulatory authorities over the last five (5) years.

There are no adverse actions against SpawGlass that would affect our performance under a contract with the City of Bryan



#### TEXAS A&M CORPS DORM RENOVATION WITH DBR ENGINEERS

SpawGlass completed the complete demolition and rebuild of nine dormitory buildings, new construction of two Leadership Learning Centers and the addition of thirteen end caps for egress. The extensive renovation included full replacement of HVAC systems which was completed with DBR Engineering.



San Antonio Waste Water System New Operations Center - Design Build with DBR Engineering

## TAB B

### WORKLOAD CAPABILITY AND HISTORY OF PERFORMING WORK WITHIN A SPECIFIED BUDGET AND SCHEDULE

1. Identify the number and type of HVAC design and installation projects presently being conducted by the Firm.

DBR Engineering has 20 HVAC design projects presently being conducted by the firm. These projects include HVAC systems in commercial offices, multifamily facilities, K-12 facilities, state government facilities, and municipal government facilities.

2. Include specific examples of your success with designing and installing HVAC systems, in particular residential split systems. Ideally, examples should involve work for government entities at the state or local level. Provide historical examples of completed projects similar to the scope of work. These examples should be inclusive of design and/or construction budgets, expenses, and images of equipment installations.

#### CITY OF SUGAR LAND - CITY HALL HVAC DESIGN SUGAR LAND, TEXAS

DBR provided MEP Engineering services for HVAC design services at the City of Sugar Land's City Hall facility. Prior to beginning the design of this project, our team performed an assessment of the entire existing HVAC system of the 82,883 sq. ft. City Hall. Our team evaluated existing equipment capacities and operation of the chiller plant and provided design services to upgrade the HVAC system and better meet the city's needs.

#### CITY OF CONROE - MUNICIPAL CENTER HVAC DESIGN CONROE, TEXAS

DBR provided MEP engineering services for the systems upgrades of the existing 36,000 sq. ft. municipal building. The scope included the replacement of the existing HVAC equipment, chilled water piping, ductwork, air devices, and control systems for the entire building. The existing chiller was replaced. The existing chilled water fan coil units were demolished and replaced with two new fans powered VAV systems. Also the existing light fixtures were reinstalled with the removal and replacement of the existing ceiling.

#### CITY OF ROSENBERG - CIVIC CENTER HVAC DESIGN ROSENBERG, TEXAS

DBR provided MEP engineering services for the systems upgrades of the existing Civic Center. The scope included the Demolition drawings that indicate the complete or partial removal of the existing HVAC systems, heating and cooling load calculations, design and specifications for replacement equipment based on calculations, design and specifications to upgrade the Alerton building automation system, design the HVAC air distribution systems, design the exhaust ventilation systems, and the Evaluation of energy/electrical requirements.

#### TEXAS A&M UNIVERSITY - MOSHER HALL HVAC DESIGN COLLEGE STATION, TEXAS

Our team performed an assessment of the existing condition of the MEP systems in this residence hall. We designed the replacement of most of the HVAC systems, coordinating the schedule to allow the building to remain partially occupied during the construction phase.

3. Address service agreement options provided by your Firm.

During the design phase, the appropriate type of service agreement is carefully evaluated and selected to align with the project's scope, requirements, and client objectives.

Once the agreement type is determined, it is incorporated directly into the project specifications to ensure clarity and consistency. This approach allows the service agreement framework to be embedded in the solicitation documents, so that subcontractors bid with a full understanding of the contractual expectations.

This structured process ensures that the service agreement is not an afterthought, but rather a deliberate and integrated component of the project design and procurement strategy.



Harris County Spring Fire Department Training Center

## TAB C

### PREVIOUS PROJECTS COSTS

1. Preference will be given to submissions that include actual total cost of previous projects based on successful projects completed by the Firm. A minimum of three (3) actual examples are preferred with projects being completed in the last three (3) years. An itemized project cost is not required but information should be sufficient to demonstrate the project's abilities, components, etc.

SpawGlass and DBR have performed services similar in size and scope in the last three years as well as throughout our firms' histories.

#### SpawGlass' similar project experience:

- City of Bryan Legends Event Center
- City of Bryan Legends Event Center Exterior Amenities
- Texas A&M University Corps Dorm Renovation
- Texas A&M University Barbara C. Barnett Women's Basketball Student-Athlete Center
- Texas A&M University Chemistry Building 1972 Wing Renovation(s)
- The University of Texas Marine Science Institute Wet/Dry Lab HVAC Renovation
- Texas Health and Human Services Corpus Christi State Supported Living Center Repairs, Roofing & MEP-HVAC Upgrades
- Sam Houston State University HVAC/TAS/Structural Renovation

Please see project sheets demonstrating our most relevant experience on the following pages. Some of the projects listed were complete prior to the last three years, but demonstrate the depth of our teams' experience. They speak to our teams' ability to perform services of a similar size and scope specifically for the City of Bryan.

#### DBR's similar project experience:

- HARRIS COUNTY ESD 16 - KLEIN FIRE STATION NO. 8 SPRING, TEXAS  
Year Completed: 2023  
Project Budget: \$500,000  
DBR served as the Prime Consultant and provided MEP Engineering services for the HVAC replacement for the 10,907 sq. ft. Klein Fire Station No. 8 for Harris County ESD 16.
- CY-FAIR VOLUNTEER FIRE DEPT. - DISPATCH NETWORK ROOM - HVAC UPGRADE HOUSTON, TEXAS  
Year Completed: 2023  
Project Budget: \$1 Million  
DBR provided MEP Engineering services for a new HVAC system to provide supplemental air conditioning to the Network Room at the Cy-Fair VFD Dispatch facility. The project included two new Ducted BARD units and one new ducted split fan coil unit and Sales Shop
- BROOKS COUNTY - HVAC REPLACEMENT FOR MULTIPLE BUILDINGS HOUSTON, TEXAS  
Year Completed: 2024  
Project Budget: \$2.5 Million  
DBR provided MEP Engineering services for HVAC replacements at multiple buildings for Brooks County. The project included replacements at the Blumer Building and the Sheriff's Department Building.

2. As a design/build project, the final costs will be negotiated. However, proposers must provide a Guaranteed Maximum Price during the design phase, once a Firm has been chosen.

SpawGlass has worked in the Bryan-College Station area for more than 40 years. With our local office in College Station focusing on work in the greater Brazos Valley, we are uniquely equipped to understand the market trends that will make the Signature Park Playground project a success.

Our team has a reputation for delivering quality projects on time, in budget and with an excellent level of client satisfaction. Our commitment is to make every dollar count, while building a high-quality facility that will be a source of pride for the City of Bryan for generations of residents, visitors and guests. With complete financial transparency, our team will collaborate with your staff to create a rewarding project experience for everyone involved.



## TEAM DIFFERENTIATOR

SpawGlass' philosophy is firmly rooted in our corporate policy of open-book management. This transparency allows our clients access to review all costs associated with the project at any time.

### Ensuring the Design Documents Provide the Information Necessary to Arrive at a Complete GMP

Preparing a GMP on incomplete documents involves a variety of steps to ensure the project scope is properly understood and reflected in the GMP proposal. SpawGlass performs a complete takeoff of all GMP scopes that can be measured from the Design Documents (DD) documents, utilizing our cost database from recent market trends and other similar facilities. We also review the information shown in the DDs with other information gained during design meetings, similar project experiences and client programming sessions. This process fills in the gaps to make sure the areas not fully developed in design are included in the scope. To achieve accurate pricing, we solicit key subcontractor input in almost all scope categories. This allows us to compare quantities, labor hours, schedule, procurement and pricing to reach a balanced estimate for the GMP.

While the development of the GMP is ongoing, we strive to identify alternative options in which the project scope, budget, sustainability or aesthetics might be further enhanced. In addition, our team will explore prefabrication opportunities in order to maximize the schedule, increase quality, minimize safety risks and reduce the amount of workers needed onsite.

### Ensuring the 100% Construction Documents Align with GMP

After the GMP is established, Project Manager Josh Farris will continue to meet regularly with DBR and the City to review and discuss the progress and compare further development of the design with the information and costs in the GMP. We will review the documents, validate the scope development, track deviations or scope growth, and work with the project team to consider alternative methods or materials that meet the budget requirements.



Here's how we do it:



#### Teamwork

It's all about the team! We will conduct regular team meetings and set clear project goals that define what a successful project looks like to you and your stakeholders.



#### Collaboration

We will listen and understand everyone's viewpoint and utilize our strong reputation in the Brazos Valley subcontracting community to get better pricing and proven performers on the team.



#### Trust

Our team will build trust by being transparent in all transactions, providing updates on delivery dates for critical items and estimates at each stage of drawings and specifications.



#### Communication

Early and often! We will discuss the project phasing with the City and all stakeholders to maximize performance while minimizing disruption. Great phasing plans save time, money and headaches for our clients.

***OUR GUARANTEE:***  
***The Absolute Best***  
***Construction Experience***



**DELIVERY METHOD**

Design/Build

**CONSTRUCTION COST**

Original: \$43,572,162

Final: \$43,338,542

**PROJECT SIZE**

122,500 SF (Building)

148,000 SF (Exterior)

**PROJECT SCHEDULE**

Notice to Proceed: 05/04/2021

Substantial Completion:

01/18/2024

*Exterior phase completed ahead of schedule*

**TEAM LEADERS**

Project Manager: **Andrew**

**Kerbow/Drew Cain**

Superintendent: **Cullen Schoener**

**REFERENCES**

**Owner**

City of Bryan

Frank Clark, Jr.

979-209-5112

FClark@bryantx.gov

**Architect**

PBK Architects, Inc.

Ed Ramirez

713-965-0608

Ed.Ramirez@pbk.com

# CITY OF BRYAN LEGENDS EVENT CENTER AND EXTERIOR AMENITIES

BRYAN, TEXAS

The 122,000-square-foot Legends Event Center is a hub for athletes, gamers and families looking to break a sweat and have some fun. The facility is located on a 148-acre site and features a vast playbook of amenities. The multi-purpose sports and entertainment facility includes 16 volleyball courts, eight full-size basketball courts, an arcade with state-of-the-art virtual reality games, catering kitchen and outdoor patio area with relaxing lakeside views. Exterior amenities include four beach volleyball courts/lighting with associated synthetic turf terrace seating area and a large synthetic turf lawn; circulation sidewalks with a pre-manufactured steel pedestrian bridge, sports lighting/security; foundation for a future kayak boat storage facility; floating dock for kayak use and a boat ramp. The project also consists of lakeside grading to aid in floodplain mitigation.

Scan the QR code with your smartphone or [click here](#) to take a look inside the world-class facility and largest venue of its kind in the region.



Virtual Reality (VR) and E-gaming Area

“...This project was bid during a time of many unknowns in the market in the middle of a pandemic. However, under SpawGlass’ guidance, the budget was achieved and met all City goals for the facility. This professionalism and thoroughness continued once ground was broken and construction started. The on-site team’s attention to detail & management of the schedule ensured that the project would be on time and within budget...”

- Frank Clark Jr., Business Liaison and Special Projects  
City of Bryan





**DELIVERY METHOD**  
Design/Build

**CONSTRUCTION COST**  
Original: \$124,474,700  
Final: \$123,018,603

**PROJECT SIZE**  
720,000 SF

**PROJECT SCHEDULE**  
Notice to Proceed: 03/25/2015  
Substantial Completion:  
06/30/2017

**TEAM LEADERS**  
Project Executive:  
**Garrett Wheaton**  
Project Manager:  
**Andrew Kerbow**  
Superintendent: Wade Lollar

**REFERENCES**  
**Owner**  
Texas A&M University  
Randy Wipke  
979-595-7586  
randy-wipke@tamus.edu  
**Architect**  
Kirksey  
David McLemore  
713-850-9600  
davidm@kirksey.com

# TEXAS A&M UNIVERSITY CORPS DORMS RENOVATION

COLLEGE STATION, TEXAS

Built in 1939, the Texas A&M University (TAMU) Corps of Cadets dormitories have been transformed into a 21st century living/learning environment.

The project consisted of the complete demolition and rebuild of nine dormitory buildings, new construction of two Leadership Learning Centers and the addition of thirteen end caps for egress. The extensive renovation took the dorm buildings back to the structural concrete and original exterior masonry rebuilding the interiors completely from there. The quad/plaza area surrounding the dorms, totaling approximately 350,000 square feet, was also improved using over 95,000 square feet of concrete pavers and 50 trees.

The new living/learning space accommodates approximately 1,100 students in the four-level buildings. The two Leadership Learning Centers provide study spaces, academic support offices, conference rooms and computer labs. Cadets also have new laundry facilities and even the luxury of a Starbucks.



Project was awarded the 2017 Excellence in Construction from the Associated Builders and Contractors (ABC) organization.

“...We were very fortunate to have SpawGlass as our contractor for this project. Their performance was absolutely superb from start to finish and the entire SpawGlass team was a pleasure to work with throughout the project. We have been extremely pleased with the results and would enthusiastically recommend SpawGlass...”  
- Will Schrank, '86 Assistant Commandant-Logistics, Corps of Cadets





**DELIVERY METHOD**

Competitive Sealed Proposal (CSP)

**CONSTRUCTION COST**

Original:  
\$2,680,232

**SIZE OF PROJECT**

4,475 SF

**TYPE OF CONSTRUCTION**

Renovation

**CONSTRUCTION DATES**

NTP:  
11-06-2019  
Substantial Completion:  
10/28/2019

**OWNER**

SSC Service Solutions  
David Ritter  
(979) 458-8854  
David.Ritter@sscscserv.com

**ARCHITECT**

Populous  
Josh Vogel  
(816) 329-4579  
Josh.Vogel@populous.com

# TEXAS A&M UNIVERSITY BARBARA C. BARNETT WOMEN'S BASKETBALL STUDENT-ATHLETE CENTER

COLLEGE STATION, TEXAS

SpawGlass performed a complete interior demolition and renovation of the Aggie women's basketball program's existing space to create the world-class Barbara C. Barnett Women's Basketball Student-Athlete Center. Located inside the Cox-McFerrin Center for Aggie Basketball, the new space offers many unique amenities, including sleep pods, to accommodate athletes before and after they hit the court. Features include a spacious locker room with ample storage room and individual computers for each athlete, a nutrition area, a film room with custom seating, a players' lounge, an equipment room and a salon. State-of-the-art equipment and high-end technology are incorporated throughout all player areas. In addition to serving as a comfortable retreat for current athletes to stay in top form as well as relax, the renovated space also serves as a recruiting tool for future talent.





**DELIVERY METHOD**

Construction Manager-at-Risk

**CONSTRUCTION COST**

Original: \$16,409,559

Final: \$17,248,238

(Both phases combined)

**PROJECT SIZE**

76,120 SF

**CONSTRUCTION TYPE**

Renovation

**CONSTRUCTION DATES**

Ground Floor

Notice to Proceed: 06/10/2019

Substantial Completion:

01/31/2020

1st and 2nd Levels

Notice to Proceed: 08/01/2016

Substantial Completion:

06/30/2017

**OWNER**

Texas A&M University

Ronald Carter

979-845-0712

carter@chem.tamu.edu

**ARCHITECT**

PGAL

Mike Helman

713-622-1444

mhelman@pgal.com

# TEXAS A&M UNIVERSITY CHEMISTRY BUILDING 1972 WING 1ST, 2ND AND GROUND FLOOR RENOVATION

COLLEGE STATION, TEXAS

The Texas A&M University Chemistry Building was built in 1932, expanded in 1958 and underwent renovations in the 1980s. An annex was added in 1972, and is appropriately known as the 1972 Wing. Due to the importance of ongoing research projects, Texas A&M planned for renovations of the Chemistry Building 1972 Wing to take place in separate phases so the building could remain operational throughout construction.

Renovation included replacement of and/or upgrades to the mechanical, electrical and plumbing infrastructure for both floors, in the basement and on the roof; replacement of the chilled water system; and new lab casework, fume hoods and architectural finishes.





## TAB D PROJECT TIMELINE

### Lean Scheduling Pull Plan at SpawGlass Brazos Valley Office

1. Submittals must include a time-line for critical milestones for each phase (design and construction).

Please find our proposed project schedule on the following page, inclusive of project milestones.

2. Submittals must provide a chronological timeline of each task or event and the estimated time required to complete the engagement.

SpawGlass' philosophy is firmly rooted in our corporate policy of open-book management. This transparency allows the City of Bryan access, at any time, to review all costs associated with the construction of your Fire Station 2 HVAC Replacement project. Contract cost is reported on a monthly basis and compared to committed and anticipated GMP scopes. This ensures that all forecasted costs are included in our reporting system.

Our goal throughout all phases of your project will be to keep the City of Bryan informed. We understand that current and accurate information will be required for the city to make good, informed decisions concerning the project.

During the design/preconstruction phase, the project team will review the documents to identify any concerns that may lead to inefficiency, high maintenance costs, poor quality or costly construction. Our team will make recommendations on construction methods, constructability, materials, equipment, special material handling requirements and specification clarification. A written constructability report with cost savings and constructability recommendations will be submitted and reviewed with the City of Bryan, and DBR.

During the construction phase, we will include the following reports in our monthly request for payment:

Executive Summary – A multi-page recap of important construction activities that occurred during the past month, goals for the month ahead and a discussion of any key issues the project is facing that may affect schedule, budget or quality.

Schedule Reports – Generated by selecting activities from our CPM schedule and displaying them in a clear, concise format. Such reports will include owner activities, critical activities, milestone activities, submittal log and RFI log.

Cost Control Log – We will monitor all project costs and potential change items by providing regular reports, which consist of a subcontractor/supplier buyout log, substantiated subcontractor invoices for billings, accounting cost reports by phase codes, change item logs, contingency expenditure request logs and an updated cash flow curve on a monthly basis.

3. The contract will include a completion deadline subject to penalties for failure to meet the date.

Acknowledged.



### BEGINNING WITH THE END IN MIND

Today's municipal and emergency services facilities include a significant amount of infrastructure as well as long lead items. These moving parts are key schedule drivers. Integrating, programming and commissioning must be scheduled at the onset of the project.

| Activity ID                                       | Activity Name                   | Orig Dur | Remaining Duration | Start     | Finish    |
|---|---------------------------------|----------|--------------------|-----------|-----------|
| <b>CoB Fire Station #2 - D/B HVAC Replacement</b> |                                 |          |                    |           |           |
| <b>Milestones</b>                                 |                                 |          |                    |           |           |
| M1000   | RFQ's Due                       | 347      | 347                | 18-Dec-25 | 29-Apr-27 |
| M1010   | Contract Award                  | 0        | 0                  | 18-Dec-25 | 06-Feb-26 |
| M1020   | Design Kickoff Meeting          | 0        | 0                  | 23-Feb-26 | 09-Jun-26 |
| M1030   | Submit GMP Pricing              | 0        | 0                  |           | 16-Jun-26 |
| M1040   | GMP Pricing Approval            | 0        | 0                  | 24-Jun-26 | 04-Dec-26 |
| M1050   | NTP                             | 0        | 0                  |           | 03-Feb-27 |
| M1060   | HVAC Equipment Delivery         | 0        | 0                  |           | 17-Feb-27 |
| M1070   | Phase 1 Substantial Completion  | 0        | 0                  |           | 15-Apr-27 |
| M1080   | Phase 2 Substantial Completion  | 0        | 0                  |           | 29-Apr-27 |
| M1100   | Phase 2 Final Completion        | 0        | 0                  |           | 04-Dec-26 |
| <b>Pre-Construction</b>                           |                                 |          |                    |           |           |
| P1000   | Contract Evaluations            | 34       | 34                 | 18-Dec-25 | 06-Feb-26 |
| P1010   | Execute Owner Contract          | 10       | 10                 | 09-Feb-26 | 20-Feb-26 |
| <b>Design</b>                                     |                                 |          |                    |           |           |
| <b>SD Phase</b>                                   |                                 |          |                    |           |           |
| P1020   | SD Drawings                     | 80       | 80                 | 24-Feb-26 | 16-Jun-26 |
| P1030   | SD Drawing Review               | 20       | 20                 | 24-Feb-26 | 23-Mar-26 |
| <b>DD Phase</b>                                   |                                 |          |                    |           |           |
| P1040   | DD Drawings                     | 10       | 10                 | 10-Mar-26 | 09-Mar-26 |
| P1050   | DD Drawing Review               | 10       | 10                 | 20-Mar-26 | 23-Mar-26 |
| <b>CD Phase</b>                                   |                                 |          |                    |           |           |
| P1060   | CD Drawings                     | 20       | 20                 | 24-Mar-26 | 20-Apr-26 |
| P1070   | CD Drawing Review               | 5        | 5                  | 24-Mar-26 | 06-Apr-26 |
| P1080   | Contractor GMP Pricing          | 10       | 10                 | 07-Apr-26 | 20-Apr-26 |
| P1090   | GMP Pricing Review              | 5        | 5                  | 21-Apr-26 | 16-Jun-26 |
| <b>Buy-Out / Contract Execution</b>               |                                 |          |                    |           |           |
| P1100   | HVAC Subcontractor Buyout       | 10       | 10                 | 21-Apr-26 | 18-May-26 |
| P1110   | Electrical Subcontractor Buyout | 5        | 5                  | 19-May-26 | 26-May-26 |
| P1120   | Finishes Subcontractor Buyout   | 10       | 10                 | 27-May-26 | 09-Jun-26 |
| <b>Submittals</b>                                 |                                 |          |                    |           |           |
| P1130   | HVAC Equipment Submittals       | 15       | 15                 | 10-Jun-26 | 16-Jun-26 |
|   |                                 |          |                    | 24-Jun-26 | 07-Jul-26 |
|   |                                 |          |                    | 24-Jun-26 | 07-Jul-26 |
|   |                                 |          |                    | 24-Jun-26 | 07-Jul-26 |
|   |                                 |          |                    | 24-Jun-26 | 07-Jul-26 |
|   |                                 |          |                    | 08-Jul-26 | 28-Jul-26 |
|   |                                 |          |                    | 08-Jul-26 | 28-Jul-26 |

Start Date: 18-Dec-25  
 Finish Date: 29-Apr-27  
 Data Date: 18-Dec-25  
 Run Date: 18-Dec-25

**CoB Fire Station #2 - D/B HVAC Replacement**  
 RFQ Schedule  
 Page 1 of 3







# TAB E

## METHODOLOGY INCLUDING TECHNICAL APPROACH AND UNDERSTANDING OF THE SCOPE OF THE PROJECT



Legends Event Center - Bryan, TX

1. Submittals must indicate a clear understanding of the scope of the work, including a detailed project plan for this engagement outlining major tasks and responsibilities, time frames, and staff assigned for each category of the scope of work identified above.

The SpawGlass/DBR Design-Build Team has thoroughly reviewed the City of Bryan's requirements for Fire Station 2 HVAC Replacement. We understand that the City seeks a qualified Design/Build firm to provide full design services and turn-key installation of residential HVAC split systems, ensuring reliable, efficient, and maintainable solutions.

Our team acknowledges the following key elements of the project scope:

The SpawGlass/DBR Design-Build Team will replace Fire Station #2's existing LG VRF system with new residential HVAC split systems from leading manufacturers, sized at 35–40

tons with gas furnaces and two DOAS units for makeup air. Each unit will operate independently with non-proprietary parts, ensuring reliability and serviceability. Existing ductwork will be reused where possible, with necessary construction, gas line upgrades, and outdoor pad installations included. Our solution is designed to be code-compliant, energy-efficient, and maintainable, meeting the City of Bryan's operational and long-term needs.

Our team is committed to delivering a high-quality, code-compliant, and energy-efficient HVAC solution that meets the City's operational needs and long-term maintenance goals

| Major Task                                 | Champion      | Additional Staff |  |
|--|---------------|------------------|--|
| <b>Preconstruction</b>                     |               |                  |  |
| <b>Executed Contract + 30 Days</b>         |               |                  |  |
| Submit Insurance & 1295 Form               | SpawGlass     | Sarah Accurso    | Josh Farris & Garrett Wheaton                  |
| Executed D/B Contract                      | SpawGlass     | Garrett Wheaton  | Josh Farris                                    |
| Kick Off Meeting                           | SpawGlass     | Josh Farris      | City of Bryan PM, Erik MacDonald (Jones DBR)   |
| Program Discovery/ Validation              | Jones DBR     | Erik MacDonald   | Josh Farris & Jercolby Gamble                  |
| Site Investigation                         | SpawGlass     | Josh Farris      | Jercolby Gamble & Erik MacDonald               |
| Schematic Design                           | Jones DBR     | Erik MacDonald   | Josh Farris & Jercolby Gamble                  |
| <b>Complete SD Design + 30 Days</b>        |               |                  |  |
| Design Development                         | Jones DBR     | Erik MacDonald   | Josh Farris & Jercolby Gamble                  |
| DD Pre-Construction Constructability       | SpawGlass     | Josh Farris      | Jercolby Gamble                                |
| DD Estimates                               | SpawGlass     | Josh Farris      | Garrett Wheaton                                |
| <b>Completed DD Design + 50 Days</b>       |               |                  |  |
| Construction Documents                     | Jones DBR     | Erik MacDonald   | Josh Farris & Jercolby Gamble                  |
| CD Pre-Construction Constructability       | SpawGlass     | Josh Farris      | Jercolby Gamble                                |
| CD Estimates                               | SpawGlass     | Josh Farris      | Garrett Wheaton                                |
| Bidding                                    | SpawGlass     | Josh Farris      | Zach Romero & Garrett Wheaton                  |
| Deliver GMP                                | SpawGlass     | Josh Farris      | Garrett Wheaton                                |
| Develop Site Specific Safety Plan          | SpawGlass     | Jercolby Gamble  | Josh Farris                                    |
| Develop Site Specific Quality Control Plan | SpawGlass     | Jercolby Gamble  | Josh Farris & Zach Romero                      |
| City of Bryan Permitting                   | SpawGlass     | Josh Farris      | Jercolby Gamble                                |
| <b>Delivery of GMP + 15 Days</b>           |               |                  |  |
| Council Approval for Construction          | City of Bryan | City of Bryan PM | -  |
| Notice to Proceed                          | City of Bryan | City of Bryan PM | -  |
| <b>Construction</b>                        |               |                  |  |
| <b>NTP + 205 Days</b>                      |               |                  |  |
| Contracting                                | SpawGlass     | Josh Farris      | Zach Romero                                    |
| Call locates                               | SpawGlass     | Jercolby Gamble  | Josh Farris & Zach Romero                      |
| Site Mobilization                          | SpawGlass     | Jercolby Gamble  | Josh Farris & Zach Romero                      |
| Construction Supervision & QA/QC           | SpawGlass     | Jercolby Gamble  | Zach Romero & Erik MacDonald                   |
| Construction Management                    | SpawGlass     | Josh Farris      | Zach Romero                                    |
| Owner Architect Contractor Meetings        | SpawGlass     | Josh Farris      | Zach Romero, Jercolby Gamble, & Erik MacDonald |
| Contract Closeout                          | SpawGlass     | Zach Romero      | Josh Farris & Jercolby Gamble                  |





2. Submittals shall identify progress reports to be made available during the process and key decision points.

SpawGlass' philosophy is firmly rooted in our corporate policy of open-book management. This transparency allows the City of Bryan access, at any time, to review all costs associated with the construction of your Sports and Event Center project. Contract cost is reported on a monthly basis and compared to committed and anticipated GMP scopes. This ensures that all forecasted costs are included in our reporting system.

Our goal throughout all phases of your project will be to keep the City of Bryan informed. We understand that current and accurate information will be required for the city to make good, informed decisions concerning the project.

During the design/preconstruction phase, the project team will review the documents to identify any concerns that may lead to inefficiency, high maintenance costs, poor quality or costly construction. Our team will make recommendations on construction methods, constructability, materials, equipment, special material handling requirements and specification clarification. A written constructability report with cost savings and constructability recommendations will be submitted and reviewed with the City of Bryan, Arkitek Studio and our subconsultants.

During the construction phase, we will include the following reports in our monthly request for payment:

**Executive Summary** – A multi-page recap of important construction activities that occurred during the past month, goals for the month ahead and a discussion of any key issues the project is facing that may affect schedule, budget or quality.

**Schedule Reports** – Generated by selecting activities from our CPM schedule and displaying them in a clear, concise format. Such reports will include owner activities, critical activities, milestone activities, submittal log and RFI log.

**Cost Control Log** – We will monitor all project costs and potential change items by providing regular reports, which consist of a subcontractor/supplier buyout log, substantiated subcontractor invoices for billings, accounting cost reports by phase codes, change item logs, contingency expenditure request logs and an updated cash flow curve on a monthly basis.

3. Submittals shall clearly distinguish the Firm's duties and responsibilities and those of the City. Absence of this distinction shall mean the Firm is assuming full responsibility for all tasks.

Owner involvement is critical to the project success, and regular weekly – and at times daily – involvement is strongly encouraged. Understanding the lines of authority for owner approval, defined at project kick-off enables the team to proceed with confidence in decisions made by the owner. Owner engagement at each step of project development facilitates decision making that may affect scope, cost and budget.

The construction industry is evolving at a rapid pace; preconstruction processes and virtual technology are very much a part of this evolution. Our clients are looking for us to lead the design/preconstruction processes and apply the latest in technology throughout project delivery and post-completion.

While SpawGlass leads the successful design and construction of your Signature Park Playground, we are available at any time to discuss your project, and we will provide you with any information you need to make the best decisions for your new facility. As an employee-owned company, transparency with our clients comes naturally for us. We provide complete transparency in our processes, documentation, accounting and record-keeping throughout each project. This brings trust and accountability to our relationship with every client.



## TAB F REFERENCES

📍 Texas State University DHRL Blanco Hall Renovations -  
Completed with DBR Engineering

Provide references for similarly successful projects, inclusive of three government agencies, including the name of the agency, contact name, telephone, fax, and email address.

### REFERENCE

City of Bryan  
Frank Clark, Jr.  
Business Liaison and Special Projects  
979-209-5006

Bryan Texas Utilities (BTU)  
Will Brownlow  
979.446.9714  
wbrownlow@btutilities.com

Mumford Independent School District  
Dr. Allen Reese  
512.269.3263  
atreese@mumford.k12.tx.us

SSC Services for Education  
David Ritter  
979-219-0774  
David.Ritter@SSCServ.com



# TAB G

## PURCHASING REQUIRED FORMS

 Texas A&M University Corps Dorms Renovation  
Design Build with DBR Engineering

### PURCHASING REQUIRED FORMS

Certification page, acknowledgement of any Addendum issued, and a statement of willingness to sign the City's Standard Form of Agreement

Please find the requested purchasing required forms on the following pages.

We will collaborate closely with the City of Bryan to maintain budget control and resolve potential construction conflicts. With this experience, we understand the importance of your contract. We have read City of Bryan's contract and are ready to sign!

**CERTIFICATION/AUTHORIZATION/ACKNOWLEDGEMENT FORM**

**RFQ #26-015**

**Design and Build Services for the Replacement of Existing HVAC System for City of Bryan Fire Station No. 2**

The undersigned certifies that he has fully read and understands this "Statement of Qualifications" and has full knowledge of the scope, quantity, and quality of the services and materials to be furnished *including the Texas Ethics Commission Certificate of Interested Parties Form 1295* and intends to adhere to the provisions described herein. The undersigned also affirms they are duly authorized to submit this SOQ, that this SOQ has not been prepared in collusion with any other Vendor, and the contents of this SOQ have not been communicated to any other Vendor prior to the official opening of this SOQ. Additionally, the undersigned affirms that the Firm is willing to sign the enclosed Standard Form of Agreement.

**By signing below, the Firm certifies that neither the signatory, nor any co-owner of the Firm, is related to a member of the City Council of the City of Bryan within the third degree of consanguinity (blood) or within the second degree of affinity (marriage).**

Signed By:  Title: Vice President of Operations

Typed Name: Garrett Wheaton Company Name: SpawGlass Construction Corp.

Phone No.: 979.401.3270 Fax No.: N/A

Email: \_\_\_\_\_

Proposal Address: 4030 HWY 6 S., Ste 300, College Station, Texas 77845  
P.O. Box or Street                      City                      State                      Zip

Order Address: 4030 HWY 6 S., Ste 300, College Station, Texas 77845  
P.O. Box or Street                      City                      State                      Zip

Remit Address: 13800 West Road, Houston, Texas 77041  
P.O. Box or Street                      City                      State                      Zip

Federal Tax ID No.: 76-0398989

Date: 12/18/2025

***Payment Notice:*** The City of Bryan has partnered with **PaymentWorks** to automate its vendor management process for payments related to goods and services provided to the City. This protects the financial information of payees, eliminates payment fraud, and ensures regulatory compliance.

All new vendors and/or vendor updates must be invited to register by the City of Bryan through the **PaymentWorks** secure site. Existing vendors will be invited to register over the next several months but this will not preclude conducting business prior to registration through **PaymentWorks**. For more information, please contact the City at [VendorInfo@bryantx.gov](mailto:VendorInfo@bryantx.gov)



December 2, 2025

## ADDENDUM NO. 1

RFQ #26-015

### Design and Build Services for the Replacement of Existing HVAC System for the City of Bryan Fire Station No. 2

Please be advised of the following clarifications, additions, deletions and/or changes to RFP No. 26-015 are hereby made a part of the proposal documents for the above referenced project as full and as completely as though the same were included therein.

**Please disregard the statements on page 7 in regards to the water feature, as shown in the redlines below and on the attached. This language was mistakenly carried over from a previous RFQ:**

~~**PROJECT**— The Project includes a Design and/or Construction model with multiple elements to be reviewed, revised, and finalized through the design process, of which the Firm will have an extensive and inclusive role. The primary focus of the project is the lighted water feature, spanning between 320 and 400 feet, with potential for future expansion. The project involves two phases; design and construction. Once designed, the Project moves into the construction phase. That is, as defined, submittals should consider the Project to be all components of design and construction with the City reserving the right to move forward to the construction phase based on results of the design phase. For more information, refer to the Intent and Scope of Work section within this RFQ.~~

~~**WORLD CLASS ENTERTAINMENT ATTRACTION**— Within Travis Bryan Midtown Park, a lighted and audio synchronized water feature, spanning between 320 and 400 feet with potential for future expansion; for reference, see Attachment B. The project integrates technology, water, lighting, digital image projection, ariel events, and/or any other creative ideas. Midtown Lake is approximately 23 acres in size and is currently used as a detention pond, resulting in fluctuating water levels. The normal water elevation of 305 inches is maintained using wells. The attraction should incorporate a dynamic and choreographed display of water jets, air cannons, and other aquatic elements, accompanied by synchronized music, lighting effects, and sometimes interactive features to include color projections of legible text and images. Shows should be designed to create a captivating and immersive experience for spectators, combining the rhythmic movement of water with artistic and technological elements.~~

#### END OF ADDENDUM

This addendum shall be signed and included with your response package as acknowledgement of the addendum. Failure to acknowledge and submit any addenda may be cause for the bid to be rejected. The City's decision to accept or reject a bid due to a failure to acknowledge and submit addenda shall be final.

Vendor Acknowledgement Signature

Purchasing Department  
PO BOX 1000 • Bryan, TX 77805  
(979) 209-5505



December 4, 2025

**ADDENDUM NO. 2**  
RFQ #26-015  
**Design and Build Services for the Replacement of Existing HVAC System for the  
City of Bryan Fire Station No. 2**

Please be advised of the following clarifications, additions, deletions and/or changes to RFP No. 26-015 are hereby made a part of the proposal documents for the above referenced project as full and as completely as though the same were included therein.

**See Separate Attachment:**

➤ **Addendum 2 – Bryan Fire Station No. 2 Plan Review Set**

**END OF ADDENDUM**

This addendum shall be signed and included with your response package as acknowledgement of the addendum. Failure to acknowledge and submit any addenda may be cause for the bid to be rejected. The City's decision to accept or reject a bid due to a failure to acknowledge and submit addenda shall be final.

Vendor Acknowledgement Signature

Purchasing Department  
PO Box 1000 • Bryan, TX 77805  
(979) 209-5500

Addendum No. 2 - Page 1 of 1

**SpawGlass**

*Providing the Absolute Best  
Construction Experience*



SpawGlass

4030 HWY 6 S., Ste 300  
College Station, Texas 77845  
979-401-3270

SpawGlass.com

***Connect with us today!***



## REQUEST FOR QUALIFICATIONS

### Design/Build Services for the Replacement of Existing HVAC System for City of Bryan Fire Station No. 2

RFQ# 26-015



# CITY OF BRYAN

*The Good Life, Texas Style.™*

Date Posted:  
November 21, 2025

**Statement of Qualifications Due Date:**  
**Thursday, December 18, 2025 @ 2:00 PM CST**

**Publicly Acknowledged via zoom:**

<https://us02web.zoom.us/j/85948016863?pwd=oB1e5tkcqfTVZBubePFwuN2DepzGQI.1>

**MEETING ID: 859 4801 6863**

**PASSCODE: 840743**

**DIAL IN: 1-346-248-7799**

## DISCLOSURE REQUIREMENTS

Chapter 176 of the Texas Local Government Code mandates the public disclosure of certain information concerning persons doing business or seeking to do business with the City of Bryan, including affiliations and business and financial relationships such persons may have with City of Bryan officers. An explanation of the requirements of Chapter 176, applicable forms and a complete text of the new law are available at:

<http://www.bryantx.gov/purchasing-services/#vendorethics>

If you are unable to obtain such information online, please contact the City of Bryan Purchasing Department, 2611 N. Earl Rudder Fwy, Texas 77803 or call (979) 209-5500.

**BY DOING BUSINESS OR SEEKING TO DO BUSINESS WITH THE CITY OF BRYAN, YOU ACKNOWLEDGE THAT YOU HAVE BEEN NOTIFIED OF THE REQUIREMENTS OF CHAPTER 176 OF THE TEXAS LOCAL GOVERNMENT CODE AND THAT YOU ARE SOLELY RESPONSIBLE FOR COMPLYING WITH THEM.**

## DISCLOSURE OF INTERESTED PARTIES

Section 2252.908 of the Government Code states that a governmental entity or state agency may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency. The law applies only to a contract of a governmental entity or state agency that either (1) requires an action or vote by the governing body of the entity or agency before the contract may be signed or (2) has a value of at least \$1MM. The disclosure requirement applies to a contract entered into on or after January 1, 2016. The process as implemented by the Texas Ethics Commission is as follows:

1. A business entity must use the application to enter the required information on Form 1295 and print a copy of the form and a separate certification of filing that will contain a unique certification number.
2. An authorized agent of the business entity must sign the printed copy of the form and have the form notarized. The completed Form 1295 and certification of filing must be filed with the city "at the time the business entity submits the signed contract" to the city.
3. The city must notify the Commission, using the Commission's filing application, of the receipt of the filed Form 1295 and certification of filing not later than the 30th day after the date the contract binds all parties to the contract.

For more information regarding how to file Form 1295, please click on the following link:

<https://www.ethics.state.tx.us/filinginfo/1295>

## **ADDITIONAL CERTIFICATIONS**

Developer verifies that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.

Developer verifies, the extent authorized by law and as applicable under Section 2271.002 of the Texas Government Code, that for any contract that has a value of \$100,000 or more, it does not, and will not for the duration of the contract, boycott Israel.

Developer verifies that neither it, nor its parent company, is (1) majority owned or controlled by individuals who are citizens of China, Iran, North Korea, or Russia, or by a company or other entity that is owned or directly controlled by the government of China, Iran, North Korea, Russia; (2) headquartered in any of those countries, as prohibited by Section 2275.0102 of the Texas Government Code.

## **CONFIDENTIAL INFORMATION**

Any information deemed to be confidential or proprietary by Proposer should be clearly annotated on the pages where confidential or proprietary information is contained. The City cannot guarantee that it will not be required to disclose all or part of any public record under Texas Public Information Act, since information deemed to be confidential or proprietary by Proposer may not be confidential or proprietary under Texas Law, or pursuant to a Court order. Pursuant to Government Code, Chapter 552, the City must disclose certain contracting information and the law presumes that most contracting information is public. Certain types of contracting information must generally be released under the Public Information Act: overall price; price and description of items or services to be delivered; delivery and service deadlines; remedies for breach of contract; identity of the parties to the Contract; execution and effective dates; and information connected to a vendor or contractor's performance on the Contract. Additionally, information regarding performance under the Contract, including breaches of the Contract, Contract variances, amendments, liquidated damages, and other penalties for non- performance, must generally be released under the Public Information Act.

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

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## INTRODUCTION

**RFQ# 26-015**

### **Design and Build Services for the Replacement of Existing HVAC System for City of Bryan Fire Station No. 2**

The City of Bryan, Texas (“City”) is requesting qualification(s) for design and build services from firms that can provide full design and turn-key installation of residential HVAC split systems as described in the Scope of Work.

The City intends to select a single firm pursuant to the design and build method to accomplish services outlined in this Request for Qualifications to replace the existing failed Variable Refrigerant Flow (“VRF”) system at the Bryan Fire Station #2.

**Electronic responses will be accepted until 2:00 PM CST on Thursday, December 18, 2025**

**You may upload one (1) electronic SOQ response in the format prescribed herein to the City’s procurement website at <https://brazosbid.ionwave.net/>.** *Please note: The City of Bryan is not responsible for high internet traffic or technical issues at or near the submission deadline. Respondents who submit during peak traffic times assume the risk that their response may not be received by the due date and/or time.*

Alternatively, if you choose to submit a hard copy, **one (1) original SOQ response** must be returned in a sealed envelope clearly bearing the name and address of the respondent. Sealed statement of qualifications will be accepted until **2:00 p.m. CST on December 18, 2025**, and shall be delivered to the location and addressed to:

**City of Bryan, Purchasing Department  
Phebe Mosley, Purchasing Manager  
RFQ# 26-015  
2611 N. Earl Rudder Fwy  
Bryan, Texas 77803**

In order to ensure a fair and objective RFQ process and evaluation, all questions and inquiries related to this Request for Qualifications shall be addressed in writing, **via the Brazos Valley Online Bidding System (<http://brazosbid.ionwave.net/>)** or to the individual identified above. The deadline for written questions and inquiries is **Thursday, December 11, 2025 @ 10:00 AM CST**. Contact with any City of Bryan employee or elected official is prohibited without prior written consent from the Purchasing Department or their designee. Firm(s) contacting any other employee(s) or elected official(s) without prior written consent, risk elimination of their submittal from further consideration.

The city believes that the data contained in this RFQ is sufficient for the preparation of a SOQ response. Requests for additional information will be considered depending on the RFQ time

frame and the availability of the requested information. Such information will be submitted to all known Firms simultaneously.

**Schedule of Events:**

The tentative schedule for this Request for Qualifications is as follows:

**Date of Release:** November 21, 2025

**Site Visits (by appointment only):** Contact Kathy Yeager with Facility Services at 979-209-5520

\*Weekdays only December 1 through December 10 from 9:00am to 2:00pm

**Deadline for Questions and Inquiries:** December 11, 2025 (10:00AM)

**Statement of Qualifications Due:** December 18, 2025 (2:00PM)

**Contract Evaluations/Negotiations:** December 19, 2025-January 16, 2026

**Anticipated Award Date:** February 2026

**DEFINITIONS, TERMS, AND CONDITIONS**

**Definitions**

To simplify the language throughout this request for qualification, the following definitions shall apply:

***CITY OF BRYAN/CITY*** – A home-rule Municipal Corporation of the State of Texas.

***CITY COUNCIL*** – The elected officials of the City of Bryan, Texas, given the authority to exercise such powers and jurisdiction of all City business as conferred by the State Constitution and Laws.

***CONTRACT*** – An agreement between the City and a Firm to furnish supplies or services over a designated period of time during which repeated purchases are made of the commodity or service specified.

***COOPERATIVE AGREEMENT*** – Any governmental entity(s) that has entered into a joint interlocal purchasing cooperative agreement with the City of Bryan, Texas.

***DESIGN/BUILD (D/B) FIRM*** – A “Design/Build (D/B) Firm” is a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for the design, documentation, construction, rehabilitation, alteration, or repair of a facility at the contracted price as a general contractor and provides consultation to the City regarding all phases of the design and build (or construction) of the facility. Firms submitting Statements of Qualifications shall be referred to as “Respondents,” and in some instances referred to as “FIRM,” “Firm,” “firm,” “Offeror,” “offeror,” “Contractor,” or “contractor.”

***INSURANCE REQUIREMENTS*** – Reference page 21

**OFFEROR/VENDOR/PROPOSER/FIRM** – Organization offering a response to this Request for Qualifications (RFQ).

**PARTICIPATING ENTITIES** – The City of Bryan and any other local entity who may elect to participate in the future.

**PROJECT** – The Project includes a Design and/or Construction model with multiple elements to be reviewed, revised, and finalized through the design process, of which the Firm will have an extensive and inclusive role. The primary focus of the project is the lighted water feature, spanning between 320 and 400 feet, with potential for future expansion. The project involves two phases; design and construction. Once designed, the Project moves into the construction phase. That is, as defined, submittals should consider the Project to be all components of design and construction with the City reserving the right to move forward to the construction phase based on results of the design phase. For more information, refer to the Intent and Scope of Work section within this RFQ.

**RESPONSE/SUBMITTAL** – A response to the Request for Qualifications (RFQ).

**RESPONDENT** – Organization offering a response to this Request of Qualifications (RFQ). Respondent also may be referred to as “firm,” “Firm,” “Proposer,” “proposer,” “Offeror,” or “offeror.”

**RFQ** – Request for Qualifications.

**SOQ** – Statement of Qualifications. Similar to a “Response” or “Submittal” to the Request for Qualifications (RFQ).

**WORLD CLASS ENTERTAINMENT ATTRACTION** – Within Travis Bryan Midtown Park, a lighted and audio synchronized water feature, spanning between 320 and 400 feet with potential for future expansion; for reference, see Attachment B. The project integrates technology, water, lighting, digital image projection, ariel events, and/or any other creative ideas. Midtown Lake is approximately 23-acres in size and is currently used as a detention pond, resulting in fluctuating water levels. The normal water elevation of 305 inches is maintained using wells. The attraction should incorporate a dynamic and choreographed display of water jets, air cannons, and other aquatic elements, accompanied by synchronized music, lighting effects, and sometimes interactive features to include color projections of legible text and images. Shows should be designed to create a captivating and immersive experience for spectators, combining the rhythmic movement of water with artistic and technological elements.

#### **Receipt of Statement of Qualifications**

The submitted SOQ must be received by the Purchasing Department prior to the time and date specified. The mere fact that the SOQ was dispatched will not be considered; the Firm must ensure that the SOQ is actually delivered. SOQs received after the date and time specified in the Schedule of Events shall be returned unopened and will be considered void and unacceptable. The City of Bryan is not responsible for lateness of mail carrier, etc., and time/date stamp in the Purchasing Department shall be the official time of receipt.

Submittals cannot be altered or amended after the closing date. Alterations made before closing must be initialed by Firm guaranteeing authenticity. Submittals may not be withdrawn after the closing date.

Submittals will be publicly acknowledged via zoom.

Submittals shall remain valid for a period of one-hundred-twenty (120) days from the date and time of the submission deadline date.

The original and one electronic version of the submittals must be included in .pdf, Word, or another standard format.

By submitting a SOQ, the Firm certifies they have fully read and understands this “Request for Qualification” and has full knowledge of the scope, quantity, and quality of the services to be furnished and intends to adhere to the provisions described herein. Failure to do so will be at the Firm’s own risk, and they cannot secure relief on pleas or error. Neither law nor regulations make allowance for error of omission or commission on part of Firm.

Any submittal which does not contain all of the information requested in this RFQ will be considered incomplete and may be rejected by the City of Bryan.

The City of Bryan by statute is exempt from State Sales Tax and Federal Excise Tax, and the proposal price shall not include taxes.

The Firm shall furnish any additional information as the City of Bryan may require. The City of Bryan reserves the right to make investigation of the qualifications of the Firm(s) as they deem appropriate.

This RFQ does not commit the City of Bryan to award a contract, to pay any cost incurred in the preparation of a proposal, or to procure or contract for services.

### **Reservations**

The City reserves the right to accept or reject any or all SOQs as a result of this request, to negotiate with all qualified sources, or to cancel, in part or in its entirety, this Request for Qualifications if found in the best interest of the City. All SOQs become the property of the City of Bryan.

The City reserves the right to retain all SOQs submitted and to use any idea in a submittal regardless of whether that Firm or team is selected. Submission of an SOQ indicates acceptance by the Firm of the terms and conditions contained in this request for qualifications, unless clearly and specifically noted in the SOQ submitted and confirmed in the contract between the City of Bryan and the Firm or team selected.

The City of Bryan reserves the right to waive any informalities and technicalities and to accept the offer considered most advantageous in order to obtain the best value for the City. Causes for rejection of a submittal may include but shall not be limited to the Firm’s current violation of any

City ordinance, the Firm's current inability to satisfactorily perform the work or service, or the Firm's previous failure to properly and timely perform its obligations under a contract with the City. Firms may be disqualified and rejection of submittals may be recommended for any (but not limited to) of the following causes: 1) Failure to use the forms furnished by the City; 2) Lack of signature by an authorized representative on the Certification form; 3) Failure to properly complete the submittal requirements; 4) Evidence of collusion among proposers; 5) Omission of uncertified personal or company check as a proposal guarantee (if Bid Bond required); or 6) Any alteration of the language contained within the RFQ forms. City of Bryan reserves the right to waive any minor informality or irregularity.

The City reserves the right to retain all submittals and to use any idea provided regardless of whether that Firm is selected. SOQ submission indicates acceptance by the Firm of the terms and conditions contained in this RFQ, unless clearly and specifically noted in the SOQ and confirmed in the contract between the City of Bryan and the Firm selected.

The City of Bryan may conduct reference checks as needed to evaluate SOQ submissions. The City may contact those listed, and inclusion of this listing in the submittal is an agreement that the City may contact the named reference. The City reserves the right to contact other companies or individuals that can provide information to the City that will assist the City in evaluating the Firm's capability.

### **Reimbursements**

There is no express or implied obligation for the City of Bryan to reimburse responding Firms for any expenses incurred in preparing SOQs in response to this Request for Qualifications and the City of Bryan will not reimburse responding Firms for expenses, nor will the City pay any subsequent costs associated with the provision of any additional information or presentation, or to procure a contract for these services.

### **Certification**

SOQ's must be completed and submitted as required in this document. ***The Certification and Authorization form must be fully completed. Failure to submit the certification form within the sealed SOQ will result in the SOQ being rejected as non-responsive.***

By submitting an RFQ, the Firm(s) certifies that he has fully read and understands this "Request for Qualifications" and has full knowledge of the scope, quantity, and quality of the services to be furnished and intends to adhere to the provisions described herein. Failure to do so will be at the Firm(s) own risk, and he cannot secure relief on pleas or error. Neither law nor regulations make allowance for error of omission or commission on part of Firm(s).

### **Communication**

The City shall not be responsible for any verbal communication between any employee of the City or City Official and any potential Firm. Only written requirements and qualifications will be considered.

### **Management**

Should there be a change in ownership or management; the contract shall be canceled unless a mutual agreement is reached with the new owner or manager to continue the contract with its present provisions and prices. This contract is nontransferable by either party.

### **Payment Terms**

Payment will be made in accordance with a negotiated fee schedule.

### **Negotiations**

During the evaluation process, City of Bryan reserves the right, where it may serve the City of Bryan's best interest, to request additional information or clarifications from respondents. At the discretion of the City, all Firm(s) reasonably susceptible of being selected based on criteria set forth in this RFQ, may be requested to make oral presentations. Each SOQ must designate the person(s) who will be responsible for answering technical and contractual questions.

Firms will be ranked in order of preference and final contract negotiations will begin with the top ranked Firm. Should negotiations with the highest ranked Firm fail to yield a contract, or if the Firm is unable to execute said contract, negotiations will be formally ended and then commence with the second highest ranked Firm, etc.

### **Disclosure**

At the public opening, there will be no disclosure of contents to competing Firms and all SOQs will be kept confidential during the negotiation process. Except for trade secrets and confidential information which the Firm identifies as proprietary, all SOQs will be open for public inspection after the RFQ process.

### **Award of the Contract**

Award of the contract shall be based on demonstrated competence and qualifications, so long as the professional fees are consistent with, and not higher than the published recommended practices and fees of the various professional associations and do not exceed any maximums provided by state law.

### **Conflict of Interest**

Chapter 176 of the Texas Local Government Code requires a vendor contracting or seeking to contract for the sale or purchase of property, goods, or services with a local governmental entity to disclose any affiliation or business relationship which might create a conflict of interest with a local governmental entity. The Conflict of Interest Questionnaire is available from the Texas Ethics Commission at [www.ethics.state.tx.us](http://www.ethics.state.tx.us), and completed forms must be submitted to the appropriate records administrator of the City not later than the seventh business day after the date the vendor begins contract discussions or negotiations with the local governmental entity, or submits to the local governmental entity an application, response to a Request for Qualifications, Request for Proposals or Bids, correspondence, or another writing related to a potential Agreement with the local governmental entity. If responding to this RFQ, the Conflict-of-Interest Form may be submitted with the RFQ submittal. The completed forms may be mailed or hand delivered to the City Secretary at the following address: The City of Bryan, Office of the City Secretary, 300 Texas Avenue, Bryan, TX 77803. Any attempt to intentionally or unintentionally conceal a conflict of

interest may result in disqualification of any response to a solicitation. The validity of the Contract is not affected solely because of failure to comply with the conflict-of-interest disclosure requirements.

### **Communications with the City**

To insure the proper and fair evaluation of the SOQ submittals, the City prohibits ex parte communication (e.g., unsolicited) initiated by the Firm(s) to the City Official or Employee evaluating or considering the SOQ submittal prior to the time an award has been made. Communication between Firm(s) and the City will be initiated by the appropriate City Official or Employee in order to obtain information or clarification needed to develop a proper and accurate evaluation of the SOQ submittal. Ex parte communication may be grounds for disqualifying the offending Firm(s) from consideration or award of the SOQ submittal then in evaluation, or any future submittals. Ex parte communications with any elected officials will disqualify the bidder from consideration.

Unless otherwise specified, all requests for clarification or questions regarding a Solicitation must be directed to the City of Bryan Purchasing Office, Attn.: Purchasing Department, P.O. Box 1000, 979-209-5500 or [brazosbid.ionwave.net](http://brazosbid.ionwave.net)

### **Disclosure of Pending Litigation**

Each Firm(s) shall include in its proposal a complete disclosure of any material civil or criminal litigation or pending investigation which involves the Firm(s) or in which the Firm(s) has been judged guilty.

### **Addenda**

In the event of a needed change in the published documents, it is understood that all the foregoing terms and conditions and all performance requirements will apply to any published addendum.

All published addenda shall be signed and included with the Firm(s) response package as acknowledgement of the addendum. Firm(s) are responsible for obtaining all published addenda from the City of Bryan Purchasing Office or by downloading these documents from the City of Bryan website. The City assumes no responsibility for the Firm(s) failure to obtain and/or properly submit any addendum. **Failure to acknowledge and submit any addendum may be cause for the SOQ to be rejected. The City's decision to accept or reject any particular SOQ due to a failure to acknowledge and submit addenda shall be final.**

### **If RFQ Submittal Results in a Contract, the Following Terms and Conditions Will Apply**

Firm(s) should be aware that the RFQ and the contents of the successful submittal will become a part of any subsequent contractual document that may arise from this RFQ. In case of discrepancy between the RFQ and the Firm(s) submittals, the RFQ will rule.

Award of the contract shall be based on demonstrated competence and qualifications, so long as the professional fees are consistent with, and not higher than the published recommended practices and fees of the various professional associations and do not exceed any maximums provided by state law.

In the event a new contract cannot be executed at the anniversary date of the original term or any renewal term, the contract may be renewed month-to-month until a new contract is executed.

Contracts can be cancelled, without penalty, with thirty (30) days written notice of cancellation by the City of Bryan.

The opportunity for City of Bryan to enter into contract with the successful Firm(s) will remain open for a period of **one-hundred and twenty (120)** days from the date and time of the proposal submission deadline date, with the same terms, conditions and negotiated fee schedule.

The City of Bryan will not accept any contract terms that require pre-payment for services, supplies, or equipment.

No oral statement of any person shall modify or otherwise change, or affect the terms, conditions, or specifications stated in the resulting contract. All Change Orders to the contract will be made in writing by the Purchasing Department for the City of Bryan.

Should there be a change in ownership or management, the Contract shall be cancelled unless a mutual agreement is reached with the new owner or manager to continue the contract with its present provisions and prices. This Contract is nontransferable by either party.

Payment will be made in accordance with a negotiated fee schedule.

All invoicing shall be submitted in duplicate to the City of Bryan. If invoices are subject to cash discount, discount period is to be taken from the date of completion of order or date of receipt of invoice, whichever occurs last regardless of whether or not correct discount terms appear on invoice. All invoices are to be paid in full within 30 days after satisfactory delivery of services and billing.

No public official or City employee shall enter into a contract with the City that violates Local Government Code, Section 171.003. The Firm(s) will be required to comply with all provisions of the President's Executive Order No. 11246 as of September 24, 1965. Firm(s) is/are advised that all contracts are subject to all legal requirements provided in the City Charter and/or applicable City Ordinances, State, and Federal Statutes.

The City of Bryan operates and is funded on a fiscal year basis; accordingly, the City of Bryan reserves the right to terminate, without liability, any contract for which funding is not available. Renewal of contract will be in accordance with Local Government Code 271.903 concerning non-appropriation of funds for multi-year contracts.

## GENERAL INFORMATION

### Background

The City of Bryan, Texas, seat of Brazos County, is centrally located between Austin and Houston. The city was incorporated in 1871 and the original square-mile town site now consists of more than 54.78 square miles. As of 2024, Bryan has an estimated population of 93,590. The community is home to Texas A&M University's Health and Science Center, RELIS Campus, and Blinn College, which have a combined population of over 79,000 students. The City is bordered on the north, east and west by unincorporated areas of Brazos County and on the south by the City of College Station and Texas A&M University's main campus. The government, education, manufacturing, and healthcare sectors are the largest employers in the city.

Bryan is a home-rule city that operates under the council-manager form of government. The seven-member city council consists of a mayor and six councilmembers, with one councilmember elected at-large and the other five elected from single-member districts. The mayor and councilmembers are elected for alternating four-year terms with eight-year term limits. The City provides the full range of municipal services established by charter and state law. These services include police, fire and emergency medical services, parks and recreational facilities and programs, library services, street maintenance and construction, public improvements, general administrative services, and electrical (Bryan Texas Utilities), water, sewer, and solid waste systems.

City Charter, Council minutes, budget information, maps and a wealth of miscellaneous information about the City of Bryan can be found online at [www.bryantx.gov](http://www.bryantx.gov).

## SCOPE OF WORK

The City is seeking a Design/Build firm ("Firm") to provide full design and turn-key installation of residential HVAC split systems at the Bryan Fire Station #2.

The existing system comprises of approximately fifteen (15) air handling (AH) units, ranging from 400 CFM to 1,500 CFM, with eleven (11) vertical fan-coil units, three (3) wall-mounted units, and one (1) ceiling cassette. The AHs are connected to two (2) outdoor condensing units ("ODU"). The systems are as described on the original Construction Documents dated June 13, 2016 and shall be provided as reference to the selected Firm.

Equipment selection is required to be from industry-leading manufacturers with extensive background of providing quality products. A list of manufacturers that may be considered includes, but is not limited to, Carrier, Daiken, Ecoer, and Mitsubishi. The specified equipment will be required to meet current industry standard refrigerants and all components readily available at local supply stores. The new system design shall include gas-fired furnaces. With the incorporation of gas-fired-furnaces, extensive electrical upgrades for the facility is not anticipated. Two (2) dedicated outdoor air systems ("DOAS") are requested to precondition makeup air to both the Fire Marshal's Office and Fire Operations side of the facility. The DOAS units may be gas-fired. All new refrigerant line sets will be required throughout. The Firm shall calculate the heating, ventilating, and air conditioning (HVAC) loads with the anticipation of 35-40 tons being required. Soft-start kits for units and upgraded media air filters are requested by the City. The design shall be based on an indoor temperature of 68 degrees, ambient outside temperature of 105 degrees, and relative humidity maintained at 55%. The design shall incorporate the ability to monitor the system remotely.

Equipment should be highly redundant such that each split system is stand alone, and failure of one component will not affect the other systems. Parts and repair procedures for the residential DX split system equipment design shall be non-proprietary and available from numerous sources. Local service contractors should have full capability to repair or replace equipment specified in the design. No other system designs (i.e., chilled-water, Variable Refrigerant Flow, electric heat, etc.) are to be considered.

Design should anticipate utilizing the existing ductwork as much as possible. Should the Firm determine that any portion of the duct work is not adequate for the anticipated design, the City will need to approve any demolition and reconfiguration. Demolition to any section of ductwork is anticipated at duct plenums and connections to the new units will need to be remade to support revised configurations. New ductwork shall be like-kind (sheet metal).

Plumbing modifications will involve routing a larger medium-pressure gas line to the mechanical rooms with service drops to each new furnace and DOAS units. A large outdoor concrete pad(s) will be required to accommodate multiple ODUs. Placement of the pad must include aesthetics consideration.

Demolition and removal of the proprietary LG equipment will be required. The existing VRF refrigerant piping shall be removed, and new piping sets from each new ODU to its associated AH

will need to be installed. The line sets will need to be concealed within walls and above ceilings, which will require the removal, replacement, and refinishing of wallboard. Firm shall be responsible for all related general construction work required following demolition and installation of new equipment. This work includes, but is not limited to: sheetrock repairs, insulation, pipe/conduit rerouting, low-voltage wiring, fire suppression lines, and any required roof penetrations/weatherproofing related to the specific scope of work.

**The Firm shall account for the facility being occupied 24 hours a day, 365 days a year.** The Firm, and its subcontractors, will need to work amongst occupants and with the understanding fire department operations take precedence over all construction activities. The City will make every effort to work cohesively with the Firm limiting construction delays. The Firm will be provided any available design documents for reference purposes upon request.

The estimated budget for this project is between \$600,000 and \$800,000.

The current adopted City Codes include the 2021 International Codes (IBC, IMC, IPC, IFC), the 2018 IECC, State adopted 2023 NEC, 2012 TAS and City's Amendments to the adopted codes. The new design shall be compliant with current codes.

Link to City's Amendments: <https://www.bryantx.gov/2021codeupdates/>

## **SPECIAL PROVISIONS**

### **Selection Process**

A selection committee composed of City staff shall review all submittals.

Selection shall be based on the responsible Firm(s) whose submittal(s) is determined to be the best value to the City of Bryan, considering the relative importance of the evaluation criteria listed herein.

### **Oral Presentations**

After all submittals have been evaluated, the selection committee may require representatives of one or more of the respondents to appear and make presentations to the selection committee for the purpose of making a final evaluation and recommendation for contract award. However, the City may, in its sole discretion, award a contract without presentations, based solely on information supplied in the responses.

### **News Releases/Publicity**

News releases, publicity releases, or advertisements relating to this engagement or the tasks or projects associated with this engagement shall not be made without prior written approval from the City.

## FORMAT REQUIREMENT

### **Cover Letter/Firm Introduction**

1. Briefly introduce your Firm, providing a summary of the administration, organization, and staffing of your Firm, including multiple offices, if applicable. Provide an organizational chart indicating the positions and names of the core management team to undertake this engagement.
2. If your firm has multiple office locations, specify the location you propose to service the City's account.
3. Describe the experience of the Firm in the last thirty-six (36) months in performing services in similar size and scope. Particular emphasis will be placed on Firms that have recently performed design and/or installation of HVAC split systems in commercial facilities.

### **TAB A Demonstrate the Competence and Qualifications of the Individuals who will be Directly Responsible for the Management and Delivery of the Proposed Work**

1. Identify the Project Manager and each individual who will work as part of this engagement. Include resumes for each person to be assigned. Include any professional designations and affiliations, certifications and licenses, etc.
2. Describe the organization of the proposed team, detailing the level of involvement, field of expertise, and estimated hours for each member of the team.
3. Describe municipal staff support you anticipate for the project.
4. Address any performance related litigation your firm may be, or has been, involved in over the last five (5) years.
5. Identify if your firm had any contracts terminated due to non-performance over the last five (5) years.
6. Identify adverse actions sanctioned by any regulatory authorities on your firm over the last five (5) years.

### **TAB B Workload Capability and History of Performing Work within a Specified Schedule and Budget**

1. Identify the number and type of HVAC design and installation projects presently being conducted by the Firm.
2. Include specific examples of your success with designing and installing HVAC systems, in particular residential split systems. Ideally, examples should involve work for government entities at the state or local level. Provide historical examples of completed projects similar to the scope of work. These examples

should be inclusive of design and/or construction budgets, expenses, and images of equipment installations.

3. Address service agreement options provided by your Firm.

**TAB C**      **Previous Projects Costs**

1. Preference will be given to submissions that include actual total cost of previous projects based on successful projects completed by the Firm. A minimum of three (3) actual examples are preferred with projects being completed in the last three (3) years. An itemized project cost is not required but information should be sufficient to demonstrate the project's abilities, components, etc.
2. As a design/build project, the final costs will be negotiated. However, proposers must provide a Guaranteed Maximum Price during the design phase, once a Firm has been chosen.

**TAB D**      **Project Timeline**

1. Submittals must include a time-line for critical milestones for each phase (design and construction).
2. Submittals must provide a chronological timeline of each task or event and the estimated time required to complete the engagement.
3. The contract will include a completion deadline subject to penalties for failure to meet the date.

**TAB E**      **Methodology including Technical Approach and Understanding of the Scope of the Project**

1. Submittals must indicate a clear understanding of the scope of the work, including a detailed project plan for this engagement outlining major tasks and responsibilities, time frames, and staff assigned for each category of the scope of work identified above.
2. Submittals shall identify progress reports to be made available during the process and key decision points.
3. Submittals shall clearly distinguish the Firm's duties and responsibilities and those of the City. Absence of this distinction shall mean the Firm is assuming full responsibility for all tasks.

**TAB F**      **References**

Provide references for similarly successful projects, inclusive of three government agencies, including the name of the agency, contact name, telephone, fax, and email address.

**TAB G      Certification page, acknowledgement of any Addendum issued, and a statement of willingness to sign the City's Standard Form of Agreement**

## STATEMENT OF QUALIFICATIONS AND EVALUATION FACTORS

The City will review all proposals to determine compliance with the requirements as specified in the RFQ. Only submittals which, in the opinion of the selection committee, meet the requirements of the RFQ will be further evaluated.

Submittals that pass the preliminary review will be evaluated on how well the submittal meets the needs of the City as described in the Firm's response to each requirement listed in the RFQ. The Selection Committee will review all written submittals that meet the minimum requirements and will select what it deems to be the top two to four submittals for further review. It is important that the responses be clear and complete so that the selection committee can adequately understand all aspects of the submittals.

### **Evaluation Factors**

After receipt of Statement of Qualifications, the City will use the following criteria in the selection process (inclusive of design and construction):

- 15% Competence and Qualifications of Individuals Directly Responsible for the Proposed Work
- 15% Workload Capability and History of Performing Work within a Specified Schedule and Budget
- 30% Previous Projects Costs
- 20% Project Timeline
- 15% Methodology including Technical Approach and clear Understanding of the Scope of the Project
- 5% References
- 0% **REQUIRED** - Certification page, acknowledgement of any Addenda issued, and a statement of willingness to sign the City's Standard Form of Agreement.

If the evaluated criteria result in two (2) or more Firms being rated equal, then the following tie-breaker procedure shall be utilized:

1. Local Firms are preferred over non-local Firms
2. Non-local Firms that associate with a local Firm for the work are preferred over non-local.

## BONDS AND INSURANCE REQUIREMENTS

### BONDS

A performance and a payment bond in an amount of not less than one hundred percent (100%) of the contract price, conditioned upon faithful performance of the contract in accordance with the plans, specifications and contract documents and payment to all persons supplying labor and materials, shall be executed by the successful Design/Build Firm and shall accompany the signed contract.

### INSURANCE

FIRM agrees to procure and maintain for the duration of this contract, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the FIRM, his agents, representatives, employees, or subcontractors. With respect to General Liability & Professional Liability, coverage should be maintained for a minimum of five (5) years after contract completion.

If the FIRM fails to maintain the required insurance, the City shall have the right to withhold payment to FIRM until coverage is reinstated or to terminate the contract.

1. **Commercial General Liability (CGL).** Firm shall maintain Commercial General (CGL) with a limit of not less than **\$1,000,000** per occurrence and an annual aggregate of at least **\$2,000,000** during the design phase. During the construction phase, limits of not less than **\$5,000,000** per occurrence and an annual aggregate of **\$10,000,000** are required.
  - 1.1 CGL insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, products-completed operations, property damage, bodily injury, and personal and advertising injury, and liability assumed under an insured's contract.
  - 1.2 **The City, its officers, officials, employees, and volunteers are to be covered as additional insureds** with respect to liability arising out of work or operations performed by or on behalf of the Firm including materials, parts or equipment furnished in connection with such work or operations. This can be provided in the form of an endorsement to the Firm's insurance.
2. **Business Automobile Liability (AL).** Firm shall maintain automobile liability and, if necessary, commercial umbrella liability insurance with a limit not less than **\$5,000,000 each accident**.
  - 2.1. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos).
  - 2.2. Coverage shall be written on ISO form CA 00 01, CA 00 08, CA 00 09.
3. **Workers' Compensation (WC).** Firm shall maintain workers compensation insurance with **Texas Statutory Limits** and Employers Liability insurance with a limit of not less than **\$2,000,000** per accident for bodily injury or disease.
  - 3.1. **This policy shall be endorsed with a waiver of subrogation in favor of the City** for all work performed by the Firm, its employees, agents, and subcontractors.
4. **Builder's Risk (Course of Construction).** Firm shall maintain builder's risk insurance utilizing an "All Risk" (Special Perils), Replacement Cost, and Completed Value coverage form, with limits equal to the completed value of the project with no coinsurance penalty provisions. Firm may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. The policy must provide transit and off-premises coverage if the builder makes the City responsible for materials.

- 4.1. Coverage shall **name the City as a loss payee** as their interest may appear.
5. **Professional Liability (Errors and Omissions).** Firm shall maintain professional liability/error and omissions liability insurance appropriate to the Firm's profession. Coverage shall apply to liability for a professional error, act, or omission arising out of the scope of the Firm's services as defined in this contract. Coverage shall be written subject to limits not less than **\$2,000,000 per occurrence or claim, \$2,000,000 aggregate.**
- 5.1. If coverage is written on a claims-made basis, the Firm warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this contract; and that coverage will be maintained or an extended discovery period will be exercised for a period of **at least five (5) years after completion of the contract of work.**
- 5.2. A copy of the claims reporting requirements must be submitted to the City within 5 days of request.
6. **Pollution Legal Liability and/or Asbestos Legal Liability.** Firm shall maintain pollution legal liability and/or asbestos legal liability insurance applicable to bodily injury; property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims; all in connection with any loss arising out of the scope of the Firm's services as defined in this contract. If non-owned disposal sites are used for disposal of wastes, these sites shall be specifically covered under the Pollution Liability policy.

"Pollution Condition(s)" means the discharge, dispersal, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant, including, but not limited to, smoke, sewage, vapors, soot, fumes, acids, alkalis, toxic chemicals, medical waste, and waste materials into or upon land, the atmosphere or any watercourse or body of water, including groundwater, provided such conditions are not naturally present in the environment in the amounts or concentrations discovered.

Coverage shall be written subject to limits not less than **\$2,000,000** per occurrence or claim, and **\$2,000,000** policy aggregate.

- 6.1 **The City, its officers, officials, employees, and volunteers are to be covered as additional insureds** with respect to liability arising out of work or operations performed by or on behalf of the Firm including materials, parts or equipment furnished in connection with such work or operations. This can be provided in the form of an endorsement to the Firm's insurance.
- 6.2 If coverage is written on a claims-made basis, the Firm warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this contract; and that coverage will be maintained or an extended discovery period will be exercised for a period of **at least five (5) years after completion of the contract of work.**
- 6.3 If the services involve lead-based paint or asbestos identification/remediation, the Firm's Pollution Liability policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Firm's Pollution Liability policy shall not contain a mold exclusion, and the definition of Pollution shall *include microbial matter, including mold.*
- 6.4 A copy of the claims reporting requirements must be submitted to the City within 5 days of the City's written request.

If the Firm 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 higher limits maintained by the Firm.

By requiring insurance herein, the City does not represent that coverage and limits will necessarily be adequate to protect Firm, and such coverage and limits shall not be deemed as a limitation on Firm's liability under the indemnities granted to the City in this contract.

Self-insured retentions must be declared and approved by the City. The City may require the Firm 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 the City.

#### General Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **Primary Coverage.** For any claims related to this project, the **Firm's insurance coverage shall be primary** insurance coverage as respects the City, its officers, officials, employees, and volunteers. There shall be no modification to make it excess over other available insurance. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Firm's insurance and shall not contribute with it.
2. **Policy Limits-** Required limits may be satisfied by a combination of primary and umbrella excess liability policies. Firm agrees to endorse City and its agents, officers, officials, and employees as additional insured, unless the Certificate states the Umbrella or Excess Liability provides coverage on a pure "True Follow Form" basis.
3. **Notice of Cancellation.** Each insurance policy required above shall provide that coverage **shall not be canceled, except with notice to the City.** If the City is notified a required insurance coverage will cancel or non-renew during the contract period, the Firm shall agree to furnish prior to the expiration of such insurance, a new or revised certificate(s) as proof that equal and like coverage is in effect.
4. **Acceptability of Insurers.** Insurance is to be placed with insurers authorized to conduct business in the State with a current A.M. Best's rating of no less than A-:VII, unless otherwise acceptable to the City.
5. **Waiver of Subrogation.** Firm hereby grants to City a waiver of any rights of subrogation which any insurer of Firm may acquire from Firm by virtue of payment of any loss under such insurance. Firm agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.
6. **Evidence of Insurance.** Firm shall furnish the City with certificates of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above, including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) before work commences. However, failure to obtain the required documents prior to the work beginning or failure to identify a deficiency from evidence that has been provided shall not be construed as a waiver of the Firm's obligation to maintain such insurance, or as a waiver to the enforcement of any of these provisions. Firm shall provide certified copies of all required insurance policies within 10 days of City's written request of said copies.
7. **Subcontractors.** If the Firm's insurance does not afford coverage on behalf of any subcontractor hired by the Firm, the Firm shall require and verify that all subcontractors shall maintain insurance meeting all the requirements stated herein, and Firm shall ensure that City is and additional insured on insurance required from subcontractors.

#### Special Risks or Circumstances

City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.

**CERTIFICATION/AUTHORIZATION/ACKNOWLEDGEMENT FORM**

**RFQ #26-015**

**Design and Build Services for the Replacement of Existing HVAC System for City of Bryan Fire Station No. 2**

The undersigned certifies that he has fully read and understands this "Statement of Qualifications" and has full knowledge of the scope, quantity, and quality of the services and materials to be furnished *including the Texas Ethics Commission Certificate of Interested Parties Form 1295* and intends to adhere to the provisions described herein. The undersigned also affirms they are duly authorized to submit this SOQ, that this SOQ has not been prepared in collusion with any other Vendor, and the contents of this SOQ have not been communicated to any other Vendor prior to the official opening of this SOQ. Additionally, the undersigned affirms that the Firm is willing to sign the enclosed Standard Form of Agreement.

**By signing below, the Firm certifies that neither the signatory, nor any co-owner of the Firm, is related to a member of the City Council of the City of Bryan within the third degree of consanguinity (blood) or within the second degree of affinity (marriage).**

Signed By: \_\_\_\_\_ Title: \_\_\_\_\_

Typed Name: \_\_\_\_\_ Company Name: \_\_\_\_\_

Phone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_

Email: \_\_\_\_\_

Proposal Address: \_\_\_\_\_

P.O. Box or Street                      City                      State                      Zip

Order Address: \_\_\_\_\_

P.O. Box or Street                      City                      State                      Zip

Remit Address: \_\_\_\_\_

P.O. Box or Street                      City                      State                      Zip

Federal Tax ID No.: \_\_\_\_\_

Date: \_\_\_\_\_

***Payment Notice:*** *The City of Bryan has partnered with **PaymentWorks** to automate its vendor management process for payments related to goods and services provided to the City. This protects the financial information of payees, eliminates payment fraud, and ensures regulatory compliance.*

*All new vendors and/or vendor updates must be invited to register by the City of Bryan through the **PaymentWorks** secure site. Existing vendors will be invited to register over the next several months but this will not preclude conducting business prior to registration through **PaymentWorks**. For more information, please contact the City at [VendorInfo@bryantx.gov](mailto:VendorInfo@bryantx.gov)*

**ATTACHMENT A – SAMPLE CONTRACT**  
**SEPARATE**



December 2, 2025

## ADDENDUM NO. 1

RFQ #26-015

### Design and Build Services for the Replacement of Existing HVAC System for the City of Bryan Fire Station No. 2

Please be advised of the following clarifications, additions, deletions and/or changes to RFP No. 26-015 are hereby made a part of the proposal documents for the above referenced project as full and as completely as though the same were included therein.

Please **disregard** the statements on page 7 in regards to the water feature, as shown in the redlines below and on the attached. This language was mistakenly carried over from a previous RFQ:

~~**PROJECT**— The Project includes a Design and/or Construction model with multiple elements to be reviewed, revised, and finalized through the design process, of which the Firm will have an extensive and inclusive role. The primary focus of the project is the lighted water feature, spanning between 320 and 400 feet, with potential for future expansion. The project involves two phases; design and construction. Once designed, the Project moves into the construction phase. That is, as defined, submittals should consider the Project to be all components of design and construction with the City reserving the right to move forward to the construction phase based on results of the design phase. For more information, refer to the Intent and Scope of Work section within this RFQ.~~

~~**WORLD CLASS ENTERTAINMENT ATTRACTION**— Within Travis Bryan Midtown Park, a lighted and audio synchronized water feature, spanning between 320 and 400 feet with potential for future expansion; for reference, see Attachment B. The project integrates technology, water, lighting, digital image projection, ariel events, and/or any other creative ideas. Midtown Lake is approximately 23 acres in size and is currently used as a detention pond, resulting in fluctuating water levels. The normal water elevation of 305 inches is maintained using wells. The attraction should incorporate a dynamic and choreographed display of water jets, air cannons, and other aquatic elements, accompanied by synchronized music, lighting effects, and sometimes interactive features to include color projections of legible text and images. Shows should be designed to create a captivating and immersive experience for spectators, combining the rhythmic movement of water with artistic and technological elements.~~

#### END OF ADDENDUM

This addendum shall be signed and included with your response package as acknowledgement of the addendum. Failure to acknowledge and submit any addenda may be cause for the bid to be rejected. The City's decision to accept or reject a bid due to a failure to acknowledge and submit addenda shall be final.

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Vendor Acknowledgement Signature

Purchasing Department  
PO BOX 1000 • Bryan, TX 77805  
(979) 209-5505

**OFFEROR/VENDOR/PROPOSER/FIRM** – Organization offering a response to this Request for Qualifications (RFQ).

**PARTICIPATING ENTITIES** – The City of Bryan and any other local entity who may elect to participate in the future.

~~**PROJECT** – The Project includes a Design and/or Construction model with multiple elements to be reviewed, revised, and finalized through the design process, of which the Firm will have an extensive and inclusive role. The primary focus of the project is the lighted water feature, spanning between 320 and 400 feet, with potential for future expansion. The project involves two phases; design and construction. Once designed, the Project moves into the construction phase. That is, as defined, submittals should consider the Project to be all components of design and construction with the City reserving the right to move forward to the construction phase based on results of the design phase. For more information, refer to the Intent and Scope of Work section within this RFQ.~~

**RESPONSE/SUBMITTAL** – A response to the Request for Qualifications (RFQ).

**RESPONDENT** – Organization offering a response to this Request of Qualifications (RFQ). Respondent also may be referred to as “firm,” “Firm,” “Proposer,” “proposer,” “Offeror,” or “offeror.”

**RFQ** – Request for Qualifications.

**SOQ** – Statement of Qualifications. Similar to a “Response” or “Submittal” to the Request for Qualifications (RFQ).

~~**WORLD CLASS ENTERTAINMENT ATTRACTION** – Within Travis Bryan Midtown Park, a lighted and audio synchronized water feature, spanning between 320 and 400 feet with potential for future expansion; for reference, see Attachment B. The project integrates technology, water, lighting, digital image projection, ariel events, and/or any other creative ideas. Midtown Lake is approximately 23 acres in size and is currently used as a detention pond, resulting in fluctuating water levels. The normal water elevation of 305 inches is maintained using wells. The attraction should incorporate a dynamic and choreographed display of water jets, air cannons, and other aquatic elements, accompanied by synchronized music, lighting effects, and sometimes interactive features to include color projections of legible text and images. Shows should be designed to create a captivating and immersive experience for spectators, combining the rhythmic movement of water with artistic and technological elements.~~

### **Receipt of Statement of Qualifications**

The submitted SOQ must be received by the Purchasing Department prior to the time and date specified. The mere fact that the SOQ was dispatched will not be considered; the Firm must ensure that the SOQ is actually delivered. SOQs received after the date and time specified in the Schedule of Events shall be returned unopened and will be considered void and unacceptable. The City of Bryan is not responsible for lateness of mail carrier, etc., and time/date stamp in the Purchasing Department shall be the official time of receipt.



December 4, 2025

**ADDENDUM NO. 2**  
**RFQ #26-015**  
**Design and Build Services for the Replacement of Existing HVAC System for the**  
**City of Bryan Fire Station No. 2**

Please be advised of the following clarifications, additions, deletions and/or changes to RFP No. 26-015 are hereby made a part of the proposal documents for the above referenced project as full and as completely as though the same were included therein.

**See Separate Attachment:**

➤ **Addendum 2 – Bryan Fire Station No. 2 Plan Review Set**

**END OF ADDENDUM**

This addendum shall be signed and included with your response package as acknowledgement of the addendum. Failure to acknowledge and submit any addenda may be cause for the bid to be rejected. The City's decision to accept or reject a bid due to a failure to acknowledge and submit addenda shall be final.

---

Vendor Acknowledgement Signature

Purchasing Department  
PO Box 1000 • Bryan, TX 77805  
(979) 209-5500