

May 18, 2026

Item No. 7.8.

Thomas Park and Surrounding Streets CMAR

Sponsor: Jennifer Cain, Director Capital Projects

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on a Construction Manager-at-Risk (CMAR) contract with Crain Group, LLC for Thomas Park and surrounding streets project, not-to-exceed the remaining project budget of \$13,869,380 for this CMAR contract and other future project costs.

Relationship to Strategic Goals:

Core Services and Infrastructure

Recommendation(s): Staff recommends approval.

Summary: This project combines the 2023 Mabel Clare Thomas Park Redevelopment Bond project with the James Parkway/ Puryear Drive Rehabilitation (From Francis Drive to Kyle Ave), and the Francis Drive Phase III Improvement (from Walton to Texas Ave) into a single Construction Manager at Risk Project.

Improvements under this consolidated contract include a new restroom building, pavilion, playgrounds, lighted walking paths, resurfacing the existing basketball courts to accommodate both basketball and four-square play, reconfiguring the existing tennis courts to allow three pickleball courts and one tennis court, and improving the drainage within Mable Clare Thomas Park. Outside the park boundaries James Parkway, Puryear Drive, and Francis Drive will see be converted to concrete, rehab section of water and sewer line, improving the culvert under Kyle, and adding sidewalks along James, Puryear, and Gilchrist.

By coordinating these related improvements under a single contract, the City will streamline planning, procurement, and construction activities, reducing redundant mobilization and optimizing the use of labor, equipment, and materials. This unified approach is expected to generate measurable savings in both project duration and overall cost while minimizing disruptions to residents and businesses. At the same time, the combined project will deliver significant community benefits, including enhanced roadway conditions, improved neighborhood connectivity, and upgraded recreational amenities, ensuring a cohesive and efficient implementation process.

The Construction Manager at Risk (CMAR) for pre-construction phase services was solicited via Request for Proposal (RFP) on February 26, 2026. The City of College Station received seven (7) proposals for RFP 26-041. After the review process, Crain Group, LLC was selected as the most qualified, best value firm for the city based on the published selection criteria.

Budget & Financial Summary: A combined budget of \$16,100,000 is included for this project in the Streets, Parks, Water, and Wastewater Capital Improvement Projects Funds. A combined total of \$2,230,620 has been spent or encumbered to date, leaving a balance of \$13,869,380 for this CMAR and future costs.

Attachments:

1. Thomas Park and Surround Street CMAR RFP Response List
2. Thomas Park and Surrounding Streets Location Map
3. CMAR Contract_Crain Group LLC_26300443_VendorSigned



RFP 26-041

Thomas Park and Surrounding Streets

The following is a list of firms submitting proposals in response to the above-mentioned project:

1. Brazos Paving, Inc.
2. Brizo Construction, LLC
3. Crain Group, LLC
4. Forney Construction
5. Tegrity Contractors, Inc.
6. The Fain Group
7. J. T. Vaughn Construction, LLC

The firms submitted Statements of Proposals were evaluated in the following categories laid out in the RFP:

- Project Staff Experience and Qualifications
- Contractor Experience and Qualifications
- Project Management Approach and Approach to Quality
- Contractor Safety Program and Record
- Proposed Fees and Construction Time.

Thomas Park & Surrounding Streets





CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: 26300443 PROJECT #: _____ BID/RFP/RFQ#: RFP#26-041

Project Name / Contract Description: Thomas Park Redevelopment and Surrounding Streets Rehabilitation
Construction Manager at Risk

Name of Contractor: Crain Group, LLC

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

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

NEW CONTRACT **RENEWAL #** _____ **CHANGE ORDER #** _____ **OTHER** _____

BUDGETARY AND FINANCIAL INFORMATION (Include number of bids solicited, number of bids received, funding source, budget vs. actual cost, summary tabulation)

Seven (7) proposal were received. A combined budget of \$16,000,000 is included for this projects in Streets, Parks, Water, and Wastewater.

A combined total of \$2,230,620 has been spent to date. Leaving \$13,869,380 for this CMAR and future costs.

(If required)*
CRC Approval Date*: n/a **Council Approval Date*:** 5/18/26 **Agenda Item No*:** _____

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

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

SIGNATURES RECOMMENDING APPROVAL

Jennifer Cain _____ 5/11/2026 _____
DEPARTMENT DIRECTOR/ADMINISTERING CONTRACT DATE

[Signature] _____ 5/11/2026 _____
ASST CITY MGR – CFO DATE

John A. Haislet _____ 5/11/2026 _____
LEGAL DEPARTMENT DATE

APPROVED & EXECUTED

CITY MANAGER DATE

N/A _____
MAYOR (if applicable) DATE

N/A _____
CITY SECRETARY (if applicable) DATE

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

This Agreement is entered into by and between the **City of College Station**, a Texas home-rule municipal corporation (the “City”) and Crain Group, LLC , a Texas (the “Contractor”) for the delivery of Construction Manager-At-Risk preconstruction and construction services, and installation of the following City Project: As describe in RFP 26-041 as rehabilitation of James Parkway, Puryear Drive, Francis Drive and enhancements to Mabel Clare Thomas Park , as more particularly described in Paragraph 2.18 of this Agreement.

**ARTICLE I.
GENERAL CONDITIONS**

1. GENERAL PROVISIONS

1.01 Contracting and Project Delivery Method. This Contract is entered into pursuant to the contracting and project delivery method authorized by Texas Government Code Chapter 2269, Subchapter F. – *Construction Manager-At-Risk Method*, as amended.

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

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

2. DEFINITIONS

2.01 Unless specifically defined in this Agreement or in Texas Government Code Chapter 2269, words used in this Agreement shall be interpreted according to their common usage or meaning to result in the most reasonable application. Unless otherwise designated, the following specific definitions (and others specifically defined in other paragraphs of this Agreement) shall apply whether a term or phrase appears in capital letters or in bolded, italicized, or underlined print.

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

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

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

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

2.06 Calendar Day or Day. A “calendar day” or “day” is any day of the week or month, no days being excepted, and further, unless specifically designated as a “working day,” a day described in this Agreement is a calendar day.

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

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

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

2.010 Design Professional. The term “Design Professional” shall mean the professional registered architect(s) and licensed engineer(s), as defined in subsections (1)-(2), Section 2269.001, Texas Government Code, as amended, who are under contract with the City as the architect(s) and engineer(s) of record for the Project, and their authorized representatives, consultants and subconsultants, or such successor architect(s) and engineer(s) as City may appoint

by written notice to Contractor from time to time.

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

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

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

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

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

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

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

2.018 Project. The term “Project” shall mean and include: (a) the City’s rehabilitation of James Parkway, Puryear Drive, Francis Drive and enhancements to Mabel Clare Thomas Park _ project; and (b) all that is required to obtain a final product that is acceptable to the City for said project. The term “Work” shall have like meaning. The Project is the total construction of which the Work performed under the Agreement and Agreement Documents may be the whole or a part and which may include construction by the City or by separate contractors. All provisions of this Agreement pertain and relate to the successful completion of the Project herein described and no other development or construction project (past or present) of the City or Contractor.

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

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

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

2.022 Substantial Completion. The terms “Substantial Completion” and “Substantially Completed” mean that in the opinion of the City’s Representative the Project (communicated through the procedure described in this section 2.21), including all systems and improvements, is in a condition to serve its intended purpose but still may require minor miscellaneous work and adjustment. Substantial Completion notice shall be given in writing by the City Manager or the City’s Director of Capital Projects stating the existence of the requirements of this section 2.21 and the date Substantial Completion was accomplished. Final payment of the Agreement Price, including retainage, however, shall be withheld until Final Completion and acceptance of the work by the City. Acceptance by the City shall not impair or waive any warranty obligation of Contractor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.026 General Interpretation. Unless otherwise stated in the Agreement Documents, words which have well-known technical, or construction industry meanings are used in the Agreement Documents in accordance with such recognized meanings. Unless otherwise designated in this Agreement, the past, present, or future tense shall each include the other, the masculine or feminine

gender shall each include the other, and the singular and plural number shall each include the other where necessary for a correct meaning. Unless otherwise designated, the numbered paragraph and subparagraph provisions of this Agreement will be referred to as numbered “paragraphs” or “subparagraphs,” however, it shall be understood that should “section” and “subsection” be used as a descriptive term to identify a specific provision of this Agreement, those terms are synonymous with “paragraph” and “subparagraph” in this Agreement.

3. THE AGREEMENT DOCUMENTS

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

- (a) This signed Agreement.
- (b) Addendum to this Agreement.
- (c) General Conditions.
- (d) Special Conditions.
- (e) Technical specifications.
- (f) Drawings.
- (g) Instructions to Bidders and any other notices to Bidders or Contractor.
- (h) Performance bond, Payment bonds, Bid bonds and Special bonds.
- (i) Contractor’s Proposal.

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

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

4. OWNER OR CITY

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

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

4.03 Information and Services Required of the City. Information or services reasonably necessary for the Work and under the City’s control shall be furnished by the City with reasonable promptness when requested in writing by the Contractor. In any instance where information or services from the City or Design Professional is required, Contractor shall promptly notify the

Design Professional in writing, with a copy to the City, of the particular need. **Absent such notification, any claim based upon lack of such information or services shall be waived.**

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

4.05 City's Right to Carry out the Work.

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

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

4.06 City's Right to Use or Occupy.

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

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

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

5. CONTRACTOR

5.01 Contractor. The Contractor is the person or entity identified as such in the Agreement. The term “Contractor” means the Contractor or the Contractor’s authorized representative.

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

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

5.04 Review of Agreement Documents and Field Conditions by Contractor.

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

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

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

(d) The Contractor shall make a reasonable attempt to interpret the Agreement Documents before asking the Design Professional for assistance in interpretation. The Contractor shall not ask the Design Professional for observance of work prior to the Contractor’s field superintendent’s personal inspection of the Work and their determination that the Work complies with the Agreement Documents. The Contractor shall arrange

meetings prior to commencement of the Work of all major Subcontractors to allow the Subcontractor(s) to ask for any interpretation it may require.

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

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

5.05 Supervision And Construction Procedures.

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

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

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

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

5.06 Labor And Materials.

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

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

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

5.07 Warranty.

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

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

(c) When deemed necessary by the City, and prior to installation of any items specifically made subject to a performance standard or regulatory agency standard under

any provision of the Agreement Documents, Contractor shall furnish proof of conformance to the Design Professional. Proof of Conformance shall be in the form of (1) an affidavit from the manufacturer certifying that the item is in conformance with the applicable standard, (2) an affidavit from a testing laboratory certifying that the product has been tested within the past year and is in conformance with the appreciated standard, or (3) such further reasonable proof as required by the Design Professional.

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

(e) In the event of failure of materials, goods, fixtures, equipment, products, services, or workmanship, either during construction or the warranty period (which shall be two (2) years from the Date of Final Completion, except where a longer period is specified), the Contractor shall take appropriate measures to assure correction or replacement of the defective items, whether notified by the City or Design Professional.

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

5.08 Permits, Fees and Notices.

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

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

approvals for street closing and other similar matters as may be necessary or appropriate from time to time for the performance of the Work.

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

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

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

5.09 Allowances.

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

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

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

5.10 Superintendent. The Contractor shall employ a competent superintendent (approved by the City) and necessary assistants who shall be in attendance at the Project site during performance of

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

5.11 Contractor's Construction Schedules.

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

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

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

(d) The process of approving Contractor's schedules and updates to Contractor's schedules shall not constitute a warranty by the City that any non-Contractor milestones or activities will occur as set out in the Contractor's schedules. Approval of a Contractor's schedule does not constitute a commitment by the City to furnish any City-furnished information or material any earlier than City would otherwise be obligated to furnish that information or material under the Agreement Documents. Failure of the Work to proceed in the sequence scheduled by Contractor shall not alone serve as the basis for a Claim for additional compensation or time. In the event there is interference with the Work, which is beyond its control, Contractor shall attempt to reschedule the Work in a manner that will hold the additional time and costs to a minimum. The construction schedules shall be in a detailed format satisfactory to the City and the Design Professional and shall also: (1) provide a graphic representation of all activities and events that will occur during performance of Work; (2) identify each phase of construction and occupancy; and (3) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Agreement Documents (hereinafter referred to as Milestone Dates). If not accepted, the construction schedules shall be promptly revised by the Contractor in accordance with the recommendations of the City and Design Professional and re-submitted for acceptance. The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedules and shall promptly advise the City of any delays or potential delays. The accepted construction schedules shall be updated to reflect actual conditions as set forth in Paragraph 5.11(a), if requested, by either the City or Design Professional. In the event any schedule indicates any delays, the Contractor shall propose an affirmative plan to correct the delay. In no event shall any schedule constitute an adjustment in the Agreement Time, any Milestone Date, or the Agreement Sum unless any such adjustment is agreed to by the City and authorized pursuant to Change Order.

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

5.13 Shop Drawings, Product Data and Samples.

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

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

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

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

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

(f) By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Agreement Documents. If, in the opinion of the Design Professional, the shop drawings indicate a lack of study and the review by the Contractor is incomplete or indicate an inadequate understanding of the Work covered by the shop drawings, prior to submittal to the Design Professional, the shop drawings will be returned, unchecked, to the Contractor for correction of any/all of these deficiencies for subsequent resubmittal.

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

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

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

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

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

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

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

Design Professional, and City. After final review and correction of the submittal, Contractor shall send a corrected digital set to the Subcontractor(s), Design Professional and City.

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

5.14 Use of Project Site.

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

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

5.15 Cutting And Patching.

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

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

5.16 Cleaning Up.

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

Work and shall repair or replace damaged work at Substantial Completion of the Work. The Contractor shall remove all temporary protections at the completion of the Work.

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

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

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

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

6. INDEMNIFICATION AND RELEASE

6.01 Contractor Not Providing Architectural or Engineering Services. When the Contractor is not providing architectural or engineering services for the Project (such as when such services are not required by the Agreement Documents for a portion of the Work, or when the Contractor does not need to provide such services to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures), then the following indemnity and release provisions apply:

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

THAN AS SET FORTH IN THIS SECTION. ALL OTHER PROVISIONS REGARDING THE SAME SUBJECT MATTER SHALL BE DECLARED VOID AND OF NO EFFECT.

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

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

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

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

RELEASE SHALL APPLY REGARDLESS OF WHETHER SUCH INJURY, DEATH, LOSS, OR DAMAGE WAS CAUSED IN WHOLE OR IN PART BY THE INTENTIONAL OR WILLFUL ACT, NEGLIGENCE, OR GROSS NEGLIGENCE OF THE CITY.

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

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

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

DEATH, PROPERTY DAMAGE, OR LOSS SUFFERED BY THE CONTRACTOR, ANY SUBCONTRACTOR, OR ANY PERSON OR ORGANIZATION DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM TO PERFORM OR FURNISH WORK ON THE PROJECT, THIS RELEASE SHALL NOT APPLY WHEN SUCH INJURY, DEATH, LOSS, OR DAMAGE WAS CAUSED IN WHOLE OR IN PART BY THE INTENTIONAL OR WILLFUL ACT, NEGLIGENCE, OR GROSS NEGLIGENCE OF THE CITY.

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

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

7. REPRODUCIBLE RECORD DRAWINGS

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

8. ANTITRUST VIOLATIONS

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

9. ADMINISTRATION OF THE CONTRACT

9.01 Design Professional.

(a) The Design Professional is the person lawfully registered or licensed to practice architecture or engineering or an entity lawfully practicing architecture or engineering identified as such in the Agreement.

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

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

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

9.02 Design Professional's Administration of the Contract.

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

(b) The Design Professional, as a representative of the City, will visit the site at intervals appropriate to the stage of the Contractor's operations (1) to become generally familiar with and to keep the City informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the City against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Agreement Documents. However, the Design Professional will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Design Professional will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Agreement Documents, except as provided in Paragraph 5.05(a) In no event shall City or any other party have control over, be in charge of, or be responsible for construction means, methods, techniques, sequences, procedures, or for safety precautions and programs in connection with the Work, since these are solely Contractor's responsibilities. City will not be responsible for the Contractor's failure to carry out the Work in accordance with the Agreement Documents. City will not have control over, be in charge of, and will not be responsible for the acts or omissions of Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

(c) The Design Professional will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Agreement Documents. The Design Professional will not have control over or charge of and will not be responsible for

acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

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

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

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

(g) The Design Professional will review and approve or take other appropriate action upon the Contractor's submittals regarding this Agreement for the Project, including Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Agreement Documents. The Design Professional's action will be taken with such reasonable promptness, but no longer than fifteen (15) business days, as to cause no delay in the Work or in the activities of the City, Contractor or separate contractors, while allowing sufficient time in the Design Professional's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Agreement Documents. The Design Professional's review of the Contractor's submittals shall not relieve the Contractor of its obligations. The Design Professional's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Design Professional, of any construction means, methods, techniques, sequences, or procedures. The Design

Professional's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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

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

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

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

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

10. CLAIMS AND DISPUTES

10.01 Definition. A Claim is any demand or assertion by the Contractor that it should be paid more money than the Agreement Sum, as adjusted under the Change Order provisions herein, by the City because of action or inaction on the part of City, Design Professional, or any party for whom City is responsible, or any party with whom City has separately contracted for other portions of the Project, including but not limited to any demand or assertion that Contractor's performance has been delayed, interrupted or interfered with, that Contractor's performance has been accelerated, constructively accelerated, or suspended, that Contractor's performance has been wrongfully terminated, that the Agreement Documents have been misinterpreted, that there has been a failure of payment, that Contractor has encountered concealed or unknown conditions, that Contractor has encountered hazardous materials, that there are problems with the Agreement Documents, or the timing of engineering or architectural approvals or decisions, that actions of the City have been intentionally wrongful or deceptive in any way to the Work, that the amount of time or money granted in a Construction Change Directive is inadequate, that an item treated as a

minor change in the Work should have been treated as a Change Order, that a time extension granted was inadequate, or that Contractor is entitled to any other relief, on any legal theory, related to the Agreement Documents or Work. Nothing contained in this subparagraph shall be construed as creating any Contractor right to make a claim, where no such right otherwise exists.

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

(a) Any Claim or portion of a Claim that has not been made the specific subject of a notice strictly in accordance with the requirements of this Paragraph shall be waived. It is imperative that City have timely, specific notice of any subject, the impact of which City may be in a position to mitigate.

(b) No course of conduct or dealings between the parties, nor implied acceptance of alteration or additions to the Agreement Documents or Work, or changes to the Agreement Documents or Work schedule, shall be the basis for any claim for an increase in the Agreement Sum or change in the Agreement Time.

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

No suit shall be filed by a Party regarding a dispute arising under or related to this Agreement unless the Parties first attempt to submit the dispute to mediation pursuant to Chapter 2009 of the Texas Government Code and Chapter 154 of the Texas Civil Practice and Remedies Code. Notwithstanding anything to the contrary stated in this Agreement, however, a Party may file suit solely for injunction or

mandamus relief regarding an aforesaid dispute without first submitting that dispute to mediation. The mediation shall be held in Brazos County, Texas within 30 days of a Party sending notice to the other Party requesting mediation, unless otherwise agreed in writing by the Parties. Each Party shall pay its own expenses incurred for the mediation, including attorney fees, mediator fees, and travel expenses. The mediator shall be selected by the Parties' agreement; however, should they fail to agree on a mediator, the dispute shall be submitted to the following public institution for assignment of a mediator and the holding of the mediation at that institution: Aggie Dispute Resolution Program, Texas A&M University School of Law, 1515 Commerce Street, Fort Worth, Texas 76102-6509 (800-733-9529 telephone).

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

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

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

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

- (a) No indirect or consequential damages will be allowed.
- (b) All damages must be directly and specifically shown to be caused by a proven wrong. No recovery shall be based on a comparison of planned expenditures to total actual expenditures, or on estimated losses of profits, or materials or labor efficiency, or on a comparison of planned manloading to actual manloading, or any other analysis that is used to show damages indirectly.
- (c) Damages are limited to extra costs specifically shown to have been directly caused by a proven wrong.
- (d) The maximum daily limit on any recovery for delay shall be the amount established by the Contractor for job overhead costs, defined in the Schedule of Values, divided by the total number of calendar days of Agreement Time called for in the original Contract.

Absent an overhead amount in the Schedule of Values, the amount estimated by the Contractor for job overhead costs shall be used.

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

10.08 Liquidated and Other Damages.

(a) The amount of liquidated damages (as hereafter described) for the Contractor's failure to meet the deadlines for Substantial and/or Final Completion are fixed and agreed on by the parties because of the impracticability and extreme difficulty in fixing and ascertaining the actual damages that the City would in such an event sustain. The amounts to be charged are agreed to be damages the City would sustain and shall be retained by the City from current periodic estimates for payment or from final payment. As a result of the difficulty in estimation, calculation and ascertainment of City's damages due to a failure of Contractor to achieve timely completion of the Work, if the Contractor should neglect, fail, or refuse to either Substantially Complete or Finally Complete the Work within the time herein specified, or any proper extension thereof granted by the City's Representative pursuant to the terms of the Agreement Documents, then the Contractor does hereby agree as part of the consideration for the awarding of this Agreement that the City may permanently withhold from the Contractor's total compensation the sum of TWO HUNDRED FIFTY and NO/100 DOLLARS (\$250.00) for each and every calendar day that the Contractor shall be in default after the time stipulated for Substantial Completion not as a penalty, but as liquidated damages for the breach of this Agreement. It being specifically understood that the assessment of liquidated damages may be made for any failure to meet either or both deadlines specified for Substantial Completion and/or Final Completion.

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

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

11. SUBCONTRACTORS

11.01 Definitions.

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

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

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

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

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

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

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

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

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

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

11.04 Contingent Assignment of Subcontracts.

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

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

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

(c) Each Subcontract and assignment shall provide that the City shall only be responsible to the Subcontractor for those services and materials furnished by the Subcontractor subsequent to the City's exercise of any rights under this contingent assignment.

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

12. CONSTRUCTION BY CITY OR BY SEPARATE CONTRACTORS

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

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

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

12.02 Mutual Responsibility.

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

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

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

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

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

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

13. CHANGES IN THE WORK

13.01 General.

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

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

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

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

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

1. Each separate Change Proposal shall be numbered consecutively and shall include material costs, labor costs, fees, overhead and profit. The Change Proposal shall specify all costs related to the proposed change in the Work, including any disruption or impact on performance.

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

3. If a Change Proposal is returned to the Contractor for additional information or if the scope of the proposed change in the Work is modified by additions,

deletions or other revisions, the Contractor shall revise the Change Proposal accordingly and resubmit the revised Change Proposal to the City and Design Professional.

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

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

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

13.02 Change Orders.

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

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

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

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

2. For construction contracts funded in whole or in part by Certificates of Obligations, an Agreement with a GMP of \$1 million or more may not be increased by more than twenty-five percent (25%). If a change order for a construction Agreement funded in whole or in part with certificates of obligation that has a GMP of less than \$1 million increases the Agreement amount to \$1 million or more, subsequent change orders may not increase the revised Agreement amount by more

than twenty-five percent (25%). Written change orders may be made or approved by the City Manager or their delegate if the change order is less than Fifty Thousand Dollars (\$50,000.00). Changes in excess of Fifty Thousand Dollars (\$50,000.00) must be approved by the City Council prior to commencement of the services or work.

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

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

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

13.03 Construction Change Directives.

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

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

(c) The Construction Change Directive shall include a unilateral change in the Agreement Sum and/or Agreement Time reflecting the City's view of the appropriate change in the Agreement Sum and/or Agreement Time for the Change in Work covered by the Construction Change Directive. Until an agreement is reached by the City and Contractor on these issues for a Change Order, the changes in Agreement Sum and Agreement Time set out in the Construction Change Directive shall be used for Schedule of Values, payment and scheduling purposes.

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

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

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

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

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

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

14. TIME

14.01 Definitions.

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

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

(c) The date of Substantial Completion is the date certified by the Design Professional in accordance with Section 16.

14.02 Progress and Completion.

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

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

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

14.03 Delays and Extensions of Time.

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

(b) Weather delays include "rain days" (days with rainfall in excess of one-tenth of an inch) during the term of this Agreement that exceed the average number of rain days for such term for this locality, both as determined by the National Weather Service Forecast Office for Easterwood Airport in College Station, Texas (KCLL/CLL).

(c) On or before the fifteenth (15) day of each month of the Work, Contractor shall submit in writing a request for all time extensions to which it believes itself to be entitled

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

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

15. PAYMENTS AND COMPLETION

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

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

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

- (a) Contractor's costs for Contractor's Fee, bonds and insurance, mobilization, etc., shall be named as individual line items.
- (b) Contractor's costs for various construction items shall be detailed. For example, concrete work shall be subdivided into footings, grade beams, floor slabs, paving, etc. These subdivisions shall appear as individual line items.
- (c) On major subcontracts, such as mechanical, electrical, and plumbing, the Schedule of Values shall indicate line items and amounts in detail (for example: underground, major equipment, fixtures, installation of fixtures, start up, etc.)
- (d) Costs for subcontract Work shall be named without any addition of Contractor's costs for overhead, profit or supervisions.

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

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

15.03 Applications for Payment.

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

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

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

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

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

15.04 Certificates for Payment.

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

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

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

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

15.05 Decisions to Withhold Certification.

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

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

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

15.06 Progress Payments.

(a) After the Design Professional has issued a Certificate for Payment, the City, upon the City's review and written approval of the Certificate for Payment, shall endeavor to

make payment in the manner and within the time provided in the Agreement Documents, and shall so notify the Design Professional. If the City believes the Contractor is not current in its legitimate obligations to suppliers, laborers and/or Subcontractors on the Project, City may (but is not obligated to) withhold payment until it receives partial or final releases, or other reasonable proof from the Contractor that this situation does not exist.

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

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

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

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

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

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

16. SUBSTANTIAL COMPLETION

16.01 General. When the Contractor considers that the Work, or a portion thereof which the City agrees to accept separately, is substantially complete, the Design Professional and City shall review the punch list prepared by Contractor and supplement the list as necessary. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Agreement Documents.

(a) The Contractor's superintendent shall participate in the preparation of the Contractor's punch list that is submitted to the Design Professional and City for

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

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

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

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

16.04 Approval of Certificate. The Certificate of Substantial Completion shall be submitted to the City and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance, the City, in its sole discretion, may, but is not required to, make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Agreement Documents. If retainage is not released at Substantial Completion, applicable retainage amounts will be released by City upon Contractor obtaining Final Completion.

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

16.06 Partial Occupancy or Use.

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

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

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

17. FINAL COMPLETION AND FINAL PAYMENT

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

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

1. Contractor's Affidavit of Payment of Debts and Claims;

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

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

17.03 Delay. If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Design Professional so confirms, the City shall, upon application by the Contractor and certification by the Design Professional, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Agreement Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Design Professional prior to certification of such payment. Such

payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

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

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

18. Protection of Persons and Property.

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

18.02 Safety of Persons and Property.

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

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

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

(c) The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

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

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

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

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

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

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

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

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

Contractor engages in any of the activities prohibited in this Paragraph 18.03. **to the fullest extent permitted by law, Contractor hereby indemnifies and holds City, Design Professional and all of their respective officers, agents and employees harmless from and against any and all claims, damages, losses, causes of action, suits, and liabilities of every kind, including, but not limited to, expenses of litigation, court costs, punitive damages and attorneys' fees, arising out of, incidental to or resulting from the activities prohibited in this Paragraph 18.03.**

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

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

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

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

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

19. INSURANCE AND BONDS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19.07 Additional Insured.

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

19.08 Builder's Risk

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

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

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

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

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

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

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

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

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

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

“A. Definitions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

work on the project; and

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

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

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

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

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

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

19.10 Professional Liability.

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

19.11 Contractors' Pollution Legal Liability.

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

19.12 Property Insurance.

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

19.13 Performance Bond and Payment Bond.

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

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

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

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

20. UNCOVERING AND CORRECTION OF WORK

20.01 Uncovering of Work.

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

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

20.02 Correction of Work.

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

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

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

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

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

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

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

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

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

21. TEST AND INSPECTIONS

21.01 Tests and Inspections.

(a) Tests, inspections, and approvals of portions of the Work required by the Agreement Documents (or by laws, ordinances, rules, regulations, or orders of public authorities having jurisdictional, regulatory, or supervisory authority regarding the land or activities of the Project) shall be made at appropriate times. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory employed by the City for this purpose, or with the appropriate public authority. City shall bear the normal costs of these services, but not any excess costs attributable to Contractor-caused scheduling problems, or other Contractor error. The Contractor shall give the Design Professional timely notice of when and where

tests and inspections are to be made so the Design Professional may observe such procedures.

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

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

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

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

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

22. TERMINATION OR SUSPENSION OF THE CONTRACT

22.01 Termination by the Contractor.

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

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

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

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

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

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

22.02 Termination by the City with or without Cause.

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

- 1.** refuses or fails to timely supply enough properly skilled workers, or proper materials or equipment, to perform the Work of the Project;
- 2.** fails to make a payment to Subcontractors for materials, equipment, or labor in accordance with the respective agreements between the Contractor and the Subcontractors for the Work of the Project;
- 3.** disregards or fails to comply with any law, ordinance, rule, regulation, decision, or order regarding the Project that is issued by a court or other public authority (including without limitation a State, federal, or local governmental authority or agency, including the City) with regulatory, supervisory, or jurisdictional authority regarding the land or activities of the Project;
- 4.** commits conduct, an act, or omission which constitutes a breach or default of the Agreement or the Agreement Documents;
- 5.** fails to furnish the City, upon request, with assurances satisfactory to the City evidencing the Contractor's ability to complete the Work in compliance with all the requirements of the Agreement or Agreement Documents;

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

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

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

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

2. accept assignment of subcontracts pursuant to Paragraph 11.04;

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

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

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

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

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

(e) If a Performance Bond has been furnished and the Contractor is declared by the City to be in default under the Agreement, the Surety shall promptly, and in no event more

than 30 days, remedy the default by commencing and continuing to perform the remaining work of the Agreement in accordance with its terms and conditions, or by obtaining a bid or bids for the Work in accordance with the Agreement's terms and conditions. At City's election, upon determination by the City and the Surety of the lowest responsible bidder, the Surety will complete the Work or will arrange for an Agreement between such bidder and the City and make available sufficient funds to pay the cost of completion less the balance of the Agreement Sum, but not exceeding the Penal Sum of the bond. The phrase "balance of the Agreement Sum" as used herein shall mean the total amount payable by the City to the Contractor under the Agreement, including any adjustments thereto made in accordance with the terms and conditions of this Agreement, and amendments thereto less the amount previously paid by the City to the Contractor.

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

22.03 Suspension by the City for Convenience.

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

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

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

22.04 Termination by the City for Convenience.

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

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

1. cease operations as directed by the City in the notice;
2. take actions necessary, or that the City may direct, for the protection and preservation of the Work; and
3. except for Work not so terminated and/or directed to be performed prior to the effective date of termination stated in the notice, terminate all existing

subcontracts, and purchase orders and enter into no further subcontracts and purchase orders.

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

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

23. CONTRACTOR'S GENERAL RESPONSIBILITIES.

23.01 General.

(a) Appropriation of Funds. The Contractor acknowledges and agrees that the estimated construction budget is contingent upon the appropriation and availability of funds as approved by the City Council and is subject to change without notice.

(b) Project Site Location and Land Acquisition. The Contractor acknowledges and agrees that the City may not have identified or selected a final site location or started land acquisition activities for this Project.

(c) Contractor Services. The Contractor shall perform all services described in this Agreement to be performed by the Contractor. The services to be provided under Sections 23.02 and 23.03 constitute the Preconstruction Phase services.

(d) Full or Partial Preconstruction Phase Services, City's Termination Rights. The City, at its sole option, may decide to receive full or partial Preconstruction Phase services from the Contractor, and during or after the Preconstruction Phase services period, the City has the option of continuing forward or not continuing forward with the Contractor or this Project. The City reserves the right to close out this Contract or terminate this Contract for convenience, at any time, at no penalty to the City, pursuant to the Termination provisions contained in this Contract.

23.02 Concurrent Preconstruction and Construction Phases. If the City and Contractor agree, the Construction Phase may commence before the Preconstruction Phase is completed, in which case both phases will proceed concurrently.

23.03 Preconstruction Phase.

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

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

(c) Preliminary Project Schedule. When Project requirements described in Paragraph 24.01(a) have been sufficiently identified, the Contractor shall prepare, and periodically update, a preliminary Project schedule for the Design Professional's review and the City's approval. The Contractor shall coordinate and integrate the preliminary Project schedule with the services and activities of the City, Design Professional and Contractor. As design proceeds, the preliminary Project schedule shall be updated to indicate proposed activity sequences and durations, Milestone Dates for receipt and approval of pertinent information, submittal of a Guaranteed Maximum Price proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, City's occupancy requirements showing portions of the Project having occupancy priority, and proposed date of Substantial Completion. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Contractor shall make appropriate recommendations to the City and Design Professional.

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

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

1. When preliminary design documents have been prepared by the Design Professional and approved by the City, the Contractor shall prepare, for the review of the Design Professional and approval of the City, a more detailed estimate with supporting data. During the preparation of the detailed design documents, the

Contractor shall update and refine this estimate in real time with the design's development using a trend log or other tools.

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

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

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

(f) Subcontractors and Suppliers. The Contractor shall seek to develop subcontractor interest in the Project and shall furnish to the City and Design Professional for their information a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Design Professional will promptly reply in writing to the Contractor if the Design Professional or City know of any objection to such subcontractor or supplier. The receipt of such list shall not require the City or Design Professional to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the City or Design Professional later to object to or reject any proposed subcontractor or supplier.

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

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

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

23.03 Guaranteed Maximum Price Proposal and Agreement Time.

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

(b) As the Drawings and Specifications may not be finished at the time the Guaranteed Maximum Price proposal is prepared, the Contractor shall provide in the Guaranteed Maximum Price for further development of the Drawings and Specifications by the Design Professional that is consistent with the Agreement Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds, and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

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

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

1. A list of the Drawings and Specifications, including all addenda thereto and the Conditions of the Contract, which were used in preparation of the Guaranteed Maximum Price proposal.
2. A list of allowances and a statement of their basis.
3. A list of the clarifications and assumptions made by the Contractor in the preparation of the Guaranteed Maximum Price proposal to supplement the information contained in the Drawings and Specifications.
4. The proposed Guaranteed Maximum Price, including a statement of the estimated cost organized by trade categories, allowances, contingency, and other items and the Fee that comprise the Guaranteed Maximum Price.

5. The Date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based, and a schedule of the Construction Documents issuance dates upon which the date of Substantial Completion is based.

6. A list of any exclusions.

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

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

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

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

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

23.04 Construction Phase.

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

1. the City's acceptance of the Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, and

2. the City's first authorization to the Contractor to:

(i) award a subcontract, or

- (ii) undertake construction Work with the Contractor's own forces, or
- (iii) issue a purchase order for materials or equipment required for the Work.

(b) Administration.

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

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

3. If the Guaranteed Maximum Price has been established and a specific bidder among those whose bids are delivered by the Contractor to the City and Design Professional (1) is recommended to the City by the Contractor; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid which conforms to the requirements of the Agreement Documents without reservations or exceptions, but the City requires that another bid be accepted, then the Contractor may require

that a change in the Work be issued to adjust the Agreement Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the City by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the City.

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

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

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

7. The Contractor shall provide monthly written reports to the City and Design Professional on the progress of the entire Work. The Contractor shall maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as the City may reasonably require. The log shall be available to the City and Design Professional. The Contractor shall promptly inform City in writing of any circumstance or development that is likely to delay Substantial Completion of the Project in accordance with the schedule.

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

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

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

END OF GENERAL CONDITIONS

ARTICLE II.
ADDITIONAL CONDITIONS

24. CITY'S RESPONSIBILITIES

24.01 Information And Services

- (a)** The City shall provide information in a timely manner regarding the requirements of the Project, including a program which sets forth the City's objectives, constraints, and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.
- (b)** The City shall establish and update an overall budget for the Project, based on consultation with the Contractor and Design Professional, which shall include contingencies for changes in the Work and other costs which are the responsibility of the City.
- (c)** At the time of execution of this Contract, funds have not been fully approved or fully appropriated by the City Council to pay for all estimated Project costs. The estimated construction budget for the Project is contingent upon the appropriation and availability of funds as approved by the City Council and is subject to change without notice.
- (d)** Project Site Location and Land Acquisition. The Parties acknowledge that the City may not have identified or selected a final site location or started land acquisition activities for this Project. Site specific City deliverables, including site reports, surveys, drawings, and test results will be provided to the Contractor once approved, completed and received by City.
- (e)** Structural And Environmental Tests, Surveys and Reports. In the Preconstruction Phase, the City shall furnish the following with reasonable promptness and at the City's expense. Except to the extent that the Contractor knows of any inaccuracy, or should have reasonably discovered such error or inaccuracy, the Contractor shall be entitled to rely upon the accuracy of any such information, reports, surveys, drawings, and tests described in Paragraphs 24.01(d) through 24.01(g) but shall exercise customary precautions relating to the performance of the Work.
- (f)** Reports, surveys, drawings, and tests concerning the conditions of the site which are required by law.
- (g)** Surveys describing physical characteristics, legal limitations, and utility locations for the site of the Project, and a written legal description of the site.
- (h)** The services of a geotechnical engineer when such services are requested by the Contractor and are reasonably required by the scope of the Project, as determined by the City or Design Professional. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous

materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.

(i) Structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports which are required by law.

(j) The services of other consultants when such services are reasonably required by the scope of the Project, as determined by the City or Design Professional, and are requested by the Contractor.

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

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

25. COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES.

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

25.01 Compensation.

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

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

Stipulated Sum of \$20,000

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

25.02 Payments.

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

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

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

26. COMPENSATION FOR CONSTRUCTION PHASE SERVICES.

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

26.01 Compensation. For the Contractor's performance of the Work as described in Paragraph 23.04, the City shall pay the Contractor in current funds the Agreement Sum consisting of the Cost of the Work as defined in Section 27 and the Contractor's Fee determined as follows:

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

General Conditions: \$735,794.00

Construction Manager at Risk Fee – 2.95% of the Cost of the Work

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

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

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

26.03 Changes in the Work.

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

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

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

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

27. COST OF THE WORK FOR CONSTRUCTION PHASE.

27.01 Costs to be Reimbursed. The term “Cost of the Work” shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher

than those customarily paid at the place of the Project except with prior consent of the City. The Cost of the Work shall include only the items set forth in this Section 27.

27.02 Labor Costs.

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

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

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

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

Classification	Name
N/A	N/A

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

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

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

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

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

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

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

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

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

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

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

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

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

27.06 Miscellaneous Costs.

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

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

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

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

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

(e) Data processing costs related to the Work.

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

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

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

27.09 Costs not to be Reimbursed.

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

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

6. Costs due to the negligence of the Contractor or to its failure to fulfill a specific responsibility to the City set forth in this Agreement.
7. Costs incurred in the performance of Preconstruction Phase Services.
8. Except as provided in Paragraph 27.07, any cost not specifically and expressly described in Paragraph 27.01.
9. Costs which would cause the Guaranteed Maximum Price to be exceeded.

27.10 Discounts, Rebates and Refunds.

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

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

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

28. CONSTRUCTION PHASE.

28.01 Progress Payments.

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

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

(c) Provided an Application for Payment is received by the Design Professional not later than the 30th day of a month, the City, upon approval of the Application for Payment, shall endeavor to make payment to the Contractor not later than the 30th day of the

following month. If an Application for Payment is received by the Design Professional after the application date fixed above, payment shall endeavor to be made by the City not later than thirty (30) days after the Design Professional receives the Application for Payment and after the City approves the Application for Payment.

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

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

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

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

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

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

3. Next, add the Contractor's Fee, less retainage of: (i) ten percent (10%) where the GMP is less than \$400,000; or (ii) five percent (5%) where the GMP is \$400,000 or more. Next, the Contractor's Fee shall be computed upon the Cost of the Work described in the two preceding Paragraphs at the rate stated in Paragraph 25.01(a) or, if said Fee is stated as a fixed sum in that Paragraph, said Fee shall be an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in the two preceding Paragraphs bears to a reasonable estimate of the probable Cost of the Work upon its completion;

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

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

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

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

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

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

28.02 Final Payment.

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

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

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

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

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

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

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

If, subsequent to final payment and at the City's request, the Contractor incurs costs described in Paragraph 27.01 and not excluded by Paragraph 27.09(a) to correct nonconforming Work or (2) arising from the resolution of disputes, the City shall reimburse the Contractor such costs and the Contractor's Fee, if any, related thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Contractor has participated in savings, the amount of such savings shall be recalculated, and appropriate credit given to the City in determining the net amount to be paid by the City to the Contractor.

29. DISPUTE RESOLUTION.

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

30. TERMINATION OR SUSPENSION.

30.01 Termination Before Establishing Guaranteed Maximum Price.

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

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

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

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

The City shall also pay the Contractor fair compensation, either by purchase or rental at the election of the City, for any equipment owned by the Contractor which the City elects to retain and which is not otherwise included in the Cost of the Work under Paragraph 30.01(c)(1). To the extent that the City elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in Section 30, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the City may require for the purpose of fully vesting in the City the rights and benefits of the Contractor under such subcontracts or purchase orders.

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

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

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

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

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

31. OTHER CONDITIONS AND SERVICES.

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

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

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

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

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

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

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

31.08 Benefit. Subject to a proper application of the doctrine of governmental immunity under Texas law, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns where permitted by this Agreement. Nothing in this Paragraph shall be construed to waive the conditions elsewhere contained in this Agreement applicable to assignment by the Contractor. Nothing contained in this Agreement shall be construed to confer any benefit upon any subcontractor or any other third party.

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

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

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

City: City of College Station
Capital Projects Rusty Warnke
PO Box 9960, College Station, TX 77842

Contractor: Crain Group, LLC
Attn: John Green, Executive Vice President
3801 Knapp Rd. Pearland, TX 77581

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

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

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

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

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

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

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

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

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

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

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


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

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

List of Exhibits

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

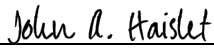
CRAIN GROUP, LLC.

By: 
Printed Name: John Green
Title: Executive Vice President
Date: 5/8/2026

CITY OF COLLEGE STATION

By: _____
City Manager: _____
Date: _____

APPROVED:


City Attorney
Date: 5/11/2026


Assistant City Manager/CFO
Date: 5/11/2026

EXHIBIT A
DAVIS BACON WAGE RATES

Superseded General Decision Number: TX20250033

State: Texas

Construction Type: Heavy Dredging

Counties: Texas Statewide.

DREDGING PROJECTS ALONG THE TEXAS GULF COAST AREA INCLUDING ALL PUBLIC CHANNELS, HARBORS, RIVERS, TRIBUTARIES AND THE GULF INTRACOASTAL WATERWAYS

Modification Number 0 Publication Date 01/02/2026

SUTX1994-001 01/18/1994

The following rates were revised pursuant to 29 CFR 1.6(c)(1) on 02/07/2025.

	Rates	Fringes
Derrick Operator.....	\$ 16.85	
Dozer Operator.....	\$ 16.85	
Dredge 16" and Over		
DECKHAND.....	\$ 16.85	
DREDGE TENDER OPERATOR.....	\$ 16.85	
FIREMAN.....	\$ 16.85	
FIRST ASSISTANT ENGINEER....	\$ 16.85	
LEVERMAN.....	\$ 16.85	
OILER.....	\$ 16.85	
SECOND ASSISTANT ENGINEER...\$	16.85	
SHOREMAN.....	\$ 16.85	
THIRD ASSISTANT ENGINEER...\$	16.85	
TRUCK DRIVER.....	\$ 16.85	
WELDER.....	\$ 16.85	
Dredge Under 16"		
DECKHAND.....	\$ 16.85	
DREDGE TENDER OPERATOR.....	\$ 16.85	
LEVERMAN.....	\$ 16.85	
OILER.....	\$ 16.85	
WELDER.....	\$ 16.85	
Hydraulic Dredging		
FIRST COOK.....	\$ 16.85	
HANDYMAN.....	\$ 16.85	
JANITOR - CABIN PERSON.....	\$ 16.85	
MESS PERSON.....	\$ 16.85	
SECOND COOK.....	\$ 16.85	
Marsh Buggy Dragline		
OILER.....	\$ 16.85	
OPERATOR.....	\$ 16.85	

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their

own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Note: Executive Order 13658 generally applies to contracts subject to the Davis-Bacon Act that were awarded on or between January 1, 2015 and January 29, 2022, and that have not been renewed or extended on or after January 30, 2022. Executive Order 13658 does not apply to contracts subject only to the Davis-Bacon Related Acts regardless of when they were awarded. If a contract is subject to Executive Order 13658, the contractor must pay all covered workers at least \$13.30 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2025. The applicable Executive Order minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under Executive Order 13658 is available at www.dol.gov/whd/govcontracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (iii)).

The body of each wage determination lists the classifications and wage rates that have been found to be prevailing for the type(s) of construction and geographic area covered by the wage determination. The classifications are listed in alphabetical order under rate identifiers indicating whether the particular rate is a union rate (current union negotiated rate), a survey rate, a weighted union average rate, a state adopted rate, or a supplemental classification rate.

Union Rate Identifiers

A four-letter identifier beginning with characters other than "SU", "UAVG", "SA", or "SC" denotes that a union rate was prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2024. PLUM is an identifier of the union whose collectively bargained rate prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2024 in the example, is the effective date of the most current negotiated rate.

Union prevailing wage rates are updated to reflect all changes over time that are reported to WHD in the rates in the collective bargaining agreement (CBA) governing the classification.

Union Average Rate Identifiers

The UAVG identifier indicates that no single rate prevailed for those classifications, but that 100% of the data reported for the classifications reflected union rates. EXAMPLE: UAVG-OH-0010 01/01/2024. UAVG indicates that the rate is a weighted union average rate. OH indicates the State of Ohio. The next number, 0010 in the example, is an internal number used in producing the wage determination. The date, 01/01/2024 in the example, indicates the date the wage determination was updated to reflect the most current union average rate.

A UAVG rate will be updated once a year, usually in January, to reflect a weighted average of the current rates in the collective bargaining agreements on which the rate is based.

Survey Rate Identifiers

The ""SU"" identifier indicates that either a single non-union rate prevailed (as defined in 29 CFR 1.2) for this classification in the survey or that the rate was derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As a weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SUFL2022-007 6/27/2024. SU indicates the rate is a single non-union prevailing rate or a weighted average of survey data for that classification. FL indicates the State of Florida. 2022 is the year of the survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 6/27/2024 in the example, indicates the survey completion date for the classifications and rates under that identifier.

?SU? wage rates typically remain in effect until a new survey is conducted. However, the Wage and Hour Division (WHD) has the discretion to update such rates under 29 CFR 1.6(c)(1).

State Adopted Rate Identifiers

The ""SA"" identifier indicates that the classifications and prevailing wage rates set by a state (or local) government were adopted under 29 C.F.R 1.3(g)-(h). Example: SAME2023-007 01/03/2024. SA reflects that the rates are state adopted. ME refers to the State of Maine. 2023 is the year during which the state completed the survey on which the listed classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 01/03/2024 in the example, reflects the date on which the classifications and rates under the ?SA? identifier took effect under state law in the state from which the rates were adopted.

WAGE DETERMINATION APPEALS PROCESS

1) Has there been an initial decision in the matter? This can be:

- a) a survey underlying a wage determination
- b) an existing published wage determination
- c) an initial WHD letter setting forth a position on a wage determination matter
- d) an initial conformance (additional classification and rate) determination

On survey related matters, initial contact, including requests for summaries of surveys, should be directed to the WHD Branch of Wage Surveys. Requests can be submitted via email to davisbaconinfo@dol.gov or by mail to:

Branch of Wage Surveys
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Regarding any other wage determination matter such as conformance decisions, requests for initial decisions should be directed to the WHD Branch of Construction Wage Determinations. Requests can be submitted via email to BCWD-Office@dol.gov or by mail to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.

Washington, DC 20210

2) If an initial decision has been issued, then any interested party (those affected by the action) that disagrees with the decision can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Requests for review and reconsideration can be submitted via email to dba.reconsideration@dol.gov or by mail to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210.

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END OF GENERAL DECISION

"

1. Payment greater than prevailing wage rate as listed within this document not prohibited per Texas Government Code, Chapter 2258, Prevailing Wage Rates, Subchapter A. General Provisions.
2. Not less than the following hourly rates shall be paid for the various classifications of work required by this project. Workers in classifications where rates are not identified shall be paid not less than the general prevailing rate of "laborer" for the various classifications of work therein listed.
3. The hourly rate for legal holiday and overtime work shall not be less than one and one-half (1 & 1/2) times the base hourly rate.
4. The rates listed are journeyman rates. Helpers may be used on the project and may be compensated at a rate determined mutually by the worker and employer, commensurate with the experience and skill of the worker but not at a rate less than 60% of the journeyman's wage as shown. Apprentices (enrolled in a federally certified apprentice program) may be used at the percentage rates of the journeyman scale stipulated in their apprenticeship agreement. At no time shall a journeyman supervise more than two (2) apprentices or helpers. All apprentices or helpers shall be under the direct supervision of a journeyman working as a crew.
5. Except for Heavy/Highway Construction, building construction wage rates shall be paid to all workers except those workers engaged in site work and construction beyond five feet of buildings.

EXHIBIT B

PERFORMANCE AND PAYMENT BONDS

BID & SECURITY BOND

Surety Bond No. N/A

STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

§

COUNTY OF BRAZOS

§

That we, Crain Group, L.L.C., as Principal (the CMAR), and Travelers Casualty and Surety Company of America, as Surety, a corporation organized and existing under the laws of the State of Connecticut, licensed to do business in the State of Texas and admitted to write bonds, as a Surety, (the Surety), are hereby held and firmly bound unto the City of College Station, Texas, as Obligee (the City or Obligee), and its successors and assigns, in the Penal Sum of **Five Percent (5%)** of Twelve Million and no/100 Dollars (\$12,000,000.00), the Construction/Project Budget, for a total Penal Sum of **Six Hundred Thousand** and no/100 Dollars (\$600,000.00), for the Thomas Park and Surrounding Streets Project (the "Project") for payment and obligations whereof the said Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents:

WHEREAS, the Principal has submitted a proposal to City for the construction of the Project in accordance with the plans and specifications in the bid/proposal documents on file with the City and under a request or invitation for bids or proposals.

NOW THEREFORE, the condition of this obligation is such that, if the Principal's bid or proposal is accepted, and the CMAR contract for the work and Project is awarded to Principal by the Obligee, and if Principal enters into the CMAR contract, and if the aforesaid Principal shall execute a Guaranteed Maximum Price Proposal ("GMP") acceptable to the Obligee, and the said Obligee executes the Contract Amendment in connection therewith and, the Principal fails to execute the Contract Amendment or fails to deliver Payment and Performance Bonds (and any subsequent bond riders that increase the original bond amounts to cover each GMP or additional GMP) acceptable to the Obligee within the time required by the Contract, to secure the performance of the terms and conditions of the Contract, the Principal and Surety will pay the Obligee the difference in money between the amount of the partially executed Contract Amendment, the Guaranteed Maximum Price, as may be applicable (or all of them in the case of multiple Contract Amendments and/or Guaranteed Maximum Prices), of the said Principal and the amount for which the Obligee contracts with another party to perform the work of the partially executed Contract Amendment and/or Guaranteed Maximum Price, if the latter amount be in excess of the former (respectively, in the case of multiple Contract Amendments and/or Guaranteed Maximum Prices), and the costs Obligee incurs to reselect a Construction Manager at Risk, including but not limited to the difference in the amount of Principal's Fee and General Conditions costs and the new Construction Manager at Risk's Fee and General Conditions costs, but in no event shall the Surety's aggregate liability hereunder exceed the Penal Sum hereof.

PROVIDED, FURTHER, that this Security Bond is effective for the term of twelve (12) months from the time of its execution and will be deemed to be automatically extended without amendment for six months from the expiration date hereof, or any future expiration date, unless at least sixty (60) days prior to any expiration date Surety notifies Obligee by registered mail, at the address for notices to Obligee set forth in the Contract, that it elects not to extend the term of this Security Bond for any additional period.

IN WITNESS WHEREOF, the above bounden parties have executed this instrument on the respective dates written below their signatures and under their several seals the name and corporate seal of each entity being hereto affixed, and these presents duly signed by its undersigned representative pursuant to authority of its governing body and have attached a current Power of Attorney.

Bond No. N/A

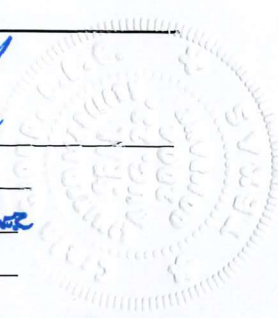
FOR THE PRINCIPAL/CMAR:

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

By: Kim Tolleson
Name: Kim Tolleson
Title: Project Coordinator
Date: 4/17/26

Crain Group, L.L.C.
(Name of Principal/CMAR)

By: [Signature]
Name: John G. Crain
Title: Chief Operating Officer
Date: 4/17/26



FOR THE SURETY:

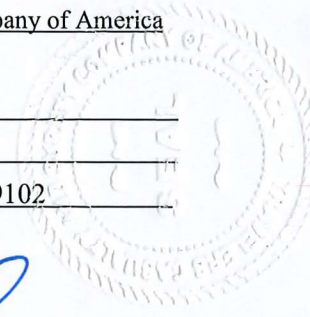
ATTEST/WITNESS (SEAL)

By: Debbie Bledsoe
Name: Debbie Bledsoe
Title: Witness
Date: 4/17/26

Travelers Casualty and Surety Company of America
(Full Name of Surety)

1500 Market Street
29th Floor
West Tower, Philadelphia, PA 19102
(Address of Surety for Notice)

By: [Signature]
Name: Jillian O'Neal
Title: Attorney-in-Fact
Date: 4/17/26



FOR THE OBLIGEE/CITY:

REVIEWED:

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

John A. Haislet 5/11/2026
City Attorney

City Manager



**Travelers Casualty and Surety Company of America
Travelers Casualty and Surety Company
St. Paul Fire and Marine Insurance Company**

POWER OF ATTORNEY


KNOW ALL MEN BY THESE PRESENTS: That Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint **JILLIAN O'NEAL** of **THE WOODLANDS Texas**, their true and lawful Attorney-in-Fact to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed, and their corporate seals to be hereto affixed, this **3rd** day of **February**, 2017.



State of Connecticut

City of Hartford ss.

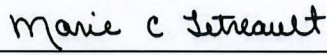
By: 
Robert L. Raney, Senior Vice President

On this the **3rd** day of **February**, 2017, before me personally appeared **Robert L. Raney**, who acknowledged himself to be the Senior Vice President of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.

My Commission expires the **30th** day of **June**, 2021




Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

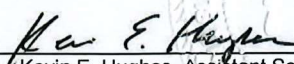
FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, **Kevin E. Hughes**, the undersigned, Assistant Secretary of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which remains in full force and effect.

Dated this _____ day of _____




Kevin E. Hughes, Assistant Secretary

**To verify the authenticity of this Power of Attorney, please call us at 1-800-421-3880.
Please refer to the above-named Attorney-in-Fact and the details of the bond to which the power is attached.**



IMPORTANT NOTICE

TO OBTAIN INFORMATION OR MAKE A COMPLAINT:

You may contact Travelers Casualty and Surety Company of America, for information or to make a complaint at:

Travelers Bond
Attn: Claims
1500 Market Street, 29th Floor, West Tower
Philadelphia, PA 19102
(267) 675-3057 / (267) 675-3102 Fax

You may contact the Texas Department of Insurance to obtain the information on companies, coverages, rights or complaints at:

Texas Department of Insurance
P.O. Box 149104
Austin, TX 78714-9104
(800) 252-3439

ATTACH THIS NOTICE TO YOUR BOND. This notice is for information only and does not become a part or a condition of the attached document and is given to comply with Section 2253-021, Government Code, and Section 53.202, Property Code, effective September 1, 2001.

EXHIBIT C

CERTIFICATES OF INSURANCE AND ENDORSEMENTS

AGENCY CUSTOMER ID: CRAINGROUP

LOC #: _____



ADDITIONAL REMARKS SCHEDULE

Page 1 of 1

AGENCY Bowen, Mickette & Britt, Insurance Agency, LLC		NAMED INSURED Crain Group, LLC 1600 Old Alvin Rd Pearland TX 77581	
POLICY NUMBER		EFFECTIVE DATE:	
CARRIER	NAIC CODE		

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: 25 **FORM TITLE:** CERTIFICATE OF LIABILITY INSURANCE

Blanket primary/non-contributory per form # CG 73 24 03 23

Automobile:

Blanket additional insured per form # CA 71 65 0911
 Blanket waiver of subrogation per form # CA 71 1811 09
 Blanket primary/non-contributory per form # CA 71 65 0911

Worker's Compensation:

Waiver of subrogation per form # WC420304B - 06_14

Umbrella:

Blanket additional insured per form # CU 00 01 04 13
 Blanket waiver of subrogation per form # CU 00 01 04 13
 Blanket primary/non-contributory per form # CU 00 01 04 13



EVIDENCE OF PROPERTY INSURANCE

DATE (MM/DD/YYYY)

4/22/2026

THIS EVIDENCE OF PROPERTY INSURANCE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE ADDITIONAL INTEREST NAMED BELOW. THIS EVIDENCE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS EVIDENCE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE ADDITIONAL INTEREST.

AGENCY Bowen, Miclette & Britt Insurance Agency, LLC 2800 N Loop West, Ste 1100 Houston, TX 77092		PHONE (A/C, No, Ext): 713-880-7100	COMPANY Travelers Lloyds Insurance Company 123 street Maitland, FL 32751	
FAX (A/C, No): 713-880-7166	E-MAIL ADDRESS: sbrown@bmbinc.com			
CODE:	SUB CODE:			
AGENCY CUSTOMER ID #:		LOAN NUMBER		POLICY NUMBER QT660B0944770TLC26
INSURED Crain Group LLC 1600 Old Alvin Road Pearland TX 77581		EFFECTIVE DATE 03/07/2026	EXPIRATION DATE 03/07/2027	<input type="checkbox"/> CONTINUED UNTIL TERMINATED IF CHECKED
THIS REPLACES PRIOR EVIDENCE DATED:				

PROPERTY INFORMATION

LOCATION/DESCRIPTION

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 EVIDENCE OF PROPERTY INSURANCE 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.

COVERAGE INFORMATION

PERILS INSURED	BASIC	BROAD	SPECIAL
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COVERAGE / PERILS / FORMS	AMOUNT OF INSURANCE	DEDUCTIBLE
BUILDERS' RISK COVERAGE Frame or Joisted Masonry construction projects located outside of high hazard counties	\$2,000,000	\$2,500
Noncombustible, Masonry Noncombustible, Modified Fire Resistive or Fire Resistive construction projects located outside high hazard counties	\$20,000,000	
Masonry Noncombustible, Modified Fire Resistive or Fire Resistive construction projects located inside high hazard counties	\$5,000,000	

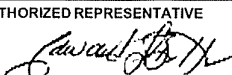
REMARKS (Including Special Conditions)

Project Thomas Park and Surrounding Streets

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

ADDITIONAL INTEREST

NAME AND ADDRESS The City of College Station Thomas Park and Surrounding Streets 1101 Texas Avenue College Station, TX 778470	<input type="checkbox"/> ADDITIONAL INSURED	<input type="checkbox"/> LENDER'S LOSS PAYABLE	<input type="checkbox"/> LOSS PAYEE
	<input type="checkbox"/> MORTGAGEE		
	LOAN #		
AUTHORIZED REPRESENTATIVE 			

ACORD 27 (2016/03)

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EXHIBIT D

TECHNICAL SPECIFICATIONS AND PLANS

If the plans and specifications from the RFP/CSP are not physically inserted here, then they are fully incorporated into this contract by reference.

26-041 RFP (CMAR) Thomas Park & Surrounding Streets