



ADDENDUM I

SUBJECT: New Parking Structure and Ground Transportation Center (GTC),
RFQ 25-012, WBS: 33-03350-01,
Scheduled to Close: Tuesday, January 7, 2025;
Date of Issue: Friday, November 8, 2024

FROM: Jonathan Miranda, MSJP
Procurement Administrator

DATE: December 17, 2025

THIS NOTICE SHALL SERVE AS ADDENDUM NO. I – TO THE ABOVE REFERENCED REQUEST FOR QUALIFICATIONS

This addendum is separated into sections for convenience; however, all Respondents, and other parties shall be responsible for reading the entire addendum. The failure to list an item or items in all affected sections of this addendum does not relieve any party affected from performing as per instructions, providing that the information is set forth one time any place in this addendum. These documents shall be attached to and become part of the Contract Documents for this project. The Respondent shall be required to acknowledge the receipt of this addendum.

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1. The following changes and/or additions to the Contract Documents, via this addendum, shall apply to submittals made for and to the execution of the various parts of the work affected thereby.
 2. Careful note of the addendum shall be taken by all interested parties and all trades affected shall be fully advised in their performance of the work involved.

THE ABOVE MENTIONED REQUEST FOR QUALIFICATIONS IS HEREBY AMENDED AS FOLLOWS:

GENERAL INFORMATION

1. The bid opening date is hereby extended to Tuesday, January 14, 2025, at 10:00 AM CT
2. Add: Pre-Submittal Conference Presentation, this document will be posted as a separate file.
3. Add: Pre-Submittal Conference Sign in Sheet, this document will be posted as a separate file.
4. Add: Exhibit A – Design-Build Contract Template
5. Add: Exhibit B – Design-Build General Conditions
6. Replace: Exhibit J – Project Development Manual with Revised Exhibit J – Project Development Manual

CHANGES TO RFQ

1. Section II. Scope of Work and General Requirements:

Remove: Language “Proposed early work packages will be developed as follows:

- Package 1 – Civil Demolition and Utility Relocations
- Package 2 – Early Foundation
- Package 3 – Early Procurement for Switchgear and other long lead items

These packages will be negotiated as fixed price proposals that will be included in the Guaranteed Maximum Price (GMP). The D-B will develop and complete these design packages to the 100% construction documents level as the Architect/Engineer of Record.

The total estimated contract amount is not to exceed \$110,000,000 (not to exceed \$125,000,000 total program cost). Optional project components will be considered to meet budget requirements. The GMP may be negotiated based on construction documents developed by the D-B at the 95% design stage, after which construction can begin.”

Replace: Language “**Proposed Design Deliverables:** The owner expects the D-B program/project controls team to develop and maintain the program/project budget and schedule, continuously updated monthly, for the design progression, early work packages, all procurement and GMP.

1. **Schematic Design (SD) 30%**

- a. **Activities:** Development of conceptual designs, initial layouts, and exploration of design options.
- b. **Purpose:** To establish design intent, confirm initial alignment with the Terminal Development Program (TDP) and supporting infrastructure. Preliminary cost estimates.

2. **Design Development (DD) 60%**

- a. **Activities:** Refine the design in detail, including architectural and engineering drawings, material specifications, and system integration.
- b. **Purpose:** To finalize the design and specifications, ensuring all components are coordinated and compliant with regulations as well as the TDP. Submit for preliminary plan review with permitting agencies.

3. **Proposed early work packages should be developed as follows:**

- a. **Package 1** – Civil Make-Ready
- b. **Package 2** – Piles/Foundations
- c. **Package 3** – Early Procurement for Switchgear and other long lead items

4. **Construction Documents (CD) 90%**

- a. **Activities:** Preparation of complete construction drawings and specifications.
- b. **Purpose:** To provide detailed instructions for construction, ensuring clarity and compliance with codes.

5. **Construction Permit Documents 100%**

- a. **Activities:** Finalize and prepare all necessary construction drawings and specifications for permit submission.

- b. **Purpose:** To ensure that all documentation meets regulatory requirements, providing a clear roadmap for construction while ensuring compliance with codes.

The early work packages will be negotiated as Fixed Price Proposals that will be included in the final Guaranteed Maximum Price (GMP). The D-B will develop and complete these design packages to the 100% design/Construction documents level as the Architect/Engineer of Record.

The total estimated contract amount is a not to exceed budget of \$110,000,000. Optional project components will be considered to meet budget requirements. The Design-Builder is expected to propose a timeline for the development of the project, aligning design, procurement, issuance of early work Fixed Price Proposals, and the overall program construction schedule. GMP negotiations may begin as early as 60% or as late as 100% design completion, provided that the Design-Builder can demonstrate cost certainty and acceptable mitigation of development risks. GMP must be negotiated not later than 01 May 2026.”

QUESTIONS SUBMITTED IN ACCORDANCE WITH SECTION VIII.3,
RESTRICTION OF COMMUNICATIONS:

QUESTIONS SUBMITTED ON CIVCAST

Question 1: Are engineering/architectural firms that are a part of the Terminal Development Program (TDP) precluded from pursuing this project?

Response: Consultants and firms for the Terminal Development Program are not precluded from submitting as part of a team for the New Parking Garage and Ground Transportation Center. The City of San Antonio’s Aviation Department welcomes responses from firms who are qualified and interested in doing business with the Aviation Department.

Question 2: Regarding Evaluation Criteria D SBEDA; can you please clarify how this section is scored. Is the only way to get a portion of these 20 points is to submit as a Joint-Venture which includes M/WBE entities; therefore, a submission by a Design-Builder not in a JV (whom is not a M/WBE) receives zero points for Criteria D, and can only score a maximum of 80 out of the 100 possible points for the RFQ?

Response: A Prime respondent submitting a response to this solicitation as a sole respondent (i.e., not a joint venture entity) will be ineligible to receive any SBEDA evaluation preference points. To receive up to 20 evaluation preference points for this solicitation, a prime respondent must respond as a joint venture entity that includes one or more SBEDA eligible M/WBE firm(s) as joint venture partner(s). Evaluation preference points will be awarded based off the participation and performance of SBEDA eligible M/WBE(s) as Joint Venture partner(s) on the overall contract value that is not subcontracted based on the table below:

<i>Percent Performance by M/WBE Joint Venture Entity(s)</i>	<i>Evaluation Criteria Points</i>
50% or Greater	20 points
40%- 49%	15 points
25% - 39%	10 points

10%-24%	5 points
0%-9%	0 points

To be eligible for the City of San Antonio's Small Business Economic Development Advocacy (SBEDA) Program, a vendor must meet the following criteria:

1. A vendor must be certified by the South Central Texas Regional Certification Agency (SCTRCA) as a Small Business Enterprise (SBE).
 - a. Additional certifications necessary to receive M/WBE Joint Venture Program evaluation preference points and/or to meet SBEDA (SBE, MBE, WBE, AABE) Subcontracting Program goal requirements.
 - b. Please note that the City of San Antonio only accepts certifications from the SCTRCA for the purposes of SBEDA Program eligibility; while the Small Business Office encourages vendors to obtain other agency's certifications (State of Texas HUB, SBA HUBZone/8a, U.S. Department of Transportation DBE/ACDBE, etc.), those certifications **do not count** towards SBEDA Program eligibility.
2. A vendor must be headquartered in or must have a significant business presence in the San Antonio Metropolitan Statistical Area (SAMSA).
 - a. A significant business presence is defined as 20% of your firm's workforce being located in SAMSA for at least one year per the solicitation due date. SAMSA is defined as Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina, and Wilson Counties.

Question 3: Is the total SBEDA subcontracting goal a) 20% (17% MWBE + 3% AABE) or b) 40% (20% SBE + 17% MWBE + 3% AABE)?

Response: No, the M/WBE and AABE subcontracting goals are segmented from the SBE goal; for example, if a SBEDA eligible AABE subcontractor is given 10% of the total contract value, that will also count towards the 17% M/WBE subcontracting and 20% SBE subcontracting goals, as a SBEDA eligible AABE is also certified as an SBE and an MBE. Therefore, more SBE and M/WBE subcontractors would be needed to meet those required goals, but the AABE goal would be met.

Question 4: The Contract Template (Exhibit A) and the General Conditions (Exhibit B) were not included in the RFQ documents. Can you please provide copies of Exhibits A and B for review?

Response: Refer to addition of Exhibits A and B under General Information listed above.

Question 5: In Tab 9 (Understanding of the Project and Proposed Management Plan), the Respondent as asked to address their approach to "Design for equitable access". Is this referencing compliance with ADA standards? Please clarify what "equitable access" is in the context of this question.

Response: "Equitable access" in this context goes beyond ADA compliance. While ADA standards address physical accessibility for individuals with disabilities, equitable access also involves the following:

- Physical Accessibility: Ensuring facilities are accessible to people with varying mobility needs, beyond just meeting minimum legal requirements.
- Cultural and Linguistic Accessibility: Incorporating features that cater to diverse cultural and language needs.

- **Technological Accessibility:** Ensuring digital and technological tools are accessible to individuals with various impairments.

Question 6: In Tab 6 the list of key personnel includes 'inspector'. Can you please confirm if the testing and inspection scope will be included in the Design-Builders Scope, or will that be procured directly by the City.

Response: The Aviation's Project Manager will arrange for a full-time Resident Project Representative (RPR) to oversee the owner's responsibilities related to Quality Assurance (QA) third party testing and inspections. Third party testing will be procured by the City.

The Design-Builder must assign a dedicated and qualified individual—who may be employed by the contractor but will not report directly to the Superintendent or Construction Project Manager—to oversee the design builder's internal Quality Control (QC) related inspections and testing.

Question 7: Regarding question 4: Tab 3 requires written acknowledgment from the Respondent confirming acceptance of the terms, conditions, and requirements of the City's Design-Build Contract and General Conditions. Will Exhibits A and B be provided in sufficient time for the Respondent's review? Additionally, if the Respondent proposes any modifications to the contract, should these be included in Tab 3?

Response: Sufficient time will be allowed to review both Exhibits A and B. Any proposed modifications to the contract should be included in Tab 3.

Question 8: The list of key personnel includes "Inspector". Typically, inspectors are 3rd party for materials testing, etc. or AHJ employees, not hired by the Design-Builder. Can you clarify what the "Inspector" role is intended to be and specific responsibilities of this person?

Response: The Aviation's Project Manager will arrange for a full-time Resident Project Representative (RPR) to oversee the owner's responsibilities related to Quality Assurance (QA) third party testing and inspections. Third party testing will be procured by the City.

The Design-Builder must assign a dedicated and qualified individual—who may be employed by the contractor but will not report directly to the Superintendent or Construction Project Manager—to oversee the design builder's internal Quality Control (QC) related inspections and testing.

Question 9: There appears to be discrepancies in the architectural and structural systems described by the PDM and those shown in Concept Drawings Exhibit K. For example, bay sizes, structural depth, column sizes, etc. Is the PDM description the preferred approach or the conceptual drawings? Or is there intended to be flexibility in the design?

Response: The intent is to provide the Design-Builder with flexibility to propose appropriate systems that align with the Aviation Department's design concept while ensuring the facility is delivered within the established project schedule and budget.

Question 10: Are Federal funds being utilized on this project?

Response: No.

Question 11: Please clarify how points are awarded for criteria 4.D Small Business Economic Development Plan, specifically the proration of points based on "contract value that is not

subcontracted". For example, on a project of this size/scope, we would typically expect to see approximately 80% or more of the contract value being subcontracted for contract awards to trade contractors for the direct cost of work completion. If this 80% of the contract value was subcontracted, would the SBEDA points only be awarded on the 20% of the contract value that is "not subcontracted", therefore resulting in the award of 5 points to the M/WBE Joint Venture Entity, based on the table in Section 4.D If this scenario is accurate, does the M/WBE Joint Venture Entity need to state its anticipated percentage of the contract value that will "not be subcontracted"?

Response: In the scenario mentioned above, M/WBE Joint Venture Program evaluation preference points would be awarded on that 20% of the contract value that is not being subcontracted and would result in only 5 points being awarded. For example, if the total submitted bid amount was \$120 million, and the joint venture entity retained 20% (\$24 million) of the bid amount and the M/WBE partner of the joint venture entity performed half (50%) of the retained value, then the joint venture entity would be able to receive 20 evaluation preference points. Please see the response to question 1 for further breakdown of evaluation preference point award.

Question 12: Are the points awarded for step 1 and step 2 cumulative for a potential total of 200 points? Or will scoring reset after step 1 and final selection will only be based on step 2 points?

Response: Scoring is not cumulative. Step 2 scoring will be weighted on its own.

Question 13: Are engineering/architectural firms that are part of the TDP PMCM conflicted out of this contract?

Response: Consultants and firms for the Terminal Development Program are not precluded from submitting as part of a team for the New Parking Garage and Ground Transportation Center. The City of San Antonio Aviation Department welcomes responses from firms who are qualified and interested in doing business with the Airport.

Question 14: Would the City entertain a modest extension to the due date as many firms' offices are typically closed over the holidays with many returning to the office Monday Jan 6th, 2025 (day before current due date). A week or two extensions to allow teams to complete their proposals after the holidays would be greatly appreciated.

Response: Refer to change of due date listed above under General Information 1.

Question 15: The structural design narrative paragraph 3.2.2 - Design Loads/Structural Framing indicates a Life Cycle Cost Analysis is to be provided by the Design Team if a precast structure is proposed. Is there a LCCA on file for a cast-in-place/post tensioned concrete structure? If so, can you make it available? If there is not one on file, should it be required as part of the proposal?

Response: The Design-Build Team will provide a Life Cycle Cost Analysis (LCCA) for the different types of structural systems that need to be considered for this project such as cast-in place, pre-cast, pre/post tensioned or non-tensioned systems.



Jonathan Miranda, MSJP
Procurement Administrator
Finance Department - Procurement Division

Request for Qualifications

Pre-Submittal Meeting for the New Parking Structure and Ground Transportation Center (GTC)



RFQ# 2025-012

Friday, November 22, 2024

Sign-In Instructions



Everyone attending today's conference **is highly encouraged** to scan the QR Code with your phone/tablet or click/type the URL link on your computer and complete the Sign-In Form.

All information provided by you on this form may be posted on the City's website, or otherwise disseminated publicly. By including this information, you hereby affirmatively consent to the release of the information you provide.

By signing in, this will confirm your attendance for today's meeting. If you do not complete the form, your information will not be added to the sign in sheet and may miss critical updates should the City need to release notifications. The QR code will not be available after the meeting.



Sign-In Form: <https://forms.office.com/g/2ky7emKbx8>

Introductions



City Staff Only:

We will begin with City staff introductions who are attending today's meeting.

**PLEASE HOLD ALL QUESTIONS UNTIL THE END
OF THE PRE-SUBMITTAL CONFERENCE.**

High Profile Solicitation

This solicitation has been identified as High-Profile.

Prohibition against Campaign or Officeholder Contributions for Individuals and Entities Seeking High-Profile Contracts. Under Section 2-309 of the Municipal Campaign Finance Code, the following are prohibited from making a campaign or officeholder contribution to any member of City Council, candidate for City Council or political action committee that contributes to City Council elections beginning on the 10th business day after a contract solicitation has been released through the 30th calendar day following the approval by City Council (“blackout” period).

1. Any individual seeking a high-profile contract;
2. Any owner, officer, officer of board, executive committee member, and general board member of an entity seeking a high-profile contract;
3. The legal signatory of the high-profile contract;
4. Any attorney, lobbyist or consultant hired or retained to assist the individual or entity in seeking a high-profile contract;
5. Subcontractors hired or retained to provide services under the high-profile contract;
6. Any first-degree member of the household of any person listed in (1), (2), (3) or (5) of this subsection; and
7. Any corporate political action committee (PAC) established or formed by the entity seeking a high-profile contract.

Please refer to the solicitation and the Contracts Disclosure Form for additional details.

High Profile Solicitation



This solicitation has been identified as High-Profile.

A high-profile contract cannot be awarded to the individual or entity if a prohibited contribution was made by any of these individuals during the “blackout” period.

For this solicitation, the first-day contributions are prohibited is **Monday, November 25, 2024. The first day contributions may be made is the 31st day after the contract is approved at a City Council “A” Session.*

For more information on updates to the Ethics Code and Municipal Campaign Finance Code, approved by City Council on May 2, 2024, and were effective on October 1, 2024, please visit: <https://www.sa.gov/Directory/Departments/OCC/Ethics/Revisions>. Resources are available to include a Vendor Frequently Asked Questions (FAQs) with key changes and compliance requirements for vendors working with the City, including non-profit organizations.

Solicitation Background



In response to this growth, the airport developed the New Parking Structure and Ground Transportation Center (GTC) project to:

- Provide a consolidated commercial passenger vehicle hub with additional passenger parking
- Reduce curbside congestion by removing commercial passenger traffic from the loop roadway
- Support construction of new terminal and increased passenger traffic

2023 was the busiest year for passenger traffic at the airport, which is a 3% increase from the previous record year in 2019.



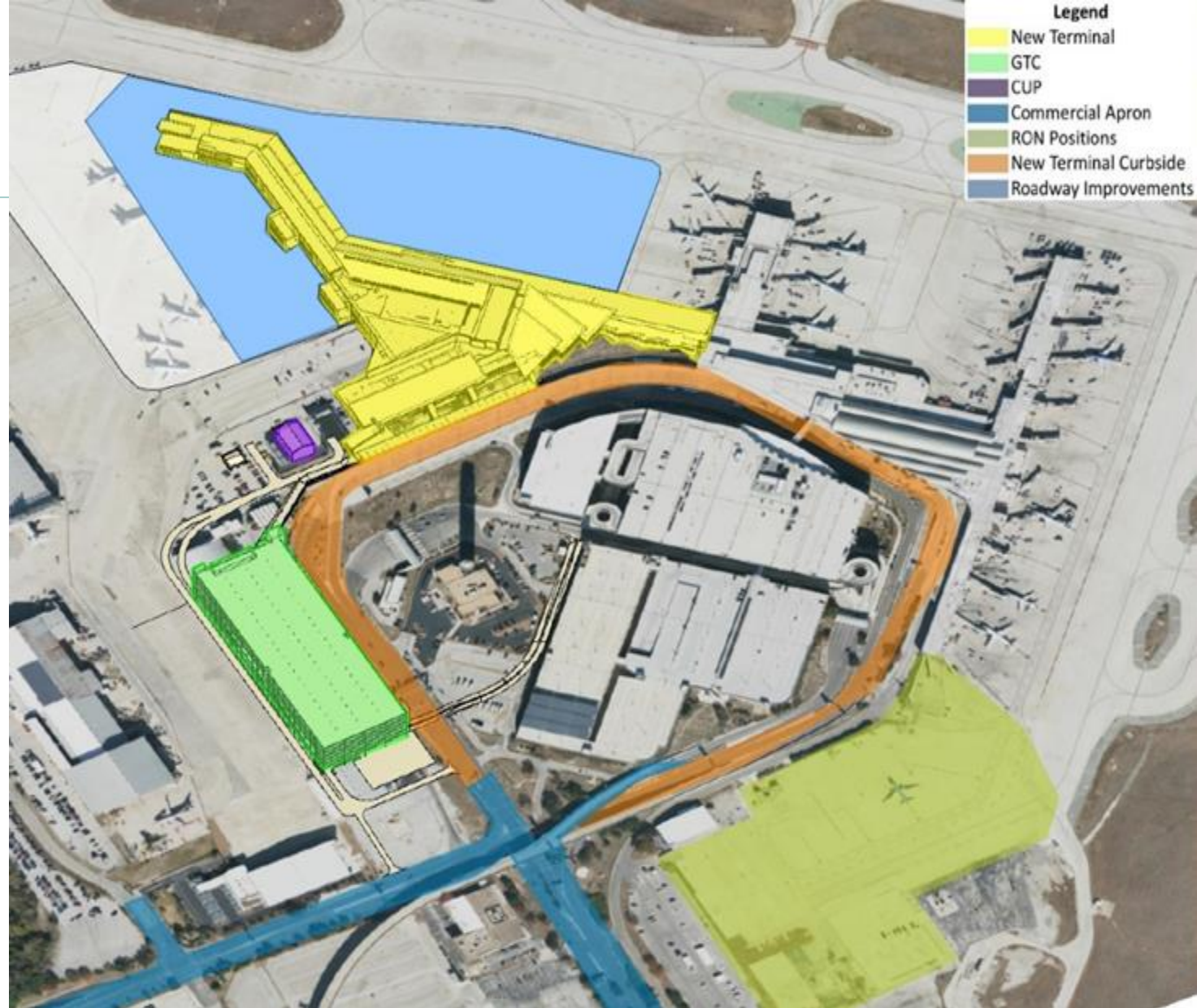
Scope of Services

Will provide:

- Centralized on-airport passenger access to taxis, rideshares, hotel shuttles, and public transportation
- Up to 2,500 additional parking spaces

Progressive Design/Build contract

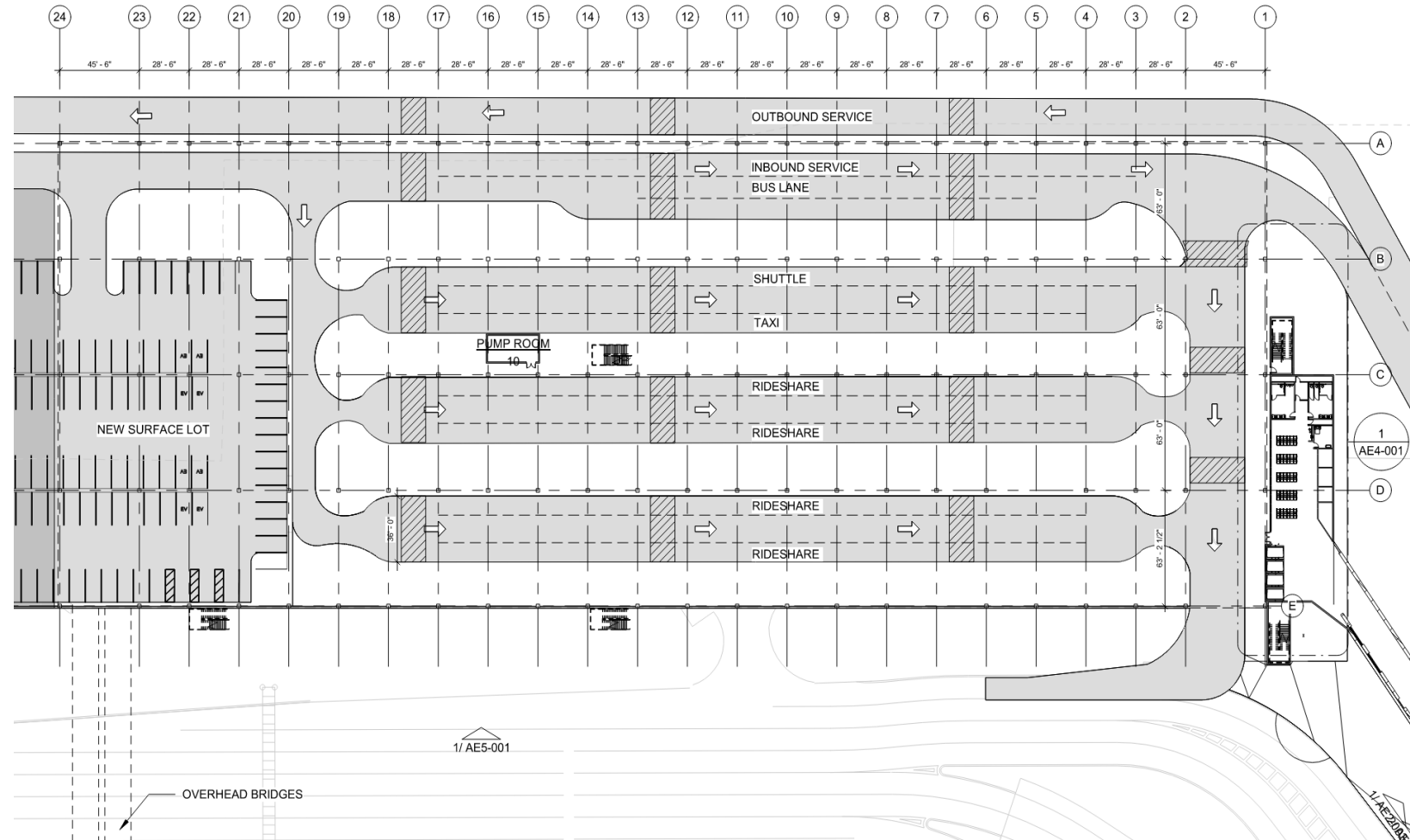
- \$110,000,000 estimated contract budget
- Anticipate selection in April 2025
- Construction completion in Summer 2027



Ground Level Layout Concept



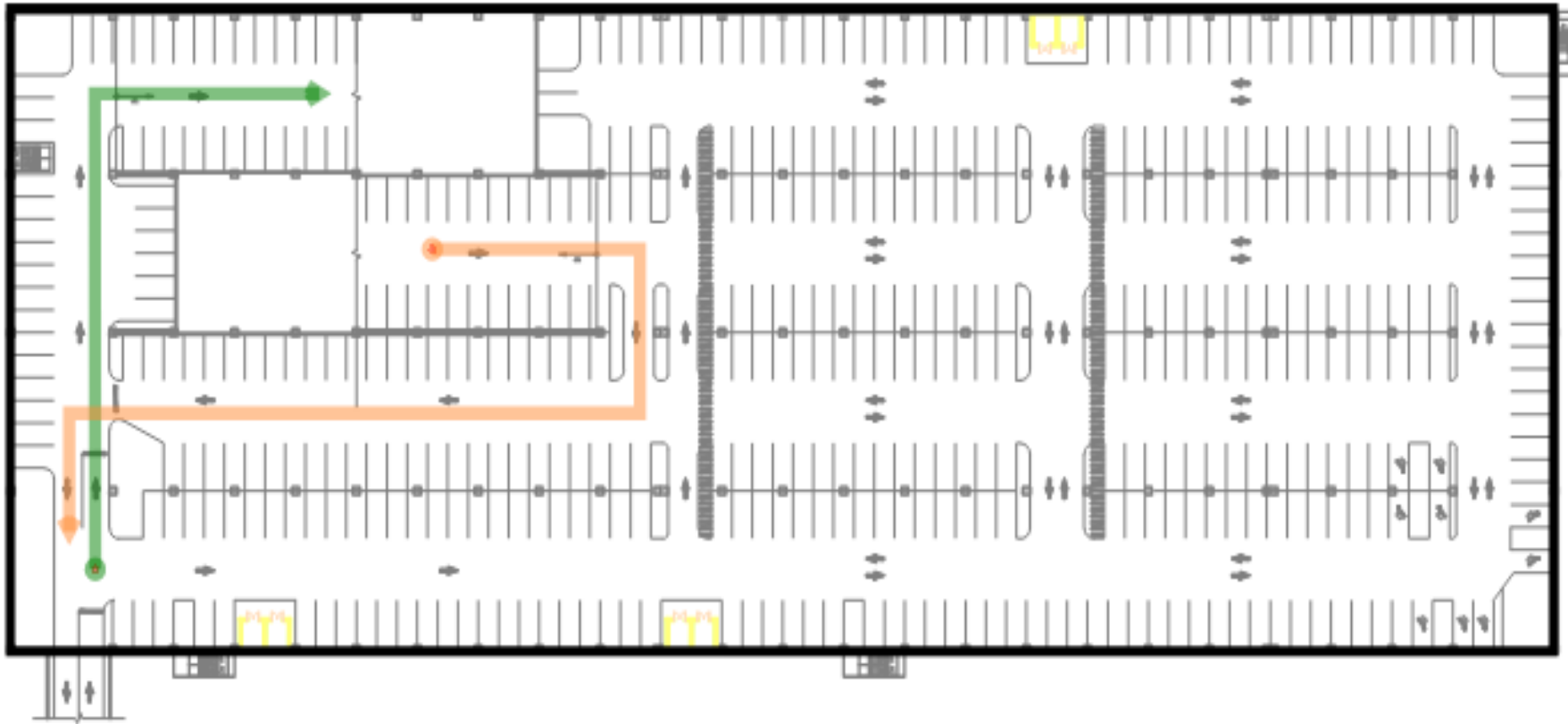
- Will support taxis, rideshare, shuttles, and bus service
- Will reduce curbside congestion by removing commercial traffic from the terminal loop road



Parking Level Layout Concept



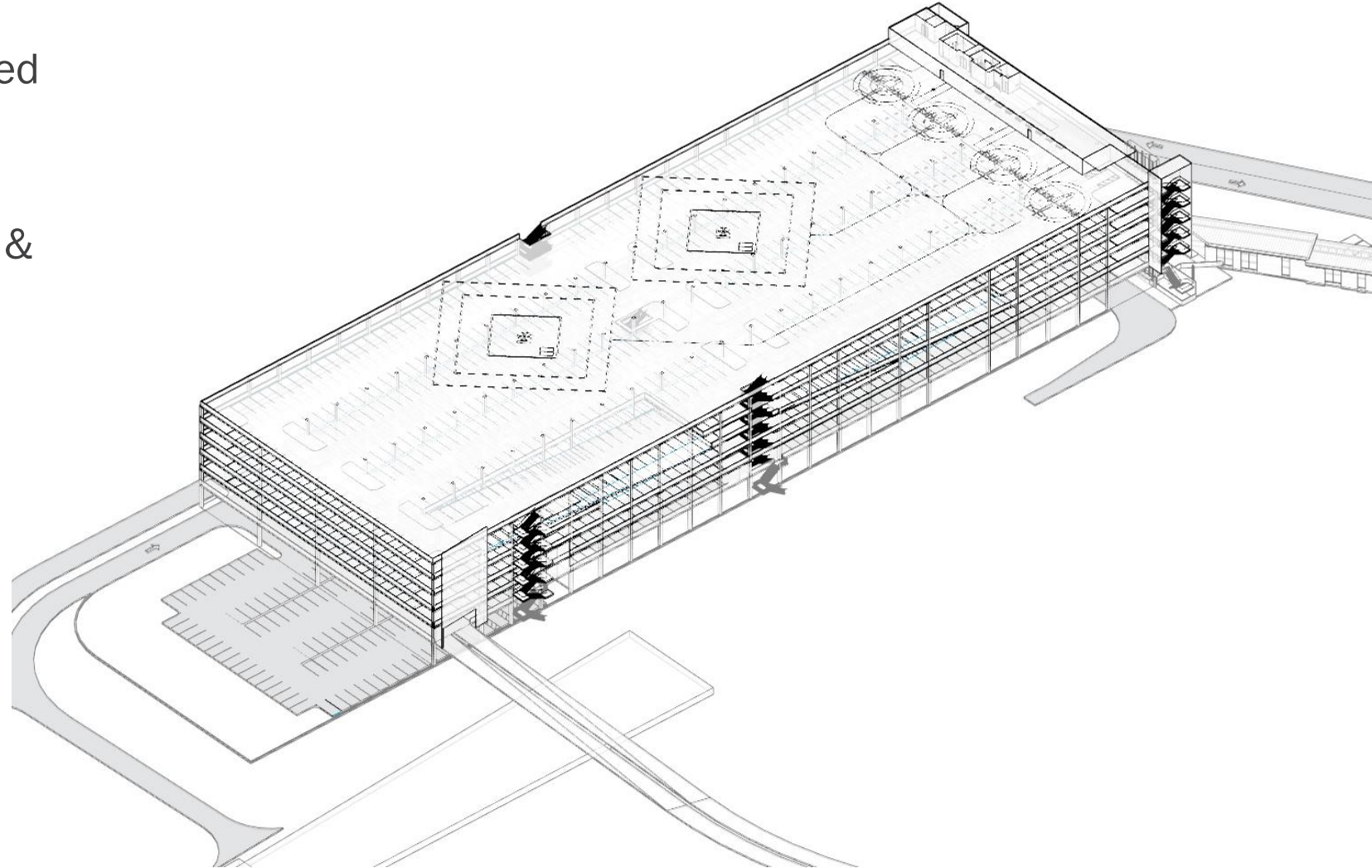
- Up to 450 to 500 spaces per level



Rooftop Parking & Future eVTOL Landing



- Rooftop parking will be constructed with the potential to include landing sites for eVTOL aircraft (Electric Vertical Take-Off & Landing)



Submission Instructions



Online submission will be utilized via CivCast at: www.civcastusa.com/bids
Solicitation was released on November 08, 2024; and is due on January 07, 2025, at
10:00 A.M. CT.

- **Hard or emailed copies of proposals will not be accepted.**
- Utilize the Table of Contents/Submittal Checklist to ensure tabs and forms are in the identified order listed in solicitation.
- Keep submittal relevant to project.
- Company/Firm legal name must match the Texas Secretary of State website listing.
- **Respondents are strongly encouraged to submit their proposals electronically well in advance of the submission deadline to avoid any last minute challenges.**

Restriction of Communications

- No communication with 1) City Officials from the release of the solicitation until the contract is posted for consideration as an “A Session” agenda item and 2) City Staff from the release of the solicitation until Contract Award except:
 - Questions at today’s pre-submittal conference;
 - Small Business Office (SBO) can be reached until the submittal deadline (do not recommend);
 - Submit written questions by 4:00 p.m. CT, December 02, 2024.
- Failure to adhere to the restrictions on communications policy may lead to disqualification of Respondent’s submittal from consideration.
- City staff can reach out to Respondents to clarify documents submitted and to begin negotiations once evaluation is completed, if applicable.

Solicitation Document Requirements



TAB	TITLE	DESCRIPTION
1	Submittal Checklist and Table of Contents (Form 1)	Ensure all required information is in correct order.
2	Executive Summary	One (1) page summary stating relevant information of your firm.
3	Contract Template/General Conditions Review	<u>Must</u> provide written acknowledgment that Respondent accepts the terms, conditions and requirements of the City's General Conditions.
	Statement of Qualifications	<u>Must</u> provide a narrative document addressing all evaluation criteria and project defined in this solicitation.

Evaluation Criteria



A: Experience, Background, Qualifications of Firm, Key Personnel, and Key Sub-Consultants (45 points)

TAB	TITLE	DESCRIPTION
4	Qualifications	Respondent's D-B qualifications relating to scope. (2 pages)
5	Team Profile	Respondent Team description
6	Proposed Key Personnel/Organizational Chart	Organizational Chart of proposed team.
7	Project Sheets	4 programs in the last 10 years
8	Resumes	One-page resume for each key team member.

Evaluation Criteria



B: Understanding of the Project and Proposed Management Plan (25 points)

TAB	TITLE	DESCRIPTION
9	Understanding of the Project and Proposed Management Plan	Respondent shall submit information in a brief narrative plan which clearly and concisely describes the organizational structure, resource availability and approach to project management and execution. This section shall be limited to ten (10) pages (Indexed and labeled as Tab “9”) in the submittal.

Evaluation Criteria



C: Design-Build Team's Past Experience Working Together as a Team(10 points)

TAB	TITLE	DESCRIPTION
10	Design-Build Team's Past Experience Working Together as a Team	<p>List the projects and timeframe for which respondents proposed D-B team has worked together on similar airport parking garage projects.</p> <p>In narrative form, using a maximum of two (2) pages, briefly describe relevant projects on which Respondents proposed D-B team has worked together.</p>

Evaluation Criteria



D: Small Business Economic Development Advocacy (20 points)

TAB	TITLE	DESCRIPTION
	Small Business Economic Development Advocacy	Respondents that qualify as Joint Venture entity(s) and which include M/WBE entity(s) at the Prime Contractor level will receive up to 20 (twenty) Evaluation Preference points.

Evaluation Criteria Summary



Evaluation Criteria Summary	Maximum Points
A. Experience, Background, Qualifications including Key Sub-Consultants	45
B. Understanding of the Project and Proposed Management Plan	25
C. Design-Build Team's Past Experience Working Together as a Team	10
D. Small Business Economic Development Advocacy Program (SBEDA)	20
Total Maximum	100 Points

Required Uploads



Upload each Document Individually

Submittal Cover/Signature Page (Form 2)

SOS Filing Number and SAMS Unique Entity ID and/or CAGE number

Contracts Disclosure Form (Form 3)

<https://www.sanantonio.gov/portals/0/files/clerk/ethics/ContractsDisclosure.pdf>

Litigation Disclosure Form (Form 4)

SBEDA Subcontractor/Supplier Utilization Plan (Form 5)

Veteran-Owned Small Business Program Tracking Form (Form 6)

Local Preference Program (LPP) Identification Form (Form 7)

Heat Illness Prevention Acknowledgment Form (Form 8)

Letter of Insurability

Certificate of Interested Parties Form (Form 1295)

www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

New Parking Structure and Ground Transportation Center (GTC)



**Economic Development Department,
Small Business Office**

SBEDA Eligibility & SAePS Registration

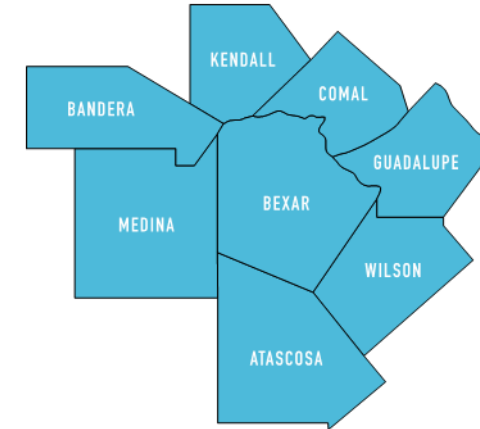
Doing Business with the City

SBEDA Eligibility



Certified by the SCTRCA as a Small Business Enterprise (SBE)

Note: Other certifications such as MBE, WBE or AABE may be needed to fulfill other SBEDA requirements or obtain certain SBEDA incentives



HQ or a Significant Business Presence in SAMSA

Significant business presence requires a firm to have an office in the SAMSA for 1 year and 20% of the firm's employees must work out of that SAMSA office



Register Your Business with the City

- To register, please follow the link:
www.sanantonio.gov/purchasing/saeps.aspx
 - Once registered, the SAePS portal will state online if your firm is SBEDA eligible or not
 - Prime awardees must be registered in the Central Vendor Registry; however, the City encourages all vendors to register in SAePS
 - SAePS is a great way to market your business and learn about upcoming solicitation opportunities
-

M/WBE Joint Venture Program, Subcontracting Programs,
Mentor Protégé Program

SBEDA Tools

M/WBE JOINT VENTURE PROGRAM

Depending on the percentage a M/WBE joint venture partner is performing, points will be awarded to joint venture prime respondents per the following chart:

% OF JV PERFORMANCE BY M/WBE	POINTS
50% or greater	20
40% - 49%	15
25% - 39%	10
10% - 24%	5
0% - 9%	0

SBEDA Tools



Subcontracting Program

For a Subcontractor to count toward a City required subcontracting goal(s), the Subcontractor must be SBEDA eligible and have the same certification(s) as the City required goal(s)

Note that self-performance by the Prime Contractor IS NOT ALLOWED

Goal Type	Percentage
SBE	20%
M/WBE	17%
AABE	3%



Subcontracting Program Important Notes



- Self-Performance of subcontracting goals by the Prime respondent **IS NOT ALLOWED** for this solicitation
- Not meeting the subcontracting goals at the time bids are due will deem a bid non-responsive
- The City of San Antonio has a vendor search function to find SBEDA eligible S/M/WBEs. Please visit the COSA vendor Listing to view or to download a listing of SBEDA eligible vendors registered with the City:
www.sanantonio.gov/purchasing/vendorinformation/cosavendorlisting.aspx
- ASSISTANCE IS AVAILABLE FOR COMPLETING THE UTILIZATION PLAN

SBEDA Tools



Mentorship Requirement

- The prime respondent awarded this contract is required to serve in the City's Mentor Protégé Program
- If matched with a protégé, your firm must participate in the partnership for 2 years
- Developing an action plan and meeting its objectives with your protégé is required
- Mentor and protégé must meet monthly
- To learn more about the program, please visit www.besanantonio.com

Utilization Plan, Commitment Form, and Waiver Requests

SBEDA Forms

Commitment Form



City of San Antonio

Prime Contractor/Joint Venture and Subcontractor/Supplier Utilization Commitment Form

Solicitation Name: *Ground Transportation Center*

Respondent Name:

Section A: If you are submitting a response to this solicitation as *either an individual respondent or as a Joint Venture entity*, please acknowledge the statements below by initialing the box:

- ☐ 1. In responding to this solicitation, I hereby affirm my firm's/entity's commitment to meet the subcontracting requirements indicated in the solicitation.
- ☐ 2. I understand that a Small Business Enterprise (SBE) Subcontracting Program goal of **twenty percent (20%)**, a Minority and/or Woman-Owned Business Enterprise (M/WBE) Subcontracting Program goal of **seventeen percent (17%)**, and an African American Business Enterprise (AABE) Subcontracting Program goal of **three percent (3%)** applies to this solicitation.
- ☐ 3. I understand that the Minority and/or Woman-Owned Business Enterprise (M/WBE) Joint Venture Program has been applied to this solicitation, which allows for a Joint Venture entity with one or more SBEDA eligible M/WBE entities to receive up to twenty (20) evaluation preference points. Based on the total percentage of dollars allocated to SBEDA eligible M/WBE joint venture entities, points will be determined per the Joint Venture Agreement provided with the proposed plan AND by submitting the Joint Venture Program Commitment Form with all required documentation as stated in Section B. **Please note that failure to submit a completed and signed Subcontractor/Supplier Utilization Commitment Form by the Prime or Joint Venture respondents will deem the response NON-RESPONSIVE.**
- ☐ 4. I understand that if awarded this contract, I am required to register as a Mentor in the City of San Antonio's Mentor Protégé Program for a term of two (2) years. Prime and Joint Venture entities will be required to register (www.sanantonio.gov/mentor).
- ☐ 5. I understand that to be eligible for the South Central Texas Region, the firm/entity must be headquartered or have a significant business presence in the region.
- ☐ 6. I understand that for SBEDA eligible and M/WBE eligible S/M/WBE firm participation in the subcontracting goals, the Subcontractor must be SBEDA eligible and M/WBE eligible. Self-performance by the Subcontractor shall not count towards the subcontracting goals. Please consult the City of San Antonio's SBEDA and M/WBE Ordinance for more information.
- ☐ 7. I understand and agree that the Subcontractor shall not pursue subcontracting goals without an approved Post-Award Subcontracting Goal Waiver Request, which is to be submitted with the Prime Contractor/Joint Venture and Subcontractor/Supplier Commitment Form, during or after the price proposal response (as determined by the City), will be grounds for termination of negotiations and will allow the City to enter into negotiations with another prime respondent.
- ☐ 8. I understand that in the absence of a Post-Award Vendor Subcontracting Waiver Request granted by the SBO, the failure of a firm or of a Joint Venture entity to attain these subcontracting goals for S/M/WBE firm participation in the performance of a Commercially Useful Function under the terms of its contract shall be a material breach and subject to penalties and/or sanctions available under the terms of this Agreement for violations of the SBEDA Ordinance, or under any other law. These penalties and/or sanctions will apply to all prime respondents including Joint Venture entity.

ALL individual respondents and Joint Venture entities must sign below to affirm that your firm/entity understands and agrees to the provisions above. If you are submitting a response to this solicitation as a Joint Venture entity, Section B (next page) must also be completed and signed:

Joint Venture/Prime Contractor's Authorized Agent:

Sign and Date:

- See subcontracting requirements of SBE 20%, M/WBE 17% and AABE 3%
- A Commitment Form should be completed and submitted at the time bids are due
- M/WBE Joint Venture evaluation preference points will be awarded based on SBEDA-eligibility, certifications, and makeup of the JV
- All individual Prime respondents and Joint Venture respondents are required to complete Section A of the Commitment Form

Commitment Form



Section B: This side must be completed by ALL joint venture entity respondents.
Please attach the Joint Venture agreement with all parties with this Commitment Form:

1. INFORMATION REGARDING BUSINESS ENTITIES ("ENTITY") COMPRISING THE JOINT VENTURE ("JV"):
Complete all sections for each entity that makes up the joint venture. Note that each JV entities will be referred to hereinafter with the title "E1", "E2", etc., throughout the form to help match information to a specific JV entity.

JV Entity	Entity Name	SBEDA Eligible	Contact Name	Contact Phone #	Contact Email
E1					
E2					
E3					
E4					

2. PROFIT AND LOSS BREAKDOWN BETWEEN JOINT VENTURE ENTITIES: Complete the percentage each JV entity will share in ownership, profits, and losses.

JV Entity	Ownership %	Profit Share %	Loss Share %	Capital Contribution %	Equipment Contribution %
E1					
E2					
E3					
E4					

The initials and signatures below affirm that the following statements are correct and include all information necessary to identify and explain the terms and operations of our joint venture. Misrepresentation of any and all information will result in the rejection of our proposal, termination of the contract if awarded, debarment, and action under federal or state laws concerning false statements. We agree and affirm that:

E1	E2	E3	E4
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

1. We understand that all information documented on this form is accurate and that any omission or misrepresentation of any and all information will result in the rejection of our proposal, termination of the contract, debarment and initiating action under federal or state laws concerning false statements.

2. We attest that we have attached a Joint Venture agreement with our response to this is not limited to: Allocation of ownership, right to control work to be performed and managed by each entity, and venture.

3. A legal agreement between all Joint Venture entities will be fully-executed agreement will be submitted to the City

4. I/We certify that we have provided the City with current, complete, and accurate information regarding all payments, changes in provisions of the joint venture and termination of records relevant to the joint venture agreement and during the term of the contract

5. We estimate that _____ percent of this contract will be subcontracted. (Must be completed by the Joint Venture entity, subject to change per the price proposal submission & subcontracting goal requirements)

PLEASE NOTE THAT ALL PARTNERS IN THE JOINT VENTURE ENTITY MUST SIGN ON THE NEXT PAGE

- See subcontracting requirements of SBE 20%, M/WBE 17% and AABE 3%
- All Joint Venture respondents must complete Section B of the Commitment Form
- All Joint Venture respondents must detail business information of each JV entity and the profit and loss breakdown between JV entities

Commitment Form



If you are submitting a response to this solicitation as a Joint Venture entity, please sign below to affirm that your entity understands and agrees to the provisions above:

E1	Entity Name: <input type="text"/>
	Signature: <input type="text"/> Print Name: <input type="text"/>
	Title: <input type="text"/> Date: <input type="text"/>
E2	Entity Name: <input type="text"/>
	Signature: <input type="text"/> Print Name: <input type="text"/>
	Title: <input type="text"/> Date: <input type="text"/>
E3	Entity Name: <input type="text"/>
	Signature: <input type="text"/> Print Name: <input type="text"/>
	Title: <input type="text"/> Date: <input type="text"/>
E4	Entity Name: <input type="text"/>
	Signature: <input type="text"/> Print Name: <input type="text"/>
	Title: <input type="text"/> Date: <input type="text"/>

- See subcontracting requirements of SBE 20%, M/WBE 17% and AABE 3%
- All Joint Venture respondents and their entities must sign on page 3 in addition to their signature on page 1.

Version 2024-10-24

Post-Award Waiver Request



Post-Award Vendor Subcontracting Waiver Request Form

Contract Title:	<input type="text"/>		
Contract #:	<input type="text"/>	Contact #:	<input type="text"/>
Prime Contractor:	<input type="text"/>	Contact Email:	<input type="text"/>
Contact Person:	<input type="text"/>	Date:	<input type="text"/>

The purpose of this waiver is to address the good faith efforts made in meeting the required subcontracting goal(s) for this project. The Prime contractor should submit or has submitted a change to Utilization Plan with this waiver request.

1. Describe the rationale for your waiver request for not meeting the subcontracting goal(s) applied to this project.

Check the box(s) that best explain why the subcontracting goal(s) applied were not met.

- ☐ The city issued a change order that limited subcontracting opportunities or required expedited completion of the scope of work causing the subcontracting goal(s) to not be met.
- ☐ A S/M/WBE to be utilized lost certification and could not be replaced with another S/M/WBE who could perform the scope of work.
- ☐ There were other issue(s) that resulted in the subcontracting goal(s) not being met.

Please provide further detail for the checked box(s) above.

- Once awarded, if a Prime Contractor can not meet a committed goal, a Post Award Vendor Subcontracting Waiver Request form should be submitted for consideration and approval by the Small Business Office
- For more details see this link: <https://www.sanantonio.gov/SBO/Forms>

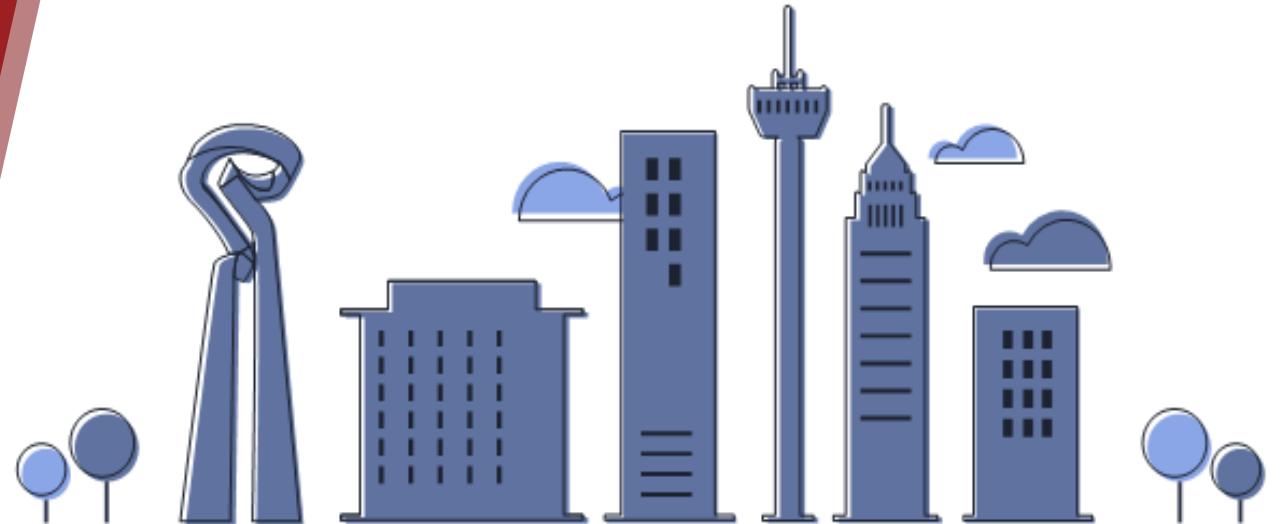
CCMS Reporting, Mentor Protégé Program, Bonding
Assistance Program

Post-Award Information

Post-Award Requirements

City Contract Management System

- Report payments to subcontractors and monitor attainment of the SBEDA goals on a monthly basis
- Submit Change of Utilization Plans if the value of the contract changes or if subcontractors are added, removed, or reduced in value with proper documentation



Capacity Building & Bonding Assistance Program



Small Business Contractors in San Antonio

- **Maximize** your bonding capacity
- **Bid** on more City of San Antonio Contracts
- **Grow** your own business to the next level

CAPACITY BUILDING & BONDING ASSISTANCE PROGRAM



CAPACITY BUILDING

- Education & training
- One-on-one technical assistance & guidance



BONDING ASSISTANCE

- Access to specialty bond markets
- Access to funds for city bond requirements

**GET IN THE GAME!
GET BONDED TODAY!**

For more information visit
www.sanantonio.gov/edd

City of San Antonio Capacity Building & Bonding Assistance Program
Jim Swindle, AFSB - Program Administrator | Alamo Surety Bonds

(210) 930-5550 jim@alamobonds.com



SAEDC

SAN ANTONIO ECONOMIC
DEVELOPMENT CORPORATION

CITY OF SAN ANTONIO
ECONOMIC DEVELOPMENT
DEPARTMENT

Mentor Protégé Program

- The City of San Antonio has partnered with Alamo Colleges to establish a Mentor Protégé Program.
- The Program starts with a series of classes to help S/M/WBEs write a business plan, understand financials, learn how to market, etc.
- S/M/WBEs are then partnered with mentors for a 2-year period to learn best business practices.



ALAMO
COLLEGES



Contact Us



SBEDA Program

- Email: SBEDAdocs@sanantonio.gov
- Phone: 210-207-3922
- Website: www.sanantonio.gov/sbo



Central Vendor Registry Support

- Phone: 210-207-0118
- Website: www.sanantonio.gov/purchasing/saeps



SCTRCA

- Phone: 210-458-3225
- Website: www.sctrca.org



Mentor Protégé Program

Mario Hernandez, Program Manager

- Email: mhernandez1665@alamo.edu
- Phone: 210-486-0821
- Website: www.besanantonio.com



ALAMO
COLLEGES



Thank You
End of Presentation

Conflict of Interest Questionnaire



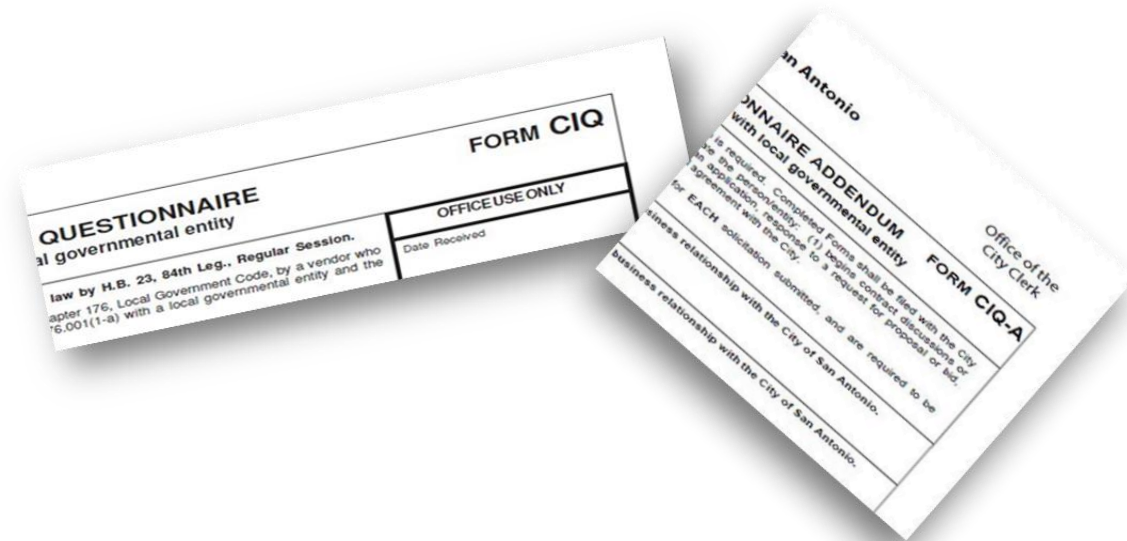
*Completed CIQ and CIQ-A Forms shall be filed with the Office of the City Clerk not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. **City only requires Prime Firms to submit the CIQ and CIQ-A forms.***

Do not include these forms with your proposal. The Procurement Division will not deliver the forms to the City Clerk for you.

CIQ: <https://www.ethics.state.tx.us/forms/conflict/>

CIQ-A:

<https://www.sanantonio.gov/Portals/0/Files/Ethics/OC-CI-Addendum.pdf>



Completed forms must be mailed to:
Office of the City Clerk, P.O. Box 839966, San Antonio, TX. 78283-3966

Labor Compliance



- The awarded Prime Contractor and their subcontractors must comply with the Prevailing Wage Decision.

COMPLIANCE - TOP 10

1 Post the appropriate Wage Determination and Notices for the project in a conspicuous location.

2 Pay time-and-a-half to workers who work on any of the 7 listed City Holidays.

3 Pay time-and-a-half to workers who work in excess of 40 hours in a given week.

4 Workers must be classified for the work performed, in accordance to the Wage Determination.

5 Prime Contractor is accountable and responsible for ensuring that all workers are paid the prevailing wage rates, including subcontractors.

6 Certified payrolls must be submitted through the LCP Tracker System, weekly.

7 Apprentices must be registered in an Apprenticeship Training Program which is approved by the US Department of Labor.

8 All workers must be paid on an hourly rate basis. No piece work or day labor rates.

9 Site Visits may be conducted to ensure proper work classification and wage rates.

10 If workers are underpaid, restitution to the worker is required and the City will impose penalties in accordance to the contract.

Should you have any questions during the project, contact the LCO assigned to the project or email laborcompliance@cityofsanantonio.gov.

Schedule of Events



SOLICITATION



November / December 2024

- Nov 08, 2024
- Nov 22, 2024; at 9:00 AM CT: Pre-Bid/Submittal Conference and Site Visit
- Dec 02, 2024; at 4:00 PM CT: Final Questions Accepted

POST SOLICITATION



January – March 2025

- Jan 07, 2025; at 10:00 AM CT: Submittals Due
- Feb 2025; Evaluation Process
- Interviews (If Needed) Mar 2025

FINALIZATION



May / June 2025

- May/June; Anticipated City Council Consideration

Addendums to Solicitation

- Changes and responses to questions received, in compliance with Restriction on Communications, will be posted as part of an addendum. It is Respondent's responsibility to review and ascertain whether addendums or revisions have been made prior to submission of a proposal. No oral statement of any person shall modify or otherwise change, or affect the terms, conditions, or specifications stated in the solicitation. Changes, if any, shall be made in writing only.
- **Respondent must confirm receipt of all amendments/addenda.**
- It is Respondent's responsibility to review site and ascertain whether addenda or revisions have been made prior to submission of a proposal.

Reminders - CIVCAST

- Today's Pre-Submittal Presentation will be released through the portal/site.
- Site Visit is scheduled for Friday, November 22, 2024; after the Pre-Submittal. Please refer to the solicitation for instructions.
- Failure to adhere to the Restrictions on Communications may deem your submittal non-responsive.
- Submit written questions by question deadline 4:00 PM CT, December 02, 2024.
- Submissions must be uploaded by 10:00 AM CT, January 07, 2025.
Please remember to click the “Submit Bid” button. If not, your bid will not be received by the City. LATE PROPOSALS WILL NOT BE ACCEPTED. Failure to properly click SUBMIT will not be grounds for acceptance of late proposal.

QUESTIONS?





Thank You
Reminder to Sign-In

Sign-In Form: <https://forms.office.com/g/2ky7emKbx8>

First Name	Last Name	Title	Organization	Phone	Email2
Tom	Devine	Project Manager	Walker Consultants	415.830.3201	Tdevine@walkerconsultants.com
Hannah	Haifa	Procurement Specialist II	COSA - Finance	210-207-0621	hannah.haifa@sanantonio.gov
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Sandy	Lenz	Director of Marketing	Lopez Salas Architects, Inc. / SBE/MBE	210-380-2871	lenz@lopezsalas.com
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Richard	Liu	Principal	AEC-WAY (Structural)	512-472-1689	rlui@aec-way.com
Kenda	McCormick	Office Manager	Lopez Salas Architects / MBE SBE	210-734-4448	McCormick@lopezsalas.com
Claudia	Orellana	Designer	HarrisonKornberg Architects (HUB/MWDBE)	832-533-4698	corellana@harrisonkornberg.com
Veronica	Escobedo	Sr. Marketing Specialist	JE Dunn + Guido, a joint venture	512-417-6121	Veronica.escobedo@jedunn.com
Jade	Boccia	Construction Contract Coordinator	City of San Antonio	210-207-3530	jade.boccia2@sanantonio.gov
Cecilia	Hours	Principal	MP Studio Landscape Architecture	2103145582	Cecilia@mpstud.io
Rachel	Brehm	Business Development Director	Page	512-382-3666	rbrehm@pagethink.com
Josh	Bedre	Principal	AEC TVLin	512-737-4012	josh.bedre@aecollab.com
Jesse	Reyes	Associate Principal	CNg Engineering	2102248841	Jesse.reyes@cngengineering.com

CITY OF SAN ANTONIO

DESIGN-BUILD CONTRACT

**NEW PARKING STRUCTURE AND GROUND
TRANSPORTATION CENTER**



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

DESIGN-BUILD CONTRACT

ARCHITECTURAL AND ENGINEERING

DESIGN AND CONSTRUCTION SERVICES

FOR THE

NEW PARKING STRUCTURE AND GROUND TRANSPORTATION CENTER

PROJECT NUMBER:

33-03350

This **DESIGN-BUILD CONTRACT** (hereafter referred to as “Contract”) is made and entered into by and between the **City of San Antonio**, a Texas municipal corporation (hereafter referred to as “City” or “City”) and **NAME OF SELECTED RESPONDENT**, with a place of business at **NAME AND ADDRESS OF RESPONDENT** (hereafter referred to as “Design-Builder”). (City and Design-Builder individually are referenced to herein as “a Party” and collectively referenced to herein as “the Parties”).)

This Contract for the architectural, engineering, construction and related services of a project identified as the: New Parking Structure and Ground Transportation Center Project, Project No. 00-00000 in the City of San Antonio, County of Bexar, Texas (hereafter referred to as “the Project”) is being executed by City, pursuant to City Charter, Ordinances, and Resolutions of the San Antonio City Council, and by Design-Builder.

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ARTICLE 4.	CONSTRUCTION DOCUMENTS
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ARTICLE 6.	TIME FOR CONSTRUCTION: THE CONTRACT TIME
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DESIGN-BUILD CONTRACT SIGNATURE PAGE

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EXHIBIT C	GENERAL CONDITIONS FOR CITY OF SAN ANTONIO DESIGN/BUILD CONTRACTS
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EXHIBIT N	PREVAILING WAGE DECISION
EXHIBIT O	FEDERAL CONTRACT PROVISIONS

ARTICLE 1. DEFINITIONS

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

- 1.1. **Amendment.** Written modification of the terms and conditions of the Contract signed by both City and Design-Builder, (and approved by the San Antonio City Council, if required) issued on or after the Effective Date of the Agreement.
- 1.2. **Approved Fixed Price Proposal or AFPP.** Fixed Price Proposal approved by City, which shall include the cost of construction and all other construction-related costs to be incurred by the Design-Builder, including all related General Conditions costs, unless otherwise established in the Guaranteed Maximum Price (as defined below) or a specific Work Package (as defined below), and shall establish the not-to-exceed amount to paid by City for all work necessary to deliver the defined Work Package, as required by City, within Design-Builder's Baseline Construction Schedule, attached hereto, incorporated herein by reference and labeled as **EXHIBIT G: DESIGN BUILDER'S BASELINE CONSTRUCTION SCHEDULE** and within the Project Budget, and shall be subject to City's approval.
- 1.3. **Architect/Engineer of Record (also referred to as Architect or Engineer).** Design-Build team registered as an architect or engineer, pursuant to Texas Occupations Code Ann., Chapter 1051 (Architect) or Chapter 1001, (Engineer), and which/who will provide professional architectural/engineering services, have direct responsibility for compliance with the design and supervision of the architectural/engineering work associated with the Project, will perform certain contract administration responsibilities, as set forth in the Contract and shall perform all other applicable requirements of the relevant and applicable Texas Occupations Code Annotated.
- 1.4. **Baseline Construction Schedule.** A component of the overall Project Schedule, the baseline construction schedule is the final approved construction schedule agreed to during Guaranteed Maximum Price (GMP) negotiations that indicates the start and finish of construction and shows the order in which the Design-Builder proposes to carry out the construction work.
- 1.5. **Certificate of Substantial Completion.** Document issued by City at the stage in the progress of the work when the work, or designated portion of the work defined by City, is sufficiently complete in accordance with the Contract so that City may occupy or use the work for its intended use. Said Certificate of Substantial Completion Form is attached hereto, incorporated herein by reference and marked as **EXHIBIT L: SCHEDULE OF VALUES; SUMMARY SPREADSHEET AND BACKUP DOCUMENTS; CERTIFICATE OF SUBSTANTIAL COMPLETION**.
- 1.6. **Change Order.** Written modification of the terms and conditions of the Contract signed by both City and Design-Builder (and approved by the City Council, if required) that authorizes one or more of the following: (a) an addition, deletion or revision in the Work, (b) an adjustment in the Contract Sum or the Contract Times and is issued on or after the Effective Date of the Contract: and/or (c) an adjustment of a completion date

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- 1.7. **City.** Defined as The City of San Antonio, Texas, a home-rule, Texas Municipal Corporation located in Bexar County and identified as “City” in the Contract and these General Conditions, is referred to throughout the Contract Documents as if singular in number.
- 1.8. **City Council.** Means the duly elected members of the City Council of the City of San Antonio, Texas.
- 1.9. **City Designated Representative (CDR).** Person(s) designated by City to act for City.
- 1.10. **City’s Project Criteria.** All program elements, drawings, standards, schedules, reports, surveys, specifications and systems and product descriptions, which are created by Design Criteria Consultant and approved by City, used to prepare the Fixed Price Proposal(s) or GMP, as applicable, and Construction Documents.
- 1.11. **Claim.** Demand or assertion by one of the Parties seeking, as a matter of right, an adjustment or interpretation of the Contract terms, payment of money, extension of time or other relief, with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between City and Design-Builder arising out of or relating to the Contract. Claims must be initiated by written notice, signed and sworn to by an authorized corporate officer (if not a corporation, then an official of the company authorized to bind Design-Builder by his/her signature) of Design-Builder, verifying the truth and accuracy of the claim.
- 1.12. **Compensation.** Amounts paid by City to Design-Builder for completed services under this Design-Build Contract.
- 1.13. **Construction Progress Schedule.** The Construction Progress Schedule, is a required monthly submittal which shall be submitted with each Application for Payment showing construction progress as it relates to the approved Baseline Construction Schedule.
- 1.14. **Contract.** The Design-Build Contract Architectural and Engineering Design and Construction Services for the New Parking Structure and Ground Transportation Center project number 33-03350 including all exhibits thereto.
- 1.15. **Contract Documents.** Construction Contract between City and Design-Builder, which consists of, but is not limited to, the solicitation documents, to include addenda, the Notice of Award, an enabling City of San Antonio Ordinance, and all other contract-related documents, which include:
- 1.15.1. Amendments, Change Orders, Field Work Directives, a written order for minor changes in Work issued by City;
 - 1.15.2. Contract including exhibits;
 - 1.15.3. General Conditions;
 - 1.15.4. Special Conditions;
 - 1.15.5. Construction Drawings;

1.15.6. Technical Specifications;

Any geotechnical and subsurface reports, which City may have provided to Design-Builder, specifically are excluded from the Contract Documents.

- 1.16. Contract Drawings and Specifications.** All the design documents provided by Design-Builder and approved by City pursuant to the Contract including, without limitation, those for use in constructing the Project, performing the Work and the rendering of the Project fully operational, signed and sealed detailed plans, drawings, specifications, manuals, and related materials prepared by the Architect/Engineer of Record.
- 1.17. Contract Sum.** The total maximum not-to-exceed amount payable by City to Design-Builder for performance of the Work under the Contract.
- 1.18. Construction Work.** Shall mean whatever is done by or required of Design-Builder to perform and complete its duties relating to the construction of the Project under the Contract, including, without limitation:
- 1.18.1. construction of the whole and all parts of the Project in full and Strict Compliance with this Contract;
 - 1.18.2. prompt payment of all labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling, other utilities and things required for the construction of the Project;
 - 1.18.3. the procurement and furnishing of all necessary permits required for the construction of the Project;
 - 1.18.4. the creation and submission to City of detailed, as-built drawings depicting all as-built construction in required format;
 - 1.18.5. the furnishing of Design-Build Construction surety bonds and all insurance documents as required by the Contract;
 - 1.18.6. the furnishing of all equipment and product warranties, manuals, test results and user guides required by the Contract or otherwise reasonably available to Design-Builder and/or standard in the industry; and
 - 1.18.7. the furnishing of all other services and things required, or reasonably inferable from the Contract Documents, including the provisions of **Article 7** below.
- 1.19. Cost of the Construction Work.** Costs necessarily incurred in the performance of the Construction Work, for items specific to the Project and the Contract requirements, and paid or payable by Design-Builder, and not included in the Management Fee, as set forth herein. Cost of the Construction Work is further defined in **Article 7** herein.
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1.20. Drawings (or Plans). Graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of Work, generally including elevations, sections, details, schedules and diagrams.

1.21. Design-Builder. The Design Builder is **NAME OF SELECTED RESPONDENT**, which is the entity entering into this Contract with the City to include its officers, partners, employees, agents and representatives, and all sub-contractors, if any, as well as all other persons or entities for which Consultant legally is responsible. Design-Builder is referred to throughout the Contract Documents as if singular in number. The term “Design-Builder” means the Design-Builder or the Design-Builder’s authorized representative(s).

Design-Builder is a person registered and licensed as an Architect as defined pursuant to Texas Occupations Code Ann., Chapter 1051, a person registered and licensed as a Landscape Architect as defined pursuant to Texas Occupations Code, Chapter 1052, a person registered and licensed as a professional Engineer pursuant to Texas Occupations Code, Chapter 1001, and/or a firm employed by City to provide professional Architectural or Engineering services, exercising overall responsibility for the design of a Project, or a significant portion thereof, performing certain contract administration responsibilities as set forth in the Contract and responsible for the construction of the Project pursuant to City’s acceptance of the design. If the employment of Design-Builder is terminated, City may employ a new Design-Builder whose status under the Contract Documents shall be that of the former Design-Builder.

1.22. Design Criteria Consultant or Consultant. City’s independent consultant which/who may prepare/did prepare the Programming Documents and may provide peer review or other services on this Project.

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

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

1.25. Director. Director of City's Aviation Department (hereafter referred to as “Director”) to include the designated Project Manager identified in the Notice to Proceed issued by City.

1.26. Federally Assisted Contract. Any contract financed in whole or in part with federal funds.

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

1.28. Final Completion. Completion of all Design Services and all Construction Work required by, and in Strict Compliance with, the Contract, including Design-Builder's provision to City of

all documents and things required to be provided by the Contract, as stated herein and as an addition to **Article 5** of City's General Conditions for Design/Build Contracts.

- 1.29. Fixed Price Proposal (FPP).** Design-Builder's proposed not-to-exceed amount for the cost of the Work associated with a particular FPP, which shall include the cost of construction and all other construction-related costs to be incurred by Design-Builder, including all related General Conditions costs and preconstruction services costs, unless otherwise established in the Guaranteed Maximum Price (as defined herein below) or a specific Work Package (as defined herein below), and shall be the maximum price paid by City for all work necessary to deliver the defined Work Package, as required by City, within the Baseline Construction Schedule and the Project Budget, and shall be subject to City's approval.
- 1.30. Governmental Approval.** Any permit, license, consent, concession, grant, franchise, authorization, waiver, variance or other approval, guidance, protocol, mitigation agreement, or memoranda of agreement/understanding, and any amendment or modification of any of them provided by Governmental Entities, including State, local, or federal regulatory agencies, agents, or employees, or provided by City in its capacity as a regulatory agency for issuing state regulatory permits or approvals, which authorize or pertain to the Work or the Project, but excluding any such approvals given by or required from any Governmental Entity in its capacity as a utility owner.
- 1.31. Governmental Entity.** Any federal, State or local government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity other than City.
- 1.32. Key Personnel.** Means, collectively, those individuals listed in Exhibit __ (RFQ Submittal and Proposal Commitments) and any individuals approved by City to replace those individuals pursuant to the terms of the Contract Documents (each is a "Key Person").
- 1.33. Guaranteed Maximum Price (GMP).** Guaranteed maximum price for which all Construction Work will be completed within the Baseline Construction Schedule and the Project Budget. The GMP shall be comprised of the cost for Construction Work, Design-Builder's Management Fee, any/all AFPPs, as defined in **Article 8** herein, General Conditions costs, Pass Through costs, allowances and Design-Builder's contingency.
- 1.34. Law(s).** Means: (a) any statute, law, code, regulation, ordinance, rule or common law (including any code adopted by a Governmental Entity); (b) any binding judgment (other than regarding a claim or dispute under the Contract); (c) any binding judicial or administrative order or decree (other than regarding a claim or dispute under the Contract); (d) any written directive, guideline, policy requirement or other governmental restriction (including those resulting from the initiative or referendum process, but excluding those by City within the scope of its administration of the Contract Documents); or (e) any similar form of decision of or determination by, or any written interpretation or administration of any of the foregoing by, any Governmental Entity; in each case which is applicable to or has an impact on the Project or the Work, whether taking effect before or after the Effective Date. "Laws", however, excludes Governmental Approvals.

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- 1.35. **Liquidated Damages.** The liquidated damages that reflect the daily monetary compensation, as specified in **Article 6.10**, to be paid to City by Design-Builder for losses/damages incurred by City as a result of Design-Builder's failure to achieve the contractual deadlines for Substantial Completion and/or Final Completion of the Project and for unavailability or unauthorized replacement of Key Personnel.
- 1.36. **Management Fee.** Shall be composed of Design-Builder's combined overhead and profit at the agreed upon rate as shown in Design Builder's Fee Schedule, attached hereto, made a part hereof by reference and labeled as **EXHIBIT B: DESIGN- BUILDER'S FEE PROPOSAL**.
- 1.37. **Notice to Proceed (NTP).** Written notice given by City to Design-Builder establishing the date on which the Contract Time shall commence to run and the date on which Design-Builder may begin performance of its contractual obligations.
- 1.38. **Party.** City or Design-Builder individually herein.
- 1.39. **Parties.** City and Design-Builder collectively herein.
- 1.40. **Pass Through Costs.** Those costs incurred by Design-Builder for insurance, bonds, and the building permit that City agrees shall be paid by City, upon invoice of Design- Builder to City, that shall have no mark-up or fee applied to, or included in, the submitted invoice.
- 1.41. **Plans.** See Drawings.
- 1.42. **Programming Documents.** Documents provided by City to Design-Builder defining the Project's general goals and requirements. Typically, Programming Documents shall provide information such as the Project's estimated square footage of each usage type and other such elements that achieve the Project's goals.
- 1.43. **Project Documents.** All design documents, schedules, reports, surveys, specifications and systems and product descriptions, which are created by Design Builder and approved by City, used to prepare a Guaranteed Maximum Price or Fixed Price Proposal(s), as applicable.
- 1.44. **Project.** Services to be provided by Design-Builder pursuant to this Design-Build Contract for the design and construction of the Design-Build services for the New Parking Structure and Ground Transportation Center at San Antonio International Airport, which may include construction by the City or by a separate contractor, as further set out in the Scope of Services attached hereto, incorporated by reference and labeled as **EXHIBIT H: DESIGN-BUILD SCOPE OF SERVICES AND HOURLY RATE WITH SCHEDULE OF VALUES**
- 1.45. **SAMSA.** San Antonio Metropolitan Statistical Area or Relevant Marketplace, which collectively is comprised of Bexar County and the seven (7) surrounding counties of Atascosa, Bandera, Comal, Guadalupe, Kendall, Medina and Wilson.
- 1.46. **Samples.** Physical samples of materials, equipment or workmanship representative of some portion of the Work, furnished by the Design-Builder to City, to assist City and Design-

Builder in the establishment of workmanship and quality standards by which the Work shall be judged.

- 1.47. Schedule of Values.** Document specified in the General Conditions which divides an Approved Fixed Price Proposal and any accepted GMP Proposal, as applicable, into pay items, such that the sum of all pay items equals the Approved Fixed Price Proposal or accepted GMP Proposal. City, at its discretion, may require that the SOV be aligned with the Progress Schedule.
- 1.48. Shop Drawings.** Drawings, diagrams, illustrations, schedules, performance charts, brochures and other data prepared and furnished by Design-Builder or its agents, manufacturers, suppliers or distributors and which illustrate and detail some portion of the Work.
- 1.49. Specifications.** The elements of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards, workmanship for the Work, performance of related services and other technical requirements.
- 1.50. Strict Compliance.** Work that is nearly equivocal to the contract requirements, varying only in very minor and immaterial respects.
- 1.51. Sub-Consultant.** Any person or entity performing Architectural/Engineering or other professional services on behalf of Design-Builder.
- 1.52. Subcontractor.** Person or entity that has a direct contract with the Design-Builder or any other individual or entity that has a contract with such an individual or entity, at any tier, including vendors at any level that has a subcontract to perform a portion of the Work. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or Sub-Consultant or an authorized representative of same.
- 1.53. Submittal.** Documents, drawings, samples and/or mockups prepared by Design Builder to be submitted to City for review and/or approval.
- 1.54. Substantial Completion.** The stage in the progress of the Work when the Work. – or a designated portion thereof, which City agrees to accept separately – sufficiently is complete, in accordance with the Contract Documents, so City may occupy or utilize the Work or a designated portion thereof for its intended use with no inconvenience to City, as evidenced by City's issuance of a Certificate of Substantial Completion.
- 1.55. Supplier.** Entity manufacturer, fabricator, Supplier, distributor, material man or vendor having a direct contract with Design-Builder, or with any Subcontractor, to furnish or provide materials or equipment to be incorporated in the construction phase for the performance of the Construction Work.
- 1.56. Work.** Design services and construction work which is required, or may be, required to do to comply with the Contract , whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by Design-Builder, or any

Subconsultants, Subcontractors, material suppliers or any other entities for which Design-Builder is responsible, to fulfill Design-Builder's obligations under this Contract.

- 1.57. Work Packages.** Portion of the construction work within the Project addressed by a Fixed Price Proposal ("FPP") or an Approved Fixed Price Proposal ("AFPP").

END OF ARTICLE 1

ARTICLE 2. REGULATORY GUIDELINES, REQUIREMENTS, AND STANDARDS

- 2.1. Design-Builder shall perform all Design Services described in, contemplated by, inferable from or necessary to achieve the objectives stated in the Programming Documents and the Contract, including all Design Services necessary for the Project to be properly constructed by Design-Builder and used, operated and maintained by City in accordance with all applicable Laws, regulations, guidelines, requirements and standards. The Design Services shall be performed within the time provided by the Design Schedule for the performance of Design-Builder's Design Services, as provided in **Article 3** of this Contract. To the extent possible, design-builder shall meet City's "Facility Design Guidelines and Standards (FDGS)".
- 2.2. Design-Builder shall be responsible for registering the Project with the Texas Department of Licensing and Regulation-Architectural Barriers, and obtaining all reviews, inspections and approvals of Construction Documents required for compliance with all applicable state and federal handicapped and Americans with Disabilities Act (hereafter referred to as "ADA") requirements. Design-Builder also shall be responsible for ensuring that all facilities constructed in accordance with the Construction Documents created under this Contract comply with all applicable state and federal handicapped and ADA requirements.
- 2.3. Design-Builder guarantees that the Project will be executed and constructed in Strict Compliance with City-approved Construction Documents. Design-Builder further agrees to keep City informed about the progress and quality of the portion of the Work completed, and to endeavor to guard City against defects in the Work.
- 2.4. **City's Review of Design Services.** Subject to **Article 10** herein, Design-Builder shall submit all documents produced as part of the Design Services to City for review and approval in accordance with the terms of the Contract. However, any review or approval by City shall not relieve Design-Builder of or otherwise diminish either its obligations under the Contract or Design-Builder's sole responsibility for the accuracy and completeness of the Construction Documents or other submittals. City may direct Design-Builder to make changes to any Construction Documents to conform the documents to City's objectives. Any changes by Design-Builder ordered by City shall not relieve Design-Builder of its obligations under this Contract unless, and only to the extent, Design-Builder notifies City in writing, within five (5) calendar days after receipt of City's directive to make changes, concerning any adverse impact on schedules, budgets, operational costs, operational performance, satisfaction of regulatory requirements or other adverse impact that may result from the directed changes. Failure of Design-Builder to submit its notice within the five (5) calendar day period constitutes a waiver by Design-Builder of any claim for an adjustment to the Design Schedule or the Contract Time.
- 2.5. **Preparation of Site Information.** Design-Builder shall prepare and provide to City, as necessary, surveys, geotechnical surveys and topographic information including

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

- 2.6. Retention of Geotechnical Consultants.** Design-Builder is responsible to perform any and all necessary geotechnical work as it relates to the Project. In preparing the Construction Documents, City Design-Builder shall retain an experienced qualified geotechnical consultant to evaluate all geotechnical considerations relating to the design and construction of the Project. If City so chooses, City may retain a separate geotechnical consultant to review Design-Builder's evaluations. Design-Builder shall be responsible for designing the Project in accordance with the analysis and recommendations of the geotechnical consultant. City expressly does not warrant any geotechnical information provided by it, if any, to Design-Builder for use in connection with preparation of the Construction Documents.
- 2.7. Quality of Design Services.** Design-Builder shall be responsible for the professional quality, completeness, accuracy and coordination of Construction Documents. Design-Builder shall provide Design Services that shall result in an operationally cost-efficient and economical facility that meets all applicable environmental and regulatory requirements as of the date hereof, and uses the most appropriate available technology. Design-Builder shall provide for all quality control reviews required by sound professional architectural/engineering design practices and by governmental authorities having jurisdiction over the Project.
- 2.8. Compliance with Laws and Regulatory Requirements.** In providing Design Services, Design-Builder shall comply with all Laws and the authorities having lawful jurisdiction over the Project. Design-Builder shall design the Project to meet all applicable requirements of building control laws and regulations in relation to the design, construction, occupation, and operation of the Project including, without limitation, SAT Design Guidelines, SAT Design Standards environmental standards, fire and safety regulations and requirements and compliance with all other applicable standards and codes. Design-Builder shall be responsible to perform environmental work as it relates to the lead mitigation in the Project. In preparation of the Construction Documents, Design-Builder shall retain an experienced and qualified environmental consultant to evaluate all environmental considerations relating to the design of the Project and construction of the Work. If City so chooses, City may retain a separate

environmental consultant to review Design-Builder's evaluations. City expressly does not warrant any environmental information provided by it, if any, to Design-Builder for use in connection with preparation of the Construction Documents. Design-Builder accepts and agrees it shall be responsible for designing the Project in accordance with and in compliance with all federal, state and local environmental Laws.

- 2.9.** The Design-Builder warrants that Services provided by Design-Builder and all of its Sub-Consultants and Subcontractors under this Contract will be performed in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession or trade currently practicing under similar circumstances in Bexar County, Texas.
- 2.10.** Duty to Correct Errors. Design-Builder shall, without additional compensation, immediately correct any errors, omissions or deficiencies in its Design Services and Construction Documents.
- 2.11.** Design-Builder acknowledges and agrees that the Architect/Engineer of Record shall be responsible for all material aspects of the practice of architecture/engineering and shall have direct supervision of the architectural/engineering work associated with the Project. The Architect of Record shall have responsibility for compliance with the requirements of the Texas Occupations Code Ann. Chapter 1051. The Engineer of Record shall have responsibility for compliance with the requirements of the Texas Occupations Code Ann., Chapter 1001. Design-Builder further acknowledges and agrees that the Architect/Engineer of Record shall be responsible for compliance with the engineering design requirements, shall have direct supervision of the engineering work associated with the Project, and compliance with the engineering requirements of the Texas Occupations Code Ann., Chapter 1001.
- 2.12.** Design-Builder shall be represented by a registered professional Architect and/or Engineer, licensed to practice in the State of Texas, at meetings of any official nature concerning the Project including, but not limited to, scope meetings, review meetings, pre-construction meetings and other meetings as required by City.
- 2.13.** Design-Builder acknowledges and agrees that the Architectural Representative shall be responsible for compliance with the architectural design requirements and shall have direct supervision of the architectural work associated with the Project. The Architect of Record shall have responsibility for compliance with the architectural requirements of the Texas Occupations Code Ann., Chapter 1051.
- 2.14.** Design-Builder certifies that each individual or business entity which is an Architect or Engineer chosen to be a member of the Design-Build team was selected only on the basis of demonstrated competence and qualifications.
- 2.15.** Acceptance of the final Construction Documents by City shall not constitute nor be deemed a release of the responsibility and liability of Design-Builder, its employees, associates, agents, Sub-Consultants or Subcontractors for the accuracy and competency of their designs, drawings, specifications or other documents and

Services; nor shall such acceptance be deemed an assumption of responsibility or liability by City for any defect in the designs, working drawings, specifications or other documents and Work prepared by said Design-Builder, its employees, Sub-Consultants, Subcontractors and agents.

- 2.16.** The Design-Builder warrants that it has not employed or retained any company or person other than a bona fide employee working solely for Design-Builder to solicit or secure this Contract and that it has not, for the purpose of soliciting or securing this Contract, paid or agreed to pay any company or person a commission, percentage, brokerage fee, gift or any other consideration contingent upon or resulting from the award or making of this Contract. For breach of this warranty, City shall have the right to terminate this Contract under the provisions of **Article 15** of General Conditions for City of San Antonio Design/Build Contracts.

END OF ARTICLE 2

ARTICLE 3. CONTRACT DOCUMENTS, PRELIMINARY CONSULTATION AND PROJECT ANALYSIS

- 3.1. Execution of Contract Documents.** Execution of the Contract by Design-Builder is a representation Design-Builder has been provided unrestricted access to the existing improvements and conditions on the Project Site and it has visually investigated those conditions, to the extent reasonably possible. Design-Builder confirms its investigation of the Project Site was instrumental in preparing for Execution of the Contract Documents. Design-Builder may be entitled to additional compensation and time for unforeseen conditions that were not reasonably apparent, visible, and/or not shown on As-Builts, and could not be discerned by commercially reasonable surface inspection by Design-Builder as an entity experienced in engineering and construction. Design-Builder understands that no time or additional compensation will be awarded without City's approval, and Design-Builder will not make or be entitled to any claim for any adjustments to the Contract Time and Cost arising from Project Conditions Design-Builder discovered or in the exercise of reasonable care, should have discovered in the Design-Builder's investigation.
- 3.2. Correlation and Intent.** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by Design-Builder. Performance by Design-Builder shall be required only to the extent consistent with the Contract Documents and reasonably inferable from the Contract Documents as deemed necessary to produce the indicated results.
- 3.2.1.** The most recently issued Contract Document takes precedence over previous issues of the same Contract Document. In the event of a conflict among the Contract Documents, the following order of precedence shall govern the interpretation of such documents, with the highest authority listed as "a" and in descending order:
- a) Amendments and Change Orders to the Contract signed by Design-Builder and City;
 - b) Contract, including Exhibits;
 - c) Addenda, with those of later date(s) having precedence over those with earlier date(s);
 - d) Special Conditions;
 - e) General Conditions;
 - f) Technical Specifications;
 - g) Construction Drawings.

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- 3.2.2. In cases of discrepancy between any drawing and the dimension figures written thereon the dimension figures shall govern over scaled dimensions.
- 3.2.3. Organization of the Specifications into divisions, sections, articles, and the arrangement of Drawings shall not control Design-Builder in dividing the Work among subcontractors or establishing the extent of Work to be performed by any trade.
- 3.2.4. Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. Where the phrases "directed by," "ordered by" or "to the satisfaction of" City or City's COI or other specific designation occur, it is to be understood that the directions, orders or instructions to which they relate are those within the scope of and authorized by the Contract Documents.
- 3.2.5. Reference to manufacturer's instructions, standard specifications, manuals or codes of any technical society, organization or association, or to any other documents, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code in effect at the time of opening of Design-Builder's Bid Proposal, except as otherwise may be specifically stated or where a particular issue is indicated. Municipal and utility standards shall govern, except in case of conflict with the Specifications. In case of a conflict between the Specifications and the referenced standard, the more stringent shall govern.
- 3.2.6. Notwithstanding the order of precedence in **Article 3.2.1**, in the event of a conflict among any standard or specification applicable to the Project established by reference contained in the Contract Documents to a described publication, Law, or of a conflict among documents with equal priority, the more stringent requirement applies regardless of the order of precedence that would otherwise apply, unless the Parties otherwise agree. Design-Builder shall notify City of any perceived conflict and request City's determination respecting the order of precedence among such perceived conflicting provisions promptly upon becoming aware of any such perceived conflict. City shall have the right to determine which standard or specification is more stringent in the event of ambiguity.
- 3.2.7. Should the Drawings and Specifications be inconsistent, contract pricing shall be based on the better quality and greater quantity of work indicated. In the event of the above-mentioned inconsistency, City shall determine the resolution of the inconsistency.
- 3.2.8. In the Drawings and Specifications, where certain products, manufacturer's trade names or catalog numbers are given, such information is given for the sole and express purpose of establishing a standard of function, dimension, appearance and quality of design in harmony with the Work and is not intended for the purpose of limiting competition. Materials or equipment shall not be substituted unless such a substitution has been specifically accepted for use on this Project by City.
- 3.2.9. When the work is governed by reference to standards, building codes, manufacturer's instructions or other documents, unless otherwise specified, the edition currently in place as of the date of the submission of the bid shall apply.
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- 3.2.10.** Requirements of public authorities apply as minimum requirements only and do not supersede more stringent specified requirements.
- 3.2.11.** Each of the Contract Documents is an essential part of the agreement between the Parties, and a requirement occurring in one is as binding as though occurring in all. Contract Documents, by reference, are made a part of this Contract to the same extent as if set forth herein in full. Notwithstanding the above, any geotechnical and subsurface reports, which City may have provided to Design-Builder and which are not expressly included in the Contract Documents, specifically are excluded from the Contract Documents and are Reference Documents only.
- 3.3. Interpretation.** In the interest of brevity, the Contract Documents frequently omit modifying words such as “all” and “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.
- 3.4. Determining the Project Objectives.** Prior to the preparation of the Design Documents, as required by **Article 4** herein, Design-Builder first shall consult in detail with City and carefully shall analyze any information furnished by City concerning requirements of the Project including, but not limited to, any design, construction, scheduling, budgetary or operational requirements, limitations and objectives, as well as the Design scope specification(s). Should the goals of the Project subsequently change, either Design-Builder or City may request a review of the anticipated Services, with an appropriate adjustment in compensation.
- 3.5. Report On Project Requirements And Objectives.** Based on its study and analysis, by a mutually agreeable date after receipts of the final Program Document, Design-Builder shall prepare and submit to City a written report detailing Design-Builder's understanding and analysis of the Project requirements and identifying any design, construction, scheduling, budgetary, and operational or other problems which may result from said requirements. Design-Builder shall include proposed solutions, design alternatives if appropriate, addressing each of the identified problems. Design-Builder shall review report with City and shall implement such changes as City may require.
- 3.6. Schedule of Design Services.** Design-Builder shall, no later than ten (10) days prior to City's issuance of a written Notice to Proceed, submit for City's approval the baseline Design Schedule, addressing each stage of design shown in **EXHIBIT I: DESIGN TASKS AND DELIVERABLES FOR VERTICAL PROJECTS** attached hereto and incorporated herein by reference, for the performance of Design-Builder's Design Services, which shall include allowance for fifteen (15) calendar days for City's review of submissions and for approvals of authorities having jurisdiction over the Project. This Design Schedule shall, upon approval by City, be considered incorporated and made a part of this Contract, attached hereto, incorporated herein by reference and labeled as **EXHIBIT F: DESIGN-BUILDER'S DESIGN SCHEDULE AND DESIGN FEE SCHEDULE**.
- 3.7.** The Design Schedule, when approved by City, shall not, except for good cause, be exceeded by Design-Builder. Should Design-Builder at any time during the course of

performing the Contract, have reason to believe that it will be unable to meet any completion date in accordance with the Design Schedule, it immediately shall notify City in writing, stating the reason for the delay, the party responsible for the delay (if any) and the steps being taken to remedy or minimize the impact of the delay. Failure of Design-Builder to submit such notification shall constitute a waiver by Design-Builder of any claim Design-Builder may have for an adjustment to the Contract Sum, the Design Schedule or the Contract Time. All extensions of time shall be governed by **Article 10** of City's General Conditions for Design/Build Contracts. Subject to the provisions of **Article 10** of said General Conditions, City shall review and approve, where appropriate, the Design Schedule or any portion thereof.

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

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

3.9.1. THE ARCHITECT AND/OR ENGINEER, WHOSE WORK PRODUCT AND SERVICES ARE THE SUBJECT OF THIS CONTRACT FOR PROFESSIONAL SERVICES IN CONNECTION WITH THE DESIGN-BUILD CONTRACT FOR THE PROJECT WITH THE CITY OF SAN ANTONIO, TEXAS, AGREES TO INDEMNIFY AND HOLD HARMLESS CITY AND ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES, VOLUNTEERS, DIRECTORS AND REPRESENTATIVES (HEREAFTER INDIVIDUALLY AND COLLECTIVELY REFERRED TO AS "INDEMNITEE") FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LIABILITIES OR COSTS, INCLUDING REASONABLE ATTORNEY FEES AND DEFENSE COSTS, MADE UPON INDEMNITEE CAUSED BY OR RESULTING FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY ARCHITECT AND/OR ENGINEER OR ITS AGENT, CONSULTANT UNDER CONTRACT OR ANOTHER ENTITY OVER WHICH CONSULTANT EXERCISES CONTROL WHILE IN THE EXERCISE OF RIGHTS OR PERFORMANCE OF THE DUTIES UNDER THIS AGREEMENT. THIS INDEMNIFICATION SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM INDEMNITEE'S NEGLIGENCE OR WILLFUL MISCONDUCT IN INSTANCES WHERE THE NEGLIGENCE OR WILLFUL MISCONDUCT CAUSES PERSONAL INJURY, BODILY INJURY, DEATH OR PROPERTY DAMAGE. IF A COURT OF COMPETENT JURISDICTION FINDS ARCHITECT AND/OR ENGINEER AND CITY JOINTLY LIABLE, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.; and

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

END OF ARTICLE 3

ARTICLE 4. CONSTRUCTION DOCUMENTS

- 4.1. Time for Preparation.** Not later than the date called for in the Design Schedule attached hereto, made a part of this Contract by reference and labeled as **EXHIBIT F: DESIGN-BUILDER'S DESIGN SCHEDULE AND DESIGN FEE SCHEDULE**, after City has authorized Design-Builder to commence with the completion of the Design Documents, Design-Builder shall prepare Design Documents consisting of Drawings and Specifications and submit them to the City for approval at schematic design (SD), design development (DD) and construction documentation (CD) stages of design completion as defined in **EXHIBIT I: DESIGN TASKS AND DELIVERABLES FOR VERTICAL PROJECTS**. The Design Documents shall be based on the approved Programming Documents, any further adjustments to the facility program, the GMP or Fixed Price Proposal(s), as applicable, and shall be provided not later than the date called for in the design schedule.
- 4.2. The Design Documents.** Design-Builder shall submit the Design Documents to City and obtain City's acceptance and approval of the Design Documents at the stages of completion levels stated in **Article 4.1** herein, to proceed with development of Construction Documents. Design-Builder shall submit two (2) full size and three (3) half size sets of the Design Documents and two (2) sets of any accompanying any reports to City. All models and other documents also shall be provided to City in electronic format to be determined by City, including BIM and other electronic information.
- 4.3. The Construction Documents.** The Construction Documents shall include all Design Documents and any other necessary documentation to complete all Construction Work for its intended use. The Construction Documents shall include satisfaction of all testing, commissioning, permitting, qualifications, certifications, validations and obtaining regulatory approvals by all applicable regulatory authorities required to render the Project and all its components operational and functionally and legally usable for their intended purpose. Subject to the provisions of **Article 10.1.7** herein, City shall review and approve, where appropriate, the Construction Documents, or any portion thereof. If City has not submitted comments to Design-Builder within twenty (20) calendar days following receipt of the Construction Documents, Design-Builder shall verify City has no comments on the submitted Construction Documents.
- 4.4.** Guaranteed Maximum Price/Fixed Price Proposal(s) Includes Construction Documents.
- 4.5.** The Guaranteed Maximum Price or Fixed Price Proposal(s), as applicable and as set forth in **Article 8** herein, shall include the cost of constructing the Project in Strict Compliance with the requirements of the Construction Documents. It is anticipated, as of the execution date of this Agreement, City will require a GMP proposal from Design-Builder during the Construction Document phase at one hundred percent

(100%) of design completion, but City reserves the right to request a GMP from Design-Builder at any time.

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

END OF ARTICLE 4

ARTICLE 5. CONSTRUCTION SERVICES

- 5.1. Design-Builder shall perform all Construction Work necessary to construct the Project in accordance with this Contract and to render the Project and all its components operational and functionally and legally usable for their intended purpose, incorporating all of the Construction Tasks and Deliverables contained in **EXHIBIT J: CONSTRUCTION TASKS AND DELIVERABLES FOR VERTICAL PROJECTS**, attached hereto and incorporated herein by reference.
- 5.2. Design-Builder shall ensure that the Architect and/or Engineer of Record, or Design-Builder's architecture/engineering representative, shall make periodic visits (at minimum every seven (7) calendar days throughout the duration of construction) to the Project site to ensure that all facilities are being and have been constructed in Strict Compliance with the Construction Documents and endeavor to guard City against defects in the work. Within five (5) calendar days of each periodic visit, Design-Builder shall forward City the report generated from that visit electronically, in a format to be determined by City.

END OF ARTICLE 5

ARTICLE 6. TIME FOR CONSTRUCTION: THE CONTRACT TIME

- 6.1. Baseline Construction Schedule.** Design-Builder shall submit Design-Builder's Baseline Construction Schedule for the Construction Work no later than ten (10) calendar days prior to City's issuance of the initial Notice to Proceed for construction. The Baseline Construction Schedule must be approved by City. Design-Builder accepts and agrees the Substantial Completion date of the Project shall be **ENTER DATE** and Design-Builder accepts and agrees the Final Completion date of the Project shall be **ENTER DATE**. The Baseline Construction Schedule shall, upon approval by City, be considered incorporated by reference and made a part of this Contract, attached hereto and labeled as **EXHIBIT G: DESIGN-BUILDER'S BASELINE CONSTRUCTION SCHEDULE**. Any changes to the Baseline Construction Schedule, the Substantial Completion Date and/or the Final Completion date only may be made in writing with the written approval of the City.
- 6.2. Notice to Proceed.** After City has approved the Construction Documents, City shall issue a Notice to Proceed for the Construction Work, directing Design-Builder to proceed with the Work on the specified date indicated in the Notice to Proceed (hereafter referred to as the "Commencement Date").
- 6.3. Time for Completion.** Design-Builder shall commence Work on the Commencement Date and the Work shall be carried out regularly and without interruption. Design-Builder shall substantially complete the Construction Work, per the schedule provided by Design-Builder and approved by City for this Project, which schedule shall become part of **EXHIBIT G: DESIGN- BUILDER'S BASELINE CONSTRUCTION SCHEDULE** hereto, or such other date as later may be designated by Change Order (hereafter referred to as the "Scheduled Substantial Completion Date"). "Contract Time" is the period of time, including any authorized adjustments, allotted in the Contract Documents to achieve Substantial Completion of the Work, established between the -Notice to Proceed Date and the Scheduled Substantial Completion Date. Design-Builder shall achieve Final Completion of the Construction Work no later than **ENTER NUMBER OF DAYS** calendar days after achieving Substantial Completion.
- 6.4. Substantial Completion.** Prior to Design-Builder reaching the established Substantial Completion date, City and Design-Builder shall negotiate the terms and conditions of City taking partial occupancy of the defined core scope items if City so elects to take partial occupancy. Such partial occupancy or use may commence upon City and Design-Builder accepting in writing the responsibilities assigned to each for security, maintenance, damage to the Work and insurance. City and Design-Builder shall agree in writing the period for correction of the Substantial Completion Work and the commencement of warranties, if any. When Design-Builder considers this Substantial Completion portion of the Work to be complete, Design-Builder shall prepare and submit a list of items to be completed or corrected of the core scope items making up the Substantial Completion and submit such list to City. Upon receipt of Design-

Builder's list of items, City then shall determine if Design-Builder has met the requirements of the Substantial Completion.

- 6.5. Consent of Design-Builder to any partial occupancy or use shall not be unreasonably withheld. The state of the progress of the Work shall be determined by written agreement between City and Design-Builder.
- 6.6. Immediately prior to such partial occupancy or use by City, City and Design-Builder shall inspect the area in order to determine and record the condition of the Work.
- 6.7. Unless expressly agreed upon in writing, City's partial occupancy or City's use of a portion of or portions of the Work shall not constitute City's acceptance of Work not complying with the requirements of the Contract Documents. Partial occupancy or use by City does not constitute Substantial Completion and said partial occupancy or use by City starts only those warranty period(s) accepted in writing by City.
- 6.8. Upon Design-Builder meeting the Substantial Completion date and City taking partial occupancy or use of the area of the Project, City may assume responsibility for maintenance, security and insuring that portion of the Work put into use and accepted by City through notification of such responsibility in writing to Design-Builder.
- 6.9. Design-Builder shall:
 - a) employ and utilize the Key Personnel in the jobs specified in the Contract Documents, with each Key Person dedicated full time to their respective position unless otherwise approved by City in writing;
 - b) subject to **Article 6.9(c)**, not replace any Key Person without the City's prior written approval; and
 - c) if any Key Person resigned from Design-Builder's (or SubDesign-Builder's or Sub-Consultant's) employment, is unavailable due to disability, leave of absence, illness, retirement, death, termination, or removal from the position at City's request, replace such person as required pursuant to the process and requirements set forth in General Conditions **Article 5.10**.

6.10. Liquidated Damages

- 6.10.1. Delay in Substantial Completion. If Design-Builder is late in completing the Project, or portions thereof, City will suffer significant and substantial financial damages which cannot be quantified as of the Effective Date of this Contract. Therefore, Design-Builder and City have agreed to stipulated amounts to be paid for each calendar day of delay by Design-Builder in the event of its failure to complete certain Project milestones until Design-Builder attains that milestone. Design-Builder acknowledges and agrees that the Liquidated Damages are intended to be City's sole monetary remedy for damages for delay caused by Design-Builder's failure to meet the applicable milestones. When City reasonably believes that Substantial Completion will be inexcusably delayed,

City shall be entitled but not required to withhold from any amounts otherwise due to Design-Builder an amount then believed by City to be adequate to recover Liquidated Damages applicable to such delays. If and when Design-Builder overcomes the delay in achieving Substantial Completion, or any part thereof, for which City has withheld payment, City shall promptly release to Design-Builder those funds withheld, but no longer applicable as Liquidated Damages. However, nothing contained in this **Article 6.10** shall preclude City from recovery of actual damages caused by reasons other than Design-Builder-caused delays, including but not limited to damages for any other breach of the Contract requirements, including any failure of the Work to conform to applicable requirements, negligence, injury to persons or property, or third-party claims not otherwise waived under these Contract Documents. Although Liquidated damages are City's sole monetary remedy for damages for delay caused by Design-Builder's failure to achieve Completion Deadlines by the applicable deadline, City reserves the right to terminate this Contract for cause as provided herein. If Substantial Completion of the Project has not occurred within 365 days after the deadline for such Substantial Completion or if Final Completion of the Project has not occurred within 180 days after the deadline for such Final Completion, as such deadlines may be extended in accordance with the Contract Documents, City shall have the right to (a) terminate this Contract for cause; (b) assess Liquidated Damages as provided herein; and (c) exercise any other right or remedy under this Contract, at law or in equity.

- a) Design-Builder hereby accepts and agrees that if Substantial Completion of the Project is not attained within the specified contractual deadline for Substantial Completion of the Project, Design-Builder shall pay City [] (\$) as Liquidated damages for each Day Substantial Completion of the Project extends beyond the defined contractual deadline for Substantial Completion.
- b) Upon attaining Substantial Completion, the Project, Design-Builder shall be given [] () calendar days to achieve Final Completion of the Project. Design-Builder accepts and agrees if Final Completion of the Project is not achieved within ~~Thirty~~ (30) one [] () calendar days from the date of Substantial Completion, [] (\$) as Liquidated damages for each day Final Completion extends beyond this Final Completion deadline.

6.10.2. Key Personnel. If any person filling a Key Person's role is not available for, or actively involved in, the performance of the Work or a vacant Key Personnel position is not filled as required by the Contract Documents, including **Article 6.9** above and General Conditions **Article 5.10**, as determined by City in its good faith discretion, then Design-Builder accepts and agrees that:

- a) City and the Project will suffer significant and substantial financial damages, which cannot be quantified as of the Effective Date of this Contract; and

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- b) (City may, in its sole discretion, impose upon Design-Builder a Liquidated amount as follows, for each position held by such individual, as deemed compensation to City for such damages:

POSITION	LIQUIDATED AMOUNT
[BUILD OUT TABLE]	\$(_____)

- c) City may, in its sole discretion, impose upon Design-Builder for the positions listed above an additional Liquidated Damages amount equal to the corresponding amount specified in **Article 6.13(b)** for each six-month period where such Key Person's position is vacant or not being fulfilled in accordance with this Contract as determined by City.

6.10.3. If Design-Builder incurs Liquidated Damages under this **Article 6.10**, Design-Builder accepts and agrees City shall be entitled to deduct, from any sums due Design-Builder, any or all Liquidated Damages due and owed to City on this Project. In such an instance, Design-Builder shall include a line item on all submitted pay application requests, tracking the Liquidated Damages accrued by (a) including the number of days of Liquidated Damages from the contractual date for the missed completion deadline forward, then computing the number of days of Liquidated Damages incurred for that pay period, and (b) including the amount of any Liquidated Damages for any changes in or unavailability of Key Personnel not permitted under **Article 6.9**. Design-Builder shall deduct the amount of accrued Liquidated Damages associated with that submitted pay application submittal. Alternatively, City may invoice Design-Builder for such Liquidated Damages, which shall be payable by Design-Builder to City within 10 days after Design-Builder's receipt of the invoice.

6.10.4. Design-Builder acknowledges and agrees that the foregoing damages have been set based on an evaluation by City of damages which it will incur in the event of late completion of the defined aspects of the Work or unpermitted changes in or unavailability of Key Personnel, including additional administrative costs. Design-Builder and City agree that the amount of such damages is impossible to ascertain as of the Effective Date of this Contract and the Parties have agreed to such Liquidated Damages in order to fix Design-Builder's costs and to avoid later disputes over which items are properly chargeable to Design-Builder.

6.10.5. Time is of the Essence. All limitations of time set forth in this Contract for Substantial Completion and Final Completion and the submission of Time Impact Analyses and Claims, as such dates may be adjusted in accordance with the terms of the Contract Documents, are material and time is of the essence for such dates.

END OF ARTICLE 6

ARTICLE 7. ADDITIONAL DUTIES AND RESPONSIBILITIES OF DESIGN-BUILDER

- 7.1. Design-Builder to Perform All Work Required by the Contract.** The intent of this Contract is to require complete, correct and timely execution of the Design Services and the Construction Work. Any and all Design Services that are required, reasonably implied or reasonably inferred by the Contract or any part of it, as necessary to produce the intended result, shall be provided by Design-Builder for the Design Services Fee as provided in **Article 8** herein. In addition, any and all Construction Work that may be required reasonably implied or reasonably inferred by the Contract or any part of it, as necessary to produce the intended result shall be provided by Design-Builder for the Guaranteed Maximum Price or Fixed Price Proposal(s), as applicable, as provided in **Article 8** herein.
- 7.2. Strict Compliance with the Contract Documents.** All Construction Work performed by Design-Builder shall be in Strict Compliance with this Contract. “Substantial Compliance” is not strict compliance. Any Construction Work not in strict compliance with the Contract is defective. .
- 7.3. Design-Builder's Baseline Construction Schedule.** Pursuant to Article 2.5 of City’s General Conditions for Design/Build Contracts, Design-Builder, **ENTER NUMBER OF DAYS** prior to City’s issuance of the initial Notice to Proceed for construction, shall submit to City its Baseline Construction Schedule, Preliminary Schedule of Shop Drawing and Sample Submittals and its Preliminary/Baseline Schedule of Values for all of the Work, which shall constitute Design-Builder’s schedule for completing the Construction Work by the Scheduled Completion Date. The Baseline Construction Schedule shall reflect the performance of all Construction Work on weekdays and non-holidays. The Baseline Construction Schedule shall be a detailed critical path management (“CPM”) schedule in a form acceptable to City. Per **Article 5** of City’s General Conditions for Design/Build Contracts herein, the Construction Progress Schedule and successive updates shall be revised at minimum monthly and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project. Each such Construction Progress Schedule revision shall be furnished to City. Strict Compliance with the requirements of this Paragraph shall be a condition precedent for payment to Design-Builder, and failure to Strictly Comply with said requirements shall constitute a material breach of the Contract. City, without Design-Builder’s concurrence and at City’s option, may withhold any payment to Design-Builder for any fees due and owing Design-Builder until Design-Builder submits its monthly Construction Progress Schedule. No claim for an increase in the GMP or Fixed Price Proposal, as applicable, shall be allowed as a result of Design-Builder basing the GMP/Fixed Price Proposal upon an early completion schedule or as a result of delays and costs attributable to completion later than the planned early completion date.

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- 7.4. Review and Approval of Submittals.** Design-Builder shall review, study, approve or take other necessary action upon all Shop Drawings, Product Data, Samples and other Submittals, to ensure that the Project will be constructed in a timely fashion in Strict Compliance with the Contract. No deviation from, substitution for or other modification from the Contract Documents shall be allowed by Design-Builder in a shop drawing or submittal without written approval, from City. Design-Builder shall engage in prompt and adequate review of Shop Drawing and other Submittals to maintain the Baseline Construction Schedule. Design-Builder shall use its best independent professional judgment in its review to determine compliance with the Contract Documents.
- 7.5. City's Option to Review Submittals.** City shall, in its discretion, have the right to review and approve Submittals and if City so elects, Design-Builder shall not perform any portion of the Construction Work of which City has required submittal and review until such Submittal has been submitted to and approved by City. Prior to Construction Notice to Proceed, Design-Builder will provide a recommended list of Submittals that the City should approve. Approval by the City, however, shall not be evidence that Construction Work installed pursuant to the City's approval conforms to the requirements of the Contract nor shall such approvals relieve Design-Builder of any of its responsibilities or warranties under the Contract. Design-Builder shall maintain a Submittal log which shall include, at a minimum, the date of each Submittal, the date of any re-submittal, the date of any approval or rejection and the reason for any approval or rejection. Design-Builder shall have the duty carefully to review, inspect and examine any and all Submittals before submission of same to City. Shop Drawings and other Submittals from Design-Builder do not constitute a part of this Contract.
- 7.6. Procurement of Operations and Maintenance Documentation.** Design-Builder shall prepare or procure and shall transmit to City all documentation required by this Contract regarding the operation and recommended maintenance programs relating to the various elements of the Construction Work.
- 7.7. As-Built Drawings.** Design-Builder shall use 3D Modeling Software, in the latest revision and version designated by and acceptable to City, to prepare and provide to City the final as-built deliverable, which shall be complete and, except as specifically noted, shall reflect performance of the Construction Work in Strict Compliance with the requirements of this Contract. The model shall follow, at minimum, the AIA E202 Protocol. The Level of Development (hereafter referred to as "LOD") shall utilize Model Elements at progressive detailed levels of completeness, as mutually agreed to between Design-Builder and City, by executing the Model Element Table to establish the LOD for the Project. Design-Builder electronically shall attach all close-out documents to the model for delivery to City on a flash drive.

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- 7.8. Compliance with Labor Laws.** Per this **Article 7.8** and **Article 5.4** of the City's General Conditions for Design/Build Contracts, Design-Builder shall assume all labor responsibility for all personnel assigned to or contracted with for the performance of the Construction Work and agrees to Strictly Comply with all its obligations as employer, with respect to said personnel under all applicable labor laws.
- 7.9. Testing, Inspections, and Approvals.** City shall be responsible for procuring the services of special inspections and material testing, as required by the latest version of the International Building Code (IBC) Chapter 17, as adopted and amended by the City of San Antonio Development Services Department, including, but not limited, to construction materials testing. Excepting the inspections, testing and approvals required per IBC Chapter 17, if the Laws of any public authority having jurisdiction require any Construction Work specifically to be inspected or approved to complete the Construction Work, Design-Builder shall assume full responsibility therefore, pay all costs in connection therewith and furnish to City the required certificates of inspection or approval. These inspections shall be exclusive of and not relieve Design-Builder of the responsibility to provide independent Quality Control processes and procedures, to ensure the required quality standards are met.
- 7.10. City's Regulations and Applicable Laws.** Design-Builder shall, during the course of the Construction Work, comply with any regulations or guidelines contained in the Contract or as mutually agreed upon in writing by the Parties. Design-Builder warrants that it will comply with all Laws applicable to the services to be performed under the Contract including, without limitation, those relating to the terms and conditions of the employment of any person by Design- Builder in connection with the Construction Work to be performed under the Contract.
- 7.11. Compliance with Construction Regulations.** Design-Builder shall perform the Construction Work in accordance with all construction codes, and Laws applicable to the design and execution of the Construction Work. Design- Builder shall be notified by City of any fine or penalty known to City which may be imposed as consequence of any violation of this provision, any fine or penalty shall be paid by Design-Builder and Design-Builder fully shall indemnify and hold City Harmless from all loss, damage and expense resulting from and such violation or alleged violation of Laws.
- 7.12. Conditions to Site Access.** While on City's property, all Design-Builder's employees, Sub-Consultants and Subcontractors shall confine themselves to areas designated by City and will be subject to City's badge and pass requirements, if any, in effect at the site of the Construction Work.
- 7.13. Repair of Collateral Damage.** Unless otherwise instructed by City, Design-Builder shall repair and return to original condition all buildings, streets, curbs, sidewalks,

utilities or other facilities and pre-existing site features affected by Design-Builder's performance of the Construction Work.

Sustainability in Design. The Design-Builder shall adhere to design standards set out in the San Antonio Airport System Sustainability Airport Manual in designing the Project. In addressing these design standards, the Design- Builder, through its Architect, shall perform its services in a manner consistent with that degree of skill and care ordinarily exercised by design professionals performing similar services in the same locality, and under the same similar circumstances and conditions. .

END OF ARTICLE 7

ARTICLE 8. CONTRACT SUM

- 8.1. Contract Sum** The Contract Sum is the not-to-exceed amount of **_____**
_____ AND 00/100 U.S. DOLLARS (\$ _____
_____.00) which shall consist of the Design Services Fee, Pre-Construction Services Fee, and the Guaranteed Maximum Price (GMP), and Owner's Contingency which shall be adjusted once the GMP is established, as set out herein. The quantities of the various elements of the Construction Work to be done and material to be furnished are determined by Design-Builder. It is expressly understood and agreed by City and Design-Builder that the Contract Sum, including authorized adjustments, is the total amount payable by City to Design-Builder and shall cover the cost for all design and all Construction Work required to complete the Project in accordance with the Contract Documents, regardless of what the final measurement of quantities is determined to be. Should the final Cost of the design, the Construction Work, and Design-Builder's compensation total less than the Contract Sum, or any approved revision thereof, the difference shall inure to the benefit of City and no claim for all or any portion of said difference shall be valid against or payable by City. City's limitation of obligation or liability set out in this **Article 8.1** shall be incontrovertible and unequivocal; any term or provision of this Contract, the Exhibits, attachments or provisions incorporated by reference in or to this Contract or of any Subcontract executed in furtherance of the anticipated design or Construction Work under the Contract shall not be construed or deemed to alter or waive this absolute condition.
- 8.2. Preconstruction Services.** The preconstruction services phase of this Project shall be completed as described in **EXHIBIT B: DESIGN-BUILDER'S FEE PROPOSAL** The cost/price to City for Design-Builder's preconstruction services shall include all labor and material costs related to the Design Phase services not already addressed under Design-Builder's Design Fee including, but not limited to:
- 8.2.1.** Compliance with all contractual requirements during the design phase;
 - 8.2.2.** Coordination of all Sub-Consultants and Subcontractors;
 - 8.2.3.** Attendance at all Project meetings;
 - 8.2.4.** Project management, assessment and engineering/architecture;
 - 8.2.5.** Project scheduling;
 - 8.2.6.** Constructability and bid-ability reviews of the design documents;
 - 8.2.7.** Feasibility and practicability of any proposed means and methods;
 - 8.2.8.** Assessment of the availability of labor, materials and equipment;

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- 8.2.9. Building system analysis (to include alternate systems design);
- 8.2.10. Identification of equipment or material requiring extended delivery time; and
- 8.2.11. Review and recommendation for cost-sensitive aspects of the design and other facts that may impact the Project's cost estimate.
- 8.2.12. Preconstruction services also may include the creation of the GMP, creation of Fixed Price Proposal(s), the advertisement and distribution of Plan sets and bid packages, the bidding of construction work and all outreach and diversity efforts. Design-Builder's preconstruction services costs and all associated costs shall clearly be defined and negotiated with City as a stand-alone Project cost, included and listed in the Project's Contract Sum.
- 8.3. **Guaranteed Maximum Price (GMP).** The GMP is intended to address all items for the performance of all Construction Work required by the Contract, and the performance of all other requirements of this Contract, to include , General Conditions costs, pass through costs, assumptions, Design-Builder's contingencies, schedules and other matters necessary and relevant for proper execution and completion of the Work for the GMP. Design-Builder shall provide a fully functional and operational facility as intended in the GMP.
- 8.3.1. The GMP shall incorporate all of the terms and conditions of this Contract and all other documents that comprise the Contract between the City and Design-Builder. Any exceptions to or modifications of such terms and conditions proposed by Design- Builder in the GMP shall not be effective unless they are expressly stated and conspicuously identified in the GMP and specifically are accepted and approved by City. Upon approval by City, the GMP shall become a part of Contract.
- 8.3.2. Approved Fixed Price Proposals (AFPP) and the Contract Documents are intended to address all items necessary for the performance of all construction work required by a specific Work Package issued, pursuant to this Contract, and the performance of all other requirements of this Contract related to that Work Package, including all assumptions, costs, contingencies, schedules and other matters necessary and relevant for the proper execution and completion of the Work Packages for the AFPP. AFPP(s) approved prior to the establishment of the GMP shall include all costs related to the Work Package(s) except those already accounted for in the Preconstruction Services. All AFPPs shall be included as part of the GMP.
- 8.3.3. The GMP shall consist of Design-Builder's AFFPs (if any) and the Cost of the Construction Work, as defined **EXHIBIT L: GMP SUMMARY AND GMP PROPOSAL** of the Contract, Design-Builder's Management Fee, General Conditions cost, pass through costs, allowances, and Design-Builder's

contingency. City agrees to perform its responsibilities so as to assist Design-Builder to facilitate the completion of the Construction Work. The GMP, unless changed by amendment or Change Order, represents the absolute limit of obligation or liability that City may ever have, insofar as the cost for full and final completion of the Construction Work and the total of all payments to Design-Builder or its Subcontractors for the Construction Work. Should additional amounts be required to be expended over and above the GMP, to achieve completion of the Construction Work, including Project construction and payment to Design-Builder, in accordance with this Contract, liability for and payment of such additional amounts shall solely be the responsibility of Design-Builder and its Contract Surety herein, and City never shall be liable for same. Should the final Cost of the Construction Work and Design-Builder's compensation total less than the GMP, or any approved revision thereof, the difference shall inure to the benefit of City and no claim for all or any portion of said difference shall be valid against or payable by City. City's limitation of obligation or liability set out in this **Article 8.3.3** shall be incontrovertible and unequivocal; any term or provision of this Contract, the Exhibits, attachments or provisions incorporated by reference in or to this Contract or of any Subcontract executed in furtherance of the anticipated Construction Work under the Contract shall not be construed or deemed to alter or waive this absolute condition. Likewise, Design-Builder's absolute responsibility for the completion of the Project in accordance with the Contract Documents, including the Plans and Specifications and within the agreed cost constraints, as well as Design-Builder's Contract to bear all costs in excess of the GMP without recourse to City, if such excess costs are necessary for the completion of the Construction Work, shall be incontrovertible, undisputable and shall take precedence over all other terms and provisions of this Contract and the Exhibits hereto, no part of which shall be deemed to alter, diminish or waive such obligations.

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

8.4. Management of Construction Work. In addition to the Construction Work Design-Builder shall perform, it also will provide all the usual and necessary traditional construction management services incidental to construction projects of the nature and scope of this Project, for which the Management Fee described in **Article 9.7** herein is paid. The services required are not intended in any manner to diminish the overall responsibility of Design-Builder for the full and final completion of the Construction Work within the time and cost constraints specified in this Contract. Note: main/home office/corporate overhead shall not be approved as a cost of work and shall be accounted for by Design-Builder under its Management Fee, as described in **Article 9.7** herein.

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- 8.5. Cost of Construction Work.** City agrees to pay Design-Builder for the Cost of the Construction Work, as defined herein, inclusive of Design-Builder's General Conditions costs, subject to submission by Design-Builder of all backup substantiation as may be reasonably required by City, to include, but not limited to, invoices for labor and materials and any other receipts City may request. Such payment shall be in addition to Design-Builder's Management Fee specified above. However, in no event shall the sum of payments for the Cost of the Construction Work, AAFP(s), Design-Builder's Management Fee, Design-Builder's General Conditions costs, bonds, insurance and any other compensation paid by City to Design-Builder exceed the GMP, as adjusted by Change Order(s).
- 8.6.** In addition, Design-Builder shall be responsible for enforcing warranties and for obtaining correction and/or replacement of all defective Construction Work not constructed or installed in accordance with the Contract Documents. All such corrective or remedial Construction Work required by the Contract Documents shall be performed by responsible Subcontractors under the terms of their Subcontracts, without additional cost to the City. Costs incurred by Design-Builder to correct or remedy Construction Work performed by Design-Builder's own forces, or where the responsible Subcontractor fails to perform, shall NOT be a Cost of the Construction Work and shall be Design-Builder's sole responsibility, at no additional cost to City; provided, however, Design-Builder shall be entitled to the proceeds of any Subcontractor maintenance bond, where such Subcontractor has defaulted in this regard.
- 8.7.** The following items are considered to be part of the Cost of the Construction Work:
- 8.7.1.** Wages paid for labor in the direct employ of Design-Builder in the performance of the Work under any applicable collective bargaining agreement, or under a salary or wage schedule agreed upon by City and Design-Builder, and including reasonable and customary benefits, if any, as may be payable with respect thereto. Such costs shall be at rates not higher than the standard rate of pay in the locality of the Construction Work except with prior consent of the City and shall include the items set forth below in this **Article 8**. The reasonable cost of drug testing for all of Design-Builder's employees utilized on or hired for the Project, whether management or labor, shall also be a Cost of the Construction Work.
- 8.7.2.** Salaries of Design-Builder's personnel at or below the level of Project Design-Builder, when engaged on the Construction Work and stationed at the field office, in whatever capacity employed. Personnel engaged, at shops or on the road in expediting the production or transportation of materials or equipment, or at Design-Builder's home office or other offices shall be considered as stationed at the field office and their salaries paid only for that limited portion of their time spent on this Construction Work and as negotiated and included in the Design-Builder's General Conditions.

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- 8.7.3.** Cost of reasonable and customary pension contributions, hospitalization insurance, medical insurance, assessments or taxes for such items as unemployment compensation and social security, insofar as such cost is reasonably based on wages, salaries, or other remuneration paid to employees of Design-Builder and included in the Cost of the Construction Work under **Article 5** of the General Conditions for City of San Antonio Design/Build Contracts.
- 8.7.4.** Only with City's prior written approval, the proportion of reasonable travel and hotel expenses incurred outside of the City of San Antonio metropolitan area by Design-Builder's officers or employees in discharge of duties directly connected with the Construction Work.
- 8.7.5.** Cost of all materials, supplies and equipment incorporated in the Construction Work, including costs of transportation thereof.
- 8.7.6.** Payments made by Design-Builder to Sub-Consultants and Subcontractors for Construction Work performed pursuant to a Subcontract entered into in the performance of this Contract.
- 8.7.7.** Cost, including transportation and maintenance, of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workmen, which are employed or consumed in the performance of the Construction Work, and cost less salvage value of such items used but not consumed which remain the property of Design-Builder.
- 8.7.8.** In connection with the Construction Work and Management Fee and only with City's prior written approval, rental charges of all necessary machinery and equipment, exclusive of hand tools, used at the site of the Construction Work, whether rented from Design-Builder or others, including installation, repairs and replacements, dismantling, removal, costs of lubrication, transportation and delivery costs thereof, at rental charges consistent with those shown in the then current Associated Equipment Distributors (AED) Manual. Provided further that, with respect to equipment and machinery rented from Design-Builder, the rental rate shall not exceed 75% of the current AED Manual rental charges, and shall in no event cumulatively exceed the value of such equipment or machinery at the commencement of the rental period. Should rental charges reach such value, for the equipment and machinery rented from Design-Builder, the equipment and machinery thereafter shall belong to City, to be disposed of in accordance with this **Article 8** herein. Design-Builder shall furnish City with a list, to be updated monthly, of all equipment furnished for the Project for which City reimburses Design-Builder as a part of the Cost of the Construction Work. Equipment and machinery rented, which becomes property of City pursuant to this **Article 8.7.8**, shall be delivered to City upon final completion and acceptance by City of all Construction Work under the Project.
- 8.7.9.** Minor expenses, such as telephone service at the site, expressage, courier services and similar petty cash items in connection with and for the benefit of the Construction Work.
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- 8.7.10.** Cost of removal of debris. Removal of debris left by other contractors hired by the City is not a part of this Contract.
- 8.7.11.** Cost incurred due to an emergency affecting the safety of persons and property.
- 8.7.12.** Other costs incurred in the performance of the Construction Work, if and to the extent approved in advance in writing by City.
- 8.7.13.** The reasonable and actual direct cost of data processing services, as required for the Project. Such costs shall be specifically documented as having been done for the Project.
- 8.7.14.** Legal costs growing out of prosecution of the Construction Work for City only will be reimbursable if such legal costs were incurred for the direct benefit of City and with prior written approval of City. In no event shall City reimburse any legal costs incurred by Design-Builder resulting from or associated with any action against City to include Claims filed in accordance with the procedures outlined in the Contract Documents.
- 8.7.15.** Cost or rental of temporary portable buildings and toilets as required; cost of utilities, ice, water, containers, cups, fire extinguishers, first-aid supplies, safety equipment, off-site storage space or facilities, progress photographs or digital records.
- 8.7.16.** All reasonable costs and expenditures necessary for the operation of the field office, such as stationery, supplies, printing, furniture, fixtures, office equipment, etc.
- 8.7.17.** Costs incurred by Design-Builder in preparing and maintaining progress schedules, budgets and reports required hereby.
- 8.7.18.** The reasonable, actual direct cost of computer services, including jobsite and main office terminal, for purposes of field payroll preparation and control. Such costs specifically shall be documented as having been done for the Project.
- 8.7.19.** Salaries of Design-Builder's personnel, not included in the cost of General Conditions, earned after the date of approval and funding of the GMP, whether stationed at the field office or at the main office of Design-Builder, for that portion of their time spent on this Construction Work.
- 8.7.20.** Where not otherwise included in the Cost of the Construction Work, the cost of central accounting services in connection with the Construction Work, such as payment of invoices, maintaining material cost records, computer services, preparation of W-2 Reports, payroll tax reporting and preparation of other reports.
- 8.8.** The following, while considered as a Cost of Work, only shall be paid by City to Design-Builder at the actual costs incurred, as a direct pass through cost, without any
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Design-Builder fee or markup applied and only upon the prior written approval of City:

- 8.8.1.** Cost of the premiums for all Design-Builder's bonds and insurance coverage required by this Contract, or deemed necessary by Design-Builder, in the normal pursuit of the Construction Work. Premiums for company-wide coverage will be pro-rated on the basis of value of Construction Work on this Project completed during the premium period. The cost of (or payment of) all deductible amounts, not otherwise recoverable from third parties or not the result of a claim based upon Design-Builder's negligence, under any insurance furnished by City, or under insurance policies required by this Contract or deemed necessary by Design-Builder in the normal pursuit of the Construction Work. City retains the option of paying Design-Builder the cost for Design-Builder's bonds and insurance in either a lump sum payment at the beginning of the Project, on a monthly basis, on an "as-billed" basis or as City so determines.
- 8.8.2.** Taxes, if any, related to the Work. However, as City qualifies for exemption under Section 151.309 of the Texas Limited Sales, Excise and Use Tax Act, Design-Builder shall alert all Sub-Consultants and Subcontractors to prevent erroneous payment of taxes covered by City's exemption. City will provide exemption certificates to confirm this exemption upon request.
- 8.8.3.** Project required Permit fees, Project-specific licenses, tests, royalties and deposits lost for causes other than Design-Builder's negligence.
- 8.8.4.** Costs associated with related business meetings approved with prior written approval by City.
- 8.8.5.** Costs Not Included as Part of the Construction Work and Services.
- 8.9.** The following items of cost and expense are not included as part of the Cost of the Construction Work to be paid by City to Design-Builder:
 - 8.9.1.** Except as specifically provided above, salaries, wages, and other compensation of Design-Builder personnel stationed at Design-Builder's principal office or offices.
 - 8.9.2.** Design-Builder's home office overhead including, but not limited to, any and all expenses associated with Design-Builder's principal office and offices other than at the Project site.
 - 8.9.3.** Design-Builder's capital costs and expenses, including interest on capital utilized in the performance of this Contract.
 - 8.9.4.** Rental cost for machinery or equipment, except as expressly provided herein.
 - 8.9.5.** Cost and expense incurred by Design-Builder, its Subcontractors, Sub-Consultants, Suppliers or anyone directly or indirectly employed by any of the

entities when such costs or expenses are the result of their negligence or failure to perform any required contractual duty.

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

- 8.10.1.** Travel outside SAMSA. Reimbursement for travel costs shall be limited to costs directly associated with Design-Builder's performance under the Contract. Travel costs are limited to the per diem rates set annually by the Federal Government's General Services Administration (GSA). Design-Builder shall provide detailed receipts for all reimbursable charges other than lodging, meals and incidental expenses included in and covered by the GSA per diem rates. City does not pay for Design-Builder's travel within SAMSA.
- 8.10.2.** Mailing, courier services and copies of documents requested by City in writing in excess of the copies to be provided under **EXHIBIT H: DESIGN-BUILD SCOPE OF SERVICES AND HOURLY RATE WITH SCHEDULE OF VALUES** of this Contract. These costs, if any, shall not exceed the amount noted in **Exhibit H** herein, without further approval of City. Design-Builder shall bear these costs unless agreed to, in writing, by City.
- 8.10.3.** Graphics, physical models, and presentation boards requested by City in writing in excess of the copies to be provided under **EXHIBIT H: DESIGN-BUILD SCOPE OF SERVICES AND HOURLY RATE WITH SCHEDULE OF VALUES** of this Contract. These costs shall not exceed the amount noted in **Exhibit H** herein without further approval of City. Design-Builder shall bear these costs unless agreed to, in writing, by City.
- 8.10.4.** City does not allow a markup on any of the above cited reimbursable items in this **Article 8.10.4.** and only will reimburse approved hard costs incurred.
- 8.11.** Any and all cash discounts, rebates, or refunds relating to payments made by Design-Builder shall accrue to City and shall be credited or paid to City at its election.
- 8.12.** City may, at its option, offset any amounts due and payable under this Contract against any debt (including taxes) lawfully due to City from Design-Builder, regardless of whether the amount due arises pursuant to the terms of this Contract or otherwise and regardless of whether or not the debt due to City has been reduced to judgment by a court.
- 8.13.** Contract Savings, Allowances, Rebates and Refunds. If the allowable, final, verified, audited amount for the cost of Design-Builder's General Conditions, Cost of Work, Allowance items and any extended contingency is less than the amount established for each of those itemized categories in the approved GMP, the entire difference shall be credited to the City as savings and the final Design-Build contract amount shall be adjusted accordingly. When buyout of the Project is at least eighty five percent (85%)

complete, City may recognize any savings achieved to that point by issuing a deductive change order for the saved amount.

- 8.14.** Items to be provided for through City's Allowances under the GMP shall clearly be identified in the Construction Documents and the GMP. The Cost of Work included in the Allowances shall be determined through negotiation between City and Design-Builder. Any claim by the Design-Builder for an adjustment to an Allowance amount included in the GMP, based on the cost of Allowance work, shall be made within a reasonable time after the issuance of the Construction Documents for the Allowance item(s). Any expense against an allowance shall be coordinated with the City prior to its expense. Design-Builder shall not be entitled to any increase in its cost of Construction Workforce increases to Allowance amounts that initially were based on estimates provided by Design-Builder. City shall be entitled to retain one hundred percent (100%) of the balance of any unused Allowance amount.
- 8.15.** City shall be entitled to deduct amounts for the following items from any of Design-Builder's Application for Payment or from Design-Builder's Request for Final Payment:
- 8.15.1.** The fair market value of all tools, surplus materials, construction equipment and temporary structures charged to the Work (other than rental items) but were not consumed during construction or retained by City. Upon completion of the Work or when no longer required, Design-Builder shall either credit City for the fair market value (as approved by City) for all surplus tools, construction equipment and materials retained by Design-Builder or, at City's sole option, use commercially reasonable efforts to sell the surplus tools, construction equipment and materials for the highest available price and credit the proceeds to City;
 - 8.15.2.** Discounts earned by Design-Builder through advance or prompt payments funded by City. Design-Builder shall obtain all possible trade and item discounts on bills for materials furnished and shall pay bills within the highest discount periods. Design-Builder shall purchase Project materials in quantities that provide the most advantageous prices to;
 - 8.15.3.** Rebates, discounts or commissions obtained by Design-Builder from material suppliers, Sub-Consultants and/or Subcontractors, together with all other refunds, returns or credits received for materials, bond premiums, insurance and sales taxes;
 - 8.15.4.** Deposits made by City and forfeited due to the fault of Design-Builder; and
 - 8.15.5.** Balances remaining on any/all Project Allowances, any balance remaining on the Project contingency or the balance on any other identified Contract savings are and remain the sole property of City.
 - 8.15.6.** Subcontractors and Sub-consultants shall calculate markup, including all overhead and profit, in accordance with items (1) through (4) below, provided that in no event shall the total cumulative markup from all Subcontractors and Sub-

Consultants exceed twenty percent (20%) of the direct cost of the subcontracted Work:

- a) For Subcontractor or Sub-Consultant, for Work performed by the Subcontractor's or Sub-Consultant's own forces, ten percent (10%) of the amount of the direct cost is the maximum markup that shall be allowed to be charged City.
- b) For Subcontractor or Sub-Consultant, for Work performed by the Subcontractor's or Sub-Consultant's Sub-Subcontractor or Sub-Sub-Consultant, five percent (5%) of the amount of the direct cost due to the Sub-Subcontractor or Sub-Sub-Consultant is the maximum markup that shall be allowed to be charged by Subcontractor or Sub-Consultant and passed to City.
- c) For each Sub-Subcontractor or Sub-Sub-Consultant involved, for Work performed by that Sub-Subcontractor's or Sub-Sub-Consultant's own forces, ten percent (10%) of the amount of the direct cost is the maximum markup that shall be allowed to be charged City
- d) For each Sub-Subcontractor or Sub-Sub-Consultant, for Work performed by the Sub-Subcontractor's or Sub-Sub-Consultant's lower tier Subcontractor or Sub-Consultant, five percent (5%) of the amount of the direct cost due to the lower tier Subcontractor or Sub-Consultant is the maximum markup that shall be allowed to be charged by the lower tier Subcontractor and Sub-Consultant and passed to City for a Change.

END OF ARTICLE 8

ARTICLE 9. PAYMENT OF THE CONTRACT PRICE

- 9.1.** Payment Procedure. City shall pay the Contract Sum to Design-Builder in accordance with the procedures set forth in this **Article 9** and, for purposes of the Construction Work, the applicable provisions of **Article 11** of City's General Conditions for Design/Build Contracts to the extent they do not conflict with this **Article 9**.
- 9.2. Project Contingency.** There shall only be two contingency line items within the contract:
- 9.2.1. City's Project Contingency.** With City's written approval, City's Project contingency shall be used:
- 9.2.1.1.** for a City-requested increase in Project scope, resulting in an increase in the cost of work.
 - 9.2.1.2.** for unforeseen site conditions which may occur on the Project.
 - 9.2.1.3.** or any other reason City deems necessary.
- 9.2.2. Design Builder's Project Contingency.** Subject to the exceptions set forth in this **Article 9.2.2**, the Design-Builder's Project Contingency shall be available for the Design-Builder's use, with City's prior written approval, at any time, including at the time of Final Payment, for reimbursement of costs and expenses (1) reasonably incurred by Design-Builder in performing the Work, (2) of a type that are reimbursable under this Agreement as a Cost of the Work, and (3) that are not otherwise the basis for a Change Order (it being understood that the Design-Builder's Project Contingency shall not be used to fund any Work which would otherwise be subject to a Change Order); including, by way of example, but not limited to:
- 9.2.2.1.** Work items inadvertently omitted during the estimating and bidding process.
 - 9.2.2.2.** Schedule recovery costs associated with normal weather.
 - 9.2.2.3.** Cost increases due to unanticipated local labor and material market conditions.
 - 9.2.2.4.** Interfacing omissions between and from the various categories of work; and
 - 9.2.2.5.** Additional costs incurred due to the withdrawal or disqualification of a subcontractor bid forming the basis for the GMP prior to signing of a written subcontract.

9.2.2.6. Design Builder shall submit to the City for approval a list showing assignment of the contingency (risk) associated with the major activities of the Construction Schedule. Design-Builder shall submit internal Changes Orders to the City for approval prior to using the Design-Builder's Contingency to show movement of funds within the Contract. Design-Builder shall furnish the City with a monthly Design-Builder's Contingency Log showing all reimbursements from the Design-Builder's Project Contingency according to the activity assignment. In no event may Design-Builder use the Design-Builder's Project Contingency to reimburse itself for costs and expenses incurred as the result of the failure of Design-Builder or its Subcontractors, Sub-subcontractors, Suppliers, or anyone directly or indirectly employed, retained or contracted by any of them, or by anyone for whose acts any of them may be responsible or liable, to discharge their respective responsibilities with respect to the Work. Costs and expenses reimbursable from the Design-Builder's Project Contingency shall not exceed the amount of the Design-Builder's Project Contingency identified as an element of the GMP. When the Design-Builder's Project Contingency is exhausted, all costs and expenses that would qualify for reimbursement from the Design-Builder's Project Contingency shall be borne by Design-Builder unless such costs and expenses are otherwise compensable and agreed to by the City in accordance with the terms of this Contract and which do not cause the GMP to be exceeded. Any amount remaining in the Design-Builder's Project Contingency at Final Payment shall be counted as savings to inure to City.

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

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

their pay application and construction work progress schedule to the City Project team no later than seven (7) business days prior to Design-Builders planned electronic submittal. The city will review and schedule a meeting with the Design-Builder prior to the planned electronic submittal date to resolve any comments.

- 9.5. Request for Payment for Design Services.** As the Design Services progress, Design-Builder shall submit Applications for Payments, at minimum, on a monthly basis no later than the 5th business day of the month following the month the work was performed. for Design Services rendered, based upon a percentage of completion of the Design Services, as determined by the City-approved Design Schedule and based upon the total cost for Design Services reflected in Design-Builder's Schedule of Values. If special services or City-approved reimbursable expenses are included as part of the Design Services Fee, such services shall be paid on the basis of the hourly rates or actual cost, as applicable, for those items as needed or required by City. City shall make monthly payments for Design Services in the amount shown by Design-Builder's approved monthly statements and other required documentation submitted within thirty (30) days after receipt by City of properly prepared and certified requests for payment for Design Services. Nothing contained in this **Article 9.5** shall require City to pay for any Design Services which are unsatisfactory, as determined by City, or which are not submitted in compliance with the terms of this Contract and payment may be withheld until the Design Services at issue are corrected or compliance is achieved. Progress payments for Design Services under this Contract shall be up to but shall not exceed 95% of the total Design Services Fee; upon final completion and acceptance of the Construction Work, the balance of the Design Services Fee will be paid, along with any final payment for the Construction Work.
- 9.6. Request for Payment for Construction Work.** Payments for Construction Work shall be made in accordance with **Article 11** of City's General Conditions for Design/Build Contracts.
- 9.7. Payment of the Management Fee.** In addition to the payment of the Cost of the Construction Work and related services, as set forth herein, City shall pay Design-Builder its Management Fee monthly during performance of Construction Work, based upon the percentage of Construction Work completed in accordance with the Contract. Design-Builder shall submit pay applications to City, at minimum, monthly during the performance of Construction Work. From each scheduled Management Fee payment, City shall withhold retainage in the amount of five percent (5%).
- 9.8. Right to Audit.** City shall be entitled to rely upon the accuracy and completeness of the information furnished by Design-Builder in connection with any request for payment under this Contract. City reserves the right to audit, at City's election, all of Design-Builder's records and billings relating to the performance of Design Services, Pre-Construction Services or Construction Work under this Contract. Design-Builder agrees to retain its Project records, including, but not limited to, records and documents covering reimbursable expenses, actual base hourly rates, timecards, and annual salary escalation records for a minimum of ten (10) years following completion of all Services

under this Contract, unless there is an ongoing dispute under the Contract, then, such retention period shall extend until final resolution of the dispute. City agrees that it will exercise the right to audit only at reasonable hours. Any payment, settlement, satisfaction or release made or provided during the course of performance of this Contract shall be subject to City's rights as may be disclosed by an audit under this subsection. In the event City determines that Design-Builder has been paid any sums not due or earned by Design-Builder, same shall be reimbursed by Design-Builder to City within forty-eight (48) hours of demand by City. Notwithstanding anything in the Contract Documents to the contrary, City's audit rights shall not extend to the composition or make-up of any, negotiated and mutually accepted lump sums, or other negotiated and mutually accepted fixed amounts included in Design-Builder's compensation, but only to the proper application of such amounts in Design-Builder's applications for payment. Notwithstanding the foregoing, City shall have the right to audit Design-Builder's records and certified payrolls to ensure Design-Builder's compliance with the "Prevailing Wage Decision" set out in **Exhibit N**, the provisions of Chapter 2258 of the Texas Government Code and City Ordinance No. 2008-11-20-1045. The right to audit Design-Builder's records and billings relating to the performance of the Work pursuant to this Article 9.8 shall be in addition to the right to audit Design-Builder's records established in **Article 17** of the General Conditions.

- 9.9. Condition Precedent to Final Payment.** Notwithstanding any other provision in the Contract Documents, final payment shall not be made to Design-Builder until Design-Builder fully has performed all of its obligations under the Contract and the Design Services and the Construction Work fully are complete.
- 9.10. City's Review of Pay Requests.** City shall have the right to review all pay requests for the Design Services and the Construction Work to determine whether the quantity and quality of the Design Services and the Construction Work is as represented in the pay request and as required by the Contract.
- 9.11. Conditions Precedent to Payment.** In addition to all other conditions precedent contained in this Contract and in City's General Conditions for Design/Build Contracts, including, but not limited to, the provisions of **Articles 7.3** and **9.9** herein, it shall be a condition precedent to payment of any pay request under this Contract that Design-Builder has submitted properly updated or revised schedules for the performance of its Design Services and Construction Work, as required by this Contract.
- 9.12. Passage of Title to Construction Work.** Notwithstanding progress payments made by City under this Contract, title to Construction Work under this Contract does not pass to City until final completion of the Project, at which point title to all Construction Work is deemed to pass immediately to City. The risk of loss regarding completed Construction Work that is paid for by City prior to final completion remains with Design-Builder.
- 9.13. Design-Builder's Use of Progress Payments.** Upon receipt of any payment from City, Design-Builder promptly shall pay all Sub-Consultants, Subcontractors, laborers and Suppliers such amounts as they are entitled for the Construction Work covered by such payment. Design-Builder also shall comply with the requirements of City's General

- 9.14. Use of Joint Checks.** If City becomes informed that Design-Builder has not paid a Sub-Consultant, Subcontractor, materialman, laborer or Supplier as provided herein, City shall have the right but not the duty to issue checks and payment then or thereafter otherwise due to Design-Builder naming Design-Builder and any such Sub-Consultant, Subcontractor, materialman, laborer or Supplier as joint payees. Such joint check procedure, if employed by City, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit City to repeat the procedure in the future nor to create any contractual or other relationship of any kind between City and such person or entity.
- 9.15. Payment Not a Waiver or Acceptance.** No payment to Design-Builder, nor any use or occupancy of the Project by City, shall be interpreted or construed to constitute acceptance of any Construction Work not in Strict Compliance with the Contract, and Design-Builder expressly accepts the risk that defective Construction Work may not be detected:
- 9.15.1.** during any inspection by City;
 - 9.15.2.** prior to making of any payment to Design-Builder; or
 - 9.15.3.** before City's occupancy of the Project.
- 9.16. Withholding of Payment.** City shall have the right to refuse to make payment for Design Services and/or Construction Work and, if necessary, may demand the return of a portion or the entire amount previously paid to Design-Builder in an amount then believed by City to be adequate to cover the penalties, damages and potential losses resulting or likely to result from:
- 9.16.1.** the quality of a portion, or all, of Design-Builder's Design Services and/or Construction Work not being in accordance with the requirements of this Contract;
 - 9.16.2.** the quantity of Design-Builder's Design Services and/or Construction Work not being as represented in Design-Builder's pay request, or otherwise;
 - 9.16.3.** Design-Builder's rate of progress being such that, in City's opinion, the Substantial Completion and/or Final Completion or any of the two may inexcusably be delayed;
 - 9.16.4.** Design-Builder's failure to use Contract funds, previously paid to Design-Builder by City, to pay Design-Builder's Project-related obligations including, but not limited to, Sub-Consultants, Subcontractors, laborers and material and equipment Suppliers;

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- 9.16.5. evidence that the balance of the Construction Work cannot be completed, in accordance with the Contract, for the unpaid balance of the Contract Sum;
 - 9.16.6. claims made, or likely to be made, against City or its property;
 - 9.16.7. loss or damage caused by Design-Builder;
 - 9.16.8. Design-Builder's failure or refusal to perform any of its obligations to City; or
 - 9.16.9. any other basis for withholding of payment specified in the General Conditions.
 - 9.16.10. Failure to provide updated Construction Progress Schedule
 - 9.16.11. When applicable failure to demonstrate up to date as-builts
- 9.17. In the event that City makes written demand upon Design-Builder for amounts previously paid by City, as contemplated in this **Article 9.17**, Design-Builder promptly shall comply with such demand. City will timely pay Design-Builder any undisputed amounts. If and when the reason for withholding is resolved, City will pay the withheld amounts to Design-Builder within thirty (30) days.
- 9.18. **Limitation on Duty to Pay.** In addition to the grounds for withholding payment, as set forth in **Article 9.16** herein, City and Design-Builder further agree as follows:
- 9.18.1. Prior to beginning Design Services on the Project, Design-Builder shall submit to City a Design Services Schedule of Values, allocating Design-Builder's allocated percentage of the Not-To-Exceed Contract Sum to the design phase of the Project. During the Design Services phase, Design-Builder shall invoice, at minimum, monthly no later than the 5th business day of the month following the month the work was performed and each submitted invoice shall reflect the percentage of completion of Design Services. Upon completion of Design Services, Design-Builder shall include its allocated Design Services total costs in Design-Builder's Guaranteed Maximum Price Proposal.
 - 9.18.2. Prior to City's approval of the Guaranteed Maximum Price or Fixed Price Proposal, as applicable, Design-Builder shall submit to City a Schedule of Values allocating the Guaranteed Maximum Price or Fixed Price Proposal, as applicable, to the various portions of the Construction Work and the Design Services fee addressed in **Article 9.18.1** herein. Such Schedule of Values shall be prepared in such form, with such detail and supported by such data as City may require substantiating its accuracy. Design-Builder shall not imbalance nor artificially inflate any element of its Schedule of Values. The violation of this provision by Design-Builder shall constitute a material breach of this Contract. The Schedule of Values only shall be utilized as a basis for evaluating Design-Builder's request(s) for payment and only shall constitute such basis after it has been acknowledged in writing by City.

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- 9.18.3.** Each request for payment for Construction Work shall include a certification by Design-Builder of the percentage of Work completion, as of the date of such request for payment, of those portions of the Construction Work as identified in the Schedule of Values. Design-Builder shall furnish to City such documentation or other supporting data as City may request in order to verify the percentage of completion certified by Design-Builder.
- 9.18.4.** City shall have no obligation to make payment to Design-Builder for any Design Services or Construction Work where the amount, for which such payment is requested, is in excess of the amount allocated in the Schedule of Values for Construction Work based upon the percentage of completion as of the date of the request for payment.
- 9.19. Unexcused Failure to Pay.** If City, without cause or basis, fails to pay Design-Builder any amounts due and payable under this Contract to Design-Builder within thirty (30) days after the date established in this Contract for payment of such amounts, then the payment shall bear interest in accordance with the Texas Prompt Payment Act, as amended. Provided, however, that City shall not be liable for interest due on any late or delayed progress payment or final payment caused by any good faith claim or dispute, any discrepancy in quantities, any failure to provide supporting documentation or other information required with the request for payment or as a precondition to payment under the Contract Documents, or due to any payment City has a right to withhold or not certify under the Contract Documents.

END OF ARTICLE 9

ARTICLE 10. CITY'S DUTIES, OBLIGATIONS, AND RESPONSIBILITIES

10.1. In addition to payment, City shall undertake to perform the following:

- 10.1.1. Provide Project Information.** City shall provide Design-Builder with information regarding City's requirements for the Project, including any desired or required design or construction schedule.
- 10.1.2. Review of Documents.** City shall review any documents submitted by Design-Builder requiring City's decision and shall render any required decisions pertaining thereto.
- 10.1.3. Provide Notice of Defects.** In the event City knows of any material fault or defect in the Construction Work, nonconformance with the Contract or of any errors, omissions or inconsistencies in the Construction Documents, City shall give prompt notice thereof in writing to Design-Builder. However, no action or failure to act by City in regard to this **Article 10.1.3**, and in accordance with the timelines set forth in the Contract Documents, shall constitute City's acceptance of Work which is non-conforming and/or fails to comply with all requirements of the Contract Documents, except as may be specifically agreed in writing. Furthermore, no act or failure to act by City in regard to this **Article 10.1.3**, and in accordance with the timelines set forth in the Contract Documents, shall constitute a waiver of any duty owed by Design-Builder, except as may be specifically agreed in writing.
- 10.1.4. Access to the Site and the Construction Work.** City shall provide Design-Builder access to the site and to the Construction Work and shall provide Design-Builder with such information, existing and reasonably available, necessary to Design-Builder's performance of the Contract as Design-Builder may request.
- 10.1.5. Cooperation to Secure Permits, Licenses, Approvals and Authorizations.** City shall cooperate with Design-Builder in securing any necessary licenses, permits, approvals or other necessary authorizations for the design, construction and certification of the Project.
- 10.1.6. Timely Performance.** City shall perform the duties set forth in this **Article 10** a reasonably expeditious fashion so as to permit the orderly and timely progress of Design-Builder's Design Services and of the Construction Work.
- 10.1.7. City's Reviews, Inspections, Approvals, and Payments Not a Waiver.** City's review, inspection or approval of any Construction Work, Design Documents, Submittals or pay requests by Design-Builder solely shall be for the purpose of determining whether such Construction Work and such documents are generally consistent with City's construction program and requirements. No review,

inspection or approval by City of the Construction Work or documents shall relieve Design-Builder of its responsibility for the performance of its obligations under the Contract or the accuracy, adequacy, fitness, suitability or coordination of its Design Services or the Construction Work. Approval by any governmental or other regulatory agency or other governing body of any Construction Work, Design Documents or Contract Documents shall not relieve Design-Builder of responsibility for the Strict Compliance to its obligations under the Contract.

Payment by City, pursuant to the Contract, shall not constitute a waiver of any of City's rights under the Contract or at law and Design-Builder expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including final payment, is made by City.

- 10.1.8. Delay or Forbearance Not A Waiver.** City's agreement not to exercise any right under the Contract, City's delay or failure to exercise any right under the Contract or City requiring Strict Compliance with any obligation of Design-Builder under the Contract shall not be a waiver of City's right to exercise such right or to insist on such compliance at any other time or on any other occasion.
- 10.1.9. Documents Requested By Design-Builder.** City shall furnish to Design-Builder, prior to the execution of this Contract, any and all written and tangible material available and knowingly in City's possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to Design-Builder only in order to make complete disclosure of such material and for no other purpose. By furnishing such material, City does not represent, warrant or guarantee its accuracy or completeness, either in whole or in part. City expressly does not warrant any geotechnical or site information provided by it for use in connection with preparation of the Construction Documents; Design-Builder, however, may make use of the geotechnical information provided by City. Notwithstanding the foregoing Design-Builder is responsible for thoroughly reviewing the information for deficiencies, flaws, errors and/or omissions and to independently verify the accuracy of such geotechnical information and independently verifying the information. If Design-Builder requests it in writing, if in existence and if in City's possession, City also shall furnish surveys, legal limitations, utility locations (if known) and a legal description of the Project site.
- 10.1.10. Approvals and Easements.** Design-Builder shall obtain any and all easements required and City shall pay, as a pass-through cost, the necessary assessments and charges required for use and occupancy of the Construction site that are outside of the General Condition Costs. City shall render such assistance as Design-Builder may require in obtaining such easements, certificates of occupancy, and the like.

10.1.11. Right to Stop Construction Work. In the event Design-Builder fails or refuses to perform the Construction Work in Strict Compliance with the Contract, or otherwise is in breach of this Contract in any way, City may, at its option, direct Design-Builder to stop the Work, in accordance with **Article 4.3** of City's General Conditions for Design/Build Contracts, and/or direct Design-Builder to carry out the Work in accordance with **Article 4.4** of City's General Conditions for Design/Build Contracts and Design-Builder warrants that it will comply with any direction given by City under this **Article 10.1.11**

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

END OF ARTICLE 10

ARTICLE 11. PROJECT DOCUMENTATION

- 11.1. Maintenance of Project-Related Records.** Design-Builder shall maintain and protect all records relating in any manner whatsoever to the Project (hereafter referred to as the “Project Records”) for no less than four (4) years after Final Completion of the Project, unless there is an ongoing dispute under the Contract, then, such retention period by Design-Builder shall extend until final resolution of the dispute and for any longer period of time as may be required by City, Law or good management practice.
- 11.2. Availability of Project-Related Records to City.** All Project Records in the possession of Design-Builder, Design-Builders Sub-Consultants and/or Subcontractors shall be made available to City for inspection and copying upon City's request at any time during normal business hours. Additionally, such records shall be made available upon request by City to any state, federal or other regulatory authority and any such authority may review, inspect and copy such records. The Project Records include, without limitation, all drawings, Plans, Specifications, Submittals, correspondence, logs, minutes, memoranda, photographs, tape or videotape recordings or other writings or things which document the Project, its design or its construction. Said records include those documents reflecting the cost of design and construction to Design- Builder. Design-Builder shall not be required to keep records of, or provide access to, the makeup of any negotiated and agreed-to lump sums, unit prices or fixed overhead and profit multipliers with the exception of records required to verify Design-Builder is paying its employees in accordance with the Prevailing Wage Rates as required by this Contract. Refusal by Design-Builder to comply with the provisions hereof shall entitle City to withhold any payment(s) to Design-Builder until compliance is obtained.
- 11.2.1.** Design-Builder must notify City immediately if Design-Builder receives a request for documents from a third party. City must be given the opportunity to assert any proprietary interest it may have.
- 11.2.2.** Design-Builder must impose on its Sub-Consultants and its Subcontractors, if any, all record retention obligations of this Contract.

END OF ARTICLE 11

ARTICLE 12. OWNERSHIP OF PROJECT DOCUMENTS AND COPYRIGHTS

- 12.1.** All Work product (electronically or manually generated) including, but not limited to, Drawings, Specifications, cost estimates, studies, design analyses, original drawings, Computer Aided Drafting and Design (CADD) electronic files and other related documents prepared specifically in the performance of this Contract (hereafter collectively referred to as “Project Documents”) shall be the property of the City and are to be delivered to the City, in a reasonably organized form, without restriction on its future use by City before final payment is made to Design-Builder. In the event the Projects Documents are altered, modified or adapted with or without the written consent of Design-Builder, Design-Builder will not unreasonably withhold the delivery of the Project Documents to City. Any materially significant Work product lost or destroyed by Design-Builder shall be replaced or reproduced at Design-Builder’s non-reimbursable, sole cost.
- 12.2.** Design-Builder shall be permitted to retain one record set. Neither Design-Builder nor any sub-consultant, Subcontractor, or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by Design-Builder, City or City’s consultants. All copies of Construction Documents, except Design-Builder’s record set, shall be returned or suitably accounted for to City, on request, upon completion of the Work or earlier termination of the Contract. The Drawings, Specifications and other documents prepared by Design-Builder, City or City’s consultants, and any copies thereof furnished to Design-Builder, are for use solely with respect to this Project. The drawings, specifications or other documents are not to be used by Design-Builder or any sub-consultant, Subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the City. Design-Builder, sub-consultants, Subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by Design-Builder, City or City’s consultants appropriate to and for use in the execution of Design-Builder’s Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by Design-Builder, City or City’s consultants. Submittal or distribution to meet official regulatory requirements, or for other purposes in connection with this Project, is not to be construed as publication.
- 12.3.** When applicable and required by Law, all completed documents submitted by Design-Builder, its Sub-Consultants and its Subcontractors for final approval or issuance of a permit shall bear the seal with signature and the date adjacent thereto of a Texas registered professional Architect and/or Engineer for all plans, Work and Deliverables prepared by them for this Contract.
- 12.4.** All previously owned documents, including drawings, estimates, specifications, and all other documents and data not related to this Project will remain the property of Design-

Builder as instruments of service even if such intellectual property is contained within or incorporated into the Project Documents. However, Design-Builder understands and agrees that City shall have free access to all such information with the right to make and retain copies of previously owned Project-related drawings, estimates, specifications and all other documents and data. Any reuse of Design-Builder's previously owned documents without specific written verification or adaptation by Design-Builder will be at City's sole risk and without liability or legal exposure to Design-Builder.

- 12.5.** Notwithstanding anything to the contrary contained herein, all previously owned intellectual property of Design-Builder including, but not limited to, any computer software (object code and source code), tools, systems, equipment or other information used by Design-Builder or its Suppliers in the course of delivering the Services hereunder, and any know-how, methodologies or processes used by Design-Builder to provide the services or protect deliverables to City including, without limitation, all copyrights, trademarks, patents, trade secrets and any other proprietary rights inherent therein and appurtenant thereto, shall remain the sole and exclusive property of Design-Builder or its Suppliers.
- 12.6.** Design-Builder acknowledges and agrees that, upon payment, City exclusively shall own any and all information in whatsoever form and character produced and/or maintained in accordance with, pursuant to, or as a result of this Contract and shall be used as City desires and documents. All said information, including Drawings, Specifications, estimates, and all other documents and data, shall be delivered to City at no additional cost to City upon request, termination or completion of this Contract without restriction on City's future use. However, any reuse by City without specific written verification or adaptation by Design-Builder will be at City's sole risk and without liability or legal exposure to Design-Builder.
- 12.7.** Design-Builder agrees and covenants to protect any and all proprietary rights of City in any materials provided to Design-Builder. Such protection of proprietary rights by Design-Builder shall include, but not be limited to, the inclusion in any copy intended for publication of copyright mark reserving all rights to City. Additionally, any materials provided to Design-Builder by City shall not be released to any third party without the written consent of City and shall be returned intact to City upon termination or completion of this Contract or if instructed to do so by City.
- 12.8.** DESIGN-BUILDER, SUBJECT TO **ARTICLE 12.3**, HEREBY ASSIGNS ALL STATUTORY AND COMMON LAW COPYRIGHTS TO ANY COPYRIGHTABLE WORK THAT, IN PART OR IN WHOLE WAS PRODUCED FROM THIS CONTRACT TO CITY, INCLUDING ALL EQUITABLE RIGHTS. NO REPORTS, MAPS, DOCUMENTS OR OTHER COPYRIGHTABLE WORKS PRODUCED IN WHOLE OR IN PART BY THIS CONTRACT SHALL BE SUBJECT OF AN APPLICATION FOR COPYRIGHT BY DESIGN-BUILDER. ALL REPORTS, MAPS, PROJECT LOGOS, DRAWINGS OR OTHER COPYRIGHTABLE WORK PRODUCED UNDER THIS CONTRACT SHALL BECOME THE PROPERTY OF CITY (EXCLUDING ANY PRIOR OWNED INSTRUMENT OF SERVICES,

UNLESS OTHERWISE SPECIFIED HEREIN). DESIGN- BUILDER SHALL, AT ITS EXPENSE, INDEMNIFY CITY AND DEFEND ALL SUITS OR PROCEEDINGS INSTITUTED AGAINST CITY AND PAY ANY AWARD OF DAMAGES OR LOSS RESULTING FROM AN INJUNCTION AGAINST CITY, INSOFAR AS THE SAME ARE BASED ON ANY CLAIM THAT MATERIALS OR WORK PROVIDED UNDER THIS CONTRACT CONSTITUTE AN INFRINGEMENT OF ANY PATENT, TRADE SECRET, TRADEMARK, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHTS.

- 12.9.** Design-Builder may make copies of any and all documents and items for its files. Design-Builder shall have no liability for changes made to or use of the drawings, specifications and other documents made by Engineers or persons other than Design-Builder. Design-Builder appropriately shall mark all changes or modifications on all drawings, specifications and other documents made by Architects, Engineers and/or persons other than Design-Builder, including electronic copies.
- 12.10.** Copies of documents that may be relied upon by City are limited to the printed copies (also known as hard copies) and PDF electronic versions that are sealed and signed by Design-Builder. Files in editable electronic media format of text, data, graphics or other types, that are furnished by Design-Builder to City only are for convenience of City. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. However, any reuse without specific written verification or adaptation by Design-Builder will be at City's sole risk and without liability or legal exposure to Design-Builder.
- 12.11.** All Design-Builder's documentary Work product shall be maintained within Design-Builder's San Antonio offices, unless otherwise authorized by City. After expiration of this Contract, Design-Builder's documents may be archived in the Design-Builder's central record storage facility but shall remain accessible to City for the ten (10) year period cited in **Article 9.8** herein.

END OF ARTICLE 12

ARTICLE 13. INSURANCE REQUIREMENTS

13.1. Prior to the commencement of any work under this Project, Design-Builder shall purchase and maintain insurance, as set forth in **Article 13** of City's General Conditions for Design/Build Contracts, and any Supplementary General Conditions or Special Conditions, if applicable.

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

13.1.2. City reserves the right to review the insurance requirements of **Article 13** of City's General Conditions for Design/Build Contracts during the effective period of this Contract and to modify insurance coverage and limits when deemed necessary and prudent by the City of San Antonio's Risk Manager based upon changes in statutory law, court decisions or circumstances surrounding this Contract. Provided however, that such modified insurance coverage and/or limits are commercially available and can be reasonably procured in the insurance market. City shall increase the GMP, and allow Design-Builder to submit invoices for, the actual cost of such modified insurance coverage and/or limits. In no instance will City allow modification whereby City may incur increased risk.

END OF ARTICLE 13

**ARTICLE 14. SMALL BUSINESS ECONOMIC DEVELOPMENT
ADVOCACY (SBEDA) PROGRAM**

14.1. SBEDA Program. The City has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2016-05-19-0367 and as amended, also referred to as “SBEDA” or “the SBEDA Program”), which is posted on the City’s Economic Development Department (EDD) website page and is also available in hard copy format upon request to the City. The SBEDA Ordinance Compliance Provisions contained in this section of the Agreement are governed by the terms of the SBEDA Ordinance, as well as by the terms of the SBEDA Ordinance Policy & Procedure Manual established by the City pursuant to this Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual that are effective as of the date of the execution of this Agreement. Unless defined in a contrary manner herein, terms used in this section of the Agreement shall be subject to the same expanded definitions and meanings as given those terms in the SBEDA Ordinance and as further interpreted in the SBEDA Policy & Procedure Manual.

14.2. SBEDA Program Compliance – Affirmative Procurement Initiatives. The City has applied the following contract-specific Affirmative Procurement Initiatives to this contract. Design-Builder hereby acknowledges and agrees that the selected API requirement(s) shall also be extended to any change order or subsequent contract modification and, absent SBO’s granting of a waiver, that its full compliance with the following API terms and conditions are material to its satisfactory performance under this Agreement:

14.2.1. M/WBE Joint Venture Program. In accordance with SBEDA Ordinance Section III. D. 2 (c), this contract is being awarded pursuant to the M/WBE Joint Venture Program. For Construction contracts for which the City undertakes a “Best Value Contracting” method of procurement and subsequent evaluation of proposals an evaluation preference for M/WBE joint venture partners equal to up to 20% of the total points is assigned for purposes of evaluating and ranking prospective proposals. The allocation of points for M/WBE Joint Venture entity(s) shall be as follows:

- a) 20% of total Points for joint ventures wherein the M/WBE joint venture entity(s) is performing 50% or greater of the overall contract value that is not subcontracted;
- b) 15% of total Points for joint ventures wherein the M/WBE joint venture entity(s) is performing from 40% up to 49% of the overall contract value that is not subcontracted;

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- c) 10% of total Points for joint ventures wherein the M/WBE joint venture entity(s) is performing from 25% up to 39 % of the overall contract value that is not subcontracted;
 - d) 5% of total Points for joint ventures wherein the M/WBE joint venture entity(s) is performing from 10% up to 24% of the overall contract value that is not subcontracted; and
 - e) 0% of total Points for joint ventures wherein the M/WBE joint venture entity(s) is performing less than 10% of the overall contract value that is not subcontracted.

The M/WBEs that are likely to serve as an M/WBE joint venture entity(s) as a Prime Design-Builder for the contract will perform Commercially Useful Functions on the specific contract. A prospective joint venture entity(s) Design-Builder **shall submit a SBEDA Joint Venture Program Commitment Form** as required in the solicitation such documentation as required by the City that includes, but is not limited to:

- a) The name(s) of all the M/WBE joint venture entity(s) that will participate on the project;
- b) The percentage of prime contract dollars and the absolute dollar value of the services to be provided by the M/WBE joint venture entity(s); and,
- c) A description of the work that each M/WBE joint venture entity(s) shall be responsible for performing under the terms of the joint venture agreement.

14.2.2. SBE Subcontracting Program. In accordance with SBEDA Ordinance Section III. D. 1. (d), this contract is also being awarded pursuant to the SBE Subcontracting Program. Design-Builder agrees to subcontract at least twenty percent (20%) of its prime contract value to certified SBE firms headquartered or having a Significant Business Presence within the San Antonio Metropolitan Statistical Area (SAMSA).

14.2.3. M/WBE Subcontracting Program. In accordance with SBEDA Ordinance Section III. D. 2. (d), this contract is also being awarded pursuant to the M/WBE Subcontracting Program. Design-Builder agrees to subcontract at least seventeen percent (17%) of its prime contract value to certified M/WBE firms headquartered or having a Significant Business Presence within the San Antonio Metropolitan Statistical Area (SAMSA). This seventeen percent (17%) subcontracting goal will also count toward the aforementioned twenty percent (20%) SBE subcontracting goal.

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- 14.2.4. Segmented M/WBE Goal.** In accordance with SBEDA Ordinance Section III. D. 2. (e), this contract is being awarded pursuant to Segmented M/WBE Goals. Design-Builder agrees to subcontract at least three percent (3%) of the contract value to a certified African American Business Enterprise (AABE) firm headquartered or having a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA). This three percent (3%) subcontracting goal will also count toward the aforementioned seventeen percent (17%) M/WBE subcontracting goal and the twenty percent (20%) SBE subcontracting goal.

The Design-Builder shall submit a Prime Design-Builder/Joint Venture and Subcontractor/Supplier Commitment Form to City with its response for this contract. Failure to include a completed, signed copy of the Subcontractor/Supplier Commitment Form acknowledging the subcontracting goal(s) for this solicitation will render this response NON-RESPONSIVE. During or after the price proposal phase as determined by the City, the Design-Builder agrees to submit a Subcontractor/ Supplier Utilization Plan with the names of the certified SBE, M/WBE and AABE Sub-contractors to be used by Design-Builder on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each SBE, M/WBE and AABE Sub-Design-Builder, and documentation including a description of each SBE, M/WBE and AABE Sub-contractor's scope of work and confirmation of each SBE, M/WBE and AABE Sub-Design-Builder's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Agreement.

In the absence of a waiver granted by the SBO during or after the price proposal response (as determined by the City), failure of a Prime Design-Builder to attain this SBE, M/WBE and AABE subcontracting goal as required in the solicitation shall render its response non-Responsive. Also, in the absence of a waiver granted by the SBO, failure of a Prime Design-Builder to attain subcontracting goal(s) for SBE, M/WBE and AABE participation in the performance of its contract or otherwise comply with the provisions of this API shall be considered a material breach of contract, grounds for termination of that contract with the City and shall be subject to any penalties and sanctions available under the terms of the SBEDA Ordinance, its contract with the City or by law.

- 14.2.5. Subcontractor Diversity:** The City of San Antonio strongly encourages each bidder to be as inclusive as possible, and to reach out to all segments of the M/WBE community in its efforts to exercise good faith in achieving the SBE, M/WBE and AABE subcontracting goal of 20%, 17%, and 3% respectively, that has been established for this contract. While the relative availability of ready, willing, and able firms within various ethnic and gender categories will vary significantly from contract to contract based upon the particular trades that are involved, overall in the San Antonio Construction industry, as reflected in the City's Centralized Vendor Registration system, African-American owned firms represent approximately 2.63%, of available subcontractors, Hispanic-American

firms represent approximately 16.36%, Asian-American firms represent approximately 1.36%, Native American firms represent approximately 0.16%, and Women-owned firms represent approximately 5.67%, of available Construction subcontractors.

14.2.6. Mentor Protégé Program: In accordance with the SBEDA Ordinance, Section III. D. 2. (g), this contract is being awarded pursuant to the Mentor-Protégé Program, and as such, if the prime Design-Builder/Joint Venture entities are awarded this contract, they will be required to serve in the City's Mentor Protégé Program. Note, if submitting as a Joint Venture, all business entities will be required to register as a Mentor. If the Design-Builder/Joint Venture entities are already registered in the City's Mentor Protégé Program, then Design-Builder/Joint Venture entities are required to continue their service in the Program for a two-year period per the date of contract award. Please refer to the website at <https://www.besanantonio.com> or contact Mario Hernandez, Program Administrator for the City's Mentor Protégé Program, at (210) 486-0821 to learn more about the application process and Program requirements if awarded one or more of the contracts requiring mentorship participation.

14.3. Contract Requirements and Commitment. Design-Builder commits to comply with these requirements.

14.3.1. Waiver Request - Design-Builder may request, for good cause, a full or partial Waiver of a **specified subcontracting goal** included in this solicitation by submitting the *Subcontracting Goal- Waiver Request* form (*available at <http://www.sanantonio.gov/SBO/Forms.aspx>*) **during or after the price proposal response (as determined by the City)**. The Design-Builder's Waiver request must fully document Subcontractor unavailability despite the Design-Builder's good faith efforts to comply with the goal. Such documentation shall include all good faith efforts made by Design-Builder including, but not limited to, which Subcontractors were contacted (with phone numbers, e-mail addresses and mailing addresses, as applicable) and the method of contact. More information on the good faith effort criteria is available within the Subcontracting Goal – Waiver Request Evaluation Criteria at <http://www.sanantonio.gov/SBO/Forms.aspx>.

14.3.2. Exception Request - Design-Builder may, for good cause, request an Exception to the application of the SBEDA Program if the Design-Builder submits the *Exception to SBEDA Program Requirements Request* form (*available at <http://www.sanantonio.gov/SBO/Forms.aspx>*) with its solicitation response. The Design-Builder's Exception request must fully document why: (1) the value of the contract is below the \$50,000 threshold for application of the SBEDA Program; or (2) no commercially-useful subcontracting opportunities exist within the contract scope of work; or (3) the type of contract is outside of the scope of the SBEDA Ordinance. **Late Exception Requests will not be considered.**

14.4. Definitions

- 14.4.1. Affirmative Procurement Initiatives (API)** – Refers to various S/M/WBE Program tools and Solicitation Incentives that are used to encourage greater prime and subcontract participation by S/M/WBE firms, including bonding assistance, evaluation preferences, subcontracting goals and joint venture incentives. (For full descriptions of these and other S/M/WBE Program tools, see Section III.D of Attachment A to the SBEDA Ordinance). To be eligible for the benefits of race- and gender-conscious APIs as provided in the SBEDA Ordinance, M/WBE firms must also satisfy the size standards for being a Small Business Enterprise or SBE as defined herein.
- 14.4.2. Annual Aspirational Goal** – a non-mandatory annual aspirational percentage goal for overall M/WBE Prime and subcontract participation in City of San Antonio contracts is established each year for Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies contract Industry Categories. This Annual Aspirational Goal is to be set (and thereafter adjusted) by the Goal Setting Committee (GSC) based upon the M/WBE availability by industry in accordance with the City’s 2015 Disparity Study findings, along with relative M/WBE availability data to be collected by the City through its CVR system, and the utilization of M/WBEs. Any adjusted Annual Aspirational Goals for a given industry should not exceed the Expected Availability for award dollar weights as found in the 2015 Disparity Study. Annual Aspirational Goals are not to be routinely applied to individual contracts, but are intended to serve as a benchmark against which to measure the overall effectiveness of the S/M/WBE Program on an annual basis, and to gauge the need for future adjustments to the mix and to the aggressiveness of remedies being applied under the Program. Percentage Goals for S/M/WBE participation may be established by the GSC on a contract-by-contract basis based upon similar data and analysis for the particular goods and services being purchased in a given contract.
- 14.4.3. Award** – the final selection of a Design-Builder for a specified Prime Contract or subcontract dollar amount. Contract awards are made by the City to Prime Design-Builders or vendors and by Prime Design-Builders or vendors to Subcontractor or sub-vendors, usually pursuant to a solicitation process. (Contract awards are to be distinguished from contract payments in that they only reflect the anticipated dollar amounts instead of actual dollar amounts that are paid to a contractor under an awarded contract).
- 14.4.4. Best Value Contracting** – a purchasing solicitation process through which the Originating Department may evaluate factors other than price. Evaluation criteria for selection may include a Design-Builder’s previous experience and quality of product or services procured, and other factors identified in the applicable statute.

14.4.5. Centralized Vendor Registration System (CVR) – a mandatory electronic system of hardware and software programs by which the City recommends all prospective Design-Builders and Subcontractors that are ready, willing and able to sell goods or services to the City to register. All businesses awarded a City contract shall be required to register in the CVR. The CVR system assigns a unique identifier to each registrant that is then required for the purpose of submitting solicitation responses and invoices, and for receiving payments from the City. The CVR-assigned identifiers are also used by the Goal Setting Committee for measuring relative availability and tracking utilization of SBE and M/WBE firms by Industry or commodity codes, and for establishing Annual Aspirational Goals and Contract-by-Contract Subcontracting Goals.

14.4.6. Certification – the process by which the Small Business Office (SBO) staff determines a firm to be a bona-fide small, minority-, women-owned, or emerging small business enterprise. Emerging Small Business Enterprises (ESBEs) are automatically eligible for Certification as SBEs. Any firm may apply for multiple Certifications that cover each and every status category (e.g., SBE, ESBE, MBE, or WBE) for which it is able to satisfy eligibility standards. The SBO staff may contract these services to a regional Certification agency or other entity. For purposes of Certification, the City may accept any firm that is certified by local government entities and other organizations identified herein that have adopted Certification standards and procedures similar to those followed by the SBO, provided the prospective firm satisfies the eligibility requirements set forth in this Ordinance in Section III.E.6.

14.4.7. City – refers to the City of San Antonio, TX.

14.4.8. Commercially Useful Function – an S/M/WBE firm performs a Commercially Useful Function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, staffing, managing and supervising the work involved. To perform a Commercially Useful Function, the S/M/WBE firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an S/M/WBE firm is performing a Commercially Useful Function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the S/M/WBE firm is to be paid under the contract is commensurate with the work it is actually performing and the S/M/WBE credit claimed for its performance of the work, and other relevant factors. Specifically, an S/M/WBE firm does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of meaningful and useful S/M/WBE participation, when in similar transactions in which S/M/WBE firms do not participate, there is no such role performed.

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- 14.4.9. Control** – the authority of a person or business owner to sign responses to solicitations and contracts, make price negotiation decisions, sell or liquidate the business and have the primary authority to direct the day-to-day management and operation of a business enterprise without interference from others.
- 14.4.10. Economic Inclusion** – efforts to promote and maximize commercial transactions within, between and among all segments of the business population, regardless of race or gender, within the Relevant Marketplace.
- 14.4.11. Emerging SBE (ESBE)** – a certified SBE corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is independently owned and operated by Individuals legally residing in, or that are citizens of, the United States or its territories whose annual revenues and number of employees are no greater than 25% of the small business size standards for its industry as established by the U.S. Small Business Administration, and meets the Significant Business Presence requirements as defined herein.
- 14.4.12. Emerging M/WBE** – a certified M/WBE firm whose annual revenues and number of employees are no greater than 25% of the small business size standards for its industry as established by the U.S. Small Business Administration, and meets the Significant Business Presence requirements as defined herein.
- 14.4.13. Evaluation Preference** – an API that may be applied by the Goal Setting Committee to Construction, Architectural & Engineering, Professional Services, Other Services, and Goods and Supplies contracts that are to be awarded on a basis that includes factors other than lowest price, and wherein responses that are submitted to the City by S/M/WBE firms may be awarded additional Points in the evaluation process in the scoring and ranking of their proposals against those submitted by other prime Design-Builders.
- 14.4.14. Formal Solicitation** – an invitation for bids, request for proposals, request for qualifications or other solicitation document issued by a City department for a contract that requires City Council approval, in accordance with the procurement rules adopted by the City Manager or designee through a memorandum issued by the City Manager or designee, an Administrative Directive or a procurement manual issued under the authority of the City Manager or designee, and/or pursuant to statutory requirements.
- 14.4.15. Goal Setting Committee (GSC)** – a committee, or series of committees, appointed and chaired by the City Manager or designee from the Executive Team that includes, at a minimum, the EDD Director or designee, and the Director of Finance or Director of Transportation and Capital Improvements (TCI) or their designees, the Director or designee of the Originating Department (if the Originating Department is neither Finance nor TCI,) all without duplication of designees and two citizens appointed by City Council who are eligible to vote during the goal setting committee on contracts valued at \$3,000,000 and above.

The City Manager or designee may also appoint two ex-officio members of the Small Business Advocacy Committee to serve on any GSC purely in an advisory and non-voting capacity. The GSC establishes S/M/WBE Program Goals for the City of San Antonio (e.g., Annual Aspirational Goals, Contract-by-Contract Subcontracting Goals, and determining which M/WBE segments are eligible for Segmented Subcontracting Goals annually) based upon Industry Categories, vendor availability, project-specific characteristics, and M/WBE utilization. The GSC also makes determinations about which Affirmative Procurement Initiatives (APIs) are to be applied to specific contracts based upon various criteria.

14.4.16. Good Faith Efforts – documentation of the Design-Builder’s intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following: (1) documentation as stated in the solicitation reflecting the Design-Builder’s commitment to comply with SBE or M/WBE Program Goals as established by the GSC for a particular contract; or (2) documentation of efforts made toward achieving the SBE or M/WBE Program Goals (e.g., solicitations of bids/proposals/qualification statements from all qualified SBE or M/WBE firms listed in the Small Business Office’s directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a Prime Design-Builder’s posting of a bond covering the work of SBE or M/WBE Subcontractors; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by the Design-Builder; and documentation of consultations with trade associations and Design-Builders that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Subcontractors.)

14.4.17. HUBZone Firm – a business that has been certified by U.S. Small Business Administration for participation in the federal HUBZone Program, as established under the 1997 Small Business Reauthorization Act. To qualify as a HUBZone firm, a small business must meet the following criteria: (1) it must be owned and Controlled by U.S. citizens; (2) at least 35 percent of its employees must reside in a HUBZone; and (3) its Principal Place of Business must be located in a HUBZone within the San Antonio Metropolitan Statistical Area. [See 13 C.F.R. 126.200 (1999).]

14.4.18. Independently Owned and Operated – ownership of an SBE firm must be direct, independent and by Individuals only. Ownership of an M/WBE firm may be by Individuals and/or by other businesses provided the ownership interests in the M/WBE firm can satisfy the M/WBE eligibility requirements for ownership and Control as specified herein in Section III.E.6. The M/WBE firm must also be Independently Owned and Operated in the sense that it cannot be the subsidiary of another firm that does not itself (and in combination with the certified M/WBE firm) satisfy the eligibility requirements for M/WBE Certification.

14.4.19. Individual – an adult person that is of legal majority age.

14.4.20. Industry Categories – procurement groupings for the City of San Antonio inclusive of Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies (i.e., manufacturing, wholesale and retail distribution of commodities). This term may sometimes be referred to as “business categories.”

14.4.21. Joint Venture Incentives – an API that provides inducements for non-SBE and non-M/WBE firms to collaborate with SBE or M/WBE partners in responses to solicitations and performing a Prime Contract to supply goods to, or to perform non-Construction services on behalf of, the City. Joint ventures are manifested by written agreements between two or more Independently Owned and Controlled business firms to form a third business entity solely for purposes of undertaking distinct roles and responsibilities in the completion of a given contract. Under this business arrangement, each joint venture partner shares in the management of the joint venture and also shares in the profits or losses of the joint venture enterprise commensurately with its contribution to the venture. Incentives under this API may include Evaluation Preferences that are tied to the percentage of SBE or M/WBE participation in the joint venture, expedited issuance of building permits and extra contract option years in certain Other Services and Goods & Supplies contracts.

14.4.22. Minority/Women Business Enterprise (M/WBE) – firm that is certified as either a Minority Business Enterprise or as a Women Business Enterprise, and which is at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members and/or women, and that is ready, willing and able to sell goods or services that are purchased by the City of San Antonio.

14.4.23. M/WBE Directory – a listing of M/WBEs that have been certified for participation in the City’s M/WBE Program APIs.

14.4.24. M/WBE Subcontracting Program – an API in which Prime Design-Builders or vendors are required to make Good Faith Efforts to subcontract a specified percentage of the value of prime contract dollars to certified M/WBE firms. Such subcontracting goals may be set and applied by the GSC on a contract-by-contract basis to those types of contracts that provide subcontract opportunities for performing Commercially Useful Functions wherein:

- a) There have been ongoing disparities in the utilization of available M/WBE Subcontractors; or
- b) Race-Neutral efforts have failed to eliminate persistent and significant disparities in the award of prime contracts to M/WBEs in a particular Industry

Category or industry segment (e.g., Construction contracts, Professional Services contracts, and Architectural and Engineering contracts), and subcontract opportunities are limited outside of City contracts.

When specified by the GSC, the M/WBE Subcontracting Program may also be required to reflect Good Faith Efforts that a Prime Design-Builder or vendor has taken (or commits to taking in the case of solicitations that do not include a detailed scope of work or those in which price cannot be considered a factor in evaluation), toward attainment of subcontracting goals for M/WBE firms.

14.4.25. M/WBE Evaluation Preference – an API that the City may apply to requests for proposals or qualifications (RFPs or RFQs) on City Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies contracts that are issued pursuant to a Best Value Contracting method or other methods of procurement wherein criteria other than lowest price are factored into the selection process. M/WBEs that submit responses for these kinds of solicitations are awarded additional Points in the scoring of their responses when evaluating and ranking their responses against those submitted by non-minority firms. Where specified in contract specifications as approved by the Goal Setting Committee, the M/WBE Evaluation Preference may be limited to Emerging M/WBE firms.

14.4.26. Minority Business Enterprise (MBE) – any legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is certified as being at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members, and that is ready, willing and able to sell goods or services that are purchased by the City. To qualify as an MBE, the enterprise shall meet the Significant Business Presence requirement as defined herein. Unless otherwise stated, the term “MBE” as used in the SBEDA Ordinance is not inclusive of women-owned business enterprises (WBEs).

14.4.27. Minority Group Members – African-Americans, Hispanic Americans, Asian Americans and Native Americans legally residing in, or that are citizens of, the United States or its territories, as defined below:

African-Americans: Persons with origins in any of the black racial groups of Africa.

Hispanic-Americans: Persons of Mexican, Puerto Rican, Cuban, Spanish or Central and South American origin.

Asian-Americans: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.

Native Americans: Persons having no less than 1/16th percentage origin in any of the Native American Tribes, as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.

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- 14.4.28. Originating Department** – the City department or authorized representative of the City which issues solicitations or for which a solicitation is issued.
- 14.4.29. Payment** – dollars actually paid to Prime Design-Builders and/or Subcontractors and vendors for City contracted goods and/or services.
- 14.4.30. Points** – the quantitative assignment of value for specific evaluation criteria in the vendor selection process used in some Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies contracts (e.g., up to 20 points out of a total of 100 points assigned for S/M/WBE participation as stated in response to a Request for Proposals).
- 14.4.31. Prime Design-Builder** – the vendor or contractor to whom a purchase order or contract is issued by the City of San Antonio for purposes of providing goods or services for the City.
- 14.4.32. Race-Conscious** – any business classification or API wherein the race or gender of business owners is taken into consideration (e.g., references to M/WBE programs and APIs that are listed herein under the heading of “Race-Conscious”). To be eligible for the benefits of race- and gender-conscious APIs as provided in this Ordinance, M/WBE firms must also satisfy the size standards for being a Small Business Enterprise or SBE as defined herein.
- 14.4.33. Race-Neutral** – any business classification or API wherein the race or gender of business owners is not taken into consideration (e.g., references to SBE programs and APIs that are listed herein under the heading of “Race-Neutral”).
- 14.4.34. Relevant Marketplace** – the geographic market area affecting the S/M/WBE Program as determined for purposes of collecting data for the 2015 Disparity Study, and for determining eligibility for participation under various programs established by the SBEDA Ordinance, is defined as the San Antonio Metropolitan Statistical Area (SAMSAs), currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.
- 14.4.35. Design-Builder** – a vendor submitting a bid, statement of qualifications, or proposal in response to a solicitation issued by the City.
- 14.4.36. Responsible** – a firm which is capable in all respects to fully perform the contract requirements and has the integrity and reliability which will assure good faith performance of contract specifications.
- 14.4.37. Responsive** – a firm’s submittal (bid, response or proposal) conforms in all material respects to the solicitation (Invitation for Bid, Request for Qualifications, or Request for Proposal) and shall include compliance with S/M/WBE Program requirements.

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- 14.4.38. San Antonio Metropolitan Statistical Area (SAMS)** – also known as the Relevant Marketplace, the geographic market area from which the City’s 2015 Disparity Study analyzed contract utilization and availability data for disparity (currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson).
- 14.4.39. Segmented M/WBE Goals** – the application of multiple goals for M/WBE participation within Annual Aspirational Goals or for M/WBE Subcontracting Goals on an individual City contract wherein an overall combined M/WBE goal is accompanied by subsets of one or more smaller goals. Such segmented goals specifically target the participation of a particular segment of business enterprises owned and Controlled by WBEs or certain Minority Group Members (e.g., African-Americans or Hispanic-Americans) based upon relative availability and significantly greater patterns of underutilization and disparity within an industry as compared to other gender and Minority Group Member categories of M/WBEs. The application of Segmented M/WBE Goals is intended to ensure that those segments of M/WBEs that have been most significantly and persistently underutilized receive a fair measure of remedial assistance.
- 14.4.40. SBE Directory** – a listing of small businesses that have been certified for participation in the City’s SBE Program APIs.
- 14.4.41. Significant Business Presence** – to qualify for this Program, a S/M/WBE must be headquartered or have a significant business presence for at least one year within the Relevant Marketplace, defined as: an established place of business in one or more of the eight counties that make up the San Antonio Metropolitan Statistical Area (SAMS), from which 20% of its full-time, part-time and contract employees are regularly based, and from which a substantial role in the S/M/WBE's performance of a Commercially Useful Function is conducted. A location utilized solely as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not be construed to constitute a significant business presence.
- 14.4.42. Small Business Enterprise (SBE)** – a corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is Independently Owned and Operated by Individuals legally residing in, or that are citizens of, the United States or its territories, and which meets the U.S. Small Business Administration (SBA) size standard for a small business in its particular industry(ies) and meets the Significant Business Presence requirements as defined herein.
- 14.4.43. Small Business Office (SBO)** – the office within the Economic Development Department (EDD) of the City that is primarily responsible for general oversight and administration of the S/M/WBE Program.

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- 14.4.44. Small Minority Women Business Enterprise Program (S/M/WBE Program)** – the combination of SBE Program and M/WBE Program features contained in this Ordinance.
- 14.4.45. Solicitation Incentives** – additional inducements or enhancements in the solicitation process that are designed to increase the chances for the selection of S/M/WBE firms in competition with other firms. Such inducements and enhancements may include such terms as additional contract option years, increased quantities in supply contracts, and evaluation preferences, where not prohibited by law. These solicitation incentives may be applied as appropriate to solicitations, contracts, and letter agreements for Construction, Architecture and Engineering services, Professional Services, Other Services, and Goods & Supplies contracts, including change orders and amendments.
- 14.4.46. Subcontractor** – any vendor or contractor that is providing goods or services to a Prime Design-Builder in furtherance of the Prime Design-Builder’s performance under a contract or purchase order with the City. A copy of the binding agreement between the Prime Design-Builder and the Subcontractor shall be submitted prior to the City’s issuance of a notice to proceed.
- 14.4.47. Suspension** – the temporary stoppage of an SBE or M/WBE firm’s beneficial participation in the City’s S/M/WBE Program for a finite period of time due to cumulative contract payments the S/M/WBE firm received during a fiscal year that exceed a certain dollar threshold as set forth in Section III.E.7, or pursuant to the Penalties and Sanctions set forth in Section III.E.13.
- 14.4.48. Subcontractor/Supplier Utilization Plan** – a binding part of this contract agreement which states the Design-Builder’s commitment for the use of Joint Venture Partners and / or Subcontractors/Suppliers in the performance of this contract agreement, and states the name, scope of work, and dollar value of work to be performed by each of Design-Builder’s Joint Venture partners and Subcontractors/Suppliers in the course of the performance of this contract, specifying the S/M/WBE Certification category for each Joint Venture partner and Subcontractor/Supplier, as approved by the SBO Manager. Additions, deletions or modifications of the Joint Venture partner or Subcontractor/Supplier names, scopes of work, of dollar values of work to be performed requires an amendment to this agreement to be approved by the EDD Director or designee.
- 14.4.49. Women Business Enterprises (WBEs)** - any legal entity, except a joint venture, that is organized to engage in for-profit transactions, that is certified for purposes of the SBEDA Ordinance as being at least fifty-one percent (51%) owned, managed and Controlled by one or more non-minority women Individuals that are lawfully residing in, or are citizens of, the United States or its territories, that is ready, willing and able to sell goods or services that are purchased by the City and that meets the Significant Business Presence requirements as defined herein.

Unless otherwise stated, the term “WBE” as used in this Ordinance is not inclusive of MBEs.

14.5. SBEDA Program Compliance – General Provisions. As Design-Builder acknowledges that the terms of the City’s SBEDA Ordinance, as amended, together with all requirements, guidelines, and procedures set forth in the City’s SBEDA Policy & Procedure Manual are in furtherance of the City’s efforts at economic inclusion and, moreover, that such terms are part of Design-Builder’s scope of work as referenced in the City’s formal solicitation that formed the basis for contract award and subsequent execution of this Agreement, these SBEDA Ordinance requirements, guidelines and procedures are hereby incorporated by reference into this Agreement, and are considered by the Parties to this Agreement to be material terms. Design-Builder voluntarily agrees to fully comply with these SBEDA program terms as a condition for being awarded this contract by the City. Without limitation, Design-Builder further agrees to the following terms as part of its contract compliance responsibilities under the SBEDA Program:

- 14.5.1.** Design-Builder shall cooperate fully with the Small Business Office and other City departments in their data collection and monitoring efforts regarding Design-Builder’s utilization and payment of Subcontractors, S/M/WBE firms, and HUBZone firms, as applicable, for their performance of Commercially Useful Functions on this contract including, but not limited to, the timely submission of completed forms and/or documentation promulgated by SBO, through the Originating Department, pursuant to the SBEDA Policy & Procedure Manual, timely entry of data into monitoring systems, and ensuring the timely compliance of its subcontractors with this term;
- 14.5.2.** Design-Builder shall cooperate fully with any City or SBO investigation (and shall also respond truthfully and promptly to any City or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of Design-Builder or its subcontractors or suppliers;
- 14.5.3.** Design-Builder shall permit the SBO, upon reasonable notice, to undertake inspections as necessary including, but not limited to, contract-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview Subcontractors and workers to determine whether there has been a violation of the terms of this Agreement;
- 14.5.4.** Design-Builder shall notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to Design-Builder’s Subcontractor / Supplier Utilization Plan for this contract, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by Design-Builder to replace the Subcontractor / Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Subcontractor / Supplier Utilization Plan including,

but not limited to, proposed self-performance of work by Design-Builder of work previously designated for performance by Subcontractor or supplier, substitutions of new Subcontractors, terminations of previously designated Subcontractors, or reductions in the scope of work and value of work awarded to Subcontractors or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.

- 14.5.5.** Design-Builder shall immediately notify the Originating Department and SBO of any transfer or assignment of its contract with the City, as well as any transfer or change in its ownership or business structure.
- 14.5.6.** Design-Builder shall retain all records of its Subcontractor payments for this contract for a minimum of four years or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this contract, for a minimum of four years or as required by state law following the final determination of litigation, whichever is later.
- 14.5.7.** In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a Design-Builder's Subcontractor / Supplier Utilization Plan, the Design-Builder shall not be given credit for the participation of its S/M/WBE or HUBZone Subcontractor(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and the Design-Builder and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.
- 14.5.8.** Design-Builder acknowledges that the City will not execute a contract or issue a Notice to Proceed for this project until the Design-Builder for this project have registered and/or maintained active status in the City's Centralized Vendor Registration System (CVR), and Design-Builder has represented to City which primary commodity codes each Subcontractor will be performing under for this contract. City recommends all Subcontractors to be registered in the CVR.
- 14.6. Commercial Nondiscrimination Policy Compliance.** As a condition of entering into this Agreement, the Design-Builder represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the City's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, Design-Builder shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause

shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the City's Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in City contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. Design-Builder's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the City pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. Design-Builder shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to City contracts.

- 14.7. Prompt Payment.** Upon execution of this contract by Design-Builder, Design-Builder shall be required to submit to City accurate progress payment information with each invoice regarding each of its Subcontractors, including HUBZone Subcontractors, to ensure that the Design-Builder's reported subcontract participation is accurate. Design-Builder shall pay its Subcontractors in compliance with Chapter 2251, Texas Government Code (the "Prompt Payment Act") within ten days of receipt of payment from City. In the event of Design-Builder's noncompliance with these prompt payment provisions, no final retainage on the Prime Contract shall be released to Design-Builder, and no new City contracts shall be issued to the Design-Builder until the City's audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the contract.
- 14.8. Violations, Sanctions and Penalties.** In addition to the above terms, Design-Builder acknowledges and agrees that it is a violation of the SBEDA Ordinance and a material breach of this Agreement to:
- 14.8.1.** Fraudulently obtain, retain, or attempt to obtain, or aid another in fraudulently obtaining, retaining, or attempting to obtain or retain Certification status as an SBE, MBE, WBE, M/WBE, HUBZone firm, Emerging M/WBE, or ESBE for purposes of benefitting from the SBEDA Ordinance;
 - 14.8.2.** Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent statements or representations, or make use of any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry pursuant to the terms of the SBEDA Ordinance;
 - 14.8.3.** Willfully obstruct, impede or attempt to obstruct or impede any authorized official or employee who is investigating the qualifications of a business entity which has requested Certification as an S/M/WBE or HUBZone firm;
 - 14.8.4.** Fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under the terms of the SBEDA Ordinance; and

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- 14.8.5.** Make false statements to any entity that any other entity is, or is not, certified as an S/M/WBE for purposes of the SBEDA Ordinance.

Any person who violates the provisions of this section shall be subject to the provisions of Section III. E. 13. of the SBEDA Ordinance and any other penalties, sanctions and remedies available under law including, but not limited to:

- 14.8.6.** Suspension of contract;
- 14.8.7.** Withholding of funds;
- 14.8.8.** Rescission of contract based upon a material breach of contract pertaining to S/M/WBE Program compliance;
- 14.8.9.** Refusal to accept a response or proposal; and
- 14.8.10.** Disqualification of Design-Builder or other business firm from eligibility for providing goods or services to the City for a period not to exceed two years (upon City Council approval).

END OF ARTICLE 14

ARTICLE 15. DESIGNATED REPRESENTATIVES OF PARTIES

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

ENTER NAME & TITLE HERE

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

ENTER NAME & TITLE HERE

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

ENTER NAME & TITLE HERE

END OF ARTICLE 15

ARTICLE 16. MISCELLANEOUS PROVISIONS

- 16.1. Dispute Resolution.** All disputes against City that arise from this Contract or any Project shall be resolved in accordance with City's General Conditions for Design/Build Contracts. City designates the Director or his department designee as its officer(s) for examining, negotiating and resolving claims and counterclaims.
- 16.2. Records** of expenses pertaining to additional services and services performed on the basis of a Worker Wage Rate or Monthly Salary Rate shall be kept on the basis of generally accepted accounting principles and in accordance with cost accounting standards promulgated by the Federal Office of Management and Budget Cost Accounting Standards Board and shall be available for audit by City or City's authorized representative on reasonable notice.
- 16.3. Texas Family Code Child Support Certification.** Pursuant to Section 231.006, Texas Family Code, Design-Builder certifies that it is not ineligible to receive the award of or payments under this Contract and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.
- 16.4. Franchise Tax Certification.** If it is a corporation or limited liability company, Design-Builder certifies:
- 16.4.1.** it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the Texas Tax Code; or
 - 16.4.2.** that the corporation or limited liability company is exempt from the payment of such taxes; or
 - 16.4.3.** that the corporation or limited liability company is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.
- 16.5. Payment of Debt or Delinquency to City.** It is the policy of City that any person or entity doing business with City shall, at all times, remain in financial good standing with all City Departments. In that regard, Design-Builder warrants that it has no outstanding obligations to any City of San Antonio Department at the time of the execution of this Contract, and hereby covenants that it timely will pay, as they come due, any and all taxes, fees, fines or any other charges assessed by any City of San Antonio Department whether imposed by statute, ordinance or contract, without regard to whether these charges are associated with this Contract or Design-Builder's operation under this Contract.

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- 16.6. Contract Documents; Merger.** The Contract Documents form the entire and integrated Contract between City and Design-Builder and supersede all prior negotiations, representations or agreements, either written or oral. This Contract and each of its provisions shall be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by Design-Builder and City.
- 16.7. Captions.** The captions of sections in this Contract are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.
- 16.8. Notices.** In addition to the written Notice Provision in **Article 16.2** of the General Conditions for City of San Antonio Design/Build Contracts, all notices, consents, approvals, demands, requests or other communications relied on by the parties shall be in writing. Written notice shall be deemed to have been given when:
- 16.8.1.** delivered in person to the designated representative of Design-Builder or City listed in **Article 15** herein; or
 - 16.8.2.** sent by U. S. Mail, registered or certified mail, postage prepaid, return receipt requested, to the last known business address of the designated representative of Design-Builder or City listed in **Article 15** herein; or
 - 16.8.3.** delivery by reputable express courier service with charges prepaid; or
 - 16.8.4.** E-mails transmitted to the web address supplied by each respective Party hereto for its designated representative listed in **Article 15** herein.
- 16.9. Notices are deemed effective upon:**
- 16.9.1.** Personal delivery; or
 - 16.9.2.** For mail notices, upon receipt or on the third business day after the date of mailing, whichever is sooner
 - 16.9.3.** for express courier services on the second business day following the date of mailing by express courier service or upon actual receipt of such mailing, whichever shall first occur, or
 - 16.9.4.** E-mail notices are deemed effective upon confirmation the e-mail was received by the intended recipient.
- 16.10.** Notices of claims or disputes or other legal notices required by this Contract shall be sent to the following persons at the indicated locations. The parties may make reasonable changes in the person or place designated for receipt of notices upon advance written notice to the other party.

If to City:

If to Design-Builder:

City of San Antonio
Aviation Department
Attention: Jesus Saenz
Director of Airports
9800 Airport Blvd
San Antonio, Texas 78216

**ENTER NAME, TITLE, AND
ADDRESS OF DESIGN-BUILDER**

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

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

16.13. Equal Employment Opportunity and Affirmative Action. Design-Builder shall comply with applicable Laws and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs.

16.14. Statutory Contracting Prohibitions.

16.14.1. Texas Government Code §2271.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:

- (a) does not boycott Israel; and
- (b) will not boycott Israel during the term of the Contract.

"Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

"Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit. Based on the definition above, Design-Builder qualifies as a Company.

By executing the Contract, Design-Builder hereby verifies that it does not boycott Israel, and will not boycott Israel during the term of the Contract. City hereby relies on Design-Builder's verification. If Design-Builder's affirmation is found to be false,

City may terminate the Contract for material breach.

16.14.2. Texas Government Code §2274 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:

- (a) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trading association; and
- (b) will not discriminate during the term of the contract against a firearm entity or firearm trading association.

"Firearm entity" means:

- (i) a firearm, firearm accessory, or ammunition manufacturer, distributor, wholesaler, supplier, or retailer; and
- (ii) sport shooting range as defined by Texas Local Government Code §250.001.

"Firearm trade association" means any person, corporation, unincorporated association, federation, business league, or business organization that:

- (i) is not organized or operated for profit and for which none of its net earnings inures to the benefit of any private shareholder or individual;
- (ii) has two or more firearm entities as members; and
- (iii) is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c) of that code.

By executing the Contract, Design-Builder hereby verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trading association, and will not have such a practice, policy, guidance or directive during the term of the Contract. City's hereby relies on Design-Builder's verification. If Design-Builder's affirmation is found to be false, City may terminate the Contract for material breach.

16.14.3. Texas Government Code §2274 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:

- (a) does not boycott energy companies; and
- (b) will not boycott energy companies during the term of the contract.

"Boycott Energy Company" means, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company either:

- (i) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or
- (ii) does business with a company described by Paragraph (a).

"Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary,

majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

By executing the Contract, Design-Builder hereby verifies that it does not boycott energy companies and will not boycott energy companies during the term of the Contract. City hereby relies on Design-Builder's verification. If Design-Builder's affirmation is found to be false, City may terminate the Contract for material breach.

- 16.14.4.** Texas Government Code §2252.152 provides that a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Texas Government Code §§2270.0201 or 2252.153.

By executing the Contract, Design-Builder hereby certifies that it is not identified on such a list and that it will notify City should it be placed on such a list while under contract with City. City hereby relies on Design-Builder's certification. If the certification is found to be false, or if Design-Builder is identified on such list during the term of the Contract, City may terminate the Contract for material breach.

- 16.14.5.** Texas Health and Safety Code §161.0085 provides that a business in the State may not require a customer to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from the business. A business that fails to comply with Texas Health and Safety Code §161.0085 is not eligible to receive a grant or enter into a contract payable with State funds.

By executing the Contract, Design-Builder hereby certifies that it is not ineligible to be awarded this Contract under Texas Health and Safety Code §161.0085. City hereby relies on Design-Builder's certification. If the certification is found to be false, City may terminate the Contract for material breach.

END OF ARTICLE 16

DESIGN-BUILD CONTRACT SIGNATURE PAGE

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

Executed on this _____ day of _____, 20_____.

City

Design-Builder

CITY OF SAN ANTONIO, TEXAS

COMPANY NAME

By: _____
Erik Walsh
City Manager

By: _____
Name
Title

APPROVED AS TO FORM:

By: _____
City Attorney

END OF DESIGN-BUILD CONTRACT SIGNATURE PAGE

EXHIBIT A
PROGRAMMING DOCUMENTS

EXHIBIT B
DESIGN-BUILDER'S FEE PROPOSAL

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

EXHIBIT E

RESERVED

PAYMENT AND PERFORMANCE BOND FORMS

EXHIBIT F

DESIGN-BUILDER’S DESIGN SCHEDULE AND DESIGN FEE SCHEDULE

EXHIBIT G
DESIGN-BUILDERS BASELINE CONSTRUCTION SCHEDULE

EXHIBIT H

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

EXHIBIT I

DESIGN TASKS AND DELIVERABLES

1. Pre-design Services Tasks

- 1.1.** Design-Builder shall setup, schedule and conduct initial meetings, including partnering session(s).
 - 1.1.1.** Design-Builder shall organize, schedule and lead City workshops. Design-Builder shall determine what information is required to be collected or conveyed via workshops with City. Design-Builder shall schedule required workshops through City's designated Project Manager.
 - 1.1.2.** A formal partnering process shall be a part of the Project delivery. An initial partnering workshop shall be held at the start of design, and subsequent sessions will be held throughout the life of the project, as determined by the joint project team. The Design-Builder is responsible for organizing and delivering all partnering sessions.

2. Design Tasks and Deliverables

2.1. Design Process

- 2.1.1.** Estimated Cost of the Work shall be broken down into the most recent standard CSI Divisions, and such sections as directed by the design, shop drawing, fabrication and construction shall progress in stages with approvals provided by the City before advancing to the next stage.
- 2.1.2.** A kick-off meeting shall take place before beginning design. The kick-off meeting shall:
 - 2.1.2.1.** Involve City representatives and appropriate Design-Builder design team
 - 2.1.2.2.** Delineate who from Design-Builder design team will be performing the work and where.
 - 2.1.2.3.** Establish the starting point for design, e.g. what is known and not known to date, what direction has been documented and the applicability of that documentation.
 - 2.1.2.4.** Outline the general design process to be followed.
 - 2.1.2.5.** Define stages at which there will be formal and informal reviews, presentations, milestones, and submittals.

- 2.1.2.6.** Establish what formal reviews and approvals are required to be performed by City.
 - 2.1.2.7.** Review the cost and schedule guidelines and programming document and make changes as required through discussions with the stakeholders to the extent they are defined.
- 2.2.** In addition to the major design phase deliverables listed for Conceptual/Schematic Design (hereafter referred to as “SD”) , Design Development (hereafter referred to as “DD”) and Contract Documents (hereafter referred to as “CD”) , (50%, 95%, and 100%) many systems and components require intermediate documentation and/or presentations to secure City approval.

3. Design-Build Documentation

3.1. Design Phase Deliverables

All deliverables described are minimum requirements and should be thorough and complete, consistent with the standard of practice.

- 3.2.** At each level of completion, adequate information shall be provided to support design intent and the estimated budget.
- 3.2.1.** Level of completion should be greatest for systems, sub systems or components where additional detail will substantially increase pricing accuracy.
- 3.2.2.** Level of completion must be adequate to define the quality and extent of systems, sub-systems or components in sufficient detail to serve as the baseline for Design-Builder's Project delivery.
- 3.2.3.** Certain systems, sub systems or components may have less detailed documentation and still adequately support estimating and scope definition.

4. Review Comment Response

- 4.1.** At each submittal stage, within fifteen (15) calendar days of document submission by Design-Builder, City shall provide a list of written comments. Design-Builder shall be expected to promptly respond in writing to these comments within ten (10) calendar days of submission by City, unless agreed to otherwise by City in writing. The responses must be thorough, and specifically address the issue in question. Note specific actions already taken or planned actions with a completion time commitment. Such responses as "done" or "will comply" are not acceptable.
- 4.2.** In some cases, City comments may be given in a workshop setting, or as document mark-ups. In these cases, Design-Builder shall be expected to document the original comment as well as respond to all such comments as noted above.

5. General Project Document Requirements

5.1. General

- 5.1.1. Design-Builder shall document all presentations and work sessions and update the Programming Document with additions or changes. The Progress Schedule must be provided in hard copy form in the binder and also in design guidance.
- 5.1.2. All Documents must conform to commonly accepted Architectural and Engineering (hereafter referred to as “A&E”) norms, as suggested in the manuals of the American Institute of Architects (“AIA”), Construction Specifications Institute (“CSI”), and other such organizations and as reflected in the approved Procedures mentioned above. Any practices of Design-Builder that are not industry standard must be approved by the City before being used on Contract Documents for the Project.
- 5.1.3. Design Builder shall completely coordinate the Drawings with the Specifications, and each discipline's drawings with all other discipline's Drawings, as covered by Design-Builder's Quality Control Procedures. This must be an ongoing and continuous process. Quality Control Procedures must include the use of a Completion Checklist for each document and these checklists shall be turned over to the City with each progress submittal. Procedures must include composite CAD or REVIT floor plans showing all disciplines work on one big plot, with each discipline in a unique color. Provide these plots to City with sufficient notation to ensure that apparent areas of conflict are explained, and if necessary, being resolved.
- 5.1.4. Design-Builder must correct all identified and/or known errors in the Construction Documents. Design-Builder must bring issues of professional judgment forward on a case-by-case basis for review, discussion and resolution by the City and Design-Builder. However, Design-Builder must correct all clear-cut errors promptly when identified.
- 5.1.5. The Project design shall be as complete as appropriate for a Design Build delivery methodology. Design-Builder shall complete all appropriate design that can be done during the Contract Document phase. In no case shall design work be deferred to the Construction Administration phase unless it is unquestionably dependent upon specific material or system choices given to Design-Builder in the Contract Documents.
- 5.1.6. Maintain the latest copy of all Contract Documents completed or in progress on an accessible secure shared site or other such location accessible at all times by City and other Project participants, as applicable.
- 5.1.7. All Project Documents that are required to be turned over to City in electronic format shall be prepared on a PC system in the native application for the formats requested.

5.2. Project Presentation materials

- 5.2.1.** Design concept materials must include the full complement of presentation quality plans, elevations and sections, renderings, Material and Color Boards, manufacturer's literature and similar materials as are necessary to fully convey the design concepts to the City's staff.
- 5.2.2.** Presentation materials must be easily understood by individuals who are skilled in City's Operations and Management but not familiar with the normal conventions of architectural presentations. Simple, direct, and accurate materials must be used. Use accurately colored models, normal perspective renderings, and Material and Color Boards with sizable material swatches, as opposed to abstract basswood models, axonometric, and artful but complex material collages.
- 5.2.3.** As necessary, provide two copies of all Material and Color Boards, material samples, manufacturer's literature and the like to the City at the time of each presentation.
- 5.2.4.** Renderings, etc., require electronic files in the form of scanned or high quality digital photographs at the time of each presentation. If renderings are produced using computer graphics, submit native electronic file(s) as well.

5.3. Programming Document

- 5.3.1.** City will provided its objectives, limitations, program requirements, Project budget requirements (including design-to-budget target), and other relevant information regarding the Project to Design-Builder via a "Programming Document". The Parties acknowledge that the City's Programming Document is a starting point for the project's scope and will be updated as design progresses in conjunction with the following:
 - 5.3.1.1.** Consult with City to further define and clarify City's requirements for the Project, and available data;
 - 5.3.1.2.** Identify, consult with, and analyze the requirements of governmental authorities having jurisdiction to approve parts of the Project;
 - 5.3.1.3.** Inspect existing site conditions;
 - 5.3.1.4.** Review Laws that are applicable to the design and construction of the Project, and correlate them to the Project;
 - 5.3.1.5.** Identify the type and duration of manufacturers' warranties to be procured as part of the Project;
 - 5.3.1.6.** Include the design-to-budget target amount as one of the basis for the Programming Document;

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- 5.3.2.** Design-Builder shall furnish an addendum reflecting any agreed upon updates to the Programming Document with each submission for the Conceptual/Schematic Design “SD,” Design Development “DD” and Contract Documents “CD” submittals.

5.4. Contract Specifications

- 5.4.1.** All Contract Specifications shall be prepared by Design-Builder in current version CSI Format in accordance with the CSI Manual of Practice.
- 5.4.2.** Design-Builder shall closely coordinate all Specification Divisions with General Provisions, Special Provisions, Specification Division One, and drawings to avoid duplication or conflict.
- 5.4.3.** There are only two parties to be referenced in the Contract Documents: City and Design-Builder. The only exception is for references to entities as may be required by code, such as the Structural Special Inspection Agency.
- 5.4.4.** Every submittal required for a particular Specification Section shall be listed in the Part I article "SUBMITTALS". Prior to Construction Notice to Proceed, Design-Builder will provide a recommended list of submittals that the City should approve.
- 5.4.5.** As an appendix to the final specifications, Design-Builder shall prepare a list of all submittals required in the Contract Specifications by section and type of document.
- 5.4.6.** The specifications should not refer to "approved" drawings, samples, mock-ups and the like. No specific adjective is required to precede references to shop drawings, samples, mock-ups and the like since Specification Division One prescribes when such items can be used for fabrication, construction, etc., and when they cannot.
- 5.4.7.** The Contract Specifications and Drawings should be adequately instructive such that the use of "as directed" or like statements is inappropriate. Such statements imply that future direction will be given on how to fabricate or install parts of the work. This creates an unknown for Design-Builder when bidding and preparing shop drawings, and potentially exposes City to claims if it can be shown that the general nature of the direction could not be clearly anticipated by Design-Builder.
- 5.4.8.** If Design-Builder is expected to match a particular finish or color that cannot adequately be defined by a standard, then specify said finish or color and attach a Control Sample. A Control Sample is defined as a benchmark sample maintained by City to serve as the basis for finish or color control to be provided to Design-Builder before Design-Builder prepares the required submittals. City shall not require Design-Builder to submit finish or color samples with no predefined guidelines for acceptance.
- 5.4.9.** Design-Builder shall avoid voluminous Specification Sections with long unbroken paragraphs. Such specifications are often difficult to interpret and administer. Some

Facility/Site systems are very complex, and specifications for such systems will benefit from the liberal use of breaking the specifications into multiple sections.

- 5.4.10.** All material references on drawings shall match a single material reference in the Specifications with a unique term that can apply to only one Specification reference. All material references on drawings shall be indicated uniquely in a Specification section that defines that item. Specification headings that are terms used as material references on drawings shall be underlined in the Specification. No other specification headings or terms shall be underlined.

5.5. Contract Drawings

- 5.5.1.** All Contract Drawings shall be produced using AutoCAD or REVIT software. Translated drawings from other CAD or BIM applications are not acceptable.
- 5.5.2.** Absolutely no hand drawn work will be acceptable for Contract Drawings.
- 5.5.3.** No revisions, no matter how minor will be allowed to be made by hand to CAD-produced Contract Drawings during any submittal/milestone, including in progress submittals. Hand drawn sketches in response to RFI's and supplemental information are acceptable.
- 5.5.4.** Design-Builder shall carefully select a drawing scale that will serve all disciplines, not just the architectural. Design-Builder shall subdivide systems into separate series of plans in order to achieve clarity. Design-Builder shall use key plans when floor plans are matched over more than one sheet. A prominent North arrow shall be consistently placed on each plan sheet. North shall be shown in a consistent direction on any plan drawings. A numerical and graphic scale shall be placed on all plan and detail sheets and/or partial plans and details, as appropriate.
- 5.5.5.** All fonts, line styles, color tables, etc. shall be as originally supplied with the AutoCAD or REVIT program. Customization of the program defaults shall be limited only to those necessary to prepare the Contract Drawings. Any such custom libraries, color or pen tables, shall be supplied to the City and all Sub- consultants, and shall be used consistently in the preparation of all Contract Drawings, including those of all Sub-consultants.
- 5.5.6.** All lettering to be in upper case only.
- 5.5.7.** A standard drawing sheet size title block and necessary title block data will be agreed to by the City and Design-Builder based on City required data and Design-Builder input. A simplified sheet layout may be proposed for presentation drawings. If approved, Design-Builder must use the approved simplified sheet layout consistently for all presentation material. The City's approval of the

Contract and Presentation sheet layout is required before the submittal of any drawings

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- 5.5.8.** A standard Contract Drawing Package Title Sheet will be agreed to by the City and Design-Builder based on City required data and Design-Builder input.
- 5.5.9.** Specification information is not allowed on the Contract Drawings, not even in tables or schedules. REVIT E-SPEC references shall be allowable on the Contract Drawings.
- 5.5.10.** Material references on Contract Drawings shall match the language used in the Specification. The only exception is that Contract Drawing material references may be made plural when it refers to more than one of the same item.
- 5.5.11.** Material references on Contract Drawings must be as succinct as possible while still being unique and understandable. Example: Unitized Extruded Aluminum Window Wall System is unnecessarily complex. Window Wall System would be sufficient, unless there are several types and then perhaps Unitized Window Wall System would be all that would be needed.
- 5.5.12.** Limit abbreviations to those conditions where space needs to be conserved.
- 5.5.13.** When abbreviations are used, their use must be consistent across all documents. Do not use the same abbreviation for two different words. The same abbreviation shall be used for the same item throughout. Example: if STEEL PLATE is ever abbreviated ST PL T then in every single other case it shall be abbreviated the same. ST PLATE or STEEL PL T would not be acceptable in other locations.
- 5.5.14.** “NOT IN SCOPE” or “NOT IN CONTRACT” references must be used very carefully to refer only to items that are not the scope of the overall Contract. They must not be used to refer to things that are not a part of one discipline, Sub-consultant, or subcontractor.
- 5.5.15.** To the extent possible, information should show in one place only. Disciplines must avoid duplicating information from another discipline. Dimensions shown on large scale plans, must not be repeated on small scale plans unless there is a particular reason for doing so.
- 5.5.16.** Provide horizontal dimensions on plans, vertical dimensions on sections or elevations.
- 5.5.17.** All details must be referenced from somewhere on the plans, elevations or sections. Unreferenced details are not acceptable.
- 5.5.18.** Avoid large complex "details." Break such details up into adjacent details in an exploded fashion that highlights the unique elements of the detail and avoids obscuring important details.
- 5.5.19.** Use isometric details liberally to describe conditions where multiple interfaces are the subject.
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5.5.20. The schedules required in the “Design Tasks and Deliverables” shall be organized, thorough, and accurate.

5.5.21. Some schedules may be more appropriately located in the Specification.

5.5.22. Schedules must be as uniform as possible in the order of information and format across all disciplines. The order of room number, room name, equipment designation, etc. must be the same in all schedules. Item spacing, text sizes, border weights and general configurations should be uniform.

5.5.23. Schedules must be on drawings separate from any other data, such as details. Schedules must completely spell out all words to the extent practical.

5.5.24. Schedules cannot rely on complex legends to decipher. Dittos or "Do" are not allowed; make each entry stand-alone.

5.6. Code Analyses

5.6.1. Design-Builder is responsible for performing and shall prepare Code Analyses and schedule meetings with Code Officials. Design-builder shall invite the City to all such scheduled meetings. Design-builder shall provide written responses to reviews from Code Officials within ten (10) calendar days of receiving the review comments, unless agreed to otherwise in writing Design-Builder must schedule all Code Reviews to be completed before City's acceptance of final documents.

5.6.2. In general Code Reviews for life safety, hazardous materials, and fire sprinkler design are performed by the Development Services Department (DSD).

5.7. Design Calculations

5.7.1. Design-Builder is responsible for performing and shall prepare Project Calculations as required for code compliance. In addition, Design-Builder is responsible for performing and shall provide calculations for building systems to demonstrate compliance with design guidelines. This includes but is not limited to:

5.7.1.1. Area calculations that are based on occupational loads and area allowances per person, to include occupied spaces;

5.7.1.2. Systems driven by people flows, such as elevators, escalators, major entry points;

5.7.1.3. Mechanical subsystems, such as HVAC systems, plumbing fixture counts, water pressure; and

5.7.1.4. Electrical subsystems such as generator capacity, electrical demand load, and lighting levels.

6. Pre-Design Services

6.1. The Pre-Design Stage initiates confirmation of the current Program and begins with Design-Builder assembling and reviewing data related to existing conditions, use patterns and facility(s) policies. The Pre-Design Stage includes Design-Builder reviewing the programming documentation and providing comments and any recommendation for updates.

6.2. Tasks

6.2.1. Project Set Up

6.2.1.1. Design-Builder shall set up, schedule, and conduct mobilization meetings.

6.2.1.2. Design-Builder shall assemble Required Initial Submittals.

6.2.2. Compile existing requirements and policies: It is incumbent upon Design-Builder to solicit the necessary data from the City. This data exists as many discrete pieces of material, part of it written, and some in the "oral tradition". This data needs to be sought out by Design-Builder through interviews, work sessions and scrutiny of data repositories. There will be no consolidated package that the City will deliver to Design-Builder. Although Design-Builder is responsible to identify the complete list of information they will need, at a minimum it must include:

6.2.2.1. Overall Program criteria

6.2.2.2. Facility/Site Policy

6.2.2.3. Facility/Site Goals

6.2.2.4. Facility/Site operations

6.2.2.5. Facility/Site and other user operations and use patterns

6.2.2.6. Legal and Regulatory requirements

6.2.2.7. Building codes

6.2.2.8. Health related regulatory requirements

6.2.2.9. Environmental

6.2.2.10. Design Limitations

6.2.2.11. Architectural (aesthetic, operational)

6.2.2.12. Engineering (safety, maintainability)

6.2.2.13. Regulatory

-
- 6.2.2.14.** Schedule and Phasing
 - 6.2.2.15.** Existing Facility/Site Standards and Programs
 - 6.2.2.16.** Signage and graphics
 - 6.2.2.17.** Concessions
 - 6.2.2.18.** Service and Utility
 - 6.2.2.19.** Security
 - 6.2.2.20.** Building Management System (BMS)
 - 6.2.2.21.** Other planning projects
 - 6.2.2.22.** Characteristics
 - 6.2.2.23.** Impacts
 - 6.2.3.** Analyze Site.
 - 6.2.3.1.** A thorough site analysis including the assessment of numerous existing studies, reports, and drawings.
 - 6.2.3.2.** Survey Site physical characteristics
 - 6.2.3.3.** Topographic survey
 - 6.2.3.4.** Geographic - surround land use and transportation
 - 6.2.3.5.** Climatic, weather data
 - 6.2.3.6.** Existing Geotechnical Data
 - 6.2.3.7.** Utilities, coordination
 - 6.2.3.8.** Assess existing structures
 - 6.2.3.9.** Facility/Site systems (Security, BMS)
 - 6.2.3.10.** Review available documents
 - 6.2.3.11.** Survey existing buildings
 - 6.2.3.12.** Analyze accuracy and shortcomings of available documents
 - 6.2.3.13.** Backfill necessary data as required.

-
- 6.2.3.14.** Determine current patterns of Facility/Site usage for, at minimum, the following:
- a.** Access
 - b.** Traffic
 - c.** Parking
 - d.** Pedestrian
 - e.** Scheduled Events
 - f.** Service
 - g.** Concessions
- 6.2.4.** Update Programming Document (PD).
- 6.2.4.1.** Organize, analyze and evaluate assembled data
 - 6.2.4.2.** Summarize Facility/Site Goals and Objectives, as they relate to this Program
 - 6.2.4.3.** Access
 - 6.2.4.4.** Traffic
 - 6.2.4.5.** Pedestrian (Crowd Modeling)
 - 6.2.4.6.** Scheduled Events
 - 6.2.4.7.** Confirm sizing for all individual facility components including building services
 - 6.2.4.8.** Establish relationship considerations between components, noting flows from component to component and develop use/relationship diagrams
 - 6.2.4.9.** Note operational and spatial characteristics for individual facility components
 - 6.2.4.10.** Confirm appropriate net-to-gross factors
 - 6.2.4.11.** Compile overall Space Tabulation
 - 6.2.4.12.** Determine logistics considerations.
 - 6.2.4.13.** Preferred and existing materials and systems
 - 6.2.4.14.** Construction limitations
-

- 6.2.4.15. Package the update (addendum) to the Programming Document in an orderly updateable format
 - 6.2.5. Set Program Cost Target.
 - 6.2.5.1. Overall Project
 - 6.2.5.2. By project element
 - 6.2.6. Design-Builder to organize, schedule, and lead City workshops. Determine what information is required to be collected or conveyed via workshops with the City. Schedule required workshop through the City's Program Manager.
 - 6.2.7. Presentation to City of findings of the Pre-Design Stage
 - 6.3. Deliverables
 - 6.3.1. Programming Document updates (addendum) must include the following:
 - 6.3.1.1. Revisions to Program Goals and Objectives
 - 6.3.1.2. Space Tabulation
 - 6.3.1.3. Index of Assembled Data including a brief description of each item.
 - 6.3.2. Cost Estimate.
 - 6.3.2.1. Statement of Program Cost Target
 - 6.3.3. Other Program Documents.
 - 6.3.3.1. Updated Project Management Plan
 - 6.3.4. Electronic versions of Programming Document Addendum and Statement of Program Cost Target
 - 6.4. Completion Evaluation
 - 6.4.1. The Pre-Design Stage documents must be clear enough to explain what the Program involves economically, legally, and practically to the City's senior staff. Therefore, the criterion for evaluation of the Pre-Design Design Stage documents is that they must be self-explanatory both to a design professional and to a reviewer who is not familiar with design and construction industry conventions.
- Conceptual and Schematic Design
- 7.1. This work represents at a minimum the initial stages of design and shall be packaged for formal review at two distinct points: after the development of the major architectural and

systems design concepts and again the completion of this stage of work, the completion of Conceptual and Schematic Designs for the Program.

This stage of design provides the framework for refining the Programming Document, formulating a design philosophy, and developing architectural and engineering systems solutions. The Conceptual and Schematic Design Stage includes the preparation of studies, drawings, diagrams, data sheets and other documents illustrating the general scope requirements, restrictions, scale and relationship of components, for presentation and approval

7.2. Tasks

7.2.1. Evaluate Data and Formulation of Design Schemes

7.2.2. Expand Programming Document by discipline

7.2.3. Investigate building systems.

7.2.3.1. Typical building systems including mechanical, electrical, plumbing, and structural.

7.2.3.2. Facility/Site Special Systems including audio-visual, and building management system(s).

7.2.3.3. Circulation including elevators, escalators,

7.2.4. Write Statement of Design Solution.

7.2.4.1. Prepare a statement of design principles to be observed in the design of architectural and building systems throughout the Program. The statement will be an important evaluation criterion for the design

7.2.5. Prepare Facility/Site Planning Studies.

7.2.5.1. Design-Builder is solely responsible for planning of Facility/Site-related issues. The City will supply whatever information is available, but Design-Builder is to fill in any blanks with additional research

7.2.5.2. Loading dock usage (If applicable)

7.2.5.3. Analysis of known event schedules and determination of impacts on facility design and construction (If applicable)

7.2.6. Generate Concept Design Alternatives.

7.2.6.1. Design-Builder's Concept Design Alternative concepts must, at a minimum, address:

7.2.6.2. Public and staff service areas issues

-
- 7.2.6.3.** Functional space layouts
 - 7.2.6.4.** Major facility systems
 - 7.2.6.5.** General facility aesthetics
 - 7.2.6.6.** Patterns of usage
 - 7.2.6.7.** Site Layout
 - 7.2.7.** Security Features.
 - 7.2.7.1.** Document the criteria provided for each specific project, a summary of how the facility meets or doesn't meet each major requirement or design element, and sketches as required to describe the Project site.
 - 7.2.8.** Review Minor Planning Concept Design alternatives for the Schematic Design of the Expansion. Evaluation should be narrative and use comparative descriptions. Avoid numerical ranking systems using pseudo mathematical ratings and weightings. Evaluation criteria should be based heavily if not exclusively on the Programming Document. The concepts should be judged against the parameters that the concepts were to address
 - a.** Facilitate schematic concept design review workshops with City
 - b.** Select optimal schematic concept design scheme in conjunction with City
 - c.** Develop optimal scheme into a Schematic Design solution and prepare required submittals.
 - d.** Present Schematic Design Deliverables
 - 7.3.** Deliverables
 - 7.3.1.** Schematic Design Presentation materials
 - 7.3.1.1.** Schematic design narrative
 - 7.3.1.2.** Site and plan organization
 - 7.3.2.** Updated Programming Document. Expanded to include systems descriptions, a brief evaluation of alternate systems and provide data and calculations as required to back up systems analysis as selected
 - 7.3.2.1.** A detailed schedule of space allocation
 - 7.3.2.2.** Architectural - spatial organization and sequence, standards for support services (restrooms, building services, curb, tenant areas).

-
- 7.3.2.3.** Civil/site design requirements - identify on-site/off-site utility loads and projected needs, storm, sanitary water, fire protection, drainage, site access, parking, site lighting, fences, etc.
 - 7.3.2.4.** Structural - identify typical floor loadings; establish typical structural framing system; indicate range of structural steel (lbs./sq. ft.), and reinforcing (lbs./cu. yd.) quantities; describe special requirements for foundations and framing.
 - 7.3.2.5.** Mechanical - identify energy source, equipment type and operation, HVAC loads, solar energy review, energy conservation factors, process systems, and space requirements.
 - 7.3.2.6.** Plumbing – identify plumbing fixtures and systems.
 - 7.3.2.7.** Electrical.
 - a.** Design-Builder shall identify the following:
 - b.** Provide electrical load criteria, and lighting levels including overall electrical load target
 - 7.3.2.8.** Security, alarm and control systems, access control and keying.
 - 7.3.2.9.** Fire detection and alarm – describe systems and code requirements, list fire separation systems, fire and smoke detection, alarm and control.
 - 7.3.2.10.** Building automation systems (intelligent building) integration for communications, data management, security fire protection, HVAC, lighting, etc.
 - 7.3.2.11.** Emergency and legal standby systems
 - 7.3.2.12.** Public Address System
 - 7.3.2.13.** Other.
 - a.** Acoustical requirements, if any, between exterior and interior of facility, and between interior spaces.
 - b.** Landscaping, interiors, Fixed FF&E
 - 7.3.2.14.** Inclusion of design guidance from Schematic design approvals
 - 7.3.3.** Schematic Specifications.
 - 7.3.3.1.** List proposed specification sections with short outline specification for materials and systems selected.
-

7.3.4. Schematic Design Drawings

- 7.3.4.1.** Scale as required to clearly describe the design
- 7.3.4.2.** Vicinity Plan - Area map showing major streets, access, major surrounding developments, transportation systems planned and existing, and the Facility/Site.
- 7.3.4.3.** Site Plan - Program as a roof plan, facility ground floor elevation, rough grading, all surrounding streets, roads, accesses, parking, walks, other constructed elements, and major landscape features. It is important that this plan clearly indicate truck loading locations, food service access, and the particular needs of special events staging and access related issues.
- 7.3.4.4.** Overall Floor Plans - showing floor layouts, square footages of the Program with spaces labeled as to use. Major and important dimensions shall be shown. Indicate:
- 7.3.4.5.** Typical partial layouts at larger scale where needed for drawing clarity:
- 7.3.4.6.** Facility Elevations - (minimum scale 1"=16'), major elevations, indicating finish, with overall and floor-to-floor dimensions, rough grade elevations and descriptive notes.
- 7.3.4.7.** Facility Sections - (minimum scale 1"=16'), a minimum of one longitudinal and one transverse section, showing the most informative sections to explain the vertical organization of the facility. Floor elevations shall be shown.
- 7.3.4.8.** Wall Sections - Typical construction detail wall sections to explain the major construction systems and finishes proposed.
- 7.3.4.9.** Structural Drawings - (minimum scale 1"=16'), typical floor plan showing location of columns, beams and girders, type of floor system, foundation plans, substructure plans and superstructure plans to ascertain system and typical bay and any unusual structural details.
- 7.3.4.10.** MEP drawings - (minimum scale 1"=16'), showing locations of major equipment (boilers, chillers, AHU's) to verify rough sizes of mechanical rooms and plenum spaces, penthouse sizes, transformer and switch gear rooms, toilets, pump rooms, etc.

8.3.1. Evaluate Data and Review Design

8.3.1.1. Evaluate revisions to data.

8.3.1.2. Review and revise the selected design scheme in response to changes in criteria, City preferences and comments.

8.3.1.3. Confirm regulatory criteria through consultation with authorities and obtain preliminary approvals.

8.3.2. Prepare System Studies or provide recommendations as Design-Builder determines is reasonably necessary to solicit design guidance from City. As a minimum Systems Studies shall be done for:

8.3.2.1. Electronic signage

8.3.2.2. Video/IT Systems

8.3.2.3. Public address systems

8.3.2.4. Infrastructure connections including but not limited to: water, sewerage, telecom, fire alarm, building management, lighting controls

8.3.2.5. Assessment of existing capacities, and if inadequate, recommendations for augmentation.

8.3.2.6. Locations of connection points

8.3.2.7. Logistics of routing

8.3.3. Generate Design Development Documentation.

8.3.3.1. Civil.

- a.** Civil layouts and calculations to be coordinated with Architectural and Landscaping. Review size and location of subgrade utilities with appropriate disciplines. Establish final scope of on-site and off-site engineering needs.

8.3.3.2. Architectural.

- a.** Develop and expand architectural design to define final scope, relationships, forms size and appearance of the Program through detailed drawings, three-dimensional sketches, working models, etc.
- b.** Refine material selections, finishes and color schemes

8.3.3.3. Structural.

- a.** Develop selected structural system

-
- b. Verify loads, member sizes and clearances
 - c. Final review soils analysis/test boring report and establish foundation approach

8.3.3.4. Mechanical.

- a. Refine mechanical loads
- b. Confirm system and equipment selection, establish clearance requirements, equipment and chase locations
- c. Analyze energy conservation measures
- d. Coordinate loads with structural and electrical disciplines
- e. Size major duct lines
- f. Coordinate space requirements, clearances and visual impact Architectural
- g. Analyze acoustical and vibration requirements
- h. Develop diagrammatic fire protection and storm layouts
- i. Determine utility tie-in locations and routing

8.3.3.5. Electrical.

- a. Verify electrical loading requirements with lighting levels, mechanical equipment, elevator equipment, and other power needs
- b. Coordinate lighting layout with lighting designer, Architectural and Interiors
- c. Establish equipment locations, shaft sizes and locations
- d. Select lighting features
- e. Requirements for the integration of the numerous controls and special systems into the existing Facility/Site infrastructure for these systems.
- f. Coordinate equipment loading, locations and space requirements with Mechanical, Civil, Structural, Landscaping, and Architectural disciplines.
- g. Determine utility tie locations and routing
- h. Coordinate permitting with CPS Energy.

8.3.3.6. Plumbing.

- a. Refine plumbing calculations

-
- b.** Confirm system and fixture and fitting selection, establish clearance requirements, equipment, distribution, and piping locations
 - c.** Analyze energy conservation measures
 - d.** Coordinating piping with structural and electrical disciplines
 - e.** Size major pipelines
 - f.** Coordinate permits with SAWS.

8.3.3.7. IT/Security/Audio Visual/Acoustical Plans.

- a.** Develop diagrammatic fire protection and storm layouts
- b.** Determine utility tie-in locations and routing

8.3.3.8. Landscaping.

- a.** Design areas requiring soft and hardscaping
- b.** Develop plant list
- c.** Establish hardscape components list
- d.** Coordinate lighting and service furniture requirements with other disciplines and City

8.3.3.9. Signage and Graphics.

- a.** Prepare Signage and Graphics program in accordance with City guidelines

8.3.3.10. Interior Design and FF&E.

- a.** Develop interior design furnishing and equipment layouts.
- b.** Develop sketches and construction details of special design features. Develop furniture and finishes list to identify final scope.

8.3.3.11. Other Design Development Documents.

- a.** Formulate specification requirements. Draft general specification conditions. Develop detailed outline specifications for all disciplines.
- b.** Develop rendering(s).

8.3.4. Develop a complete list of projected drawings and specification sections to be included in Construction Document package.

8.3.5. Review and update the detailed work plan by task and deliverables through completion of Construction Document Stage.

8.3.6. Submit Design Development Drawings and Code Analysis to regulatory and building departments for conformance to:

8.3.6.1. Fire and life safety codes

8.3.6.2. Sprinkler Design requirements

8.3.6.3. Hazardous materials handling

8.3.6.4. Electrical Safety

8.3.6.5. ADA compliance

8.3.6.6. Facility/Site-related regulations

8.4. Deliverables

8.4.1. Design Development Presentation materials

8.4.1.1. Rendered Perspectives of major exterior and interior spaces

8.4.1.2. Material and Color Boards

8.4.2. Design Development Specifications

8.4.2.1. General, special and supplementary conditions ready for review and discussion with City.

8.4.2.2. Comprehensive, abbreviated methods, materials and systems descriptions in tune with the drawings.

8.4.2.3. Selected equipment data sheets and material, fixture catalog cuts.

8.4.2.4. Landscaping material information and requirements, soils and planting requirements, irrigation criteria, and other pertinent data and requirements.

8.4.3. Design Development Drawings: Scale as required to clearly describe intent

8.4.3.1. General.

a. Cover sheet with pertinent information identifying Program, City, A/E firm(s) and all Sub-consultants.

8.4.3.2. Civil.

a. Site and Topo Survey

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- b.** Test boring/test pit plan
 - c.** Site Plan showing finish grading, legal property boundaries, setbacks and easements, rights-of-way, sewers, manholes, hydrants and other subsoil utilities and vaults, roads, drives, parking and paving, facility and equipment locations and dimensions. Demolition data shall be included if pertinent.
 - d.** Typical and special construction details for ramps, stairs, railings, paving types and patterns, light standards, fountains and exterior furnishings.

8.4.3.3. Architectural

- a.** Plan drawings of all floors to a scale that clearly explains designer's intent and indicates:
 - i.** Overall building plan
 - ii.** Exterior wall type and thickness
 - iii.** Structural grid, including column locations
 - iv.** All interior fixed space layouts, i.e., facility cores, elevators, stairs, shafts, toilets, equipment rooms and interior partitions, including doors w/swing
 - v.** Dimensions, space designations, floor elevations, door type and partition type indications, and other pertinent notes
 - vi.** Floor pattern plans as required for public spaces, circulation, and any other areas with special floor treatments
 - vii.** Built-in furniture and equipment location, clearly identifying items NIC or OFCI
- b.** Blow up plans including furniture and equipment layouts, floor treatments as required for:
 - i.** Detail plans and sections of core elements, clearly identifying clearances, shaft requirements and dimensions and special details for:
 - ii.** Stairs
 - iii.** Toilet facilities
 - iv.** further clarification
- c.** Elevations drawn at same scale as plans must include the following:
 - i.** Total full height of facades including roof structures, mechanical equipment enclosures.
 - ii.** All fenestration and louvers fixed and related to interior walls and internal floor heights.

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- iii. Overall facility floor heights and slab elevations. Indicate location of facility and detail section
 - iv. Indicate setbacks, facility profile relationship to adjacent (existing) buildings, expansion joints, etc.
 - v. Both graphically and by notes identify finishes, surface patterns, etc.
- d. Detail elevations to clarify key elements as required to augment facility elevations, including:
- i. Building recesses, court yards
 - ii. Typical building bay
 - iii. Building entry
 - iv. Fenestration patterns, divisions, and venting arrangements
 - v. Masonry patterns and coursing
 - vi. Building sections, to explain changes in grade, overall floor-to-floor and floor-to-ceiling dimensions and clearances, at same scale as floor plans.
 - vii. Indicate floor slab elevations, vertical dimensions, column lines, and label major spaces.
 - viii. Transverse section
 - ix. Longitudinal section
 - x. Detail wall sections, major different conditions at wall sections to convey basic building perimeter construction systems and materials clearly dimensioned and noted to show:
 - Foundation and below grade construction,
 - Typical wall construction,
 - Back up structure and abutting floor system,
 - Window type and location,
 - Exterior finishes (masonry coursing), insulation, and interior finishes, furring,
 - Mechanical penetrations,

-
- Parapet and roof construction, and
 - Key all sections to elevations.
- e. Large scale details (scale as required) for clarifying critical or relevant details, keyed to floor plans sections or other drawings as required for:
- i. Window types, sill, mullions, jamb and head details, glazing type and venting
 - ii. Hollow metal (typical only),
 - iii. Frame types (typical only),
 - iv. Metal and glass walls,
 - v. Special details for surface trim and finishes,
 - vi. Special design related items, as required,
 - vii. Built in furniture, counters, display cases and millwork,
 - viii. Interior elevations of typical and special spaces interfaced with and cross-referenced floor and reflected ceiling plans,
 - ix. Suspended ceiling lines, floor elevations and level changes,
 - x. Mechanical, electrical and structural conditions and restrictions,
 - xi. Wall treatment and materials clearly identifying design intent, and
 - xii. All pertinent notes and dimensions
- f. Reflected ceiling plans for typical and special spaces including exterior soffits and canopies if required. Indicate:
- i. Lighting layout,
 - ii. Soffits, coves, furring treatments,
 - iii. Skylights,
 - iv. Ceiling material, special features,
 - v. Acoustical treatments,
 - vi. Relationship with partitions,
 - vii. Interface with window details,

-
- a. Typical system requirements and special conditions for HVAC, plumbing, waste fire protection and control systems and in any interfaces with other disciplines and existing systems
 - b. Typical floor plans by system, as required, at same scale as architectural, showing single line distribution systems, locating major equipment and size and clearance requirements, showing shafts (dimensioned) chases, mechanical rooms and required floor/wall penetrations.
 - c. Plans of special floors, lobby, roof, other) showing equipment locations and clearance requirements for boiler, air handling and cooling equipment; provide sections as required
 - d. Special details for equipment such, fire water pumps, etc.
 - e. Equipment room layouts at 1/4"= 1'-0" minimum scale.
 - f. Flow diagrams, riser diagrams, etc.

8.4.3.6. Electrical:

- a. Typical and special requirements for electrical work including interfaces with other systems and Facility/Site-wide infrastructure
- b. Typical floor plans, at same scale as architectural showing shaft locations, typical and special lighting and power requirements, showing single line power distribution system, locating major equipment, size and clearance requirements including height.
- c. Plans of special equipment rooms (panel, Motor Control Centers, transformers, generators, control panels, UPS, etc.), indicating critical dimensions at 1/4"= 1'-0" minimum scale.
- d. Riser and other diagrams to explain communication system, data, security, fire and smoke detection/annunciation, etc.
- e. Single Line Diagram summarizing overall electrical distribution system.

8.4.3.7. Plumbing

- a. Typical system requirement and special conditions for plumbing related to HVAC, fire protection, storm, and control systems and in any interfaces with other disciplines and existing systems
- b. Typical floor plans by system, as required, at same scale as architectural, showing piping, fixtures, locating major equipment and size and clearance requirements, showing shafts (dimensioned) chases, and required floor/wall penetrations

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- c. Plans of special floors, lobby, roof, other showing equipment locations and clearance requirements
 - d. Special details for plumbing fixtures
 - e. Floor diagrams, riser diagrams, etc.

8.4.3.8. IT/Security/Audio Visual/Acoustical Plans

8.4.3.9. Landscaping

- a. Landscaping planting plans and detailed plant material schedules.
- b. Large scale plans to describe areas requiring detailed definition.
- c. Elevations and sections at a scale and quantity as may be necessary to explain the design
- d. Typical and special construction details for ramps, stairs, railings, paving types and patterns, light standards, and exterior furnishings.

8.4.3.10. Signage and Graphics

- a. Major Signage schedule
- b. Major mounting details unique to the Program

8.4.3.11. Interiors and FF&E

- a. Large scale plans of area requiring FF&E
- b. Typical FF&E details

8.4.4. Code Analyses

- 8.4.4.1. Fire and life safety codes**
- 8.4.4.2. Sprinkler Design requirements**
- 8.4.4.3. Hazardous materials handling**
- 8.4.4.4. Electrical Safety**
- 8.4.4.5. ADA compliance**

8.4.5. Cost Estimates

- 8.4.5.1. Prepare design Development Cost Estimate based on the Design Development documentation.**

8.4.6. Other Design Development Documents

8.4.6.1. Written reports for Systems Study

8.4.6.2. Complete list of projected drawings and specification sections to be included in Construction Document package.

8.4.6.3. Updated detailed Project Management Plan for the

- a.** Construction Documents,
- b.** Public Construction Bid Packages, and
- c.** Construction Administration stages.

8.4.7. Electronic versions of all required deliverables.

8.5. Completion Evaluation

8.5.1. The deliverables submitted shall be evaluated for completion as follows:

8.5.1.1. All deliverables requested have been submitted.

8.5.1.2. The documents submitted are clear, easy to comprehend, correct and legible.

8.5.1.3. All data required for each drawing, study, specification, etc., have been submitted.

8.5.1.4. All deliverables submitted respond to all the task items identified in Section 2.

8.5.2. Each set of documents will be evaluated on a scale to be developed as part of the Project Management Plan.

9. Construction Documents

9.1. The Construction Document Stage consists of the preparation of detailed drawings and specifications to identify the specific materials, quantities, methods and systems required to build the Program. This stage is the single largest component of Design- Builder's design work. All Value Engineering items identified in the Design Development phase and accepted by the City shall be incorporated into the documents by completion of this phase.

9.2. Tasks

9.2.1. Present final design, material and color selections to City for approval

9.2.2. Develop Construction Specifications and Drawings for submittal at 50%, 95%, and 100% CD's. The following are the minimum requirements and should be thorough and completed consistent with the standard of practice.

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- 9.2.2.1.** Check and coordinate all documents
 - 9.2.2.2.** Complete Construction Specifications
 - 9.2.2.3.** Complete Construction Drawings
 - 9.2.2.4.** Complete Design Calculations for all systems
 - 9.2.2.5.** Compile documents to be issued for Information Only (Product information, data sheets, etc.)
 - 9.2.3.** Submit 100% complete Construction Drawings and Code Analysis to regulatory and building departments for conformance to Fire and Life Safety codes
 - 9.2.3.1.** Respond to City's comments and Code Official's comments, and incorporate agreed upon changes to stamped and sealed Final Deliverables.
 - 9.2.4.** Design-Builder representative with signature authority shall sign all Final Deliverables listed. In addition, provide a Professional signature and stamp where required by Law.
 - 9.2.5.** Prepare a detailed Work Plan for the Construction Administration Stage. Consult with the City to establish appropriate level of Resident Architectural and Engineering Services
- 9.3. Deliverables**
- 9.3.1.** A list of the Final Program Documents shall be developed by Design-Builder for the specific needs of the Program. This list will be reviewed against the contract requirements by the City and will establish the complete list of deliverables for the Program. The Final Program Documents shall, at a minimum, include the following
 - 9.3.2. Construction Document Presentation Materials**
 - 9.3.2.1.** Material and Color Boards
 - 9.3.2.2.** Renderings showing significant exterior and interior materials and color selections
 - 9.3.2.3.** Systems presentation material for technical review
 - 9.3.3. Contract Specifications**
 - 9.3.3.1.** Supplemental and General Conditions
 - 9.3.3.2.** All Divisions or as required
 - 9.3.3.3.** Sections to be "Issued for Information Only", such as those for City
-

Furnished Equipment.

9.3.3.4. List of Design-BUILDER Submittals as required in the Contract Specifications

9.3.4. Contract Drawings.

9.3.4.1. General.

- a.** Cover sheet with pertinent information identifying Program, City, AE firms and major Sub-consultants
- b.** Drawing Index sheet(s) listing all drawings in the package.
- c.** Legend, symbols, abbreviations and general notes sheet. This should be a common sheet for all disciplines.

9.3.4.2. Civil.

- a.** Detail site plan
- b.** Plan drawings that clearly explain the design intent, completely dimensioned to facilitate construction. Included are:
 - i.** Demolition plan
 - ii.** Excavation plan
 - iii.** Grading and drainage plans, including existing and modified contours
 - iv.** Utility routing plans
 - v.** Utility detail plans
 - vi.** Paving and roadway alignment plans
- c.** Profile drawings shall include:
 - i.** Storm sewer
 - ii.** Sanitary sewer
 - iii.** Potable/fire water
 - iv.** Irrigation water
 - v.** Power/telephone duct banks
- d.** Sections of utilities and paving including
 - i.** Duct bank sections

9.3.4.3. Architectural

- a.** Building Code Analysis per the requirements of the Fire Marshal of the City of San Antonio

9.3.4.4. Plan drawings of all floors (1/8"=1'-0" scale) indicating:

- i.** All building walls and partitions showing type, materials and thickness
 - ii.** All interior fixed space layouts
 - iii.** All dimensions, space designations and numbers, floor elevations, door type/swing, window type and operation, finishes and other pertinent notes
 - iv.** Built-in furniture and equipment locations, clearly indicating items NIC or by City
 - v.** Building sections and interior and exterior elevation keys
 - vi.** Structural grid and column indications
- b.** Detail plans for toilets, building core, stairs, elevators, shafts, equipment rooms, etc., indicating:
 - i.** Dimensions, clearances and space designations
 - ii.** Furniture and equipment layouts
 - iii.** Structural grid including column locations
 - iv.** Wall and partition thickness
 - v.** Door and door swings
 - vi.** Floor patterns
- c.** Elevations, at same scale as floor plans, showing:
 - i.** Complete facades including roof structures and other features
 - ii.** Fenestration, louvers and other facade elements fixed and related to structural grid and internal floor heights
 - iii.** Overall building heights and floor elevations
 - iv.** Location of building and detail section cuts
 - v.** Setbacks, building profile relationship to adjacent buildings, expansion joints, etc.
 - vi.** Finishes and surface patterns, etc., graphically and by note

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- d. Detail elevations depicting key elements as necessary to supplement building elevations, including:
 - i. Building recesses, court yards
 - ii. Typical bay
 - iii. Building entry
 - iv. Fenestration patterns, divisions and venting
 - v. Masonry patterns and coursing
 - vi. Ornamentation features
 - e. Building sections at same scale as floor plans, showing changes in elevation, floor-to-floor and floor-to-ceiling dimensions, with major spaces labeled. Include transverse and longitudinal sections as required to describe the facility design.
 - i. Detail wall sections, major different conditions at wall sections to convey basic building perimeter construction systems and materials (3/4" scale) clearly dimensioned and noted to show:
 - Foundation and below grade construction
 - Typical wall construction
 - Back up structure and abutting floor system
 - Window type and location
 - Exterior finishes (masonry coursing), insulation, and interior finishes, furring
 - Mechanical penetrations
 - Parapet and roof construction
 - Key all sections to elevations
 - ii. Large scale details (scale as required) for clarifying critical or relevant details, keyed to floor plans sections or other drawings as required for:
 - Window types, sill, mullions, jamb and head details, glazing type and venting
 - Hollow metal (typical only)

-
- Frame types (typical only)
 - Metal and glass walls
 - Special details for surface trim and finishes
 - Special design related items, as required
 - Built in furniture, counters, display cases and millwork
 - Interior elevations of typical and special spaces, interfaced with and cross-referenced floor and reflected ceiling plans.
 - Suspended ceiling lines, floor elevations and level changes
 - Mechanical, electrical and structural conditions and restrictions
 - Wall treatment and materials clearly identifying design intent
 - All pertinent notes and dimensions.
- iii. Reflected ceiling plans for typical and special spaces including exterior soffits and canopies if required. Indicate:
- Lighting layout
 - Soffits, coves, furred building features
 - Skylights
 - Ceiling material, special features
 - Acoustical treatments
 - Relationship with partitions
 - Interface with window details
 - Sprinklers
 - Access panels
 - HVAC registers, etc.
 - Exposed structure
- iv. Schedules - comprehensive, keyed to floor plans and elevations, listing:
- Interior finishes

-
- Doors and frames
 - Door Hardware
 - Windows and glazing
 - Louvers
 - Partition Types

9.3.4.5. Structural

- a.** Foundation Plan(s) at same scale as architectural plans including:
 - i.** Foundation layout.
 - ii.** Footing elevations
 - iii.** Column grid
 - iv.** Typical and special details
- b.** Floor Plan(s) at same scale as architectural plans showing:
 - i.** Floor elevations
 - ii.** Column grid
 - iii.** Floor openings
 - iv.** Section and detail indications
- c.** Framing Plans including:
 - i.** Beam, girder and joist sizes
 - ii.** Slab openings and depressions
 - iii.** Slab elevations
 - iv.** Section and detail indications
 - v.** Roof Plan(s) similar to floor plan
- d.** Sections
 - i.** Typical trusses, beams, girders and joists
 - ii.** Columns and foundations
 - iii.** Walls

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- e. Schedules
 - i. Details
 - ii. Footing
 - iii. Truss
 - iv. Beam
 - v. Joist
 - vi. Column

9.3.4.6. Mechanical

- a. Mechanical drawings shall indicate all requirements and special conditions for HVAC, plumbing, waste, fire protection and control systems
- b. Site Plan indicating connection to offsite utilities
- c. Floor Plans for each system, at same scale as architectural, showing:
 - i. Detailed system layouts indicating sizes of system components
 - ii. Location of mechanical equipment rooms
 - iii. Location of all equipment required for system operation, showing clearances and interfaces with other equipment
 - iv. Complete extent of system routing, including connections to existing systems
- d. Large Scale Plans
- e. Sections
- f. Riser diagrams
- g. Equipment and Fixture Schedules
- h. Details

9.3.4.7. Electrical.

- a. Electrical drawings shall indicate all requirements and special conditions for electrical, electronic, lighting, communications, data transmission, fire and smoke detection and alarm, security, and control systems.

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- b.** Design-Builder must provide a Site Plan indicating on-site distribution and connection to off-site service, street and parking lighting system, and irrigation system.
 - c.** Design-Builder must provide floor plans, for each system, at same scale as architectural, indicating the location of:
 - i.** Power distribution and supply
 - ii.** Lighting
 - iii.** Fire and smoke detection and alarm
 - iv.** Communications (telephone, data, public address)
 - v.** LAN for special systems
 - vi.** Complete extent of system routing, including connections to existing systems
 - vii.** Security System (access control, IDS, CCTV)
 - viii.** EMCS for HVAC Control System and Lighting Control System
 - d.** Large Scale Plans (X" = 1'-0") showing:
 - i.** Equipment rooms
 - ii.** Panels and MCC's
 - iii.** Transformers
 - iv.** Generators
 - e.** Riser Diagrams
 - i.** Security
 - ii.** Fire alarm
 - iii.** LAN
 - iv.** Communications
 - f.** Schedules
 - i.** Panel boards
 - ii.** Luminaires
 - iii.** Conduit and Wire

iv. MCC's

v. Details

g. Single Line Diagrams

9.3.4.8. Plumbing

i. Typical system requirements and special conditions for plumbing related to HVAC, fire protection, storm and control systems and in any interfaces with other disciplines and existing systems

ii. Typical floor plans by system, as required, at same scale as architectural, showing piping, fixtures, locating major equipment and size and clearance requirements, showing shafts (dimensioned) chases, and required floor/wall penetrations.

iii. Plans of special floors, lobby, roof, other showing equipment locations and clearance requirements.

iv. Special details for plumbing fixtures.

v. Floor diagrams, riser diagrams, etc.

9.3.4.9. IT/Security/Audio Visual/Acoustical Plans

9.3.4.10. Landscaping

a. Layout Plans showing:

i. Overall site layout

ii. Special pavements

iii. Retaining Walls, steps and ramps

iv. Site furniture

v. Lighting fixtures

vi. Special vehicular areas and pedestrian circulation

vii. Water features

viii. All other elements as included in program

b. Grading Plans at same scale as layout plans, including:

i. Elevations of various terrain or paved levels

- ii.** Elevations of retaining walls, steps and ramps
 - iii.** Elevations of decks and walkways
 - iv.** Location of all drainage structures
 - v.** Indication of surface water runoff
- c.** Planting Plans at same scale as layout plan, showing quantity, size and description of the following:
 - i.** Trees and shrubs
 - ii.** Groundcover
 - iii.** Specimen material
 - iv.** Planting details
- d.** Irrigation Plans at same scale as planting plan, to include:
 - i.** Irrigation head layout
- e.** Exterior Lighting Layout Plans indicating:
 - i.** Landscape uplighting
 - ii.** Walkway lighting
 - iii.** Activity areas lighting
- f.** Exterior Details, Sections and Blow-ups (scale according to complexity) for:
 - i.** Paving, steps and ramps
 - ii.** Lighting fixtures
 - iii.** Retaining walls and railings
 - iv.** Drainage and curbing
 - v.** Site furniture
 - vi.** Planting

9.3.4.11. Signage and Graphics

- a. Schedule of all signage
- b. Large scale elevations of each sign type

-
- c. Mounting details

9.3.4.12. Interior and FF&E

- a. Furniture layouts
- b. Fixture layouts, elevations and details
- c. Equipment layouts, elevations and details

9.3.4.13. Information Only Drawings

- a. Any existing drawings of facilities or conditions necessary to convey the scope of the Construction Package
- b. Code related Drawings as noted above
- c. Equipment Drawings of City Furnished Equipment
- d. Any other drawings not showing actual work to be performed under the Contract Package but necessary to convey the scope.

9.3.5. Code Analyses – Design-Builder to provide code analysis of each of the following:

9.3.5.1. Final Fire and life safety codes

9.3.5.2. Final Sprinkler Design requirements

9.3.5.3. Final Hazardous materials handling

9.3.5.4. Final Electrical Safety

9.3.5.5. Final ADA compliance

9.3.5.6. Final Facility/Site related regulations

9.3.6. In addition, Design-Builder shall perform review and analysis of the requirements of the International Building Code applicable to this Project relative to the Drawings and Specifications of the Project.

9.3.7. Design Calculations – Design-Builder to provide the following design calculations:

9.3.7.1. Final Design Calculations for Civil, Structural, Mechanical and Electrical disciplines

9.3.7.2. Final calculations as required to support Code Analyses

9.3.8. Cost Estimates

9.3.8.1. 100% Cost Estimate based on the 100% Construction Documents

9.3.9. Other Program Documents at the end of the Program, turn over to City

9.3.9.1. Final Document Control Log

9.3.9.2. CAD Drawing Documentation

9.3.9.3. CAD File Documentation

9.3.9.4. "As completed" Work Plan.

9.3.9.5. Final versions of all project records not already transmitted to City

9.3.9.6. Work Plan for the Construction Administration Stage

9.3.10. Electronic versions of all required deliverables.

10. Construction Administration

10.1. The Construction Administration activities provide support to the Construction Process for the duration of the Construction period and beyond, until Program closeout.

10.2. Tasks - Design-Builder shall perform the following tasks:

10.2.1. Submittals

10.2.1.1. Ensure that all subcontracted construction and material supply is preceded by appropriate submittals for:

- a.** Product data
- b.** Systems design, including shop drawings, calculations, performance verification
- c.** Installation requirements
- d.** Maintenance data
- e.** Operations data, including training materials
- f.** Warranties
- g.** Testing and inspection data

10.2.1.2. Maintain a log of all submittals required in the Contract Specifications and their status

10.2.1.3. Review and take action on all submittals as many times as required to solve construction issues

10.2.1.4. Mock-ups

-
- a.** Maintain a log of all mock-ups required in the Specifications and their status
 - b.** Review and action all mock-ups at the Jobsite as many times as required
 - 10.2.1.5.** Provide and maintain Control Samples at the Jobsite
 - 10.2.2.** Periodic observations – Design-Builder must provide the following periodic observations:
 - 10.2.2.1.** Provide on-site observations for all disciplines at a frequency appropriate to the observed activities to ensure aesthetic quality and design integrity.
 - 10.2.2.2.** Observe at critical system installation times and system testing.
 - 10.2.3.** 10.2.3. Resident Architectural and Engineering Services
 - 10.2.3.1.** Services shall be provided as agreed upon with the City in the approved Construction Administration Stage Work Plan prepared at the end of the Construction Documentation Stage.
 - 10.2.4.** 10.2.4. Contract Document Change Control
 - 10.2.4.1.** Prepare all drawings, specifications or reports required for change orders.
 - 10.2.4.2.** Respond to Requests for Information (RFI)
 - 10.2.5.** Design-Builder shall arrange, schedule, and conduct negotiations and settlement of claims and disputes.
 - 10.2.6.** Design-Builder shall arrange, schedule, and conduct Construction Meetings, including but not limited to:
 - 10.2.6.1.** Pre-Engineering, Pre-Fabrication, and Pre-Installation, Construction Meetings as referenced in the Specifications.
 - 10.2.6.2.** Routine progress meetings
 - 10.2.6.3.** Other construction-related meetings
 - 10.2.7.** Record Drawings
 - 10.2.7.1.** Throughout construction, maintain mark-ups of Construction Drawings ensuring that they document:
 - a.** All significant changes made during construction
 - b.** Locations of field-routed systems
 - c.** Accurate locations for concealed systems routing, particularly those buried or cast in concrete.
-

d. Connection and tie-in data

10.2.7.2. Update electronic Construction Drawings and/or Shop Drawings as required to reflect changes noted above in accordance with the City's CAD Guidelines.

10.2.7.3. Update CAD Drawing Documentation and CAD File Documentation as required to reflect changes in the Construction Drawings and/or Shop Drawings.

10.3. Deliverables --Design-Builder shall deliver the following:

10.3.1. Completed Submittals

10.3.1.1. Return actioned submittals within 10 Business Days

10.3.2. Observation Reports

10.3.2.1. Each observer shall provide a written Observation Report for each day's observation to the City's Program Manager within 5 Business Days of each observation.

10.3.3. Change Order Documents

10.3.3.1. Drawings and Specifications

10.3.3.2. Change Order cover documents

10.3.4. Responses to RFIs

10.3.5. Startup Report

10.3.5.1. Prepare a written report for each system Start-up

10.3.6. Record Drawings

10.3.6.1. All Record Drawings

10.3.7. Electronic versions of all required deliverables.

10.4. Completion Evaluation

10.4.1. The Construction Administration documents must be clear enough to be useful to the City's Facilities personnel as a long-term resource.

EXHIBIT J

CONSTRUCTION TASKS AND DELIVERABLES

1. Construction Tasks and Deliverables

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

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

1.1.1. Construction Design and Planning

1.1.2. Scheduling and Cost control

1.1.3. Subcontracting and Procurement

1.1.4. Project Coordination

1.1.5. Testing, Material Testing Coordination and Inspection

1.2. COORDINATION

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

2. CONSTRUCTION DESIGN AND PLANNING

2.1. OVERALL PHASING AND STAGING PLANS

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

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

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

2.2. PHASING / SEQUENCING REQUIREMENTS

2.2.1. Facility/Site Events

- 221.1.** Where applicable schedule construction operations to allow existing facilities to remain in uninterrupted service during scheduled operations. Do not perform any construction operation prior to receiving a review and acceptance from City, which also will coordinate with the affected event organizers.
- 221.2.** Provide temporary dust proof enclosures and protection as required to sequence construction and maintain event operations.

2.3. REQUIREMENTS FOR ALTERNATIVES TO PHASING AND SEQUENCING OBJECTIVES

- 2.3.1.** Design-Builder is encouraged to seek alternative approaches of phasing and sequencing that can save time and/or money that may require adjustments to the any specified City objectives.
- 2.3.2.** Design-Builder is required to meet all specified City objectives unless City gives prior written approval for alternative approaches.
- 2.3.3.** Design-Builder shall make a written request for alternative approaches prior to initiating any effort involving these alternative approaches. The request shall:
 - 233.1.** Indicate how the alternative approaches will save time and/or money;
 - 233.2.** Detail the operational impacts of the alternative approaches and demonstrate the viability of any operational adjustments that are required;
 - 233.3.** Convey to City the nature of alternative approaches in sufficient detail to enable the City to understand all significant implications of the alternative approaches; and
 - 233.4.** Demonstrate compliance with performance criteria detailed in the Program Document and any subsequent direction provided to Design- Builder.

2.4. MONTHLY PHASING PLANS

- 2.4.1.** Each month concurrent with Design-Builder's Application for Payment, and as a requirement for the Application for Payment to be considered for payment, Design-Builder shall submit the Monthly Phasing Plan to City. The Phasing Plan will indicate Design-Builder's next calendar (thirty [30] days) work in graphic and written format.
- 2.4.2.** The Monthly Phasing Plan will be a progress update of Design-Builder's Overall Phasing Plan and shall, at a minimum, address the following:
- 2.4.3.** Show all normal public, Facility/Site operational circulation impacts, the need for temporary facilities, security impacts, equipment locations, and changes affecting current crane permits.
- 2.4.4.** Indicate any creation of temporary hazardous conditions such as excavations, fuel storage, welding, lifts and cranes for unloading materials, and pavement cutouts near walking areas.
- 2.4.5.** Show all Temporary Facilities that will be in use during the next thirty (30) calendar days.
- 2.4.6.** Identify dates during the next thirty (30) calendar days when utility interruptions are anticipated.
- 2.4.7.** Identify equipment placements, haul routes, access routes, safety concerns, parking, material staging areas, significant areas of work, note temporary signage, etc.

2.5. HAUL ROUTES

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

2.6. ROADWAYS AND PARKING

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

- 2.6.1.** Electrical power shall not be disturbed to offices, entrances, exits, and lighting.
- 2.6.2.** Integrity of the parking perimeter shall not be compromised.
- 2.6.3.** Queuing areas must be in place for entrances and exits.
- 2.6.4.** Clear signage for entry and exit of the parking shall be in place at all times.

2.7. NOTICE OF CHANGES

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

2.8. CONSTRUCTION QUALITY CONTROL PROGRAM

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

2.8.1. Quality control organization.

2.8.2. Work progress schedule.

2.8.3. Submittal schedule.

2.8.4. Inspection requirements.

2.8.5. Quality control testing plan.

2.8.6. Documentation of quality control activities.

2.8.7. Requirements for corrective action when quality control and/or acceptance criteria are not met.

2.9. Deliverables shall include but not be limited to the following:

2.9.1. Overall Construction Staging and Phasing Plans

2.9.2. Monthly Construction Staging and Phasing Plans

2.9.3. Traffic Handling Plans

2.9.4. Temporary Striping and Signage Plans

2.9.5. Haul Route Plans

2.9.6. Construction Quality Control Program

2.9.7. Procedure for Notice of Changes

3. PROJECT COORDINATION

3.1. COORDINATION WITH OTHER CONCURRENT PROJECTS

3.1.1. Develop a procedure to coordinate access, including elevator access, to all tenant areas for event contractors during the same hours that Design-Builder is working. Loading and stocking shall occur during off hours for which the event subcontractor shall be responsible for the overtime PREMIUM of the hoist/elevator operator.

3.1.2. Develop a procedure for permitting visitors to the construction area.

3.1.3. Coordinate tenant contractor access to building systems and utilities.

3.2. EVENT PLANNING.

3.2.1. Design-Builder shall notify Facility/Site/City and confirm with an Aviation Public Relations team a minimum of one (1) month prior to official ground breaking and grand opening of major facilities. Notification shall be made in writing to City.

3.2.2. Design-Builder shall be available to assist with any media-related stories and events that arise during the duration of the Project, such as, but not limited to, first construction and topping off ceremonies.

3.2.3. Design-Builder shall assign representative(s) to be actively involved in the planning committee for the event.

3.3. CONSTRUCTION SIGNAGE

3.3.1. Design-Builder shall provide necessary signage needed during the construction period that notifies passengers, tenants and stakeholders of construction-related annoyances and inconveniences. Such work includes, but is not limited to, activity that causes noise (ex. pile driving); roadway changes, detours and closures; and work activity that creates dust and debris.

3.3.2. Signage shall be approved by City.

3.3.3. Signage shall be mounted by Design-Builder approximately five (5) business days before work is set to begin and removed promptly once work is completed.

3.4. TESTING AND INSPECTION

3.4.1. Per UBC Section 1701 - Special Inspections, the testing/Inspection Agencies shall be employed by City for necessary special inspections. Design-Builder shall coordinate with City as required for the following activities:

341.1. Field Testing and Inspection: the performance of all testing, observation, and inspection required by code and as specified.

341.2. Commissioning Report, prepared with the City and by the independent Commissioning resource providing all performance testing, and verifying that the Project's y-related systems are installed and calibrated and perform as intended.

3.5. 14.2. The energy-related systems that will be included in the commissioning process activities include as a minimum:

3.5.1. Heating, ventilating, air conditioning, and refrigeration (HVAC&R) systems (mechanical and passive) and associated controls

3.5.2. Lighting and daylighting controls

3.6. REPORTS

Written report of each test/inspection, including complete details of conditions, methods, and results shall be signed by responsible individual.

3.7. REFERENCE STANDARDS

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

3.8. DATE OF ISSUE

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

4. OFF-SITE STORAGE

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

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

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

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

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

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

4.5.1. With each monthly payment estimate, submit a report to City listing the quantities of materials already paid for and still stored in the off-site location.

4.5.2. 15.5.2. Make warehouse records, receipts and invoices available to City's representatives, upon request, to verify the quantities and their disposition.

4.6. In the event of Contract termination or default by Design- Builder, the items in storage off-site, upon which payment has been made, will be promptly turned over to City or City's agents at a location near the jobsite as directed by City. The full provisions of performance and payment bonds on this Project cover the materials off-site in every respect as though they were stored on the Project Site.

EXHIBIT K

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

EXHIBIT L

GMP SUMMARY AND GMP PROPOSAL

GMP COST SUMMARY

	Design Builder: Entity Name		
A	Direct Cost of Work (Labor, Material, Equipment, Warranty)		\$
B	Alternates		\$
C	Allowances		\$
D	Design-Builders Contingency (Direct Cost of Work x Negotiated %)	%	\$
E	Total of All Fixed Priced Proposals (Direct Cost of Work Only)		\$
F	SUBTOTAL COST OF THE CONSTRUCTION WORK		\$
G	General Conditions (Stipulated % x Subtotal Cost of the Construction Work)	%	\$
H	SUBTOTAL COST OF WORK = (F+G)		\$
I	Management Fee (Stipulated % x Subtotal Cost of the Construction Work)	%	\$
J	SUBTOTAL FEE + SUBTOTAL COST OF WORK		\$
K	Insurance		\$
L	Payment & Performance Bond Construction		\$
M	SUBTOTAL INSURANCE & BONDS		\$
N	Sales Tax (If Any)		\$
O	GMP TOTAL		\$
P	Owner's Contingency		\$
Q	Design Fee		\$
R	CONTRACT SUM		\$

NOTES:

1	Item E is the Direct Cost of Construction Work values only from Approved Fixed Price Proposals (AFPP). The General Conditions, Management Fee, Bonds, and Insurance for the AFPP will be captured in their respective line items above.
2	$F = A + B + C + D + E$
3	$G \text{ (General Conditions)} = \text{Stipulated \%} \times F$
4	$H = F + G$
5	$I \text{ (Management Fee)} = \text{Stipulated \%} \times F$
6	$J = H + I$
7	K and L are pass through costs without markup
8	$M = K + L$
9	$O \text{ (GMP Total)} = J + M + N$
10	$Q = \text{Design Fee}$
11	$R \text{ (Contract Sum)} = O + P + Q$

EXHIBIT M

DESCRIPTION OF DESIGN-BUILDER'S GENERAL CONDITION COSTS

EXHIBIT N
PREVAILING WAGE DECISION

EXHIBIT O

FEDERAL CONTRACT REQUIREMENTS

As used in this Exhibit, the term “contractor” or “Contractor” shall refer to Design-Builder entering into this Agreement with the City. Design-Builder shall include the provisions set out in this exhibit in every subcontract, including procurements of materials and leases of equipment, unless exempt by Federal regulations and directives issued pursuant thereto.

General Civil Rights Provisions

In all its activities within the scope of its airport program, the Contractor agrees to comply with pertinent statutes, Executive Orders, and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

The above provision binds the Contractor and subcontractors from the bid solicitation period through the completion of the contract.

Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-Assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);

- The Civil Rights Restoration Act of 1987 (PL 100-259) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990 (42 USC § 12101, et seq) (prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs [70 Fed. Reg. 74087 (2005)];

Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC § 1681, et seq).

Nondiscrimination Requirements/Title VI Clauses for Compliance

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”), agrees as follows:

1. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor’s obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

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4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
 5. **Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the Sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
 6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Sponsor to enter into any litigation to protect the interests of the Sponsor. In addition, the Contractor may request the United States to enter



CITY OF SAN ANTONIO

DESIGN-BUILD GENERAL CONDITIONS FOR NEW PARKING STRUCTURE AND GROUND TRANSPORTATION CENTER

PROJECT NUMBER:

33-03350

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- 12.10. Environmental Compliance.
- 12.11. Road Closures and Detour Routes.
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- 12.13. Abatement and Mitigation of Excessive or Unnecessary Construction Noise.

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- 13.1. Design-Builder's Liability Insurance.
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- 16.2. Written Notice.
- 16.3. Rights and Remedies; No Waiver of Rights by City.
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- 16.12. Mutual Waiver of Consequential Damages

Article 17. Audit

- 17.1. Right to Audit Design-Builder's Records.

Article 18. Attorney Fees

ARTICLE 1 CONTRACT DEFINITIONS

Wherever used in the Contract Documents, as defined in the Design-Build Contract, and printed with initial capital letters, the terms listed below will have the meanings indicated, which are applicable to both the singular and plural thereof.

1.1. Act of God.

An accident or event resulting from natural causes, without human intervention or agency, and one that could not have been prevented by responsible foresight or care – for example, fires, lightening earthquakes. not influenced by man. They are accidents caused by nature. By way of example and not limitation, hurricanes, floods, hail, tsunamis, wildfires, earthquakes and tornados are all considered acts of God.

1.2. Application for Payment.

Electronic requests for payment submitted by Design-Builder to City electronically, at a minimum of every thirty (30) days throughout the duration of the Project to include all data substantiating Design-Builder's right to payment and reflecting a deduction for Liquidated Damages, if applicable.

1.3. Base Bid.

Price quoted for the Work before Alternates are considered.

1.4. City Holiday.

The following holidays observed by the City of San Antonio: New Year's Day (both actual and observed if different); Martin Luther King, Jr. Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; and Christmas Day (Both actual and observed if different).

1.5. Claim.

Demand or assertion by one of the Parties seeking, as a matter of right, an adjustment or interpretation of Contract terms, payment of money, extension of time or other relief, with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between City and Design-Builder arising out of or relating to the Contract. Claims must be initiated by written notice.

1.6. Construction Observer/Inspector (COI).

Authorized representative of the Director of the Aviation Department, or its designee department, assigned by City to observe and inspect any or all parts of the Project and the materials to be used therein.

1.7. Contract Time.

Period of time, unless otherwise provided, including any authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

The plural (CONTRACT TIMES) refers to milestones designated in the schedule.

1.8. Contract Times.

Milestones designated in the schedule.

The singular (CONTRACT TIME) refers to the time allotted for Substantial Completion of Work.

1.9. Day.

Calendar Day, unless otherwise specifically defined.

A Calendar Day is a day of 24 hours, measured from midnight to the next midnight, unless otherwise specifically stipulated.

1.10. Department.

Aviation Department of the City of San Antonio, Texas.

1.11. Field Work Directives.

Also known as **FORCE ACCOUNT**.

Written order signed by City directing a change in the Work prior to agreement or an adjustment, if any, in the Contract Sum and/or Contract Time, as further defined in **Article 9.3** herein.

1.12. Flood.

Overflowing of a large amount of water beyond its normal confines, especially over what is normally dry land.

1.13. Governmental Entity.

Any federal, State or local government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity other than City.

1.14. Hazardous Substance.

Is defined to include the following:

- (a) Any asbestos or any material which contains any hydrated mineral silicate, including chrysolite, amosite, crocidolite, tremolite, anthophyllite or actinolite, whether friable or non-friable;
- (b) Any polychlorinated biphenyls (“PCBs”), or PCB-containing materials, or fluids;
- (c) Radon;
- (d) Any other hazardous, radioactive, toxic or noxious substance, material, pollutant, or solid, liquid or gaseous waste; any pollutant or contaminant (including but not limited to petroleum, petroleum hydrocarbons, petroleum products, crude oil or any fractions thereof, any oil or gas exploration or production waste, any natural gas, synthetic gas or any mixture thereof, lead, or other toxic metals) which in its condition, concentration or area of release could have a significant effect on human health, the environment, or natural resources;
- (e) Any substance, whether by its nature or its use, is subject to regulation or requires environmental investigation, monitoring, or remediation under any federal, state, or local environmental Laws;
- (f) Any underground storage tanks, as defined in 42 U.S.C. Section 6991 (1)(A)(I) (including those defined by Section 9001(1) of the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act, 42 U.S.C Section 6901 et seq.;
- (g) A tank, pipeline, vessel or other facility covered by Texas Water Code Annotated Section 26.344 or Chapter 334 of Title 30 of the Texas Administrative Code (noting exceptions and exclusions in Sections 334.3 and 334.4), whether empty, filled or partially filled with any substance; and
- (h) Any other hazardous material, hazardous waste, hazardous substance, solid waste, and toxic substance as those or similar terms are defined under any federal, state, or local environmental Laws.

1.15. Omitted.

1.16. Liquidated Damages.

The liquidated damages reflect the daily monetary compensation, as specified in **Article 6.10** of the Design-Build Contract, to be paid to City by Design-Builder for losses/damages incurred by City as a result of Design-Builder’s failure to achieve the contractual deadlines for Substantial Completion and/or Final Completion of the Project.

1.17. Omitted.

1.18. Product Data.

Illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by Design-Builder to illustrate materials or equipment for some portion of the Work.

1.19. Project Schedule.

The schedule developed and maintained by Design-Builder for the Project as otherwise described in **Article 5.11.6.**

1.20. Project Site.

All area(s) (as indicated in the Drawings) furnished by City, upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by City which are designated for the use of Design-Builder. The Project Site is to be included under all applicable insurance policies as described in the General Conditions.

1.21. Project Management Team.

Comprised of City's program manager and project manager and its representatives.

1.22. Request for Information

Formal notification from Design-Builder, after Contract has been awarded, utilizing City's web-based project management system, that there is a question on the project that needs to be addressed.

1.23. Quality Assurance.

Those actions taken by the City to determine the requirements of the contract have been met to include inspection, sampling, texting, and other activities.

1.24. Quality Control.

Sampling, testing, and other process control activities conducted by Design-Builder to ensure that the services are performed according to the terms and conditions of the contract.

1.25. Site.

Land(s) or area(s) (as indicated in the Contract Documents) furnished by City, upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by City which are designated for the use of Design-Builder.

1.26. Special Conditions.

Terms and conditions to a contractual agreement that supplement and are superior to General Conditions which grant greater authority or impose greater restrictions upon Design-Builder, beyond those granted or imposed in these General Conditions. If applicable, City's

Horizontal Special Conditions shall be attached hereto, and made a part of these General Conditions.

1.27. Specifications.

Those elements of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards, workmanship for the Work, performance of related services and other technical requirements.

1.28. Substitution.

A change proposed by the Design-Builder to products, materials, equipment, methods of construction or point of origin that differ from those required by the Contract Documents.

1.29. Temporary Benchmarks (TBM).

Temporary affixed marks which establish the exact elevation of a place; TBMs are used by surveyors in measuring site elevations or as a starting point for surveys.

1.30. The Building Information Model.

Building Information Model is prepared by Design-Builder in the format designated, approved and acceptable to City with databases of materials, products and systems that can be used by Design-Builder to prepare schedules for cost estimating, product and materials placement schedules and evaluations of clash incidences. A 3D Model, may be used as a tool, however all information taken from the 3D Model is the responsibility of Design-Builder and not City.

1.31. Time Impact Analysis (TIA).

Evaluation of the effects of changes in the construction sequence, contract, Plans or site conditions on Design-Builder's plan for constructing the Project, as represented by the schedule. The purpose of the Time Impact Analysis is to determine if the overall Project has been delayed and, if necessary, to provide Design-Builder and City a basis for making adjustments to the Contract.

1.32. Unusually Severe Weather.

Precipitation (rain, snow, ice, etc.), temperatures, wind, and other environmental, climatic, and atmospheric conditions for any given calendar day that exceed historical averages for the applicable month and has a direct physical impact on the Project.

1.33. Written Notice.

Any notice, payment, statement or demand required or permitted to be given under this Contract by either Party to the other shall be in writing to an officer, management level

employee or other designated representative of the other Party at such address, telephone number or electronic mail address as such party shall have specified most recently by written notice. Such notice, payment, statement or demand may be affected by i) personal delivery, ii) registered or certified mail, return receipt requested, postage prepaid, iii) delivery by reputable air courier service with charges prepaid, or iv) electronic mail. A notice given under this Contract will be effective (i) upon hand delivery, (ii) on the second business day following the date of mailing by express courier service, fully prepaid, addressed to such address, or upon actual receipt of such mailing, whichever shall first occur, or (iii) upon confirmation of receipt of email by sender.

1.34. Other Definitions.

As used in the Contract Documents, the following additional terms have the following meanings:

1.34.1. Provide.

To furnish, install, fabricate, deliver and erect, including all services, materials, appurtenances and all other expenses necessary to complete in place and ready for operation or use;

1.34.2. Shall.

Mandatory action of the party of which reference is being made;

1.34.3. As required.

As prescribed in the Contract Documents; and

1.34.4. As necessary.

All action essential or needed to complete the work in accordance with the Contract Documents and applicable laws, ordinances, construction codes and regulations.

END OF ARTICLE 1

ARTICLE 2 PRELIMINARY MATTERS.

2.1. Ordinance and Issuance

Upon the San Antonio City Council's passing of an Ordinance authorizing the issuance of a contract, a notice of award letter shall be sent to Design-Builder by Contract Services, notifying Design-Builder of the award of a contract. In its notice of award letter, Design-Builder shall be informed of a date certain by which Design-Builder's bond(s) and evidence of insurance shall be delivered to Contract Services.

2.2. Delivery of Contract and Bonds.

Not later than the preconstruction meeting and prior to the commencement of any Work on the Project, Design-Builder shall deliver a fully executed Contract to City, along with such bonds as Design-Builder may be required to furnish, including, but not limited to, a required payment bond in the form and amount specified in the Contract Documents and these General Conditions and a required performance bond in the form and amount specified in the Contract Documents and these General Conditions.

2.3. Delivery of Evidence of Insurance.

Not later than the preconstruction meeting, and prior to the commencement of any Work under this Contract, Design-Builder shall deliver evidence of insurance to City. Design-Builder shall furnish an original completed certificate of insurance, together with all required endorsements thereto, required by the Contract Documents to the Aviation Department, Contract Services Division, or its delegated department, clearly labeled with the name of the Project and which shall contain all information required by the Contract Documents. Design-Builder shall be prohibited from commencing the Work and City shall have no duty to pay or perform under this Contract until such evidence of insurance is delivered to City. No officer or employee, other than City's Risk Manager, shall have authority to waive this requirement.

2.4. Notice to Proceed and Commencement of Contract Times.

Unless otherwise stated on the Notice to Proceed, the Contract Time will commence to run on the date stated on the Notice to Proceed. No Work shall commence any earlier than the date stated on Notice to Proceed and no Work shall be performed by Design-Builder or any subcontractor prior to issuance of the Notice to Proceed. Any work commenced prior to Design-Builder receiving a Notice to Proceed is performed at Design-Builder's risk.

2.5. Submission of Project Schedule(s).

Prior to commencement of Work (unless otherwise specified elsewhere in the Contract Documents), Design-Builder shall submit to the Director of the Aviation Department or his/her designee the Baseline Construction Schedule, as described in **Article 5.11** herein,

a minimum of ten (10) calendar days prior to City's issuance of the initial Notice to Proceed for construction.

2.6. Preconstruction Meeting.

Before Design-Builder commences any Construction Work on the Project, a preconstruction meeting attended by City, Design-Builder, City's Designated Representative and others, as appropriate, will be held to establish a working understanding among the parties as to the Work and discuss, at a minimum: the Project Schedule(s) referenced in this **Article 2**; the procedures for handling Shop Drawings and other submittals; the processing of Applications for Payment; and Design-Builder maintaining required records. The Notice to Proceed may be issued at the preconstruction meeting or issued by City at any time at City's discretion. The issuance of the Notice to Proceed will not unreasonably be withheld by City.

2.7. Payments

Payments for services, work, equipment and materials are contingent upon and subject to the availability and appropriation of funds and the sale of future City of San Antonio Certificates of Obligation and/or General Obligation Bonds in accordance with adopted budgets. In the event funds are not available, appropriated or encumbered to fund a Project, then, at City's discretion, this Agreement may be terminated immediately with no additional liability to City.

END OF ARTICLE 2

ARTICLE 3
RESERVED

END OF ARTICLE 3

ARTICLE 4 CITY

4.1. General.

4.1.1. City shall designate in writing to Design-Builder a representative (CDR) who shall have express authority to bind City with respect to all matters concerning this Contract requiring City's approval or authorization. Whenever the term "City" or "Owner" is found in this Contract or the Contract Documents, such term shall include the City's agents, elected officials, employees, officers, directors, volunteers, representatives, successors and assigns.

4.1.2. Design-Builder acknowledges that no lien rights exist with respect to public property.

4.2. Information and Services to be Provided by City.

4.2.1. City shall provide and maintain the preliminary budget and general schedule, if any for the Project. The preliminary budget shall include the anticipated design cost, construction cost, and contingencies for changes in the Work during construction and other costs that are the responsibility of City. The general schedule will set forth City's plan for milestone dates and Substantial Completion and Final Completion of the Project.

4.2.2. If in existence and if in City's possession, City shall furnish surveys describing physical characteristics, legal limitations and utility locations. The furnishing of these surveys and reports shall not relieve Design-Builder of any of its duties under the Contract Documents to include these General Conditions. Information or services required of City by the Contract Documents shall be furnished by City with reasonable promptness following actual receipt of a written request from Design-Builder. It is incumbent upon Design-Builder to identify, establish and maintain a current schedule of latest dates for submittal and approval by City, as required in **Article 5.11**, including when such information or services must be delivered. If City delivers the information or services to Design-Builder as scheduled and Design-Builder is not prepared to accept or act on such information or services, then Design-Builder shall reimburse City for all extra costs incurred by holding, storage, retention or performance, including redeliveries by City to comply with the current schedule.

4.2.3. Unless otherwise provided in the Contract Documents, Design-Builder shall furnish, free of charge, up to three (3) complete sets of the Plans and Specifications to City and one (1) USB Drive. Additional complete sets of Plans and Specifications, if requested by City, shall be furnished to City at Design-Builder's reproduction cost without markup.

4.2.4. City's personnel may, but are not required to, be present at the construction site during progress of the Work to verify Design-Builder's record of the number of workers employed on the Work site, the workers' occupational classification, the time each worker is engaged in the Work and the equipment used by the workers in the performance of the Work, for purpose of verification of Design-Builder's Applications for Payment and payroll records.

- 4.2.5.** City shall reimburse Design-Builder for the necessary project-related approvals, fees and required permits with no markup paid to Design-Builder for these necessary Project-related approvals, fees and required permit costs, unless said costs are stipulated in the Contract Documents as part of Design-Builders cost of Work.

4.3. City's Right to Stop the Work.

If Design-Builder fails to correct Work deemed by City not in accordance with the requirements of the Contract Documents, as required by **Article 14.3** herein, fails to carry out Work in accordance with the Contract Documents, or fails to submit its preliminary schedule(s), or other required submittals, within ten (10) days of receiving a written order to Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated. If Design-Builder fails to submit bond(s) or insurance certificate(s) or if the failure to correct Work as required by **Article 14.3** creates a situation which could endanger the life and/or health and safety of any persons or result in imminent damage to property, City may issue a written notice to Design-Builder to stop Work immediately.

4.4. City's Right to Carry Out the Work.

If Design-Builder defaults, neglects or fails to carry out the Work in accordance with the Contract Documents and fails, within a three (3) work-day period after receipt of written notice from City, to commence and continue correction of such default, neglect or failure with diligence and promptness, City may, without prejudice to other remedies City may have, correct such deficiencies, neglect or failure. In such case, an appropriate Change Order may be issued deducting from payments then or thereafter due Design-Builder the reasonable cost of correcting such deficiencies, neglect or failure, including all of City's incurred expenses and compensation for City's additional services made necessary by such default, neglect or failure. If payments then or thereafter due Design-Builder are not sufficient to cover such amounts for the Work performed, Design-Builder shall pay the difference to City.

END OF ARTICLE 4

ARTICLE 5 DESIGN-BUILDER

5.1. General.

- 5.1.1.1.** Design-Builder represents that it is thoroughly familiar with and understands the requirements of the Work and is experienced in the design, administration and construction of building projects of the type and scope of Work contemplated by and for the Project. Design-Builder further represents to Owner that Design-Builder and its sub-consultants and Subcontractors have all architectural, engineering and construction education, skill, knowledge and experience required for the Project and will maintain such personnel on its staff to provide the Work As Necessary within the time periods required by the Contract Documents.
- 5.1.1.2.** Design-Builder shall perform the Work in a good and workmanlike manner, except to the extent the Contract Documents expressly specify a higher degree of finish or workmanship.
- 5.1.1.3.** Design-Builder shall not be relieved of its obligations, responsibilities or duties to perform the Work in accordance with the Contract Documents either by any activities or duties of City in City's administration of the Contract or by tests, inspections or approvals required or performed by City or any person other than the Design-Builder.

5.2. Review of Contract Documents and Field Conditions by Design-Builder.

5.2.1. Design-Builder shall:

- 5.2.1.1.** Carefully review and verify the Contract Documents to establish that the information is sufficiently complete to perform the Work and that there are no obvious or patent errors, ambiguities, inaccuracies, inconsistencies, or omissions within or between the Contract Documents;
- 5.2.1.2.** study and compare the various Drawings and other Contract Documents relative to that portion of the Work and the City's solicitation documents, including any amendments or attachments thereto, and Project Program Documents furnished by or on behalf of City for obvious or patent errors, ambiguities, inaccuracies, inconsistencies, or omissions within or between the Contract Documents; and
- 5.2.1.3.** promptly report any errors, ambiguities, inaccuracies, inconsistencies, or omissions discovered by Design-Builder to City via a Request for Information in such form as the City may require.

5.2.2. Before starting each portion of the Work, Design-Builder shall:

- 5.2.2.1.** At the site, observe any conditions effecting the Work and take field measurements for said conditions;
- 5.2.2.2.** Because the exactness of existing grades, elevations, dimensions or locations given on any Drawings issued by City, or the work installed by City's other

contractors, is not guaranteed by City, Design-Builder shall satisfy itself as to the accuracy of all grades, elevations, dimensions and locations; and

- 5.2.2.3.** In all cases of interconnection of its Work with existing conditions or with work performed by others, Design-Builder shall verify at the site all dimensions relating to such existing or other work. Any errors due to Design-Builder's failure to so verify all such grades, elevations, dimensions or locations promptly shall be rectified by Design-Builder without any additional cost to City.
- 5.2.2.4.** If Design-Builder believes additional cost or time is involved because of clarifications or instructions issued by City in response to the Design-Builder's Notices or Requests for Information, Design-Builder shall make Claims as provided in **Article 6.2**. If Design-Builder fails to perform the obligations of **Article 5.2**, Design-Builder shall pay such costs and damages to City as would have been avoided if Design-Builder had performed such obligations and had recognized or by reasonable inference should have recognized such errors, ambiguities, inaccuracies, inconsistencies, or omissions.

5.3. Supervision and Construction Procedures.

- 5.3.1.** Design-Builder shall supervise, inspect and direct the Work competently and efficiently, exercising the skill and attention of a prudent Design-Builder, devoting such attention and applying such skills and expertise as is necessary to perform the Work in accordance with the Contract Documents. Design-Builder solely shall be responsible for and have control over the means, methods, techniques, sequences, procedures and coordination of all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods and/or techniques, Design-Builder then shall evaluate the jobsite safety thereof and, except as stated herein below, shall fully and solely be responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If, upon its evaluation, Design-Builder determines such means, methods, techniques, sequences or procedures may not be safe, Design-Builder shall give timely written notice to City and Design-Builder shall not proceed with that portion of the Work without further written instructions from City. (Although Design-Builder is solely responsible for the sequencing and procedures, such sequencing and procedures shall be coordinated and agreed upon by City and Design-Builder.)
- 5.3.2.** Design-Builder shall be responsible to City for the acts and omissions of Design-Builder's agents and employees, sub-consultants, and their respective agents and employees, Subcontractors and their respective agents and employees and all other persons or entities performing portions of the Work for or on behalf of Design-Builder or any of its sub-consultants and/or Subcontractors.
- 5.3.3.** Design-Builder shall be responsible for inspection of portions of Work already performed, to determine that such portions are in proper condition to receive subsequent Work.

- 5.3.4.** Design-Builder shall bear responsibility for design and execution of acceptable trenching and shoring procedures, in accordance with Texas Government Code, Section 2166.303 and Texas Health and Safety Code, Subchapter C, Sections 756.021, et seq, as such may amended or modified in the future.
- 5.3.5.** It is understood and agreed the relationship of Design-Builder to City shall be of an independent contractor. Nothing contained herein or inferable in the Contract Documents shall be read, deemed or construed to make Design-Builder the agent, servant or employee of City or create any partnership, joint venture or other association between City and Design-Builder. Any direction or instruction by City, in respect of the Work, shall relate to the results the City desires to obtain from the Work, and shall in no way affect Design-Builder's independent contractor status, as described herein.
- 5.3.6.** Design-Builder shall review its Subcontractor(s) written safety programs, procedures and precautions in connection with performance of the Work. However, Design-Builder's duties shall not relieve any Subcontractor(s) or any other person or entity (e.g. a supplier), including any person or entity with whom Design-Builder does not have a contractual relationship, of their responsibility or liability relative to compliance with all applicable federal, state and local laws, rules, regulations and ordinances, which shall include the obligation to provide for the safety of their employees, persons, and property and their requirements to maintain a work environment free of recognized hazards.

5.4. Labor and Materials.

- 5.4.1.** Unless otherwise stipulated in the Contract Documents or required, Design-Builder shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities 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.
- 5.4.2.** Prevailing Wage Rate and Labor Standard Provisions.
- 5.4.3.** The Provisions of Chapter 2258 of the Texas Government Code, and the “Wage and Labor Standard Provisions” contained in City of San Antonio Ordinance 2008-11-20-1045, expressly are made a part of this Contract. In accordance therewith, a schedule of the general prevailing rate of per diem wages in this locality for each craft or type of worker needed to perform this contract shall be obtained by Design-Builder from the City of San Antonio’s Labor Compliance Office and included in Design-Builder’s Project bid package and Plans & Specifications, prior to Design-Builder bidding of the Project and such schedule shall become a part hereof. Design-Builder shall forfeit, as a penalty to City, sixty dollars (\$60.00) for each laborer, worker or mechanic employed for each calendar day, or portion thereof, in which such laborer, worker or mechanic is paid less than the stipulated prevailing wage rates for any work done under this Contract by the Design-Builder or any Sub-Consultant and/or Subcontractor employed on the Project. The establishment of

prevailing wage rates, pursuant to Chapter 2258 of the Texas Government Code, shall not be construed to relieve Design-Builder from its obligation under any federal or state law, regarding the wages to be paid to or hours worked by laborers, workers or mechanics, insofar as applicable to the work to be performed hereunder. Design-Builder, in the execution of this Project, agrees it shall not discriminate in its employment practices against any person because of race, color, creed, sex, or origin. Design-Builder agrees it will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, creed, national origin, sex, age, handicap or political belief or affiliation. This Contract provision shall be included in its entirety in all Subcontractor agreement entered into by the Design-Builder or any Subcontractor employed on the project.

5.4.4. Substitutions.

5.4.4.1. Substitutions and alternates may be rejected by City without explanation and shall be considered by City only under one or more of the following conditions:

- a. the proposal is required for compliance with interpretation of code requirements or insurance regulations then existing;
- b. specified products are unavailable through no fault of Design-Builder; and
- c. when, in the judgment of City, a substitution substantially would be in City's best interests in terms of cost, time or other considerations.

5.4.4.2. Design-Builder shall submit to City:

- a. a full explanation of the proposed substitution and submittal of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures and other like information necessary for a complete evaluation of the substitution;
- b. a written explanation of the reasons the substitution is necessary, including the benefits to the City and to the Work, in the event the substitution is acceptable to City;
- c. the adjustment, if any, in the Contract Sum;
- d. the adjustment, if any, in the time of completion of the Contract and the construction schedule; and
- e. in the event of a substitution under this **Article 5.4**:
- f. the proposed substitution conforms to and meets all the requirements of the pertinent Specifications and requirements shown on the Drawings; and
- g. Design-Builder accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by City.

- 5.4.4.3.** Proposals for substitutions shall be submitted to City in sufficient time to allow City no less than ten (10) calendar days for review. No substitutions shall be considered or allowed without Design-Builder's submittal of complete substantiating data and information.
- 5.4.4.4.** In the event of substitution submittal under **Article 5.4**, and whether or not any such proposed substitution is accepted by City, Design-Builder shall reimburse City, at City's reasonable discretion, for any fees charged by City or City's representatives for evaluating each proposed substitute.
- 5.4.4.5.** Except as otherwise stipulated in the Contract Documents or required for safety or protection of persons or the Work or property at the Site or adjacent thereto, no Work shall be allowed by City from sundown to sunrise of the following calendar day, unless directed by the CDR or requested in writing by Design-Builder and approved by City.
- 5.4.5.** Design-Builder shall, at all times, enforce strict discipline and good order among persons working on the Project and shall not employ or continue to employ any unfit person on the Project or any person not skilled in the assigned work. Design-Builder shall be liable for and responsible to City for all acts and omissions of its employees, all tiers of its Sub-Consultants and Subcontractors, material suppliers, anyone who Design-Builder may allow to perform any Work on the Project, and their respective officers, agents, employees, and any consultants Design-Builder may allow to come on the job site, with the exception of City, the CDR or City's consultants. City, at any time, in City's reasonable discretion, may direct Design-Builder to remove any employee, Subcontractor, Sub-Consultant, material supplier or anyone else from the Project and Design-Builder promptly shall comply with City's direction. In addition, if Design-Builder receives written notice from City complaining about any Subcontractor, Sub-consultant, employee or anyone who is a hindrance to proper or timely execution of the Work, Design-Builder shall remedy such complaint without delay to the Project and at no additional cost to City. This provision shall be included in all contracts between the Design-Builder and all subcontractors of all tiers.
- 5.4.6.** Design-Builder recognizes and acknowledges that the Project Site is a public facility representing the City of San Antonio. As such, Design-Builder shall prohibit the possession or use of alcohol, controlled substances, tobacco and any prohibited weapons on the Project Site and shall require appropriate dress of Design-Builder's forces consistent with the nature of the Work being performed, including the wearing of shirts at all times. Harassment of any kind, including sexual harassment, of employees of Design-Builder, employees of City, any visitor to the site, or anyone in surroundings of the Project Site, by employees of Design-Builder is strictly forbidden. Any employee of Design-Builder who is found to have engaged in such conduct shall be subject to appropriate disciplinary action by Design-Builder, including removal from the Project Site.
- 5.4.7.** Design-Builder shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project.

- 5.4.8.** All materials and installed equipment shall be as specified in the Contract Documents, and if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. If required by City, Design-Builder shall furnish satisfactory evidence (including reports of required tests) as to the source, kind and quality of materials and equipment. Design-Builder may make substitutions only with the consent of City, after Design-Builder's compliance with **Article 5.4** herein.
- 5.4.9.** All materials shall be shipped, stored and handled in a manner which will protect and ensure their condition at the time of incorporation in the Work. After installation, all materials shall be properly protected against damage to ensure they are in the condition as required by **Article 6.1** herein when the Work is Substantially Completed or City takes overuse and occupancy, whichever is earlier.
- 5.4.10.** During construction of the Work and for ten (10) years after final completion, or if there is an ongoing dispute under this Contract such retention period shall extend longer until final resolution of said dispute, Design-Builder shall retain and shall require all subcontractors to retain for inspection and audit by City all books, accounts, reports, files, time cards, material invoices, payrolls and evidence of all other direct or indirect costs related to the bidding and performance of this Work. Upon request by City, a legible copy or the original of any or all such records shall be produced by Design-Builder at the administrative office of City. To the extent that it requests copies of such documents, City will reimburse Design-Builder and its subcontractors for copying costs. Design-Builder shall not be required to keep records of or provide access to the makeup of any negotiated and agreed-to lump sums, unit prices or fixed overhead and profit multipliers.

5.5. Building Envelope

Design-Builder's design of the building envelope will comply with the standard of care in **Article 2.9** of the Contract. Design-Builder will construct in accordance with the Construction Documents and in good and workmanlike manner and take good and reasonable care to ensure that the building envelope will be leak proof, prior to Final Completion and throughout the correction of work period in **Article 14**, immediately upon notification by the City of water penetration, shall determine the source of water penetration and perform any work necessary to make the building watertight in accordance with the Contract Documents. Design-Builder also shall repair or replace any damaged material, finishes and/or fixtures damaged as a result of any water penetration, returning the building to original condition. The costs of such determination and repair shall be borne by Design-Builder only to the extent that the leak(s) are attributable to design errors, faulty workmanship, Design Builder's negligence, or unauthorized or defective materials

5.6. Warranty.

- 5.6.1.** Design-Builder warrants to City that materials and equipment furnished and installed under the Contract will be of good quality and new, unless otherwise required or permitted by the Contract Documents, and that the Construction Work will be free

from defects not inherent in the quality required or permitted, that the Construction Work will be done in a good and workmanlike manner, and that the Work will conform to the requirements of the Contract Documents. Design Services will comply with the standard of care in **Article 2.9** of the Contract. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. Design-Builder's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Design-Builder, improper or insufficient maintenance, improper operation, normal wear and tear and normal usage. If required by City, Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

- 5.6.2.** A right of action by City for any breach of Design-Builder's express warranty herein shall be in addition to, and not in lieu of, any other remedies City may have under this Contract at law or in equity, regarding any defective Work.
- 5.6.3.** The warranty provided shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents. Design-Builder's expressed warranty and any manufacturer's warranty will run concurrently.
- 5.6.4.** All warranties shall be assignable by City. Submittal of all warranties and guarantees are required as a prerequisite to the final payment.
- 5.6.5.** City and Design-Builder acknowledge that the Project may involve construction work on more than one (1) building or section of infrastructure. While the entire Project will have a Single date for Substantial Completion of the Work, each building, section of infrastructure or approved phase of each section of infrastructure may have its own separate and independent date of Substantial Completion or Final Completion.
- 5.6.6.** If separate dates for Substantial Completion and Final Completion are established and granted by City, at City's sole discretion and as a result of City electing partially to occupy areas prior to the Project's overall date for Substantial Completion, Design-builder shall maintain a complete and accurate schedule of the dates of Substantial Completion.
- 5.6.7.** Warranties shall become effective on a date established by City in accordance with the Contract Documents. This date shall be the date of Substantial Completion of the entire Work, unless otherwise provided in any Certificate of Partial Substantial Completion dates approved by the Parties, except for Work to be completed or corrected after the date of Substantial Completion and prior to final payment and those occurrences addressed in **Article 5.6.5** herein. Warranties for Work to be completed or corrected after the date of Substantial Completion and prior to final completion shall become effective on the later of the date the Work is completed or corrected and accepted by City for the date of final completion of the Work.
- 5.6.8.** Neither final payment nor compliance by Design-Builder with any provision in the Contract Documents shall constitute an acceptance of Work not done in accordance with the Contract Documents or relieve Design-Builder or its sureties of liability,

with respect to any warranties or responsibility for faulty materials and workmanship. Design-Builder warrants that the Work will conform to the requirements of the Contract Documents.

- 5.6.9.** Design-Builder agrees to assign to City, at the time of final completion of the Work, any and all manufacturer's warranties and Operation & Maintenance manuals relating to equipment, materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties, provided that such assignment shall contain a reservation of Design-Builder's right also to enforce the manufacturer's warranties as a condition precedent to final payment.
- 5.6.10.** As a condition precedent to Final Completion, the Design- Builder shall organize and compile operation and maintenance manual information into suitable sets of manageable size and bind into individual binders properly tabbed and indexed.
- 5.6.10.1.** Manuals shall include emergency instructions, spare parts list, warranties, wiring diagrams, inspection procedures, shop drawings, product data, and similar information. Material and equipment data is intended to include all data necessary for the proper installation, removal, normal operation, emergency operation, start up, shutdown, maintenance, cleaning, adjustment, calibration, assembly, disassembly, repair, inspection, trouble shooting, and service of the equipment or materials.
- 5.6.10.2.** Equipment shall include Part Number, Quantity, Spec Paragraph Reference, Source- (Manufacturer's name and address and supplier's name and address), Serial Number, Location- (State the name of system and/or subsystem and state physical location of each like item of equipment by room name and number and column gridline as shown on plans), Parts List, Recommended Spare Parts, Special Tools & Equipment, System Drawings, Warranties, and Documentation of Training of Owner Personnel.
- 5.6.10.3.** Warranties: Include within the tabbed section for each system, equipment item, or material, an executed copy of the specified warranty covering that particular system, equipment items or material. This is to include both the manufacturer's warranty and the installing contractor's guarantee for workmanship and system operation. This copy is in addition to original signature copies of all project warranties/guarantees bound together separately into a Warranty Binder to be transmitted to the Owner upon Final Completion.
- 5.6.10.4.** O&M Manuals shall be consolidated to include all specification divisions in numerical order and each package of data shall be numbered according to the specification section governing that particular system.
- 5.6.10.5.** Manuals shall include a Table of Contents with the following information itemized within each specification division: Tab Number, Specification Number, Description, Subcontractor, Contact Name and Phone Number.

- 5.6.10.6.** Manuals shall be bound in heavy duty, 3 ring vinyl covered binders including pocket folders for folded sheet information. Binders shall have proper identification including volume number on front and spine of each binder.
- 5.6.10.7.** 2 complete sets of each bound O&M Manual are required and shall be color coded separately for each set. Design-Builder shall also provide 1 electronic copy on flash drive.
- 5.6.10.8.** Design-Builder shall submit a draft format of proposed Table of Contents and packaging of O&M documentation into binders for Architect and Owner's review and approval.
- 5.6.10.9.** Design-Builder shall provide a preliminary copy of all O&M Manuals in an approved format to the Architect and Owner for review prior to Substantial Completion inspection.
- 5.6.10.10.** The Design-Builder's final submission of these manuals is a precondition for Final Completion.
- 5.6.11.** In addition, and as a condition precedent to Final Completion, the Design-Builder shall organize and compile a separate warranty reference into suitable sets of manageable size and bind into individual binders properly tabbed in similar fashion as the Operation & Maintenance Binders
 - 5.6.11.1.** Provide a tabbed binder to include all project warranties and guarantees as required by various specification sections and other conditions to the Contract. This is to include all specific warranties on manufactured items and installed systems as noted above, in addition to Design-Builder's project Warranty and applicable guarantees from all Subcontractors and suppliers covering defects in workmanship and manufacturer.
 - 5.6.11.2.** Warranty Binder shall include a Table of Contents with the following information itemized within each specification division: Tab Number, Specification Number, Description, Subcontractor, Contact Name / Phone Number, and Warranty Period
 - 5.6.11.3.** 2 complete sets of each bound Warranty Binder are required and shall be color coded separately for each set. Design-Builder shall also provide 1 electronic copy on flash drive.
 - 5.6.11.4.** Design-Builder shall submit a draft format of proposed Table of Contents and packaging of Warranty documentation into binders for Architect and Owner's review and approval.
 - 5.6.11.5.** Design-Builder shall provide a preliminary copy of all Warranty Binders in an approved format to the Architect and Owner for review prior to Substantial Completion inspection.

5.7. Taxes.

Design-Builder will not include in the Contract Sum or any modification thereto any amount for sales, use or similar taxes for which City is exempt and City has provided Design-Builder with a tax exemption certificate or other documentation necessary to establish City's exemption from such taxes.

5.8. Permits, Fees, and Notices.

5.8.1. Permits.

Unless otherwise provided in the Contract Documents or by City, as per **Article 4.2** herein, Design-Builder shall secure all permits, licenses and inspections. City may assist Design-Builder, when necessary, in obtaining such permits, licenses and inspections necessary for the proper execution and completion of the work. If required, City shall prepare and submit the necessary paperwork to satisfy Texas Pollutant Discharge Elimination System (TPDES), regulations of the Texas Commission on Environmental Quality.

City shall pay for cost of Building (Parent) Permit only. Trade (Child) permits shall be obtained and paid for by the appropriate subcontractor and or vendor performing the work.

City shall pay for the Architectural Barriers Review and Inspections Fees.

5.8.2. Design-Builder shall comply with and give all notices required by law, ordinance, rule, regulations and lawful orders of public authorities applicable to performance of the Work.

5.8.3. Design-Builder warrants to City that if Design-Builder performs Work contrary to laws, statutes, ordinances, building codes and rules and regulations and City design guidelines and standards Design-Builder shall assume sole responsibility for correcting such Work and shall bear all costs attributable to correct such Work, unless approved by City.

5.8.4. Design-Builder also shall assist City in obtaining all permits and approvals and, at City's request, pay all fees and expenses, if any, associated with TPDES regulations of the Texas Commission on Environmental Quality, as well as local authorities, if applicable, which require completion of documentation and/or acquisition of a "Land Disturbing Activities Permit" for a Project. Design-Builder's obligations under this **Article 5.8.4** require it to perform all necessary engineering services during the pre-construction phase to prepare proper drainage for the Project Site. Any drainage alterations made by Design-Builder during the construction process, which require the issuance of a permit, shall be at Design-Builder's sole cost. It will be Design-Builder's responsibility to prepare and submit the permit approval documentation provided by the regulatory agencies prior to beginning any Work.

5.9. Allowances.

- 5.9.1.** Design-Builder shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as City may direct, but Design-Builder shall not be required to employ persons or entities to whom Design-Builder has reasonable objection.
- 5.9.2.** Unless otherwise provided in the Contract Documents:
- 5.9.2.1.** Allowances shall cover the cost to Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- 5.9.2.2.** Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses, contemplated for stated allowance, shall be included in the allowances;
- 5.9.2.3.** Whenever actual costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect both the difference between actual costs and the allowances and all changes in Design-Builder's costs..
- 5.9.2.4.** All expenditures shall be in pre-coordination with the City representative.
- 5.9.3.** Materials and equipment under an allowance shall be selected by City within such time as is reasonably specified by Design-Builder as necessary to avoid any delay in the Work.

5.10. Superintendent/Key Personnel.

In coordination with the contract, at all times during the progress of the Work, Design-Builder shall assign a competent resident superintendent who is able to communicate fluently in English, along with any necessary assistant(s) who is/are satisfactory to City. Any superintendent designee shall be identified in writing to City promptly after City issues a written Notice to Proceed. The superintendent shall represent Design-Builder at all times and all directions given to the superintendent shall be binding on Design-Builder. The designated superintendent shall not be replaced without written notice to City and the approval of the Director or his/her designee, which approval will not be unreasonably withheld, except with good reason (including any termination or disability of the superintendent) or under extraordinary circumstances. The superintendent may not be employed on any other project, prior to final completion of the Work, without the approval of City, which approval will not be unreasonably withheld.

- 5.10.1.** Design-Builder shall furnish a list to City of all Architects, Engineers, consultants, Sub-Consultants, job-site superintendents, Subcontractors and suppliers involved in the Project. In addition, Design-Builder shall submit a written Identification of Project Team Structure, indicating Key Project Personnel, and including contact information, as provided to and accepted by City during the selection process. Design-Builder shall indicate actual lines of reporting and responsibility and shall

include matrix reporting, as applicable. Key Project Personnel are defined as individuals that interface directly with City or cover critical technical expertise. Executive, ceremonial or figurehead positions should not be indicated; only individuals with actual authority and responsibility and who will make tangible contributions to the Project should be included in Design-Builder's Project Team Structure. In the event of a change or departure of any key personnel, Design-Builder will endeavor to replace such key personnel within fourteen (14) calendar days of such person's departure with an individual of equal or greater qualifications, as reasonably determined by City.

- 5.10.2.** City, upon the showing of good and reasonable cause, may reject or require removal of any architect, engineer, consultant, sub-consultant, job superintendent, employee of the Design-Builder, Subcontractor of any tier and/or supplier involved in the Project.
- 5.10.3.** Design-Builder shall provide an adequate staff for the proper coordination and expedition of the Work. City reserves the right to require Design-Builder to dismiss from the Project any employee(s) City, at its sole discretion, deems incompetent, careless, insubordinate or in violation of any provision in these Contract Documents. This provision is applicable to Subcontractors and their employees. Design-Builder will endeavor to replace such staff with a competent replacement within fourteen (14) calendar days of equal or greater qualifications, as reasonably determined by City.
- 5.10.4.** City reserves the right to utilize one or more of its employees to function in the capacity of City's Inspector, whose primary function will be daily inspections, checking pay requests, construction timelines and verification of the storage of supplies and materials.
- 5.10.5.** Design-Builder shall not change any Key Project Personnel, key Subcontractors or key sub-consultants without the prior written consent of City, which consent shall not be unreasonably withheld. City shall be notified at least twenty (20) calendar days in advance of any proposed changes in Design-Builder's Key Project Personnel. In the event Key Project Personnel leaves Design-Builder's employment, such replacement shall be subject to City's reasonable approval. In the event of a change of any key personnel, Design-Builder will endeavor to replace such Key Project Personnel within fourteen (14) calendar days of such person's departure from the Project with an individual of equal or greater qualifications, as reasonably determined by City.
- 5.10.6.** Key Project Personnel shall be available to City during normal business hours. Design-Builder shall inform City, via e-mail, at least ten (10) calendar days in advance of any known scheduled absence of Key Project Personnel expected to exceed three (3) calendar days. For sudden or unscheduled absences, such as illnesses of Key Project Personnel, Design-Builder shall inform City by telephone, as soon as is practical, if the absent individual was expected to be available for consultation or meetings.

5.11. Project Management Tasks and Deliverables

5.11.1. Comprehensive Service

- 5.11.1.1.** Design-Builder shall provide a comprehensive service in the execution of the Project, as defined by the Contract terms and conditions herein. City shall participate in the Project, as defined by the Contract terms and conditions, as the overall success of the Project is a shared responsibility of City and Design-Builder.
- 5.11.1.2.** The requirements and guidelines below apply to Design-Builder. All procedures, quality control programs and deliverable requirements are to apply to all of Design-Builder's team members. Project Management Plans, Document Control Logs, team structure charts and the like shall encompass all of Design-Builder's team members together in one (1) document, not in separate documents. This shall include the work of even minor Subcontractors and Sub-Consultants.

5.11.2. Project Management Plan

- 5.11.2.1.** Design-Builder shall provide a written Project Management Plan outlining the overall level of Project effort. Elements of this Plan shall continually be updated throughout Design-Builder process and will create both a forward looking and the key tools to track performance of the Project. At a minimum, the Plan shall be composed of the following elements summarized herein and explained in subsequent paragraphs.
 - a.** Programming Document
 - b.** Project Team Structure
 - c.** Quality Assurance Plan
 - d.** Document Control Procedure
 - e.** Archiving of Program Procedure
 - f.** Project Schedule
 - g.** Project Cost Estimate
- 5.11.2.2.** The first version of Design-Builder's Project Management Plan Shall be provided to City for approval within thirty (30) calendar days of Design-Builder contract award. Design-Builder shall allow fourteen (14) calendar days for review by City.

5.11.3. Programming Document

The initial Programming Document, attached hereto and made a part of this document by reference and labeled as **EXHIBIT A: PROGRAMMING**

DOCUMENTS, shall be provided by City and shall validate during design considerations, with any changes tracked and documented to the Design-Builder, as described in **EXHIBIT I: DESIGN TASKS AND DELIVERABLES FOR VERTICAL PROJECTS**.

5.11.3.1. Quality Assurance Program

- a. Design-Builder shall develop and submit to City an effective Quality Assurance Program outlining the methods and procedures that will be used to develop detailed Design and Construction Quality Control programs, to assure that all design work, materials and completed construction conform to all applicable City, state and federal requirements. Design-Builder's Quality Assurance Program shall describe the established and approved instructions and procedures for both design and construction of the Project. The data contained in these procedures shall include or reference acceptance or rejection criteria.
- b. Design-Builder shall submit the written Design Quality Control Program, indicating specific responsible parties, to City for approval within thirty (30) Calendar Days of the Contract award.
- c. Design-Builder shall submit the written Construction Quality Control Program, indicating specific responsible parties, to City for approval, at minimum, thirty (30) calendar days prior to the start of any of Design-Builder's production, construction or off-site fabrication.
- d. The Quality Control Programs shall apply to Design-Builder, its Sub-Consultants and Subcontractors. If Design-Builder's Sub-Consultants and/or Subcontractors have additional Quality Control procedures, those entities shall submit their additional Quality Control procedures to City for approval, at minimum, thirty (30) calendar days prior to the start of that Sub-Consultant's or Subcontractor's work effort.
- e. The Quality Control Program shall be organized to address, at minimum, the following items:
 - Quality control organization.
 - Project schedule.
 - Submittal schedule.
 - Procedures covering, as a minimum, the coordination, checking and sign-off procedures for drawings specifications, calculations and reports.
 - Documentation of quality control activities.

- Requirements for corrective action when quality control and/or acceptance criteria are not met.
- Testing & inspection procedures

5.11.4. Document Control

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

5.11.5. Document Archiving

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

5.11.6. Project Schedule

- 5.11.6.1.** Design-Builder shall provide an overall Project Schedule that will allow tracking actual performance of the Project against original forecasts, allowing the Project team to project the likelihood of meeting future targets. Design-Builder shall review its schedule and performance with City monthly, or as otherwise indicated herein or as frequently as City requests. The Project Schedule, which will be composed of the Design Schedule addressing each design stage given in the companion **EXHIBIT I: DESIGN TASKS AND DELIVERABLES**, a Baseline Construction Schedule, addressing construction efforts and requirements as outlined in the companion **EXHIBIT J: CONSTRUCTION TASKS AND DELIVERABLES**, which shall be updated using a Construction Progress Schedule to measure performance against the baseline schedule. The first version of the Project Schedule shall be provided to City for Approval within ten (10) Calendar Days of the contract award. Design-Builder shall allow fourteen (14) calendar days for review by the City.

5.11.6.2. Schedule Methods.

- a.** Design-Builder shall create and maintain Critical Path Method (hereafter referred to as “CPM”) Schedules, showing the manner of execution of Work Design-Builder intends to follow, in order to complete the Project within the allotted time. The CPM Schedule shall employ computerized CPM for the planning, scheduling and reporting of Work, as described herein. Design-Builder shall create and maintain the Project Schedule using project management scheduling software compatible with City’s project management scheduling software. The observance of the requirements herein is an essential part of the Work to be performed by Design-Builder under this Contract
- b.** Unless otherwise indicated in writing by City, Design-Builder shall provide an individual who shall be referred to hereafter as “Scheduler” to create and maintain the Project Schedules. Scheduler shall be proficient in CPM analysis, possess sufficient experience to be able to perform required tasks on the specified software and be able to prepare and interpret reports from the software. Scheduler shall be made available for discussion or meetings when requested by City.
- c.** The Schedules shall show the sequence and interdependence of activities required for complete performance of the Work. Design-Builder shall be responsible for assuring all Work sequences are logical and show a coordinated plan of Work, in accordance with the sequence of work outlined in the plans. The purpose of City requiring the Project Schedules shall be to:

 - Ensure adequate planning during the execution and progress of the Work, in accordance with the allowable number of calendar days and all milestones;
 - Assure coordination of the efforts of Design-Builder, City, utilities and others that may be involved in the Project and the coordinated activities are included in the Schedule, highlighting coordination points with others;
 - Assist Design-Builder and City in monitoring the progress of the Work and evaluating proposed changes to the scope of work and Contract; and
 - Assist City in administering the Contract time requirements.
- d.** Design-Builder shall provide City a legend for all abbreviations. The activities shall be coded so that organized plots of the Project Schedule may be produced Design-Builder shall show an estimated production rate per working day for each Work activity. Activity durations shall be based on production rates shown. Each activity on the Project Schedule shall include:

- An activity number, utilizing an alphanumeric designation system that is agreeable to City;
- A concise description of the Work represented by the activity; and
- Activity durations in whole workdays, with a maximum of twenty (20) workdays. Durations greater than twenty (20) workdays may be used for non-construction activities (mobilization, submittal preparation, curing, etc.), and other activities mutually agreeable between City and Design-Builder.

5.11.6.3. Design Schedule.

- a. Design-Builder shall, within ten (10) calendar days after contract award,, submit for City's approval the Design Schedule for the performance of Design-Builder's Design Services, which shall include allowance for fifteen (15) calendar days required for City's review of submissions and for approvals of authorities having jurisdiction over the Project. This Design Schedule shall, upon approval by City, be considered incorporated and made a part the Program Management Plan and of this Contract, attached hereto, incorporated herein by reference and labeled as **EXHIBIT F: DESIGN-BUILDER'S DESIGN SCHEDULE AND FEE SCHEDULE**. Design-Builder's Design Schedule, when approved by City, shall not, except for good cause, be exceeded by Design-Builder. Should Design-Builder at any time during the course of performing the Contract, have reason to believe that it will be unable to meet any completion date(s) in accordance with the Design Schedule, it shall notify City in a timely manner, but in no event more than three (3) days after becoming aware of such inability to meet the completion date(s), in writing, stating the reason for the delay, the party responsible for the delay (if any) and the steps being taken to remedy or minimize the impact of the delay. Failure of Design-Builder to submit such notification shall constitute a waiver by Design-Builder of any claim Design-Builder may have for an adjustment to the Contract Price, the Design Schedule or the Contract Time. All extensions of time shall be governed by **Article 6** of City's General Conditions for Design/Build Contracts.
- b. Design-Builder's Design Schedule shall indicate document delivery dates, presentations, work sessions, code reviews and any other important milestones in the design process. Design-Builder's Design Schedule shall be in bar chart form with highlight milestones for tasks to be performed by discipline for each stage and sub-stage. If applicable, Design-Builder's Design Schedule shall address any early works packages that will be required to meet construction timelines.
- c. Design-Builder's Design Schedule shall be submitted at the end of each design submittal stage and for City's approval prior to beginning Work on the next stage of the Project.

5.11.6.4. Baseline Construction Schedule.

- a.** (In conjunction with the submittal of the Initial Project Management Plan, Design-Builder shall submit an estimated schedule of construction activities which shall be updated periodically, culminating in a final agreed upon Baseline Construction Schedule, to be submitted at minimum ten (10) calendar days prior to City's issuance of the initial Notice to Proceed for construction. Design-Builder's Baseline Construction Schedule is attached hereto, incorporated herein by reference and labeled as **EXHIBIT G**.
- b.** This Baseline Construction Schedule shall indicate the dates for starting and completing the various aspects/phases required to complete the Work, including mobilization, procurement, installation, testing, inspection and acceptance of all the Work of the Contract, including any contractually mandated milestone dates. The schedule shall not exceed the time limits set forth in the Contract Documents. Design-Builder shall organize the schedule and provide adequate detail, so the schedule is capable of measuring and forecasting the effect of delaying events on completed and uncompleted activities.
- c.** The Schedule shall show the order in which Design-Builder proposes to carry out the Work in accordance with the final approved phasing plan, if any, and the anticipated start and completion dates of each phase of the Work. The Schedule shall be in the form of a time scaled work progress chart, to indicate the percentage of Work scheduled for completion at various critical milestones.
- d.** Design-Builder shall maintain a schedule of shop drawings and sample submittals and each submitted shop drawing and sample submittal shall list each required submittal and the expected time(s) for submitting, reviewing and processing such submittal
- e.** The Schedule layout shall be grouped by Project and then by Work Breakdown Structure (hereafter referred to as "WBS") for organizational purposes.
- f.** The original and remaining Work duration shall be displayed. The grouping band will, by default, report Work days planned. One additional level of effort activity shall be added to the schedule as a "time calculator" with a seven (7) day calendar without holidays. The calculation of days should be reflected in the appropriate duration columns.
- g.** Work shall be scheduled based upon Design-Builder's standard five (5) day work week, utilizing the appropriate calendar assignments and using compatible Project Scheduling software.
- h.** The Project Schedule shall not specifically identify days for typical inclement weather conditions based on the historical conditions at the Site.

- i. The Design-Builder will take reasonable precautions to prevent loss caused by weather related events, erosion, rising water, or vandalism during the construction period and is the responsibility of the Design-Builder to rectify such loss or damage to the extent required by City.
- j. City-responsible delays in activities affecting milestone dates or the Contract completion date, as determined by CPM analysis, shall be considered for a time extension in accordance with the terms of the Contract.
- k. A Project Estimator should be a proactive part of the design process, being continually kept abreast of the design progress and caution about upcoming design activity that deserves careful attention, with regard to system selection and design in order to control costs. The Project Estimator should identify items or areas where the costs seem unusually proportioned in relation to industry norms.

5.11.6.5. In general the Baseline Construction and Construction Progress Schedule shall:

- a. have all Work coded and organized by WBS.
- b. reflect Duration Percent complete as the percent complete type;
- c. reflect Fixed Units as the duration type;
- d. include submittals with a logical tie to what each drives;
- e. add proposed Change Order(s) and those Change Order(s) shall be reflected on the Schedule as proposed Change Order(s). This task will be linked to the schedule with logical ties and approved by City. Upon approval of a Change Order, a task will be renamed and shall identify Work performed and Change Order number;
- f. only have constraints in accordance with the plans;
- g. include activity milestones for material delivery;
- h. disallow default progress; and
- i. include a detailed explanation in the Project narrative, if Work is performed out of sequence.

5.11.6.6. Each Baseline Construction and Construction Progress Schedule shall segregate the Work into a sufficient number of activities to facilitate the efficient use of critical path method scheduling by Design-Builder and City. The Work Progress Schedule layout shall be grouped first by Project then by WBS. The layout shall include the following columns:

- a. Activity ID

- b. Activity Description**
- c. Original Durations**
- d. Remaining Durations**
- e. Early Start and Early Finish Dates**
- f. Late Start and Late Finish Dates**
- g. Total Float**
- h. Performance Percent Complete**

5.11.6.7. The Baseline Construction and Construction Progress Schedule shall display logic and target bars in the Gantt bar chart view.

5.11.6.8. Each Baseline Construction and Construction Progress Schedule shall include activities representing manufacturing, fabrication or ordering lead time for materials, equipment or other items, for which City is required to review submittals, shop drawings, product data or samples.

5.11.6.9. Each Construction Progress Schedule, shall:

- a.** indicate the activities, or portions thereof, which have been completed;
- b.** reflect the actual time for completion of such activities; and
- c.** reflect any changes to the sequence or planned duration of all activities.

5.11.6.10. If any updated schedule exceeds the time limits set forth in the Contract Documents for the Project Milestone date and/or Substantial Completion of the Work, Design-Builder shall include, along with its updated schedule, a statement of the reasons for the anticipated delay in achieving the Project Milestone and/or Substantial Completion of the Work and Design-Builder's planned course of action for completing the Work within the time limits set forth in the Contract Documents. If Design-Builder asserts the failure of City to provide requested information to Design-Builder as the reason for anticipated delay in completion, Design-Builder also shall specify what information has been requested and is required from City.

5.11.6.11. Neither City nor Design-Builder shall have exclusive Ownership of float time in the schedule and all float time shall inure to the benefit of the Project.

5.11.6.12. Submission of any Construction Progress Schedule under this Contract constitutes a representation by Design-Builder, as of the date of the submittal:

- a.** the Construction Progress Schedule represents the sequence in which Design-Builder intends to prosecute the remaining Work;

- b. the Construction Progress Schedule represents the actual sequence and duration used to prosecute the completed Work;
- c. to the best of its knowledge and belief, Design-Builder is able to complete the remaining Work in the sequence and time indicated on the submitted Work Progress Scheduled; and
- d. Design-Builder intends to complete the remaining work in the sequence and time indicated.

5.11.6.13. Review and Approval of the Construction Progress Schedule.

- a. The Construction Progress Schedule update shall be submitted no later than the date Design-Builder's pay application is submitted.
- b. Design-Builder shall meet with City each month, at a scheduled Construction Progress Schedule update meeting, to review actual progress made through the date of the schedule update, as determined by City. The review of Design-Builder's progress shall include dates of activities actually started and/or completed, the percentage of Work completed, the remaining duration of each activity started and/or completed and the amount of Work needed to complete active and remaining activities, with an analysis of the relationship between the remaining duration of the activity and the quantity of material to install over that given period of time with a citation of past productivity.
- c. The monthly Construction Progress Schedule update meeting shall include a progress narrative explaining the Project's progress, identifying progress made out of sequence, defining the Critical Path, identification of any potential delays and other relevant data. A Work Progress Schedule narrative template shall be required for the narrative. Upon request, City shall supply said template to Design-Builder. Design-Builder shall include in the progress narrative a separate section, to be reviewed at the Construction Progress Schedule update meeting, summarizing the activities and the schedule of Work to be completed in the two weeks immediately following the meeting date.
- d. The Construction Progress Schedule and successive updates or revisions thereof are for Design-Builder's use in managing the Construction. The Construction Progress Schedule is for the information of City and to demonstrate that Design-Builder has complied with requirements for planning the Work. City's acceptance of a Schedule, Schedule updates or revisions shall constitute City's agreement to coordinate its own activities with Design-Builder's activities, as shown on Design-Builder's Construction Progress Schedule.
- e. Within fourteen (14) calendar days of receipt of Design-Builder's proposed Construction Progress Schedule, City shall evaluate the Schedule for compliance with this specification and notify Design-Builder of its findings.

If City requests a revision or justification, Design-Builder shall provide satisfaction to City within seven (7) calendar days. If Design-Builder submits a Construction Progress Schedule for acceptance, based on a sequence of work not shown in the plans, then Design-Builder shall notify City in writing of said sequence of work, separate from the Construction Progress Schedule submittal.

- f. City's review and acceptance of Design-Builder's Construction Progress Schedule only is for conformance to the requirements of the Contract Documents. Review and acceptance by City of Design-Builder's Construction Progress Schedule does not relieve Design-Builder of any of its responsibility for the Construction Progress Schedule, Design-Builder's ability to meet interim milestone dates (if so specified) or meeting the Contract completion date, nor does such review and acceptance by City expressly or by implication warrant, acknowledge or admit the reasonableness of the logic, durations, manpower or equipment loading of Design-Builder's Construction Progress Schedule. In the event Design-Builder fails to define any element of Work, activity or logic and City's review does not detect this omission or error, such omission or error, when discovered by Design-Builder or City, shall be corrected by Design-Builder at the next monthly schedule update and shall not affect the Project or Contract completion date.
- g. Acceptance of the Baseline Construction or Construction Progress Schedule, and/or revision thereto, does not indicate any approval of Design-Builder's proposed sequences and duration.
- h. Acceptance by City of the Baseline Construction or Construction Progress Schedule, which exceeds contractual time, does not alleviate Design-Builder from meeting the contractual completion date.
- i. Acceptance of a Baseline Construction or Construction Progress Schedule update or revision indicating early or late completion does not constitute City's consent to any changes, alter the terms of the Contract, waive either Design-Builder's responsibility for timely completion or waive City's right to damages for Design-Builder's failure to do so.
- j. Design-Builder's scheduled dates for completion of any activity or of the entire Work do not constitute a change in terms of the Contract. Change Orders (i.e. Contract amendments) are the only method of modifying the completion date(s) and Contract Times.
- k. Submittal of a schedule, a schedule revision or a schedule update constitutes Design-Builder's representation to City, as of the date of the submittal, the accurate depiction of all progress to date and Design-Builder will follow the schedule, as submitted, in performing the Work.

1. Design-Builder promptly shall advise City when circumstances indicate the Project Schedule cannot be met and Design-Builder shall provide City a re-forecast plan for minimizing any delays or disruption.

5.12. Cost Estimate/Planning

- 5.12.1. As one of the first steps on the program, Design-Builder shall work with City to establish Project cost targets. After establishing a cost target for a particular program component, Design-Builder shall break it into sufficient detail, as appropriate, to provide design guidance for the design team.
- 5.12.2. Upon completion of the Schematic Design Documents, Design-Builder shall submit a construction cost estimate that verifies the design does not exceed the design-to-budget target amount.
- 5.12.3. Upon completion of City's review of the Schematic Design Documents and the associated cost estimate, City shall have the right at its sole discretion to:
 - 5.12.3.1. direct Design-Builder to proceed with progressing the design to Design Development completion;
 - 5.12.3.2. remove the Project element from the contract and pursue other delivery methods, including, but not limited to, issuing a Request for Proposals for completion of design and construction; or
 - 5.12.3.3. terminate the Contract for convenience.

5.12.4. Cost Estimate/Proposal at Design Development Documents

- 5.12.4.1. Design-Builder shall submit a revised construction cost estimate/proposal verifying the design does not exceed the design-to-budget target amount and any approved changes. That submitted cost estimate/proposal may be converted to a Guaranteed Maximum Price (GMP) for construction, if mutually agreed upon by Design-Builder and City at that time.
- 5.12.4.2. If City and Design-Builder cannot agree upon a GMP, City reserves the right at its sole discretion to:
 - 5.12.4.3. direct Design-Builder to proceed with progressing the design to Construction Document completion;
 - 5.12.4.4. remove the Project element from the contract and pursue other delivery methods, including, but not limited to, issuing a Request for Proposals for completion of design and construction; or
 - 5.12.4.5. terminate the Contract for convenience.

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

- 5.12.5.1.** If City and Design-Builder have not previously agreed to a GMP for completion of the Project element through construction, Design-Builder shall submit a revised construction cost estimate/proposal that verifies the design does not exceed the design-to budget target amount and any approved changes. This cost estimate/proposal could be converted to a Guaranteed Maximum Price (GMP) for construction, if mutually agreed upon by Design-Builder and City at this time.
- 5.12.5.2.** If City and Design-Builder cannot agree upon a GMP, City reserves the right at its sole discretion to:
- 5.12.5.3.** remove the Project element from the contract and pursue other delivery methods, including, but not limited to, issuing the design for competitive bids; or
- 5.12.5.4.** terminate the Contract for convenience.

5.12.6. Terminating the Contract

If the parties cannot agree upon a GMP for construction, and the design work is complete (100% Construction Documents), Design-Builder shall be required to provide bid-able documents. In other words, the design documents shall be in the condition of a bid set suitable for advertising and receiving competitive bids. Design-Builder shall invoice and receive fair and reasonable compensation for Design-Build services provided up to the date of Contract Termination.

5.13. Required Submittals

- 5.13.1.** Required submittals shall include:
 - 5.13.1.1.** Project Management Plan
 - 5.13.1.2.** Design-Builder's Program Team Structure
 - 5.13.1.3.** Quality Control Program
 - 5.13.1.4.** Document Control Procedure
 - 5.13.1.5.** Archiving Procedure
 - 5.13.1.6.** Proposed Action Item Log
 - 5.13.1.7.** Cost Estimate

5.14. Review Comment Response

- 5.14.1.** At each submittal stage (schematic design, design development, 50% construction documents, 95% construction documents, 100% construction documents), within fifteen (15) calendar days, City shall provide a list of written comments. Design-Builder promptly shall respond in writing to City's comments within ten (10) calendar days of receipt, unless agreed to otherwise in writing by City. Design-

Builder's responses must be thorough and specifically address City's issue(s) in question. Design-Builder shall note specific actions already taken or Design-Builder's planned actions with a completion time commitment. Such responses, such as "done" or "will comply" are not acceptable responses for Design-Builder to submit to City.

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

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

5.14.3.1. Design studies, reports, drawings and specifications shall be reviewed by City and City's designated third parties, comments shall be prepared and returned to Design-Builder within fifteen (15) calendar days after receipt by City. City shall endeavor to better the review period of 15 calendar Days as they understand that a shorter review period may improve the schedule.

5.14.3.2. Cost estimates and pricing submittals shall be reviewed by City and/or City's designated third parties, comments shall be prepared and City shall return its comments to Design-Builder within fifteen (15) calendar days after receipt by City. City shall work to better the review period of fifteen (15) calendar days, as it understands a shorter review period may improve the Project schedule.

5.14.3.3. Design-Builder shall advise City how Design-Builder intends to address all comments received from City and/or City's designated third parties and return Design-Builder's comments to City within ten (10) calendar days after receipt from City.

5.14.3.4. City is responsible to manage and enforce the design review durations outlined above with all third party reviewers, unless authority to do so is specifically delegated to Design-Builder.

5.15. City's Participation and Responsibilities

5.15.1. City's Participation

City reserves the right to participate in any and all design activities of Design-Builder, Design-Builder's Sub-Consultants and Subcontractors, with the exception of meetings or discussions of a contractual nature between Design-Builder and its Sub-Consultants, Subcontractors, Legal Counsel and the like. Design-Builder shall inform City of all work sessions, coordination meetings, scheduled conference calls and similar design activities, sufficiently in advance to allow City's participation. Design-Builder understands and acknowledges that City's participation in no way diminishes or relieves Design-Builder of Design-Builder's duties and obligations under applicable law and the Contract

Documents.

5.15.2. Design-Builder Provisions for City

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

5.15.3. City's Responsibilities

- 5.15.3.1.** City has performed the programming and other early planning studies that serve as the foundation for the Program Criteria Document.
- 5.15.3.2.** City has provided the Programming Documents, attached hereto, incorporated herein and labeled as **EXHIBIT A: PROGRAMMING DOCUMENTS**, which shall serve as the basis for Design-Builder's design.
- 5.15.3.3.** City shall primarily be responsible for Public Affairs, Media Relations and Community Outreach concerning this Project. Design-Builder shall provide support services for all Public Affairs, Media Relations and Community Outreach, to the extent delegated and authorized by City and based upon direction provided by City.

5.16. Project Communications

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

5.16.2. Project Data Gathering

- 5.16.2.1.** Design-Builder represents that it is experienced in the Project type it has contracted to perform and is aware of all relevant issues that must be addressed. Design-Builder further represents that it shall be proactive in soliciting all necessary design information.
- 5.16.2.2.** Requests to meet with Facility/Site or City personnel that normally are not one of Design-Builder contacts shall be coordinated with the City's Project Manager.

- 5.16.2.3.** Design Builder shall provide written reports of all meetings and other data gathering exercises, whether with Facility/Site or other City personnel, or with outside entities or data sources within ten (10) Business Days.

5.16.3. Action Items

- 5.16.3.1.** Design-Builder shall maintain an electronic Action Item Log of all "action items" that have been identified either internally or by City. An "action item" is defined as a Project issue requiring special attention, management oversight or off-project input. An "action item" is not an item or a list of things yet to be done that are a normal part of the progress of the Project. The Action Item Log shall regularly be maintained and distributed to City.
- 5.16.3.2.** Design-Builder shall submit a sample of the proposed Action Item Log to City for City's approval within thirty (30) calendar days of the award of this contract.

5.16.4. Minutes and Reports

Design-Builder shall take and publish coherent minutes and/or reports on every formal meeting, work session or site visit that Design-Builder, its Sub-Consultant and/or Subcontractors participates in, even if Design-Builder is not the meeting chair or coordinator. Design-Builder shall transmit minutes and/or reports to City within ten (10) calendar days of the meeting, work session or site visit.

5.16.5. Other Project Documents

- 5.16.5.1.** Design-Builder shall prepare all written Project documents, such as reports, meeting minutes, etc., using Microsoft Word, latest version, or an unprotected PDF format, unless otherwise agreed upon by City. The utilized font shall be 11 point Times New Roman or Arial, as supplied with the latest Microsoft Windows Operating System.
- 5.16.5.2.** All Project documents, except drawings and presentation materials, shall be on letter sized paper. Absolutely no legal-sized paper shall be utilized or is allowed.

5.16.6. Project Schedule Other Requirements.

- 5.16.6.1.** The Project Schedule shall:
- a.** have all Work coded and organized by WBS. An example of an acceptable WBS shall be provided, upon written request, by City to Design-Builder;
 - b.** reflect duration percent complete as the percent complete type;
 - c.** reflect fixed units as the duration type;
 - d.** include submittals with a logical tie to what each drives;

- e. add proposed Change Order(s) and those Change Order(s) shall be reflected on the Schedule as proposed Change Order(s). This task shall be linked to the schedule with logical ties and approved by City as evidenced by a Time Impact Analysis. Upon approval of a Change Order, a task shall be renamed and shall identify Work performed and Change Order number and resources shall be added to the task;
- f. only have constraints in accordance with the plans;
- g. include activity milestones for material delivery;
- h. disallow default progress; and
- i. include a detailed explanation in the Project narrative, if Work is performed out of sequence.

5.17. Project Schedule Joint Review and Acceptance.

- 5.17.1.** The Project Schedule and successive updates or revisions thereof are for Design-Builder's use in managing the Work. The Project Schedule is for the information of City and to demonstrate that Design-Builder has complied with requirements for planning the Work. City's acceptance of a Schedule and Schedule updates or revisions constitutes City's agreement to coordinate its own activities with Design-Builder's activities, as shown on the schedule.
- 5.17.2.** Within fourteen (14) days of receipt of Design-Builder's proposed Project Schedule, City shall evaluate the Schedule for compliance with this specification and notify Design-Builder of its findings. If City requests a revision or justification, Design-Builder shall provide satisfaction to City within seven (7) calendar days. If Design-Builder submits a Project Schedule for acceptance, based on a sequence of work not shown in the plans, then Design-Builder shall notify City in writing of said sequence of work, separate from the Schedule submittal.
- 5.17.3.** City's review and acceptance of Design-Builder's Project Schedule is only for conformance to the requirements of the Contract Documents. Review and acceptance by City of Design-Builder's Project Schedule does not relieve Design-Builder of any of its responsibility for the Project Schedule, Design-Builder's ability to meet interim milestone dates (if so specified) or meeting the Contract completion date, nor does such review and acceptance expressly or by implication warrant, acknowledge or admit the reasonableness of the logic, durations, manpower or equipment loading of Design-Builder's Project Schedule. In the event Design-Builder fails to define any element of Work, activity or logic and City's review does not detect this omission or error, such omission or error, when discovered by Design-Builder or City, shall be corrected by Design-Builder at the next monthly schedule update and shall not affect the Project or Contract completion date.
- 5.17.4.** Acceptance of the Project Schedule, or update and/or revision thereto, does not indicate any approval of Design-Builder's proposed sequences and duration.

- 5.17.5.** Acceptance by City of the Project Schedule or updated Project Schedule which exceeds contractual time does not alleviate Design-Builder from meeting the contractual completion date.
- 5.17.6.** Acceptance of a Project Schedule update or revision indicating early or late completion does not constitute City's consent to any changes, alter the terms of the Contract, waive either Design-Builder's responsibility for timely completion, or waive City's right to damages for Design-Builder's failure to do so.
- 5.17.7.** Design-Builder's scheduled dates for completion of any activity or of the entire Work do not constitute a change in terms of the Contract. Change Orders are the only method of modifying the completion date(s) and Contract Times.
- 5.17.8.** Submittal of a schedule, schedule revision or schedule update constitutes Design-Builder's representation to City, as of the date of the submittal, of the accurate depiction of all progress to date and that Design-Builder will follow the schedule as submitted in performing the Work.

5.18. Completion of Work.

- 5.18.1.** Design-Builder is accountable for substantially completing the Work in the Contract Time or as otherwise amended by Change Order.
- 5.18.2.** If, in the sole judgment of City, the Schedule update reflects Work is ten (10) or more days behind schedule and the rate of performance of Work is inadequate to regain scheduled progress to insure Design-Builder achieves, Substantial Completion in accordance with the Project Schedule, City may, at its sole option, give written notice to Design-Builder and direct Design-Builder, at Design-Builder's sole expense, to propose a plan to accelerate the Work so that the Work conforms to the Project Schedule previously agreed upon. Design-Builder may, but is not limited to, propose:
 - 5.18.2.1.** increasing Project work forces;
 - 5.18.2.2.** increasing Project equipment or tools;
 - 5.18.2.3.** increasing the hours of work or number of shifts per day;
 - 5.18.2.4.** expediting the delivery of Project materials;
 - 5.18.2.5.** changing, with the approval of City, the schedule logic and Work sequences; or
 - 5.18.2.6.** taking some other action as Design-Builder may proposes, if acceptable to City.
- 5.18.3.** Within ten (10) calendar days after such notice from City, Design-Builder shall notify City in writing of the specific measures taken and plan to be undertaken to increase the rate of progress of Work on the Project. Design-Builder shall include an estimate as to the date of scheduled full progress recovery and an updated Project Schedule, illustrating Design-Builder's plan for achieving timely completion of Substantial Completion.

5.18.4. Should City deem Design-Builder's plan of action inadequate to achieve the desired acceleration to bring the Work back on the Project Schedule, and achieve Substantial Completion on time, City shall have the right to order Design-Builder, at Design-Builder's sole expense, to take any corrective measures City deems necessary to expedite the progress of Work including, without limitations:

5.18.4.1. increasing work forces and hours, to include Design-Builder working additional shifts of overtime;

5.18.4.2. supplying additional manpower, equipment and facilities;

5.18.4.3. re-sequencing the Work;

5.18.4.4. expediting the fabrication and supply of materials; and/or

5.18.4.5. other similar measures City may direct. (Hereafter (i) – (v) above collectively referred to as "Extraordinary Measures".) Such Extraordinary Measures City directs shall continue until the progress of the Work complies with the milestone required by the Contract Documents.

5.18.5. City's right to require Extraordinary Measures solely is for the purpose of ensuring Substantial Completion of the Work are achieved within the Contract Time. Design-Builder shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by City under or pursuant to this **Article 5.18**, except as may be provided under the provisions of **Article 6.2** herein.

5.18.6. City may exercise the rights furnished under or pursuant to this **Article 5.18** as frequently as City deems necessary to ensure Design-Builder's performance of the Work is in compliance with any milestone date or completion date set forth in the Contract Documents.

5.18.7. If reasonably required by City, Design-Builder also shall prepare and furnish Project cash flow projections, manning data for critical activities, and schedules for the purchase and delivery of all critical equipment and material, together with periodic updating thereof.

5.18.8. Design-Builder shall recommend to City a schedule for procurement of long-lead time items, which will constitute part of the Work as required to meet the Project Schedule.

5.19. Documents and Samples at the Site.

5.19.1. Design-Builder shall maintain, on the Site and for City, one (1) record copy of the Drawings, Specifications, Addenda, Change Orders and other Amendments, in good order and currently marked, to record field changes and selections made during construction, along with one (1) record copy of approved Shop Drawings, Product Data, samples and similar required submittals. These record copies shall be available to City and shall be delivered to City upon completion of the Work.

- 5.19.2.** Design-Builder shall maintain, at all times, job records, including, but not limited to, invoices, payment records, payroll records, daily reports, logs, diaries and job meeting minutes applicable to the Project. Design-Builder shall make such reports and records available for inspection by City and/or its respective agents during normal business hours upon request by City.

5.20. Shop Drawings, Product Data, and Samples.

- 5.20.1.** Shop Drawings, product data, samples and similar submittals are not Contract Documents. The purpose of their submittals is to demonstrate, for those portions of the Work for which submittals are required by the Contract Documents, the way by which Design-Builder proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by City is subject to the limitations of **Article 6.1.8** herein. Informational submittals, upon which City is not expected to take responsive action, may be so identified in the Contract Documents. Submittals which are not required by the Contract Documents may be returned by the City without action.
- 5.20.2.** Design-Builder shall review for compliance with the Contract Documents, approve and submit to City Shop Drawings, Product Data, samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of City or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by Design-Builder may be returned by City without action.
- 5.20.3.** By approving and submitting Shop Drawings, product data, samples and similar submittals, Design-Builder represents that it has determined and verified materials, field measurements and filed 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 Contract Documents.
- 5.20.4.** Design-Builder shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, product data, samples or similar submittals until the respective submittal has been reviewed and approved by City. City shall review and return such submittals within ten (10) calendar days or within a reasonable period so as to not delay the project.
- 5.20.5.** The Work shall be in accordance with approved submittals, except that Design-Builder shall not be relieved of responsibility for deviations from requirements of the Contract Documents by City's approval of Shop Drawings, product data, samples or similar submittals unless Design-Builder specifically has informed City in writing of such deviation at the time of submittal and:
 - 5.20.5.1.** City has given written approval of the specific deviation as a minor change in the Work; or

5.20.5.2. Change Order or Field Work Directive has been issued authorizing the deviation. Design-Builder shall not be relieved of responsibility for errors or omissions in Shop Drawings, product data, samples or similar submittals by Design-Builder for City's approval.

5.20.6. Design-Builder shall direct specific attention, in writing or on resubmitted Shop Drawings, product Data, samples or similar submittals, to revisions other than those requested by City on previous submittals. In the absence of such written notice, City's approval of a resubmission shall not apply to such revisions.

5.20.7. Design-Builder shall be required to provide professional services which constitute the practice of architecture or engineering as required by the Contract Documents for the Work and shall provide such services to carry out Design-Builder's responsibilities for design and construction means, methods, techniques, sequences and procedures. Design-Builder shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment specifically are required of Design-Builder by the Contract Documents, Design-Builder shall cause such services or certifications to be provided by a properly Texas-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 City. City shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals. Pursuant to this **Article 5.20** City 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 Contract Documents. Design-Builder shall be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

5.21. Use of Site.

5.21.1. Design-Builder shall confine construction equipment, the storage of materials and equipment and the operations of workers to areas permitted by law, ordinances, permits or the requirements of the Contract Documents and shall not unreasonably encumber the premises with construction equipment or other materials or equipment.

5.21.2. Design-Builder shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Design-Builder subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

5.21.3. Design-Builder will abide by all applicable rules and regulations of City with respect to conduct, including smoking, parking of vehicles, security regulations and entry into adjacent facilities owned by City.

- 5.21.4.** Design-Builder shall provide access to residents and businesses affected by the construction of this Project to the greatest extent possible, including providing temporary base and asphalt as needed.
- 5.21.5.** Design-Builder shall erect and maintain on Site a Project Bulletin Board, accessible to all Design-Builder's Sub-Consultant and Subcontractor employees, upon which Design-Builder shall post and maintain, throughout the Project's duration, all employment and safety information required by law and shall include information listing Design-Builder's bonding and insurance agencies/providers, to include agency contact names, address and telephone numbers.
- 5.21.6.** As applicable, City will have appropriate Temporary Bench Marks (TBM) and baselines (for both horizontal and vertical projects, as applicable) established. As of the date of the written Notice to Proceed, it is Design-Builder's responsibility to protect, preserve and reestablish (if required) the TBM and/or baselines. Construction staking and tolerances shall be in accordance with the "Manual of Practice for Land Surveying in the State of Texas Category 5" as that document may be amended, updated or supplanted.
- 5.21.7.** As applicable, Design-Builder shall layout its work from established baselines and TBM indicated on the drawings and shall be responsible for all measurements in connection with the layout. Design-Builder shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials and labor required to layout any part of the work. Design-Builder shall provide cut sheets to City's inspector seven (7) calendar days prior to construction of street and drainage work. Design-Builder shall establish the necessary offsets, hubs and guards marked showing control designation and offsets for San Antonio Water System (SAWS) Work, if present. Design-Builder shall provide cut sheets for improvements where Sewer profiles are provided for various phases of the project and cut sheets for Water profiles, if applicable. Design-Builder shall provide staking and preparation of cut sheets after receiving notice to proceed from City. If present, Design-Builder shall provide SAWS with cut sheets (7) calendar days prior to commence of SAWS work. Design-Builder shall be responsible for maintaining and preserving baseline and TBM indicated on the drawings for duration of construction. If such marks are destroyed, Design-Builder shall replace them at its own expense. At the end of construction of the Project, Design-Builder shall provide City a grade certificate prepared by a Registered Professional Land Surveyor. This certificate shall state that the infrastructure is constructed in accordance to the construction documents or as approved by City and the Engineer of Record, which is noted on the record plan set.

5.22. Cutting and Patching.

- 5.22.1.** Design-Builder shall be responsible for all cutting, fitting or patching required to complete the Work or to make its parts fit together properly.
- 5.22.2.** Design-Builder shall not damage or endanger a portion of the Work or a fully or partially completed construction by either City or separate contractor by cutting, patching or otherwise altering such construction, or by excavation. Design-Builder

shall not cut or otherwise alter such construction by City or a separate contractor except with written consent of City and, if City so designates, of such separate contractor and said consent shall not be unreasonably withheld. Design-Builder unreasonably shall not withhold from City or City's separate contractor Design-Builder's consent to cutting or otherwise altering the Work.

- 5.22.3.** Any part of the finished Work damaged by Design-Builder, either during installation or prior to achieving Substantial Completion of the Work (or such earlier date established in **Article 11.8** herein, shall be repaired by Design-Builder so as to be equal in quality, appearance, serviceability and other respects to an undamaged item or part of the Work. Where this repair cannot be fully accomplished, the damaged item or part shall be replaced by Design-Builder.

5.23. Cleaning Up.

- 5.23.1.** During the progress of the Work, Design-Builder shall keep the Project Site and surrounding area including, but not limited to, creeks, drainage channels, easements, private property, free from accumulations of waste materials, rubbish and other debris resulting from the Work. As applicable, Design-Builder shall clean, sweep, mop, brush and polish, as appropriate, the interior of the improvements and/or renovated areas including, but not limited to, any floors, carpeting, ducts, fixtures and ventilation units operated during construction, and shall clean exterior gutters, drainage, walkways, driveways and roofs of debris. If Design-Builder fails to clean up as provided in the Contract Documents, City may do so and all costs incurred by City shall be paid by Design-Builder.
- 5.23.2.** Prior to Substantial Completion of the Work, Design-Builder shall remove all waste materials, rubbish and debris from and about the premises, as well as all tools, appliances, construction equipment and machinery and surplus materials, and shall leave the Site clean and ready for occupancy by City. As applicable, Design-Builder shall clean, sweep, mop, brush and polish, to City's satisfaction, the interior of the improvements and/or renovated areas including, but not limited to, any floors, carpeting, ducts, fixtures and ventilation units operated during construction, and shall clean exterior gutters, drainage, walkways, driveways and roofs of debris. Design-Builder shall restore to their original condition those portions of the Site not designated for alteration by the Contract Documents. If Design-Builder fails to clean up the premises as provided in the Contract Documents, City may do so and all costs incurred by City shall be paid by Design-Builder.

5.24. Access to Work.

Design-Builder shall provide City and City's representatives access to the Work in preparation and in progress, wherever located. City acknowledges that Design-Builder's applicable site access procedures must be followed prior to entering any construction site.

5.25. Patent Fees and Royalties.

Design-Builder shall pay all license fees and royalties and assume all costs incident to the use of such patent, copyright or other intellectual property in the performance of the Work or the incorporation therein of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of City its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by City in the Contract Documents.

5.26. Indemnity Provisions.

5.26.1. DESIGN-BUILDER SHALL FULLY RELEASE, PROTECT, DEFEND, INDEMNIFY AND HOLD HARMLESS CITY AND ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES, VOLUNTEERS, DIRECTORS, CONSULTANTS AND REPRESENTATIVES (HEREAFTER INDIVIDUALLY AND COLLECTIVELY REFERRED TO AS "INDEMNITEE") FROM AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, SUITS, JUDGMENTS, INVESTIGATIONS, LEGAL OR ADMINISTRATIVE PROCEEDINGS, DEMANDS, LOSSES, DAMAGES, LIABILITIES AND COSTS, INCLUDING REASONABLE ATTORNEY FEES AND DEFENSE COSTS, IN EACH CASE IF ASSERTED OR INCURRED OR AWARDED TO ANY THIRD PARTY, DIRECTLY OR INDIRECTLY ARISING OUT OF, RELATING TO OR RESULTING FROM:

- (a) THE BREACH OR ALLEGED BREACH OF ANY OF THE CONTRACT DOCUMENTS BY DESIGN-BUILDER OR ANY SUB-CONSULTANT OR SUBCONTRACTOR;
- (b) THE FAILURE OR ALLEGED FAILURE BY DESIGN-BUILDER OR ANY SUB-CONSULTANT OR SUBCONTRACTOR TO COMPLY WITH APPLICABLE LAW;
- (c) ANY ALLEGED INTELLECTUAL PROPERTY INFRINGEMENT CONCERNING THE CITY'S USE OR ACCESS OF INTELLECTUAL PROPERTY PROVIDED BY DESIGN-BUILDER OR ANY SUBCONTRACTOR, PROVIDED THAT THIS INDEMNITY SHALL NOT APPLY TO ANY INFRINGEMENT TO THE EXTENT RESULTING FROM CITY'S FAILURE TO COMPLY WITH SPECIFIC WRITTEN INSTRUCTIONS REGARDING USE PROVIDED TO CITY BY DESIGN-BUILDER OR THE SUBCONTRACTOR, AS APPLICABLE;
- (d) THE ACTUAL OR ALLEGED CULPABLE ACT, ERROR, OMISSION, NEGLIGENCE, BREACH, INTENTIONAL TORT, OR MISCONDUCT OF DESIGN-BUILDER OR ANY SUB-CONSULTANT, OR SUBCONTRACTOR IN OR ASSOCIATED WITH PERFORMANCE OF THE WORK;

- (e) ANY AND ALL CLAIMS BY ANY GOVERNMENTAL OR TAXING AUTHORITY CLAIMING TAXES BASED ON GROSS RECEIPTS, PURCHASES OR SALES, THE USE OF ANY PROPERTY OR INCOME OF DESIGN-BUILDER OR ANY SUB-CONSULTANT OR SUBCONTRACTOR WITH RESPECT TO ANY PAYMENT FOR THE WORK MADE TO OR EARNED BY DESIGN-BUILDER OR ANY SUB-CONSULTANT OR SUBCONTRACTOR;
- (f) ANY AND ALL STOP NOTICES AND LIENS FILED IN CONNECTION WITH THE WORK, INCLUDING ALL EXPENSES AND ATTORNEYS', ACCOUNTANTS', AND EXPERT WITNESS FEES AND COSTS INCURRED IN DISCHARGING ANY STOP NOTICE OR LIEN, AND ANY OTHER LIABILITY TO SUB-CONSULTANTS, SUBCONTRACTOR OR SUPPLIERS FOR FAILURE TO PAY SUMS DUE FOR THEIR WORK OR SERVICES, PROVIDED THAT CITY HAS PAID ALL UNDISPUTED AMOUNTS OWING TO DESIGN-BUILDER WITH RESPECT TO SUCH WORK;
- (g) ANY ACTUAL OR THREATENED RELEASE OF HAZARDOUS MATERIALS BY DESIGN-BUILDER OR ANY SUB-CONSULTANT OR SUBCONTRACTOR;
- (h) THE CLAIM OR ASSERTION BY ANY OTHER DESIGN-BUILDER THAT DESIGN-BUILDER OR ITS SUB-CONSULTANT OR SUBCONTRACTOR INTERFERED WITH OR HINDERED THE PROGRESS OR COMPLETION OF WORK BEING PERFORMED BY SUCH OTHER DESIGN-BUILDER, OR FAILED TO COOPERATE REASONABLY WITH SUCH OTHER DESIGN-BUILDER, SO AS TO CAUSE DISRUPTION, DELAY, OR LOSS, TO THE EXTENT SUCH CLAIM ARISES OUT OF THE ACTUAL OR ALLEGED CULPABLE ACT, ERROR, OMISSION, NEGLIGENCE, BREACH, OR MISCONDUCT OF DESIGN-BUILDER OR ANY OF ITS SUB-CONSULTANTS OR SUBCONTRACTOR, PROVIDED THAT THE INDEMNITY UNDER THIS ITEM (H) ONLY APPLIES TO CLAIMS OR ASSERTIONS WHERE CITY EXPRESSLY DISCLOSED TO DESIGN-BUILDER THE SCOPE OF WORK FOR SUCH OTHER DESIGN-BUILDER;
- (i) DESIGN-BUILDER'S PERFORMANCE OF, OR FAILURE TO PERFORM, THE OBLIGATIONS UNDER ANY UTILITY AGREEMENT, OR ANY DISPUTE BETWEEN DESIGN-BUILDER AND A UTILITY OWNER AS TO WHETHER WORK RELATING TO A UTILITY ADJUSTMENT CONSTITUTES A BETTERMENT;
- (j) (i) DESIGN-BUILDER OR ANY OF ITS SUB-CONSULTANTS OR SUBCONTRACTOR'S BREACH OF OR FAILURE TO PERFORM AN OBLIGATION THAT CITY OWES TO A THIRD PERSON, INCLUDING GOVERNMENTAL ENTITIES, UNDER LAW OR UNDER ANY AGREEMENT BETWEEN CITY AND A THIRD PERSON, WHERE CITY

HAS DELEGATED PERFORMANCE OF THE OBLIGATION TO DESIGN-BUILDER UNDER THE CONTRACT DOCUMENTS OR (ii) THE ACTS OR OMISSIONS OF DESIGN-BUILDER OR ITS SUB-CONSULTANTS OR SUBCONTRACTORS THAT RENDER CITY UNABLE TO PERFORM OR ABIDE BY AN OBLIGATION THAT CITY OWES TO A THIRD PERSON, INCLUDING GOVERNMENTAL ENTITIES, UNDER ANY AGREEMENT BETWEEN CITY AND A THIRD PERSON WHERE THE AGREEMENT WAS EXPRESSLY DISCLOSED TO DESIGN-BUILDER;

- (k) THE FRAUD, BAD FAITH, ARBITRARY OR CAPRICIOUS ACTS, OR VIOLATION OF LAW BY ANY DESIGN-BUILDER OR ANY OF ITS SUB-CONSULTANTS OR SUBCONTRACTORS IN OR ASSOCIATED WITH THE PERFORMANCE OF THE WORK; AND
- (l) ERRORS, INCONSISTENCIES, OR OTHER DEFECTS IN THE CONSTRUCTION OF THE WORK OR OF UTILITY ADJUSTMENTS INCLUDED IN THE WORK.

5.26.2. DESIGN-BUILDER'S INDEMNIFICATION OBLIGATION IN SECTION 13.1 SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM INDEMNITEE'S NEGLIGENCE OR WILLFUL MISCONDUCT. IN INSTANCES WHERE THE NEGLIGENCE OR WILLFUL MISCONDUCT CAUSES PERSONAL INJURY, BODILY INJURY, DEATH OR PROPERTY DAMAGE. IF A COURT OF COMPETENT JURISDICTION FINDS DESIGN-BUILDER AND CITY JOINTLY LIABLE, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

5.26.3. The indemnification obligations under this **Article 5** shall not be limited in any way by the limits of any insurance coverage or any limitation on the amount or type of damages, compensation or benefits payable by, for or to Design-Builder or any Sub-Consultant, Subcontractor, supplier or any other individual or entity under any insurance policy, workers' compensation acts, disability benefit acts or other employee benefits acts.

5.26.4. The indemnification hereunder shall include, without limiting the generality of the foregoing, liability which could arise to City, its agents, consultants and/or representatives or Design Consultant pursuant to State of Texas statutes for the safety of workers and, in addition, all Federal statutes and rules existing thereunder for protection, occupational safety and health to workers. It is agreed that the primary obligation of Design-Builder is to comply with these statutes in the performance by Design-Builder of the Work and the obligations of City, its agents, consultants and representatives under said statutes are secondary to that of Design-Builder.

- 5.26.5.** For purposes of this Article 5, “third party” means any person or entity other than an Indemnatee and Design-Builder, except that a “third party” includes any Indemnatee’s employee, agent or contractor who asserts a claim against an Indemnatee that is within the scope of the indemnities and that is not covered by the Indemnatee’s worker’s compensation program.
- 5.26.6.** The provisions of this Article 5 solely are for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Design-Builder shall advise City in writing within twenty-four (24) hours of any claim or demand against City or Design-Builder known to Design-Builder related to or arising out of Design-Builder’s activities under this Contract and shall see to the investigation and defense of such claim or demand at Design-Builder’s sole cost. City shall have the right, at its option and at its own expense, to participate in such defense without relieving Design-Builder of any of its obligations under this Article 5.
- 5.26.7.** City shall have the right to approve defense counsel, of which approval shall not be unreasonably withheld, to be retained by Design-Builder in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. Design-Builder shall retain City-approved defense counsel within ten (10) calendar days of City’s written notice that City is invoking its right to indemnification under this Contract. If Design-Builder fails to retain counsel within such time period, City shall have the right to retain defense counsel on its own behalf and Design-Builder shall be liable for all costs incurred by City. City also shall have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.
- 5.26.8.** The indemnities contained herein shall survive the termination of this Contract for any reason whatsoever.
- 5.26.9.** The provisions of this **Article 5.26** solely are for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

5.27. Representations and Warranties.

Design-Builder represents and warrants to City (in addition to the other representations and warranties contained in the Contract Documents), as an inducement to City to execute this Contract, which representations and warranties shall survive the execution and delivery of the Contract and the final completion of the Work, that Design-Builder:

- 5.27.1.** is thoroughly familiar with and understands the requirements of the Work and is experienced in the design, administration and construction of building projects of the type and scope of Work contemplated by and for the Project
- 5.27.2.** is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents;

- 5.27.3. is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;
- 5.27.4. is authorized to do business in the State of Texas and is properly licensed by all necessary governmental, public and quasi-public authorities having jurisdiction over it, over the Work and over the site of the Project;
- 5.27.5. is acting within its duly authorized powers to execute this Contract and execute the performance and obligations thereof; and
- 5.27.6. its duly authorized representative(s) has visited the Site of the Work, familiarized itself with the local conditions under which the Work is to be performed and correlated its observations with the requirements of the Contract Documents.

5.28. Business Standards.

Design-Builder, in performing its obligations under this Contract, shall establish and maintain appropriate business standards, procedures and controls, including those necessary to avoid any real or apparent impropriety or adverse impact on the interest of City or affiliates. Design-Builder shall review with City, at a reasonable frequency during the performance of the Work hereunder, such business standards and procedures including, without limitation, those related to the activities of Design-Builder's employees and agents, sub-consultants, Sub-Contractors and their respective employees and agents in their relations with City's employees, agents, representatives, vendors, subcontractors, other third parties and those relating to the placement and administration of purchase orders and subcontracts.

END OF ARTICLE 5

ARTICLE 6 ADMINISTRATION OF THE CONTRACT

6.1. Roles in Administration of the Contract.

- 6.1.1.** City shall provide administration of the Contract as described in the Contract Documents, and City, City's CDR or consultant will represent City:
 - 6.1.1.1.** During construction;
 - 6.1.1.2.** Until final payment is due; and
 - 6.1.1.3.** From time to time during the one-year period for correction of Work described in **Article 14.3.**
 - 6.1.1.4.** Only CDR and/or consultant(s) shall have authority to act on behalf of City to the extent provided in the Contract Documents, unless otherwise modified in writing by City in accordance with other provisions of the Contract Documents.
- 6.1.2.** City's instruction to Design-Builder may be issued through the CDR or City's consultant(s) and City reserves the right to issue instructions directly to Design-Builder. Design-Builder understands that City may modify the authority of City's representatives as provided in the terms of its contractual relationship with City's representatives and City shall, in such event, be vested with powers formerly exercised by such City's representatives. Nothing herein shall authorize independent agreements between Design-Builder and such City's representatives, nor shall City's representatives be deemed to have a legal relationship with Design-Builder.
- 6.1.3.** Neither City nor City's representatives shall have control over, charge of nor be responsible for the construction means, methods or techniques, or for the safety precautions and programs in connection with the Work, since these are solely Design-Builder's rights and responsibilities under the Contract Documents. Sequencing and procedures will be coordinated and agreed upon by City and Design-Builder but will remain the responsibility of Design-Builder for implementation.
- 6.1.4.** City shall not be responsible for Design-Builder's failure to perform the Work in a good and workmanlike manner, and in accordance with the requirements of the Contract Documents, and in accordance with all applicable City of San Antonio codes and ordinances, as amended, and all applicable State of Texas and Federal laws, rules and regulations, as amended. City will not have control over, charge of and will not be responsible for acts or omissions of Design-Builder, sub-consultants, Subcontractors, their respective agents, employees or any other persons or entities performing portions of the Work.
- 6.1.5.** Communications by Design-Builder with City's consultants shall be through City. Communications by and with Design-Builder's Subcontractors, sub-consultants and material suppliers shall be through Design-Builder. All communications by and with City's separate contractors, if any, shall be through City.

- 6.1.6.** City shall review, approve or take other appropriate action upon Design-Builder's submittals, such as 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 Contract Documents. City will perform these reviews in a timely fashion so as to not delay the Work. City will respond to submittals, such as Shop Drawings, product data and samples, pursuant to the procedures set forth in the Project Specifications. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of equipment or systems, all of which remain the responsibility of Design-Builder as required by the Contract Documents. City's review of Design-Builder's submittals shall not relieve the Design-Builder of the obligations under **Article 5** herein. City's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by City, any construction means, methods, techniques, sequences or procedures. City's approval of a specific item shall not indicate approval of an assembly of which the item is a component.
- 6.1.7.** Upon written request of Design-Builder, City will issue its interpretation of the requirements of the plans and specifications. City's response to such requests shall be made in writing within a time limit agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of City shall be furnished in compliance with this **Article 6.1**, then no delay will be recognized on account of any failure by City to furnish such interpretations except for actual substantiated delays, for which Design-Builder is not responsible, occurring more than fifteen (15) calendar days after written request is made for the interpretations.
- 6.1.8.** Interpretations and decisions of City will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings.
- 6.1.9.** Design-Builder's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents and not expressly overruled in writing by City.

6.2. Claims and Disputes.

- 6.2.1.** Every Claim of Design-Builder, whether for additional compensation, additional time or other relief including, but not limited to, claims arising from concealed conditions, shall be signed and sworn to by an employee of Design-Builder, verifying the Claim is believed in good faith by Design-Builder to be valid and accurate, including with respect to any Claims information received from Subconsultants or Subcontractors.. The responsibility to substantiate a Claim shall rest with the Party making the Claim.
- 6.2.2. Time Limit on Claims Notifications and Submittals.**

Except for those claims resulting from Unusually Severe Weather, as addressed herein, Design-Builder claim notifications must be submitted within fifteen (15) calendar days after Design-Builder knew or should have known of the event giving

rise to such Claim. Claim notifications by Design-Builder must be submitted by written notice to City. Claims by City must be submitted by written notice to Design-Builder. Failure by Design-Builder to submit a written Claim notification within the required time limit shall constitute a waiver of such claim. The complete Claim submittal must be submitted to City within thirty (30) calendar days after Design-Builder's submission of the Claim. Failure by Design-Builder to submit the complete Claim submittal within the required time limit shall constitute a waiver of such claim.

6.2.2.1. Claim Notification Requirements.

In addition to any other requirements set forth in the Contract Documents, each Claim notification must, to the best of Design-Builder's ability based on the information then available to Design-Builder, (a) state the facts underlying such notice, the reasons why Design-Builder believes additional compensation or time will or may be due and the date of occurrence; (b) state the basis that the work such notice relates to is not required by the Contract Documents, if applicable; (c) identify particular elements of performance for which additional compensation may be sought under this **Article 6.2**; (d) identify whether there is likely to be any critical path impacts; (e) identify any insurance that may be applicable; and (f) detail any actions Design-Builder has taken and will take to mitigate the impact of the subject event on the Project.

6.2.2.2. Complete Claim Submittal Requirements

In addition to any other requirements set forth in the Contract Documents, each complete Claim submittal must include the components listed below. The complete Claim submittal will not be considered if it does not have the same nature, scope (except reductions) and circumstances, and basis of claim, as those specified in the relevant complete Claim submittal:

- a. Scope of work – The scope of work shall describe in detail satisfactory to City all activities associated with the complete Claim submittal, including a description of requested additions, deletions and modifications to the existing requirements of the Contract Documents.
- b. Cost estimate – If applicable, and if the work is sufficiently defined to obtain Subcontractor quotes, Design-Builder shall obtain quotes on the Subcontractor's stationery and shall include such quotes as back-up for Design-Builder's estimate. No mark-up shall be allowed in excess of the amounts allowed under **Article 8.15.6** of the Contract. Design-Builder shall identify all conditions with respect to prices or other aspects of the cost estimate, such as pricing contingent on firm orders being made by a certain date or the occurrence or non-occurrence of an event. The cost estimate shall include an explanation as to how the extra costs relate to the delay and how they are being calculated and measured, and identify all Project employees for whom costs are being compiled, and all

manufacturer's numbers of all items of equipment for which costs are being compiled.

- c. Time Impact Analysis – If applicable, Design-Builder shall submit a Time Impact Analysis in accordance with **Article 6.2.5.12**.
- d. Justification – All complete Claim submittals shall include a narrative justification therefor, detailing all causes of the proposed change, making specific reference to the applicable provisions of this **Article 6.2.2.2** which permit a change to be issued, and describing the data and documents which establish the necessity and amount and length of such proposed change.
- e. Certifications – Design-Builder shall provide a Claim certification in accordance with **Article 6.2.1** and, if applicable, Claim certifications from Subcontractors in accordance with **Article 4.2.10**.
- f. Other supporting documentation – Design-Builder shall provide such other supporting documentation as may be required by City and continue to comply with the requirements set forth in **Article 6.2.3** with respect to Claim records, updates, and supplemental information.

6.2.3. Continuing Contract Performance: Mandatory Records.

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in in the Contract Documents, Design-Builder shall proceed diligently with performance of the Contract and City shall continue to make payments in accordance with the Contract Documents.

Design-Builder shall keep daily records of all labor, material and equipment costs incurred in relation to the Claim. Design-Builder shall identify in such daily records each operation and specific location affected by the Claim. City may also keep records of all labor, material and equipment related to the Claim. Design-Builder shall provide to City a copy of Design-Builder's daily records on a weekly basis and shall be entitled to receive a copy of City's daily records, if any, upon written request. Copies of daily records to be provided hereunder shall be provided at no cost to the recipient.

6.2.4. Claims for Concealed or Unknown Conditions.

If conditions are encountered at the Site which either are subsurface or otherwise concealed physical conditions which were not known to Design-Builder and which differ materially from those indicated in the Contract Documents or the reports of investigations and tests of subsurface and latent physical conditions provided by City to Design-Builder, prior to the preparation by Design-Builder of its bid and referred to above, or are 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 Contract Documents in the general vicinity of the Project site, then Design-Builder promptly shall notify City of such conditions before conditions are disturbed and no more than five (5) work days after first observation of the conditions. Upon notification by Design-Builder, City promptly shall investigate such conditions. If City and Design-Builder cannot agree on an adjustment to the Contract Sum or Contract Time, the adjustment shall be subject to dispute resolution pursuant to **Article 6.2** herein.

6.2.5. Claims for Additional Cost.

If Design-Builder wishes to make a Claim for an increase in the Contract Sum, written notice as provided in this **Article 6.2.5** shall be given to City before proceeding to execute the Work, provided that prior notice is not required for Claims relating to an emergency endangering life or property. Design-Builder shall file a Claim in accordance with this **Article 6.2.5** if it believes additional cost is involved for reasons including, but not limited to:

- 6.2.5.1.** a written interpretation from City;
- 6.2.5.2.** an order by City to stop the Work where Design-Builder was not at fault;
- 6.2.5.3.** a written order for a minor change in the Work issued by City;
- 6.2.5.4.** failure of payment by City;
- 6.2.5.5.** termination of the Contract by City for convenience;
- 6.2.5.6.** suspension of the Contract by City;
- 6.2.5.7.** City's separate consultants or contractors;
- 6.2.5.8.** Act of God or other force majeure events exceeding an aggregate of 15 days;
- 6.2.5.9.** change in applicable law;
- 6.2.5.10.** concealed or differing conditions; or
- 6.2.5.11.** Unusually Severe Weather that meets the conditions to relief specified in **Article 6.2.6.7**, provided that Design-Builder shall not be entitled to any increase in the Cost of the Work and shall only be entitled to (i) an increase in General Conditions Cost proportionate to the delay to the critical path and (ii) direct site costs reasonably and necessarily incurred as a result of such Unusually Severe Weather, to the extent (i) and (ii) are not otherwise covered by builder's risk insurance;
- 6.2.5.12.** other reasonable grounds.

6.2.6. Claims for Additional Time.

- 6.2.6.1. Time Impact Analysis.** If Design-Builder wishes to make Claim for an increase in the Contract Time, Design-Builder shall provide written notice to Owner upon the occurrence of an impact that may justify an extension of contract time and/or adjustment of milestone dates. Except for impacts resulting from Unusually Severe Weather, said notice shall be made by Design-Builder in writing, no later than fourteen (14) calendar days after the commencement of the impact giving rise to delay. Failure to provide such written notice within fourteen (14) calendar days of the commencement of the impact shall waive Design-Builder's right to subsequently request a time extension, or to recover days or compensation for the delay. Time extensions will only be considered when the Float is absorbed and a Completion Deadline is delayed.
- 6.2.6.2.** Design-Builder shall submit to City a Time Impact Analysis in accordance with the timelines set forth in this **Article 6.2.6.2** as part of any Claim for additional time and as a condition to Design-Builder's entitlement to an extension of the Completion Deadlines. Design-Builder shall also submit a Time Impact Analysis within fourteen (14) days of receiving a request from City for evaluating the potential time impact of Change Orders under consideration, Submission of a TIA does not relieve Design-Builder of complying with all contractual requirements regarding notification and documentation of potential Claims and actual Change Orders.
- 6.2.6.3.** Each TIA shall consist of the following steps:
- Step 1: Establishing the status of the Project before the impact by using the latest Project Schedule Update with the closest data date prior to the impact, or as adjusted by mutual agreement to the date the impact began;
- Step 2: Estimating the duration of the impact, determining appropriate logic, and insertion of the impact activity or activities into the Project Schedule used in Step 1, and predicting the effect of the impact on the schedule;
- Step 3: Tracking the effects of the impact on the schedule during its occurrence. Identifying and measuring the effect of mitigation efforts taken by either Design-Builder or City; and
- Step 4: Design-Builder shall establish the status of the Project after the impact is complete and identify any ongoing mitigation efforts being taken.
- Steps 1 and 2 shall be submitted to City within fourteen (14) days after submission of the notice described in **Article 6.2.6**. Step 1, 3 and 4 must be complete before any consideration of contract time extension or adjustment of a milestone date will be considered.
- 6.2.6.4.** Within twenty-one (21) calendar days after the end of the impacting event, Design-Builder shall submit electronically, in conformance with the Owner's scheduling software, a Time Impact Analysis including Step 4 above. The end of

an impacting event shall be determined by the recommencing of Work on the particular portion of Work initially impacted, regardless of whether the cause of the event may result in subsequent additional impacts to other portions of the Work. Each separate impact on the Project Schedule that has definitive start date and a date that Work recommences shall be treated as a separate occurrence regardless of whether the underlying cause of the event may result in additional schedule impacts at a subsequent time. Failure to provide a Time Impact Analysis within twenty-one (21) calendar days after the end of the impacting event shall waive Design-Builder's right to subsequently request a time extension or to recover days or compensation for the delay.

6.2.6.5. A Time Impact Analysis shall consist of a report with accompanying schedules used in the analysis in Primavera .xer format. The report shall:

- a) Identify the scope and timeline for the impact(s) being analyzed;
- b) Identify the schedule approach to modeling the time impact including the addition of activities, relationships, modifications to calendars, or application of constraints, and include a plot of the portion of the schedule showing the model;
- c) Describe the impact or potential impact by comparing Step 1 to Step 2 above;
- d) Describe the results of mitigation efforts taken through Step 3 above;
- e) Describe any other potential mitigation efforts that may be taken to avoid impact;
- f) Describe the status of the Project after the impact is over; and
- g) Include schedule plots illustrating the analysis and documentation supporting dates, timelines, and entitlement. The schedule plots need to include the complete time impact analysis and a copy of the full project schedule incorporating the time impact analysis.

6.2.6.6. Approval or rejection of each Time Impact Analysis by Owner shall be made within twenty-one (21) calendar days after receipt of such Time Impact Analysis by Owner, unless subsequent meetings and negotiations are necessary.

6.2.6.7. Design-Builder assumes the risk of all typical inclement weather conditions and any delays to the Project associated with such conditions. In the event of Unusually Severe Weather, Design-Builder shall be entitled to an extension of completion deadlines if: (a) according to the most recent Project Schedule, Design-Builder planned to perform Work on the impacted day; (b) Unusually Severe Weather prevented or hindered Design-Builder from performing at least 50% of the Work scheduled on the impacted day; and (c) the non-performance of such Work caused a delay to the critical path shown in the most recent Project

Schedule. Unless otherwise required by City, in its sole discretion, Design-Builder is not required to submit a Time Impact Analysis as evidence of a delay caused by Unusually Severe Weather. It shall be Design-Builder's burden to prove that weather conditions constituted Unusually Severe Weather and otherwise met the conditions for relief above. Design-Builder must provide appropriate documentation from the National Oceanic and Atmospheric Administration (NOAA) or other authoritative sources to establish weather conditions. Design-Builder shall provide all such information regarding Unusually Severe Weather for a given month via a report that Design-Builder must submit by no later than seven (7) days after the close of the month or waive its rights to relief. City will review the submittal and provide Design-Builder with its written determination whether Design-Builder meets the conditions for relief above. The Parties will incorporate any approved weather extensions into the Contract via Change Order no less frequently than on a quarterly basis.

Any time extension granted to Design-Builder under this Section 6.2.6.7 shall be non-compensatory except as provided in **Article 6.2.5**.

6.2.6. Injury or Damage to Person or Property.

If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party or an act or omission of others for whose acts such party legally is responsible (including, with respect to City, the acts or omissions of City's separate consultants and contractors), written notice of such injury or damage, whether or not insured, shall be given to the other Party within a reasonable time not exceeding three (3) calendar days after the discovery of the injury or damage. The written notice shall provide sufficient detail to enable the other Party to investigate the injury or damage.

6.2.7. Change in Unit Prices.

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

6.2.8. Claims for Damages.

In calculating the amount of any Claim or any measure of damages for breach of contract (such provision to survive any termination following such breach), the following standards will apply to claims by Design-Builder:

- 6.2.9.1.** No recovery shall be based on a comparison of planned expenditures to total actual expenditures, on estimated losses of labor efficiency, on a comparison of planned procurement of appropriate personnel to actual procurement of

appropriate personnel or on any other similar analysis that is used to show total cost or other damages.

- 6.2.9.2.** The maximum amount of any recovery for delay, to the extent damages for delay are not otherwise disallowed by the terms of the Contract Documents, shall be as is provided in **Article 6.2.6** herein unless otherwise provided in the Contract Documents.
- 6.2.9.3.** No damages will be allowed for home office overhead or other home office charges or any Eichleay formula calculation, except or unless as expressly authorized by the Contract Documents.
- 6.2.9.4.** No profit will be allowed on any damage claim, except for profit on actual Work performed in accordance with the terms and conditions of the Contract not previously paid for by City or unless as expressly authorized by the Contract Documents.

6.2.10. Subcontractor Pass-Through Claims.

In the event any Sub-consultant or Subcontractor of Design-Builder asserts a claim to Design-Builder that Design-Builder seeks to pass through to City under the Contract Documents, any entitlement to submit and assert the claim as to City shall be subject to the requirements of **Article 6.2** herein of these General Conditions; and the following additional four (4) requirements listed below, all four of said additional requirements shall be conditions precedent to the entitlement of Design-Builder to seek and assert such claim against City.

- 6.2.10.1.** Design-Builder shall have direct legal liability as a matter of contract, common law, or statutory law to the subcontractor for the claim that the subcontractor is asserting.
- 6.2.10.2.** Design-Builder shall have entered into a written agreement with the sub-consultant or subcontractor, prior to submission of the Claim, under which Design-Builder has agreed to be legally responsible to the sub-consultant or subcontractor for pursuing the assertion of such claim against City under said Contract and for paying to the sub-consultant or subcontractor any amount that may be recovered, less Design-Builder's included markup (subject to the limits in the Contract Documents for any markup). The liability or responsibilities shall be identified in writing by Design-Builder to City at the time such claim is submitted to City and a copy of any liquidating agreement shall be included by Design-Builder in the claim submittal materials.
- 6.2.10.3.** Design-Builder shall have reviewed the claim of the sub-consultant or subcontractor prior to its submittal to City and shall independently have evaluated such claim in good faith to determine the extent to which the claim is believed in good faith to be valid. Design-Builder shall inform City that Design-Builder has made a review, evaluation and determination that the Claim is made in good faith and is believed to be valid.

- 6.2.10.4.** Sub-consultant or Subcontractor making the Claim to Design-Builder shall certify to both Design-Builder and City that it has compiled, reviewed and evaluated the merits of such claim and that the claim is believed in good faith by the subcontractor to be valid. A copy of the certification by the subcontractor shall be included by Design-Builder in the claim submittal materials.
- 6.2.10.5.** Any failure of Design-Builder to comply with any of the foregoing requirements and conditions precedent with regard to any such Claim shall constitute a waiver of any entitlement to submit or pursue such Claim.
- 6.2.10.6.** Receipt and review of a Claim by City under this **Article 6.2** shall not be construed as a waiver of any defenses to the claim available to City under the Contract Documents or at law.
- 6.2.11. City's Right to Order Acceleration and to Deny Claimed and Appropriate Time Extensions, in whole or in Part.**

Design-Builder acknowledges and agrees that meeting Substantial Completion of the Work by or before the scheduled completion date are of substantial importance to City. If Design-Builder falls behind the approved construction schedule and Design-Builder is not entitled to relief under the Contract Documents for such delay, City shall have the right to require acceleration of the Work at Design-Builder's sole cost and expense in accordance with **Article 5.18**. The following provisions, therefore, shall apply in the event Design-Builder falls behind the approved construction schedule due to an event for which Design-Builder is entitled to an extension of the Contract Time:

- 6.2.11.1.** If Design-Builder falls behind the approved construction schedule and is entitled to an extension of the Contract Time, City shall have the right, in City's sole discretion, to order Design-Builder to develop a Recovery Plan. In such event, any possible right, if any, of Design-Builder to additional compensation for any acceleration shall be subject to the terms of this **Article 6.2.11**.
- 6.2.11.2.** In the event City agrees Design-Builder is entitled to an extension of Contract Time under the terms of the Contract Documents and Design-Builder has properly initiated a Claim for a time extension, City shall have the right, in its sole discretion, to grant the extension of Contract Time and concurrently order Design-Builder to exercise its commercially reasonable efforts to implement a Recovery Plan that is subject to approval by City, at City's cost as provided below in **Article 6.2.11.3**. The Recovery Plan shall include a revised Project Schedule with revised Completion Deadlines as needed. City shall provide written notice to Design-Builder of its election within fifteen (15) calendar days after receipt of Design-Builder's Claim. Design-Builder shall proceed to prosecute the Work in accordance with the approved Recovery Plan.
- 6.2.11.3.** If City orders Design-Builder to accelerate the Work, pursuant to **Article 6.2.11.2**, Design-Builder may initiate a Claim for acceleration costs. Any

resulting Claim for these costs properly initiated by Design-Builder shall be paid through an executed Change Order and shall be limited to those reasonable and documented direct costs of labor, materials, equipment~~and~~, supervision, bonds, and insurance solely and directly attributable to the actual recovery or acceleration activity undertaken in accordance with the approved Recovery Plan, including the revised Project Schedule. Direct costs of Design-Builder include, but are not limited to; the premium portion of overtime pay for additional crew, shift, or equipment costs, if requested in advance by Design-Builder and approved in writing by City. Design-Builder shall be allowed actual incremental increased costs for premiums on the existing performance and payment bonds and required insurance, for the Work resulting from the approved Recovery Plan without markup. Markups for profit and field overhead on other claimed direct costs shall be allowed to the extent they do not exceed the markups permitted by this Contract. **NO OTHER MARKUP FOR PROFIT, OVERHEAD (INCLUDING, BUT NOT LIMITED TO, HOME OFFICE OVERHEAD) OR ANY OTHER COSTS SHALL BE ALLOWED ON ANY ACCELERATION CLAIM.** City shall not be liable for any costs related to an acceleration claim other than those described in this **Article 6.2.11.**

6.2.12. No Waiver of Governmental Immunity.

Nothing in this contract shall be construed to waive City's Governmental Immunity from a lawsuit, which Immunity is expressly retained to the extent it is not clearly and unambiguously waived by State law.

6.2.13. City Review of Claims.

- 6.2.13.1.** City will have thirty (30) calendar days to review and respond to Design-Builder upon receipt of a complete claims package from Design-Builder. City's response may request additional supporting data related to the claim or may include City's decision on the claim.
- 6.2.13.2.** City's issuance of a decision on claims submitted by Design-Builder and the Parties' participation in the negotiation process set forth in **Article 16.2.14** are conditions precedent to mediation and any subsequent litigation of any claims arising prior to the date final payment is due.
- 6.2.13.3.** Following Design-Builder's receipt of City's decision on a claim, Design-Builder has seven (7) calendar days to provide notice that it disagrees with one or more aspects of City's decision and has decided to further pursue the claim. Design-Builder's failure to provide notice within this period shall signify Design-Builder's decision to waive any rights to further pursue this issue. However, if Design-Builder provides notice within this period, City and Design-Builder to participate in the claims negotiation process set forth in **Article 16.2.14.**

6.2.14. Claims Negotiations Process.

- 6.2.14.1.** Within sixty (60) days of Notice to Proceed under the Contract, the Parties shall each designate three tiers of representatives who are authorized to represent their Party in negotiation sessions related to unresolved claims. The representative for each tier must have increasing responsibility and authority within its respective organization, with the final tier consisting of senior management representatives who have overall managerial responsibility for the Project.
- 6.2.14.2.** After City's initial decision on a claim, if either Party submits the notice described in **Article 6.2.13.3** within the prescribed deadline, and as a condition to either Party invoking mediation, the Parties agree that they shall first try to resolve the unresolved claim through the direct negotiation process described in this **Article 16.2.14**.
- 6.2.14.3.** Within twenty (20) calendar days of receipt of the **Article 16.2.13** notice, the lowest tier of negotiation representatives shall meet to discuss the unresolved claim. If the Parties do not agree on a resolution of the claim within this period, the Parties shall proceed to the next tier of negotiation representatives, who will meet within twenty (20) days to discuss the claim. If the Parties still do not agree on a resolution at the end of this period, the Parties shall proceed to the highest tier of negotiation representatives, who will meet within twenty (20) days to discuss the claim. Unless otherwise agreed by the Parties, the three tiers of negotiations shall not take more than sixty (60) calendar days. If the Parties' representatives cannot resolve the dispute pursuant to this process, then Design-Builder may deliver a written notice of its intention to pursue mediation within fourteen (14) days of the close of the negotiation period. Design-Builder's failure to provide notice within this period shall signify Design-Builder's decision to waive any rights to further pursue this issue. However, if Design-Builder provides notice within this period, then the Parties shall proceed with mediation pursuant to **Article 16.2.15**.
- 6.2.14.4.** The Parties shall bear their own costs associated with the negotiation process set forth in this **Article 16.2.14**. All negotiations pursuant to this Article 16 are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

6.2.15. Mediation.

In the event that Design-Builder provides written notice of its request for mediation of a claim pursuant to the procedures and within the time period set forth in **Article 6.2.14.3**, the Parties shall pursue mediation pursuant to this **Article 16.2.15**. Participation in the mediation process is as a condition precedent to filing a lawsuit. The following procedures shall apply to mediation:

- (a) The Parties shall jointly select a mediator(s) for each claim taken to mediation.
- (b) Unless otherwise agreed by the Parties, mediation shall commence not less than thirty (30) or more than ninety (90) calendar days following the date Design-Builder submits its request for mediation.

(c) In the event City and Design-Builder are unable to agree to a date for mediation to commence or to the identity of the mediator(s) within thirty (30) calendar days following the date of the request for mediation, all conditions precedent in this Article 6 shall be deemed to have occurred and the Parties shall have no further obligation to seek mediation of that particular claim.

(d) The Parties shall share the mediator's fee and any mediation filing fees equally. Venue for any mediation or lawsuit arising under this Contract shall be in Bexar County, Texas. Any agreement reached in mediation shall be enforceable as a settlement agreement in any court having jurisdiction thereof. No provision of this Contract shall waive any immunity or defense. No provision of this Contract is consent to a suit.

6.2.16. Waiver of Lien.

It is understood that, by virtue of this Contract, no mechanic, contractor, material man, artisan or laborer, whether skilled or unskilled, ever shall, in any manner, have a claim or acquire any lien upon the building or any of the improvements of whatever nature or kind so erected or to be erected by virtue of this Contract, nor upon any of the land upon which said building or any of the improvements are so erected, built or situated.

6.2.17. Continuation of Work Pending Dispute Resolution.

Each Party is required to continue to perform its obligations under this Contract pending the final resolution of any dispute arising out of or relating to this Contract, unless it would be impossible or impracticable under the circumstances then present.

END OF ARTICLE 6

ARTICLE 7 SUBCONTRACTORS

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

- 7.1.1.** Design-Builder shall, prior to entering into an agreement with a sub-consultant or Subcontractor, notify City in writing of the names of all proposed sub-consultant and first-tier Subcontractors for the Work.
- 7.1.2.** Design-Builder shall not employ any sub-consultant, Subcontractor or other person or organization (including those who are to furnish the principal items of materials or equipment), whether initially or as a substitute, against whom City may have reasonable objection. A sub-consultant, Subcontractor or other person or organization identified in writing to City, prior to the Notice of Award and not objected to in writing by City prior to the Notice of Award, will be deemed acceptable to City. Acceptance of any sub-consultant or Subcontractor, other person or organization by City shall not constitute a waiver of any right of City to reject defective Work. If City, after due investigation, has reasonable objection to any sub-consultant, Subcontractor, other person or organization proposed by Design-Builder after the Notice of Award, Design-Builder will be required to submit an acceptable substitute. Design-Builder shall not be required to employ any Sub-consultant, Subcontractor, other person or organization against whom Design-Builder has reasonable objection.
- 7.1.3.** Design-Builder fully shall be responsible to City for all acts and omissions of its sub-consultants, Subcontractors, persons and organizations directly or indirectly employed by them and persons and organizations whose acts any of them may be liable to the same extent that Design-Builder is responsible for the acts and omissions of persons directly employed by Design-Builder. Nothing in the Contract Documents shall create any contractual relationship between City and any sub-consultant, Subcontractor or other persons or organizations having a direct contract with Design-Builder, nor shall it create any obligation on the part of City to pay or to see to the payment of any moneys due any sub-consultant, Subcontractor or other person or organization, except as may otherwise be required by law. City may furnish to any sub-consultant, Subcontractor or other person or organization, to the extent practicable, evidence of amounts paid to Design-Builder on account of specific Work done.
- 7.1.4.** The divisions and sections of the Specifications and the identifications of any Drawings shall not control Design-Builder in dividing the Work among sub-consultants and/or Subcontractors or delineating the Work to be performed by any specific trade.
- 7.1.5.** All Work performed for Design-Builder by a sub-consultant or Subcontractor will be pursuant to an appropriate agreement between Design-Builder and sub-consultant or Subcontractor and which specifically binds sub-consultant and/or Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of City.

7.2. Sub-Consultant/Sub-Contractual Relations.

By appropriate agreement, written where legally required for validity, Design-Builder shall require each sub-consultant and Subcontractor, to the extent of the Work to be performed by each, to be bound to the Design-Builder by terms of the Contract Documents and to assume toward Design-Builder all the obligations and responsibilities, including the responsibility for safety of sub-consultant and Subcontractor's Work, which Design-Builder, by these Documents, assumes toward City. Each sub-consultant and Subcontractor agreement shall preserve and protect the rights of City under the Contract Documents, with respect to the Work to be performed by Subcontractor, so that sub-consulting and/or subcontracting thereof will not prejudice such rights. Where appropriate, Design-Builder shall require each sub-consultant and Subcontractor to enter into similar agreements with Sub-sub-consultants and Sub-Subcontractors. Design-Builder shall make available to each proposed sub-consultant and Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which sub-consultants and Subcontractor will be bound. sub-consultants and Subcontractors similarly will make copies of applicable portions of such documents available to their respective proposed Sub-sub-consultants Sub-Subcontractors.

7.3. Contingent Assignment of Subcontracts.

Each Subcontractor agreement for a portion of the Work that is assigned by Design-Builder to City shall provide:

- 7.3.1.** An assignment is effective only after termination of the Contract by City and only for those subcontract agreements which City accepts by notifying sub-consultant, Subcontractor and Design-Builder in writing; and
- 7.3.2.** An assignment is subject to the prior rights of the Surety, if any, obligated under bond relating to the Contract.
- 7.3.3.** Upon such assignment, if the Work has been suspended for more than thirty (30) calendar days, sub-consultant's and Subcontractor's compensation equally shall be adjusted for increase in cost resulting from the suspension.

END OF ARTICLE 7

ARTICLE 8 CONSTRUCTION BY CITY OR BY SEPARATE CONTRACTS

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

- 8.1.1.** City reserves the right to perform construction or operations related to the Project with City's own forces and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under conditions of the Contract identical or substantially similar to these conditions. If Design-Builder claims a delay or additional cost because of such action by City, Design-Builder shall make such Claim as provided in **Article 6.2** herein.
- 8.1.2.** When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Design-Builder" in the Contract Documents in each case shall mean the Design-Builder which executes each separate City/Design-Builder Agreement.
- 8.1.3.** City shall provide for coordination of the activities of City's own forces and of each separate contractor with the Work of Design-Builder and Design-Builder shall cooperate with said forces. Design-Builder shall participate with City's separate contractors and City in reviewing construction schedules when directed by City to do so. Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement with all parties. The construction schedules then shall constitute the schedules to be used by Design-Builder, separate City contractors and City until subsequently revised.
- 8.1.4.** Unless otherwise provided in the Contract Documents, when City performs construction or operations related to the Project with City's own forces, City shall be subject to the same obligations and have the same rights that apply to Design-Builder under these General Conditions and the Contract Documents.

8.2. Mutual Responsibility.

- 8.2.1.** Design-Builder shall afford City and City's contractors reasonable opportunity for the introduction and storage of their materials and equipment and performance of their activities and shall coordinate the Design-Builder's construction and operations with theirs as required by the Contract Documents.
- 8.2.2.** If part of Design-Builder's Work depends, for proper execution or results, upon the construction or operations by City or City's contractors, Design-Builder shall, prior to proceeding with that portion of the Work, promptly report to City apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of Design-Builder so to report shall constitute an acknowledgment that City's or City's contractors completed or partially completed construction is fit and proper to receive Design-Builder's Work, except as to defects not then reasonably discoverable.
- 8.2.3.** Design-Builder shall reimburse City for actual costs incurred by City and which are payable to City's contractors because of delays, improperly timed activities or

defective construction of Design-Builder. These costs shall be considered foreseeable direct damages and are not be considered to be consequential damages. Consequential damages incurred by City's contractor impacted as a result of delay, improperly timed activities or defective construction of Design-Builder shall not be the responsibility of Design-Builder. City shall be responsible to Design-Builder for costs incurred by Design-Builder because of delays, improperly timed activities and damage to the Work or defective construction of City's contractors, and, if eligible pursuant to the term of the Contract, an extension of Contract Time.

- 8.2.4.** Design-Builder promptly shall remedy any damage wrongfully caused by Design-Builder, its sub-consultants or its Subcontractors to any completed or partially completed construction or to property of City or City's contractors.

8.3. City's Right to Clean Up.

If a dispute arises among or between City, Design-Builder or City's contractors, as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, City may clean up the area(s) and those clean-up costs will be allocated by City amongst those responsible.

END OF ARTICLE 8

ARTICLE 9 CHANGES IN THE WORK

9.1. General.

- 9.1.1.** Changes in the Work may be accomplished, after the execution of the Contract and without invalidating the Contract, by Change Order, Field Work Directive/Force Account or order for a minor change in the Work that does not affect the Contract Time or the Contract Sum, subject to the limitations stated in this **Article 9** and elsewhere in the Contract Documents.
- 9.1.2.** A Change Order shall be based upon agreement between City and Design-Builder; a Field Work Directive requires a directive by City and may or may not be agreed to by Design-Builder; and an order for a minor change in the Work that does not affect the Contract Time or the Contract Sum may be issued by City.
- 9.1.3.** Changes in the Work shall be performed under applicable provisions of the Contract Documents, and Design-Builder promptly shall proceed with the changed Work, unless otherwise provided in a Change Order, Field Work Directive or order for a minor change in the Work or in this **Article 9**.
- 9.1.4.** Changes resulting from Change Orders, Field Work Directives or orders for minor changes shall be recorded by Design-Builder on the As-Built record documents.

9.2. Change Orders.

- 9.2.1.** Methods used in determining adjustments to the Contract Sum may include those listed in **Article 9.3** herein.
- 9.2.2.** Acceptance of a Change Order by Design-Builder shall constitute a full accord and satisfaction for any and all claims and costs of any kind, whether direct or indirect, including but not limited to impact, delay or acceleration damages arising from the subject matter of that Change Order, except as otherwise agreed to by the parties in a Change Order. Each Change Order shall be specific and final as to prices and extensions of time, with no reservations or other provisions allowing for future additional money or time as a result of the particular changes identified and fully compensated in that Change Order, except as otherwise agreed to by the parties in a Change Order. If a Change Order impacts the contract time and/or adjustment of milestone dates, Design-Builder must submit a Time Impact Analysis with the Change Order evidencing such impact. The execution of a Change Order by Design-Builder shall constitute conclusive evidence of Design-Builder's agreement to the ordered changes in the Work. This Contract, as amended, forever releases any claim against City for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order. This release of any claim applies to claims related to the cumulative impact of all change orders and to any claim related to the effect of a change on unchanged work.

- 9.2.3.** City shall prepare Change Orders and Field Work Directives and shall have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time. Such changes shall be effected by written order, which Design-Builder promptly shall carry out and record on the As-Built record documents.
- 9.2.4.** Design-Builder, when self-performing the work, shall be entitled to include the Management Fee as established by the Contract in any Change Order. Self-performed work must be performed using Design-Builder's own forces and resources as evidenced by monthly payrolls. Design-Builder must provide backup to evidence that self-performing Work, rather than subcontracting such Work, provides the best value to City.
- 9.2.5.** The maximum markup paid to Design-Builder on sub-consultant/Subcontractor work self-performed on the Project shall be established in accordance with **Article 8.15.6** of the Contract.

9.3. Field Work Directives.

- 9.3.1.** City may, at any time, in its sole discretion, issue a Field Work Directive to Design-Builder regarding any matter for which a Change Order can be issued, including additions, deletions or other revisions to the Work or regarding Work already required by the Contract Documents in the event of a dispute between the Parties regarding the scope of the Work or whether Design-Builder has performed the Work in accordance with the requirements of the Contract Documents. A Field Work Directive shall be written and signed by City and state that it is being issued pursuant to this Article 9.3. The Field Work Directive will describe the Work to be performed. The Field Work Directive will also state either: (a) that it is directing Design-Builder to implement a change to the Work for which Design-Builder may be entitled to relief under the Contract; or (b) that the subject Work is within Design-Builder's original scope of Work or is necessary to comply with the requirements of the Contract Documents.
- 9.3.2.** Upon receipt of a Field Work Directive, if Design-Builder believes the Field Work Directive constitutes a change to the Work, Design-Builder may assert a Claim under the procedures in **Article 6.2**, including compliance with the notice and submittal deadlines and other requirements in **Article 6.2.2**.
- 9.3.3.** If the Field Work Directive states that it constitutes a change to the Work or Design-Builder intends to assert a Claim pursuant to **Article 6.2**, Design-Builder shall maintain daily records for such Work in accordance with **Article 6.2.3**, pending resolution of the dispute or execution of a Change Order.
- 9.3.4.** If the Field Work Directive provides for the implementation of a change to the Work, any changes to the Contract Sum and/or the Contract Time will be adjusted according to the terms of this **Article 9.3**.

- 9.3.5.** City may use a Field Work Directive in the absence of total agreement on the terms of a Change Order, in which case City may issue a Field Work Directive to Design-Builder with a defined not-to-exceed dollar amount for the scope of Work defined.
- 9.3.6.** Whether or not a Field Work Directive states that the Work constitutes a change to the Work, upon receipt of a Field Work Directive, Design-Builder shall promptly proceed as directed in the Field Work Directive, which may include City's direction for Design-Builder to proceed with performance of the subject Work ahead of resolution of any Claim that Design-Builder may submit in relation to the Field Work Directive.
- 9.3.7.** If the Field Work Directive includes the method for determining, or amount of, an adjustment in the Contract Sum or Contract Time, Design-Builder shall promptly advise City of Design-Builder's agreement or disagreement with the proposed method or amount.
- 9.3.8.** Design-Builder shall promptly proceed with the Work as directed in the Field Work Directive, which may include City's direction for Design-Builder to proceed with performance of the subject Work ahead of resolution of any Claim that Design-Builder may submit in relation to the Field Work Directive.
- 9.3.9.** If the Field Work Directive states that it constitutes a change to the Work and provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods, as applicable:
- a. Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
 - b. Prices, including unit prices, stated in the Contract Documents or subsequently agreed upon;
 - c. Cost to be determined in a manner agreed upon by City and Design-Builder and a mutually acceptable fixed or percentage fee; or
- 9.3.10.** Under the circumstances set forth in **Article 9.3.9**, if Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall initially be determined by City on the basis of reasonable costs and savings attributable to the change including a reasonable adjustment for overhead and profit. Unless otherwise provided in the Contract Documents, costs for the purposes of this **Article 9.3.10** shall be limited to the following:
- a. Costs of all labor, including social security, old age and unemployment insurance, fringe benefits required by Law, agreement or custom, and workers' compensation insurance;

- b. Costs of all materials, supplies and equipment, including cost of transportation, storage installation, maintenance, dismantling and removal, whether incorporated or consumed;
- c. Rental costs of all machinery and equipment, exclusive of hand tools, whether rented from Design-Builder or others, including costs of transportation, installation, minor repairs and replacements, dismantling and removal;
- d. Expenses incurred in accordance with Design-Builder's standard personnel policy for travel approved in writing by City in advance;
- e. Costs of premiums for all bonds and insurance, permit fees and allowable sales, use or similar taxes related to the Work;
- f. All additional costs of supervision and field office personnel directly attributable to the change; and
- g. All payments made by the Design-Builder to Subcontractors.
- h. The amount of credit to be allowed by Design-Builder to City for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost of the deleted or change Work, plus Design-Builder's allocated percent for profit and overhead, subject to any equitable adjustment approved by City. 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 or decrease, if any, with respect to that change.
- i. If City and Design-Builder agree on the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.
- j. If the Field Work Directive states that the directive constitutes a change to the Work for which Design-Builder is entitled to relief and City and Design-Builder cannot reach an agreement on either an adjustment on the Contract Sum and Contract Time, City and Design-Builder shall execute a Change Order for the adjustment on the Contract Sum or Contract Time, if any, the Parties do agree upon for the Work performed and Design-Builder reserves the right to file a Claim for any disagreements in Contract Sum or Contract Time not addressed in the Change Order, pursuant to **Article 6.2**. If City and Design-Builder cannot agree on both the adjustment in the Contract Sum and the Contract Time associated with an issued Field Work Directive, City may unilaterally file a Change Order listing City's adjustments in the Contract Sum and/or Contract Time and Design-Builder reserves the right to file a Claim for payment and/or time, pursuant to **Article 6.2**.
- k. Maximum allowable markups for Field Work Directives shall follow the allowable markups established in **Article 8.15.6**.

- 9.3.11.** The fact that City issued a Field Work Directive shall not be considered evidence that there has been a change to the Work. The determination whether there has been a change to the Work shall be based on an analysis of the original requirements of the Contract Documents and a determination as to whether the Field Work Directive in fact constituted a change in those requirements.
- 9.3.12.** Design-Builder's failure to promptly comply with City's direction under a Field Work Directive shall be considered an event of default as described in **Article 15.3**.
- 9.3.13.** City shall be entitled to withdraw a Field Work Directive at any time, provided that such withdrawal shall not be effective as to Work Design-Builder completed under a Field Work Directive prior to the withdrawal.

9.4. Minor Changes to the Work.

City shall have authority to order, and Design-Builder shall comply with, minor changes in the Work not involving an adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on City and Design-Builder. Design-Builder promptly shall carry out such written orders and record such changes in the As-Built record documents.

9.5. Time Required to Process Change Orders.

- 9.5.1.** All responses by Design-Builder to proposal requests from City shall be accompanied by a complete itemized breakdown of costs and additional time. If Design-Builder seeks additional time, the response to the proposal request shall include a Time Impact Analysis. Responses to proposal requests shall be submitted sufficiently in advance of the required work to allow City a minimum of thirty (30) calendar days after receipt by City to review the itemized breakdown and to prepare or distribute additional documents as may be necessary. Each of Design-Builder's responses to proposal requests shall include a statement that the cost and additional time described and requested in Design-Builder's response represents the complete, total and final cost and additional Contract Time associated with the extra work, change, addition to, omission, deviation, substitution or other grounds for seeking extra compensation or additional time under the Contract Documents for the Work under the proposal request, without reservation or further recourse.
- 9.5.2.** All Change Orders require written approval by either City or City Council or, where authorized by the state law and City ordinance, by City's City Manager or designee, pursuant to administrative action. The City Council approval process requires a minimum of forty-five (45) calendar days after submission to City in final negotiated form with all supporting data. Receipt of a submission by City does not constitute acceptance or approval of a proposed change order, nor does it constitute a warranty that the proposed change order will be authorized by City or City Council Resolution. The time required for the approval process shall not be considered a delay and no extensions to the contract time or increase in the contract sum will be considered or granted as a result of this process. Notwithstanding the foregoing, in the event a Time

Impact Analysis justifies an increase in contract time or amount such change shall be approved in accordance with **Article 6.2**. Pending the approval of a Change Order as described above, Design-Builder will proceed with the work under a pending Change Order only if directed in writing to do so by City.

END OF ARTICLE 9

ARTICLE 10 TIME

10.1. Progress and Completion.

- 10.1.1. Time limits stated in the Contract Documents for Substantial Completion and Final Completion and the submission of Time Impact Analyses and Claims, as such dates may be adjusted in accordance with the terms of the Contract Documents, are of the essence.
- 10.1.2. By executing the Contract, Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.
- 10.1.3. Design-Builder shall proceed with the Work expeditiously using adequate forces and shall achieve Substantial Completion within the Contract Time.

10.2. Delays and Extensions of Time.

- 10.2.1. Neither City nor Design-Builder, except as provided for in this **Article 10.2**, shall be liable to the other for any delay to the Design-Builder's Work by reason of fire, act of God, riot, strike, official emergency declarations or orders from a governmental official specifically directed at coping with an epidemic or pandemic's threat to health and safety, or any other cause beyond the impacted party's control. Should any of these listed factors delay the Work's critical path, as evidenced by a Time Impact Analysis developed by Design-Builder and verified by City, Design-Builder shall receive an extension of the Contract Times equal to the impact on the critical path if a written claim is made in accordance to **Article 6.2.6**. Under no circumstances shall City be liable to pay Design-Builder any compensation for such delays. Lasting fewer than 15 aggregate calendar days. For delays resulting from fire, act of God, a riot, strike, official emergency declarations or orders from a governmental official specifically directed at coping with an epidemic or pandemic's threat to health and safety, or any other cause beyond City's control impacting the Design-Builder's critical path in excess of 15 aggregate calendar days. Design-Builder may submit a claim only for (1) extended General Condition costs in accordance with **Article 6.2** to the extent that such costs are not paid by the proceeds of Builder's Risk Insurance, excepting the cost of any deductibles, and for direct site costs reasonably and necessarily incurred as a result of the event causing such delay. Provided however, if Design-Builder fails to maintain Builder's Risk Insurance in at least the amounts required by this Contract, City shall not be liable to pay Design-Builder any compensation, direct site costs or any other costs resulting from delays by reason of fire, act of God, riot, strike or any other cause beyond City's or Design-Builder's control. Regardless of the duration of the delay. No other costs shall be recoverable for delay due to the aforementioned factors. Note that any request for an extension of time due to delays or disruption caused by Unusually Severe Weather are described in **Article 6.2**.
- 10.2.2. Should Design-Builder be delayed solely by the act, negligence or default of City or the City's separate consultants or contractors and should any of these factors delay the Project's critical path, as evidenced by a Time Impact Analysis developed by

Design-Builder and verified by City, Design-Builder shall receive an extension of the Contract Time equal to the impact on the critical path if a written claim is made in accordance to **Article 6.2.6**. In addition, Design-Builder, upon timely notice, substantiation and approval of City, shall be compensated for its Project facilities and field management expenses on a per diem basis (said per diem includes the costs incurred by Design-Builder to administer its Work and does not include costs associated for any tier of sub-consultant, Subcontractor or supplier to administer their Work. Compensation for sub-consultant's, Subcontractor's and supplier's compensable delay affecting the Project's critical path shall be separate and apart from the per diem cost due and payable to the Design-Builder) for the period of the critical path delay attributable to the City-caused event. In no event will Design-Builder be entitled to home office expenses or damages.

- a. Contractor shall be entitled to Design-Builder costs only when directed to Design-Builder in writing by City. Standby costs may include actual documented Project overhead costs of Contractor, consisting of administrative and supervisory expenses incurred at the Site. Standby equipment costs shall not be allowed during periods when the equipment would otherwise have been idle.
- b. No more than eight (8) hours of Design-Builder time shall be paid during a 24-hour day, no more than forty-eight (48) hours shall be paid per week for Design-Builder time and no more than two hundred and eight (208) hours per month shall be paid of Design-Builder time. Standby equipment time shall be computed at fifty percent (50%) of the rates found in the Rental Rate Blue Book for Construction Equipment and shall be calculated by dividing the monthly rate found in the Blue Book by 208, then multiplying that total by the regional adjustment factor and the rate adjustment factor. Operating costs shall not be charged by Contractor.

10.2.3. Claims relating to time shall be made in accordance with applicable provisions of **Article 6.2** herein.

10.2.4. This Contract does not permit the recovery of damages by Design-Builder for delay, disruption or acceleration, other than recovery specifically permitted under the terms and conditions described in this **Articles 10.2** and **Article 6.2**. Design-Builder agrees that it shall be fully compensated for all other delays solely by an extension of non-compensatory time or as contemplated in this **Articles 10.2**.

END OF ARTICLE 10

ARTICLE 11 PAYMENTS AND COMPLETION

11.1. Contract Sum.

Stated in the Design-Build Contract and, including authorized adjustments, is the total maximum not-to-exceed amount payable by City to Design-Builder for performance of the Work under the Contract Documents. Design-Builder accepts and agrees that all payments pursuant to this contract are subject to the availability and appropriation of funds by the San Antonio City Council. If funds are not available and/or appropriated, this Contract shall immediately be terminated with no liability to any Party to this Contract. Design-Builder shall invoice and receive fair and reasonable compensation for Design-Build services provided after contract execution and notice to proceed, up to the date of Contract Termination.

11.2. Schedule of Values.

- 11.2.1.** A Schedule of Values for all of the Work shall be submitted and shall include quantities and prices of items which, when added together, equal the not-to-exceed contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Where applicable and allowable, overhead and profit shall be included as a separate line item.
- 11.2.2.** Before the first Application for Payment, Design-Builder shall submit to City a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as City may require. This schedule, unless objected to by City, shall be used as a basis for reviewing Design-Builder's Applications for Payment.

11.3. Applications for Payment.

- 11.3.1.** Design-Builder shall submit Applications for Payment to City electronically, at minimum, every thirty (30) days throughout the duration of the project. To ensure prompt payment throughout the City's electronic system Design-Builder will provide 3 hard copies of their pay application and work progress schedule to the City Project team no later than seven (7) business days prior to Design-Builders planned electronic submittal. The city will review and schedule a meeting with the Design-Builder prior to the planned electronic submittal date to resolve any comments. Design-Builder electronically shall attach to its Application for Payment all data substantiating Design-Builder's right to payment as City may require, such as copies of requisitions from sub-consultants, Subcontractors and material suppliers reflecting retainage, if provided for in the Contract Documents, and reflecting a deduction for Liquidated Damages, if applicable. Applications for Payment shall not include requests for payment for portions of the Work which Design-Builder does not intend to pay to a sub-consultant, Subcontractor or material supplier, unless such Work has been performed by others whom Design-Builder intends to pay.

- 11.3.2.** Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work and verified by City. If approved in advance in writing by City, payment similarly may be made for materials and equipment suitably stored off the Site at a location agreed upon in writing and verified by City. Payment for materials and equipment stored on or off the Site shall be conditioned upon compliance by Design-Builder with procedures reasonably satisfactory to City to establish City's title to such materials and equipment or otherwise protect City's interest. Design-Builder solely shall be responsible for payment of all costs of applicable insurance, storage and transportation to the site for materials and equipment stored off the site.
- 11.3.3.** Design-Builder warrants that, upon submittal of an Application for Payment, all Work for which payment previously has been received from City shall, to the best of Design-Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of Design-Builder, sub-consultants, Subcontractors, material suppliers or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. Design-Builder shall indemnify and hold City harmless from any liens, claims security interest or encumbrances filed by Design-Builder, Subcontractors or anyone claiming by through or under Design-Builder, Sub-Consultant(s) or Subcontractors(s) for items covered by payments made by City to Design-Builder.
- 11.3.4.** By submission of an Application for Payment, Design-Builder certifies that there are no known liens or bond claims outstanding as of the date of said Application for Payment, that all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current application and, except for such bills not paid but so included, there is no known basis for the filing of any liens or bond claims relating to the Work and that releases from all sub-consultants, Subcontractors and Design-Builder's material men have been obtained in such form as to constitute an effective release of lien or claim under the laws of the State of Texas covering all Work theretofore performed and for which payment has been made by City to Design-Builder; provided if any of the foregoing is not true and cannot be certified, Design-Builder will revise the certificate as appropriate and identify all exceptions to the requested certifications.

11.4. Pay Application Approval.

- 11.4.1.** City will, within a total of five (5) business days after the electronic receipt of Design-Builder's Application for Payment through Primavera Unifier, either approve the Application for Payment or reject the Application for Payment and state on the electronic notification to Design-Builder City's reasons for withholding approval, as provided in **Article 11.5.1** herein.
- 11.4.2.** The certification of an Application for Payment shall constitute a representation by Design-Builder to City, based upon Design-Builder'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 Design-Builder's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The

foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon meeting a Contract milestone date and/or Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to any specific qualifications expressed by City. The issuance of a Certificate for Payment further shall constitute a representation that Design-Builder is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment shall not be a representation that City has:

- 11.4.2.1.** made exhaustive or continuous on-site inspections to check the quality or quantity of the Work;
- 11.4.2.2.** reviewed construction means, methods, techniques, sequences or procedures;
- 11.4.2.3.** reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by City to substantiate Design-Builder's right to payment; or
- 11.4.2.4.** made any examination to ascertain how or for what purpose Design-Builder has used money previously paid on account of the Contract Sum.

11.5. Decisions to Reject Application for Payment.

- 11.5.1.** The Application for Payment may be rejected by City to protect City for any of the following reasons:
 - 11.5.1.1.** Work not performed or defective;
 - 11.5.1.2.** third party claims filed or reasonable evidence indicating a probable filing of such claims for which Design-Builder is responsible hereunder unless security acceptable to City is provided by Design-Builder;
 - 11.5.1.3.** failure of Design-Builder to make payments properly to sub-consultants, Subcontractors or for labor, materials or equipment;
 - 11.5.1.4.** reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum and Design-Builder has failed to provide City adequate assurance of its continued performance within a reasonable time after demand;
 - 11.5.1.5.** damage to City or another contractor anyone Design Builder exercises or should exercise control of, Design Builder's invitees, or resulting from Design Builder failure to take reasonable precautions to guard against such damages;
 - 11.5.1.6.** reasonable evidence that the Work shall not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or Liquidated Damages for the anticipated delay;
 - 11.5.1.7.** persistent failure by Design-Builder to carry out the Work in accordance with the Contract Documents;

- 11.5.1.8.** the applicable Liquidated Damages were not included in the Application for Payment;
 - 11.5.1.9.** billing for unapproved/unverified materials stored off Site; or
 - 11.5.1.10.** a current Progress Work Schedule update has not been submitted by Design-Builder.
 - 11.5.1.11.** As applicable demonstration that as-built drawings were not kept up to date
- 11.5.2.** City shall not be deemed in default by reason of rejecting Application for Payment as provided for in **Article 11.5.1** herein.

11.6. Progress Payments.

- 11.6.1.** After the final approval of the Application for Payment, City may make payment in the manner and within the time provided in the Contract Documents.
- 11.6.2.** During the latter part of each month, as the Work progresses, regardless of Contract Sum, City and Design-Builder shall determine the cost of the labor and materials incorporated into the Work during that month and actual invoiced cost of Design-Builder-acquired materials stored on the Project Site, and/or within off-site storage facilities either owned or leased by Design-Builder. Upon receipt of a complete and mathematically accurate Application for Payment from Design-Builder, City shall make payments, in accordance with this **Article 11.6**, to Design-Builder within thirty (30) calendar days on Contracts totaling [REDACTED] dollars (\$ [REDACTED]) or less, based upon such cost determination and at the Contract prices in a sum equivalent to ninety percent (90%) of each such invoice. The remaining ten percent (10%) retainage shall be held by City until the final completion. However, where the Contract amount exceeds [REDACTED] dollars (\$ [REDACTED]), installments shall be paid to Design-Builder at the rate of ninety-five percent (95%) of each monthly invoice within thirty (30) calendar days of City receipt of a complete and mathematically accurate Application for Payment from the Design-Builder, and the retainage held until final completion shall be five percent (5%). Retainage shall not be withheld for design or preconstruction Work.
- 11.6.3.** City's payment of installments shall not in any way be deemed to be a final acceptance by City of any part of the Work and shall not prejudice City in the final settlement of the Contract account or relieve Design-Builder from completion of the Work as herein provided.
- 11.6.4.** Design-Builder shall, within ten (10) calendar days following receipt of payment from City, pay all bills for labor and materials performed and furnished by others in connection with the construction, furnishing and equipping of the improvements and the performance of the work and shall, if requested, provide City with written evidence of such payment. Design-Builder's failure to make payments or provide written evidence of such payments within such time shall constitute a material breach of this contract, unless Design-Builder is able to demonstrate to City bona fide

disputes associated with the unpaid sub-consultant(s), Subcontractor(s) or supplier(s) and its/their work. Design-Builder shall include a provision in each of its subcontracts imposing the same written documentation of payment obligations on its sub-consultants and Subcontractors as are applicable to Design-Builder hereunder, and if City so requests, shall provide copies of such subcontractor payments to City. If Design-Builder has failed to make payment promptly to its sub-consultants, Subcontractors or for materials or labor used in the Work for which City has made payment to the Design-Builder, City shall be entitled to withhold payment to Design-Builder to the extent necessary to protect City.

- 11.6.5.** City shall, if practicable and upon request, furnish to a sub-consultant or Subcontractor information regarding percentages of completion or amounts applied for by Design-Builder and action taken thereon by City and Design-Builder on account of portions of the Work done by such sub-consultants or Subcontractor.
- 11.6.6.** Payments to material suppliers shall be treated in a manner similar to that provided in **Article 11.6.2, Article 11.6.3 and Article 11.6.4** herein regarding sub-consultants and/or Subcontractors.
- 11.6.7.** A certificate for payment, a progress payment or a partial or entire use or occupancy of the Project by City shall not constitute acceptance of Work that was not performed or furnished in accordance with the Contract Documents.
- 11.6.8.** Design-Builder shall, as a condition precedent to any obligation of City under this Contract, provide to City payment and performance bonds in the full amount of the Contract, in accordance with Texas Government Code Chapter 2253.

11.7. Substantial Completion.

- 11.7.1.** A condition precedent to Substantial Completion is the receipt by City of all necessary certificates of occupancy or other authorizations for the use and occupancy of the Project required by any governmental or regulatory authority. In addition, preliminary copies of both the O&M and Warranty Binders shall be provided. Subject to the provision of **Article 5.6** City reserves the right to occupy and use any part, phase or system of the Project when such part, phase or system substantially is completed, but such partial use or occupancy of the Project shall not result in the Project being deemed substantially complete, and such partial use or occupancy shall not be evidence of Substantial Completion. Substantial completion for this Project shall be described in **Exhibit K**: When Design-Builder considers that the Work, or a portion thereof which City agrees to accept separately, is Substantially Complete, Design-Builder shall prepare and submit to City a preliminary comprehensive list of items to be completed or corrected prior to final completion or portion thereof, as applicable. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Contract Documents.
- 11.7.2.** Upon receipt of Design-Builder's list of items to be completed or corrected, City will make a Site inspection to determine whether the Work or designated portion thereof

is Substantially Complete. If City's inspection discloses any item, whether or not it was included on Design-Builder's list of items to be completed or corrected, which is not sufficiently complete or correct in accordance with the Contract Documents so that City may occupy or utilize the Work or designated portion thereof as designed for its intended use, Design-Builder shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon written notification by City. In such case, Design-Builder then shall submit a request for another inspection by City to determine Substantial Completion and Design-Builder shall be responsible for all costs incurred by City and associated with the requested re-inspection.

11.7.3. When the Work – or designated portion thereof which City agrees to accept separately – is Substantially Complete, City shall prepare a Certificate of Substantial Completion (“Certificate of Substantial Completion”) which shall:

11.7.3.1. establish the date of Substantial Completion (which will be the date on which the Work met the requirements under the Contract Documents for Substantial Completion);

11.7.3.2. establish responsibilities of City and Design-Builder, as agreed to by City and Design-Builder, for security, maintenance, heat, utilities, damage to the Work and insurance; and

11.7.3.3. confirm the time limit by which Design-Builder shall complete all items on the list accompanying the Certificate and reach final completion.

11.7.4. In the event Substantial Completion is not achieved by the designated date, or the date extended by issued and accepted Change Order(s), City may withhold payment of sums necessary to pay the estimated Liquidated Damages due City. City shall be entitled, at any time, to deduct out of any sums due to Design-Builder any or all Liquidated Damages due City in accordance with the Contract between City and Design-Builder.

11.7.5. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work, or the designated portion thereof, unless otherwise provided herein or in the Certificate of Substantial Completion.

11.7.6. A Certificate of Substantial Completion issued by City shall not constitute acceptance of Work that was not performed or furnished in accordance with the Contract Documents

11.8. Partial Occupancy or Use.

11.8.1. City may occupy or use any completed or partially completed portion of the Work at any stage of the Work when such partially completed portion is designated by separate agreement with Design-Builder, to include the satisfaction of City provided such occupancy or use is consented to by the insurer, as required 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 City and Design-Builder have accepted in writing the responsibilities assigned to each for security, maintenance, heat, utilities, damage to the Work, applicable warranties and insurance and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. Consent of Design-Builder to partial occupancy or use shall not be unreasonably withheld. The state of the progress of the Work shall be determined by written agreement between City and Design-Builder or, if no agreement is reached, by the decision of City.

- 11.8.2.** Immediately prior to such Partial Occupancy or use, or upon Design-Builder's request for Substantial Completion, City and Design-Builder collectively shall 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.
- 11.8.3.** Unless expressly agreed upon in writing, 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 Contract Documents.
- 11.8.4.** Partial occupancy or use by City does not constitute Project Substantial Completion and does not start any warranty period(s) as agreed to by parties in writing and does not constitute acceptance of Work that was not performed or furnished in accordance with the Contract Documents.

11.9. Final Completion and Final Payment.

- 11.9.1.** When all of the Work finally is completed and ready for final inspection, Design-Builder shall notify City thereof in writing. Thereupon, City shall make final inspection of the Work and, if the Work is complete in full accordance with this Contract and this Contract has fully been performed, the final Application for Payment may be submitted. If City is unable to approve the final Application for Payment for reasons for which Design-Builder is responsible and City is required to repeat a final inspection of the Work, Design-Builder shall be responsible for all costs incurred and associated with such repeat final inspection(s) and said costs may be deducted by City from the Design-Builder's retainage.
- 11.9.2.** Design-Builder shall not be entitled to payment of retainage unless and until it submits all documents required in the retainage checklist to City. Retainage checklist shall include, but is not limited to:
 - 11.9.2.1.** Evidence that payrolls, invoices for materials and equipment and other liabilities, to include Liquidated Damages connected with the Work for which City might be responsible, fully have been paid or otherwise satisfied or will be paid from final payment;

- 11.9.2.2.** releases and waivers of liens from all sub-consultants and Subcontractors of Design-Builder and of any and all other parties required by City that either are unconditional or conditional on receipt of final payment;
 - 11.9.2.3.** Certificates of insurance showing continuation of required insurance coverages;
 - 11.9.2.4.** such other documents as City may request; and
 - 11.9.2.5.** consent of Surety to final payment.
- 11.9.3.** If, after Substantial Completion of the Work, final completion thereof materially is delayed through no fault of Design-Builder or by issuance of Change Orders affecting final completion, and City so confirms, City shall, upon application by Design-Builder and certification by City 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 Contract 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 Design-Builder to City 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.
- 11.9.4.** Request for final payment by Design-Builder shall constitute a waiver of all claims against City except those previously made in writing to City and identified as unsettled at the time of final Application for Payment

11.10. Additional Inspections.

In addition to any Liquidated Damages accrued by and payable to City by Design-Builder, City shall be entitled to deduct from the Contract Sum amounts due to Design-Builder by City to compensate City for any additional inspections or services provided by City, provided City undertook these additional inspections or services due to the fault or negligence of Design-Builder if:

- 11.10.1.** The same subject matter expert for City is required to make more than one inspection of the same phase or feature of Work to determine if Substantial Completion has been achieved by Design-Builder; or
- 11.10.2.** The same subject matter expert for City is required to make more than one inspection of the same phase or feature of Work to determine if final completion has been achieved by Design-Builder; or
- 11.10.3.** The Work is not substantially complete within thirty (30) calendar days after the date established for the Work's Substantial Completion, as stated in the Contract Documents.

11.11. Subcontractor Retainage.

- 11.11.1.** Design-Builder may hold retainage from Subcontractors, provided that Design-Builder acknowledges and agrees that the percentage of retainage amounts withheld by Design-Builder from its Subcontractors, if any, may not exceed the percentage withheld by City from Design-Builder pursuant to Article 9.5.3.
- 11.11.2.** Upon satisfactory completion of all Work to be performed by a Subcontractor, including provision of appropriate releases, certificates and other evidence of the Subcontractor's compliance with all applicable requirements of the Contract Documents, Design-Builder shall submit an application to City for City's release of the portion of the Retention attributed to the Subcontractor's work, stating that the Subcontractor has completed all Work required to be performed under its Subcontract, stating the amount withheld by Design-Builder under the Subcontract and providing all backup information and releases as may be required by City.
- 11.11.3.** Within seven (7) days following receipt of retainage from City for the completed Subcontractor Work, Design-Builder shall return all moneys that Design-Builder withheld as retainage from the Subcontractor, even if Work to be performed by Design-Builder or other Subcontractors is not completed and has not been accepted. Design-Builder must report on the release of any retainage to City on a monthly basis. Design-Builder shall require this Article 9.10 to be included in each Subcontract.

END OF ARTICLE 11

ARTICLE 12 PROTECTION OF PERSONS AND PROPERTY

12.1. Safety Precautions and Programs.

- 12.1.1.** Design-Builder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. Design-Builder shall develop a safety program applicable to each job site and to the Work to be done, review such program with City in advance of beginning the Work, and enforce such program at all times. Further, Design-Builder shall comply with all applicable laws and regulations including, but not limited to, the standards and regulations promulgated by the Secretary of Labor under the Occupational Safety and Health Act of 1970 (OSHA), City of San Antonio Aviation Department and Safety Division Contractor Safety Plan Requirement, and any other legislation enacted for the safety and health of Design-Builder sub-consultants, Subcontractors and employees. In addition, Design-Builder shall comply with any City safety and security requirements, including badging requirements. City shall have the right, but not the obligation, to inspect and verify Design-Builder's compliance with Design-Builder's responsibility for protecting the safety and health of its sub-consultants, Subcontractors and employees.
- 12.1.2.** Design-Builder shall notify City immediately, by telephone with prompt confirmation in writing, of all injuries and fatalities including, but not limited to, copies of all reports and other documents filed or provided to Design-Builder's insurers and the State of Texas in connection with such injuries or fatalities.
- 12.1.3.** Design-Builder has adopted or shall adopt its own policy to assure a drug and alcohol-free work place while performing the Work. Design-Builder's employees, agents, sub-consultants and Subcontractors shall not perform any service for City while under the influence of alcohol or any controlled substance. Design-Builder, its employees, agents, sub-consultants and Subcontractors shall not use, possess, distribute or sell illegal, illicit and/or prescribed controlled drugs or drug paraphernalia or misuse legitimate prescription drugs while on Site or performing the Work. Design-Builder, its employees, agents, sub-consultants and Subcontractors shall not use, possess, distribute or sell alcoholic beverages while performing the Work or while on Site or performing the Work. Design-Builder shall remove any of its employees, sub-consultant or Subcontractor employees from performing the Work or from the Site any time there is suspicion of alcohol and/or drug use, possession or impairment involving such employee and at any time an incident occurs where drug or alcohol use could have been a contributing factor. City has the right to require Design-Builder to remove employees or sub-consultant or Subcontractor employees from performing the Work or from the Site any time cause exists to suspect alcohol or drug use. In such cases, Design-Builder's, sub-consultant's or Subcontractor's employees only may be considered for return to work after Design-Builder certifies, as a result of a for-cause test conducted immediately following a removal, said employee was in compliance with this Contract. Design-Builder will not employ any individual or will not accept any sub-consultant or Subcontractor employees, to perform the Work who either refuses to take or tests positive in any alcohol or drug test.

- 12.1.4.** Design-Builder shall comply with all applicable federal, state and local drug and alcohol related laws and regulations (e.g., Department of Transportation regulations, Department of Defense Drug-free Work-free Workforce Policy, Drug-Free Workplace Act of 1988).
- 12.1.5.** The presence of any firearms or other lethal weapons by any person is prohibited on the Project Site, regardless of whether the individual has a permit for a concealed weapon.
- 12.1.6.** Upon issuance of a National Weather Service heat advisory for the region in which the project is located, Design-Builder is required to take all of the following actions for all on-Site workers working in unconditioned spaces:
- a. Mandate at least a fifteen (15) minute rest break for every four (4) hours worked. No employee may be required to work more than 3.75 continuous hours without a rest break. These rest breaks are in addition to and shall not take the place of other required or otherwise provided rest breaks.
 - b. Provide a heat relief station at the Site with a shaded area and water.
 - c. Train supervisors and workers to recognize heat hazards and take appropriate actions.
 - d. Post a sign with City requirements in English and Spanish within the Site where notices to employees are customarily posted. City will prescribe the size, content, and location of signs.
 - e. Employees shall be informed that they can call the City's 311 hotline to report violations of the heat safety requirements.
- 12.1.7.** Both City and Design-Builder agree that these safety and health terms are of the highest importance and that a breach or violation of any of the terms of this **Article 12.1** by Design-Builder, a sub-consultant or a Subcontractor shall be a material and substantial breach of this Contract. In the event that City shall determine that Design-Builder has breached or violated the terms of this **Article 12.1**, then City shall determine, immediately upon written notice to Design-Builder, whether the Work shall be suspended as a result thereof. If the Work is suspended, the Work shall not recommence until City is satisfied that the safety provisions hereof shall not be breached or violated thereafter. If City terminates the Contract as a result of such breach or violation, City and Design-Builder shall complete their obligations hereunder to one another in accordance with **Article 6.2** herein.
- 12.1.8.** Nothing contained in this **Article 12.1** shall be interpreted as creating or altering the legal duty of City to Design-Builder or to Design-Builder's agents, employees, sub-consultants, Subcontractors or third parties, or altering the status of Design-Builder as an independent contractor.

- 12.1.9.** Notwithstanding either of the above provisions, or whether City exercises its rights set forth herein, City neither warrants nor represents to Design-Builder, Design-Builder's employees or agents, any sub-consultant, Subcontractors or any other third party that Design-Builder's safety policy meets the requirements of any applicable law, code, rule or regulation, nor does City warrant that the proper enforcement of Design-Builder's policy shall insure that no accidents or injuries will occur. In addition, any action by City under these provisions in no way diminishes any of Design-Builder's obligations under applicable law or the Contract Documents.

12.2. Safety of Persons and Property.

- 12.2.1.** Design-Builder shall take reasonable precautions for safety and training and shall provide reasonable protection, to prevent damage, injury or loss to:
- 12.2.1.1.** employees performing the Work and other persons who may be affected thereby;
 - 12.2.1.2.** the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of Design-Builder or Design-Builder's sub-consultants, or Subcontractors; and
 - 12.2.1.3.** 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 the Work.
 - 12.2.1.4.** the contents of a building or structure, when Design-Builder is working in, on or around an existing/operating City facility.
- 12.2.2.** Design-Builder shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.
- 12.2.3.** Design-Builder 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 all City's and users of adjacent sites and utilities.
- 12.2.4.** When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for the execution of the Work, Design-Builder shall exercise extraordinary care and shall carry on such activities under the direct supervision of properly qualified personnel. Prior to the use of any explosives, Design-Builder shall submit a written blasting plan, shall obtain City approval and shall comply with City's requirements for such use.
- 12.2.5.** Design-Builder shall designate a responsible member of Design-Builder's organization at the site whose duty shall be the prevention of accidents. This person shall be Design-Builder's superintendent, unless otherwise designated by Design-Builder in writing to City.

- 12.2.6.** Design-Builder shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.
- 12.2.7.** Notwithstanding the delivery of a survey or other documents by City, Design-Builder shall use reasonable efforts to perform all Work in such a manner so as to avoid damaging any utility lines, cables, pipes or pipelines on the property. Design-Builder acknowledges and accepts that the location of underground utilities (both public and private) reflected on any City-provided plans are not guaranteed and may not be completely accurate. Design-Builder shall use good and reasonable efforts to locate and verify any and all utilities and associated service lines prior to beginning any Work. Design-Builder shall be responsible for and shall repair, at Design-Builder's own expense, any damage done to lines, cables, pipes, and pipelines by Design-Builder.
- 12.2.8.** Design-Builder promptly shall remedy any and all damage and loss (other than damage or loss insured under property insurance required by the Contract Documents). **Design-Builder also shall hold harmless and unconditionally indemnify, protect and defend City, its elected officials, employees, officers, directors, volunteers and representatives of City, individually or collectively, from and against any and all damage or loss to property (other than the Work itself and including property of Design-Builder and City) referred in Article 12.2.1 herein, but only to the extent caused in whole or in part by the acts or omissions of Design-Builder, its agents, servants, and employees, or its sub-consultant(s) and/or Subcontractor(s) and its/their agents, servants, and employees, or anyone directly or indirectly employed by Design-Builder, sub-consultant or Subcontractor, or by any other person or entity for which Design-Builder, sub-consultant or Subcontractor may be responsible under the Contract Documents in connection with the Work to be performed, services to be rendered or materials to be furnished under this Contract, including, but not limited to, violations of any statute, regulation, ordinance or provision of this Contract. Notwithstanding anything to the contrary included herein, in no event shall Design-Builder be liable for claims arising out of accidents resulting from the sole negligence of City, all without, however, waiving any governmental immunity available to City under Texas Law and without waiving any defenses of the parties under Texas Law. The foregoing obligations of Design-Builder are in addition to Design-Builder's obligations under Article 13.**

12.3. Emergencies.

- 12.3.1.** In an emergency affecting safety of persons or property, Design-Builder shall exercise its best efforts to act to prevent or minimize threatened damage, injury or loss. Additional compensation or extension of time claimed by Design-Builder on account of an emergency shall be determined, as provided in **Articles 6.2 and 9.**
- 12.3.2.** If Design-Builder causes damage resulting in an issue of safety and/or security to a property City, Design-Builder immediately shall repair any damage caused. If Design-Builder does not or shall not act immediately to repair the damage caused by Design-Builder to eliminate the resulting safety and/or security issue(s), City shall

act to repair the damage caused and deduct all costs associated with the repair from any money due Design-Builder.

12.4. Public Convenience and Safety.

- 12.4.1.** Design-Builder shall place materials stored at the Project site and shall conduct the Work at all times in a manner that causes no greater obstruction to the public than is considered necessary by City. Sidewalks or streets shall not be obstructed, except by special permission of City. Materials excavated and construction materials or plants used in the performance of the Work shall be placed in a manner that does not endanger the Work or prevent free access to all fire hydrants, water mains and appurtenances, water valves, gas valves, manholes for the telephone, telegraph signal or electric conduits, wastewater mains and appurtenances and fire alarm or police call boxes in the vicinity.
- 12.4.2.** City reserves the right to remedy any neglect on the part of Design-Builder, in regard to public convenience and safety, which may come to City's attention, after twenty-four (24) hour notice in writing to Design-Builder. In case of an emergency, City shall have the right immediately to remedy any neglect without notice to Design-Builder. In either case, the cost of any work done by or for City to remedy Design-Builder's neglect shall be deducted by City from Design-Builder's Contract Sum. Design-Builder shall notify City, including City's Transportation Systems Management & Operations (TSM&O) division, when any street is to be closed or obstructed. The notice shall, in the case of major thoroughfares or street upon which transit lines operate, be given at least forty-eight (48) hours in advance. City reserves the right to postpone and/or prohibit any closure or obstruction of any streets or thoroughfares, to the extent necessary for the safety and benefit of the traveling public. Design-Builder shall, when directed by City, keep any street or streets in condition for unobstructed use by City departments. When Design-Builder is required to construct temporary bridges or make other arrangements for crossing over ditches or around structures, Design-Builder's responsibility for accidents shall include the roadway approaches as well as the crossing structures.
- 12.4.3.** Design-Builder shall limit airborne dust and debris throughout the Project site and its duration. Design-Builder shall apply the necessary amounts of water or other appropriate substance required to maintain sufficient moisture content for dust control. For City horizontal projects, Design-Builder shall apply appropriate amounts of water or other appropriate substance to the base on streets under construction and on detours required to maintain sufficient moisture control in the surface layer for dust control. Any maintenance costs or damages associated with not maintaining proper dust control will be the responsibility of Design-Builder.
- 10.4.4** Design-Builder shall comply with the construction requirements set forth in the latest version of the SAAS Sustainable Airport Manual in place ahead of City's acceptance of a Fixed Price Proposal or the Guaranteed Maximum Price Proposal, as applicable.
- 10.4.5** City may close the Site due to operational or security reasons at any time in its reasonable discretion.

12.4.4. City's Office of Sustainability continues to work on City's Air Quality Control Strategies Plan in its ongoing efforts to lower emissions throughout the City, including City's Project sites. In an effort to assist City in these goals, Design-Builder shall strive to:

- 12.4.4.1.** reduce fuel use by directing its employees, sub-consultants, and its Subcontractors to reduce vehicle idling, maintaining equipment utilized on the Project and replacing or repowering equipment with current technologies;
- 12.4.4.2.** conserve electricity used to provide power to Design-Builder's offices and throughout the Project site, to include Project lighting, tools and Design-Builder's Project construction trailer; and
- 12.4.4.3.** recycle Project site materials such as asphalt, steel, other metals and concrete.
- 12.4.4.4.** all costs associated with Design-Builder's and its sub-consultants' and Subcontractors' acquisition and installation of emission control technology shall be considered incidental costs of the Project; as such, no additional compensation shall be provided Design-Builder by City.

12.5. Barricades, Lights, and Watchmen.

If the Work is carried on, in or adjacent to any street, alley or public place, Design-Builder shall, at Design-Builder's own cost and expense, furnish, erect and maintain sufficient barricades, fences, lights and danger signals, provide sufficient watchmen and take such other precautionary measures necessary for the protection of persons or property and of the Work. All barricades shall be painted in a color that shall be visible at night, and shall be illuminated by lights as required under City's Barricades Specifications. The term "lights," as used in this **Article 12.5**, shall mean flares, flashers or other illuminated devices. A sufficient number of barricades with adequate markings and directional devices also shall be erected to keep vehicles from being driven on or into any Work under construction. Design-Builder shall be held responsible for all damage to the Work due to failure of barricades, signs, lights and/or watchmen necessary to protect the Work. Whenever evidence is found of such damage, City may order the damaged portion immediately removed and replaced by Design-Builder at Design-Builder's sole cost and expense. Design-Builder's responsibility for maintenance of barricades, signs, lights and for providing watchmen, as required under this **Article 12.5** shall not cease until the Project finally has been accepted by City.

For all work within the Air Operations Area (AOA) barricades shall be properly secured as necessary to prevent overturning or displacement from wind or jet blast and shall be illuminated. Refer to FAA Advisory Circular 150/5340-1M, Standards for Airport Markings for FAA lighting and marking standards on Airport runways, taxiways and aprons and FAA Advisory Circular 150/5370-2G, Operational Safety on Airports during Construction for aviation safety requirements during construction.

12.6. Public Utilities and Other Properties to be Changed.

In case it is necessary for Design-Builder to change or move the property of City or of any telecommunications or public utility, such property shall not be touched, changed, removed or interfered with until ordered to do so by City. City reserves the right to grant any public or private utility personnel the authority to enter upon the Project site for the purpose of making such changes or repairs to their property that may become necessary during the performance of the Work. City reserves the right of entry upon the Project site at any time and for any purpose, including repairing or relaying sewer and water lines and appurtenances, repairing structures and for making other repairs, changes or extensions to any of City's property. City's actions shall conform to Design-Builder's current and approved schedule for the performance of the Work, provided that proper notification of schedule requirements has been given to City by Design-Builder.

12.7. Temporary Storm Sewer and Drain Connections.

When existing storm sewers or drains have to be taken up or removed, Design-Builder shall, at its expense, provide and maintain temporary outlets and connections for all public and private storm sewers and drains. Design-Builder also shall provide for all storm sewage and drainage which shall be received from these storm drains and sewers. For this purpose, Design-Builder shall provide and maintain, at Design-Builder's own expense, adequate pumping facilities and temporary outlets or diversions. Design-Builder shall, at Design-Builder's own expense, construct such troughs, pipes or other structures that may be necessary and shall be prepared at all times to dispose of storm drainage and sewage received from these temporary connections until such time as the permanent connections are built and are in service. The existing storm sewers and connections shall be kept in service and maintained under the Contract, except where specified in the plans or ordered to be abandoned by City. All storm water and sewage shall be disposed of in a satisfactory and lawful manner so that no nuisance is created and that the Work under construction will be adequately protected.

12.8. Additional Utility Arrangements and Charges.

- 12.8.1.** When Design-Builder desires to use City's water in connection with the Work, Design-Builder shall make complete and satisfactory arrangements with the San Antonio Water System
- 12.8.2.** Design-Builder shall make complete and satisfactory arrangements for electricity and metered electrical connections with City or with any retail electric provider, in the event that separately metered electrical connections are required for the Project.

12.9. Use of Fire Hydrants.

Design-Builder, sub-consultants, Subcontractors and any other person working on the Project shall not open, turn off, interfere with, attach any pipe or hose to or connect

anything with any fire hydrant, stop valve or stop cock, or tap any water main belonging to City, unless duly authorized in writing to do so by City.

12.10. Environmental Compliance.

12.10.1. Design-Builder its sub-consultants and Subcontractors are deemed to have made themselves familiar with and at all times shall comply with any and all applicable federal, state or local laws, rules, regulations, ordinances and rules of common law now in effect (including any amendments now in effect), relating to the environment, Hazardous Substances or exposure to Hazardous Substances including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C.A. §§ 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C.A. §§ 1801, et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C.A. §§ 6901, et seq.; the Federal Water Pollution Control Act, 33 U.S.C.A §§ 1201, et seq.; the Toxic Substances Control Act, 15 U.S.C.A. §§ 2601, et seq.; the Clean Air Act, 42 U.S.C.A. §§ 7401, et seq.; the Safe Drinking Water Act, 42 U.S.C.A. §§ 3808, et seq., and any current judicial or administrative interpretation of these laws, rules, regulations, ordinances or rules of common law including, but not limited to, any judicial or administrative order, consent decree or judgment affecting the Project.

12.10.2. In the event Design-Builder encounters materials on the Project Site reasonably believed to be a Hazardous Substance that have not been rendered harmless, and the removal of such materials is not a part of the scope of Work required under the Contract Documents, Design-Builder immediately shall stop Work in the affected area and report in writing the facts of such encounter to City. Work in the affected area shall not thereafter be resumed except by written order of City and written consent of Design-Builder, unless and until the encountered material is determined not to be a Hazardous Substance or the Hazardous Substance is remediated. Unless removal of such materials is a part of the scope of Work required under the Contract Documents, City shall remediate the Hazardous Substance with a separate contractor or direct Design-Builder to perform the remediation work by issuing a Field Work Directive.. If the Hazardous Substance exists in the affected area due to the fault or negligence of Design-Builder or any of its sub-consultants or Subcontractors, Design-Builder shall be responsible for remediating the condition at the sole expense of Design-Builder. If applicable, such remediation shall be in accordance with Design-Builder's Spill Remediation Plan. City, at its own expense, will oversee any remediation performed by Design-Builder resulting from Design-Builders' fault or negligence. Design-Builder must request and obtain City's written acceptance of the remediation work, based on federal, state and local environmental regulations, which acceptance shall not be unreasonably withheld. City's acceptance of the remediation work shall in no way relieve Design-Builder of its sole responsibility to comply with all applicable laws, rules, regulations or ordinances governing said activities. An extension of the Contract Time, for any delay in the progress schedule caused as a result of the discovery and remediation of a Hazardous Substance not due to the fault of Design-Builder, its sub-consultants or Sub-Contractors, may be granted by City and only in the event the Project's critical path is affected and Design-Builder is not

the source of the Hazardous Substance. Any request for an extension of the Contract Time or Contract Sum related to the discovery and remediation of a Hazardous Substance is subject to the provisions of **Articles 6.2, 9 and 10 herein**.

- 12.10.3.** Design-Builder shall be responsible for identification, abatement, cleanup, control, removal, remediation and disposal of any Hazardous Substance brought into or onto the site by Design-Builder or any of its sub-consultant, Subcontractor or supplier. Design-Builder shall obtain any and all permits necessary for the legal and proper handling, transport and disposal of the Hazardous Substance and shall, prior to undertaking any abatement, cleanup, control, removal, remediation and/or disposal, notify City; provided, however, that it shall be Design-Builder's sole responsibility to comply with all applicable laws, rules, regulations or ordinances governing said activities. City, at its own expense, will oversee any remediation performed by Design-Builder resulting from Design-Builder's handling, transport and disposal of the Hazardous Substance. Design-Builder must request and obtain City's written acceptance of the remediation and/or disposal work, based on federal, state and local environmental regulations, which acceptance shall not be unreasonably withheld. City's acceptance of the remediation and/or disposal work shall in no way relieve Design-Builder of its sole responsibility to comply with all applicable laws, rules, regulations or ordinances governing said activities.
- 12.10.4.** Design-Builder shall be responsible for complying with the San Antonio International Airport Soil Management Plan (SMP) for all capital improvement projects as set forth in Contract Documents. Design-Builder shall provide no more than three (3) soil disposal sites to the City fourteen (14) days prior to commencement of hauling any excess soil or fill material. Design-Builder shall provide required documentation regarding disposal or reuse sites, flood plain verification, storm water pollution measures information, and compliance with applicable federal, state and local regulations. Design-Builder shall not proceed with hauling activities of excess soils until they receive approval from City. Projects performed on Aviation grounds shall comply with Aviation's Soil Management Policy.
- 12.10.5.** Design-Builder shall comply with the Texas Commission on Environmental Quality's (TCEQ) regulations to include the "Stormwater Discharges Associated with Construction Activities TXR150000" requirements and shall provide a copy of its notice of intent form, submitted to TCEQ in accordance with the aforementioned regulation, to Director and to San Antonio Water Systems (SAWS), which entity regulates the Airport's Industrial & Construction Municipal Separate Storm Sewer System (MS4).

12.11. Road Closures And Detour Routes

Contractor shall not begin construction of the Project or close any streets until adequate barricades and detour signs have been provided, erected and maintained in accordance with the detour route and details shown on the Project Plans, Barricade Construction Standards and Traffic Control Standards. Contractor shall sequence construction to maintain access to adjacent properties, driveways and sidestreets at

all times unless noted in the plans otherwise. Contractor shall not work out of sequence of phases shown on the traffic control plans. Single lane closures will be restricted to off-peak hours from 9:00 AM to 3PM Monday through Friday and all day Saturday and Sunday. Contractor shall also not execute a single lane closure during City Holidays. Multiple lane closures will be limited to night work starting at 9:00 PM and concluding no later than 5:00 AM. Contractor shall submit lane closure notifications to the City each Thursday by 12:00 PM for the following week's closures. Closures shall be clearly defined to the exact location.

12.12. Use of Streets.

Contractor shall confine the movements of all steel-tracked equipment to the limits of the Site and any such equipment shall not be allowed use of City's streets unless being transported on pneumatic-tired vehicles.

12.13. Abatement and Mitigation of Excessive or Unnecessary Construction Noise.

Contractor shall ensure abatement and mitigation of excessive or unnecessary construction noise to the satisfaction of City and as prescribed by all applicable Law.

12.14. Incidental Work, Connections, and Passageways.

Contractor shall perform all incidental Work necessary to complete and comply with this Contract including, but not limited to the following:

- 12.14.1.** Contractor shall make and provide all suitable reconnections with existing improvements (generally excluding new connections with or relocation of utility services, unless specifically provided for otherwise in the Contract Documents) as are necessarily incidental to the proper completion of the Project;
- 12.14.2.** Contractor shall provide passageways or leave open such thoroughfares in the Site as may be reasonably required by City; and
- 12.14.3.** Contractor shall protect and guard same at its own risk and continuously shall maintain the Site in a clean, safe and workmanlike manner.

END OF ARTICLE 12

ARTICLE 13 INSURANCE AND BONDS

13.1. Design-Builder's Liability Insurance.

13.1.1. No later than 30 days before the scheduled design and construction of the ground transportation center at the airport under this contract, Design-Builder must provide a completed Certificate(s) of Insurance to City's Aviation Department. The certificate must be:

- clearly labeled with the legal name of the contract in the Description of Operations block;
- completed by an agent and signed by a person authorized by the insurer to bind coverage on its behalf (City will not accept Memorandum of Insurance or Binders as proof of insurance);.
- properly endorsed and have the agent's signature, and phone number,

Certificates may be mailed or sent via email, directly from the insurer's authorized representative. City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by City's Aviation Department. No officer or employee, other than City's Risk Manager, shall have authority to waive this requirement.

13.1.2. If the City does not receive copies of required insurance endorsement, then by executing this Agreement, Design-Builder certifies and represents that its endorsements do not materially alter or diminish the insurance coverage for the Project.

13.1.3. The City's Risk Manager reserves the right to modify the insurance coverages, their limits, and deductibles prior to the scheduled event or during the effective period of this Agreement based on changes in statutory law, court decisions, and changes in the insurance market which presents an increased risk exposure.

13.1.4. Design-Builder shall obtain and maintain in full force and effect for the duration of this Agreement, at Design-Builder's sole expense, insurance coverage written on an occurrence basis, by companies authorized to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below. If the Design-Builder claims to be self-insured, they must provide a copy of their declaration page so the City can review their deductibles:

Table 13.1

TYPE	LIMITS
1. Workers' Compensation. 2. Employer's Liability	<i>Statutory</i>
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Contractual Liability *e. Independent Contractors* *f. Damage to Property Rented by you* g. Explosion, Collapse, Underground Property Hazard Liability h. Broad Form Property Damage to include Fire and Legal Liability	For Bodily Injury and Property Damage of: \$_____ per occurrence; \$_____ General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage. *f.
4. Business Automobile Liability: a. Owned/leased vehicles b. Non-owned vehicles c. Hired vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$_____ per occurrence. If AOA access required \$ CSL
5. Professional Liability (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	\$_____ per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.
6. Umbrella Liability Coverage	\$_____ per occurrence combined limit Bodily Injury (including death) and Property Damage. (per occurrence limit depends on scope of operation)
7. Umbrella or Excess Liability Coverage	\$_____ per occurrence combined limit Bodily Injury (including death) and Property Damage.

TYPE	LIMITS
8. Environmental Insurance –(Contractor’s Pollution Liability (Claims-made coverage)	\$ _____ per occurrence; \$ _____ general aggregate for claims associated with hazardous materials, to include spills and mitigation.
8. Builder’s Risk	All Risk Policy written on an occurrence basis for 100% replacement cost during construction phase of any new or existing structure.
9. Cyber Liability	\$ _____ per claim \$ _____ general aggregate, or its equivalent in Umbrella or Excess Liability Coverage.
* if applicable	

- 13.1.5.** Design-Builder must require, by written contract, that all subcontractors providing goods or services under this Agreement and provide a certificate of insurance and endorsement that names Design-Builder and City as additional insureds. Design-Builder shall provide City with subcontractor certificates and endorsements before the subcontractor starts work.
- 13.1.6.** If a loss results in litigation, then the City is entitled, upon request and without expense to the City, to receive copies of the policies, declaration page and all endorsements. Design-Builder must comply with such requests within 10 days by submitting the requested insurance documents to the City at the following address:

City of San Antonio
Aviation Department
9800 Airport Blvd.
Mezzanine Level
9800 Airport Blvd.
San Antonio, Texas 78216

- 13.1.7.** Design-Builder’s insurance policies must contain or be endorsed to contain the following provisions:
- Name City and its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with City. The endorsement requirement is not applicable for workers’ compensation and professional liability policies.

- Endorsement that the “other insurance” clause shall not apply to City where City is an additional insured shown on the policy. City’s insurance is not applicable in the event of a claim.
- Design-Builder shall submit a waiver of subrogation to include, workers’ compensation, employers’ liability, general liability and auto liability policies in favor of City; and
- Provide 30 days advance written notice directly to City of any suspension, cancellation, non-renewal or materials change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

13.1.8. Within five (5) calendar days of a suspension, cancellation, material change in coverage, or non-renewal of coverage, Design-Builder shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Design-Builder’s performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

13.1.9. In addition to any other remedies City may have upon Design-Builder’s failure to provide and maintain any insurance or policy endorsements to the extent and within the time required, City may order Design-Builder to stop work and/or withhold any payment(s) which become due to Design-Builder under this Agreement until Design-Builder demonstrates compliance with requirements.

13.1.10. Nothing contained in this Agreement shall be construed as limiting the extent to which Design-Builder may be held responsible for payments of damages to persons or property resulting from Design-Builder’s or its subcontractors’ performance of the work covered under this Agreement.

13.1.11. Design-Builder’s insurance shall be deemed primary and non-contributory with respect to any insurance or self - insurance carried by City for liability arising out of operations under this Agreement.

13.1.12. The insurance required is in addition to and separate from any other obligation contained in this Agreement and no claim or action by or on behalf of City shall be limited to insurance coverage provided.

13.1.13. Design-Builder and any subcontractor are responsible for all damage to their own equipment and/or property result from their own negligence.

13.2. Builder’s Risk Coverage.

Design-Builder shall obtain at its expense and maintain throughout the duration of the Project, All-Risk Builder's Risk Insurance, if the Project involves complete construction of a new building, or an All-Risk Installation Floater policy, if the Project involves materials and supplies needed for additions to, renovations or remodeling of an existing building. Coverage on either policy shall be All-Risk, including, but not limited to, Fire, Extended

Coverage, Vandalism and Malicious Mischief, Flood (if located in a flood zone) and Theft, in an amount equal to one hundred percent (100%) of the insurable value of the Project for the Installation Floater policy, and one hundred percent (100%) of the replacement cost of the Project for the Builder's Risk policy. If an Installation Floater policy is provided, City shall be shown as a Joint Named Insured with respect to the Project. If a Builder's Risk policy is provided, the policy shall be written on a Completed Value Form, including materials delivered and labor performed for the Project. This policy shall be in the name of Design-Builder and naming City, and Subcontractors, as well as any Sub-Subcontractors, as additional insured as their interests may appear. The policy shall have endorsements as follows:

- 13.2.1.** This insurance shall be specific as to coverage and not contributing insurance with any permanent insurance maintained on the property.
- 13.2.2.** Loss, if any, shall be adjusted with and made payable to Design-Builder or City and Design-Builder as trustee for the insured as their interests may appear.

13.3. Performance Bond and Payment Bonds.

- 13.3.1.** Subject to the provisions of **Article 13.3.2** herein, Design-Builder shall, with the execution and delivery of the Contract, furnish and file with City, in the amounts required in this **Article 13**, the surety bonds described in **Article 13.3**, with said surety bonds in accordance with the provisions of Chapter 2253, Texas Government Code, as amended. Each surety bond shall be signed by Design-Builder, as the Principal, as well as by an established corporate surety bonding company as surety, meeting the requirements of **Article 13** herein and approved by City. The surety bonds shall be accompanied by an appropriate Power-of-Attorney clearly establishing the extent and limitations of the authority of each signer to so sign and shall include:

13.3.1.1. Performance Bond.

A good and sufficient Performance Bond in an amount equal to one hundred percent (100%) of the total Contract Sum, guaranteeing the full and faithful execution of the Work and performance of the Contract in accordance with Plans, Specifications and all other Contract Documents, including any extensions thereof, for the protection of City. This Performance Bond shall also provide for the repair and maintenance of all defects due to faulty materials and workmanship that appear within a period of one (1) year from the date of final Completion or acceptance of the Work by the City, or lesser or longer periods as otherwise may be designated in the Contract Documents.

13.3.1.2. Payment Bond.

A good and sufficient Payment Bond in an amount equal to 100% of the total Contract Sum, guaranteeing the full and prompt payment of all claimants

supplying labor or materials in the prosecution of the Work provided for in the Contract, and for the use and protection of each claimant.

- 13.3.2.** If the Contract Sum, including City-accepted Alternates and allowances, if any, is greater than \$100,000.00, Payment Bond and Performance Bond equaling one hundred percent (100%) of the Contract Sum are mandatory and shall be provided by Design-Builder. If the Contract Sum is greater than \$50,000.00 but less than or equal to \$100,000.00 only a Payment Bond equaling one hundred percent (100%) of the Contract amount is mandatory; provided, however, that Design-Builder also may elect to furnish a Performance Bond in the same amount if Design-Builder so chooses. If the Contract Sum is less than or equal to \$25,000, Design-Builder may elect not to provide Performance and Payment Bonds; provided that in such event, no money will be paid by City to Design-Builder until final completion of all Work. If Design-Builder elects to provide the required Performance Bond and Payment Bond, the Contract Sum shall be payable to Design-Builder through progress payments in accordance with these General Conditions.
- 13.3.3.** No surety shall be accepted by City that is in default, delinquent on any bonds or that is a party to any litigation against City. All bonds shall be made and executed on City's standard forms, shall be approved by City and shall be executed by not less than one (1) corporate surety that is authorized and admitted to do business in the State of Texas, is licensed by the State of Texas to issue surety bonds, is listed in the most current United States Department of the Treasury List of Acceptable Sureties and is otherwise acceptable to City. Each bond shall be executed by Design-Builder and the surety and shall specify that legal venue for enforcement of each bond exclusively shall lie in Bexar County, Texas. Each surety shall designate an agent resident in Bexar County, Texas to which any requisite statutory notices may be delivered and on which service of process may be had in matters arising out of the suretyship.
- 13.3.4.** The person or persons, partnership, company, firm, limited liability company, association, corporation or other business entity to whom the Contract is awarded shall, within ten (10) days after such award, sign the required Contract with City and provide the necessary surety bonds and evidence of insurance as required under the Contract Documents. No Contract shall be binding on City until:
- 13.3.4.1.** it has been approved as to form by City's City Attorney;
- 13.3.4.2.** it has been executed by City's City Manager (if required);
- 13.3.4.3.** the Payment Bond and Performance Bond and evidence of required insurance have been furnished to City by Design-Builder, as required by the Contract Documents; and
- 13.3.4.4.** a fully executed Contract has been delivered to Design-Builder (if required).
- 13.3.5.** The failure of Design-Builder to execute the Contract (if required) and deliver the required bonds and evidence of insurance within ten (10) days after the Contract is

awarded, or as soon thereafter as City can assemble and deliver the Contract and by the time the City-scheduled preconstruction meeting is held shall, at City's option, constitute a material breach of Design-Builder's bid proposal and City may rescind the contract award and collect or retain the proceeds of the bid security. By reason of the uncertainty of the market prices for materials and labor, and it being impracticable and difficult to determine accurately the amount of damages occurring to City by reason of Design-Builder's failure to execute the Contract within ten (10) days and deliver bonds and insurance by the City-scheduled preconstruction meeting, the filing of a bid proposal shall constitute an acceptance of this **Article**. In the event City should re-advertise for bids, the defaulting Design-Builder shall not be eligible to bid and the lowest responsible bid obtained in the re-advertisement shall be the bid referred to in this **Article**.

13.4. Umbrella Liability Insurance.

Design-Builder shall obtain, pay for and maintain Umbrella Liability Insurance during the Contract term, insuring Design-Builder for an amount of not less than **\$5,000,000** per occurrence combined limit Bodily Injury (including death) and Property Damage, that follows form and applies in excess of the primary coverage required hereinabove. City shall be named as an additional insured, using endorsement ISO CG 2010 and CG 20 37 or broader. The Umbrella Liability Insurance policy shall provide "drop down" coverage, where the underlying primary insurance coverage limits are insufficient or exhausted.

13.5. Policy Endorsements and Special Conditions.

13.5.1. Each insurance policy to be furnished by Design-Builder shall address the following required provisions within the certificate of insurance, which shall be reflected in the body of the insurance contract and/or by endorsement to the policy:

13.5.1.1. City shall be named as an additional insured on all liability coverages, using endorsement ISO CG 20 10 and CG 20 37 or broader. When City elects to employ a Construction Manager on the Project, Design-Builder, sub-consultant(s) and Subcontractor(s) shall include the Construction Manager on all liability insurance policies, to the same extent as City is required to be named as additional insured.

13.5.1.2. Within five (5) calendar days of a suspension, cancellation or non-renewal of any required line of insurance coverage, Design-Builder shall provide City a replacement certificate of insurance with all applicable endorsements included. City shall have the option to suspend Design-Builder's performance should there be a lapse in coverage at any time during the Contract.

13.5.1.3. The terms "City" or "City of San Antonio" shall include all authorities, boards, bureaus, commissions, divisions, departments and offices of City and the individual members, any employees thereof in their official capacities while acting on behalf of City.

13.5.1.4. The policy phrase or clause "Other Insurance" shall not apply to City where City is an additional insured on the policy. The required insurance coverage furnished

by Design-Builder shall be the primary insurance for all purposes for the Project, as well as the primary insurance for the additional insured named in the required policies.

- 13.5.1.5.** The Commercial General Liability policy required by the Design-Builder shall include broad form contractual liability.

13.5.2. Concerning the insurance to be furnished by Design-Builder, it is a condition precedent to acceptability that:

- 13.5.2.1.** All policies must comply with the applicable requirements and special provisions of this **Article 13.5.2.1**.
- 13.5.2.2.** Any policy evidenced by a Certificate of Insurance shall not be subject to limitations, conditions or restrictions deemed inconsistent with the intent of the insurance requirements set forth herein, and City's decision regarding whether any policy contains such provisions and contrary to this requirement shall be final.
- 13.5.2.3.** All policies required are to be written through companies duly authorized and approved to transact that class of insurance in the State of Texas and that otherwise are acceptable to City.

13.5.3. Design-Builder agrees to the following special provisions:

- 13.5.3.1.** Design-Builder hereby waive subrogation rights against the City for loss or damage to the extent same are covered by insurance. Insurers shall have no right of recovery or subrogation against City, it being the intention that the insurance policies shall protect all parties to the Contract and be primary coverage for all losses covered by the policies. This waiver of subrogation shall be included, by endorsement or otherwise, as a provision of all policies required under this **Article 13**.
- 13.5.3.2.** the insurance companies issuing the insurance policies and Design-Builder shall have no recourse whatsoever against City for payment of any premiums or assessments for any deductibles, as all such premiums and assessments solely are the responsibility and risk of Design-Builder.
- 13.5.3.3.** Approval, disapproval or failure to act by City, regarding any insurance supplied by Design-Builder, sub-consultant(s) or subcontractor(s), shall not relieve Design-Builder of any responsibility or liability for damage or accidents as set forth in the Contract Documents. The bankruptcy, insolvency or denial of liability of or by Design-Builder's insurance company likewise shall not exonerate or relieve Design-Builder from liability.
- 13.5.3.4.** City reserves the right to review the insurance requirements contained in this **Article 13** during the effective period of this Contract and to adjust insurance coverage and insurance limits when deemed necessary and prudent by City's Risk

Management Division, based upon changes in statutory law, court decisions or the claims history of Design-Builder and Subcontractors. City shall reimburse Design-Builder for additional premium required due to such modifications.

- 13.5.3.5.** No special payments shall be made for any insurance policies that Design-Builder, sub-consultants and subcontractors are required to carry. Except as provided in **Article 13.6** herein, all amounts payable regarding the insurance policies required under the Contract Documents are included in the Contract Sum.
- 13.5.3.6.** Any insurance policies required under this **Article 13** may be written in combination with any of the other policies, where legally permitted, but none of the specified limits neither may be lowered or otherwise negatively impacted by doing so, nor may any of the requirements or special provisions of this **Article 13** be limited or circumvented by doing so.

END OF ARTICLE 13

ARTICLE 14 INSPECTING, UNCOVERING, AND CORRECTING OF WORK

14.1. Inspecting Work.

City shall have authority to reject Work that does not conform to the Contract Documents. Whenever City considers it necessary or advisable, City shall have authority to require Design-Builder to inspect or test the Work in accordance with this **Article 14**, whether or not such Work is fabricated, installed or completed.

14.2. Uncovering Work.

14.2.1. If a portion of the Work is covered, concealed and/or obstructed, contrary to City's requirements specifically expressed in the Contract Documents, it must be uncovered for City's inspection and properly be replaced at Design-Builder's expense without any change in the Contract Time or Sum.

14.2.2. If a portion of the Work has been covered, concealed and/or obstructed in accordance with the Contract Documents and City, after being provided reasonable notice and opportunity to inspect the Work, has not inspected the Work prior to its being covered, concealed and/or obstructed, City retains the right to inspect such Work and, when directed by City, Design-Builder shall uncover it. If said Work is found to be in accordance with the Contract Documents, the costs for uncovering and replacement shall, by appropriate Change Order, be paid by City. If such Work uncovered is found to not be in accordance with the Contract Documents, Design-Builder shall pay all costs associated with the uncovering, correction and replacement of the Work, unless the condition found was caused by City or City's separate contractor, in which event City shall be responsible for payment of actual costs incurred by Design-Builder.

14.3. Correcting Work.

14.3.1. During the Term and until expiration of the warranty period, Design-Builder promptly shall correct any Work rejected by City as failing to conform to the requirements of the Contract Documents, whether inspected before or after Substantial Completion and whether or not fabricated, installed or completed. Design-Builder shall bear costs of correcting such rejected Work, along with all costs for additional testing and inspections, along with all compensation for City's services and incurred expenses made necessary thereby.

14.3.2. In addition to Design-Builder's warranty obligations set out in **Article 5.6**, if any of the Work is found to be defective or nonconforming with the requirements of the Contract Documents including, but not limited to, these General Conditions, Design-Builder promptly shall correct the Work after receipt of written notice from City to correct, unless City previously has given Design-Builder a written acceptance or waiver of the defect or nonconformity. Design-Builder's obligation to correct defective or nonconforming Work remains in effect for:

- 14.3.2.1.** one (1) year after the date of Substantial Completion of the Work or a designated portion of the Work;
 - 14.3.2.2.** one (1) year after the date for commencement of warranties established by agreement in connection with partial occupancy under **Article 11.8** hereto; or
 - 14.3.2.3.** the stipulated duration of any applicable special warranty required by the Contract Documents.
- 14.3.3.** The one (1) year period, described in **Article 14.3**, shall be extended, with respect to portions of the Work first performed after Substantial Completion, by the period of time between Substantial Completion and the actual completion of the Work.
- 14.3.4.** The obligations of Design-Builder under this **Article 14.3** shall survive final acceptance of the Work and the termination of this Contract. City shall give notice to Design-Builder after discovery of a defective or nonconforming condition in the Work. The one (1) year period stated in this **Article 14.3** does not limit the ability of City to require Design-Builder to correct latent defects or nonconformities in the Work, which defects or nonconformities could not have been discovered through reasonable diligence by City at the time the Work was performed or at the time of inspection for certification of Substantial Completion or final completion. The one (1) year period also does not relieve Design-Builder from liability for any defects or deficiencies in the Work that may be discovered after the expiration of the one (1) year correction period. After expiration of the one (1) year correction period, City may provide written notice to Design-Builder of any latent defects. After Design-Builder's receipt of City's notice of a defective or nonconforming condition in the Work or a latent defect, Contractor shall have a reasonable amount of time to correct the Work at its cost.
- 14.3.5.** Design-Builder shall remove from the Project Site those portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by Design-Builder nor accepted by City.
- 14.3.6.** If Design-Builder fails to correct any defective or nonconforming Work within a reasonable time after City gives written notice of a defective or nonconformity in the Work or of a latent to Design-Builder, City may correct the defective or nonconforming Work in accordance with this **Article 14.3**. If Design-Builder does not promptly proceed with correction of any defective or nonconforming Work within what City deems a reasonable time fixed by written notice from City, City may remove or replace the defective or nonconforming Work and furthermore may, at its sole discretion, store any salvageable materials or equipment at Design-Builder's expense. If Design-Builder does not pay the costs of removal and storage within ten (10) calendar days after written notice by City, City may, upon ten (10) additional calendar days written notice, sell the materials and equipment at auction or at private sale and shall account to Design-Builder for the proceeds, after deducting all costs and damages that should have been borne by Design-Builder to correct the defective work, including all compensation for City's services and expenses made necessary as a result of the sale, removal and storage. If the proceeds

of such a sale do not cover the costs that Design-Builder should have borne, the Contract Sum shall be reduced by the deficiency. If payments due to Design-Builder then or thereafter are not sufficient to cover the deficiency, Design-Builder shall pay the difference to City.

- 14.3.7.** Design-Builder shall bear the cost of correcting destroyed or damaged construction of City or City's separate contractors, whether the construction is completed or partially completed, caused by Design-Builder's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.
- 14.3.8.** Nothing contained in this **Article 14.3** shall be construed to establish a period of limitation with respect to other obligations which Design-Builder might have under the Contract Documents. The establishment of the one (1) year time period, as described in **Article 14.3** relates only to the specific obligation of Design-Builder to correct the Work pursuant to **Article 14** herein and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced or to the time within which proceedings may be commenced to establish Design-Builder's liability with respect to Design-Builder's obligations other than specifically to correct the Work pursuant to **Article 14** herein.
- 14.3.9.** Any Work repaired or replaced, pursuant to this **Article 14**, shall be subject to the provisions of **Article 14** to the same extent as Work originally performed or installed.

14.4. Acceptance of Nonconforming Work.

City may, in City's sole discretion, accept Work that is not in accordance with the requirements of the Contract Documents instead of requiring its removal and correction. Upon said occurrence, City shall reduce the Contract Sum by an amount it deems appropriate and equitable, as solely reasonably determined by City. Any adjustment will be accomplished whether or not final payment has been made.

END OF ARTICLE 14

ARTICLE 15 COMPLETION OF THE CONTRACT / TERMINATION / TEMPORARY SUSPENSION

15.1. Final Completion of Contraction.

The Contract will be considered completed, except as provided in any warranty or maintenance stipulations, bond, when all the Work fully has been completed, a final inspection is made by City and final acceptance is provided by written notification issued by City.

15.2. Warranty Fulfillment.

Prior to the expiration of the specified correcting of work period provided for in **Article 14** herein, City shall make a detailed inspection of the Work and shall advise Design-Builder and Design-Builder's Surety of the items that require correction. City shall make a subsequent inspection and, if the corrections properly have been performed, City shall issue a letter of release on the maintenance obligations to Design-Builder. If, for any reason, Design-Builder has not made the required corrections before the expiration of the warranty period, the warranty provisions, as provided for in the Contract Documents, shall remain in effect until the corrections properly have been performed and a letter of release from City to Design-Builder is issued.

No action or failure to act by City in regard to **Article 15.2** herein shall constitute City's acceptance of Work which is non-conforming and/or fails to comply with all requirements of the Contract Documents, except as may be specifically agreed in writing. Furthermore, no action or failure to act by City in regard to **Article 15.2** herein shall constitute a waiver of any right or duty afforded City under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

15.3. Termination by City for Cause.

15.3.1. Notwithstanding any other provision of these General Conditions, the Work or any portion of the Work may be terminated immediately by City for any material breach or default by Design-Builder after giving seven (7) calendar days advance written notice and an opportunity to cure to Design-Builder (or, if the alleged breach or default cannot reasonably be cured within such time, seven (7) calendar days for Design-Builder to commence and thereafter diligently continue such cure), if applicable, including but not limited to the following causes:

15.3.1.1. Failure or refusal of Design-Builder to start the Work within ten (10) calendar days after the date of the written Notice to Proceed is issued by City to Design-Builder commence Work;

15.3.1.2. A reasonable belief of City that the progress of the Work being made by Design-Builder is insufficient to complete the Work within the specified Contract Time;

- 15.3.1.3.** Failure or refusal of Design-Builder to provide sufficient and proper equipment or construction forces to properly execute the Work in a timely manner;
 - 15.3.1.4.** City's reasonable belief that Design-Builder has abandoned the Work;
 - 15.3.1.5.** City's reasonable belief that Design-Builder has become insolvent, bankrupt, or otherwise is financially unable to carry on the Work;
 - 15.3.1.6.** Failure or refusal on the part of Design-Builder to observe any material requirements of the Contract Documents or to comply with any written orders given by City, as provided for in the Contract Documents;
 - 15.3.1.7.** Failure or refusal of Design-Builder promptly to correct any defects in materials or workmanship, or defects of any nature, the correction of which has been directed to Design-Builder in writing by City;
 - 15.3.1.8.** A reasonable belief by City collusion exists or has occurred for the purpose of illegally procuring the contract, a sub-consultant or a Subcontractor, or that a fraud is being perpetrated on City in connection with the construction of Work under the Contract; or
 - 15.3.1.9.** Repeated and flagrant violation of safe working procedures.
- 15.3.2.** In addition, upon City's determination that any of the below events have occurred, City may immediately terminate this Contract, in whole or in part, "for cause" without any opportunity to cure by giving Design-Builder written notice of such termination:
- 15.3.2.1.** Design-Builder, either directly or indirectly through its employees or representatives, makes any material misrepresentation or provides any materially misleading information to City in connection with this Contract or its performance hereunder; or
 - 15.3.2.2.** Design-Builder attempts the sale, transfer, pledge, conveyance or assignment of this Contract, contrary to the terms of this Contract; or
 - 15.3.2.3.** Design-Builder ceases to do business as a going concern; makes an assignment for the benefit of creditors; admits in writing its inability to pay debts as they become due; files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such Party is continued and performance of all its obligations under this Contract shall continue) and such petition is not dismissed within forty-five (45) days of filing; or if a receiver, trustee or liquidator is appointed for it, or its joint venture entity, or any substantial part of Design-Builder's assets or properties.
- 15.3.3.** When the Work or any portion of the Work is terminated for any of the causes itemized in **Article 15.3.1**, or for any other cause except termination for convenience pursuant to **Article 15.3.7**, Design-Builder shall, as of the date specified by City,

immediately discontinue the Work or a portion of the Work as City shall designate. In the event of partial termination of the Contract, the terms and conditions of the Contract shall continue to apply with respect to the Work that has not been terminated. The Surety shall, within fifteen (15) calendar days after the written notice of termination by City for cause has been served upon Design-Builder and the Surety or its authorized agents, assume the obligations of Design-Builder for the Work or that portion of the Work which City has ordered Design-Builder to discontinue and Surety may:

- 15.3.3.1.** perform the Work with forces employed by the Surety;
- 15.3.3.2.** with the written consent of City, tender a replacement Design-Builder to take over and perform the Work, in which event the Surety shall be responsible for and pay to the replacement Design-Builder the amount of any costs required to be incurred for the completion of the Work that are in excess of the amount of funds remaining under the Contract as of the time of the termination; or
- 15.3.3.3.** with the written consent of City, tender and pay to City in settlement the amount of money necessary to finish the balance of uncompleted Work under the Contract, correct existing defective or nonconforming work and compensate City for any other loss sustained as a result of Design-Builder's default.
- 15.3.4.** In the event of a termination by City for cause involving **Article 15.3.1 and/or Article 15.3.2**, Surety shall assume Design-Builder's place in all respects and the amount of funds remaining and unpaid under the Contract shall be paid by City for all Work performed by Surety or the accepted replacement Design-Builder, in accordance with the terms of the Contract Documents, subject to any rights of City to deduct any and all costs, damages (liquidated or actual) City incurred, including, but not limited to, any and all additional fees and expenses of Design-Builder and any attorney fees City incurs as a result of Design-Builder's default and subsequent termination.
- 15.3.5.** The balance of the Contract Sum remaining at the time of Design-Builder's default and subsequent termination shall become due and payable by City to the Surety as the Work progresses, subject to all of the terms, covenants and conditions of the Contract Documents. If the Surety does not, within the time specified in **Article 15.3.2**, exercise its obligation to assume the obligations of the Contract or that portion of the Work which City has ordered Design-Builder to discontinue, then City shall have the power to complete the Work by contract or otherwise, as City may deem necessary and so elects. Design-Builder agrees that City shall have the right to:
 - 15.3.5.1.** take possession of or use any or all of the materials, plant, tools, equipment, supplies and property of any and every kind, to be provided by Design-Builder for the purpose of the Work; and
 - 15.3.5.2.** procure other tools, equipment, labor and materials for the completion of the Work at Design-Builder's and Surety's expense; and

15.3.5.3. charge to the account of Design-Builder/Surety the expenses of completion and labor, materials, tools, equipment, and incidental expenses.

15.3.6. All expenses incurred by City to complete the Work shall be deducted by City out of the balance of the Contract Sum remaining unpaid to or unearned by Design-Builder. Design-Builder and Surety shall be liable to City for any costs incurred in excess of the balance of the Contract Sum for the completion and correction of the Work and for any other costs, damages, expenses (including, but not limited to, additional fees of City and attorney's fees) and liquidated or actual damages incurred as a result of the termination.

15.3.7. City shall not be required to obtain the lowest bid for the Work of completing the Contract, as described in **Article 15.3.4**, but the expenses to be deducted from the Contract Sum shall be the actual reasonable cost of such Work and all other damages, as provided in **Article 15.3.4**. In case City's costs and damages are less than the sum which would have been payable under the Contract if the Work had been completed by Design-Builder pursuant to the Contract, then City may pay Design-Builder (or Surety, in the event of a complete termination by City for cause) the difference, provided that Design-Builder (or Surety) shall not be entitled to any claim for damages or for loss of anticipated profits. In case such costs for completion and damages shall exceed the amount which would have been payable under the Contract if the Work had been completed by Design-Builder pursuant to the Contract, then Design-Builder and its Surety shall pay the amount of the excess to City immediately upon written notice from City to Design-Builder and/or Surety for the excess amount owed. When only a particular part of the Work is being carried on by City, by contract or otherwise under the provisions of this **Article 15.3.7**, Design-Builder shall continue the remainder of the Work in conformity with the terms of the Contract and in such manner as not to hinder or interfere with the performance of workers employed and provided by City.

15.3.8. If this Contract is terminated for grounds which are later determined not to justify a termination for cause under **Article 15.3**, such termination shall be deemed to constitute a termination for convenience pursuant to **Article 15.4**.

15.4. Termination by City for Convenience.

15.4.1. The right to terminate this Contract for the convenience of City (including, but not limited to, non-appropriation of funding) expressly is retained by City. In the event of a termination for convenience by City, City shall, at least ten (10) calendar days in advance, deliver written notice of the termination for convenience to Design-Builder. Upon Design-Builder's receipt of such written notice, Design-Builder immediately shall cease the performance of the Work and shall take reasonable and appropriate action to secure and protect the Work then in place. Design-Builder then shall be paid by City, in accordance with the terms and provisions of the Contract Documents, an amount not to exceed the actual labor costs incurred and not yet paid to date, the actual cost incurred and not yet paid to date of all materials installed and the actual cost incurred and not yet paid to date of all materials stored at the Project site or away from the Project site, as approved in writing by City and which cannot

be returned, plus applicable overhead, profit and the actual, reasonable and documented termination costs, if any, paid by Design-Builder in connection with the Work in place which is completed and in conformance with the Contract Documents up to the date of termination for convenience, less all amounts previously paid for the Work. No amount ever shall be paid to Design-Builder for lost or anticipated profits on any part of the Work not performed. Design-Builder shall not, however, be entitled to any lost or anticipated profit or to any payment on unperformed services, should City choose to exercise this option to terminate, nor shall Design-Builder be entitled to compensation for any unnecessary or unapproved Work performed during the time between Design-Builder's receipt of City's Notice of Termination and the actual termination date.

15.5. Temporary Suspension of the Work.

15.5.1. The Work or any portion of the Work may temporarily be suspended by City, for a time period not to exceed ninety (90) calendar days, immediately upon written notice to Design-Builder for any reason including, but not limited to:

15.5.1.1. under other provisions in the Contract Documents that require or permit temporary suspension of the Work;

15.5.1.2. situations where the Work is threatened by, contributes to or causes an immediate threat to public health, safety, or security; or

15.5.1.3. other unforeseen conditions or circumstances.

15.5.2. Design-Builder immediately shall resume the temporarily suspended Work when ordered in writing to do so by City. City shall not, under any circumstances, be liable for any claim of Design-Builder arising from a temporary suspension due to a cause described in **Article 15.3.1**; provided, however, that in the case of a temporary suspension for any of the reasons described under **Article 15.3.1**, where Design-Builder is not a contributing cause of the suspension or where the provision of the Contract Documents in question does not specifically provide that the suspension is at no cost to City, City shall make an equitable adjustment for the following items, provided that a claim properly is made by Design-Builder under **Article 6.2**:

15.5.2.1. an equitable extension of the Contract Time, not to exceed the actual delay caused by the temporary suspension, as determined by City;

15.5.2.2. an equitable adjustment to the Contract Sum for the actual, necessary and reasonable direct costs incurred by Design-Builder for properly protecting any Work finished or partially finished during the period of the temporary suspension; provided, however, that no payment of profit and/or overhead shall be allowed on top of these costs; and

15.5.2.3. if it becomes necessary to move equipment from the Project Site and then return it to the Project Site when the Work is ordered to be resumed, an equitable adjustment to the Contract Sum for the actual, necessary and reasonable direct

cost of these moves; provided, however, that no adjustment to the Contract Sum shall be due if said equipment is moved to another Project site of City.

END OF ARTICLE 15

ARTICLE 16 MISCELLANEOUS PROVISIONS

16.1. Successors and Assigns.

City and Design-Builder respectively bind themselves, their partners, successors, assigns and legal representatives to the promises, covenants, terms, conditions and obligations contained in the Contract Documents. Design-Builder shall not assign, transfer or convey its interest or rights in the Contract, in part or as a whole, without the written consent of City. If Design-Builder attempts to make an assignment, transfer or conveyance without City's written consent, Design-Builder nevertheless shall remain legally responsible for all obligations under the Contract Documents. City shall not assign any portion of the Contract Sum due or to become due under this Contract without the written consent of Design-Builder, except where assignment is compelled by court order, other operation of law or the terms of these General Conditions.

16.2. Written Notice.

Any notice, payment, statement or demand required or permitted to be given under this Contract by either party to the other may be effected by personal delivery in writing, facsimile transmission, email, U.S. mail (postage prepaid) or by overnight delivery to an officer, management level employee or other designated representative of either party. Mailed or e-mailed notices shall be addressed to the parties at an address designated by each party, but each party may change its address by written notice to the other in accordance with this **Article 16.2**. Mailed notices shall be deemed received as of three (3) calendar days after mailing.

16.3. Rights and Remedies; No Waiver of Rights by City.

- 16.3.1.** The duties and obligations imposed on Design-Builder by the Contract Documents and the rights and remedies available to City under the Contract Documents shall be in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or made available by law.
- 16.3.2.** No action or failure to act by City shall constitute a waiver of a right afforded City under the Contract Documents, nor shall any action or failure to act by City constitute approval of or acquiescence in a breach of the Contract by Design-Builder, except as may be specifically agreed in writing by Change Order, Amendment or supplemental agreement.

16.4. Interest.

City shall not be liable for interest on any progress or final payment to be made under the Contract Documents, except as may be provided by the applicable provisions of the Prompt Payment Act, Chapter 2251, Texas Government Code, as amended, subject to **Article 11** of these General Conditions.

16.5. Test and Inspections

- 16.5.1.** Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time and shall be made promptly to avoid unreasonable delay in the Work. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to City, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. .
- 16.5.2.** If the City in its reasonable discretion determines that portions of the Work require additional testing, inspection or approval not included under **Article 16.5.1**, City, shall instruct Design-Builder to make arrangements for such additional testing, inspection, or approval by an entity acceptable to City. Such costs, except as provided in **Article 16.5.3**, shall be at City's expense, subject to **Article 16.5.3** below.
- 16.5.3.** If such procedures for testing, inspection or approval under **Articles 16.5.1** and **16.5.2** reveal failure of portions of the Work to comply with requirements established by the Contract Documents, all additional testing, inspection or approval performed pursuant to **Article 16.5.2**, remediation, repairs, replacements, and other costs made necessary by such failure (including those of repeated procedures), shall be at Design-Builder's expense.
- 16.5.4.** Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by Design-Builder.

16.6. Independent Materials Testing and Inspection.

In some circumstances, City shall retain, independent of Design-Builder, inspection services, the testing of construction materials, engineering and the verification testing services necessary for acceptance of the Project by City. Such consultants will be selected in accordance with Section 2254.004 of the Government Code. The professional services, duties and responsibilities of any independent consultants of City will be described in the agreements between City and those consultants. The provision of inspection services by City will be for Quality Assurance and shall not reduce or lessen Design-Builder's responsibility for the Work or its duty to establish and implement a thorough Quality Control Program to monitor the quality of construction and guard City against defects and deficiencies in the Work, as required herein. Design-Builder fully and solely is responsible for constructing the Project in strict accordance with the Construction Documents.

16.7. Financial Interest.

- 16.7.1.** Officers or employees of the City shall not have financial interest in any contract of the city. Design-Builder acknowledges the Charter of the City of San Antonio and its Ethics Code prohibits a City officer or employee, as those terms are defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with City of any City agency, such as City-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with City or in the sale to City of land,

materials, supplies or service if any of the following individual(s) or entities is a Party to the contract or sale:

- 16.7.1.1.** City officer or employee; his parent, child or spouse;
- 16.7.1.2.** business entity in which the officer or employee, his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity;
- 16.7.1.3.** business entity in which any individual or entity listed above is a Subcontractor on a City contract, or
- 16.7.1.4.** a partner or a parent or subsidiary business entity.

Pursuant to the subsection above, Design-Builder warrants and certifies, and this Contract is made in reliance thereon, that it, its officers, employees and/or agents are neither officers nor employees of City. Design-Builder further warrants and certifies that it has tendered to City a Discretionary Contracts Disclosure Statement in compliance with City's Ethics Code. Any violation of this **Article 16.8** shall constitute malfeasance in office and any officer or employee of City guilty thereof shall forfeit his office or position. Any violation of this **Article 16.8**, with the knowledge, express or implied, of the person, persons, partnership, company, firm, association or corporation contracting with City shall render a Contract voidable by the City's City Manager or City Council.

16.8. Governing Law and Venue.

This Contract and all of the rights and obligations of the Parties and all of the terms and conditions shall be construed, interpreted and applied in accordance with and governed by and enforced under the Laws of the State of Texas without reference to conflict of law or choice of law principles of Texas or of any other state. This Contract is entered into subject to and controlled by, and Contractor shall comply with, the Charter, codes and ordinances of the City of San Antonio and all applicable Laws of the State of Texas and the Government of the United States of America. Bexar County shall be the sole place of venue for any legal action arising from or related to this Contract or the Project in which City is a party.

16.9. Independent Design-Builder.

In performing the Work under this Contract, the relationship between City and Design-Builder is that of an independent contractor. Design-Builder shall exercise independent judgment in performing the Work and solely is responsible for setting working hours, scheduling and/or prioritizing the Work flow and determining the means and methods of performing the Work, subject only to the requirements of the Contract Documents. No term or provision of this Contract shall be construed as making Design-Builder an agent, servant or employee of City or making Design-Builder or any of Design-Builder's employees, agents or servants eligible for the fringe benefits, such as retirement, insurance and worker's compensation which City provides to its employees.

16.10. Non-Discrimination.

As a Party to this Contract, Design-Builder understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City of San Antonio Code and further, Design-Builder shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless Design-Builder is exempted by state or federal law, or as otherwise established. Design-Builder covenants that it shall take all necessary actions to insure that, in connection with any Work under this Contract, Design-Builder, its sub-consultant(s), and its Subcontractor(s) shall not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, either directly, indirectly or through contractual or other arrangements. Design-Builder also shall comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended.

16.11. Benefits to Public Servants.

- 16.11.1.** City may terminate this Contract immediately if Design-Builder has offered, conferred or agreed to confer any benefit on a City of San Antonio employee or official that the employee or official is prohibited by law from accepting.
- 16.11.2.** For purposes of this **Article 16.12**, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.
- 16.11.3.** Notwithstanding any other legal remedies, City may require Design-Builder to remove any employee of Design-Builder, a sub-consultant, a Subcontractor or any employee of a sub-consultant and/or Subcontractor from the Project who has violated the restrictions of this **Article 16** or any similar state or federal law and City may obtain reimbursement for any expenditures made to Design-Builder as a result of the improper offer, agreement to confer or the conferring of a benefit to a City of San Antonio employee or official.

16.12. Mutual Waiver of Consequential Damages.

Notwithstanding anything in the Contract Documents to the contrary, neither City nor Design-Builder shall be liable for any consequential, indirect, incidental, punitive or exemplary damages, whether or not foreseeable, regardless of whether based on breach of contract, tort (including negligence), indemnity, strict liability or other bases of liability; provided, however, that this Article shall not prevent City's recovery of liquidated damages as allowed by **Articles 6.10** of the Design-Build Contract.

END OF ARTICLE 16

ARTICLE 17 AUDIT

17.1. Right to Audit Design-Builder's Records.

By execution of the Contract, Design-Builder grants City, the Federal Aviation Administration and the Comptroller General of the United States the right to audit, examine, inspect and/or copy, at City's election at all reasonable times during the term of this Contract following reasonable advance written notice and for a period of ten (10) years following the completion or termination of the Work, all of Design-Builder's written and electronically stored records and billings relating to the performance of the Work under the Contract Documents. The audit, examination or inspection may be performed by a City designee, which may include its internal auditors, or an outside representative engaged by City. Design-Builder agrees to retain its records for a minimum of ten (10) years following termination of the Contract, unless there is an ongoing dispute under this Contract, then, such retention period shall extend until final resolution of the dispute, with full access allowed to authorized representatives of City upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

17.1.1. As used in these General Conditions, "Design-Builder written and electronically stored records" shall include any and all information, materials and data of every kind and character generated as a result of the work under this Contract. Example of Design-Builder written and electronically stored records include, but are not limited to: accounting data and reports, billings, books, general ledgers, cost ledgers, invoices, production sheets, documents, correspondences, meeting notes, subscriptions, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, reports, drawings, receipts, vouchers, memoranda, time sheets, payroll records, policies, procedures, Subcontractor agreements, Supplier agreements, rental equipment proposals, any payments / settlements / satisfaction / release provided under the Contract Documents, federal and state tax filings for any issue in question, along with any and all other agreements, sources of information and matters that may, in City's sole judgment, have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Contract Documents. Notwithstanding anything in the Contract Documents to the contrary, City's audit rights shall not extend to the composition or make-up of any , negotiated and mutually accepted lump sums, or other negotiated and mutually accepted fixed amounts included in Design-Builder's compensation, but only to the proper application of such amounts in Design-Builder's applications for payment. Notwithstanding the foregoing, City shall have the right to audit Design-Builder's records and certified payrolls to ensure Design-Builder's compliance with the "Prevailing Wage Decision" set out in **EXHIBIT N**, the provisions of Chapter 2258 of the Texas Government Code and City Ordinance No. 2008-11-20-1045.

17.1.2. City agrees that it shall exercise the right to audit, examine or inspect Design-Builder's records only during regular business hours. Design-Builder agrees to allow City and/or City's designee access following reasonable advance written notice to all of the Design-Builder's Records only as they relate to this contract, Design-Builder's facilities and current or former employees of Design-Builder, deemed necessary by

City or its designee(s), to perform such audit, inspection or examination. Design-Builder also agrees to provide adequate and appropriate workspace necessary for City or its designees to conduct such audits, inspections or examinations.

- 17.1.3.** Design-Builder shall include this **Article 17** in any sub-consultant, Subcontractor, Supplier or vendor contract.

END OF ARTICLE 17

ARTICLE 18 ATTORNEY FEES

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

END OF ARTICLE 18

END OF GENERAL CONDITIONS



New Parking Structure & Ground Transportation Center (GTC)

SAT Project # 33-03350

Project Development Manual (PDM)

San Antonio Airport System
9800 Airport Blvd, San Antonio, Texas
FINAL ISSUE



WALKER
CONSULTANTS

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Introduction Executive Summary

This Project Development Manual (PDM) provides the general scope of work for the New Parking Structure and Ground Transportation Center (GTC).

The San Antonio International Airport has seen substantial growth in traveler numbers over the past five years, with 2023 achieving the highest passenger traffic on record—an increase of 3% compared to 2019. In response to this growth and the construction of a new terminal, the airport plans to develop an upgraded Parking Structure and GTC.

This project aims to accommodate approximately 2,500 vehicles and enhance services for taxis, rideshares, hotel shuttles, and public transportation. The GTC will also help reduce curbside congestion by redirecting traffic away from the loop roadway, improving the overall efficiency of ground transportation at the airport.

The total estimated contract amount is \$110,000,000.00, (Not-To-Exceed \$125,000,000.00 total program costs).

Optional project components will be considered to meet budget requirements. The Design-Builder is expected to propose a timeline for the development of the project, aligning design, procurement, issuance of early work Fixed Price Proposals, and the overall program construction schedule. GMP negotiations may begin as early as 60% or as late as 100% design completion, provided that the Design-Builder can demonstrate cost certainty and acceptable mitigation of development risks. GMP must be negotiated not later than 01 May 2026.

Note that the information provided includes proposed design elements to be developed by the Design-Build Team into the project and can be modified through the design process in coordination with the Owner. Compliance with SAT Design Standards, and all current applicable codes and local ordinances are mandatory throughout the project design’s development.

Program Objectives

- Establish and sustain an integrated and cohesive Project team relationship between the City, the City’s stakeholders, and the Design-Build Team to deliver an optimized high-quality design and construction that is on time and within the Sponsor’s budget.
- Design and construct a Project that will achieve design excellence manifested by exceeding City’s vision and functional requirements with solutions that are high performance, sustainable, and possess a holistic awareness of the local site.
- Maintain a safe, injury free work site.
- Minimize impacts to the Airport through close coordination with City.
- Minimize impacts to parking and traffic for work site and material storage.
- Maximize the amount of parking spaces within the allocated project budget ensuring that the facility can expand in the future to the south to accommodate additional parking.

Notice to Bidders

Title VI Solicitation Notice:

The City, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, Respondents will be afforded full and fair opportunity to submit bids in response to this invitation and no businesses will be discriminated against on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in consideration for an award.

Federal Fair Labor Standards Act (Federal Minimum Wage)

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, et seq, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text.

The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part-time workers.

The selected Respondent has full responsibility to monitor compliance to the referenced statute or regulation.

The Respondent must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

Design-Build Requirements

The Design-Build Team is to provide, but not limited to, the following:

- Complete, permittable, and constructable construction documents developed from the preliminary RFQ bridging documents.
- All project management, architectural, engineering, cost management, permitting (including costs), project design and construction schedule, and other such pre-construction services required for the successful completion of the Project.
- Identify a fair process to facilitate and expedite design review to enhance schedule with City and stakeholders.
- Identify project specific risks, clearly identify how such risks are mitigated, and maintain a risk register hosted within the City's Project Management Information System (PMIS). DB shall allocate the risk to each party best suited to address the risk.
- Identify sustainable design opportunities.
- All Quality management controls and monitoring needed for a successful project, including quality assurance and quality control of both design and construction phases of the project.
- All construction management and supervision, general conditions for construction, construction services for all required trades, including all labor, materials and equipment required for a complete and workable Project.
- Maintain compliance with all applicable prevailing wage laws/Davis Bacon Laws.
- Systems commissioning, operational readiness, performance requirements validation, Project Substantial Completion, Final Completion, close-out, and warranty follow-up services.
- Assist with reporting on passenger experience with GTC operations.
- Collaborate with Terminal Development Program (TDP) engineering team's traffic study and other planning efforts to maximize GTC utilization.
- Analyze changes from existing conditions and anticipated outcomes.
- Collect data as required and use metrics.
- Examine industry benchmarks.
- Assist with overall planning to create an inclusive and accessible facility.
- Meet and present to Accessibility stakeholder focus groups.

Design Deliverables

Proposed Design Deliverables: The owner expects the D-B program/project controls team to develop and maintain the program/project budget and schedule, continuously updated monthly, for the design progression, early work packages, all procurement and GMP.

1. **Schematic Design (SD) 30%**
 - a. **Activities:** Development of conceptual designs, initial layouts, and exploration of design options.
 - b. **Purpose:** To establish design intent, confirm initial alignment with the Terminal Development Program (TDP) and supporting infrastructure. Preliminary cost estimates.
2. **Design Development (DD) 60%**
 - a. **Activities:** Refine the design in detail, including architectural and engineering drawings, material specifications, and system integration.
 - b. **Purpose:** To finalize the design and specifications, ensuring all components are coordinated and compliant with regulations as well as the TDP. Submit for preliminary plan review with permitting agencies.
3. **Proposed early work packages should be developed as follows:**
 - a. **Package 1** – Civil Make-Ready
 - b. **Package 2** – Piles/Foundations
 - c. **Package 3** – Early Procurement for Switchgear and other long lead items
4. **Construction Documents (CD) 90%**
 - a. **Activities:** Preparation of complete construction drawings and specifications.

- b.

Purpose: To provide detailed instructions for construction, ensuring clarity and compliance with codes.
5. **Construction Permit Documents 100%**

a.

Activities: Finalize and prepare all necessary construction drawings and specifications for permit submission.

b.

Purpose: To ensure that all documentation meets regulatory requirements, providing a clear roadmap for construction while ensuring compliance with codes.

The early work packages will be negotiated as Fixed Price Proposals that will be included in the final Guaranteed Maximum Price (GMP). The DB will develop and complete these design packages to the 100% design/Construction documents level as the Architect/Engineer of Record.

The total estimated contract amount is a not to exceed budget of \$110,000,000. Optional project components will be considered to meet budget requirements. The Design-Builder is expected to propose a timeline for the development of the project, aligning design, procurement, issuance of early work Fixed Price Proposals, and the overall program construction schedule. GMP negotiations may begin as early as 60% or as late as 100% design completion, provided that the Design-Builder can demonstrate cost certainty and acceptable mitigation of development risks. GMP must be negotiated not later than 01 May 2026.

Cost Estimation Requirements

The Design-Build Team is to provide detailed cost estimates that will aid in financial planning and budget management.

The following levels of cost estimates are expected:

- Level 1 Cost Estimate:** A high-level estimate that provides a rough order of magnitude for project costs at each design milestone. This estimate should offer a general understanding of the overall budget implications and will be useful for initial project financing and stakeholder discussions.
- Level 2 Cost Estimate:** A more detailed cost breakdown that aligns with the design deliverables. This estimate should include itemized costs associated with materials, labor, equipment, and other project expenses. Level 2 estimates must be refined as the design progresses, providing a clearer picture of financial requirements at the 30%, 50%, and 90% stages.

Scheduling Requirements/Project Timeline

The Design-Build Team is to utilize project management software to provide the following, (Primavera P6 suggested):

1.

Cost-Loaded Schedules: All schedules must be cost-loaded, detailing project costs associated with each activity. This entails assigning percentages of total costs to specific tasks, providing a clear financial overview that aids in budget management and forecasting. This feature ensures that stakeholders can monitor financial performance alongside project progress.
2.

Graphical Representation: We require that all schedules include comprehensive graphical elements, such as Gantt charts and histograms, to enhance clarity and facilitate communication. These visual tools will provide stakeholders with immediate insights into project timelines, resource allocation, and budget expenditures, promoting transparency and informed decision-making.
3.

Progress Tracking and Reporting: The ability to track progress against the cost-loaded schedule is vital. Primavera P6 will enable our team to regularly update the status of activities, reflecting actual costs and work completed. This functionality will support effective variance analysis and enable timely interventions if necessary.

Estimated Project Timeline



1. Design Criteria

1.1 Design Standards and Guidelines (most current versions)

The following design standards and guidelines have been adopted as most relevant to this project. Confirm most current version of the following:

- SAT Design Standards and Guidelines – Link: <https://flysanantonio.com/business/about-saas/construction-development/>
 - SAT Design Guidelines (Visioning Document)
 - SAT Design Standards
 - SAT BIM Standards Manual
 - SAT/SSF Brand Guidelines
 - SAT Wildlife Hazard Management Plan
 - SAT Storm Water Pollution Plan
 - SAT Soil Management Plan
 - SAT Sustainable Airport Manual (SAM) VOL 1
 - SAT Contractor Safety Plan Requirements
 - SAT Wayfinding and Signage Master Plan
 - CoSA Structured Cabling Infrastructure Guidelines
 - SAT Concessions Standards and Specification Guidelines

National Fire Protection Association (NFPA)

- NFPA 70 - National Electrical Code (latest edition)
- NFPA 110 - Standard for Emergency and Standby Power Systems

FAA Advisory Circulars (AC) will be utilized for design. FAA ACs and CoSA requirements will be utilized for specifications. FAA Modifications of Standards (MoS) are not anticipated and therefore are not included in the project at this time.

- 150/5300-13A - Airport Design
- 150/5360-9 - Planning and Design of Airport Terminal Buildings
- 150/5300-16A - Airport Surveying
- 150/5360-12A - Airport Land Use Compatibility Planning
- 150/5370-10H - Standard Specifications for Construction of Airports
- Engineering Brief 105A, Vertiport Design

2. Design Approach

2.1 Scope of Work and Descriptions

The purpose of this project is for the construction of a new Parking Structure and Ground Transportation Center (GTC) facility. The GTC and associated structured parking above encompasses improvements to provide enhanced commercial curbside operations, as well as expand revenue generating onsite parking for the airport. The GTC will provide for centralized airport passenger access to taxis, rideshares, hotel shuttles and public transportation on the ground level. Additionally, the GTC will provide support spaces for personnel that maintain/operate the facility and climate-controlled elevators. The ground level GTC provides the opportunity for approximately 2150 ft. of curbside operations, and accommodates various commercial vehicles, up to and including 40 ft. buses with bike racks mounted to the front. The Parking Structure is estimated to accommodate parking for 2,500 vehicles with 450-500 parking spots on each level. The top level of the facility is to be designed for vehicle parking and to structurally support future development of an Electric Vertical Take-Off & Landing (eVTOL) operations area.

An overview of the elements included in the new parking structure and GTC are as follows:

Architectural and Structural Design

- New entry plaza (dedicated short-term and long-term parking) with commercial vehicle bypass
- Access to existing or future exit toll plaza
- Concrete post-tension structure and/or pre-cast concrete structure
- Conditioned lobby at grade with provisions for future pathway to terminal
- Approximately 5-6 elevated levels (to be developed by Design-Build Team)

- Vertical circulation core (elevator/stairs) to serve parking and GTC
- Vertical circulation ramping to meet entry / exit requirements (to be developed by Design-Build Team)
- Parking Geometrics and pavement markings
- Signage / wayfinding (Dynamic and Static)
- Landscape and irrigation along GTC roadway frontage

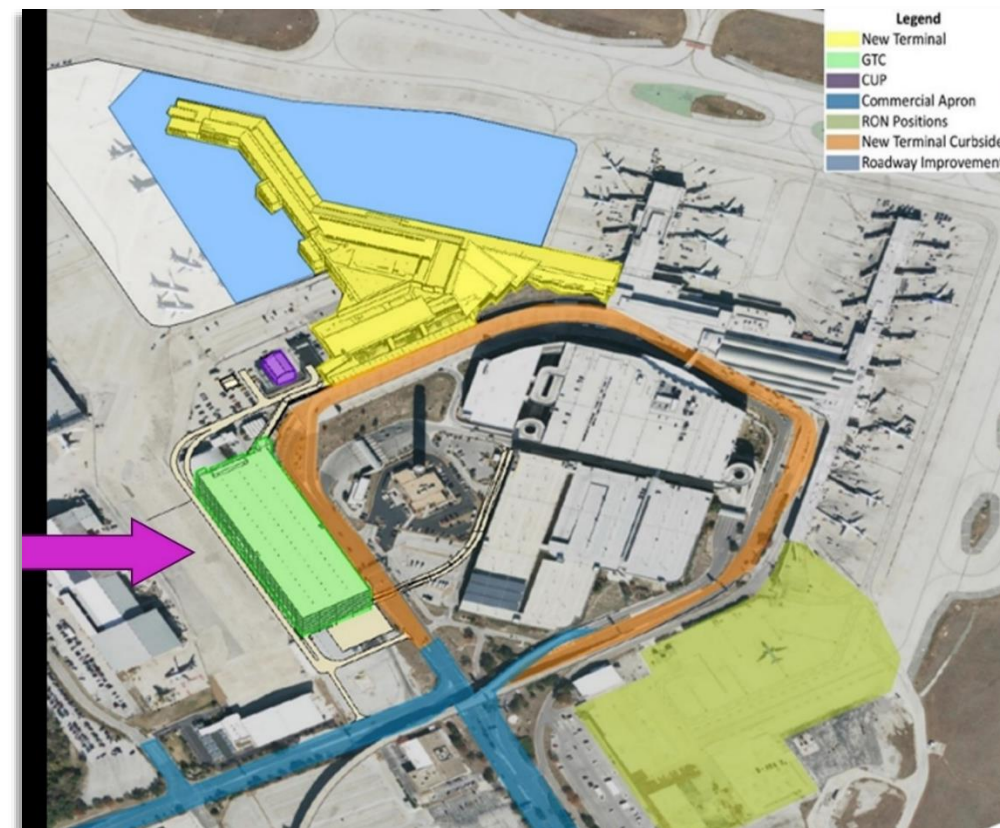
Mechanical, Electrical and Plumbing Design

- Utility connections / Improvement
- HVAC – chilled water system and/or other HVAC system as required
- Building Automation / Energy Management
- Air Filtration & Distribution
- Future eVTOL provisions
- Electrical service, meters and submetering
- Emergency Generator
- EV Chargers & future provisions
- Lighting and Controls
- Fire Alarm, Sprinkler Systems and Emergency Responder Radio coverage
- Domestic Water
- Passenger Restrooms as required
- Ground Transportation Operator Restrooms

Technology

- Security Technologies
- Parking Revenue and Access Control System (PARCS)
- Advanced Parking Guidance System (APGS)
- Digital Signage
- IT and Communications
- Main Distribution Frame / IDF Room Distribution

(Note that other elements may be proposed for consideration to ensure project success).



(Conceptual Plan by Others)

2.2 Site Design

Geotechnical

- Design-Build Team to obtain geotechnical report and survey of the current project site.
- Geotechnical information available from the soils exploration and testing program indicates site class "C" soils are present. The resulting seismic design category for the parking structure is category "A". Drilled piers (deep foundation) are appropriate for supporting the parking structure.
- Ancillary structures may be supported on thickened slabs or mat foundations over select fill.
- The site soils are potentially expansive. All stair landings and elevator lobbies at the ground level will be supported by drilled piers and structural slabs with adequately designed void forms that will mitigate the heaving soils potential.
- The at-grade spandrel panels will be designed to span from deep foundation to deep foundation. A void form will be placed between the spandrel bottom and the soils to mitigate heaving.

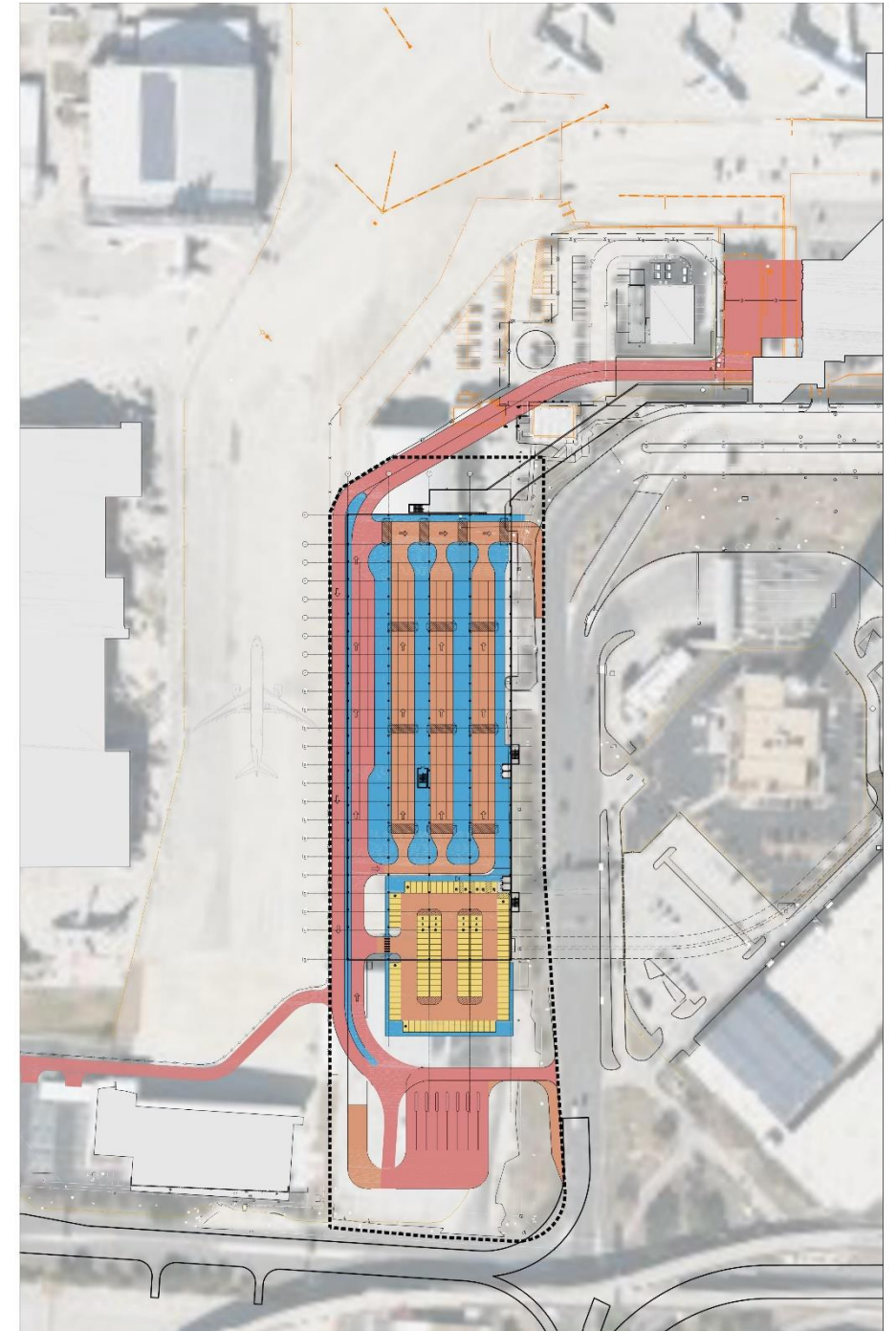
Utilities

At the current planning stage, the following utility requirements are anticipated:

- Electrical service adequate for lighting, parking equipment, signage, elevators, security technology, and future installation of electric vehicle chargers
- New Parking Structure & GTC lighting in accordance with applicable federal, state, and local requirements. New Parking Structure & GTC lighting is to be LED type with low glare and low stray lighting spillover toward the skies.
- Stormwater collection system for runoff from the roof level
- Rainwater cistern for gray water reuse
- Sanitary sewer collection system for effluent from covered levels
- Domestic water Supply for facility cleaning
- Standpipe system and sprinkler system for fire protection
- Communications system to support parking equipment, security technology, automated external defibrillators, dynamic signage, access control, telephone, Wi-Fi, and a distributed antenna system.

Roadways

Due to the unique geometry of the entry/exit to the Commercial Vehicle Level of the facility, cast-in-place bridge structures are anticipated that connect to grade with use of retaining wall supported fill.



(Conceptual Plan by Others)

Landscape

Landscaping and irrigation to be provided along the Airport Terminal Drive frontage for the new GTC.

The Design-Build Team is to coordinate all work with the Terminal Development Program Team, as well as coordinate with any work done by others such as the GTC/Terminal Building Connector and related landscaping and retaining walls.

All work to be installed in compliance with the City of San Antonio's Unified Development Code (UDC).

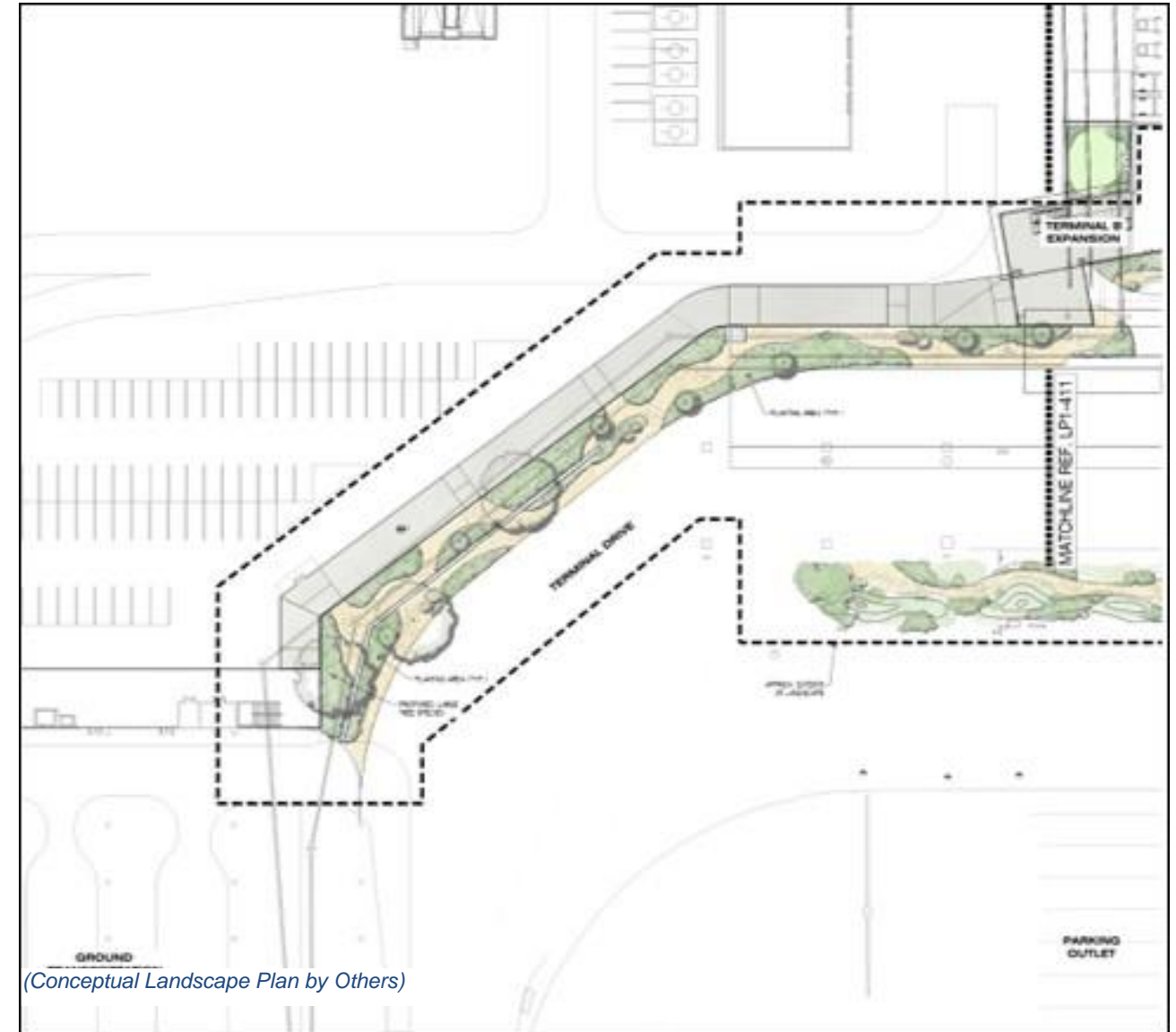
Loading Zone

Commercial vehicle loading zones must include an accessible loading zone for every 100 linear feet of curb. The final designers shall determine how accessible loading zones will be incorporated into the floor plate design. Preference is given to utilizing methods of separating vehicles and pedestrians via alternative means and not utilizing a raised curb within the structure.

Wayfinding

The signage for the new parking structure should provide vehicular and pedestrian movements that are intuitive, safe, and convenient. Beams, columns, and walls should be used for static signage where possible to limit walking and sight obstructions. Design-Build Team to collaborate with a wayfinding consultant to accomplish the following:

- Provide a seamless experience between the parking structure and the terminal
- Provide signage identifying the commercial vehicles operating at each curb
- Provide direction to the vertical circulation cores (pedestrian and vehicular)
- Provide direction to parking from the roadway system, (An automated parking guidance system (APGS) may accomplish some of the wayfinding goals for drivers within or approaching the GTC)



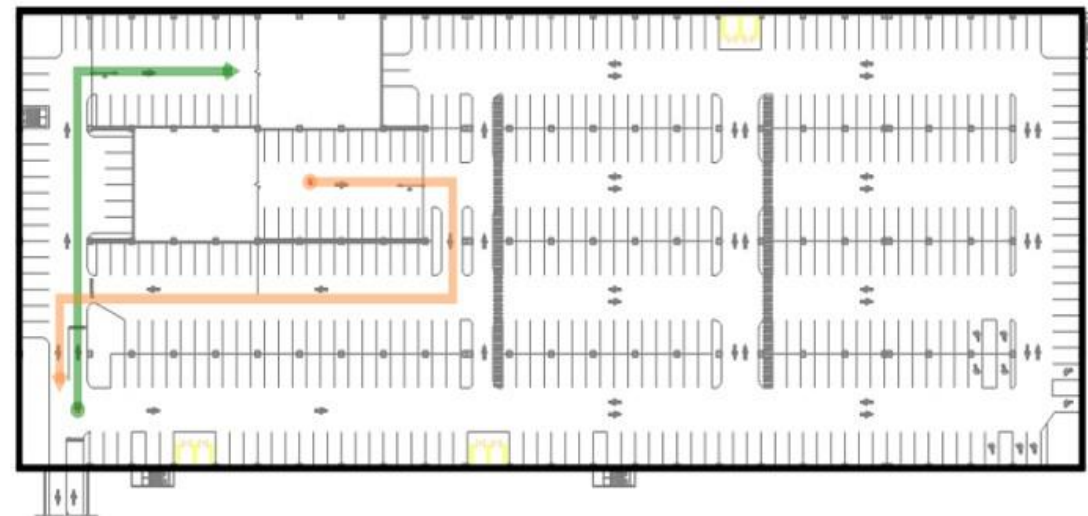
3. New Parking Structure and Ground Transportation Center (GTC)

3.1 Architectural Design

Parking Geometrics

The new parking structure should incorporate the current best practices in the U.S. parking industry to facilitate efficient and safe traffic flows.

- Configure parking for two-way vehicular traffic with 90-degree parking stalls.
- Provide 60-foot minimum clear width parking bays with 24-foot minimum width drive lanes.
- Follow local codes for conditions that require wider parking bays or drive aisles.
- Vertical elements, such as columns, pipes, and bollards, should not encroach into parking spaces.
- A minimum vertical clearance from the finished surface to the overhead elements (structure, piping, signage, etc.) must be provided.
- Provide 8'-6" minimum structure clearance to accommodate accessible vans.
- Higher clearance will be required for Level 1 to accommodate shuttles, busses and other vehicles as required.
- Geometric design and vertical clearance for Levels 1 and 2 should also accommodate emergency vehicles.
- Parking spaces are to be 9'-0" wide and 18'-0" long, (Compact spaces are not permitted).
- Accessible parking must be provided as a parking product by federal codes.



(Conceptual Plan by Others)

GTC – GRID COORDINATION

San Antonio Unified Development Code
Sec. 35-526. Parking and Loading Standards

(e) Size and Location.

- (1) **Dimensions.** Off-street parking spaces shall have minimum dimensions of nine (9) feet in width and eighteen (18) feet in length, exclusive of access or maneuvering area, ramps and other appurtenances and except as provided in subsection (b). Stall depth shall be based upon the angle of parking, as set forth in column (B) of Table 526-1. The minimum width of access aisles internal to a parking lot or structure shall be as prescribed in column (C) of Table 526-1.

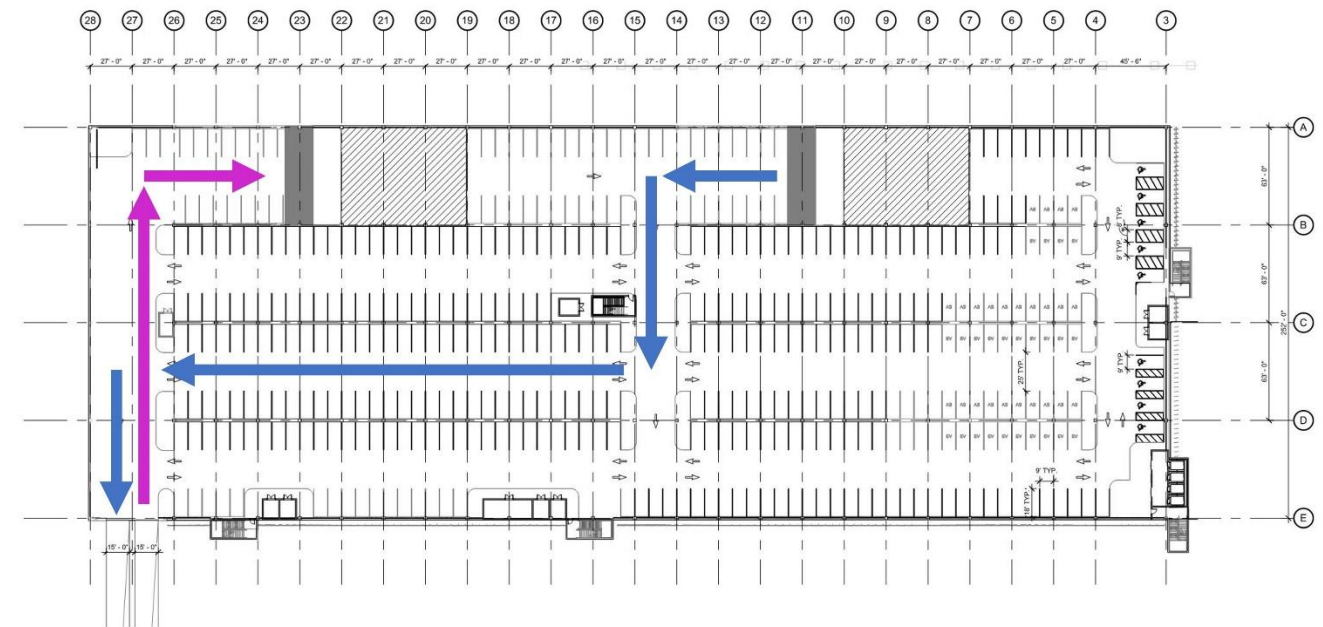
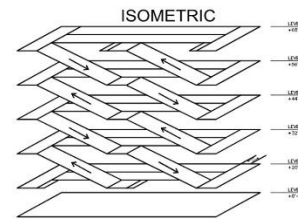
Table 526-1
Minimum Stall Length and Aisle Width (Feet)

(A) Parking Angle	(B) Stall Depth		(C) Aisle Width	
	Car-to-Wall Stalls	Interlocking Stalls	One-Way Operation	Two-Way Operation
30°	17	13	12	19
45°	19	16	12	19
60°	20	18	16	20
75°	20	19	22	22
90°	18	18	25	25

Ramping

- For additional levels of parking, beyond the 1-level base program, stacked in-line ramps have been shown.
(Design-Build Team to provide alternate ramping options, three (3) minimum). Final number and location of ramps to be supported by final design and a traffic flow capacity analysis.
- The vehicle access bridge to the second floor of the garage will be routed from the existing controlled parking drive adjacent to the existing parking garages.
- The maximum ramp slope to the bridge should not exceed 5.2% as shown in the provided reference drawings.
(Design-Build Team to provide alternate option(s) to eliminate bridge connection).

UP
DOWN



(Concept Parking Plan by Others)

Parking Products

All parking products in the new structure will be access-controlled to ensure valuable parking revenue is accounted for and collected. As such, the parking structure should provide Parking and Revenue Control (PARCS) equipment. These devices control access and ensure revenue collection. Additional functionalities, such as license plate recognition (LPR), automatic vehicular identification (AVI), and pay-on-foot (POF) stations can be incorporated at the discretion of SAT. An automated parking guidance system (APGS) may also be implemented to provide a better customer experience and reduce vehicular idling. SAT already employs PARCS and APGS at the airport. It may be a requirement that the PARCS and APGS for the new GTC are supplied by the same vendors as the existing systems so that they can interoperate. Generally, parking equipment is not interoperable between different suppliers. Additional parking products such as electric vehicle charging, and motorcycle parking are optional. All stalls not identified for a specific product will operate as a general parking stall. It is not recommended to create “nested” parking areas as the parking product portfolio may change over time as parking is further expanded. (Design-Build Team to determine SAT requirements and provide vendor options as required).

3.2 Structural Design

3.2.1 Relevant Codes and References (most current versions)

- 2021 International Building Code (IBC)
- ACI 302.1R-04 (American Concrete Institute), Guide for Concrete Floor and Slab Construction
- ACI 315-Latest Edition: Details and Detailing of Concrete Reinforcement
- ACI 318-19 – Building Code Requirements for Structural Concrete
- ACI-ASCE 530: Building Code Requirements for Concrete Masonry
- AISC (American Institute of Steel Construction) Manual of Steel Construction, latest edition
- AISI (American Iron and Steel Institute) 2007 North American Specification for the Design of Cold-Formed Steel Structural Members
- ASCE 7-16 (American Society of Civil Engineers): Minimum Design Loads for Buildings and other Structures
- Steel Deck Institute (SDI): Design Manual for Composite Deck, Form Decks and Roof Deck
- Steel Joist Institute (SJI): Standard Specification and Load Tables for Steel Joists and Joist Girders
- American Welding Society D1.1(AWS)
- American Concrete Institute, “Building Code Requirements and Specification for Masonry Structures”, ACI 530

3.2.2 Design Loads

Structural considerations as shown are based on the provided reference drawings and are contingent upon the parking structure design as proposed by the Design-Build Team. Provisions for future eVTOL loading are also to be accommodated in the proposed parking structure design.

Structural Framing

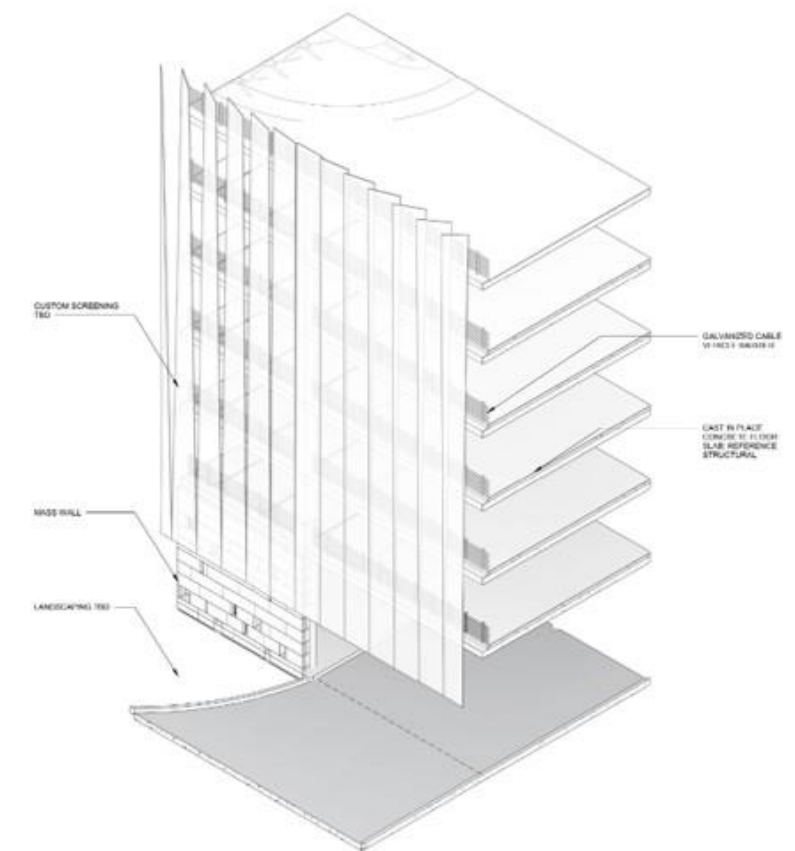
The structural framing system for the parking structure may be cast in place, post-tensioned concrete, and/or pre-cast. (If pre-cast is proposed, a life cycle cost analysis is to be provided by the Design Build Team). A post tensioning system for the slabs and beams will utilize fully encapsulated un-bonded post-tensioning cables. A combination of upturned beams and 8” thick cast- in-place barrier walls may comprise the structural facade. An expansion joint may divide the parking structure into two independent substructures. Proposed ramping options may also be comprised of an independent substructure.

Gravity and Lateral Systems

The structural grid for the parking structure generally consists of columns at +/- 20 feet on center in the short direction and +/- 62'-0” on center in the long direction. Post tensioned concrete slabs are 6" thick and span in the short direction. Temperature tendons parallel to the beams are to be provided per code for crack control. The slabs will be supported on post-tensioned beams at +/- 20'-0” on center. At typical exterior grid lines, the beams are to be framed directly to columns. At turning bays, the beams are to frame into supporting girders spanning between columns. The lateral load resisting system for the parking structure consists of reinforced concrete moment resisting moment frames. Beam sizes for typical north/south beams at the main and intermediate column grids are 14” wide by 36” deep. Typical girders are 24” wide by 36” deep. Typical columns are 24” square.

Structural Design Loading

Structural design to consider the following minimum design loads, but not less than required by the IBC and the City of San Antonio Building Code, or as required for a particular use.



(Conceptual Elevation Diagram by Others)

Live Loads

Roof of Elevators and Stairs	20 psf (reducible) code minimum live load
Parking Decks	40 psf*
Mechanical Rooms	based upon actual equipment, but not less than 150 psf
Stairs	100 psf
Passenger Shuttles	coordinate requirements with SAT
Commercial Vehicles	coordinate requirements with SAT
Wheeled Maintenance Lift	coordinate requirements with SAT Pedestrian Bridges
Light Storage	based on intended use, but not less than 125 psf
Heavy Storage	based on intended use, but not less than 250 psf
Planters	based on intended use, but not less than 150 psf
Public Art Areas	based on actual installation, but not less than 150 psf
Telecom Rooms	based on actual equipment, but not less than 150 psf
Other Occupied Areas	based on intended use, but not less than 80 psf

Reduction of live load not allowed for specified live loads of 100 psf or greater. Specified live loads not to be less than required for airport operations.
* The designer may consider increasing the design live load of parking decks if the anticipated average vehicle weight is greater than the historic average for passenger vehicles.

Superimposed Dead Loads

Suspended APGS and MEP
based on actual construction, but not less than 5 psf Roofing and Insulation
based on actual construction, but not less than 15 psf

Seismic Loads

Seismic loads to be in accordance with the IBC and City of San Antonio Building Code

Wind Loads

Wind loads to be in accordance with the IBC and City of San Antonio Building Code

Rain and Snow Loads

Rain and snow loads to be in accordance with the IBC and City of San Antonio Building Code

Structural Materials

The following are minimum requirements for structural materials. Alternative materials are acceptable subject to review and acceptance by SAT.

Structural Steel

Wide Flange Members	ASTM A992, Gr. 50 Plates for Box Columns	ASTM A572, Gr. 50 WT-Sections	ASTM A992, Gr. 50
Channels	ASTM A36		
Angles	ASTM A36		
HSS Sections	ASTM A500 Grade C, F _y = 50 ksi (rectangular); 46 ksi (round)	Connection materials	ASTM A572, Gr. 50
Base Plates	ASTM A36 or ASTM A572, Gr. 50 Bent Plate for Slab Edges	ASTM A36 or ASTM A572, Gr. 50 Miscellaneous Plates	ASTM A36 or ASTM A572, Gr. 50 High Strength Bolts
	ASTM F3125, Grade A325 and A490		

Anchor Rods	ASTM F1554	
Shear Stud Anchors	ASTM A108, Grade 1015 or 1020	
<u>Normal Weight Concrete (150 pcf)</u>		
Portland Cement	ASTM C150, Type I, Type II, or Type III, as applicable	
ASTM C150,	Type II or Type V if recommended by geotechnical engineer	
Coarse Aggregate	ASTM C33 Minimum 28-day Compressive Strengths:	
Cast-in-Place Floor and beams	5,000 psi	Slab-on-grade 4,000psi
Subgrade Walls	4,000 psi	
Drilled Piers	3,000 psi	
Pier Caps	4,000 psi	
Grade Beams	4,000 psi	
Spread Footings	4,000 psi	
Wall Footings	4,000 psi	
<u>Concrete Masonry</u>		
Unit Masonry	ASTM C90, 2,000 psi net area compressive strength	
Masonry Grout	ASTM C476, 2,000 psi	
Mortar	ASTM C270, Type S by proportion Minimum 28-day Compressive Strengths: 2,000 psi	
<u>Reinforcing Steel</u>		
Typical, UNO	ASTM A615, Grade 60 Reinforcing to be Welded	ASTM A706, Grade 60
<u>Steel Deck</u>		
Deck and Accessories	ASTM A653, galvanized per ASTM A653, G60	

3.3 Mechanical Design

3.3.1 Relevant Codes and References (most current versions)

- 2021 International Building Code (IBC)
- 2021 International Mechanical Code (IMC)
- 2021 International Energy Conservation Code (IECC)
- American Society of Heating and Air-Conditioning Engineers
- Current ASHRAE 62.1 – Ventilation for Acceptable Indoor Air Quality
- Current ASHRAE 90.1 – Energy Standard for Building Except Low-Rise Residential Buildings
- SMACNA Duct Construction Standards, Latest Edition

3.3.2 Mechanical Narrative

Building HVAC System

The HVAC system for the new parking structure and GTC should include the following major elements:

- Chilled water system with Variable Frequency Drives (VFD) and or other HVAC system, as required
- Chilled water piping system. System to be confirmed
- Chilled water pumps. System to be confirmed
- Direct expansion packaged or split system with refrigerant piping
- Variable Air Volume Air Handling Units (VAVAHUs)
- Variable Air Volume Terminal Units for different zone (VAVTUs)
- Thermostats and humidistats for zone temperature and humidity controls
- Building Automation / Energy Management System (BMS) based on Direct Digital Control (DDC)
- Outdoor air intake system for fresh air
- Ventilation air rates in accordance with the minimum requirements per ASHRAE 62.1
- Relief air system to maintain positive building pressurization
- Air filtration with carbon system capable of removing jet fuel smells
- Heating hot water boiler system and piping or utilize electric heating elements
- Heating hot water distribution piping system
- Air distribution system in accordance with SMACNA Standards
- Condensate discharge system
- Exhaust fans and louvers ventilation systems for Bus drop off areas with CO/NO2 detection system
- Provisions for future VTOL lobbied to be provided

3.4 Electrical Design

3.4.1 Relevant Codes and References (most current versions)

- 2021 International Building Code, IBC
- 2021 International Fire Code, IFC
- 2021 International Energy Conservation Code, IECC
- 2020 National Electrical Code, NEC
- Current Texas Accessibility Standards, TAS
- NFPA 780 Standards for the Installation of Lightning Protection Systems
- IESNA Illuminating Engineering Society
- IESNA Recommended Lighting Airport Outdoor Environments Standard IES RP-37-20

3.4.2 Electrical Narrative

General Description

The new parking structure and GTC will require a new CPS Energy electrical service along with all typical electrical building systems in accordance with SAT Design Standards.

Building Electrical Systems

The electrical infrastructure for the new parking structure and GTC should include the following major elements.

- Electrical Site Utility, CPS Energy, Service Locations: New electrical service from CPS Energy will be required for the GTC and the parking structure.
- Electric meters as required by utility, code requirements and SAT.
- Normal Power Distribution System: The power system for the buildings will serve lighting, general purpose power in core area and selected other areas, mechanical/plumbing equipment, data/IT equipment, elevators, parking and revenue controls system, parking guidance system, access controls, CCTV system, emergency call stations, and other systems as needed.
- The normal and emergency power is to be 480/277V for lighting and power distribution. 480- 208/120V transformer distribution systems are to provide miscellaneous receptacle power as required.
- Fire pump if installed is to be fed directly from the service transformer. Emergency power may be fed from the generator if installed, If the normal power is considered a reliable source of power, then the fire pump does not need to connect to the generator per NFPA 20. Confirm with local AHJ and Fire Marshal.
- Confirm the local AHJ is not requiring a generator for elevator power and fire pump power.
- In addition, 5% of parking stalls will have EV charging capabilities. The size of electrical service will depend on the number of parking spaces requiring EV charging capabilities. Confirm power requirements as design progresses.
- Service capacity is to be sized to accommodate future VTOL facilities. Provide conduits for future power and communications to these facilities. Confirm power requirements as design progresses.
- Emergency power supply system: Battery backups in accordance with life safety and building codes are to be provided for lighting fixtures located in stairwells and in the parking lanes to allow safe egress via stairs to the street level. Exit signs are to be provided with standby battery backups. The APGS will not be on standby power.
- Interior Lighting System: The lighting system is to be energy efficient and include high quality specification grade LED lighting fixtures appropriate for the occupancy. Lighting fixtures should be located in between / over the end parking spaces and not in the center of drive lane. The lighting shall be uniform, and the illumination level shall comply with IES RP-8-22 and G-1-22 recommendations.
- Lighting controls are to be in accordance with the energy code requirements. Occupancy and daylight harvesting is to be provided.
- Interior Feature Lighting: Feature lighting will be required along the preferred travel path to elevators.

- Exterior Lighting System: Exterior lighting will be required for roof level parking and at exits from stairs and ramps. Additional lights should be provided at the perimeter of the structure for safety and security. Fixtures shall be shielded as required to limit light spill.
- Lightning Protection System: A complete Class II lightning protection system is to be provided. The system is to be designed and installed by certified personnel to comply with the UL master label requirements or LPI certification.
- Electrical Grounding System: The grounding system is to be comprised of the electrical service grounding electrode system, the lightning protection system ground loop, and a building grounding riser. All elements required to be bonded to the service ground and are to connect to a Main Grounding Busbar (MGB), located in the main electrical room of the building. The grounding system should be extended to the IT / COM system in accordance with applicable codes and standards.
- Fire Alarm System: A complete voice notification type fire alarm system is to be provided in compliance with applicable NFPA, State and local codes in both the GTC and Parking garage and to have notification devices and pull stations placed in accordance with NFPA 72.
- Provisions for future VTOL lobby are to be provided.

3.5 Plumbing Design

3.5.1 Relevant Codes and References (most current versions)

- 2021 International Plumbing Code (IPC)
- 2021 International Energy Conservation Code (IECC)
- 2021 International Building Code (IBC)
- 2021 International Fire Code (IFC)
- Current ASME A17.1 – Safety Code for Elevators and Escalators

3.5.2 Plumbing Narrative

General Description

The new parking structure is to have two drainage systems with all areas exposed to the sky going to the storm system and the covered levels going to sanitary through an oil water separator. The parking structure is to have a non-potable water system that will have hose bibs on every level to wash down the floors. The GTC is to be provided with domestic cold and hot water, sanitary sewer, and storm drainage systems. The GTC is to be provided with high efficiency domestic hot water unit heater system. Plumbing fixtures are to comply with the current International Energy Conservation Code (IECC).

The overall facility is to be designed in accordance with SAT Design Standards and all adopted codes and ordinances.

Building Plumbing Systems

The parking structure and GTC are to include the following major elements:

- | | |
|---|---|
| <ul style="list-style-type: none"> • Domestic water meter. • Domestic water backflow preventer. • Domestic hot water heater with expansion tank, thermostatic mixing valves, and a recirculation pump. • Domestic water piping with service valves. All exposed piping shall have heat trace system with insulation and jacketing. • Domestic water booster system, if required. | <ul style="list-style-type: none"> • Non- Potable water system. • Sanitary Sewer system piping and venting system with vent -through-roof. • Low water consumption plumbing fixtures. • Storm drainage system with flat area drains in the parking areas • Floor drains in the GTC |
|---|---|

- Sanitary system for covered level of garage
- Water softening system
- Roof drainage system with emergency overflow drain system
- Area drainage system
- Oil Interceptor
- Storm and sanitary pumps if necessary

Natural Gas

Natural gas is not intended to be utilized in the project.

- Heat trace system for all exterior domestic water piping
- Gray water system
- Domestic water
- Passenger restrooms
- Ground transportation operator restrooms
- Provisions for future VTOL lobby are to be provided

3.6 Fire Protection / Fire Alarm Narrative

3.6.1 Relevant Codes and References (most current versions)

Refer to latest adopted edition including local amendments for the following:

- 2021 International Building Code, IBC
- 2021 International Fire Code, IFC
- NFPA 13, Standard for the Installation of Sprinkler Systems
- NFPA 415, Standard on Airport Terminal Buildings, Fueling Ramp Drainage, and Loading Walkways
- NFPA 72, National Fire Alarm and Signaling Code

3.6.2 Fire Protection / Fire Alarm Narrative

General Description

The fire protection system for the new parking structure and GTC should include the following major elements:

- Fire water connection
- Water backflow preventer
- Hydrant fire flow test that will show static and residual pressure in PSI and flow test in GPM
- Fire pump, jockey pump and associated controllers
- Dry-pipe sprinkler system in parking garage
- Wet sprinkler system in GTC
- Quick response sprinkler discharge type heads
- Manual Dry Standpipes
- Building fire department connection or a free-standing pipe fire department connection for both sprinkler and standpipes
- Piping hangers and hanger components
- Piping material type
- All sprinkler materials shall be UL listed or FM approved
- Provisions for future VTOL lobby are to be provided

Additionally, the Design-Build Team is to provide a Fire Protection Site Plan to be approved by the AHJ.

3.7 IT / Telecommunications and Security Design

3.7.1 Relevant Codes and References (most current versions)

Refer to the following City of San Antonio IT Services guidelines (most current version):

- Structured Cabling Infrastructure Guideline, Version 1.6
- Physical Security System Infrastructure Guideline, Version 1.4, Dated August 30, 2024

3.7.2 Telecommunications and Security Design Narrative

The new Parking Structure and GTC shall take advantage of multiple innovations for commercial vehicle management and parking technologies.

These shall include the following:

IT and Communications

- A Main Distribution Frame (MDF) is to be constructed as required to serve as the main point of entry for fiber services into the new structure. All communications within the facility are to route to the MDF room and to Intermediate Distribution Frame (IDF) rooms as required. MDF and IDF rooms are to be provided with electronic access and are to be fully-conditioned with UPS and generator back up power.
- The GTC MDF will have two independent single-mode fiber connections back to Terminal B MDF and the New Terminal MDF. Each run of fiber shall be at least 72 strands.

Parking and Ground Transportation Technology

The Design-build Team to propose specific technologies per SAT requirements which may include the following:

- Radio Frequency Identification (RFID) shall be deployed at the entrance and exit of the GTC for commercial vehicle tracking.
- License Plate Recognition (LPR) to be deployed at the entry and exit of the GTC for overall vehicle tracking and analytics. It may also be deployed at Level 2 to provide data and analysis of vehicle mix and congestion.
- The GTC may be equipped with LiDAR, or an equivalent sensor-based system, which will enable tracking of space utilization. This system may provide total dwell time of vehicles by curbside location, and overall counts of availability. It will provide capability to load balance the GTC curbside as required and provide data to SAT Ground Transportation operations.
- The Parking Garage may have an Automated Parking Guidance System (APGS) installed which provides analytics on stall availability and visual indicators to those parking in the garage. Space availability shall be indicated on digital signage upon entry to the garage, at each level change, and at key decision points. The system's data shall be integrated with the other systems throughout the Airport's existing parking garages, which typically will require the APGS to be supplied by the same vendor as the existing APGS.
- Full-matrix digital signage shall be deployed at the shuttle pick-up and drop off area which indicates the shuttles that operate, their typical timetable, and if available, live times for next pick-up/drop-off.

Security

- Where coverage gaps may exist from the APGS (or if the APGS does not provide recorded video), video surveillance will be required for coverage of all passenger areas throughout the garage including inside elevators. This includes complete coverage of the commercial vehicle and TNC curbside. The security environment shall be an extension of the existing ITSD and AICC systems.
- An emergency notification system within the facility.
- Emergency response radio system in accordance with the building code and AHJ requirements.

4. Sustainability

Sustainability Guidelines

Refer to SAT Sustainable Airport Manual Vol. 1 Building Design and Construction, September 2021

This manual serves as airport-specific guiding document to reduce resource consumption during the planning, development, and construction of airport facilities in line with the City's sustainability and climate resiliency goals.

5. Construction Phasing

Design-Build Team may evaluate option of submitting early design packages to expediate permitting and construction schedule.

Design-Build Team to seek SAT authorization prior to phasing design packages.

A Safety Plan Document will be developed during the pre-design Phase by the Design-Build Team, as required.

6. Third Party Coordination

Third party coordination with stakeholders and other agencies, as required shall be initiated upon award of Design Build Contract per SAT direction and will continue throughout the design and contract execution process. Agencies having jurisdiction including and not limited to the following:

- Federal Aviation Administration
- Electrical Utility Company (CPS Energy)
- San Antonio Water System (SAWS)
- City of San Antonio
- Third part agency on behalf of AHJ
- Texas Department of Licensing and Regulation (TDLR)
- Owner's Commissioning Agent
- City of San Antonio Fire Marshall
- City Arts Commission
- Historic & Design Review Commission (HDRC)

Design-Build Team to provide due diligence to obtain necessary permits and approvals from Authorities having jurisdiction.

Design-Build Team to also assist and support in obtaining a certificate of appropriateness (HDRC) & certificate of platting determination.

Design-Build Team to coordinate with agencies for permitting and inspection requirements and to obtain compliance certifications required by local Authorities.

Any external communication or transmittals with the outside stakeholders including secure handling of any information shall be conducted in accordance with San Antonio International Airport Communication and Security protocol.

7. Coordination with Other Projects

The following is anticipated to be occurring simultaneously with design of the Parking Structure and GTC.

- Terminal Development Program (TDP) which includes but not limited to the following projects:
 - New Terminal
 - New Triturate for New Terminal
 - RON Parking
 - Public Safety Building
 - Badging Office
 - Utility Corridor Relocation
 - CUP Upgrades and Electrical Upgrades
 - Terminal Curbside Roadway Improvement