

**Attachment 1**

**CITY OF SAN ANGELO, TEXAS**

**OWNER'S CONSTRUCTION GENERAL CONDITIONS**

**(Effective April 16, 2018)**

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**CITY OF SAN ANGELO, TEXAS**

**OWNER'S CONSTRUCTION GENERAL CONDITIONS**

The conditions contained herein are generally applicable to the Work described. Contractor and Owner agree to interpret and enforce the terms and conditions contained within this section only insofar as they are applicable to the Work.

**1. Definitions**

Wherever used in these General Conditions or in the other Contract Documents, the following terms shall have the meanings indicated which shall be applicable to both the singular and plural thereof:

**Agreement**

The written agreement between the Owner and the Contractor covering the Work to be performed, including the Request for Bid/Proposal, Addenda if any, Contractor's bid or proposal submission, and the Bonds and all other documents described more fully in the executed agreement.

**Architect**

The Architect is the person lawfully licensed to practice architecture or any entity lawfully practicing architecture identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.

**Bidder**

Any individual, partnership, firm, or corporation, acting directly or through a duly authorized representative, who submits a proposal or bid for the work contemplated.

**Bond(s)**

The approved form(s) of security furnished by the Contractor and its surety in accordance with the terms set forth in the Bid and as may otherwise be requested of the Contractor in the Contract Documents.

**Calendar Day**

A "Calendar Day" is any calendar day of week, month or year, no days being excepted.

**Change Order**

A written order to the Contractor signed by the Owner and architect covering changes in the plans, specifications, or proposal quantities and establishing the basis of payment and contract time adjustment, if any, for the work affected by such changes. The work, covered by a change order, shall be within the scope of the contract.

**Contract Documents**

The Agreement/Contract and documents incorporated therein by reference including Plans, Specifications, Drawings, and Field Changes, change orders, or any related addenda to the Agreement, Supplemental Agreement(s), Plans, Specifications, or Field Changes.

**Contract Price**

The total monies payable to the Contractor under the Contract Documents.

**Contract Time**

The number of calendar days allowed for completion of the Work, or completion date stated in the Contract Documents for the completion of the Work.

**Contractor**

The individual, partnership, firm, or corporation primarily liable for the acceptable performance of the Work and for the payment of all legal debts pertaining to the Work who act as directly or through lawful agents or employees to complete the Work. "Contractor shall include "Construction Manager" and "Construction Manager at Risk".

**Engineer**

A person or entity licensed to engage in the practice of engineering in the State of Texas. "Engineer" designates the licensed engineer duly authorized by the Owner to be responsible for the engineering aspects of the Work.

**Equipment**

All machinery, together with the necessary supplies for upkeep and maintenance, and all tools and apparatus necessary for the proper construction and acceptable completion of the Work.

**Extra Work**

An item of work not provided for in the Contract Documents as previously modified by Change Order or Supplemental Agreement, but which is found by the Owner to be necessary to complete the Work within the intended scope of the Contract Documents as previously modified.

**Field Change**

A Field Change may be issued in the form of:

- (a) A written amendment of the Contract Documents signed by both parties,
- (b) A Change Order,
- (c) A written clarification or interpretation issued by the Owner in accordance with Section 2.17, or
- (d) A written order for a minor change or alteration in the Work issued by the Owner pursuant to Section 2.17.

A Field Change may only be issued after execution of the Agreement.

**Field Order**

A written order issued by the Owner which clarifies or interprets the Contract Documents or minor changes in the Work in accordance with Section 2.17.

**Guaranteed Maximum Price (GMP)**

A cost-type contract where the Contractor is compensated for actual costs incurred plus a fixed fee subject to a not-to-exceed price. The contractor is responsible for cost overruns, unless the GMP has been increased via formal change order. Savings resulting from cost under-runs are returned to the owner

**Materials**

Any substance or building product specified for use in the construction of the Work.

**Owner**

A public body or authority, corporation, association, partnership, or individual for whom the Work is to be performed. For this Agreement, the "Owner" is the City of San Angelo, located in Tom Green County, Texas.

**Partial Payment Estimate**

A form filled out and signed by the Contractor covering the work performed during the period covered by the partial payment estimate and supported by such data as the Owner or Owner's designated agent may require, detailing but not limited to previous payments made to Contractor, retainage to date of estimate, materials delivered but not yet incorporated into the construction, and other information relevant to establishing the work performed and work remaining to be performed. Partial Payment Estimates are usually issued monthly or on the same periodic basis that partial payments are to be made under the Agreement.

**Plans**

The official drawings or exact reproductions which show the location, character, dimensions and details of the Work to be done and which are to be considered as a part of the Contract Documents, supplementary to the Specifications.

**Project**

The total construction of which the Work performed under the Contract Documents may be the whole or part, to include all duties and Work to be performed as provided in the Contract Documents.

**Resident Project Representative**

The "Resident Project Representative" shall be the Owner or any individual, partnership, firm or corporation duly authorized by the Owner who is assigned to the Project, or any part thereof, and who shall be responsible for observing the progress and quality of the Work, or any portion of the Work, on the behalf of the Owner.

**Shop Drawings**

All drawings, diagrams, illustrations, brochures, schedules, and other data which are prepared by the Contractor, a Subcontractor, manufacturer, supplier, or distributor which illustrate the Equipment, Material, or some portion of the Work.

**Specifications**

A part of the Contract Documents containing the written directions and requirements for completing the Work. Standards for specifying materials or testing which are cited in the Contract Documents by reference shall have the same force and effect as if included in the Contract Documents physically.

**Subcontractor**

An individual, firm, or corporation having a direct contract with the Contractor or with any other Subcontractor for the performance of a part of the Work.

**Substantial Completion**

The date as certified by the Owner, when the construction of the Project or a specified part thereof is sufficiently completed, in accordance with the Contract Documents, so that the Project or specified part can be utilized for the purposes for which it was intended.

**Supplemental Agreement**

A written, agreement between the Contractor and the Owner covering (1) work that would increase or decrease the total amount of the Agreement as awarded; or (2) work that is not within the scope of the Contract Documents.

**Work**

Any and all obligations, duties, and responsibilities necessary to the successful completion of the Project assigned to or undertaken by the Contractor under the Contract Documents, including the



furnishing of all labor, Materials, Equipment, and other incidentals necessary to the Contractor's performance of all duties and obligations imposed by the Contract Documents.

**Work Day**

A "Work Day" is defined as a calendar day excluding Saturdays, Sundays, and legal holidays authorized in the list prepared for the City of San Angelo for use of its employees, in which weather or other conditions not under the control of the Contractor will permit the performance of the principal units of work underway for a continuous period of not less than 7 hours between 8:00 a.m. and 5:00 p.m.

**Work Week**

The "Work Week" shall consist of a period of seven (7) successive calendar days to begin and end as specified by the Contractor.

**2. General Conditions**

**2.1. Architect/Engineer Administration of the Contract**

The Architect or Engineer will provide administration of the Contract as described in the Contract Documents and the RFP, and will be an Owner's representative (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the one-year period for correction of Work described herein. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

The Architect or Engineer, as a representative of the Owner, will visit the site at intervals appropriate to the stage of the Contractor's operations (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. The Architect or Engineer will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

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

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

The Architect or Engineer will have authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect or Engineer will have authority to require inspection or testing of the Work, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision

made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or Engineer to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

The Architect or Engineer will review and approve or take other appropriate action upon the Contractor'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. The Architect or Engineer's action will be taken with ~~such~~ reasonable promptness as not to cause unreasonable delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect or Engineer's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's or Engineer's review of the Contractor's submittals shall not relieve the Contractor of its obligations within the Contract Documents unless Contractor's shop drawings approved by Architect or Engineer specifically reference change in the plans and specifications. The Architect or Engineer's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect or Engineer, of any construction means, methods, techniques, sequences or procedures. The Architect or Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

The Architect or Engineer will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided herein.

The Architect or Engineer will interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of either the Owner or Contractor. The Architect or Engineer's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of the Architect or Engineer shall be furnished in compliance with this Section, then delay shall not be recognized on account of failure by the Architect or Engineer to furnish such interpretations until 15 days after written request is made for them.

Interpretations and decisions of the Architect or Engineer 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. When making such interpretations and initial decisions, the Architect or Engineer will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions so rendered in good faith.

The Architect or Engineer's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

## **2.2. Notice to Proceed and the Preconstruction Conference**

No work shall be performed until issuance of a written notice to proceed by the Owner. The notice to proceed shall be issued only upon filing and acceptance of required certificates of insurance, performance bond, payment bond and completion of any scheduled Preconstruction Meeting and all related requirements as provided for in Section 7.1 of Attachment 1 are complete.

## **2.3. Ownership, Copies of Documents, and Record Documents**

All Specifications, Plans, and copies thereof furnished by the Owner shall remain the property of the Owner. They shall not be used on another project.

The Contractor will keep one record copy of all Specifications, Plans, Field Changes, Shop Drawings, and any addenda thereto at the site in good order and annotated to show all changes made during the construction process. These shall be available to the Owner and shall be delivered to the Owner upon completion of the Project.

**Ownership of Professional Services Documents.** As to professional services contracts, Provider understands and agrees that any information, document, report or any other material whatsoever which are given by City to Provider or which are otherwise obtained or prepared by Provider pursuant to or under the terms of the Contract are, and shall at all times remain, the property of City. Provider agrees not to use any such information, document, report or material for any other purpose whatsoever without the written consent of City, which may be withheld or conditioned by City in its sole discretion. If City modifies and/or uses documents prepared by Provider pursuant to the contract for any reason other than their intended use without Provider's authorization, Provider shall be released from any liability associated with that use.

#### **2.4. Cooperation between Contractors**

When separate contracts are let within the limits of anyone project, each Contractor shall conduct the work so as not to interfere with or hinder the progress or completion of the work being performed by other contractors. The Contractor will afford the other contractors who are parties to such direct contracts (or the Owner, if Owner is performing the additional work itself), reasonable opportunity for the introduction and storage of materials and equipment and the execution of work, and shall properly connect and coordinate its Work with theirs. If any part of the Contractor's Work depends upon the work of any such other contractor or the Owner for proper execution or results, the Contractor will inspect such work and promptly report any defects or deficiencies in writing to the Owner. Failure to make such a report shall constitute an acceptance of the other work as fit and proper for the Work, except as to defects and deficiencies which may appear in the other work after the execution of Contractor's Work.

The Contractor will do all cutting, fitting, and patching of its Work that may be required to make its several parts come together properly and fit it to receive or be received by such other work. The Contractor will not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work of others with the written consent of the Owner.

**Contractor shall defend and hold harmless Owner and Owner's officers, council members, agents and employees from and against any and all claims, costs, suits, damages and liabilities that may arise out of the performance of the Agreement with Owner, and shall release Owner from liability for and waive any claim for direct or consequential damages arising from, delay, work interference, or inconvenience experienced by the Contractor relating to the presence, conduct or operations of any other contractors or subcontractors on the Project.**

If the performance of additional work by other contractors or the Owner is not noted in the Contract Documents prior to the Award of the Agreement, written notice thereof shall be given to the Contractor prior to starting any such additional work. If the Contractor believes that the performance of such additional work by the Owner or others causes Contractor to incur additional expense or entitles Contractor to an extension of the Contract Time, Contractor may make a claim therefore as provided for herein.

#### **2.5. Acceptance of Work by Others**

Each subcontractor shall examine work installed by others that would affect the final appearance of the subcontractor's installation and notify the Architect and General Contractor in writing of any

defects which would impair finished appearance of the Work. Application of materials by subcontractor will constitute acceptance of work by others.

## **2.6. Subcontracts**

The Contractor will not employ any Subcontractor (whether initially or as a substitute) against whom the Owner may have objection, nor will the Contractor be required to employ any Subcontractor against whom Contractor has objection. However, if the Contractor reviews, evaluates and recommends the use of particular subcontractor or its bid or proposal and the Owner requires that another subcontractor's bid or proposal be accepted, Owner shall compensate the Contractor by a change in price, time or guaranteed maximum price for any additional cost or risk the Contractor will incur because of Owner's requirement to utilize another subcontractor and its bid or proposal rather than the one recommended.

The Contractor will be fully responsible for all acts and omissions of its Subcontractors and of persons directly or indirectly employed by Contractor's subcontractors and of persons for whose acts any of them may be liable, to the same extent that Contractor is responsible for the acts and omissions of persons directly employed by it. Nothing in the Contract Documents shall create contractual relationship between any Subcontractor and the Owner, or any obligation on the part of the Owner to pay or be responsible for payment of any moneys due any Subcontractor, except as may otherwise be required by law. The Owner may furnish to any Subcontractor, to the extent practicable, evidence of amounts paid to the Contractor on account of specific work done.

## **2.7. Public Record**

Contractor understands that the public shall have access, at reasonable times, to all documents and information pertaining to City contracts, subject to the provisions of the Texas Public Information Act (TPIA), Chapter 552, Texas Government Code, and provisions therein pertaining to protection of proprietary information, and agrees to allow access by City and the public to all documents subject to required disclosure under applicable law. Provider's failure or refusal to comply with the provisions of this section 2.7 may result in the immediate cancellation of the Contract by City.

## **2.8. Permits, Laws, Taxes, and Regulations**

The Contractor will secure and pay for all necessary construction permits and licenses and will pay all governmental and public utility charges and inspection fees necessary for the prosecution of the Work. The Contractor will give all notices and comply with all federal, state, and municipal laws, acts, statutes, ordinances, rules, and regulations applicable to the Work. If the Contractor observes that the Specifications or Plans are at variance therewith, Contractor will give prompt written notice thereof to the Owner and any necessary changes shall be accomplished by an appropriate Field Change. If the Contractor performs any Work when Contractor knows or reasonably should know such work to be contrary to applicable laws, ordinances, rules, or regulations, and without such notice to the Owner, Contractor shall bear all costs, including penalties, relating to compliance of the work.

The Contractor will pay all sales, consumer, and other similar taxes imposed by the law of the place where the Work is to be performed, or of the place from which any portion of the Equipment or Materials is obtained.

## **2.9. Availability of Lands**

The Owner will provide not later than the date when required by the Contractor, the lands indicated in the Contract Documents upon which the Work is to be done, rights-of-way for access thereto, and such other lands which are designated for the use of the Contractor. Easements required for permanent structures or permanent changes in existing facilities will be secured and paid for by the Owner, unless otherwise specified in the Contract Documents. If the Contractor believes that any

delay in the Owner's furnishing these lands or providing such easements entitles it to an extension of the Contract Time, Contractor may make a claim therefore as provided herein. The Contractor will provide all additional lands and access thereto that may be required for temporary construction facilities or storage of Materials and Equipment.

#### **2.10. Use of Premises**

The Contractor will confine its equipment, the storage of materials and equipment, and the operations of its workers to areas permitted by law, ordinances, permits, or the requirements of the Contract Documents, and shall not unnecessarily encumber the premises with materials or equipment.

#### **2.11. Owner's Status During Construction**

All instructions of the Owner, or its duly appointed representative, to the Contractor shall be issued directly to the Contractor.

The Owner will make periodic visits to the site to observe the progress and quality of the executed Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. The efforts of the Owner will be directed toward providing assurance that the completed Project will conform to the requirements of the Contract Documents, but Owner will not be responsible for the Contractor's failure to perform the Work in accordance with the Contract Documents. Based on on-site observations, the Owner, or its duly appointed representative, will keep informed of the progress of the Work and will endeavor to guard it against defect and deficiencies.

The Owner will have authority to disapprove of or reject Work which is unsatisfactory, faulty, or defective, or does not conform to the requirements of the Contract Documents or does not meet the requirements of any inspection, test, or approval set forth herein. The Owner will also have authority to require special inspection or testing of the Work as provided herein, whether or not the Work is fabricated, installed, or completed. If such special inspection or testing reveals that the work already performed by Contractor was in accord with the contract documents the costs of such inspection and testing, if any, shall be paid by owner via a change order.

Neither the Owner's authority to act under this subsection, nor any decision made by it in good faith, either to exercise or not exercise such authority, shall give rise to any duty or responsibility of the Owner to the Contractor, any Subcontractor, any of their agents or employees, or any other person performing any of the Work.

#### **2.12. and Owner's Interpretations Decisions**

The Owner will issue with reasonable promptness such clarifications or interpretations (in the form of drawings or otherwise) as may be determined necessary for the proper execution of the Work, such clarifications and interpretations to be consistent with or reasonably inferable from the overall intent of the Contract Documents. If the Contractor believes that a written clarification and interpretation entitles it to an increase in the Contract Price, it may make a claim therefore as provided herein.

#### **2.13. Shop Drawings and Samples**

After checking and verifying all field measurements, the Contractor will submit five (5) copies of all Shop Drawings to the Architect. The Shop Drawings shall have been checked and stamped with the approval of the Contractor and otherwise identified as required by the Architect. The data shown on the Shop Drawings will be complete with respect to dimensions, design criteria, materials of construction, and the like. The Contractor will also submit to the Architect for the Architect's file, all samples required by the Contract Documents. All samples will have been checked and

stamped with the approval of the Contractor, identified clearly as to material, manufacturer, any pertinent catalog numbers, and the use for which it is intended.

At the time of each submission, the Contractor will provide written notification to the Architect concerning any deviations that the Shop Drawing or sample may have from the requirements of the Contract Documents. The Architect will review the Shop Drawings and samples, but this review shall be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents.

No Work requiring a Shop Drawing or sample submission shall be initiated until the submission has been delivered to the Architect. The review of Shop Drawings or samples by the Architect shall not relieve the Contractor from its responsibility for any deviations at the time of submission unless the Architect has given written approval to the specific deviation, nor shall any review or approval by the Architect, relieve the Contractor from responsibility for errors or omissions in the Shop Drawings.

#### **2.14. Contractor's Supervision and Superintendence**

The Contractor will supervise and direct the Work efficiently and with its best skill and attention. The Contractor will be solely responsible for the means, methods, techniques, safety, sequences, and procedures of construction. Before undertaking the Work, Contractor will carefully study and compare the Contract Documents and check and verify all figures shown thereon and all field measurements. The Contractor will immediately file a written report to the Owner concerning any conflict, error, or discrepancy which it may discover. The Contractor will be responsible for seeing that the finished Work complies accurately with the Contract Documents. The Contractor shall give constant attention to the Work to facilitate in every way possible the progress thereof, and Contractor shall cooperate with the Owner and Owner's authorized representatives, including, but not limited to, Engineers, Resident Project Representatives, Inspectors, and other Contractors, although Contractor may subcontract such responsibility to its subcontractors.

The Contractor shall have a competent superintendent on the Work at all times who is fully authorized as the Contractor's agent on the Work. All communications given to the superintendent shall be as binding as if given to the Contractor. The Contractor, or its superintendent, shall be capable of reading and thoroughly understanding the Plans and Specifications and shall receive and fulfill instructions from the Owner or its authorized representative.

Knowledge of the Work, familiarity with all pertinent codes and ability to clearly communicate with subcontractor at all times are required of Contractor on this project.

The Contractor will provide competent, suitably qualified personnel to plan and layout the Work, and perform the Work and construction as required by the Contract Documents. Contractor will at all times maintain good discipline and order among his employees at the site.

#### **2.15. Safety and Protection**

The Contractor will be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work; Contractor will take all necessary safety precautions and will provide the necessary protection to prevent damage, injury, or loss to:

- (a) all employees on the Work and other persons who may be affected thereby,
- (b) all Work and all Materials or Equipment to be incorporated into the Work, whether in storage on or off the site, and

(c) other property at the site or adjacent thereto, including but not limited to shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

The Contractor will erect and maintain all necessary safeguards as required by the conditions and progress of the Work, including posting danger signs and other warnings against hazards and promulgating safety regulations. The Contractor will notify Owners of adjacent utilities, in writing, when prosecution of the Work may affect them. When the use or storage of explosives or other hazardous materials is necessary for the prosecution of the Work, the Contractor will exercise the utmost care and will carry on such activities under the supervision of properly qualified personnel and in compliance with all applicable law. All damage, injury, or loss to any person or property caused, directly or indirectly, in whole or in part, by the Contractor, any subcontractor, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, will be remedied or paid for as applicable by the Contractor. The Contractor shall at all times comply with the requirements of the Occupational Safety Standards and any other applicable standards that may be set forth by federal, state, municipal, or any other governmental or regulatory agency.

The Contractor will designate a responsible member of its organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated in writing by the Contractor to the Owner.

In emergencies affecting the safety of persons or the Work or property at the site or adjacent thereto, the Contractor, without special instruction or authorization from the Owner, is obligated to act, at its discretion, to prevent threatened damage, injury, or loss. The Contractor will give the Owner prompt written notice of any significant changes in the Work or deviations involved. If the Contractor believes additional emergency work by it, which arose from causes beyond its control, entitles it to an increase in the Contract Price or an extension of the Contract Time it may make a claim therefore as provided herein.

#### **2.16. Access to the Work and Uncovering Finished Work**

The Owner and his representatives will at all times have access to the Work. The Contractor will facilitate such access and observation of the Work as well as any inspection or testing thereof by others.

If any Work is covered contrary to the request of the Owner, it must be uncovered for observation and replaced at the Contractor's expense, if requested by the Owner.

If any Work has been covered which the Owner has not specifically requested to observe prior to its being covered, or if the Owner considers it necessary or advisable that covered Work be inspected or tested by others, the Contractor, at the Owner's request, will uncover, expose, or otherwise make available for observation, inspection or testing that portion of the Work in question. The Contractor will furnish all necessary labor, material, and equipment to comply.

If it is found that such Work is defective or does not meet the requirements of the Contract Documents, the Contractor will bear all the expenses of such uncovering, exposure, observation, inspection, testing, and professional services. If, however, such Work is found not to be defective and meets the requirements of the Contract Documents, the Contractor may request and may be granted an increase in the Contract Price and/or extension of the Contract Time as compensation, but only for the amount or time directly attributable to such uncovering, exposure, observation, inspection, testing, and reconstruction.

### **2.17. Changes in the Work**

Without invalidating the Agreement, the Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work as may be necessary or desirable to complete the work originally intended in a manner acceptable to the Owner. The alterations that are for work within the general scope of the Contract Documents shall be authorized by Change Orders issued by the Owner. Upon receipt of a Change Order, the Contractor will proceed with the Work involved. All such Work shall be executed under the applicable conditions of the Contract Documents and as directed by the Owner. If any Change Order causes an increase or decrease in the Contract Price or an extension or shortening of the Contract Time, an equitable adjustment will be made pursuant to the construction contract.

The Contractor shall include all documentation necessary to complete a Change Order or change order request including but not limited to cost invoices for materials and labor, and subcontractor invoices. Contractor's overhead and profit as set forth in the contract shall be calculated and included in the Change Order.

For contracts based on Guarantee Maximum Price (GMP), the Construction Manager at Risk or Design Builder shall NOT be entitled to a percentage mark-up on any change order Work unless the change order increases the Guaranteed maximum Price.

The Owner may authorize minor changes or alterations in the Work not involving extra cost or delay and not inconsistent with the overall intent of the Contract Documents. These may be accomplished by a Field Order. If the Contractor believes that any minor change or alteration authorized by the Owner entitles it to an increase in the Contract Price, it may make a claim.

Additional work performed by the Contractor without authorization of a Change Order will not entitle ~~him~~ Contractor to an increase in the Contract Price or an extension of the Contract Time, except in the case of an emergency as provided herein.

The Owner will execute any appropriate Change Order covering changes in the Work the Owner determines to be reasonably necessary.

Upon execution of a Change Order by Owner, Contractor and Architect/Engineer, all costs and time issues claimed by Contractor regarding that change are final and not subject to increase.

### **2.18. Changes of Contract Price**

The Contract Price constitutes the total compensation payable to the Contractor for performing the Work. All duties, responsibilities, and obligations assigned to or undertaken by the Contractor shall be at its expense without change in the Contract Price.

A change of Contract Price may only be authorized by a Change Order. If the Contractor is entitled by the Contract Documents to make a claim for an increase in the Contract Price, the claim shall be made in writing and delivered to the Owner within fifteen (15) days of the occurrence of the event-giving rise to the claim. The value of any Work covered by a Change Order or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following ways as determined by the Owner:

- (a) Where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of items involved. Pending agreement on change order, undisputed amounts shall be paid to contractor;
- (b) By mutual acceptance of a lump sum; or,



(c) By cost and a mutually acceptable fixed amount for overhead and profit.

If required by the Owner, the Contractor shall submit an itemized cost breakdown together with supporting data.

The amount of credit to be allowed by the Contractor to the Owner for any such change which results in a net decrease in cost will be the amount of the actual net decrease as accepted by the Owner. When both additions and credits are involved in anyone change, the approved overhead and profit shall be figured based on the net increase, if any.

The department director may approve Change Orders for \$25,000.00, or less. City Manager may approve Change Orders for less than \$50,000.00. City Council must approve all change orders for \$50,000.00, or more. Required approvals must be secured prior to the commencement of any work associated with Change Orders. (City Council regularly meets on the first and third Tuesday of each month unless it conflicts with a holiday or is designated otherwise.) At no time may the initial contract price approved by City Council be increased by Change Orders totaling more than 25% of the initial contract price.

**2.19. Extra Work.**

Should acceptable completion of the Work require the Contractor to perform an item of work for which no basis of payment has been provided in the original Contract Documents or previously issued Change Orders or supplemental agreements, then same shall be called "Extra Work". Extra Work that is within the general scope of the Contract shall be covered by written Change Order. Change Orders for such Extra work shall contain agreed unit prices for performing the Change Order work in accordance with the requirements specified in the Change Order, and shall contain any adjustment to the Contract Time that, in the Owner's opinion, is necessary for completion of such Extra Work.

Extra Work that is necessary for acceptable completion of the Project, but is not within the general scope of the Work covered by the original Contract Documents shall be covered by a "Supplemental Agreement". Any claim for payment of Extra Work that is not covered by written agreement (Change Order or Supplemental Agreement) shall be rejected by the Owner. Pending an agreement on the Change Order for Extra Work and subject to applicable provisions for retainage, undisputed quantities of work shall be paid to the contractor

**2.20. Unauthorized Work**

WORK DONE CONTRARY TO THE INSTRUCTIONS OF THE OWNER, WORK DONE BEYOND THE LINES SHOWN OR AS GIVEN IN THE CONTRACT DOCUMENTS, OR ANY EXTRA WORK DONE WITHOUT CHANGE ORDER WILL BE CONSIDERED AS UNAUTHORIZED AND WILL NOT BE PAID FOR UNDER THE PROVISIONS OF THE AGREEMENT. WORK SO DONE MAY BE ORDERED REMOVED OR REPLACED AT THE CONTRACTOR'S EXPENSE.

**2.21. Neglected Work**

If the Contractor should neglect to prosecute the Work in accordance with the Contract Documents and progress schedule, the Owner, after seven (7) days written notice to the Contractor, may make good such deficiencies, and the cost thereof including compensation for additional professional services shall be charged against the Contractor. A Change Order shall be issued incorporating the necessary revisions in the Contract Documents and including an appropriate reduction in the Contract Price. If the payments then or thereafter due the Contractor are not sufficient to cover

such amount, the Contractor will pay the difference to the Owner within ten (10) days of written demand setting forth the amount due accompanied with supporting documentation.

### **2.22. Conformity with Contract Documents**

All Work, Materials, and Equipment furnished shall be in reasonably close conformity with the lines, grades, grading sections, cross sections, dimensions, material requirements, and testing requirements that are specified (including specified tolerances) in the Contract Documents.

If the Owner, after consultation with and agreement by the Architect, finds the Materials or Equipment furnished, Work performed, or the finished product are not within reasonably close conformity with the Contract Documents but that the portion of the Work affected will result in a finished product having an acceptable level of safety, economy, durability, and workmanship, the affected Work will be accepted and remain in place. The Owner and Architect will determine, subject to Contractor's right to dispute, the basis of acceptance and will provide for an adjustment in the Contract Price for the affected portion of the Work to the extent there is a diminution in value. Changes in the Contract Price shall be covered by a Change Order or Supplemental Agreement as applicable.

If the Architect finds the Materials and Equipment furnished, Work performed, or the finished product are not in reasonably close conformity with the Contract Documents and have resulted in an unacceptable finished product, the affected Work, Materials or Equipment shall be removed and replaced or otherwise corrected by and at the expense of the Contractor in accordance with the Owner's written orders.

### **2.23. Change of Contract Time**

The Contract Time may only be changed by a Change Order. If the Contractor is entitled by the Contract Documents to make a claim for an extension in the Contract Time, the claim shall be in writing delivered to the Owner within fifteen (15) days of the occurrence of the event-giving rise to the claim. All claims for adjustment in the Contract Time shall be as determined or approved by the Owner. Any change in the Contract Time resulting from any such claim shall be incorporated into a Change Order.

The Contract Time will be extended in an amount equal to time lost due to delays beyond the control of the Contractor. Such delays shall include, but not be restricted to, acts or neglect by any separate Contractor employed by the Owner, fires, floods, labor disputes, epidemics, abnormal weather conditions, or acts of God, unanticipated subsurface conditions, inability to secure permits, or unsafe materials.

Time limits stated in the Contract Documents are the essence of the Agreement. The provisions of this Section shall not exclude recovery by Owner for delay.

### **2.24. Warranty and Guarantee Regarding Work**

The Contractor warrants and guarantees to the Owner that all Materials or Equipment will be new unless otherwise specified, free from faults or defects, and that all Work will be performed in a workmanlike manner, and in accordance with the specifications and requirements of the Contract Documents as well as of any required or applicable regulations, codes, inspections, test, or required approvals. All unsatisfactory, faulty or un-workman like Work and all Work not conforming to the requirements of the Contract Documents or of such inspections, tests, or approvals shall be considered defective. Prompt notice of all defective Work shall be given to the Contractor. All defective Work, whether or not in place, may be rejected.

If required by the Owner prior to approval of final payment as set forth in paragraph 4.8, the Contractor will promptly, without cost to the Owner, either correct any defective Work, whether or not fabricated, installed, or completed, or remove it from the site and replace it with non-defective Work. The Contractor will also bear the expenses of making good all work of others destroyed or damaged by its correction, removal, or replacement of Contractor's defective Work. If the Contractor does not diligently proceed to correct such defective Work or remove and replace such rejected Work within a reasonable time, as required by written notice from the Owner, the Owner may have the deficiency corrected or the rejected Work removed and replaced. All direct or indirect costs of such correction or removal and replacement, including compensation for additional professional services shall be charged to the Contractor, and an appropriate Change Order shall be issued deducting all such costs from the Contract Price.

Prior to the expiration of one (1) year after the date of Final Completion (or such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee or warranty required by the Contract Documents), if any Work is found to be defective, the Contractor will, as set forth in the provision and in paragraph 4.9, promptly without cost to the Owner and in accordance with the Owner's written instruction, either correct such defective Work, or, if it has been rejected by the Owner, remove it from the site and replace it with non-defective Work. Any such corrected or replaced defective work shall be warranted by the Contractor for one year from and after such correction or replacement of work.

If the Contractor does not promptly comply with the terms of such instructions, the Owner may have the defective Work corrected or the rejected Work removed and replaced, and all direct and indirect costs of such removal and replacement, including compensation for additional professional services, will be paid by the Contractor. In such case, a Change Order shall be issued incorporating the necessary revisions in the Contract Documents, including appropriate reduction in the Contract Price. Should the remaining contract balance be insufficient to complete the works, Owner will seek reimbursement from the Contractor and/or its surety for the damages in excess of the remaining contract balance. If the acceptance occurs after approval of final payment, an appropriate amount shall be paid by the Contractor within thirty (30) days of written demand for payment accompanied by supporting documentation.

#### **2.25. Waivers of Claims and Continuing Obligations**

The Contractor's obligation to perform the Work and complete the Project in accordance with the Contract Documents shall be absolute. Neither approval of any progress or final payment by the Owner, nor the issuance of a certificate of Substantial Completion, nor any payment by the Owner to the Contractor under the Contract Documents, nor any use or occupancy of the Project or any part thereof by the Owner, nor any act of acceptance by the Owner nor any failure to do so, nor any correction of faulty or defective Work by the Owner shall constitute an acceptance of Work not in accordance with the Contract Documents.

The Acceptance of Final Payment by the Contractor shall constitute a waiver of all claims by the Contractor against the Owner other than those previously made in writing and unresolved at the time final payment is accepted.

#### **2.26. Owner's Right to Stop or Suspend Work**

The Owner may order the Contractor to stop the Work, or any portion thereof, if the Contractor performs un-workmanlike or defective Work, fails to supply sufficient skilled workmen or suitable Materials or Equipment, fails to provide adequate supervision, fails to make prompt payment to Subcontractors, fails to make prompt payment for labor, Materials or Equipment, or fails for any other similar cause jeopardizing the integrity of the Work. The Owner may suspend the Work without liability to the Contractor or subcontractors until the cause for the stop work order has been

eliminated. No additional Contract Time and no increase in Contract Price will be awarded in such cases.

The Owner may, at any time and without fault of the Contractor, suspend the Work or any portion thereof for a period of not more than ninety (90) days by notice in writing to the Contractor and the Owner shall fix the date on which Work shall be resumed. The Contractor will resume the Work on the date so fixed. The Contractor will be allowed an increase in the Contract Price or an extension of the Contract Time directly attributable to suspension without cause.

#### **2.27. Owner's Right to Terminate**

Owner may, by written five (5) days' notice to Contractor, terminate this contract in whole or in part at any time, either in its sole discretion for the Owner's convenience or because of failure of Contractor to fulfill the contract obligations. Upon receipt of such notice, services shall be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this contract shall be delivered to the Owner.

- (a) If the termination is for the convenience of the Owner, an equitable adjustment in the contract price shall be made. In no event shall City be liable to Provider for any additional compensation, other than that provided in the Contract, or for any consequential or incidental damages
- (b) If the termination is due to Contractor's failure to fulfill the Contractor's obligations under the Contract Documents, the Owner shall not be obligated to pay any amounts to Contractor and Contractor shall reimburse Owner all amounts received by Contractor under this Contract. The Owner may take over the Work and prosecute the same to completion by contract with third parties or otherwise. In such case, the Contractor shall be liable to the Owner for any additional cost occasioned to the Owner thereby and an equitable adjustment shall be made in the Contract Price.
- (c) The rights and remedies of the Owner provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

#### **2.28. Contractor's Right to Stop Work or Terminate**

If, through no act or fault of the Contractor, the Work is suspended for a period of more than ninety (90) days; or, after written notice and opportunity to cure within thirty (30) days, the Owner, without disputing the claim, fails to act as directed in the Contract Documents or fails to pay the Contractor any authorized amount, then the Contractor may, upon seven (7) days written notice to the Owner: (a) terminate the Agreement and recover from the Owner payment for all Work executed, reasonable expenses and agreed profit margin, if any; or. (b) stop the Work until Contractor has been paid all amounts then past due under the Agreement.

#### **2.29. Contractor's Management Personnel**

Contractor shall employ a competent person or persons who will be present at the Project Site during the progress of the Work to supervise or oversee the Work. Contractor shall advise Owner, in writing, of the names and contact information for Contractor's superintendents or management personnel for the Work. The competent persons are subject to the approval of Owner or Owner's designee (Architect/Engineer). Contractor shall not change approved staff during the course of the Project without the written approval of Owner unless the staff member leaves the employment of Contractor. Contractor shall provide additional quality control, safety and other staff as stated in the Contract Documents.

### **2.30. Abandonment by Contractor**

In case the Contractor should abandon the Work and fail or refuse to resume the Work within twenty (20) days after written notification from the Owner or if the Contractor refuses or fails to comply with the orders of the Owner, when such orders are consistent with the Contract Documents, then, where performance and payment bonds exist, the Surety on the Bonds shall be notified in writing and directed to complete the Work, and a copy of said notice shall be delivered to the Contractor.

After receiving ~~said~~ notice of abandonment, the Contractor shall not remove from the Work any machinery, Equipment, tools, Materials, or supplies then on the job, but the same, together with any Materials and Equipment under contract for the Work, may be held for use on the Work by the Owner or the Surety on the performance and payment bonds, or another Contractor in completion of the Work, and the Contractor shall not receive any rental or credit therefore (except when used in connection with Extra Work, where credit shall be allowed as provided in this Agreement), it being understood that the use of such Equipment and Materials will ultimately reduce the cost to complete the Work and be reflected in the final settlement. Where there is no performance and payment bond provided or in case the Surety should fail to commence compliance with the notice for completion provided for, within ten (10) days after service of such notice, the Owner may provide for completion of the Work in either of the following elective manners:

(a) The Owner may employ such labor and use such Equipment, tools, Materials, and supplies as the Owner deems necessary to complete the Work and charge the expense of such labor, machinery, Equipment, tools, Materials and supplies to the Contractor. The expense(s) so charged shall be deducted and paid by the Owner out of such moneys as may be due, or that may thereafter become due by virtue of this Agreement. In case such expense is less than the sum which would have been due had the Work been completed by the Contractor, then said Contractor shall receive the difference. In case such expense is greater than the sum which would have been payable under this Agreement, then the Contractor or its Surety shall pay the amount of such excess to the Owner;

Or,

(b) The Owner may contract with a third party or third parties for the completion of the Work under substantially the same terms and conditions provided for in this Agreement. In case of any increase in cost to the Owner under the new agreement, such increase shall be charged to the Contractor and the Surety. However, should the cost to complete the Work be less, the Contractor and its Surety shall be credited with the difference. When the Work shall have been Substantially Completed a complete itemized statement of the contract amounts certified to by the Owner, shall be prepared, and delivered to the Contractor and its Surety, whereupon the Contractor or its Surety shall pay the balance due if any within fifteen (15) days of the date of such Certificate of Completion.

In the event the statement of accounts shows that the cost to complete the Work is less than the Contract Price; or when the Contractor or its Surety shall pay the balance shown to be due by them to the Owner, then all machinery, Equipment, tools, Materials or supplies left on the site of the Work shall be turned over to the Contractor or its Surety. Should the cost to complete the Work exceed the Contract Price, and the Contractor or its Surety fail to pay the amount due the Owner within the time designated hereinabove, and there remains any machinery, equipment, tools, materials, or supplies on the site of the Work, notice, together with an itemized list of such equipment and materials, shall be mailed to the Contractor and its Surety. Such property shall be held at the risk of the Contractor and its Surety. After fifteen (15) days from the date of said notice, the Owner may sell such machinery, equipment, tools, materials, or supplies and apply the net sum

derived from such sale to the credit of the Contractor and its Surety. Such sale may be made at either public or private sale, with or without notice, as the Owner may elect. The Owner shall release any machinery, equipment, tools, materials, or supplies, which remain on the Work and belong to persons other than the Contractor or its Surety, to their proper Owners.

### **2.31. Abandonment by Owner**

In case the Owner shall fail to commence and diligently pursue compliance with the terms of this Agreement after the expiration of thirty (30) days of receipt of written notification describing the breach, the Contractor may, upon seven (7) days written notice to the Owner, suspend or wholly abandon the Work, and may remove there from all machinery, tools, and equipment, and all materials that have not been included in payments to the Contractor or have not been wrought into the Work.

## **3. Insurance Requirements**

### **3.1. Maintenance of Insurance**

During all phases of the Project, the Contractor shall purchase and maintain insurance as set forth herein and of the types and minimum limits set forth in the **Special Insurance Rider**. Such insurance shall be written for not less than the following limits as set forth below:

#### **3.1.1. Certificates of Insurance**

**A.** Contractor shall, at all times during the term of the Contract, maintain such insurance coverage as may be required by City of the types and in the amounts specified in the Special Insurance Rider and with insurers licensed to do business in Texas. All insurance required under the Contract shall be drawn in the name of Contractor, with City, its council members, board and commission members, officials, agents, guests, invitees, consultants and employees named as additional insureds, except on coverage for Workers' Compensation. The Contractor must provide the Owner with certificates of insurance prior to beginning work under the Contract. Each certificate of insurance must include the project name that is the subject of the Contract. The certificates are to be approved by Owner before work commences. The certificates of coverage must be signed by a person authorized by the insurer to bind coverage on its behalf. The certificates must contain enough detail to allow the Owner to confirm that the following requirements have been fulfilled by the Owner's insurance coverage. Owner reserves the right to require complete, certified copies of insurance policies at any time. Contractor shall name the Owner and Architect or Engineer as additional insureds on the Commercial General Liability, Commercial Automobile Liability, and Commercial Umbrella Liability policies and such insurance shall be primary to any other insurance. Approval of the certificates or policies by the Owner does not relieve the Contractor of its duty of indemnification.

**B.** Evidence of such coverage shall be furnished to City on Certificates of Insurance indicating such insurance to be in force and effect and providing that it will not be canceled during the performance of Services under this Agreement without thirty (30) calendar days prior written notice to City. Completed Certificates of Insurance shall be filed with City's Risk Manager at City Hall, 72 W. College Avenue, San Angelo, Texas 76903 prior to the performance of Services under the Contract, provided, however, that Contractor shall at any time upon request file duplicate copies of the policies of such insurance with City.

**C.** If the coverage period shown on the current certificate of coverage ends during the duration of the Contract, the Contractor shall, prior to the end of the coverage period, provide a new certificate of coverage showing extension of the coverage.

### **3.1.2. Required Limits of Insurance**

The required limits of insurance coverage may be satisfied by any combination of primary, excess, or umbrella liability insurance coverage, provided the primary policy complies with the requirements detailed in the contract Agreement and the excess/umbrella policies are written on a “following form” basis. The Contractor may maintain reasonable deductibles, subject to approval by the Owner. The required limits of insurance do not establish a limit on the Contractor’s liability.

### **3.1.3. Required Policy Terms**

Each required insurance policy shall:

**3.1.3.1.** Waive all rights of subrogation against the Owner for losses arising from Work performed by the Contractor for the Owner on all General Liability and Automobile Liability policies;

**3.1.3.2.** Require the insured to immediately notify the Owner of any material change in the insurance coverage;

**3.1.3.3.** Provide the Owner with 30 days notice of cancellation, non-renewal, or termination of insurance by return receipt mail (10 days as respects non-payment of premium);

**3.1.3.4.** Be written by an insurer that is licensed to do business in Texas, classified by the Texas Department of Insurance as an “admitted” insurer, and maintains and A.M. Best rating of A/VII or better throughout the Project until the Owner has accepted the work;

**3.1.3.5.** Be written on forms that have been filed and approved by the Texas Department of Insurance;

**3.1.3.6.** Be primary insurance as respects Owner, its officers, elected officials, employees, agents and representatives. Any insurance maintained by Owner will be in excess of Contractor’s insurance and will not contribute to it. ;

**3.1.3.7.** Apply separate to each insured against whom a claim is made or suit brought, except with respect to the limits of the insurer’s liability;

**3.1.3.8.** Be maintained from the time Work commences until services are completed and accepted by Owner; and,

**3.1.3.9.** Must not contain any special limitations on the scope of coverage provided to the Owner, its officers, elected officials, employees, agents and representatives.

### **3.1.4. Subcontractors and Trade Contractors as Insureds**

The Contractor shall include all contractors, subcontractors and trade contractors as insured parties under its policies or furnish Owner separate certificates for each contractor, subcontractor and trade contractor. All coverage required of contractors, subcontractors and trade contractors shall be subject to all of the insurance requirements detailed above except each contractor, subcontractor and trade contractor’s general aggregate limit on Commercial General Liability shall be not less than \$1,000,000.00. The requirements of the Commercial Umbrella coverage do not apply to the contractors, subcontractors and trade contractors.

### **3.1.5. State Mandated Workers' Compensation Insurance Requirements**

The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, meeting the statutory requirements of Texas Workers' Compensation Act, Title 5 Subchapter A of the Texas Labor Code (Texas Labor Code Chapter 406) for all employees of the Contractor providing services on the Project, for the duration of the Project

#### **3.1.5.1. Definitions (applicable to Part 3.1.5)**

- a.** Certificate of Coverage (“certificate”) - A copy of a certificate of insurance or a certificate of authority to self-insure issued by the Texas Department of Insurance Division of Workers' Compensation (Workers' Compensation) showing statutory workers' compensation insurance coverage for the persons or entities' employees, executives, officers, partners and proprietors providing services on the Project, for the duration of the Project.
- b.** Duration of the Project - Includes the time from the beginning of the Work on the Project until the Contractor's work on the Project has been completed and accepted by Owner.
- c.** Persons providing services on the Project (“subcontractor” in Section 406.096 of the Texas Labor Code). Includes all persons or entities performing all or part of the services the Contractor had undertaken to perform on the subject, regardless of whether the person contracted directly with the Contractor and regardless that person has employees. This includes, without limitation, independent contractors, subcontractors, sub-contractors, motor carriers, Owner-operators, employees, executives, officers, partners and proprietors of any such entity, trade contractors, or employees of any entity which furnishes persons to provide services on the Project.
- d.** Services - Include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to the Project.

**3.1.5.2.** The Contractor shall provide workers' compensation insurance coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meet the statutory requirements of the Texas Labor Code (401.011 (44)) for all employees of the Contractor providing services on the Project, for the duration of the Project.

**3.1.5.3.** The Contractor must provide a certificate of coverage to Owner prior to execution of this Agreement.

**3.1.5.4.** If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the Project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with Owner showing that coverage has been extended.

**3.1.5.5.** The Contractor shall obtain from each person providing services on the Project, and provide to Owner:



- a. A certificate of coverage, prior to that person beginning Work on the Project, so Owner will have on file certificates of coverage showing coverage for all persons providing services on the project; and,
- b. No later than seven days after receipt by the Contractor, a new certificate showing extension of the coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.

**3.1.5.6.** The Contractor shall retain all required certificates of coverage for the duration of the Project and for three years thereafter.

**3.1.5.7.** The Contractor shall notify Owner in writing by certified mail or personal delivery, within 10 days after the Contractor knew or should have known, of any change that materially affects the provision of the coverage of any person providing services on the Project.

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

**3.1.5.9.** The Contractor shall contractually require each person with whom it contracts to provide services on the Project, to:

- a. Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meet the statutory requirements of the Texas Labor Code [401.011 (44)] for all employees of the Contractors, Subcontractors and Trade Contractors providing services on the Project, for the duration of the Project;
- b. Provide to the Contractor, prior to that person beginning work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project, for the Duration of the Project.
- c. Provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of the coverage, if the coverage period shown on the current certificate of coverage ends during the Duration of the Project.
- d. Obtain from each other person with whom it contracts, and provide to the Owner:
  - (i) A certificate of coverage, prior to the other person beginning work on the project;
  - (ii) A new certificate of coverage showing extension of the coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
  - (iii) Retain all required certificates of coverage on file for the duration

of the Project and for three years thereafter;

(iv) Notify Owner in writing by certified mail or personal delivery, within 10 days after the Contractor knew or should have known, of any change that materially affects the provision of the coverage of any person providing services on the Project; and,

(v) Contractually require each person with whom it contracts to perform as required by clauses (i) - (iv) of this subparagraph, with certificates of coverage, to be provided to the person for whom they are providing services.

- e. The Contractor's failure to comply with any of the provisions of Paragraph 8.1.5 is a breach of contract by the Contractor which entitles Owner to declare this Agreement void if the Contractor does not remedy the breach within ten (10) days after notice of breach from Owner.

**3.1.5.10.** In the event that Contractor has workers (Whether employees, volunteers or contract labor) present on the job site and working in any manner on the Project who are not covered at all times by the required coverages for workers' compensation, Contractor shall be deemed in default of the construction contract and Owner shall be entitled to declare the contract void if Contractor does not remedy the breach within ten days after receipt of notice of breach from the Owner. Contractor shall further immediately remove from the work site any such workers not covered by the required coverages for workers' compensation from the job site.

### **3.2. A&E Professional Liability Insurance**

A&E Professional Liability Insurance is required of all design, architectural and engineering professionals, surveyors, accountants, appraisers, insurance brokers, attorneys, medical services providers and any other licensed provider of professional services (the "Assured") including those affixing their seal to an artist's design drawings survey or design specification, with a minimum limit of liability per claim / occurrence as provided on the Special Insurance Rider. The Professional Liability Insurance policy shall provide for payment on behalf of the Assured all sums which the Assured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission committed or alleged to have been committed with respect to plans, maps, drawings, analyses, reports, surveys, change orders, designs or specifications prepared or alleged to have been prepared by or at the direction of the Assured. The policy shall provide for 30 day advance notice of cancellation in favor of the OWNER.

### **3.3 Builders Risk Insurance**

The Contractor shall purchase and maintain Builders Risk Insurance with limits that are at all times sufficient to cover the value of the exposure. The policy should be written to cover the interests of the Owner, the Contractor, subcontractors, trade contractors, and all subcontractors. Further, the policy shall:

**3.3.1.** Stipulate that the insurer will not seek recovery, through subrogation or otherwise, against any insured (even if their negligence causes a covered loss), regardless of the extent of the insured's insurable interest.

**3.3.2.** Be written on an "all-risk" basis, and shall provide coverage for fire, extended coverage and physical loss or damage including theft, vandalism, malicious mischief, collapse, sewer backup, seepage, hydrostatic testing, pneumatic testing, mechanical testing and normal

settling.

**3.3.3.** Apply to foundations, false work, temporary buildings, and debris removal including demolition occasioned by enforcement of applicable legal requirements.

**3.3.4.** Provide coverage for consequential damage ensuing from faulty workmanship, material, construction, or design (resulting damage only, not cost of making good the workmanship).

**3.3.5.** Be maintained until the Owner has accepted the Project as completed or until no one other than the Owner has an insurable interest in the Project.

**3.3.6.** Cover portions of property stored off-site (after written approval of the Owner) at the value established by the Owner and portions of the work in transit.

#### **4. Contract Measurement and Payment**

##### **4.1. Quantities and Measurements**

No extra or customary measurements of any kind will be allowed, but only the actual measured or computed length, area, solid contents, number, and weight shall be considered, unless otherwise specifically provided.

##### **4.2. Estimated Quantities**

The Contract Documents are intended to show clearly all Work to be done and Material and Equipment to be furnished hereunder. Where the evaluation quantities are shown for the various classes of the Work, they are to be used only as a basis for comparing the proposals offered for the Work. It is understood and agreed that the actual amount of the Work to be done and Material and Equipment to be furnished under the Project Agreement will not be reflected by these evaluation quantities. The basis for payment shall be for the actual amount of the Work done and the Material and Equipment furnished under the terms contained within the Project Agreement. Where payment is based on the unit price method, the Contractor agrees that it will make no claim for damages, or anticipated profits on account of any differences which may be found between the quantities of the Work actually done, the Material and Equipment actually furnished under the Project Agreement and the evaluation quantities provided.

##### **4.3. Price of Work**

In consideration of the furnishing of all the necessary labor, Equipment, and Material, and the completion of all Work by the Contractor, and on the completion of all Work and of the delivery of all Material and Equipment embraced in this Agreement in full conformity with the Specifications and stipulations contained within the Contract Documents, the Owner agrees to pay the Contractor the Contract Price. The Contractor hereby agrees to receive such prices in full for furnishing all Material, Equipment and all labor required for the aforesaid Work, also for all expense incurred by it, and for well and truly performing the same and the whole thereof in the manner and according to this Agreement and the Contract Documents. The unit prices provided in the Bid shall be the actual unit price for each item when considering the cost of providing all labor, material, equipment, resources, and profit to be recovered by the Contractor for such Work and without consideration of association with any other item of Work.

##### **4.4. Partial Payment Estimates**

The Contractor shall subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction.

#### **4.4.1. Deadline**

The Contractor shall prepare a statement showing as completely as practicable the total value of the Work done by the Contractor. The statement shall be deemed complete and received once all corrections to the Work required by Owner, if any, have been made. The Owner's representative shall submit a recommendation for approval upon completion of all corrections. Failure by the Owner to note corrections prior to payment does not constitute acceptance of the Work nor waive any remedy provided for in the Contract Documents or under law.

#### **4.4.2. Payment**

The Owner shall pay the total amount of the Contractor's statement to the Contractor as due under the contract documents, less all previous payments and all further sums that may be retained, withheld, or delayed by the Owner under the terms of this Agreement.

#### **4.4.3. Warranty of Title**

The Contractor warrants and guarantees that clear ownership title to all Work, Materials, and Equipment covered by a Partial Payment Estimate, whether incorporated in the Project or not, will have passed to the Owner prior to making the Partial Payment Estimate free and clear of all liens, claims, security interests, and encumbrances (hereinafter in these General Conditions referred to as "Liens"); and that no Work, Materials, or Equipment covered by a Partial Payment Estimate will have been acquired by the Contractor or by any other person performing the Work at the site or furnishing materials and equipment for the Project subject to an agreement under which an interest therein or encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

#### **4.4.4. Retainage**

Partial payment retainage by the Owner shall be at the maximum rate prescribed by the laws, rules, or regulations established by the State of Texas and shall in no case exceed five percent (5%). See this Part 4, "Contract Measurement and Payment", for specific payment methods.

#### **4.5. Approval of Payments**

The Partial Pay Estimate shall be based on on-site observations of the Work in progress, and shall verify that the Work has progressed to the point indicated; that the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning Project upon Substantial Completion, to the results of any subsequent test called for in the Contract Documents and any qualifications stated in the approval); and that the Contractor is entitled to payment of the amount approved. However, by such payment, the Owner shall not thereby be deemed to have represented that it has made exhaustive or continuous on-site inspections to check the quality or the quantity of the Work, or that it has reviewed the means, methods, techniques, sequences, and procedures of construction or that it has made any examination to ascertain how or for what purpose the Contractor has used the moneys paid or to be paid to it on account of the Contract Price.

The Owner may nullify any such payment previously requested to such extent as may be necessary to provide protection from loss because:

- (a) The Work is defective, neglected, or omitted,
- (b) Claims relating to the work have been filed or there is reasonable, confirmed evidence indicating the probable filing thereof,
- (c) The Contract Price has been reduced because of Change Orders or Field Changes,

- (d) The Owner has been required to correct defective Work or complete neglected Work.
- (e) Unsatisfactory prosecution of the Work, including failure to clean up as required herein.
- (f) Material installation has not been tested as required by the terms of the Contract Documents.

#### **4.6. Substantial Completion**

Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

(a) When the Contractor considers that the Work or a portion thereof which the Owner agrees to accept separately is substantially complete the Contractor shall prepare and submit to the Owner's representative (Architect, Engineer or Project Manager, as appropriate) a comprehensive list (punch list) of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. In addition, the Owner's representatives will prepare a punch list of items that need to be completed, corrected or repaired prior to final payment.

1. Contractor shall make certain that the project is substantially complete and ready for inspection and punch list completion.
2. Contractor shall provide its punch list to the owner's representative prior to Substantial Completion inspection.
3. Contractor shall assist the Owner and Owner's Architect, Engineer or other involved professionals in establishing a date and time agreeable to the parties for such punch list and inspection. If, during the inspection the Owner, Owner's Architect or other involved professional should determine that the work is not substantially complete, the inspection will end, and the Contractor will be given time to Substantially Complete as determined by the Owner. If the Owner does not consider the Project substantially complete, the Contractor will be notified in writing of the reasons as soon as possible thereafter.
4. Should partial acceptance of a specific area of the work be necessary, then this may be accomplished and the area approved separately from the remainder of the work. Such acceptance shall be described fully in writing, accepted by all interested parties and meet all of the requirements of the Contract Documents and Specifications at the time of acceptance.
5. Upon receipt of the latest punch list or other items called to the attention of the Contractor, the Contractor shall respond with a date reasonable and acceptable to all parties to fully complete the work. Any action in this regard will not waive the Contractor's obligation to complete the project on time as it relates to damages, whether liquidated or other.
6. Upon Substantial Completion of the work or designated portion thereof and upon application by the Contractor and certification by the Owner's Architect, if

applicable, the owner shall make payment, reflecting adjustment in retainage, for such work or portion thereof as provided in the Contract Documents.

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

(c) The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents pursuant to this Section 4.6.

#### **4.7. Partial Utilization**

Prior to final payment, the Owner shall have the right to take possession of and use any completed or partially completed portions of the Work, notwithstanding the time for completing the entire Work of such portions may not have expired, but such taking possession and use shall not be deemed an acceptance of any Work not completed in accordance with the Contract Documents. If such prior use increases the cost or delays the Work, the Contractor may request in writing, in accordance with the process set forth in these General Conditions, an increase in the Contract Price or extension of the Contract Time, or both as the Owner may determine to be reasonable.

#### **4.8. Final Payment**

Upon written notice from the Contractor that the Project is substantially complete, the Owner and the Contractor will make a final inspection, and the Owner will notify the Contractor in writing of any particulars in which this inspection reveals that the Work is defective or incomplete. Owner may utilize a punch list of contract items requiring completion to identify defective or incomplete work. The Contractor shall immediately make such corrections or complete such work as are necessary to remedy such defects.

After the Contractor has completed any such corrections to the satisfaction of the Owner and delivered all maintenance and operating instructions, schedules, guarantees, stock materials bonds, certificates of inspection and other documents, Contractor may request final payment. The final estimate shall be accompanied by such supporting data as the labor and services performed and the material and equipment furnished. In lieu thereof and as approved by the Owner, the Contractor may furnish receipts or releases in full, including an affidavit of the Contractor showing that releases and receipts for all labor, services, Material, and Equipment for which a Lien could be connected with the Work have been paid or otherwise satisfied; and showing consent of the surety, if any, to final payment. If any Subcontractor or supplier fails to furnish a release or receipt in full, the Contractor may furnish a bond satisfactory to the Owner in an amount sufficient to cover any Lien.

Contractor shall prepare and submit all required documents and provide, including but not limited to:

- a) Project Warranties/Guarantees

- b) Maintenance manuals and data
- c) Required Inspection Reports and Certifications
- d) As-built drawing on a set of blue-line prints (marked in red or otherwise obvious) of all significant changes in the plans and/or utilities services.
- e) Stock materials for Owner use as directed in the construction documents.

If, on the basis of observation and review of the Work during construction and the final inspection, the Owner is satisfied that the Work has been completed and the Contractor has fulfilled all of its obligations under the Contract Documents the Owner will issue written approval and the final estimate will be processed for payment. Otherwise, the Owner will indicate in writing its reasons for refusing to issue payment of the final estimate.

If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor, the Owner shall 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 the retainage, and, if Bonds have been furnished in accordance with the Contract Documents, the written consent of the surety to the payment of the balance due shall be submitted to the Owner. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

#### **4.9. Guarantee**

Upon Final Completion of Contractor's work, which includes acceptance of all punch list items, the Contractor shall furnish to the Owner a written statement guaranteeing all materials, equipment, workmanship, and operation for a period of one (1) year from the date of final completion and acceptance by the Owner. This does not waive requirements specified elsewhere for guarantees in excess of one (1) year, or warranties furnished by manufacturers for period in excess of one (1) year. Failure of manufacturer to guarantee its own product will not relieve the Contractor of Contractor's obligation under this contract. Subcontractors shall guarantee their work to the General Contractor and the Owner.

Contractor shall also furnish to the Owner all certificates of Guarantee and Warranty provided by the manufactures of the equipment and materials.

Whenever, within one (1) year from the date of final completion, the Contractor is notified by the owner of defects in work, equipment, or materials, the Contractor shall promptly correct such defects without cost to Owner, either in materials or labor. Repairs, corrections and/or replacement of work shall be handled in accordance with the provisions of this paragraph and paragraph 2.24. Any such corrected or replaced defective work shall be warranted by the Contractor for one year from and after such correction or replacement of work.

#### **4.10. Payments Withheld**

The Owner may, because of subsequently discovered evidence, withhold or nullify payment to such extent as may be deemed reasonably necessary by Owner because of:

- (a) Defective Work not remedied.
- (b) Claims filed or reasonable, confirmed evidence that the filing of a claim is likely.

(c) Failure of the Contractor to make payments properly to sub-contractors for Material, Equipment or labor; or failure of Contractor to certify to Owner or Owner's representative that all such payments are complete.

(d) Damage to or claimed by another Contractor.

(e) Failure to carry out testing of material installation, if required.

When the above grounds are removed, or the Contractor provides a Surety bond satisfactory to the Owner, which will protect the Owner in the amount withheld, payment shall be made.

#### **4.11. Delayed Payments**

Should the Owner fail to make payment to the Contractor of a sum due and payable under the contract documents and set forth in any statement from Contractor, or should the Owner fail to issue any payment on or before the date required, then the Owner shall pay to the Contractor, in addition to the sum, interest at the rate of six (6%) percent per annum from the date the payment became past due until fully paid. Payment of interest on the amount owed shall fully liquidate any injury or claim for injury to the Contractor growing out of such delay in payment. The right is expressly reserved to the Contractor in the event payments are not promptly made to treat the Agreement as abandoned and recover compensation unless such payments are withheld as otherwise authorized in the Contract Documents.

### **5. Project Requirements**

#### **5.1. Line and Grade**

Lines and grades for construction are as directed in the Contract Documents. Any questions, alterations, or adjustments must be directed through the Owner.

#### **5.2. Working Day**

Work on the Project site shall be done only during the Work Day, except for emergencies or as otherwise approved by the Owner. This Agreement is established with the intent that no Work shall be permitted on weekends or legal holidays except in cases of extreme emergency and then only with the written permission of the Owner.

#### **5.3. Character of Employees**

The Contractor agrees to employ only orderly and competent employees, skillful in the performance of the type of Work required under this Agreement, to do the Work; and agrees that whenever the Owner shall inform the Contractor in writing that any employee or employees are, in its opinion, incompetent or disorderly, such employee or employees shall be discharged from the Work and shall not again be employed on the Work without the written consent of the Owner.

#### **5.4. Physical and Subsurface Conditions**

The Contractor will promptly notify the Owner in writing of any subsurface or latent physical conditions at the site differing materially from those indicated in the Contract Documents or any soils reports or data furnished by the Owner during Preconstruction under 3.1.4.2.3 of the Contract. The Owner will promptly investigate those conditions and determine if further surveys or subsurface tests are necessary. Promptly thereafter, the Owner will obtain the necessary additional surveys and tests and furnish copies to the Contractor. If the results of such surveys or tests indicate subsurface or latent physical conditions differing significantly from those indicated in the Contract Documents, a Change Order shall be issued incorporating the necessary revisions and increasing the GMP and/or extending the Contract Time.



### **5.5. Reference Points**

The Owner will establish such general reference points as will enable the Contractor to proceed with the Work. The Contractor will be responsible for the layout of the Work, will protect and preserve the established reference points, and will make no changes or relocations without the prior written approval of the Owner. The Contractor will report to the Owner whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations. The Contractor will replace and accurately relocate all reference points so lost, destroyed, or moved. All utilities shown on drawings are schematic only. The Contractor is solely responsible for verification of existence and location of all utilities within the Project site prior to construction.

## **6. Materials**

### **6.1. Materials and Equipment**

The Contractor shall furnish and pay for all labor, Materials, Equipment, tools, transportation, construction equipment, fuel, power, light, heat, telephone, water, sanitary facilities, and all other incidentals required to complete the Work in accordance with the Contract Documents. All Materials and Equipment used in the construction of the Work shall conform fully to the Contract Documents and be approved by the Owner. Any Materials or Equipment placed before approval of the Owner shall be removed, if directed by the Owner, and replaced with approved Materials or Equipment, at the expense of the Contractor.

If required the Contractor will furnish satisfactory evidence as to the kind and quality of Materials and Equipment to be used. If authorized by Owner, the Contractor may use a substitute that is equal to any Material or Equipment specified. No substitute shall be ordered or installed without the written approval of the Owner.

All Materials and Equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the instructions of the applicable manufacturer, fabricator, or processors, except as otherwise specifically provided in the Contract Documents. The Contractor shall provide start-up services for all major equipment.

### **6.2. Right of the Owner to Modify Equipment and/or Methods**

Construction Manager will agree that if the Owner, in the exercise of its reasonable discretion and after written notice, determines that the contractor is behind schedule for reasons which do not warrant a time extension hereunder, Construction manager will, at its expense implement a recovery plan until such time that the work is back on schedule. At the Owners request the Contractor shall have the opportunity to initiate a Schedule Recovery Plan to get the project back on schedule. Such authority of the Owner, however, is for the sole benefit of the Owner in order to secure completion in conformity with this Agreement. It shall remain the sole duty and responsibility of the Contractor to take adequate precautions in its operation for the safety of persons and property. No failure of the Owner to notify the Contractor of deficient or negligent methods or Equipment shall excuse or relieve the Contractor of sole liability for damage to the property or improvements of the Owner because of Owner's neglect or omission.

### **6.3. Owner Furnished Materials**

The Contractor shall furnish all Materials required to complete the Work, except those specified herein (if any) to be furnished by the Owner. Owner-furnished Materials shall be made available to the Contractor at the location specified in the Contract Documents. All costs of handling, transportation from the specified location to the site of Work, storage, and installing Owner furnished Materials shall be included in the unit price bid for the contract item in which such Owner-furnished Material is used.

After any Owner furnished Material has been delivered to the location specified, the Contractor shall be responsible for any demurrage, damage, loss, or other deficiencies that may occur during the Contractor's handling, storage, or use of such Owner-furnished Material. The Owner will deduct from any monies due or to become due the Contractor any cost incurred by the Owner in making good such loss due to the Contractor's handling, storage, or use of Owner-furnished Materials.

#### **6.4. Material Storage**

Materials shall be so stored as to assure the preservation of their quality and fitness for the Work. When considered necessary by the Owner, Materials shall be placed on wooden platforms or other hard, clean, and dry surfaces and not in contact with the ground, and shall be placed under cover. Stored materials, even though approved before storage, may again be inspected prior to their use in the Work. Stored materials shall be located to facilitate their prompt inspection. The Contractor shall coordinate the storage of all materials with the Owner or its Resident Project Representative. Materials to be stored on the site of the Work shall not create an obstruction to the public, nor shall they interfere with the free and unobstructed movement of vehicular traffic associated with the site. The storage of the Materials and the location of the Contractor's plant and parked equipment or vehicles shall be as directed by the Owner or its representative. Private property shall not be used for storage purposes without written permission of the Owner. The Contractor shall make all arrangements and bear all expenses for the storage of Materials on private property.

All storage sites shall be restored to their original condition by the Contractor at its entire expense, except as otherwise agreed to by the Owner.

#### **6.5. Sources of Supply and Quality of Materials**

The source of supply of each of the Materials shall be approved by the Owner before delivery is started and may be sampled and tested to determine compliance with the specifications before delivery is started. If it is found that sources of supply previously approved do not produce uniform and satisfactory products, or if the product from any source proves unacceptable at any time, the Contractor shall furnish Materials from other approved sources. Only Materials conforming to the requirements of the Contract Documents and approved by the Owner shall be used in the Work. No material which after approval has in any way become unfit for use shall be incorporated in the Work.

Throughout the specifications where reference is made to ASTM (American Society for Testing and Materials), AASHTO (American Association of State Highway and Transportation Officials), or bulletins of the Texas Department of Transportation for the quality of Materials or sampling and testing, the latest standard, tentative standard, or bulletin issued prior to the date of the proposal shall govern.

#### **6.6. Samples and Tests**

All Materials shall be inspected, tested, and approved by the Owner, and any Work in which Materials are used without prior test and approval without first being excepted from testing and approval by Owner, may be ordered removed and replaced at the Contractor's expense. The Contractor shall furnish a complete written statement of the origin, composition, and manufacture of any or all Materials that are to be used in the Work.

#### **6.7. Defective Materials**

All Materials not conforming to the requirements of the Contract Documents will be rejected and shall be removed immediately from the site of the Work. Rejected Materials in which the defects have been subsequently corrected, shall have the status of new Material. Upon failure on the part

of the Contractor to comply with the provisions of this item, the Owner will have authority to remove and replace defective Material and to deduct the cost of removal and replacement from any payment due or to become due to the Contractor.

## **7. Project Meetings**

### **7.1. Pre-construction Meeting**

Prior to the commencement of Work at the site, a pre-construction conference will be held with the Owner and Architect at a mutually agreed upon time and location. The conference shall be attended by:

Contractor and its superintendent  
Principal Subcontractors  
Representatives of principal suppliers and manufacturers as appropriate  
Representatives of Owner  
Others as requested by the Contractor or the Owner

Unless previously submitted to the Owner, the Contractor shall bring to the conference each of the following:

- A list of all subcontractors, including addresses and contact information.
- Completed Debarment and Suspension forms for all contractors and subcontractors.
- Completed Certification for a Drug-Free Workplace for all contractors and subcontractors (Form Number: HUD-50070)
- Completed Conflict of Interest Forms for all contractors
- Approved certificates of insurance for all subcontractors
- Material Sources
- Materials Test Results and Certification
- List of Equipment to be utilized
- Description of Procedures and Work Crews

The agenda will include:

- Contractor's tentative schedules
- Critical Work sequencing
- Transmittal, review, and distribution of Contractor's submittals
- Field decisions and Change Orders
- Use of premises, office and storage areas, security, housekeeping, and Owner's needs
- Major equipment deliveries and priorities
- Maintaining record documents
- Processing applications for payment
- Contractor's assignments for safety and first aid

The sequence of operations to be followed shall be prepared by the Contractor for approval by the Owner. The sequence shall meet the job requirements for Completion Time and shall conform to the requirements set forth in the Contract Documents.

### **7.2. Progress Meetings**

The Contractor shall schedule and hold regular progress meetings at least monthly and at other times as requested by the Architect or Owner or required by progress of the Work. The Contractor,

the Owner, and all Subcontractors active on the site shall be represented at each meeting. The Contractor may, at its discretion, request attendance by representatives of Contractor's suppliers, manufacturers, and other Subcontractors.

The Contractor shall preside at the meetings, provide for keeping of the minutes, and provide the Owner with a copy of the minutes. The purpose of the meetings will be to prepare statements of payment, review the progress of the Work, maintain coordination of efforts, discuss changes in procedures and personnel, and resolve problems.

## **8. Construction Administration**

### **8.1. Default**

**A.** If Contractor fails to comply with any term or condition of the Contract, or fails to perform any of its obligations the Contract, then Contractor shall be in default. Upon the occurrence of a default, City, in addition to all remedies available to it by law, may immediately, upon written notice to Contractor, terminate the Contract whereupon all unpaid contract funds shall be available to City to complete the construction and/or remedy any defective performance by Contractor. Should Contractor default, any advances for work to be performed or materials to be ordered which have been paid by City to Contractor shall be immediately returned to City. Should the costs to complete the construction and/or remedy any defective performance by Contractor exceed the remaining Contract balance, Contractor shall be liable to City for all costs and expenses to complete the construction and/or remedy any defective performance, to include any cost associated with re-procurement, and for any consequential and incidental damages suffered by City. Contractor understands and agrees that termination of the Contract under this section shall not release Contractor from any obligation accruing prior to the effective date of termination.

**B.** Before City shall be liable to Contractor or any of its successors or assigns for any alleged breach of the Contract, notice must first be given City no later than ninety-one (91) days of the date Contractor alleges the breach occurred. Such notice shall be given in accordance with Contract provisions for service of notice and shall state the date, time, and circumstances of the alleged breach.

### **8.2. Resolution of Contract Disputes**

**A.** Contractor understands and agrees that all disputes between Contractor and City concerning or relating to the denial or partial denial of a change, change order or extra work under paragraphs 2.17, 2.18 or 2.19 of the Owner's Construction General Conditions of the Contract shall be held for resolution until the Project has been substantially completed. Contractor shall make a written request for resolution of the dispute (the "Request") to City's designated official (the City Manager or his designee) for determination of the matter in dispute. The Request shall clearly state the disputed issue and include or incorporate by specific reference all information or documents that Contractor wants the official to consider in reaching a determination. The official shall issue a written notice of decision upon Contractor's Request within the thirty (30) days of receipt of Contractor's Request. If the official cannot issue a decision within thirty (30) days of the receipt of Contractor's Request, the official shall notify Contractor the date upon which a decision shall be issued. Submission of a Contractor's Request for determination of the dispute is a condition precedent to Contractor's ability to engage in litigation against City. If a decision is not issued by the date indicated by the official or within ninety (90) days after the submission of Contractor's written Request for determination, whichever occurs first, Contractor will be deemed to have met the condition precedent required by this provision. Should the dispute be resolved through the submission of Contractor's Request, the resolution of the dispute will be documented, if necessary, through a change to the Contract in accordance with the provisions contained in the Contract, to include but not limited to, Owner's Construction General Conditions, paragraphs 2.17, 2.18 and 2.19. Should the dispute fail to reach resolution through the submission by Contractor's Request,

the dispute may be submitted to mediation at the sole discretion of City. City agrees that it shall make an election within no later than sixty (60) days after the issuance of a determination by the official in response to a Contractor's Request, final completion, abandonment or termination of the Project, whichever is later. Such mediation shall be conducted by and between the parties in accordance with the AAA Rules of Mediation for Construction Cases then in effect. Contractor understands and agrees that it shall continue to perform Work under the Contract unless further performance has been excused by termination of Contractor or stopping Work is specifically allowed under the laws of the State of Texas. Contractor understands that should a settlement be reached at mediation it is subject to the approval of the City Council. If either mediation is unsuccessful or City elects not to proceed to mediation, then the dispute shall be submitted to litigation in keeping with the terms of the Contract and the laws of the State of Texas.

**B.** Contractor understands and agrees that any and all other disputes arising between Contractor and City not related to changes, change orders or extra work, may be submitted to mediation at the sole discretion of City. City agrees that it shall make such an election within no later than sixty (60) days from the date of final completion, abandonment or termination, whichever is later. Such mediation shall be conducted by and between the parties in accordance with the AAA Rules of Mediation for Construction Cases then in effect. Contractor understands and agrees that it shall continue to perform Work under the Contract unless further performance has been excused by termination of Contractor or is specifically allowed under the laws of the State of Texas. Contractor understands that should a settlement be reached at mediation it is subject to the approval of the City Council. If either mediation is unsuccessful or City elects not to proceed to mediation, then the dispute shall be submitted to litigation in keeping with the terms of the Contract and the laws of the State of Texas

### **8.3. Notices to Owners and Authorities**

The Contractor shall notify Owners of adjacent property and utilities in writing and sufficiently in advance when prosecution of the Work may affect them. When it is necessary to temporarily deny access by Owners or tenants to their property, or when any utility service connection must be interrupted, the Contractor shall give notices in writing and sufficiently in advance to enable the affected persons to provide for their needs. Notices will conform to any applicable local ordinance, shall be provided in writing, and will include appropriate information concerning the interruption and instructions on how to limit their inconvenience.

### **8.4. Notification of Street Closing**

Where the Contractor has cause to close a street or thoroughfare for purposes of construction, the Owner shall be provided reasonable advance notice, in writing, prior to such actions for approval and coordination with appropriate agencies.

### **8.5. Detours and Barricading**

The Contractor shall be responsible for providing barricading for all work areas during the construction of this Project. Unless provided by Owner in the Technical Specifications contained within the contract documents, the Contractor shall prepare and submit a barricading plan to the Owner for Owner's approval. Owner's approval shall be for routing and for length of time of barricading only. Plans shall be prepared by a Professional Engineer, Registered in the State of Texas, and show all necessary barricades, signs, etc., required to provide a safe work site. Plans shall be based on the recommendations in the Manual of Uniform Traffic Control Devices for control of traffic in a construction area. It shall be the total responsibility of Contractor to maintain the barricades, lights, signs, and all other items involved in the detouring of traffic.

Contractor shall provide appropriate barricades for use at night, and shall maintain all lighted barricades for the duration of the project. Contractor shall designate an employee who will be responsible for the maintenance of the barricades and lighting system on a twenty four (24) hour

basis, and shall provide a phone number where the responsible party can be reached on a twenty four (24) hour basis.

#### **8.6. Convenience to Traffic**

When the Agreement requires the maintenance of vehicular traffic on an existing road, street, or highway during the Contractor's performance of the Work, the Contractor shall keep such road, street, or highway open to all traffic as provided herein and shall provide such maintenance as may be required to accommodate traffic. The Contractor shall furnish, erect, and maintain barricades, warning signs, flag persons, and other traffic control devices in reasonable conformity with the manual of Uniform Traffic Control Devices for Streets and Highways (published by the United States Government Printing Office), unless otherwise specified herein. The Contractor shall also construct and maintain in a safe condition any temporary connections necessary for ingress to and egress from abutting property or intersecting roads, streets, or highway.

The Contractor shall make its own estimate of all labor, Materials, Equipment, and incidentals necessary for providing the maintenance of vehicular traffic as specified in this subsection. The cost of maintaining vehicular traffic specified in this subsection shall not be measured or paid for directly, but shall be included in the various contract items.

One-half of the traveled portions of the road must be open to traffic at all times unless otherwise approved by the Owner. Work that will require less than one day to complete shall not be performed on major or collector streets between 7:00 a.m. to 9:00 a.m., 4:00 p.m. to 6:00 p.m., or other peak congestion periods as determined by the Owner.

#### **8.7. Unfavorable Construction Conditions**

During unfavorable weather, wet ground, or other unsuitable construction conditions, the Contractor shall confine its operations to Work which will not be affected adversely by such conditions. No portion of the Work shall be constructed under conditions which would affect adversely the quality or efficiency thereof unless special means or precautions are taken by the Contractor to perform the work in a proper and satisfactory manner.

#### **8.8. Cleaning Up**

The Contractor shall keep the premises free at all times from accumulations of waste materials, rubbish, and other debris resulting from the Work. The Contractor will restore to their original or better condition those portions of the site not designated for alteration by the Contract Documents.

The Contractor shall provide adequate trash receptacles about the work site, and shall promptly empty the containers when filled. Construction materials, such as concrete forms and scaffolding shall be neatly stacked by the Contractor when not in use. The Contractor shall promptly remove splattered concrete, asphalt, oil, paint, corrosive liquids, and cleaning solutions from surfaces to prevent marring or other damage.

Volatile wastes shall be properly stored in approved containers and removed daily. Wastes shall not be buried or burned on the site or disposed of into storm drains, sanitary sewers, streams, or waterways. All wastes shall be removed from the site and disposed of in a manner complying with local, state, and federal laws. Adequate cleanup will be condition for recommendation of progress payment applications.

Upon completion of the Work and before acceptance and final payment will be made, the Contractor shall remove from and about the site all machinery, equipment, tools, surplus and discarded and waste materials, debris, rubbish, temporary structures, and stumps or portions of

trees. The Contractor shall cut all brush and woods within the limits indicated and shall leave the site in a neat and presentable condition, ready for occupancy by the Owner.

#### **8.9. Site Administration**

The Contractor shall be responsible for all areas of the work site, and all Subcontractors in the performance of the Work. The Contractor will exert full control over the actions of all employees and other persons with respect to the use and reservation of property and existing facilities, except such controls as may be specifically reserved to Owner or others. The Contractor has the right to exclude from the site all persons who have no purpose related to the Work or its inspection, and may require all persons on the site to observe the same regulations as Contractor requires of its employees.

#### **8.10. Load Restrictions**

The Contractor shall comply with all legal load restrictions in the hauling of materials on public roads beyond the limits of the Work. A special permit will not relieve the Contractor of liability for damage that may result from the moving of material or equipment. The operation of equipment of such weight or so loaded as to cause damage to structures or to any other type of construction will not be permitted. Hauling of materials over the base course or surface course under construction shall be limited as directed. No loads will be permitted on a concrete pavement, base, or structure before the expiration of the curing period. The Contractor shall be responsible for all damage done by its hauling equipment and shall correct such damage at its own expense.

#### **8.11. Applicable Codes**

References in the Contract Documents to local codes mean codes used, referenced, required, or adopted by the City of San Angelo, Texas, the State of Texas or the federal government.

#### **8.12. Owner Responsibilities**

Contractor shall be responsible for securing all required construction and other related permits, local, state or federal.

### **9. Employment Requirements**

#### **9.1. General**

With respect to the construction of a public work, including a building, highway, road, excavation, and repair work or other project development or improvement, paid for in whole or in part from public funds, without regard to whether the work is done under public supervision or direction, the Contractor shall comply with all requirements of the prevailing wage law of the State of Texas, Texas Government Code, Chapter 2258, including the latest amendments thereto.

A worker employed on a public work by or on behalf of the City of San Angelo (its contractors and their subcontractors) shall be paid not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed; and not less than the general prevailing rate of per diem wages The prevailing wage law does not prohibit payment of more than the general prevailing rate of wages.

#### **9.2. Records**

The selected Respondent/Contractor and each Subcontractor shall keep an accurate record showing the names and occupations of all laborers, workers, and mechanics employed, together with the actual wages paid to each worker. At all reasonable hours, such records shall be open to inspection by the representatives of Owner.

### **9.3. Penalty**

If the selected Respondent/Contractor or any Subcontractor fails to comply with the prevailing wage law, it shall forfeit to Owner sixty dollars (\$60.00) per day for each laborer, workman, or mechanic who is paid less than the specified rate, pursuant to §2258.023 of the Texas Government Code.

### **9.4. Hours of Labor**

The selected Respondent/Contractor shall comply with all requirements of the hours of work on public works defined by Texas Government Code §650.001, including the latest amendments thereto, as an eight (8) hour work day. Violation of this provision is punishable by fine and imprisonment pursuant to §650.003 of the Texas Government Code.

### **9.5. Veterans Preference**

Pursuant to Texas Government Code, §657.004, the selected Respondent/Contractor shall give preference in employment to honorably discharged veterans who were engaged in the services of the United States in time of war or conflict and who are and have been citizens of Texas for not less than five (5) years.

### **9.6. Prevailing Wage and Hour Decision**

#### **9.6.1. Prevailing Wage Rate**

Chapter 2258 of the Texas Government Code requires contractors and subcontractors performing work on public works contracts to pay wages at a rate consistent with the rate prevailing in the area. Under federal law, the United State Department of Labor is required to maintain a prevailing Wage and Hour decision for each geographical area. Compliance with the published decision meets the requirements of the Texas Government Code.

1. If the Wage Decision lists fringe benefits, you must either provide the benefits or pay the hourly equivalent in cash in addition to the predetermined wage.
2. Labor classifications not appearing on the Wage Decision will be deferred to the U.S. Department of Labor (DOL) for approval.

#### **9.6.2. Prevailing Wage and Benefit Rider**

The Prevailing Wage and Benefit Rate set out in the RFB/RFP is the Prevailing Wage and Hour Decision applicable to the construction contract. The Contractor shall be solely responsible for compliance with the applicable portions of Davis-Bacon and Related Acts, and any Prevailing Wage and Hour Decision that is applicable or may become applicable at the timework is performed.

## **10. INDEMNIFICATION OF OWNER**

### **10.1. CONTRACTOR AGREEMENT TO INDEMNIFY AND HOLD HARMLESS OWNER**

**By the execution of a contract pursuant to which these “Owner’s Construction General Conditions” apply,**

#### **10.1.1. General Indemnification**

**A. General Indemnification Applicable to other than-Professional Services Contracts:**



Contractor shall indemnify, defend and hold harmless City and its officials, employees and agents (collectively referred to as “Indemnitees”) and each of them from and against all loss, costs, penalties, fines, damages, claims, expenses (including reasonable attorney’s fees) or liabilities (collectively referred to as “Liabilities”) by reason of any injury to or death of any person or damage to or destruction or loss of any property arising out of, resulting from, or in connection with (i) the performance or non-performance of Services contemplated by the Contract but only to the extent caused by the negligent acts, errors or omissions, intentional torts, intellectual property infringement, or a failure to pay a subcontractor or supplier committed by Contractor or Contractor’s agent, consultant under contract, or another entity over which Contractor exercises control, or its employees, agents or sub-providers (collectively referred to as “Contractor”) (ii) the failure of Contractor to comply with any of the paragraphs of the Contract or the failure of Contractor to conform services or work to statutes, ordinances, or other regulations or requirements of any governmental authority, federal, state or local, in connection with the performance of the Contract. Contractor expressly agrees to indemnify and hold harmless the Indemnitees, or any of them, from and against all liabilities which may be asserted by an employee or former employee of Contractor, or any of its sub-providers, as provided above, for which Contractor’s liability to such employee or former employee would otherwise be limited to payments under State Workers’ Compensation or similar laws. Nothing herein shall require Contractor to indemnify, defend, or hold harmless any Indemnitee for the Indemnitee’s own gross negligence or willful misconduct. Any and all indemnity provided for in the contract shall survive the expiration of the Contract and the discharge of all other obligations owed by the parties to each other thereunder and shall apply prospectively not only during the term of the Contract but thereafter so long as any liability could be asserted in regard to any acts or omissions of Contractor in performing Services under the Contract.

**B. General Indemnification Applicable to Professional Services Contracts:**

(i) Provider shall indemnify, defend and hold harmless City and its officials, employees and agents (collectively referred to as “Indemnitees”) and each of them from and against all loss, costs, penalties, fines, damages, claims, expenses (including reasonable attorney’s fees) or liabilities (collectively referred to as “Liabilities”) by reason of any injury to or death of any person, or damage to or destruction or loss of any property, or defective design or material specification resulting in defective construction of any property, arising out of, resulting from, or in connection with (i) the performance or non-performance of Services contemplated by this Agreement but only to the extent caused by the negligent acts, errors or omissions, intentional torts, intellectual property infringement, or a failure to pay a subcontractor or supplier committed by Provider or Provider’s agent, consultant under contract, or another entity over which Provider exercises control (whether active or passive) of Provider or its employees, agents or sub-providers (collectively referred to as “Provider”) (ii) the failure of Provider to comply with any of the paragraphs herein or the failure of Provider to conform to statutes, ordinances, or other regulations or requirements of any governmental authority, federal, state or local, in connection with the performance of this Agreement. Provider expressly agrees to indemnify and hold harmless the Indemnitees, or any of them, from and against all liabilities

which may be asserted by an employee or former employee of Provider, or any of its sub-providers, as provided above, for which Provider's liability to such employee or former employee would otherwise be limited to payments under State Workers' Compensation or similar laws. Nothing herein shall require Provider to indemnify, defend, or hold harmless any Indemnitee for the Indemnitee's own negligence or willful misconduct. Any and all indemnity provided for in this Agreement shall survive the expiration of this Agreement and the discharge of all other obligations owed by the parties to each other hereunder and shall apply prospectively not only during the term of this Agreement but thereafter so long as any liability could be asserted in regard to any acts or omissions of Provider in performing Services under this Agreement.

(ii) For Professional Liability Claims, Provider shall be liable for reasonable defense costs incurred by City but only after final adjudication and to the extent and percent that Provider or Provider's agents are found negligent or otherwise at fault.

#### **10.1.2. Environmental Indemnification\***

Contractor agrees to indemnify, defend and hold City and its council members, board and commission members, officials, agents, guests, invitees, consultants and employees free and harmless from and against any and all claims, demands, proceedings, suits, judgments, costs, penalties, fines, damages, losses, attorneys' fees and expenses asserted by local, state or federal environmental agencies or private individuals or entities in connection with or resulting from or arising out of Contractor's handling, collection, transportation, storage, disposal, treatment, recovery, and/or reuse by any person under Contractor's direction or control of waste collected, transported or landfilled or any cleanup associated with environmental contamination, whether such cleanup is of air, soil, structure, ground water or surface water contamination. Contractor specifically agrees to indemnify, defend and hold harmless City against all claims, damages and liabilities of whatever nature asserted under CERCLA caused by acts or omissions of contractor regardless of when such incident is discovered. Contractor shall be responsible and liable for any spill, underground pollution or any other environmental impairment incident caused by acts or omissions of Contractor regardless of when such incident is discovered. It is the intent of the parties that this section shall in no way limit other coverage required under the Contract as it may relate to any environmental claim, damage, loss or liability of any kind. The environmental indemnification provisions of the Contract extend to claims and assessments relating to runoff, leachate, or other infiltration that may occur or has occurred at or near the site of landfills, transfer stations, or other solid waste facilities and surrounding areas which are or were used by Contractor, during the term of the Contract or previous agreements between City and Contractor. This section does not make Contractor liable for any site it has never used, closed, managed or monitored.

\* *This provision is applicable only on Contracts in which the Special Insurance Rider provides for Environmental Liability insurance coverage.*

**10.1.3. Prospective Application.**

Any and all indemnity provided for in the Contract shall survive the expiration of the Contract and the discharge of all other obligations owed by the parties to each other hereunder and shall apply prospectively not only during the term of the Contract but thereafter so long as any liability could be asserted in regard to any acts or omissions of Contractor in performing under the Contract.

**10.1.4. Application to surrounding property\***

The indemnification provisions of the Contract extend to claims and assessments relating to runoff, leachate, or other infiltration that may occur or has occurred at or near the site of landfills, transfer stations, or other solid waste facilities and surrounding areas which are or were used by the Contractor, during the term of the Contract or previous agreements between City and Contractor. This section does not make Contractor liable for any site it has never used, closed, managed or monitored.

**10.4. Contractor Agreement to Indemnify Owner from Infringement of Intangible Property Rights**

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

**10.5. No Rights Created in Third Parties**

The provisions of this indemnification are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

**10.6. Contractor Notice of Claims to Owner**

Contractor shall promptly advise Owner in writing of any claim or demand against Owner or against Contractor which involves Owner and known to Contractor and related to or arising out of Contractor's activities under this Contract.

**10.7. Survival of Indemnity and Hold Harmless Provisions**

These indemnity and hold harmless provisions of this Part 10 "Indemnification of Owner", shall survive the expiration or termination this Agreement regardless of the reason for termination.

**11. Bonds Applicable to "Public Work Contracts"**

"Public work contract" means a contract for constructing, altering, or repairing a public building or carrying out or completing any public work pursuant to which the Public Work Performance and Payment Bond provisions of Chapter 2253 of the Texas Government Code apply.

## **11.1. Construction Bonds**

Contractor is required to tender to Owner, prior to commencing the Work, performance and payment bonds in the amount of the contract, as required by Texas Government Code, Chapter 2253 "Public Work Performance and Payment Bonds". On Construction Manager-at-Risk and Design-Build Projects the Owner shall require a security bond, as described in Subsection 11.1.2 below.

### **11.1.1. Bond Requirements**

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

**11.1.1. (a)** A Performance bond is required if the Contract Sum is in **excess of \$100,000**. The performance bond is solely for the protection of Owner. The performance bond is to be for the Contract Sum to guarantee the faithful performance of the Work in accordance with the Contract Documents. The form of the bond shall be approved by the Office of the Attorney General of Texas. The performance bond shall be effective through Contractor's warranty period.

**11.1.1. (b)** A Payment bond is required if the Contract price is in **excess of \$50,000**. The payment bond is to be for the Contract Sum and is payable to Owner solely for the protection and use of payment bond beneficiaries. The form of the bond shall be approved by the Office of the Attorney General of Texas.

### **11.1.2. Security Bond**

The security bond provides protection to Owner if Contractor presents an acceptable Guaranteed Maximum Price ("GMP") to Owner but is unable to deliver the required payment and performance bonds within the time period stated below.

### **11.1.3. When Bonds Are Due**

**11.1.3. (a)** Security bonds are due before execution of a Construction Manager-at-Risk or Design-Build Contract.

**11.1.3. (b)** Payment and performance bonds are due before execution of a contract on competitively bid or competitively sealed proposal projects or before execution of a Guaranteed Maximum Price (GMP) proposal on Construction Manager-at-Risk projects or Design-Build projects.

#### **11.1.4. Power of Attorney**

Each bond shall be accompanied by a valid power of attorney (issued by the surety company and attached, signed and sealed with the corporate embossed seal, to the bond) authorizing the attorney-in-fact who signs the bond to commit the company to the terms of the bond, and stating any limit in the amount for which the attorney can issue a single bond.

#### **11.1.5. Bond Indemnification**

The process of requiring and accepting bonds and making claims thereunder shall be conducted in compliance with Tex. Gov't Code, Chapter 2253. IF FOR ANY REASON A STATUTORY PAYMENT OR PERFORMANCE BOND IS NOT HONORED BY THE SURETY, CONTRACTOR SHALL FULLY INDEMNIFY AND HOLD OWNER HARMLESS OF AND FROM ANY COSTS, LOSSES, OBLIGATIONS OR LIABILITIES IT INCURS AS A RESULT THEREOF.

#### **11.1.6. Furnishing Bond Information**

Owner shall furnish certified copies of the payment bond and the related Contract to any qualified person seeking copies who complies with Tex. Gov't Code § 2253.026.

#### **11.1.7. Claims on Payment Bonds**

Claims on payment bonds must be sent directly to Contractor and its surety in accordance with Texas Government Code § 2253.041. All payment bond claimants are cautioned that no lien exists on the funds unpaid to Contractor on such Contract, and that reliance on notices sent to Owner may result in loss of their rights against Contractor and/or its surety. Owner is not responsible in any manner to a claimant for collection of unpaid bills, and accepts no such responsibility because of any representation by any agent or employee.

#### **11.1.8. Payment Claims when Payment Bond not Required**

The rights of Subcontractors regarding payment are governed by Texas Property Code, Subchapter J, §§ 53.231 – 53.239, when the value of the Contract between Owner and Contractor is less than \$25,000.00. These provisions set out the requirements for filing a valid lien on funds unpaid to Contractor as of the time of filing the claim, actions necessary to release the lien and satisfaction of such claim.

#### **11.1.9. Sureties**

A surety shall be listed on the US Department of the Treasury's Listing of Approved Sureties maintained by the Bureau of Financial Management Service (FMS), [www.fms.treas.gov/c570](http://www.fms.treas.gov/c570), stating companies holding Certificates of Authority as acceptable sureties on federal bonds and acceptable reinsuring companies (FMS Circular 570).

### **12. Contractor's Examination of Contract Documents and Site**

#### **12.1. It is the responsibility of each Contractor, before submitting a bid or proposal:**

**12.1.1.** To examine thoroughly the Contract Documents and other related data identified in the Proposal Documents including reports and data relating to: specifications, subsurface conditions, geophysical information, environmental conditions.

**12.1.2.** To visit the Work sites to become familiar with and satisfy Contractor as to the general, local, and site conditions that may affect cost, progress, performance, or furnishing of the Work;

**12.1.3.** To consider federal, state, and local laws and regulations that may affect cost, progress, performance, or furnishing of the Work;

**12.1.4.** To study and carefully correlate Contractor's knowledge and observations with the Contract Documents and such other related data; and,

**12.1.5.** To promptly notify City of all conflicts, errors, ambiguities or discrepancies which Contractor has discovered in or between the Contract Documents and such other related documents.

## **12.2. Disclaimer of Warranties**

**12.2.1.** Contractor may not rely upon data, interpretations, opinions, or information contained in reports, data or otherwise relating to the subsurface conditions at the Work site.

**12.2.2. CITY EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES THAT THE INFORMATION, DATA, INTERPRETATIONS, OR OPINIONS SHOWN, INDICATED, OR CONTAINED IN ANY REPORTS SPECIFICATIONS, DATA OR INFORMATION RELATING TO: SUBSURFACE CONDITIONS, GEOPHYSICAL INFORMATION, OR ENVIRONMENTAL CONDITIONS, ARE ACCURATE, CORRECT, COMPLETE, OR FIT FOR THEIR INTENDED PURPOSES. BY EXECUTION OF THE CONTRACT CONTRACTOR AVERS THAT CONTRACTOR HAS MADE CONTRACTOR'S OWN INVESTIGATIONS, INTERPRETATIONS AND CONCLUSIONS ABOUT THE WORK SITE AND WORK, AND RELIES UPON CONTRACTOR'S OWN INTERPRETATIONS, ACCEPTANCE OR REJECTIONS OF ANY SUCH REPORTS, SPECIFICATIONS, DATA OR INFORMATION.**

## **13. Contractor's Representations**

**BY EXECUTION OF THE CONTRACT, CONTRACTOR, IN ORDER TO INDUCE CITY TO ENTER INTO THE CONTRACT, MAKES THE FOLLOWING REPRESENTATIONS:**

**13.1.** Contractor has familiarized itself with the nature and extent of the Contract Documents, Work, Work site and with all local conditions and federal, state and local laws and regulations that may affect cost, progress, and performance of the Work.

**13.2.** Contractor has made, or caused to be made, examinations and investigations of information as it deems necessary for the performance of Work at the Contract price, within the Contract time and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations or similar data are, or will be required by Contractor for such purposes.

**13.3.** Contractor has considered the information known to Contractor; information commonly known to contractors doing business in the locality of the Work site; information and observations obtained from visits to the Work site; the Contract Documents; and the Work site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents, and (3) Contractor's safety precautions and programs.

**13.4.** Based on the information and observations referred to in Paragraph **13.3** above, Contractor does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

**13.5.** Contractor has given City advanced written notice of all conflicts, errors, or discrepancies that it has discovered in the Contract Documents prior to bidding and the written resolution thereof by City is acceptable to Contractor.

**13.6.** Contractor is skilled and experienced to responsibly perform the type of Work described in the Contract Documents in a timely manner.

**13.7. Representations and Warranty of Professional Services Provider**

Professional Services Provider represents and warrants to City that throughout the term of the Contract for services and the performance of any services pursuant to Task Order issued under the Contract that: (i) it possesses all qualifications, licenses and expertise required for the performance of Services; (ii) it is not delinquent in the payment of any sums due City, including but not limited to payment of permit fees or occupational licenses, nor in the performance of any obligations to City; (iii) all personnel assigned to perform Services are and shall be, at all times during the term hereof, fully qualified and trained to perform the tasks assigned to each; (iv) Services will be performed in the manner described in Contract Documents; (v) services provided under the Contract shall be performed with the professional skill and care ordinarily provided by members of the same profession practicing in the same or similar locality and under the same or similar circumstances and professional license; and (vi) services provided under the Contract shall be performed as expeditiously as is prudent considering the ordinary professional skill and care of a competent member of the same profession.