CITY OF SAN ANTONIO, TEXAS
CONSTRUCTION MANAGER AT RISK CONTRACT

PROJECT NAME
PROJECT NUMBER:

This Construction Manager at Risk Contract (hereafter referred to as "Agreement") is entered into by and between the City of San Antonio, Texas, a Texas Municipal Corporation and home-rule City (hereafter referred to as "City" or "Owner") by and through its City Manager, pursuant to Ordinance Number **XXXX-XX-XX-XXXX** passed and approved by the San Antonio City Council on **_____Date____,** and **____Contractor___,** a corporation authorized to do business in the State of Texas (hereafter referred to as "CM@Risk" or "Construction Manager").

RECITALS

A. The City Manager of the City of San Antonio, Texas, is authorized and empowered to execute agreements for professional and construction services.

B. City intends to construct the **Project Name** as described in **Exhibit B** attached hereto and made a part hereof (hereafter referred to as the "Project").

C. To undertake the design of said Project, City has entered into a contract with **___Consultant___** (hereafter referred to as "Design Professional").

D. CM@Risk has represented to City the ability to provide pre-construction services and construction phase management services for the Project and, based on this representation, City engages CM@Risk to provide pre-construction services and construction phase management services for the Project. CM@Risk also may construct the Project or a portion thereof if qualified and selected for construction.

E. Based on this representation, City intends to enter into this Agreement with CM@Risk for the Pre-Construction Phase Services and the Construction Phase Management Services identified in this Agreement.

AGREEMENT

NOW THEREFORE, for and in consideration of the mutual covenants and considerations hereinafter contained, it is agreed by and between City and CM@Risk as follows:

CM@Risk, to further the interests of City, shall perform the services required by this Agreement and in accordance with this Agreement, to the satisfaction of the Director of the Capital Improvements Management Services Department (hereafter referred to as "Director"), its terms and conditions in a good and workmanlike manner exercising the degree of care, skill and judgment a professional Contractor performing similar services in San Antonio, Texas would exercise at such time, under similar conditions. CM@Risk shall, at all times, perform the required services consistent with sound and generally accepted construction management and construction contracting practice.

Attached hereto and incorporated herein, as if fully set out herein, unless specifically modified herein by this Agreement, are:

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EXHIBIT A – PAYMENT AND PERFORMANCE BONDS
EXHIBIT B – PROJECT DEFINITION
EXHIBIT C – HOURLY RATE SCHEDULE AND SCHEDULE OF VALUES FOR PRE-CONSTRUCTION SERVICES
EXHIBIT D – SUBMITTAL REQUIREMENTS FOR THE GMP
EXHIBIT E – SUBMITTAL REQUIREMENTS FOR THE FIXED PRICE PROPOSALS
EXHIBIT F – APPROVED FIXED PRICE PROPOSALS
EXHIBIT G – GENERAL CONDITIONS FOR CITY OF SAN ANTONIO BUILDING CONSTRUCTION CONTRACTS
EXHIBIT H – APPROVED GMP PROPOSAL
EXHIBIT I – TECHNICAL SPECIFICATIONS
EXHIBIT J – CONSTRUCTION DRAWINGS
EXHIBIT K – SBEDA SUBCONTRACTOR/SUPPLIER UTILIZATION PLAN FORM
EXHIBIT L – CM@RISK DESCRIPTION OF GENERAL CONDITIONS SUPPLEMENT

IN WITNESS WHEREOF, two (2) identical counterparts of this Agreement, each of which shall for all purposes be deemed an original thereof, have been duly executed by the parties herein above named on the date and year first above written.

CM@Risk agrees that this Agreement, as awarded, is for the stated work and understands that payment for the total work will be made on the basis of the indicated amount(s) and percentage(s), per the terms and conditions of the Agreement. See also **Exhibit H, Approved GMP Proposal**.

Pre-construction Fee: AMOUNT IN WORDS AND 00/100 ($XXX,XX.XX)

To include all personnel, material, and equipment expenses and profit through the design phase portion of the project.

Construction Fee: ($_____)

To include all overhead, profit, direct and indirect costs.

Other Related Fees to Include Builder's Risk, General Liability Insurance, Payment and Performance Bond Premiums: AMOUNT IN WORDS AND 00/100 ($XXX,XX.XX)

General Conditions: _____FEES % OF TOTAL COST OF WORK; NOT TO EXCEED ONE AMOUNT IN WORDS AND 00/100 ($XXX,XX.XX)

General Conditions costs include, but are not necessarily limited to:

- Operations manager
- Home office personnel
- Project Manager
- Site superintendent
- Assistant superintendent(s)
- Field engineers
- Trash disposal
- Portable toilets
- Storage trailer rental
- Cellular Telephones
- Postage and Shipping
- Haul and set up trailers

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- Secretarial support
- Temporary & contract personnel
- Personnel relocation
- Travel and lodging
- Job office rental
- Project office utilities
- Project office telephone
- Office supplies
- Project office machines
- First aid supplies
- Construction site fire extinguishers
- Pick up truck rental
- Security fencing
- Fuel and maintenance
- Benchmark survey
- Data processing
- Drug Screens
- Progress schedules
- Submittal/Shop drawing printing
- Employee Benefits
- Workers compensation

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CITY OF SAN ANTONIO
CONSTRUCTION MANAGER-AT-RISK AGREEMENT

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ARTICLE 1. TERMS AND DEFINITIONS

1.1 Addenda – Written or graphic instruments issued after the submittal of the Guaranteed Maximum Price (hereafter referred to as "GMP") Proposal, which clarify, correct or change the GMP Proposal requirements and/or incorporated as part of this contract.

1.2 Value Engineering – Alternatives for design, means and methods or other scope considerations that are evaluated and have the potential to reduce construction costs while still delivering a quality and functional Project that meets City requirements.

1.3 Approved Fixed Price Proposal – The offer or proposal of CM@Risk submitted on the prescribed form, setting forth the prices for the entire Work or portions of the Work to be performed during the construction phase which has been approved by City and incorporated herein as part of **Exhibit F**.

1.4 Construction Contract Time(s) – The number of calendar days or the dates related to the construction phase within which Contractor is to achieve Substantial Completion of the Work.

1.5 Construction Cost Limitation (CCL) – The maximum monetary amount payable to CM@Risk for all Construction Phase services, materials, labor and other work required for completion of the Work, in accordance with the Contract Documents. The CCL includes, without limitation, the General Conditions Costs, the Cost of the Work and the Construction Fee. The CCL may be adjusted by the parties for City-directed or agreed upon changes in the scope of the Project before or after the acceptance of the GMP Proposal. The CCL does not include CM@Risk's Pre-Construction Phase Fee.

1.6 Construction Documents – Include this Agreement, City's General Conditions, City's Supplementary and Special Conditions, the Drawings/Plans, Specifications, details and other documents prepared by the Design Professional and its Sub-Consultants and by City's other consultants that describe the scope and quality of the materials, supplies, equipment, systems and other elements that are required for construction of the Project that are accepted by City.

1.7 Construction Fee – A set percentage of the total cost of work, to include CM@Risk's administrative costs, direct and indirect costs and CM@Risk's home office overhead and profit, whether at CM@Risk's principal or branch offices.

1.8 Construction Manager at Risk (CM@Risk) – The firm, corporation, or other approved legal entity with whom City has entered into this Contract to provide services as detailed in this Contract.

1.9 CM@Risk's Representative – The person(s) designated by CM@Risk in writing with decision-making authority on behalf of CM@Risk.

1.10 Contingency – A fund to cover cost increases during the Project, to be used at the discretion of City, to address such costs that result from City directed changes, unanticipated project circumstances, unforeseen site conditions or related unanticipated costs. The amount of the Contingency will be set by City and will be in addition to the project costs included in CM@Risk's GMP and FPP packages.

1.11 Contract Documents – As defined in the General Conditions to include GMP Plans and Specifications and Fixed Price Proposals (hereafter referred to as "FPPs").

1.12 Cost of the Work – The direct costs incurred by CM@Risk in the proper performance of the Work. The Cost of the Work shall include, but is not necessarily limited to, direct labor costs, Subcontractor costs, costs of materials and equipment incorporated in the completed construction, costs of other materials and equipment, building permit fees (if not paid for by City), materials testing (if not paid and/or provided by City) and related items. The Cost of the Work shall not include CM@Risk's Construction Fee, General Conditions Cost, Bond and insurance or taxes.

1.13 Critical Path Schedule/Method – The sequence of necessary and required activities from the start of the Work to the Substantial Completion of the Project, the delay in the completion of which may extend the Substantial Completion date.

1.14 Day – Calendar day, unless otherwise specifically noted in the Contract Documents.

1.15 Deliverables – The work products prepared by CM@Risk in performing the scope of Work described in this Contract.

1.16 Design Professional – The Architect, Engineer, or other qualified, licensed person, firm or corporation who furnishes design and/or construction administration services required for the Project.

1.17 Design Services Phase – See Pre-Construction Phase Services herein.

1.18 Director – The Capital Improvements Management Services Director or his/her identified designee.

1.19 Drawings or Plans – Documents which visually represent the scope, extent and character of the Work to be furnished and performed by CM@Risk during the construction phase and which have been prepared or approved by the Design Professional and City. These include Drawings that have reached a sufficient stage of completion and released by the Design Professional solely for the purposes of review and/or use in performing constructability or bid-ability reviews and in preparing cost estimates (e.g. conceptual design Drawings, preliminary design Drawings, detailed design Drawings at 30%, 60%, 90% or 100% or schematic, design development, construction documents), but *"not for construction"*. Shop Drawings are not Drawings included in this definition.

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1.20 Fixed Price Proposal (FPP) - The offer or proposal of CM@Risk submitted on the prescribed form setting forth the proposed prices for the entire Work or portions of the Work to be performed during the construction phase.

1.21 Float - The number of Days by which the completion of an activity can be delayed without lengthening the Critical Path and extending the Substantial Completion date.

1.22 General Conditions Costs – Includes but is not limited to the following types of costs for CM@Risk during the construction phase: personnel costs for project manager or construction manager for Work conducted at the site; personnel costs for the superintendent and full-time general foremen; personnel costs for other management personnel resident and working on the site; workers not included as direct labor costs engaged in support (e.g. loading/unloading, clean-up, etc.); administrative office personnel; costs of offices and temporary facilities, including office materials, office supplies, office equipment, minor expenses; utilities, fuel, sanitary facilities and telephone and data services at the site; labor burdens for direct labor costs; and costs of consultants not in the direct employ of CM@Risk or Subcontractors.

1.23 Guaranteed Maximum Price (GMP) – The sum of the maximum Cost of the entire Work, including CM@Risk's Construction Fee, General Conditions Costs and sales tax(es) (if any).

1.24 GMP Plans and Specifications – The three sets of Design Development Documents Plans and Specifications provided, as defined in **Article 2** herein, upon which the Guaranteed Maximum Price Proposal is based.

1.25 Guaranteed Maximum Price (GMP) Proposal – The offer or proposal of CM@Risk, submitted on the prescribed form, setting forth the GMP prices for the entire Work to be performed during the construction phase.

1.26 Notice to Proceed (NTP) – A written notice given by City to CM@Risk fixing the date on which CM@Risk will start to perform CM@Risk's obligations under this agreement and setting forth the date for Substantial Completion of the Work.

1.27 Pre-Construction Services – Services provided by CM@Risk as defined in **Article 3** herein.

1.28 Preliminary Budget – The total estimated cost of the Project, including design, construction, and other associated costs and services, that is established by City prior to the commencement of design.

1.29 Project – The services and work to be completed by CM@Risk, Subcontractors and/or Sub-Consultants pursuant to this Agreement as set forth in the Contract Documents.

1.30 Project Team – The Design Professional, CM@Risk, City and any others designated by City who are responsible for making decisions regarding the programming, design and construction of the Project. The members of the Project Team may be modified from time to time by City.

1.31 Schedule of Values (SOV) – Document specified in the General Conditions which divides the Approved Fixed Price Proposals into pay items, such that the sum of all pay items equals the Approved Fixed Price Proposal for the construction phase Work or for any portion of the Work

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having a separate specified Approved Fixed Price Proposal. City, at its discretion, may require that the SOV be output from the Progress Schedule, depending on whether the Progress Schedule is cost-loaded or not.

1.32 Sub-Consultant – A person, firm or corporation having a contract with CM@Risk to furnish services required as its independent professional associate or consultant, with respect to the Project.

1.33 Subcontractor – An individual or firm having a direct contract with CM@Risk or any other individual or firm having a contract with an individual or firm having a direct contract with CM@Risk at any tier, who/which undertakes to perform a part of the Construction Phase Work at the site for which CM@Risk is responsible. Subcontractors shall be selected through the Subcontractor bid process described in this Agreement.

1.34 Substantial Completion – As defined in the General Conditions. The terms of Substantial Completion that apply to each FPP and GMP shall be listed in each Notice to Proceed Letter.

1.35 Work Packages – One or more packages (individually, referred to as a "Work Package") which identify a specific scope of Work and which will be ready for commencement of construction before it is appropriate to arrive at an overall Guaranteed Maximum Price (as defined herein) for the entire Work.

ARTICLE 2. GENERAL PROVISIONS

2.1 Contract Documents

2.1.1 Contract Documents are defined in **Article 1** herein. Contract Documents include this Agreement and all of its Exhibits and attachments including, but not limited to, the General Conditions for City of San Antonio Construction Contracts, Plans, Specifications, Standard Specifications and Details, Special Provisions and Conditions, Addenda (if any), used as the basis for the Guaranteed Maximum Price Proposal (GMP), as accepted by City, Approved Fixed Price Proposals, Performance Bonds, Payment Bonds, Certificates of Insurance, Construction Documents and Change Orders, Amendments or Modifications (if any) are by this reference made a part of this Agreement to the same extent as if set forth herein in full.

2.1.2 In the event of any inconsistency, conflict or ambiguity between or among the Contract Documents, the Contract Documents shall take the order of precedence as established in City's General Conditions. At no time will the Specifications be altered or amended through a submitted Fixed Price Proposal or the GMP. Specifications only may be changed through the procedure outlined in General Conditions.

2.1.2.1 On the drawings, the given dimensions shall take precedence over scaled measurements and large scale drawings shall take precedence over small-scale drawings.

2.1.2.2 Specifications take precedence over Plans.

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2.1.3 The headings used in this Agreement or any other Contract Documents are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision or shall not be referenced in resolving questions of interpretation or construction.

2.1.4 The Contract Documents form the entire agreement between City and CM@Risk and, by incorporation herein, are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

2.2 If a fixed contract amount or Guaranteed Maximum Price (GMP) has not been determined at the time the contract is awarded, the penal sums of the Payment and Performance Bonds required to be delivered to the governmental entity must each be in the amount of **AMOUNT IN WORDS AND 00/100 ($XXX,XX.XX),** an amount equal to the CCL in the amount of **AMOUNT IN WORDS AND 00/100 ($XXX,XX.XX)** unless CM@Risk furnishes a bid bond or other financial security acceptable to City to ensure that the CM@Risk will furnish the required performance and payment bonds when a GMP is established. Upon execution of this Agreement, City will accept a Surety Bond on the form provided on **Exhibit "A"** herein in the amount of one hundred percent (100%) of the CCL. The Surety Bond shall meet the same requirements as set forth for Payment and Performance Bonds.

2.3 Upon acceptance by City of a Guaranteed Maximum Price Proposal (GMP) or a Fixed Price Proposal, CM@Risk shall provide Payment and Performance Bonds on forms prescribed by City and in accordance with the requirements set forth in the General Conditions for the City of San Antonio Construction Contracts. The penal sum of the Payment and Performance Bonds shall be equal to the Guaranteed Maximum Price. If construction is phased or staged, with different Fixed Price Proposals established at different times, the penal sum of the bonds for the Guaranteed Maximum Price shall be reduced by the face amount of the Payment and Performance Bonds in effect for the ongoing Fixed Price Proposals No construction shall commence on any Fixed Price Proposal until the adequate Payment and Performance Bonds are delivered to City.

2.4 CONSULTATION AND COORDINATION

2.4.1 Program Evaluation: As a participating member of the Project Team, CM@Risk shall provide to City and Design Professional a written evaluation of City's Project Program and Project Budget, with recommendations as to the appropriateness of each within thirty (30) days of City issuing a Notice to Proceed to CM@Risk, unless the parties otherwise mutually agree in writing.

2.4.2 Project Meetings: CM@Risk will attend Project Team meetings which may include, but are not limited to, regular Project management meetings, Project workshops, special Project meetings, construction document rolling reviews and partnering sessions.

2.4.3 CM@Risk, when requested by City, will attend, make presentations and participate as may be appropriate in public agency and or community meetings germane to the Project. CM@Risk will provide drawings, schedule diagrams, budget charts and other

materials describing the Project when their use is required or appropriate in any such public agency meetings.

2.4.4 CM@Risk will provide and implement a system for tracking questions, resolutions, decisions, directions and other information matters that arise during the development of the Drawings and Specifications for the Project. The decision tracking system shall be in a format approved by City and shall be updated, at minimum, monthly during the Pre-construction Phase of the Project.

2.5 PROJECT SCHEDULE

2.5.1 As approved by City, the purpose of the Project Schedule is to identify, coordinate and record the tasks and activities to be performed by all of the Project Team members. The Project Team then will utilize that Deliverable as a basis for managing and monitoring all members' compliance with the schedule requirements of the Project. Each Project Team member is responsible for its compliance with the Project Schedule requirements. CM@Risk shall develop and maintain the Project Schedule on behalf of and to be used by the Project Team, based on input from the other Project Team members. The Project Schedule shall use the Critical Path Method (hereafter referred to as "CPM") technique, unless required otherwise in writing by City. CM@Risk shall use scheduling software to develop the Project Schedule that is acceptable to City. If Project phasing, as described below, is required, the Project Schedule shall indicate milestone dates for the phases once those milestones are determined.

2.5.2 The Project Schedule shall include a CPM diagram schedule that shall show the sequence of activities, the interdependence of each activity and indicate the Critical Path.

2.5.3 The CPM diagram schedule shall be in Days and indicate duration, earliest and latest start and finish dates for all activities and total Float times for all activities, except critical activities. The CPM diagram shall be presented in a time scaled graphical format for the Project as a whole.

2.5.4 The CPM diagram schedule shall indicate all relationships between activities.

2.5.5 The activities making up the schedule shall be sufficient detail to assure that adequate planning has been done for proper execution of the Work and such that it provides an appropriate basis for monitoring and evaluating the progress of the Work.

2.5.6 The CPM diagram schedule shall be based upon activities which coincide with the Schedule of Values.

2.5.7 The CPM diagram schedule shall show all submittals associated with each work activity and the review time for each submittal.

2.5.8 The schedule shall show milestones, including milestones for City-furnished information, and shall include activities for City-furnished equipment and furniture, when those activities are interrelated with CM@Risk activities.

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2.5.9 The schedule shall include anticipated rain delays during the performance of the contract for items of critical path activity. The duration shall reflect the average climatic range and usual industrial conditions prevailing in the locality of the site. Weather data shall be based on information provided by the National Weather Service based out of San Antonio International Airport or other approved source.

2.5.10 The Project Schedule shall be updated and maintained by CM@Risk throughout the Pre-Construction Phase, such that it shall not require major changes at the start of the Construction Phase Services to incorporate CM@Risk's plan for the performance of the Construction Phase Work. CM@Risk shall provide updates and/or revisions to the Project Schedule for use by the Project Team whenever required, but no less often than at the monthly Project Team meetings. CM@Risk shall include with such submittals a narrative describing its analysis of the progress achieved to date versus progress planned, any concerns regarding delays or potential delays and any recommendations regarding mitigating actions.

2.5.11 If phased construction is deemed appropriate and City and Design Professional approve, CM@Risk will review the design and shall make recommendations regarding the phased issuance of Construction Documents, to facilitate phased construction of the Work, with the objective of reducing the Project Schedule and/or Cost of the Work. CM@Risk shall take into consideration such factors as natural and practical lines of work severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, labor and materials availability and any other factors pertinent to saving time and cost.

2.6 Phases of Services and the Work. The services and the Work to be performed by or through CM@Risk shall be divided into the Pre-Construction Phase and the Construction Phase. The Work to be performed under the Construction Phase may commence before the Pre-Construction Phase is completed. However, no Work shall commence under the Construction Phase until a Notice to Proceed, with regard to such Work, has been issued by City in accordance with the terms of the Contract.

2.7 Date of Commencement. The Pre-Construction Phase Services shall commence after this Agreement has been executed fully by the parties and upon CM@Risk's receipt of City's Notice to Proceed, unless the parties otherwise mutually agree in writing. The Construction Phase Work shall commence upon the issuance of City's Notice to Proceed with the specific scope of the Work stated therein, unless the parties otherwise mutually agree in writing.

ARTICLE 3. CM@RISK'S PRE-CONSTRUCTION SERVICES AND RESPONSIBILITIES

The Pre-Construction Services Phase shall be deemed to commence upon the date specified in the Notice to Proceed with Pre-Construction Services, issued by City, and shall continue through completion of the Construction Documents or upon the delivery to City of a Guaranteed Maximum Price proposal. The duties of CM@Risk include those set forth in this **Article 3**.

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3.1 GENERAL RESPONSIBILITIES

3.1.1 CM@Risk shall have overall responsibility for and shall provide complete Pre-Construction Services in accordance with this Agreement. CM@Risk shall cooperate with the Design Professional and endeavor to further the interests of City and the Project. CM@Risk shall furnish Pre-Construction Services in accordance with the Project Schedule in an expeditious and economical manner, consistent with the interests of City as set forth in this Agreement.

3.1.2 CM@Risk shall identify for City the employees and other personnel that it will assign to the Pre-Construction Services Phase and provide the hourly loaded salary rate, the amount paid for each and the number of hours each employee or other personnel is projected to work. CM@Risk also shall identify any Sub-Consultants that will be performing services during the Pre-Construction Services Phase. After execution of this Agreement by City, CM@Risk shall not remove or replace the persons or entities assigned to the Project except with City's written consent, which consent shall not be unreasonably withheld, and CM@Risk shall provide a written explanation to City for the requested removal or replacement of a person or entity. CM@Risk shall not assign any person or entity to the Project or contract with any person or entity to which City has a reasonable objection. Upon receiving City's reasonable objection of any person or entity and direction, CM@Risk promptly shall remove and replace the objected person or entity. Following receipt of City's written consent or direction to remove or replace a person or entity, CM@Risk promptly shall update the list of persons and consultants no later than fifteen (15) calendar days after the change is made during the Pre-Construction Services Phase.

3.1.3 The Pre-Construction Services Phase of the Project shall commence upon the date specified in City-issued Notice to Proceed with Pre-Construction Services for the Project and, unless otherwise agreed, shall continue through 100% completion of the Construction Documents or the delivery of a Guaranteed Maximum Price proposal to City. If, however, it is deemed by the Director or his designee to be in the best interest of City, and upon written approval by City, the Construction Services Phase of the Project may commence before the Design Services Phase has been completed, in which case the direction to do so will be documented in writing and both phases shall proceed concurrently.

3.1.4 CM@Risk shall visit the site and inspect the existing facilities, systems and conditions to ensure an accurate understanding of the existing conditions.

3.1.5 CM@Risk shall provide Pre-Construction Services described herein in a proactive manner and consistent with the most current Drawings and Specifications. CM@Risk promptly shall notify City in writing whenever CM@Risk determines that any Drawing(s) or Specification(s) is/are inappropriate for the Project and/or cause(s) changes in the Scope of Work requiring an adjustment in the Project Schedule and/or in the Contract Time for the Work, to the extent such are established.

3.1.6 CM@Risk shall provide evaluations, recommendations and information to the Project Team regarding: site usage and site improvements; building systems, equipment and construction feasibility; selection and availability of materials and labor; time

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requirements for installation and construction; assignment of responsibilities for safety precautions and programs; temporary Project facilities; equipment, materials and services for common use of CM@Risk and City's separate Contractors, if any; cost factors, including costs of alternative materials, systems or designs, Preliminary Budgets and possible cost savings; recognizing and tracking the resolution of conflicts in the proposed Drawings and Specifications; methods of delivery of materials, systems, and equipment; and any other matters necessary to complete the Project in accordance with the Project Schedule and GMP.

3.1.7 The recommendations and advice of CM@Risk concerning design alternatives shall be subject to the review and approval of City and City's Consultants. It is not CM@Risk's responsibility to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes and ordinances, building codes, rules and regulations. However, if CM@Risk has actual knowledge that portions of the Drawings and Specifications are at variance therewith, CM@Risk promptly shall notify the Design Professional and City in writing.

3.1.8 CM@Risk shall be responsible for reporting and assisting in remedying all discrepancies, errors and omissions in the Contract Documents of which CM@Risk has actual knowledge. In such case, CM@Risk's responsibilities include the review, coordination and recommendation of a resolution of strategies (within budget constraints) but do not establish a liability for design.

3.1.9 CM@Risk's services shall be provided in conjunction with the services of a Design Professional. The terms of the Agreement between City and the Design Professional shall be available for inspection by CM@Risk upon request.

3.2 DESIGN DOCUMENT REVIEWS

3.2.1 CM@Risk periodically shall evaluate the availability of labor, materials/equipment, building systems, cost-sensitive aspects of the design and other factors that may impact the cost estimate, GMP Proposals, Fixed Price Proposals and/or the Project Schedule.

3.2.2 CM@Risk shall recommend, in conjunction with the Project Team, those additional surface and subsurface investigations that, in its opinion, are required to provide the reasonably necessary information for CM@Risk to construct the Project. Before CM@Risk's receipt of Notice to Proceed for Construction, CM@Risk may request additional investigations to improve the adequacy and completeness of the site condition information and data made available with the Construction Documents.

3.2.3 CM@Risk shall meet with the Project Team as required to review designs during their development. CM@Risk shall familiarize itself with the evolving documents through the construction document phase. CM@Risk proactively shall advise the Project Team and make recommendations on factors related to construction costs and its concerns pertaining to the feasibility and practicality of any proposed means and methods, selected materials, equipment and building systems and, labor and material availability. CM@Risk shall advise the Project Team on proposed site improvements and excavation and foundation considerations, as well as concerns with respect to coordination of the Drawings and Specifications. Where appropriate, CM@Risk shall recommend cost effective alternatives to Design Consultant and City.

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3.2.4 CM@Risk routinely shall conduct constructability and bid-ability reviews of the Drawings and Specifications as necessary to satisfy the needs of the Project Team. The reviews will attempt to identify all discrepancies and inconsistencies in the Construction Documents, especially those related to clarity, consistency and coordination of Work of Subcontractors, Sub-Consultants and Suppliers.

3.2.5 Constructability Reviews: CM@Risk shall implement and conduct a constructability review to identify and document Project cost and schedule savings opportunities. Whenever the term "value engineering" is used in conjunction with this Agreement or the Project, it has its commonly accepted meaning within the construction industry and does not imply the practice of professional engineering without a license.

3.2.6 CM@Risk shall prepare a "Constructability Report" that identifies items that, in CM@Risk's opinion, negatively may impact construction of the Project. The Constructability Report shall address the overall coordination of Project Drawings, Specifications, and details and identify known discrepancies that may generate Change Orders or claims once Construction Phase Services commence. CM@Risk shall evaluate whether:

(a) the Drawings and Specifications are configured to enable efficient construction;

(b) design elements are standardized;

(c) construction efficiency is properly considered in the Drawings and Specifications;

(d) module/preassembly design are prepared to facilitate fabrication, transport and installation;

(e) the design promotes accessibility of personnel, material and equipment and facilitates construction under adverse weather conditions;

(f) sequences of Work required by or inferable from the Drawings and Specifications are practicable; and

(g) the design has taken into consideration, efficiency issues concerning; access and entrance to the site, laydown and storage of materials, staging of site facilities, construction parking, and other similar pertinent issues.

3.2.7 CM@Risk shall identify equipment or material requiring extended delivery times and advise City on the need for expedited procurement of those items.

3.2.8 Bid-ability Reviews: CM@Risk shall check cross-references and complementary drawings and sections within the Specifications and, in general, evaluate whether:

(a) the Drawings and Specifications are sufficiently clear and detailed to minimize ambiguity and to reduce scope interpretation discrepancies;

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(b) named materials and equipment are commercially available and are performing well or otherwise, in similar installations;

(c) Specifications include alternatives in the event a requirement cannot be met in the field; and

(d) in its exercise of good judgment as the Project's CM@Risk, the Project is likely to be subject to differing site conditions.

3.2.9 The results of the reviews shall be provided to City in formal, written reports that clearly identify all discovered discrepancies and inconsistencies in the Drawings and Specifications with accompanying notations and recommendations made on the Drawings, Specifications and other documents. If requested by City, CM@Risk shall meet with City and Design Professional to discuss any findings and review reports.

3.2.10 CM@Risk's reviews shall be written from a Contractor's perspective and though it will seek to reduce the number of Requests for Information (RFIs) and changes during the construction phase, responsibility for the Drawings and Specifications shall remain with the Design Professional and not CM@Risk.

3.2.11 Notification of Variance or Deficiency: CM@Risk agrees to assist the Design Professional in its efforts to ascertain whether the Construction Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. If CM@Risk has actual knowledge that portions of the Construction Documents are at variance with applicable laws, statutes, ordinances, building codes, rules and regulations, it promptly will notify the Design Professional and City in writing, describing the apparent variance or deficiency. Notwithstanding the foregoing, the responsibility for ensuring compliance with applicable laws, statutes, ordinances, building codes, rules and regulations rests solely with the Design Professional.

3.2.12 Alternate Systems Evaluations: The Project Team routinely shall identify and evaluate, using value engineering principles, any alternate systems, approaches and design changes that have the potential to reduce Project costs while still delivering a quality and functional product. The recommendations and advice of CM@Risk concerning design alternatives shall be subject to the review and approval of City and City's Consultants. If the Project Team agrees, CM@Risk, in cooperation with the Design Professional, shall perform a cost/benefit analysis of the alternatives and submit such analysis in writing to the Project Team. The Project Team shall decide, at the Project Team's sole discretion, which alternatives if any will be incorporated into the Project. The Design Professional shall have full responsibility for the incorporation of City's decided upon alternatives into the Drawings and Specifications. CM@Risk will include the cost of the alternatives into the cost estimate and any GMP Proposals.

3.3 COST ESTIMATES

3.3.1 Unless otherwise agreed upon by both parties, within fourteen (14) days after receipt of all documents for the various phases of design, CM@Risk shall provide a complete and detailed cost projection estimate and a written review of the documents. The cost

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estimate shall include all cost categories except Contingency to be included in the GMP Summary identified in **Exhibit C** hereto. The Design Professional and CM@Risk shall work to reconcile any disagreements on CM@Risk's estimate, to arrive at an agreed upon cost projection. If no consensus is reached by the Design Professional and CM@Risk, City shall make the final determination.

3.3.2 If any estimate submitted to City exceeds previously accepted Construction Cost Limitation (hereafter referred to as "CCL"), CM@Risk, City and/or Design Consultant shall make appropriate recommendations on methods and materials to City and Design Professional that each party believes will bring the Project back into the CCL.

3.3.3 In between the designated milestone estimates, issued by the Design Professional at designated phases of the design, CM@Risk periodically shall provide a tracking report that identifies the upward or downward movements of costs due to value engineering or scope changes. It shall be the responsibility of CM@Risk to keep City and Design Professional informed as to the major trend changes in costs, relative to City's budget.

3.3.4 CM@Risk shall prepare a preliminary "cash flow" projection, based upon historical records of similar type projects, to assist City in the financing process.

3.3.5 Arrival at Net Reconciled Estimate. When requested by City, CM@Risk shall prepare and submit a Construction Manager Estimate (hereafter referred to as "CME") of the Cost of the Work and a Project Schedule for the Project. This CME will be compared and reconciled with the Design Professional Estimate (hereafter referred to as "DPE") for the Project, which will be prepared by the Design Professional. Through a process of negotiation and consultation between City, the Design Professional and CM@Risk, the CME and the DPE will be reconciled to arrive at an agreed Cost and Schedule for the Project (hereafter referred to as "Net Reconciled Estimate").

3.3.6 <u>Bidding of Project.</u>

3.3.6.1 Upon completion of the Construction Documents, or applicable "Bid Package" portion thereof, by the Design Professional, CM@Risk publically shall advertise, as prescribed for a governmental entity under the Local Government Code, and receive sealed bids or proposals from trade Contractors and/or Subcontractors for the performance of all major elements of the Work, other than the minor work that may be included in its General Conditions Costs. CM@Risk shall comply with City's SBEDA Ordinance and Procurement Program policies and procedures in evaluating the impact of each Subcontractor selection. CM@Risk shall follow this process in the development of each construction trades package for each Work Package. CM@Risk shall submit CM@Risk's standard form of subcontract for the Project to City for review and approval in order to verify that it contains provisions required by the Contract Documents that are protective of the interests of City and conforms to the requirements of the Contract Documents. Subcontracts shall not be awarded on the basis of cost of the work plus a fee without the prior written consent of City.

3.3.6.2 CM@Risk may perform portions of the Work itself if CM@Risk submits its bid or proposal for those portions of the Work in the same manner as other trade Contractors and/or Subcontractors and if City determines that

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CM@Risk's bid or proposal provides the best value for City. If CM@Risk intends to submit a proposal for such Work, it shall notify City prior to soliciting proposals and all such bids and/or sealed proposals shall be submitted directly to City or its designated representative.

3.3.6.3 CM@Risk shall instruct interested Subcontractors to review the Project Plans and Specifications from the approved list of plan review locations or purchase a copy from the Design Professional.

3.3.6.4 CM@Risk shall include specific notices of the following statutory requirements in the information to bidders:

3.3.6.4.1 The successful bidder's responsibility to provide workers' compensation insurance in accordance with Texas Labor Code Chapter 406.

3.3.6.4.2 The successful bidder's responsibility to pay prevailing wages pursuant to Texas Government Code Chapter 2258.

3.3.6.4.3 A notice of the sales tax exemption for the Project and the procedure for obtaining any required exemption verification or certificates.

3.3.6.4.4 Other notices required, as set out in City's General Conditions or Special Conditions.

3.3.6.4.5 Nothing herein shall prevent CM@Risk from including other notices required or allowed by law.

3.3.6.5 Upon receipt of bids/proposals, CM@Risk and City (and/or its representative) jointly shall open and review all trade Contractor or Subcontractor bids or proposals, taking into consideration the criteria listed in Texas Local Government Code. Following this review, CM@Risk shall prepare, for City's review, a notebook that includes all bids/proposals received and a summary of the bids and/or proposals received. After discussion with City, CM@Risk shall recommend to City the bidders/proposers that offer the best value to City and with whom CM@Risk desires to enter into a subcontract. At all times, City retains right to accept and/or reject all Subcontractors.

3.3.6.6 The bid/proposal review shall be handled in a manner that does not disclose the contents of the bid or proposal during the selection process to a person not employed by CM@Risk, the Design Professional, the Project Management Team or City.

3.3.6.7 All bids or proposals shall be made public after the award of the contract or not later than the seven (7) days after the date of final selection of bids or proposals, whichever is later.

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3.3.6.8 If a specific bidder among those whose bids are delivered by CM@Risk to City and Design Professional

(1) is recommended to City by CM@Risk;

(2) is qualified to perform that portion of the Work;

(3) has submitted a bid which conforms to the requirements of the Contract Documents without reservations or exceptions, but City requires that another bid be accepted, then City shall compensate CM@Risk for the increased change in price, time or Guarantee Maximum Cost for any additional cost and risk that CM@Risk may incur related directly to City's requirement that another bid or proposal be accepted.

3.3.7 CM@Risk agrees, at its own proper cost and expense, to do all Work as aforesaid for the construction of said improvements and to completely construct the same and install the material therein, as called for by this Agreement, free and clear of all claims, liens and charges whatsoever in the manner and under the conditions specified within the time or times stated in the accepted GMP Proposal.

3.3.8 The Contract Price shall include the approved Guaranteed Maximum Price Proposal, to be attached hereto, incorporated herein and labeled as **Exhibit H,** and shall include Contingency in an amount which shall be determined and controlled by City upon the acceptance of the GMP, along with CM@Risk's Pre-Construction Services Fee.

3.3.9 CM@Risk is at risk to cover any additional Project costs in the performance of the Work in excess of GMP (less any contingency listed). Any amounts in excess of the actual Cost of the Work shall be paid by CM@Risk.

3.3.10 The General Conditions Costs and the Construction Fee may be fixed percentages that shall be applied to the actual Cost of the Work, as evidenced by the approved GMP, the FPPs and Payment Applications, but are subject to adjustments as permitted in the Contract Documents.

3.3.11 Contingency are funds to be used at the discretion of City to cover any increases in Project costs that result from City directed changes, unforeseen site conditions or related unanticipated project costs. Contingency shall be in addition to the GMP amount provided by CM@Risk, the sum of which will be the full contract price for construction. Markups for Construction Fee may be applied by CM@Risk at the time that Contingency is elected to be used by City.

3.3.12 Approved Fixed Price Proposals are cumulative and the sum total of all Approved Fixed Price Proposals and the remaining costs to complete Work not addressed in Fixed Price Proposals shall not exceed the GMP total (less City's contingency). The amount of City-controlled Contingency for each Approved Fixed Price Proposal shall be negotiated separately.

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3.3.13 If the GMP requires an adjustment due to changes in the Work or other causes, as allowed in the Contract Documents, the cost of such changes is determined subject to the General Conditions. Any markups that may be allowed on such changes shall be no greater than the markups delineated in the approved GMP.

3.3.14 Prior to submitting its GMP Proposal, CM@Risk acknowledges that it has been provided unrestricted access to the existing improvements and conditions on the Project Site and that it thoroughly has investigated those conditions, to the extent reasonably possible. CM@Risk confirms that its investigation of the Project Site was instrumental in preparing its GMP Proposal for the Work. CM@Risk shall not make or be entitled to any claim for any adjustment to the Contract Time, the GMP,Pre-construction Phase Services or for Construction Phase Services arising from Project conditions that CM@Risk discovered or, in the exercise of reasonable care, should have discovered in CM@Risk's investigation.

3.4 GMP Proposal Requirements. The GMP Proposal shall be consistent with the Guidelines to Prepare the GMP Proposal, attached hereto as **Exhibit D**, unless the Parties mutually agree in writing otherwise.

3.4.1 A proposed GMP for the Work, shall be the sum of:

i. CM@Risk's Cost of Work; and

ii. Indirect Costs, as defined in **Exhibit H – Approved GMP proposal** hereto.

3.4.2 Negotiation of GMP Proposal. After submission of its GMP Proposal for the entire Work, CM@Risk and City promptly shall meet to discuss and review the Proposal. To the extent that the estimated Cost of the Work component of a GMP Proposal exceeds the Construction Cost Limitation as established herein, CM@Risk shall exercise its best efforts (as measured by its applicable standard of care under the Contract) to propose Value Engineering solutions and other cost-cutting measures to bring such construction costs within the applicable Limit. In the event that the estimated Cost of the Work component exceeds the applicable Construction Cost Limitation and such cost increase is not due to a change in the scope of the Work, CM@Risk shall not be entitled to any reimbursement for the time or expenses required to bring such construction costs within the applicable Limit. If City has any comments regarding the respective Proposal or finds any inconsistencies or inaccuracies in the information presented, it promptly shall give written notice to CM@Risk of such comments or findings. If appropriate, CM@Risk shall, upon receipt of City's notice, make appropriate adjustments to the respective Proposal. CM@Risk agrees that, to the best of its knowledge, the GMP Supporting Documents at the time of the approval of the GMP are sufficient to enable it to determine the GMP for all the Work covered by such Contract Documents and that such Work can be completed in accordance with the Contract Documents for the GMP. By agreeing to a GMP, CM@Risk agrees with City that the Work required by the Contract Documents for the Work including, without limitation, construction means, methods, procedures, and techniques necessary to perform the Work, will be consistent with:

(i) good and sound practices within the construction industry;
(ii) generally prevailing and accepted industry standards applicable to the Work; and
(iii) requirements of any warranties applicable to the Work.

3.4.3 Following approval of a GMP Proposal by City, City shall authorize and cause the Design Professional to revise the Drawings and Specifications for the Project to the extent necessary, to reflect the agreed-upon assumptions and clarifications contained in CM@Risk Construction Phase Contract for the Project. Such Drawings and Specifications shall be furnished to CM@Risk in accordance with the schedules agreed upon by City, Design Professional and CM@Risk. CM@Risk promptly shall notify the Design Professional and City if it has actual knowledge that the revised Drawings and Specifications are inconsistent with the agreed-upon assumptions and clarifications.

3.4.4 Following written approval of the GMP Proposal by City, CM@Risk without reimbursement shall pay any costs or expenses that would cause the GMP for applicable Project to be exceeded, except as otherwise provided by the Contract Documents.

3.4.5 At the end of the Project, GMP savings resulting from a lower actual project cost than anticipated by CM@Risk shall revert to City.

3.4.6 The GMP is subject to adjustments made in accordance with those allowed by this Agreement and by GMP amendments to this Agreement.

3.4.7 GMP amendments are cumulative. The amount of Contingency for each GMP amendment will be determined separately.

3.4.8 If the GMP requires an adjustment due to changes in the Work or other causes, as allowed in the Contract Documents, the cost of such changes is determined subject to the General Conditions. The markups that shall be allowed on such changes shall be no greater than the markups delineated in the approved GMP proposal.

3.5 Fixed Price Proposal Requirements. If CM@Risk elects and to utilize Fixed Price Proposal(s), and City accepts CM@Risk's utilization of Fixed Price Proposal(s), CM@Risk shall provide:

3.5.1 CM@Risk's Fixed Price Proposal that shall be an amount that includes CM@Risk's Costs of the Work and all City-proposed allowances, if any, a detailed and itemized statement of the Cost of the Work organized by trade categories, a list of all of City's allowances, if any, and a detailed and itemized statement of those allowances' basis.

3.5.2 The date of Substantial Completion, upon which the requested Fixed Price Proposal is based;

3.5.3 The Not-To-Exceed Construction Phase Fee, based on the agreed upon percentage;

3.5.4 The Not-To-Exceed General Conditions Costs and shall include bonds and insurance premiums, based on the Cost of The Work for construction (Note that City does not pay any fee or markup for CM@Risk's cost for bonds and insurance, as these are straight past-through costs);

3.5.5 A schedule for Construction Documents issuance dates, upon which the date of Substantial Completion is based;

3.5.6 A complete Schedule of Values with line item breakdowns of the calculations apportioned for the various divisions or phases of the Work. If City has agreed to accept one or more portions of the Work separately, there will be a separate Schedule of Values for each separate portion of the Project;

3.5.7 A list of the Drawings and Specifications, including all addenda thereto, and the Supporting Documents, which were used in preparation of the Fixed Price Proposal;

3.5.8 A list of the clarifications and assumptions made by CM@Risk in the preparation of the Fixed Price Proposal to supplement the information contained in the Supporting Documents;

3.5.9 A list of the trade packages that are supported by certified bids;

3.5.10 CM@Risk's SBEDA submittals documentation, to the extent required for the specific Project for which the Fixed Price is proposed; and

3.5.11 Any other Project information reasonably requested by City.

3.5.12 The Fixed Price Proposal(s) shall include no amount for sales or use taxes, for which City is exempt. Upon request by CM@Risk, City timely shall provide to CM@Risk an appropriate tax exemption certificate or other required verification of City's tax exempt status. Such taxes shall not be reimbursable costs.

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

3.7 CM@Risk shall not withdraw its Fixed Price Proposal for the Project for ninety (90) days, following submission to City.

3.8 Fixed Price Proposal(s) Review and Approval: CM@Risk shall meet with City and Design Professional to review the Fixed Price Proposal(s) and the written statement of its basis. As part of the statement of its basis, CM@Risk shall identify and justify any costs that are significantly different than the latest cost estimate provided by CM@Risk. In the event City or Design Professional discovers inconsistencies or inaccuracies in the information presented, CM@Risk shall make adjustments as necessary to the GMP Proposal, its basis or both.

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3.9 If CM@Risk's Fixed Price Proposal is greater than the independent third party or Design Professional's estimate, City may require CM@Risk to reconfirm its Fixed Price Proposal. CM@Risk will accept the independent third party's or Design Professional's estimate for the Cost of Work as part of his Fixed Price Proposal or present a report to City within seven (7) days of a written request by City identifying, explaining and substantiating the differences. CM@Risk may be requested to, or at its own discretion may, submit a revised Fixed Price Proposal for consideration by City. At that time, City may accept CM@Risk original or revised Fixed Price Proposal, if it is within City's budget and CM@Risk's GMP, without comment.

3.10 City may accept or reject CM@Risk's Fixed Price Proposal or negotiate its terms with CM@Risk. The Fixed Price Proposal shall not be effective without written approval by City, documenting the agreement of the Parties to a Fixed Price Proposal

3.11 Prior to written approval of the Fixed Price Proposal by City, CM@Risk shall not incur any cost to be reimbursed as part of the Cost of Work for the Construction Phase Services of the Project, except as City may specifically authorize in writing.

ARTICLE 4. AMENDMENTS FOR UNANTICIPATED PRE-CONSTRUCTION SERVICES

4.1 CHANGE IN SCOPE

4.1.1 Before any altered or modified work begins, a Task Order, Change Order, Amendment or Modification shall be negotiated, approved and executed by City and CM@Risk. The compensation paid to CM@Risk may be adjusted by mutual agreement of the contracting parties, based on the hourly rates agreed to under this contract.

4.2 CLAIMS FOR EXTRA WORK

4.2.1 No claim for extra work performed and/or materials furnished by CM@Risk shall be allowed by City except as provided herein, nor will CM@Risk do any work or furnish any material(s) not covered by this Contract, unless such work or material first is authorized in writing by City. Pre-construction Services or material(s) furnished by CM@Risk without such prior written authorization shall be at CM@Risk's sole jeopardy, cost and expense. CM@Risk hereby agrees that, without prior written authorization from City, no claim for compensation for such work and/or materials furnished shall be made.

ARTICLE 5. CM@RISK'S CONSTRUCTION SERVICES AND RESPONSIBILITIES

5.1 GENERAL RESPONSIBILITIES.

5.1.1 The Work to be performed under the Construction Phase may commence before the Preconstruction Phase is completed. CM@Risk shall commence the Construction Phase on the date specified in the Notice to Proceed with Construction issued by City and shall continue until Final Completion of all Work on the Project. In implementation of the responsibilities and duties of CM@Risk for Construction Phase, CM@Risk shall provide the services described in this **Article 5**.

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5.1.2 CM@Risk shall construct the Work in strict accordance with the Construction Documents and as required by City's General Conditions, Supplementary General Conditions (if any) and City's Specifications within the time required in and by the Project Schedule approved by City.

5.2 ADMINISTRATION

CM@Risk shall award and enter into, as a General Contractor, all subcontracts necessary and appropriate to provide all labor and materials for the Work. CM@Risk shall self-perform only General Conditions Work and other Project Work which has been awarded to CM@Risk in accordance with the requirements of Texas Government Code and this Agreement. City reserves the right to perform work related to the Project and to award separate contracts for work related to the Project.

5.3 CONTROL OF THE WORK

5.3.1 CM@Risk shall keep City informed of the progress and quality of the Project Work.

5.3.2 In accordance with City's General Conditions and Supplementary Conditions, CM@Risk shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation and all other facilities and services necessary for the proper execution and completion of the Work, in strict accordance with the requirements of the Construction Documents.

5.3.3 CM@Risk shall coordinate delivery and installation of any and all City-procured material and equipment.

5.3.4 Where the Contract Documents require that a particular product be installed and/or applied by an applicator approved by the manufacturer, it is CM@Risk's responsibility to ensure the Subcontractor employed for such Work is approved by the manufacturer.

5.3.5 CM@Risk shall take field measurements and verify field conditions and carefully shall compare such field measurements, conditions and other information known to CM@Risk with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered immediately shall be reported to City.

5.3.6 Before ordering materials or doing Work, CM@Risk and each Subcontractor shall verify measurements at the Site and each shall be responsible for the correctness of such measurements. No increase to the approved GMP shall be allowed because of differences between actual dimensions and the dimensions indicated in the Design and/or Contract Documents. Dimension differences, which may be found, shall be submitted to City for resolution before proceeding with the Work.

5.3.7 CM@Risk solely shall be responsible for quality control throughout duration of project, to ensure compliance with plans, specifications, good workmanship and construction management.

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5.4 CONTROL OF THE WORK SITE

5.4.1 CM@Risk shall provide a traffic control plan for approval by City, if required by City for execution of the work.

5.4.2 CM@Risk shall take all reasonable steps, procedures and means to prevent any dust nuisance on Site, due to construction operations. The dust control measures shall be maintained at all times to the satisfaction of City and in accordance with all legal requirements.

5.4.3 CM@Risk shall maintain ADA and ANSI accessibility requirements during construction activities in an occupied building or facility. ADA and ANSI accessibility requirements shall include, but not be limited to, parking, building access, entrances, exits, restrooms, areas of refuge and emergency exit paths of travel. CM@Risk shall be responsible for the coordination of all work to minimize disruption to building occupants and facilities.

5.5 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

5.5.1 CM@Risk shall not be relieved of responsibility for deviations from requirements of the Contract Documents by City's and Design Professional's approval of Shop Drawings, Product Data, Samples or similar submittals, unless CM@Risk specifically has informed City in writing of such deviation at the time of submittal and City has given written approval to the specific deviation. CM@Risk shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by City's approval thereof.

5.5.2 CM@Risk shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by City or Design Professional on previous submittals.

5.5.3 Informational submittals, upon which City is not expected to take responsive action, shall be identified in the Contract Documents.

5.5.4 When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, City shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

5.6 QUALITY CONTROL, INDEPENDENT MATERIALS TESTING AND INSPECTION

5.6.1 In compliance with Texas Government Code, City shall retain, independent of CM@Risk, the inspection services, the testing of construction materials engineering and the verification testing services necessary for acceptance of the facility by City. Such consultants shall be selected in accordance with Section 2254.004 of the Government Code. The professional services, duties and responsibilities of those independent consultants shall be described in the Agreements between City and those consultants. The provision of inspection services by City shall not reduce or lessen CM@Risk's responsibility for the Work or its duty to establish and implement a program to monitor and control the quality of construction, to guard City against defects and deficiencies in the Work, required by the Contract Documents. CM@Risk fully and solely is responsible for constructing the Project in strict accordance with the Construction

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Documents. When the first and subsequent tests indicate noncompliance with the Contract Documents, all associated costs associated with that noncompliance shall be paid by and are the responsibility of CM@Risk, including all costs for re-testing. Project Contingency shall not be utilized for the cost of re-testing.

5.6.2 When the first and subsequent tests indicate noncompliance with the Contract Documents, all retesting shall be performed by the original testing agency.

5.6.3 CM@Risk shall cooperate and coordinate with the selected testing laboratory and all others responsible for testing and inspecting the work and shall provide all access to the Work at all times.

5.6.4 At the option of City, materials may be approved at the source of supply before delivery is started.

5.6.5 Code compliance testing and inspections required by codes or ordinances, or by a plan approval authority, and which are made by a legally constituted authority, shall be the responsibility of and shall be paid by CM@Risk as a cost of the work, unless otherwise provided in the Contract Documents.

5.6.6 CM@Risk's convenience and quality control testing and inspections shall be the sole responsibility of CM@Risk and paid by CM@Risk.

5.7 PROJECT RECORD DOCUMENTS

5.7.1 At all times during the construction period, CM@Risk shall maintain at the jobsite a set of blueline or blackline prints of the Construction Document drawings and shop drawings for Project Record Document purposes.

5.7.2 CM@Risk shall mark these drawings to indicate the actual installation, where the installation varies from the original Construction Documents, and give particular attention to information on concealed elements, which would be difficult to identify or measure and record at a later date. If applicable, items required to be marked include, but are not limited to:

- Dimensional changes to the drawings.
- Revisions to details shown on drawings
- Depths of foundations below first floor
- Locations and depths of underground utilities
- Revisions to routing of piping and conduits.
- Revisions to electrical circuitry.
- Actual equipment locations.
- Duct size and routing.
- Locations of concealed internal utilities.
- Changes made by Change Order.
- Details not on original Contract Drawings.

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5.7.3 CM@Risk shall, with red erasable colored pencil, mark completely and accurately the Project Record Drawing prints of Construction Documents or Shop Drawings, whichever is the most capable of indicating the actual physical condition. Where Shop Drawings are marked, CM@Risk shall show cross-references on the Construction Documents location.

5.7.4 CM@Risk shall note on the drawings RFI Numbers, ASI Numbers and Change Order numbers, etc., as required, identifying the source of the change to the Construction Documents.

5.7.5 CM@Risk shall, as a condition of Substantial Completion, submit Project Record Drawing and Shop Drawing prints to City or its representative for review and comment.

5.7.6 Upon receipt of the reviewed Project Record Drawings from City, CM@Risk shall correct any deficiencies and/or omissions to the drawings and prepare the following for submission to City within fourteen (14) Calendar Days:

5.7.6.1 CM@Risk shall, as a condition of Substantial Completion, submit to City or its representative a complete set of electronic Project Record Drawings prepared in a 3D Modeling format or in a format designated by City that is compatible with City technology. The Design Professional shall provide files of the original Construction Documents to CM@Risk for its use in preparing these final Project Record Drawings or CM@Risk may contract with the Design Professional to revise and update the electronic drawing files. Each drawing shall be clearly marked with "As-Built Document."

5.7.6.2 The original copy of the Project Record Drawings (redline mark-ups) shall be retained by City.

5.8 PROJECT SAFETY

The requirements in this Section are in addition to the **Article X** of City's General Conditions.

5.8.1 CM@Risk shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, CM@Risk's Safety Representative shall be an individual stationed at the Site who may have other responsibilities on the Project, in addition to safety.

5.8.2 The Safety Representative shall make routine daily inspections of the Site and shall hold, at minimum, weekly safety meetings with CM@Risk's personnel, Subcontractors and others, as applicable.

5.8.3 CM@Risk immediately shall report in writing any safety-related injury, loss, damage or accident arising from the Work to City's Representative and, to the extent mandated by legal requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

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5.8.4 CM@Risk shall submit a project safety plan to City for approval, prior to initiating construction work.

ARTICLE 6. CITY'S SERVICES AND RESPONSIBILITIES

6.1 DUTY TO COOPERATE

6.1.1 City shall, throughout the performance of the Work, cooperate with CM@Risk and perform its responsibilities, obligations and services in a timely manner, to facilitate CM@Risk's timely and efficient performance of the Work and so as not to delay or interfere with CM@Risk's performance of its obligations under the Contract Documents.

6.1.2 City shall furnish, at CM@Risk's request and at no cost to CM@Risk, if in City's possession, a file of Construction Documents it possesses in a format compatible with City of San Antonio technology.

6.2 CITY'S DESIGNATED REPRESENTATIVE

The requirements in this Section are in addition to **Article II** of City's General Conditions.

6.2.1 City's Representative shall be responsible for providing City-supplied and/or City-requested information and approvals in a timely manner to permit CM@Risk to fulfill its obligations under the Contract Documents.

6.2.2 City's Representative also shall provide CM@Risk with prompt notice if he/she observes any failure on the part of CM@Risk to fulfill its contractual obligations, including any default or defect in the Project or non-conformance with the Contract Documents, specifying in such detail as is necessary to enable Contractor's prompt correction of same as required by the Contract Documents.

6.2.3 On or before issuing its Notice(s) to Proceed, City shall designate in writing to CM@Risk a representative who shall have express authority to bind City with respect to all matters requiring City's approval or authorization, other than matters that require the approval of the San Antonio City Council. To the extent permitted by law, City's representative shall have the authority to make decisions on behalf of City concerning estimates and schedules, construction budgets and changes in the Work and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of CM@Risk.

6.2.4 City's Representative shall be responsible for providing City-supplied information and approvals in a timely manner, to permit CM@Risk to fulfill its obligations under the Contract Documents.

6.2.5 City's Representative also shall provide CM@Risk with prompt notice if he/she observes any failure on the part of CM@Risk to fulfill its contractual obligations, including any default or defect in the Project or non-conformance with the Contract Documents.

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6.3 INFORMATION AND SERVICES

6.3.1 City shall provide full and accurate information in a timely manner, regarding the requirements of the Project, including information which sets forth City's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems and site requirements.

6.3.2 City shall provide a Preliminary Budget and general schedule information for the Project to CM@Risk in a timely manner. The Preliminary Budget shall include the anticipated construction cost, any City-controlled contingency for City-requested changes in the Work during construction and/or all other costs that are the responsibility of City. City shall set forth City's plan for milestone dates (if any) and the completion of the Project.

6.3.3 Structural and Environmental Tests, Surveys and Reports. In the Pre-Construction Phase, City shall furnish the following with reasonable promptness, **if in City's possession**, so as not to delay CM@Risk's performance of its services and/or Work, at City's expense:

6.3.3.1 Reports, surveys, drawings and tests accurately identifying the conditions at the Site which are required by law.

6.3.3.2 Surveys accurately identifying the physical characteristics, legal limitations and utility locations for the Site and a written legal description of the Site. The surveys and legal information may include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights of way, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and liens, both public and private, above and below grade, including inverts and depts. All information on the survey shall be referenced to a Project benchmark.

6.3.3.3 The services of competent Geotechnical Engineers, when such services reasonably are requested by CM@Risk and City concurs that such services are needed. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.

6.3.3.4 Accurate structural, mechanical, chemical, air and water pollution tests, tests for Hazardous Substances, and other laboratory and environmental tests, inspections and reports which are required by law.

6.4 LEGAL REQUIREMENTS: If known by City, City shall advise the Design Professional and CM@Risk of any special legal requirements relating specifically to the Project which differ from those generally applicable to construction in the jurisdiction of the Project.

6.5 CORRECTION OF DEFECTIVE WORK**:** City shall have the right to reject any and all defective Work on the Project. Should CM@Risk refuse or neglect to correct any such defective Work within a reasonable time after its receipt of notice and a reasonable opportunity to cure,

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City may have the Work corrected and shall recover all reasonable and necessary expenses incurred from CM@Risk. If CM@Risk refuses to make a direct payment to City for the cost to correct defective work, CM@Risk grants City the authority to withhold or deduct such payments from CM@Risk's payment applications and/or Project retainage.

6.6 SEPARATE CONTRACTS

6.6.1 City may perform other work related to the Project with its employees, separate Contractors or vendors under its control. If City is performing other work with its employees, separate Contractors or vendors under its control, CM@Risk agrees to cooperate and coordinate its work with the work of City's employees, separate Contractors or vendors and City agrees to coordinate the work of City's separate Contractors or vendors with CM@Risk, so that the Project can be completed in an orderly and coordinated manner reasonably free of significant disruption to any party.

6.6.2 If the proper execution or results of any part of CM@Risk's work depends on work performed by City's employees, separate Contractors, vendors or employees, CM@Risk shall inspect such other work and promptly report to City and the Design Professional in writing any patent defects or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of CM@Risk's Work. CM@Risk's failure to so report shall constitute an acceptance of the other work as fit and proper for integration with CM@Risk's work, except with regard to latent or non- apparent defects and deficiencies in the other work.

6.6.3 CM@Risk shall do all cutting, fitting and patching of its Work that may be required to make its several parts of Work come together properly and integrate with such other work. CM@Risk shall not endanger any work of others by cutting, excavating or otherwise altering the others' work and will only cut or alter others' work with the written consent of City and Design Professional and the other party or parties whose work will be affected.

ARTICLE 7. CONTRACT TIME

7.1 GENERAL

7.1.1 Work Packages. It is anticipated that the Construction Phase Work may be divided into one or more packages (individually, a "Work Package") which, through a Fixed Price Proposal, identify a specific scope of Work and which may be ready for commencement of construction before it is appropriate to arrive at an overall Guaranteed Maximum Price (as defined herein) for the entire Work.

7.1.2 Work Authorization. When the parties have identified the Work to be performed in a Work Package and have agreed on any applicable Contract Time Requirements for that Work Package and such other terms and conditions relating to that Work Package including, but not limited to, a Fixed Price Proposal for the Work Package, CM@Risk shall receive a Notice to Proceed from City and the Approved Fixed Price Proposal shall be incorporated as part of this Agreement. However, no Work shall commence under a Work Package or Fixed Price Proposal until a Notice to Proceed with regard to such Work has been issued in writing by City to CM@Risk in accordance with the terms of the Contract Documents.

7.1.3 Each Work Package established through an Approved Fixed Price Proposal may establish a separate commencement date and a date of Substantial Completion and a Performance Period. The Performance Periods are not required to be sequential and may run concurrently.

7.1.4 CM@Risk agrees that it shall commence performance of the Work upon receipt of Notice to Proceed and shall achieve the Performance Periods and Contract Time.

7.1.5 All of the times set forth in this **Article 7** shall be subject to adjustment in accordance with the General Conditions.

7.2 LIQUIDATED DAMAGES

7.2.1 CM@Risk understands that if Substantial Completion is not attained within the Contract Time as adjusted, City will suffer damages which are difficult to determine and accurately specify. CM@Risk agrees that if Substantial Completion is not attained within the Contract Time as adjusted, CM@Risk shall pay City **THREE THOUSAND DOLLARS AND 00/100 ($3,000.00)** as liquidated damages for each Day that Substantial Completion extends beyond the date determined by the Contract Time as adjusted.

7.2.2 CM@Risk and CM@Risk's surety shall be liable for and shall pay to City the sums stipulated in the Agreement as liquidated damages for each calendar day of delay until City grants Substantial Completion.

7.2.3 Upon attaining Substantial Completion CM@Risk will be given **30** calendar days to achieve Final Completion of the project. CM@Risk agrees that if Final Completion within 60 days from Substantial Completion, CM@Risk shall pay City **THREE HUNDRED DOLLARS AND 00/100 ($300.00)** as liquidated damages for each day that Final Completion extends beyond 60 days from the date of achieving Substantial Completion.

ARTICLE 8. PROCEDURE FOR PAYMENT

8.1. CONTRACT PRICE

8.1.1 PAYMENTS FOR PRE-CONSTRUCTION PHASE SERVICES

8.1.1.1 Payments for Pre-construction Phase Services shall be made monthly, following presentation of CM@Risk's Application for Payment and the Schedule of Values, which is included herein labeled as **"Exhibit C"** and made a part of this Agreement, including all required attachments, and shall be in proportion to services performed. Retainage will not be withheld from payments for Pre-construction Phase Services. The scope and quantity of the services provided will be dependent upon services actually performed and authorized by City. Charges will be assessed only for actual services rendered.

8.1.1.2 Payment for services negotiated as an amount not-to-exceed shall be made in accordance with the percentage of work completed during the preceding month.

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8.1.1.3 The fees for CM@Risk and any Sub-Consultants shall be based upon the hourly rate schedule included as **Exhibit C** hereto, attached and presented with the Payment Application.

8.1.1.4 Payments from City are due and payable thirty (30) days from the date CM@Risk's accurate and complete Application for Payment invoice is received by City.

8.1.1.5 CM@Risk will pay all sums due Sub-Consultants for services and reimbursable expenses within ten (10) calendar days after CM@Risk has received payment for those services from City.

8.1.2 GUARANTEED MAXIMUM PRICE AND APPROVED FIXED PRICE PROPOSALS

8.1.2.1 This article shall be read and interpreted to complement the General Conditions not as a replacement to them.

8.1.2.2 For and in consideration of the faithful performance of the Work herein, as set forth in the Contract Documents and in accordance with the directions of City and to its satisfaction, City agrees to pay CM@Risk the actual Cost of the Work and any applicable General Conditions Costs, the costs for insurance and bonding without markup or fee and CM@Risk's Construction Fee, but in no event will City pay CM@Risk more than the GMP, as adjusted by any Change Orders. Payment for the specific Work under this Agreement shall be made in accordance with payment provisions detailed herein below. To the extent that the Construction Phase consists of multiple Work Packages, each such Work Package shall be subject to a Firm Fixed Price Proposal, as defined herein. The sum of the Firm Fixed Price Proposals for all Work Packages shall not exceed the Guaranteed Maximum Price for the Construction Phase.

8.1.2.3 At the Pre-Construction Conference prescribed in the General Conditions, CM@Risk shall submit for City's review and approval a Schedule of Values. The Schedule of Values will serve as the basis for monthly progress payments made to CM@Risk throughout the Work, in accordance with the General Conditions.

8.1.2.4 At least five (5) working days prior to the date established for a Payment Application, CM@Risk shall submit an updated Project Schedule and meet with City's Representative to review the progress of the Work as it shall be reflected on the Payment Application.

8.1.2.5 The Payment Application shall constitute CM@Risk's representation that the Work has been performed consistent with the Contract Documents, has progressed to the point indicated in the Payment Application and that all Work will pass to City free and clear of all claims, liens, encumbrances and security interests upon the incorporation of the Work into the Project and payment therefore.

8.1.2.6 The Payment Application may request payment for stored equipment and materials if: (1) construction progress is in reasonable conformance with the approved Project Schedule and (2) said store equipment and materials have been verified by City in writing.

8.1.2.7 For equipment and materials suitably stored at the Site, the equipment and materials shall be protected by suitable insurance and City shall receive the equipment and materials free and clear of all liens and encumbrances upon payment therefore.

8.1.2.8 For materials and equipment stored off the Site and included in Payment Application, City must approve the storage in writing. The material and equipment must be stored within Bexar County and be accessible for City's inspection. CM@Risk must protect City's interest and shall include applicable insurance, bonding, storage and transportation to the Site.

8.1.2.9 All bonds and insurance required for stored materials shall name City as the loss payee, to the extent of its interest in the stored materials.

8.1.2.10 CM@Risk shall submit mathematically accurate Payment Applications for construction services to City electronically at minimum monthly, beginning with the first month after the construction Notice to Proceed.

8.1.2.11 Payment of Approved Pay Estimates - Payment for certified and approved Work shall be made by City no later than thirty (30) calendar days after the accurate Payment Application is received, but in each case less the total of payments previously made and less amounts properly retained under this **Section 8**.

8.1.2.11.1 City shall pay CM@Risk all amounts properly due. If City determines that CM@Risk is not entitled to all or part of a Payment Application, it will reject the Payment Application within seven (7) calendar days after the date Payment Application is received by City. City shall provide specific reasons and basis of rejection and the specific measures CM@Risk must take to rectify City's concerns. If the parties cannot resolve such concerns, CM@Risk may pursue its rights under the Contract Documents.

8.1.2.12 Retention on GMP or FPP - City will retain ten percent (10%) of each Payment Application amount provided on contracts valued at $400,000 or less. City will retain five percent (5%) of each Payment Application amount provided on contracts valued at greater than $400,000.

ARTICLE 9. CONTRACT SAVINGS, ALLOWANCES, REBATES & REFUNDS

9.1 CREDITS

If the allowable amount of the cost of Cost of Work and General Conditions is less than the amount established for each of those line items in the originally approved GMP

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Proposal, the entire difference shall be credited to City as savings and the GMP amount shall be adjusted accordingly, including CM@Risk Fees.

9.2 DEDUCTIONS

City shall be entitled to request CM@Risk to deduct amounts for the following items from any Payment Application or from the request for Final Payment submitted by CM@Risk:

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

9.2.2 **Discounts earned by CM@Risk through advance or prompt payments funded by City** - CM@Risk shall obtain all possible trade and time discounts on bills for material furnished, and shall pay bills within the highest discount periods. CM@Risk shall purchase materials for the Project in quantities that provide the most advantageous prices to City.

9.2.3. Rebates, discounts or commissions obtained by CM@Risk from material Suppliers or Subcontractors, together with all other refunds, returns, or credits received for materials, bond premiums, insurance and sales taxes.

9.2.4 Deposits made by City and forfeited due to the fault of CM@Risk.

9.2.5 Balances remaining on any Allowances or any other identified contract savings.

9.2.6 Any markup or fee applied to bond or insurance costs.

9.3 RECOVERY OF SAVINGS

City shall be entitled to recognize and recover one hundred percent (100%) of any savings identified by cost review or audit at any time, before or after final payment.

ARTICLE 10. PRE-EXISTING CONDITIONS & DESIGN ERRORS & OMMISSIONS

This **Article 10** shall be read and interpreted to complement the General Conditions not to replace them.

10.1 CM@RISK ACCESS TO PRE-EXISTING CONDITIONS - CM@Risk acknowledges that it has been provided unrestricted access to the existing improvements and conditions on the Project site and that it thoroughly has investigated those conditions. CM@Risk's investigation was instrumental in preparing its Guaranteed Maximum Price Proposal for the Work. CM@Risk shall not make or be entitled to any claim for any adjustment to the Contract Time or the Contract Sum for Pre-Construction or Construction Phase Services arising from Project

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conditions that CM@Risk discovered or, in the exercise of reasonable care, should have discovered in CM@Risk's investigation.

10.2 ACKNOWLEDGEMENT OF PARTICIPATION IN CONSTRUCTION DOCUMENT PHASE - CM@Risk acknowledges that, as part of its Pre-construction Phase Services, it participated in the review of the Construction Documents. CM@Risk shall review the drawings, specifications and other Construction Documents and notify City of any errors, omissions or discrepancies in the documents or any issue that City should be aware. CM@Risk shall not make or be entitled to any claim for adjustment to the Contract Time or the Contract Sum for errors or omissions in the Construction Documents that CM@Risk discovered or, in the exercise of reasonable care, should have discovered in CM@Risk's Pre-construction Phase design review process that CM@Risk did not bring to the attention of City and the Design Professional in a timely manner.

ARTICLE 11. CITYSHIP OF DOCUMENTS

11.1 PROJECT DOCUMENTS AND COPYRIGHTS

11.1.1 City Ownership of Project Documents: All work products (electronically or manually generated) including, but not limited to, cost estimates, studies, design analyses, original mylar drawings, Computer Aided Drafting and Design (CADD) file diskettes and other related documents prepared specifically in the performance of this Contract (collectively referred to as Project Documents) are to be and remain the property of City and are to be delivered to the Project Manager before final payment is made to CM@Risk. Nonetheless, these Projects Documents may altered, modified or adapted by City with or without the written consent of CM@Risk, which consent CM@Risk will not unreasonably withhold.

11.1.2 Documents to Bear Seal: When applicable and if required by state law, CM@Risk and its Sub-Consultants shall endorse, by a Texas professional seal, all plans, works and Deliverables prepared by the CM@Risk or its Sub-Consultants for this Contract.

11.1.3 All previously owned documents, including the estimates, specifications and all other documents and data, will remain the property of CM@Risk as instruments of service. However, CM@Risk understands and agrees that City shall have free access to all such information with the right to make and retain copies of previously owned drawings, estimates specifications and all other documents and data. Any reuse without specific written verification or adaptation by CM@Risk will be at City's sole risk and without liability or legal exposure to CM@Risk.

11.1.4 CM@Risk acknowledges and agrees that, upon payment, City exclusively shall own any and all information in whatsoever form and character produced and/or maintained in accordance with, pursuant to or as a result of this Agreement and shall be used by City as City desires. Documents, including the original drawings, estimates, specifications and all other documents and data, shall be delivered to City at no additional cost to City upon request, termination or completion of this Agreement without restriction on future use. However, any reuse without specific written verification or adaptation by CM@Risk will be at City's sole risk and without liability or legal exposure to CM@Risk.

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11.1.5 CM@Risk agrees and covenants to protect any and all proprietary rights of City in any materials provided to CM@Risk. Such protection of proprietary rights by CM@Risk shall include, but not be limited to, the inclusion in any copy intended for publication of copyright mark reserving all rights to City. Additionally, any materials provided to CM@Risk by City shall not be released to any third party without the written consent of City and shall be returned intact to City upon termination or completion of this Agreement or if instructed to do so by the Director.

11.1.6 CM@RISK HEREBY ASSIGNS ALL STATUTORY AND COMMON LAW COPYRIGHTS TO CITY OF ANY COPYRIGHTABLE WORK THAT, IN PART OR IN WHOLE, WAS PRODUCED FROM THIS AGREEMENT, INCLUDING ALL EQUITABLE RIGHTS. NO REPORTS, MAPS, DOCUMENTS OR OTHER COPYRIGHTABLE WORKS PRODUCED IN WHOLE OR IN PART BY THIS AGREEMENT SHALL BE SUBJECT OF AN APPLICATION FOR COPYRIGHT BY CM@RISK. ALL REPORTS, MAPS, PROJECT LOGOS, DRAWINGS OR OTHER COPYRIGHTABLE WORK PRODUCED UNDER THIS AGREEMENT SHALL BECOME THE PROPERTY OF CITY AND JOINT UTILITIES (EXCLUDING ANY PRIOR OWNED INSTRUMENT OF SERVICES, UNLESS OTHERWISE SPECIFIED HEREIN). CM@RISK SHALL, AT ITS EXPENSE, INDEMNIFY CITY AND JOINT UTILITIES AND DEFEND ALL SUITS OR PROCEEDINGS INSTITUTED AGAINST CITY AND PAY ANY AWARD OF DAMAGES OR LOSS RESULTING FROM AN INJUNCTION, AGAINST CITY, INSOFAR AS THE SAME ARE BASED ON ANY CLAIM THAT MATERIALS OR WORK PROVIDED UNDER THIS AGREEMENT CONSTITUTE AN INFRINGEMENT OF ANY PATENT, TRADE SECRET, TRADEMARK, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHTS.

11.1.7 CM@Risk may make copies of any and all documents and items for its files. CM@Risk shall have no liability for changes made to or use of the drawings, specifications and other documents by other Architects, Engineers or other persons, subsequent to the completion of the Project. CM@Risk appropriately shall mark all changes or modifications made on all drawings, specifications and other documents by other Architects, Engineers or other persons, including electronic copies, subsequent to the completion of the Project.

11.1.8 Copies of documents for this Work that may be relied upon by City are limited to the printed copies (also known as hard copies) and PDF electronic versions that are submitted by CM@Risk. Files in editable electronic media format of text, data, graphics or other types, (such as DGN) that are furnished by CM@Risk to City only are for convenience of City or a utility. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. However, any reuse without specific written verification or adaptation by CM@Risk will be at City's sole risk and without liability or legal exposure to CM@Risk.

11.1.9 Notwithstanding anything to the contrary contained herein, all previously owned intellectual property of CM@Risk including but not limited to, any computer software (object code and source code), tools, systems, equipment or other information used by CM@Risk or its Suppliers in the course of delivering the Services hereunder, and any know-how, methodologies or processes used by CM@Risk to provide the services or

protect deliverables to City including, without limitation, all copyrights, trademarks, patents, trade secrets and any other proprietary rights inherent therein and appurtenant thereto, shall remain the sole and exclusive property of CM@Risk or its Suppliers.

ARTICLE 12. INSURANCE

This **Article 12** supplements the Insurance Provisions included in the General Conditions.

12.1 INSURANCE REQUIREMENTS: Prior to the commencement of any work under this Project, CM@Risk shall purchase and maintain insurance, as set forth herein and in City's General Conditions and any Supplementary General Conditions or Special Conditions. Such insurance shall be written for not less than the following limits or greater if required by law or the Contract Documents:

12.1.1 WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE: In accordance with all applicable State and Federal laws and endorsed specifically to include Employer's liability, including occupational disease, subject to a limit of liability of not less than $500,000.00 and Waiver of subrogation in favor of City.

12.1.1.1 Definitions.

a) Certificate of Coverage ("Certificate"). A certificate of insurance, or a certificate of authority to self-insure issued by the commission, and, if applicable a coverage agreement (DWC-81, DWC -82, DWC -83, or DWC-84), showing statutory Workers' Compensation Insurance coverage for the person's or entity's employees providing services on the Project, for the duration of the Project. Other evidence of such insurance as may be required by City.

b) Duration of the Project. Includes the time from the beginning of a person's work on the Project until the Contractor's/person's work on the Project has been completed and accepted by City.

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

12.1.1.2 Coverage and Evidence of Coverage

12.1.1.6.1 CM@Risk shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any

coverage agreements, which meets the statutory requirements of Texas Labor Code, Title 5 for all employees of CM@Risk providing services on the Project, for the duration of the Project. CM@Risk must provide a Certificate of Coverage and copies of all required endorsements of its Insurance Policy prior to City commencement of any Work on under this Contract. The Contractor shall make available a copy of the new policy upon request. If the coverage period shown on CM@Risk's current Certificate of Coverage ends during the duration of the Project, CM@Risk must, prior to the end of the coverage period, file a new Certificate of Coverage and all required endorsements evidencing extension of the current Policy, with City showing that coverage has been extended.

12.1.1.6.2 Contractors Providing Services. CM@Risk shall contractually require each person with whom it contracts to provide services on a Project, to:

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

b) provide to CM@Risk, prior to that person beginning work on the Project, a Certificate Of Coverage and copy of the required endorsements 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 CM@Risk, prior to the end of the coverage period, a new Certificate Of Coverage and all required endorsements evidencing extension of, the coverage period shown on the current Certificate Of Coverage ends during the duration of the Project;

d) provide CM@Risk, upon request, copies of the current insurance policies.

12.1.1.6.3 CM@Risk shall provide to City all evidence of insurance required herein prior to commencement of any Work on the Project.

12.1.1.3 CM@Risk shall retain all required certificates and other evidence of insurance coverage for the duration of the Project and for four (4) years thereafter.

12.1.1.4 CM@Risk shall notify City in writing by certified mail or personal delivery, within ten (10) days before any change that materially affects the provision of coverage of any person or entity providing services on the Project.

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12.1.1.5 CM@Risk shall post on each Project site a notice, in the text, form and manner prescribed by the Texas Department of Insurance, Workers' Compensation Division, 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.

12.1.1.6 CM@Risk shall contractually require each person with whom it contracts to provide services on a Project, to:

12.1.1.6.1 Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code 401.011(44) for all of its employees providing services on the Project for the duration of the Project;

12.1.1.6.2 Provide to CM@Risk, 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;

12.1.1.6.3 Provide CM@Risk, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;

12.1.1.6.4 Obtain from each other person with whom it contracts, and provide to CM@Risk, a certificate of coverage, prior to the other person beginning work on the Project; and a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;

12.1.1.6.5 Retain all required certificates of coverage on file for the duration of the Project and for four (4) year thereafter;

12.1.1.6.6 Notify the governmental entity in writing by certified mail or personal delivery, within ten days after the person knew, or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and

12.1.1.6.7 Contractually require each person with whom it contracts to perform as required by items 8.1.1.6.1 through 8.1.1.6.7, with the certificates of coverage to be provided to the person for whom they are providing services.

12.1.1.7 By signing this contract or providing or causing to be provided a Certificate of Coverage, CM@Risk is representing to City that all employees of CM@Risk who will provide services on the Project will be covered by Workers' Compensation coverage for the duration of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that

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all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject CM@Risk to administrative penalties, criminal penalties, civil penalties, or other civil actions.

12.1.1.8 CM@Risk's failure to comply with any of these provisions is a breach of contract by CM@Risk, for which City is entitled to terminate the Agreement if CM@Risk does not remedy the breach within ten (10) days after receipt of notice of breach from City.

12.1.1.9 The coverage requirement recited above does not apply to sole proprietors, partners, and corporate officers who are excluded from coverage in an insurance policy or certificate of authority to self-insure that is delivered, issued for delivery, or renewed on or after January 1, 1996. 28 TAC 110.110(i)

12.1.2 COMMERCIAL GENERAL LIABILITY INSURANCE: Including coverage for Premises-Operations; Independent CM@Risk's Protective Liability covering liability for work sublet; Products-Completed Operations Coverage, Contractual Liability insuring the indemnity agreements contained in this Contract; Personal Injury, Broad form Property Damage, including coverage for damage due to collapse of or structural injury to any building or structure due to excavation, tunneling, pile driving, cofferdam or caisson work or dredging; to moving, shoring, underpinning, raising, or demolition of any building or structure, or removal or rebuilding of any structural support thereof; to blasting or explosions; or to wires, conduits, pipes, mains, sewers, tanks, tunnels or any other property below the surface of the ground. (i.e. Explosion, Collapse, and Underground Hazards), and Pollution Legal Liability with combined limits of liability for bodily injury and property damage of not less than $1,000,000 any one occurrence, and $2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage.

12.1.2.1 All such insurance shall remain in effect until final payment and at all times thereafter when CM@Risk may be correcting, removing, or replacing defective Work in compliance with the terms of this Contract.

12.1.2.2 CM@Risk shall maintain its Products and Completed Operations Insurance for at least two years after final payment and furnish City with evidence of continuation of such insurance at final payment and for five (5) years thereafter.

12.1.2.3 Such insurance shall be endorsed to have the General Aggregate apply to the specific Project on which the covered Work is being performed.

12.1.3 COMPREHENSIVE AUTOMOBILE LIABILITY INSURANCE (owned, non-owned and hired vehicles): With limits of liability for bodily injury of not less than $1,000,000.00 any one person, and $1,000,000.00 any one occurrence, and for property damage of not less than $1,000,000.00 any one occurrence. Such coverage shall include owned, hired and non-owned vehicles. Policy shall be endorsed to include a waiver of subrogation in favor of City and shall include City as an additional insured.

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12.1.5 MISCELLANEOUS INSURANCE REQUIREMENTS

12.1.5.1 Information in Trade Packages. CM@Risk shall include required insurance information in trade packages and indicate on bid/proposal forms the insurance that bidders/proposers are to include in their base proposals. Notice shall also be given that copies of all insurance policies may be required by City for purposes of verification of required insurance coverage.

12.1.5.2 Notice of Cancellation to City. Prior to commencing any work, CM@Risk shall furnish to City at the address shown below all required endorsements and original Certificates of Insurance and if requested by City a copy of the actual policies (or other evidence deemed sufficient by City's Risk Manager) for all insurance coverage required by this Article and additional insurance called for elsewhere in the Contract Documents, certifying compliance with the minimum required coverage. CM@Risk shall notify City in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty days prior to the change, or ten days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. In addition, all policies shall also be endorsed to provide that in the event of cancellation or reduction of coverage during the policy period, the insurer shall provide City thirty days advance written notice of such cancellation or reduction. Both notices shall be delivered to the following address(s):

City of San Antonio
Capital Improvements Mgmt. Services
P. O. Box 839966
San Antonio, Texas 78283-3966

WITH A COPY TO:

Contract Services
Capital Improvement Mgmt. Service
P.O. Box 839966
San Antonio, Texas 78283-3966

12.1.5.3 Notice of Reinstatement of Insurance Coverage. Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage CM@Risk shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend CM@Risk's performance should there be any lapse in coverage at any time during this contract. Failure to provide and maintain the required insurance shall constitute a material breach of this Agreement.

12.1.5.4 Company Rating. Insurance shall be carried with financially responsible insurance companies, licensed in the State of Texas, with an A.M. Best Rating of A- (VII) or better, if City has any objection to the coverage afforded by or other provisions of the insurance required to be purchased and maintained by CM@Risk in accordance with this Contract on the basis of its not complying

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with the Contract Documents, City will notify CM@Risk in writing thereof. CM@Risk will provide to City such additional information in respect of insurance provided by him as City may reasonably request.

12.1.5.5 In addition to any other remedies City may have upon CM@Risk's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, City shall have the right to order CM@Risk to stop work hereunder, and/or withhold any payment(s) which become due, to CM@Risk hereunder until CM@Risk demonstrates compliance with the requirements hereof. Nothing herein contained shall be construed as limiting in any way the extent to which CM@Risk may be held responsible for payments of damages to persons or property resulting from CM@Risk's performance of the Work covered under this Agreement.

12.1.5.6 City reserves the right to review the insurance requirements set forth in this **Article 12** during the effective period of the Agreement and to make reasonable adjustments to the insurance coverage and their limits when deemed necessary and prudent by City based upon changes in statutory law, court decisions, or the claims history of the industry as well as CM@Risk.

12.1.5.7 City shall be entitled, upon request, and without expense, to receive complete copies of the policies with all endorsements and may make any reasonable requests for deletion, or revision or modification of particular policy terms, conditions, limitations, or exclusions, except where policy provisions are established by law or regulation binding upon the Parties or the underwriter of any of such polices. Damages caused by CM@Risk and not covered by insurance shall be paid by CM@Risk.

12.1.5.8 CM@Risk agrees that with respect to the above required insurance all insurance policies are to contain or endorsed to contain the following provisions:

12.1.5.1 Name City, its officers, officials, employees, volunteers and elected representatives as additional insureds by endorsement, as respects to operations and activities of, or on behalf of the named insured performed under contract with City, with the exception of workers' compensation.

12.1.5.2 Provide for an endorsement that the "other insurance" clause shall not apply to City where City is an additional insured shown on the policy

12.1.5.9 Nothing herein contained shall be construed as limiting in any way the extent to which CM@Risk may be held responsible for payments of damages to person or property resulting from CM@Risk's or it Subcontractor's performance of the work covered under this agreement.

12.1.5.10 It is agreed that CM@Risk's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by City for liability arising out of operations under this agreement.

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12.1.5.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement

ARTICLE 13. INDEMNIFICATION

13.1 GENERAL INDEMNIFICATION

This **Article 13** supplements the Indemnity Provisions of the General Conditions:

IT IS THE EXPRESS INTENT OF THE PARTIES TO THIS CONTRACT, THAT THE INDEMNITY PROVIDED FOR IN THE GENERAL CONDITIONS, IS AN INDEMNITY EXTENDED BY CM@RISK IN ACCORDANCE WITH THE TERMS OF THE INDEMNIFICATION PROVISIONS, TO INDEMNIFY, PROTECT AND DEFEND CITY FROM THE CONSEQUENCES OF CM@RISK'S OWN NEGLIGENCE ONLY, AND THAT THE INDEMNITY PROVIDED FOR IN THIS ARTICLE SHALL NOT APPLY WHEN SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE FROM THE NEGLIGENCE OF CITY.

ARTICLE 14. NOTICES

14.1 REPRESENTATIVES OF THE PARTIES

14.1.1 City's Designated Representative

City designates the individual listed below or his/her designee as its Senior Representative (hereafter referred to as "City's Senior Designated Representative"), which has the authority and responsibility for avoiding and resolving disputes under the provisions of this Agreement.

Mike Frisbie, P.E., Director
Capital Improvements Management Services Department
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

14.1.2 CM@Risk's Designated Representative

CM@Risk designates the individual listed below as its Senior Representative ("CM@Risk's Senior Representative"), which has the authority and responsibility for avoiding and resolving disputes under the provisions of this Agreement:

Name:
Title:
Firm Name:
Address:

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ARTICLE 15. TERMINATION AND SUSPENSION

15.1 TERMINATION WITHOUT CAUSE.

15.1.1 This Agreement may be terminated by City at any time after issuance of the Notice to Proceed for Pre-Construction Services or the Notice to Proceed for Construction Services, either for City's convenience or because of CM@Risk's failure to fulfill the contract obligations. Upon receipt of such notice, CM@Risk's services immediately shall be discontinued (unless the termination notice directs otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in progress, shall be delivered to City.

15.1.2 If the Agreement termination is for the convenience of City, following City's inspection and acceptance of CM@Risk's services properly performed prior to the effective date of termination, City promptly shall pay CM@Risk for all services properly performed and all liabilities incurred up to the time of such termination. CM@Risk shall not, however, be entitled to any lost or anticipated profit or to any payment on unperformed services, should City choose to exercise this option to terminate, nor shall CM@Risk be entitled to compensation for any unnecessary or unapproved Work performed during the time between CM@Risk's receipt of City's Notice of Termination and the actual termination date.

15.1.3 If the Agreement termination is due to CM@Risk's failure to fulfill its obligations, City may take over the work and prosecute the same to completion by contract or otherwise. In such event, CM@Risk shall be liable to City for any and all additional costs reasonably and necessarily occasioned to City thereby.

15.1.4 The rights and remedies of City provided in this **Section 15** are in addition to any other rights and remedies provided by law or under this contract.

15.2 DEFAULTS WITH OPPORTUNITY FOR CURE: Should CM@Risk fail to satisfactorily perform the Pre-Construction Services set out in **Article 3** herein, or comply with any covenant required by the Contract Documents, such failure shall be considered an Event of Default. In such Event of Default, City shall deliver written notice of said default in accordance with the notice provisions contained in this Agreement, specifying the specific Event(s) of Default and the action necessary to cure such defaults. CM@Risk shall have a reasonable period of time of not more than seven (7) calendar days after receipt of the written notice to cure such default. CM@Risk shall continue working during the seven (7) days to cure such default. If CM@Risk fails to cure the default within such seven-day cure period or take steps reasonably calculated to cure such default, City shall have the right, without further notice, to terminate this Contract in whole or in part, as City deems appropriate, and to contract with another CM@Risk or other party to complete the work required by this Agreement. City also shall have the right to offset the cost of said new agreement with a new CM@Risk or other party against CM@Risk's future or unpaid invoice(s), subject to any statutory or legal duty, if any, on the part of City to mitigate its losses.

15.2.1 The party not in default of this Agreement must issue a signed, written notice of default and termination (citing this **Section 15.2**) to the other party declaring the other party to be in default and stating the reason(s) why it is in default. Upon receipt of such written notice of default and termination, the party in receipt shall have a period of not more

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than seven (7) days to cure any failure to perform under this Agreement. Upon the completion of such seven-day period, commencing upon receipt of notice of default termination, if such party has not cured any failure to perform, such termination shall become effective without further written notice.

15.3 **CM@RISK TERMINATION FOR CAUSE:** Upon the occurrence of any of the events listed in **Article 13** of City's General Conditions or one or more of the following events, and following written notice to CM@Risk given in accordance with the notice provisions contained in this Agreement, City immediately may terminate this Agreement, in whole or in part, "for cause":

15.3.1 CM@Risk, either directly or indirectly through its employees or representatives, makes any material misrepresentation or provides any materially misleading information to City in connection with this Agreement or its performance hereunder; or

15.3.2 CM@Risk violates or materially fails to perform any covenant, provision, obligation, term or condition of a material nature contained in this Agreement, except those events of default for which an opportunity to cure is provided herein; or

15.3.3 CM@Risk fails to cure or initiate steps reasonably calculated to cure a default listed in **Section 9.3** herein, within the time period required for cure; or

15.3.4 CM@Risk materially violates any rule, regulation or law to which CM@Risk is bound or shall be bound under the terms of this Agreement; or

15.3.5 CM@Risk attempts the sale, transfer, pledge, conveyance or assignment of this Agreement, contrary to the terms of the Agreement; or

15.3.6 CM@Risk ceases to do business as a going concern; makes an assignment for the benefit of creditors; admits in writing its inability to pay debts as they become due; files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under this Contract shall continue) and such petition is not dismissed within forty-five (45) days of filing; or if a receiver, trustee or liquidator is appointed for it, or its joint venture entity, or any substantial part of CM@Risk's assets or properties.

15.4 **TERMINATION BY LAW:** If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

15.5 **ORDERLY TRANSFER FOLLOWING TERMINATION:** Regardless of how this Agreement is terminated, CM@Risk shall affect an orderly transfer to City or to such person(s) or firm(s) as City may designate. However, if such termination is due to CM@Risk's default, such transfer shall be performed by CM@Risk at no additional cost to City. Upon the effective date of expiration or termination of this Agreement, CM@Risk shall cease all operations of work being performed by CM@Risk, or any of its Subcontractors pursuant to this Agreement. All completed or partially completed documents, papers, records, charts, reports and any other materials or information produced or provided to CM@Risk, in connection with the services

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rendered by CM@Risk under this Agreement, regardless of storage medium, shall be transferred to City. Such record transfer shall be completed within thirty (30) calendar days of the termination date at no additional cost to City, if the termination is due to CM@Risk's default. Payment of compensation due or to become due to CM@Risk is conditioned upon delivery of all such documents.

15.5.1 Upon receipt of a Notice of Termination and prior to the effective date of termination, unless the notice otherwise directs or CM@Risk immediately takes action to cure a failure to perform under the cure period set out hereinabove, CM@Risk immediately shall begin the phase-out and the discontinuance of all services in connection with the performance of this Agreement and shall proceed to promptly cancel all existing orders and contracts, insofar as such orders and contracts are chargeable to this Agreement. Within thirty (30) calendar days after receipt of such Notice of Termination (unless CM@Risk successfully has cured a failure to perform) CM@Risk shall submit a statement showing in detail the services performed under this Agreement, prior to the effective date of termination. City shall have the option to grant an extension to the time period for submittal of such statement.

15.5.2 Copies of all completed or partially completed specifications and all reproductions of all completed or partially completed designs, plans and exhibits prepared under this Agreement prior to the effective date of termination shall be delivered to City, in the form requested by City as a pre-condition to final payment. These documents shall be subject to the restrictions and conditions set forth in these Contract Documents.

15.5.3 Upon the above conditions being met, City promptly shall pay CM@Risk that proportion of the prescribed fee which the Work and/or services actually performed under this Agreement bear to the total Work and/or services called for under this Agreement, less any and all previous payments of the fee.

15.5.4 City, as a public entity, has a duty to document the expenditure of public funds. CM@Risk acknowledges this duty on the part of City. To this end, CM@Risk understands that failure of CM@Risk to comply with the submittal of the statement and documents, as required above, shall constitute evidence of a waiver by CM@Risk of any and all rights or claims to payment for services performed by CM@Risk under this Agreement.

15.5.5 Failure of CM@Risk to comply with the submittal of the statement and documents as required herein shall constitute evidence of a waiver by CM@Risk of any and all rights or claims to collect monies to which CM@Risk may otherwise be entitled for services performed under this Agreement.

15.6 **<u>ASSIGNMENT OF INTEREST IN SUBCONTRACTS AND PURCHASE ORDERS:</u>** In further assurance of the orderly transfer of Work, CM@Risk hereby conditionally assigns to City and its assigns all its interest in any subcontracts and purchase orders now existing or hereinafter entered into by CM@Risk for performance of the payment for any part of the Work, which assignment will be effective upon acceptance by City in writing and only as to those subcontracts and purchase orders which City designates in writing after CM@Risk's termination. It is agreed and understood that City may accept said assignment at any time during the course of the Construction Phase prior to Final Completion. It further is agreed that all subcontracts and purchase orders shall provide that they are freely assignable by CM@Risk to City and its assigns.

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It is further understood that such assignment is part of the consideration to City for entering into this Agreement with CM@Risk and may not be withdrawn prior to completion.

15.7 **CLAIMS FOR OUTSTANDING COMPENSATION:** Within forty-five (45) calendar days of the effective date of completion, termination or expiration of this Agreement, CM@Risk shall submit to City its claims, in detail, for any monies owed by City to CM@Risk for services performed under this Agreement through the effective date of termination. Failure by CM@Risk to submit its claims within said forty-five (45) calendar days shall constitute evidence of a Waiver by CM@Risk of any and all right or claims to collect monies CM@Risk rightfully may otherwise be entitled to for services performed pursuant to this Agreement.

15.8 **TERMINATION NOT SOLE REMEDY:** In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity City's right to seek damages from or otherwise pursue CM@Risk for any default hereunder or any other action.

15.9 **SUSPENSION:** The Work may be suspended by City as provided in City's General Conditions; in such case the compensation, as established by this Agreement, may be increased as provided in the General Conditions except that the term "Cost of Performance of the Contract" in the General Conditions shall be understood to mean the Cost of the Work and the term "profit" shall be understood to mean the Construction Phase Fee.

15.9.1 Upon receipt of written Notice of Suspension, which date shall also be the effective date of the suspension, CM@Risk shall, unless the Notice otherwise directs, immediately begin to phase-out and discontinue all services in connection with the performance of this Agreement and shall proceed promptly to suspend all existing orders and contracts, insofar as such orders and contracts are chargeable to this Agreement.

15.9.2 CM@Risk shall prepare a statement showing in detail the services performed under this Agreement prior to the effective date of suspension.

15.9.3 Copies of all completed or partially completed design, plans and specifications prepared under this Agreement prior to the effective date of suspension shall be prepared for possible delivery to City and shall be retained by CM@Risk until such time as CM@Risk may exercise the right to terminate as defined herein.

15.9.4 If a Notice of Suspension is issued by City, CM@Risk may exercises its right to terminate this Agreement as outlined in **Section 15.9.8** herein. If CM@Risk elects to terminate this Agreement and notifies City in writing of its intent via a Notice of Termination, within thirty (30) days after receipt by City of CM@Risk's Notice of Termination, CM@Risk promptly shall cancel all existing orders and contracts, insofar as such orders and contracts are chargeable to this Agreement, and shall submit the above referenced statement showing in detail the services performed under this Agreement prior to the effective date of suspension.

15.9.5 Any documents prepared in association with this Agreement shall be delivered to City as a pre-condition to final payment.

15.9.6 Upon the above conditions being met, City promptly shall pay CM@Risk that proportion of the prescribed fee which the services actually performed under this Agreement bear to the total services called for under this Agreement, less previous payments of the fee, together with all liabilities incurred by CM@Risk as a result of such suspension or termination.

15.9.7 City reserves the right to suspend this Agreement at the end of any phase for the convenience of City by issuing a signed, written Notice of Suspension citing this **Section 15.9,** which shall outline the reasons for the suspension and the expected duration of the suspension, but such expected duration shall in no way will guarantee what the total number of days the suspension will occur. Such suspension shall take effect immediately upon receipt of said Notice of Suspension by CM@Risk.

15.9.8 CM@Risk hereby is given the right to terminate this Agreement in the event such suspension extends for a period in excess of one hundred twenty (120) days. CM@Risk may exercise this right to terminate by issuing a signed, written Notice of Termination, citing this **Section 15.9.8**, to City after the expiration of one hundred twenty (120) days from the effective date of the suspension. Termination under this paragraph shall become effective immediately upon receipt of said written notice by City. In such event, City promptly shall pay CM@Risk that proportion of the prescribed fee which the Work and/or services actually performed under this Agreement bear to the total Work and/or services called for under this Agreement, less previous payments of the fee, together with all liabilities incurred by CM@Risk as a result of such suspension or termination.

ARTICLE 16. MISCELLANEOUS PROVISIONS

16.1 **DISPUTE RESOLUTION:** All disputes against City that arise from this Agreement and any Project shall be resolved in accordance with the procedures and limitations of Texas Local Government Code Subchapter I, Chapter 271.151et.seq., and City's General Conditions. City designates the Director of Capital Improvements Management Services or his/her designee as its officer(s) for examining, negotiating and resolving claims and counterclaims. City hereby waives sovereign immunity only in accordance with Section 271.152 of the Local Government Code for its obligations to CM@Risk arising under this Agreement.

16.2 **ASSIGNMENT:** This Agreement is a personal service contract for the services of CM@Risk, and CM@Risk's interest in this Agreement, duties hereunder and/or fees due hereunder may not be assigned or delegated to a third party without City's written consent.

16.3 **TITLE TO WORK:** Immediately upon the performance of or payment for any part of the Work, as between CM@Risk and City, title thereto shall vest in City; provided, however, the vesting of title shall not impose any obligations on City or relieve CM@Risk of any of its obligations hereunder.

16.4 **AUDIT RIGHTS:** **ARTICLE 15, The Right to Audit Contractor's Record** in City's General Conditions is superseded by the following provision: CM@Risk agrees that City may review any and all Work performed by CM@Risk under this Agreement. City is granted the right to audit, at City's election, all of the records and billings related to performance of this Agreement. CM@Risk agrees to retain such records for a minimum of four (4) years following completion of this Agreement. Any payment, settlement, satisfaction, or release

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provided under this Agreement shall be subject to City's rights as may be disclosed by such audit."

16.5 The following supplements **Section 3.4 LABOR AND MATERIAL** of City's General Conditions: Records of expenses pertaining to services performed on the basis of a Worker Wage Rate or Monthly Salary Rate shall be kept on the basis of generally accepted accounting principles and in accordance with cost accounting standards promulgated by the Federal Office of Management and Budget Cost Accounting Standards Board and shall be available for audit by City or City's authorized representative on reasonable notice.

16.6 **TEXAS FAMILY CODE CHILD SUPPORT CERTIFICATION:** Pursuant to Section 231.006, Texas Family Code, CM@Risk certifies that it is eligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

16.7 **FRANCHISE TAX CERTIFICATION:** As corporation or limited liability company, CM@Risk certifies that: 1) it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the Texas Tax Code; or 2) that the corporation or limited liability company is exempt from the payment of such taxes; or 3) that the corporation or limited liability company is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.

16.8 **PAYMENT OF DEBT OR DELINQUENCY TO CITY:** It is the policy of City that any person or entity doing business with City shall, at all times, remain in financial good standing with all City Departments. In that regard, CM@Risk warrants that it has no outstanding obligations to any City Department at the time of the execution of this Agreement and hereby covenants that it timely will pay, as they come due, any and all taxes, fees, fines or any other charges assessed by any City Department, whether imposed by statute, ordinance or contract, without regard to whether these charges are associated with this Agreement, or CM@Risk's operation under this Agreement.

16.9 **CONTRACT DOCUMENTS; MERGER:** The Agreement Documents form the entire and integrated Contract Agreement between City and CM@Risk and supersede all prior negotiations, representations or agreements, written or oral. This Agreement and each of its provisions shall be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by CM@Risk and City.

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

16.11 **GOVERNING LAW AND VENUE**: This Agreement and all of the rights and obligations of the parties and all of the terms and conditions shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas without reference to its conflicts of law provisions. Bexar County shall be the sole place of venue for any legal action arising from or related to this Agreement or the Project in which City is a party.

16.12 **WAIVERS:** Except for the Claims and Disputes Provision in City's General Conditions, no delay or omission by either party in exercising any right or power arising from non-compliance or failure of performance by the other party with any of the provisions of this Agreement shall impair or constitute a waiver of any such right or power. A waiver by either party of any

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covenant or condition of this Agreement shall not be construed as a waiver of any subsequent breach of that or of any other covenant or condition of the Agreement.

16.13 **SUCCESSORS AND ASSIGNS**: This Agreement shall be binding upon and inure to the benefit of the parties and their respective permitted assigns and successors.

16.14 **RECORDS**: Records of CM@Risk's costs, reimbursable expenses pertaining to the Project and payments shall be available to City or its authorized representative during normal business hours and shall be retained for four (4) years after final Payment to CM@Risk or CM@Risk's termination and/or abandonment of the Project, unless City otherwise instructs CM@Risk in writing.

16.15 **NOTICES:** In addition to the written Notice Provision in City's General Conditions, all notices, consents, approvals, demands, requests or other communications relied on by the parties shall be in writing. Written notice shall be deemed to have been given when delivered in person to the designated representative of CM@Risk or City for whom it is intended; or sent by U. S. Mail, certified mail, return receipt requested, to the last known business address of the designated representative; transmitted by fax machine to the last know business fax number of the designated representative or sent via electronic mail (e-mail) to the last known e-mail address. Mail notices are deemed effective upon receipt or on the third business day after the date of mailing, whichever is sooner. Fax notices are deemed effective the next business day after faxing. E-mail are deemed effective at the time sent. Notices of claims or disputes or other legal notices required by this Agreement shall be sent to the following persons at the indicated locations. The parties may make reasonable changes in the person or place designated for receipt of notices upon advance written notice to the other party.

If to City:
City of San Antonio
Capital Improvements Management Services Department
Attention: Debbie Sittre, Assistant Director
P. O. Box 839966
San Antonio, Texas 78283-3966

If to CM@Risk:
NAME OF FIRM
Attention: NAME, TITLE
ADDRESS

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

16.17 **ILLEGAL DUMPING:** CM@Risk shall ensure that it and all of its Sub-Consultants, Subcontractors and assigns prevent illegal dumping of litter in accordance with Title 5, Texas Health and Safety Code, Chapter 365.

16.18 **EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION:** CM@Risk shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs.

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16.19 **INDEPENDENT CONTRACTOR:** In addition to the Independent Contractor Provision in City's General Conditions, CM@Risk is an independent Contractor and not an agent of City. CM@Risk shall be liable to City for acts and omissions of CM@Risk and CM@Risk's Sub-Consultants, Subcontractors and Suppliers of any tier, and their agents, employees and parties in privy of this Agreement with any of them and anyone acting on behalf of any of them, and any other persons performing any of the Work, directly or indirectly, under contract with CM@Risk, including any design professionals and their consultants and Sub-Consultants of any tier, to the extent of its liability for same.

16.20 **SUB-CONSULTANT AND SUBCONTRACTOR CONTRACT REQUIREMENTS:** In addition to the Sub-Contractual Relations Provision in City's General Conditions, CM@Risk shall require each Sub-Consultant and Subcontractor, to the extent of the Work to be performed by the Sub-Consultant and Subcontractor, to be bound to CM@Risk by the terms of the Contract Documents and to assume, toward CM@Risk, all the obligations and responsibilities that CM@Risk, by these Documents, assumes toward City. Each sub-consultant and subcontract agreement shall preserve and protect the rights of City under the Contract Documents, with respect to the Work to be performed by the Sub-Consultant and Subcontractor, so that sub-consulting and subcontracting thereof will not prejudice such rights. Where appropriate, CM@Risk shall require each Sub-Consultant and Subcontractor to enter into similar agreements with its sub-Sub-Consultants and sub-Subcontractors. CM@Risk shall make available to each proposed Sub-Consultant and Subcontractor, prior to the execution of a Subconsultant and/or Subcontract agreement, copies of the Contract Documents to which the Subconsultant and/or Subcontractor will be bound, and, upon written request of the Subconsultant or Subcontractor, identify to the Sub-Consultant and/or Subcontractor terms and conditions of the proposed sub-consultant and subcontract agreement that may be at variance with the Contract Documents. Sub-Consultants and Subcontractors similarly shall make copies of applicable portions of such documents available to their respective proposed sub-Sub-Consultants and sub-Subcontractors. CM@Risk shall provide City with a copy of each Sub-Consultant and Subcontractor agreement, upon request.

ARTICLE 17. INTEREST IN CITY CONTRACTS PROHIBITED

17.1 In addition to the **Officers or Employees of City Not to Have Financial Interest in Any Contract of City** provision in City's General Conditions: No officer or employee of City shall have a financial interest, directly or indirectly, in any contract with City, or shall be financially interested, directly or indirectly, in the sale to City of any land, materials, supplies or service, except on behalf of City as an officer or employee. This prohibition extends to City Public Service Board, the SAWS, and other City boards and commissions, which are more than purely advisory. The prohibition also applies to subcontracts on City projects.

17.2 CM@Risk acknowledges that it is informed that the Charter of City and its Ethics Code prohibit a City officer or employee, as those terms are defined in City's Ethics Code, from having a financial interest in any contract with City or any City agency, such as City owned utilities. An officer or employee has a "prohibited financial interest" in a contract with City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or

entity above listed is a Subconsultant or Subcontractor on a City contract, a partner or a parent or subsidiary business entity.

17.3 CM@Risk warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents neither are officers nor employees of City. CM@Risk further warrants and certifies that is has tendered to City a Discretionary Contracts Disclosure Statement in compliance with City's Ethics Code.

17.4 CM@Risk must disclose if it is associated in any manner with a City official or employee in a business venture or business dealings. Failure to do so will constitute a violation of City Ordinance No. 76933. To be "associated" in a business venture or business dealings includes being in a partnership or joint venture with City official or employee, having a contract with City official or employee, being joint owners of a business, owning at least 10% of the stock in a corporation in which a City official or employee also owns at least 10%, or having an established business relationship with a City official or employee as client or customer.

ARTICLE 18. SBEDA COMPLAINCE PROVISIONS

A. SBEDA Program

The City has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2010-06-17-0531 and as amended, also referred to as "SBEDA" or "the SBEDA Program"), which is posted on the City's Economic Development (EDD) website page and is also available in hard copy form upon request to the City. The SBEDA Ordinance Compliance Provisions contained in this section of the Agreement are governed by the terms of this Ordinance, as well as by the terms of the SBEDA Ordinance Policy & Procedure Manual established by the City pursuant to this Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual that are effective as of the date of the execution of this Agreement. Unless defined in a contrary manner herein, terms used in this section of the Agreement shall be subject to the same expanded definitions and meanings as given those terms in the SBEDA Ordinance and as further interpreted in the SBEDA Policy & Procedure Manual.

B. Definitions

Affirmative Procurement Initiatives (API) – Refers to various Small Business Enterprise, Minority Business Enterprise, and/or Women Business Enterprise ("S/M/WBE") Program tools and Solicitation Incentives that are used to encourage greater Prime and subcontract participation by S/M/WBE firms, including bonding assistance, evaluation preferences, subcontracting goals and joint venture incentives. (For full descriptions of these and other S/M/WBE program tools, see Section III. D. of Attachment A to the SBEDA Ordinance).

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

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

Commercially Useful Function – an S/M/WBE firm performs a Commercially Useful Function when it is responsible for execution of a distinct element of the work of the contract and is carrying out its responsibilities by actually performing, staffing, managing and supervising the work involved. To perform a Commercially Useful Function, the S/M/WBE firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an S/M/WBE firm is performing a Commercially Useful Function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the S/M/WBE firm is to be paid under the contract is commensurate with the work it is actually performing and the S/M/WBE credit claimed for its performance of the work, and other relevant factors. Specifically, an S/M/WBE firm does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of meaningful and useful S/M/WBE participation, when in similar transactions in which S/M/WBE firms do not participate, there is no such role performed. The use of S/M/WBE firms by Contractor to perform such "pass-through" or "conduit" functions that are <u>not</u> commercially useful shall be viewed by the City as fraudulent if Contractor attempts to obtain credit for such S/M/WBE participation towards the satisfaction of S/M/WBE participation goals or other API participation requirements. As such, under such circumstances where a commercially useful function is not actually performed by the S/M/WBE firm, the Contractor shall not be given credit for the participation of its S/M/WBE Subcontractor or joint venture partner towards attainment of S/M/WBE utilization goals, and the Contractor and S/M/WBE firm may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

Evaluation Preference – an API that may be applied by the Goal Setting Committee ("GSC") to Construction, Architectural & Engineering, Professional Services, Other Services, and Goods and Supplies contracts that are to be awarded on a basis that includes factors other than lowest price, and wherein responses that are submitted to the City by S/M/WBE firms may be awarded additional Points in the evaluation process in the scoring and ranking of their proposals against those submitted by other prime Contractors or Respondents.

Good Faith Efforts – documentation of the Contractor's or Respondent's intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following: (1) documentation within a solicitation response reflecting the Respondent's commitment to comply with SBE or M/WBE Program Goals as established by the GSC for a particular contract; or (2) documentation of efforts made toward achieving the SBE or M/WBE Program Goals (e.g., timely advertisements in appropriate trade publications and publications of wide general circulation; timely posting of SBE or M/WBE subcontract opportunities on the City of San Antonio website; solicitations of bids/proposals/qualification statements from all qualified SBE or M/WBE firms listed in the Small

Business Office's directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a Prime Contractor's posting of a bond covering the work of SBE or M/WBE Subcontractors; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by the Respondent; and documentation of consultations with trade associations and Contractors that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Subcontractors.) The appropriate form and content of Contractor's Good Faith Efforts documentation shall be in accordance with the SBEDA Ordinance as interpreted in the SBEDA Policy & Procedure Manual.

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

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

Individual − an adult person that is of legal majority age.

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

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

M/WBE Directory – a listing of minority- and women-owned businesses that have been certified for participation in the City's M/WBE Program APIs.

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

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

> African-Americans: Persons having origins in any of the black racial groups of Africa as well as those identified as Jamaican, Trinidadian, or West Indian.
>
> Hispanic-Americans: Persons of Mexican, Puerto Rican, Cuban, Spanish or Central and South American origin.
>
> Asian-Americans: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
>
> Native Americans: Persons having no less than 1/16th percentage origin in any of the Native American Tribes, as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.

Originating Department – the City department or authorized representative of the City which issues solicitations or for which a solicitation is issued.

Payment – dollars actually paid to Contractor and/or Subcontractors and vendors for City contracted goods and/or services.

Points – the quantitative assignment of value for specific evaluation criteria in the vendor selection process used in some Construction, Architectural & Engineering, Professional Services, and Other Services contracts (e.g., up to 10 points out of a total of 100 points assigned for S/M/WBE participation as stated in response to a Request for Proposals).

Prime Contractor – the vendor or Contractor to whom a purchase order or contract is issued by the City of San Antonio for purposes of providing goods or services for the City. For purposes of this agreement, this term refers to the Contractor.

Relevant Marketplace – the geographic market area affecting the S/M/WBE Program as determined for purposes of collecting data for the MGT Studies, and for determining eligibility for participation under various programs established by the SBEDA Ordinance, is defined as the San Antonio Metropolitan Statistical Area (SAMSA), currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.

Respondent – a vendor submitting a bid, statement of qualifications, or proposal in response to a solicitation issued by the City. For purposes of this agreement, Contractor is the Respondent.

Responsible – a firm which is capable in all respects to fully perform the contract requirements and has the integrity and reliability which will assure good faith performance of contract specifications.

Responsive – a firm's submittal (bid, response or proposal) conforms in all material respects to the solicitation (Invitation for Bid, Request for Qualifications, or Request for Proposal) and shall include compliance with S/M/WBE Program requirements.

San Antonio Metropolitan Statistical Area (SAMSA) – also known as the Relevant Marketplace, the geographic market area from which the City's MGT Studies analyzed contract utilization and

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availability data for disparity (currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson).

SBE Directory - a listing of small businesses that have been certified for participation in the City's SBE Program APIs.

Significant Business Presence – to qualify for this Program, a S/M/WBE must be headquartered or have a *significant business presence* for at least one year within the Relevant Marketplace, defined as: an established place of business in one or more of the eight counties that make up the San Antonio Metropolitan Statistical Area (SAMSA), from which 20% of its full-time, part-time and contract employees are regularly based, and from which a substantial role in the S/M/WBE's performance of a Commercially Useful Function is conducted. A location utilized solely as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not be construed to constitute a significant business presence.

Small Business Enterprise (SBE) – a corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is Independently Owned and Operated by Individuals legally residing in, or that are citizens of, the United States or its territories, and which meets the U.S. Small Business Administration (SBA) size standard for a small business in its particular industry(ies) and meets the Significant Business Presence requirements as defined herein.

Small Business Office (SBO) – the office within the Economic Development Department (EDD) of the City that is primarily responsible for general oversight and administration of the S/M/WBE Program.

Small Business Office Manager – the Assistant Director of the EDD of the City that is responsible for the management of the SBO and ultimately responsible for oversight, tracking, monitoring, administration, implementation and reporting of the S/M/WBE Program. The SBO Manager is also responsible for enforcement of Contractor and vendor compliance with contract participation requirements, and ensuring that overall Program goals and objectives are met.

Small Minority Women Business Enterprise Program (S/M/WBE Program) – the combination of SBE Program and M/WBE Program features contained in the SBEDA Ordinance.

Subcontractor – any vendor or Contractor that is providing goods or services to a Prime Contractor or Contractor in furtherance of the Prime Contractor's performance under a contract or purchase order with the City. A copy of each binding agreement between the Contractor and its Subcontractors shall be submitted to the City prior to execution of this contract agreement and any contract modification agreement.

Suspension – the temporary stoppage of the SBE or M/WBE firm's beneficial participation in the City's S/M/WBE Program for a finite period of time due to cumulative contract payments the S/M/WBE firm received during a fiscal year that exceed a certain dollar threshold as set forth in Section III.E.7 of Attachment A to the SBEDA Ordinance, or the temporary stoppage of Contractor's and/or S/M/WBE firm's performance and payment under City contracts due to the City's imposition of Penalties and Sanctions set forth in Section III.E.13 of Attachment A to the SBEDA Ordinance.

Subcontractor/Supplier Utilization Plan – a binding part of this contract agreement which states the Contractor's commitment for the use of Joint Venture Partners and / or Subcontractors/Suppliers in

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the performance of this contract agreement, and states the name, scope of work, and dollar value of work to be performed by each of Contractor's Joint Venture partners and Subcontractors/Suppliers in the course of the performance of this contract, specifying the S/M/WBE Certification category for each Joint Venture partner and Subcontractor/Supplier, as approved by the SBO Manager. Additions, deletions or modifications of the Joint Venture partner or Subcontractor/Supplier names, scopes of work, of dollar values of work to be performed requires an amendment to this agreement to be approved by the EDD Director or designee.

Women Business Enterprises (WBEs) - any legal entity, except a joint venture, that is organized to engage in for-profit transactions, that is certified for purposes of the SBEDA Ordinance as being a Small Business Enterprise and that is at least fifty-one percent (51%) owned, managed and Controlled by one or more non-minority women Individuals that are lawfully residing in, or are citizens of, the United States or its territories, that is ready, willing and able to sell goods or services that are purchased by the City and that meets the Significant Business Presence requirements as defined herein. Unless otherwise stated, the term "WBE" as used in this Agreement is not inclusive of MBEs.

C. SBEDA Program Compliance – General Provisions

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

1. Contractor shall cooperate fully with the Small Business Office and other City departments in their data collection and monitoring efforts regarding Contractor's utilization and payment of Subcontractors, S/M/WBE firms, and HUBZone firms, as applicable, for their performance of Commercially Useful Functions on this contract including, but not limited to, the timely submission of completed forms and/or documentation promulgated by SBO, through the Originating Department, pursuant to the SBEDA Policy & Procedure Manual, timely entry of data into monitoring systems, and ensuring the timely compliance of its Subcontractors with this term;

2. Contractor shall cooperate fully with any City or SBO investigation (and shall also respond truthfully and promptly to any City or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of Contractor or its Subcontractors or suppliers;

3. Contractor shall permit the SBO, upon reasonable notice, to undertake inspections as necessary including, but not limited to, contract-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview

Subcontractors and workers to determine whether there has been a violation of the terms of this Agreement;

4. Contractor shall immediately notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to Contractor's Subcontractor / Supplier Utilization Plan for this contract, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by Contractor to replace the Subcontractor / Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Subcontractor / Supplier Utilization Plan including, but not limited to, proposed self-performance of work by Contractor of work previously designated for performance by Subcontractor or supplier, substitutions of new Subcontractors, terminations of previously designated Subcontractors, or reductions in the scope of work and value of work awarded to Subcontractors or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.

5. Contractor shall immediately notify the Originating Department and SBO of any transfer or assignment of its contract with the City, as well as any transfer or change in its ownership or business structure.

6. Contractor shall retain all records of its Subcontractor payments for this contract for a minimum of four years or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this contract, for a minimum of four years or as required by state law following the final determination of litigation, whichever is later.

7. In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a Contractor's Subcontractor / Supplier Utilization Plan, the Contractor shall not be given credit for the participation of its S/M/WBE or HUBZone Subcontractor(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and the Contractor and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

8. Contractor acknowledges that the City will not execute a contract or issue a Notice to Proceed for this project until the Contractor and each of its Subcontractors for this project have registered and/or maintained active status in the City's Centralized Vendor Registration System, and Contractor has represented to City which primary commodity codes each registered Subcontractor will be performing under for this contract.

D. <u>SBEDA Program Compliance – Affirmative Procurement Initiatives</u>

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

SBE Subcontracting Program. In accordance with SBEDA Ordinance Section III. D. 1. (c), this contract is also being awarded pursuant to the SBE Subcontracting Program. Contractor agrees to subcontract at least **thirty percent (30%)** of its prime contract value to certified SBE firms headquartered or having a Significant Business Presence within the San Antonio Metropolitan Statistical Area (SAMSA). The Subcontractor/Supplier Utilization Plan which Contractor submitted to City with its response for this contract (or, as appropriate, that it agrees to submit during the price proposal negotiation phase of this contract), and that contains the names of the certified SBE Subcontractors to be used by Contractor on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each SBE Subcontractor, and documentation including a description of each SBE Subcontractor's scope of work and confirmation of each SBE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Agreement. In the absence of a waiver granted by the SBO, the failure of Contractor to attain this Subcontractor goal for SBE firm participation in the performance of a Commercially Useful Function under the terms of its contract shall be a material breach and grounds for termination of the contract with City, and may result in debarment from performing future City contracts and/or shall be subject to any other remedies available under the terms of this Agreement for violations of the SBEDA Ordinance, or under any other law, **and**

M/WBE Subcontracting Program. In accordance with SBEDA Ordinance Section III. D. 2. (b), this contract is also being awarded pursuant to the M/WBE Subcontracting Program. Contractor agrees to subcontract at least **twenty percent (20%)** of its prime contract value to certified M/WBE firms headquartered or having a Significant Business Presence within the San Antonio Metropolitan Statistical Area (SAMSA). The Subcontractor/Supplier Utilization Plan which Contractor submitted to City with its response for this contract (or, as appropriate, that it agrees to submit during the price proposal negotiation phase of this contract), and that contains the names of the certified M/WBE Subcontractors to be used by Contractor on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each M/WBE Subcontractor, and documentation including a description of each M/WBE Subcontractor's scope of work and confirmation of each M/WBE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Agreement. In the absence of a waiver granted by the SBO, the failure of Contractor to attain this Subcontractor goal for M/WBE firm participation in the performance of a Commercially Useful Function under the terms of its contract shall be a material breach and grounds for termination of the contract with City, and may result in debarment from performing future City contracts and/or shall be subject to any other remedies available under the terms of this Agreement for violations of the SBEDA Ordinance, or under any other law.

F. Commercial Nondiscrimination Policy Compliance

As a condition of entering into this Agreement, the Contractor represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the City's Commercial Nondiscrimination Policy, as described under Section III. C. 1.

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of the SBEDA Ordinance. As part of such compliance, Contractor shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the City's Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in City contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. Contractor's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the City pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. Contractor shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to City contracts.

G. Prompt Payment

Upon execution of this contract by Contractor, Contractor shall be required to submit to City accurate progress payment information with each invoice regarding each of its Subcontractors, including HUBZone Subcontractors, to ensure that the Contractor's reported subcontract participation is accurate. Contractor shall pay its Subcontractors in compliance with Chapter 2251, Texas Government Code (the "Prompt Payment Act") within ten days of receipt of payment from City. In the event of Contractor's noncompliance with these prompt payment provisions, no final retainage on the Prime Contract shall be released to Contractor, and no new City contracts shall be issued to the Contractor until the City's audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the contract.

H. Violations, Sanctions and Penalties

In addition to the above terms, Contractor acknowledges and agrees that it is a violation of the SBEDA Ordinance and a material breach of this Agreement to:

1. Fraudulently obtain, retain, or attempt to obtain, or aid another in fraudulently obtaining, retaining, or attempting to obtain or retain Certification status as an SBE, MBE, WBE, M/WBE, HUBZone firm, Emerging M/WBE, or ESBE for purposes of benefitting from the SBEDA Ordinance;

2. Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent statements or representations, or make use of any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry pursuant to the terms of the SBEDA Ordinance;

3. Willfully obstruct, impede or attempt to obstruct or impede any authorized official or employee who is investigating the qualifications of a business entity which has requested Certification as an S/M/WBE or HUBZone firm;

4. Fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under the terms of the SBEDA Ordinance; and

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

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

1. Suspension of contract;

2. Withholding of funds;

3. Rescission of contract based upon a material breach of contract pertaining to S/M/WBE Program compliance;

4. Refusal to accept a response or proposal; and

5. Disqualification of contractor or other business firm from eligibility for providing goods or services to the City for a period not to exceed two years (upon City Council approval).

BY THEIR SIGNATURES BELOW, the respective and represented parties have executed and bound themselves to this Agreement as of the_____ day of _____, 20 _____.

CITY OF SAN ANTONIO, TEXAS **NAME OF FIRM**

By: _____ By:_____
Peter Zanoni, Deputy Assistant City Manager NAME, TITLE

APPROVED AS TO FORM:

_____
City Attorney

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EXHIBIT A- SURETY AND PAYMENT AND PERFORMANCE BOND FORMS

SURETY BOND

Surety Bond No._____

STATE OF TEXAS §

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF _____§

That we,_____., as Principal, and_____ , as Surety, are hereby held and firmly bound unto City OF SAN ANTONIO as Obligee in the penal sum of $_____ Percent (__%) of _____ the Construction Cost Limitation (CCL) for the Project, for payment whereof the said Principal and Surety bind themselves, their heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

Whereas the Principal has submitted a proposal in response to a Request for Proposals dated November 1, 2010 for a Construction Manager at Risk, for __Project_____, Project No. _____, (the "Project").

Whereas, the Agreement allows the Work to be performed in incremental components of the Work (each, individually, a "Work Package") with the scope of Work and an Approved Fixed Price Proposal to be established for each such Work Package, and further requires the Principal to provide Performance and Payment Bonds in the amount of 100% of each such Fixed Price Proposal within 10 days after the approval of each Fixed Price Proposal and prior to the Notice to Proceed for each Work Package.

NOW THEREFORE, the condition of this obligation is such that, if a fixed contract amount or Guaranteed Maximum Price (GMP) has not been determined at the time the contract is awarded the penal sums of the performance and payment bonds required to be delivered to the governmental entity must each be in the amount of _____ and No/100 Dollars ($_____), an amount equal to the Construction Cost Limitation, as specified in the request for qualifications **unless** the Construction Manager at Risk furnishes a bid bond or other financial security acceptable to the governmental entity to ensure that the construction manager will furnish the required performance and payment bonds when a guaranteed maximum price is established. When the aforesaid Principal furnishes the Performance and Payment Bonds, after a Guaranteed Maximum Price is established, as required by the Contract, to secure the performance of the terms and conditions of the Contract, then this obligation shall be null and void; otherwise the principal and surety shall pay unto the Obligee the penal sum hereof.

IN WITNESS WHEREOF, the above bounded parties have executed this instrument under their several seals this _____day _____ of in the year_____, the name and corporate seal of each corporate party being hereto affixed, and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

(SEAL) _____
Principal

ATTEST:

By:_____ By: _____

_____ _____
(Typed Name and Title) (Typed Name and Title)

(SEAL) _____
Surety

ATTEST:

By:_____ By: _____

_____ _____
(Typed Name and Title) (Typed Name and Title)

(SEAL) _____
Surety

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PAYMENT BOND

STATE OF TEXAS)
COUNTY OF BEXAR) Know all men by these presents:
CITY OF SAN ANTONIO)

1. That we _____, as Principal,
and _____
as Sureties, do hereby acknowledge ourselves to be held and firmly bound unto City of San Antonio, a municipal corporation of the County of Bexar and State of Texas in the sum of **$**_____ for payment of which sum well and truly to be made in and unto said City of San Antonio, we do hereby bind and obligate ourselves, our heirs, executors, administrators, assigns, and successors, jointly and severally:

2. THE CONDITIONS OF THIS BOND, HOWEVER, ARE SUCH THAT WHEREAS, the said

_____

hereinafter called Contractor or Principal, has made and does this day make and enter into a certain contract in writing with said City of San Antonio, for the construction and completion for said City of certain structures, work and improvements generally described as **PROJECT NAME, Project Number: _____**

and for the performance and observance of diverse other matters and things in connection with said work, and, interalia, therein entered into covenants and agreements to promptly pay all persons supplying labor, materials and services in the prosecution of the work provided for in said contract; all as more fully described in said contract and its included instruments which are expressly made a part of this obligation;

3. NOW THEREFORE, if Contractor, the Principal party to this obligation shall promptly make payment to all persons supplying labor and materials in the prosecution of the work provided for in said contract, and any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the surety being hereby waived, then this obligation shall be and become null and void, but otherwise to remain in full force and effect: and it is hereby further understood and agreed that this bond shall be a continuous obligation against the principal and each member of said principal party hereto, and each and all sureties hereon, and that successive recoveries may be had thereon for each and every breach of this bond until the full amount thereof shall have been exhausted; and the liability of the sureties on this bond shall not be in any manner released or diminished by any changes in the work which may be authorized or directed by City, nor by the exercise or failure to exercise by or on behalf of City any right or remedy provided by the contract or specifications or by any law or ordinances.

4. It is further understood that this obligation is incurred pursuant to Chapter 2253 of the Texas Government Code, and that this obligation is for the benefit and sole protection of all persons supplying labor and materials in the prosecution of said contract.

5. IN TESTIMONY WHEREOF, witness our hands and the seal of any incorporated surety hereon this _____day of _____ A.D. 20 _____.

_____
(_____)

By:_____

(Typed Name) _____

_____
(Surety)

By:_____

(SEAL) (Typed Name) _____

_____
Address of Surety for Service Purposes

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PERFORMANCE BOND

STATE OF TEXAS)
COUNTY OF BEXAR) Know all men by these presents:
CITY OF SAN ANTONIO)

1. That we _____, as Principal,
and _____,
as Sureties, do hereby acknowledge ourselves to be held and firmly bound unto City of San Antonio, a municipal corporation of the County of Bexar and State of Texas in the sum of **$**_____ for payment of which sum well and truly to be made in and unto said City of San Antonio, we do hereby bind and obligate ourselves, our heirs, executors, administrators, assigns, and successors, jointly and severally:

2. THE CONDITIONS OF THIS BOND, HOWEVER, ARE SUCH THAT WHEREAS, the said

_____

hereinafter called Contractor or Principal, has made and does this day make and enter into a certain contract in writing with said City of San Antonio, for the construction and completion for said City of certain structures, work and improvements generally described as _____ **Project Number:** _____

and for the performance and observance of diverse other matters and things in connection with said work; all as more fully described in said contract and its included instruments which are expressly made a part of this obligation.

3. NOW THEREFORE, if Contractor, the principal party to this obligation shall faithfully construct and complete said structures, work and improvements, and shall observe, perform and comply with all the terms, conditions, stipulations, undertakings and provisions of said contract and all included instruments, according to their intent and purpose insofar as the same relate to or are incident to the construction and completion of said structures, work and improvements then and thereupon this obligation shall be and become null and void, but otherwise to remain in full force and effect; and it is hereby further understood and agreed that this bond shall be a continuous obligation against the principal and each member of said principal party hereto, and each and all sureties hereon, and that successive recoveries may be had hereon for each and every breach of this bond until the full amount thereof shall have been exhausted; and the liability of the sureties on this bond shall not be in any manner released or diminished by any changes in the work which may be authorized or directed by City, nor by the exercise or failure to exercise by or on behalf of City any right or remedy pro vided by the contract or specifications or by any law or ordinance.

4. It is further understood that this obligation is incurred pursuant to Chapter 2253 of the Texas Government Code as amended, and all liabilities on this bond shall be determined in accordance with the provisions of said Chapter to the same extent as if it were copied at length herein.

5. IN TESTIMONY WHEREOF, witness our hands and the seal of any incorporated surety hereon this _____day of _____ A.D. 20 _____.

_____

(_____)

By:_____

(Typed Name) _____

_____
(Surety)

By:_____

(SEAL)

(Typed Name) _____

_____

_____
Address of Surety for Service Purposes

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EXHIBIT B – PROJECT DEFINITION

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EXHIBIT C – HOURLY RATE SCHEDULE AND SCHEDULE OF VALUES FOR PRE-CONSTRUCTION SERVICES

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EXHIBIT D – SUBMITTAL REQUIREMENTS FOR THE GMP

The proposed Cost of the Work will be developed as set out herein.

The Stipulated Sum proposal must be submitted in a binder and entitled, "Proposal for the Cost of the Work for PROJECT NAME/PROJECT NUMBER and must include a date on the cover. Proposal pages must be numbered. Proposals must include all specified items and components of the GMP as required by the Agreement, Sections must be divided by tabs for ease of reference. Please include:

- transmittal letter
- table of contents

Tab 1 Executive Summary – brief general summary

Tab 2 A list of Drawings and Specifications and any other Contract Documents upon which the proposed prices were based.

Tab 3 Description of Variations, Substitutions proposed to the Drawings and Specifications

- Specification listing – provide a detailed listing of Specifications by division and section, which describes exclusions, substitutions, modifications, etc. If no changes are proposed for a particular section, insert "as per specifications"
- Qualifications and Assumptions – a narrative summary of all qualifications and assumptions included in the Specification listing
- Exclusions – a summary of all exclusions included in the Specification listing, plus any exclusions not related to the Specifications
- Value Engineering recommendations – if applicable
- Allowance Schedule – if applicable

Tab 4 Proposed Cost of Work Breakdown:

- Estimated Cost of the Work shall be broken down into the standard 16 CSI Divisions and such sections as directed by City prior to the submission of the GMP Proposal
- Cost breakdown will be a lump sum for each Division and section with information on proposed Subcontractors and pricing supporting such costs, to include a schedule of Unit Prices if applicable.

Tab 5 Proposed Indirect Costs Breakdown

- Construction Fee and General Conditions each as a percentage of the Cost of Work
- Cost break down for Payment and Performance Bonds, Builder's Risk Insurance, General Liability Insurance, and applicable Sales Tax

Tab 6 Progress Schedule

- The Progress Schedule for the GMP Proposal must include detailed activities for all events, milestones, and Substantial Completion dates included in Construction Phase.
- Additionally, the Progress Schedule update must include detailed, logic driven activities for all Construction Phase activities
- All paths in the Progress Schedule must lead to milestone activities to ultimately achieve Substantial Completion on or before the Milestone for Substantial Completion.
- If applicable, a Schedule of Values based on the timeline in the Progress schedule.
- The Progress Schedule must be provided in hard copy form in the binder and also in an electronic format attached to the binder.

Tab 7 SBEDA Plan

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EXHIBIT E – SUBMITTAL REQUIREMENTS FOR THE FIXED PRICE PROPOSALS

CM@Risk will first submit one copy of the Fixed Price Proposal submittal for review. Two copies will be requested by the Capital Improvement Management Services (CIMS) Department prior to contract execution.

Table of Contents:

1. Scope of Work
2. Summary of the Fixed Price Proposal
3. Schedule of Values – summary spreadsheet and backup documents
4. List of Plans and Specifications used for Fixed Price Proposal
5. List of clarification and assumptions
6. Project Schedule
7. SBEDA required documents

1. Scope of work will consist of a brief description of the work to be performed by CM@Risk and major points that CM@Risk and City must be aware of pertaining to the scope (normally one paragraph is sufficient.)

2. A summary of the Fixed Price Proposal with a total for each of the components of the Fixed Price Proposal as listed in its definition in **Article 1** herein, as shown in the table below:

The general conditions fee includes bond and insurance cost. All costs should be listed individually for future use. **(CM@Risk shall not acquire bond or insurance until notified by the CIMS Department.)**

PROJECT #: **DATE:**
PROJECT NAME:

FPP Summary				**AMOUNT**
A.	Cost of the Work (Labor, Materials, Equipment, Warranty)			$
				$
B.	Total Cost of Work			$
INDIRECT COSTS			RATE	
C.	Construction Fee			$
D.	General Conditions			$
E.	Payment and Performance Bond	$		
F.	Builder's Risk Insurance	$		
G.	General Liability Insurance	$		
H.	Sales Taxes			$0.00
		I. TOTAL FPP		**$**
		J. City-Controlled Contingency		**$**
		K. Total:		**$**

Formulas:

Total **FPP**: A+B+C+D+E+F+G+H = I

Dollar Amounts for C & D are calculated by multiplying the rate by the total cost of the work.
Dollar Amounts for E, F andGH are calculated by multiplying the rate by the total contract amount.

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3. Schedule of Values - spread sheet with the estimated bid or cost organized by subcontract categories, allowances, bid contingency, general conditions costs, taxes, bonds, insurances, and CM@Risk's construction phase fee. The supporting document for the spreadsheet must be provided in an organized manner that correlates with the schedule of values. The backup information shall consist of the request for bids, bids received, and clarification assumptions used for the particular bid item listed on the schedule of values, if applicable.

4. A list of the Plans and Specifications with latest issuance date including all addenda used in preparation of the Fixed Price Proposal. The plans used for the Fixed Price Proposal must be date stamped and signed by CM@Risk, Design Consultant and Project Manager using the format below.

Plans Used For Preparation of Fixed Price Proposal No. ____

CM@Risk	Date
Design Consultant	Date
Project Manager	Date

5. A list of the clarifications and assumptions made by CM@Risk in the preparation of the Fixed Price Proposal, to supplement the information contained in the documents.

6. A Critical Path Method (CPM) diagram construction schedule.

7. SBEDA required documents.

NOTE: The submittal package must be kept as simple as possible all on 8 ½ x 11 sheets. Color or shading must be kept to a minimum. If used, make sure the color or shading will not affect the reproduction of the submittal in black and white.

Final Fixed Price Proposal submittal will consist of the following:

1. Two (2) copies of the Fixed Price Proposal.

2. One (1) copy of the plans and technical specifications used to arrive at the Fixed Price Proposal (signed by Design Consultant, CM@Risk and Project Manager).

For questions regarding the submittal requirements, kindly contact the Capital Improvements Management Services Department at (210) 207-2121.

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EXHIBIT F – APPROVED FIXED PRICE PROPOSALS

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EXHIBIT H – APPROVED GMP PROPOSAL

PROJECT #: **DATE:**
PROJECT NAME:

GMP Summary				**AMOUNT**
A.	Cost of the Work (Labor, Materials, Equipment, Warranty – To include all Fixed Price Proposals, if any)			
B.	Total cost of work			
INDIRECT COSTS			RATE	
C.	Construction Fee			
D.	General Conditions			
E.	Payment and Performance Bond	$		
F.	Builder's Risk Insurance	$		
G.	General Liability Insurance	$		
H.	Sales Taxes			
		I. TOTAL GMP		
		J. City-Controlled Contingency		
		K. Total Contract Amount		

Formulas:
Total GMP: A+B+C+D+E+F+G+H = I

Rates for C, D are calculated by dividing each amount by the total cost of the work.
Rates for E, F, and G are calculated by dividing each by the total contract amount.

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EXHIBIT I – TECHNICAL SPECIFICATIONS

Technical Specifications, as referenced herein, are on file with the:

- Design Professional
- City Project Manager
- CM@Risk Contractor

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EXHIBIT J – CONSTRUCTION DRAWINGS

Three sets of construction drawings, as referenced herein, are on file with the:

- Design Professional
- City Project Manager
- CM@Risk Contractor

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EXHIBIT K – SBEDA SUBCONTRACTOR/SUPPLIER UTILIZATION PLAN FORM

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