CITY OF SAN ANTONIO, TEXAS
CONSTRUCTION MANAGER AT RISK SERVICES

TERMINAL A RENOVATIONS AT THE SAN ANTONIO INTERNATIONAL AIRPORT
(Contract Template)
PROJECT NUMBER: 33-00061

This Construction Manager at Risk Agreement ("Agreement") is entered into by and between the City of San Antonio, Texas, a Texas Municipal Corporation and home-rule City ("City" or "Owner") by and through its City Manager, pursuant to Ordinance Number _____ passed and approved by the City Council on _____, and _____, a Corporation authorized to do business in the State of Texas ("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. The City intends to construct the Terminal A Renovations at the San Antonio International Airport, as described in Exhibit B attached, hereinafter referred to as the "Project".

C. To undertake the design of said Project the City has entered into a contract with Reynolds, Smith, and Hills, Inc., hereinafter referred to as the "Design Professional."

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

E. Based on this representation, the City intends to enter into this Agreement with the 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 the City and the CM@Risk as follows:

The CM@Risk, to further the interests of the City, will 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 (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. The CM@Risk will, at all times, perform the required services consistent with sound and generally accepted construction management and construction contracting practice.

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

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 SBE SUBCONTRACTOR/SUPPLIER UTILIZATION PLAN FORM

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.

The 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 Services Fee: ($_____)

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

Construction Phase Services 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: _____ AND __/100 DOLLARS ($_____)

General Conditions: ____ PERCENT (_%) OF TOTAL COST OF WORK; _____ AND __/100 DOLLARS ($_____)

General Conditions costs include but are not necessarily limited to:

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

CITY OF SAN ANTONIO
CONSTRUCTION MANAGER-AT-RISK AGREEMENT

PAGE

RECITALS 1

ARTICLE 1 – TERMS AND DEFINITIONS 4

ARTICLE 2 – GENERAL PROVISIONS 8

ARTICLE 3 - CM@RISK'S PRE-CONSTRUCTION SERVICES AND RESPONSIBILITIES 10

ARTICLE 4 – AMENDMENTS FOR UNANTICIPATED PRE-CONSTRUCTION SERVICES 18

ARTICLE 5 – CM@RISK'S CONSTRUCTION SERVICES AND RESPONSIBILITIES 19

ARTICLE 6 – CITY'S SERVICES AND RESPONSIBILITIES 22

ARTICLE 7 – CONTRACT TIME 24

ARTICLE 8 – PROCEDURE FOR PAYMENT 25

ARTICLE 9 – CONTRACT SAVINGS, ALLOWANCES, REBATES AND REFUNDS 26

ARTICLE 10 – PRE-EXISTING CONDITIONS AND DESIGN ERRORS AND OMISSIONS 27

ARTICLE 11 – OWNERSHIP OF DOCUMENTS 28

ARTICLE 12 – INSURANCE 29

ARTICLE 13 – INDEMNIFICATION 34

ARTICLE 14 – SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA) PROGRAM 34

ARTICLE 15 – NOTICES 37

ARTICLE 16 – TERMINATION AND SUSPENSION 37

ARTICLE 17 – MISCELLANEOUS PROVISIONS 41

ARTICLE 18 – INTEREST IN CITY CONTRACTS PROHIBITED 43

EXHIBIT A – SURETY AND PAYMENT AND PERFORMANCE BOND FORMS
EXHIBIT B - PROJECT DEFINITION
EXHIBIT C – HOURLY RATE SCHEDULE FOR PRE-CONSTRUCTION SERVICES
EXHIBIT D – SUBMITTAL REQUIREMENTS FOR THE GMP AND SAMPLE TASK ORDER FORM
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 PLAN

ARTICLE 1. TERMS AND DEFINITIONS

Addenda - Written or graphic instruments issued after the submittal of the Guaranteed Maximum Price (GMP) Proposal, which clarify, correct or change the GMP Proposal requirements.

Agreement (Contract) – This written document signed by the City and the CM@Risk including any other document itemized and expressly referenced in or attached to and expressly made part of this Agreement.

Agreement Amount – The agreement costs to be paid to CM@Risk for the services required by this Agreement.

Agreement Documents - The following items and documents in descending order of precedence: (i) all written modifications, amendments and Change Orders executed by the City and the CM@Risk; (ii) this Agreement, including all exhibits and attachments; (iii) Construction Documents; and (iv) GMP Plans and Specifications.

Alternate Systems Evaluations – Alternatives for design, means and methods or other scope considerations that are evaluated using value engineering principles and have the potential to reduce construction costs while still delivering a quality and functional Project that meets City requirements.

Approved Fixed Price Proposal - The offer or proposal of the 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 the City and incorporated herein as part of Exhibit F.

Change Order (Amendment or Modification) - A written instrument issued after execution of the Agreement Documents signed by the City and CM@Risk modifying in the scope of services or Deliverables to be performed by CM@Risk, the Agreement Amount; the Agreement Time and/or other modifications of other contract terms and/or conditions.

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

Construction Cost Limitation (CCL) - Means the maximum monetary amount payable to the 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, the Construction Phase Fee and the Construction Manager's Contingency. The CCL may be adjusted by the parties for changes in the scope of the Project before or after the acceptance of the Guaranteed Maximum Price Proposal. The CCL does not include the CM@Risk's Pre-Construction Phase Fee.

Construction Documents – The City's General Conditions, City's Supplementary and Special Conditions, the Drawings/Plans, Specifications, details and other documents prepared by the Design Professional, its consultants and by the 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 the City.

Construction Fee – The CM@Risk's administrative costs, direct and indirect costs, home office overhead, and profit, whether at the CM@Risk's principal or branch offices.

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

Construction Phase Services – Services provided by the CM@Risk just as a general contractor would, during the actual construction of the Project.

Construction Phase Work – Actual Construction of the Project.

CM@Risk's Representative - The person designated by the CM@Risk in writing with decision-making authority.

Contingency, CM@Risk's - A fund to cover cost increases during the Project to be used by the CM@Risk with approval of the City to address such costs that result from unanticipated Project circumstances. The amount of the CM@Risk's Contingency will be negotiated as a separate line item in the GMP and each FPP package. All unused contingency belongs to the City and will be returned to the City at the end of the project.

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

Contract Documents - The following items and documents in descending order of precedence: (i) all written modifications, change orders and/or amendments executed by the City and the CM@Risk; (ii) this Agreement, including all exhibits and attachments including the General Conditions; (iii) Construction Documents; (iv) Supporting Documents; and (v) GMP Plans and Specifications and Fixed Price Proposals (FPPs).

Cost of the Work - The direct costs necessarily incurred by the 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, subcontract 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 the City), and related items. The Cost of the Work shall not include the CM@Risk's Construction Fee, General Conditions Cost, or taxes.

Critical Path Schedule - 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 will necessarily extend the Substantial Completion date.

Day - Calendar day unless otherwise specifically noted in the Contract Documents.

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

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.

Design Services Phase **–** See Pre-Construction Phase Services.

Director – The Capital Improvements Management Services Director or identified designee.

Drawings (Plans) – Documents, which visually represent the scope, extent and character of the Work to be furnished and performed by the CM@Risk during the construction phase and which have been prepared or approved by the Design Professional and the City. Includes 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 biddability 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.

Fixed Price Proposal (FPP) - The offer or proposal of the 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.

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.

General Conditions Costs – Includes, but is not limited to the following types of costs for the 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 the CM@Risk or Subcontractors.

Guaranteed Maximum Price (GMP) – The sum of the maximum Cost of the entire Work including the CM@Risk's Construction Fee, General Conditions Costs, sales tax (if any), and CM@Risk Contingency (Amounts contained in the Approved Guaranteed Maximum Price Proposal)

GMP Plans and Specifications – The three sets of Design Development Documents Plans and Specifications provided pursuant to paragraph 2.6.5 upon which the Guaranteed Maximum Price Proposal is based.

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

Laws and Regulations; Laws or Regulations - Any and all applicable laws, rules, regulations, ordinances, codes and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.

Notice to Proceed (NTP) - A written notice given by City to the CM@Risk fixing the date on which the CM@Risk will start to perform the CM@Risk's obligations under this agreement. The City's NTP will provide for not less than seven (7) calendar days advance notice of the date when the City desires CM@Risk to commence its obligations.

Payment Application - The approved form that is to be completed and submitted by the CM@Risk in requesting progress payments or final payment and which will include such supporting documentation as is required by the Contract Documents and/or otherwise reasonably required by the City.

Owner (City) - The contracting entity with whom CM@Risk has entered into this Agreement and for whom the services are to be provided.

Owner's Designated Representative (ODR) – The person designated by the City in writing with decision-making authority to bind the City.

Pre-Construction Phase Services – Services provided by the CM@Risk such as evaluation, recommendation, and advice concerning design and design alternatives and constructability reviews in conjunction with the Design Professional.

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

Project - The services and work to be completed by CM@Risk and/or subconsultants and subcontractors pursuant to this Agreement as set forth in the Recitals above, Exhibit A attached and incorporated herein, and Supporting Documents.

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

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 having a separate specified Approved Fixed Price Proposal. The SOV may or may not be output from the Progress Schedule depending on whether the Progress Schedule is cost-loaded or not.

Shop Drawings - The drawings, diagrams, schedules and other data specifically prepared for the Work by the CM@Risk or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some specific portion of the Work for approval by the City.

Site – The land or premises on which the Project is to be constructed.

Specifications - The part(s) of the Contract Documents for the construction phase consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

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

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

Substantial Completion – Means that when the Work, or an agreed upon portion of the Work, is sufficiently complete so that City can occupy and use the Project or a portion thereof for its intended purposes. Conditions of Substantial Completion may also include, but are not limited to: (i) the approval by City Fire Marshall and local authorities (Certificate of Occupancy); (ii) the issuance of an Elevator Permit; (iii) all major systems are in place and functional demonstrated to the City or its representative; (iv) all major materials and equipment are installed; (v) all major systems have been reviewed and accepted by the City, such acceptance not being unreasonably withheld; (vi) draft O&M manuals and record documents have been reviewed and accepted by the City, such acceptance not being unreasonably withheld; (vii) the City's operation and maintenance training is complete; (viii) HVAC test and balance completed (provide minimum 30 days prior to projected substantial completion); (ix) material items of landscaping and site work; and (x) cleaning. The conditions of Substantial Completion that do not apply to a specific GMP will be listed in the Notice to Proceed Letter pursuant to the Construction Management Phase obligations.

Supplier - A manufacturer, fabricator, supplier, distributor, materialman or vendor having a direct contract with CM@Risk or with any Subcontractor to furnish materials or equipment to be incorporated in the construction phase Work by CM@Risk or any Subcontractor.

Supporting Documents – Bound set of signed, sealed, and dated drawings, specifications, plans, sketches, instructions, requirements, materials, equipment specifications and other information or documents that fully describe the Project as developed at the time.

Task Order – All Work performed under this Agreement and any additional services to be performed in connection with this Agreement shall be performed under Task Orders. CM@Risk shall complete a Task Order for each Work Task that the City requests to be performed under this Agreement. Task Orders shall be numbered sequentially starting with number one and must reference this Agreement. The CITY will either approve or disapprove each Task Order. Once a Task Order is approved, it will become a part of this Agreement. A Sample Task Order Form is included as part of Exhibit D.

Work - The entire completed construction or the various separately identifiable parts thereof, required to be furnished during the Construction Services Phase. Work includes and is the result of performing or furnishing labor, materials, supplies and equipment that are required of the CM@Risk to complete the Project in strict accordance with the requirements of the Agreement and the Construction Documents, and performing or furnishing services and documents as required by the Contract Documents for the Construction Services Phase. Work includes, but is not limited to, the Construction Services Phase, additional work required by Change Orders, and any other work necessarily inferable from the Construction Documents.

Work Packages - One or more packages (individually, 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 as defined in Article 1. This Agreement and all of its exhibits and attachments, including, but not limited to the General Conditions, 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 the 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 The Contract Documents are intended to permit the CM@Risk to complete the Work and all obligations required by the Contract Documents within the Contract Times for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards.

2.1.3 In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence in the order in which they are listed in the definition of Contract Documents in Article 1.

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

2.1.3.2 Specifications take precedence over Plans.

2.1.4 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 referred to in resolving questions of interpretation or construction.

2.1.5 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 performance and payment bonds required to be delivered to the governmental entity must each be in the amount of _____ **($_____),** an amount equal to the Construction Cost Limitation (CCL) in the amount of _____($_____), unless the CM@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.–Upon execution of this Agreement, the City will accept a surety bond on the form provided herein as Exhibit "A" in the amount of ___% of the Construction Cost Limitation (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 performance and payment bonds on forms prescribed by the City and in accordance with the requirements set forth in the General Conditions for City of San Antonio Building 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 performance and payment bonds in effect for the ongoing Fixed Price Proposals No construction shall commence on any Fixed Price Proposal until the adequate performance and payment bonds are delivered to the City.

2.4 <u>CONSULTATION AND COORDINATION</u>

2.4.1 Program Evaluation: As a participating member of the Project Team, the CM@Risk will provide to the City and Design Professional a written evaluation of the City's Project Program and Project Budget with recommendations as to the appropriateness of each.

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

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

2.4.4 The 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 reasonably approved by the City and updated at least monthly during the Pre-construction Phase of the Project.

2.5 PROJECT SCHEDULE

2.5.1 As approved by the 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 and then for the Project Team to utilize that Deliverable as a basis for managing and monitoring all member's compliance with the schedule requirements of the Project. Each Project Team member is responsible for its compliance with the Project Schedule requirements. The CM@Risk will, however, 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 will use the Critical Path Method (CPM) technique, unless required otherwise in writing by the City. The CM@Risk will use scheduling software to develop the Project Schedule that is acceptable to the City. If Project phasing as described below is required, the Project Schedule will indicate milestone dates for the phases once determined.

2.5.2 The Project Schedule shall include a Critical Path Method (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 would 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 the CM@Risk activities.

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 or other approved source.

2.5.10 The Project Schedule will be updated and maintained by the CM@Risk throughout the pre-construction phase such that it will not require major changes at the start of the Construction Phase Services to incorporate the CM@Risk's plan for the performance of the Construction Phase Work. The CM@Risk will 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. The CM@Risk will include with such submittals a narrative describing its

analysis of the progress achieved to-date vs. that planned, any concerns regarding delays or potential delays, and any recommendations regarding mitigating actions.

2.5.11 If phased construction is deemed appropriate and the City and Design Professional approve, the CM@Risk will review the design and 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. The CM@Risk will 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.

2.5 Phases of Services and the Work. The services and the Work to be performed by or through the CM shall be divided into the Preconstruction Phase and the Construction Phase. The Work to be performed under the Construction Phase may commence before the Preconstruction 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 the Owner in accordance with the terms of the Contract.

2.6 Date of Commencement. The Preconstruction Phase Services shall commence after this Agreement has been fully executed by the parties and upon the CM's receipt of Owner's Notice to Proceed, unless the Parties otherwise mutually agree in writing. The Construction Phase Work shall commence upon the issuance of the Owner'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 the City and shall continue through completion of the Construction Documents. The duties of the CM@Risk include those set forth in this Article.

3.1 GENERAL RESPONSIBILITIES

3.1.1 The CM@Risk shall have overall responsibility for and shall provide complete Pre-Construction Services in accordance with the City's requirements and the Scope of Work described this Agreement. The CM@Risk shall cooperate with the Design Professional and endeavor to further the interests of the 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 the City as set forth in this Agreement.

3.1.2 The CM@Risk shall identify for the City the employees and other personnel that it will assign to the Pre-Construction Services Phase and provide the Monthly Salary Rate for each of them. CM@Risk shall also identify any consultants that will be performing services during the Pre-Construction Services Phase. After execution of this Agreement by the City, CM@Risk shall not remove or replace the persons or entities assigned to the Project except with the City's written consent, which consent shall not be unreasonably withheld. CM@Risk shall not assign to the Project or contract with any person or entity to which City has a reasonable objection. CM@Risk shall promptly 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 a 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. If however, it is deemed by the Director or his designee to be in the best interest of the City, and upon approval by CM@Risk, the Construction Services Phase of the Project may commence before the Design Services Phase is complete, in which case, the direction to do so will be documented in writing and both phases shall proceed concurrently.

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

3.1.5 The CM@Risk will provide Pre-Construction Services described herein, in a proactive manner and consistent with the most current Drawings and Specifications. The CM@Risk will promptly notify the City in writing whenever the CM@Risk determines that any Drawings or Specifications are inappropriate for the Project and/or cause 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 The 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 requirements for installation and construction; assignment of responsibilities for safety precautions and programs; temporary Project facilities; equipment, materials and services for common use of the 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 the CM@Risk concerning design alternatives shall be subject to the review and approval of the City and the City's professional consultants. It is not the 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 the CM@Risk has actual knowledge that portions of the Drawings and Specifications are at variance therewith, the CM@Risk shall promptly notify the Design Professional and City in writing**.**

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

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

3.2 DESIGN DOCUMENT REVIEWS

3.2.1 The CM@Risk will evaluate periodically 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 The CM@Risk will recommend, in conjunction with the Project Team, those additional surface and subsurface investigations that, in its professional opinion, are required to provide the reasonably necessary information for the CM@Risk to construct the Project. Before CM@Risk's receipt of NTP for Construction Management Services, the 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 The CM@Risk will meet with the Project Team as required to review designs during their development. The CM@Risk will familiarize itself with the evolving documents through the construction document phase. The CM@Risk will proactively advise the Project Team and make recommendations on factors related to construction costs, and concerns pertaining to the feasibility and practicality of any proposed means and methods, selected materials, equipment and building systems, and, labor and material availability. The CM@Risk will advise the Project Team on proposed site improvements, excavation and foundation considerations, as well as, concerns that exist with respect to coordination of the Drawings and Specifications. Where appropriate, the CM@Risk will recommend cost effective alternatives.

3.2.4 The CM@Risk will routinely conduct constructability and biddability 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 and Suppliers.

3.2.5 Constructability Reviews: The CM@Risk will 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 The CM@Risk will prepare a "Constructability Report" which identifies items that, in the CM@Risk's opinion, may negatively 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.

3.2.6.1 The CM@Risk will 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 Identify equipment or material requiring extended delivery times and advise the City on the need for expedited procurement of those items.

3.2.8 Biddability Reviews: The CM@Risk will 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, (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 will be provided to the City in formal, written reports clearly identifying all discovered discrepancies and inconsistencies in the Drawings and Specifications with notations and recommendations made on the Drawings, Specifications and other documents. If requested by the City, the CM@Risk will meet with the City and Design Professional to discuss any findings and review reports.

3.2.10 The CM@Risk's reviews will be 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 will remain with the Design Professional and not the CM@Risk.

3.2.11 Notification of Variance or Deficiency: The 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 the 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 will promptly notify the Design Professional and City in writing, describing the apparent variance or deficiency. Notwithstanding the foregoing, the responsibility for ensuring compliance with those

laws, statutes, ordinances, building codes, rules and regulations rests solely with the Design Professional.

3.2.12 Alternate Systems Evaluations: The Project Team will routinely identify and evaluate using value engineering principles any alternate systems, approaches, design changes that have the potential to reduce Project costs while still delivering a quality and functional product. The recommendations and advice of the CM@Risk concerning design alternatives shall be subject to the review and approval of the City and the City's professional consultants. If the Project Team agrees, the CM@Risk in cooperation with the Design Professional will perform a cost/benefit analysis of the alternatives and submit such in writing to the Project Team. The Project Team will decide which alternatives will be incorporated into the Project. The Design Professional will have full responsibility for the incorporation of the alternatives into the Drawings and Specifications. The 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 by both parties, within 14 days after receipt of all documents for the various phases of design, the CM@Risk shall provide a complete and detailed cost estimate and a written review of the documents. The cost estimate should include all cost categories except Owner's Contingency included in the GMP Summary identified in Exhibit C attached. The Design Professional and CM@Risk shall reconcile any disagreements on the estimate to arrive at an agreed cost. If no consensus is reached, the City will make the final determination.

3.3.2 If any estimate submitted to the City exceeds previously accepted project budget (CCL), the CM@Risk shall make appropriate recommendations on methods and materials to the City and Design Professional that it believes will bring the project back into the Project budget (CCL).

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

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

3.3.5 Arrival at Net Reconciled Estimate. When requested by the City, the CM@Risk shall prepare and submit a Construction Manager Estimate ("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 ("DPE") for the Project, prepared by the Design Professional. Through a process of negotiation and consultation between the City, the Design Professional, and the CM@Risk, the CME and the DPE will be reconciled to arrive at an agreed Cost and Schedule for the Project ("Net Reconciled Estimate"). In addition to, but separate from the Net Reconciled Estimate, the CM@Risk shall submit its proposed allowances (to include the proposed Construction Contingency amount) and Liquidated Damages it proposes be stipulated for each calendar day of delay until the Work is substantially complete.

3.3.6 Bidding of Project.

3.3.6.1 Upon completion of the Construction Documents, or applicable "Bid Package" portion thereof, by the Design Professional, the CM@Risk shall publicly advertise, as prescribed for a governmental entity under Section 271.025 of the Local Government Code, and receive sealed bids or proposals from trade contractors 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 the Owner's SBEDA Ordinance and Procurement Program policies and procedures in evaluating the impact of each Subcontractor selection to the Compliance Plan. CM@Risk will 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 Owner for review and approval in order to verify that it contains provisions required by the Contract Documents that are protective of the interests of Owner 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 Owner's Representative.

3.3.6.2 The CM@Risk may perform portions of the Work itself if the CM@Risk submits its bid or proposal for those portions of the Work in the same manner as other trade contractors or subcontractors, and if the City determines that the CM@Risk's bid or proposal provides the best value for the City. If CM@Risk intends to submit a proposal for such Work, it shall notify Owner prior to soliciting proposals and all such bids and/or sealed proposals will be submitted directly to Owner or its designated representative.

3.3.6.3 The 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 The 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 the Supplementary or Special Conditions.

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

3.3.6.5 Upon receipt of bids/proposals, the CM@Risk and the City or its representative shall jointly open and review all trade contractor or subcontractor bids or proposals taking into consideration, the criteria listed in Texas Local Government Code 271.113(b). Following this review, the CM@Risk shall prepare for the City's review, a notebook that includes all bids/proposals received and a summary of the bids and/or proposals received. After discussion with the City, the CM@Risk shall recommend to the City the bidders/proposers that offer the best value to the City and with whom the CM@Risk desires to enter into a sub-contract.

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 the CM@Risk, the Design Professional, the Project Management Team or the 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.

3.3.6.8 If a specific bidder among those whose bids are delivered by the CM@Risk to the City and Design Professional (1) is recommended to the City by the 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 the City requires that another bid be accepted, then the City shall compensate the CM@Risk for the increased change in price, time, or Guarantee Maximum Cost for any additional cost and risk that the CM@Risk may incur related directly to the City's requirement that another bid or proposal be accepted.

3.3.7 The 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 will be as accepted in the Guaranteed Maximum Price Proposal to be attached as Exhibit H and shall include Owner's Contingency in an amount which shall be determined by the City upon the acceptance of the Guaranteed Maximum Price (GMP).

3.3.9 Guaranteed Maximum Price is composed of the following not-to-exceed cost reimbursable or lump sum amounts defined below. The CM@Risk is at risk to cover any additional Project costs in the performance of the Work. Any amounts in excess of the actual Cost of the Work shall be paid by the CM@Risk Contingency Funds or the CM@Risk and any unused CM@Risk's Contingency shall revert to the City upon completion and acceptance of the Project/Work.

3.3.10 The Cost of the Work is actual costs and is a not-to-exceed reimbursable amount.

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

3.3.12 In the event that the Construction Phase is divided into two or more Work Packages, the CM's Fee for a respective Work Package shall be set out in the Fixed Price Proposal for that Work Package and shall be allocated to such Work Package in an amount which bears the same ratio to the CM's Fee as the estimated Cost of the Work of that Work Package (as reflected in the GMP Proposal) bears to a reasonable estimate of the Cost of the Work of the entire Project.

3.3.13 The CM@Risk's Contingency is an amount the CM@Risk may use under the following conditions: (1) only with written approval of the City for increases in the Cost of the Work, or (2) only with written approval of the City for increases in General Condition Costs. CM@Risk's Contingency is assumed to be a direct project cost so it has received all markups at the time of GMP submission.

3.3.14 When the CM@Risk utilizes CM@Risk's Contingency funds, the CM@Risk shall make the appropriate changes to the schedule of values with the next regular progress payment application. The CM@Risk shall deduct the amount of CM@Risk's Contingency funds used from the CM@Risk's Contingency line item and add the same amount to the line item on the schedule of values where the funds were used. If the CM@Risk's Contingency funds are used for a new line item that was not given with the original schedule of values, that will be so indicated.

3.3.15 Owner's Contingency are funds to be used at the discretion of the City to cover any increases in Project costs that result from City directed changes or unforeseen site conditions. Owner's Contingency will be added to the GMP amount provided by the CM@Risk, the sum of which will be the full contract price for construction. Markups for Construction Fee will be applied by the CM@Risk at the time that Owner's Contingency is used.

3.3.16 Approved Fixed Price Proposals and contingencies allocated to each Approved Fixed Price Proposal are cumulative. The amount of CM@Risk's and Owner's Contingency for each Approved Fixed Price Proposal will be negotiated separately. Any amounts in excess of the actual Cost of the Work shall be paid by the CM@Risk Contingency Funds or the CM@Risk, and any unused CM@Risk's Contingency shall revert to the City upon completion and acceptance of the Project/Work.

3.3.17 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.

3.3.18 Prior to submitting its GMP Proposal, the CM@Risk acknowledges that it has been provided unrestricted access to the existing improvements and conditions on the Project Site and that it has thoroughly investigated those conditions to the extent reasonably possible. CM@Risk's investigation 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 or the GMP, or for 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 and shall include the following, unless the Parties mutually agree otherwise:

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

i. the CM@Risk's Construction Fee for the Work as defined herein; and

ii. The estimated Cost of the Work, including the CM's General Conditions Costs, as defined herein, inclusive of any Construction Contingency, if such a Contingency is established in the accepted GMP Proposal, for the Work.

3.4.2 A list of the Design or Construction Documents, including all other information used as the basis for the GMP proposal;

3.4.3 A list of the assumptions and clarifications made by CM@Risk in the preparation of the GMP Proposal, which list is intended to supplement the information regarding the scoping and requirements of the Work contained in the Design or Construction Documents;

3.4.4 If applicable, a list of Allowances or any other open pricing terms and a statement of their basis;

3.4.5 If applicable, a schedule of Unit Prices;

3.4.6 The Contract Time Requirements for the designated portion of the Work, including the Milestone dates and the required Substantial Completion Date upon which the proposed GMP is based, to the extent said date has not already been established hereunder,

3.4.7 If applicable, a Schedule of Values based upon the Contract Time Requirements;

3.4.8 Any other information requested in the attached form of the GMP Proposal.

3.4.9 The GMP Proposal must be prepared with a breakdown of estimated costs organized by trade, allowances, contingencies, etc. following the format presented in Exhibit 6. The GMP Proposal must include a description of how the estimated Cost of the Work was derived and prepared in accordance with the requirements of this Agreement and the other Contract Documents. If directed by Owner, in formulating the estimated Cost of the Work in the GMP Proposal, CM shall provide for a construction contingency ("Construction Contingency") as provided herein.

3.4.10 Negotiation of GMP Proposal. After submission of GMP Proposal for the entire Work, CM@Risk and Owner shall promptly 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, the CM@Risk shall exercise 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 Owner has any comments regarding the respective Proposal, or finds any inconsistencies or inaccuracies in the information presented, it shall promptly give written notice to CM@Risk of such comments or findings. If appropriate, CM@Risk shall, upon receipt of Owner's notice, make appropriate adjustments to the respective Proposal. CM@Risk agrees that to the best of its knowledge that 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 agrees with Owner that the Work required by the Contract Documents for the Work covered by the respective Work Authorization Amendment, 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.

3.4.11 Following approval of a GMP Proposal by the City, the 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 the CM@Risk Construction Phase Contract for the Project. Such Drawings and Specifications shall be furnished to the CM@Risk in accordance with the schedules agreed to by the City, Design Professional and CM@Risk. The CM@Risk shall promptly 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.

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

3.4.13 GMP savings resulting from a lower actual project cost than anticipated by the CM@Risk remaining at the end of the project will revert to City.

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

3.4.15 GMP amendments are cumulative except for CM@Risk's contingency. The amount of Owner's Contingency for each GMP amendment will be negotiated separately.

3.4.16 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. The CM@Risk in its Fixed Price Proposal(s) shall provide:

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

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

3.5.3 The Lump Sum Construction Phase Fee based on the agreed upon percentage;

3.5.4 The Lump Sum General Conditions Costs and will include bonds and insurance premiums based on the Cost of The Work for construction;

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 breakdown of the calculations apportioned for the various divisions or phases of the Work. If the City has agreed to accept one or more portions of the Work separately, there will be a separate Schedule of Values for each 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 the 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 have certified bids;

3.5.10 The 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 the City.

3.5.12 The Fixed Price Proposal shall include no amount for sales or use taxes for which City is exempt and for which the City has timely provided to the CM@Risk an appropriate tax exemption certificate or other required verification of the City's tax exempt status. Such taxes shall not be reimbursable costs.

3.5.13 The Fixed Price Proposal shall adopt and incorporate all of the terms and conditions of this Agreement and all attachments to this Agreement. Any proposed deviation from the terms and conditions of this Agreement must be clearly and conspicuously identified to the City in writing and specifically accepted by the 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 the City the terms of this Agreement and its attachments shall control.

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

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

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

3.5.17 The City may accept or reject the 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 the City, documenting the agreement of the Parties to a Fixed Price Proposal

3.5.18 Prior to written approval of the Fixed Price Proposal by the City, the 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 the City may specifically authorize in writing.

ARTICLE 4. AMENDMENTS FOR UNANTICIPATED PRE-CONSTRUCTION SERVICES

4.1 CHANGE IN SCOPE

In the event there is a change in the character or scope of work or Deliverable required in this Agreement, thereby materially increasing or decreasing the scope of services, cost of performance, or Project Schedule, the work or Deliverable will be performed as directed by the City. However, before any altered or modified work begins, a Task Order, Change Order, Amendment or Modification will be negotiated, approved and executed by the City and the CM@Risk. The compensation paid to the CM@Risk may be adjusted by mutual agreement of the contracting parties based on the hourly rates agreed to under this contract. Any unused Contingency funds may be used for such a change.

4.2 CLAIMS FOR EXTRA WORK

No claim for extra work done or materials furnished by the CM@Risk will be allowed by the City except as provided herein, nor will the CM@Risk do any work or furnish any material(s) not covered by this Contract unless such work or material is first authorized in writing. Pre-construction Services or material(s) furnished by the CM@Risk without such prior written authorization will be the CM@Risk's sole jeopardy, cost, and expense, and the CM@Risk hereby agrees that without prior written authorization no claim for compensation for such work or materials furnished will 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. The Construction Phase will commence on the date specified in the Notice to Proceed with Construction Phase issued by City, and shall continue until Final Completion of all Work on the Project. In implementation of the responsibilities and duties of the CM@Risk for Construction Phase, the CM@Risk shall provide the services described in this Article.

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

5.2 ADMINISTRATION

5.2.1 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 Local Government Code Section 271.118(h) 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 The CM@Risk shall keep the City informed of the progress and quality of the Project Work.

5.3.2 In accordance with City's General and Supplementary Conditions, the 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 The CM@Risk shall coordinate delivery and installation of 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 the CM@Risk's responsibility to ensure the Subcontractor employed for such Work is approved by the manufacturer.

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

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

5.4 CONTROL OF THE WORK SITE

5.4.1 The CM@Risk will provide a traffic control plan for approval by the City.

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

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

5.5.2 The 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 the City or Design Professional on previous submittals.

5.5.3 Informational submittals upon which the City is not expected to take responsive action may be so 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, the 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 Local Government Code, Section 271.118(d), the City will retain, independent of the CM@Risk, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the facility by the

City. Such consultants will be selected in accordance with Section 2254.004 of the Government Code. The professional services, duties, and responsibilities of those independent consultants will be described in the Agreements between the 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 the quality of construction to guard the City against defects and deficiencies in the Work, required by the Contract Documents. CM@Risk is fully and solely responsible for constructing the Project in strict accordance with the Construction Documents. When the first and subsequent tests indicate noncompliance with the Contract Documents, the cost associated with that noncompliance will be paid for by the CM@Risk. CM@Risk's Contingency cannot 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 same testing agency.

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

5.6.4 At the option of the 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 the CM@Risk as a cost of the work, unless otherwise provided in the Contract Documents.

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

5.7 PROJECT RECORD DOCUMENTS

5.7.1 During the construction period, the 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 The 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 later. 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.

5.7.3 The 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, show cross-reference on the Construction Documents location.

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

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

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

5.7.7 CM@Risk shall, as a condition of substantial completion, submit to the City or its representative a complete set of electronic Project Record Drawings prepared in AutoCAD or REVIT format compatible with City technology. The Design Professional will provide files of the original Construction Documents to the CM@Risk for the use of preparing these final Project Record Drawings or the 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."

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

5.8 PROJECT SAFETY

The requirements in this Section are in addition to the General Conditions Article 10.

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 weekly safety meetings with CM@Risk's personnel, Subcontractors and others as applicable.

5.8.3 The CM@Risk will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to Owner'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.

ARTICLE 6. CITY'S SERVICES AND RESPONSIBILITIES

6.1 DUTY TO COOPERATE

6.1.1 The 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 The City shall furnish at the CM@Risk's request, at no cost to the CM@Risk, a CADD file of the Construction Documents in AutoCAD or REVIT format compatible with City of San Antonio CADD technology.

6.2 OWNER'S DESIGNATED REPRESENTATIVE

The requirements in this Section are in addition to the General Conditions Article 2

6.2.1 The 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.

6.2.2 The City's Representative shall also provide CM@Risk with prompt notice if it 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 NTP, the City shall designate in writing a representative who shall have express authority to bind the City with respect to all matters requiring the City's approval or authorization, other than matters that require the approval of the City Council. To the extent permitted by law this representative shall have the authority to make decisions on behalf of the City concerning estimates and schedules, construction budgets, and changes in the Work, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the CM@Risk.

6.2.4 The 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 The City's Representative shall also provide CM@Risk with prompt notice if it 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.

6.3 INFORMATION AND SERVICES

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

6.3.2 The City will provide the Preliminary Budget and general schedule information for the Project toCM@Risk in a timely manner. The Preliminary Budget will include the anticipated construction cost, contingencies for changes in the Work during construction, and other costs that are the responsibility of the City. The City will set forth the City's plan for milestone dates and completion of the Project.

6.3.3 Structural and Environmental Tests, Surveys and Reports. In the Pre-construction Phase, the City shall furnish the following with reasonable promptness so as not to delay CM@Risk's performance of its services and/or Work, and at the 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 of each Project and a written legal description of the Site. The surveys and legal information shall 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 geo-technical engineers when such services are reasonably requested by the CM@Risk. 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: The City shall determine and 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 defective Work on the Project. Should CM@Risk refuse or neglect to correct any such Work within a reasonable time after its receipt of notice and a reasonable opportunity to cure, City may have the Work corrected and recover all reasonable and necessary expenses incurred from CM@Risk on demand.

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 the City is performing other work with separate contractors or vendors under its control, the CM@Risk agrees to cooperate and coordinate its work with the work of the City's separate contractors or vendors, and the City agrees to coordinate the work of the 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 such separate contractors vendors or employees, CM@Risk shall inspect such other work, and promptly report to 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 his work that may be required to make its several parts 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 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 the 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 by the Owner in accordance with the terms of the Contract Documents.

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

7.1.4 The CM@Risk agrees that it will commence performance of the Work and achieve the Performance Periods and Contract Time.

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

7.2 LIQUIDATED DAMAGES

7.2.1 The 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 the City _____ ($_____) as liquidated damages for each Day that Substantial Completion extends beyond the date determined by the Contract Time as adjusted.

7.2.2 The CM@Risk and the CM@Risk's surety shall be liable for and shall pay to the City the sums stipulated in the Agreement as liquidated damages for each calendar day of delay until the Work is substantially complete.

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 the CM@Risk's Application for Payment and the Schedule of Values included herein as part of Exhibit C, 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 the City. Charges will be assessed only for actual services rendered.

8.1.1.2 Payment for services negotiated as a lump sum shall be made in accordance with the percentage of work completed during the preceding month. Services negotiated as a not-to-exceed fee will be paid in accordance with the work effort expended on that service during the preceding month.

8.1.1.3 The fees for the CM@Risk and any Subconsultants will be based upon the hourly rate schedule included as Exhibit C attached and presented attached to the Payment Application.

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

8.1.1.5 The CM@Risk will pay all sums due Subconsultants for services and reimbursable expenses within 10 calendar days after the CM@Risk has received payment for those services from the City.

8.1.2 GUARANTEED MAXIMUM PRICE AND APPROVED FIXED PRICE PROPOSALS

8.1.2.1 This article complements sections 9.3, 9.4, 9.6 and 9.7 of the General Conditions.

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 the City and to its satisfaction, the City agrees to pay the CM@Risk the actual Cost of the Work and any applicable General Conditions Costs as well as insurance and bonding, and the CM@Risk's Construction Fee, but in no event more than the GMP as adjusted by any Change Orders. Payment for the specific work under this Agreement will be made in

accordance with payment provisions detailed below. To the extent that the Construction Phase consists of multiple Work Packages, each such Work Package shall be subject to a Guaranteed Maximum Price as established herein. The sum of the Guaranteed Maximum Prices 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 Section 1.2.5 of 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 Section 9.2 of the General Conditions.

8.1.2.4 At least five working days prior to the date established for a Payment Application, the CM@Risk shall submit an updated Project Schedule and meet with the Owner's Representative to review the progress of the Work as it will 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 construction progress is in reasonable conformance with the approved Project Schedule.

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, the City must approve the storage. The material and equipment must be stored within Bexar County and be accessible for City's inspection. The CM@Risk must protect the 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 the City as the loss payee to the extent of its interest in the stored materials.

8.1.2.10 The CM@Risk shall submit Payment Applications to the City 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 will be made no later than thirty (30) Days after the Payment Application is received, but in each case less the total of payments previously made, and less amounts properly retained under Section 8.4 below.

8.1.2.11.1 The 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 notify CM@Risk in writing within seven Days after the date Payment Application is received by the City. The notice shall indicate the specific amounts City intends to withhold, the specific reasons and contractual basis for the withholding, and the specific measures CM@Risk must take to rectify City's concerns. CM@Risk and City will attempt to resolve City's concerns. If the parties cannot resolve such concerns, CM@Risk may pursue its rights under the Contract Documents, including those under Article 8 hereof.

8.1.2.12 Retention on GMP or FPP - The City will retain ten percent (10%) of each Payment

Application amount provided on contracts valued at $400,000 or less. The 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

9.1.1 If the allowable amount of the cost of Cost of Work, General Conditions and CM@Risk's Contingency is less than the amount established for each of those line items in the originally approved GMP Proposal, the entire difference shall be credited to the Owner as savings and the GMP amount shall be adjusted accordingly, including Construction Fees. When buyout of the Project is at least 85% complete, the Owner may recognize any savings achieved to that point by issuing a deductive change order for the saved amount.

9.2 DEDUCTIONS

Owner shall be entitled to deduct amounts for the following items from any Application for Payment or from the Request for Final Payment submitted by the 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 Owner. Upon completion of the Work or when no longer required, CM@Risk shall either credit the Owner for the fair market value (as approved by Owner) for all surplus tools, construction equipment and materials retained by the CM@Risk, at Owner's option, use commercially reasonable efforts to sell the surplus tools, construction equipment and materials for the highest price and credit the proceeds to the Owner's account.

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

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 Owner and forfeited due to the fault of the CM@Risk.

9.2.5 Balances remaining on any Allowances, the CM@Risk's Contingency, or any other identified contract savings.

9.3 RECOVERY OF SAVINGS

9.3.1 Owner shall be entitled to recover any savings realized between the GMP and the buyout price for subcontracting work, provided however, that CM@Risk may use such savings to offset other buyout packages that exceed the amounts identified in the initial GMP, not including owner's contingency, so long as the total Cost of Work proposed in the GMP does not increase.

9.3.2 Owner shall be entitled to recognize and recover 100% of any savings identified by cost review or audit at any time, before or after final payment.

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

This Article complements Sections 3.2.2, 3.2.3, and 3.2.4 of the General Conditions.

10.1 CM@RISK ACCESS TO PRE-EXISTING CONDITIONS

10.1.1 The CM@Risk acknowledges that it has been provided unrestricted access to the existing improvements and conditions on the Project site and that it has thoroughly investigated those conditions. 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 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

10.2.1 The CM@Risk acknowledges that as part of its Pre-construction Phase Services, it participated in the review of the Construction Documents. The CM@Risk shall review the drawings, specifications and other Construction Documents and notify Owner of any errors, omissions or discrepancies in the documents of which it is 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 the Owner and the Design Professional in a timely manner.

ARTICLE 11. OWNERSHIP 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 which are prepared specifically in the performance of this Contract (collectively referred to as Project Documents) are to be and remain the property of the City and are to be delivered to the Project Manager before the final payment is made to the CM@Risk. Nonetheless, in the event these Projects Documents are altered, modified or adapted with or without the written consent of the CM@Risk, which consent the CM@Risk will not unreasonably withhold.

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

11.1.3 All previously owned documents, including the original drawings, estimates, specifications, and all other documents and data, will remain the property of the CM@Risk as instruments of service. However, the CM@Risk understands and agrees that the 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 The CM@Risk acknowledges and agrees that upon payment, the CITY shall own exclusively 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 as the CITY desire and documents, including the original drawings, estimates, specifications and all other documents and data shall be delivered to the CITY at no additional cost to the CITY upon request or 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.

11.1.5 The CM@Risk agrees and covenants to protect any and all proprietary rights of the CITY in any materials provided to the CM@Risk. Such protection of proprietary rights by the CM@Risk shall include, but not be limited to, the inclusion in any copy intended for publication of copyright mark reserving all rights to the CITY. Additionally, any materials provided to the CM@Risk by the CITY shall not be released to any third party without the

written consent of the CITY and shall be returned intact to the CITY upon termination or completion of this Agreement or if instructed to do so by the Director.

11.1.6 THE CM@RISK HEREBY ASSIGNS ALL STATUTORY AND COMMON LAW COPYRIGHTS TO ANY COPYRIGHTABLE WORK THAT IN PART OR IN WHOLE WAS PRODUCED FROM THIS AGREEMENT TO THE CITY, 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 THE CM@RISK. ALL REPORTS, MAPS, PROJECT LOGOS, DRAWINGS OR OTHER COPYRIGHTABLE WORK PRODUCED UNDER THIS AGREEMENT SHALL BECOME THE PROPERTY OF THE CITY AND JOINT UTILITIES (EXCLUDING ANY PRIOR OWNED INSTRUMENT OF SERVICES, UNLESS OTHERWISE SPECIFIED HEREIN). THE CM@RISK SHALL, AT ITS EXPENSE, INDEMNIFY CITY AND JOINT UTILITIES AND DEFEND ALL SUITS OR PROCEEDINGS INSTITUTED AGAINST THE CITY AND PAY ANY AWARD OF DAMAGES OR LOSS RESULTING FROM AN INJUNCTION, AGAINST THE 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 The CM@Risk may make copies of any and all documents and items for its files. The CM@Risk shall have no liability for changes made to or use of the drawings, specifications and other documents by other engineers, or other persons, subsequent to the completion of the Project. CM@Risk shall appropriately mark all changes or modifications on all drawings, specifications and other documents by other engineers or other persons, including electronic copies, subsequent to the completion of the Project.

11.1.8 Copies of documents that may be relied upon by the CITY are limited to the printed copies (also known as hard copies) and PDF electronic versions that are submitted by the CM@Risk. Files in editable electronic media format of text, data, graphics, or other types, (such as DGN) that are furnished by the CM@Risk to the CITY are only for convenience of the CITY or 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 Nothwithstanding 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 the 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 supplements the Insurance Provisions included in the General Conditions.

12.1 INSURANCE REQUIREMENTS: Prior to the commencement of any work under this Project the CM@Risk shall purchase and maintain insurance as set forth herein and in the 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 the 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 the 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, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the Project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a Project. "Services" does not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

12.1.1.2 Coverage and Evidence of Coverage.

12.1.1.6.1 By CM@Risk. The 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 the CM@Risk providing services on the Project, for the duration of the Project. The CM@Risk must provide a Certificate of Coverage and copies of all required endorsements of its insurance Policy prior to the 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 the CM@Risk's current Certificate of Coverage ends during the duration of the Project, the 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 the City showing that coverage has been extended.

12.1.1.6.2 Contractors Providing Services. The 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 the 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 the 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 the CM@Risk, upon request, copies of the current insurance policies.

12.1.1.6.3 The CM@Risk shall provide to the City all evidence of insurance required by Paragraphs 8.1.1.1 and 8.1.1.2 above, to the City prior to commencement of any Work on the Project.

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

12.1.1.5 The 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 The 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 the 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 the 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 the 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, the CM@Risk is representing to the City that all employees of the

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

12.1.1.8 The CM@Risk's failure to comply with any of these provisions is a breach of contract by the CM@Risk which entitles the City to terminate the Agreement if the CM@Risk does not remedy the breach within ten days after receipt of notice of breach from the 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 the City as an additional insured.

12.1.4 NOT USED

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 the 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 the 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 the 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 the 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 Dept. P. O. Box 839966 San Antonio, Texas 78283-3966	**With copy to**	City of San Antonio 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 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 the 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, the 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 The City reserves the right to review the insurance requirements set forth in this Article 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 the City based upon changes in statutory law, court decisions, or the claims history of the industry as well as the CM@Risk.

12.1.5.7 The 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 the CM@Risk and not covered by insurance shall be paid by the 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 the 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 the City, with the exception of workers' compensation.

12.1.5.2 Provide for an endorsement that the "other insurance" clause shall not apply to the City where the 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 the City for liability arising out of operations under this agreement.

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 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 MANAGER IN ACCORDANCE WITH THE TERMS OF THE INDEMNIFICATION PROVISIONS, TO INDEMNIFY, PROTECT AND DEFEND THE CITY FROM THE CONSEQUENCES OF THE 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. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA) PROGRAM

14.1 The CITY has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 010-06-17-0531, also referred to as "SBEDA" or "the SBEDA Program"), which is posted on the City's International and Economic Development (IEDD) 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.

14.2 Definitions

14.2.1 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.)

14.2.2 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.

14.2.3 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.

14.2.4 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 consultants 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.

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

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

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

14.2.8 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."

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

14.2.10 Payment – dollars actually paid to CONTRACTORS and/or Subcontractors and vendors for CITY contracted goods and/or services.

14.2.11 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.

14.2.12 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.

14.2.13 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.

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

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

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

14.2.17 SBE Subcontracting Program – an API in which Prime Contractors or vendors are required to make Good Faith Efforts to subcontract a specified percentage of the value of prime contract dollars to certified SBE firms. Such subcontracting goals may be set and applied by the GSC on a contract-by-contract basis to those types of contracts that provide subcontract opportunities for performing Commercially Useful Functions wherein there have been ongoing disparities in the utilization of available SBE Subcontractors.

When specified by the GSC, the SBE Subcontracting Plan or Good Faith Efforts plan submitted by CONTRACTOR may also be required to reflect Good Faith Efforts that a Prime Contractor or vendor has taken (or commits to taking in the case of solicitations that do not include a detailed scope of work or those in which price cannot be considered a factor in evaluation), toward attainment of subcontracting goals for SBE firms.

14.2.18 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.

14.2.19 Small Business Enterprise (SBE) – a corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is Independently Owned and Operated by Individuals legally residing in, or that are citizens of, the United States or its territories, and which meets the U.S. Small Business

Administration (SBA) size standard for a small business in its particular industry(ies) and meets the Significant Business Presence requirements as defined herein.

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

14.2.21 Small Business Office Manager – the Assistant Director of the IEDD 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.

14.2.22 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.

14.2.23 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.

14.2.24 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 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 IEDD Director or designee.

14.3 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:

14.3.1 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;

14.3.2 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;

14.3.3 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;

14.3.4 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.

14.3.5 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.

14.3.6 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.

14.3.7 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.

14.4 SBEDA Program Compliance – Affirmative Procurement Initiatives

The CITY has applied the following contract-specific Affirmative Procurement Initiative 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. 3. (a), this contract is being awarded pursuant to the SBE Subcontracting Program. CONTRACTOR agrees to subcontract at least **29%** of its prime contract value to certified SBE firms headquartered or have a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA). The Subcontractor / Supplier Utilization Plan that 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 subcontracting 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 the CITY, and may result in debarment from performing future CITY contracts, withholding of payment for retainage equal to the dollar amount of the underutilization below the agreed upon SBE subcontracting goal, 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.

14.5 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. 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.

14.6 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.

14.7 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:

14.7.1 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 benefiting from the SBEDA Ordinance;

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

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

14.7.4 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

14.7.5 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.

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

14.8.1 Suspension of contract;

14.8.2 Withholding of funds;

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

14.8.4 Refusal to accept a response or proposal; and

14.8.5 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).

ARTICLE 15. NOTICES

15.1 REPRESENTATIVES OF THE PARTIES

15.1.1 Owner's Designated Representative.

15.1.1.1 City designates the individual listed below or his designee as its Senior Representative ("Owner's Senior Designated Representative"), which individual 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

15.1.2 CM@Risk's Designated Representative.

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

Name:
Title:
Firm Name:
Address: 400 North Loop 1604 East, Suite 200

ARTICLE 16. TERMINATION AND SUSPENSION

16.1 TERMINATION WITHOUT CAUSE.

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

16.1.2 If the termination is for the convenience of the City, and following inspection and acceptance of CM@Risk's services properly performed prior to the effective date of termination, the City shall promptly 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 lost or anticipated profit or 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 time between the CM@Risk's receipt of the City's notice of termination and the actual termination date.

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

16.1.4 The rights and remedies of the City provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

16.2 **DEFAULTS WITH OPPORTUNITY FOR CURE:** Should CM@Risk fail to satisfactorily perform the Pre-construction Services set out in Article 3, or comply with any covenant required by the Contract Documents, such failure shall be considered an Event of Default. In such event, the City shall deliver written notice of said default, in accordance with the notice provisions contained in this Agreement, specifying the specific Events of Default and the action necessary to cure such defaults. CM@Risk shall have a reasonable period of time of not less than ten (10) calendar days after receipt of the written notice to cure such default. If CM@Risk fails to cure the default within such 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 to complete the work required by this Agreement. City shall also have the right to offset the cost of said new agreement with a new CM@Risk 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.

16.2.1 The party not in default must issue a signed, written notice of termination (citing this paragraph) to the other party declaring the other party to be in default and stating the reason(s) why they are in default. Upon receipt of such written notice of default, the party in receipt shall have a period of ten (10) days to cure any failure to perform under this Agreement. Upon the completion of such ten-day period commencing upon receipt of notice of termination, if such party has not cured any failure to perform, such termination shall become effective without further written notice.

16.3 **TERMINATION FOR CAUSE:** Upon the occurrence of **any of the events listed in Article 13 of the 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 may immediately terminate this Contract, in whole or in part, "for cause":

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

16.3.2 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

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

16.3.4 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

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

16.3.6 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.

16.4 **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.

16.5 **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 the City may designate. However, if such termination is for CM@Risk's fault, 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 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 for CM@Risk's fault. Payment of compensation due or to become due to CM@Risk is conditioned upon delivery of all such documents.

16.5.1 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 shall immediately 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) days after receipt of such notice of termination (unless CM@Risk has successfully cured a failure to perform) the CM@Risk shall submit a statement showing in detail the services performed under this Agreement prior to the effective date of termination. The CITY shall have the option to grant an extension to the time period for submittal of such statement.

16.5.2 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 the CITY, in the form requested by the CITY as a pre-condition to final payment. These documents shall be subject to the restrictions and conditions set forth in these Contract Documents.

16.5.3 Upon the above conditions being met, the CITY shall promptly pay the 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.

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

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

16.6 **ASSIGNMENT OF INTEREST IN SUBCONTRACTS AND PURCHASE ORDERS:** 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 said writing after termination. It is agreed and understood that City may accept said assignment at any time during the course of the Construction Phase of a Project prior to final completion. It is further agreed that

all subcontracts and purchase orders shall provide that they are freely assignable by the CM@Risk to the City and assigns. 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.

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

16.8 **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 other action.

16.9 **SUSPENSION:** The Work may be suspended by the City as provided in the City's General Conditions; in such case the GMP and Fee, as established by this Agreement, shall 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.

16.9.1 Upon receipt of written notice of suspension, which date shall also be the effective date of the suspension, the 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 to promptly suspend all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement.

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

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

16.9.4 In the event that CM@Risk exercises the right to terminate one hundred twenty (120) days after the effective suspension date, within thirty (30) days after receipt by the CITY of CM@Risk's notice of termination, CM@Risk shall promptly 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.

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

16.9.6 Upon the above conditions being met, the City shall promptly pay the 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.

16.9.7 The City, as a public entity, has a duty to document the expenditure of public funds. CM@Risk acknowledges this duty on the part of the City. To this end, CM@Risk understands that failure of CM@Risk to substantially comply with the submittal of the statements and documents as required herein shall constitute evidence of a waiver by the CM@Risk of any portion of the fee for which CM@Risk did not supply such necessary statements and/or documents.

16.9.8 The CITY reserves the right to suspend this Agreement at the end of any phase for the convenience of the CITY by issuing a signed, written notice of suspension (citing this paragraph) 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 of suspension will occur. Such suspension shall take effect immediately upon receipt of said notice of suspension by the CM@Risk.

16.9.9 The CM@Risk is hereby 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 paragraph) to the 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 the CITY. In such event, the City shall promptly pay the 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.

ARTICLE 17. MISCELLANEOUS PROVISIONS

17.1 **DISPUTE RESOLUTION:** All disputes against the City that arise from this Agreement or any Project shall be resolved in accordance with the procedures and limitations of Texas Local Government Code Subchapter I, Chapter 271.151et.seq., and the City's General Conditions. The City designates the Director or his Director of the Department 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.

17.2 **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 the City's written consent.

17.3 **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.

17.4 **AUDIT RIGHTS:** **ARTICLE 15, THE RIGHT TO AUDIT CONTRACTOR'S RECORDS of the General Conditions** is superseded by the following provision: "The CM@Risk agrees that the CITY may review any and all of the work performed by the CM@Risk under this Agreement. The CITY is granted the right to audit, at the CITY's election, all of the records and billings related to performance of this Agreement. The 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 provided under this Agreement shall be subject to the CITY's rights as may be disclosed by such audit."

17.5 **The following provision supplements Paragraph 3.4 LABOR AND MATERIAL of the General Conditions:**

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

17.6 **TEXAS FAMILY CODE CHILD SUPPORT CERTIFICATION:** Pursuant to Section 231.006, Texas Family Code, CM@Risk certifies that it is not ineligible 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.

17.7 **FRANCHISE TAX CERTIFICATION:** A corporate or limited liability company CM@Risk certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the Texas Tax Code, or that the corporation or limited liability company is exempt from the payment of such taxes, or 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.

17.8 **PAYMENT OF DEBT OR DELINQUENCY TO THE CITY:** It is the policy of the City that any person or entity doing business with the 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 will timely 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.

17.9 **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.

17.10 **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.

17.11 **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 the City is a party.

17.12 **WAIVERS:** **Except for the Claims and Disputes Provision in the 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 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.

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

17.14 **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 business hours and shall be retained for four years after final Payment or abandonment of the Project, unless City otherwise instructs CM@Risk in writing.

17.15 **NOTICES:** **In addition to the written Notice Provision in the 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 the 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; or transmitted by fax machine to the last know business fax number of the designated representative. Mail notices are deemed effective upon receipt or on the third business day after the date of mailing, whichever is sooner. Fax notices are deemed effective the next business day after faxing. 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:

17.16 **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.

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

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

17.19 **INDEPENDENT CONTRACTOR: In addition to the Independent Contractor Provision in the 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 Subcontractors and Suppliers of any tier, and their agents, employees and parties in privity of contract 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.

17.20 **SUBCONTRACTOR CONTRACT REQUIREMENTS:** In addition to the Sub-Contractual Relations Provision in the General Conditions, CM@Risk shall require each Subcontractor, to the extent of the Work to be performed by the 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 subcontract agreement shall preserve and protect the rights of City under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights. Where appropriate, CM@Risk shall require each Subcontractor to enter into similar agreements with its sub-subcontractors. CM@Risk shall make available to each proposed subcontractor prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed sub-subcontractors. CM@Risk shall provide City with a copy of each subcontract agreement upon request.

ARTICLE 18. INTEREST IN CITY CONTRACTS PROHIBITED

18.1 In addition to the Officers or Employees of the Owner Not to Have Financial Interest in Any Contract of the Owner Provision in the General Conditions: No officer or employee of the CITY shall have a financial interest, directly or indirectly, in any contract with the CITY, or shall be financially interested, directly or indirectly, in the sale to the CITY of any land, materials, supplies or service, except on behalf of the CITY as an officer or employee. This prohibition extends to the 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.

18.2 The CM@Risk acknowledges that it is informed that the Charter of the CITY and its Ethics Code prohibit a CITY officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with the CITY or any the CITY agency such as the CITY owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the CITY or in the sale to the 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 subcontractor on a CITY contract, a partner or a parent or subsidiary business entity.

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

18.4 CM@Risk must disclose if they are 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 the City Ordinance No. 76933. To be "associated" in a business venture or business dealings includes being in a partnership or joint venture with the officer or employee, having a contract with the officer or employee, being joint owners of a business, owning at least 10% of the stock in a corporation in which a CITY officer or employee also owns at least 10%, or having an established business relationship as client or customer.

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

CITY OF SAN ANTONIO, TEXAS	**FIRM NAME**
By: _____ Peter Zanoni, Assistant City Manager	By:_____

APPROVED AS TO FORM:

_____
City Attorney

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 the 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 **Terminal A Renovations at the San Antonio International Airport**, Project No. **33-00061**, (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

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 the 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

TERMINAL A RENOVATIONS AT THE SAN ANTONIO INTERNATIONAL AIRPOT, Project Number: 33-00061

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 the City, nor by the exercise or failure to exercise by or on behalf of the 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

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 the 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: 33-00061**

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 the City, nor by the exercise or failure to exercise by or on behalf of the 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

EXHIBIT B – PROJECT DEFINITION

The Terminal A Renovations at the San Antonio International Airport consists generally of the following:

Renovations of interiors, finishes, signs and restrooms;
Replacement and upgrades to mechanical, electrical and plumbing infrastructure/controls;
Replacement and upgrades of escalators and elevators;
Curbside ADA upgrades;
Sprinkler system upgrades;
Miscellaneous building system repairs and replacements; and
Continued use of the facility during construction.

TOTAL CONSTRUCTION BUDGET	**$24,300,000.00**
Proposed Pre-Construction Phase Services (Lump Sum to include cost of services, overhead and profit for this work only):	$_____
Proposed General Condition (percentage of cost of work)	_____%
Bonds and Insurance (percentage of cost of work)	_____%
CM@Risk Fee (percentage of cost of work) Shall include subcontractor markup	_____%

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** 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 Cost of the Work Proposal Cost Breakdown:

- Estimated Cost of the Work shall be broken down into the standard 16 CSI Divisions and such sections as directed by the Owner 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.

Tab 5 Progress Schedule

- The Progress Schedule for the GMP Proposal must include detailed activities for all events and milestones 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.
- The Progress Schedule must be provided in hard copy form in the binder and also in an electronic format attached to the binder.

Tab 6 SBEDA Plan

EXHIBIT E – SUBMITTAL REQUIREMENTS FOR THE FIXED PRICE PROPOSALS

The 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 (Good Faith Effort Plan)

1. Scope of work will consist of a brief description of the work to be performed by CM@Risk and major points that the CM@Risk and the 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 as shown in the table below:

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

PROJECT #: 33-00061 **DATE:**

PROJECT NAME: _____

FPP Summary				**AMOUNT**
A.	Cost of the Work (Labor, Materials, Equipment, Warranty)			$
B.	CM@Risk's Contingency (For use as approved by Owner under the terms and conditions of this Agreement)			$
C.	Total Cost of Work			$
INDIRECT COSTS			RATE	
D.	Construction Fee			$
E.	General Conditions			$
F.	Payment and Performance Bond	$		
G.	Builder's Risk Insurance	$		
H.	General Liability Insurance	$		
I.	Sales Taxes			$0.00
		I. TOTAL FPP		**$**
		J. Owner's Contingency		**$**
		K. Total:		**$**

Formulas:

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

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

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 the 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 the 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 copies of the Fixed Price Proposal.

2. One 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, please contact the Capital Improvements Management Services Department at (210) 207-2121.

EXHIBIT F – APPROVED FIXED PRICE PROPOSALS

PROJECT #: 33-00061 **DATE:**
PROJECT NAME: Terminal A Renovations at the San Antonio International Airport

GMP Summary				**AMOUNT**
A.	Cost of the Work (Labor, Materials, Equipment, Warranty)			
B.	CM@Risk's Contingency (For use as approved by Owner under the terms and conditions of this Agreement)			
C.	Total cost of work			
INDIRECT COSTS			RATE	
D.	Construction Fee		2.5%	
E.	General Conditions			
F.	Payment and Performance Bond	$		
G.	Builder's Risk Insurance	$		
H.	General Liability Insurance	$		
I.	Sales Taxes			
		J. TOTAL GMP		
		K. Owner's Contingency		
		L. Total Contract Amount		

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

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

EXHIBIT I – TECHNICAL SPECIFICATIONS

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

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

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

EXHIBIT K – SBEDA SBE SUBCONTRACTOR/SUPPLIER UTILIZATION PLAN FORM