



REQUEST FOR PROPOSALS (RFP) NO. 2025-050

CLOSING DATE AND TIME: January 15, 2025 - 2:00 P.M.

**CONSTRUCTION MANAGER AT RISK (CMAR) SERVICES
FOR THE REMODEL OF THE MESQUITE CONVENTION CENTER**

PROPOSALS SHALL BE SUBMITTED ON THIS FORM

The City of Mesquite, Texas invites sealed proposals from all qualified vendors desiring to furnish the City with Construction Manager at Risk (CMAR) Services for the remodel of the Mesquite Convention Center, complying with the following specifications as listed herein.

A pre-submittal conference will be held at **2 p.m. on Monday, January 6, 2025**, located on second floor at. **RM 1515 Engineering, 1515 N Galloway Avenue, Mesquite TX 75149**. Although it is not required, prospective Proposers are encouraged to attend this conference.

A sealed copy of the bid proposal may be submitted by courier or hand delivered to Ryan Williams, Manager of Purchasing, City of Mesquite, 757 N. Galloway, Mesquite, Texas 75149. Proposals may also be mailed to Ryan Williams, Manager of Purchasing, City of Mesquite, P.O. Box 850137, Mesquite, Texas 75185-0137. Mark envelope in lower left corner "RFP No. 2025-050; Construction Manager At-Risk (CMAR) Services for the Remodel of the Mesquite Convention Center so that the proposals will not be opened until the appointed hour. Proposals submitted must be received before proposal closing on **Wednesday, January 15, 2025, at 2:00 p.m.** Faxed bid proposals will not be accepted.

GENERAL CLAUSES AND CONDITIONS

1. If you have questions regarding the preparation of your proposal, you may contact purchasing@cityofmesquite.com.
2. Vendors who do not respond to this particular proposal, but who want to remain on our mailing list for future opportunities shall indicate "NO PROPOSAL" on the face of this page by putting the date and signed by the authorized representative of your company and return this page to the Purchasing office. Your assistance in this matter is greatly appreciated.
3. Protection of Resident Workers: The City of Mesquite actively supports the Immigration and Nationality Act (INA), which includes provisions addressing employment eligibility, employment verification, and nondiscrimination. Under the INA, employers may hire only persons who may legally work in the United States (i.e., citizens and nationals of the U.S.) and aliens authorized to work in the U.S. The employer must verify the identity and employment eligibility of anyone to be hired, which includes completing the Employment Eligibility Verification Form (I-9). The Contractor shall establish appropriate procedures and controls so no services or products under the Contract Documents will be performed or manufactured by any worker who is not legally eligible to perform such services or employment.
4. Laws and Ordinances: The Contractor shall at all times observe and comply with all Federal, State, and local laws, ordinances, and regulations which in any manner affect the Contract or the work and shall indemnify and save

harmless the City against any claim arising from the violation of any such laws, ordinances, and regulations whether by the Contractor or his employees.

5. Proposals must be received prior to the closing date and time to be considered. Proposals must be submitted in sufficient time to be received and time-stamped at the above location on or before the published date and time shown on the RFP. The City of Mesquite will not be responsible for mail delivered from the post office. Proposals received after the published time and date cannot be considered and will be returned unopened. **Proposer shall submit one original, and one flash drive containing an electronic copy of the complete proposal and all attachments.**
6. Proposals will be received and publicly acknowledged at the location, date and time stated above. Only the name of the proposers responding to this request for proposal shall be released at the proposal opening. Other information submitted by the proposer shall not be released by the City during the proposal evaluation process or prior to contract award. At no time will confidential information, as noted by the proposer, be released.
7. Proposer shall attach official documentation from the State of Texas or other qualified certification agency of M/WBE status of your company with bid/proposal. This data is for informational purposes only and will not affect the bid proposal award.
8. A completed W-9 form will be required and submitted with bid.
9. In submitting an offer, respondent certifies that they have not participated in, nor have they been party to any collusion, price fixing or any other illegal or unethical agreements with any company, firm or person concerning the pricing offered.
10. The attached Non-Exclusion Affidavit for General Contractors must be signed, notarized, and submitted with bid proposal.
11. A representative of the proposing entity who is authorized to enter into contract on behalf of the proposing entity must manually sign proposals in ink. The person signing the proposal must indicate his/her title along with signature. Proposals received without proper signature will not be considered.
12. Any ambiguity in the bid proposal as a result of omission, error, lack of clarity or non-compliance by the proposer with specifications, instructions and all conditions shall be construed in favor of the City.
13. The City of Mesquite reserves the right to reject any and all proposals, waive formalities and to make award of bid proposal as may be deemed to the best advantage of the City. No proposal may be withdrawn within forty-five (45) days after date of opening.
14. This Contract may be terminated at any time with thirty-(30) day's written notice by either the City of Mesquite or successful proposer.
15. The City is not liable for any cost incurred by Proposers in replying to this RFP. This includes costs to determine the nature of the proposal, submitting, negotiating, presentations or any other costs a vendor would incur in responding to the RFP.
16. Proposers shall complete all information requested and blanks provided shall be filled in on the provided forms. Failure to completely describe the merchandise being proposed may result in rejection of your bid proposal.
17. The City is exempt from all sales and excise taxes.
18. The City of Mesquite reserves the right to evaluate variations from these specifications. If exceptions are made, proposer shall state wherein the merchandise fails to meet these specifications. Failure to completely describe

the merchandise being proposed may result in rejection of your proposal.

19. It shall be understood all proposals, responses, inquiries, or correspondence relating to or in reference to this RFP, and all reports, charges and proposal or referencing information submitted in response to this RFP shall become the property of the City and will not be returned. All restrictions on the use of data contained within a proposal and all confidential information must be clearly stated in the RFP. Proprietary information submitted in a proposal, or in response to the RFP, will be handled in accordance with the Texas Open Records Law and other applicable state statutes.
20. It is the vendor's responsibility to check for any addendums that might have been issued before the proposal closing date and time.
21. Cooperative Purchasing: As permitted under the Texas Local Government Code, Chapter 791025, other *government entities may wish to also participate under the same terms and conditions contained in this contract (piggyback)*. Each entity wishing to piggyback must have prior authorization from the City of Mesquite and vendor. If such participation is authorized, all purchase orders will be issued directly from and shipped directly to the entity requiring supplies/services. The City of Mesquite shall not be held responsible for any orders placed, deliveries made or payment for supplies/services ordered by these entities. Each entity reserves the right to determine their participation in this contract.

Successful proposer agrees to extend prices to all entities that have entered into or will enter into joint purchasing interlocal cooperation agreements with the City of Mesquite _____ Yes _____ No.

22. The proposal evaluation process will occur after the closing date. The City's evaluation and clarification process will commence. An evaluation team will review the proposals. Financial terms will not be the sole determining factor in this award. Other criteria described in this RFP will be considered, as well as any other factors the evaluation team determines may affect the suitability of the proposal for the City's requirements. A Proposer's submission of a proposal constitutes their acceptance of the evaluation technique.
23. The insurance requirements are included in the proposal document. Proposers agree to provide and to maintain the required types of insurance for the term of the contract. An original certificate of insurance will be required within 10 business days by the apparent low proposer once notification has been received.
24. ALL BIDDERS must submit with bid, either a Bid Bond on the form provided herein, a Cashier's Check or Certified Check in the amount of five percent (5%) of the total bid.
25. The contract is included for proposer's information so that proposers may be familiar with its contents and requirement. **Proposer shall not fill in or execute these forms at time of proposal submittal. Upon award of the proposal, the awarded vendor will be required to execute the contract.**

SPECIAL PROVISIONS

1. The successful proposer's rights and duties awarded by the contract may not be assigned to another without written consent of the City signed by the City's authorized agent. Such consent shall not relieve the assigned of liability in the event of default by the assignee.
2. Any deviations from specifications and alternate proposals must be clearly shown with complete information provided by the proposer. They may or may not be considered by the City.
3. No oral statement of any person shall modify or otherwise change, or affect the terms, conditions or specifications stated in the resulting contract. All change orders to the contract will be made in writing and shall not be effective unless signed by an authorized representative of the City.
4. The City shall have the right to modify this order subject to an adjustment in the price in accordance with the applicable provisions of the purchase order, if any, or pursuant to mutual agreements. No agreement or understanding to modify this order shall be binding on the City unless it is in writing and signed by an authorized representative of the City.
5. The City reserves the right to require additional technical and pricing information and negotiate all elements, which comprise the Vendor's proposal to ensure that the best possible consideration be afforded to all concerned. The City reserves the right to accept all or part of any proposal, to reject any or all proposals and to re-solicit for proposals.
6. **All questions must be submitted via email at purchasing@cityofmesquite.com by 2:00 p.m. on Friday, January 10, 2025, prior to proposal closing date.**
7. Proposers shall submit five current client references and five former client references.
8. Proposers shall fill out the following required documents, as noted in the bid proposal. If the following forms are not included, the bid proposal may be considered non-responsive.

Check List:

- Conflict of Interest Questionnaire
- Non-Exclusion Affidavit for General Contractors
- Prohibition on Contracts with Companies Boycotting Israel
- References
- Secretary of State Filing Certificate
- W-9
- Bid Bond, Cashier's Check or Certified Check
- Offeror's Response Letter
- Offeror's Questionnaire
- Proposal Form

CONTRACTING WITH THE CITY OF MESQUITE

Updated: January 15, 2016

Conflict of Interest Questionnaire And Disclosure of Interested Parties (Form 1295)

YOU WILL BE REQUIRED TO COMPLY WITH THE FOLLOWING:

Chapter 176 of the Texas Local Government Code is an ethics law that was initially enacted by the Texas Legislature with HB 914 in 2005 that requires disclosure of employment and business relationships local government officers may have with contractors, consultants and vendors who conduct business with local government entities. The law applies to any written contract for the sale or purchase of real property, goods, or services. Further information regarding Texas Conflict of Interest laws and the ***Conflict-of-Interest Questionnaire*** (FORM CIQ) can be found at the Texas Ethics Commission web site at the following web address:

<https://www.ethics.state.tx.us/filinginfo/1295/>

PLEASE COMPLETE THE ATTACHED FORM CIQ AND SUBMIT WITH YOUR RESPONSE.

Section 2252.908 of the Texas Government Code was enacted in 2015, by the Texas Legislature pursuant to HB 1295, which provides that a governmental entity may not enter into certain contracts with a business entity on or after January 1, 2016, unless the business entity submits a disclosure of interested parties (FORM 1295) to the governmental entity at the time the business entity submits the signed contract to the governmental entity. Further information regarding the disclosure of interested parties' law and FORM 1295 can be found at the Texas Ethics Commission web site at the following web address:

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

PLEASE DO NOT COMPLETE FORM 1295 UNTIL YOU HAVE BEEN NOTIFIED OF CONTRACT AWARD AND REQUESTED TO ELECTRONICALLY FILE FORM 1295 WITH THE TEXAS ETHICS COMMISSION.

CONFLICT OF INTEREST QUESTIONNAIRE
For vendor doing business with local governmental entity

FORM CIQ

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

OFFICE USE ONLY

Date Received

1 Name of vendor who has a business relationship with local governmental entity.

2 **Check this box if you are filing an update to a previously filed questionnaire.** (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information is being disclosed.

_____ Name of Officer

4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

Yes No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

Yes No

5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.

6 **Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).**

7

Signature of vendor doing business with the governmental entity

Date

CONFLICT OF INTEREST QUESTIONNAIRE
For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

(a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed;

or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

STANDARDS OF CONDUCT

The City of Mesquite conducts business with the public, business partners, vendors, and contractors under a set of rules to ensure that all City officials and employees discharge their duties in a manner designed to promote public trust and confidence in our city. This code of ethics, titled Standards of Conduct, is taken from the Mesquite City Code, Chapter 2, Art. IV, Sec 2-123.

The City wants you to be aware of the rules that its employees are required to follow while performing their services to you. A violation of state or federal statutes may occur if these rules are broken. It is hoped that by outlining these rules for you, your experience in dealing with the City of Mesquite will be both rewarding and satisfactory.

Acceptance of Gifts or Gratuities

Accepting gifts or gratuities by employees in consideration for the performance of their duties, or as an appreciation for their performance, is strictly prohibited.

- Please do not offer employees any gift, loans, or any other thing of value.
- Employees may not receive any fee or compensation for their services from any source other than the City, so please do not offer.
- Please do not offer to buy meals for employees.
- Employees may accept coffee, tea, soft drinks, snacks, etc. when attending meetings in your office.
- Letters to supervisors for exceptional service by employees are always welcome.

Conflicts of Interest

Employees are prohibited from engaging in any outside activities that conflict with, or have the appearance of conflicting with, the duties assigned to them in the employment of the City.

- Please do not ask employees for any special favor or consideration that is not available to every other citizen.
- Please do not ask an employee to disclose any information that is not available to every other citizen through normal public information channels.
- Please do not offer to compensate the employee by offering to hire, or do business with any business entity of the employee or family member
- Do not ask employees to represent you or your company or make any recommendations on your behalf other than those that are a part of their official duties with the City.
- Please do not ask employees to endorse the products or services of your company.
- Please do not ask employees to hand out or post advertising materials.

Solicitation by City Employees

Employees may not solicit gifts, loans, or any other items of value from people doing City business that will be used by them personally.

- If you are asked to pay a fee for services that you believe is improper or illegal, please contact the City's ethic's officer at **972-329-8723**. (payments should only be made to designated cashiers or clerks).
- Employees are prohibited from taking retaliatory action against you for failing to comply with any request unless the request is within the scope of the employee's official duties for the City.

Use of City Equipment, Facilities and Resources

Use of City equipment, facilities and resources is authorized only for City purposes and for those activities permitted by City ordinance and policy.

- Please do not ask employees to use City equipment to run errands or perform tasks for your benefit.
- Employees may not perform tasks, nor conduct any business not related to their official duties while on City time.

Your Rights and Expectations

When dealing with employees of the City of Mesquite you have the right to honest, fair, and impartial treatment. You may expect prompt, courteous, and professional service from our employees who are expected to understand and practice good customer service skills. Employees are tasked to uphold the public trust through the ethical performance of their duties. We understand that the enforcement of regulatory guidelines and codes may sometimes be a cause for concern; however, you may rest assured that we are responsible to all of the citizens of Mesquite and our goal is to serve them to the best of our ability.

Should you have any concerns or questions concerning this information or the conduct of any of our employees please contact the City's ethics officer at 972-329-8723. All calls to the City's ethics officer are confidential and your name (or any other identifying information) will not be disclosed.

Cliff Keheley
City Manager



**INSURANCE VERIFICATION PROGRAM
LETTER OF AUTHORITY**

TO: All Awarded Vendors

RE: Insurance Verification

Dear Vendor:

The City of Mesquite has provided Insurance Certificate Administrators (ICA) authority to monitor certificates of insurance, endorsements and other policy information from our vendors and contractors. ICA will request, receive, evaluate, and order corrections from such companies.

ICA will provide the City of Mesquite with verification that any insurance document your agent or insurer certifies conforms to the contract requirements.

It is necessary that you have your agent or insurer promptly cooperate with ICA by having them provide the information ICA requests.

All correspondence regarding certificates of insurance and insurance policy information for the City of Mesquite should be sent to the following address. There is no need to provide copies to the City of Mesquite.

City of Mesquite
c/o ICA
input@icaprogram.com
P.O. Box 2566
Fort Worth, TX 76113-2566
Phone: 817-332-5313

Please forward the enclosed instructions to your agent/broker. Thank you for your cooperation.

INSURANCE

A. AMOUNTS OF INSURANCE

Contractor agrees to provide and to maintain the following types and amounts of insurance, for the term of this Contract.

<u>Type</u>	<u>Amount</u>
1. <u>Worker's Compensation</u> and <u>Employer's Liability</u>	<u>Statutory Limits</u> \$100,000 per occurrence
2. <u>Commercial (Public Liability)</u> <u>including but not limited to:</u>	<u>Bodily Injury:</u> \$500,000 per person \$1,000,000 per occurrence and
A. Premises/Operations	
B. Independent Contractors	
C. Personal Injury	<u>Property Damage:</u>
D. Products/Complete Operations	\$500,000 per occurrence
E. Contractual Liability (insuring above indemnity provisions)	with <u>general aggregate</u> of \$1,000,000
3. <u>Business (Commercial)</u> <u>Automobile Policy:</u>	Combined Single Limit/ \$500,000

The preceding amounts notwithstanding, the City reserves the right to increase the minimum required insurance to be effective thirty (30) days after notice is sent to the address provided herein. The Contractor may pass through to the City all costs for obtaining the increase in the insurance coverage.

B. OTHER INSURANCE REQUIREMENTS

The Contractor understands that it is its sole responsibility to provide the required Certificate and that failure to comply within 10 business days after notice of award and according to the requirements of this article shall be a cause for termination of this Contract.

For any pesticide spraying performed, the City of Mesquite will require the successful bidder to carry Pollution Liability Insurance and Environmental Impairment Liability Insurance.

Insurance required herein shall be issued by a company or companies of sound and adequate financial responsibility and authorized to do business in the State of Texas. All policies shall be subject to examination and approval by the City Attorney's office for their adequacy as to form, content, form of protection, and providing company.

Insurance required by this Contract for the City, as additional insured shall be primary insurance and not contributing with any other insurance available to City, under any third-party liability policy. The Contractor further agrees that with respect to the above-required insurances, the City shall:

1. Be named as additional insured/or an insured, on all required insurance except workers' compensation. Blanket Endorsements are acceptable in meeting this requirement if copies of the endorsements are provided along with the certificate. If using a form that has specific boxes labeled for additional insured, checking those specific boxes is acceptable in meeting this requirement as well.

2. Be provided with a waiver of subrogation, in favor of the City on all required insurance. Blanket Endorsements are acceptable in meeting this requirement if copies of the endorsements are provided along with the certificate. If using a form that has specific boxes labeled for waiver of subrogation, checking those specific boxes is acceptable in meeting this requirement as well.
3. Be provided with an unconditional 30 days' advance written notice of cancellation or material change.
4. Prior to execution of this Agreement, proof of insurance shall be provided through the office of the City Secretary with either their original Certificate of Insurance or their insurance policy evidencing the above requirements. Thereafter, new certificates or copies of the policies shall be furnished prior to the expiration date of any prior certificate.

C. ADDITIONAL WORKER'S COMPENSATION INSURANCE REQUIREMENTS

1. Definitions:
Certificate of coverage ("certificate") A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement showing statutory Worker's Compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the contractors'/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project (subcontractor" in 406.096) - includes all persons or entitles 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 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.
2. The contractor 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, Section 401.011 (44) for all employees of the contractor providing services on the project, for the duration of the project.
3. The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.
4. If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.
5. The contract shall obtain from each person providing services on a project, and provide to the governmental entity:
 - (a) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage for all persons providing services on the project; and
 - (b) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
6. The Contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

NON-EXCLUSION AFFIDAVIT FOR GENERAL CONTRACTORS

Federal, state, and local government agencies, not-profits, and other organizations that use federal money to fund all or part of any program or project are required to follow specific requirements regarding the use of such federal funds. One of these requirements is that no contract, subcontract, grant, financial assistance, or other forms of assistance provided using federal funds may be awarded to individuals or entities that have been suspended, debarred, or otherwise excluded from participation in federally funded programs.

The U.S. federal government maintains a Web site known as the "System for Award Management" (SAM) at www.sam.gov. One of the purposes of the SAM Web site is to provide a comprehensive list of all individuals, firms, and other entities that have been suspended, debarred, or otherwise excluded from participation in federally funded contracts, subcontracts, grants, etc. SAM provides a simple means of helping government, non-profit agencies, and other organizations ensure that they do not award federally funded grants, contracts, subcontracts, or other financial or non-financial benefits to any individual, firm, or other entity that has been excluded by any agency from participation in such federally funded activities.

I, _____ (Contractor Representative), hereby certify that neither I nor _____ (Name of the company or organization I represent) nor any subcontractors that I or said company may employ to work on any federally funded activity have been suspended, debarred, or otherwise excluded by any federal agency from participation in any federally funded activity. I further acknowledge my understanding that, before entering into a contract with me or with the company or organization I represent, City of Mesquite staff will perform a search on www.sam.gov to verify whether I, the organization I represent, or any subcontractors I may employ to work on any federally funded activity, have been excluded from participation in any federally funded activity.

Signature of Contractor Representative

Date

Sworn to and subscribed before me this _____ day of _____, 20_____

Notary Public in and for _____ County, _____ (Insert State Name)

PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL

Chapter 2271 of the Texas Government Code provides that the City may not enter into a contract* with a company for goods or services unless the contract contains a written verification from the company that it: (i) does not Boycott Israel; and (ii) will not Boycott Israel during the term of the contract.

“Boycott Israel” is defined to mean refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. “Company” is defined to mean a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

*** The requirement applies only to a contract that: (1) is between the City and a company with 10 or more full-time employees; and (2) has a value of \$100,000 or more that is to be paid wholly or partly from City funds.**

I, _____, the _____
(Name of Certifying Official) (Title or Position of Certifying Official)

of _____, does hereby verify on behalf of said
(Name of Company)

company to the City of Mesquite that said company does not Boycott Israel and will not Boycott Israel during the term of this contract.

Signature of Certifying Official

Title

Date of Certification

PROPOSAL INFORMATION

- A. The City of Mesquite, Texas (“City”) is seeking a Construction Manager at Risk firm (“CMAR”) to perform typical and complete Construction Management services in conjunction with the design and remodel of the Mesquite Convention Center, 1700 Rodeo Center Drive, Mesquite, Texas 75149. The CMAR will work with the City entities, staff, and any appropriate consultants.
- B. In seeking a CMAR, the City is looking for a qualified general contractor, with prior experience with improvements similar to as set forth herein:
- 1) The CMAR will be able to work with the Architect during the design phase, prior to construction, to analyze the Architect’s design, including the plans and specifications, to ensure the feasibility and constructability of the project design, and to assist in bringing the estimated construction cost of the project within the construction budget, through the selection of alternate construction systems, detailed and prompt cost estimating, scheduling, and other means, without adversely affecting the capacity and quality of the project; and
 - 2) The CMAR will propose a Guaranteed Maximum Price (GMP) for the construction of the project, which is within the approximate \$5.0 million project construction budget, after or during the preconstruction services, **and prior to a 100% set of construction documents**. It is the City’s intent that upon successful completion of the preconstruction services that the CMAR will serve as the general contractor for the project during the construction phase.

Statutory Requirements for a Construction Manager-at-Risk Contract under Texas Government Code Chapter 2269 - Contracting and Delivery Procedures for Construction Projects and City Requirements:

- A. A “Construction Manager-at-Risk (CMAR)” is a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for construction, rehabilitation, alteration, or repair of a facility at the contracted price as a general contractor and provides consultation to the City regarding construction during and after the design of the facility.
- B. Architects and Engineers: The City has selected ARCHITECT to prepare construction documents for the Project and who has full responsibility for complying with the requirements of Chapter 1051, Subtitle B of the Texas Occupations Code (Regulation of Architecture and Related Practices).

Project Scope, Schedule, Payment, and Procurement:

A. Scope of Work:

- 1) Preconstruction Services: The CMAR will work with the Architect and the City during the design process to ensure the feasibility and constructability of the remodel. The CMAR will also be responsible for cost estimates during both the schematic and design development phases of the project. The CMAR will work with the Architect and City to ensure that the cost of construction of the Project is within the estimated Construction Budget through the selection of construction systems and materials, detailed CSI format cost estimating, scheduling, and other means. The CMAR will also review the project schedule and identify critical path and long-lead items. **Upon the completion of the design development phase and prior to the completion of the 100% set of construction documents, the CMAR will submit a proposal of a Guaranteed Maximum Price (GMP) for the construction of the Project, which is within the City's Construction Budget.**
- 2) Bidding Services: Should the City exercise its option; the CMAR will serve as General Contractor to complete all work for the bidding and construction of the project. The CMAR will be responsible for coordination of all bids, advertisement, and solicitation, bid procurement, selection of sub-consultants or trade contractors as outlined in Texas Government Code Chapter 2269. CMAR will also be responsible for issuance of pre-purchase orders for long lead items, if required.
- 3) Construction Services: Should the City exercise its option; the CMAR will serve as General Contractor to complete all work for the construction of the Project. The scope of Construction services will be determined based on the final Drawings and Specifications and may include, but not be limited to, **one or more** of the following areas of work: site clearing, excavation, fill, select fill and backfill; site utilities; concrete sidewalks, paving and roadway / parking lot work, rough and finish grading, topsoil and grass planting; fencing and gates, site lighting, retaining wall construction, landscape installation, irrigation, concrete piers, concrete slab-on-grade, concrete masonry (CMU) interior walls, cast stone lintels, limestone and plaster exterior veneer, concrete floor topping, masonry, structural steel frame (columns and joists), metal roof deck, metal wall and roof panels, miscellaneous metals and metal fabrications; rough and finish carpentry, millwork and casework; damp proofing and waterproofing, caulking and sealants, thermal insulation, flashing and sheet metal, metal soffit panels, metal roofing, modified bitumen roofing; other roofing, wood doors, metal doors and frames, aluminum doors and frames, glass and glazing, finish architectural hardware, acoustical ceilings, resilient flooring and base, carpeting, tile or wood flooring, metal studs and support systems, gypsum drywall, painting and special floor coatings, interior and exterior signage; metal louvers and miscellaneous specialties; furnishings and appliances; equipment and specialty equipment; sound enhancement systems; fire protection; lightning protection; telecommunications, audio / visual and security systems and mechanical, plumbing and electrical systems, building demolition, asbestos abatement, debris haul off services and any other requirements set out in the Contract Documents.
- 4) The work does not include inspection services, and the materials testing services necessary for City's acceptance of the Project, which will be performed under a separate contract with an independent provider engaged directly by the City.
- 5) The facility is described below:

Mesquite Convention Center- The convention center facility consists of ballrooms, breakout rooms, and back-office areas that together total approximately 21,000 square feet. There is also a large open space exhibit hall that is approximately 35,000 square feet. The purpose of this remodel is to update the public facing ballrooms, breakout rooms, and all restroom facilities. Updating of lighting within all public facing areas is also desired. Coordination of all construction activities with the convention center management company is essential for this remodel as the facility will remain open during the project.

- 6) The **Location:** 1700 Rodeo Drive, Mesquite TX, 75149. **Property Description** is included in as Attachment D at the end of this document. This document is included for information purposes only and no warrantee or guarantee is implied or expressed by the City. BY SUBMITTING A PROPOSAL, THE PROPOSAL UNDERSTANDS AND AGREES THE LOCATION MAP AND PROPERTY DESCRIPTION IS INFORMATIONAL ONLY AND SHALL NOT BE USED OR RELIED ON BY THE PROPOSER FOR ANY PURPOSES.
- 7) The City has impact and related costs for late completion. Liquidated damages of \$500.00 per day are anticipated and will be assessed for late completion.
- 8) A Field Office must be assembled on-site by the CMAR. The Field Office will provide office space for the CMAR field team, plus additional space for project meetings. The Field Office shall be equipped with a copier, printer, available power and Wi-Fi capabilities for computer equipment and telephone land line or cellular telephone.
- 9) CMAR staff at a minimum shall be a full time on-site general superintendent and project clerk, as well as a part time project manager and project executive. Percentages of part time staff shall be negotiated. CMAR project team staffing shall not be changed without the consent of the City.

B. Payment:

The City will make all construction payments directly to the CMAR, for their distribution of payments to the subcontractors and suppliers as appropriate. Accounting by the CMAR will be on a monthly line-item submittal based on a preapproved Schedule of Values. Release of lien for work to date, along with an updated schedule and project status report, will be required for each monthly payment requested by the CMAR.

C. Procurement:

- 1) The successful Offeror will enter into a Construction Manager-at-Risk Agreement (“Agreement”) with the City (where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price).
- 2) Prior to or at the time of execution of the Agreement, the CMAR must provide the City required insurance and the following required bonds on forms approved by the Mesquite City Attorney’s Office: bid, payment, performance, project maintenance.
- 3) The CMAR and all subcontractors must comply with the prevailing wage rate requirements described in the Agreement.
- 4) The CMAR must select subcontractors or trade contractors in accordance with the terms of applicable law and the Agreement, which are summarized as follows:
 - a) A CMAR shall publicly advertise and solicit either competitive bids or competitive sealed submittals 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 general conditions. A CMAR may seek to perform portions of the work itself if the CMAR submits its bid or proposal for those portions of the work in the same manner as all other trade contractors or subcontractors and if the City determines that the CMAR’s bid proposal provides the best value for the City.
 - b) The CMAR, the Architect, and the City shall receive and publicly open all trade contractor or subcontractor bids or submittals in a manner that does not disclose the contents of the bid or proposal during the selection process. The CMAR will document the basis of its selection and make the evaluations public not later than the 7th day after the date the contract is awarded, as required by law. All trade or subcontractor bids are to be reviewed and approved by the City prior to award.

- c) If the CMAR reviews, evaluates, and recommends to the City a bid or proposal from a trade contractor or subcontractor, but the City requires a bid or proposal from another trade contractor or subcontractor to be accepted, then, pursuant to the terms of the Agreement, the City shall compensate the CMAR by a change in Contract Sum, Contract Time, or Guaranteed Maximum Price for any additional cost and risk, which has been demonstrated to City's satisfaction and as required by the Agreement, that the CMAR may incur because of the City's requirement that another trade contractor or subcontractor bid or proposal be accepted.
- 5) The City reserves the right to contract separately with other consultants, suppliers and vendors as deemed in the best interest of the project.
- 6) The City may elect to procure certain materials / equipment / furnishings with coordination and scheduling support from the CMAR. The materials / equipment / furnishings would then be assigned to the CMAR with the full acceptance of coordination and installation. Proposal is to include coordination of the following potentially City-supplied equipment.
 - a) Computer and telecommunications equipment and installation
 - b) Security and audio / visual equipment and installation
 - c) Furniture installation
 - d) Certain appliances as specified

Notice to Offerors

Request for Proposals:

The City of Mesquite, Texas (the "City") is accepting Submittals for a CMAR contract, pursuant to Section 2269 *et seq.* of the Texas Government Code, in accordance with the terms, conditions and requirements set forth in this Request for Proposals ("RFP").

OFFERORS ARE CAUTIONED TO READ THE INFORMATION CONTAINED IN THIS RFP CAREFULLY AND TO SUBMIT A COMPLETE RESPONSE TO ALL REQUIREMENTS AND QUESTIONS AS DIRECTED.

Pre-Submittal Conference:

A pre-submittal conference will be held at 2:00 p.m. on Tuesday, January 6, 2025, located on second floor at City Hall Building, 1515 N. Galloway Avenue, 1515 Engineering, Galloway Avenue, Mesquite, TX 75149. The purpose of this conference is to discuss with the Proposed Offerors the service to be provided and for the Proposed Offerors to ask questions arising from their review of the Request for Proposals. This pre-proposal conference is for informational purposes only. Answers furnished will not be official until verified in writing by the issuing office or department. Answers that change or substantially clarify the Request for Proposals will be affirmed in writing. Addendums will be issued on the City of Mesquite's bid website.

Submittal Format:

Responses must comply with the Submittal Requirements set out in Proposal Information section of this RFP.

Submittal Deadline:

The City will accept Responses to this RFP until Wednesday, January 15, 2025, at 2:00 p.m., after which time all responses timely received will be publicly opened, and the names of the Offerors read aloud. Responses received after the stated submission time will not be considered.

Place for Submission:

One (1) original and one (1) electronic copy (USB) of the Proposal are required. Responses are to be delivered January 15, 2025, at 2:00 p.m., to the City of Mesquite Purchasing Department by mail or hand delivery addressed to:

Ryan Williams
Manager of Purchasing
Purchasing Division
City of Mesquite
757 N. Galloway
Mesquite, Texas 75149

It is the responsibility of each Offeror to make sure responses are submitted in a timely manner. The City is not responsible for delays in mail delivery, or failure of couriers to deliver responses prior to the expiration of the deadline for submission. The City shall not be obligated to reimburse any expenses incurred by the Offeror in preparing a response that is not accepted or considered.

The City's Contact:

For technical questions concerning this RFP, you may contact:

Mark Kerby
Special Projects Director
972-216-6797
mkerby@cityofmesquite.com

The City specifically requests that Offerors restrict all contact and questions regarding this RFP to the above-named individual and asks that questions or requests for interpretation be submitted by email.

Inquiries and Interpretations:

Responses to inquiries which directly affect an interpretation or change to this RFP will be issued in writing by addendum. Requests for interpretation or changes to this RFP must be received by the **City's Purchasing Division** (purchasing@cityofmesquite.com) by the **time and date listed in Key Events Schedule** below. All such addenda issued by the City / Architect prior to the last date that submittals are required to be received shall be considered part of the RFP, and the Offeror shall be required to consider and acknowledge receipt of such in its Response. Firms receiving this RFP other than directly from the City are responsible for notifying the City that they are in receipt of a submittal package and are to register with the City of Mesquite's Ebid system. It is the obligation of the Offeror to make sure that it has received all addenda prior to submission of its Response. Offerors may obtain information on all addenda issued to the date of inquiry from the **City's Purchasing Division** (purchasing@cityofmesquite.com). Only those responses to inquiries, which are made by formal written addenda, shall be binding. Oral and other interpretations or clarifications will be without legal effect and shall not be binding on the City. The Offeror must acknowledge receipt of all addenda in its Response.

Selection Procedure:

The procedure for selecting the CMAR is described in Proposal Information section of this Request for Proposal.

Public Information:

The City considers all information, documentation and other materials requested to be submitted in response to this solicitation to be of a non-confidential and / or non-proprietary nature and therefore shall be subject to public disclosure under the Texas Public Information Act (*Texas Government Code*, Chapter 552.001, *et seq.*) after a contract is awarded.

Offerors are hereby notified that the City strictly adheres to all statutes, court decisions, and opinions of the Texas Attorney General with respect to disclosure of public information.

Offeror's Acceptance of Evaluation Methodology:

WAIVER OF CLAIMS: Each Offeror by submission of a Response to this RFP waives any claims it has or may have against the Architect, its consulting engineers, or any other consultants, and their respective employees, officers, members, directors and partners; and the City, its employees, officers and elected officials, agents, representatives, that are connected with or arising out of this RFP, including, the administration of the RFP, the RFP evaluation, and the selection of qualified Offerors to receive a Request for Proposals. Submission of proposals indicates Offeror's acceptance of the evaluation technique and Offeror's recognition that some subjective judgments must be made by the City during the determination of qualification. Without limiting the generality of the foregoing, each Offeror acknowledges that the basis of selection and that the evaluations shall be made public in accordance with applicable law and waives any claim it has or may have against the above-named persons, due to information contained in such evaluations.

Offeror’s Commitment:

Offeror understands and agrees that the City has the ability to terminate its selection process at any time, and to reject any and all Responses, or any and all Submittals, and that the City has made no representation, written or oral, that it will award a contract for this Project. Furthermore, Offeror recognizes and understands that any cost incurred by the Offeror which arises from Offeror’s submittal of a Response to this RFP, or subsequent Proposal to the City’s Request for Proposals, if applicable, shall be the sole responsibility of Offeror.

Offeror’s Eligibility:

Only individual firms or formal joint ventures may respond to this RFP. Two firms may not respond jointly unless they have formed a joint venture. (This does not preclude an Offeror from having consultants.)

Key Events Schedule:

Currently, the City has established the following tentative timeline for its selection process:

Issue Request for Proposals:	December 12th and 19th, 2024
Pre-Proposal Conference:	January 6,2025, at 2:00 p.m. RM 1515 Engineering, 757 N. Galloway Avenue, Mesquite, TX 75149
Interpretation Deadline:	January 10,2025 at 4:00 p.m.
Issue Addendum:	January 10,2025
RFP Deadline:	January 15,2025, at 2:00 p.m. 757 N. Galloway Ave., Mesquite, TX 75149
Interviews, if needed:	January 20-24, 2025
Recommendation to Award:	February 03, 2025

This timeline is subject to change by City.

PROPOSAL EVALUATION

RFP shall be awarded to the best-value proposal. The proposals will be evaluated on the factors outlined below which shall be applied to all eligible, responsive proposals in selecting the successful offeror. Award of a contract may be made without discussion with proposers after responses are received. Proposals should, therefore, be submitted on the most favorable terms.

Sealed Proposal Submission

Proposals shall be sealed and clearly marked with the Proposer's name and return address and indicate the proposal number and title. Facsimile or e-mail submitted proposals will not be accepted. Responses received after the deadline cannot be considered and will be returned unopened. The City is not responsible for delays occasioned by the U.S. Postal Service, the internal mail delivery system of the City, or any other delivery method employed by the Proposer.

Proposers or their authorized representatives are expected to fully inform themselves as to the general terms and conditions, requirements, and specification of this Proposal Invitation before submitting proposals. Failure to do so will be at the proposer's own risk.

CRITERIA FOR EVALUATION IN ORDER OF IMPORTANCE:

- | | |
|-------------------|-----|
| 1. Qualifications | 55% |
| 2. Fees | 45% |

Negotiations may be conducted with responsible proposers who submit proposals determined to be susceptible of being selected for award. **All proposers will be accorded fair and equal treatment with respect to any opportunity for negotiation and revision of proposals.** Revisions to proposals may be permitted after submission and before award for the purpose of obtaining best and final offers.

Selection Process, Qualifications Being Sought and Evaluation Criteria:

A. Selection Process:

- 1) The process for selection of a Construction Manager at Risk for this project will be a one-step process, as outlined in Texas Government Code Chapter 2269. The time period for responding to the RFP will be as set out on the first page of the RFP. After receiving the Submittals, the City will publicly open and read aloud the names of the parties providing submittals along with fees and prices (referred to herein as "Offerors") received in accordance with the submission deadline.
- 2) The City will evaluate and rank the Offerors based on the Selection Criteria set out in the RFP. Unless the City rejects all Submittals, the City will authorize negotiations with the first-ranked Offeror. If the parties cannot negotiate a successful agreement, the City will terminate negotiations with the first-ranked Offeror and commence negotiations with the second-ranked Offeror in the same manner. If an agreement is not reached, the City will proceed with this process, in order of ranking, until an agreement is reached, or all Submittals are rejected. The City reserves the right to reject any and all Submittals.

B. Qualifications Sought:

- 1) The Offeror's successful and cost-effective experience and expertise with municipal projects of similar size, scope, and quality.

- 2) The Offeror's past performance and demonstrated capability on similar projects with this or other local municipalities and on construction of publicly funded projects.
- 3) The Offeror's capability to provide the resources, including financial, equipment and staffing, necessary to meet project requirements.
- 4) The Offeror's proposed project personnel as shown in a project organizational chart and including their qualifications and municipal construction experience as evidenced by their resumes.
- 5) The Offeror's recent experience with project cost estimates, as well as project budget and schedule adherence.
- 6) The Offeror's safety record supported by accurate and verifiable data.
- 7) The Offeror's reference letters indicating the quality of previous work on similar municipal projects and satisfaction from past customers.

Consideration may also be given to any additional information and comments at the selection phase if it reflects on the Offeror's qualifications to perform the services required for this Project.

Evaluation Criteria: Responses to Offeror's Questionnaire for RFP 2025-050 will be scored on a 100-point scale using the criteria below.

Contractor Qualifications – 55 points to be awarded as follows:

General Information & Safety Record (10 points)

- Firm's number of years in business, size, and staffing
- Firm's financial health and stability
- Firm's safety record

Municipal Projects & Experience (15 points)

- Experience of the proposed project team on similar projects
- Firm's experience on projects of similar scope, size, and quality
- Quality of past construction; provide a list of municipal projects to tour

Contractor Staff Experience & Client Relationships (15 points)

- Project organization chart and resumes
- Reference letters
- Effective communications and cooperation

Adherence to Budget & Schedule (15 points)

- Current workload and availability to perform the work
- Firm's record of successful completion of municipal projects
- Recent experience with project cost estimates; provide examples
- Recent experience with project budget and schedule adherence

Contractor Fees - 45 points

- Proposed Phase I Preconstruction Services Fee (10 points)
 - *Note: A pre-construction service proposal of \$0 will be considered as non-responsive.*
- Proposed Phase II Construction Services Fee (35 points)

OFFEROR'S RESPONSE LETTER TO RFP 2025-050

Ryan Williams
Manager of Purchasing
Purchasing Division
City of Mesquite
757 N. Galloway
Mesquite, Texas 75149

Mr. Williams:

This response is being submitted by the undersigned, on behalf of the Offeror:

The person signing this Response on behalf of the Offeror represents to City that:

- 1) The information provided herein is true, complete, and accurate to the best of the knowledge and belief of the undersigned; and
- 2) He / she has full authority to execute this Response on behalf of Offerors.
- 3) Offeror has received the Addenda to this RFP, specifically; Addenda numbered _____ and dated_____.

Executed this ____ day of _____, 202__.

OFFEROR: _____

By: _____

Name: _____ Title: _____

Email: _____

Office Phone: _____ Cell: _____

Attachment: Responses to Offeror's Questionnaire

OFFEROR'S QUESTIONNAIRE FOR RFP 2025-050

Offerors are required to submit a complete response to each of the below listed items. Responses requiring additional space should be brief and submitted as an attachment to the Offeror's Questionnaire.

1. Legal name of the company: _____

Authorized point of contact for the company:

Name: _____ Title: _____

Email: _____ Cell: _____

Address of office that would be providing service:

Main phone: _____ Direct phone: _____

Number of years in Business: _____

Type of Operation: Individual Partnership Corporation

Number of Employees: _____ Annual Sales Volume: _____

State whether you will provide a copy of your company's financial statements for the past two (2) years, if requested by the City. Yes No

2. Provide a financial rating of your company and any documentation (e.g., a Dunn & Bradstreet analysis), which indicates the financial stability of the company.

3. Is your company currently for sale or involved in any transaction to expand or to become acquired by another business entity? If yes, please explain the impact both in organizational and directional terms.

Yes No

4. Provide any details of all past or pending litigation or claims filed against your company arising out of or in connection with your company's performance under a contract for construction management and / or construction services. Describe how such suit or claims were resolved.

See attached explanation N/A

5. Is your company currently in default on any loan agreement or financing agreement with any bank, financial institution, or other entity? If yes, specify date(s), details, circumstances, and prospects for resolution.

Yes No

6. Does any relationship exist between your company and any of City's officers, employees whether by relative, business associate, capital funding agreement or any other such kinship? If yes, please explain.

Yes No

7. Provide your company's safety data including your Experience Modifier Rate (EMR), Recordable Incident Rate (RIR) and Loss Indicator Rate (LIR).
8. Provide a minimum of three and a maximum of five projects with photos for which your firm has provided / is providing construction management or construction services which are most related to this project. In determining which projects are most related, consider same or related use of facilities; related size and complexity; whether the project consisted of an expansion of an existing facility or new construction; how many members of the proposed team (and their role) worked on the listed project; and how recently the project was completed. List the projects in priority order, with the most related projects listed first. City of Mesquite staff may request site visits of the projects your firm identifies.
9. For each of the listed projects, provide the following information: construction cost (original Budget, GMP and final construction cost), current phase of development, estimated (or past) completion date, type of construction services provided (CM at risk with GMP, CM-agency, design/build, general contractor-low bid, general contractor through sealed Submittals), owner's contact person and telephone number, and the name and telephone number of the project architect.
10. Describe your company's quality assurance program, what are your company's requirements, and how are they measured? In particular, describe the way your firm maintains quality control during the pre-construction and construction phases.
11. Provide a project organization chart along with resumes of key personnel; Project Manager, Estimator, and Superintendent that shows experience with projects of similar size, complexity, and scope.
12. Provide customer reference letters from no less than three (3) public entities with which Offeror currently has contracts and / or has previously provided construction management services of equal type and scope within the past five (5) years. **DO NOT USE REFERENCES FROM CURRENT CITY OF MESQUITE OFFICIALS.**
13. Describe your firm's past performance on other contracts for the City of Mesquite or other cities (e.g., cost control, cost savings, schedule control) and your firm's demonstrated technical competence and management qualifications with CMAR projects, particularly those that are similar to the proposed project type. Please provide specific examples and owners' contact information.
14. Provide details regarding any special services, management characteristics or other benefits / advantages offered for the City in selecting your company.
15. Explain your firm's current workload and availability for this project. Please list current projects including number of staff committed, phase of development and projected completion date.

PROPOSAL FORM RFP 2025-050

FIRM: _____

ADDRESS: _____

PRIMARY CONTACT NAME: _____

TITLE: _____

SIGNATURE: _____

EMAIL: _____

OFFICE PHONE: _____

CELL PHONE: _____

PROJECT IDENTIFICATION:

PROJECT NAME: **Mesquite Convention Center Remodel**

PRICING:

Proposed Phase I (Design) Services Fee
(Lump Sum with descriptions) _____

Proposed Phase II (Construction) Services Fee
(% of the Construction Cost) _____

Please include additional lines as needed for the items above.

QUESTIONS

All questions or clarifications shall only be directed in writing via e-mail to purchasing@cityofmesquite.com before the designated deadline for written questions. Questions received after the date specified above may not receive response. Any contact or attempt to contact any other employee of the City regarding this RFP may result in the immediate disqualification of the Proposer. Oral and other interpretations or clarifications will be without legal effect. Only questions answered by formal written addenda will be binding.

TERMINATION FOR DEFAULT

The City of Mesquite reserves the right to enforce the performance of this contract in any manner prescribed by law or deemed to be in the best interest of the City in the event of breach or default of this contract. City of Mesquite reserves the right to terminate the **contract** immediately in the event the successful proposer fails to:

- ◆ meet delivery or completion schedules
- ◆ otherwise perform in accordance with the accepted proposal

Breach of contract or default authorizes the City to award to another proposer, purchase elsewhere, and charge the full increase in cost to the defaulting proposer.

REFERENCES

Five (5) Professional References (Include: Names, Addresses, Phone No's., Dates, Work Description and Contract Amounts.)

1. _____

2. _____

3. _____

4. _____

5. _____

BID BOND

Bidders shall submit a Cashier's or Certified Check or a Bid Bond from a reliable surety company in the amount of five percent (5%) of Phase I bid. If a Bid Bond is submitted, the forms provided herein must be complete and signed by a surety licensed to do business in Texas. Bid security should be enclosed in the same envelope with the bid. Bids without the required bid security are subject to disqualification.

The required bid security shall serve as a guarantee that the successful bidder will enter into a contract and execute any additional bond and guarantee forms provided within ten (10) days after notice of award of contract. If no additional bonds are required, said bid security shall serve as a guarantee that the successful bidder will deliver all material, equipment and/or services in accordance with the bid and specifications.

Such security financially protects the City against a bidder's failure to do any of the above and is subject to forfeiture as liquidated damages if the successful bidder fails or refuses to enter into the contract for any of the following reasons: 1) The successful bidder fails to provide insurance as required in the contract documents within five (5) business days of notification that bidder is the apparent low bidder. 2) The successful bidder fails, within ten (10) calendar days from award of the bid by the Mesquite City Council, to submit properly executed performance and payment bonds as required by the Contract. If no performance and payment bonds are required, such security is subject to forfeiture as liquidated damages if the successful bidder fails or refuses to deliver all materials, equipment and /or services in accordance with the bid and specifications.

If applicable, the city shall retain the bid security submitted by the two next lowest bidders until the successful bidder executes the contract and bonds and provides all insurance as required herein. If no additional bonds are required, the bid security will be retained until delivery of all materials, equipment and / or services in accordance with the bid and specifications. If either of the next two low bidders becomes the low bidder, that bidder shall be subject to the forfeiture provisions stated above. Bid security submitted by all other bidders shall be returned as soon as practicable after the bid opening.

BID BOND

Bond No.: _____
(by Surety)

STATE OF TEXAS §

§ KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF DALLAS §

THAT _____, of the City of _____, _____ County, State of Texas (hereinafter referred to as "Principal"), and _____, authorized under the laws of the State of Texas to act as Surety on bonds for principals (hereinafter referred to as "Surety") are held and firmly bound unto the City of Mesquite (hereinafter referred to as "City") in the penal sum of \$_____ (an amount equal to 5% of the approximate total amount of the bid or if the bid is based upon alternates and/or addenda, at least 5% of the greatest amount bid by the bidder or Principal herein as evidenced in the Bid Proposal) for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, by these presents;

WHEREAS the Principal has submitted on or about this date, a bid proposal offering to perform the following: _____ **CITY CONTRACT NO.** _____ in accordance with the specifications and terms and conditions related thereto, to which reference is hereby made;

NOW, THEREFORE, the condition of this obligation is such that if the said Principal's offer as stated in the bid proposal is accepted by the City, and the said Principal executes and returns to the City the number of original counterparts of the contract required by the City, on the forms provided by the City, for the materials, equipment and/or services described herein and also executes and returns the same number of Performance, Payment and Maintenance Bonds, if required, on the forms provided by the City, within the time provided in the specifications, then this obligation is null and void, otherwise, it is to remain in full force and effect;

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument on this ____ day of _____, 202__.

PRINCIPAL:

SURETY:

Signature

Signature

Printed Name

Printed Name

Title

Title

Company

Company

Street Address

Street Address
(P. O. Box is not acceptable)

City State Zip Code

City State Zip Code

Phone Number
(Dallas Telephone Number)

SURETY'S DALLAS COUNTY REGISTERED AGENT FOR SERVICE (REQUIRED):

Printed Name: _____

Title: _____

Company: _____

Street Address: _____
(P. O. Box is not acceptable)

City State Zip Code

Phone Number: _____
(Dallas County Telephone Number)
(Attach dated Power of Attorney for Surety)

ATTACHMENT A

CITY OF MESQUITE GENERAL CONDITIONS FOR BUILDING CONSTRUCTION

CITY OF MESQUITE GENERAL CONDITIONS FOR BUILDING CONSTRUCTION

ARTICLE 1 GENERAL PROVISIONS

GENERAL DEFINITIONS

1.1 The following definitions apply throughout these General Conditions and to the other Contract Documents:

(a) THE CONTRACT DOCUMENTS

The Contract Documents consist of the formal Building Construction Services Agreement between the Owner and the Contractor, these General Conditions and other supplementary conditions included by special provisions or addenda, drawings, specifications, addenda issued prior to execution of the Contract, other documents listed in the Contract, and Amendments issued after execution of the Contract. For purposes of these General Conditions, an Amendment is:

- (1) a written Supplemental Agreement to the Contract signed by authorized representatives of both parties.
- (2) a Change Order, including Change Orders signed only by the Owner as described in Subparagraph 7.1(b) and Subparagraph 7.1(e); or
- (3) a written order for a minor change in the Work issued by the Architect as described in Paragraph 7.3.

The Contract Documents also include bid documents such as the Owner's Instructions to Bidders, sample forms, the Contractor's Bid Proposal and portions of addenda relating to any of these documents, and any other documents, exhibits or attachments specifically enumerated in the Building Construction Services Agreement, but specifically exclude geotechnical and subsurface reports that the Owner may have provided to the Contractor.

(b) THE CONTRACT

The Contract Documents, as defined in Paragraph 1.1, are expressly incorporated into and made a part of the formal Building Construction Services Agreement between the Owner and the Contractor by reference in this Paragraph and Paragraph 1.1 (which documents are sometimes also referred to collectively in these General Conditions as the "Contract"). The Contract Documents represent the entire and integrated agreement between the Owner and the Contractor and supersede all prior negotiations, representations, or agreements, either written or oral. The terms and conditions of the Contract Documents may be changed only by an Amendment. The Contract Documents shall not be construed to create a contractual relationship of any kind:

- (1) between the Architect and Contractor;
- (2) between the Owner and a Subcontractor or Sub-subcontractor; or
- (3) between any persons or entities other than the Owner and Contractor.

The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract Documents intended to facilitate performance of the Architect's duties.

(c) THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all labor, materials, equipment, and services provided or to be provided by the Contractor, or any Subcontractors, Sub-subcontractors, material suppliers, or any other entity for whom the Contractor is responsible, to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

(d) THE PROJECT

The Project is the total construction more particularly described in the Building Construction Services Agreement, of which the Work performed under the Contract Documents may be the whole or a part of the Project and which may include construction by the Owner or by separate contractors. All references in these General Conditions to or concerning the Work or the site of the Work will use the term "Project," notwithstanding that the Work may only be a part of the Project.

(e) THE DRAWINGS

The Drawings (also known as the "Plans") are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

(f) THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards, and workmanship for the Work, performance of related services, and other technical requirements.

(g) THE PROJECT MANUAL

The Project Manual is the volume or volumes which contain the bidding requirements, sample forms, General Conditions for Building Construction, special provisions, and Specifications. The Project Manual may be modified by written addendums issued by the Owner during bidding, in which case the written addendums become a part of the Project Manual upon their issuance, unless otherwise indicated by the Owner in writing.

(h) ALTERNATE

An Alternate is a variation in the Work in which the Owner requires a price separate from the Base Bid. If an Alternate is accepted by the Owner, the variation will become a part of the Contract through the execution of a change order or amendment to the Contract and the Base Bid will be adjusted to include the amount quoted. If an alternate is accepted by the Owner, and later deleted prior to any Work under the alternate being performed or materials delivered to the Project site, the Owner will be entitled to a credit in

the full value of the alternate as priced in the Contractor's Bid.

(i) **BASE BID**

The Base Bid is the price quoted for the Work before Alternates are considered.

(j) **HAZARDOUS SUBSTANCE**

The term Hazardous Substance is defined to include the following:

- (1) any asbestos or any material which contains any hydrated mineral silicate, including chrysotile, amosite, crocidolite, tremolite, anthophyllite or actinolite, whether friable or non-friable.
- (2) any polychlorinated biphenyls ("PCBs"), or PCB-containing materials, or fluids;
- (3) radon.
- (4) any other hazardous, radioactive, toxic or noxious substance, material, pollutant, or solid, liquid or gaseous waste.
- (5) any pollutant or contaminant (including but not limited to petroleum, petroleum hydrocarbons, petroleum products, crude oil or any fractions thereof, any oil or gas exploration or production waste, any natural gas, synthetic gas or any mixture thereof, lead, or other toxic metals) which in its condition, concentration or area of release could have a significant effect on human health, the environment, or natural resources.
- (6) any substance that, whether by its nature or its use, is subject to regulation or requires environmental investigation, monitoring, or remediation under any federal, state, or local environmental laws, rules, or regulations.
- (7) any underground storage tanks, as defined in 42 U.S.C. Section 6991(1)(A)(I) (including those defined by Section 9001(1) of the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; the Texas Water Code Annotated Section 26.344; and Title 30 of the Texas Administrative Code Sections 334.3 and 334.4), whether empty, filled or partially filled with any substance; and
- (8) any other hazardous material, hazardous waste, hazardous substance, solid waste, and toxic substance as those or similar terms are defined under any federal, state, or local environmental laws, rules, or regulations.

(k) **OTHER DEFINITIONS**

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

- (1) "provide" means to furnish, install, fabricate, deliver and erect, including all services, materials, appurtenances and other expenses to complete in place, ready for operation or use.

- (2) “shall” means the action of the party to which reference is being made is mandatory;
- (3) “as required” means as prescribed in the Contract Documents; and
- (4) “as necessary” means all action essential or needed to complete the work in accordance with the Contract Documents and applicable laws, ordinances, construction codes, and regulations.

1.2 EXECUTION, CORRELATION, AND INTENT

- (a) The Building Construction Services Agreement shall be signed by duly authorized representatives of the Owner and Contractor as provided in the Agreement.
- (b) Execution of the Building Construction Services Agreement by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions, including but not limited to subsurface conditions, under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.
- (c) The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.
- (d) Organization of the Specifications into divisions, sections, and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.
- (e) Unless otherwise stated in the Contract Documents, words which have well-known technical, or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.
- (f) The Drawings and Specifications are intended to agree with one another, and Work called for by Drawings and not mentioned in Specifications, or vice versa, shall be furnished as if set forth by both. Specifications shall govern materials, methods, and quality of work. In the event of a conflict on the Drawings between scale and dimension, figured dimensions shall govern over scale dimensions and large-scale drawings shall govern over small scale drawings. Conflict between two or more dimensions applying to a common point shall be referred to the Architect for final adjustment. If discrepancies or conflicts occur within or between the Drawings and Specifications regarding the Work, or within or between other Contract Documents, the Contractor shall not perform such Work without having obtained a clarification from the Architect and resolution by the Owner. The Owner's decision as to the appropriate resolution of a conflict or discrepancy shall be final. Should the Drawings or the Specifications disagree within themselves or with each other, the Base Bid will be based on the most expensive combination of quality and quantity of Work indicated.
- (g) Deviations from Contract Documents shall be made only after written approval is obtained from Architect and Owner, as provided in Article 7.
- (h) The intention of the Contract Documents is to include all materials, labor, tools, equipment, utilities, appliances, accessories, services, transportation, and supervision required to completely perform

the fabrication, erection and execution of the Work in its final position.

(i) The most recently issued Drawing or Specification takes precedence over previous issues of the same Drawing or Specification. In the event of a conflict, the order of precedence of interpretation of the Contract Documents is as follows:

- (1) Amendments (see Paragraph 7.2 for order of precedence between Amendments);
- (2) the Building Construction Services Agreement;
- (3) addenda, with those addenda of later date having precedence over those of an earlier date;
- (4) the Supplementary General Conditions and Special Provisions, if any;
- (5) the General Conditions for Building Construction;
- (6) the Specifications and Drawings.

1.3 OWNERSHIP AND USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

All Drawings, Specifications, and copies thereof furnished by the Architect are and shall remain the property of the Owner and are, with the exception of the Contract set for each party, to be returned to the Owner upon request at the completion of the Work.

1.4 CAPITALIZATION

Terms capitalized in these General Conditions include those which are:

- (1) specifically defined in these General Conditions (except the terms defined in Subparagraph 1.1(j), which terms are of common grammatical usage and are not normally capitalized);
- (2) the titles of numbered articles and identified references to Paragraphs, Subparagraphs, and Clauses;
- (3) the titles of other documents published or used by the Owner as manuals or official policy statements; or
- (4) proper nouns or other words required under standard grammatical rules to be capitalized.

ARTICLE 2 **THE OWNER**

2.1 DEFINITION OF OWNER

The Owner is the City of Mesquite, a Texas municipal corporation, and is identified as such in the

Building Construction Services Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representatives.

2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

(a) The Owner shall furnish the most recent survey describing the physical characteristics, legal limits, utility locations, and a permanent benchmark for the site of the Project. The Owner shall also furnish any environmental site assessments that may have been given to the Owner or conducted for the property upon which the Project is to be constructed. **THIS INFORMATION IS FURNISHED TO THE CONTRACTOR ONLY IN ORDER TO MAKE DISCLOSURE OF THIS MATERIAL AND FOR NO OTHER PURPOSE. BY FURNISHING THIS MATERIAL, THE OWNER DOES NOT REPRESENT, WARRANT, OR GUARANTEE ITS ACCURACY EITHER IN WHOLE, IN PART, IMPLICITLY OR EXPLICITLY, OR IN ANY OTHER WAY, AND THE OWNER SHALL HAVE NO LIABILITY FOR THIS MATERIAL.**

(b) Except for permits and fees which are provided for in Subparagraph 3.7(a), the Owner shall secure and pay for necessary approvals, easements, assessments, and charges required for construction, use, or occupancy of permanent structures or for permanent changes in existing facilities.

(c) Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in the orderly progress of the Work. It is incumbent upon the Contractor to identify, establish, and maintain a current schedule of latest dates for submittal and approval, as required in Paragraph 3.10, including when such information or services must be delivered. If Owner delivers the information or services to the Contractor as scheduled and Contractor is not prepared to accept or act on such information or services, then Contractor shall reimburse Owner for all extra costs incurred of holding, storage, or retention, including redeliveries by the Owner to comply with the current schedule.

(d) Unless otherwise provided in the Contract Documents, electronic files of all documents will be provided to the Contractor at no charge. The printing and distribution of these documents, including Drawings and Specifications, shall be the responsibility of Contractor, at Contractor's expense.

(e) The obligations described above are in addition to other duties and responsibilities of the Owner enumerated in the Contract Documents and especially those in respect to Article 6 (Construction by Owner or by Separate Contractors), Article 9 (Payments and Completion), and Article 11 (Insurance and Bonds).

(f) The Owner shall forward all instructions to the Contractor through the Architect, except for the Owner's Notice to Proceed and the Owner's decision to carry out Work as described in Paragraph 2.4.

(g) The Owner's employees, agents, and consultants may be present at the Project site during performance of the Work to assist the Architect in the performance of the Architect's duties and to verify the Contractor's record of the number of workmen employed on the Work, their occupational classification, the time each is engaged in the Work, the equipment used in the performance of the Work, and for purpose

of verification of Contractor's Applications for Payment.

2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct any portion of the Work which is not in accordance with the requirements of the Contract Documents as required by Paragraph 12.2 or refuses or fails to carry out all or any part of the Work in accordance with the Contract Documents, the Owner, by written order, may order the Contractor to stop the Work, or any portion of the Work, until the cause for the order has been eliminated. The right of the Owner however, to stop the Work shall not create or imply a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity. The rights of the Owner under this Paragraph 2.3 shall be in addition to, and not in restriction of, the Owner's rights under Paragraph 12.2.

2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor fails or refuses to carry out the Work or perform any of the terms, covenants, or obligations of the Contract Documents, and fails or refuses to correct any failure or refusal with diligence and promptness within fourteen (14) days after receipt of notice from the Owner, the Owner may correct the Contractor's failure or refusal or cause such failure or refusal to be corrected, without affecting, superseding, or waiving any other contractual, legal, or equitable remedies the Owner has, including but not limited to the Owner's termination rights under Article

13. In that case, an appropriate Change Order will be issued deducting the Owner's cost of correction, including Architect's compensation for additional services and expenses made necessary by the failure or refusal of the Contractor from payments then or thereafter due to the Contractor. The cost of correction is subject to verification (but not approval) by the Architect. If payments then or thereafter due the Contractor are not sufficient to cover the cost of correction, the Contractor shall pay the difference to the Owner.

2.5 NOTICE TO PROCEED

After final execution of the Contract and receipt and approval of the required performance and payment bonds and evidence of required insurance, the Owner will issue a written notice to proceed with the Work, including the designated Contract Time within which Substantial Completion of the Work must be achieved. If the Owner unreasonably delays issuance of a written notice to proceed through no fault of the Contractor, the Contractor shall be entitled only to an equitable adjustment of the Contract Time, if properly claimed pursuant to the requirements of Paragraph 4.3; but the Contractor shall not be entitled to any increase to the Contract Sum whatsoever for this reason.

ARTICLE 3 **THE CONTRACTOR**

3.1 DEFINITION OF CONTRACTOR

The Contractor is the person or business entity identified as such in the Building Construction Services Agreement and is referred to throughout the Contract Documents as if singular in

number. The term "Contractor" means the Contractor or the Contractor's authorized employees or representatives.

3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

(a) The Contractor shall carefully check, study, and compare the Contract Documents with each other and shall at once report to the Architect in writing any inconsistency, ambiguity, error, omission, conflict, or discrepancy the Contractor may discover. The Contractor shall also verify all dimensions, field measurements, and field conditions before laying out the Work. The Contractor will be held responsible for any subsequent error, omission, conflict, or discrepancy which might have been avoided by the above-described check, study, comparison, and reporting. In the event the Contractor continues to work on an item where an inconsistency, ambiguity, error, omission, conflict, or discrepancy exists without obtaining such clarification or resolution or commences an item of the Work without giving written notice of an error, omission, conflict, or discrepancy that might have been avoided by the check, study, and comparison required above, it shall be deemed that the Contractor bid and intended to execute the more stringent, higher quality, or state of the art requirement, or accepted the condition as is in the Contract Documents, without any increase to the Contract Sum or Contract Time. The Contractor shall also be responsible to correct any failure of component parts to coordinate or fit properly into final position as a result of Contractor's failure to give notice of and obtain a clarification or resolution of any error, omission, conflict, or discrepancy, without any right to any increase to the Contract Sum or Contract Time.

(b) The Contractor shall perform the Work in accordance with the Contract Documents and submittals approved pursuant to Paragraph 3.12.

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

(a) The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work, unless the Contract Documents set forth specific instructions concerning these matters.

(b) The Contractor shall be responsible to the Owner for the acts and omissions of the Contractor's employees, Subcontractors, Sub-subcontractors, and their respective agents and employees, and any other persons performing portions of the Work under a subcontract with the Contractor or with any Subcontractor, and all other persons or entities for which the Contractor is legally responsible. All labor shall be performed by mechanics who are trained and skilled in their respective trades. Standards of work required throughout shall be of a quality that will bring only first-class results. Mechanics whose work is unsatisfactory, or who are considered careless, incompetent, unskilled, or otherwise objectionable shall be dismissed promptly from the Work and immediately replaced with competent, skilled personnel. Any part of the Work adversely affected by the acts or omissions of incompetent, unskilled, careless, or objectionable personnel shall be immediately corrected by the Contractor.

(c) The Contractor shall not be relieved of its obligation to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's

administration of the Contract, or by tests, inspections, or approvals required or performed by persons other than the Contractor.

(d) The Contractor shall be responsible for inspection of portions of Work already performed under this Contract to determine that such portions are in proper condition to receive subsequent Work. The Contractor's responsibility under this paragraph will not in any way eliminate the Architect's responsibility to the Owner under the Architect/Owner Agreement.

(e) Any Contractor, Subcontractor, Sub-subcontractor, or separate contractor who commences Work over, in, or under any surface prepared by the Owner or by any other contractor, subcontractor, sub-subcontractor or separate contractor without the Contractor having given written notice to the Architect of the existence of any faulty surface or condition in the surface that prevents achieving the quality of workmanship specified by the Contract Documents and without having obtained the prior approval of the Architect and the Owner to proceed is deemed to have accepted the surface or condition in the surface as satisfactory at the commencement of such Work. Any unsatisfactory Work subsequently resulting from such a faulty surface or condition in the surface that was not pre-approved by the Architect or the Owner after notice as provided above may be rejected and replacement required, without any increase to the Contract Sum or Contract Time.

(f) All grades, lines, levels, and benchmarks shall be established and maintained on an ongoing basis by the Contractor. The Contractor is solely responsible for any errors made in establishing or maintaining proper grades, lines, levels, or benchmarks. Each Contractor for his own Work shall verify all grades, lines, levels, and dimensions as indicated on Drawings. He shall report any errors, omissions, conflicts, or inconsistencies to Architect before commencing any Work affected by these conditions. Contractor shall establish and safeguard benchmarks in at least two widely separated places and, as Work progresses, establish benchmarks at each level and lay out partitions on rough floor in exact locations as guides to all trades. The Contractor shall, from the permanent benchmark provided by the Owner, establish and maintain adequate horizontal and vertical control.

3.4 LABOR AND MATERIALS

(a) Except as is otherwise specifically provided in the Contract Documents as being the responsibility of the Owner, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

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

(c) The Contractor shall give preference, when qualified labor is available to perform the Work to which the employment relates, to all labor hired for the Project in the following order:

- (1) to bona fide residents of the City of Mesquite, Texas.
- (2) to bona fide residents of the County of Dallas, Texas.
- (3) to bona fide residents of the State of Texas.
- (4) to bona fide residents of the United States.

3.5 WARRANTY

(a) **General Warranty.** The Contractor warrants to the Owner that all Work shall be accomplished in a good and workmanlike manner and that all materials and equipment furnished under the Contract will be of good quality, new (unless otherwise specified), and free from faults or defects, and that the Work will otherwise conform to the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, will be considered defective or nonconforming. The Contractor's warranty excludes any remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The commencement date, duration, and other conditions related to the scope of this general warranty are established in Subparagraphs 9.9 (a) and 12.2(b) of these General Conditions. **THE GENERAL WARRANTY PROVIDED IN THIS SUBPARAGRAPH IS IN ADDITION TO AND DOES NOT LIMIT OR DISCLAIM ANY OTHER WARRANTY OR REMEDY REQUIRED OR PROVIDED BY LAW OR THE CONTRACT DOCUMENTS AND SUCH WARRANTY SHALL REQUIRE THE CONTRACTOR TO REPLACE DEFECTIVE MATERIALS AND RE-EXECUTE DEFECTIVE WORK THAT IS DISCLOSED BY THE OWNER TO THE CONTRACTOR WITHIN A PERIOD OF ONE (1) YEAR AFTER SUBSTANTIAL COMPLETION OF THE ENTIRE WORK OR, IF A LATENT DEFECT, WITHIN ONE (1) YEAR AFTER DISCOVERY BY THE OWNER OF THE LATENT DEFECT.**

(b) **Special Warranties.** The Contractor shall assign to the Owner in writing, as a condition precedent to final payment, the terms and conditions of all special warranties required under the Contract Documents.

3.6 TAXES

The Owner qualifies for exemption from state and local sales and use taxes, pursuant to the provisions of Section 151.309 of the Texas Tax Code, as amended. Therefore, the Owner shall not be liable for, or pay the Contractor's cost of, such sales and use taxes which would otherwise be payable in connection with the purchase of tangible personal property furnished and incorporated into the real property being improved under the Contract Documents or the purchase of materials, supplies and other tangible personal property, other than machinery or equipment and its accessories and repair and replacement parts, necessary and essential for performance of the Contract which is to be completely consumed at the job site. The Contractor shall issue an exemption certificate in lieu of the tax on such purchases.

3.7 PERMITS, FEES AND NOTICES

(a) The Architect will apply and arrange for the issuance of the City of Mesquite Building Permit. The Contractor and Subcontractors will apply and arrange for the issuance of all other required permits and will not be required to pay a fee for any City of Mesquite permits required for the Project. The Owner will pay all service extension charges, including tap fees, assessed by the Water Utilities Division of the Public Works Department.

(b) The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations, and lawful orders of governmental entities or agencies applying to performance of the Work.

(c) Except as provided in Subparagraph (d) below, it is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, ordinances, construction codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance with applicable laws, ordinances, construction codes, rules or regulations, the Contractor shall promptly notify the Architect and the Owner in writing, and necessary changes shall be accomplished by appropriate Amendment.

(d) If the Contractor performs Work knowing it to be contrary to laws, ordinances, construction codes, or rules and regulations without notifying the Architect and the Owner, the Contractor shall assume full responsibility for the Work and shall bear the attributable costs of the correction of the Work and any other Work in place that may be adversely affected by the corrective work.

3.8 ALLOWANCES

(a) The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for the amounts identified in the Contract and by persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities against which the Contractor makes reasonable objection.

(b) Unless otherwise provided in the Contract Documents:

(1) materials and equipment under an allowance shall be selected promptly by the Owner to avoid delay in the Work.

(2) the amount of each allowance shall cover the cost to the Contractor of materials and equipment delivered at the site less all exempted taxes and applicable trade discounts.

(3) the amount of each allowance includes the Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance Work.

(4) whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect:

(i) the difference between actual costs and the allowances under Clause (b)(2);
and

(ii) changes in Contractor's costs under Clause (b)(3);

(5) the Owner retains the right to review and approve Subcontractors selected by the Contractor to perform work activities covered by allowances.

3.9 SUPERINTENDENT

The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case. The Owner reserves the right to request that the Contractor replace its superintendent at any time and the Contractor will replace said superintendent at the Owner's direction.

3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

(a) The Contractor shall, immediately after award of the Contract and before submittal of the first Application for Payment, prepare and submit the construction schedule for the Architect's and Owner's information, review, and approval in accordance with the following provisions:

(1) Unless otherwise approved in writing by the Owner, the construction schedule shall not exceed the Contract Time limits currently in effect under the Contract Documents and shall provide for expeditious and practicable execution of the Work.

(2) The construction schedule shall include all shop drawing and submittal data requirements, indicating for each:

(i) the latest date to be submitted by the Contractor; and

(ii) the latest date for approval by the Architect.

(3) The construction schedule shall be in the form of a critical path management schedule and shall indicate each critical task (the "predecessor") of all the major construction activities of the Work in a logical and sequential order (the "project network") which requires completion prior to commencement of the task next following (the "successor"). Each task shall be identified with:

(i) actual work time, exclusive of slack time, for accomplishment;

(ii) the latest start date;

(iii) the latest finish date;

(iv) the amount of float associated with each task;

(v) the amount of labor, material, and equipment associated with each task; and

(vi) the percentage of completion as of the date of the current schedule.

(4) The construction schedule shall be revised and updated monthly to reflect the actual status of the Work and shall be submitted with each Application for Payment.

(5) On or before the first day of each month, following the date of commencement of the Work as stated in the notice to proceed, the Contractor shall prepare and submit to the Architect and the Owner an up-to-date status report of the progress of the various construction phases of the Work in the form of an updated construction schedule. This status report shall consist of a time scale drawing

indicating actual progress of the various phases of the Work and the percentage of completion of the entire Work. The original construction schedule shall be updated or changed to indicate any adjustments to the Contract Time granted by the Owner. The updated schedule must be submitted with the Contractor's Application for Payment. No application will be certified without a satisfactory update to the construction schedule.

(6) The construction schedule will also be revised to show the effect of change orders and other events on Contract Time. No request for an increase in Contract Time will be considered unless it is accompanied by a schedule revision demonstrating the amount of time related to the cause of the request. If the Contractor's status schedules reflect that the Contractor has fallen behind the pace required to complete the Work within the Contract Time, through no fault of the Owner, the Contractor shall prepare a recovery schedule demonstrating how it intends to bring its progress back within the Contract Time. This recovery schedule shall be in a form acceptable to the Owner.

(7) Costs incurred by the Contractor in preparing and maintaining the required construction schedule, any updated schedule, and any recovery schedule required by the Owner will not be paid as an additional or extra cost and shall be included in the Contract Sum.

(8) The Contract Sum is deemed to be based upon a construction schedule requiring the full Contract Time. **NO CLAIM FOR ADDITIONAL COMPENSATION SHALL BE ALLOWED AS A RESULT OF THE CONTRACTOR BASING HIS BID ON AN EARLY COMPLETION SCHEDULE, OR AS A RESULT OF DELAYS AND COSTS ATTRIBUTABLE TO COMPLETION LATER THAN THE PLANNED EARLY COMPLETION DATE.**

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

(c) The Contractor shall conform to the most recent schedules approved as to form by the Architect and the Owner. Any subsequent revisions made by the Contractor to schedules in effect shall conform to the provisions of Subparagraph 3.10(a)

(d) If the Work falls behind the approved construction schedule, the Contractor shall take such steps as may be necessary to improve his progress, and the Architect and the Owner may require him to increase the number of shifts, overtime operations, days of work, or the amount of construction plant, and to submit for approval revised schedules in the form required above in order to demonstrate the manner in which the agreed rate of progress will be regained, all without additional cost to the Owner.

3.11 DOCUMENTS AND SAMPLES AT THE PROJECT SITE

The Contractor shall maintain at the Project site for the Owner one record copy of the Drawings, Specifications, addenda, and Amendments in good order and marked currently to record changes and selections made during construction, and in addition shall maintain at the Project site approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work.

3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

(d) Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Architect is subject to the limitations of Paragraph 4.2.

(e) The Contractor shall review, approve, and submit to the Architect Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals made by the Contractor which are not required by the Contract Documents may be returned without action.

(f) The Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples, or similar submittals until the respective submittal has been approved by the Architect. Work requiring this submittal and review shall be in accordance with approved submittals and any identified exceptions noted by the Architect.

(g) By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements, and related field construction criteria, or will do so, and has checked and coordinated the information contained within submittals with the requirements of the Work and of the Contract Documents. The Contractor's attention is directed to Paragraph 3.2 of these General Conditions and the requirements stated in that Paragraph.

(h) The Contractor shall not be relieved of responsibility for deviations, substitutions, changes, additions, deletions or omissions from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals unless the Contractor has specifically informed the Architect in writing of such substitutions, changes, additions, deletions, omissions, or deviations involved in the submittal at the time of submittal and the Architect, subject to a formal Change Order signed by the Owner, Architect and Contractor, has given written approval to the specific substitutions, changes, additions, deletions, omissions, or deviations. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by the Architect's approval thereof. Further, notwithstanding any approval of a submittal by the Architect, the Contractor shall be responsible for all associated Project costs, including costs of coordination, modifications, or impacts, direct or indirect, resulting from any and all substitutions, changes,

additions, deletions, omissions, or deviations, whether or not specifically identified by the Contractor to the Architect at the time of the above-mentioned submittals, including additional consulting fees, if any, in any and all accommodations associated with such substitutions, changes, additions, deletions, omissions, or deviations to the requirements of the Contract Documents.

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

(j) Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents.

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

3.13 USE OF THE PROJECT SITE

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

3.14 CUTTING AND PATCHING

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

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

3.15 CLEANING UP

(a) The Contractor shall keep the Project site and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. Upon the completion of the Work the Contractor shall remove from and about the Project site all waste materials, and rubbish, and all of the Contractor's tools, construction equipment, machinery, and surplus materials.

(b) If the Contractor fails to clean up as provided in the Contract Documents, the Owner may clean up and the Owner's cost of cleaning up shall be charged to the Contractor.

3.16 ACCESS TO WORK

The Contractor shall provide the Owner and the Architect access to the Work in preparation and progress wherever located during the course of construction.

3.17 TESTS AND INSPECTIONS

(a) Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations, or orders of governmental entities or agencies having jurisdiction over the Work shall be made at appropriate times. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate governmental entity or agency, and the Contractor shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so the Architect may observe such procedures. The Owner shall bear costs of tests, inspections, or approvals which become requirements after bids or proposals are received.

(b) If the Architect, the Owner or other public authorities having jurisdiction over the Work determine that portions of the Work require additional testing, inspection or approval not included under Subparagraph 3.17(a), the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may observe such procedures. The Owner shall bear such costs except as provided in Subparagraph 3.17(c).

(c) If procedures for testing, inspection, or approval under Subparagraphs 3.17(a) and 3.17(b) reveal deficiencies or nonconformities in the Work, the Contractor shall bear all costs made necessary to correct the deficiencies or nonconformities, including those of repeated procedures and compensation for the Architect's services and expenses, if any. The Contractor shall bear the costs of any subsequent testing, inspection, or approval of the corrected Work.

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

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

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

3.18 ROYALTIES AND PATENTS

The Contractor shall pay all royalties and license fees. **CONTRACTOR SHALL COMPLETELY DEFEND, INDEMNIFY AND HOLD OWNER AND ARCHITECT HARMLESS FROM ANY AND ALL SUITS OR CLAIMS FOR INFRINGEMENT OF PATENT RIGHTS, REGARDLESS OF WHETHER OR NOT THE OWNER OR THE**

**ARCHITECT SPECIFIED A PARTICULAR DESIGN, PROCESS OR PRODUCT IN THE
CONTRACT DOCUMENTS THAT MAY BE THE SUBJECT OF A PATENT
INFRINGEMENT OR OTHERWISE ACTIVELY INDUCED OR CONTRIBUTED TO**

THE INFRINGEMENT. In the event the Contractor has reason to believe that a particular design, process, or product specified infringes a patent, the Contractor shall immediately notify the Owner and the Architect of same.

3.19 INDEMNIFICATION

(a) **THE CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD THE OWNER, ITS OFFICERS, AGENTS AND EMPLOYEES, AND THE ARCHITECT, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY CONTRACTOR'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE CONTRACTOR IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS CONTRACT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF THE OWNER, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, OR OF THE ARCHITECT, AND IN THE EVENT OF JOINT AND CONCURRENT NEGLIGENCE OR FAULT OF THE CONTRACTOR, THE OWNER, AND THE ARCHITECT, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE OWNER UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.**

(b) In claims against any person or entity indemnified under this Paragraph 3.19 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph 3.19 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

(c) Indemnification under this Paragraph 3.19 shall include, but is not limited to, liability which could result to or be created for the Owner, its officers, agents, or employees, or the Architect pursuant to State or Federal laws or regulations relating to pollution of the environment and State or Federal laws or

regulations relating to the occupational safety and health of workers. The Contractor specifically agrees to comply with the above-mentioned laws and regulations in the performance of the Work by the Contractor and that the obligations of the Owner, its officers, agents, and employees, and the Architect under the above-mentioned laws and regulations are secondary to those of the Contractor.

ARTICLE 4

CONTRACT ADMINISTRATION

4.1 THE ARCHITECT

(a) The Architect is the person lawfully licensed to practice architecture or a firm or other business entity lawfully practicing architecture identified as such in the formal Building Construction Services Agreement and is referred to throughout the Contract Documents as if singular in number. The term “Architect” means the Architect or the Architect’s authorized representative. The Owner may, at its option, designate a qualified Owner representative to serve as the Architect on the Project instead of an outside firm or person. In such event, the references in these General Conditions that refer to the Architect shall apply to the Owner-designated Architect representative and the Owner-designated Architect representative shall be accorded that same status by the Contractor.

(b) In the event the Architect is an outside person or firm and the Architect's employment is terminated, the Owner may, at its option, contract with a new outside architect to replace the former, or may designate a qualified Owner representative to serve as the Architect. The replacement Architect, whether an Owner representative, an independent architect or any other qualified person or entity, shall be regarded as the Architect for all purposes under the Contract Documents and shall be accorded that same status by the Contractor. Any dispute in connection with such appointment shall be reviewed and settled by the Owner, whose decision shall be final and binding.

(c) Owner reserves the right to appoint a representative empowered to act for the Owner during the Construction Phase and to supersede the Architect’s Construction Phase responsibility. Similarly, from time to time the Owner may expand or reduce the Owner’s delegation of powers to the Architect, with the Owner notifying the Contractor of any such changes. The Architect shall not be construed as a third-party beneficiary to the Contract and can in no way object to any expansion or reduction of powers as set forth in this Subparagraph (c). In no event, however, shall the Owner have control over, charge of, or be responsible for, construction means, methods, techniques, sequences, or procedures, or for safety precautions or programs in connection with the Work since these are solely the Contractor’s responsibility. The Owner will not be responsible for the Contractor’s failure to carry out the Work in accordance with the Contract Documents. The Owner will not have control over or charge of and will not be responsible for acts or omissions of Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

4.2 ARCHITECT’S RESPONSIBILITIES DURING CONSTRUCTION

(a) The Architect will administer the Contract as described in the Contract Documents and in accordance with the terms of the Architect's agreement with the Owner, where applicable, subject to the direction and approval of the Owner. If requested by the Contractor, the provisions of the Owner/Architect Agreement will be made available to the Contractor.

(b) The Architect shall provide, during performance of the Work, adequate and competent periodic on-site construction observation, periodically visiting the Project site to the extent necessary to personally familiarize itself with the progress and quality of the Work, and to determine if the Work is proceeding in accordance with the Contract Documents. The Architect shall not, however, be required to make continuous on-site inspections to check the Work. Field reports of each visit shall be prepared by the Architect and submitted to the Owner. The Architect shall employ all reasonable measures to safeguard the Owner against

defects and nonconformities in the Work. The Architect shall not be responsible for the construction means, methods, techniques, sequences of procedures, nor for the safety precautions and programs employed in connection with the Work. The Architect will, however, immediately inform the Owner whenever defects or nonconformities in the Work are observed, or when any observed actions or omissions are undertaken by the Contractor or any Subcontractor which are not in the best interests of the Owner or the Project.

(c) The Architect and the Owner will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility as provided in Paragraph

4.3. The Architect and the Owner will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Architect and the Owner will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, Subsubcontractors, or their respective agents or employees, or of any other persons performing portions of the Work for which the Contractor is responsible.

(d) Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate through the Architect. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors will be through the Owner. The Contractor shall provide written confirmation of communications made directly with the Owner and provide copies of such confirmation to the Architect.

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

(f) The Architect and the Owner will each have authority to reject Work which does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect will have authority to require additional inspection or testing of the Work in accordance with Subparagraphs 3.17(b) and 3.17(c), whether or not such Work is fabricated, installed, or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to any duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the Work.

(g) The Architect will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken with such reasonable promptness as to not delay the Work or the activities of the Owner, Contractor, or separate contractors. Review of such submittals is not conducted for the purpose of determining the

accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of any obligations under Paragraphs 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated in writing by the Architect, of any construction means,

methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

(h) The Architect will prepare Change Orders and may authorize minor changes in the Work as provided in Paragraph 7.3.

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

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

(k) The Architect will interpret and make recommendations to the Owner concerning performance under and requirements of the Contract Documents upon written request of either the Owner or Contractor. The Architect's response to such requests will be made with reasonable promptness and within any time limits agreed upon. The Architect shall secure the Owner's written approval before issuing instructions, interpretations, or judgments to the Contractor which change the scope of the Work, or which modify or change the terms and conditions of any of the Contract Documents.

(l) Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of Drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by the Contractor.

(m) The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents provided that the Architect has prior written approval of the Owner.

4.3 CLAIMS AND DISPUTES

(a) **Definition; General Notice of Claim Procedure.** As used in these General Conditions, a "Claim" means a demand or assertion by one of the parties to the Contract seeking an adjustment of the terms of the Contract Documents, of the Contract Sum, of the Contract Time, or some other relief in respect to the terms of the Contract Documents. The term also includes all other disputes between the Owner and the Contractor arising out of or relating to the Project or the Contract

Documents, including but not limited to claims that work was outside the scope of the Contract Documents. The responsibility to substantiate the Claim and the burden of demonstrating compliance with this provision shall rest with the party making the Claim. Except where otherwise provided in the Contract Documents, a Claim by the Contractor, whether for additional compensation, additional time, or other relief, including but not limited to claims arising from concealed conditions, **MUST BE MADE BY WRITTEN NOTICE TO THE ARCHITECT AND THE OWNER WITHIN FOURTEEN (14) DAYS AFTER OCCURRENCE OF THE EVENT OR EVENTS GIVING RISE TO THE PARTICULAR CLAIM.** Every Claim of the Contractor, whether for additional compensation, additional time, or other relief, including but not limited to claims arising from concealed conditions, shall be signed and sworn to by an authorized corporate officer (if not a corporation, then an official of the company authorized to bind the Contractor by his signature) of the Contractor, verifying the truth and accuracy of the Claim. **THE CONTRACTOR SHALL BE DEEMED TO HAVE WAIVED ANY CLAIM NOT MADE STRICTLY IN ACCORDANCE WITH THE PROCEDURE AND TIME LIMITS SET OUT IN THIS PARAGRAPH.**

(b) **Referral to the Architect.** Claims, disputes, and other matters in question between the Contractor and the Owner relating to the progress or execution of the Work or the interpretation of the Contract Documents shall be referred to the Architect for recommendation to the Owner, which recommendation the Architect will furnish in writing within a reasonable time, provided proper and adequate substantiation has been received. Failure of the Contractor to submit the Claim to the Architect for rendering of a recommendation to the Owner shall constitute a waiver of the Claim.

(c) **Continuing Contract Performance.** Pending final resolution of a claim, the Contractor shall proceed diligently with performance of the Work and the Owner shall continue to make payments in accordance with the Contract Documents.

(d) **Claims for Concealed or Unknown Conditions.** No adjustment in the Contract Sum or Time associated with concealed or unknown conditions will normally be considered or allowed; provided, however, that the Contract Sum or Time may be adjusted by the Owner in such circumstances only if:

- (1) a concealed subsurface condition is encountered in the course of performance of the Work;
- (2) a concealed or unknown condition in an existing structure is at variance with conditions indicated by the Contract Documents; or
- (3) an unknown physical condition is encountered below the surface of the ground or in an existing structure which is of an unusual nature and materially different from those ordinarily encountered and generally recognized as inherent in the character of the Work; and
- (4) a notice of claim with proper and adequate substantiation is presented pursuant to Subparagraph 4.3(a) of these General Conditions; and
- (5) the Owner and the Architect determine that:

- (i) prior to submitting its bid for the Work, the Contractor used reasonable diligence to fully inspect the portion of the Project site where the condition was discovered; and
- (ii) the work caused or required by the concealed or unknown condition at issue can be considered extra work to the extent that additional new Drawings must be prepared and issued and new construction beyond the scope of the Contract Documents is required.

(e) Disclaimer of Warranties as to Reports, Drawings, and Specifications. PROJECT SITE INFORMATION AND REPORTS (INCLUDING BUT NOT LIMITED TO SOILS TESTING REPORTS, GEOTECHNICAL REPORTS, OR ENVIRONMENTAL SITE ASSESSMENTS) PROVIDED BY THE OWNER AND THE ARCHITECT IN THE PROJECT MANUAL OR BY OTHER MEANS SHALL BE UTILIZED BY THE CONTRACTOR AT THE CONTRACTOR'S OWN RISK. THE OWNER AND THE ARCHITECT DO NOT GUARANTEE OR WARRANT ANY INFORMATION SHOWN IN THE PROJECT SITE INFORMATION AND REPORTS.

(f) **Claims for Additional Cost.** If the Contractor wishes to make a claim for an increase in the Contract Sum, written notice as provided in this Paragraph 4.3 shall be given before proceeding to execute the Work. Prior notice is not required for claims relating to an emergency endangering life or property arising under Paragraph 10.3. In addition, the Contractor's request for an increase in the Contract Sum for any reason (other than work performed under emergency conditions) shall be made far enough in advance of required work to allow the Owner and the Architect a sufficient amount of time, without adversely affecting the construction schedule, to review the request, prepare and distribute such additional documents as may be necessary to obtain suitable estimates or proposals and to negotiate, execute and distribute a Change Order for the required work if the Contractor believes that additional cost is involved for reasons including but not limited to:

- (1) a written interpretation from the Architect;
- (2) a written order for a minor change in the Work issued by the Architect;
- (3) failure of payment by the Owner;
- (4) termination of the Contract by the Owner;
- (5) the Owner's temporary suspension of all or any portion of the Work where the Contractor was not at fault; or
- (6) other reasonable grounds.

(g) **Injury or Damage to Person or Property.** If the Contractor suffers injury or damages to person or property because of an act or omission of the Owner, or of any of the Owner's officers, employees, or agents, written, sworn-to notice of any claim for damages or injury shall be given as provided in Subparagraph 4.3(a). The notice shall provide sufficient detail to enable the Architect and the Owner to investigate the matter.

(h) **Subcontractor Pass-Through Claims.** In the event that any Subcontractor of the Contractor asserts a claim to the Contractor that the Contractor seeks to pass through to the Owner under the Contract Documents, any entitlement of the Contractor to submit and assert the claim against the Owner shall be subject to:

- (1) the requirements of Paragraph 4.3 of these General Conditions; and
- (2) the following additional three requirements listed below, all three of which additional requirements shall be conditions precedent to the entitlement of the Contractor to seek and assert such claim against the Owner:

- (i) The Contractor shall either (A) have direct legal liability as a matter of contract, common law, or statutory law to the Subcontractor for the claim that the Subcontractor is asserting or (B) the Contractor shall have entered into a written liquidating agreement with the Subcontractor, under which agreement the Contractor has agreed to be legally responsible to the Subcontractor for pursuing the assertion of such claim against the Owner under the Contract and for paying to the Subcontractor any amount that may be recovered, less Contractor's included markup (subject to the limits in the Contract Documents for any markup). The liability or responsibilities shall be identified in writing by the Contractor to the Owner at the time such claim is submitted to Owner, and a copy of any liquidating agreement shall be included by the Contractor in the claim submittal materials.

- (ii) The Contractor shall have reviewed the claim of the Subcontractor prior to its submittal to Owner and shall have independently evaluated such claim in good faith to determine the extent to which the claim is believed, in good faith, to be valid. The Contractor shall also certify, in writing and under oath to the Owner, at the time of the submittal of such claim, that the Contractor has made a review, evaluation, and determination that the claim is made in good faith and is believed to be valid.

- (iii) The Subcontractor making the claim to the Contractor shall certify in writing and under oath that it has compiled, reviewed, and evaluated the merits of such claim and that the claim is believed, in good faith by the Subcontractor, to be valid. A copy of the certification by the Subcontractor shall be included by Contractor in the claim submittal materials.

- (3) Any failure of the Contractor to comply with any of the foregoing requirements and conditions precedent with regard to any such claim shall constitute a waiver of any entitlement to submit or pursue such claim.

- (4) Receipt and review of a claim by the Owner under this Subparagraph shall not be construed as a waiver of any defenses to the claim available to the Owner under the Contract Documents or law.

(i) **Owner's Right to Order Acceleration and to Deny Claimed and Appropriate Time Extensions, in Whole or in Part.** The Contractor acknowledges and agrees that Substantial Completion of the Work by or before the Scheduled Completion Date is of substantial importance to Owner. The following provisions, therefore, will apply:

- (1) If the Contractor falls behind the approved construction schedule for whatever reason, the Owner shall have the right, in the Owner's sole discretion, to order the Contractor to develop a recovery schedule as described in Paragraph 3.10 or to accelerate its progress in such a manner as

to achieve Substantial Completion on or before the Contract Time completion date or such other date as the Owner may reasonably direct and, upon receipt, the Contractor shall take all action necessary to comply with the order. In such event, any possible right, if any, of the Contractor to additional compensation for any acceleration shall be subject to the terms of this Subparagraph (i).

(2) In the event that the Contractor is otherwise entitled to an extension of Contract Time and has properly initiated a Claim for a time extension in accordance with Subparagraph 4.3(a) above, the Owner shall have the right, in the Owner's sole discretion, to deny all, or any part, of the Claim for extension of Contract Time by giving written notice to the Contractor provided within fourteen (14) days after receipt of the Contractor's Claim. If the Owner denies the Contractor's claim for an extension of Contract Time under this Clause (i)(2), either in whole or in part, the Contractor shall proceed to prosecute the Work in such a manner as to achieve Substantial Completion on or before the then existing Scheduled Completion Date.

(3) If the Contractor would have been entitled to a time extension for a reason specifically allowed under the Contract Documents, for an amount of time that would have justified approval by the Owner if not for the need and right to accelerate, the Contractor may initiate a Claim for acceleration costs pursuant to Subparagraph 4.3(a). Any resulting Claim for acceleration costs properly initiated by the Contractor under Subparagraph 4.3(a) above shall be limited to those reasonable and documented direct costs of labor, materials, equipment, and supervision solely and directly attributable to the actual acceleration activity necessary to bring the Work back within the then existing approved construction schedule. These direct costs include the premium portion of overtime pay, additional crew, shift, or equipment costs if requested in advance by the Contractor and approved in writing by the Owner. A percentage markup for the prorated cost of premium on the existing performance and payment bonds and required insurance, not to exceed 5%, will be allowed on the claimed acceleration costs. **NO OTHER MARKUP FOR PROFIT, OVERHEAD (INCLUDING BUT NOT LIMITED TO HOME OFFICE OVERHEAD) OR ANY OTHER COSTS WILL BE ALLOWED ON ANY ACCELERATION CLAIM.** The Owner shall not be liable for any costs related to an acceleration claim other than those described in this Clause (i)(3).

(j) **Waiver of Claims; Final Payment.** The making of final payment shall constitute a waiver of claims by the Owner except those arising from:

- (1) claims, security interests, purported liens, or other attempted encumbrances arising out of the Contract and remaining unsettled;
- (2) defective or nonconforming Work appearing after Substantial Completion;
- (3) latent defects, as defined in Subparagraph 12.2(d), appearing after Final Completion; or
- (4) the terms of general and special warranties required by the Contract Documents or allowed or implied by law.

(k) **Reserved.**

(l) **No Waiver of Governmental Immunity. NOTHING IN THE CONTRACT DOCUMENTS SHALL BE CONSTRUED TO WAIVE THE OWNER'S GOVERNMENTAL IMMUNITY FROM LAWSUIT, WHICH IMMUNITY IS EXPRESSLY RETAINED TO THE EXTENT IT IS NOT CLEARLY AND UNAMBIGUOUSLY WAIVED BY STATE LAW**

ARTICLE 5
SUBCONTRACTORS

5.1 DEFINITIONS OF SUBCONTRACTOR

(a) A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the Project site or to supply materials or equipment to the Contractor by purchase or lease for use in performance of or incorporation into the Work. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

(b) A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the Project site or to supply materials or equipment to the Subcontractor or another Sub-subcontractor by purchase or lease for use in performance of or incorporation into the Work. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

(a) Immediately after the award of the Contract by the Owner, and before the Building Construction Services Agreement is signed by the Contractor and the Owner, the Contractor shall furnish to the Architect in writing, for acceptance by the Owner and the Architect, a list of the names, addresses, telephone numbers, M/WBE certification numbers (where applicable), and type of work of the Subcontractors (including those who are to furnish materials or equipment fabricated to a special design), proposed for the principal portions of the Work, including furnishings when made a part of the Contract. The Contractor shall immediately notify the Owner in writing of any changes in the list as they occur. The Architect will promptly reply to the Contractor in writing stating whether or not the Owner or the Architect, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner or Architect to reply promptly shall constitute notice of no reasonable objection.

(b) The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection.

(c) Architect's and Owner's approval of or objection to any Subcontractor or of a particular process or material will not relieve the Contractor of his responsibility for performance of Work as called for under the Contract Documents and shall not provide a basis for any claim for additional time or money on the part of the Contractor. Approval shall not be construed to create any contractual relationship between the Subcontractor and either the Owner or Architect. In no event shall the Contract Sum be increased as a result of the rejection of any Subcontractor.

(d) The Contractor shall not change a Subcontractor previously selected if the Owner or Architect makes reasonable objection to such change.

5.3 SUBCONTRACTUAL RELATIONS

(a) By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents (including but not limited to these General Conditions), and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by the Contract Documents, assumes toward the Owner and the Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and the Architect under the Contract Documents (including but not limited to these General Conditions) with respect to the Work to be performed by the Subcontractor so that subcontracting will not prejudice the rights of the Owner and the Architect. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor is to be bound. Subcontractors shall similarly make copies of applicable portions of such Documents available to their respective proposed Sub-subcontractors.

(b) The Contractor is solely responsible for making payments properly to the Contractor's Subcontractors on the Project. During performance of the Work, the Contractor shall comply with the following additional rules regarding Subcontractor payments:

(1) The Contractor shall submit, beginning with the Second Application and Certificate for Payment, a Subcontractor Payment Report (the "Report") with each Application and Certificate for Payment. The Report shall show all payments made to date by the Contractor (plus existing retainage) to each Subcontractor involved in the Project. The Report shall be made on a form approved and supplied by the Owner. As an alternative to the Report, the Contractor may furnish

Affidavits of Payment Received with the Application and Certificate for Payment, which affidavits shall be executed by each Subcontractor owed money and paid during the previous progress payment period for work or materials furnished on the Project. **RECEIPT BY THE OWNER OF THE REPORT OR AFFIDAVITS OF PAYMENT RECEIVED SHALL BE A CONDITION PRECEDENT TO PAYMENT ON ANY APPLICATION.**

(2) If, for any reason, the Contractor is withholding payment to a Subcontractor due to a dispute or other problem with performance, the Contractor shall note the amount withheld and that payment is in dispute. The Owner may require the Contractor to document and verify the dispute or other problem in question.

(3) The Owner reserves the right in its sole discretion, to withhold payment to the Contractor pursuant to Paragraph 9.5(a) of the General Conditions, should it appear from the Report, statements of payment received, or other information furnished to the Owner that:

- (i) the Report has not been properly completed;
- (ii) the Contractor has knowingly provided false information regarding payment of any Subcontractor; or
- (iii) the Contractor has otherwise failed to make payments properly to any Subcontractor.

5.4 THE CONTRACTOR SHALL NOT HAVE ANY RIGHT TO MAKE A CLAIM FOR ADDITIONAL TIME OR ADDITIONAL COMPENSATION AS A RESULT OF THE OWNER'S

OR ARCHITECT'S ENFORCEMENT OF THIS SUBPARAGRAPH 5.3(b). NO PROVISION OF THIS SUBPARAGRAPH OR ANY OF THE CONTRACT DOCUMENTS SHALL BE CONSTRUED TO CREATE A CONTRACTUAL RELATIONSHIP, EXPRESS OR IMPLIED, BETWEEN ANY SUBCONTRACTOR AND EITHER THE OWNER OR THE ARCHITECT AND SHALL NOT BE CONSTRUED TO MAKE ANY SUBCONTRACTOR OR ANY OTHER PERSON OR ENTITY A THIRD-PARTY BENEFICIARY OF THE CONTRACT BETWEEN THE OWNER AND THE CONTRACTOR.

5.5 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

In the event of a termination of this Contract by the Owner under Article 14, the Contractor shall, if requested in writing by the Owner, within fifteen (15) days after the date notice of termination is sent, deliver and assign to Owner, or any person or entity acting on the Owner's behalf, any or all subcontracts made by Contractor in the performance of the Work, and deliver to the Owner true and correct originals and copies of the subcontract documents. In the event assignment is not requested by the Owner, Contractor shall terminate all subcontracts to the extent that Owner has not directed assignment of same and to the extent that they relate to the performance of Work terminated by the notice of termination.

ARTICLE 6 CONSTRUCTION BY THE OWNER/ SEPARATE CONTRACTORS

6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

(a) The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the Project site under Conditions of the Contract identical or substantially similar to these General Conditions, including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make a claim as provided elsewhere in and in accordance with the Contract Documents.

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

(c) The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall, with the approval of the Owner, make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors, and the Owner until subsequently revised by mutual agreement or by written Change Order. If the Contractor believes it is entitled to an adjustment of the Contract Sum under the circumstances, the Contractor shall submit a written proposal for a Change Order pursuant to Article 7 of the General Conditions. In the event the Contractor's Change Order proposal is denied by the Owner, the Contractor must submit any Claim pursuant to Paragraph 4.3 of the

General Conditions.

(d) Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights which apply to the Contractor under these General Conditions, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11 and 12.

6.2 MUTUAL RESPONSIBILITY

(a) The Contractor shall afford the Owner and separate contractors reasonable opportunity for access to and storage of their materials and equipment and the performance of their activities and shall coordinate the Contractor's construction and operations with the separate contractors as required by the Contract Documents.

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

(c) The Owner shall not be liable to the Contractor for damages suffered by the Contractor due to the fault or negligence of a separate contractor or through failure of a separate contractor to carry out the directions of the Owner or the Architect. Should any interference occur between the Contractor and a separate contractor, the Architect or the Owner may furnish the Contractor with written instructions designating priority of effort or change in methods, whereupon the Contractor shall immediately comply with such direction. In such event, the Contractor shall be entitled to an extension of the Contract Time only for unavoidable delays verified by the Architect; no increase in the Contract Sum, however, shall be due to the Contractor.

(d) The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors as provided in Subparagraph 10.2(e).

(e) Should the Contractor cause damage to the work or property of any separate contractor on the Project, the Contractor shall, upon due notice, settle with the separate contractor by agreement, if the separate contractor will so settle. If the separate contractor sues the Owner or submits a claim on account of any damage alleged to have been so sustained, the Owner shall notify the Contractor who shall defend such proceedings, at the Contractor's expense, and if any judgment or award against the Owner arises from the separate contractor's claim, the Contractor shall pay or satisfy it and shall reimburse the Owner for all attorney's fees and costs which the Owner has incurred.

(f) The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Paragraph 3.14.

6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors, and the Owner as to the responsibility under their respective contracts for maintaining the Project site and surrounding area free from waste materials and rubbish as described in Paragraph 3.15, the Owner may clean up and allocate the cost among those responsible as the Architect recommends to be just.

ARTICLE 7 **AMENDMENTS**

7.1 CHANGE ORDERS

(a) A Change Order is a written order to the Contractor, signed by the Owner and the Architect, issued after execution of the Contract, authorizing a change in the Work, an adjustment in the Contract Sum, or an adjustment to the Contract Time, consistent with other applicable provisions of this Contract. The Owner, without invalidating the Contract and without requiring notice of any kind to the sureties, may order changes to the scope of Work under the Contract by additions, deletions, or other revisions, the Contract Sum and Contract Time to be adjusted consistent with other applicable provisions of this Contract. All Change Orders shall be executed on a Change Order form approved by the Owner and the Owner's City Attorney.

(b) In addition to the Owner and the Architect, the Contractor shall sign all Change Orders to verify and confirm the terms and conditions established by Change Order; however, should the Contractor refuse to sign a Change Order, this shall not relieve him of his obligation to perform the change directed by the Owner and the Architect to the best of his ability in accordance with the provisions of this Article 7. A Change Order signed by the Contractor indicates his agreement with all of the changes approved, including the adjustment in the Contract Sum or the Contract Time. **EACH CHANGE ORDER SHALL BE SPECIFIC AND FINAL AS TO PRICES AND EXTENSIONS OF TIME, WITH NO RESERVATIONS OR OTHER PROVISIONS ALLOWING FOR FUTURE ADDITIONAL MONEY OR TIME AS A RESULT OF THE PARTICULAR CHANGES IDENTIFIED AND FULLY COMPENSATED IN THE CHANGE ORDER.** The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work. The Contractor forever releases any claim against the Owner for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order. This release applies to claims related to the cumulative impact of all Change Orders and to any claim related to the effect of a change on other Work.

(c) No extra work (except under emergency conditions) or changes shall be made nor shall any substitutions, changes or additions to or omissions or deviations from the requirements of the Drawings and Specifications be made unless pursuant to a written Change Order signed by the Owner and the Architect, it being expressly understood that the Owner shall not be liable for the cost of extra work or any substitution, change, addition, omission or deviation from the requirements of the Drawings or Specifications unless the same shall have been authorized in writing by the Owner and the Architect in a written change order or other Amendment. The provisions of this Paragraph 7.1 shall control in the event of any inconsistency between such provisions and the other provisions of this Article 7. See Subparagraph 10.3(a) of the General Conditions for Change Orders under emergency conditions.

(d) The method of determining the cost or credit to the Owner for any change in the Work shall be one of the following:

- (1) mutual acceptance of a not-to-exceed lump sum amount properly itemized and supported by sufficient substantiating data to permit evaluation;

- (2) unit prices stated in the Contract Documents or subsequently agreed upon;
- (3) cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- (4) the force account method provided in Subparagraph 7.1(e)

(e) If the parties cannot agree to one of the methods of calculating cost provided in Clauses (d)(1), (d)(2), or (d)(3), or if the parties agree to a method but cannot agree to a final dollar figure, or if the Contractor for whatever reason refuses to sign the Change Order in question, the Contractor, provided he receives a written order signed by the Owner, shall promptly proceed with the Work involved. The cost of the Work involved shall then be calculated on the basis of the reasonable jobsite expenditures and savings of those performing the Work attributable to the changes, including a reasonable allowance for overhead and profit, such allowance in any case never to exceed 15%. In such case, the Contractor shall keep an itemized accounting of the Work involved, on a daily basis, in such form and with the appropriate supporting data as the Architect and Owner may prescribe. Sworn copies of the itemized accounting shall be delivered to the Architect each day during the performance of force account work, with copies to the Owner. **FAILURE OF THE CONTRACTOR TO SUBMIT THE SWORN-TO ITEMIZED ACCOUNTING DAILY AS REQUIRED HEREIN SHALL CONSTITUTE A WAIVER BY THE CONTRACTOR OF ANY RIGHT TO DISPUTE THE OWNER'S DETERMINATION OF THE AMOUNT DUE THE CONTRACTOR FOR FORCE ACCOUNT WORK.** Costs to be charged under this Subparagraph for force account work are limited to the following:

- (1) costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers compensation insurance.
- (2) costs of materials, supplies and equipment (but not to include off-site storage unless approved in writing by the Owner), whether incorporated or consumed.
- (3) rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others.
- (4) costs of premiums for all bonds and insurance related to the Work; and
- (5) additional costs of supervision and field office personnel directly attributable to the changed Work.

Pending final determination of cost to the Owner, payment of undisputed amounts on force account shall be included on the Architect's Certificate of Payment as work is completed.

(f) The amount of credit to be allowed to the Owner for any deletion of Work or any other change which results in a net decrease of the Contract Sum shall be the amount of actual net cost confirmed by the Architect plus the stated percentage for overhead and profit. When both additions and deletions or credits covering related Work or substitutions are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase or decrease with respect to that change.

7.2 SUPPLEMENTAL AGREEMENTS

A written Supplemental Agreement can also be used to implement changes in the Work instead of a Change Order form, including but not limited to situations involving partial occupancy of the Work under Paragraph 9.8, a change made to the Drawings or the Specifications without an increase in the Contract Sum, or special

circumstances where it is necessary or more appropriate for the Owner to use a Supplemental Agreement. Written Supplemental Agreements shall have a status equal to that of Change Orders for purposes of priority of Contract Documents interpretation, except that to the extent of a conflict, later Supplemental Agreements in time control over earlier Supplemental Agreements, and the latest Change Order or Supplemental Agreement in time controls over earlier dated Change Orders and Supplemental Agreements. The rules of Subparagraphs 7.1(b) through (f) shall also apply to the negotiation and execution of Supplemental Agreements.

7.3 MINOR CHANGES IN THE WORK

The Architect, after notifying the Owner, shall be authorized to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Minor changes shall be affected by written order, and shall be binding on the Owner and the Contractor. The Contractor shall carry out such written orders promptly. These written orders shall not be deemed to change or impact the Contract Sum or the Contract Time. Contractor shall have no Claim for any minor change ordered to the Work under this Paragraph 7.3 unless the Contractor submits its change proposal, prior to complying with the minor change ordered and in no event later than ten (10) working days from the date the minor change was ordered, to the Owner for approval.

7.4 TIME REQUIRED TO PROCESS AMENDMENTS

(a) All of the Contractor's responses to proposal requests shall be accompanied by a complete, itemized breakdown of costs. Responses to proposal requests shall be submitted sufficiently in advance of the required work to allow the Owner and the Architect a minimum of thirty (30) calendar days after receipt by the Architect to review the itemized breakdown and to prepare or distribute additional documents as may be necessary. All of the Contractor's responses to proposal requests shall include a statement that the cost described in the response represents the complete, total, and final cost and additional Contract Time associated with the extra work, change, addition to, omission, deviation, substitution, or other grounds for seeking extra compensation under the Contract Documents, without reservation or further recourse.

(b) All Amendments require approval by either the City Council or, where authorized by the state law and City ordinance, by the City Manager. The approval process requires a minimum of forty-five (45) calendar days after submission to the Owner in final form with all supporting data. Receipt of a submission by Owner does not constitute acceptance or approval of a proposal, nor does it constitute a warranty that the proposal will be authorized by City Council Resolution or the City Manager, where appropriate. **THE TIME REQUIRED FOR THE APPROVAL PROCESS SHALL NOT BE CONSIDERED A DELAY AND NO EXTENSIONS TO THE CONTRACT TIME OR INCREASE IN THE CONTRACT SUM WILL BE CONSIDERED OR GRANTED AS A RESULT OF THIS PROCESS.** Pending the approval described above, the Contractor will proceed with the work under a pending Amendment only if directed in writing by the Owner.

8.1 DEFINITIONS

ARTICLE 8 CONTRACT TIME

- (a) Unless otherwise provided, the Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.
- (b) The date of commencement of the Work is the date established in the notice to proceed from the Owner. The date of commencement shall not be postponed by the failure of the Contractor, or of persons or entities for whom the Contractor is responsible to act promptly to commence the Work. If the Owner unreasonably delays the issuance of the notice to proceed through no fault of the Contractor, the Contractor shall be entitled only to an equitable extension of the Contract Time; the Contract Sum shall remain unchanged.
- (c) The date of Substantial Completion is the date certified by the Architect in accordance with Paragraph 9.7.
- (d) The term “day” as used in the Contract Documents shall mean a calendar day, beginning and ending at 12:00 midnight, unless otherwise specifically defined by special provision.

8.2 PROGRESS AND COMPLETION

- (a) Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Building Construction Services Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.
- (b) The Contractor shall not knowingly, except by agreement with or instruction of the Owner in writing, prematurely commence operations on the Project site or elsewhere prior to the effective date of insurance to be furnished by the Contractor as required by Article 11. The date of commencement of the Work shall not be changed by the effective date of insurance required by Article 11.
- (c) **Liquidated Damages.** The Contractor shall proceed expeditiously with adequate forces, materials, and equipment, and shall achieve Substantial Completion within the Contract Time. If the Contractor fails or refuses to complete the Work within the Contract Time as specified in the Bid Proposal form, the Building Construction Services Agreement, or in any proper extension of the Contract Time granted by the Owner, then the Contractor agrees, as a part of the consideration for the awarding of the Contract, to pay to the Owner the amount of liquidated damages (hereinafter called the “Stipulated Amount”) as stipulated in the Bid Proposal form and the Building Construction Services Agreement for each calendar day that the Contractor has not Substantially Completed the Work after the expiration of the Contract Time provided. If no Stipulated Amount is provided in the Bid Proposal form and the Building Construction Services Agreement, the amount of liquidated damages shall be \$500.00 for each calendar day that the Contractor has not Substantially Completed the Work after the expiration of the Contract Time provided. The Stipulated Amount is not to be considered as a penalty, but shall be deemed, taken, or treated as reasonable liquidated damages, fixed and agreed upon by and between the Contractor and the Owner because of the impracticality and extreme difficulty of fixing and ascertaining the actual damages the Owner would sustain in the event of the Contractor’s late completion of the Project, and the stipulated amount is agreed to be the daily amount of damages that the Owner would sustain. The Stipulated Amount, as it accrues, will be retained from any portion of the Contract Sum due or that may become due to the Contractor. In the event the portion of the Contract Sum retained by the Owner is insufficient to recover the Stipulated Amount, then the Contractor or the Contractor’s Surety shall pay to the Owner any additional liquidated damages due that are in excess

of the funds remaining unpaid in the Contract Sum. The Owner shall be the sole judge as to whether or not the Work has been Substantially Completed within the calendar days allotted, which shall include the original Contract Time and any proper extension of the Contract Time granted in writing by the Owner. Should the Contractor dispute the Owner's determination of liquidated damages due, however, or should the Contractor, or the Contractor's agents or assigns, institute any legal action against the Owner to enforce rights under the Contract Documents, then this Subparagraph 8.2(c) shall not be construed to prevent the Owner from seeking full recovery for any and all actual damages suffered by the Owner and attributable to the Contractor, as an alternative to all liquidated damages due.

DELAYS AND EXTENSIONS OF TIME

(a) If the Contractor is delayed at any time in the progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, or by delay authorized by the Owner pending a claim, or by other causes which the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect and Owner may determine.

(b) Claims relating to Contract Time and time extensions shall be made in accordance with the applicable provisions of Paragraph 4.3.

(c) **No Damages for Delay. NOTWITHSTANDING ANY OTHER PROVISIONS OF THE CONTRACT DOCUMENTS, INCLUDING THE GENERAL CONDITIONS, NO ADJUSTMENT SHALL BE MADE TO THE CONTRACT SUM AND THE CONTRACTOR SHALL NOT BE ENTITLED TO CLAIM OR RECEIVE ANY ADDITIONAL COMPENSATION AS A RESULT OF OR ARISING OUT OF ANY DELAY, HINDRANCE, DISRUPTION, FORCE MAJEURE, IMPACT, OR INTERFERENCE, INTENTIONAL OR UNINTENTIONAL, FORESEEN OR UNFORESEEN, WHICH INCREASES THE TIME TO COMPLETE THE WORK, INCLUDING BUT NOT LIMITED TO ANY DELAYS CAUSED IN WHOLE OR IN PART BY THE ACTS, OMISSIONS, FAILURES, NEGLIGENCE, OR FAULT OF THE OWNER, THE ARCHITECT, OR THE OWNER'S REPRESENTATIVE, AN EXTENSION OF THE CONTRACT TIME UNDER SUBPARAGRAPH 8.3(a) BEING THE CONTRACTOR'S SOLE REMEDY.**

(d) The Owner shall have the right to occupy, without prejudice to the right of either party, any completed or largely completed portions of the structure or Work, notwithstanding the fact that the Contract Time for completing all or a portion of the Work may not have expired. Partial occupancy and use shall not be deemed as an acceptance of the Work taken or used.

(e) The Contractor shall promptly suspend the Work when either the Contractor or the Owner is ordered to do so by a court order from a court having lawful jurisdiction, and the Contractor will not be entitled to additional compensation by virtue of any delays resulting from the court order. The Contractor will also not be liable to the Owner for a delay caused in fact by the Work being suspended by a court order.

(f) The Architect, with the consent of the Owner, shall have the authority to suspend the Work, in whole or in part, for such period or periods as the Architect deems necessary due to unusual or severe weather conditions as are considered unfavorable for the suitable prosecution of the Work, or due to failure on the part of the Contractor to correct conditions considered unsafe for workmen or the general public. If it should become necessary to stop the Work for an indefinite period, the Contractor shall store all materials in such a manner that they will not obstruct or impede the public unnecessarily or become damaged in any way and shall take every precaution to prevent damage or deterioration of the Work performed. In cases of

suspension of the Work under this Subparagraph, the Contractor shall also provide suitable drainage about the Work and erect temporary structures where necessary. The Contractor shall not suspend the Work in whole or in part without written authority from the Architect or the Owner and shall resume the Work promptly when notified by the Architect or the Owner to resume operations.

(g) In the event of a delay that is the responsibility of the Contractor or any of the Subcontractors, for which the Contractor is not entitled to a time extension under the provisions of this Contract, the Owner may direct that the Work be accelerated by means of overtime, additional crews or additional shifts, or resequencing. This acceleration shall be at no cost to the Owner and will continue until the Contract Time is restored. In the event of a delay for which the Contractor is entitled to a time extension, as determined by the Architect, Owner may similarly direct acceleration and the Contractor agrees to perform same on the basis that the Contractor will be reimbursed only to the extent described in Subparagraph 4.3(i). **THE CONTRACTOR EXPRESSLY WAIVES ANY OTHER COMPENSATION RESULTING FROM ACCELERATION, SUCH AS LOSS OF LABOR PRODUCTIVITY OR EFFICIENCY.**

ARTICLE 9

CONTRACT SUM PAYMENTS AND COMPLETION

The Contract Sum is stated in the Building Construction Services Agreement and, including authorized adjustments, is the total amount of compensation payable by the Owner to the Contractor for the performance of the Work under the Contract Documents.

9.1 SCHEDULE OF VALUES

Before the first Application for Payment, the Contractor shall submit to the Architect a schedule of values allocated to various portions of the Work, prepared in such form, and supported by such data to substantiate its accuracy as the Architect may require. This schedule, when approved by the Architect and the Owner, shall be used as a basis for the Contractor's Application for Payment. The schedule of values shall follow the trade division of the Specifications. Contractor's Application for Payment shall be filed on the current version of AIA Form G702 (Application and Certificate for Payment), as approved by the Owner.

9.2 APPLICATIONS FOR PAYMENT

(a) At least ten (10) days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment for Work completed in accordance with the schedule of values. The Application shall be notarized, if required, and supported by data substantiating the Contractor's right to payment as the Owner or Architect may require, including but not limited to copies of requisitions from Subcontractors and material suppliers, and reflecting the applicable retainage as required in the Contract Documents. Contractor's Application for Payment shall also provide other supporting documentation as the Owner, or the other applicable provisions of the Contract Documents may require.

(b) Applications for Payment may not include requests for payment of amounts the Contractor does not intend to pay to a Subcontractor because of a good faith dispute, unless the Contractor complies with Clause 5.3(b)(2) of these General Conditions and the Contractor's Payment Bond Surety consents in writing to payment to the Contractor of the funds deemed to be in dispute.

(c) Unless otherwise provided in the Contract Documents, progress payments shall include

payment for materials and equipment delivered and suitably stored at the Project site for subsequent incorporation into the Work within thirty (30) days after delivery to the Project site. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored away from the Project site at a location agreed upon in writing. Payment for costs incurred in storage of materials or equipment away from the Project site will **NOT** be made by Owner unless:

- (1) the Owner has given prior approval of such off-site storage in writing.
- (2) the materials or equipment are stored in a bonded warehouse located in Dallas County and identified with the Project for which they are stored, as evidenced by warehouse receipts and appropriate documents of title; and
- (3) the materials or equipment stored off-site will be incorporated into the Work within thirty (30) days after delivery. **STORAGE IN FACILITIES OF THE MANUFACTURER OR THE CONTRACTOR WILL NOT BE PERMITTED OR PAID FOR, UNLESS THE OWNER HAS EXPRESSLY GIVEN PRIOR APPROVAL OF SUCH STORAGE IN WRITING.**

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

(e) All materials or equipment delivered to the Project site earlier than thirty (30) days prior to an approved schedule for delivery to the Project site shall be classified as an "early delivery." All early delivery materials or equipment must have the express written permission of the Owner to be stored on the Project site. If any unauthorized early delivery occurs, Contractor shall, at Contractor's expense or at the expense of the responsible Subcontractor or Supplier, cause such early delivery to be removed from the Project site and stored off-site until required at the Project site. All costs of labor, transportation and storage will be included as part of the expense. If the Contractor fails or refuses to remove unauthorized early delivery materials, the Owner may cause such materials to be removed at the Contractor's sole expense, and amounts may be withheld from the Contractor's Application for Payment to reimburse the Owner for any costs incurred in removing unauthorized early delivery materials. **OWNER WILL NOT BE RESPONSIBLE FOR THE PROTECTION OF OR RISK OF LOSS ON ANY EARLY DELIVERY MATERIALS OR EQUIPMENT, NOR WILL OWNER BE LIABLE FOR ANY PAYMENT FOR THE EARLY DELIVERY MATERIALS OR EQUIPMENT.** Any materials or equipment classified as early delivery will not be approved for payment as stored materials prior to thirty (30) days before the incorporation of the materials or equipment into the Work unless storage and payment at an earlier date is expressly approved in writing by the Owner.

(f) If the Contract Sum is equal to or less than \$100,000.00 and performance and payment bonds are not furnished by the Contractor, no payment applied for will be payable under the Contract until the Work has been Finally Completed and accepted.

9.3 CERTIFICATES FOR PAYMENT

(a) The Architect will, within ten (10) days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Subparagraph 9.5(a). The Certificate for Payment shall be issued on the current version of AIA Form G702 (Application and Certificate for Payment) as approved by the Owner.

(b) The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's observations at the site and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial and Final Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to Final Completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified, subject to the Owner's approval.

(c) The issuance of a Certificate for Payment is not a representation that the Architect has:

(1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work.

(2) reviewed construction means, methods, techniques, sequences, or procedures.

(3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or

(4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

(d) Whenever the Application for Payment for Work done since the last previous Application for Payment exceeds one hundred dollars (\$100.00) in amount, Owner will pay a percentage of the Application, less applicable retainage, to the Contractor within thirty (30) days following Owner's receipt and approval of the Certificate for Payment certified by the Architect. The Application may include acceptable nonperishable materials delivered to the Work or stored as provided for in Paragraph 9.3(c) and the payment will be allowed on the net invoice value, less taxes and applicable retainage.

(e) **Retainage.** The retainage withheld by the Owner on any and all progress payments will be ten (10%) percent if the Contract Sum at the time of execution of the Contract is in excess of \$100,000 and less than \$400,000; if the Contract Sum at time of execution is \$400,000 or more, the retainage withheld will be five (5%) percent. If the Contract Sum at time of execution is \$100,000 or less and the Contractor chooses to furnish performance and payment bonds, thereby allowing the Owner to make progress payments, the Owner will retain fifteen (15%) percent. The retainage will be withheld by the Owner from each progress payment until final completion of the Work by the Contractor, approval of final completion by the Architect, and final acceptance of the Work by the Owner. Unless otherwise required by state law, the retainage percentage as specified above is based upon the original

Contract Sum and will not be affected in the event the original Contract Sum is subsequently increased or decreased by Change Order.

(f) No progress payments shall be made on contracts where performance and payment bonds are not required or furnished. In such instances, payment for the Work performed will be made upon final completion and acceptance by the Owner of all Work.

9.4 DECISIONS TO WITHHOLD CERTIFICATION

(a) The Architect or the Owner may decide not to certify payment and may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner's interest, if in the Architect's or Owner's opinion the representations to the Owner required by Subparagraph 9.4(b) cannot be made. If the Architect or the Owner is unable to certify payment in the amount of the Application, the Architect or the Owner will notify the Contractor as provided in Subparagraph 9.4(a). If the Contractor and Architect or the Owner cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make the required representations to the Owner. The Architect or the Owner may also decide not to certify payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a Certificate for Payment previously issued to such extent as may be necessary, in the Architect's or Owner's opinion, to protect the Owner from loss because of:

- (1) defective or nonconforming Work not remedied.
- (2) third party claims filed or reasonable evidence indicating probable filing of such claims.
- (3) failure of the Contractor to make payments properly to Subcontractors or for labor, materials, or equipment.
- (4) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum.
- (5) damage to the Owner or another contractor.
- (6) reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay.
- (7) persistent failure to carry out the Work in accordance with the Contract Documents;
or
- (8) mathematical or other errors that are discovered in the Application for Payment.

(b) When each of the above reasons that existed for withholding certification are removed or remedied, certification will be made for amounts previously withheld.

(c) The Owner may, at its option, offset any progress payment or final payment under the Contract Documents against any debt (including taxes) lawfully due to the Owner from the Contractor,

regardless of whether the amount due arises pursuant to the terms of the Contract Documents or otherwise and regardless of whether or not the debt due to the Owner has been reduced to judgment by a court.

9.5 PROGRESS PAYMENTS

(a) After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents and shall so notify the Architect. The Owner shall not be liable for interest on any late or delayed progress payment or final payment caused by any claim or dispute, any discrepancy in quantities, any failure to provide supporting documentation or other information required with the Application for Payment or as a precondition to payment under the Contract Documents, or due to any payment the Owner or the Architect has a right to withhold or not certify under the Contract Documents. Notwithstanding the foregoing, the Owner may refuse to make payment on any Certificate for Payment (including, without limitation, the final Certificate for Payment) for any default under the Contract Documents, including but not limited to those defaults set forth in Subparagraph 9.5(a), Clauses (1) through (7). The Owner shall not be deemed in default by reason of withholding payment while any Contractor default remains uncured.

(b) The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of each Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractors portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in similar manner.

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

(d) Neither the Owner nor the Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law. That obligation belongs to the Contractor or, in the event of the Contractor's failure to pay a Subcontractor, to the Surety on the Payment Bond as required under Paragraph 11.3.

(e) Payment to material suppliers shall be treated in a manner similar to that provided in Subparagraphs 9.6(b), (c), and (d).

(f) A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not performed in accordance with the Contract Documents.

9.6 SUBSTANTIAL COMPLETION

(a) The Date of Substantial Completion of the Work, or designated portion of the Work, is the date certified by the Architect when construction is sufficiently completed in accordance with the Contract Documents such that the Owner may beneficially occupy and use the Work, or designated portions of the Work, for the purposes for which it is intended and only trivial and insignificant items remain which do not affect the Work as a whole.

(b) When the Contractor considers that the Work, or the portion of the Work which the Owner agrees to accept separately, is Substantially Complete, the Contractor shall prepare and submit to the Architect a comprehensive list of remaining items to be completed or corrected. The Contractor shall proceed promptly to complete and correct items on the list (hereinafter called the

“punch list”). Failure to include an item on the punch list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of the punch list, the Architect will make an inspection to determine whether the Work, or designated portion of the Work, is Substantially Complete. If the Architect’s inspection discloses any item, whether or not included on the punch list, which is not in accordance with the requirements of the Contract Documents and which renders the Work inspected not Substantially Complete, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct the item upon notification by the Architect. The Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion. When the Work or designated portion of the Work is Substantially Complete, the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and the Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the punch list accompanying the Certificate.

(c) The Certificate of Substantial Completion shall be submitted to the Owner and the Contractor for their written acceptance of responsibilities assigned to them in the Certificate.

(d) Upon Substantial Completion of the Work or designated portion thereof and upon application by the Contractor and certification by the Architect, the Owner shall make payment, reflecting adjustment in retainage, if any, for the Work, or portion of the Work, as provided in the Contract Documents.

9.7 PARTIAL OCCUPANCY OR USE

(a) The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate Supplemental Agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Subparagraph 11.2(e) and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is Substantially Complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion Substantially Complete, the Contractor shall prepare and submit a list to the Architect as provided under Subparagraph 9.7(b). Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

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

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

9.8 FINAL COMPLETION AND FINAL PAYMENT

(a) Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect, accompanied by the Owner's representative, will promptly make final inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract Documents fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's observations and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in said final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Subparagraph 9.9(b) as a condition precedent to the Contractor's being entitled to final payment have been fulfilled. Owner will normally make final payment within thirty (30) days after Owner's receipt and approval of the final Certificate for Payment. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work, unless otherwise provided by separate agreement between the Owner and the Contractor.

(b) Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect:

(1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied.

(2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least thirty (30) days prior written notice has been given to the Owner;

(3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents.

(4) a consent of surety to final payment; and

(5) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner.

(c) As a precondition to final payment by the Owner under this Contract, the Contractor's affidavit under Clause (b)(1) shall state that the Contractor has paid each of his subcontractors, laborers, or materialmen in full for all labor and materials provided to him for the Work under this Contract. In the event the Contractor has not paid each of his subcontractors, laborers, or materialmen in full, the Contractor shall state in the affidavit the amount owed and the name of each subcontractor, laborer, or materialmen to whom such payment is owed. In any event, **THE CONTRACTOR SHALL BE REQUIRED TO EXECUTE THE OWNER'S STANDARD AFFIDAVIT OF FINAL PAYMENT AND RELEASE AS A PRECONDITION TO RECEIPT OF FINAL PAYMENT.**

(d) If, after Substantial Completion of the Work, final completion of the Work is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion

and the Architect confirms the delay, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of payment. Payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

(e) The acceptance by the Contractor of the final payment shall operate as and shall be a complete release of the Owner from all claims or liabilities under the Contract, for anything done or furnished or relating to the Work or the Project, or for any act or neglect of the Owner relating to or connected with the Work or the Project.

ARTICLE 10

SAFETY, SECURITY AND UTILITY PROVISIONS; ENVIRONMENTAL COMPLIANCE

10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract, and will comply with all applicable City, County, State and Federal health and safety regulations.

10.2 SAFETY OF PERSONS AND PROPERTY

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

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

(b) The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

(c) The Contractor shall erect and maintain, as required by existing conditions and

performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

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

(e) **USE OF EXPLOSIVES - CLAIMS AND TOTAL INDEMNIFICATION.** The Owner shall have the right to pre-approve the use of any explosives on the Project; the Contractor shall not assume in its bid that permission to use explosives will be granted. The Owner shall NOT be liable for any claim for additional time or compensation as a result of the Owner's denial of permission to use explosives. Where use of explosives is permitted by the Owner, the Contractor EXPRESSLY AGREES TO BE SOLELY RESPONSIBLE for the determination as to whether explosives shall actually be used, and for any result from the use, handling or storage of explosives, and shall INDEMNIFY, DEFEND AND HOLD COMPLETELY HARMLESS the Owner, its officers, agents and employees, and the Architect against any and all claims, lawsuits, judgments, costs or expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, as the result of the use, handling or storage of the explosives by the Contractor or any Subcontractor, REGARDLESS OF WHETHER SAID USE, HANDLING OR STORAGE WAS NEGLIGENT OR NOT, AND REGARDLESS OF WHETHER THE DAMAGE OR INJURY WAS CONTRIBUTED TO IN ANY WAY BY THE NEGLIGENCE OR FAULT OF THE OWNER, ITS OFFICERS, AGENTS, EMPLOYEES, OR REPRESENTATIVES, OR THE ARCHITECT AND ITS OFFICERS, AGENTS, EMPLOYEES, OR REPRESENTATIVES. In the event of conflict with any other indemnity paragraph in this Contract, this paragraph controls. This indemnity paragraph is intended solely for the benefit of the parties to this Contract and is not intended to create or grant any rights, contractual or otherwise, to or for any other person or entity. The Contractor shall furnish the Owner and the Architect with evidence of insurance sufficient to cover possible damage or injury, which insurance shall either include the Owner and the Architect as additional insureds or be sufficiently broad in coverage as to fully protect the Owner and the Architect. All explosives shall be stored in a safe and secure manner, under the care of a competent watchman at all times, and all storage places shall be marked clearly "DANGEROUS-EXPLOSIVES." The method of storing and handling explosives and highly flammable materials shall conform to Federal and State laws, City of Mesquite ordinances, and the City of Mesquite Fire Department regulations. The Contractor shall notify any telecommunications and public utility company and any private property owners having structures in the proximity of the Project Site of the Contractor's intention to use explosives, and such notice shall be given sufficiently in advance to enable the telecommunications and public utility companies and private property owners to take such steps as they may deem necessary to protect their property from injury. The notice shall not relieve the Contractor of any responsibility for damage resulting from any blasting operations.

(f) The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Clauses 10.2(a)(2) and 10.2(a)(3) caused in whole or in part by the Contractor, a Subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Clauses 10.2(a)(2) and 10.2(a)(3), except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor or any of its Subcontractors. The

foregoing obligations of the Contractor are in addition to the Contractor's obligations under Paragraph 3.19. To the extent that any such damage or loss may be covered by property insurance or other insurance required by the Contract Documents, the Owner and the Contractor shall exercise their best efforts to make a claim and obtain recovery from the insurers to provide for the cost, in whole or in part, of the repair work or to provide for reimbursement for such damage or loss.

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

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

10.3 EMERGENCIES

In an emergency affecting safety, health, or security of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Paragraph 4.3 and Article 7.

10.4 PUBLIC CONVENIENCE AND SAFETY

(a) The Contractor shall place materials stored about the Work and shall conduct the Work at all times in a manner that causes no greater obstruction to the public than is considered necessary by the Owner. Sidewalks or streets shall not be obstructed, except by special permission of the Owner. The materials excavated and the construction materials or plant used in the performance of the Work shall be placed in a manner that does not endanger the Work or prevent free access to all fire hydrants, water mains and appurtenances, water valves, gas valves, manholes for the telephone, telegraph signal or electric conduits, wastewater mains and appurtenances, and fire alarm or police call boxes in the vicinity.

(b) The Owner reserves the right to remedy any neglect on the part of the Contractor in regard to public convenience and safety which may come to the Owner's attention, after twenty-four (24) hours notice in writing to the Contractor. In case of an emergency, the Owner shall have the right to immediately remedy any neglect without notice. In either case, the cost of any work done by the Owner to remedy the Contractor's neglect shall be deducted from the Contract Sum. The Contractor shall notify the City Public Work's Department when any street is to be closed or obstructed. The notice shall, in the case of major thoroughfares or street upon which transit lines operate, be forty-eight (48) hours in advance. The Owner reserves the right to postpone or prohibit any closure or obstruction of any streets or thoroughfares to the extent necessary for the safety and benefit of the traveling public. The Contractor shall, when directed by the Architect or the Owner, keep any street or streets in condition for unobstructed use by City departments. When the Contractor is required to construct temporary bridges or make other arrangements for crossing over ditches or around structures, the Contractor's responsibility for accidents shall include the roadway approaches as well as the crossing structures.

10.5 BARRICADES, LIGHTS AND WATCHMEN

If the Work is carried on or adjacent to any street, alley or public place, the Contractor shall, at the Contractor's own cost and expense, furnish, erect, and maintain sufficient barricades, fences, lights, and danger signals, shall provide sufficient watchmen, and shall take such other precautionary measures as are necessary for the protection of persons or property and of the Work. All barricades shall be painted in a color that will be visible at night, shall indicate in bold letters thereon the Contractor's name and shall be illuminated by lights from sunset to sunrise. The term "lights," as used in this Paragraph, shall mean flares, flashers, or other illuminated devices. A sufficient number of barricades with adequate markings and directional devices shall also be erected to keep vehicles from being driven on or into any Work under construction. The Contractor will be held responsible for all damage to the Work due to failure of barricades, signs, lights, and watchmen to protect the Work. Whenever evidence is found of such damage, the Architect may order the damaged portion immediately removed and replaced by the Contractor at Contractor's cost and expense. The Contractor's responsibility for maintenance of barricades, signs, and lights, and for providing watchmen, shall not cease until the Project has been finally accepted by the Owner.

10.6 PUBLIC UTILITIES AND OTHER PROPERTIES TO BE CHANGED

In case it is necessary to change or move the property of the Owner or of any telecommunications or public utility, such property shall not be removed or interfered with until ordered to do so by the Architect. The right is reserved to the owner of any public or private utilities to enter upon the Project site for the purpose of making such changes or repairs of their property that may become necessary during the performance of the Work. The Owner reserves the right of entry upon the Project site for any purpose, including repairing or relaying sewer and water lines and appurtenances, repairing structures, and for making other repairs, changes, or extensions to any of the Owner's property. The Owner's actions shall conform to the Contractor's current and approved schedule for the performance of the Work, provided that proper notification of schedule requirements has been given to the Owner by the Contractor.

10.7 TEMPORARY STORM SEWER AND DRAIN CONNECTIONS

When existing storm sewers or drains have to be taken up or removed, the Contractor shall at his own expense provide and maintain temporary outlets and connections for all public and private storm sewers and drains. The Contractor shall also take care of all storm sewage and drainage that will be received from these storm drains and sewers; for this purpose, the Contractor shall provide and maintain, at the Contractor's own expense, adequate pumping facilities and temporary outlets or diversions. The Contractor shall, at the Contractor's own expense, construct such troughs, pipes, or other structures necessary and shall be prepared at all times to dispose of storm drainage and sewage received from these temporary connections until such time as the permanent connections are built and in service. The existing storm sewers and connections shall be kept in service and maintained under the Contract, except where specified or ordered to be abandoned by the Architect. All storm water and sewage shall be disposed of in a satisfactory manner so that no nuisance is created and that the Work under construction will be adequately protected.

10.8 ARRANGEMENT AND CHARGE FOR WATER FURNISHED BY THE OWNER, ELECTRICITY FOR THE PROJECT

(a) When the Contractor desires to use the Owner's water in connection with the Work, the Contractor shall make complete and satisfactory arrangements with Mesquite Water Utilities and shall be responsible for the cost of the water the Contractor uses. Where meters are used, the charge will be at the regular established rate; where no meters are used, the charge will be as prescribed by City ordinance, or where no ordinance applies, payment shall be based on estimates made by the Mesquite Water Utilities.

(b) The Contractor shall make complete and satisfactory arrangements for electricity and metered electrical connections with the Owner, or with any retail electric provider in the event that separately metered electrical connections are required for the Project. The Contractor shall pay for all electricity used in the performance of the Work through separate metered electrical connections obtained by the Contractor through a retail electric provider.

10.9 USE OF FIRE HYDRANTS

The Contractor, Subcontractors, and any other person working on the Project shall not open, turn off, interfere with, attach any pipe, or hose to, or connect anything with any fire hydrant, stop valve, or stop cock, or tap any water main belonging to the Owner, unless duly authorized to do so by the Mesquite Water Utilities in accordance with City ordinances and regulations.

10.10 ENVIRONMENTAL COMPLIANCE

(a) Reserved.

(b) The Contractor and its Subcontractors are deemed to have made themselves familiar with and at all times shall comply with the U.S. Green Building Council Leadership in Energy and Environmental Design (LEED) standards and any and all applicable federal, state or local laws, rules, regulations, ordinances, and rules of common law now in effect (including any amendments now in effect), relating to the environment, Hazardous Substances or exposure to Hazardous Substances, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C.A. §§ 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C.A. §§ 1801, et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C.A. §§ 6901, et seq.; the Federal Water Pollution Control Act, 33 U.S.C.A §§ 1201, et seq.; the Toxic Substances Control Act, 15 U.S.C.A. §§ 2601, et seq.; the Clean Air Act, 42 U.S.C.A. §§ 7401, et seq.; the Safe Drinking Water Act, 42 U.S.C.A. §§ 3808, et seq., and any current judicial or administrative interpretation of these laws, rules, regulations, ordinances, or rules of common law, including but not limited to any judicial or administrative order, consent decree, or judgment affecting the Project.

(c) In the event the Contractor encounters on the site materials reasonably believed to be a Hazardous Substance that have not been rendered harmless, and removal of such materials is not a part of the scope of Work required under the Contract Documents, the Contractor shall immediately stop Work in the affected area and report in writing the facts of such encounter to the Architect and the Owner. Work in the affected area shall not thereafter be resumed except by written order of the Owner unless and until the material is determined not to be a Hazardous Substance or the Hazardous Substance is remediated. The Owner may choose to remediate the Hazardous Substance with a separate contractor or through a Change Order with the Contractor. If the Owner determines that the Hazardous Substance exists in the affected area due to the fault or negligence of the Contractor or any of its Subcontractors, the Contractor shall be responsible for remediating the condition at the sole expense of the Contractor in accordance with the Contractor's Spill Remediation Plan. **An extension of the Contract Time for any delay in the progress schedule caused as a result of the discovery and remediation of a Hazardous Substance may be granted by the Owner only if all remaining Work on the Project must be suspended and the delay cannot be made up elsewhere in the progress schedule. Any request for an extension of the Contract Time related to the discovery and remediation of a Hazardous Substance is subject to the provisions of Paragraph 4.3 and Article 8.**

(d) The Contractor shall be responsible for identification, abatement, cleanup, control, removal,

remediation, and disposal of any Hazardous Substance brought into or upon the site by the Contractor or any Subcontractor or Supplier. The Contractor shall obtain any and all permits necessary for the legal and proper handling, transportation, and disposal of the Hazardous Substance and shall, prior to undertaking any abatement, cleanup, control, removal, remediation, and disposal, notify the Owner and the Architect so that they may observe the activities; provided, however, that it shall be the Contractor's sole responsibility to comply with all applicable laws, rules, regulations, or ordinances governing the activities.

(e) **Spill Prevention Plan.** At least seventy-two (72) hours prior to commencing performance of any of the Work at the Project site, the Contractor shall submit to the Owner for review and approval a Spill Prevention and Response Plan (SPRP) meeting the requirements of federal and state law, rules, and regulations. The SPRP shall be specially designed for the Contractor's planned work methods and procedures. The SPRP shall be designed to complement all applicable safety standards, fire prevention regulations, and pollution prevention policies and procedures. The SPRP shall include estimates of the quantity and rate of flow should equipment fail, and detail containment or diversionary structures to prevent spills from leaving the site or migrating into adjacent properties or navigable waters. The SPRP shall include methods of recovery of spilled materials and all applicable twenty-four (24) hour emergency phone numbers, including without limitation that of the Owner's Project Manager or other designated representative. The Contractor shall not commence any field work prior to approval of such plan by the Owner. The following additional rules shall apply with respect to spills caused by the Contractor or a Subcontractor:

(1) The Contractor shall immediately report any spill or release at the Project site, whether or not it is associated with this Contract, to the Owner's Project Manager or other designated representative. Thereafter, within two (2) working days after the occurrence of such event, the Contractor shall submit a written report describing such event in a degree of detail reasonably acceptable to the Owner.

(2) The Contractor shall immediately respond in accordance with the SPRP in the event of a spill.

(3) The Contractor shall dispose of spilled materials in accordance with EPA and Texas Commission on Environmental Quality (TCEQ) regulations and any other applicable federal, state, or local laws, rules, or regulations. In connection with such disposals, the Contractor shall use only those transporters and disposal facilities that are approved in advance in writing by the Owner. A copy of all transport manifests for the spilled materials shall be obtained and retained in the Contractor's records for reference purposes, to be provided upon request of the Architect, the Owner, or any governmental regulatory agency with jurisdiction over the matter. **ALL COSTS OF COLLECTION, CONTAINMENT, AND DISPOSAL OF SPILLED MATERIALS SHALL BE THE SOLE RESPONSIBILITY OF THE CONTRACTOR.**

(4) For purposes of this Subparagraph (e), the term "spill" includes any kind of environmental discharge or release.

(f) **Clean Air Management Plan.** The Contractor shall comply with the Clean Air Management Plan submitted to and approved by the Owner during the contractor selection process. The Owner reserves the right, at the Contractor's sole expense, to require the removal or retrofitting of any equipment used in the course of construction that does not comply with the Plan submitted to and approved by the Owner.

(g) The Contractor shall deposit surplus, or waste excavation or other materials removed as part of the Work at a legal disposal site in accordance with all applicable state, federal, and local laws, rules, regulations, and ordinances. The Contractor shall submit to the Owner for review and approval all planned disposal sites or proposed uses for the surplus or waste excavation or other materials prior to removal of any excavation or other material from the Project site. A copy of all transport manifests for surplus or waste excavation or other materials shall be obtained and retained in the Contractor's records for reference purposes, to be provided upon request to the Architect, the Owner, or any governmental regulatory agency with jurisdiction over the matter.

(h) The Contractor is responsible for obtaining coverage under the Texas Pollutant Discharge Elimination System (TPDES) Construction General Permit from TCEQ for construction of the Work under regulations contained in 40 CFR Part 122, as amended, pursuant to the Clean Water Act, 33 U.S.C.A. §§1251 et seq. and Chapter 26 of the Texas Administrative Code. These regulations require the filing of a Notice of Intent (NOI) to obtain and abide by the general stormwater permit for construction activities promulgated by EPA as administered by the TCEQ, including but not limited to demolition, clearing, grading, embankment, and excavation that disturb the applicable amount of total land area. In addition, the Contractor shall comply with all regulations of the OWNER relating to stormwater and stormwater runoff management at the Work site.

(i) The Contractor shall provide a Storm Water Pollution Prevention Plan (SWPPP) in accordance with the requirements of the TPDES Construction General Permit, and Storm Water Pollution Prevention Plan, of these General Conditions. The Contractor is responsible for obtaining a Storm Water Discharge Permit that may be required for construction of this project under regulations contained in 40 CFR Part 122, as amended, under the authority of the Clean Water Act, 33 U.S.C. 1251 et seq. These regulations require the filing of a notice of intent to obtain and abide by the general storm water permit for construction activities, including cleaning, grading, and excavation, that disturb the applicable amount of total land area. For permitting information and requirements, contact USEPA Region VI, Fountain Place 12th Floor, Suite 1200, 1445 Ross Ave., Suite 1200, Dallas, Texas 75202-2733, (214) 665-2200 and Texas Commission on Environmental Quality. If a permit is required, the Contractor shall provide measures to control soil erosion sediment and water pollution created by construction operations for the duration of the Contract as directed by the Owner. These measures shall be in addition to those required of the Contractor under Item 202. Temporary Erosion, Sedimentation, and Water Pollution Prevention and Control of the North Central Texas Council of Governments' Standard Specifications for Public Works Construction, Fifth Edition (November 2017), made applicable to the Contractor under these General Conditions.

(j) The Contractor shall not install any materials in the performance of the Work that contain asbestos or asbestos-related material such as hydrated mineral silicate, including chrysotile, amosite, crocidolite, tremolite, anthophyllite or actinolite, whether friable or non-friable.

(k) The Owner reserves the right in its sole option to exercise the following remedies (without waiving the right to pursue the imposition of any civil or criminal fines or penalties that may be imposed under state, federal, or local laws or ordinances), at no additional cost to the Owner and without an extension of the Contract Time, in the event the Contractor fails or refuses after seven (7) days advance written notice from the Owner to comply with the provisions of this Paragraph 10.10, the terms of the SPRP, the terms of the Clean Air Management Plan, any storm water permit or other environmental permit issued in connection with the Work, or any applicable environmental law, rule, regulation, or ordinance:

- (1) suspend all or any portion of the Work until the noncompliance is corrected, or until a detailed plan to achieve compliance within a reasonably prompt period of time is prepared by the Contractor and approved by the Owner.
- (2) if the Contractor fails to properly address the noncompliance within the time stipulated by the Owner, perform the necessary remediation or correction work and back charge the Contractor for the cost of the remediation or correction; or
- (3) terminate the Contract for cause as provided in Article 13.

ARTICLE 11 INSURANCE AND BONDS

11.1 CONTRACTOR'S LIABILITY INSURANCE

(a) Without limiting any of the other obligations or liabilities of the Contractor under the Contract Documents, the Contractor shall purchase and maintain, during the term of the Contract and at the Contractor's own expense, the minimum liability insurance coverage described below with companies duly authorized or approved to do business in the State of Texas and otherwise satisfactory to the Owner. Contractor shall also require each Subcontractor performing work under the Contract, at the Subcontractor's own expense, to maintain during the term of the Contract levels of insurance that are necessary and appropriate for the Work performed, which levels of insurance comply with all applicable laws and are consistent with industry standards. The Subcontractor's liability insurance shall name the Contractor and the Owner as additional insureds using the broadest form of endorsement available, with such status extended to include the extension of any completed operations coverage provided or required. Certificates of insurance complying with the requirements prescribed in Subparagraph 11.1(b) which show the existence of each policy shall be delivered to the Architect, who will in turn forward same to the Owner before any Work is started. Contractor shall promptly furnish, upon the request of and without expense to the Owner, a certified copy of each policy required, including all endorsements.

- (1) Workers' Compensation, with statutory limits, with the policy endorsed to provide a waiver of subrogation as to the Owner; Employer's Liability Insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee and \$500,000 disease policy limit.
- (2) Commercial General Liability Insurance, Including Personal Injury Liability, Independent Contractor's Liability, Products and Completed Operations and Contractual Liability covering, but not limited to, the liability assumed under the indemnification provisions of this Contract, fully insuring Contractor's (or Subcontractor's) liability for injury to or death of the Owner's employees

and third parties, and for damage to property of third parties, with a combined bodily injury (including death) and property damage minimum limit of no less than \$1,000,000 per occurrence, and no less than \$1,000,000 annual aggregate. If coverage is written on a claims-made basis, coverage shall be continuous (by renewal or extended reporting period) for no less than 60 months following completion of the contract and acceptance of work by the City. Coverage, including any renewals, shall have the same retroactive date as the original policy applicable to the Project. The Owner and the Architect shall be named as additional insureds using the broadest form of endorsement available, with such status extended to include extension of the completed operations coverage as described above.

The general liability policy shall include coverage extended to apply to completed operations, asbestos hazards (if the Project involves work with asbestos), and XCU hazards. The Completed Operations coverage must be maintained for a minimum of one (1) year after final completion and acceptance of the Work, with evidence of same filed with Owner. The policy shall include an endorsement CG2503 amendment of limits (designated project or premises) in order to extend the policy's limits specifically to the project in question.

(3) Business Automobile Liability Insurance, covering owned, hired and non-owned vehicles, with a combined bodily injury (including death) and property damage minimum limit of \$1,000,000 per occurrence. Such insurance shall include coverage for loading and unloading hazards.

(b) Certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required under Paragraph 11.1 shall contain a provision that coverages afforded under the policies will not be cancelled, non-renewed, allowed to expire, or materially changed until at least thirty (30) days prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Subparagraph 9.9(c). Information concerning reduction and changes in required coverage shall be furnished by the Contractor to the Owner, on an equal basis, with reasonable promptness in accordance with the Contractor's receipt of information and belief.

(c) If any insurance company for the Contractor, which company provides insurance required under the Contract Documents, becomes insolvent or becomes the subject of any rehabilitation, conservatorship, or liquidation or similar proceeding, the Contractor shall procure, immediately upon first notice of such occurrence and without cost to the Owner, replacement insurance coverage before continuing the performance of the Work at the Project. Any failure to provide such replacement insurance coverage shall constitute a material breach of the Contract.

11.2 PROPERTY INSURANCE

(a) **All-Risk Insurance.** In addition to the insurance described in Paragraphs 11.1 and 11.4, the Contractor shall obtain at its expense, and maintain throughout the duration of the Project, All-Risk Builder's Risk Insurance, if the Project involves complete construction of a new building, or an All-Risk Installation Floater policy, if the Project involves materials and supplies needed for additions to, or renovations or remodeling of an existing building. Coverage on either policy shall be All-Risk, including, but not limited to, Fire, Extended Coverage, Vandalism, Collapse or Damage from Collapse, including collapse resulting from design error, Malicious Mischief, Flood (if located in a flood zone) and Theft, in an amount equal to one hundred percent (100%) of the insurable value of the Project for the Installation Floater policy, and one hundred percent (100%) of the replacement cost of the Project for the Builder's Risk policy. If an Installation

Floater policy is provided, the Owner shall be shown as an Additional Insured and primary non-contributory, with respect to the Project. If a Builder's Risk policy is provided, the policy shall be written on a Completed Value Form, including materials and necessary equipment delivered, as well as labor performed for the Project. This policy shall be written jointly in the names of the Owner, the Contractor, Subcontractors, and Sub-Subcontractors as their interests may appear. The policy shall have endorsements as follows:

- (1) This insurance shall be specific as to coverage and not contributing insurance with any permanent insurance maintained on the property.
- (2) Loss, if any, shall be adjusted with and made payable to the Owner as trustee for the insureds as their interests may appear.
- (3) The right of subrogation under the policy shall be waived as to the Architect.

(b) **Boiler and Machinery Insurance.** The Contractor shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner. This insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

(c) **Loss of Use Insurance.** The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. To the extent the loss is covered by the Owner's property insurance, the Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

(d) The Contractor shall provide to the Architect for forwarding to the Owner a copy of all property insurance policies procured under this Paragraph 11.2 before any exposure to loss may occur.

(e) If any insurance company for the Contractor, which company provides insurance required under the Contract Documents, becomes insolvent or becomes the subject of any rehabilitation, conservatorship, or liquidation or similar proceeding, the Contractor shall procure, immediately upon first notice of such occurrence and without cost to the Owner, replacement insurance coverage before continuing the performance of the Work at the Project. Any failure to provide such replacement insurance coverage shall constitute a material breach of the Contract.

(f) Partial occupancy or use in accordance with Paragraph 9.8 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

(g) Any deductible applicable to the insurance (primary coverage) should be identified in the contract documents, and the responsibility for paying the part of any loss not covered because of the operation of such deductibles shall be apportioned among the contracting parties. If any part of a loss is not covered because of the application of a deductible amount not identified in the contract, the loss shall be paid by the Contractor. As an example: Any insured other than the Owner making claim to which a deductible applies shall be responsible for the portion of the loss not

insured because of the deductible.

11.3 PERFORMANCE AND PAYMENT BONDS

(a) Subject to the provisions of Subparagraph 11.3(b), the Contractor shall, with the execution and delivery of the Building Construction Services Agreement, furnish and file with the Owner in the amounts required in this Paragraph, the surety bonds described in Clauses (a)(1) and (a)(2) below, which surety bonds shall be in accordance with the City of Mesquite regulations and the provisions of Chapter 2253, Texas Government Code, as amended; each bond shall be signed by the Contractor, as Principal, and by an established bonding company, as surety, meeting the requirements of Subparagraph 11.3(c) and approved by the Owner. The surety bonds shall be accompanied by an appropriate Power-of-Attorney clearly establishing the extent and limitations of the authority of each signer to so sign:

(1) **Performance Bond.** A good and sufficient bond in an amount equal to 100% of the total Contract Sum, guaranteeing the full and faithful execution of the Work and performance of the Contract in accordance with Plans, Specifications, and all other Contract Documents, including any Amendments thereof, for the protection of the Owner. This bond shall also provide for the repair and maintenance of all defects due to faulty materials and workmanship that appear within a period of one (1) year from the date of final completion and acceptance of the improvements by the Owner or lesser or longer periods as may be otherwise designated in the Contract Documents.

(2) **Payment Bond.** A good and sufficient bond in an amount equal to 100% of the total Contract Sum, guaranteeing the full and prompt payment of all claimants supplying labor or materials in the prosecution of the Work provided for in the Contract Documents and any Amendments thereto, and for the use and protection of each claimant.

(b) If the Contract Sum, including Owner-accepted alternates and allowances, if any, is greater than \$100,000, Performance and Payment Bonds in 100% of the Contract Sum are mandatory and shall be provided by the Contractor. If the Contract Sum is greater than \$50,000 but less than or equal to \$100,000, only a Payment Bond in 100% of the Contract amount is mandatory; provided, however, that the Contractor may elect to furnish a Performance Bond in the same amount if the Contractor so chooses. If the Contract Sum is less than or equal to \$50,000, the Contractor may elect not to provide Performance and Payment Bonds; provided that in such event, no money will be paid to the Contractor until final completion and acceptance of all work by Owner. If the Contractor elects to provide Performance and Payment Bonds 100% of the total Contract Sum, progress payments in accordance with these General Conditions shall be disbursed.

(c) No surety will be accepted by the Owner who is now in default or delinquent on any bonds or who is a party to any litigation against the Owner. All bonds shall be made and executed on the Owner's standard forms, shall be approved by the Owner, and shall be executed by not less than one corporate surety that is authorized and admitted to do business in the State of Texas, is licensed by the State of Texas to issue surety bonds, is listed in the most current United States Department of the Treasury List of Acceptable Sureties, and is otherwise acceptable to the Owner. Each bond shall be executed by the Contractor and the surety and shall specify that legal venue for enforcement of each bond shall lie exclusively in Dallas County, Texas. Each surety shall designate an agent resident in Dallas County, Texas to whom any requisite statutory notices may be delivered and on whom service of process may be had in matters arising out of the suretyship.

(d) The person or persons, partnership, company, firm, limited liability company, association, corporation, or other business entity to whom the Contract is awarded shall, within ten (10) days after such

award, sign the required Contract with the Owner and provide the necessary surety bonds and evidence of insurance as required under the Contract Documents. No Contract shall be binding on the Owner until it has been approved as to form by the City Attorney, executed for the Owner by the City Manager, the performance and payment bonds and evidence of insurance have been furnished as required by the Contract Documents, and the fully executed contract has been delivered to the Contractor.

(e) The failure of the Contractor to execute the Contract or deliver the required statutory bonds and evidence of insurance within ten (10) days after the Contract is awarded or as soon thereafter as the Owner can assemble and deliver the Contract shall constitute a material breach of the Contractor's bid proposal and the Owner may rescind the Contract award and collect or retain the proceeds of the bid security. By reason of the uncertainty of the market prices or materials and labor, and it being impracticable and difficult to determine accurately the amount of damages occurring to the Owner by reason of the Contractor's failure to execute and furnish the statutory bonds and to sign the Contract within ten (10) days, the filing of a bid proposal with the accompanying bid security will be considered as an acceptance of this Subparagraph 11.3(e). In the event the Owner should readvertise for bids, the defaulting Contractor shall not be eligible to bid, and the lowest responsible bid obtained in the readvertisement, or the bid which provides the best value, shall be the bid referred to in this Paragraph.

11.4 'UMBRELLA' LIABILITY INSURANCE

The Contractor shall obtain, pay for and maintain umbrella liability insurance during the Contract term, insuring Contractor for an amount of not less than \$3,000,000 per occurrence combined limit Bodily Injury (including death) and Property Damage, that follows form and applies in excess of the primary coverage required hereinabove. The Owner and Architect shall be named as additional insureds using the broadest form of endorsement available, with such status extended to include the extension of the completed operations coverage as described in this Article. The policy shall provide "drop down" coverage where underlying primary insurance coverage limits are insufficient or exhausted.

11.5 POLICY ENDORSEMENTS AND SPECIAL CONDITIONS

(a) Each insurance policy to be furnished by the Contractor shall include the following required provisions within the certificate of insurance, and within the body of the insurance contract or by endorsement to the policy:

(1) That the Owner and Architect shall be named as additional insureds on all liability coverages, using the broadest form of endorsement available, with such status extended to include the extension of the completed operations coverage as described in this Article. Where the Owner employs a Construction Manager on the Project, the Contractor and Subcontractor shall include the Construction Manager on all liability insurance policies to the same extent as the Owner and Architect are required to be named as additional insureds.

(2) Each insurance policy shall require that thirty (30) days prior to the expiration, cancellation, nonrenewal or any material change in coverage, a notice thereof shall be given to Owner by certified mail, by sending the notice to the Engineer and to the Human Resources Department, Risk Management Division, 1515 North Galloway, Mesquite, Texas 75149. Contractor shall also notify Owner, within 24 hours after receipt, of any notice of expiration, cancellation, nonrenewal or material change in coverage it receives from its insurer.

(3) The term "Owner" or "City of Mesquite" shall include all authorities, boards, bureaus, commissions, divisions, departments and offices of the Owner and the individual members, employees and agents thereof in their official capacities, while acting on behalf of Owner (the City

of Mesquite).

(4) The policy phrase or clause "Other Insurance" shall not apply to Owner where Owner is an additional insured on the policy. The insurance coverage furnished by Contractor as required is considered to be primary insurance for purposes of the Project and the additional insureds named in the required policies.

(5) All provisions of the Contract Documents concerning liability, duty and standard of care, together with the indemnification provision, shall, to the maximum extent allowable in the insurance market, be underwritten by contractual liability coverage sufficient to include such obligations with the applicable liability policies.

(6) Concerning the insurance to be furnished by the Contractor, it is a condition precedent to acceptability that:

(7) All policies must comply with the applicable requirements and special provisions of this Article.

(8) Any policy evidenced by a certificate of insurance or submitted for review shall not be subject to limitations, conditions or restrictions deemed inconsistent with the intent of the insurance requirements set forth herein, and the Owner's decision regarding whether any policy contains such provisions, contrary to this requirement, shall be final.

(9) All policies required are to be written through companies duly authorized and approved to transact that class of insurance in the State of Texas and that are otherwise acceptable to the Owner.

(b) The Contractor agrees to the following special provisions:

(1) The Contractor hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall have no right of recovery or subrogation against the Owner, it being the intention that the insurance policies shall protect all parties to the Contract and be primary coverage for all losses covered by the policies. This waiver of subrogation shall be included, by endorsement or otherwise, as a provision of all policies required under this Article 11.

(2) Insurance companies issuing the insurance policies and the Contractor shall have no recourse against the Owner for payment of any premiums or assessments for any deductibles, as all such premiums and deductibles are the sole responsibility and risk of Contractor.

(3) Approval, disapproval, or failure to act by the Owner regarding any insurance supplied by the Contractor (or any Subcontractors) shall not relieve the Contractor of any responsibility or liability for damage or accidents as set forth in the Contract Documents. The bankruptcy, insolvency or denial of liability of or by the Contractor's insurance company shall likewise not exonerate or relieve the Contractor from liability.

(4) The Owner reserves the right to review the insurance requirements of this Article 11 during the effective period of this Contract and to modify insurance coverages and their limits when deemed necessary and prudent by the Owner's Risk Management Division, Human Resources Department, based upon economic conditions, the recommendation of professional insurance advisors, changes in statutory law, court decisions or other relevant factors. The Contractor agrees to make any reasonable request for deletion, revision or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or

regulation binding upon either party to this Contract or upon the underwriter of any such policy provisions). Upon request by the Owner, the Contractor shall exercise reasonable efforts to accomplish such changes in policy coverages and shall pay the cost thereof.

- (5) No special payments shall be made for any insurance policies that the Contractor and Subcontractors are required to carry; all are included in the Contract Sum.
- (6) Any insurance policies required under this Article may be written in combination with any of the others, where legally permitted, but none of the specified limits may be lowered or otherwise negatively impacted by doing so, nor may any of the requirements or special provisions of this Article be limited or circumvented by doing so.

ARTICLE 12

DEFECTIVE AND NONCONFORMING WORK

12.1 UNCOVERING OF WORK

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

(b) If a portion of the Work has been covered which the Architect has not specifically requested to observe prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If any Work is not in accordance with the Contract Documents, the Contractor shall pay the costs of uncovering, repair, replacement unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

12.2 CORRECTION OF WORK

(a) The Contractor shall promptly correct Work rejected by the Architect as failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed, or completed. The Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect's services and expenses made necessary thereby.

(b) If any of the Work is found to be defective or nonconforming with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Architect or the Owner to do so unless the Owner has previously given the Contractor a written acceptance or waiver of the defect or nonconformity. The Contractor's obligation to correct defective or nonconforming Work remains in effect for:

- (1) one year after the date of Substantial Completion of the Work or designated portion of the Work.

(2) one year after the date for commencement of warranties established by agreement in connection with partial occupancy under Subparagraph 9.8(a); or

(3) the stipulated duration of any applicable special warranty required by the Contract Documents.

(c) The one-year period described in Clauses (b)(1) and (b)(2) shall be extended with respect to portions of the Work performed, repaired, or corrected after Substantial Completion by the period of time between Substantial Completion and the actual completion of the Work.

(d) The obligations of the Contractor under this Paragraph 12.2 shall survive final acceptance of the Work and termination of this Contract. The Owner shall give notice to the Contractor promptly after discovery of a defective or nonconforming condition in the Work. The one-year period stated in Clauses (b)(1) and (b)(2) does not limit the ability of the Owner to require the Contractor to correct latent defects or nonconformities in the Work, which defects or nonconformities could not have been discovered through reasonable diligence by the Owner or the Architect at the time the Work was performed or at the time of inspection for certification of Substantial Completion or Final Completion. The one-year period also does not relieve the Contractor from liability for any defects or deficiencies in the Work that may be discovered after the expiration of the one-year correction period.

(e) The Contractor shall remove from the Project site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

(f) If the Contractor fails to correct defective or nonconforming Work within a reasonable time after notice from the Owner or the Architect, the Owner may correct it in accordance with Paragraph 2.4. If the Contractor does not proceed with correction of defective or nonconforming Work within a reasonable time fixed by written notice from the Architect, the Owner may remove or replace the defective or nonconforming Work and store the salvageable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of removal and storage within ten days after written notice, the Owner may, upon ten (10) additional days written notice, sell the materials and equipment at auction or at private sale and shall account for the proceeds after deducting costs and damages that should have been borne by the Contractor, including compensation for the Architect's services and expenses made necessary as a result of the sale. If the proceeds of sale do not cover costs which the Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments due to the Contractor then or thereafter are not sufficient to cover the deficiency, the Contractor shall pay the difference to the Owner.

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

(h) Nothing contained in this Paragraph 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the one-year time period as described in Subparagraph 12.2(b) relates only to the specific obligation of the Contractor to correct the Work, and has no relationship

to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

- (i) Any Work repaired or replaced pursuant to this Article 12 shall be subject to the provisions of Article 12 to the same extent as Work originally performed or installed.

12.3 ACCEPTANCE OF NONCONFORMING WORK

The Owner may, in the Owner's sole discretion, accept Work which is not in accordance with the requirements of the Contract Documents instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. The adjustment will be accomplished whether or not final payment has been made.

ARTICLE 13

COMPLETION OF THE CONTRACT; TERMINATION; TEMPORARY SUSPENSION

13.1 FINAL COMPLETION OF CONTRACT

The Contract will be considered completed, except as provided in any warranty or maintenance stipulations, bond, or by law, when all the Work has been finally completed, the final inspection is made by the Architect, and final acceptance and final payment is made by the Owner.

13.2 WARRANTY FULFILLMENT

Prior to the expiration of the specified warranty period provided for in the Contract Documents, the Architect will make a detailed inspection of the Work and will advise the Contractor and the Contractor's Surety of the items that require correction. The Architect will make a subsequent inspection and if the corrections have been properly performed, the Architect will issue a letter of release on the maintenance stipulations to the Contractor and the Surety. If for any reason the Contractor has not made the required corrections before the expiration of the warranty period, the warranty provisions as provided for in the Contract Documents shall remain in effect until the corrections have been properly performed and a letter of release issued.

13.3 TERMINATION BY THE OWNER FOR CAUSE

- (a) Notwithstanding any other provision of these General Conditions, the Work or any portion of the Work may be terminated immediately by the Owner for any good cause after giving seven (7) days advance written notice and opportunity to cure to the Contractor, including but not limited to the following causes:

- (1) Failure or refusal of the Contractor to start the Work within ten (10) days after the date of written notice by the Owner to commence the Work.
- (2) A reasonable belief that the progress of the Work being made by the Contractor is insufficient to complete the Work within the specified time.

- (3) Failure or refusal of the Contractor to provide sufficient and proper equipment or construction forces to properly execute the Work in a timely manner.
- (4) A reasonable belief that the Contractor has abandoned the Work.
- (5) A reasonable belief that the Contractor has become insolvent, bankrupt, or otherwise financially unable to carry on the Work.
- (6) Failure or refusal on the part of the Contractor to observe any requirements of the Contract Documents or to comply with any written orders given by the Architect or the Owner as provided for in the Contract Documents.
- (7) Failure or refusal of the Contractor to promptly make good any defects in materials or workmanship, or any defects of any nature, the correction of which has been directed in writing by the Architect.
- (8) A reasonable belief by the Owner that collusion exists or has occurred for the purpose of illegally procuring the Contract or a Subcontractor, or that a fraud is being perpetrated on the Owner in connection with the construction of Work under the Contract.
- (9) Repeated and flagrant violation of safe working procedures.
- (10) The filing by the Contractor of litigation against the Owner prior to completion of the Work.

(b) When the Work or any portion of the Work is terminated for any of the causes itemized above or for any other cause except termination for convenience pursuant to Subparagraph 13.3(e), the Contractor shall, as of the date specified by the Owner, discontinue the Work or portion of the Work as the Owner shall designate, whereupon the surety shall, within fifteen (15) days after the written notice of termination for cause has been served upon the Contractor and the surety or its authorized agents, assume the obligations of the Contractor for the Work or that portion of the Work which the Owner has ordered the Contractor to discontinue and may:

- (1) perform the Work with forces employed by the surety.
- (2) with the written consent of the Owner, tender a replacement contractor to take over and perform the Work, in which event the surety shall be responsible for and pay the amount of any costs required to be incurred for the completion of the Work that are in excess of the amount of funds remaining under the Contract as of the time of the termination; or
- (3) with the written consent of the Owner, tender and pay to the Owner in settlement the amount of money necessary to finish the balance of uncompleted Work under the Contract, correct existing defective or nonconforming Work, and compensate the Owner for any other loss sustained as a result of Contractor's default.

In the event of termination for cause involving Clause (b)(1) or (b)(2), the Surety shall assume the Contractor's place in all respects, and the amount of funds remaining unpaid under the Contract shall be paid by the Owner for all Work performed by the surety or the replacement contractor in accordance with the terms of the Contract Documents, subject to any rights of the Owner to deduct any costs, damages, or liquidated or actual damages that the Owner may have incurred, including but not limited to additional fees and expenses of the Architect and attorney's fees, as a result of such termination.

(c) The balance of the Contract Sum remaining at the time of the Contractor's default and of the termination shall become due and payable to the surety as the Work progresses, subject to all of the terms, covenants, and conditions of the Contract Documents. If the surety does not, within the time specified in Subparagraph 13.3(b), exercise its obligation to assume the obligations of the Contract, or that portion of the Contract which the Owner has ordered the Contractor to discontinue, then the Owner shall have the power to complete the Work by contract or otherwise, as it may deem necessary. The Contractor agrees that the Owner shall have the right to take possession of or use any or all of the materials, plant, tools, equipment, supplies, and property of every kind provided by the Contractor for the purpose of the Work, and to procure other tools, equipment, labor, and materials for the completion of the Work, and to charge to the account of the Contractor the expenses of completion and labor, materials, tools, equipment, and incidental expenses. The expenses incurred by the Owner to complete the Work shall be deducted by the Owner out of the balance of the Contract Sum remaining unpaid to or unearned by the Contractor. The Contractor and the surety shall be liable to the Owner for any costs incurred in excess of the balance of the Contract Sum for the completion and correction of the Work, and for any other costs, damages, expenses (including but not limited to additional fees of the Architect and attorney's fees), and liquidated or actual damages incurred as a result of the termination.

(d) The Owner shall not be required to obtain the lowest bid for the Work of completing the Contract as described in Subparagraph 13.3(c), but the expenses to be deducted from the Contract Sum shall be the actual cost of such Work. In case the Owner's expense is less than the sum which would have been payable under the Contract, if the same had been completed by the Contractor, then the Owner may pay to the Contractor (or the Surety, in the event of a complete termination for cause) the difference in the cost, provided that the Contractor (or the Surety) shall not be entitled to any claim for damages or for loss of anticipated profits. In case such expenses for completion shall exceed the amount which would have been payable under the Contract if the same had been completed by the Contractor, then the Contractor and his Sureties shall pay the amount of the excess to the Owner on notice from the Owner for excess due. When only a particular part of the Work is being carried on by the Owner by contract or otherwise under the provisions of this Subparagraph, the Contractor shall continue the remainder of the Work in conformity with the terms of the Contract, and in such manner as not to hinder or interfere with the performance of workmen employed and provided by the Owner.

(e) The right to terminate this Contract for the convenience of the Owner (including but not limited to non-appropriation of funding) is expressly retained by the Owner. In the event of termination for convenience, the Owner shall deliver at least ten (10) days advance written notice of termination for convenience to the Contractor. Upon the Contractor's receipt of such written notice, the Contractor shall cease the performance of the Work and shall take reasonable and appropriate action to secure and protect the Work in place. The Contractor shall then be reimbursed by the Owner in accordance with the terms and provisions of the Contract Documents, not to exceed actual labor costs incurred, materials stored at the Project site or away from the Project site as approved by the Owner but not yet paid for, plus actual, reasonable, and documented termination charges, if any, paid by the Contractor in connection with the Work in place which is completed and in conformance with the Contract Documents to the date of termination for convenience. No amount shall ever be due to the Contractor for lost or anticipated profits.

13.4 TEMPORARY SUSPENSION OF THE WORK

(a) The Work or any portion of the Work may be temporarily suspended by the Owner immediately upon written notice to the Contractor for any reason, including but not limited to:

- (1) the causes described in Clauses 13.1(a)(1) through (a)(10) above.
- (2) where other provisions in the Contract Documents require or permit temporary suspension of the Work.
- (3) situations where the Work is threatened by, contributes to, or causes an immediate threat to public health, safety, or security; or
- (4) other unforeseen conditions or circumstances.

(b) The Contractor shall immediately resume the temporarily suspended Work when ordered in writing by the Owner to do so. The Owner shall not under any circumstances be liable for any claim of the Contractor arising from a temporary suspension due to a cause described in Clause (a)(1) above; provided, however, that in the case of a temporary suspension for any of the reasons described under Clauses (a)(2) through (a)(4), where the Contractor is not a contributing cause of the suspension under one of those Clauses or where the provision of the Contract Documents in question specifically provides that the suspension is at no cost to the Owner, the Owner will make an equitable adjustment for the following items, provided that a claim is properly made by the Contractor under Subparagraph 4.3 of these General Conditions:

- (1) an equitable extension of the Contract Time, not to exceed the actual delay caused by the temporary suspension as determined by the Architect and the Owner;
- (2) an equitable adjustment to the Contract Sum for the actual, necessary, and reasonable costs of properly protecting any Work that is finished or partially finished during the period of the temporary suspension (no profit and overhead shall be allowed on top of these costs); and
- (3) if it becomes necessary to move equipment from the Project site and then return it to the Project site when the Work is ordered to be resumed, an equitable adjustment to the Contract Sum for the actual, necessary, and reasonable cost of these moves; provided, however, that no adjustment shall be due if the equipment is moved to another Project site of the Owner.

ARTICLE 14 **MISCELLANEOUS PROVISIONS**

14.1 GOVERNING LAW; COMPLIANCE WITH LAWS AND REGULATIONS

(a) This Contract shall be governed by the laws and case decisions of the State of Texas, without regard to conflict of law or choice of law principles of Texas or of any other state.

(b) This Contract is entered into subject to and controlled by the Charter and ordinances of the City of Mesquite and all applicable laws, rules, and regulations of the State of Texas and the Government of the United States of America. The Contractor shall, during the performance of the Work, comply with all applicable City codes and ordinances, as amended, and all applicable State and Federal laws, rules and regulations, as amended, including all prevailing wage rate requirements of Chapter 2258 of the Texas Local Government Code, as amended, and the Davis-Bacon Act (40 U.S.C. Section 276a et seq.), and its subsequent amendments.

14.2 SUCCESSORS AND ASSIGNS

The Owner and the Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the promises, covenants, terms, conditions, and obligations contained in the Contract Documents. The Contractor shall not assign, transfer, or convey its interest or rights in the Contract, in part or as a whole, without written consent of the Owner. If the Contractor

attempts to make an assignment, transfer, or conveyance without the Owner's written consent, the Contractor shall nevertheless remain legally responsible for all obligations under the Contract Documents. The Owner shall not assign any portion of the Contract Sum due or to become due under this Contract without the written consent of the Contractor, except where assignment is compelled or allowed by court order, the terms of the Contract Documents, or other operation of law.

WRITTEN NOTICE

Except as otherwise provided in Article 16, any notice, payment, statement, or demand required or permitted to be given under this Contract by either party to the other may be affected by personal delivery in writing or by mail, postage prepaid to the Project Manager or Superintendent of either party, or to an officer, partner, or other designated representative of either party. Mailed notices shall be addressed to the parties at an address designated by each party, but each party may change its address by written notice in accordance with this section. Mailed notices shall be deemed communicated as of three (3) days after mailing.

14.3 RIGHTS AND REMEDIES; NO WAIVER OF RIGHTS BY OWNER

(a) The duties and obligations imposed on the Contractor by the Contract Documents and the rights and remedies available to the Owner under the Contract Documents shall be in addition to, and not a limitation of, any duties, obligations, rights, and remedies otherwise imposed or made available by law.

(b) No action or failure to act by the Owner shall constitute a waiver of a right afforded the Owner under the Contract Documents, nor shall any action or failure to act by the Owner constitute approval of or acquiescence in a breach of the Contract by Contractor, except as may be specifically agreed in writing by Change Order or Supplemental Agreement.

14.4 INTEREST

The Owner shall not be liable for interest on any progress or final payment to be made under the Contract Documents, except as may be provided by the applicable provisions of the Prompt Payment Act, Chapter 2251, Texas Government Code, as amended, subject to Paragraph 9.6(a) of these General Conditions.

14.5 OFFICERS OR EMPLOYEES OF THE OWNER NOT TO HAVE FINANCIAL INTEREST IN ANY CONTRACT OF THE OWNER

No officer or employee of the Owner shall have a financial interest, direct or indirect, in any Contract with the Owner, or be financially interested, directly or indirectly, in the sale to the Owner of any land, materials, supplies or services, except on behalf of the Owner as an officer or employee. Any violation of this article shall constitute malfeasance in office, and any officer or employee of Owner guilty thereof shall thereby forfeit his office or position. Any violation of this section, with the knowledge, express or implied, of the person, persons, partnership, company, firm, association, or corporation contracting with the Owner shall render the Contract involved voidable by the Owner's City Manager or City Council.

14.6 VENUE

This Contract is deemed to be performed in Dallas County, Texas, and if legal action is necessary

to enforce this Contract, exclusive venue shall lie in Dallas County, Texas.

14.7 INDEPENDENT CONTRACTOR

In performing the Work under this Contract, the relationship between the Owner and the Contractor is that of an independent contractor. The Contractor shall exercise independent judgment in performing the Work and is solely responsible for setting working hours, scheduling or prioritizing the Workflow and determining the means and methods of performing the Work, subject only to the requirements of the Contract Documents. No term or provision of this Contract shall be construed as making the Contractor an agent, servant, or employee of the Owner, or making the Contractor or any of the Contractor's employees, agents, or servants eligible for the fringe benefits, such as retirement, insurance, and worker's compensation, which the Owner provides to its employees.

14.8 NONDISCRIMINATION

As a condition of this Contract, the Contractor covenants that he will take all necessary actions to insure that, in connection with any work under this Contract, the Contractor and its Subcontractors will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, or handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. The Contractor shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. In this regard, the Contractor shall keep, retain and safeguard all records relating to his Contract or Work performed thereunder for a minimum period of three (3) years from final Contract completion, with full access allowed to authorized representatives of the Owner, upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

14.9 GIFTS TO PUBLIC SERVANTS

(a) The Owner may terminate this Contract immediately if the Contractor has offered, conferred, or agreed to confer any benefit on a City of Mesquite employee or official that the City of Mesquite employee or official is prohibited by law from accepting.

(b) For purposes of this Article, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

(c) Notwithstanding any other legal remedies, the Owner may require the Contractor to remove any employee of the Contractor from the Project who has violated the restrictions of this Article or any similar State or Federal law, and obtain reimbursement for any expenditures made to the Contractor as a result of the improper offer, agreement to confer, or conferring of a benefit to a City of Mesquite employee or official.

ARTICLE 15

RIGHT TO AUDIT CONTRACTOR'S RECORDS

By execution of the Building Construction Services Agreement, the Contractor grants the Owner the right to audit, at the Owner's election, all of the Contractor's records and billings relating to the performance of the Work under the

Contract Documents. The Contractor agrees to retain its Project records for a minimum of three (3) years following completion of the Work. The Owner agrees that it will exercise the right to audit only at reasonable hours. City may review any and all of the services performed by Contractor under this Contract. Any payment, settlement, satisfaction, or release made or provided during the course of performance of this Contract shall be subject to City's rights as may be disclosed by an audit under this section.

NOTICE

The following blank spaces in the contract are not to be filled in by the Proposer at the time of submitting his proposal. The contract form is submitted at this time to familiarize the Proposer with the form of contract, which the successful Proposer will be required to execute.

ATTACHMENT B

CONSTRUCTION MANAGER-AT-RISK CONTRACT
REMODEL OF THE MESQUITE CONVENTION CENTER
PHASE I

THIS CONTRACT entered into this ___ day of _____, 202__, is by and between the **CITY OF MESQUITE**, a municipal corporation of Dallas County, Texas (hereinafter called "Owner"), and _____, a corporation authorized to conduct business in the State of Texas, with local offices located at _____ (hereinafter called "CMaR" or "Construction Manager-at-Risk").

WITNESSETH:

WHEREAS, the Owner intends to obtain construction management services in connection with the design (Phase I services) and construction (Phase II services, referred to in the General Conditions as the "Work") of the Remodel of The Mesquite Convention Center (hereinafter called the "Project") in the City of Mesquite and County of Dallas, Texas; and

WHEREAS, in connection with the Project, Drawings and Specifications will be prepared under a separate contract between the Owner and _____ [ARCHITECT] (hereinafter called the "Architect"); and

WHEREAS, in response to the Owner's request, CMaR has submitted a proposal to provide the Owner all Phase I construction manager-at-risk services (the "Work"); and

WHEREAS, the scope of the Work is generally the Phase I services as specified below and in the CMaR's Proposal in response to RFP 2025-050, dated _____, 202__, and in the CMaR's Best and Final Offer, dated _____, 202__, collectively attached hereto and made a part hereof as Exhibit 1; and

WHEREAS, the City of Mesquite has selected _____, as CMaR to perform the Work, and authorized the City Manager to enter into a contract with CMaR; and

WHEREAS, Owner has allocated a _____ fee for all Phase I CMaR compensation; and

WHEREAS, Owner has established that the total budgeted cost for completion of the Project, subject to additions or deletions by the Owner, shall not exceed \$5,000,000.00(the "construction budget") inclusive of all cost associated with: (1) all Contractor and Subcontractor costs; (2) all General Conditions incurred by CMaR and all Contractors and Subcontractors; (3) all Construction Contingencies; and (4) CMaR's Fee; and

WHEREAS, CMaR understands that time is of the essence, and has agreed to undertake all efforts to expedite the performance of the Work set out below.

NOW, THEREFORE, Owner and CMaR, in consideration of the mutual promises, covenants, and agreements made in this Contract and of the terms and conditions contained in this Contract, agree as follows:

ARTICLE 1

THE PROJECT DESCRIPTION, REQUIREMENTS AND EXTENT OF AGREEMENT

1.1 CMaR has previously submitted its Proposal to the Owner, attached to and made a part of this Contract as Exhibit 1. In the event of a conflict between the terms of the Proposal and the terms of this Contract, the terms of this Contract shall control; provided, however, that this provision shall not be construed to relieve the CMaR from performing all Phase I services set forth in the Proposal. The CMaR accepts the relationship of trust and

confidence established between it and the Owner by this Contract. It expressly covenants with the Owner to furnish its best skill and judgment and to cooperate with the Architect, and Architect's consultants on the Project in furthering the interests of the Owner. It agrees to furnish, in connection with the Project, all Phase I services; and in the event this Contract is supplemented as provided for below at the election of the Owner, CMAr also agrees to provide all Phase II services. CMAr shall promote furtherance of the Project in the best and soundest way and in the most expeditious and economical manner consistent with the interests of the Owner and the requirements of the Contract Documents.

1.2 CMAr agrees to work under the direction of the Owner with the Architect and Owner's other consultants from design through, to the extent Owner supplements this Contract, final completion of the Project, including the final one-year warranty inspection and resolution of all outstanding Project-related claims or disputes. The CMAr shall provide its expertise and services on all matters relating to design review; and following Contract supplementation, on all matters relating to Project construction.

1.3 Time is of the essence of this Contract. CMAr agrees to undertake all necessary efforts to expedite the performance of services required under this Contract, so that on-site construction of the Project can commence on schedule and be substantially complete on or before _____, 202__, or any extension of the Contract Time granted by the Owner. In this regard, CMAr shall immediately commence design review, value engineering, scheduling, and budget-related services in connection with the Work and will continue these services until design documents are 100% complete and bids are received by CMAr. CMAr shall proceed with sufficient qualified personnel necessary to expedite and fully complete all services required under this Contract in the highest professional manner consistent with the requirements of the Contract Documents. CMAr's personnel assigned to the Project shall be subject to Owner's approval, and no change in key personnel set out in the Proposal shall be made unless approved by Owner. Owner's decisions in this regard shall not be the basis for any claim for additional compensation by CMAr.

1.4 This Contract shall be administered on behalf of the Owner by the City Manager or the City Manager designees. All Work under this Contract shall be reviewed and approved for the Owner by the City Manager or designees. CMAr shall fully comply with any and all directives or instructions from the City Manager or designees.

1.5 A schedule of performance of services hereunder shall be mutually agreed upon between CMAr, Architect and Owner as described below. Failure of CMAr to maintain progress in accordance with the agreed schedule shall be grounds for declaring CMAr in default except when CMAr is delayed by events exclusively beyond CMAr's control.

1.6 CMAr understands that Owner intends to have the Project fully completed within the time and budget limits stated in this Contract. CMAr agrees to perform the Phase I Work under this Contract consistent with that intention. Further, it is understood and agreed by CMAr that the Project is intended to be designed and built under construction bid packages utilizing multiple and concurrent construction trade contractors/subcontractors. If Owner accepts the Guaranteed Maximum Price developed by CMAr, all trade construction contracts awarded on the Project shall be publicly advertised for bid and awarded by CMAr pursuant to Sections 2269.255 and 2269.256, Texas Government Code, as amended.

1.7 For each division of the Phase II Work, the Architect, under separate contract with the Owner, will produce, assemble, and deliver to CMAr (through Owner and at CMAr's cost and expense) Drawings and Specifications. CMAr shall review the Drawings and Specifications as received and shall advise Owner and Architect within a reasonable period of time as to their acceptability, suitability, constructability, need for value engineering or other revisions, and any areas in which the Drawings and Specifications increase the scope and cost of the Project or extend the completion dates.

ARTICLE 2
CONSTRUCTION MANAGER-AT-RISK'S SERVICES

2.1.1 CMAr's Work under this Contract shall consist of the Design Phase described below and, following execution of the supplemental agreement at Owner's election, the Construction Phase. The description of Work is necessarily general rather than specific and detailed and shall not be construed so as to exclude any services customarily provided by experienced and competent construction management organizations incident to construction projects of the nature and scope of this Project. The divisions and description of the Work under this Contract are intended only to add clarity and are not in contemplation of fixed events whereupon the character of CMAr's services will change from one type to another with respect to the Project, as it is anticipated that shortly after commencement of the Work under this Contract, CMAr will be simultaneously providing services identified in all divisions with regard to each portion of the Project.

2.1.2 CMAr understands and agrees that in the development and review of the design documents and the award of subsequent construction trade contracts, the General Conditions in all construction contracts to be awarded will be the City of Mesquite General Conditions for Building Construction (the "General Conditions"), along with such special provisions modifying the General Conditions as are agreed to by Owner in writing prior to their inclusion in the final construction bidding documents. CMAr's services under this Contract and under any supplemental agreement subsequently entered into are subject to the applicable provisions of the General Conditions as modified by special provisions approved in writing by Owner. Owner reserves the right, without paying any additional compensation to CMAr, to reject any bid proposed for acceptance by CMAr that is not based upon or takes exception to any of the provisions of the General Conditions specified above. Terms used in this Contract that are defined in the General Conditions shall have the meanings as described in the General Conditions unless otherwise indicated in this Contract.

2.2 DESIGN PHASE (Phase I Services)

2.2.1 CMAr shall: (1) attend regularly scheduled meetings with Owner and the Architect during the development of the design and the Contract Documents and advise on site use, foundations and improvements, selection of materials, building systems and equipment; and (2) provide recommendations on construction efficiency and feasibility, availability of materials and labor, time requirements for installation and construction, and factors related to cost including costs of alternative designs, equipment or materials, preliminary budgets, and possible economies, without, however, assuming the responsibilities of the Architect.

2.2.2 CMAr shall develop and maintain the construction schedule (hereinafter called the "Schedule") as described in Paragraph 3.10 of the General Conditions. The Schedule shall be revised and updated to reflect actual Project status with each Application for Payment.

2.2.3 CMAr shall: (1) monitor the construction budget, which shall include all estimated CMAr compensation, including fees and reimbursable expenses; (2) prepare an estimate based on a quantity survey of the Project Drawings and Specifications for approval by the Owner as the final construction budget; (3) update and refine this estimate for Owner's approval as the development of the Project Drawings and Specifications proceeds; and (4) advise the Owner and Architect if it appears that the construction budget will be exceeded and make recommendations for alternate action.

2.2.4 CMAr shall review the Project Drawings and Specifications as they are being prepared, on the basis of value engineering, and recommend alternative solutions whenever design decisions, plans and details adversely affect construction efficiency and feasibility, budgeted costs, or schedules.

2.2.5 CMAr shall recommend the purchase or lease and procurement of long-lead items to endeavor to assure delivery by the required dates.

2.2.6 CMAr shall recommend to the Architect divisions in the Work and in the Drawings and Specifications to facilitate the bidding and awarding of contracts, allowing for phased construction, taking into consideration such factors as time of performance, minimization of worksite interference, on-time material and equipment

procurement, availability of labor, overlapping trade jurisdictions, provision of temporary facilities, coordination and sequencing of the Project, minimization of overall Project costs, and availability of the Project site.

2.2.7 CMaR shall review the Project Drawings and Specifications with Owner and Architect to assure: (1) efficiency in the use of materials and methods of construction; and (2) coordination among the plan sheets and among the various bid packages. CMaR shall eliminate areas of conflict and overlapping in the phased construction packages to be performed by the various trade contractors/subcontractors. CMaR shall use and include Owner's minimum wage rates and requirements for equal employment opportunity and minority business enterprise programs in the prepared trade bid packages.

2.2.8 CMaR shall confirm, by written memorandum to Owner with qualifications where necessary, review and approval as to construction feasibility for bidding purposes of the Architect's final Drawings and Specifications for every division or bid package of the Project, prior to final approval by Owner and public advertising for bids. Such review and approval as to construction feasibility, however, shall not be deemed an assumption by CMaR of any of the Architect's responsibilities, including errors and omissions in design. The Owner's standard bid documents and forms, including the General Conditions, Instructions to Bidders, Bid Bond, Performance and Payment Bonds, Wage Rates, and other standard City bid forms applicable to this Project, shall control the legal relationship between the Owner, the CMaR and the trade contractors/subcontractors, insofar as the actual performance of the Work is concerned and the rights and duties of parties in connection with the Work. Provided, however, that where conflict exists between such documents and this Contract, the provisions of this Contract shall be controlling. CMaR shall assist in the production of each set of final bid documents for each phase of the Project by combining the Owner's standard bid documents and forms with the Architect's final approved Drawings and Specifications, with such Special Provisions as may be necessary and for which CMaR shall be responsible for developing. In the event this Contract is supplemented to provide for performance of Construction Phase Services (Phase II) by the CMaR, and the Owner so elects to assign the phased construction work to CMaR following award by the Owner, each resulting subcontract between the CMaR and the successful low bidder shall incorporate the corresponding set of final bid documents.

2.2.9 CMaR shall: (1) develop contractor interest in the Project as contract Drawings and Specifications are completed; and (2) subject to the approval of the Architect and Owner, establish the bid schedules and schedules for pre-bid conferences, including on-site visits to endeavor to assure that prospective bidders understand the various site conditions, availability, coordination, and scheduling requirements.

2.2.10 **Guaranteed Maximum Price.** Prior to completion of CMaR's Design Phase Services and submission of trade bid packages to bidding, CMaR shall develop and submit to Owner a Guaranteed Maximum Price ("GMP") which is within the approximate \$5.0 million project construction budget, after or during the preconstruction services, and prior to a 100% set of construction documents based on the Architect's finished Design Development Drawings, with a full list of construction and performance items, additive and deductive alternates, and including CMaR compensation for fees and reimbursable expenses, all within the Construction Budget.

2.2.11 **Advertising for Bids.** If the GMP is accepted by Owner through a duly authorized supplemental agreement as described below in Paragraph 2.3 of this Contract, CMaR shall publicly advertise the trade bid packages in accordance with the requirements of Sections 2269.255 and 2269.256 of the Texas Government Code, as amended. Bid packages shall be reviewed by CMaR and Owner in accordance with the requirements of the supplemental agreement entered into for Phase II services. If CMaR is retained in Phase II only for the purpose of limited consulting services as described in Paragraph 2.3 of this Contract, Owner shall advertise the trade bid packages in accordance with applicable law and CMaR shall have the responsibilities for limited consulting services as are prescribed in a duly authorized Phase II supplemental agreement.

2.3 BIDDING AND CONSTRUCTION PHASE

2.3.1 CMaR shall undertake Bidding and Construction Phase services (Phase II) only upon execution by Owner and CMaR of a supplemental agreement or agreements to this Contract, duly authorized by resolution of the

Mesquite City Council, identifying all Phase II services, and specifying a not-to-exceed amount as additional compensation to be paid CMAr.

2.3.2 The supplemental agreement may specify, at Owner's election, that CMAr shall provide only limited consulting services during the Construction Phase, with the Owner publicly advertising for bids and contracting directly with each bidder. The CMAr will then act in an expanded capacity of providing continuing construction management services, including scheduling, coordination, supervision, inspection, and administration of the Work. Owner shall look to CMAr in a fiduciary capacity to assist Owner in the completion of the Project.

Alternatively, the supplemental agreement may provide for full construction manager-at-risk services under which CMAr shall enter into each construction contract, subject to the consent of the Owner, with responsibilities and pursuant to such procedures as have been utilized on other City projects involving a GMP arrangement. CMAr will thereafter act in a dual capacity of providing continuing construction management and construction services, the successful bidders in each instance constituting Subcontractors in privity only with the CMAr. Owner shall look solely to CMAr as a general contractor for the completion of the Project, the full responsibility for the construction of which CMAr shall accept. In this regard, CMAr acknowledges receipt of a copy of the City's standard form supplemental agreement for full construction manager-at-risk services and agrees to enter into a substantially similar agreement with the Owner for Phase II services on this Project should the Owner elect to proceed in such manner at Owner's sole discretion. In such event, the supplemental agreement shall stipulate a GMP for all costs of the Work necessary to complete the Project, including all CMAr compensation for general conditions, fees, and reimbursable expenses, as developed under Paragraph 2.2.10 above. The Project may be upgraded at Owner's election during construction by approving "add alternates" on a selective basis depending upon availability of funding and the magnitude of bids received.

2.3.3 CMAr shall furnish all copies of Drawings and Specifications necessary for the execution of the Project on a reimbursable basis, from reproducible originals furnished by the Architect.

ARTICLE 3

OWNER'S RESPONSIBILITIES

3.1 The Owner shall provide information regarding its requirements for the Project, consistent with the Contract Documents and within the Scope of the Work.

3.2 The Owner shall designate a representative who shall be fully acquainted with the Scope of the Work and has authority to approve the Construction Budget, render decisions promptly and furnish information expeditiously; the City Manager or designee is designated by the Owner for this purpose subject to the provisions of Paragraph 1.4 of this Contract.

ARTICLE 4

FIXED LIMIT CITY BUDGET - TOTAL PROJECT COST

4.1 The fixed limit of the construction budget for this Project is \$5,000,000.00 for all costs associated with construction of the Project. THESE AMOUNTS ARE ESTABLISHED AS A CONDITION OF THIS CONTRACT AND SHALL PROVIDE THE BASIS FOR CMAR'S DECISIONS AND RECOMMENDATIONS. CMAr, in consultation with Owner and in cooperation with the Architect, shall determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents and recommend adjustments in the scope of the Project to assure that the construction budget is not exceeded.

4.2 With Owner's approval, CMAr may include alternate bids within the Contract Documents to adjust construction costs in order to assure that the construction budget is not exceeded.

ARTICLE 5

OWNERSHIP OF DOCUMENTS AND CMAR STATUS

5.1 All of the CMAr's documentary work product under this Contract shall be the property of the Owner; and upon completion of this Contract, such documentary work product shall be promptly delivered to Owner in a reasonably organized form without restriction on its future use. Any necessary work product lost or destroyed by the CMAr shall be replaced or reproduced at the CMAr's sole cost. In addition, Owner shall have access, during the term of this Contract and for three (3) years after Contract termination, to all of CMAr's records and documents in connection with this Contract for purposes of auditing same at the sole cost of the Owner. Nothing in this Paragraph 5.1 shall be construed to deny CMAr the right to retain duplicates. Refusal by CMAr to comply with the provisions of this Paragraph 5.1 shall entitle Owner to withhold further payments to CMAr until compliance is obtained.

5.2 CMAr shall not be considered an employee of the Owner but shall occupy the status of an independent contractor of the Owner. CMAr shall exercise independent judgment in performing its duties under this Contract and is solely responsible for setting working hours, scheduling, or prioritizing the Workflow and determining how the Work is to be performed. No term or provision of this Contract or act of CMAr in the performance of this Contract shall be construed as making CMAr the agent, servant, or employee of the Owner, or making CMAr or any of CMAr's employees eligible for the fringe benefits, such as retirement, insurance, and worker's compensation, which the Owner provides its officers or employees. CMAr shall perform its tasks and duties consistent with such status and will make no claim or demand for any right or privilege applicable to an officer or employee of the Owner, including, but not limited to, worker's compensation, disability benefits, accident or health insurance, unemployment insurance, social security, or retirement membership.

ARTICLE 6
CONSTRUCTION MANAGER-AT-RISK'S COMPENSATION
FOR PHASE I CONSTRUCTION MANAGEMENT SERVICES

6.1 In consideration of the performance of Construction Management services under this Contract, Owner agrees to pay the CMAr compensation calculated in accordance with CMAr's proposal, attached to and made a part of this Contract as Exhibit 1, subject to Paragraph 6.5 below.

6.2 CMAr shall furnish to Owner a periodic statement of the Work performed, in a form satisfactory to Owner, with backup substantiation. Payment shall be made following review and approval of CMAr's periodic statement by Owner. No interest shall be due CMAr for any delay in payment caused by any claim or dispute by or between Owner and CMAr.

6.3 Final Payment shall be paid by Owner to the CMAr within thirty (30) days after Final Completion of all Work under this Contract and Final Acceptance of same by Owner.

6.4 CMAr will perform Additional Services, over and above the Scope of the Work, upon written instruction of Owner, should Owner determine same to be necessary. CMAr shall be compensated for such Additional Services following acceptance by Owner. CMAr shall undertake no Additional Services except pursuant to written supplemental agreement, setting out the scope and compensation for same, and Owner shall not be liable in any event for any such Additional Services except as undertaken in accordance with this Paragraph 6.4.

6.5 Total compensation for all Phase I services under this Contract shall not exceed \$_____, following receipt of invoices and approval of same by Owner. Owner shall not be liable for any payments in excess of the aforementioned amount, unless this Contract is amended by written supplemental agreement, executed by the parties, and fully authorized under the Charter and ordinances of the City of Mesquite. Any provision of the proposal in conflict with this Paragraph 6.5 is hereby withdrawn.

6.6 Owner may, at its option, offset any amounts due and payable under this Contract against any debt (including taxes) lawfully due to Owner from CMAr, regardless of whether the amount due arises pursuant to the terms of this Contract or otherwise and regardless of whether or not the debt due to Owner has been reduced to judgment by a court.

ARTICLE 7
INSURANCE

7.1 CMAr shall purchase, pay for, and maintain throughout the term of this Contract at least the minimum insurance as identified and required in Exhibit 2, attached to, and made a part of this Contract. Certificates evidencing such coverages and limits to be in force shall be provided to the Owner. Insurance costs and deductibles shall be the responsibility of CMAr. In the event Owner utilizes CMAr for Phase II services, the required minimum insurance coverages and limits may be adjusted pursuant to the requirements of the supplemental agreement.

ARTICLE 8
OWNER'S RIGHT TO TERMINATE; REMEDIES, DELAYS, AND
CMAR'S RIGHT TO SUSPEND WORK

8.1 The City Manager or designee may terminate this Contract, in whole or in part, for cause or for the convenience of the Owner. In such event, notice of termination, for all or any portion of the Work, shall be delivered to CMAr, who shall then be reimbursed by the City Manager or designee in accordance with the terms and provisions of this Contract, for all Work satisfactorily completed, but not to exceed actual costs incurred in connection with the Work to the date of termination. No amount shall be due for lost or anticipated profits. All Work-related documents and records shall become the property of Owner and shall be promptly delivered to Owner in a reasonably organized form without restriction on future use. Should Owner subsequently contract with a new construction manager for continuation of services on the Project, which right Owner specifically retains, CMAr shall cooperate in providing information.

8.2 Nothing contained in Article 6 or Paragraph 8.1 above shall require Owner to pay for services which are unsatisfactory as determined by the Owner, or services not in compliance with the provisions of this Contract. The City Manager or designee may withhold payments to CMAr when CMAr is in default under this Contract, without waiving any other remedy or right available at law or in equity, including the right to bring legal action for damages or to force specific performance of this Contract.

8.3 CMAr understands that time is of the essence. CMAr shall be fully responsible for delays in performance or for failure to use best efforts to accomplish the purposes of this Contract. However, neither Owner nor CMAr shall be deemed in violation of this Contract for delays in performance solely caused by circumstances beyond their respective control. In such event, notice of a delay due to reasons solely beyond the control of a party must be timely given and reasonable efforts undertaken to mitigate effects.

8.4 Except on an emergency basis, or for the protection of the Project or personnel at the Project site, or where CMAr observes construction being undertaken contrary to the Drawings or Specifications, CMAr shall not suspend the Work without Owner's permission.

ARTICLE 9
ASSIGNMENT, GOVERNING LAW, VENUE AND NOTICES

9.1 This Contract shall be binding on the parties, their successors, assigns and representatives. CMAr shall not sell, assign, transfer, or convey this Contract, in whole or in part, to any person or entity without the prior written consent of City Manager. As an express condition of consent to any assignment, CMAr shall remain liable

under this Contract for all obligations of CMaR and for the completion of the Work in accordance with the terms and conditions of this Contract in the event of default by the successor contractor or assignee.

9.2 This Contract shall be governed by and construed solely in accordance with the laws and court decisions of the State of Texas, without regard to conflict of law or choice of law principles of Texas or of any other state.

9.3 The obligations of the parties to this Contract shall be performable in Dallas County, Texas, and if legal action is necessary in connection with or to enforce rights under this Contract, exclusive venue shall lie in Dallas County, Texas.

9.4 Except as otherwise specifically provided in this Contract, any notice, payment, statement, or demand required or permitted to be given under this Contract by either party to the other may be affected by personal delivery in writing or by mail, postage prepaid. Mailed notices shall be addressed to the parties at the addresses appearing below, but each party may change its address by written notice in accordance with this Paragraph. Mailed notices shall be deemed communicated as of three (3) days after mailing.

If intended for City, to:

City of Mesquite
Cliff Keheley, City Manager
1515 North Galloway Avenue
Mesquite, Texas 75149

If intended for CMaR, to:

ARTICLE 10

COMPLIANCE WITH LAWS, NON-DISCRIMINATION, AND FEDERAL FUNDS

10.1 This Contract is entered into subject to and controlled by the Charter and ordinances of the City of Mesquite and all applicable laws, rules, and regulations of the State of Texas and the Government of the United States of America. CMaR shall, during the course of performance of this Contract, comply with all applicable City codes and ordinances, as amended, and all applicable State and Federal laws, rules, and regulations, as amended.

10.2 As a condition of this Contract, CMaR hereby covenants that it will take all necessary action to ensure that, in connection with any work under this Contract, it and its subcontractors will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, or physical handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. In this regard, CMaR shall keep, retain, and safeguard all records relating to this Contract or work performed hereunder for a minimum period of three (3) years from final Contract completion, with full access allowed to authorized representatives of the City upon request for purposes of evaluating compliance with this and other provisions of the Contract.

10.3 In the event Owner receives from any Federal agency funds to be utilized in construction of the Project, Owner shall notify CMaR of any terms, requirements, conditions, or restrictions attached to the use of the funds. Thereafter, CMaR shall assist Owner in notifying all affected bidders/contractors/subcontractors, and will include, to the extent necessary, all Federal requirements as a part of each and every trade contractor bid package on the federally funded portion of the Project. CMaR shall also comply with any applicable requirements and assist Owner with assembling the documents necessary to evidence compliance by each affected bidder/contractor/subcontractor.

ARTICLE 11

RESPONSIBILITY FOR WORK; INDEMNIFICATION

11.1 Approval by Owner shall not constitute nor be deemed a release of the responsibility and liability of CMaR, its employees, subcontractors, agents, or consultants, for the accuracy and competency of their services; nor shall such approval be deemed to be an assumption of responsibility by Owner for any defect, error, or omission in the Work prepared or performed by CMaR, its employees, subcontractors, agents, or consultants.

11.2 CMAR AGREES TO DEFEND, INDEMNIFY AND HOLD OWNER, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS, AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY CMAR'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, OR BY ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION OF CMAR, ITS OFFICERS, AGENTS, ASSOCIATES, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THIS CONTRACT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF THE OWNER, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRENT NEGLIGENCE OR FAULT OF BOTH CMAR AND THE OWNER, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE OWNER UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

ARTICLE 12
CONSTRUCTION WORK BY THE CMAR AND
CMAR'S ACCOUNTING RECORDS

12.1 In the event CMaR performs a portion of the Work with its own forces pursuant to Section 2269.255, Texas Government Code, as amended, CMaR shall also continue to provide all construction management services to the extent provided under this Contract with respect to that portion of the Work. Further, Work performed by CMaR shall be completed to the full satisfaction of Owner; any disputes that may arise between CMaR and Owner in connection with the Work performed by CMaR shall be determined by Owner, whose decision shall be final and binding.

12.2 Records of direct salary costs, direct personnel expenses, and reimbursable expenses of CMaR and Subcontractors pertaining to the Project, and records of accounts between Owner and CMaR shall be kept by CMaR on a generally recognized accounting basis and shall be available to Owner or its authorized representatives at mutually convenient times. In the event CMaR performs a portion of the Work, all cost and other records relating to that portion of the Work shall be kept by CMaR separately from CMaR's records relating to its construction management services, in order to facilitate review or auditing by the Owner at its election.

ARTICLE 13
TERM

13.1 Unless sooner terminated in accordance with the applicable provisions of this Contract, or extended by supplemental agreement approved by Owner, the term of this Contract shall be from the date of its execution until final completion of Phase I of the Project and all services in connection with Phase I.

ARTICLE 14
FINANCIAL INTEREST PROHIBITED; CONFIDENTIALITY

14.1 CMaR covenants and represents that CMaR, its officers, employees, agents, consultants, and subcontractors will have no financial interest, direct or indirect, in product, materials or equipment that will be specified for the construction of the Project.

14.2. CMaR understands and agrees that the Charter of the City of Mesquite provides that no officer or employee of the City shall have any financial interest, direct or indirect, in any contract with the City, or be financially interested, directly or indirectly, in the sale to the City of any land, materials, supplies or services, except on behalf of the City as an officer or employee. Any violation of this prohibition shall constitute malfeasance in office, and any officer or employee guilty of a violation of the above-mentioned Charter provision shall there by forfeit his office or position with the City. Any violation of this prohibition with knowledge, express or implied, of the person or corporation contracting with the City shall render the contract involved voidable by the City CMaR or the City Council.

14.3. CMaR's reports, evaluations, data, and all other documentation developed by CMaR under this Contract shall be kept confidential and shall not be disclosed to any third parties without the prior written consent and approval of the Owner.

ARTICLE 15
RIGHT OF REVIEW AND AUDIT

15.1 Owner may review any and all of the services performed by CMaR under this Contract. Owner is granted the right to audit, at Owner's election, all of CMaR's records and billings relating to the performance of this Contract. CMaR agrees to retain such records for a minimum of three (3) years following completion of this

Contract. Any payment, settlement, satisfaction, or release made or provided during the course of performance of this Contract shall be subject to City's rights as may be disclosed by an audit under this Article.

EXECUTED this the ___ day of _____, 202__, by Owner, signing by and through its City Manager, duly authorized to execute same by the City Council on _____, 202__, and by CMaR, acting through its duly authorized officials.

**CITY OF MESQUITE
(OWNER)**

(CONSTRUCTION MANAGER-AT-RISK)

BY _____
Cliff Keheley
City Manager

BY _____
PRINTED
NAME: _____

TITLE: _____

ATTEST:

ATTEST:

BY _____
Sonja Land
City Secretary

BY _____
Corporate Secretary

APPROVED AS TO FORM:

BY _____
Assistant City Attorney

Exhibit 2 Insurance Requirements

CITY OF MESQUITE MINIMUM INSURANCE REQUIREMENTS FOR CONTRACTS

Contractor / Vendor Services	A Financial Rating	B Business Auto Liability	C Commercial General Liability	D Workers' Compensation	E Employers' Liability	F Professional Liability
Construction <i>Contractor Controlled</i>	A- (VII)	\$500,000 CSL	\$1,000,000 Occ/Agg	Statutory	\$100,000 Limit Ea. Acc/Disease/ Aggregate	N/A
Engineering / Architect <i>Design</i>	A- (VII)	\$500,000 CSL	\$1,000,000 Occ/Agg for contracts under \$50K \$2,000,000 Agg for contracts over \$50K	N/A	\$100,000 Limit Ea. Acc/Disease/ Aggregate	\$1,000,000 Clms. Made
Building/Equipment IT Tech <i>Outsourced Labor Svcs.</i>	A- (VII)	\$500,000 CSL	\$1,000,000 Occ/Agg	N/A*	\$100,000 Limit Ea. Acc/Disease/ Aggregate	N/A
Information Technology <i>Software</i>	A- (VII)	\$500,000 CSL	\$1,000,000 Occ/Agg	N/A	N/A	\$1,000,000 Clms. Made
Consulting Services <i>Financial/Business/Other</i>	A- (VII)	\$500,000 CSL	\$1,000,000 Occ/Agg	N/A	\$100,000 Limit Ea. Acc/Disease/ Aggregate	\$1,000,000 Clms. Made
Prof. & Licensed Svcs. <i>Survey/Appraisal Real Estate</i>	A- (VII)	\$500,000 CSL	\$1,000,000 Occ/Agg	N/A	\$100,000 Limit Ea. Acc/Disease/ Aggregate	\$1,000,000 Clms. Made
Communications <i>Print/Media Public Relations</i>	A- (VII)	\$500,000 CSL	\$1,000,000 Occ/Agg	N/A	\$100,000 Limit Ea. Acc/Disease/ Aggregate	\$1,000,000 Clms. Made
Entertainment/Recreation <i>Labor & Services</i>	A- (VII)	\$500,000 CSL	\$1,000,000 Occ/Agg	N/A*	\$100,000 Limit Ea. Acc/Disease/ Aggregate	N/A

- A: Coverage shall be provided by a carrier approved to do business in the state of Texas and rated at least "A- (VII)" in A.M. Best's Key Rating Guide.
- B: Applies "when" operating vehicles to provide specified service (on City property, as part of service other than meetings, product delivery, etc.) Limits shall be no less than indicated amount, Combined Single Limit Each Occurrence. City is to be an Additional Insured on the AL policy.
- C: Limits shall be no less than indicated amount per Occurrence and Aggregate limits. All insurance policies shall be written on a primary basis and be non-contributory with any other coverages carried by the City. City is to be an Additional Insured on GL and AL policies. City requires the contractor indemnify it from liability arising out of contractor's employee injuries. Must also include a Waiver of Subrogation (W.O.S.) on the GL policies.
- D: Statutory Workers' Compensation coverage is required on all new* Construction Projects including buildings*, Waterworks, Road & Bridge Infrastructure, with a "W.O.S." it from liability arising out of contractor's employee injuries on City Property and projects.
- E: Employers' Liability coverage limits of not less than specified amounts. City shall be an Additional Insured with waiver of subrogation. City requires the contractor indemnify it from liability arising out of contractor's employee injuries on City Property and projects.
- F: Professional Liability coverage shall be maintained from project inception and for no less than two years past project completion or termination date.
- * The City of Mesquite reserves the right to alter minimum insurance requirements at any time, based on the project or service value, and perceived risk of adverse loss.
Crime coverage shall be required if a contractor or vendor directly handles or has access to computer systems that administer City money, securities or other negotiable instruments.

ATTACHMENT C

SUPPLEMENTAL AGREEMENT TO CONSTRUCTION MANAGER-AT-RISK CONTRACT

**SUPPLEMENTAL AGREEMENT NO. 1
TO CONSTRUCTION MANAGER-AT-RISK CONTRACT
WITH _____.**

THIS SUPPLEMENTAL AGREEMENT NO. 1, dated and entered into this ____ day of _____, 202__, is by and between the **CITY OF MESQUITE**, a municipal corporation of Dallas County, Texas (hereinafter called "Owner"), and _____, a ____ corporation, with offices located at _____ (hereinafter called "CMaR").

WITNESSETH:

WHEREAS, Owner intends to construct an addition and remodel on the **Mesquite Convention Center** pursuant to RFQ No. 20XX-XXX (the "Project"), in the City of Mesquite, County of Dallas, Texas, which Project will be built according to the Drawings and Specifications prepared by _____ **Architects, Inc.** (hereinafter called "Architect"); and

WHEREAS, the City Council of the City of Mesquite on XXXXXX, 202__, authorized the City Manager to enter into a contract (the "original Contract") with _____, Inc. for Design Consultation Services (Phase I services) on the Project, which original Contract, including Exhibits, was executed by Owner and CMaR on XXXXXX, 202__; and

WHEREAS, pursuant to the original Contract, CMaR has provided professional services to both Owner and Architect in development of Drawings, Specifications, schedules, and budgets for the Project, and developed and submitted to Owner a Guaranteed Maximum Price ("GMP") not to exceed \$XXXXXX.XX, representing (1) all construction contract costs necessary for completion of the Project in accordance with the Contract Documents enumerated in Exhibit 1; and (2) all CMaR compensation, including Fee and Reimbursable Expenses, which GMP is attached to and made a part of this Supplemental Agreement No. 1 as Exhibit 2; and

WHEREAS, in accordance with Section 2.3 of the original Contract, Owner now desires to supplement the original Contract with CMaR by adding to CMaR's Scope of Work the Construction Phase services (Phase II) hereinafter identified, including construction of the Project, in accordance with the terms and conditions of this Supplemental Agreement No. 1 to the original Contract; and

WHEREAS, CMaR understands that time is of the essence, and has agreed to undertake all efforts to expedite the performance of the Work, as redefined and set out in this Supplemental Agreement No. 1, so that construction of the Project will commence by XXXXXX, 202__, and be substantially completed within XXX working days after the notice to proceed; and

WHEREAS, CMaR understands that Owner has established the GMP as the fixed limit of total budgeted construction cost for the Project (\$XXXXXXXX), which GMP represents the not-to-exceed sum of all construction contract costs necessary for completion of the Work and all CMaR's compensation, including Fee and Reimbursable Expenses, and constitutes the Owner's absolute limit of liability to CMaR under the original Contract, as herein supplemented, for the full completion of the Work, including construction of the Project (as the GMP may be adjusted by change orders or other supplemental agreements signed by the parties);

NOW, THEREFORE, Owner and CMaR, in consideration of the foregoing, and the terms and conditions contained in this Supplemental Agreement No. 1, agree to supplement the original Contract as follows:

**ARTICLE 1
SCOPE OF THE CMaR'S WORK**

- 1.1 Continuation of Design Phase Services. CMaR shall continue performance of all Design Phase (Phase I) services in accordance with the terms of the original Contract.
- 1.2 Construction Phase Services. Pursuant to Section 2.3 of CMaR's original Contract, and subject to the terms and provisions of the original Contract, the scope of the CMaR's Work is hereby supplemented to include all Construction Phase services ("Phase II"), as specified below, including construction of the Project. CMaR shall immediately commence and fully complete all Phase II Work to the extent necessary to achieve completion of the Project within the time and budget limits stated above. **THE CONTRACT DOCUMENTS, INCLUDING BUT NOT LIMITED TO OWNER'S GENERAL CONDITIONS FOR BUILDING CONSTRUCTION (THE "GENERAL CONDITIONS"), AS MAY BE MODIFIED BY SPECIAL PROVISION, APPLY TO ALL PHASE II SERVICES OF MANAGER UNDER THIS SUPPLEMENTAL AGREEMENT NO. 1.**
- 1.3 The Phase II Work shall be substantially completed within XXX working days after the notice to proceed. Substantial Completion of the Project must be within the time and cost constraints hereinabove specified, or as subsequently revised by supplemental agreement of Owner and CMaR. CMaR agrees to accomplish the Phase II Work within the time required, and represents to Owner that the date of Substantial Completion is attainable, understanding that Owner is executing this Supplemental Agreement No. 1 to the original Contract in reliance upon the representations of Manager as to the time of Substantial Completion.
- 1.4 As amended by this Supplemental Agreement No. 1, all of the terms and provisions of the original Contract between the Parties hereto, including but not limited to Articles 1-15 of said original Contract, shall apply to the CMaR's Work as redefined in this Supplemental Agreement No. 1. The term "Contract," as used from this point on in this Supplemental Agreement No. 1, shall mean, unless otherwise indicated, the original Contract and this Supplemental Agreement No. 1 thereto. If a conflict exists between the terms of the two documents, the terms of this Supplemental Agreement No. 1 shall be controlling, and both documents shall be construed together as a single contractual agreement.
- 1.5 In accordance with the agreed schedule, all trade construction subcontracts awarded on the Project shall be publicly advertised for competitive bids pursuant to Section 2269.255 of the Texas Government Code, as amended, and awarded by CMaR with the concurrence of Owner. Manager will then act in a dual capacity of providing continuing construction management and construction supervisory services, the successful bidders in each instance in turn constituting Subcontractors in privity only with Manager. Manager accepts the responsibility of bidding and awarding the trade construction subcontracts, subject to compliance with the other provisions of this Supplemental Agreement No. 1. Owner shall look to CMaR and not to individual Subcontractors for the completion of the Project, the full responsibility for which CMaR hereby acknowledges and accepts as a part of CMaR's Phase II Work. Nothing in this Paragraph,

however, shall affect the ownership of the Project, which shall remain the sole property of the City of Mesquite. By execution of this Supplemental Agreement No. 1, CMaR represents and warrants to Owner that the advertisement for bids and award of trade construction subcontracts pertaining to the Project shall comply and be consistent with the General Conditions, special provisions, if any, Instructions to Bidders, and all applicable laws of the State of Texas.

ARTICLE 2 CONSTRUCTION MANAGER-AT-RISK'S PHASE II SERVICES

- 2.1 CMaR shall continue to develop Subcontractor interest in the Project as working Plans and Specifications are fully completed. Jointly with Architect and Owner, Manager shall: (1) establish bid schedules and conduct pre-bid conferences, including on-site visits to endeavor to assure that bidders understand the various site conditions, coordination and scheduling requirements; and (2) analyze the bids in a manner that does not disclose the contents of any bid to the public during the selection process, and recommend to Owner the bids to be awarded or rejected, within ten (10) days after receipt of bids; and (3) conduct pre-award conferences with successful bidders after concurrence by Owner with CMaR's recommendations. The recommendations shall include advice on acceptability of lower-tier subcontractors and suppliers proposed by bidders, as well as proposed "or equal" product substitutions, if any. CMaR shall allow public inspection of all bids relating to each trade construction subcontract in question after award of the particular subcontract.
- 2.2 Owner agrees to perform its responsibilities so as to assist CMaR to facilitate the completion of the Work and represents to CMaR that there will be sufficient funds available to pay CMaR up to the Guaranteed Maximum Price of \$XXXXXXX as adjusted by any Change Order. **THE GUARANTEED MAXIMUM PRICE, UNLESS CHANGED BY SUPPLEMENTAL AGREEMENT OR CHANGE ORDER, REPRESENTS THE ABSOLUTE LIMIT OF OBLIGATION OR LIABILITY THAT OWNER MAY EVER HAVE INsofar AS THE COST FOR FULL AND FINAL COMPLETION OF THE WORK, INCLUDING CONSTRUCTION OF THE PROJECT, AND THE TOTAL OF ALL PAYMENTS TO CONSTRUCTION MANAGER-AT-RISK OR ITS SUBCONTRACTORS ARE CONCERNED.** Should additional amounts be required to be expended, over and above the Guaranteed Maximum Price, to achieve completion of the Work, including Project construction, and payment to CMaR, in accordance with this Contract, liability for and payment of such additional amounts shall be the sole responsibility of CMaR and its Contract Surety herein, and Owner shall never be liable for same. Should the final Cost of the Work and CMaR's compensation total be less than the Guaranteed Maximum Price, or any approved revision thereof, the difference shall inure to the benefit of Owner and no claim for all or any portion of said difference shall be valid against or payable by Owner. **OWNER'S LIMITATION OF OBLIGATION OR LIABILITY SET OUT IN THIS PARAGRAPH 2.2 SHALL BE INCONTROVERTIBLE AND UNEQUIVOCAL; ANY TERM OR PROVISION OF THE CONTRACT, THE EXHIBITS TO THIS CONTRACT, OR OF ANY SUBCONTRACT EXECUTED IN FURTHERANCE OF THE ANTICIPATED PROJECT CONSTRUCTION SHALL NOT BE CONSTRUED OR DEEMED TO ALTER OR WAIVE THIS ABSOLUTE CONDITION.** Likewise, CMaR's absolute responsibility for the completion of the Project in accordance with the Contract Documents, including the Drawings and Specifications and within the agreed cost

constraints, as well as CMAr's agreement to bear all costs in excess of the Guaranteed Maximum Price without recourse to the Owner, if the expenditure of excess costs are necessary for the completion of the Work, shall also be incontrovertible and undisputable and shall take precedence over all other terms and provisions of this Contract and the Exhibits to this Contract, no part of which other provisions shall be deemed to alter, diminish or waive the obligations stated in this Paragraph.

2.3 In addition to the Work CMAr will perform under this Phase II, it will also provide all the usual and necessary traditional construction management services, including those identified below, incident to construction projects of the nature and scope of this Project. It is understood that CMAr will be exercising a dual role during this Phase II and that many of the services provided as a part of the overall Work will overlap by their very nature. The identified Work set out below is not intended in any manner to diminish the overall responsibility of CMAr for the full and final completion of the Work, including Project construction, within the time and cost constraints specified in this Contract. The traditional construction management services referred to above generally include, but are not limited to, the following:

2.3.1 Maintain a competent, qualified, full-time staff to coordinate and provide direction of the Work and progress of the Subcontractors on the Work, so as to complete the Work in accordance with the Contract Documents.

2.3.2 Establish an on-site organization and lines of authority in order to accomplish the Work in accordance with the approved and accepted Drawings and Specifications. Prepare and submit, for Owner's review and approval, an organization chart showing staff personnel, job classifications and salaries pertaining to the Work, same to be updated periodically. Following Owner's approval of CMAr's Project Manager, such Project Manager shall not be replaced or reassigned to another project without Owner's consent. Following such consent, any replacement Project Manager must receive Owner's approval. Owner retains the right to request replacement of any employee assigned by CMAr to the Project.

2.3.3 Establish procedures for coordination among Owner, Architect, Subcontractors, and CMAr pertaining to the Work and implement such procedures. Establish emergency procedures and provide protection of the Project, equipment, machinery, tools and materials.

2.3.4 Schedule and conduct progress meetings at which Subcontractors, Owner, Architect, other design consultants (as necessary) and CMAr may discuss jointly such matters as procedures, progress, problems and scheduling.

2.3.5 Assist the Subcontractors in providing to Owner and CMAr a detailed schedule for the operations of Subcontractors on the Work, including activity sequences and durations, allocation of labor and materials, processing of shop drawings and samples, and delivery of products requiring long lead time procurement.

2.3.6 Provide regular monitoring of the Project Time Schedule as the Work progresses. Identify potential variances between scheduled and probable completion dates. Review schedule for construction not started or incomplete and recommend to Owner and Subcontractors adjustments in the Project Time Schedule to meet the completion date. Provide summary reports of each monitoring and document all changes in the Project Time Schedule.

2.3.7 Review and evaluate the adequacy of the Subcontractors' personnel and equipment and the availability of materials and supplies to meet the Project Time Schedule. Recommend courses of action to Owner when requirements of a Subcontract are not being met. Implement such courses of action as are required. Terminate or suspend Subcontractors, as necessary, with the prior concurrence of Owner. In the event of termination of a Subcontractor, whether for cause or convenience, CMAr shall proceed as expeditiously as possible on behalf of the Construction Team and in the best interests of the Owner, subject to review and concurrence of Owner, in the following manner to secure a replacement Subcontractor:

- (a) If the CMAr obtained a performance bond from the Subcontractor and in accordance with the General Conditions and other applicable Subcontract procedures, make demand upon, consult and negotiate with the surety of a terminated Subcontractor to obtain a replacement, if the termination is the result of a default, and enter into a Subcontract with the surety-proposed replacement Subcontractor upon concurrence of Owner;
- (b) In the event of termination for convenience, in the event the surety fails or refuses to perform in a default situation, or in the event there is no performance bond, secure a rebid, as provided under the Contract, of that portion of the Work affected, if the Owner concurs with a rebid or determines that a rebid is required; or
- (c) If the Owner determines that rebidding is not required or desired under (b), negotiate and enter into a Subcontract with a replacement Subcontractor (with approval of the Owner), or perform the work with CMAr's own forces in accordance with the rules set forth in Paragraph 4.2 of this Supplemental Agreement No. 1.

2.3.8 Develop and monitor a system of cost control. Revise and refine the initially approved Project Construction Budget; incorporate approved changes as they occur, and develop cash flow reports and forecasts as needed. Identify variances between actual and budgeted or estimated costs and advise Owner and Architect whenever projected cost exceeds budgets or estimates.

2.3.9 Develop and implement a system for review and processing of Change Orders. Recommend necessary or desirable changes to Owner and the Architect, review requests for changes, submit recommendations to the Owner and the Architect, and assist in negotiating Change Orders, in accordance with Paragraph 9.1.3 below.

2.3.10 Develop and implement a procedure for the review and processing of applications by Subcontractors for progress and final payments.

2.3.11 Obtain all building permits, except for barricade permits, and ensure that all Subcontractors obtain permits for inspection or temporary facilities required to be obtained directly by the various Subcontractors. Obtain approvals from all the authorities having jurisdiction.

2.3.12 If required, assist Owner in selecting and retaining professional services of a surveyor, testing laboratories and special consultants, and coordinate these services.

2.3.13 Inspect the work of Subcontractors to guard Owner against defects and deficiencies, without assuming any of the Architect's responsibilities, such as and including errors and omissions in design. This inspection by CMAr during the Phase II Work shall not relieve the Subcontractors from their

responsibilities for construction means, methods, techniques, sequences and procedures, nor for their responsibility to carry out the construction work in accordance with the Contract Documents.

2.3.14 Be responsible for enforcing warranties and for obtaining correction or replacement of all defective or nonconforming work not constructed or installed in accordance with the Contract Documents. All corrective or remedial work required by the Contract Documents shall be performed by the responsible Subcontractors under the terms of their Subcontracts, without additional cost to Owner.

2.3.15 Review and coordinate the safety programs of each of the Subcontractors and make appropriate recommendations to Owner. The performance of such services by CMaR shall not relieve the Subcontractors of their responsibilities for the safety of persons and property, and for compliance with all federal, state and local statutes, rules, regulations, ordinances and orders applicable to the conduct of the Work. However, CMaR is responsible for the conduct of the Subcontractors' safety programs and for all precautions required under the safety programs.

2.3.16 Refer all questions relative to design to the Architect.

2.3.17 In collaboration with the Architect, establish and implement procedures for expediting the processing and approval of shop drawings and samples. Monitor factory inspection and testing of items fabricated outside the Project area.

2.3.18 Record the progress of the Work by submission of written progress reports to Owner and the Architect, including information on the Subcontractors' work and the percentage of completion. Maintain a detailed daily log of Project site events, which will be provided to Owner and Architect weekly.

2.3.19 Maintain at the Project site, on a current basis, records of all Subcontracts, Drawings and Specifications received from the Architect, standards, shop drawings, samples, purchases, materials, equipment, maintenance and operating manuals and instructions, and any other documents and revisions thereto which arise out of the Work. Obtain data from Subcontractors and maintain a current set of record Drawings, Plans and Specifications received from the Architect. At the completion of the Work, deliver all such records, including a full set of as-built Drawings, operating manuals and warranties received from the Architect, to Owner.

2.3.20 Secure from all Subcontractors and lower tier subcontractors prior to commencement of Work required Certificates of Insurance and, upon the request of Owner, certified copies of policies, evidencing proper insurance coverage to be in force. Maintain these certificates and policies among the Project site records and provide copies of same to Owner for Owner's records upon request.

2.3.21 Submit data for determination by the Architect of the Date of Substantial Completion of the Project or designated portions thereof and prepare for the Architect a list of incomplete or unsatisfactory items and a schedule for their completion. Assist the Architect and Owner in conducting inspections and supervise the correction and completion of all construction work.

2.3.22 With Owner's maintenance personnel, direct the checkout of utilities, operational systems, and equipment.

2.3.23 Submit data for determination by the Architect of the Date of Final Completion and provide written notice to the Owner and Architect that the Project is ready for Final Inspection. Assign to Owner all rights acquired by CMAr in special warranties obtained from Subcontractors. Secure and transmit to the Architect required guarantees, affidavits, special warranty documentation, releases, bonds, consents of sureties, and waivers. Turn over to Owner all keys, operating equipment, maintenance stocks, maintenance manuals, parts lists, and as-built Drawings received from the Architect.

2.3.24 Conduct, with Owner and Architect, periodic post-completion inspections (not less often than quarterly) during the one-year general warranty period to ascertain the existence of defects or nonconformities in material and workmanship and determine the necessity for correction of defects or nonconformities. Assign, if possible, the causes of same, to the responsible Subcontractor, and take reasonable corrective action with the concurrence of Owner, including but not limited to filing insurance and bond claims where coverage is available. Ultimate responsibility for correcting defects or nonconformities in material and workmanship shall rest with CMAr at no expense to the Owner.

2.3.25 Conduct with the Owner and Architect a Final Warranty Inspection within thirty (30) days of the end of the one-year general warranty period.

2.3.26 Fully and completely resolve, by litigation or otherwise, all Subcontractor claims arising out of the construction of the Project without directly involving the Owner, unless a claim results from a material breach of this Contract by the Owner. Provided, however, that the Owner reserves the right, at Owner's sole election, where the claim of a Subcontractor would necessitate a Change Order increasing the Subcontract Sum or the GMP, to approve any settlement of a Subcontractor claim proposed by CMAr and to make a reasonable audit of all books, records, accounts, and other data of the Subcontractor relating to the claim and to overall performance of the Subcontract prior to approval of any claim. CMAr shall provide for Owner's right to audit claims and other Change Order requests in its form subcontract with each Subcontractor.

ARTICLE 3 TERM

3.1 Section 13.1 of Article 13 of the original Contract is hereby amended to read as follows:

"13.1 Unless sooner terminated in accordance with the applicable provisions hereof, or extended by supplemental agreement approved by the City Manager or designee, the Term of this Contract shall be from _____, until final completion of Phase II Construction Phase Services in connection therewith, including construction of the Project, the final one-year warranty inspection, correction of defects and deficiencies in the Work, including construction work, and final resolution of any outstanding Project-related claims or disputes."

ARTICLE 4 TRADE CONTRACTS

4.1 All construction Work, other than professional and personal services that CMAr customarily performs with its own field staff, shall be performed under Subcontracts. Exhibit 3 to this Contract, **as an accounting tool only**, provides the method by which the Construction Team (Owner, CMAr and Architect) may continuously determine whether the Work is within the GMP throughout the Construction Phase. The general assumptions made in developing the GMP in Exhibit 2 are contained in Exhibit 3. The

bid package line item amounts contained in Exhibit 3 will be adjusted according to the amounts of the applicable Subcontract awards utilizing the "Construction Manager-at-Risk Contingency" line item as the balance line item. In any event, the GMP total shall not be altered, except by Change Order or Supplemental Agreement to this Contract.

4.2 CMAr shall award each trade construction subcontract to the lowest responsible bidder whose bid is responsive to the request for bids, provided the lowest bid is within the amount established for the specific GMP bid package line item as specified in Exhibit 3. CMAr shall document the award of each trade construction subcontract by submitting a letter to Owner in accordance with the award notification letter attached to and made a part of this Supplemental Agreement No. 1 as Exhibit 4. In such event, the difference between the actual low bid and the amount specified in the GMP bid package line item shall be accounted for by adding the difference to the "Construction Manager-at-Risk Contingency" line item. However, if all trade construction subcontract bids received exceed the amount specified in Exhibit 3 for the bid package line item, one or more of the following initial procedures will be undertaken at Owner's direction following submission of the recommendation of CMAr:

- (a) deletion of non-essential bid alternates to try to bring the bid within the amount specified on Exhibit 3 hereto, but without reducing the scope of the Work unless Owner approves;
- (b) reject all bids and rebid;
- (c) redesign to lower the cost to the budgeted amount, but only with Owner's consent, and rebid; or
- (d) proceed with the award using, with CMAr's consent, funds contained in the "Construction Manager-at-Risk Contingency" (uncommitted budgeted funds or funds saved from prior bid package line-item awards which were below the established bid package line item amounts) to pay the excess here.

4.3 If CMAr has submitted its own bid for the bid package line item as permitted by Section 2269.255(b), Texas Government Code, as amended, and Owner determines that CMAr's bid is within the GMP bid package line item and provides the best value, Owner may allow CMAr to perform the Work for that line item with CMAr's own forces, with the option of subcontracting all or any portions of that Work to third parties of CMAr's choice.

4.4 In the event procedures stated in Paragraph 4.2 (a), (b) or (c) are undertaken, CMAr will provide Owner with a subsequent recommended procedure. By execution of this Supplemental Agreement No. 1, CMAr represents and warrants to Owner that any advertisement for rebids and award of contracts by CMAr as specified in Paragraph 4.2 shall comply and be consistent with the General Conditions, special provisions, if any, Instructions to Bidders, and with all applicable laws of the State of Texas. If no bids are received on a particular item, the Owner may direct CMAr to: (a) rebid the item; or (b) if Owner determines that no reasonable bid can be obtained through rebidding or that further rebidding cannot be done because a genuine emergency threatens the integrity and progress of the Project, complete the Work under the bid package item with its own forces, with the option of subcontracting all or any portion thereof to third parties of CMAr's choice. Owner may reject CMAr's initial or subsequent recommended procedure under Paragraph 4.2, and elect to follow one of the alternative procedures specified above, including requiring CMAr to perform the Work with its own forces, with the option of subcontracting all or any portion of the Work to third parties of CMAr's choice. If CMAr performs any work with its own forces or

subcontracts all or any portion of the Work to third parties of CMAr's choice under the provisions of this Article, CMAr shall do so **at cost plus jobsite overhead only**, but the Guaranteed Maximum Price shall not be increased thereby. Costs with regard to bid package line-item Work performed by CMAr's own forces or by third parties of CMAr's choice shall be accounted for separately and reflected in subsequent adjustments to the Exhibit 3 bid package line item amounts, without increasing the Guaranteed Maximum Price.

- 4.5 With the approval of Owner, CMAr may provide incidental labor and materials in connection with its professional services at the Project site that cannot be economically or reasonably contracted to others, or which cannot be purchased under competitive bidding.
- 4.6 The form of each trade construction subcontract shall be CMAr's standard form, adjusted to conform with the requirements of this Contract. **The subcontract form shall include a full indemnification of the Owner and the Architect, shall provide the same scope of indemnity as is set forth in this Supplemental Agreement, and shall contain such other clauses as may be required to fully protect Owner's interests.** It shall be the responsibility of CMAr to make payment properly due the Subcontractors from funds paid to CMAr by Owner for that purpose, subject to the provisions of this Contract, pursuant to applications submitted for payment, with certification given to Owner following such payment.

ARTICLE 5 DATE FOR SUBSTANTIAL COMPLETION; LIQUIDATED DAMAGES AND EXTENSIONS

- 5.1 Subject to receipt of a notice to proceed with the Work by XXXXX, 202__, the Project shall be Substantially Complete on or before XXX working days. For unexcused failure to substantially complete the Project on or before XXX working days, or any extension thereof granted by Owner, Owner shall be entitled to recover from CMAr or his Surety, liquidated damages in the amount of **\$500.00 per day** for each calendar day that the time for Substantial Completion of the Project exceeds the date specified in this Supplemental Agreement No. 1 for Substantial Completion (217 working days). The amounts are agreed to and stipulated by Owner and CMAr not as a penalty, but as a just and reasonable forecast of the damages Owner would sustain in the event of CMAr's breach of the requirement for the time of performance, the calculation of actual damages being impractical, uncertain and extremely difficult to ascertain with precision. Such stipulated amount shall be recovered by deducting same from the monies due or to become due to CMAr, and if the funds withheld are insufficient to cover the amount of liquidated damages owing, CMAr or CMAr's Surety shall pay the additional amounts owed. Nothing in this Paragraph fixes any liquidated damages as to CMAr's breach of any other term, covenant, or condition of this Contract; these provisions apply only as to the failure to achieve Substantial Completion within the time required.
- 5.2 If CMAr is delayed at any time in the orderly progress of the Work, the date for Substantial Completion of the Project shall be extended by Change Order for a period of time not greater than the length of such delay as measured on the critical path of the construction schedule if the cause of the delay is for any of the following reasons (notwithstanding the above, however, the time extension will be granted only if the delay cannot reasonably be made up elsewhere in the construction schedule), provided that CMAr gives written notice of a claim for time extension within the time period and in the manner required under Article 4.3 of the General Conditions:

- (a) any act, neglect, or failure to act by the Owner or the Architect or by any employee, officer, official, department, or representative of either;
- (b) any separate contractor employed by the Owner;
- (c) changes ordered in the Work;
- (d) labor disputes, fire, unusual delay in transportation, unavoidable casualties;
- (e) any other causes beyond CMAr's control (excluding weather-related delays, except as provided in Paragraph 5.3 below); or
- (f) any delay expressly authorized or directed in writing by the Owner.

5.3 The date for Substantial Completion provided in Paragraph 5.1 includes an allowance for the number of days in which the average weather conditions do not allow the prosecution of the work, as those average weather conditions are determined by the National Weather Service, Fort Worth Bureau, for the time period in question. In regard to extensions of time proposed for weather-related delays, therefore, Owner will extend the date for Substantial Completion of the Project only for delays caused by unusually severe weather conditions, deemed to be in excess of the average weather conditions, if all of the following criteria are met: (a) the unusually severe weather conditions and the delay are adequately documented, based on CMAr's data collected at the Project site, information from the official records of the National Weather Service, Fort Worth Bureau, and information from the Subcontractor in question; (b) the Work could not be performed on at least one-half of each Work day for which an extension of time is requested as a result of the weather, and not some other cause; (c) the delay cannot reasonably be made up elsewhere in the Project Time Schedule; and (d) the cumulative number of days the Work was actually delayed because of weather conditions during the period in question exceeds the cumulative number of days, based on average weather conditions, of possible weather delay built into the Project Time Schedule for the period in question. CMAr shall document the actual versus normal weather conditions along with any resultant delays and actual number of days worked by the Subcontractors. The provisions of Paragraph 5.2 of this Supplemental Agreement No. 1 and Article 4.3 of the General Conditions shall govern any request or claim for an extension of time by CMAr. Nothing in this Paragraph 5.3 shall be construed as requiring Owner, under any circumstances, to be liable for any claim for extra costs or extra compensation resulting from or associated with any weather delay, whether normal or unusually severe. The terms of this Paragraph 5.3 shall be incorporated into and made a part of all Subcontracts entered into by CMAr in connection with construction of the Project.

ARTICLE 6 CONSTRUCTION MANAGER-AT-RISK'S FEE FOR CONSTRUCTION MANAGEMENT SERVICES

6.1 In consideration of the performance of the Phase II Work under this Supplemental Agreement No. 1, the Owner agrees to pay CMAr an additional Construction Management Fee as set forth in Paragraph 6.1.1.

6.1.1 For all Phase II Work performed, Owner shall pay CMAr a Fee of XX percent (XX%) of the total Cost of the Work as defined in Article 7 of this Supplemental Agreement No. 1. The Fee shall be paid in

monthly installments in proportion to percentage of the Phase II Work completed, subject to five percent (5%) retainage. Any balance (including retainage) of this Fee shall be paid at the time of final payment. However, in no event shall the total amount of this Fee, all other compensation and Cost of the Work due Construction Manager-at-Risk exceed the Guaranteed Maximum Price, subject to adjustment by Change Order.

6.1.2 For professional services rendered for Phase I of the Project from XXXXX, 202__, through the date of this Supplemental Agreement No. 1, CMAr received separate, additional compensation in the amount of \$XXXX. The compensation received shall be considered as part of CMAr's Fee under this Contract, and is included in the Guaranteed Maximum Price.

6.2 Included in CMAr's Fee are the following expenses related to the Phase II Work:

6.2.1 Salaries or other compensation of CMAr's employees at the principal office and branch offices, except employees listed in Subparagraphs 7.2.1, 7.2.2 and 7.2.24, of this Supplemental Agreement No. 1.

6.2.2 General operating expenses of CMAr's central or principal office and branch offices other than the field office.

6.2.3 Any part of CMAr's capital expenses employed for the Work, including interest on CMAr's capital.

6.2.4 Profit, overhead, or general expenses of any kind, including but not limited to legal fees for in-house or outside attorneys, except as may be expressly excluded altogether or otherwise included in Article 7 of this Supplemental Agreement No. 1.

6.2.5. Costs incurred for all Design Phase Services, whether performed prior to the date of this Supplemental Agreement No. 1 or thereafter, except as provided in Paragraph 6.1.2 hereof.

6.3 Monthly invoices for the payment of Construction Manager-at-Risk's Fee as set out hereinabove shall be submitted as part of CMAr's itemized Application for Payment under Article 9 of the General Conditions.

ARTICLE 7 COST OF THE WORK

7.1 The term "Cost of the Work" shall mean costs necessarily incurred in the performance of the Work during the Construction Phase, and paid or payable by CMAr, and not included in CMAr's Fee as set forth in Article 6 of this Supplemental Agreement No.1.

7.1.1 The Owner agrees to pay CMAr for the Cost of the Work as defined in this Article 7, subject to submission by CMAr of all back-up substantiation as may be reasonably required by the Owner's Director. Such payment shall be in addition to CMAr's Fee specified in Article 6. However, in no event shall the sum of payments for the Cost of the Work, CMAr's Fee and any other CMAr compensation exceed the Guaranteed Maximum Price, as adjusted by Change Order.

7.2 Cost items.

7.2.1 Wages paid for labor in the direct employ of CMAr in the performance of the Work under any applicable collective bargaining agreement, or under a salary or wage schedule agreed upon by the Owner and CMAr, and including reasonable and customary benefits, if any, as may be payable with respect thereto. Such costs shall be at rates not higher than the standard pay in the locality of the Work except with prior consent of the Owner, and shall include the items set forth below in this Article. The reasonable cost of drug testing for all of CMAr's employees utilized on or hired for the Project, whether management or labor, shall also be a Cost of the Work.

7.2.2 Salaries of CMAr's employees at or below the level of Project Manager, when engaged on the Work and stationed at the Field Office, in whatever capacity employed. Employees engaged, at shops or on the road, in expediting the production or transportation of materials or equipment, shall be considered as stationed at the field office and their salaries paid for that portion of their time spent on this Work.

7.2.3 Cost of reasonable and customary pension contributions, hospitalization insurance, medical insurance, assessments or taxes for such items as unemployment compensation and social security, insofar as such cost is reasonably based on wages, salaries, or other remuneration paid to employees of CMAr and included in the Cost of the Work under Subparagraphs 7.2.1, 7.2.2, 7.2.23 and 7.2.24 herein.

7.2.4 With prior Owner approval, the proportion of reasonable travel and hotel expenses incurred outside of the Dallas/Fort Worth metropolitan area by CMAr's officers or employees in discharge of duties directly connected with the Work.

7.2.5 Cost of all materials, supplies and equipment incorporated in the Work, including costs of transportation thereof.

7.2.6 Payments made by CMAr to Subcontractors for Work performed pursuant to Subcontract, entered into in the performance of this Contract.

7.2.7 Cost, including transportation and maintenance, of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workmen, which are employed or consumed in the performance of the Work, and cost less salvage value of such items used but not consumed which remain the property of CMAr.

7.2.8 In connection with CMAr's professional services and with prior Owner approval, rental charges of all necessary machinery and equipment, exclusive of hand tools, used at the site of the Work, whether rented from CMAr or others, including installation, repairs and replacements, dismantling, removal, costs of lubrication, transportation and delivery costs thereof, at rental charges consistent with those shown in the then current AED Manual. Further in regard to equipment and machinery rented by CMAr from an affiliate, subsidiary, or other entity under the control of CMAr, the rental rate for equipment and machinery shall not exceed 75% of the current AED Manual rental charges and shall in no event cumulatively exceed the value of such equipment or machinery at the commencement of the rental period. If rental charges reach the designated value for equipment and machinery rented from an affiliate, subsidiary, or other entity under the control of CMAr, the equipment or machinery in question shall thereafter belong to Owner, to be disposed of in accordance with Article 9 below. CMAr shall furnish Owner with a list, to be updated monthly, of all equipment furnished for the Project for which Owner reimburses CMAr as a part of the Cost of the Work. Equipment and machinery rented which becomes

property of the Owner pursuant to this paragraph shall be delivered to Owner upon final completion and acceptance by Owner of all Work under the Project.

7.2.9 Cost of the premiums for all bonds and insurance coverage required by this Contract, or deemed necessary by CMAr, in the normal pursuit of the Work. Premiums for company-wide coverage will be pro-rated on the basis of value of Work completed during the premium period. Cost of (payment of) all deductible amounts, not otherwise recoverable from third parties or not the result of a claim based upon CMAr's negligence, under any insurance furnished by the Owner, or under insurance policies required by this Contract or deemed necessary by CMAr in the normal pursuit of the Work.

7.2.10 Taxes, if any, related to the Work. As Owner qualifies for exemption, however, under Section 151.309 of the Texas Limited Sales, Excise and Use Tax Act, CMAr shall require all Subcontractors to prevent and be responsible for any erroneous payment of taxes covered by this exemption.

7.2.11 Permit fees, licenses, tests, royalties; deposits lost for causes other than CMAr's negligence.

7.2.12 Minor expenses such as telegrams, long-distance telephone calls, telephone service at the site, expressage, and similar petty cash items in connection with, and for the benefit of, the Work.

7.2.13 Cost of removal of debris. Removal of debris left by other contractors hired by Owner is not a part of this Contract.

7.2.14 Cost incurred due to an emergency affecting the safety of persons and property.

7.2.15 Other costs incurred in the performance of the Work, if and to the extent approved in advance in writing by Owner.

7.2.16 The reasonable, actual direct cost of data processing services as required for the Project. Such costs shall be specifically documented as having been done for the Project.

7.2.17 Legal costs growing out of prosecution of the Work for Owner will only be reimbursable if the legal costs were incurred at Owner's written direction to protect Owner's direct legal interests in the Project, after the prior written approval of Owner's City Council. No other legal costs shall be allowed or considered as part of the Cost of the Work under this Article.

7.2.18 Cost or rental of temporary portable buildings and toilets as required; cost of utilities, ice, water, containers, cups, fire extinguishers, first-aid supplies, safety equipment, off-site storage space or facilities, progress photographs or video tape records.

7.2.19 All reasonable costs and expenditures necessary for the operation of the field office, such as stationery, supplies, blueprinting, furniture, fixtures, office equipment, or other similar items.

7.2.20 Costs incurred by CMAr in preparing and maintaining progress schedules, budgets, and reports required hereby.

7.2.21 Service fees assessed by Associated General Contractors of America and the Associated Building Contractors, but only as they relate to the Phase II Work.

7.2.22 The reasonable, actual direct cost of computer services, including Project site and main office terminal, for purposes of field payroll preparation and control. The costs shall be specifically itemized and documented as having been done for the Project.

7.2.23 Salaries of CMAr's Project Manager and Contract Manager, Safety Engineer, and Procurement Specialist (for coordinating, costing, scoping and purchasing of major Work items), earned after the date of this Supplemental Agreement No. 1, whether stationed at the Field Office or at the Main Office of CMAr, for that portion of their time spent on this Work.

7.2.24 Where not otherwise included in the Cost of the Work under Subparagraphs 7.2.16, 7.2.20 and 7.2.22, the cost of central accounting services in connection with the Work, such as payment of invoices, maintaining material cost records, computer services, preparation of W-2 Reports, payroll tax reporting, and preparation of other reports.

7.3 If, after a substantial loss from fire, flood, or similar cause not due to the default or neglect of CMAr, CMAr is put in charge of reconstruction, CMAr shall be paid a fee for its services proportionate to the fee specified in Article 6 of this Supplemental Agreement No.1. Any reconstruction work shall be considered part of the Scope of the Work, except that the CMAr's Fee under the Guaranteed Maximum Price shall be adjusted accordingly, unless otherwise reimbursed by the proceeds of insurance, or through utilization of the procedure set out in Paragraph 8.1.2 below.

7.4 Costs incurred by CMAr to correct or remedy defective or nonconforming work performed by CMAr's own forces, or where the responsible Subcontractor fails to perform, shall not be a Cost of the Work, and shall be CMAr's sole responsibility, at no additional cost to the Owner; provided, however, CMAr shall be entitled to the proceeds of any Subcontractor performance or maintenance bond, where a Subcontractor has defaulted in this regard.

7.5 Costs not expressly included in the cost items of Paragraph 7.2 of this Supplemental Agreement No. 1 and costs expressly excluded elsewhere in this Supplemental Agreement No. 1 shall not be considered a Cost of the Work.

ARTICLE 8 CHANGES IN THE WORK

8.1 Change Orders.

8.1.1 Subject to Paragraph 8.1.2 below, Owner, without invalidating this Contract or the Project Contract Documents, may order changes in the Work consisting of additions, deletions or other revisions, the Guaranteed Maximum Price and the Project Time Schedule being adjusted accordingly where necessary. All Changes in the Work shall be authorized by a fully executed Supplemental Agreement or Change Order in accordance with Article 7 of the General Conditions for the applicable bid package. In this regard, all Subcontracts shall contain a provision entitling Owner to make changes in the Drawings or Specifications after performance has commenced, or to decrease or increase the quantity of Work to be performed or materials, equipment, or supplies to be furnished; provided, however, that the original Subcontract price shall not be increased by more than twenty-five (25%) percent.

8.1.2 Following receipt of Subcontractor bids by Owner amounting to 75% of the value of Subcontract line-item amounts, the Construction Team shall continue to review the revised line item amounts (contained in Exhibit 3), adjusted to reflect the actual Subcontract amounts. Where review indicates an over-all savings in the line items, based upon bids received below original estimates, resulting in an increase in the "Construction Manager-at-Risk Contingency" line item, Owner shall, at that time and subsequently during the term of this Contract, be authorized to transfer all amounts in excess of \$150,000.00 from the "Construction Manager-at-Risk Contingency" to the "Owner's Contingency," and to order necessary additive changes in the Work, all without increasing the GMP. Any use by Owner of the original or adjusted "Owner's Contingency" will be made without increasing the GMP. Owner may, at its option, utilize the "Construction Manager-at-Risk Contingency" balance for additive changes in the Work; however, in that event, Director shall acknowledge, in writing, the additive changes as being outside the original scope of the Work, in order that CMaR may be entitled to a subsequent credit to the "Construction Manager-at-Risk Contingency" line item (an addition to the GMP) for the amount of such portion utilized for such additive changes in the event the "Construction Manager-at-Risk Contingency" line item amount is insufficient for its intended purpose under this Contract.

8.1.3 ALL CHANGE ORDERS SHALL BE SPECIFIC AND FINAL AS TO PRICES AND EXTENSIONS OF TIME, WITH NO RESERVATIONS OR OTHER PROVISIONS ALLOWING FOR FUTURE ADDITIONAL MONEY OR TIME AS A RESULT OF THE PARTICULAR CHANGES IDENTIFIED AND FULLY COMPENSATED IN THE CHANGE ORDER. Any Change Order affecting one Subcontractor shall include all changes necessary to all Subcontractors. No action or omission to act by Owner or Architect, or acceptance and approval of a Change Order, shall be deemed a waiver, release, revision, modification or deletion of this absolute condition; and any reservations or other provisions in a Change Order allowing for future additional money or time, over and above the specific prices and extensions granted therein, shall be deemed null and void, or otherwise unenforceable and withdrawn.

8.2 Claims for additional cost.

8.2.1 If CMaR wishes to make a claim for Additional Services directed by Owner, necessitating an increase in the Guaranteed Maximum Price, or necessitating use of contingency funds, it shall give Owner written notice thereof after the occurrence of the event giving rise to such claim, in accordance with Article 4.3 of the General Conditions. No such claim shall be valid unless so made. This notice shall be given by CMaR before proceeding to execute the work, except in an emergency endangering life or property, in which case CMaR shall act, at his discretion, to prevent threatened physical damage, injury, or loss. Any change in the Guaranteed Maximum Price or in Construction Manager-at-Risk Contingency line item resulting from such claim may only be authorized by Change Order. However, it is understood and agreed that one of CMaR's primary duties is the anticipation and avoidance of potential claim situations.

8.2.2 All claims and disputes between CMaR and Owner shall first be submitted to Architect for review and evaluation. Architect shall timely submit in writing its findings, conclusions and recommendations to Owner, with a copy of same to CMaR. Further, under the conditions described in Paragraph 8.1.2 above, and in the manner set forth in Paragraph 8.1.2, Owner may, after validation of CMaR's claim, authorize an additive Change Order with regard to that claim, without increasing the Guaranteed Maximum Price at that time, provided that sufficient Construction Manager-at-Risk Contingency or Owner Contingency funds exist.

8.3 Minor Changes in the Work.

8.3.1 The Architect shall have authority to order minor Changes in the Work, within the Scope of the Work, not involving additional cost or an extension of the Project Time Schedule and not inconsistent with the Contract Documents. Such Changes may be effected by Field Order. Such Changes shall be binding on the Owner and CMaR, provided notice and reasonable opportunity to object have been given.

8.4 Field Orders.

8.4.1 The Architect may issue written Field Orders which interpret the Plans and Specifications or which order minor Changes in the Work in accordance with Paragraph 8.3.1 above, without change in the Guaranteed Maximum Price or extension of the Project Time Schedule.

8.5 Emergencies.

8.5.1 In any emergency affecting the safety of persons or property, CMaR shall act, at its discretion, to prevent threatened physical damage, injury or loss. Any additional compensation or extension of time claimed by CMaR on account of emergency work shall be determined as provided in this Article.

**ARTICLE 9
DISCOUNTS, REFUNDS, SALES OF SURPLUS MATERIALS**

9.1 All discounts, if realized, for prompt payment shall belong to the Owner and shall be accounted for in the applicable line item. All trade discounts, rebates, and refunds, and all returns from sale of surplus materials and equipment, shall likewise belong to the Owner, and CMaR and Owner shall make provisions so that they can be secured, the amounts thereof to be accounted for in the applicable line item.

**ARTICLE 10
APPLICATIONS FOR PAYMENT**

10.1 Except as modified by this Article 10, payments to CMaR during Phase II shall be in accordance with Article 9 of the General Conditions.

10.2 CMaR shall furnish to Owner a monthly statement of the work performed during the preceding month for which it claims it is entitled to be paid. This statement shall be in a form based upon a "Schedule of Values" as defined in Paragraph 9.2 of the General Conditions. The statement shall include all monthly payroll data, by classification, of CMAR's field personnel and of the personnel of the Subcontractors and all lower tier subcontractors at the Project site. All payroll records must be maintained and submitted by Workers' Compensation classification codes. CMaR shall require Subcontractors to secure monthly payroll data from lower tier subcontractors for inclusion in the monthly statement. The statement may also include the reasonable value of materials or equipment not yet incorporated into the Project but delivered, inspected, and suitably stored at the Project site or, with the Director's consent and subject to compliance with any conditions made a part of this consent, at some other location agreed upon in writing in accordance with Paragraph 9.3(e) of the General Conditions.

10.3 Each statement shall include an amount for CMaR's Fee computed on the basis of 100% of the amount earned for the statement period, less applicable retainage.

- 10.4 CMAr agrees that 5% of the amounts due under each Subcontract shall be retained by the Owner until thirty (30) days after Final Completion of the Project under this Contract, except that upon mutual agreement by the Architect, City Manager and CMAr, and with consent of the CMAr's surety, payment in full shall be made to those Subcontractors whose work is fully completed and accepted during the early stages of the Project.
- 10.5 The Architect will review CMAr's statement of monies due and will promptly issue a Certificate for Payment to Owner for such amounts as approved.
- 10.6 Final payment, constituting the unpaid balance of the Cost of the Work, retainage due Subcontractors, and the balance of CMAr's Fee (including retainage), shall be paid by the Owner to CMAr thirty (30) days after Final Completion of the Project and Acceptance by Owner, and a final Certificate for Payment has been issued by the Architect, all in accordance with Article 9 of the General Conditions.
- 10.7 No amounts due Manager under this Contract, other than for payments to Subcontractors (or payments to Manager for work done by its own forces) and Manager's Fee, shall be subject to retainage.

ARTICLE 11 INSURANCE

- 11.1 Article 7 ("Insurance") of the original Contract is hereby supplemented to provide that CMAr shall purchase and maintain the following additional insurance for the term of the Contract:

LIABILITY INSURANCE

- (1) Workers' Compensation, with statutory limits, with the policy endorsed to provide a waiver of subrogation as to Owner; and Employer's Liability Insurance at a limit of not less than \$100,000 for each accident, \$100,000 disease for each employee and \$500,000 disease policy limit.
- (2) Commercial General Liability Insurance. Coverage shall insure CMAr for Work performed under the Contract against claims for bodily injury, including death, of any person other than CMAr's employees, and property damage for injury to or destruction of tangible property other than the Work itself (the broad form property damage coverage must be extended to apply to completed operations). The policy shall be endorsed to remove any property damage liability exclusions pertaining to loss by explosion, collapse or underground hazards, and shall include coverage extended to apply to asbestos hazards, if the Project involves work with asbestos. The policy shall include:
 - (A) Products/Completed Operations Liability, to be maintained for a minimum of one (1) year after final completion and acceptance of the Work, with evidence of same filed with Owner.
 - (B) Independent Contractor's Liability to cover CMAr's liability arising out of work performed by the Subcontractors or lower tier subcontractors.

- (C) Contractual Liability covering, but not limited to, the liability assumed under the indemnification provisions contained in this Contract and in Paragraphs 3.19 and 10.2(e) of the General Conditions.
 - (D) Personal Injury Liability, with the employee exclusion deleted.
 - (E) Limits of liability shall be not less than a combined bodily injury (including death) and property damage minimum limit of \$5,000,000 per occurrence, \$5,000,000 annual aggregate. If coverage is written on a claims-made basis, coverage shall be continuous (by renewal or extended reporting period) for no less than sixty (60) months following completion of the Project and acceptance of work by Owner. Coverage, including any renewals, shall have the same retroactive date as the original policy applicable to the Project. **OWNER, AND ARCHITECT SHALL ALSO BE NAMED AS ADDITIONAL INSURED USING THE BROADEST FORM OF ENDORSEMENT AVAILABLE, WITH SUCH STATUS EXTENDED TO INCLUDE THE EXTENSION OF THE COMPLETED OPERATIONS COVERAGE AS DESCRIBED ABOVE.** The policy shall include endorsement CG2503 amendment of limits (designated project or premises), in order to extend the policy's limits specifically to the Project.
- (3) Business Automobile Liability Insurance, covering owned, hired and non-owned vehicles, with a combined bodily injury (including death) and property damage minimum limit of \$1,000,000 per occurrence. Such insurance shall include coverage for loading and unloading hazards.
 - (4) "Umbrella" Liability Insurance. The policy shall insure CMAA for an amount of not less than \$25,000,000 per occurrence combined single limit for bodily injury (including death) and property damage, that follows form and is in excess of the primary liability insurance coverage required above. **OWNER AND THE ARCHITECT SHALL BE NAMED AS ADDITIONAL INSURED USING THE BROADEST FORM OF ENDORSEMENT AVAILABLE, WITH SUCH STATUS EXTENDED TO INCLUDE THE EXTENSION OF THE COMPLETED OPERATIONS COVERAGE AS DESCRIBED ABOVE.**

PROPERTY INSURANCE

- (5) CMAA shall purchase and maintain such Boiler and Machinery Insurance as may be required by the Contract Documents or by law, at such time as the exposure commences. This insurance shall include the interests of Owner, the Architect, CMAA, the Subcontractors and lower tier subcontractors in the Work.

CERTIFICATE OF INSURANCE

- (6) Certificates of insurance acceptable to Owner evidencing the insurance coverages required shall be filed with Owner prior to commencement of the Work. **OWNER SHALL HAVE NO DUTY TO PAY OR PERFORM UNDER THE CONTRACT UNTIL THE REQUIRED CERTIFICATES OF INSURANCE HAVE BEEN DELIVERED TO**

OWNER, AND NO OFFICER OR EMPLOYEE OF OWNER SHALL HAVE AUTHORITY TO WAIVE THIS REQUIREMENT. These certificates shall contain a provision that coverages afforded under the policies will not be materially changed, cancelled or non-renewed until at least thirty (30) days prior written notice has been given to Owner. When requested by Owner, certified copies of any of the policies, plus any endorsements, will be furnished to Owner at no cost. Certificates of insurance for insurance required of Subcontractors under Article 11 of the General Conditions shall be furnished to CMaR instead of Owner.

(7) CMaR agrees that in regard to the above-required insurance coverage, all insurance contracts and certificates of insurance will contain and state, in writing, the following required provisions:

(A) Companies issuing the insurance policies shall have no recourse against City for payment of any premiums or assessments for any deductibles which all are at the sole responsibility and risk of CMaR.

(B) The term "City" or "City of Mesquite" shall include all authorities, Boards, Bureaus, Commissions, Divisions, Departments, and officers of City and the individual members, employees and agents thereof in their official capacities, and/or while acting on behalf of the City of Mesquite.

(C) The policy clause "Other Insurance" shall not apply to any insurance coverage currently held by City, to any such future coverage, or to City's Self-Insured retentions of whatever nature.

(D) All provisions of the Contract concerning liability, duty and standard of care, together with the indemnification provision, shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

11.2 Any insurance policies required under Paragraph 11.1 above may be written in combination with any of the others, where legally permitted, but none of the specified limits may be lowered thereby.

11.3 Where negligence liability is not covered by insurance, the CMaR, Subcontractors, Owner and Architect shall each be responsible for their own negligent or strictly liable acts or omissions, subject to the applicable indemnity provisions of this Contract, CMaR's Subcontract form and the General Conditions. This provision shall never be held to have been made or entered into for the benefit of third persons, but shall be strictly construed for the benefit of the parties hereto exclusively. Also, this provision shall not be deemed to alter Paragraph 3.19 or Paragraph 10.2(e) of the General Conditions, or be construed as a waiver by Owner of its governmental immunity.

11.4 Owner reserves the right to review the insurance requirements of this section during the effective period of the Contract and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Management Department, based upon economic conditions, the recommendation of professional insurance advisors, changes in statutory law, court decisions, or other relevant factors. CMaR agrees to make any reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation

binding upon either party to this Contract or upon the underwriter of any such policy provisions). Upon request by Owner, CMAr shall exercise reasonable efforts to accomplish such changes in policy coverages and shall pay the cost thereof.

- 11.5 Approval, disapproval or failure to act by Owner regarding any insurance supplied by CMAr or the Subcontractors shall not relieve CMAr of full responsibility or liability for damages, errors, omissions or accidents as set forth in this Contract. Neither the bankruptcy or insolvency of CMAr's insurer nor any denial of liability by CMAr's insurer shall exonerate CMAr from the liability or responsibility of CMAr set forth in this Contract.
- 11.6 CMAr and Owner mutually waive subrogation rights each may have against the other for loss or damage, to the extent same is covered by the proceeds of insurance. The waiver of subrogation of CMAr shall be noted on the certificate of insurance furnished by CMAr.

ARTICLE 12 PERFORMANCE AND PAYMENT BONDS

- 12.1 With the execution and delivery of this Supplemental Agreement No. 1 to the Contract, CMAr shall furnish to Owner, in the amounts herein required, the following Surety Bonds in the form attached hereto, in accordance with the provisions of Chapter 2253, Texas Government Code, as amended:
- (a) A Performance Bond in the full amount of the Guaranteed Maximum Price, guaranteeing the full and faithful execution of the Work and performance of this Contract, in accordance with the Plans, Specifications and Contract Documents, including any revisions thereof pursuant to the Contract Documents, for the protection of the Owner. This bond shall also provide for the repair or replacement of all defects due to faulty materials and workmanship that appear within a period of one (1) year from the date of Substantial Completion of the Work.
 - (b) A Payment Bond in the full amount of the Guaranteed Maximum Price, guaranteeing the full and proper protection of all claimants supplying labor and material in the prosecution of the Work and for the use of each such claimant.
- 12.2 Each Bond shall be executed by CMAr, as Principal, and one or more corporate sureties fully acceptable to Owner. Owner reserves the absolute right to reject any proposed Surety in litigation with Owner, or any of Owner's agencies.

ARTICLE 13 INDEMNIFICATION

- 13.1 Section 11.2 of Article 11 of the original Contract is hereby amended to read as follows:

"11.2 CMAR AGREES TO DEFEND, INDEMNIFY AND HOLD OWNER, ITS OFFICERS, AGENTS, INSURANCE, RISK POOLS, AND EMPLOYEES, AND THE ARCHITECT, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT,

SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY CMAR'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF CMAR, ITS OFFICERS, AGENTS, OR EMPLOYEES, IN THE PERFORMANCE OF THIS CONTRACT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF OWNER, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, OR THE ARCHITECT, AND IN THE EVENT OF JOINT AND CONCURRENT NEGLIGENCE OR FAULT OF THE CMAR, THE OWNER, AND THE ARCHITECT, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE OWNER UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. WHERE THE CMAR PERFORMS WORK WITH ITS OWN FORCES OR WITH A CONTRACTOR OF ITS OWN CHOOSING UNDER PARAGRAPH 4.2 OF SUPPLEMENTAL AGREEMENT NO. 1, THE INDEMNITY PROVISIONS CONTAINED IN THE GENERAL CONDITIONS SHALL APPLY AND SHALL CONTROL IN THE EVENT OF ANY CONFLICT WITH THIS INDEMNITY PROVISION."

**ARTICLE 14
ORIGINAL CONTRACT TO APPLY**

14.1 As modified or amended by this Supplemental Agreement No. 1, all of the terms, conditions, provisions and obligations of the original Contract between the parties, executed March 21, 2023, shall remain in full force and effect, and shall apply to the provisions of this Supplemental Agreement No. 1.

EXECUTED this the ____th day of _____, 202__ by Owner, signing by and through its City Manager, duly authorized to execute same by the City Council on _____, and by CMaR, acting through its duly authorized officials.

(Remainder of page intentionally left blank – signatures on following page)

**CITY OF MESQUITE
(CITY)**

(CONSTRUCTION MANAGER-AT-RISK)

BY _____
Cliff Keheley
City Manager

BY _____

PRINTED
NAME: _____

TITLE: _____

ATTEST:

ATTEST:

BY _____
Sonja Land
City Secretary

BY _____
Corporate Secretary

APPROVED AS TO FORM:

BY _____
Assistant City Attorney

ATTACHMENT D
LOCATION MAP AND PROPERTY DESCRIPTION



Mesquite Convention Center – 1700 Rodeo Dr.