

ORDINANCE NO. 21-2686

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSTRUCTION MANAGER AT RISK CONTRACT WITH MCCARTHY BUILDING COMPANIES, INC., FOR PRE-CONSTRUCTION SERVICES OF SOUTHEAST DENTON PACKAGE – B IMPROVEMENTS FOR THE CAPITAL PROJECTS DEPARTMENT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFQ 7714 – CMAR AWARDED TO MCCARTHY BUILDING COMPANIES, INC., IN THE NOT-TO-EXCEED AMOUNT OF \$174,955.00 FOR PRE-CONSTRUCTION SERVICES).

WHEREAS, McCarthy Building Companies, Inc., the professional services provider (the “Provider”) set forth in this ordinance, is being selected as the most highly qualified on the basis of its demonstrated competence and qualifications to perform the proposed professional services; and

WHEREAS, the fees under the proposed contract are fair and reasonable and are consistent with, and not higher than, the recommended practices and fees published by the professional associations applicable to the Provider’s profession, and such fees do not exceed the maximum provided by law; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The City Manager, or their designee, is authorized to enter into the professional service contract attached hereto with McCarthy Building Companies, Inc., for pre-construction services of Southeast Denton Package – B Improvements for the Capital Projects Department.

SECTION 2. The City Manager, or their designee, is authorized to expend funds as required by the attached contract.

SECTION 3. The City Council of the City of Denton, Texas expressly delegates the authority to take any actions that may be required or permitted to be performed by the City of Denton under this ordinance to the City Manager of the City of Denton, or their designee.

SECTION 4. The findings in the preamble of this ordinance are incorporated herein by reference.

SECTION 5. This ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by Jesse Davis and seconded by Brian Beck. This ordinance was passed and approved by the following vote [7 - 0]:

	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vicki Byrd, District 1:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Brian Beck, District 2:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jesse Davis, District 3:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Alison Maguire, District 4:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Deb Armintor, At Large Place 5:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Paul Meltzer, At Large Place 6:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

PASSED AND APPROVED this the 14th day of December, 2021.



GERARD HUDSPETH, MAYOR

ATTEST:  
ROSA RIOS, CITY SECRETARY

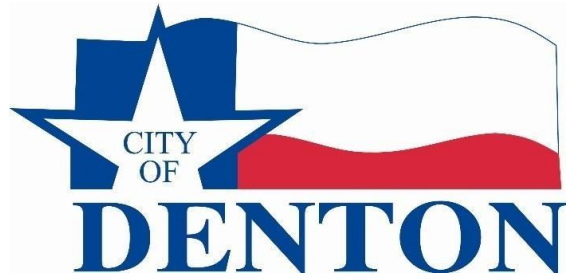
BY: Rosa Rios

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY: Marcella Lunn

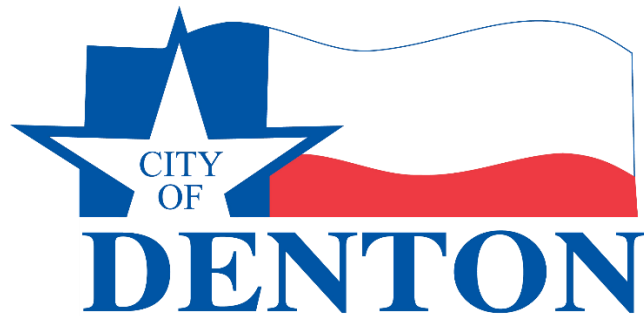
Digitally signed by Marcella Lunn  
DN: cn=Marcella Lunn, o,  
ou=City of Denton,  
email=marcella.lunn@cityofde  
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## DocuSign City Council Transmittal Coversheet

RFQ	7714
File Name	Construction Manager at Risk (CMAR) for SED-B
Purchasing Contact	Cori Power
City Council Target Date	DECEMBER 14, 2021
Piggy Back Option	Not Applicable
Contract Expiration	N/A
Ordinance	21-2686



**CITY OF DENTON, TEXAS**

**CONSTRUCTION MANAGER AT RISK FOR SOUTHEAST DENTON NEIGHBORHOOD  
AREA B (SED-B)**

**CONSTRUCTION MANAGER AT RISK  
DESIGN PHASE SERVICES**

**CONTRACT NO. 7714**



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**CONSTRUCTION MANAGER AT RISK FOR SOUTHEAST DENTON NEIGHBORHOOD AREA B (SED-B)**  
**CONSTRUCTION MANAGER AT RISK DESIGN PHASE SERVICES**  
**PROJECT NO. 210001-4**  
**CONTRACT NO. 7714**

**THIS CONTRACT**, made and entered into this by and between City of Denton, Texas, hereinafter designated the "CITY" and McCarthy Building Companies, Inc., hereinafter designated the "CONSTRUCTION MANAGER AT RISK" or "CM@Risk."

**RECITALS**

- A. The City Manager of the City of Denton, Texas, or their designee, is authorized and empowered by provisions of the City Charter to execute contracts for professional services and construction services.
- B. The City intends to construct Southeast Denton Neighborhood Area B (SED-B) as described in Exhibit A attached, hereinafter referred to as the "Project".
- C. To undertake the design of said Project the City has entered into a contract with FREESE AND NICHOLS, INC. hereinafter referred to as the "Design Professional."
- D. The CM@Risk has represented to the City the ability to provide design phase services and to construct the Project.
- E. Based on this representation, the City intends to enter into a contract with the CM@Risk for the design phase services identified in this contract. At the end of the design phase, at the City's discretion, the City may enter into a separate construction contract with the CM@Risk for construction phase services.

**AGREEMENT**

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

**ARTICLE 1 – TERMS AND DEFINITIONS**

Addenda - Written or graphic instruments issued prior to the submittal of the GMP Proposal(s), which clarify, correct or change the GMP Proposal(s) requirements.

Agreement (Contract) – This written document signed by the City and CM@Risk covering the design phase of the Project, and including other documents itemized and referenced in or attached to and made part of this Contract.

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

Change Order (Amendment) - A written instrument issued after execution of the Contract Documents signed by the City and CM@Risk, stating their agreement upon all of the following: the addition, deletion or revision in the scope of services or Deliverables; the amount of the adjustment to the Contract Amount; the extent of the adjustment to the Contract Time; or modifications of other contract terms.

City (Owner) - The City of Denton, a municipal corporation, with whom CM@Risk has entered into this Contract and for whom the services are to be provided pursuant to said Contract. Regulatory activities handled by the City of Denton Development Services, Fire and Planning Departments or any other City department are not subject to the responsibilities of the City under this Agreement.

City's Designated Project Manager – The City of Denton representative who is designated as project manager for the Project.

Construction Contract Time(s) - The number of days or the dates related to the construction phase that as stated in Construction Documents applies to achievement of Substantial Completion of the Work.

Construction Documents – The plans, specifications and drawings prepared by the Design Professional after correcting for permit review requirements.

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

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

Construction Management Plan – Formal documentation prepared and maintained by the CM@Risk as identified in Section 2.2.

Contingency, CM@Risk's - A fund to cover cost growth during the Project used at the discretion of the CM@Risk usually for costs that result from Project circumstances. The amount of the CM@Risk's Contingency will be negotiated as a separate line item in each GMP package. Use and management of the CM@Risk's Contingency is described in Section 2.6.

Contingency, Owner's - A fund to cover cost growth during the Project used at the discretion of the City usually for costs that result from City directed changes or unforeseen site conditions. The amount of the Owner's Contingency will be set by the City and will be in addition to the project costs included in the CM@Risk's GMP packages. Use and management of the Owner's Contingency is described in Section 2.6.

Contract Amount - The cost for services for this Contract as identified in Article 4.

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

Contract Time(s) - The number of days or the dates stated in this Agreement to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.

Cost of the Work - The direct costs or stipulated rates necessarily incurred by the CM@Risk in the proper performance of the Work as set forth in Exhibit D. The Cost of the Work shall not include the CM@Risk's Construction Fee.

Critical Path Schedule - The sequence of activities from the start of the Work to the Substantial Completion of the Project. Any delay in the completion of these activities will extend the Substantial Completion date.

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

Deliverables - The work products prepared by the CM@Risk in performing the scope of work described in this Contract. Some of the major deliverables to be prepared and provided by the CM@Risk during the design phase may include but are not limited to: Construction Management Plan, Project Schedule, Schedule of Values, alternative system evaluations, procurement strategies and plans, cost estimates, construction market surveys, cash flow projections, GMP Proposals, Subcontractor procurement plan, Statement of Proposed MBE/WBE Utilization, Subcontractor agreements, Subcontractor bid packages, Supplier agreements, and others as indicated in this Contract or required by the Project Team.

Design Professional - The qualified, licensed person, firm or corporation who furnishes design and/or construction administration services required for the Project.

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

Engineer - The qualified, licensed person, firm or corporation who furnishes engineering services required for the Project.

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

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

Guaranteed Maximum Price (GMP) - The sum of the maximum Cost of the Work, the CM@Risk's Construction Fee, and CM@Risk Contingency.

GMP Plans and Specifications - The plans and specifications provided pursuant to paragraph 2.6.5 upon which the Guaranteed Maximum Price Proposal is based.

Guaranteed Maximum Price (GMP) Proposal - The offer or proposal of the CM@Risk submitted on the prescribed form setting forth the GMP prices for the entire Work or portions of the Work to be performed during the construction phase. The GMP Proposal(s) are to be developed pursuant to Article 2 of this Contract.

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

Milestones - A principal event in the performance of the Work that the Contract requires CM@Risk to achieve by an intermediate completion date, or by a time prior to Substantial Completion of all the Work.

Notice of Intent to Award—The written notice by City to a respondent to the City's solicitation of the Project of City's intent to accept a certain respondent's proposal.

Notice to Proceed (NTP) Letter - A written notice given by City to the CM@Risk fixing the date on which the CM@Risk will start to perform the CM@Risk's obligations under this Contract.

Payment Request - The form that is accepted by the City and used by the CM@Risk in requesting progress payments or final payment and which will include such supporting documentation as is required by the Contract Documents.

Project - The works to be completed in the execution of this Contract as described in the Recitals above and Exhibit "A" attached.

Project Budget - The amount budgeted by the City for the Project and the Work.

Project Schedule - A schedule, prepared and maintained by CM@Risk, describing the sequence and duration of the activities comprising the CM@Risk's plan to accomplish the Work within the Contract Times.

Project Team - Design phase services team consisting of the Design Professional, CM@Risk, City's Project Manager, City's Client Department representatives and other stakeholders who are responsible for making decisions regarding the Project.

Schedule of Values (SOV) - Document specified in the construction phase Contract, which divides the Contract Price into pay items, such that the sum of all pay items equals the Contract Price for the construction phase Work, or for any portion of the Work having a separate specified Contract Price.

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

Site— The land or premises on which the Project is located.

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

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

Subcontractor - An individual or firm having a direct contract with the CM@Risk who undertakes to perform a part of the design phase services or construction phase Work at the site for which the CM@Risk is responsible. Subcontractors will be selected through the Subcontractor bid process described in paragraph 2.7 of this Contract.

Sub-subcontractor or Sub-consultant - An individual or firm having a direct contract with any Subcontractor or any other individual firm having a contract with aforesaid contractors at any tier, who undertakes to perform a part of the design phase services or construction phase Work at the site for which the CM@Risk is responsible or furnishes services required as its independent professional associate or consultant with respect to the Project, as applicable.

Substantial Completion - When the Work, or an agreed upon portion of the Work, is sufficiently complete so that City can occupy and use the Project or a portion thereof for its intended purposes. This may include, but is not limited to: (i) approval by City Fire Marshall and local authorities; (ii) all systems in place, functional, and displayed to the City or its representative; (iii) all materials and equipment installed; (iv) all systems reviewed and accepted by the City; (v) draft O&M manuals and record documents reviewed and accepted by the City; (vi) City operation and maintenance training complete; (vii) landscaping and site work; and (viii) final cleaning. The conditions of Substantial Completion that do not apply to a specific GMP will be listed in the Notice to Proceed Letter pursuant to the Construction Phase contract.

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

Work - The entire completed construction or the various separately identifiable parts thereof, required to be furnished during the construction phase. Work includes and is the result of performing or furnishing labor, services and furnishing and incorporating materials, resources and equipment into the construction, and performing or furnishing services and documents as required by the Contract Documents for the construction phase.

## **ARTICLE 2 – BASIC DESIGN PHASE SERVICES**

### **2.1 GENERAL**

- 2.1.1 The CM@Risk, to further the interests of the City, will perform the services required by, and in accordance with this Contract, to the satisfaction of the City's Designated Project Manager, exercising the degree of care, skill and judgment a professional construction manager performing similar services in Denton, Texas would exercise at such time, under similar conditions. The CM@Risk will, at all times, perform the required services consistent with sound and generally accepted construction management and construction contracting practice. The services being provided under this Contract will not alter any real property owned by the City.
- 2.1.2 Program Evaluation: As a participating member of the Project Team, the CM@Risk will provide to the City and Design Professional a written evaluation of the Project and Project Budget, with recommendations as to the appropriateness of each.
- 2.1.3 Project Meetings: The CM@Risk will attend Project Team meetings which may include, but are not limited to, regular Project management meetings, Project workshops, special Project meetings, construction document rolling reviews and partnering sessions.
- 2.1.4 The CM@Risk will provide design phase services described herein, in a proactive manner and consistent with the intent of the most current Drawings and Specifications. The CM@Risk will promptly notify the City in writing whenever the CM@Risk determines that any Drawings or Specifications are inappropriate for the Project and/or cause changes in the scope of Work requiring an adjustment in the cost estimate, Project Schedule, GMP Proposals and/or in the Contract Time for the Work, to the extent such are established.
- 2.1.5 The CM@Risk, when requested by the City, will attend, make presentations, and participate as may be appropriate in public agency and or community meetings, germane to the Project. The CM@Risk will provide drawings, schedule diagrams, budget charts and other materials describing the Project, when their use is required or apropos in any such public agency meetings.
- 2.1.6 Any documents submitted to the City in electronic format shall be considered equivalent to an original of such document.

### **2.2 CONSTRUCTION MANAGEMENT PLAN**

- 2.2.1 The CM@Risk will prepare a Construction Management Plan (CMP), which may include the CM@Risk's professional opinions concerning: (a) Project Milestone dates and the Project Schedule, including the broad sequencing of the design and construction of the Project, (b) investigations, if any, to be undertaken to ascertain subsurface conditions and physical conditions of existing surface and subsurface facilities and underground utilities, (c) alternate strategies for fast-tracking and/or phasing the construction, (d) the number of separate subagreements to be awarded to Subcontractors and Suppliers for the Project construction, (e) permitting strategy, (f) safety and training programs, (g) construction quality control, (h) a commissioning program, (i) the cost estimate and basis of the model, and (j) a matrix summarizing each Project Team member's responsibilities and roles.
- 2.2.2 The CM@Risk may add detail to its previous version of the CMP to keep it current throughout the design phase, so that the CMP is ready for implementation at the start of the construction phase. The update/revisions may take into account (a) revisions in Drawings and Specifications; (b) the results of any additional investigatory reports of subsurface conditions, drawings of physical conditions of existing surface and subsurface facilities and documents depicting underground utilities placement and physical condition, whether obtained by the City, Design Professional, or the CM@Risk, (c) unresolved permitting issues, and significant issues, if any, pertaining to the acquisition of land and right of way, (d) the fast-tracking if any of the construction, or other chosen construction delivery methods, (e) the requisite number of separate bidding documents to be advertised, (f) the status of the procurement of long-lead time equipment (if any) and/or materials, and (g) funding issues identified by the City.

### **2.3 PROJECT SCHEDULE**

- 2.3.1 The fundamental purpose of the "Project Schedule" is to identify, coordinate, and record the tasks and activities to be performed by all of the Project Team members and then for the Project Team to utilize that Deliverable as a basis for managing and monitoring all member's compliance with the schedule requirements of the Project. Each Project Team member is responsible for its compliance with the Project Schedule requirements. The CM@Risk will, however, develop and maintain the "Project Schedule" on behalf of and to be used by the Project Team based on input from the other Project Team members. The Project Schedule will be consistent with the most recent revised/updated CMP. The Project Schedule will use the Critical Path Method (CPM) technique, unless required otherwise, in writing by the City. The CM@Risk will use scheduling software to develop the Project Schedule that is acceptable to the City. The Project Schedule shall be presented in graphical and tabular reports as agreed upon by the Project Team. If Project phasing as described below is required, the Project Schedule will indicate milestone dates for the phases once determined.
- 2.3.2. The Project Schedule shall include a Critical Path Method (CPM) diagram schedule that shall show the sequence of activities, the interdependence of each activity and indicate the Critical Path.



- 2.3.2.1 The CPM diagram schedule shall be in Days and indicate duration, earliest and latest start and finish dates for all activities, and total Float times for all activities except critical activities. The CPM diagram shall be presented in a time scaled graphical format for the Project as a whole.
- 2.3.2.2 The CPM diagram schedule shall indicate all relationships between activities.
- 2.3.2.3 The activities making up the schedule shall be sufficient detail to assure that adequate planning has been done for proper execution of the Work and such that it provides an appropriate basis for monitoring and evaluating the progress of the Work.
- 2.3.2.4 The CPM diagram schedule shall be based upon activities, which would coincide with the schedule of values but the Project Schedule is not required to be cost-loaded.
- 2.3.2.5 The CPM diagram schedule shall show all submittals associated with each work activity and the review time for each submittal.
- 2.3.2.6 The schedule shall show Milestones, including Milestones for City-furnished information, and shall include activities for City-furnished equipment and furniture when those activities are interrelated with the CM@Risk activities.
- 2.3.2.7 The schedule shall include a critical path activity that reflects anticipated rain delay during the performance of the contract. The duration shall reflect the average climatic range and usual industrial conditions prevailing in the locality of the site. Weather data shall be based on information provided by the National Weather Services or other approved source.
- 2.3.3 The Project Schedule shall consider the City's and the tenants' occupancy requirements showing portions of the Project having occupancy priority, and Contract Time.
- 2.3.4 Float time shall be as prescribed below:
  - 2.3.4.1 The total Float within the overall schedule, is not for the exclusive use of either the City or the CM@Risk, but is jointly owned by both and is a resource available to and shared by both parties as needed to meet contract milestones and the Project completion date.
  - 2.3.4.2 The CM@Risk shall not sequester shared Float through such strategies as extending activity duration estimates to consume available Float, using preferential logic, or using extensive crew/resource sequencing, etc. Since Float time within the schedule is jointly owned, no time extensions will be granted nor delay damages paid until a delay occurs which extends the Work beyond the Substantial Completion date.
  - 2.3.4.3 Since Float time within the schedule is jointly owned, it is acknowledged that City-caused delays on the Project may be offset by City-caused time savings (i.e., critical path submittals returned in less time than allowed by the contract, approval of substitution requests and credit changes which result in savings of time to the CM@Risk, etc.). In such an event, the CM@Risk shall not be entitled to receive a time extension or delay damages until all City-caused time savings are exceeded, and the Substantial Completion date is also exceeded.
- 2.3.5 The Project Schedule will be updated and maintained by the CM@Risk throughout the design phase such that it will not require major changes at the start of the construction phase to incorporate the CM@Risk's plan for the performance of the construction phase Work. The CM@Risk will provide updates and/or revisions to the Project Schedule for use by the Project Team, whenever required, but no less often than at the monthly Project Team meetings. The CM@Risk will include with such submittals a narrative describing its analysis of the progress achieved to-date vs. that planned, any concerns regarding delays or potential delays, and any recommendations regarding mitigating actions.
- 2.3.6 Project Phasing: If phased construction is deemed appropriate and the City and Design Professional approve, the CM@Risk will review the design and make recommendations regarding the phased issuance of Construction Documents to facilitate phased construction of the Work, with the objective of reducing the Project Schedule and/or Cost of the Work. The CM@Risk will take into consideration such factors as natural and practical lines of work severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, labor and materials availability, and any other factors pertinent to saving time and cost.

## **2.4 DESIGN DOCUMENT REVIEWS**

- 2.4.1 The CM@Risk will evaluate periodically the availability of labor, materials/equipment, building systems, cost-sensitive aspects of the design; and other factors that may impact the cost estimate, GMP Proposals and/or the Project Schedule.
- 2.4.2 The CM@Risk will recommend, in conjunction with the Project Team, those additional surface and subsurface investigations that, in its professional opinion, are required to provide the necessary information for the CM@Risk to construct the Project. Before initiating construction operations, the CM@Risk may request additional investigations in their GMP Proposal to improve the adequacy and completeness of the site condition information and data made available with the Construction Documents.
- 2.4.3 The CM@Risk will meet with the Project Team as required to review designs during their development. The CM@Risk will

familiarize itself with the evolving documents through the various design phases. The CM@Risk will proactively advise the Project Team and make recommendations on factors related to construction costs, and concerns pertaining to the feasibility and practicality of any proposed means and methods, selected materials, equipment and building systems, and, labor and material availability. The CM@Risk will furthermore maintain a project decision and trend log as design develops and advise the Project Team on proposed site improvements, excavation and foundation considerations, as well as concerns that exist with respect to coordination of the Drawings and Specifications. The CM@Risk will recommend cost effective alternatives.

- 2.4.4 The CM@Risk will routinely conduct constructability and bidability reviews of the Drawings and Specifications as necessary to satisfy the needs of the Project Team. The reviews will attempt to identify all discrepancies and inconsistencies in the Construction Documents especially those related to clarity, consistency, and coordination of Work of Subcontractors and Suppliers.
- 2.4.4.1 Constructability Reviews: The CM@Risk will evaluate whether (a) the Drawings and Specifications are configured to enable efficient construction, (b) design elements are standardized, (c) construction efficiency is properly considered in the Drawings and Specifications, (d) module/preassembly design are prepared to facilitate fabrication, transport and installation, (e) the design promotes accessibility of personnel, material and equipment and facilitates construction under adverse weather conditions, (f) sequences of Work required by or inferable from the Drawings and Specifications are practicable, and (g) the design has taken into consideration efficiency issues concerning access and entrance to the site, laydown, and storage of materials, staging of site facilities, construction parking, and other similar pertinent issues.
- 2.4.4.2 Bidability Reviews: The CM@Risk will check cross-references and complementary Drawings and sections within the Specifications, and in general evaluate whether (a) the Drawings and Specifications are sufficiently clear and detailed to minimize ambiguity and to reduce scope interpretation discrepancies, (b) named materials and equipment are commercially available and are performing well or otherwise, in similar installations, and (c) Specifications include alternatives in the event a requirement cannot be met in the field.
- 2.4.4.3 The results of the reviews will be provided to the City in formal, written reports clearly identifying all discovered discrepancies and inconsistencies in the Drawings and Specifications with notations and recommendations made on the Drawings, Specifications, and other documents. If requested by the City, the CM@Risk will meet with the City and Design Professional to discuss any findings and review reports.
- 2.4.4.4 The CM@Risk's reviews will be from a contractor's perspective, and though it will serve to reduce the number of Requests for Information (RFIs) and changes during the construction phase, responsibility for the Drawings and Specifications will remain with the Design Professional and not the CM@Risk.
- 2.4.5 Notification of Variance or Deficiency: It is the CM@Risk's responsibility to assist the Design Professional in ascertaining that, in the CM@Risk's professional opinion, the Construction Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. If the CM@Risk recognizes that portions of the Construction Documents are at variance with applicable laws, statutes, ordinances, building codes, rules and regulations, it will promptly notify the Design Professional and City in writing, describing the apparent variance or deficiency. However, the Design Professional is ultimately responsible for the compliance with those laws, statutes, ordinances, building codes, rules and regulations.
- 2.4.6 Alternate Systems Evaluations: The Project Team will routinely identify and evaluate using value engineering principles any alternate systems, approaches, design changes that have the potential to reduce Project costs while still delivering a quality and functional product. If the Project Team agrees, the CM@Risk in cooperation with the Design Professional will perform a cost/benefit analysis of the alternatives and submit such in writing to the Project Team. The Project Team will decide which alternatives will be incorporated into the Project. The Design Professional will have full responsibility for the incorporation of the alternatives into the Drawings and Specifications. The CM@Risk will include the cost of the alternatives into the cost estimate and any GMP Proposals.

## **2.5 COST ESTIMATES**

- 2.5.1 Unless otherwise agreed by both parties, within 21 Days after receipt of the documents for the various phases of design, the CM@Risk shall provide a complete and detailed cost estimate and a written review of the documents. The cost estimate should include all cost categories except Owner's Contingency included in the GMP Proposal identified in Exhibit "C" attached. The Design Professional and CM@Risk shall reconcile any disagreements on the estimate to arrive at an agreed cost. If no consensus is reached, the City will make the final determination.
- 2.5.2 If any estimate submitted to the City exceeds previously accepted estimates or the City's Project Budget, the CM@Risk shall make appropriate recommendations on methods and materials to the City and Design Professional that he believes will bring the project back into the Project Budget.
- 2.5.3 In between these Milestone estimates, the CM@Risk shall periodically provide a tracking report which identifies the upward or downward movements of costs due to design development, value engineering or scope changes. It shall be the responsibility of the CM@Risk to keep the City and Design Professional informed as to the major trend changes in costs relative to the City's budget.
- 2.5.4 If requested by the City, the CM@Risk shall prepare a preliminary "cash flow" projection based upon historical records of similar type projects to assist the City in the financing process.

## 2.6 GUARANTEED MAXIMUM PRICE (GMP) PROPOSALS

- 2.6.1.1 The proposed GMP for the entire Work (or portions thereof) will be presented in a format acceptable to the City (see Exhibit "C" attached). CM@Risk must use the attached Exhibit C requirements and procedures when entering into these services.
- 2.6.1.2 The City may request a GMP Proposal for all or any portion of the Project and at any time during the design phase. Any GMP Proposals submitted by the CM@Risk will be based on and consistent with the current update/revised cost estimate at the time of the request, the associated estimates for construction costs and include any clarifications or assumptions upon which the GMP Proposal(s) are based.
- 2.6.2 Guaranteed Maximum Price is comprised of the following not-to-exceed cost reimbursable or lump sum amounts defined below.
- 2.6.2.1 The Cost of the Work is actual costs and is a not-to-exceed, reimbursable amount.
- 2.6.2.2 The General Conditions Costs are a firm fixed lump sum amount included as a Cost of the Work and that will include bonds and insurance premiums based on the full contract price for construction.
- 2.6.2.3 The Construction Fee is 6.95 % of the Cost of the Work.
- 2.6.2.4 CM@Risk's Contingency is an amount the CM@Risk may use under the following conditions: (1) at its discretion for increases in the Cost of the Work, or (2) with written approval of the City for increases in General Condition Costs. CM@Risk's Contingency is assumed to be a direct project cost so will receive all markups at the time such costs are charged to CM@Risk's Contingency.
- 2.6.2.5 Taxes are deemed to include all sales, use, consumer, and other taxes which are legally enacted when negotiations of the GMP were concluded, whether or not yet effective or merely scheduled to go into effect. Taxes are actual costs and are included as a Cost of the Work.
- 2.6.3 Owner's Contingency are funds to be used at the discretion of the Owner to cover any increases in Project costs that result from Owner directed changes or unforeseen site conditions. Owner's Contingency will be added to the GMP amount provided by the CM@Risk, the sum of which will be the full contract price for construction. Markups for Construction Fee and taxes will be applied by the CM@Risk at the time that Owner's Contingency is used.
- 2.6.4 GMPs are cumulative including CM@Risk Contingency. The amount of CM@Risk Contingency for each GMP amendment will be negotiated separately and shall reflect the CM@Risk's risk from that point in the project forward.
- 2.6.5 The CM@Risk will prepare its GMP in accordance with the City's request for GMP Proposal requirements based on the most current completed plans and specifications at that time. The CM@Risk shall provide a list of drawings and specifications upon which its proposed GMP is based. These documents will be identified as the GMP Plans and Specifications.
- 2.6.6 An updated/revised Project Schedule will be included with any GMP Proposal(s) that reflects the GMP Plans and Specifications. Any such Project Schedule updates/revisions will continue to comply with the requirements of paragraph 2.3.
- 2.6.7 GMP savings resulting from a lower actual cost of work than anticipated by the CM@Risk remaining at the end of the project will be negotiated in the construction phase agreement between the City and the CM@Risk.
- 2.6.7.1 GMP Proposal(s) Review and Approval
- 2.6.7.2 The CM@Risk will meet with the City and Design Professional to review the GMP Proposal(s) and the written statement of its basis. As part of the statement of basis, the CM@Risk shall identify and justify any costs that are significantly different than the latest cost estimate provided by the CM@Risk. In the event the City or Design Professional discovers inconsistencies or inaccuracies in the information presented, the CM@Risk will make adjustments as necessary to the GMP Proposal, its basis or both.
- 2.6.7.3 The City upon receipt of any GMP proposal from the CM@Risk, may submit the GMP Plans and Specifications to an independent third party or to the Design Professional for review and verification. The third party or Design Professional will develop an independent estimate of the Cost of the Work and review the Project Schedule for the associated scope of the GMP Proposals.
- 2.6.7.4 If the CM@Risk GMP Proposal is greater than the independent third party or Design Professional's estimate, the City may require the CM@Risk to reconfirm its GMP Proposal. The CM@Risk will accept the independent third party's or Design Professional's estimate for the Cost of Work as part of his GMP or present a report within seven days of a written request to the City identifying, explaining, and substantiating the differences. The CM@Risk may be requested to, or at its own discretion, submit a revised GMP Proposal for consideration by the City. At that time, the City may do one of the following.

- (a) Accept the CM@Risk original or revised GMP Proposal, if within the City's budget, without comment.
- (b) Accept the CM@Risk original or revised GMP Proposal that exceeds the City's budget and indicate in writing to the CM@Risk that the Project Budget has been increased to fund the differences.
- (c) Reject the CM@Risk's original or revised GMP Proposal because it exceeds the City's budget, the independent third parties or Design Professional's estimate, in which event, the City may terminate this Contract and/or elect to not enter into a separate contract with the CM@Risk for the construction phase associated with the scope of Work reflected in the GMP Proposal.

2.6.7.5 If during the review and negotiation of GMP Proposals design changes are required, the City will authorize and cause the Design Professional to revise the Construction Documents to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the final approved GMP Proposal. Such revised Construction Documents will be furnished to the CM@Risk. The CM@Risk will promptly notify the Design Professional and City in writing if any such revised Construction Documents are inconsistent with the agreed-upon assumptions and clarifications.

## **2.7 MAJOR SUBCONTRACTOR AND MAJOR SUPPLIER SELECTIONS**

2.7.1 The selection of major Subcontractors and major Suppliers may occur prior to submission of a GMP Proposal. Major Subcontractors may be selected based on qualifications or a combination of qualifications and price. Subcontractors shall not be selected based on price alone. Except as noted below, the selection of major Subcontractors/Suppliers is the responsibility of the CM@Risk. In any case, the CM@Risk is solely responsible for the performance of the selected Subcontractors/Suppliers.

2.7.1.1 The CM@Risk will prepare a Subcontractor/Supplier selection plan and submit the plan to the City for approval. This subcontractor selection plan shall identify those subcontractor trades anticipated to be pre-qualified by qualifications and competitive bid in accordance with Section 2.7.2 and subcontractor trades will not be pre-qualified through a formalized qualifications-based selection process (competitively bid only). The subcontractor selection plan must be consistent with the selection requirements included in this Contract and the provisions of Chapter 2269 of the Texas Government Code.

2.7.2 Selection by qualifications and competitive bid - The CM@Risk shall apply the subcontractor selection plan in the evaluation of the qualifications of a Subcontractor(s) or Supplier(s) and provide the City with its process to prequalify prospective subcontractors and suppliers. All Work for major Subconsultants and major Suppliers shall then be competitively bid to the prequalified Subcontractors. Competitive bids may occur prior to or after the GMP Proposal(s).

2.7.2.1 The CM@Risk will develop Subcontractor and Supplier interest, submit the names of a minimum of three qualified Subcontractors or Suppliers for each trade in the Project for approval by the City and solicit bids for the various Work categories. If there are not three qualified Subcontractors/Suppliers available for a specific trade or there are extenuating circumstances warranting such, the CM@Risk may request approval by the City to submit less than three names. Without prior written notice to the City, no change in the recommended Subcontractors/Suppliers will be allowed.

2.7.2.2 If the City objects to any nominated Subcontractor/Supplier or to any recommended self-performed Work bidding opportunities for good reason, the CM@Risk will nominate a substitute Subcontractor/Supplier that is acceptable to the City.

2.7.2.3 The CM@Risk will distribute Drawings and Specifications, and when appropriate, conduct a prebid conference with prospective Subcontractors and Suppliers.

2.7.2.4 If the CM@Risk desires to self-perform certain portions of the Work, it will request to be one of the approved Subcontractor bidders for those specific bid packages. The CM@Risk's bid will be evaluated in accordance with the process identified below. If events warrant and the City concurs that in order to ensure compliance with the Project Schedule and/or cost, or if a Subcontractor is terminated the CM@Risk may self-perform Work without re-bidding the Work.

2.7.2.5 The CM@Risk shall request the pre-qualified subcontractors to provide a detailed bid for the services requested. The subcontractor bid, provided on the subcontractors' letterhead, shall contain sufficient information (i.e. unit costs/amounts) to allow an evaluation of the reasonableness of bid costs. The CM@Risk shall receive, open, record and evaluate the bids. The apparent low bidders will be interviewed to determine the responsiveness of their proposals. In evaluating the responsiveness of bid proposals the CM@Risk, in addition to bid price, may consider the following factors: past performance on similar projects, qualifications and experience of personnel assigned, quality management plan, approach or understanding of the Work to be performed, and performance schedule to complete the Work. The final evaluation of Subcontractor/Supplier bids will be done with the City Representative in attendance to observe and witness the process. The CM@Risk will resolve any Subcontractor/Supplier bid withdrawal, protest or disqualification in connection with the award at no increase in the Cost of the Work.

2.7.3 The CM@Risk will be required to prepare two different reports on the subcontracting process.

2.7.3.1 Within fifteen Days after each major Subcontractor/Supplier bid opening process, the CM@Risk will prepare a report for the City's review and approval identifying the recommended Subcontractors/Supplier for each category of Work. The report will provide (a) the name of the recommended Subcontractor/Supplier and the amount of the Subcontractor/Supplier bid for each subagreement,

(b) the sum of all recommended Subcontractor/Supplier bids received, (c) a copy of the bids received from each Subcontractor, and (d) trade work and its cost that the CM@Risk intends to self-perform, if any.

- 2.7.3.2 Upon completion of the Subcontractor/Supplier bidding process, the CM@Risk shall submit a summary report to the City of the entire Subcontractor/Supplier selection process. The report will indicate, by bid process, all Subcontractors/Suppliers contacted to determine interest, the Subcontractors/Suppliers solicited, the bids received, and costs negotiated, and the recommended Subcontractors/Suppliers for each category of Work.
- 2.7.4 The approved Subcontractors/Suppliers will provide a Schedule of Values that reflects their final accepted bid proposal, which will be used to create the overall Project Schedule of Values.
- 2.7.5 If after receipt of sub-bids or after award of Subcontractors and Suppliers, the City objects to any nominated Subcontractor/Supplier or to any self-performed Work for good reason, the CM@Risk will nominate a substitute Subcontractor or Supplier, preferably, if such option is still available, from those who submitted Subcontractor bids for the Work affected. Once such substitute Subcontractors and Suppliers are consented to by the City, the CM@Risk's proposed GMP for the Work or portion thereof will be correspondingly adjusted to reflect any higher or lower costs from any such substitution.
- 2.7.6 Promptly after receipt of the Notice of Intent to Award, the City will conduct a pre-award conference with the CM@Risk and other Project Team members. At the pre-award conference, the CM@Risk will (a) review the nominated slate of Subcontractors and Suppliers and discuss any concerns with or objections that the City has to any nominated Subcontractor or Supplier; (b) discuss City concerns relating to any proposed self-performed Work; (c) review the CM@Risk's proposed Contract Price for the Work during the construction phase; (d) discuss the conditions, if any, under which the City will agree to leave any portion of the remaining CM@Risk Contingency within the Contract Price for the construction phase Work; (e) resolve possible time frames for the Date of commencement of the Contract Time for the construction phase Work; (f) schedule the pre-construction conference; and (g) discuss other matters of importance.

### ARTICLE 3 – PERIOD OF SERVICES

- 3.1 The design phase services described in this Contract will be performed by CM@Risk in accordance with the most current update/revised Project Schedule. Failure on the part of the CM@Risk to adhere to the Project Schedule requirements for activities for which it is responsible will be sufficient grounds for termination of this Contract by the City.
- 3.1.1 Upon failure to adhere to the approved schedule, City may provide written notice to CM@Risk that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within three days of CM@Risk's receipt of such notice.
- 3.2 If the date of performance of any obligation or the last day of any time period provided for herein should fall on a Saturday, Sunday, or holiday for the City, then said obligation will be due and owing, and said time period will expire, on the first day thereafter which is not a Saturday, Sunday or legal City holiday. Except as may otherwise be set forth herein, any performance provided for herein will be timely made if completed no later than 5:00 p.m. (Denton time) on the day of performance.

### ARTICLE 4 – CONTRACT AMOUNT AND PAYMENTS

#### 4.1 CONTRACT AMOUNT

- 4.1.1 Based on the design phase services fee proposal submitted by the CM@Risk and accepted by the City (which by reference is made a part of this Contract); the City will pay the CM@Risk a lump sum fee in the amount of \$ 134,955 as follows:

Additional services allowance, as described in subsection 4.3:

\$ 40,000

Total Contract Amount, not to exceed, \$ 174,955

#### 4.2 PAYMENTS

- 4.2.1 Requests for monthly payments by the CM@Risk for design phase services will be submitted in a form acceptable to the City and will be accompanied by a progress report, detailed invoices and receipts, if applicable. Any requests for payment will include, as a minimum, a narrative description of the tasks accomplished during the billing period, a listing of any Deliverables submitted, and copies of any Subconsultants' requests for payment, plus similar narrative and listings of Deliverables associated with their Work. Payment for services negotiated as a lump sum shall be made in accordance with the percentage of work completed during the preceding month. Services negotiated as a not-to-exceed fee will be paid in accordance with the work effort expended on that service during the preceding month.
- 4.2.2 The fees for additional design phase services provided by the CM@Risk and any Subconsultants will be based upon the hourly rate schedule included as Exhibit B, attached.

- 4.2.3 The CM@Risk will pay all sums due Subconsultants for services and reimbursable expenses within 14 calendar days after the CM@Risk has received payment for those services from the City. In no event will the City pay more than 95 percent of the Contract Amount until final acceptance of all design phase services.
- 4.2.4 The CM@Risk agrees that no charges or claims for costs or damages of any type will be made by it for any delays or hindrances beyond the reasonable control of the City during the progress of any portion of the services specified in this Contract. Such delays or hindrances, if any, will be solely compensated for by an extension of time for such reasonable period as may be mutually agreed between the parties. It is understood and agreed, however, that permitting the CM@Risk to proceed to complete any services, in whole or in part after the date to which the time of completion may have been extended, will in no way act as a waiver on the part of the City of any of its legal rights herein.
- 4.2.5 If any service(s) executed by the CM@Risk is abandoned or suspended in whole or in part, for a period of more than 180 days through no fault of the CM@Risk, the CM@Risk is to be paid for the services performed prior to the abandonment or suspension.

#### **4.3 ADDITIONAL DESIGN PHASE SERVICES**

- 4.3.1 If additional services are required, such services shall be billed at the stipulated hourly rates set forth on Exhibit B.
- 4.3.1.1 When authorized by the City for additional design phase services, the CM@Risk will be entitled to reimbursement at cost for direct expenses related to its performance of additional design phase services.

### **ARTICLE 5 - CITY'S RESPONSIBILITIES**

- 5.1 The City, at no cost to the CM@Risk, will furnish the following information:
  - 5.1.1 One copy of data the City determines pertinent to the work. However, the CM@Risk will be responsible for searching the records and requesting information it deems reasonably required for the Project.
  - 5.1.2 All available data and information pertaining to relevant policies, standards, criteria, studies, etc.
  - 5.1.3 The name of the City employee or City's representative who will serve as the Project Manager during the term of this Contract. The Project Manager has the authority to administer this Contract and will monitor the CM@Risk's compliance with all terms and conditions stated herein. All requests for information from or decisions by the City on any aspect of the work or Deliverables will be directed to the Project Manager.
- 5.2 The City additionally will:
  - 5.2.1 Contract separately with one or more design professionals to provide architectural and/or engineering design services for the Project. The scope of services for the Design Professional will be provided to the CM@Risk for its information. The CM@Risk will have no right, to limit or restrict any changes of such services that are otherwise mutually acceptable to the City and Design Professional.
  - 5.2.2 Supply, without charge, all necessary copies of programs, reports, drawings, and specifications reasonably required by the CM@Risk except for those copies whose cost has been reimbursed by the City.
  - 5.2.3 Provide the CM@Risk with adequate information in its possession or control regarding the City's requirements for the Project.
  - 5.2.4 Give prompt written notice to the CM@Risk when the City becomes aware of any default or defect in the Project or non-conformance with the Drawings and Specifications, or any of the services required hereunder. Upon notice of failure to perform, the City may provide written notice to CM@Risk that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within three days of CM@Risk's receipt of such notice.
  - 5.2.5 Notify the CM@Risk of changes affecting the budget allocations or schedule.
- 5.3 The City's Project Manager will have authority to approve the Project Budget and Project Schedule, and render decisions and furnish information the City's Project Manager deems appropriate to the CM@Risk.

### **ARTICLE 6 – CONTRACT CONDITIONS**

#### **6.1 PROJECT DOCUMENTS AND COPYRIGHTS**

- 6.1.1 City Ownership of Project Documents: All work products (electronically or manually generated) including but not limited to: cost estimates, studies, design analyses, Computer Aided Drafting and Design (CADD) digital files, and other related documents which are prepared specifically in the performance of this Contract (collectively referred to as Project Documents) are to be and remain the property of the City and are to be delivered to the Project Manager before the final

payment is made to the CM@Risk. Nonetheless, in the event these Projects Documents are altered, modified or adapted without the written consent of the CM@Risk, which consent the CM@Risk will not unreasonably withhold, the City agrees to hold the CM@Risk harmless to the extent permitted by law, from the legal liability arising out of and or resulting from the City's alteration, modification or adaptation of the Project Documents.

- 6.1.2 **CM@Risk to Retain Copyrights:** The copyrights, patents, trade secrets or other intellectual property rights associated with the ideas, concepts, techniques, inventions, processes or works of authorship developed or created by the CM@Risk, its Subconsultants or personnel, during the course of performing this Contract or arising out of the Project will belong to the CM@Risk, but will remain available for use by the City for this Project under the terms of this Contract.
- 6.1.3 **License to City for Reasonable Use:** The CM@Risk hereby grants, and will require its Subconsultants to grant, a license to the City, its agents, employees, and representatives for an indefinite period of time to reasonably use, make copies, and distribute as appropriate the Project Documents, works or Deliverables developed or created for the Project and this Contract. This license will also include the making of derivative works. In the event that the derivative works require the City to alter or modify the Project Documents, then paragraph 6.1.1 applies.
- 6.1.4 **Documents to Bear Seal:** When applicable and required by state law, the CM@Risk and its Subconsultants will endorse by a Texas professional seal all plans, works, and Deliverables prepared by them for this Contract.

## **6.2 COMPLETENESS AND ACCURACY OF CM@RISK'S WORK**

- 6.2.1 The CM@Risk will be responsible for the completeness and accuracy of its reviews, reports, supporting data, and other design phase Deliverables prepared or compiled pursuant to its obligations under this Contract and will at its sole own expense correct its work or Deliverables. Any damage incurred by the City as a result of additional construction cost caused by such willful or negligent errors, omissions or acts shall be chargeable to the CM@Risk to the extent that such willful or negligent errors, omissions and acts fall below the standard of care and skill that a professional CM@Risk in Denton, Texas would exercise under similar conditions. The fact that the City has accepted or approved the CM@Risk's work or Deliverables will in no way relieve the CM@Risk of any of its responsibilities under the Contract, nor does this requirement to correct the work or Deliverable constitute a waiver of any claims or damages otherwise available by law or Contract to the City. Correction of errors, omissions and acts discovered on architectural or engineering plans and specifications shall be the responsibility of the Design Professional.

## **6.3 ALTERATION IN CHARACTER OF WORK**

- 6.3.1 In the event an alteration or modification in the character of Work or Deliverable results in a substantial change in this Contract, thereby materially increasing or decreasing the scope of services, cost of performance, or Project Schedule, the Work or Deliverable will nonetheless be performed as directed by the City. However, before any altered or modified Work begins, a Change Order or amendment will be approved and executed by the City and the CM@Risk. Such Change Order or amendment will not be effective until approved by the City.
- 6.3.2 Additions to, modifications, or deletions from the Project provided herein may be made, and the compensation to be paid to the CM@Risk may accordingly be adjusted by mutual agreement of the contracting parties.
- 6.3.3 No claim for extra work done or materials furnished by the CM@Risk will be allowed by the City except as provided herein, nor will the CM@Risk do any work or furnish any material(s) not covered by this Contract unless such work or material is first authorized in writing. Work or material(s) furnished by the CM@Risk without such prior written authorization will be the CM@Risk's sole jeopardy, cost, and expense, and the CM@Risk hereby agrees that without prior written authorization no claim for compensation for such work or materials furnished will be made.

## **6.4 DATA CONFIDENTIALITY**

- 6.4.1 As used in the Contract, data means all information, whether written or verbal, including plans, photographs, studies, investigations, audits, analyses, samples, reports, calculations, internal memos, meeting minutes, data field notes, work product, proposals, correspondence, and any other similar documents or information prepared by or obtained by the CM@Risk in the performance of this Contract.
- 6.4.2 The parties agree that all data, including originals, images, and reproductions, prepared by, obtained by, or transmitted to the CM@Risk in connection with the CM@Risk's performance of this Contract is confidential and proprietary information belonging to the City to the extent allowed by Texas law.
- 6.4.3 The CM@Risk will not divulge data to any third party without prior written consent of the City. The CM@Risk will not use the data for any purposes except to perform the services required under this Contract. These prohibitions will not apply to the following data:
  - 6.4.3.1 Data which was known to the CM@Risk prior to its performance under this Contract unless such data was acquired in connection with work performed for the City.
  - 6.4.3.2 Data which was acquired by the CM@Risk in its performance under this Contract and which was disclosed to the CM@Risk by a third party, who to the best of the CM@Risk's knowledge and belief, had the legal right to make such disclosure and the CM@Risk is not otherwise required to hold such data in confidence; or



6.4.3.3 Data, which is required to be disclosed by the CM@Risk by virtue of law, regulation, or court, including but not limited to the Texas Public Information Act, Texas Government Code Chapter 552.

6.4.4 In the event the CM@Risk is required or requested to disclose data to a third party, or any other information to which the CM@Risk became privy as a result of any other contract with the City, the CM@Risk will first notify the City as set forth in this Article of the request or demand for the data. The CM@Risk will timely give the City sufficient facts, such that the City can have a meaningful opportunity to either first give its consent or take such action that the City may deem appropriate to protect such data or other information from disclosure.

6.4.5 The CM@Risk, unless prohibited by law, within ten calendar days after completion of services for a third party on real or personal property owned or leased by the City, will promptly deliver, as set forth in this section, a copy of all data to the City. All data will continue to be subject to the confidentiality agreements of this Contract.

6.4.6 The CM@Risk assumes all liability for maintaining the confidentiality of the data in its possession and agrees to compensate the City if any of the provisions of this section are violated by the CM@Risk, its employees, agents or Subconsultants. Solely for the purposes of seeking injunctive relief, it is agreed that a breach of this section will be deemed to cause irreparable harm that justifies injunctive relief in court.

## **6.5 PROJECT STAFFING**

6.5.1 Prior to the start of any work or Deliverable under this Contract, the CM@Risk will submit to the City, an organization chart for the CM@Risk staff and Subconsultants and detailed resumes of key personnel listed in its response to the City's Request for Qualifications or subsequent fee proposals (or revisions thereto), that will be involved in performing the services prescribed in the Contract. Unless, otherwise informed, the City hereby acknowledges its acceptance of such personnel to perform such services under this Contract. In the event the CM@Risk desires to change such key personnel from performing such services under this Contract, the CM@Risk will submit the qualifications of the proposed substituted personnel to the City for prior approval. Key personnel will include, but are not limited to, principal-in-charge, project manager, superintendent, project director or those persons specifically identified to perform services of cost estimating, scheduling, value engineering, and procurement planning.

6.5.2 The CM@Risk will maintain an adequate number of competent and qualified persons to ensure acceptable and timely completion of the scope of services described in this Contract throughout the period of those services. If the City objects, with reasonable cause, to any of the CM@Risk's staff, the CM@Risk will take prompt corrective action acceptable to the City and, if required, remove such personnel from the Project and replace with new personnel acceptable to the City.

## **6.6 INDEPENDENT CONTRACTOR**

6.6.1 The CM@Risk is and will be an independent contractor and whatever measure of control the City exercises over the work or Deliverable pursuant to the Contract will be as to the results of the work only. No provision in this Contract will give or be construed to give the City the right to direct the CM@Risk as to the details of accomplishing the work or Deliverable. These results will comply with all applicable laws and ordinances.

## **6.7 SUBCONSULTANTS**

6.7.1 Prior to beginning the work or Deliverable, the CM@Risk will furnish the City for approval, the names of all Subconsultants, if any, to be used on this Project. Subsequent changes are subject to the approval of the City.

## **6.8 TERMINATION**

6.8.1 The City and the CM@Risk hereby agree to the full performance of the covenants contained herein, except that the City reserves the right, at its discretion and without cause, to terminate or abandon any or all services provided for in this Contract, or abandon any portion of the Project for which services have been performed by the CM@Risk.

6.8.2 In the event the City abandons any or all of the services or any part of the services as herein provided, the City will so notify the CM@Risk in writing, and the CM@Risk will immediately after receiving such notice is to discontinue advancing the Work specified under this Contract and mitigate the expenditure, if any, of costs resulting from such abandonment or termination.

6.8.3 The CM@Risk, upon such termination or abandonment, will promptly deliver to the City all reports, estimates and other work or Deliverable entirely or partially completed, together with all unused materials supplied by the City.

6.8.4 The CM@Risk will appraise the work completed and submit an appraisal to the City for evaluation. The City will have the right to inspect the CM@Risk's work or Deliverable to appraise the work completed.

6.8.5 The CM@Risk will receive compensation in full for services satisfactorily performed to the date of such termination and the reasonable costs and expenses attributable to such termination. The fee will be paid in accordance with Article 4 of this Contract and will be an amount mutually agreed upon by the CM@Risk and the City. If there is no mutual agreement, the final determination will be made in accordance with paragraph 6.9, "Disputes". However, in no event will the fee exceed that set forth in Article 4 or as amended in accordance with paragraph 6.3, "Alteration in Character of Work". The City will

make the final payment within sixty Days after the CM@Risk has delivered the last of the partially or otherwise completed work items and the final fee has been agreed upon.

## **6.9 DISPUTES**

- 6.9.1 In any unresolved dispute arising out of an interpretation of this Contract or the duties required therein, the final determination at the administrative level will be made by the City Manager or their designee.

## **6.10 WITHHOLDING PAYMENT**

- 6.10.1 The City reserves the right to withhold funds from the City's progress payments up to the amount equal to the claims the City may have against the CM@Risk, until such time that a settlement on those claims has been reached.

## **6.11 RECORDS/AUDIT**

- 6.11.1 Records of the CM@Risk's direct personnel payroll, reimbursable expenses pertaining to this Project, and records of accounts between the City and CM@Risk will be kept on a generally recognized accounting basis and shall be available for up to three years following final completion of the Project. The City, its authorized representative, and/or the appropriate federal agency, reserve the right to audit the CM@Risk's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate this Contract and any Change Orders. Notwithstanding the foregoing, the composition of any stipulated rates shall not be subject to audit. The City reserves the right to decrease Contract Amount and/or payments made on this Contract if, upon audit of the CM@Risk's records, the audit discloses the CM@Risk has provided false, misleading, or inaccurate cost and pricing data.
- 6.11.2 The CM@Risk will include a provision similar to paragraph 6.11.1 in all of its agreements with Subconsultants, Subcontractors, and Suppliers providing services under this Contract to ensure the City, its authorized representative, and/or the appropriate federal agency, has access to the Subconsultants', Subcontractors', and Suppliers' records to verify the accuracy of cost and pricing data. The City reserves the right to decrease Contract Amount and/or payments made on this Contract if the above provision is not included in Subconsultant, Subcontractor, and Supplier contracts, and one or more of those parties do not allow the City to audit their records to verify the accuracy and appropriateness of pricing data.

## **6.12 INDEMNIFICATION**

- 6.12.1 **The CM@Risk agrees to defend, indemnify and hold harmless the City of Denton, its officers, agents and employees, and any jurisdiction or agency issuing permits for any work included in the Project, their officers, agents and employees, hereinafter individually and collectively referred to as "indemnitee", from all suits and claims, including attorney's fees and cost of litigation, actions, losses, damage, expenses, costs or claims of any character or any nature arising out of the Work or Deliverable done in fulfilling the terms of this Contract, or on account of any act, claim or amount arising out of or recovered under Workers' Compensation Law, or arising out of the failure of the CM@Risk to conform to any statutes, ordinances, regulation, law or court decree; provided, however such indemnification obligation shall not apply to the extent such suits, claims, losses, and expenses are caused by the negligence or willful misconduct of an indemnitee. It is agreed that the CM@Risk will be responsible for primary loss investigation, defense, and judgment costs where this Contract of indemnity applies. In consideration of the award of this contract, the CM@Risk agrees to waive all rights of subrogation against the City, its officers, officials, agents and employees for losses arising from the work performed by the CM@Risk for the City.**

## **6.13 NOTICES**

- 6.13.1 Unless otherwise provided, any notice, request, instruction, or other document to be given under this Agreement by any party to any other party shall be in writing and shall be delivered in person or by courier or facsimile transmission or mailed by certified mail, postage prepaid, return receipt requested and shall be deemed given upon (a) confirmation of receipt of a facsimile transmission, (b) confirmed delivery by hand or standard overnight mail, or (c) upon the expiration of three (3) business days after the day mailed by certified mail, as follows:

To City:	City of Denton Purchasing Manager – File 7714 901B Texas Street Denton, TX 76201
To CM@Risk	Dave Wallace McCarthy Building Companies, Inc. 12001 N Central Expressway, Suite 400 Dallas, TX 75243
Copy to: Design Professional (if applicable)	Colton Hermes Kimley-Horn and Associates, Inc. 100 W. Oak Street, Suite 203 Denton, TX 76201

Or to other such place and with such other copies as either Party may designate as to itself by written notice to the other Party. Rejection, any refusal to accept, or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice as of the date of such rejection, refusal, or inability to deliver.

#### **6.14 EQUAL OPPORTUNITY/AFFIRMATIVE ACTION**

- 6.14.1 The CM@Risk will comply with the provisions of this Contract, pertaining to discrimination and accepting applications or hiring employees. The CM@Risk will not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender, national origin, age, or disability nor otherwise commit an unfair employment practice. The CM@Risk will take affirmative action to ensure that applicants are employed, and employees are dealt with during employment, without regard to their race, color, religion, gender or national origin, age or disability. Such action will include but not be limited to the following: employment, promotion, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship as well as all other labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this Contract. The CM@Risk further agrees that this clause will be incorporated in all Subcontracts, and Subconsultants and Suppliers contracts associated with the Project and entered into by the CM@Risk.

#### **6.15 COMPLIANCE WITH FEDERAL LAWS**

- 6.15.1 The CM@Risk understands and acknowledges the applicability of the Americans With Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989 to it. The CM@Risk agrees to comply with these and all laws in performing this Contract and to permit the City to verify such compliance.

#### **6.16 CONFLICT OF INTEREST**

- 6.16.1 To evaluate and avoid potential conflicts of interest, the CM@Risk will provide written notice to the City, as set forth in this section, of any work or services performed by the CM@Risk for third parties that may involve or be associated with any real property or personal property owned or leased by the City. Such notice will be given seven business days prior to commencement of the Project by the CM@Risk for a third party, or seven business days prior to an adverse action as defined below. Written notice and disclosure will be sent to:

City of Denton  
Attn: Purchasing Manager  
Materials Management  
901B Texas Street  
Denton, TX 76209

- 6.16.2 Actions considered to be adverse to the City under this Contract include but are not limited to:

- (a) Using data as defined in the Contract, acquired in connection with this Contract to assist a third party in pursuing administrative or judicial action against the City.
- (b) Testifying or providing evidence on behalf of any person in connection with an administrative or judicial action against the City; and
- (c) Using data to produce income for the CM@Risk or its employees independently of performing the services under this Contract, without the prior written consent of the City.

- 6.16.3 The CM@Risk represents that except for those persons, entities and projects previously identified in writing to the City, the services to be performed by the CM@Risk under this Contract are not expected to create an interest with any person, entity, or third party project that is or may be adverse to the interests of the City.

- 6.16.4 The CM@Risk's failure to provide a written notice and disclosure of the information as set forth in this section will constitute

a material breach of this Contract.

**6.17 CONTRACTOR'S LICENSE**

- 6.17.1 Prior to award of the Contract, the CM@Risk must provide to the City's Project Manager, its Contractor's License Classification and number, if any, and its Federal Tax I.D. number.

**6.18 SUCCESSORS AND ASSIGNS**

- 6.18.1 The City and the CM@Risk will each bind itself, and their partners, successors, assigns, and legal representatives to the other party to this Contract and to the partners, successors, assigns, and legal representatives of such other party in respect to all covenants of this Contract. Neither the City nor the CM@Risk will assign, sublet, or transfer its interest in this Contract without the written consent of the other. In no event will any contractual relation be created or be construed to be created as between any third party and the City.

**6.19 FORCE MAJEURE**

- 6.19 The City of Denton, the CM@Risk, and any Subcontractors or Sub-Subcontractors shall not be responsible for performance under this Contract should it be prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of the City of Denton, the CM@Risk, and any Subcontractors or Sub-Subcontractors, as applicable. In the event of an occurrence under this Section, the City of Denton, the CM@Risk, and any Subcontractors or Sub-Subcontractors, as applicable, will be excused from any further performance or observance of the requirements so affected for as long as such circumstances prevail and the City of Denton, the CM@Risk, and any Subcontractors or Sub-Subcontractors, as applicable, continues to use commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. The CM@Risk and any Subcontractors or Sub-Subcontractors, as applicable, shall immediately notify the City of Denton Project Manager by telephone (to be confirmed in writing within five (5) calendar days of the inception of such occurrence) and describe at a reasonable level of detail the circumstances causing the non-performance or delay in performance.

**6.20 COVENANT AGAINST CONTINGENT FEES**

- 6.20.1 The CM@Risk warrants that no person has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, and that no member of the City Council, or any employee of the City of Denton has any interest, financially, or otherwise, in the firm. The City of Denton will in the event of the breach or violation of this warranty, have the right to annul this Contract without liability, or at its discretion to deduct from the Contract Amount or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

**6.21 NON-WAIVER PROVISION**

- 6.21.1 The failure of either party to enforce any of the provisions of this Contract or to require performance by the other party of any of the provisions hereof will not be construed to be a waiver of such provisions, nor will it affect the validity of this Contract or any part thereof, or the right of either party to thereafter enforce each and every provision.

**6.22 JURISDICTION**

- 6.22.1 This Contract will be deemed to be made under and will be construed in accordance with and governed by the laws of the State of Texas, without regard to the conflicts or choice of law provisions thereof. Under the provisions of Chapter 272 of the Texas Local Government Code, the City has waived its immunity by entering into this Contract. However, the City's sovereign immunity is waived only to the extent set forth by statute. An action to enforce any provision of this Contract or to obtain any remedy with respect hereto will be brought and tried in the State District Courts located in Denton County, Texas, and for this purpose, each party hereby expressly and irrevocably consents to the sole and exclusive jurisdiction and venue of such Court.

**6.23 SURVIVAL**

- 6.23.1 All warranties, representations, and indemnifications by the CM@Risk will survive the completion or termination of this Contract.

**6.24 MODIFICATION**

- 6.24.1 No supplement, modification, or amendment of any term of this Contract will be deemed binding or effective unless in writing and signed by the parties hereto and in conformation with provisions of this Contract, except as expressly provided herein to the contrary.

**6.25 SEVERABILITY**

- 6.25.1 If any provision of this Contract or the application thereof to any person or circumstance will be invalid, illegal or unenforceable to any extent, the remainder of this Contract and the application thereof will not be affected and will be enforceable to the fullest extent permitted by law.

## **6.26 INTEGRATION**

- 6.26.1 This Contract contains the full agreement of the parties hereto. Any prior or contemporaneous written or oral agreement between the parties regarding the subject matter hereof is merged and superseded hereby.

## **6.27 TIME IS OF THE ESSENCE**

- 6.27.1 Time of each of the terms, covenants, and conditions of this Contract is hereby expressly made of the essence.

## **6.28 THIRD PARTY BENEFICIARY**

- 6.28.1 This Contract will not be construed to give any rights or benefits in the Contract to anyone other than the City and the CM@Risk. All duties and responsibilities undertaken pursuant to this Contract will be for the sole and exclusive benefit of the City and the CM@Risk and not for the benefit of any other party.

## **6.29 COOPERATION AND FURTHER DOCUMENTATION**

- 6.29.1 The CM@Risk agrees to provide the City such other duly executed documents as may be reasonably requested by the City to implement the intent of this Contract.

## **6.30 CONFLICT IN LANGUAGE**

- 6.30.1 All work or Deliverables performed will conform to all applicable City of Denton codes, ordinances and requirements as outlined in this Contract. If there is a conflict in interpretation between provisions in this Contract and any Exhibits, the provisions in this Contract will prevail.

## **6.31 CITY'S RIGHT OF CANCELLATION**

- 6.31.1 All parties hereto acknowledge that this Contract is subject to cancellation by the City of Denton pursuant to the provisions of Texas Local Government Code Chapters 252 and 272, Texas Government Code Chapter 2269, and the general laws of the State of Texas.

## **6.32 CONFIDENTIALITY OF PLANS & SPECIFICATIONS**

- 6.32.1 Any plans or specifications received by the CM@Risk regarding this project are for official use only. The CM@Risk may not share them with others except as required to fulfill contract obligations with the City of Denton.
- 6.32.2 Any plans the CM@Risk generates must include the following statement in the Title Block on every page: "These plans are for Official use only and may not be shared with others except as required to fulfill the obligations of CM@Risk's contract with the City of Denton. This document must be kept secure at all times."

# **ARTICLE 7 – INSURANCE REQUIREMENTS**

The CM@Risk. Subcontractors and Subconsultants shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the CM@Risk, its agents, representatives, employees, or Subconsultants.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract.

The City in no way warrants that the minimum limits contained herein are sufficient to protect the CM@Risk from liabilities that might arise out of the performance of the work under this Contract by the CM@Risk, his agents, representative, employees, or Subconsultants. CM@Risk is free to purchase such additional insurance as may be determined necessary.

## **7.1 MINIMUM SCOPE AND LIMITS OF INSURANCE**

- 7.1.1 CM@Risk will provide coverage at least as broad and with limits of liability not less than those stated below.

- 7.1.1.1 Commercial General Liability-Occurrence Form

Policy shall include bodily injury, property damage, broad form contractual liability and XCU coverage.

General Aggregate	\$2,000,000
Products-Completed Operations Aggregate	\$1,000,000
Personal & Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000

- (a) The policy shall be endorsed to include the following additional insured language: "The City of Denton shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the CM@Risk". Policy shall contain waiver of subrogation against the City of Denton.

#### 7.1.1.2 Automobile Liability

Bodily injury and property damage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL)	\$1,000,000
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- (a) The policy shall be endorsed to include the following additional insured language: "The City of Denton shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the CM@Risk", including automobiles owned, leased or hired or borrowed by the CM@Risk".

#### 7.1.1.3 Workers Compensation and Employers Liability

Workers Compensation	Statutory
Employers Liability	
Each Accident	\$ 100,000
Disease – Each Employee	\$ 100,000
Disease – Policy Limit	\$ 500,000

- (a) Policy shall contain waiver of subrogation against the City of Denton.

### 7.2 ADDITIONAL INSURANCE REQUIREMENTS

7.2.1 The policies shall include, or be endorsed to include, the following provisions.

7.2.2 On insurance policies where the City of Denton is named as additional insured, the City of Denton shall be an additional insured to the full limits of liability purchased by the CM@Risk even if those limits of liability are in excess of those required by this Contract.

7.2.3 The CM@Risk's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

7.2.4 Coverage provided by the CM@Risk shall not be limited to the liability assumed under the indemnification provisions of this Contract.

### 7.3 SUBCONSULTANT INSURANCE

7.3.1 CM@Risk's certificate(s) shall include all subcontractors as additional insureds under its policies or subconsultants shall maintain separate insurance as determined by the CM@Risk, however, subconsultants limits of liability shall not be less than \$1,000,000 per occurrence / \$2,000,000 aggregate.

### 7.4 NOTICE OF CANCELLATION

7.4.1 Each insurance policy required by the insurance provisions of this Contract will provide the required coverage and not be suspended, voided, canceled, reduced in coverage or endorsed to lower limits except after thirty (30) days prior written notice has been given to the City. Such notice shall be sent by certified mail, return receipt requested and sent directly to the City's Purchasing Manager at:

City of Denton  
Attn: Purchasing Manager  
Materials Management  
901B Texas Street  
Denton, TX 76209

### 7.5 ACCEPTABILITY OF INSURERS

7.5.1 Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the State of Texas, and with an "A.M. Best" rating of not less than B+ VI. The City in no way warrants that the above required minimum insurer rating is sufficient to protect the CM@Risk from potential insurer insolvency.

### 7.6 VERIFICATION OF COVERAGE

7.6.1 The CM@Risk will furnish the City, Certificates of Insurance (ACORD form or equivalent approved by the City) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind

coverage on its behalf.

- 7.6.2 All certificates and endorsements are to be received and approved by the City before work commences. Each insurance policy required by this Contract must be in effect at or prior to the earlier of commencement of work under this Contract and remain in effect for the duration of the Project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.
- 7.6.3 All certificates required by this Contract will be sent directly to the Engineering and Architectural Services Department Contracts Administration Section contracts officer for this Project. The City project/contract number and project description shall be noted on the certificates of insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Contract, at any time. DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY'S RISK MANAGEMENT DIVISION.


## 7.7 APPROVAL

- 7.7.1 Any modification or variation from the insurance requirements in this Contract must be approved by the Law Department, whose decision will be final. Such action will not require a formal contract amendment but may be made by administrative action.


This Contract will be in full force and effect only when it has been approved and executed by the duly authorized City officials.

**IN WITNESS WHEREOF**, the parties hereto have executed this Contract on 12/14/2021.


CITY OF DENTON, TEXAS

BY: DocuSigned by:  
  
5236DB296270423...  
**Sara Hensley**  
 Printed Name  
**INTERIM CITY MANAGER**  
 Title

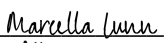
CM@Risk

BY: DocuSigned by:  
  
CB42275035AC4F3  
**Nathan Kowallis**  
 Printed Name  
**Sr. Vice President**  
 Title

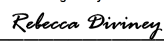
ATTEST:

City Clerk DocuSigned by:  
  
1C5CA8C5E175493...

APPROVED AS TO FORM:  
 MACK REINWAND, CITY ATTORNEY

DocuSigned by:  
  
City Attorney 438...

THIS AGREEMENT HAS BEEN BOTH  
 REVIEWED AND APPROVED  
 as to financial and operational obligations and  
 business terms.

DocuSigned by:  
  
CNT42434FE...  
**Rebecca Diviney**  
 SIGNATURE PRINTED NAME

**Director of Capital Projects/City Engineer**  
 TITLE  
**Capital Projects - Engineer**  
 DEPARTMENT



## EXHIBIT A – PROJECT DESCRIPTION

Following is a brief description of the Project for which the design phase service services specified in this Contract are to be performed:

Design Phase Services will include the CM@Risk working with the City and its Design Engineer to share ideas and experience in assisting the Design Engineer in developing construction documents suitable for construction and suitable for preparing a Guaranteed Maximum Price.

The Preconstruction Phase Services will include:

1. Prepare a Construction Management Plan (CMP), which may include the CM@Risk's professional opinions concerning: (a) Project Milestone dates and the Project Schedule, including the broad sequencing of the design and construction of the Project, (b) investigations, if any, to be undertaken to ascertain subsurface conditions and physical conditions of existing surface and subsurface facilities and underground utilities, (c) alternate strategies for fast-tracking and/or phasing the construction, (d) the number of separate sub-agreements to be awarded to Subcontractors and Suppliers for the Project construction, (e) permitting strategy, (f) safety and training programs, (g) construction quality control, (h) a commissioning program, (i) the cost estimate and basis of the model, and (j) a matrix summarizing each Project Team member's responsibilities and roles.
2. Provide a Project Manager, all Key Personnel, and all other associated personnel necessary to fully meet the CMAR obligations for the Design Phase Services; In providing such Design Phase Services, Contractor does not assume any responsibility for design errors, omissions, or inconsistencies.
3. Consult with, advise and provide recommendations to the City and the Design Engineer on all aspects of the planning, design, and proposed construction and drawings and specifications;
4. Provide constructability review and consult on constructability issues in the development of the 30%, 60% and 90% final design review plans and specifications, including recommendations on design packaging to advance construction, material availability and independent quantity calculations to verify quantities provided by Design Engineer;
5. Provide list of additional details needed on the 30%, 60% and 90% final design review plans that would be needed to complete the project in the allotted time or to accelerate aspects of the work;
6. Preconstruction lead, along with any other necessary personnel shall attend review workshops with the City and the Design Engineer at the 30%, 60% and 90% final design review milestones, assume each workshop is one complete eight (8) hour day;
7. Provide on-going value engineering review, including written reports and recommendations on the 30%, 60% and 90% final design review, as applicable;
8. Identify, evaluate and propose cost-effective alternatives;
9. Develop independent detailed construction cost estimates for the Project and Critical Path Method schedules at the 30%, 60% and 90% final design review milestones;
10. Identify long-lead equipment procurement needs and submit a report to the City;
11. Identify, evaluate and recommend elements of the Project that may require less than 100% design;
12. Make recommendations to the City regarding the division of the Work to facilitate bids and proposals for the major elements of the Work;
13. Advise the City of ways to gain efficiency in Project delivery;
14. Provide a complete, detailed, written GMP proposal including line item cost breakdowns with conditions, assumptions, and CMAR contingency;
15. Provide a construction emergency response plan;
16. Prepare and submit a construction site safety plan;
17. Develop, implement and maintain a quality management plan that assures conformance to every section of the specifications.
18. Provide an environmental management plan detailing programs for a storm water pollution prevention plan and handling other environmental issues (dust, on site chemicals and fuel, etc.) required to comply with permits and regulations applicable to the Project;
19. Incorporate the City's standard specifications and provisions relating to quality, safety, community, and environmental factors. (This pertains to the construction phase general conditions contract and applicable City standards, requirements, and ordinances as relating to quality, safety, community, and environmental factors);
20. Schedule all Project construction related activities;
21. Identify Work which the Proposer intends to self-perform. Identify and recommend which work, if any, should be procured through value based competitive selections, in lieu of low bid;
22. Identify and recommend Early Works Packages;
23. Participate in one Project kick off meeting for Design Phase Services;

24. Participate in up to 10 additional meetings or workshops with the Design Engineer, Owner or others as needed.

Upon conclusion of evaluating input from CM@R on the 90% documents, Design Engineer will incorporate such items as it deems appropriate, with the resulting modified 90% documents constituting the Final Pricing Package for use in calculating GMP.

Upon receipt of the Final Pricing Package, the CMAR shall:

1. Thoroughly review these documents;
2. Develop a Guaranteed Maximum Price;
3. Prepare a detailed schedule of construction of the project;
4. Prepare a list of additional details needed to supplement the 90% complete construction documents and when such details would be needed to complete the project within the allotted time.
5. Attend a minimum of two all-day meetings at the offices of the City in Denton, Texas, to present the basis of the amount of the Guaranteed Maximum Construction Cost and negotiate in good faith based on open book cost estimates;
6. Attend two all-day workshop meetings, in addition to those listed above, excluding the effort for GMP pricing and negotiation, at the offices of the City or Design Engineer in Denton, Texas.

**EXHIBIT B - HOURLY RATE SCHEDULE**

The schedule of hourly labor rates for employees of the CM@Risk and its Subconsultants follow and are based on the approved proposal submitted to the City.

**LIST OF CLASSIFICATIONS:**

<b><u>Classification</u></b>	<b><u>Direct Labor Rate</u></b>	<b><u>Total Labor Rate</u></b>
Chief Estimator/VP	\$ 145.00	\$ 160.00
Project Director	\$ 125.00	\$ 140.00
Preconstruction Director	\$ 114.00	\$ 129.00
Preconstruction Manager	\$ 100.00	\$ 115.00
Sr. Estimator/Estimator	\$ 85.00	\$ 93.00
Project Manager	\$ 111.00	\$ 126.00
Superintendent	\$ 121.50	\$ 136.50
Scheduler	\$ 105.75	\$ 120.75
Project Engineer	\$ 62.35	\$ 70.35
Administrator	\$ 47.00	\$ 55.00

**SUE Personnel Rates**

Director	\$ 125.00	\$ 140.00
Project Manager	\$ 111.00	\$ 126.00
Senior Utility Designator	\$ 105.00	\$ 120.00
Utility Designator	\$ 97.00	\$ 112.00
Field Engineer	\$ 100.00	\$ 115.00
VDC/BIM Engineer	\$ 90.00	\$ 105.00

**SUE Equipment Rates**

<b>Equipment Type</b>	<b>Hourly Rate</b>
Total Station	\$18.75/Hr
GNSS Equipment	\$22/Hr
Ground Penetrating Radar (GPR)	\$35/Hr
Electromagnetic Locator (EM)	\$18.75/Hr
Sewer Camera (CCTV)	\$27/Hr
¾ Ton Pickup Truck	\$18.50

**EXHIBIT C - SUBMITTAL REQUIREMENTS FOR THE GMP****GMP submittal, one copy for review.**

One printed, signed original copy and a digital copy in searchable PDF format will be requested by the City of Denton prior to contract execution.

## Table of Contents:

1. Scope of Work
  2. Summary of the GMP
  3. Schedule of Values – summary spreadsheet and backup documents
  4. List of Plans and Specifications used for GMP Proposal
  5. List of clarification and assumptions
  6. Project Schedule
1. Scope of work will consist of a brief description of the work to be performed by CM@Risk and major points that the CM@Risk and the City must be aware of pertaining to the scope. (normally one paragraph is sufficient.)
  2. A summary of the GMP with a total for each of the components of the GMP as listed in its definition in Article 1 as shown in the table below:

The general conditions fee includes bond and insurance cost. All costs should be listed individually for future use.

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

GMP Summary					AMOUNT	
A.	Cost of the Work (Labor, Materials, Equipment, Warranty)				\$	
B.	CM@Risk's Contingency				\$	
INDIRECT COSTS					RATE	
C.	Construction Fee				%	\$
D.	General Conditions				%	\$
	D1	Payment and Performance Bond	\$		%	
	D2	Insurance	\$		%	
E.	Sales Taxes				%	\$
				F. TOTAL GMP		\$
				G. Owner's Contingency		\$
H. Contract Amount						\$

## Formulas:

Total GMP:  $A+B+C+D+E = F$

Rates (Percentages) are calculated by dividing each amount by F, such as  $B/F$ ,  $D/F$ , and  $D1/F$

**(Do not acquire bond or insurance until notified by the City of Denton Project Manager.)**

3. Schedule of Values - spread sheet with the estimated bid or cost organized by subcontract categories, allowances, bid contingency, general conditions costs, taxes, bonds, insurances, and the CM@Risk's construction phase fee. The supporting document for the spreadsheet must be provided in an organized manner that correlates with the schedule of values. The backup information shall consist of the request for bids, bids received, and clarification assumptions used for the particular bid item listed on the schedule of values, if applicable.
4. A list of the Plans and Specifications with latest issuance date including all addenda used in preparation of the GMP proposal. The plans used for the GMP must be date stamped and signed by CM@Risk, Design Consultant, and Project Manager using the format below.

<b>Plans Used For Preparation of GMP No.</b>
--

CM@Risk	Date
Design Consultant	Date
Project Manager	Date

5. A list of the clarifications and assumptions made by the CM@Risk in the preparation of the GMP proposal, to supplement the information contained in the documents.
6. A Critical Path Method (CPM) diagram construction schedule.

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

**Final GMP submittal will consist of the following:**

1. One printed copy of the GMP and one digital copy in searchable PDF format.
2. One copy of the list of plans and technical specifications used to arrive at the GMP.

For questions regarding the submittal requirements, please contact City of Denton Project Manager.

## **EXHIBIT D - COST OF THE WORK FOR CONSTRUCTION PHASE**

### **§ 1.1 Costs to Be Reimbursed**

**§ 1.1.1** The term Cost of the Work shall mean costs necessarily incurred by the CM@Risk in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 1.1 through 1.7.

**§ 1.1.2** Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the City. "Cost(s)" shall be defined as the CM@Risk's rate as provided in this Agreement. Where no rate is stated, "Cost(s)" shall be the actual price paid by the CM@Risk.

### **§ 1.2 Labor Costs**

**§ 1.2.1** Rates as listed on Exhibit \_\_, attached to the GMP Proposal, for construction workers directly employed by the CM@Risk to perform the construction of the Work at the site or, with the City's prior approval, at off-site workshops.

**§ 1.2.2** Rates as listed on Exhibit \_\_, attached to the GMP Proposal, for CM@Risk's supervisory and administrative personnel when stationed at the site and performing Work, with the City's prior approval.

**§ 1.2.2.1** Rates as listed on Exhibit \_\_, attached to the GMP Proposal, for CM@Risk's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work.

**§ 1.2.3** Rates as listed on Exhibit \_\_, attached to the GMP Proposal, for CM@Risk's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

**§ 1.2.4** Costs paid or incurred by the CM@Risk for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, are included in the rates referenced under Sections 1.2.1 through 1.2.3.

### **§ 1.3 Subcontract Costs**

Payments made by the CM@Risk to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

### **§ 1.4 Costs of Materials and Equipment Incorporated in the Completed Construction**

**§ 1.4.1** Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

**§ 1.4.2** Costs of materials described in the preceding Section 1.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the City's property at the completion of the Work or, at the City's option, shall be sold by the CM@Risk. Any amounts realized from such sales shall be credited to the City as a deduction from the Cost of the Work.

### **§ 1.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items**

**§ 1.5.1** Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the CM@Risk at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the CM@Risk shall mean fair market value.

**§ 1.5.2** Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the CM@Risk at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the CM@Risk, or a related party as defined in Section 1.8, shall be subject to the City's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item. Approved rates are as listed on Exhibit \_\_, attached to the GMP Proposal, or prevailing rental rate if not listed on Exhibit 1.

**§ 1.5.3** Costs of removal of debris from the site of the Work and its proper and legal disposal.

**§ 1.5.4** Costs of the CM@Risk's site office, including general office equipment and supplies, vehicles, reproduction costs, postage and express delivery charges, telephone and mobile phone services, data lines, internet and associated charges at the site, radio/communications systems and equipment, reproducible interference background drawings, storage of records and reasonable petty cash expenses in connection with the Project.

**§ 1.5.5** Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the City's prior approval.

**§ 1.5.6** CM@Risk's lump sum General Conditions Costs as defined in the Contract. Any costs included in the Lump Sum General Conditions Costs shall not be charged by CM@Risk separately as a Cost of the Work.

**§ 1.6 Miscellaneous Costs**

**§ 1.6.1** Insurance for CM@Risk and contractor default insurance shall be in accordance with rates established in Exhibit \_ attached to the GMP Proposal, applicable deductibles for Builder's Risk insurance and performance and payment bond premiums for CM@Risk (if City requires CM@Risk to provide a performance and payment bond), and its subcontractors and suppliers that can be attributed to this Contract.

**§ 1.6.1.1** Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the City's prior approval.

**§ 1.6.1.2** Costs for insurance through a captive insurer owned or controlled by the CM@Risk, with the City's prior approval.

**§ 1.6.2** Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the CM@Risk is liable.

**§ 1.6.3** Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the CM@Risk is required by the Contract Documents to pay.

**§ 1.6.4** Fees of laboratories for tests required by the Contract Documents.

**§ 1.6.5** Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

**§ 1.6.5.1** The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the CM@Risk resulting from such suits or claims, and payments of settlements made with the City's consent, unless the CM@Risk had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the CM@Risk failed to promptly furnish such information to the Design Professional. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the CM@Risk's Fee or subject to the Guaranteed Maximum Price.

**§ 1.6.6** Rates as listed on Exhibit \_, attached to the GMP Proposal, for communications services, electronic equipment, and software, and maintenance of same, directly related to the Work and located at the site, with the City's prior approval.

**§ 1.6.7** Costs of document reproductions and delivery charges.

**§ 1.6.8** Deposits lost for causes other than the CM@Risk's gross negligence or material failure to fulfill a specific responsibility in the Contract Documents.

**§ 1.6.9** Legal, mediation and arbitration costs, including attorneys' and consultants' fees, other than those arising from disputes between the City and CM@Risk, reasonably incurred by the CM@Risk after the execution of this Agreement in the performance of the Work and with the City's prior approval, which shall not be unreasonably withheld. However, such costs shall not be included in the calculation of the CM@Risk's Fee and shall not be included in the Costs of the Work for purposes of calculating the Guaranteed Maximum Price.

**§ 1.6.10** Expenses incurred in accordance with the CM@Risk's standard written personnel policy for relocation and temporary living allowances of the CM@Risk's personnel required for the Work, with the City's prior approval.

**§ 1.6.11** That portion of the reasonable expenses of the CM@Risk's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work, including attending training and company seminars.



**§ 1.6.12 The Safety, Quality and Substance Abuse Programs.**

**§ 1.6.13** Additional overhead expenses and cost of investment of labor resources and cash for self-perform trade Work performed by McCarthy's own forces on a cost reimbursable basis at the rate of fifteen percent (15%) of the cost of such Work, including, but not limited to, materials, labor and equipment.

**§ 1.7 Other Costs and Emergencies**

**§ 1.7.1** Other costs incurred in the performance of the Work, with the City's prior approval.

**§ 1.7.2** Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property.

**§ 1.7.3** Costs of repairing or correcting damaged or nonconforming Work executed by the CM@Risk, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the gross negligence of, or willful failure to fulfill a specific responsibility by, the CM@Risk, and only to the extent that the cost of repair or correction is not recovered by the CM@Risk from insurance, sureties, Subcontractors, suppliers, or others.

## Exhibit CIQ

# CONFLICT OF INTEREST QUESTIONNAIRE - FORM CIQ

## For vendor or other person doing business with local governmental entity

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 government 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.

**1** Name of vendor who has a business relationship with local governmental entity. McCarthy Building Companies, Inc.

**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 7<sup>th</sup> 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 in this section is being disclosed.

City of Denton

\_\_\_\_\_  
Name of Officer

This section, (item 3 including subparts A, B, C & D), must be completed for each officer with whom the vendor has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section 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 named in this section AND the taxable income is not received from the local governmental entity?

☐

Yes

☐

No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of one percent or more?

☐

Yes

☐

No

D. Describe each employment or business and family relationship with the local government officer named in this section.

I have no conflict of interest with anyone at the  
City of Denton.

**4** ☒ I have no Conflict of Interest to disclose.

**5** DocuSigned by:



11/12/2021

Signature of vendor doing business with the governmental entity

Date

**Certificate Of Completion**

Envelope Id: 32AF2EEDBB384CCC90C3E9A89A3CD56D

Status: Completed

Subject: Please DocuSign: City Council Contract 7714 CMAR for SED-B

Source Envelope:

Document Pages: 32

Signatures: 6

Envelope Originator:

Certificate Pages: 7

Initials: 1

Cori Power

AutoNav: Enabled

901B Texas Street

Enveloped Stamping: Enabled

Denton, TX 76209

Time Zone: (UTC-06:00) Central Time (US &amp; Canada)

cori.power@cityofdenton.com

IP Address: 198.49.140.104

**Record Tracking**

Status: Original

Holder: Cori Power

Location: DocuSign

11/11/2021 4:31:20 PM

cori.power@cityofdenton.com

**Signer Events****Signature****Timestamp**

Cori Power

**Completed**

Sent: 11/11/2021 4:35:53 PM

cori.power@cityofdenton.com

Viewed: 11/11/2021 4:36:04 PM

Senior Buyer

Signed: 11/11/2021 4:37:05 PM

City of Denton

Using IP Address: 198.49.140.104

Security Level: Email, Account Authentication (None)

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Lori Hewell



Sent: 11/11/2021 4:37:08 PM

lori.hewell@cityofdenton.com

Viewed: 11/12/2021 7:42:06 AM

Purchasing Manager

Signed: 11/12/2021 7:42:19 AM

City of Denton

Signature Adoption: Pre-selected Style

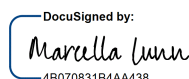
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Using IP Address: 198.49.140.104

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Marcella Lunn



Sent: 11/12/2021 7:42:21 AM

marcella.lunn@cityofdenton.com

Viewed: 11/12/2021 11:34:08 AM

Catherine Clifton, Interim City Attorney

Signed: 11/12/2021 11:39:28 AM

City of Denton

Signature Adoption: Pre-selected Style

Security Level: Email, Account Authentication (None)

Using IP Address: 68.185.202.16

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Nathan Kowallis



Sent: 11/12/2021 11:39:34 AM

nkowallis@mccarthy.com

Viewed: 11/12/2021 1:35:52 PM

Sr. Vice President

Signed: 11/12/2021 3:22:02 PM

Security Level: Email, Account Authentication (None)


Signature Adoption: Drawn on Device

Using IP Address: 165.225.216.181

**Electronic Record and Signature Disclosure:**

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ID: e4fd10dc-8d02-4ba3-902d-fde0b0d11585

Signer Events	Signature	Timestamp
Rebecca Diviney Rebecca.Diviney@cityofdenton.com Director of Capital Projects/City Engineer Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 47.222.11.1	Sent: 11/12/2021 3:22:08 PM Viewed: 11/12/2021 3:23:31 PM Signed: 11/12/2021 3:24:39 PM

**Electronic Record and Signature Disclosure:**  
Accepted: 11/12/2021 3:23:31 PM  
ID: 8ea53c5a-a8cb-4fd3-9e67-a578df3906b0

Cheyenne Defee  
cheyenne.defee@cityofdenton.com  
Contract Administrator  
City of Denton  
Security Level: Email, Account Authentication (None)

**Completed**  
  
Using IP Address: 198.49.140.104

Sent: 11/12/2021 3:24:45 PM  
Viewed: 12/15/2021 8:07:50 AM  
Signed: 12/15/2021 8:08:25 AM

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Sara Hensley  
sara.hensley@cityofdenton.com  
Interim City Manager  
City of Denton  
Security Level: Email, Account Authentication (None)


  
Signature Adoption: Pre-selected Style  
Using IP Address: 198.49.140.10

Sent: 12/15/2021 8:08:32 AM  
Viewed: 12/15/2021 8:16:28 AM  
Signed: 12/15/2021 8:16:36 AM

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Rosa Rios  
rosa.rios@cityofdenton.com  
City Secretary  
Security Level: Email, Account Authentication (None)


  
Signature Adoption: Pre-selected Style  
Using IP Address: 198.49.140.10

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Signed: 12/15/2021 9:11:16 AM

**Electronic Record and Signature Disclosure:**  
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ID: 2b299979-bb8b-44fd-aff3-651409d4d57e

In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp

Cheyenne Defee  
cheyenne.defee@cityofdenton.com  
Contract Administrator  
City of Denton  
Security Level: Email, Account Authentication (None)

**COPIED**

Sent: 11/11/2021 4:37:08 PM

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Carbon Copy Events	Status	Timestamp
Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	COPIED	Sent: 11/12/2021 3:24:45 PM Viewed: 11/15/2021 8:45:52 AM
City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	COPIED	Sent: 12/15/2021 9:11:23 AM
Seth Garcia Seth.Garcia@cityofdenton.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Accepted: 11/24/2021 5:08:53 PM ID: 6d742198-7a10-4510-ac7b-9e1cbf868da0	COPIED	Sent: 12/15/2021 9:11:24 AM
Cheyenne Defee cheyenne.defee@cityofdenton.com Contract Administrator City of Denton Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	COPIED	Sent: 12/15/2021 9:11:25 AM
Jeromy Shaw JShaw@mccarthy.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	COPIED	Sent: 12/15/2021 9:11:26 AM
Steve Wilson SWilson@McCarthy.com Vice President Operations Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	COPIED	Sent: 12/15/2021 9:11:26 AM
Colleen Martindale CMartindale@mccarthy.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	COPIED	Sent: 12/15/2021 9:11:27 AM Viewed: 12/15/2021 9:20:38 AM
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	11/11/2021 4:35:53 PM

Envelope Summary Events	Status	Timestamps
Certified Delivered	Security Checked	12/15/2021 9:10:29 AM
Signing Complete	Security Checked	12/15/2021 9:11:16 AM
Completed	Security Checked	12/15/2021 9:11:27 AM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

## **ELECTRONIC RECORD AND SIGNATURE DISCLOSURE**

From time to time, City of Denton (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

### **Getting paper copies**

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

### **Withdrawing your consent**

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

### **Consequences of changing your mind**

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

### **All notices and disclosures will be sent to you electronically**

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

**How to contact City of Denton:**

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com)

**To advise City of Denton of your new e-mail address**

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at [melissa.kraft@cityofdenton.com](mailto:melissa.kraft@cityofdenton.com) and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

In addition, you must notify DocuSign, Inc to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in DocuSign.

**To request paper copies from City of Denton**

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com) and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

**To withdraw your consent with City of Denton**

To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your DocuSign account, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com) and in the body of such request you must state your e-mail, full name, US Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

**Required hardware and software**

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none"><li>•Allow per session cookies</li><li>•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection</li></ul>

\*\* These minimum requirements are subject to change. If these requirements change, we will provide you with an email message at the email address we have on file for you at that time providing you with the revised hardware and software requirements, at which time you will have the right to withdraw your consent.



**Acknowledging your access and consent to receive materials electronically**

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

By checking the 'I Agree' box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC RECORD AND SIGNATURE DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify City of Denton as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by City of Denton during the course of my relationship with you.

ORDINANCE NO. 22-2282

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSTRUCTION MANAGER AT RISK CONTRACT WITH MCCARTHY BUILDING COMPANIES, INC., FOR CONSTRUCTION PHASE SERVICES FOR SOUTHEAST DENTON PACKAGE B IMPROVEMENTS FOR THE CAPITAL PROJECTS DEPARTMENT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFQ 7714 – AWARDED TO MCCARTHY BUILDING COMPANIES, INC., IN THE NOT-TO-EXCEED AMOUNT OF \$21,582,378).

WHEREAS, the City of Denton has engaged in a request for qualifications for Southeast Denton Package B Improvements for the Capital Projects Department; and

WHEREAS, McCarthy Building Companies, Inc., was selected as the most qualified firm to provide construction manager at risk (“CMAR”) services for the Southeast Denton Package B Improvements, and on December 14, 2021, the City Council approved the CMAR agreement for preconstruction phase services with McCarthy Building Companies, Inc., and funded preconstruction services in the not-to-exceed amount of \$174,955.00 (Ordinance 21-2686); and

WHEREAS, McCarthy Building Companies, Inc., and the City, in accordance with the requirements of the CMAR agreement, solicited, received, and tabulated competitive bids and proposals for the CMAR agreement in accordance with the procedures of state laws and city ordinances, and rejected and re-solicited certain bids and proposals. The City Council ratifies and approves any such rejections and finds that the bids and proposals included in the Construction Phase Services Contract are the lowest responsible bids, provide the best value, and are in the best interest of the City; and

WHEREAS, the City Council desires to establish a not-to-exceed amount of \$21,582,378.00 for the construction of the Southeast Denton Package B Improvements; and

WHEREAS, upon full review of all matters attendant and related thereto, the City Council is of the opinion that the City Manager, or their designee, should be authorized to execute a Construction Phase Services Contract with McCarthy Building Companies, Inc., for a Guaranteed Maximum Price that will not exceed \$21,582,378.00 for the renovation of the Southeast Denton Package B Improvements; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The recitals contained in the preamble of this ordinance are true and correct and are incorporated herewith as part of this ordinance.

SECTION 2. A not-to-exceed amount of \$21,582,378.00 for the construction of the Southeast Denton Package B Improvements has been established and reviewed by the City Council

and found to be in the best interest of the City of Denton and its citizens, and is in all things approved.

SECTION 3. The City Manager, or their designee, is authorized to execute a Construction Phase Services Contract, attached hereto and incorporated herein, to the CMAR agreement previously approved by City Council on December 14, 2021 under Ordinance No. 21-2686, and all other necessary and related documents after the same have been reviewed and approved by the City Attorney, or their designee, with McCarthy Building Companies, Inc, for the construction of the Southeast Denton Package B Improvements with a CMAR Guaranteed Maximum Price that will not exceed \$21,582,378.00.

SECTION 4. This ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by Brian Beck and seconded by Jesse Davis. This ordinance was passed and approved by the following vote [ 7 - 0 ]:

	Aye	Nay	Abstain	Absent
Gerard Hudspeth, Mayor:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
Vicki Byrd, District 1:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
Brian Beck, District 2:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
Jesse Davis, District 3:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
Alison Maguire, District 4:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
Brandon Chase Mcgee, At Large Place 5:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
Chris Watts, At Large Place 6:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>


PASSED AND APPROVED this the 15<sup>th</sup> day of November, 2022.

  
GERARD HUDSPETH, MAYOR

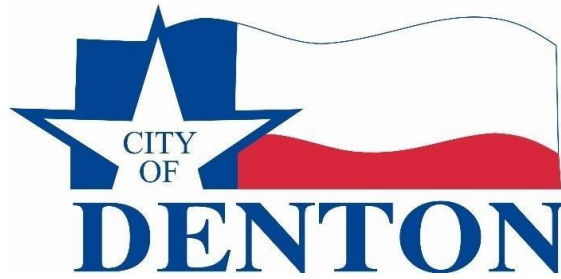
ATTEST:  
ROSA RIOS, CITY SECRETARY

BY: 

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

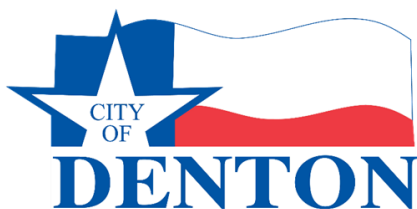
BY:   
Digitally signed by Marcella Lunn  
DN: cn=Marcella Lunn, o=City of Denton,  
email=marcella.lunn@cityofdenton.com, c=US  
Date: 2022.10.21 16:05:45 -05'00'





## DocuSign City Council Transmittal Coversheet

FILE	7714
File Name	CMAR Construction Services for SED-B
Purchasing Contact	Cori Power
City Council Target Date	NOVEMBER 15, 2022
Piggy Back Option	Not Applicable
Contract Expiration	N/A
Ordinance	22-2282



**CITY OF DENTON, TEXAS**

**Construction Manager at Risk for Southeast Denton Neighborhood Area B (SED-B)**

**CONSTRUCTION MANAGER AT RISK  
CONSTRUCTION PHASE SERVICES**

**CONTRACT NO. 7714**

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ATTACHMENTS:	EXHIBIT A	SITE DESCRIPTION
	EXHIBIT B	APPROVED GMP NO. 1
		EXHIBIT B-1 PROJECT DESCRIPTION
		EXHIBIT B-2 TECHNICAL SPECIFICATIONS
		EXHIBIT B-HCONSTRUCTION DRAWINGS
	EXHIBIT C	GENERAL CONDITIONS

**CITY OF DENTON**

**Construction Manager at Risk for Southeast Denton Neighborhood Area B (SED-B)**

**CONSTRUCTION MANAGER AT RISK CONSTRUCTION SERVICES**

**GMP No. 1**

**Project No. 210001-4          CONTRACT NO. 7714**

**THIS AGREEMENT**, made and entered by and between City of Denton, hereinafter designated the "City" and McCarthy Building Companies, Inc, hereinafter designated the "Construction Manager at Risk" or "CM@Risk"

**RECITALS**

- A.**     The City Manager of the City of Denton, Texas, or their designee, is authorized and empowered by provisions of the City Charter to execute contracts for construction services.
- B.**     The City intends to construct Southeast Denton Neighborhood Area B (SED-B) as more fully described in the Approved GMPs.
- C.**     To undertake the construction administration of said Project the City has entered into a contract with Kimley Horn and Associates, Inc. hereinafter referred to as the "Design Professional."
- D.**     The CM@Risk has represented to the City the ability to provide construction management services and to construct the Project and based on this representation the City engages the CM@Risk to provide these services and construct the Project.
- E.**     Contract No. 7714 has been executed previously between City and CM@Risk to perform design phase services. Those services may continue during the duration of this contract.

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

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## Article 1 - Definitions

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“Agreement” (“Contract”) means this written document signed by the City and CM@Risk covering the construction phase of the Project, and including other documents itemized and referenced in or attached to and made part of this Contract. The terms Agreement and Contract shall be used interchangeably throughout unless specifically stated otherwise.

“Approved GMP” means any GMP or GMP amendment agreed to by the parties in accordance with this Agreement.

“Change Directive” means a written order prepared and signed by City, directing a change in the Work prior to agreement on an adjustment in the Contract Price and the Contract Time.

“Certificate of Substantial Completion” has the meaning given such term in Subsection 4.1.5.

“Change Order” means a type of contract amendment issued after execution of this Agreement or future GMP Amendments signed by City and CM@Risk, agreeing to changes to an agreement. The Change Order will state the following: the addition, deletion, or revision in the scope of Work; the amount of the adjustment to the Contract Price; and the extent of the adjustment to the Contract Times or other modifications to Contract terms.

“City (“Owner” or “OWNER”) means the City of Denton, a municipal corporation, with whom CM@Risk has entered into this Contract and for whom the services are to be provided pursuant to said Contract. Regulatory activities handled by the City of Denton Developmental Services, Fire and Planning Departments or any other City Department are not subject to the responsibilities of the City under this Agreement.

“City’s Representative” means the person designated in Subsection 8.3.1.2.

“City’s Senior Representative” means the person designated in Subsection 8.3.1.1.

“CM@Risk” means the firm selected by the City to provide construction services as detailed in this Agreement.

“CM@Risk’s Contingency” means a fund to cover cost growth during the project used at the discretion of the CM@Risk usually for costs that result from project circumstances. The amount of the CM@Risk’s Contingency will be negotiated as a separate line item in each GMP package. Use and management of the CM@Risk’s Contingency is described in Subsection 5.1.2.3.

“CM@Risk’s Representative” means the person designated in Subsection 8.3.2.2. “CM@Risk’s Senior Representative” means the person designated in Subsection 8.3.2.1.

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

“Construction Documents” The plans, specifications, and drawings prepared by the Design Professional and issued as approved for construction meaning the documents are sealed by the Design Professional, signed and acceptable for permitting. In the event of a conflict between this Agreement and the other Contract Documents, including the General Conditions, the terms of this Agreement will control.

“Construction Fee” means the lump sum amount for CM@Risk’s administrative costs for branch or home



office overhead, and profit at the time of GMP.

“Contract Price” means the amount or amounts set forth in Article 5.

“Contract Time” means the Days as set forth in Article 4 the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Project.

“Cost of the Work” The direct costs or stipulated rates necessarily incurred by the CM@Risk in the proper performance of the Work as set forth in Exhibit D. The Cost of the Work shall not include the CM@Risk’s Construction Fee.

“Critical Path” means the sequence of activities from the start of the Work to the Substantial Completion of the Project. Any delay in the completion of these activities will extend the Substantial Completion date.

“Day(s)” mean calendar days unless otherwise specifically noted in the Contract Documents.

“Design Phase Contract” means the agreement between the City and CM@Risk for services provided by the CM@Risk during the design phase which may include the following: design recommendations, project scheduling, constructability reviews, alternate systems evaluation, cost estimates, MBE/WBE/SBE utilization, subcontractor bid phase services, and GMP preparation.

“Design Professional” means a qualified, licensed design professional who furnishes design and/or construction administration services required for the Project. A Design Professional is referenced in Recital C, above.

“Differing Site Conditions” means concealed or latent physical conditions or subsurface conditions at the Site that, (i) materially differ from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work.

“Engineer” The qualified, licensed person, firm or corporation who furnishes engineering services required for the Project.

“Final Acceptance” means the completion of the Work as prescribed in Section 4.2.

“Float” means the number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Substantial Completion date.

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

“Guaranteed Maximum Price” or “GMP” means the sum of the maximum Cost of the Work; the Construction Fee; General Conditions Costs, taxes, and CM@Risk’s Contingency including authorized adjustments.

“GMP Amendment” means an amendment, executed in writing and signed by both parties, to the GMP.

“GMP Plans and Specifications” means the plans and specifications upon which the Guaranteed Maximum Price proposal is based as listed in the GMP proposal.

“Legal Requirements” means all applicable federal, state, and local laws, codes, ordinances, rules, regulations, orders, and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

“Milestones” - A principal event in the performance of the Work that the Contract requires CM@Risk to achieve by an intermediate completion date, or by a time prior to Substantial Completion of all the Work.

“Notice to Proceed” or “NTP” means the directive issued by the City, authorizing the CM@Risk to start Work. Such notice shall be provided to the CM@Risk at least seven days prior to the commencement date stipulated herein and shall be provided no later than 30 days after the GMP proposal is approved by the City and all the required documentation is received by the City.

“Owner’s Contingency” means a fund to cover cost growth during the Project used at the discretion of the Owner usually for costs that result from Owner directed changes or unforeseen site conditions. The amount of the Owner’s Contingency will be set solely by the Owner and will be in addition to the Project costs included in the CM@Risk’s GMP packages. Use and management of the Owner’s Contingency is described in Subsection 5.1.3.

“Payment Request” means the City form used by the CM@Risk to request progress payments for Work in accordance with Article 7.

“Performance Period” means the period of time allotted in the Contract Documents to substantially complete the Work comprised within a GMP. The Performance Period shall be stated with each GMP proposal and shown on the Project Schedule.

“Product Data” means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the CM@Risk to illustrate materials or equipment for some portion of the Work.

“Project” means the Work to be completed in the execution of this Agreement as amended and as described in the Recitals above and in each Approved GMP.

“Project Schedule” means a schedule, prepared and maintained by CM@Risk, describing the sequence and duration of the activities comprising the CM@Risk’s plan to accomplish the Work within the Contract Times.

“Project Record Documents” means the documents created pursuant to Section 2.10.

“Samples” means physical examples which illustrate materials, equipment, or workmanship and establish standards by which the Work will be evaluated.

“Shop Drawings” mean drawings, diagrams, schedules, and other data specially prepared for the Work by the CM@Risk or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

“Site” means the land or premises on which the Project is located generally described in Exhibit A.

“Specifications” means the part(s) of the Contract Documents for the construction phase consisting of written technical descriptions of materials, equipment, construction systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto as listed in the GMP proposal.

“Subcontractor” means an individual or firm having a direct contract with the CM@Risk who undertakes to perform a part of the construction phase Work for which the CM@Risk is responsible.

“Subconsultant” - A person, firm or corporation having a contract with the CM@Risk to furnish services

required as its independent professional associate or consultant with respect to the Project.

“Sub-subcontractor or -subconsultant” – An individual or firm having a direct contract with any Subcontractor or any other individual firm having a contract with aforesaid contractors at any tier, who undertakes to perform a part of the design phase services or construction phase Work at the site for which the CM@Risk is responsible or furnishes services required as its independent profession associate or consultant with respect to the Project, as applicable.

“Substantial Completion” means when the Work, or an agreed upon portion of the Work, is sufficiently complete so that City can occupy and use the Project or a portion thereof for its intended purposes. This may include, but is not limited to: (i) approval by City Fire Marshall and local authorities; (ii) all systems in place, functional, and displayed to the City or its representative; (iii) all materials and equipment installed; (iv) all systems reviewed and accepted by the City; (v) draft O&M manuals and record documents reviewed and accepted by the City; (vi) City operation and maintenance training complete ; (vii) landscaping and site work; and (viii) final cleaning. The conditions of Substantial Completion that do not apply to a specific GMP will be listed in the Notice to Proceed letter pursuant to Subsection 2.4.3.

“Supplier” means a manufacturer, fabricator, supplier, distributor, material man, or vendor having a direct contract with CM@Risk or any Subcontractor to furnish materials or equipment to be incorporated in the construction phase Work by CM@Risk or any Subcontractor.

“Work” means the entire completed construction or the various separately identifiable parts thereof, required by the Agreement to be furnished during the construction phase. “Work” includes and is the result of performing or furnishing labor and furnishing and incorporating materials, resources, and equipment into the construction, and performing or furnishing services and documents as required by the Contract Documents for the construction phase.

## **Article 2 - CM@Risk's Services and Responsibilities**

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**2.0** The CM@Risk shall furnish any and all labor, materials, equipment, transportation, utilities, services, and facilities required to perform all Work required by the contract document, and to completely and totally construct the same and install the material therein for the City. All Work will be performed in a good and workmanlike and substantial manner and within the care and skill of a qualified CM@Risk in Denton, Texas. The Work shall be to the satisfaction of the City and strictly pursuant to and in conformity with the Project's Contract Documents as modified. It is not required that the services be performed in the sequence in which they are described.

### **2.1. General Services**

**2.1.1.** CM@Risk's Representative shall be reasonably available to City and shall have the necessary expertise and experience required to supervise the Work. CM@Risk's Representative shall communicate regularly with City but not less than once a week and shall be vested with the authority to act on behalf of CM@Risk. CM@Risk's Representative may be replaced only with the written consent of City.

### **2.1.2 City's Project Management Information System (Procore)**

**2.1.2.1** The CM@Risk will be required to maintain all project records in electronic format. The City provides a web-based project management database which the CM@Risk will be required to utilize in the fulfillment of the contract requirements. Although this electronic platform does not fulfill this requirement in its entirety, the CM@Risk will be required to utilize this platform as the basis for this Work. Any documents submitted to the City in electronic format shall be considered equivalent to an original of such document.

**2.1.2.2** The CM@Risk can expect to use Procore to process all primary level tri-partite contract documents related to the construction phase of the Project including but not limited to: requests for interpretation/information, potential Change Orders, Change Orders, construction meeting minutes, Submittals, Design Professional's supplemental instructions and Payment Requests.

**2.1.2.3** The CM@Risk will be required to process information into electronic digital form. In order to fulfill this requirement, the CM@Risk shall provide all necessary equipment to perform the functions necessary to generate, convert, store, maintain, connect to Procore, and transfer electronic data.

**2.1.2.4** CM@Risk shall provide a computerized networked office platform with broadband internet connectivity. Wired or wireless is acceptable. This platform shall function well in a web-based environment utilizing an internet browser compatible with the City Procore system.

### **2.2 Government Approvals and Permits**

**2.3.1** Unless otherwise provided, CM@Risk shall obtain or assist the City to obtain all necessary permits, approvals, and licenses required for the prosecution of the Work from any government or quasi-government entity having jurisdiction over the Project. **The CM@Risk is specifically reminded of the need to obtain the necessary environmental permits or file the necessary environmental notices.**

**2.3.2** Copies of these permits and notices must be provided to the City's Representative prior to starting the permitted activity. In the case of Fire Department permits, a copy of the application for permit shall also be provided to the City's Representative. This provision does not constitute an assumption by the City of an obligation of any kind for violation of said permit or notice requirements.

**2.3.3** City shall be responsible for all City of Denton review and permit(s) fees for building and demolition permits. City will also pay review and permit fees for grading and drainage, water, sewer right-of-way, and landscaping. City shall also pay for utility design fees for permanent services.

**2.3.4** CM@Risk shall be responsible for all other permits and review fees not specifically listed in Subsection 2.3.3 above. CM@Risk is responsible for the cost of water meter(s), and all water bills on the project meters until Substantial Completion of the Project. Arrangements for construction water are the CM@Risk's responsibility.

## **2.4 Pre-construction Conference**

**2.4.1** Prior to the commencement of any Work, the City's Representative will schedule a pre-construction conference.

**2.4.2** The purpose of this conference is to establish a working relationship between the CM@Risk, utility firms, and various City agencies. The agenda will include critical elements of the work schedule, submittal schedule, cost breakdown of major lump sum items, Payment Requests and processing, coordination with the involved utility firms, the level of Record Project Documents required, and emergency telephone numbers for all representatives involved in the course of construction.

**2.4.3** The Notice to Proceed date will be concurred to. After the meeting a Notice to Proceed letter will be issued confirming the construction start date, Performance Period, and, if applicable, the Substantial Completion date. If a Substantial Completion date is established the conditions of the Substantial Completion will be listed.

**2.4.4** The CM@Risk shall provide a schedule of values based on the categories used in the buyout of the Work but not greater than the approved GMP and identifying the CM@Risk's Contingency. The schedule of values will subdivide the Work into all items comprising the Work.

**2.4.5** Minimum attendance by the CM@Risk shall be the CM@Risk's Representative, who is authorized to execute and sign documents on behalf of the firm, the job superintendent, and the CM@Risk's safety officer.

## **2.5 Control of the Work**

**2.5.1** Unless otherwise provided in the Contract Documents to be the responsibility of City or a separate contractor, CM@Risk shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities, and other temporary facilities to permit CM@Risk to complete the Work consistent with the Contract Documents.

**2.5.2** CM@Risk shall perform all construction activities efficiently and with the requisite expertise, skill, and competence to satisfy the requirements of the Contract Documents. CM@Risk shall at all times exercise complete and exclusive control over the means, methods, sequences, and techniques of construction.

**2.5.3** CM@Risk, the CM@Risk's Representative or other authorized representative shall be present at the Site at all times that construction activities are taking place.

**2.5.3.1** All elements of the Work shall be under the direct supervision of a foreman or his designated representative on the Site who shall have the authority to take actions required to properly carry out that particular element of the Work.

- 2.5.4** In the event of noncompliance with this Section, the City may require the CM@Risk to stop or suspend the Work in whole or in part. Where the Contract Documents require that a particular product be installed and/or applied by an applicator approved by the manufacturer, it is the CM@Risk's responsibility to ensure the Subcontractor employed for such Work is approved by the manufacturer.
- 2.5.5** Before ordering materials or doing work, the CM@Risk and each Subcontractor shall verify measurements at the Site and shall be responsible for the correctness of such measurements. With the exception of subsurface and otherwise mutually agreed upon inaccessible conditions, no increase to the approved GMP will be allowed because of differences between actual dimensions and the dimensions indicated in the Contract Documents; differences, which may be found, shall be submitted to the City for resolution before proceeding with the Work.
- 2.5.6** The CM@Risk shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the CM@Risk with the Contract Documents before commencing activities. Errors, inconsistencies, or omissions discovered shall be reported to the City at once.
- 2.5.7** The CM@Risk shall establish and maintain all primary building and construction grades, lines, levels, and benchmarks, and shall be responsible for accuracy and protection of same. This Work shall be performed or supervised by a licensed civil engineer or surveyor in the State of Texas.
- 2.5.8** Any person employed by the CM@Risk or any Subcontractor who, in the reasonable opinion of the City, does not perform his work in a proper, skillful, and safe manner or is intemperate or disorderly shall, at the written request of the City, be removed from the Work by CM@Risk or Subcontractor employing such person, and shall not be employed again in any portion of Work without the written approval of the City. **THE CM@RISK OR SUBCONTRACTOR SHALL KEEP THE CITY HARMLESS FROM DAMAGES OR CLAIMS WHICH MAY OCCUR IN THE ENFORCEMENT OF THIS SECTION.**
- 2.5.9** CM@Risk assumes responsibility to City for the proper performance of the work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between City and any Subcontractor or Sub-subcontractor, including but not limited to any third-party beneficiary rights.
- 2.5.10** CM@Risk shall coordinate the activities of all Subcontractors. If City performs other work on the Project or at the Site with separate contractors under City's control, CM@Risk agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.
- 2.6 Control of the Work Site**
- 2.6.1** Throughout all phases of construction, including suspension of Work, CM@Risk shall keep the Site reasonably free from debris, trash, and construction wastes to permit CM@Risk to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, CM@Risk shall remove all debris, trash, construction wastes, materials, equipment, machinery, and tools arising from the Work or applicable portions thereof to permit City to occupy the Project or a portion of the Project for its intended use.
- 2.6.2** CM@Risk shall take all reasonable steps, procedures, or means to prevent any dust nuisance due to construction operations. The dust control measures shall be maintained at all times to the satisfaction of the City and in accordance with the local requirements.

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

**2.6.4** Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the Site by the CM@Risk. When equipment is no longer required for the Work, it shall be removed promptly from the Site. Protection of construction materials and equipment stored at the Site from weather, theft, damage, and all other adversity is solely the responsibility of the CM@Risk.

## **2.7 Shop Drawings, Product Data and Samples**

**2.7.1** 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 CM@Risk proposes to conform to the information given and the design concept expressed in the Contract Documents.

**2.7.2** The CM@Risk shall review, approve, verify, and submit to the City each Shop Drawing, Product Data, Sample, and similar submittal required by the Contract Documents in accordance with the approved GMP schedule as shown in Exhibit B as to cause no delay in the Work or in the activities of the City or of separate contractors. Submittals made by the CM@Risk, which are not required by the Contract Documents, may be returned without action.

**2.7.3** The CM@Risk 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 City. Such Work shall be in accordance with approved submittals.

**2.7.4** By approving, verifying, and submitting Shop Drawings, Product Data, Samples, and similar submittals, the CM@Risk represents that the CM@Risk has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

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

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

**2.7.7** Informational submittals upon which the City is not expected to take responsive action may be so identified in the Contract Documents.

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

## **2.8 Quality Control, Testing and Inspection**

**2.8.1** All materials used in the Work shall be new and unused, unless otherwise noted, and shall meet all quality requirements of the Contract Documents.

- 2.8.2** All construction materials to be used on the Work or incorporated into the Work, equipment, plant, tools, appliances, or methods to be used in the Work may be subject to the inspection and approval or rejection by the City. Any material rejected by the City shall be removed immediately and replaced in an acceptable manner.
- 2.8.3** The procedures and methods used to sample, and test material will be determined by the City.
- 2.8.4** The City may select a pre-qualified City or independent testing laboratory and may perform additional acceptance testing at the City's cost.
- 2.8.4.1** When the first and subsequent tests indicate noncompliance with the Contract Documents, the cost associated with that noncompliance will be paid for by the CM@Risk. CM@Risk's Contingency cannot be utilized for the cost of re-testing.
- 2.8.4.2** When the first and subsequent tests indicate noncompliance with the Contract Documents, all retesting shall be performed by the same testing agency.
- 2.8.5** The CM@Risk will cooperate with the selected testing laboratory and all others responsible for testing and inspecting the work and shall provide them access to the Work at all times.
- 2.8.6** At the option of the City, materials may be approved at the source of supply before delivery is started.
- 2.8.7** Code compliance testing and inspections required by codes or ordinances, or by a plan approval authority, and which are made by a legally constituted authority, shall be the responsibility of and shall be paid by the CM@Risk as a Cost of the Work, unless otherwise provided in the Contract Documents or unless required by Chapter 2269 of the Texas Government Code.
- 2.8.8** CM@Risk's convenience and quality control testing and inspections shall be the sole responsibility of the CM@Risk and paid by the CM@Risk as a Cost of the Work.
- 2.9 Trade Names and Substitutions.**
- 2.9.1** Contract Document references to equipment, materials, or patented processes by manufacturer, trade name, make or catalog number, unless indicated that no substitutions are permitted, substitute, or alternate items may be permitted, subject to the following:
- 2.9.2** The substitution shall be submitted by CM@Risk in writing to the City.
- 2.9.3** The CM@Risk shall certify that the substitution will perform the functions and achieve the results called for by the general design, be similar and of equal substance, and be suited to the same use as that specified.
- 2.9.4** The submittal shall state any required changes in the Contract Documents to adapt the design to the proposed substitution.
- 2.9.5** The submittal shall contain an itemized estimate of all costs and credits that will result directly and indirectly from the acceptance of such substitution, including cost of design, license fees, royalties, and testing. Also, the submittal shall include any adjustment in the Contract Time created by the substitution.



- 2.9.6** The CM@Risk if requested by the City shall submit Samples or any additional information that may be necessary to evaluate the acceptability of the substitution.
- 2.9.7** The City will make the final decision and will notify the CM@Risk in writing as to whether the substitution has been accepted or rejected. If the City does not respond in a timely manner, the CM@Risk shall continue to perform the Work in accordance with the Contract Documents and the substitution will be considered rejected.
- 2.10 Project Record Documents**
- 2.10.1** During the construction period, the CM@Risk shall maintain at the jobsite a set of blue-line or blackline prints of the Construction Document drawings and shop drawings for Project Record Document purposes.
- 2.10.1.1** The CM@Risk shall mark these drawings to indicate the actual installation where the installation varies appreciably from the original Construction Documents. Give particular attention to information on concealed elements, which would be difficult to identify or measure and record later. Items required to be marked include but are not limited to:
- Dimensional changes to the drawings.
  - Revisions to details shown on drawings
  - Depths of foundations
  - Locations and depths of underground utilities
  - Revisions to routing of piping and conduits.
  - Revisions to electrical circuitry.
  - Actual equipment locations.
  - Locations of concealed internal utilities.
  - Changes made by Change Order.
  - Details not on original Contract Drawings.
- 2.10.1.2** Mark completely and accurately Project Record Drawing prints of Construction Documents or Shop Drawings, whichever is the most capable of indicating the actual physical condition. Where Shop Drawings are marked, show cross-reference on the Construction Documents location.
- 2.10.1.3** Note RFI Numbers, ASI Numbers and Change Order numbers, etc., as required to identify the source of the change to the Construction Documents.
- 2.10.1.4** The CM@Risk shall as a condition of Substantial Completion, submit Project Record Drawing and Shop Drawings prints to the City or its representative for review and comment.
- 2.10.2.** Upon receipt of the reviewed Project Record Drawings from the City, the CM@Risk shall correct any deficiencies and/or omissions to the drawings and prepare for submission to the City within 14 Days.
- 2.11 Project Safety**
- 2.11.2.** CM@Risk recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto.
- 2.11.3.** CM@Risk assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work.
- 2.11.4.** CM@Risk shall, prior to commencing construction, designate a safety representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract

Documents, CM@Risk's safety representative shall be an individual stationed at the Site who may have other responsibilities on the Project in addition to safety.

- 2.11.5. The safety representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with CM@Risk's personnel, Subcontractors, and others as applicable.
- 2.11.6. CM@Risk and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any City-specific safety requirements set forth in the Contract Documents, provided that such City-specific requirements do not violate any applicable Legal Requirement.
- 2.11.7. CM@Risk will immediately report in writing any safety-related injury, loss, damage, or accident arising from the Work to City's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.
- 2.11.8. CM@Risk's responsibility for safety under this Section is not intended in any way to relieve Subcontractors and Sub-subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the Work.

## **2.12 Warranty**

- 2.12.1 CM@Risk warrants to City that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship.
- 2.12.2. CM@Risk's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work by persons other than CM@Risk or anyone for whose acts CM@Risk may be liable.
- 2.12.3. CM@Risk's warranty obligation shall be for two years.

Nothing in this warranty is intended to limit any manufacturer's warranty which provides City with greater warranty rights than set forth in this Section or the Contract Documents. CM@Risk will provide City with all manufacturers' warranties upon Substantial Completion.

## **2.13 Correction of Defective Work**

- 2.13.2. CM@Risk agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.12 above, within a period of two years from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by the Contract Documents. A progress payment, or partial or entire use or occupancy of the Project by the City, shall not constitute acceptance of Work not in accordance with the Contract Documents.
- 2.13.3. During the Work, CM@Risk shall take meaningful steps to commence correction of such nonconforming Work as notified by the City. This includes the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If CM@Risk fails to commence the necessary steps during the Work, City, in addition to any other remedies provided under the Contract Documents, may provide CM@Risk with written notice that City will commence correction of such nonconforming Work with its own forces.
- 2.13.4. CM@Risk shall, take meaningful steps to commence correction of nonconforming Work subject to Section 2.12 above, within seven Days of receipt of written notice from City. This includes the correction, removal or replacement of the nonconforming Work and any damage

caused to other parts of the Work affected by the nonconforming Work. If CM@Risk fails to commence the necessary steps within such seven Day period, City, in addition to any other remedies provided under the Contract Documents, may provide CM@Risk with written notice that City will commence correction of such nonconforming Work with its own forces.

**2.13.5.** If City does perform such corrective Work, CM@Risk shall be responsible for all reasonable costs incurred by City in performing such correction.

**2.13.6.** If the nonconforming Work creates an emergency requiring an immediate response, the CM@Risk will respond and initiate corrections within twenty-four hours.

**2.13.7.** The two-year period referenced in Subsection 2.12.1 above applies only to CM@Risk's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies City may have regarding CM@Risk's other obligations under the Contract Documents.

**2.14. Leadership in Energy & Environmental Design**

The CM@Risk shall provide an easily accessible area to serve the construction site and is dedicated to the separation, collection, and storage of materials for recycling including (at a minimum) paper, glass, plastics, metals, and designate an area specifically for construction and demolition waste recycling. The CM@Risk must provide documentation that the materials have been taken to a Denton county approved recycling facility.

### **Article 3 - City's Services and Responsibilities**

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#### **3.1 Duty to Cooperate.**

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

**3.1.2** City shall furnish at the CM@Risk's request, at no cost to the CM@Risk, a CADD file of the Construction Documents in AutoCAD format compatible with City of Denton Engineering and Architectural Services Department CADD technology.

**3.1.3** The City will provide training in the use and operation of the PROMIS system.

#### **3.2 City's Representative**

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

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

**3.2.3** The City may utilize field inspectors to assist the City's Representative during construction in observing performance of the CM@Risk. The inspector is for the purpose of assisting the City's Representative and should not be confused with an inspector with a City regulatory agency or with an inspector from a City laboratory pursuant to Subsection 2.8.4.

**3.2.3.1** Through onsite observation of the Work in progress and field checks of materials and equipment, the inspector shall endeavor to provide protection against defects and deficiencies in the Work.

**3.2.3.2** The inspector will be authorized to inspect all Work and materials furnished. Such inspection may extend to all or part of the Work and to the preparation, fabrication or manufacture of the materials to be used.

**3.2.3.3** The inspector will not be authorized to issue instructions contrary to the Construction Documents or to act as a foreman for the CM@Risk.

**3.2.3.4** The inspector shall have the authority to reject work or materials until any questions at issue can be decided by the City's Representative.

**3.2.3.5** The furnishing of such services for the City shall not make the City responsible for or give the City control over construction means, methods, techniques, sequence or procedures, or for safety precautions or programs or responsibility for the CM@Risk's failure to perform the work in accordance with Contract Documents.

#### **3.3 Design Professional Services**

**3.3.1** The City may contract separately with one or more Design Professionals to provide construction administration of the project. The Design Professional's contract as well as other firms hired by the City shall be furnished to the CM@Risk. The CM@Risk shall not have any right however, to limit or restrict any contract modifications that are mutually acceptable to the City and Design Professional.

**3.3.2** The City may contract with the Design Professional to provide some or all of the following

services during the performance of the Work.

- 3.3.2.1** Provide oversight of the Work. The City and CM@Risk shall endeavor to communicate through the Design Professional. Communications by and with the Design Professional's consultants shall be through the Design Professional.
- 3.3.2.2** Site visits at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed Work and work in progress and to determine in general if the Work is being performed in accordance with the Contract Documents. The Design Professional will keep the City informed of progress of the Work and will endeavor to guard the City against defects and deficiencies in the Work. The Design Professional may have authority to reject construction which does not conform to the Construction Documents and to require additional inspection or testing of the construction in accordance with Section 2.8.
- 3.3.2.3** Review and approve or take other appropriate action upon the CM@Risk's submittals such as Shop Drawings, Product Data and Samples in accordance with Section 2.7.
- 3.3.2.4** Interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of either the City or CM@Risk. The Design Professional's response to such requests will be made with reasonable promptness and within any time limits agreed upon.
- 3.3.2.5** Prepare Change Orders and may authorize minor changes in the Work as provided in Subsection 6.6.1.
- 3.3.2.6** Conduct inspections to determine Substantial Completion and Final Acceptance.
- 3.3.2.7** Receive and forward to the City for the City's review and records written warranties and related documents required by the Contract Documents and assembled by the CM@Risk.
- 3.4** **City's Separate Contractors.** City is responsible for all work performed on the Project or at the Site by separate contractors under City's control. City shall contractually require its separate contractors to cooperate with and coordinate their activities so as not to interfere with, CM@Risk in order to enable CM@Risk to timely complete the Work consistent with the Contract Documents. Any City separate contractors will be subject to City insurance and subrogation requirements.
- 3.5** **Permit Review and Inspections.**
  - 3.5.1** If requested by the CM@Risk, the City's Representative will provide assistance and guidance in obtaining necessary reviews, permits and inspections.
  - 3.5.2** Regulating agencies of the City, such as Developmental Services, Fire and Planning Departments, enforce Legal Requirements. These enforcement activities are not subject to the responsibilities of the City under this Agreement.

## **Article 4 - Contract Time**

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### **4.0. Contract Time.**

- 4.0.1.** Contract Time shall start with the commencement date established in the Notice to Proceed for GMP No. 1 and end with Substantial Completion.
- 4.0.2.** Each GMP will establish a separate commencement date and a date of Substantial Completion and a Performance Period. The Performance Periods may not be sequential and may run concurrently. The Period to achieve Substantial Completion for each GMP shall be set forth in each GMP submission.
- 4.0.3.** CM@Risk agrees that it will commence performance of the Work and achieve the Performance Periods and Contract Time.
- 4.0.4.** All of the times set forth in this Article 4 shall be subject to adjustment in accordance Article 6.

### **4.1. Substantial Completion**

- 4.1.1.** Substantial Completion shall be for the entire Project unless a partial Substantial Completion is identified in the approved GMP schedule and stated in the Notice to Proceed letter. Substantial Completion shall be in accordance with its definition in Article 1. and with the criteria set forth in the Notice to Proceed.
- 4.1.2.** Prior to notifying the City in accordance to Subsection 4.1.3 below, the CM@Risk shall inspect the Work and prepare and submit to the City a comprehensive list of items to be completed or corrected. The CM@Risk shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the CM@Risk to complete all Work in accordance with the Contract Documents.
- 4.1.3.** CM@Risk shall notify City when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is substantially complete.
- 4.1.4.** Within five (5) days of City's receipt of CM@Risk's notice, City and CM@Risk will jointly inspect such Work to verify that it is substantially complete in accordance with the requirements of the Contract Documents.
- 4.1.5.** If such Work is substantially complete, City shall prepare and issue a Certificate of Substantial Completion that will set forth (i) the date of Substantial Completion of the Work or portion thereof, (ii) the remaining items of Work that have to be completed within thirty (30) calendar days before Final Acceptance, (iii) provisions (to the extent not already provided in the Contract Documents) establishing City's and CM@Risk's responsibility for the Project's security, maintenance, utilities, and insurance pending Final Acceptance, and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.
- 4.1.6.** City, at its option, may use a portion of the Work which has been determined to be substantially complete, provided, however, that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in Subsection 4.1.5 above, (ii) CM@Risk and City have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project, and (iii) City and CM@Risk agree that City's use or occupancy will not interfere with CM@Risk's completion of the remaining Work.

- 4.2. Final Acceptance.** Upon receipt of written notice that the Work or identified portions of the Work is ready for final inspection and acceptance, City and CM@Risk will jointly inspect to verify that the remaining items of Work have been completed as set forth in Subsection 4.1.5. The City will issue a Final Acceptance Letter and payment pursuant to Section 7.5.
- 4.3. Liquidated Damages.**
- 4.3.1.** CM@Risk recognizes that *time is of the essence* for the CM@Risk to achieve Substantial Completion and City will suffer financial loss if the Work is not completed within the Contract Time. The Contractor also recognizes the delays, expense and difficulties involved in proving in a legal proceeding, the actual loss suffered by the City if the Work is not completed on time. Accordingly, instead of requiring any such proof, Contractor agrees that as liquidated damages for delay (but not as a penalty), Contractor shall pay City Two Thousand Dollars (\$2,000.00) for each day that expires after the Contract Time, as adjusted in accordance with this Contract, until the Day that Substantial Completion occurs.
- 4.3.2.** The City may at its sole discretion deduct from any monies due or which may become due the CM@Risk, a sum as specified herein, for each and every calendar day that the Work shall remain uncompleted. This sum shall be considered, not as penalty, but as the cost(s) for substantial losses suffered by the public and the City. Liquidated damages are intended to compensate the City for the CM@Risk's failure to meet the deadlines set forth herein, and shall not excuse the CM@Risk from liability from any other breach of requirements of the Contract Documents, including any failure of the Work to conform to applicable requirements. The CM@Risk agrees that the sums in Section 4.3.1 are reasonable in light of the anticipated or actual harm caused by the delay and breach, the difficulties of the proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy.
- 4.3.3.** The parties acknowledge, covenant, and agree that the daily basis and the amount set forth above for liquidated damages are reasonable because of the unique nature of the Project as a benefit to the public; the fact that inconvenience to the public will be one of the significant impacts of any failure by the CM@Risk to timely complete the Work; and that it is impracticable and extremely difficult to ascertain and determine the actual losses which would accrue to the City and the public. Permitting the CM@Risk to continue and finish the Work, or any portion thereof, after the time fixed for its completion, shall in no way operate as a waiver on the part of the City of any of its rights under the Contract.
- 4.4.** The CM@Risk and City waive claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes damages incurred by the City for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons and damages incurred by the CM@Risk for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except actual profit arising directly from the completed Work. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 9. Nothing contained in this Section 4.4 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.
- 4.5. Project Schedule**
- 4.5.1.** The Project Schedule approved as part of a GMP shall be updated and maintained throughout the Work.
- 4.5.2.** The Project Schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve CM@Risk of its obligations to complete the Work within the Contract Time, as such dates may be adjusted in accordance with the Contract Documents.

- 4.5.3.** Updated Project Schedules shall be submitted monthly in electronic forms to the City as part of the Payment Request.
- 4.5.4.** CM@Risk shall provide City with a monthly status report with each Project Schedule detailing the progress of the Work, including: (i) if the Work is proceeding according to Project Schedule, (ii) any discrepancies, conflicts, or ambiguities found to exist in the Contract Documents that require resolution, and (iii) other items that require resolution so as not to jeopardize ability to complete the Work as presented in the GMP proposal and within the Contract Time. Each status report shall also include the following:
- Description of problem tasks (referenced to field instructions, requests for information (RFI's), as appropriate.
  - Current and anticipated delays including:
    - Cause of the delay
    - Corrective action and schedule adjustments to correct the delay
    - Known or potential impact of the delay on other activities, Milestones, and the date of Substantial Completion.
  - Changes in construction sequence
  - Pending items and status thereof including but not limited to:
    - Time Extension requests
    - Other items
  - Substantial Completion date status:
    - If ahead of schedule, the number of calendar Days ahead.
    - If behind schedule, the number of calendar Days behind.
  - Other project or scheduling concerns
- 4.5.5.** City's review of and response to the Project Schedule is only for general conformance with the scheduling requirements of the Contract Documents. The review shall not relieve the CM@Risk from compliance with the requirements of the Contract Documents or be construed as relieving the CM@Risk of its complete and exclusive control over the means, methods, sequences, and techniques for executing the Work.
- 4.5.6.** The Project Schedule shall include a Critical Path Method (CPM) diagram schedule that shall show the sequence of activities, the interdependence of each activity and indicate the Critical Path.
- 4.5.6.1.** The CPM diagram schedule shall be in Days and indicate duration, earliest and latest start and finish dates for all activities, and total Float times for all activities except critical activities. The CPM diagram shall be presented in a time scaled graphical format for the Project as a whole.
- 4.5.6.2.** The CPM diagram schedule shall indicate all relationships between activities.
- 4.5.6.3.** The activities making up the schedule shall be sufficient detail to assure that adequate planning has been done for proper execution of the Work and such that it provides an appropriate basis for monitoring and evaluating the progress of the Work.
- 4.5.6.4.** The CPM diagram schedule shall be based upon activities, which would coincide with the schedule of values but the Project Schedule is not required to be cost-loaded.
- 4.5.6.5.** The CPM diagram schedule shall show all critical submittals associated with each work activity and the review time for each submittal.
- 4.5.6.6.** The Project Schedule shall show Milestones, including Milestones for Owner-furnished information, and shall include activities for Owner-furnished equipment and furniture when those activities are interrelated with the CM@Risk activities.
- 4.5.6.7.** The Project Schedule shall include a Critical Path activity that reflects anticipated rain delay



during the performance of the Contract. The duration shall reflect the average climatic range and usual industrial conditions prevailing in the locality of the site. Weather data shall be based on information provided by the National Weather Services or other approved source.

**4.5.7.** The Project Schedule shall consider the City's and the tenants' occupancy requirements showing portions of the Project having occupancy priority, and Contract Time.

**4.5.8.** Float time shall be as prescribed below.

**4.5.8.1.** The total Float within the overall Project Schedule, is not for the exclusive use of either the City or the CM@Risk but is jointly owned by both and is a resource available to and shared by both parties as needed to meet contract Milestones and the Project contract time.

**4.5.8.2.** The CM@Risk shall not sequester shared Float through such strategies as extending activity duration estimates to consume available Float, using preferential logic, or using extensive crew/resource sequencing, etc. Since Float time within the Project Schedule is jointly owned, no time extensions will be granted nor delay damages paid until a delay occurs which extends the Work beyond the Substantial Completion date.

Since Float time within the Project Schedule is jointly owned, it is acknowledged that delays on the Project may be offset by time savings.

## **Article 5- Guaranteed Maximum Price**

- 5.0.** The CM@Risk agrees to do all Work as aforesaid for the construction of said improvements and to completely construct the same and install the material therein, as called for by this Agreement free and clear of all liens, provided that Owner has met its payment obligations under this Agreement, in the manner and under the conditions specified within the time, or times, stated in the approved GMP proposal.
- 5.1. Guaranteed Maximum Price.**
- 5.1.1.** The Guaranteed Maximum Price will be as approved in the Guaranteed Maximum Price proposal attached as an Exhibit.
- 5.1.2.** Guaranteed Maximum Price is composed of the following lump sum amounts defined below. The CM@Risk is at risk to cover any additional Project costs.
- 5.1.2.1** Cost of the Work, General Conditions Costs and the Construction Fee are firm fixed lump sums, but subject to adjustments as permitted in the contract Documents.
- 5.1.2.2** Any additional fees tied to use of the Owner's Contingency shall not exceed 6.95% of any approved use of Owner's Contingency, subject to adjustments as permitted in the Contract Documents.
- 5.1.2.3** CM@Risk's Contingency is a firm fixed lump sum amount the CM@Risk may use under the following conditions:  
 (1) at its discretion for increases in the Cost of the Work, or (2) with written approval of the City for increases in General Condition Costs, which approval will not be unreasonably withheld. CM@Risk's Contingency is assumed to be a direct project cost so will have received all markups at the time of GMP submission.
- 5.1.2.3.1** When the CM@Risk utilize CM@Risk's Contingency funds, the CM@Risk shall make the appropriate changes to the schedule of values with the next regular progress payment request. The CM@Risk shall deduct the amount of CM@Risk's Contingency funds used from the CM@Risk's Contingency line item and adding the same amount to the line item on the schedule of values where the funds were used. If the CM@Risk's Contingency funds are used for a new line item that was not given with the original schedule of values, that will be so indicated.
- 5.1.2.4** As a City public procurement project this Project is tax exempt. Appropriate tax exemption forms shall be provided to the CM@Risk.
- 5.1.3** Owner's Contingency are funds to be used at the discretion of the Owner to cover any increases in Project costs that result from Owner directed changes or unforeseen site conditions. Owner's Contingency will be added to the GMP amount provided by the CM@Risk, the sum of which will be the total contract price for construction. Markups for Construction Fee and taxes will be applied by the CM@Risk at the time that Owner's Contingency is used.
- 5.1.4** The GMP is subject to adjustments made in accordance with Article 6 and by GMP amendments to this Agreement.
- 5.1.5** GMPs are cumulative including CM@Risk Contingency. The amount of CM@Risk Contingency for each GMP amendment will be negotiated separately and shall reflect the CM@Risk's risk from that point in the project forward.
- 5.1.5.1** If the GMP requires an adjustment due to changes in the Work or other causes as allowed in the Contract Documents, the cost of such changes is determined subject to Article 6. The markups that shall be allowed on such changes shall be no greater than the markups delineated in Article 6.

## **Article 6 - Changes to the Contract Price and Time**

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### **6.0. Delays to the Work**

- 6.0.1.** If CM@Risk is delayed in the performance of the Work that will cause a change in the date of Substantial Completion due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom CM@Risk is responsible, the Contract Times for performance shall be reasonably extended by Change Order.
- 6.0.2.** The CM@Risk shall request an increase in the Contract Time by written notice including an estimate of probable effect of delay on progress of the Work. In the case of a continuing delay only one request is necessary. Such notice shall not be later than fourteen (14) Days after such condition or event has been encountered.
- 6.0.3.** By way of example, events that will entitle CM@Risk to an extension of the Contract Time include acts or omissions of City or anyone under City's control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, delays by regulating agencies, wars, floods, labor disputes, unusual delay in transportation, epidemics, earthquakes, adverse weather conditions not reasonably anticipated, and other acts of God.
- 6.0.4.** If adverse weather conditions are the basis for a request for additional Contract Time, such requests shall be documented by data substantiating that weather conditions were abnormal for the period of time and that weather conditions had an adverse effect on the scheduled Substantial Completion.
- 6.0.5.** It is understood, however, that permitting the CM@Risk to proceed to complete any Work, or any part of the Work, after the date to which the time of completion may have been extended, shall in no way act as a waiver on the part of the City of any of its legal rights herein.
- 6.0.6.** In addition to CM@Risk's right to a time extension for those events set forth in this Section, CM@Risk shall also be entitled to an appropriate adjustment of the Contract Price provided, however, that the Contract Price shall not be adjusted for those events set forth in this Section that are beyond the control of both CM@Risk and City, including the events of war, floods, labor disputes, earthquakes, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God. In the event of an occurrence under this Section, the CM@Risk and any Subcontractors or Sub-Subcontractors, as applicable, will be excused from any further performance or observance of the requirements so affected for as long as such circumstances prevail and the CM@Risk and any Subcontractors or Sub-Subcontractors, as applicable, continues to use commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. The CM@Risk and any Subcontractors or Sub-Subcontractors, as applicable, shall immediately notify the City of Denton Project Manager by telephone (to be confirmed in writing within five (5) calendar days of the inception of such occurrence) and describe at a reasonable level of detail the circumstances causing the non-performance or delay in performance.

### **6.2 Differing Site Conditions**

- 6.2.1** If CM@Risk encounters a Differing Site Condition, CM@Risk will be entitled to an adjustment in the Contract Price and/or Contract Times to the extent CM@Risk's cost and/or time of performance are adversely impacted by the Differing Site Condition.
- 6.2.2** Upon encountering a Differing Site Condition, CM@Risk shall provide prompt written notice to City of such condition, which notice shall not be later than seven (7) days after such condition has been encountered. CM@Risk shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

### **6.3 Errors, Discrepancies and Omissions.**

- 6.3.1 If the CM@Risk observes errors, discrepancies, or omissions in the Contract Documents, they shall promptly notify the Design Professional and request clarification.
- 6.3.2 If the CM@Risk proceeds with the Work affected by such known errors, discrepancies, or omissions, without receiving such clarifications, they do so at their own risk. Adjustments involving such circumstances made by the CM@Risk prior to clarification by the Design Professional shall be at the CM@Risk's risk.

### **6.4 City Requested Change in Work.**

The City reserves the right to make, at any time during the progress of the Work, such alterations as may be found necessary or in the City's best interest.

- 6.4.1 Such alterations and changes shall not invalidate this Agreement nor release the surety and the CM@Risk agrees to perform the Work as altered, the same as if it has been a part of the original Contract Documents.
- 6.4.2 The City will request a proposal for a change in Work from CM@Risk, and an equitable adjustment in the Contract Price and/or Contract Times shall be made based on a mutual agreed upon cost and time.

### **6.5. Legal Requirements.**

- 6.5.1. The Contract Price and/or Contract Times shall be adjusted to compensate CM@Risk for the effects of any changes in the Legal Requirements enacted after the date of the Agreement or the date of the GMP proposal, affecting the performance of the Work.

### **6.6. Change Directives and Change Orders.**

- 6.6.1. City and CM@Risk shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for a Change Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the adjustment.
- 6.6.2. All changes in Work authorized by Change Orders shall be performed under the conditions of the Contract Documents

### **6.7. Minor Changes in the Work**

- 6.7.1. The City has authority to order minor changes in Work that do not materially and adversely affect the Work, including the design, quality, performance, and workmanship required by the Contract Documents. Such changes shall be affected by written order and shall be binding on the City and CM@Risk. The CM@Risk shall carry out such written orders promptly.
- 6.7.2. CM@Risk may make minor changes in Work, provided, however that CM@Risk shall promptly inform City, in writing, of any such changes and record such changes, if appropriate, on the Project Record Documents maintained by CM@Risk.
- 6.7.3. Minor changes in Work will not involve an adjustment in the Contract Price and/or Contract Times.

### **6.8. Contract Price Adjustments**

- 6.8.1. The increase or decrease in Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:

- 6.8.1.1. Unit prices set forth in the Agreement or as subsequently agreed to between the parties;
- 6.8.1.2. A mutually accepted, lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by City; or
- 6.8.1.3. Estimated cost of the Work, General Conditions Costs, if applicable, Construction Fee and tax.
- 6.8.2. The markups that shall be allowed on such changes shall be no greater than fifteen percent (15%).
- 6.8.3. If an increase or decrease cannot be agreed to as set forth in Subsections 6.8.1.1 through 6.8.1.3 above and City issues a Change Directive, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit as shown in each GMP exhibit, as may be set forth in the Agreement. CM@Risk shall maintain a documented, itemized accounting evidencing the expenses and savings associated with such changes.
- 6.8.4. If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to City or CM@Risk because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.
- 6.8.5. If City and CM@Risk disagree upon whether CM@Risk is entitled to be paid for any services required by City, or if there are any other disagreements over the scope of Work or proposed changes to the Work, City and CM@Risk shall resolve the disagreement pursuant to Article 8 hereof.
- 6.8.5.1. As part of the negotiation process, CM@Risk shall furnish City with a good faith estimate of the costs to perform the disputed services in accordance with City's interpretations.
- 6.8.5.2. If the parties are unable to agree and City expects the CM@Risk to perform the services in accordance with City's interpretations, CM@Risk shall proceed to perform the disputed services, conditioned upon City issuing a written order to CM@Risk (i) directing CM@Risk to proceed and (ii) specifying City's interpretation of the services that are to be performed.
- 6.8.6. **Emergencies.** In any emergency affecting the safety of persons and/or property, CM@Risk shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time resulting from emergency work under this Section shall be determined as provided in this Article.

## **Article 7- Procedure for Payment**

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- 7.0.** For and in consideration of the faithful performance of the Work herein embraced as set forth in the Contract Documents, which are a part hereof and in accordance with the directions of the City and to its satisfaction, the City agrees to pay the said CM@RISK the actual Cost of the Work and any applicable General Conditions Costs including, insurance and bonding, taxes, if any, and the CM@Risk's Construction Fee, but no more than the GMP as adjusted by any Change Orders. Payment for the specific work under this Agreement will be made in accordance with payment provisions detailed below.
- 7.1. GMP Payment Request**
- 7.1.1.** At the pre-construction conference prescribed in Section 2.4, CM@Risk shall submit for City's review and approval a schedule of values. The schedule of values will serve as the basis for monthly progress payments made to CM@Risk throughout the Work.
- 7.1.2.** At least five (5) working days prior to the date established for a Payment Request, the CM@Risk shall submit an updated Project Schedule and meet with the City's Representative to review the progress of the Work as it will be reflected on the Payment Request.
- 7.1.3.** The Payment Request shall constitute CM@Risk's representation that the Work has been performed consistent with the Contract Documents, has progressed to the point indicated in the Payment Request, and that all Work will pass to City free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project and payment, therefore.
- 7.1.4.** The Payment Request may request payment for stored equipment and materials if construction progress is in reasonable conformance with the approved Project Schedule.
- 7.1.4.1.** For equipment and materials suitably stored at the Site, the equipment and materials shall be protected by suitable insurance and City shall receive the equipment and materials free and clear of all liens and encumbrances upon payment, therefore.
- 7.1.4.2.** For materials and equipment stored off the Site and included in Payment Request, the City must approve the storage. The material and equipment must be stored within Denton County and be accessible for City's inspection. The CM@Risk must protect the City's interest and shall include applicable insurance, bonding, storage, and transportation to the Site.
- 7.1.4.3.** All bonds and insurance required for stored materials shall name the City as the loss payee to the extent of its interest in the stored materials.
- 7.1.5.** CM@Risk shall submit payment requests to the City at the beginning of each month beginning with the first month after the construction Notice to Proceed.
- 7.1.6.** With every Payment Request for the Work, CM@Risk will submit an affidavit stating that the CM@Risk has complied with the requirements of Chapter 2258, Texas Government Code. The parties hereto agree that any electronic copy of such affidavit shall be treated as an original for all intents and purposes.
- 7.2. Payment of GMP**
- 7.2.1.** City shall make payment in accordance with the provisions of this Contract and Chapter 2251 of the Texas Government Code. Payment will be made no later than thirty (30) Days after the Payment Request is received by the City, but in each case less the total of payments previously made, and less amounts properly retained under Section 7.3 below.

**7.2.2.** City shall pay CM@Risk all amounts properly due. If City determines that there is an error in the Payment Request and the CM@Risk is not entitled to all or part of a Payment Request, it will notify CM@Risk in writing within twenty-one (21) Days after the date Payment Request is received by the City. The notice shall indicate the specific amounts City intends to withhold, the reasons and contractual basis for the withholding, and the specific measures CM@Risk must take to rectify City's concerns. CM@Risk and City will attempt to resolve City's concerns. If the parties cannot resolve such concerns, CM@Risk may pursue its rights under the Contract Documents, including those under Article 8 hereof.

**7.3. Retention on GMP**

**7.3.1.** City will retain five percent (5%) of each Payment Request amount provided.

**7.4. Substantial Completion.** Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, City shall release to CM@Risk all retained amounts relating, as applicable, to the entire Work or substantially completed portion of the Work, less an amount of the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.

**7.5. Final Payment**

**7.5.1.** After receipt of a final Payment Request, City shall make final payment 30 days after the receipt by the City, provided that CM@Risk has completed all of the Work in conformance with the Contract Documents and a Final Acceptance Letter has been issued by the City.

**7.5.2.** At the time of submission of its final Payment Request, CM@Risk shall provide the following information

**7.5.2.1.** An affidavit that there are no claims, obligations, or liens outstanding or unsatisfied for labor, services, material, equipment, taxes, or other items performed, furnished or incurred for or in connection with the Work which will in any way affect City's interests;

**7.5.2.2.** A general release executed by CM@Risk waiving, upon receipt of final payment by CM@Risk, all claims, except those claims previously made in writing to City and remaining unsettled at the time of final payment;

**7.5.2.3.** Conditional waivers and releases executed by all Subcontractors; and

**7.5.2.4.** Consent of CM@Risk's surety, if any, to final payment (original with raised seal).

**7.6. Payments to Subcontractors or Suppliers**

**7.6.1.** CM@Risk shall pay its Subcontractors or suppliers within ten (10) Days of receipt of each progress payment from the City. The CM@Risk shall pay for the amount of Work performed or materials supplied by each Subcontractor or supplier as accepted and approved by the City with each progress payment. In addition, any reduction of retention by the City to the CM@Risk shall result in a corresponding reduction to Subcontractors or suppliers who have performed satisfactory work. CM@Risk shall pay Subcontractors or suppliers the reduced retention within ten (10) Days of the payment of the reduction of the retention to the CM@Risk. No contract between CM@Risk and its Subcontractors and suppliers may materially alter the rights of any Subcontractor or supplier to receive prompt payment and retention reduction as provided herein.

**7.6.2.** If the CM@Risk fails to make payments in accordance with these provisions, the City may take any one or more of the following actions and CM@Risk agrees that the City may take such actions:

**7.6.2.1.** To hold the CM@Risk in default under this Agreement;

- 7.6.2.2.** Withhold future payments including retention until proper payment has been made to Subcontractors or suppliers in accordance with these provisions;
- 7.6.2.3.** Reject all future offers to perform work for the City from the CM@Risk for a period not to exceed one year from Substantial Completion date of this Project; or
- 7.6.2.4.** Terminate this Agreement.
- 7.6.3.** All funds paid to the CM@Risk are paid in trust and shall be used for payment of the Subcontractors and Suppliers who have performed work on the Project before the CM@Risk may use any of the funds for any other purpose. Nothing in this provision shall prohibit the CM@Risk from withholding any funds in dispute or back charges or offsets under the provisions of the Subcontract. The CM@R shall include a trust fund provision in each subcontract requiring the subcontractor to hold any payment its receives in trust and to use them for payment of its subcontractors and suppliers who have performed work on the Project before Subcontractor may use the funds for any other purpose.
- 7.6.4.** Should the City fail or delay in exercising or enforcing any right, power, privilege, or remedy under this Section, such failure or delay shall not be deemed a waiver, release, or modification of the requirements of this Section or of any of the terms or provisions thereof.
- 7.6.5.** CM@Risk shall include these prompt payment provisions in every subcontract, including procurement of materials and leases of equipment for this Agreement.
- 7.7. Record Keeping and Finance Controls**
  - 7.7.1.** Records of the CM@Risk's direct personnel payroll, reimbursable expenses pertaining to this Project and records of accounts between the City and CM@Risk shall be kept on a generally recognized accounting basis and shall be available for three years after Final Acceptance of the Project.
  - 7.7.2.** The City, its authorized representative, and/or the appropriate federal agency, reserve the right to audit the CM@Risk's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate Contract Documents and any Change Orders. Notwithstanding the foregoing, the composition of any stipulated rates shall not be subject to audit.
  - 7.7.3.** The City reserves the right to decrease Contract Price and/or payments made on this Agreement if, upon audit of the CM@Risk's records, the audit discloses the CM@Risk has provided false, misleading, or inaccurate cost and pricing data.



## **Article 8- Claims and Disputes**

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### **8.0. Requests for Contract Adjustments and Relief.**

- 8.0.1.** If either CM@Risk or City believes that it is entitled to relief against the other for any event arising out of or related to the Contract, such party shall provide written notice to the other party of the basis for its claim for relief.
- 8.0.2.** Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of the Agreement.
- 8.0.3.** In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed twenty-one (21) Days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later.
- 8.0.4.** Such notice shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

### **8.1. Dispute Avoidance and Resolution**

- 8.1.1.** The parties are fully committed to working with each other throughout the Project and agree to always communicate regularly with each other so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, CM@Risk and City each commit to resolving such disputes or disagreements in an amicable, professional, and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.
- 8.1.2.** CM@Risk and City will first attempt to resolve disputes or disagreements at the field level through discussions between CM@Risk's Representative and City's Representative.
- 8.1.3.** If a dispute or disagreement cannot be resolved through CM@Risk's Representative and City's Representative, CM@Risk's Senior Representative and City's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement. Should this effort be unsuccessful then the parties may proceed to take appropriate action to enforce any rights or obligations pursuant to the provisions of the Contract.
- 8.2. Duty to Continue Performance** Unless provided to the contrary in the Contract Documents or as provided by statute, CM@Risk shall continue to perform the Work and City shall continue to satisfy its payment obligations to CM@Risk, pending the final resolution of any dispute or disagreement between CM@Risk and City.

### **8.3. Representatives of the Parties**

#### **8.3.1. City's Representatives**

- 8.3.1.1.** City designates the City engineer or their designee as its Senior Representative ("City's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Subsection 8.1.3.
- 8.3.1.2.** City designates the City's project manager as its City's Representative, which individual has the authority and responsibility set forth in Subsection 8.1.2.

**8.3.2. CM@Risk's Representatives**

- 8.3.2.1.** CM@Risk designates the individual listed below as its Senior Representative ("CM@Risk's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Subsection 8.1.3:

David Wallace, P.E., Project Director  
12001 N Central Expy, #400  
Dallas, TX 75243, (972) 991-5500

- 8.3.2.2.** CM@Risk designates the individual listed below as its CM@Risk's Representative, which individual has the authority and responsibility set forth in Subsection 8.1.2:

Riley Seahorn, Project Manager  
12001 N Central Expy, #400  
Dallas, TX 75243, (972) 991-5500

## **Article 9 – Suspension and Termination**

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### **9.0. City's Right to Stop Work**

- 9.0.1.** City may, at its discretion and without cause, order CM@Risk in writing to stop and suspend the Work. Such suspension shall not exceed one hundred and eighty (180) consecutive Days.
- 9.0.2.** CM@Risk may seek an adjustment of the Contract Price and/or Contract Time if its cost or time to perform the Work has been adversely impacted by any suspension or stoppage of Work by City.

### **9.1. Termination for Convenience**

- 9.1.1.** Upon receipt of written notice to CM@Risk, City may, at its discretion and without cause, elect to terminate this Agreement. In such event, City shall pay CM@Risk only the direct value of its completed Work and materials supplied as of the date of termination and the reasonable costs and expenses attributable to such termination. CM@Risk shall be entitled to profit and overhead on completed Work only but shall not be entitled to anticipated profit or anticipated overhead.
- 9.1.2.** If the City suspends the Work for 181 consecutive Days or more, such suspension shall be deemed a termination for convenience.
- 9.1.3** Upon such termination, the CM@Risk shall proceed with the following obligations:
  - 9.1.3.1** Stop Work as specified in the notice.
  - 9.1.3.2** Place no further subcontracts or orders.
  - 9.1.3.3** Terminate all subcontracts to the extent they relate to the Work terminated.
  - 9.1.3.4** Assign to the City all right, title and interest of the CM@Risk under the subcontracts terminated, in which case the City shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
  - 9.1.3.5** Take any action that may be necessary for the protection and preservation of the property related to the Contract that is in the possession of the CM@Risk and which the City has or may acquire an interest.
- 9.1.4** The CM@Risk shall submit complete termination inventory schedules no later than 120 Days from the date of the notice of termination.
- 9.1.5** The City shall pay CM@Risk the following.
  - 9.1.5.1** The direct value of its completed Work and materials supplied as of the date of termination.
  - 9.1.5.2** The reasonable costs and expenses attributable to such termination.
  - 9.1.5.3** CM@Risk shall be entitled to profit and overhead on completed Work only but shall not be entitled to anticipated profit or anticipated overhead. If it appears the CM@Risk would have sustained a loss on the entire Work had it been completed, the CM@Risk shall not be allowed profit and the City shall reduce the settlement to reflect the indicated rate of loss.
- 9.1.6** The CM@Risk shall maintain all records and documents for three years after final settlement. These shall be maintained and subject to auditing as prescribed in Section 7.7.

### **9.2. City's Right to Perform and Terminate for Cause**

- 9.2.1.** If the City provides the CM@Risk with a written order to provide adequate maintenance of traffic, adequate cleanup, adequate dust control or to correct deficiencies or damage resulting from abnormal weather conditions, and the CM@Risk fails to comply in a time frame specified, the City may have a portion of the Work included in the written order accomplished by other sources.
- 9.2.2.** If CM@Risk persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Subconsultants and/or Subcontractors, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed within the Contract Times, as such times may be adjusted, or (vi) perform material obligations under the Contract Documents, then City, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Subsections 9.2.3 and 9.2.4 below.
- 9.2.3.** Upon the occurrence of an event set forth in Subsection 9.2.2 above, City may provide written notice to CM@Risk that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) Days of CM@Risk's receipt of such notice.
- 9.2.3.1.** If CM@Risk fails to cure, or reasonably commence to cure, such problem, then City may give a second written notice to CM@Risk of its intent to terminate within an additional seven (7) Day period.
- 9.2.3.2.** If CM@Risk, within such second seven (7) Day period, fails to cure, or reasonably commence to cure, such problem, then City may declare the Agreement terminated for default by providing written notice to CM@Risk of such declaration.
- 9.2.4.** Upon declaring the Agreement terminated pursuant to Subsection 9.2.3.2 above, City may enter upon the premises and take possession, for the purpose of completing the Work, of all materials which have been purchased for the performance of the Work, all of which CM@Risk hereby transfers, assigns and sets over to City for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items.
- 9.2.5.** In the event of such termination, CM@Risk shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, the CM@Risk will only be entitled to be paid for Work performed and accepted by the City prior to its default.
- 9.2.6.** If City's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then CM@Risk shall be obligated to pay the difference to City. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by City in connection with the procurement and defense of claims arising from CM@Risk's default.
- 9.2.7.** If City improperly terminates the Agreement for cause, the termination for cause shall be converted to a termination for convenience in accordance with the provisions of Section 9.1.

Article 10 - Insurance and Bonds

10.0. Insurance Requirements

10.0.1 CM@Risk and Subcontractors shall procure and maintain until all of their obligations under this agreement have been discharged, including until any warranty periods under this Agreement are satisfied, insurance against claims for injury to persons or damage to property that may arise from or in connection with the performance of the Work hereunder by the CM@Risk, their agents, representatives, employees or Subcontractors.

10.0.2 The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement.

10.0.3 The City in no way warrants that the minimum limits contained herein are sufficient to protect the CM@Risk from liabilities that might arise out of the performance of the Work under this Agreement by the CM@Risk, their agents, representatives, employees, or subcontractors. CM@Risk is free to purchase such additional insurance as may be determined necessary.

10.1 Minimum Scope and Limits of Insurance. CM@Risk shall provide coverage with limits of liability not less than those stated below:

- 10.1.1 Commercial General Liability – Occurrence Form  
Policy shall include bodily injury, property damage, broad form contractual liability and XCU coverage.
- |   |                         |
|---|-------------------------|
| • General Aggregate/for this Project        | \$2,000,000/\$1,000,000 |
| • Products – Completed Operations Aggregate | \$1,000,000             |
| • Personal and Advertising Injury           | \$1,000,000             |
| • Each Occurrence                           | \$1,000,000             |

The policy shall be endorsed to include the following additional insured language: “**The City of Denton, its Officials, and Employees shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the CM@Risk. This policy shall provide a blanket waiver of subrogation in favor of the City of Denton. A copy of the endorsement or other policy provisions naming the City as an additional insured to the insurance policy and providing a blanket waiver of subrogation in favor of the City of Denton, its Officials, and Employees shall be attached to the certificate of insurance.**”

- 10.1.2 Automobile Liability - Bodily injury and property damage for any owned, hired, and non-owned vehicles used in the performance of this Agreement.  
Combined Single Limit (CSL) \$1,000,000

The policy shall be endorsed to include the following additional insured language: “**The City of Denton, its Officials, Employees, and Volunteers shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the CM@Risk, including automobiles owned, leased, hired or borrowed by the CM@Risk This policy shall provide a blanket waiver of subrogation in favor of the City of Denton. A copy of the endorsement or other policy provisions naming the City as an additional insured to the insurance policy and providing a blanket waiver of subrogation in favor of the City of Denton, its Officials, and Employees shall be attached to the certificate of insurance.**”

- 10.1.3 Workers’ Compensation and Employers’ Liability
- |                         |           |
|-------------------------|-----------|
| Workers’ Compensation   | Statutory |
| Employers’ Liability    |           |
| Each Accident           | \$100,000 |
| Disease - Each Employee | \$100,000 |
| Disease – Policy Limit  | \$500,000 |

**This policy shall provide a blanket waiver of subrogation in favor of the City of Denton. A copy of the endorsement or other policy provisions providing a blanket waiver of subrogation in favor of the City of Denton, its Officials, and Employees shall be attached to the certificate of insurance.”**

**10.1.4 Builders’ Risk Insurance or Installation Floater**

In an amount equal to the initial Contract Price plus additional coverage equal to Contract Price for all subsequent Amendments and/or Change Orders.

**10.1.4.1** The City of Denton, its Officials, and Employees, the CM@Risk, and Subcontractors, shall be **named as Additional Insureds** on the policy.

**10.1.4.2** Coverage shall be written on an all risk, replacement cost basis and **shall include coverage for flood and earth movement.**

**10.1.4.3** Policy shall be maintained until whichever of the following shall first occur: (i) final payment has been made; or, (ii) until no person or entity, other than the City of Denton, has an insurable interest in the property required to be covered.

**10.1.4.4** Policy shall be endorsed such that the insurance shall not be canceled or lapse because of any partial use or occupancy by the City.

**10.1.4.5** Policy must provide coverage from the time any covered property becomes the responsibility of the CM@Risk, and continue without interruption during construction, renovation, or installation, including any time during which the covered property is being transported to the construction installation site, or awaiting installation, whether on or off site.

**10.1.4.6** **This policy shall provide a blanket waiver of subrogation in favor of the City of Denton. A copy of the endorsement or other policy provisions naming the City as an additional insured to the insurance policy and providing a blanket waiver of subrogation in favor of the City of Denton, its Officials, and Employees shall be attached to the certificate of insurance.”**

**10.1.4.7** CM@Risk is responsible for the payment of **all policy deductibles.**

**10.2 Additional Insurance Requirements.** The policies shall include, or be endorsed to include the following provisions:

**10.2.1** On insurance policies where the City of Denton is named as an additional insured, the City of Denton shall be an additional insured to the full limits of liability purchased by the CM@Risk even if those limits of liability are in excess of those required by this Agreement.

**10.2.2** The CM@Risk’s insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

**10.2.3** Coverage provided by the CM@Risk shall not be limited to the liability assumed under the indemnification provisions of this Agreement.

**10.3 Notice of Cancellation.** Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided, canceled, reduced in coverage, materially changed, or endorsed to lower limits except after thirty (30) Days prior written notice has been given to the City. Such notice shall be sent directly to the City Senior Representative and shall be sent by certified mail, return receipt requested.

**10.4 Acceptability of Insurers.** Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the state of Texas and with an “A.M. Best” rating of at least A or better.

The City in no way warrants that the above-required minimum insurer rating is sufficient to protect the CM@Risk from potential insurer insolvency.

## **10.5 Verification of Coverage**

**10.5.1** CM@Risk shall furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Agreement. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

**10.5.2** All certificates and endorsements are to be received and approved by the City before Work commences. Each insurance policy required by this Agreement must be in effect at or prior to commencement of Work under this Agreement and remain in effect for the duration of the Project. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of the contract.

**10.5.3** All certificates required by this Agreement shall be sent directly to City's Senior Representative. The City project/contract number and project description shall be noted on the certificate of insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Agreement at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY'S RISK MANAGEMENT DIVISION.**

**10.5.4** **If the Certificate of Insurance reflecting policy coverage and cancellation notice does not conform to the City's requirements, the CM@Risk must:**

- **Submit a current insurance certificate (dated within 15 Days of the Payment Request submittal) with each Payment Request form. The Payment Request will be rejected if the insurance certificate is not submitted with the Payment Request.**

**10.6** **Subcontractors.** CM@Risk's certificate(s) shall include all Subcontractors as additional insureds under its policies **or** CM@Risk shall furnish to the City separate certificates and endorsements for each Subcontractor. All coverages for Subcontractors shall be subject to the minimum requirements identified above.

**10.7** **Approval.** Any modification or variation from the insurance requirements in this Contract shall be made by the Law Department, whose decision shall be final. Such action will not require a formal Contract amendment but may be made by administrative action.

## **10.8 Bonds and Other Performance Security.**

**10.8.1** Prior to execution of this Agreement, the CM@Risk must provide a performance bond and a labor and materials bond, each in an amount equal to the total contract price of the GMP set forth in this Agreement. In addition to any criteria set forth in this provision, the performance and payment bonds must comply with all requirements of Chapter 2253 of the Texas Government Code.

**10.8.2** Each such bond shall be executed by a surety company or companies holding a Certificate of Authority to transact surety business in the state of Texas, issued by the Director of the Texas Department of Insurance. A copy of the Certificate of Authority shall accompany the bonds. The Certificate shall have been issued, updated, or certified within two years prior to the execution of this Agreement.

**10.8.3** The bonds shall be made payable and acceptable to the City of Denton.

**10.8.4** The bonds shall be written or countersigned by an authorized representative of the surety who is either a resident of the state of Texas or whose principal office is maintained in this state, as by law required, and the bonds shall have attached thereto a certified copy of Power of Attorney of the signing official.

- 10.8.5 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract Documents, the CM@Risk shall promptly furnish a copy of the bonds or shall permit a copy to be made.
- 10.8.6 All bonds submitted for this project shall be provided by a company which has been rated AM Best rating of "A- or better for the prior four quarters" by the A.M. Best Company.



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## **Article 11 - Indemnification**

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### **11.1 CM@Risk's General Indemnification.**

**11.1.1 CM@Risk agrees to indemnify and save harmless the City of Denton, its officers, agents and employees, and any jurisdiction or agency issuing permits for any work included in the Project, their officers, agents and employees, hereinafter referred to as indemnitee, from all suits and claims, including attorney's fees and cost of litigation, actions, loss, damage, expense, cost or claims of any character or any nature arising out of the work done in fulfillment of the terms of the Contract Documents or on account of any act, claim or amount arising or recovered under worker's compensation law or arising out of the failure of the CM@Risk to conform to any statutes, ordinances, regulation, law or court decree, provided that such indemnification obligation shall not apply to the extent such suits, claims, losses and expenses arise from the negligence or willful misconduct of an indemnitee. It is agreed that the CM@Risk will be responsible for primary loss investigation, defense, and judgment costs where this contract of indemnity applies. In consideration of the award of this Contract, the CM@Risk agrees to waive all rights of subrogation against the City, its officers, officials, agents and employees for losses arising from the work performed by the Contractor for the City.**

## **Article 12 – General Provisions**

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### **12.1 Contract Documents**

- 12.1.1** Contract Documents are as defined in Article 1. This Agreement, Plans, Standard Specifications and Details, Special Provisions, Addenda (if any) and used as the basis for the Guaranteed Maximum Price Proposal; GMP, Performance Bond, Payment Bond, Certificates of Insurance, Construction Documents and Change Orders (if any) are by this reference made a part of this Agreement to the same extent as if set forth herein in full.
- 12.1.2** The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Times for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards.
- 12.1.3** In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence in the order in which they are listed in the definition of Contract Documents in Article 1.
- 12.1.3.1** On the drawings, given dimensions shall take precedence over scaled measurements, and large-scale drawings over small-scale drawings.
- 12.1.3.2** Specifications take precedence over Plans.
- 12.1.3.3** In the event of any inconsistency, conflict, or ambiguity between the Contract Documents and the Design Phase Contract, the Contract Documents take precedence over the Design Phase Contract
- 12.1.4** The headings used in this Agreement, or any other Contract Documents, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.
- 12.1.5** The Contract Documents form the entire agreement between City and CM@Risk and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.
- 12.2** **Amendments.** The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.
- 12.3** **Time is of the Essence.** City and CM@Risk mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.
- 12.4** **Mutual Obligations.** City and CM@Risk commit at all times to cooperate fully with each other and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.
- 12.5** **Cooperation and Further Documentation.** The CM@Risk agrees to provide the City such other duly executed documents as shall be reasonably requested by the City to implement the intent of the Contract Documents.
- 12.6** **Assignment.** Neither CM@Risk nor City shall, without the written consent of the other assign, transfer or sublet any portion of this Agreement or part of the Work or the obligations required by the Contract Documents.
- 12.7** **Successorship.** CM@Risk and City intend that the provisions of the Contract Documents are

binding upon the parties, their employees, agents, heirs, successors and assigns.

- 12.8 Third Party Beneficiary.** Nothing under the Contract Documents shall be construed to give any rights or benefits in the Contract Documents to anyone other than the City and the CM@Risk, and all duties and responsibilities undertaken pursuant to the Contract Documents will be for the sole and exclusive benefit of City and the CM@Risk and not for the benefit of any other party.
- 12.9 Governing Law.** The Agreement and all Contract Documents shall be deemed to be made under and shall be construed in accordance with and governed by the laws of the State of Texas without regard to the conflicts or choice of law provisions thereof. Any action to enforce any provision of this Contract or to obtain any remedy with respect hereto shall be brought and tried in the district courts of Denton County, Texas, and for this purpose, each party hereby expressly and irrevocably consents to the sole and exclusive jurisdiction and venue of such Court with the City consenting only to the extent allowed by statute and otherwise reserving all rights and defenses.
- 12.10 Severability.** If any provision of the Contract Documents or the application thereof to any person or circumstance shall be invalid, illegal, or unenforceable to any extent, the remainder of the Contract Documents and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.
- 12.11 Compliance with Federal Laws.** CM@Risk understands and acknowledges the applicability of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989 to it. The CM@Risk agrees to comply with these laws, as well as any other federal laws that may apply, in performing the Contract Documents and to permit the City to verify such compliance.
- 12.12 Legal Requirements.** CM@Risk shall perform all Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements. It is not the CM@Risk's responsibility to ascertain that the Construction Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if the CM@Risk recognizes that portions of the Construction Documents are at variance therewith, the CM@Risk shall promptly notify the Design Professional and City in writing, describing the apparent variance or deficiency.
- 12.13 Fair Treatment of Workers.** The CM@Risk shall keep fully informed of all Federal and State laws, County and City ordinances, regulations, codes and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any way affect the conduct of the work. They shall at all times observe and comply with all such laws, ordinances, regulations, codes, orders and decrees; this includes, but is not limited to laws and regulations ensuring fair and equal treatment for all employees and against unfair employment practices, including OSHA and the Fair Labor Standards Act (FLSA). The CM@Risk shall protect and indemnify the City and its representatives against any claim or liability arising from or based on the violation of such, whether by himself or his employees.
- 12.14 Independent Contractor.** The CM@Risk is and shall be an independent contractor. Any provisions in the Contract Documents that may appear to give the City the right to direct the CM@Risk as to the details of accomplishing the Work or to exercise a measure of control over the Work means that the CM@Risk shall follow the wishes of the City as to the results of the Work only. These results shall comply with all applicable laws and ordinances.
- 12.15 Survival.** All warranties, representations, and indemnifications by the CM@Risk shall survive the completion or termination of this Agreement.

- 12.16 Covenant Against Contingent Fees.** The CM@Risk warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, and that no member of the City Council, or any employee of the City of Denton has any interest, financially, or otherwise, in the firm. For breach or violation of this warrant, the City of Denton shall have the right to annul this Agreement without liability, or at its discretion to deduct from the Contract Price or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.
- 12.17 No Waiver.** The failure of either party to enforce any of the provisions of the Contract Documents or to require performance of the other party of any of the provisions hereof shall not be construed to be a waiver of such provisions, nor shall it affect the validity of the Contract Documents or any part thereof, or the right of either party to thereafter enforce each and every provision.
- 12.18 Notice.**
- 12.18.1** Unless otherwise provided, any notice, request, instruction, or other document to be given under this Agreement by any party to any other party shall be in writing and shall be delivered in person or by courier or mailed by certified mail, postage prepaid, return receipt requested or by e-mail; provided however, that e-mail shall not be a permissible method of delivery for any notice, request, instruction or other document that requires execution by both parties, and shall be deemed given upon (a) confirmation of receipt of an e-mail transmission, (b) confirmed delivery by hand or standard overnight mail, or (c) upon the expiration of three (3) business days after the day mailed by certified mail, as follows:

to CM@Risk:

McCarthy Building Companies, Inc.  
Attn: David Wallace, P.E., Project Director  
12001 N Central Expy, #400  
Dallas, TX 75243, (972) 991-5500

to City:

Materials Management  
ATTN: Contract 7714; Purchasing Manager  
901b Texas Street  
Denton, Texas 76209  
purchasing@cityofdenton.com

With a Copies to:

City Attorney  
215 E. McKinney Street  
Denton, Texas 76201  
legal@cityofdenton.com

Seth Garcia  
401 N. Elm  
Denton, Texas 76201  
Seth.garcia@cityofdenton.com

or to such other place and with such other copies as either Party may designate as to itself by written notice to the other Party. Rejection, any refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the

notice as of the date of such rejection, refusal, or inability to deliver.

**12.18.2 Notices Related to Payment, Securities-in-lieu, Bonds.** Any notice, request, instruction, or other document to be given under this Agreement by any party to any other party related to payment, securities-in-lieu, bonds, or other instrument securing the performance of this Agreement, including

but not limited to, bid bonds, performance bonds, payment bonds or letters of credit, shall be in writing and shall be delivered in person or by courier or facsimile transmission or mailed by certified mail, postage prepaid, return receipt requested and shall be deemed given upon (a) confirmation of receipt of a facsimile transmission, (b) confirmed delivery by hand or standard overnight mail or (c) upon the expiration of three (3) business days after the day mailed by certified mail, as follows:

to Contractor:

McCarthy Building Companies, Inc.  
Attn: David Wallace, P.E., Project Director  
12001 N Central Expy, #400  
Dallas, TX 75243, (972) 991-5500

to City:

Materials Management  
ATTN: Contract 7714; Purchasing Manager  
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**12.19 Equal Opportunity/Affirmative Action**

**12.19.1** The CM@Risk shall comply with the provisions of this Agreement, and the requirements of state, federal, and local law and regulation, pertaining to discrimination and accepting applications or hiring employees. The CM@Risk shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender, national origin, age, or disability nor otherwise commit an unfair employment practice. The CM@Risk will take affirmative action to ensure that applicants are employed, and employees are dealt with during employment, without regard to their race, color, religion, gender or national origin, age, or

disability. Such action shall include but not be limited to the following: employment, promotion, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship as well as all other labor organizations furnishing skilled, unskilled, and union labor, or who may perform any such labor or

services in connection with this Agreement. The CM@Risk further agrees that this clause will be incorporated in all subcontracts, job-consultant contracts of this Contract entered into by the CM@Risk.

**12.19.2** The City extends to each individual, firm, vendor, supplier, contractor, and Subcontractor an equal economic opportunity to compete for City business and strongly encourages voluntary utilization of Disadvantaged and/or Minority-owned or Woman-owned business to reflect both the industry and community ethnic composition.

**12.19.3** The following two paragraphs apply to the CM@Risk named herein and shall appear in all contracts between the CM@Risk and any and all Subcontractors who are employed on this Project. The CM@Risk further agrees that the two paragraphs will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled, and union labor, or who may perform any such labor or services in connection with this contract.

“Any Party (Subcontractor), in performing under this contract, shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender, national origin, age or disability nor otherwise commit an unfair employment practice.

The Party (Subcontractor) will take affirmative action to ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, gender or national origin, age or disability. Such action shall include, but not be limited to the following: employment, promotion, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training; including apprenticeship.”

## **12.20 Confidentiality of Plans & Specifications**

**12.20.1** Any plans or specifications you receive regarding this Project are for official use only. You may not share them with others except as required to fulfill the obligations of your Contract with the City.

**12.20.2** All Record Documents, Shop Drawings and other plans or drawings prepared or submitted by the CM@Risk shall include the following language: “These plans are for official use only and may not be shared with others except as required to fulfill the obligations of your contract with the City of Denton”.

## **12.21 Hazardous Materials**

**12.21.1** Unless included in the Work, if the CM@Risk encounters onsite material which they reasonably believe to contain asbestos, polychlorinated biphenyl (PCB), or other hazardous substances or materials regulated by Public Health Laws, they shall immediately stop work and report the condition to the City.

**12.21.2** If the material is found to contain asbestos, PCB or other hazardous substances or materials regulated by Public Health Laws, the CM@Risk shall not resume work in the affected area until the material has been abated or rendered harmless. The CM@Risk and the City may agree, in writing, to continue work in non-affected areas onsite.

**12.21.3** An extension of Contract Time may be granted in accordance with Article 6.

**12.21.4** The CM@Risk will comply with all applicable laws/ordinances and regulations and take all appropriate health and safety precautions upon discovery.

- 12.22 Traffic Control.** CM@Risk will comply with all provisions of the then current Manual on Uniform Traffic Control Devices and any other traffic control provisions as may be provided in the technical specifications.
- 12.23 Immigration Nationality Act.** CM@Risk shall verify the identity and employment eligibility of its employees who perform work under this Agreement, including completing the Employment Eligibility Verification Form (I-9). Upon request by City, CM@Risk shall provide City with copies of all I-9 forms and supporting eligibility documentation for each CM@Risk employee who performs work under this Agreement. CM@Risk shall adhere to all federal and state laws as well as establish appropriate procedures and controls so that no services will be performed by any CM@Risk employee who is not legally eligible to perform such services. **CM@RISK SHALL INDEMNIFY CITY AND HOLD CITY HARMLESS FROM ANY PENALTIES, LIABILITIES, OR LOSSES DUE TO VIOLATIONS OF THIS PARAGRAPH BY CM@Risk's EMPLOYEES.** City, upon written notice to CM@Risk, shall have the right to immediately terminate this Agreement for violations of this provision by CM@Risk.
- 12.24 Prohibition on Contracts with Companies Boycotting Israel.** CM@Risk acknowledges that in accordance with Chapter 2271 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The terms "boycott Israel" and "company" shall have the meanings ascribed to those terms in Section 808.001 of the Texas Government Code. By signing this agreement, CM@Risk certifies that CM@Risk's signature provides written verification to the City that CM@Risk: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the agreement. Failure to meet or maintain the requirements under this provision will be considered a material breach.
- 12.25 Prohibition on Contracts with Companies Boycotting Certain Energy Companies.** CM@Risk acknowledges that in accordance with Chapter 2274 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains written verification from the company that it (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract. The terms "boycott energy company" and "company" shall have the meanings ascribed to those terms in Section 809.001 of the Texas Government Code. By signing this agreement, CM@Risk certifies that CM@Risk's signature provides written verification to the City that CM@Risk: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the agreement. Failure to meet or maintain the requirements under this provision will be considered a material breach.
- 12.26 Prohibition on Contracts with Companies Boycotting Certain Firearm Entities and Firearm Trade Associations.** CM@Risk acknowledges that in accordance with Chapter 2274 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains written verification from the company that it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. The terms "discriminate against a firearm entity or firearm trade association," "firearm entity" and "firearm trade association" shall have the meanings ascribed to those terms in Chapter 2274 of the Texas Government Code. By signing this agreement, CM@Risk certifies that CM@Risk's signature provides written verification to the City that CM@Risk: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. Failure to meet or maintain the requirements under this provision will be considered a material breach.
- 12.27 Prohibition on Contracts with Companies Doing Business with Iran, Sudan, or a Foreign Terrorist Organization.** Sections 2252 and 2270 of the Texas Government Code restricts CITY from contracting with companies that do business with Iran, Sudan, or a foreign terrorist

organization. By signing this agreement, CM@Risk certifies that CM@Risk's signature provides written verification to the City that CM@Risk, pursuant to Chapters 2252 and 2270, is not ineligible to enter into this agreement and will not become ineligible to receive payments under this agreement by doing business with Iran, Sudan, or a foreign terrorist organization. Failure to meet or maintain the requirements under this provision will be considered a material breach.

- 12.28 Termination Right for Contracts with Companies Doing Business with Certain Foreign-Owned Companies.** The City of Denton may terminate this Contract immediately without any further liability if the City of Denton determines, in its sole judgment, that this Contract meets the requirements under Chapter 2274, and Contractor is, or will be in the future, (i) owned by or the majority of stock or other ownership interest of the company is held or controlled by individuals who are citizens of China, Iran, North Korea, Russia, or other designated country (ii) directly controlled by the Government of China, Iran, North Korea, Russia, or other designated country, or (iii) is headquartered in China, Iran, North Korea, Russia, or other designated country.

This Contract will be in full force and effect only when it has been approved and executed by the duly authorized City officials.

**IN WITNESS WHEREOF**, the parties hereto have executed this Contract on 11/15/2022.

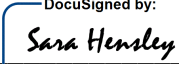
**CM@RISK**

MCCARTHY BUILDING COMPANIES, INC.


By:  Nathan Kowallis  
CB42275035AC4F3...

Title: Sr. Vice President

**CITY OF DENTON, TEXAS**

BY:  Sara Hensley  
52061E708B10283  
SARA HENSLEY  
CITY MANAGER


THIS AGREEMENT HAS BEEN  
BOTH REVIEWED AND APPROVED  
as to financial and operational obligations  
and business terms.

 Rebecca Diviney  
109CF7BCE1B0740F...  
SIGNATURE PRINTED NAME

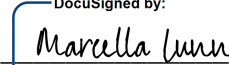
Director of Capital Projects/City Engineer  
TITLE

Capital Projects Engineering  
DEPARTMENT

ATTEST:  
ROSA RIOS, CITY SECRETARY

BY:  Rosa Rios  
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APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY:  Marcella Lunn  
4B070831B4AA438...



# EXHIBIT A: SITE DESCRIPTION

The City of Denton's 2019 Street Reconstruction Bond Southeast Denton Neighborhood Area B project includes the work as described as in Exhibit B-1, on the following streets:

- Austin
- Avenue S
- Bailey St.
- Bradshaw St.
- Collins
- Crawford
- E. Highland
- W. Highland
- Industrial
- Maddox
- Maple
- Mulberry
- Myrtle
- Pierce
- Prairie
- Smith
- E. Sycamore
- Wainwright



# CITY OF DENTON

Southeast Denton Neighborhood  
Area B (SED-B)

Exhibit B - Approved GMP

SEPTEMBER 27, 2022

SUBMITTED BY McCARTHY BUILDING COMPANIES, INC.



12001 N. Central Expressway, Suite 400, Dallas, Texas 75243  
P 972-991-5500 | F 972-991-9249  
mccarthy.com

September 27, 2022

City of Denton  
Purchasing Manager – File 7714  
901B Texas Street  
Denton, TX 76201

**RE: SED-B-GMP Package**

Dear Mr. Garcia,

McCarthy Building Companies, Inc. is pleased to submit the Guaranteed Maximum Price (GMP) for the SED-B Project dated September 27, 2022. Our price proposal is inclusive of the work included within the following documents as well as the subsequent clarifications contained within this proposal:

- » McCarthy Front End Documents Advertised 8/15/2022
- » Addendum #1, #2, and #3
- » Construction Plans for SED-B Improvements – 90% Submittal by Kimley Horn
- » 90% Specifications – Provided by Kimley Horn on 9/2/2022
- » City of Denton Standard Construction Specifications – Effective January 1, 2022
- » Post Bid Subcontractor Clarifications

McCarthy's total not to exceed proposal for GMP is \$21,014,409.00 This price proposal is predicated upon utilization of all subcontractors and suppliers as recommended by McCarthy, including the use of McCarthy as a self-perform subcontractor on indicated work packages, for the lump sum pricing as indicated in the attached GMP Recap Sheet.

Attached for your review is a GMP recap sheet, with a detailed breakdown of general conditions, project clarifications concerning our pricing proposal, bid evaluation ratings, an updated construction management plan, constructability and biddability review comments, value engineering comments, contingency and escalation plan, and project schedule.

Should you have any questions regarding this proposal, please do not hesitate to contact us. We look forward to the successful completion of this important project together.

Sincerely,

A handwritten signature in black ink, reading "Colleen Martindale".

Colleen Martindale  
Senior Preconstruction Director  
McCarthy Building Companies, Inc.

Cc:

Nate Kowalis, Senior Vice President of Operations  
Jeromy Shaw, Vice President, Preconstruction  
Matt Schrodell, Vice President, Operations

Dave Wallace, Project Director  
Brent Anderson, FNI  
Colton Hermes, Kimley-Horn

# MANAGEMENT PLAN

The following Construction Management Plan contains insightful information regarding the construction phase of the project. This document will be used as a tool to lay the groundwork for preconstruction and construction activities. It will also be updated and expounded upon as adjustments and refinements to the construction process take place.

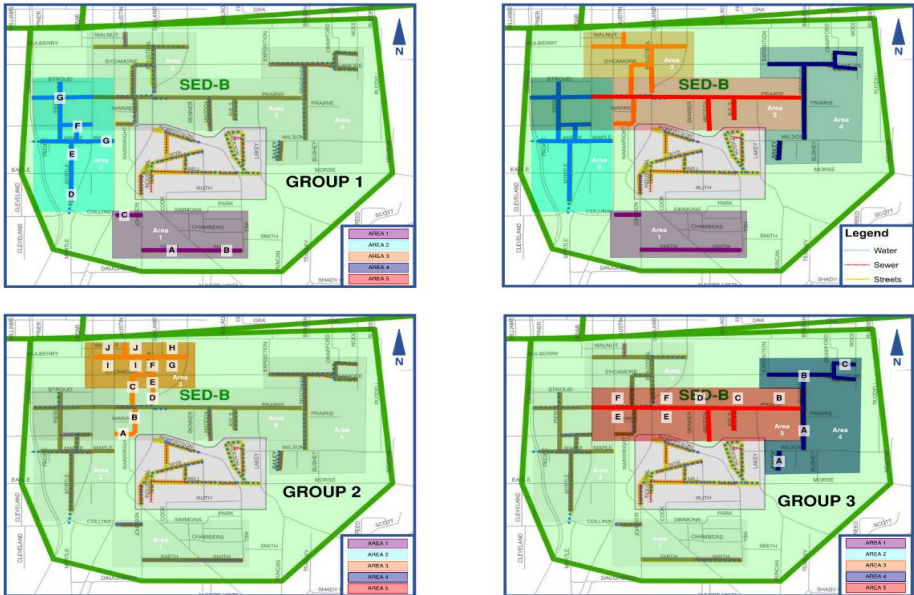
## A. PROJECT MILESTONES AND PROJECT SCHEDULE

The project schedule has been developed through a series of meetings involving key stakeholders to determine target dates for the design and construction phases of the project. The design phase schedule is centered around the major milestones of 30%, 60%, 90%, and IFC plans and specifications which drive the associated activities that make up the Integrated Design Phase Schedule. This schedule takes into consideration the time required to complete reviews and approvals at each milestone. The team determined that the best option to achieve the GMP was to advertise the project for subcontract award using the available 60% documents, and then to issue the 90% documents via addendum. This allowed the team to maintain target dates for construction and help to eliminate risk carried in subcontractor's numbers.

The construction schedule has been incorporated with the design schedule for a fully integrated and dynamic representation of the project duration that accurately shows the impact of activities. The overall sequence of construction includes three groups of crews that progress throughout the SED-B neighborhood starting with utility installation, followed by subgrade improvements, flatwork, and asphalt pavement. There is a WBS per street phase, as shown in the Construction Drawings, which provides details on the work needed. Efforts have been made to showcase the intent to finish all utility work on a particular street prior to moving to the next street to minimize impact to residents, businesses, and the traveling public. Roadwork will follow in a similar fashion, with demolition and pavement crews working in a linear fashion as they move to each street. As the work on a street is completed, a punch list of outstanding items will be generated, and the street will be closed out. A phasing plan is shown below.

Our proposed GMP schedule is based upon 90% plans and feedback from recommended subcontractors. The construction phase baseline schedule will be finalized after the 100% plans are completed and final feedback from selected Work Category Subcontractors is incorporated. The team continues to work with the City of Denton to assess franchise utility impacts related to street sequencing, specifically for ATMOS Energy. At this time, the team anticipates that Group 1 will begin in Phase 1, allotting time (6-9 months as indicated) for ATMOS to complete their scope prior to reaching Myrtle St. This will give ATMOS time to install and pressurize their lines prior to the utility crews mobilizing into this zone. If necessary, we will shift Group 1 focus to other areas of the project while waiting on ATMOS, and come back at a later date with multiple crews to finish the areas between Elm and Carroll. We may also move forward with underground utility work in some areas and then reopen the roadway until ATMOS can finish their work. This will be dependent on conflicts, which will be known once the ATMOS design work is completed.

### DENTON SED-B 90% MILESTONE- WORK PROGRESSION MAPS





Major construction milestone dates are as follows (please reference the full schedule provided later in this document):

### **MILESTONE DATES**

- » September 27, 2022 – McCarthy Submits GMP to City of Denton
- » November 29, 2022 – NTP Expected
- » April 1, 2024 – Anticipated Substantial Completion
- » April 26, 2024 – Anticipated Final Completion

Performance Period: 489 Calendar Days

### **B. INVESTIGATIONS, IF ANY, TO BE UNDERTAKEN TO ASCERTAIN SUBSURFACE CONDITIONS AND PHYSICAL CONDITIONS OF EXISTING SURFACE AND SUBSURFACE FACILITIES AND UNDERGROUND UTILITIES**

During preconstruction, three site walks were conducted to ascertain specific information on every block of every street included in this project. In addition to this, subsurface mapping has been conducted to verify the location of existing utilities. This, along with other engineer and owner supplied information, has been considered for the development of the plans associated with construction tasks.

Additionally, McCarthy Mapping performed quality level A (QLA) services to determine the three-dimensional location of utilities at the intersections below. A conflict analysis report identified three communication and one natural gas discrepancy. This report was provided along with a plan sheet of the utilities to capture these developments.

- Carroll Blvd. & Maple St.
- Dallas Dr. & Smith St.
- E. Collins St.
- U.S. Route 377
- W. Collins St. & Myrtle St.

Considering that there is still uncertainty about the exact conditions of subsurface environments, once construction begins, exploratory tasks will be conducted prior to starting work on each street. One example that arose during the constructability reviews was at Maddox at STA. 1+60 where two trees noted for removal overlap an underground communication line. Potholing for further verification of existing lines, confirmation of tie-in locations, etc. will be performed at this and other noted areas. Any new information found will be documented accordingly for record-keeping purposes.

### **C. ALTERNATE STRATEGIES FOR FAST-TRACKING AND/OR PHASING THE CONSTRUCTION**

Building a schedule and sequencing plan that includes input from the community, stakeholders, and key subcontractors will provide a phasing plan that works to the best interest of these parties, while also allowing construction to progress in a strategic manner. The alternatives below represent additional options for fast-tracking the construction progress.



Early GMP Considerations: In order to save time, the team proposed an early project GMP based on the 60% documents. A major concern was extra layers of contingency carried by major subcontractors due to incomplete plans, in addition to market volatility. The project team weighed all options and elected to engage subcontractors and advertise the project with 60% documents and updated the solicitation with 90% documents when they became available, thus maintaining a schedule close to the original timeline, and allowing subcontractors to utilize nearly complete project documents.

Reduction of Subgrade Depth: The use of a thinner layer of flex base would allow for faster placement of the material.

Limited Notice to Proceed: Given the volatility of the market and increase in lead times for available materials, the use of a Limited Notice to Proceed can expedite the procurement process by allowing subcontractors to begin submittals and material procurement while the project awaits City Council approval.

#### **D. THE NUMBER OF SEPARATE SUBAGREEMENTS TO BE AWARDED TO SUBCONTRACTORS AND SUPPLIERS FOR THE PROJECT CONSTRUCTION**

The number of separate Subagreements is anticipated to be as follows. This is subject to change based on the availability of companies to handle more than one scope and/or work that is self-performed.

Work Category 1: Asphalt Paving

Work Category 2: Demolition, Earthwork and Subgrade

Work Category 3: Concrete Flatwork

Work Category 4: Traffic Control

Work Category 5: Underground Utilities

Please note that the following small scopes of work will be procured directly by the CMAR. They have been procured competitively, but did not require the paperwork of a major work category bidder. More backup on these scopes is available upon request.

1. Electrical
2. Landscaping/SWPP
3. Striping/Signage
4. SWPPP
5. Fencing/Guardrail
6. Removeable Barricades

#### **E. PERMITTING STRATEGY**

Permits anticipated for this project include the following:

1. City of Denton
  - Clear and Grade
  - Tree Removal
  - ESA Compliance Review
2. Railroad ROW
3. TCEQ
  - SWPPP
4. TxDOT ROW

#### **F. SAFETY AND TRAINING PROGRAMS**

An extensive and in-depth site-specific safety plan will be developed for this project. In addition to housing general information about safety expectations and procedures, an appendix containing applicable forms and permits will be included. The Site Specific Safety Plan A3, that provides a one page summary of key information related to the project, such as safety goals, anticipated challenges, and solutions, contact information for key personnel, site rules, and a site map. Supplemental plans for major and high-risk operations will be created as well. The Site-Specific Safety Plan A3 is provided with this submittal.

In accordance with McCarthy's Genuine Safety Culture, compliance with established safety requirements will be monitored through reporting mechanisms that include the following:

1. Weekly Toolbox Talk Meetings – Weekly
2. Project Health & Safety Reports – Monthly
3. Assured Grounding Program Log – Quarterly
4. OSHA 300 & 300A Logs – Monthly & Annually
5. Subcontractor Incident Rate Calculation Sheet (TPIR) – Monthly
6. Competent Person Form – Monthly
7. Project Director Safety Review – Monthly
8. Task Hazard Analysis (THA) Staff Participation Tracking – Monthly
9. Fire Extinguisher Monthly Inspection – Monthly

Training of all personnel on site will be done through GoContractor for initial orientation purposes. Daily safety meetings and weekly toolbox talks will take place in the CMAR yard. Additional trainings for relevant topics will be conducted based on the needs of the project. The following includes examples of the types of safety and training topics

that will be conducted for the project:

1. Work near high voltage lines
2. Confined space entry
3. Excavation protection
4. Air pollution awareness
5. Work near railroads
6. Dust control
7. Public safety in work zones
8. Flagger and Spotter Training

## G. CONSTRUCTION QUALITY CONTROL

The quality of work installed will be a key factor in the ability to progress from one street to the next. To this aim, a site-specific quality control plan that incorporates the specifications and McCarthy's internal requirements will be created. Some of the key aspects of work that will be focused on in the quality control program include, but are not limited to, the following. An inspection and test plan will be generated to detail the specifics associated with each of these. The plan will include information on the associated test standard, description of the test, reference document, as well as a responsibility matrix identifying who will inspect, monitor, or review and approve each test. Advance notice instructions for each test will also be recorded on this log.

1. Unclassified Excavation
2. Sewer and Manhole Testing
3. Liners for Sanitary Sewer Structures
4. Boring
5. Casing Spacers
6. Fiberglass/Precast Manholes & Linings
7. Pipe Fittings
8. PVC Sewer and Water Pipe
9. HDPE Pipe
10. Water Services
11. Gate Valves
12. Connection to Existing Water Mains
13. Fire Hydrants

A Site-Specific Quality Plan (SSQP) A3 document has been generated to provide important quality-related information for all involved and is included with this submittal. This living document will monitor the progress of anticipated quality challenges, work scope reviews, and pre-installation and first installation meetings. Schedules of key tests will be incorporated as well. An overview of quality activities, site specific best practices, and items that exemplify a client focus shall also be included on the SSQP.

## H. COMMISSIONING PROGRAM

Commissioning of the utility system as quickly as possible will assist in the successful completion of work to the point of close out. A thorough understanding of what is needed in order to obtain a passing record for each street will form the basis of the commissioning program. The following items will be provided to verify compliance with associated activities and scopes of work.

Documentation

1. Accessible Pedestrian Signal

Test and Evaluation Reports

1. Embankment
2. Flexible Base Course
3. Asphalt Paving
4. Concrete Paving
5. Curbs, Gutters, Sidewalks, and Driveways
6. Cleaning and Acceptance Testing of Water and Sewer Force Mains
7. Sewer and Manhole Testing
8. Liners for Sanitary Sewer Structures
9. Utility Trench Excavation, Embedment, and Backfill

TDLR Inspection

1. Curbs, Gutters, Sidewalks, and Driveways

Maintenance Recommendations

1. Plantings

Warranty Documentation

1. Plantings

Report of Utility

1. Location of Existing Utilities

## I. COST ESTIMATE AND BASIS OF THE MODEL

The cost estimate was created through an analysis of the 90% plans and specifications as provided by Kimley Horn. Considerations for risks, unforeseen conditions, and market volatility were factored into the overall pricing. A detailed cost breakdown and additional explanations of the basis of the model can be found later in this document.

## J. PROJECT TEAM MEMBER'S RESPONSIBILITIES AND ROLES

Please see the following page for responsibilities and roles for the City of Denton SED-B Project.



ACTIVITY		RESPONSIBILITY		
DESIGN PHASE		CITY ENGINEERING	ENGINEER	CMAR
MANAGEMENT				
Project Management	Co-Lead	Co-Lead	Co-Lead	
Partnering (Facilitator as Lead)	Participate	Participate	Participate	
Community Engagement	Lead	Co-Lead	Co-Lead	
Communication/Management - Systems & Procedures	Co-Lead	Co-Lead	Assist	
Bi-Weekly Project Meetings	Assist	Lead	Assist	
Technical Workshops	Assist	Lead	Assist	
Action Items	Co-Lead	Lead	Co-Lead	
Issues Resolution	Co-Lead	Co-Lead	Co-Lead	
Change Authorization	Lead	Assist	Assist	
Schedule Model	Review	Assist	Lead	
Cost Model	Review	Assist	Lead	
PERMITTING				
Regulatory Approval/Permit Strategy	Co-Lead	Lead	Review	
SWPPP	Co-Lead	Assist	Lead	
SUPPORT SERVICES				
Survey	Review	Lead	Assist	
Geotechnical	Review	Lead	Assist	
Verify Existing Conditions	Review	Lead	Co-Lead	
Potholing	Review	Lead	Co-Lead	
GIS System Integration	Co-Lead	Lead	Assist	
DESIGN DEVELOPMENT ACTIVITIES				
CADD Standards	Assist	Lead		
Structural Design Criteria	Review	Lead		
Utility Coordination (Identification & Conflict Management)	Assist	Co-Lead	Co-Lead	
Code Review/Summary	Review	Lead	Assist	
Materials of Construction Selection	Review	Co-Lead	Co-Lead	
Preliminary Design	Review	Lead	Review	
Detail Design Documents	Review	Lead	Review	
Design Document Review	Review	Lead	Review	
Constructibility Reviews	Participate	Assist	Lead	
Bidability Reviews	Participate	Co-Lead	Lead	
Quality Control Reviews	Review	Lead	Assist	
Technical Specs	Review	Lead	Review	
Bid Docs (0-1)	Review	Lead	Co-Lead	
CONSTRUCTION PLANNING				
Construction Management Plan	Review	Assist	Lead	
Traffic Management and Community Engagement	Review	Co-Lead	Lead	
Major Supplier Selection Plan	Review	Assist	Lead	
GMP Proposals	Review	Assist	Lead	
Bid Phase	Assist	Assist	Lead	
Insurance & Bonding	Review	Review	Lead	





# DENTON SED-B IMPROVEMENTS-SSSP

## Emergency Phone Numbers

Project Director	David Wallace	(214) 412-8780
Project Manager	Riley Seahorn	(765) 719-0682
Superintendent	Erik Colburn	(702) 985-6093
Safety Manager	Sean Blakemore	(214) 430-7418
CMAR Office	Debra Daniels	(214) 714-5300

## PPE By Work Activity

**Minimum PPE Required:**  
 Hard Hat, Safety Glasses, Hi-Viz Shirt/Vest,  
 Work Boots and Cut Level 3 Gloves  
**Task specific PPE listed below**

Reflective Shirt/Vest	Night or Heavy Machinery Work
Face Shield	Cutting/Chipping/Grinding
Fall Protection Equipment	All lifts & unprotected work over 6'
Metatarsal Guards	Soil Compaction/Jack Hammer
Snake Chaps/Boots	Clearing Operations
Rubber Boots/Gloves	Concrete Placement

\*\*\*These are the minimum requirements based on the typical hazards associated with the task. If unique conditions arise, which create new hazards, additional/more stringent PPE may be required.\*\*\*

## Goals

- Create and Sustain a Genuine Safety Culture.
- Full Implementation of Spotters and Flaggers
- Keep It Clean, Keep It Safe Project.
- Proactive Incident Reporting.
- Equipment Training - Safety, Operation and Maintenance
- Full understanding of TMUTCD & Critical Self-Perform Ops

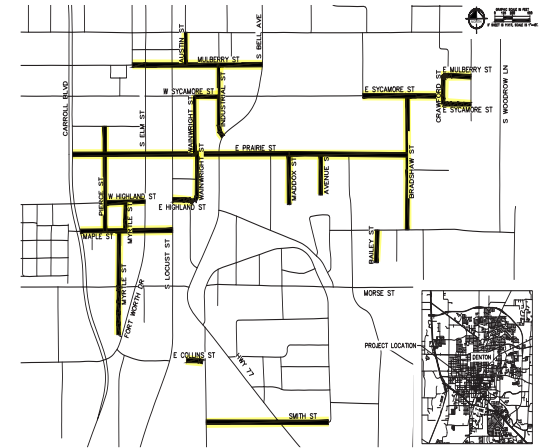


# TAKE PRIDE IN SAFETY

## Safety Challenges

Challenges	Solution	Champion
Human Element/Onboarding	The team is the first line of defense in protecting our crews and the public. Employees/Subcontractors will be required to attend an onboarding orientation prior to performing work on site. This training will include a general overview of the safety policy as well as a site specific training portion. THA's will be addressed and training will be conducted on the THA process. Stop work authority will be explained and that everyone has it.	Entire Site
Heavy Equipment	Daily equipment inspections will be utilized. Maintain proper communication with the ground crew. Spotters will be used during high traffic activities. Equipment must be properly sized for the task at hand. Equipment must have fully functional safety equipment to be operational (seatbelt, fire extinguisher, ROPS, back up alarm, etc.). Operators must qualified on the equipment they are operating.	Superintendents
Housekeeping	Keep it Clean, Keep it Safe program will be utilized throughout the duration of the project. All material will be staged on dunnage. Trash receptacles will be located throughout the job site and emptied as necessary. Just in time deliveries will be utilized to reduce the amount of material on the job site. Housekeeping will be required throughout the day, not just at the end of the workday. Housekeeping will be listed on all THA and be a daily expectation of everyone on the project.	Crew Leads
Motorized Vehicles & Public Traffic	Work area to be evaluated for exposure to traveling public via pedestrian or vehicular shall be discussed on a daily basis. Verification of correct traffic control measures are installed around the work area. Establish communication procedures for reporting damages/hazard points will be discussed in toolbox talks. Crews to verify materials, walk-ways, equipment swing radius to not encroach traveling public and ensure they are protected and practice 20-20-20 for changes in the work area.	Entire Site
Utilities	811 will be contacted for a dig ticket prior to any excavations taking place on the job site. Underground lines will be potholed and located prior to excavations taking place in the area. Overhead lines will be marked with signs indicating the location of the line and clearance if applicable. Utility providers and contact information will be obtained and kept on site in case of emergency. Contractors to provide a dedicated spotter when working around overhead lines.	Superintendent
Material Handling (combine with Logistics)	Mechanical material handling will be the preferred method of material handling. Equipment must be rated for the load it is lifting. All rigging must be in proper working condition and rated for the load. If manual material handling is required the limit per person is 50 pounds or 10 feet in length. Proper lifting procedures should be followed (straight back, bend at knees, and load close to body). Proper attention should be taken when working on the retaining walls - forming, placing and finishing.	Superintendents
Material Logistics	Generate site logistics plans prior to receiving materials to ensure that the site related vehicular movement is safe and allows for a smooth operation. Communicate said plan to the material delivery companies to verify understanding obtain buy-in. During operation, assign flaggers as needed to manage the traffic in the site. Evaluate plan effectiveness continuously and make changes depending on task and area specific requirements.	Superintendents

## Site Plan



## Site Logistics

- Material deliveries, access routes and proactive communication.
- Track any items from the report in Procore and follow up to ensure it is being completed.
- Report any findings from the walks to the Daily Huddle as needed to inform those onsite.
- Designate material and machinery layout areas for self-perform and trade partners

## Subcontractor Requirements

- All Subcontractors will be given a copy of the McCarthy Site Specific Safety Plan and is expected to comply with the policies and procedures outlined in the plan.
- Subcontractor buy-in from the top to ensure all employees go home safe everyday.
- All Subcontractors will be required to submit their own Site Specific Safety Plan to supplement the overall site plan.



Kimley»Horn

# DENTON SED-B IMPROVEMENTS-SSQP

**“Quality without Question”** must be an integral part of our culture and second nature to each employee. The primary focus of the activities detailed in McCarthy’s quality policy is to properly plan, execute and verify the work being put in place to avoid rework and to achieve customer satisfaction.

This is accomplished through:



## Site Specific Verification



- Underground Utility Verification
- Sub-Grade Compaction
- Verify Lifts and Compaction Requirements
- Flexible Base Compaction
- Verify Lifts and Compaction Requirements
- Asphalt Density Testing
- Concrete Testing and Placement
- Pavement
- Sidewalks
- Stamped/Colored Concrete
- Project Closeout Checklist
- Punch Verification per Street
- 23 Month Warranty Walk Checklist

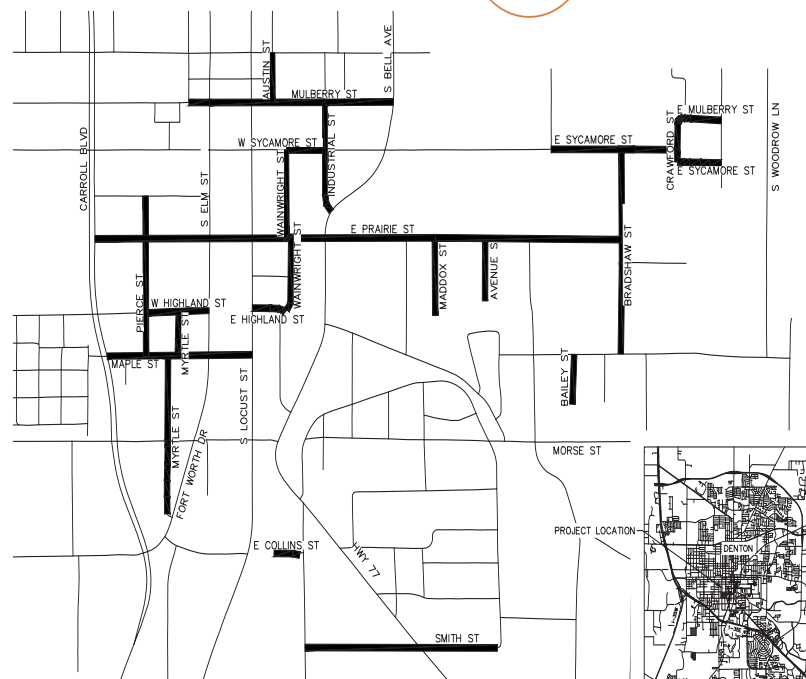
## McCarthy Processes

- Housekeeping Verifications
- SWPPP Inspections
- Pour Card Program
- Pre-Installation Meetings
- 1st Installation Meetings
- Delivery Verifications
- Inspection Coordination
- Closeout Checklist/Schedule
- Testing Verification Log



## QUALITY INITIATIVES & RESPONSIBILITIES

Project Engineer	<ul style="list-style-type: none"> <li>- Procore Coordination</li> <li>- Pre-Installation Coordination</li> <li>- Third Party Coordination Testing</li> <li>- On-Site Quality Control Backup</li> </ul>
 Erik Colburn Superintendent	<ul style="list-style-type: none"> <li>- Ongoing Verification and Training</li> <li>- Work Plan Management</li> <li>- On-Site Quality Control</li> <li>- Subcontractor Coordination</li> <li>- High-Risk Planning</li> <li>- Proposed Change Tracking</li> <li>- Closeout &amp; Warranty Management</li> </ul>
 Andrew Cunningham Division Quality Director	<ul style="list-style-type: none"> <li>- Quality Incident Management</li> <li>- Division Quality Initiative Implementation</li> <li>- Project Quality Control Auditing</li> </ul>



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Online knowledgebase for true builders.





Kimley»Horn

# DENTON SED-B IMPROVEMENTS-SSQP

## PROJECT QUALITY CHALLENGES - SHORT TERM

### Protection of Adjacent Properties

Verify that all of the existing structures - roads, sidewalks, storm drains, and any other applicable - have all been thoroughly inspected prior to executing the work. Perform existing conditions photos and video and submit to owner. Make sure that the existing adjacent property is not damaged during construction. Communicate with supervisor in case damage occurs.

### Utility Strikes

Investigations to be performed before all excavations. Utility locates, hydro-excavation, and probing/hand-digging will be used to physically locate all utilities. A 3D CAD model will be developed and maintained by McCarthy throughout the Project to ensure no existing utilities are impacted by construction activities. Maintain an 811 permit and upkeep the locates markings

### Maintenance of Traffic Control

Proper signage and barricades will be used to notify all motorists of traffic changes and promote an unhindered flow around the Project site. Street use permits will be maintained for all closures. Ensure the traffic control is being installed as required per the phasing plans, MUTCD, and the standard details. Perform daily inspections and correct any issues immediately.

### SWPPP & Rain Events

Maintain all run-off protection measures for the life of the Project, adjust the SWPPP as needs change. Daily roadway sweeping, inlet protectors, silt-fence, construction entrances, berms, and erosion logs will be used to prevent water & soil from leaving the site.

### Temporary Bypassing/Service

Maintain all utilities for local residence and business to the best of our abilities. Allow ample notice at the time of tie-ins if utilities will be out of service and/or bypass pumping as necessary.

### Demolition & Excavation

Understand requirements along with the limits of excavation & demolition. Notify the public of upcoming work, contact testing laboratory, & prepare a representative sample for backfilling compliance. Once analytical reports are obtained, verify that the excavations and embankments are being performed per the specifications. For deep excavations, appropriate benching or shoring should be designed and installed. For demolition provide means to reduce noise and excessive vibration to the local residence.

### Submittal Review

Build a submittal log and prioritize items per the schedule, specially long lead materials, i.e. precast box culverts and valves. Staff will assist PE's with submittals and hold weekly update meetings.



**McCarthy** KnowledgeBuilder™  
Online knowledgebase for true builders.



## PROJECT QUALITY CHALLENGES - LONG TERM

### Workplan Implementation

Entire staff to assist with all critical workplan drafting and review. Once deemed acceptable, all workers to attend a workplan review meeting to provide input and modify as necessary. Ensure buy-in from field team to secure accountability. Review workplans with subcontractors and ensure that they are being followed. Update the plan as conditions change.

### Subgrade Stabilization

At mobilization, potholes shall be dug in multiple locations for geotech samples to generate proper representative proctors for the project. All embankment areas will be graded and compacted per the contract documents and verified via a third party testing consultant. Prior to installing any flexible base material, verify that the subgrade elevations are spot-on, the densities and proof-roll have passed. Sub-ballast to be placed in lifts and compacted to its specified maximum dry density and moisture content %.

### Asphalt Placement

Distribute mix design location flash-cards to all staff / foremen. Pre-placement inspection card verification should be performed at each placement. Ensure that the asphalt is placed in lifts per the plans. Obtain densities and verify mix design is per specifications.

### Concrete Placement

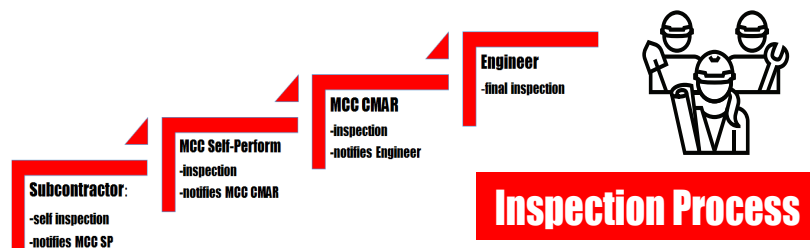
Distribute mix design location flash-cards to all staff / foremen. Pre-placement pour card verification should be performed at each pour. Ensure that the concrete is allowed to cure properly before applying any construction or traffic loads. Obtain 3 day early breaks to have information handy. Verify color, stamp, release agent and mix design for the colored concrete areas.

### Underground Utilities

Install Water Lines and Sewer Lines per the City specifications. Utilize appropriate trench shoring methods during excavations. Perform the required testing and conditioning for the tie-in. During winters months verify no lines are exposed in the trenches that could result in a freeze or busted pipe.

### As-Built Conformance & Layout

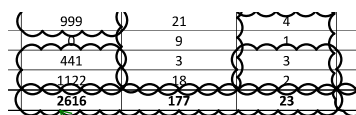
Record drawings will be stored and continually updated through McCarthy's project management software, Procore. As-Built conditions will be captured as installed utilizing current surveying instruments. An As-Built CAD model will be turned over as part of the closeout documentation. Perform site calibration with level-loop or other redundant check to ensure proper calibration.



[illegible]

# CONSTRUCTABILITY/BIDDABILITY REVIEW

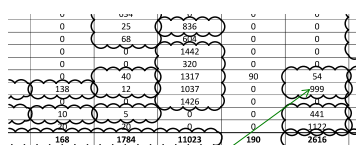
6 (6)



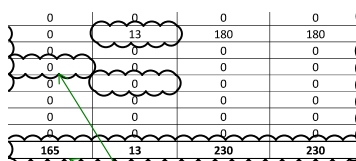
Takeoff - 2274 LF

**Subject:** RFI/CONSTRUCTABILITY**Page Label:** [6] 7 BRADSHAW ST & COLLINS ST**Page Index:** 6**Author:** STamrakar**Date:** 9/12/2022 4:04:26 PM

Takeoff - 2274 LF

Takeoff for 12" WL @  
Smith = 699 LF**Subject:** RFI/CONSTRUCTABILITY**Page Label:** [6] 7 BRADSHAW ST & COLLINS ST**Page Index:** 6**Author:** STamrakar**Date:** 9/12/2022 4:05:24 PMTakeoff for 12" WL @ Smith =  
699 LF

CONTROL ITEMS			SUM
3125	3125	9999	ITEM NUMBER

Takeoff = 245 SY, 80 SY  
in Prairie is missing**Subject:** RFI/CONSTRUCTABILITY**Page Label:** [6] 7 BRADSHAW ST & COLLINS ST**Page Index:** 6**Author:** STamrakar**Date:** 9/12/2022 4:14:25 PMTakeoff = 245 SY, 80 SY in  
Prairie is missing

SUMMARY OF UTILITY ADJUSTMENTS			
		3301	3301



Takeoff - 27 EA

**Subject:** RFI/CONSTRUCTABILITY**Page Label:** [6] 7 BRADSHAW ST & COLLINS ST**Page Index:** 6**Author:** STamrakar**Date:** 9/14/2022 9:50:03 AM

Takeoff - 27 EA

Maple St	0
E Mulberry St	0
W Mulberry St	477
Myrtle St	0
Smith St	180
E Sycamore St A (east)	0
E Sycamore St B (west)	0
Wainwright St	0
<b>PROJECT TOTALS</b>	<b>657</b>

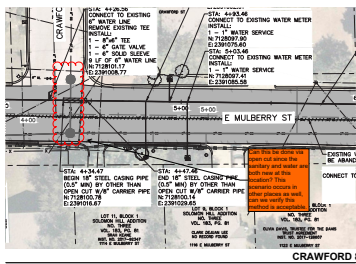
This is not shown in  
the Mulberry SS Plan,  
please clarify**Subject:** RFI/CONSTRUCTABILITY**Page Label:** [6] 7 BRADSHAW ST & COLLINS ST**Page Index:** 6**Author:** STamrakar**Date:** 9/14/2022 11:21:05 AMThis is not shown in the Mulberry  
SS Plan, please clarify



Specifications for concrete state that finishes will be called out in the plan. Please confirm that pavement and sidewalks will be broom finish and curbs and gutters will be trowel finish.

# CONSTRUCTABILITY/BIDDABILITY REVIEW

321 (1)



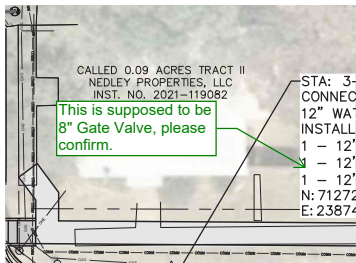
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**Page Label:** [56] 57 WAINWRIGHT ST- STA 4+76 TO END  
**Page Index:** 321  
**Author:** RSeahorn  
**Date:** 9/15/2022 10:14:50 AM



**Subject:** Re: Cloud  
**Page Label:** [56] 57 WAINWRIGHT ST- STA 4+76 TO END  
**Page Index:** 321  
**Author:** CMartindale  
**Date:** 9/16/2022 3:52:45 PM

Can this be done via open cut, since water and sanitary are both new in this location? This occurs in other locations in plans - is open cut acceptable whenever this condition occurs?

337 (1)



**Subject:** RFI/CONSTRUCTABILITY  
**Page Label:** [56] 57 WAINWRIGHT ST- STA 4+76 TO END  
**Page Index:** 337  
**Author:** STamrakar  
**Date:** 9/14/2022 8:41:25 AM

This is supposed to be 8" Gate Valve, please confirm.

# GMP COST MODEL

Issue Date: 9/27/2022

## CITY OF DENTON SED-B IMPROVEMENTS Denton, TX GMP

No.	Item of Work	Quantity	Unit	Unit Cost per Qty	Total Cost	Comments
<b>1</b>	<b>CMAR &amp; General Work Items</b>					
2	General	1	LS	\$559,322.84	\$559,322.84	
<b>3</b>	<b>WC#1</b>					
4	Asphalt Paving	1	LS	\$4,313,789.00	\$4,313,789.00	Jagoe Public
<b>5</b>	<b>WC#2</b>					
6	Earthwork/Demo/Subgrade	1	LS	\$2,747,632.00	\$2,747,632.00	McCarthy
<b>7</b>	<b>WC#3</b>					
8	Concrete Flatwork	1	LS	\$1,259,490.00	\$1,259,490.00	McCarthy
<b>9</b>	<b>WC#4</b>					
10	Traffic Control	1	LS	\$184,086.00	\$184,086.00	McCarthy
<b>11</b>	<b>WC#5</b>					
12	Underground Utilities	1	LS	\$8,392,005.00	\$8,392,005.00	North Texas Contracting

<b>Cost of Work Subtotal</b>					<b>\$17,456,325</b>
	General Conditions	7.35%			\$1,283,889
	Owner's Protective/General Liability & Umbrella Insurance	0.93%			\$174,284
	Builder's Risk Insurance				\$17,815
<b>Subtotal</b>					<b>\$18,932,312</b>
	Construction Contingency	3.00%			\$567,969
<b>Subtotal</b>					<b>\$19,500,282</b>
	Fee	6.95%			\$1,365,593
<b>Subtotal</b>					<b>\$20,865,874</b>
	McCarthy Performance & Payment Bond	0.71%			\$148,535
<b>GRAND TOTAL GMP</b>					<b>\$21,014,409</b>
	Design Contingency				\$-
	Owner's Contingency	3.00%			\$567,969
	Contract Amount				<b>\$21,582,378</b>



# 90% BUDGET SCHEDULE OF VALUES

Client #	Description	Quantity	Unit	Unit Price	Extended
WC1	WC#1 ASPHALT	1.000	LS	4,313,789.00	4,313,789.00
WC2	WC#2 DEMOLITION, EARTHWORK & SUBGRADE	1.000	LS	2,747,632.00	2,747,632.00
WC3	WC#3 CONCRETE FLATWORK & PAVING	1.000	LS	1,259,490.00	1,259,490.00
WC4	WC#4 TRAFFIC CONTROL	1.000	LS	184,086.00	184,086.00
WC5	WC#5 UNDERGROUND UTILITIES	1.000	LS	8,392,005.00	8,392,005.00
02 41 13	REMOVE FENCE	22.000	LF	115.61	2,543.42
02 41 13	REMOVE TREE	9.000	EA	1,712.21	15,409.89
02 41 13	REMOVE GUARDRAIL	68.000	LF	29.02	1,973.36
01 70 00	MOBILIZATION	1.000	LS	80,265.66	80,265.66
31 25 14	SILT FENCE	471.000	LF	3.82	1,799.22
31 25 14	CHECK DAM	36.000	LF	119.30	4,294.80
31 25 14	INLET PROTECTION	45.000	EA	118.44	5,329.80
31 25 14	EROSION CONTROL LOG	132.000	LF	77.33	10,207.56
	EROSION CONTROL MAINTENANCE	1.000	LS	48,571.36	48,571.36
32 31 00	4' CHAINLINK FENCE	12.000	LF	275.55	3,306.60
32 93 00	PLANT 6" TREE	2.000	EA	3,316.77	6,633.54
SS XX	INSTALL GUARDRAIL	49.000	LF	121.54	5,955.46
32 17 23	4" SLD PVT MARKING HAS (Y)	9,008.000	LF	1.18	10,629.44
32 17 23	8" SLD PVT MARKING HAS (W)	46.000	LF	12.40	570.40
32 17 23	8" SLD PVT MARKING HAS (Y)	215.000	LF	12.40	2,666.00
32 17 23	24" SLD PVT MARKING HAE (W)	2,306.000	LF	8.06	18,586.36
32 17 23	LANE LEGEND RR	4.000	EA	496.19	1,984.76
32 17 23	LANE LEGEND BIKE	2.000	EA	434.16	868.32
SS XX	CURB STRIPING	218.000	LF	3.72	810.96
01 35 13	RAILROAD COORDINATION	1.000	EA	6,500.00	6,500.00
34 41 50	FURNISH AND INSTALL GROUND MOUNTED SIGN	3.000	EA	756.98	2,270.94
34 41 50	FURNISH AND INSTALL SIGN EX. POLE MOUNT	2.000	EA	504.66	1,009.32
34 41 50	REMOVE AND REINSTALL SIGN PANEL AND POST	5.000	EA	1,045.36	5,226.80
26 05 35	TRAFFIC SIGNAL PACKAGE	1.000	EA	63,809.84	63,809.84
SS 6120	REMOVABLE BARRICADES	61.000	LF	179.73	10,963.53

# 90% COST MODEL QUALIFICATIONS:

All costs to remove (and replace) curb and gutter are based on the limits shown in the plans. No additional quantity has been included to remove and replace to the nearest joint.

There has been some scope growth from the 60% to the 90% model, particularly in the concrete scope and the traffic signals. The traffic signal scope now includes 4 pedestrian signal heads and associated electrical work. Additional concrete sidewalk, valley gutter, driveway removal and replacement has been incorporated in the 90% plans. Stone riprap was added at the 90% design. Concrete pavement sections increased from 6" to a combination of 8," 9," and 12." In the utilities package, additional grout fill and abandonment quantities were added, and overall quantities of waterline increased. Please reference quantity variance report included later in this document.

The GMP and 90% cost model is based on McCarthy's and recommended major Work Category Subcontractor's take-off quantities. All major work categories shall be converted into lump sum packages for contracting. Any changes that occur from the 90% to 100% set will be reconciled with major subcontractors before contracts are issued. GMP pricing is based upon the 90% Plans and Specs. McCarthy will evaluate the IFC Plans and Specifications when issued (10/14/22) and will notify the City of any impacts to pricing. As McCarthy has not carried any design contingency into the GMP, any impacts will be funded by owner contingency.



CITY OF FORT WORTH  
HARMON ROAD



# 90% QUANTITY VARIANCE REPORT

Item Description	Unit	60%	90%	Delta	Note
<b>REMOVAL ITEMS</b>					
REMOVE FENCE	LF	22.00	22.00	-	
REMOVE CONC PVMT	SY	1,175.00	1,175.00	-	
REMOVE CONC CURB AND GUTTER	LF	6,752.00	6,726.00	{26.00}	
REMOVE CONC VALLEY GUTTER	LF	1,031.00	1,096.00	65.00	
REMOVE SIDEWALK	SF	6,845.00	7,074.00	229.00	
REMOVE SIDEWALK WITH CURB	SF	58.00	58.00	-	
REMOVE CURB RAMP	EA	54.00	55.00	1.00	
REMOVE ASPHALT PVMT	SY	59,786.00	59,786.00	-	
REMOVE ASPHT DWY	SF	902.00	902.00	-	
REM GRAVEL DWY	SF	2,290.00	2,421.00	131.00	
REMOVE CONC DRWY	SF	7,085.00	7,306.00	221.00	
2" SURFACE MILLING	SY	356.00	356.00	-	
REMOVE TREE	EA	9.00	9.00	-	
REMOVE GUARDRAIL	LF	68.00	68.00	-	
REMOVE CONC FLUME	EA	2.00	2.00	-	
<b>ROADWAY ITEMS</b>					
UNCLASSIFIED EXCAVATION	CY	16,060.00	16,060.00	-	
UNCLASSIFIED EXCAVATION (ROAD BASE)	CY	4,030.00	4,030.00	-	
EMBANKMENT	CY	66.00	66.00	-	
12" STONE RIPRAP	CY	-	40.00	40.00	New Item
6" FLEXBASE	SY	60,584.00	48,504.00	{12,080.00}	
8" FLEXBASE	SY	-	12,836.00	12,836.00	New Item
2" TY D	SY	13,601.00	16,012.00	2,411.00	
3" TY D	SY	17,604.00	13,822.00	{3,782.00}	
3" TY C	SY	25,979.00	28,081.00	2,102.00	
2" TY B (Base)	SY	2,895.00	-	{2,895.00}	
2" TY B (Base Ext)	SY	11,123.00	16,607.00	5,484.00	
3" TY B (Base)	SY	6,352.00	6,403.00	51.00	
3" TY B (Base Ext)	SY	6,373.00	6,664.00	291.00	
4" TY B (Base)	SY	50,781.00	51,513.00	732.00	
5" TY B (Base Ext)	SY	39,472.00	37,507.00	{1,965.00}	
6" CONC. PVMT	SY	1,374.00	-	{1,374.00}	
8" CONC. PVMT	SY	-	451.00	451.00	New Item
9" CONC. PVMT	SY	-	12.00	12.00	New Item
12" CONC. PVMT	SY	-	904.00	904.00	New Item
8" DECORATIVE CONC. PVMT	SY	83.00	102.00	19.00	
6" CONC. CURB	LF	3.00	3.00	-	
6" CONC. CURB & GUTTER	LF	9,069.00	8,910.00	{159.00}	
CONC. VALLEY GUTTER	LF	1,516.00	1,651.00	135.00	
4" CONC. SIDEWALK	SY	1,106.00	1,050.00	{56.00}	
4" CONC. SIDEWALK W/CURB	SY	138.00	65.00	{73.00}	
CURB RAMP, TY IA	EA	24.00	23.00	{1.00}	
CURB RAMP, TY IB	EA	12.00	9.00	{3.00}	
CURB RAMP, TY II	EA	1.00	1.00	-	
CURB RAMP, TY III	EA	8.00	7.00	{1.00}	
6" CONC. DRWY APPROACH	SY	398.00	423.00	25.00	
8" CONC. DRWY APPROACH	SY	710.00	595.00	{115.00}	
SUBDRAIN	LF	16.00	16.00	-	
STEEL PLATE	EA	-	1.00	1.00	New Item
CONC. SIDEWALK FLUME	EA	1.00	1.00	-	
4' SIDEWALK SPANNING FLUME	EA	1.00	1.00	-	
CONC. FLUME	EA	2.00	2.00	-	
MOUNTABLE CONC. CURB & GUTTER	LF	98.00	70.00	{28.00}	
DETECTABLE WARNING SURFACE	SF	46.00	33.00	{13.00}	
REMOVABLE BOLLARDS?	EA	3.00	3.00	-	
BOLLARDS	EA	4.00	4.00	-	
WHEEL STOPS	EA	15.00	15.00	-	
CURB OPENING	EA	1.00	1.00	-	
GRAVEL DRIVEWAY	SY	104.00	104.00	-	
4' CHAINLINK FENCE	LF	12.00	12.00	-	

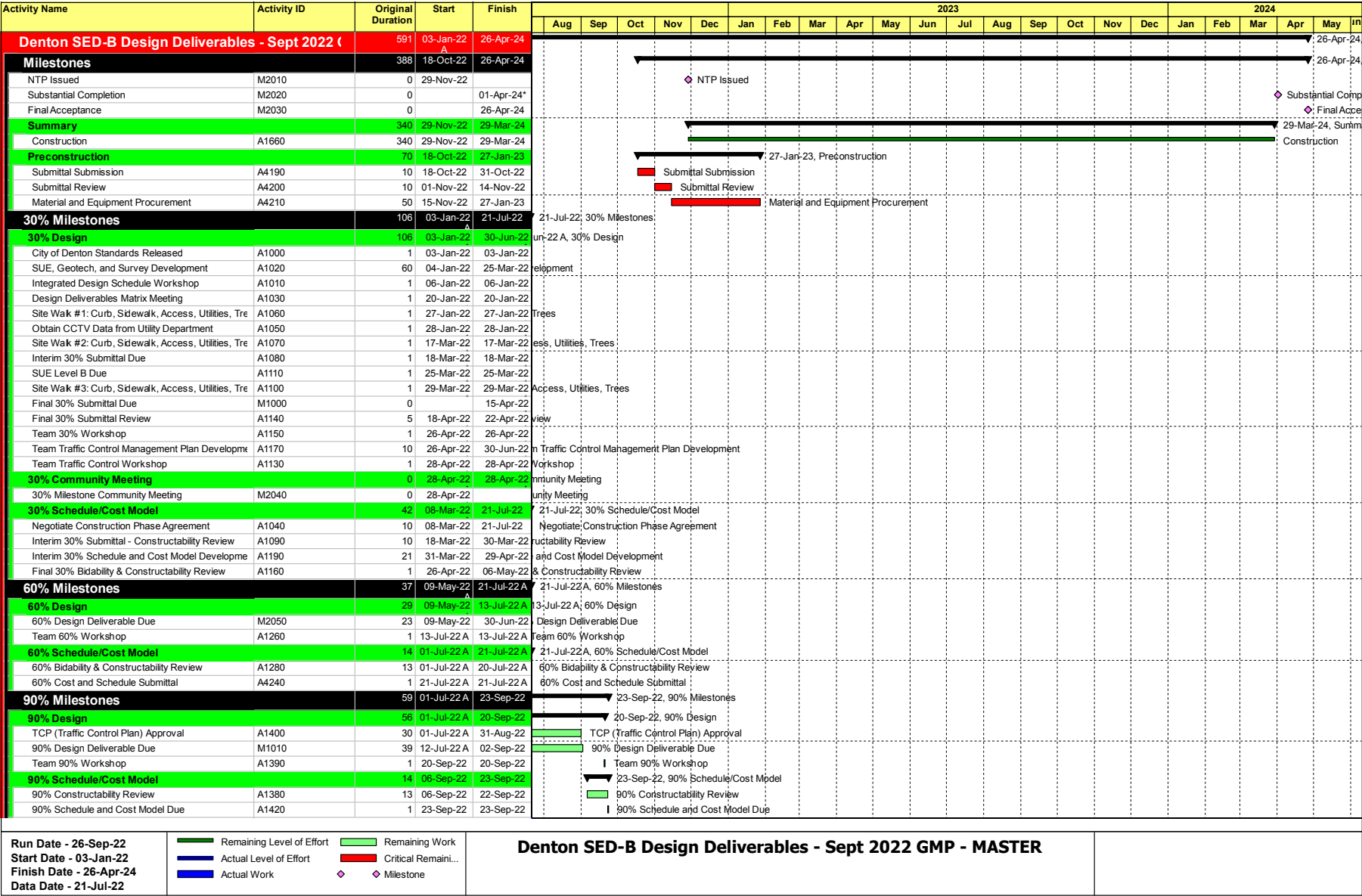
# 90% QUANTITY VARIANCE REPORT

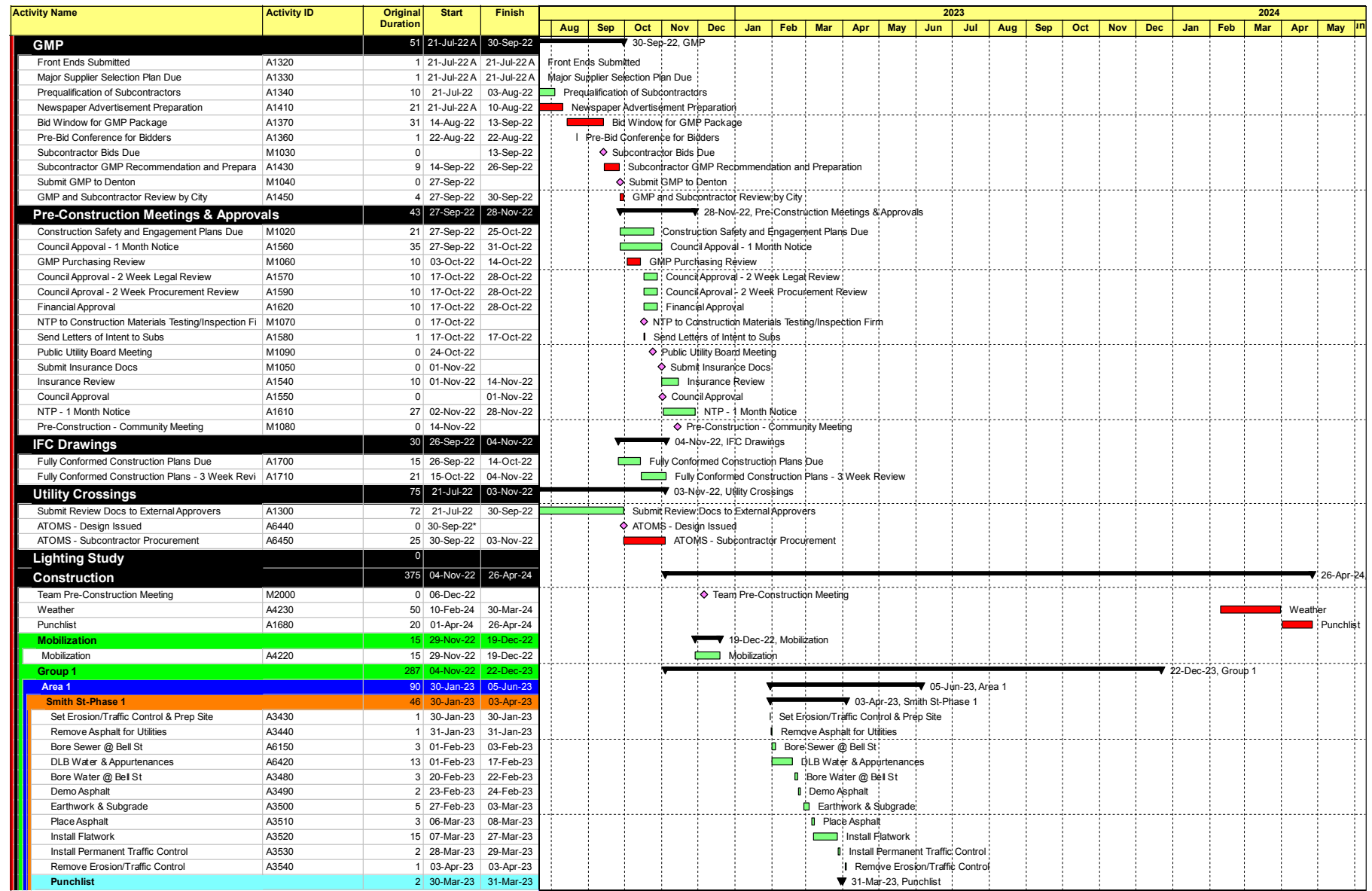
6" ASPH DWY APPROACH	SY	9.00	9.00	-	
PLANT 6" TREE	EA	2.00	2.00	-	
REMOVABLE BARRICADE	LF	61.00	61.00	-	
INSTALL GUARDRAIL	LF	49.00	49.00	-	
WATER ITEMS				-	
ASPHALT REPAIR	SY	156.00	309.00	153.00	
CONCRETE REPAIR	SY	636.00	392.00	{244.00}	
HES CONC REPAIR	SY	-	245.00	245.00	New Item
18" CASING	LF	528.00	589.00	61.00	
8" CARRIER PIPE	LF	528.00	597.00	69.00	
12" CARRIER PIPE	LF	150.00	161.00	11.00	
24" CASING	LF	150.00	138.00	{12.00}	
6" WL	LF	1,573.00	2,335.00	762.00	
8" WL	LF	10,869.00	11,038.00	169.00	
8" WL WITH CLSM	LF	100.00	176.00	76.00	
12" WL	LF	2,637.00	2,257.00	{380.00}	
1" WATER SERVICE	EA	157.00	180.00	23.00	
2" WATER SERVICE	EA	20.00	25.00	5.00	
6" GATE VALVE	EA	13.00	43.00	30.00	
8" GATE VALVE	EA	43.00	35.00	(8.00)	
12" GATE VALVE	EA	4.00	8.00	4.00	
6X6 TAPPING S&V	EA	1.00	3.00	2.00	
8X6 TAPPING S&V	EA	1.00	1.00	-	
8X8" TAPPING S&V	EA	5.00	2.00	(3.00)	
12X8 TAPPING S&V	EA	-	1.00	1.00	New Item
20X12 TAPPING S&V	EA	1.00	2.00	1.00	
FH ASSEMBLY	EA	24.00	24.00	-	
GROUT 6" WL	LF	156.00	285.00	129.00	
GROUT 12" WL	LF	1.00	148.00	147.00	
CONCRETE CURB & GUTTER REPAIR	LF	-	373.00	373.00	
CONCRETE VALLEY GUTTER REPAIR	SY	-	3.00	3.00	
CONCRETE SIDEWALK REPAIR	SY	-	115.00	115.00	
SEEDING REPAIR	LF	-	149.00	149.00	
TRENCH SAFETY	LF	15,179.00	15,891.00	712.00	
ABANDON 4" WATER VALVE	EA	-	1.00	1.00	
ABANDON 6" WATER VALVE	EA	-	29.00	29.00	
ABANDON 8" WATER VALVE	EA	-	4.00	4.00	
ABANDON 12" WATER VALVE	EA	-	9.00	9.00	
ABANDON EXIST FIRE HYDRANT	EA	-	12.00	12.00	
REMOVE 6" WATER GATE VALVE	EA	29.00	4.00	{25.00}	
REMOVE 8" WATER GATE VALVE	EA	9.00	1.00	(8.00)	
REMOVE FIRE HYDRANT	EA	4.00	3.00	(1.00)	
18" CASING BY OPEN CUT	LF	-	8.00	8.00	
24" CASING BY OPEN CUT	LF	-	23.00	23.00	
12" PVC WATER PRESSURE PIPE, CLSM BACKFILL	LF	-	57.00	57.00	New Item
WATER MAIN CONNECTION W/SHUTDOWN	EA	34.00	43.00	9.00	**Includes 6", 8" & 12"
VALVE BOX ADJUSTMENT	EA	27.00	27.00	-	
MANHOLE ADJUSTMENT, MINOR	EA	44.00	44.00	-	
SEWER ITEMS				-	
GROUT FILL 8" SS	LF	180.00	180.00	-	
ASPHALT REPAIR	SY	331.00	338.00	7.00	
CONCRETE REPAIR	SY	90.00	85.00	(5.00)	
18" STEEL CASING	LF	155.00	170.00	15.00	
24" STEEL CASING	LF	150.00	100.00	{50.00}	
8" CARRIER PIPE	LF	155.00	170.00	15.00	
12" CARRIER PIPE	LF	150.00	100.00	{50.00}	
4' SS MH	EA	34.00	28.00	(6.00)	
4' DROP SS MH	EA	-	1.00	1.00	New Item
5' SS MH	EA	2.00	5.00	3.00	
6' SS MH	EA	1.00	1.00	-	
8" SS LINE	LF	5,824.00	3,924.00	{1,900.00}	
12" SS LINE	LF	1,192.00	1,092.00	{100.00}	

# 90% QUANTITY VARIANCE REPORT

8" SS PRESSURE	LF	505.00	1,574.00	1,069.00	
10" SS LINE	LF	-	505.00	505.00	New Item
12" SS PRESSURE	LF	-	255.00	255.00	New Item
4" SEWER SERVICE	EA	108.00	96.00	{13.00}	
6" SEWER SERVICE	EA	28.00	24.00	{4.00}	
8" SEWER SERVICE	EA	-	1.00	1.00	New Item
ABANDON 4" UTILITY MANHOLE	EA	30.00	4.00	{26.00}	
REMOVE EXIST UTILITY MANHOLE	EA	-	21.00	21.00	
CONCRETE CURB & GUTTER REPAIR	LF	-	124.00	124.00	
POST-CCTV INSPECTION	LF	7,671.00	7,365.00	{306.00}	
TRENCH SAFETY	LF	7,521.00	7,095.00	{426.00}	
4' EXTRA DEPTH CONCRETE MANHOLE (> 8')	VF	92.00	11.00	{81.00}	
5' EXTRA DEPTH CONCRETE MANHOLE (> 8')	VF	5.00	25.00	20.00	
6' EXTRA DEPTH CONCRETE MANHOLE (> 8')	VF	9.00	9.00	-	
CONNECT TO EXIST MANHOLE	EA	-	10.00	10.00	
CONNECT SERVICE TO EXIST WW	EA	-	14.00	14.00	
REMOVE STORMWATER INLET TOP	EA	-	8.00	8.00	
4" SMOOTH PVC SUBDRAIN, CLASS PS 46	LF	-	16.00	16.00	
10" STANDARD INLET TOP	EA	10.00	9.00	{1.00}	
INLET GRATE	EA	2.00	2.00	-	
MOBILIZATION	LS	-	1.00	1.00	
SURVEY / LAYOUT	LS	-	1.00	1.00	
RAILROAD COORDINATION	LS	1.00	1.00	-	
UTILITY MARKERS	LS	1.00	1.00	-	
LOCATION OF EXISTING UTILITIES	LS	1.00	1.00	-	
TRAFFIC ITEMS				-	
2/C 12 AWG MULTI-CONDUCTOR CABLE	LF	40.00	1,265.00	1,225.00	
5/C 14 AWG MULTI-CONDUCTOR CABLE	LF	10.00	1,270.00	1,260.00	
10/C 14 AWG MULTI-CONDUCTOR CABLE	LF	35.00	-	{35.00}	
3" CONDT PVC SCH 40(T)	LF	75.00	75.00	-	
3" CONDT RM (RISER)	LF	-	40.00	40.00	New Item
GROUND BOX TYPE D	EA	1.00	1.00	-	
GROUND BOX TYPE D W/APRON	EA	-	2.00	2.00	New Item
PED SIGNAL HEAD ASSEMBLY	EA	1.00	4.00	3.00	
FURN/INST 5' PEDESTRIAN PUSH BUTTON	EA	1.00	4.00	3.00	
FURN/INST 10'-14' PEDESTRIAN PED POLE ASSM	EA	1.00	4.00	3.00	
DRILLED SHAFT FOUNDATION 24"	LF	6.00	24.00	18.00	
4" Y SLD PVMT MARKINGS (HAS) LF	LF	7,467.00	9008	1,541.00	
8" W SLD PVMT MARKINGS (HAS) LF	LF	46.00	46	-	
8" Y SLD PPVMT MARKINGS (HAS) LF	LF	215.00	215	-	
24" W SLD PVMT MARKINGS (HAE) LF	LF	2,290.00	2306	16.00	
LANE LEGEND RR EA	EA	4.00	4	-	
LANE LEGEND BIKE EA	EA	2.00	2	-	
CURB STRIPING LF	LF	218.00	218	-	
F&I GROUND MOUNTED SIGN EA	EA	2.00	3	1.00	
F&I INSTALL SIGN EXIST EA	EA	2.00	2	-	
REMOVE AND REINSTALL SIGN PANEL EA	EA	5.00	5	-	

90% SCHEDULE





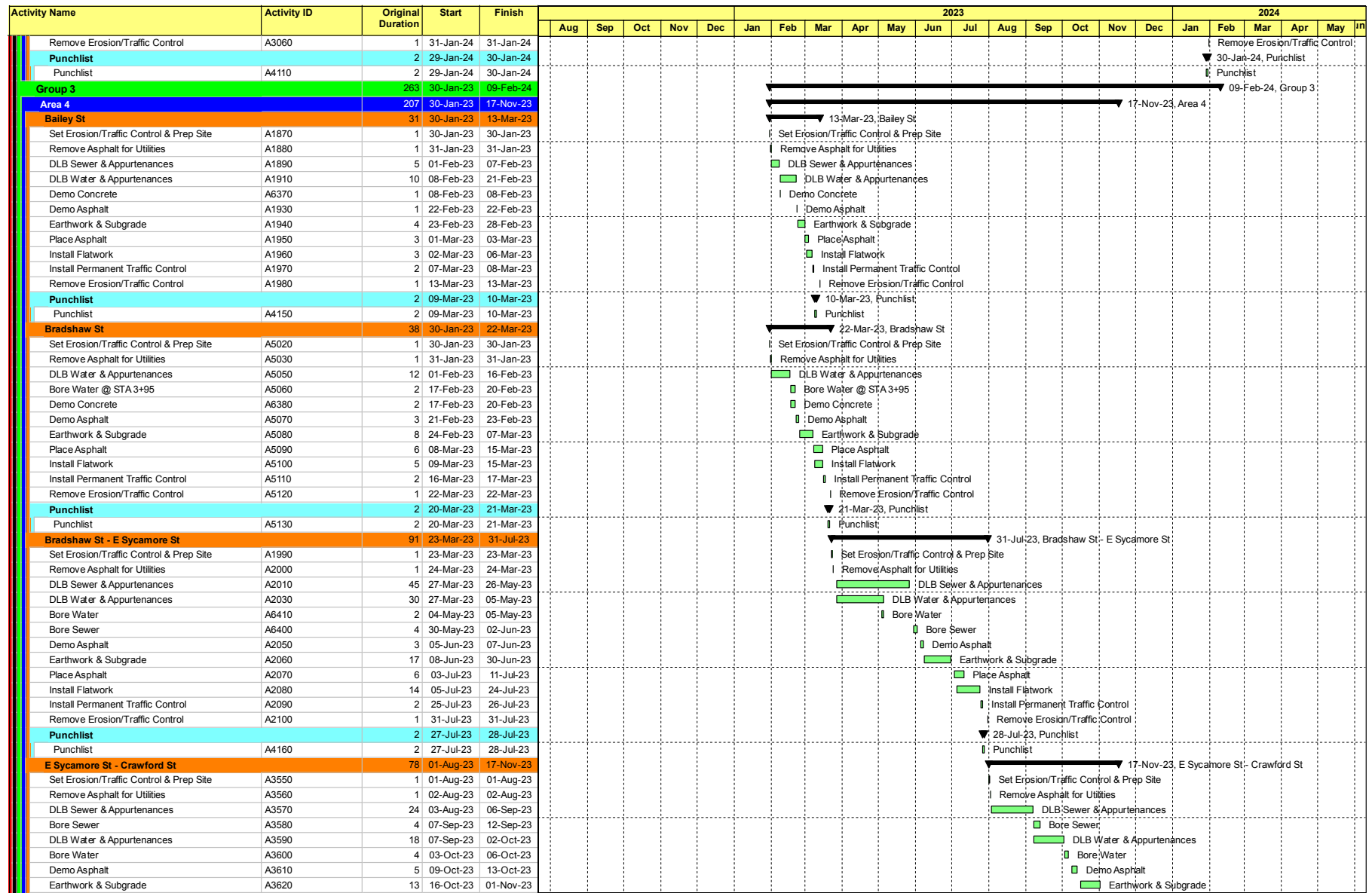
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14:Nov-23; Avenue S

- Set Erosion/Traffic Control & Prep Site
- Remove Asphalt for Utilities
- DLB Water & Appurtenances
- Demol Concrete
- Demol Asphalt
- Earthwork & Subgrade
- Place Asphalt
- Install Flatwork
- Install Permanent Traffic Control
- Remove Erosion/Traffic Control
- 13:Nov-23; Punchlist
- Punchlist

31-Jul-23; Maddox St

- Set Erosion/Traffic Control & Prep Site
- Remove Asphalt for Utilities
- DLB Sewer & Appurtenances & Remove Existing

[illegible]



# CONTINGENCY/ESCALATION PLAN

At the time of the GMP and 90% design Milestone, McCarthy has included in our pricing, a design contingency of 1.5% and a Construction Contingency of 5%. The reduced design contingency amount is intended to allow for the completion of the drawings and specifications, which is expected in mid-October. Construction contingency amount is intended to cover unforeseeable elements of cost within the defined project scope during the construction phase.

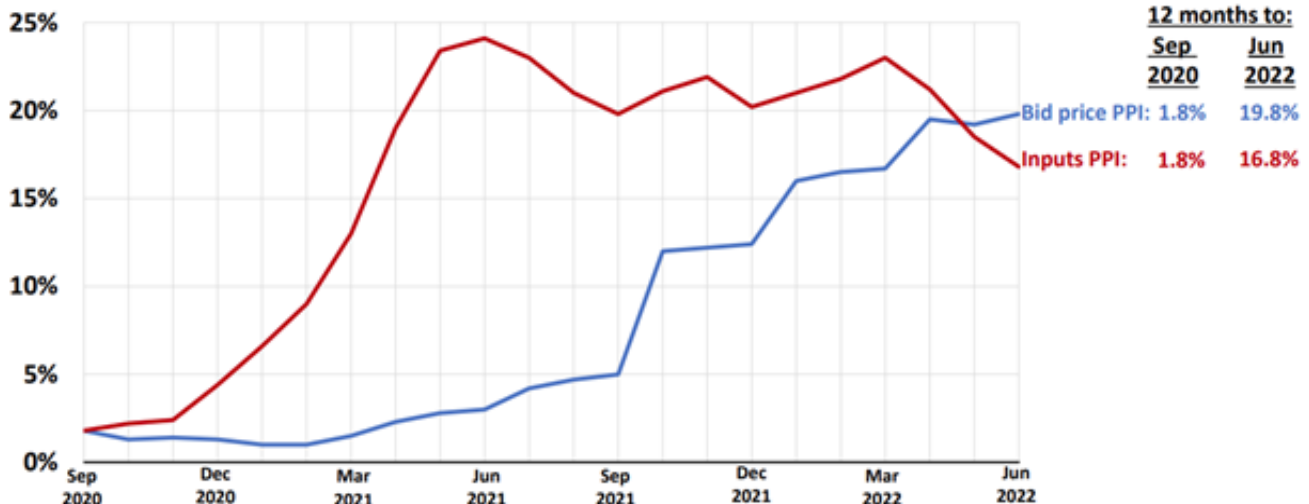
McCarthy continues to monitor changes in consumer, producer, and construction prices in order to make the best decisions and recommendations regarding market conditions on our projects. Some notable updated data for this project as of July: For highway and street construction, the producer price index (PPI) has increased 15.4% from July of 2021 to July of 2022, 1.5 % since April of 2022, and decreased 1.6% since June of 2022. PPI for truck transportation of freight has increased 21.7% in the last year, 1.3% in the last 3 months, and decreased 0.3% since June (Source: AGC - Construction Data - Producer Prices and Employment Costs, July 2022). These changes are in line with the impacts to other construction sectors and represent a slower inflation than experienced in earlier 2022.

Based upon experiences on current projects, and input from key vendors and subcontractors, we have identified the following scopes/materials as experiencing unusually high price volatility.

- » Asphalt Materials
- » Steel products/reinforcing steel
- » PVC
- » Fly Ash/Ready Mix Concrete
- » Valves

## Costs vs. bid prices for new nonresidential construction

Year-over-year change in PPIs, Sep 2020–Jun 2022, not seasonally adjusted





McCarthy has identified the following materials with long lead times:

- » Mueller Fire Hydrants (33 Weeks)- alternative material allowed in the 90% specifications to alleviate this issue
- » PVC Pipe Materials (6 weeks)
- » Standard Valves (6 weeks)
- » Precast Sewer Manholes (8 weeks)

When solicited for award, subcontractors and vendors were asked to include escalation on labor, materials and equipment costs in their cost opinions for this budget based on our current schedule. These proposers were solicited with the 60% plans and specifications. Since the 90% plans and specifications were completed during the advertisement, they were issued to the subcontractors to allow them to update their proposals with the most current project information. All subcontractors were interviewed to confirm their understanding of the documents, schedule, and contract. The team agreed that this solicitation procedure would allow us to maintain our anticipated construction schedule and minimize risk by providing bidders with more current documents. The best value combination of subcontractors as determined by the scoring criteria outlined in the Project Front Ends is included with the GMP documentation. All major work category subcontractor proposals are good for 120 days from their submission.





# MAJOR SUBCONTRACTOR AND MAJOR SUPPLIER SELECTION PLAN

McCarthy has determined the following major work categories (>\$50,000) that will be procured competitively and awarded on a best-value basis.

## **Major Work Packages:**

1. Asphalt Paving
2. Earthwork/Demolition/Subgrade
3. Concrete Flatwork
4. Traffic Control
5. Underground Utilities

As outlined in the project Front End Documents, McCarthy scored all proposals received per the following criteria:

- Proposed Construction Price: 40 Points
- Safety, Accident Rates and OSHA Record: 20 Points
- Schedule and Planning: 15 Points
- Financial Strength: 15 Points
- Qualifications/Experience/References: 15 Points

Based on strict adherence to the scoring matrix, McCarthy recommends the following subcontractors, on a best value basis, for the Major Work Categories:

## **Recommended Major Subcontractors:**

1. Asphalt Paving: Jagoe-Public Company
2. Earthwork/Demolition/Subgrade: McCarthy Building Companies
3. Concrete Flatwork: McCarthy Building Companies
4. Traffic Control: McCarthy Building Companies
5. Underground Utilities: North Texas Contracting

McCarthy, as the CMAR, solicited numerous contractors directly, as well as advertised the project in the newspaper, local and online planrooms, and AMTEK. Feedback from the marketplace indicated that many contractors are extremely busy and did not have availability to pursue this project. Others indicated that the spread out nature of the work on this project was less attractive at this time, than other opportunities.

McCarthy's estimating team worked extensively with interested proposers to assist in the preparation of their proposals, recognizing that CMAR contracting is relatively uncommon in the Texas Horizontal Market.

The McCarthy team collected sealed proposals on September 2nd, and delivered those to the City of Denton to be opened together. McCarthy did opt to compete for 3 packages, and submitted the self-perform proposals to the City 24 hours in advance, in the spirit of fairness and transparency. After evaluating the proposals received, McCarthy conducted scoping interviews with the most responsive subcontractors in each category, based on application of the scoring criteria to their written proposals. The intent of the interviews was to validate that all scope, as outlined in the front ends was included, all paperwork and documentation was complete, and that proposers understood the project and the delivery method. All proposers were given 24 hours, post-interview to correct any deficiencies and respond to requests for clarification. After completion of all interviews, scores were updated, and final totals are summarized below. Additional detail can be provided upon request.

# 90% VALUE ENGINEERING

At earlier design milestones, McCarthy identified the following opportunities for value engineering:

- » Lime Treatment in lieu of Flex Base (Positive cost impact, negative impact to schedule) - Rejected
- » Thinner Flex Base Section (Pending geotechnical report) – Accepted and incorporated
- » Thinner Flex Base Section with Geogrid (Pending geotechnical report) - Rejected
- » Eliminate utility bores and replace with open cut trenches (Impacts traffic control) – Partially accepted and incorporated
- » Re-evaluate water and sanitary sewer pipe materials (impacts to lead time and price)
- » Allow alternative fire hydrant assemblies (reduce long lead times)- Accepted and incorporated into 90% specifications
- » Consider a change to Asphalt Paving Spec to allow RAP (Recycled Asphalt Paving) similar to TXDOT 341 (Cost reduction)- Accepted for base courses in 90% specifications
- » Consider reuse/rehabilitation of existing fire hydrants (cost saving)
- » Replace stainless steel bollards with galvanized steel- Accepted and incorporated in 90% Plans
- » Removed requirement for portable changeable message boards at all locations based on subcontractor feedback to reduce cost, will only be utilized for certain streets

At the 90% milestone, the project team has accepted value engineering options for alternative fire hydrant assemblies to improve material lead times, alternate material for bollards to reduce cost, and confirmed the acceptability of blending recycled asphalt materials into base layers of asphalt to reduce cost.

As the team advances the plans to the 100% IFC set and the construction phase begins, we will continue to evaluate options to bring value to the City.



# EXHIBIT B-1: PROJECT DESCRIPTION

The City of Denton's 2019 Street Reconstruction Bond Southeast Denton Neighborhood Area B project includes these components:

- A. Full depth street reconstruction with subgrade stabilization, asphalt paving, concrete curb and gutter, and replacement of driveways within the right-of-way
- B. Water line replacement, including service connections
- C. Sanitary sewer line replacement, including service connections
- D. Storm sewer infrastructure replacement
- E. Sidewalk improvements
- F. Traffic Signal improvements

# **EXHIBIT B-2: TECHNICAL SPECIFICATIONS**

CITY OF DENTON – STANDARD CONSTRUCTION SPECIFICATION DOCUMENTS – CONTRACT NO.  
7714 – SOUTHEAST DENTON NEIGHBORHOOD  
AREA B – IFC SUBMITTAL, ISSUED BY KIMLEY HORN ON OCTOBER 14, 2022

# **EXHIBIT B-3: CONSTRUCTION DRAWINGS**

CITY OF DENTON - CONSTRUCTION PLANS FOR SED-B IMPROVEMENTS - IFC SET ISSUED BY KIM-  
LEY HORN ON OCTOBER 14, 2022



## **EXHIBIT B-2 – TECHNICAL SPECIFICATIONS**

Technical Specifications as specified in EXHIBIT B – APPROVED GMP PROPOSAL are set forth herein in full OR made part of this agreement by reference and on file with the:

- Design Professional
- City of Denton Project Manager and Purchasing Office
- CM@Risk Contractor

### **EXHIBIT B-3 – CONSTRUCTION DRAWINGS**

Construction Drawings as specified in EXHIBIT B – APPROVED GMP PROPOSAL are made part of this agreement by reference and on file with the:

- Design Professional
- City of Denton Project Manager and Purchasing Office
- CM@Risk Contractor



**EXHIBIT C**

**STANDARD GENERAL CONDITIONS OF THE  
CONSTRUCTION CONTRACT**

# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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**ARTICLE 1 – DEFINITIONS AND TERMINOLOGY****1.01 Defined Terms**

- A. Wherever used in the Contract or in other Contract Documents, the terms listed below have the meanings indicated which are applicable to both the singular and plural thereof, and words denoting gender shall include the masculine, feminine and neuter. When used in a context consistent with the definition of a listed-defined term, the term shall have a meaning as defined below whether capitalized or italicized or otherwise. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
  2. *Application for Payment*—The form acceptable to City which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract.
  3. *Asbestos*—Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
  4. *Award*—Authorization by the City Council for the City to enter into an Agreement.
  5. *Bid*—The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed. The term “Bid” shall be defined to include the term “Proposal” in those instances where the City utilizes a Request for Proposal rather than an Invitation for Bid.
  6. *Bidder*—The individual or entity that submits a Bid directly to City. The term “Bidder” shall be defined to include the terms “Proposer” or “Offeror” in those instances where the City utilizes a Request for Proposal rather than an Invitation for Bid.
  7. *Bidding Documents*—The Bidding Requirements and the proposed Contract Documents (including all Addenda). The term “Bidding Documents” shall be defined to include the terms “Proposal Documents” in those instances where the City utilizes a Request for Proposal rather than an Invitation for Bid.
  8. *Bidding Requirements*—The Advertisement or Invitation to Bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments. The term “Bidding Requirements” shall be defined to include the terms “Proposal Requirements” in those instances where the City utilizes a Request for Proposal rather than an Invitation for Bid and will include the Request for Proposal or Invitation to Offerors, Instructions to Offerors, Offerors Bond or other Proposal security, if any, the Proposal Form, and the Proposal with any attachments.
  9. *Business Day*—A day that the City conducts normal business, generally Monday through Friday, except for federal or state holidays observed by the City.
  10. *Calendar Day*—A day consisting of 24 hours measured from midnight to the next midnight.

11. *City Attorney*—The officially appointed City Attorney of the City of Denton or his or her designee.
12. *City Council*—The duly elected and qualified governing body of the City of Denton.
13. *City Manager*—The officially appointed authorized City Manager of the City of Denton.
14. *Contract Claim*—A demand or assertion by City or Contractor seeking an adjustment of Contract Price or Contract Time, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Contract Claim.
15. *Contractor*—The individual or entity with whom City has entered into the Agreement.
16. *Damage Claims*—A demand for money or services arising from the Project or Site from a third party, City or Contractor exclusive of a Contract Claim.
17. *Drawings*—The part of the Contract Documents prepared or approved by an Engineer that graphically shows the scope, extent, and character of the Work to be performed by Contractor. Submittals, as defined, are not considered Drawings as so defined here.
18. *Effective Date of the Agreement*—The date, indicated in the Agreement, on which it becomes effective,, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the City.
19. *Electronic Document*—Any Project-related correspondence, attachments to correspondence, text, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.
20. *Electronic Means*—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by the Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.
21. *Extra Work*—Additional work made necessary by City-approved changes or alterations to the Contract Documents. Extra Work shall be part of the Work.
22. *Field Order*—A written directive issued by City that requires changes in the Work but does not involve a change to the Contract Price, Contract Time, or Drawings, Plan, or Shop Drawings.
23. *Final Inspection*—The inspection performed by the City to determine whether the Contractor has completed each and every part or appurtenance of the Work fully, entirely, and in conformance with the Contract Documents.
24. *General Requirements*—Sections of The information set forth in “Division 101 – General Requirements” of the Standard Construction Specification Documents.
25. *Hazardous Environmental Condition*—The presence at the Site of Asbestos, P C B s , Petroleum, Hazardous Waste, Radioactive Material, or any other substance, product, waste

or materials, in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.

26. *Hazardous Waste*—Any solid waste listed as hazardous or which possesses one or more hazardous characteristics as defined in applicable Laws and Regulations.
27. *Incidental or incidental*—Work items that the Contractor is not paid for directly, but costs for which are included under the various bid items of the Project.
28. *Laws and Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction over the Site or any portion or part of the Work to be performed.
29. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
30. *Major Item*—An item of work included in the Contract Documents that has a total cost equal to or greater than 5% of the original Contract Price.
31. *Notice of Award*—The written notice by City to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed in such notice, City will sign and deliver the Agreement.
32. *PCBs*—Polychlorinated biphenyls.
33. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), and including but not limited to oil, fuel oil, oil sludge, oil refuse, gasoline, diesel fuel, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
34. *Plans*—This term will have the same definition of as “Drawings”.
35. .
36. *Project Manager*—The authorized representative of the City who will be assigned to the Project.
37. *Project Manual*—The documentary information prepared for bidding or proposing and furnishing the Work.
38. *Public Meeting*—An announced meeting conducted by the City to facilitate public participation and to assist the public in gaining an informed view of the Project.
39. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.
40. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor’s Applications for Payment.
41. *Submittal*—All drawings, diagrams, illustrations, schedules and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to the City to illustrate some portion of the Work.



42. *Subsidiary or subsidiary*—These terms will have the same definition as “Incidental. or incidental”.
43. *Successful Bidder*—The Bidder to whom City issues a Notice of Award. The term “Bidder” shall be defined to include the terms “Proposer” or “Offeror” in those instances where the City utilizes a Request for Proposal rather than an Invitation for Bid and is the Proposer or Offeror submitting the proposal or offer that provides the best value to the City and to whom the City issues a Notice of Award.
44. *Superintendent*—The representative of the Contractor who is available at all times and able to receive instructions from the City and to act for the Contractor.
45. *Supplementary Conditions*—The part of the Contract set forth at Division 00 73 00 that amends or supplements these General Conditions.
46. *Underground Facilities*—All underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
47. *Unit Price Work*—Work for which the Contract Price is determined by multiplying the unit price for the item by the estimated quantity of the item.
48. *Weekend Working Hours*—Those hours between 8:00 a.m. and 8:30 p.m. on Saturday, and between 1:00 p.m. and 8:30 p.m. on Sunday or on a federal or state holiday observed by the City, as approved in advance by the City for performing Work.
49. *Working Day*—Defined as a Business Day but excluding any days that weather or other conditions beyond the reasonable control of the Contractor prevents the performance of the principal unit of work underway for a continuous period of not less than 7 hours between 7:00 a.m. and 8:00 p.m.

## 1.02 Terminology

- A. The words and terms discussed in Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Bidding Requirements or Contract, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives*: The Contract includes the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of judgment by City. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of City as to the Work. It is intended that such exercise of judgment, action, or determination will be to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise).
- C. *Defective*: The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
  1. does not conform to the Contract Documents; or

2. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
3. has been damaged prior to City's written notice of Final Acceptance.

D. *Furnish, Install, Perform, Provide*

1. The word "furnish," when used in connection with services, materials, or equipment, means to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
  2. The word "install," when used in connection with services, materials, or equipment, means to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
  3. The words "perform" or "provide," when used in connection with services, materials, or equipment, means to execute, carry out, furnish and install said services, materials, or equipment complete and ready for intended use.
  4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words "furnish," "install," "perform," or "provide," then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.
- E. Unless stated otherwise in the Contract, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract in accordance with such recognized meaning.

## ARTICLE 2 – PRELIMINARY MATTERS

### 2.01 *Delivery of Performance and Payment Bonds; Evidence of Insurance*

- A. Performance and Payment Bonds: When Contractor delivers the signed counterparts of the Agreement to City, Contractor shall also deliver to City the performance bond, payment bond and maintenance bond that comply with the provisions of Chapter 2253 of the Texas Government Code. Work will not be allowed to begin until the performance and payment bonds have been provided by the Contractor to the City.
- B. Evidence of Contractor's Insurance: When Contractor delivers the signed counterparts of the Agreement to City, Contractor shall also deliver to City, with copies to each additional insured (as identified in the Contract), the certificates, endorsements, and other evidence of insurance required to be provided by Contractor in accordance with Article 6. Work will not be allowed to begin until the evidence of insurance has been provided by the Contractor to the City.

### 2.02 *Copies of Documents*

- A. City shall furnish to Contractor one (1) original executed copy and one (1) electronic copy of the Contract, and three (3) additional copies of the Drawings. Additional printed copies will be furnished upon request at the cost of reproduction.

### 2.03 *Before Starting Construction*

Baseline starting Work, Contractor shall submit for review by City the following in accordance with the Contract Documents:

- A. Baseline Schedules in accordance with General Requirements, Section 01 32 16.

- B. Preliminary Schedule of Submittals.
  - C. Preliminary Schedule of Values: For lump sum contracts, a Schedule of Values for all of the Work that includes quantities and prices of items that when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.
- 2.04 *Preconstruction Meeting*
- A. Before any Work at the Site is started, the Contractor shall attend a Preconstruction Meeting as specified in Section 01 31 19.
- 2.05 *Public Meeting*
- A. Contractor may not mobilize any equipment, materials, or resources to the Site prior to Contractor attending the Public Meeting as scheduled by the City.
- 2.06 *Initial Acceptance of Schedules*
- A. No progress payment shall be made to Contractor until acceptable Project Schedules are submitted to City in accordance with the Contract Documents.
- 2.07 *Electronic Submittals and Transmittals*
- A. Except as otherwise stated elsewhere in the Contract, the City and Contractor may send, and shall accept, Electronic Documents transmitted by Electronic Means.
  - B. If the Contract does not establish protocols for Electronic Means, then City and Contractor shall jointly develop such protocols.
  - C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents.

### **ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE**

#### **3.01 *Intent***

- A. The Contract Documents are complementary; what is required by one Contract Document is as binding as if required by all.
- B. It is the intent of the Contract to describe a functionally complete Project to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to City.
- C. City will issue clarifications and interpretations of the Contract Documents as provided herein.
- D. The Specifications may vary in form, form and style. Some Specification sections may be written in varying degrees of streamlined or declarative style, and some sections may be relatively narrative by comparison. Omission of such words and phrases as “the Contractor shall,” “in conformity with,” “as shown,” or “as specified” are intentional in streamlined

sections. Omitted words and phrases shall be supplied by inference. Similar types of provisions may appear in various parts of a section or articles within a part depending on the format of the section. The Contractor shall not take advantage of any variation of form, format or style in making Contract Claims or Damage Claims.

- E. The cross-referencing of Specification sections under the subparagraph heading “Related Sections include but are not necessarily limited to:” and elsewhere within each Specification section is provided as an aid and convenience to the Contractor. The Contractor shall not rely on the cross-referencing provided and shall be responsible to coordinate the entire Work under the Contract Documents and provide a complete Project whether or not cross-referencing is provided in each section or whether the cross-referencing is complete or accurate.

### 3.02 *Reference Standards*

#### A. Standards Specifications, Codes, Laws and Regulations

1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, means the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
2. No provision of any such standard specification, manual, reference standard, or code, and no instruction of a Supplier, will be effective to change the duties or responsibilities of City, Contractor, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to City or any of its officers, elected or appointed officials, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

### 3.03 *Reporting and Resolving Discrepancies*

#### A. Reporting Discrepancies

1. *Contractor’s Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements, and conditions. Contractor shall promptly report in writing to City any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from City before proceeding with any Work affected thereby.
2. *Contractor’s Review of Contract Documents:* If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to City in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.1717) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by City, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.

3. Contractor shall not be liable to City for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. Resolving Discrepancies

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:
  - a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier; or
  - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).
2. In case of discrepancies, figured dimensions shall govern over scaled dimensions, Drawings shall govern over Specifications, and Supplementary Conditions shall govern over General Conditions and Specifications.

3.04 *Requirements of the Contract Documents*

- A. During the performance of the Work and until final payment, Contractor shall submit to the City in writing all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. City will be the interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work.
- B. City will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. City's written clarification, interpretation, or decision will be final and binding on Contractor, unless Contractor appeals by filing a Contract Claim.

3.05 *Reuse of Documents*

- A. Contractor and its Subcontractors and Suppliers shall not:
  1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media versions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of City and specific written verification or adaptation by Engineer; or
  2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without City's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 05 will survive final payment, or termination of the Contract. Nothing herein precludes Contractor from retaining copies of the Contract Documents for record purposes.

**ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK****4.01** *Commencement of Contract Time; Notice to Proceed*

- A. The Contract Time will commence to run on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Contract.

**4.02** *Starting the Work*

- A. Contractor shall start to perform the Work on the date when the Contract Time commences to run. No Work may be done at the Site prior to the date on which the Contract Time commences to run.

**ARTICLE 5 – SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS****5.01** *Availability of Lands*

- A. City shall furnish the Site. City shall notify Contractor in writing of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. City will be responsible for obtaining any necessary easements for permanent structures or permanent changes in existing facilities.
  - 1. The City has obtained or anticipates acquisition of and/or access to right-of-way, and/or easements. Any outstanding right-of-way and/or easements are anticipated to be acquired in accordance with the schedule set forth in the Supplementary Conditions. The Project Schedule submitted by the Contractor in accordance with the Contract Documents must consider any outstanding right-of-way, and/or easements.
  - 2. Unless otherwise specified in the Contract Documents, the City has or anticipates moving and/or relocating utilities, and obstructions to the Site. Any outstanding movement or relocation of utilities or obstructions is anticipated in accordance with the schedule set forth in the Supplementary Conditions. The Project Schedule submitted by the Contractor in accordance with the Contract Documents must consider any outstanding utilities or obstructions to be moved and/or relocated by others.
- B. Upon reasonable written request of Contractor, City shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed.
- C. Contractor shall provide for any additional lands and access thereto not included in the Site that may be required for construction facilities or storage of materials and equipment. The cost of such shall be part of the Contract Price.

**5.02** *Use of Site and Other Areas*

- A. Limitation on Use of Site and Other Areas
  - 1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, worker car parking and the operations of workers to the Site, to adjacent areas that Contractor has arranged to use through construction easements or otherwise, and to other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with worker

car parking, construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas, or to improvements, structures, utilities, or similar facilities located at such adjacent lands or areas; and (d) for injuries, including death, and damage to or losses of property sustained by the owners or occupants of any such land or areas; provided that such damage, losses, injuries or deaths arose out of or result from the performance of the Work or arose out of or resulted from any other actions or conduct of the Contractor or those for whom Contractor is responsible.

2. At any time when, in the judgment of the City, the Contractor has obstructed, closed, or is carrying on operations in a portion of a street, right-of-way, or easement greater than is necessary for proper execution of the Work, the City may require the Contractor to reduce the area impacted to only that necessary for proper execution of the Work and/or to finish the section on which operations are in progress before work is commenced on any additional area of the Site.
  3. Construction equipment, spoil materials, supplies, forms, buildings, labs, or equipment and supply storage buildings, or any other item that may be transported by flood flows, shall not be stored within existing federal floodways during the course of the Work.
  4. Should any Damage Claim be made by any such owner or occupant adversely impacted because of the performance of the Work, Contractor shall promptly attempt to resolve the Damage Claim.
  5. ***PURSUANT TO PARAGRAPH 7.21, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS CITY AND ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS, AND EMPLOYEES, FROM AND AGAINST ALL CLAIMS, COSTS, LOSSES, AND DAMAGES ARISING OUT OF OR RELATING TO ANY CLAIM OR ACTION, LEGAL OR EQUITABLE, BROUGHT BY ANY SUCH ADVERSELY IMPACTED OWNER OR OCCUPANT AGAINST CITY.***
- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris will conform to applicable Laws and Regulations.
- C. *Site Maintenance Cleaning:* If 24 hours after written notice is given to the Contractor that the clean-up at the Site is insufficient or occurring in a manner unsatisfactory to the City, the Contractor fails to correct the unsatisfactory condition and/or procedures, the City may take such direct action as the City deems appropriate to correct the clean-up deficiencies cited to the Contractor in the written notice, and the costs of such direct corrective action, plus 25 % of such costs, shall be deducted from the monies due or to become due to the Contractor under the Contract.
- D. *Final Site Cleaning:* Prior to Final Acceptance of the Work, Contractor shall clean the Site and the Work and make it ready for utilization by City and any adjacent property owners, if applicable. At the completion of the Work, Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, surplus materials, waste materials, rubbish and other debris and shall restore to original condition or better all areas impacted or disturbed by the Work.

- E. *Loading of Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

### 5.03 *Underground Facilities*

- A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the Site is based on information and data furnished to City or Engineer by the owners of such Underground Facilities, including City, or by others, unless it is otherwise expressly provided in the Supplementary Conditions::
1. City and Engineer shall not be responsible for the accuracy or completeness of any such information or data provided by others; and
  2. the cost of all of the following are included in the Contract Price, and Contractor shall have full responsibility for:
    - a. reviewing and checking all information and data;
    - b. verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;
    - c. coordination and adjustment of the Work with the owners (including City) of such Underground Facilities, during construction; and
    - d. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Not Shown or Indicated:*
1. If an Underground Facility that is uncovered or revealed at the Site was not shown or indicated on the Drawings or otherwise indicated in the Contract Documents, or was not shown or indicated on the Drawings or in the Contract Documents with reasonable accuracy, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.17), identify the owner of such Underground Facility and give notice to that owner and to City. Contractor shall be responsible for the safety and protection of such discovered Underground Facility.
  2. If City concludes that a change in the Contract Documents is required, a Change Order may be issued to reflect and document such consequences, subject to the provisions of Article 11.
  3. Verification of existing utilities, structures, and service lines shall include notification of all utility companies a minimum of 48 hours in advance of construction including exploratory excavation if necessary.

## ARTICLE 6 – BONDS AND INSURANCE

### 6.01 *Licensed Sureties and Insurers*

- A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Contractor shall be obtained from surety or insurance companies that are duly licensed or



authorized in the State of Texas to issue bonds or insurance policies for the limits and coverages required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

#### 6.02 *Performance, Payment, and Maintenance Bonds*

- A. Contractor shall furnish a performance bond and a payment bond, in accordance with the provisions of the Texas Government Code Chapter 2253 or successor statute and as required by the City, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of all of Contractor's obligations under the Contract. The performance and payment bonds must be provided by the Contractor to the City prior to the Contractor beginning any Work.
- B. Contractor shall furnish maintenance bonds in an amount equal to the Contract Price as security to protect the City against any defects in any portion of the Work described in the Contract Documents. Maintenance bonds shall remain in effect for two (2) years after the date of Substantial Completion. The maintenance bond(s) shall be provided as directed by the City as part of the close-out of the Contract and shall be provided prior to the final payment being made.
- C. All bonds shall be in the form prescribed by the Contract Documents, except as provided otherwise by Laws and Regulations, and must be issued and signed by a surety named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.
- D. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, or its right to do business is terminated in the State of Texas, then Contractor shall promptly notify City in writing and shall, within 30 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.
- E. If Contractor has failed to obtain a required bond, City may refuse to allow the Contractor to begin Work, exclude the Contractor from the Site and exercise City's termination rights under Article 15.
- F. Upon request to Contractor from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Contractor shall provide a copy of the payment bond to such person or entity.

#### 6.03 *Certificates of Insurance*

- A. Contractor shall deliver to City, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance and endorsements (and other evidence of insurance requested by City or any other additional insured) establishing that Contractor has obtained and is maintaining the policies and coverages required by these General Conditions and the Supplementary Conditions prior to beginning any Work.
  - 1. The certificate of insurance shall document the City, and all identified entities named in the Supplementary Conditions as "additional insureds" on all liability policies.

2. The Contractor's general liability insurance shall include a "per project" or "per location" endorsement, that shall be identified in the certificate of insurance provided to the City.
3. The certificate shall be signed by an agent authorized to bind coverage on behalf of the insured, be complete in its entirety, and show complete insurance carrier names as listed in the current A.M. Best Property & Casualty Guide.
4. The insurers for all policies must be licensed and/or approved to do business in the State of Texas. Except for workers' compensation, all insurers must have a minimum rating of A-: VII in the current A. M. Best Key Rating Guide or have reasonably equivalent financial strength and solvency to the satisfaction City. If the rating is below that required, written approval of City is required.
5. All applicable policies shall include a Waiver of Subrogation (Rights of Recovery) in favor of the City.
6. Failure of the City to demand such certificates or other evidence of full compliance with the insurance requirements or failure of the City to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such lines of insurance coverage or to provide such certificates or other evidence of full compliance with the insurance requirements.
7. If insurance policies are not written for specified coverage limits, an Umbrella or Excess Liability insurance for any differences is required. Excess Liability shall follow form of the primary coverage.
8. Unless otherwise stated, all required insurance shall be written on the "occurrence basis". If City agrees in writing that coverage is underwritten/may be written on a claims-made basis, the retroactive date shall be coincident with or prior to the date of the effective date of the Agreement and the certificate of insurance shall state that the coverage is claims-made and the retroactive date. The insurance coverage shall be maintained for the duration of the Contract and for three (3) years following Final Acceptance or for the warranty period provided for under the Contract Documents or for the warranty period, whichever is longer. An annual certificate of insurance submitted to the City shall evidence such insurance coverage.
9. Policies shall have no exclusions by endorsements that either nullify or amend the required lines of coverage, nor or decrease the limits of said coverage unless such endorsements are approved in writing by the City. In the event a Notice of an Award has been issued or the Agreement executed, and the policy exclusions are determined to be unacceptable or the City desires that the Contractor obtain additional insurance coverage the contract price shall be adjusted by the cost of the premium for such additional coverage plus 10%.
10. For any proposed self-insured retention (SIR), in excess of \$25,000.00, affecting insurance coverage, Contractor must obtain the written approval of the City in regard to asset value and stockholders' equity. In lieu of traditional insurance, proposed alternative coverage maintained through insurance pools or, risk retention groups, or self-funding will also require the written approval of the City.
11. Any deductible in excess of \$5,000.00, for any policy that does not provide coverage on a first-dollar basis must be acceptable to and approved in writing by the City.

12. City, at its sole discretion, reserves the right to review the insurance requirements and to make reasonable adjustments to insurance coverages and limits when deemed necessary and prudent by the City based upon the scope of the Work, changes in statutory law, court decision or the claims history of the industry as well as of the contracting party to the City. The City will provide prior notice of 90 days and the insurance adjustments shall be incorporated into the Work by Change Order.
13. City shall be entitled, upon written request to Contractor and without expense to City, to receive copies of policies and endorsements thereto and. City may make any reasonable requests for deletion or revision or modifications of particular policy terms, conditions, limitations, or exclusions necessary to conform the policy and endorsements to the requirements of the Contract. Deletions, revisions, or modifications shall not be required where policy provisions are established by law or regulations binding upon either party or the underwriter on any such policies.
14. City shall not be responsible for the direct payment of insurance premium costs for Contractor's insurance.

#### 6.04 *Contractor's Insurance*

- A. *Workers Compensation and Employers' Liability:* Contractor shall purchase and maintain such insurance coverage with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Texas Labor Code, Ch. 406, as amended), and minimum limits for Employers' Liability as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:
  1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
  2. claims for damages because of bodily injury, occupational sickness or disease, or death of employees.
- B. *Commercial General Liability.* Coverage shall include but not be limited to covering liability (bodily injury, including death, or property damage) arising from: premises/operations, independent contractors, products/completed operations, personal injury including death, liability under an insured contract, and explosion/collapse/underground (where those exposures exist). Insurance shall be provided on an occurrence basis, and as comprehensive as the current Insurance Services Office (ISO) policy. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the City. The Commercial General Liability policy shall have no exclusions by endorsements that would alter or nullify premises/operations, products/completed operations, contractual, personal injury, or advertising injury, that are normally contained with the policy, unless the City approves such exclusions in writing.

For construction projects that present a substantial completed operation exposure, the City may require the Contractor to maintain completed operations coverage for a minimum of no less than three (3) years following the completion of the project (if identified in the Supplementary Conditions)).

- C. *Automobile Liability.* A commercial business auto policy shall provide coverage on “any auto”, defined as autos owned, hired and non-owned and provide indemnity for claims for damages because of bodily injury or death of any person and/or property damage arising out of or related to the work, maintenance or use of any motor vehicle by the Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.
- D. *Railroad Protective Liability.* If any of the Work or any warranty work is within the limits of railroad right-of-way, the Contractor shall comply with the requirements identified in the Supplementary Conditions.
- E. *Notification of Policy Cancellation:* Contractor shall immediately notify City upon cancellation or other loss of insurance coverage. Contractor shall stop Work until replacement insurance has been procured. There shall be no time credit for delays or days not worked pursuant to this section.

#### 6.05 *Acceptance of Bonds and Insurance; Option to Replace*

- A. If City has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the Contractor in accordance with Article 6 or the Supplementary Conditions on the basis of non-conformance with the Contract Documents, the City shall so notify the Contractor in writing within 10 Business Days after receipt of the certificates (or other evidence requested). Contractor shall provide to the City such additional information in respect of insurance provided as the City may reasonably request. If Contractor does not purchase or maintain all of the bonds and insurance required by the Contract Documents, the City shall notify the Contractor in writing of such failure prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Such failure to provide bonds or insurance as required by the Contract Documents is a breach of the terms of the Contract and the City may terminate the Contractor in accordance with the provisions of the Contract Documents.

### **ARTICLE 7 – CONTRACTOR’S RESPONSIBILITIES**

#### 7.01 *Contractor’s Means and Methods of Construction*

- A. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. If the Contract Documents note, or Contractor determines, that professional engineering or other design services are needed to carry out Contractor’s responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then Contractor shall cause such services to be provided by a properly licensed design professional, at Contractor’s expense. Such services are not City-delegated professional design services under this Contract, and neither City nor Engineer has any responsibility with respect to (1) Contractor’s determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by Contractor, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

#### 7.02 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents.

- B. At all times during the progress of the Work, Contractor shall identify and assign a competent superintendent, who is proficient in English, and who shall not be replaced without written notice to City of the name of the replacement superintendent. If at any time the superintendent is not satisfactory to the City, Contractor shall, if requested by City, replace the superintendent with another satisfactory to City.
- C. Contractor shall notify the City 24 hours prior to moving areas during the sequence of construction.

#### 7.03 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Contractor shall be fully responsible to City for all acts and omissions of Contractor's employees; of Suppliers and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work, just as Contractor is responsible for Contractor's own acts and omissions.
- C. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours on Business Days. Contractor will not permit the performance of Work outside of regular working hours on Business Days without City's prior written consent (which will not be unreasonably withheld)). Contractor's written request (by letter or electronic communication) for City's written consent must be made as follows:
  - 1. for Work beyond regular working hours on Business Days, request must be made by noon at least two (2) Business Days prior;
  - 2. for Work during Weekend Working Hours, request must be made by noon of the preceding Wednesday; and
  - 3. for Work on state or federal holidays observed by the City, request must be made sufficiently in advance of the holiday, to satisfy requirements for City Council approval.

#### 7.04 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, Contractor required testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of sufficient quality to complete the Work, and must be new and of good quality, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of City. If required by City, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment to be incorporated into the Work shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with

instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

- D. All items of standard equipment to be incorporated into the Work shall be the latest model at the time of bid, unless otherwise specified.

#### 7.05 *Project Schedule*

- A. Contractor shall adhere to the Project Schedule established in accordance with Paragraph 2.06 and the General Requirements as it may be adjusted from time to time as provided below.
1. Contractor shall submit to the City for acceptance (to the extent indicated in Paragraph 2.06 and the General Requirements) proposed adjustments in the Project Schedule that will not result in changing the Contract Time. Such adjustments must comply with any provisions of the General Requirements applicable thereto.
  2. Contractor shall submit to City a monthly Project Schedule with a monthly progress payment request for the duration of the Contract in accordance with the Construction Progress Schedule, General Requirements 01 32 16.
  3. Proposed adjustments in the Project Schedule that will change the Contract Time shall be submitted in accordance with the requirements of Article 11. Adjustments in Contract Time may only be made by a Change Order.

#### 7.06 *“Or Equals”*

- A. *Contractor’s Request; Governing Criteria:* Whenever an item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or “or equal” item is permitted, Contractor may request that City permit the use of other items of equipment or material, or items from other proposed Suppliers, under the circumstances described below.
1. If City in its sole discretion determines that an item of equipment or material proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by City as an “or equal” item. For the purposes of this Paragraph, a proposed item of equipment or material will be considered functionally equal to an item so named if:
    - a. the City determines that:
      - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
      - 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
      - 3) it has a proven record of performance and availability of responsive service; and
      - 4) it is not objectionable to City.
    - b. Contractor certifies that, if the proposed item is approved and incorporated into the Work:

- 1) there will be no increase in cost to the City or increase in Contract Time; and
  - 2) the item will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor's Expense:* Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. *City's Evaluation and Determination:* City will be allowed a reasonable time to evaluate each "or-equal" request. City may require Contractor to furnish additional data about the proposed "or-equal" item. City will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until City's review is complete and City determines that the proposed item is an "or-equal." City." City will advise Contractor in writing of its determination.
- D. *Effect of City's Determination:* Neither approval nor denial of an "or-equal" request will result in any change in Contract Price. The City's denial of an "or-equal" request will be final and binding, and may not be reversed through an appeal under any provision of the Contract.
- E. *Treatment as a Substitution Request:* If City determines that an item of equipment or material proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that City consider the item a proposed substitution pursuant to Paragraph 7.07.

#### 7.07 Substitutions

- A. *Contractor's Request; Governing Criteria:* Unless the specification or description of an item of equipment or material required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that City permit the use of other items of equipment or material under the circumstances described below. To the extent possible such requests must be made before commencement of related Work at the Site.
1. Contractor shall submit sufficient information as provided below to allow City to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitution therefor. City will not accept requests for review of proposed substitute items of equipment or material from anyone other than Contractor.
  2. The requirements for review by City will be as set forth in Paragraph 7.07.B, as supplemented by the Specifications, and as City may decide is appropriate under the circumstances.
  3. Contractor shall make written application to City for review of a proposed substitute item of equipment or material that Contractor seeks to furnish or use. The application shall comply with Section 01 25 00 and:
    - a. will certify that the proposed substitute item will:
      - 1) perform adequately the functions and achieve the results called for by the general design;
      - 2) be substantially similar in substance to the item specified; and
      - 3) be well-suited to the same use as the item specified.
    - b. will state:

- 1) the extent, if any, to which the use of the proposed substitute item will adversely impact Contractor's achievement of Final Acceptance on or before the Contract Time;
  - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with City for other work on the Project) to adapt the design to the proposed substitute item; and
  - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
- c. will identify:
- 1) all variations of the proposed substitute item from the item specified; and
  - 2) available engineering, sales, maintenance, repair, and replacement services.
- d. will contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and Damage Claims of other contractors affected by any resulting change.
- B. *City's Evaluation and Determination:* City will be allowed a reasonable time to evaluate each substitution request. City may require Contractor to furnish additional data about the proposed substitute item. City will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until City's review is complete and City determines that the proposed item is an acceptable substitution. City's approval determination will be evidenced by a Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Time. City will advise Contractor in writing of any denial determination.
- C. *Special Guarantee:* City may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitution. ***Contractor shall indemnify and hold harmless City and its officers, elected and appointed officials, employees, agents, consultants and subcontractors and anyone directly or indirectly employed by them from and against any and all claims, damages, losses and expenses (including attorney's fees) arising out of or related to the use of substituted materials or equipment.***
- D. *Reimbursement of City's Cost:* City will record City's costs in evaluating a substitution proposed or submitted by Contractor. Whether or not City approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse City for evaluating each such proposed substitute. Contractor shall also reimburse City for the charges for making changes in the Contract Documents (or in the provisions of any other direct contract with City) resulting from the acceptance of each proposed substitute.
- E. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- F. *City Substitution Reimbursement:* Cost savings attributable to acceptance of a substitution shall be paid to City by Contractor by an appropriate Change Order decreasing the Contract Price.



- G. *Effect of City's Determination:* If City approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The City's denial of a substitution request will be final and binding, and may not be reversed through an appeal under any provision of the Contract. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.07.D, by timely submittal of a Change Order.

7.08 *Concerning Subcontractors and Suppliers*

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, against whom City may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection, except as provided in Paragraph 7.08.B. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor's obligation to City to perform and complete the Work in accordance with the Contract.
- B. The City may require the use of specific Subcontractors, Suppliers, or other individuals or entities for the performance of designated parts of the Work, and will provide such requirements in the Supplementary Conditions.
- C. Contractor shall provide to City as part of the Bid, the identity of all proposed Subcontractors and Suppliers. Such proposed Subcontractor or Supplier shall be deemed acceptable to City unless City raises a substantive, reasonable objection prior to execution of the Agreement.
- D. Contractor shall be fully responsible to City for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract:
1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between City and any such Subcontractor, Supplier or other individual or entity; nor
  2. shall create any obligation on the part of City to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- E. No acceptance by City of any such Subcontractor or Supplier, whether initially or as a replacement, will constitute a waiver of the right of City to the completion of the Work in accordance with the Contract Documents, Contract Price and Contract Time.
- F. Contractor shall be solely responsible for scheduling and coordinating the tasks of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.
- G. All Work performed for Contractor by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of City. Contractor must comply with all applicable federal, state, and local laws, statutes, ordinances or regulations, including but not limited to immigration laws, workers compensation laws and wage laws, in the hiring of any Subcontractor or Supplier and shall ensure that each Subcontractor or Supplier has the same obligations.

- H. Contractor shall restrict all Subcontractors and Suppliers from communicating with City, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.

#### 7.09 *Wage Rates*

- A. *Duty to pay Prevailing Wage Rates:* The Contractor shall comply with all requirements of Chapter 2258, Texas Government Code (as amended), including the payment of not less than the rates determined by the City Council of the City of Denton to be the prevailing wage rates in accordance with Chapter 2258. The then current prevailing wage rates at the time of execution of the Agreement are included in these Contract Documents.
- B. *Penalty for Violation:* A Contractor or any Subcontractor who does not pay the prevailing wage shall, upon demand made by the City, pay to the City \$60 for each worker employed for each calendar day or part of the day that the worker is paid less than the prevailing wage rates stipulated in these contract documents. This penalty shall be retained by the City to offset its administrative costs, pursuant to Texas Government Code Section 2258.023.
- C. *Complaints of Violations and City Determination of Good Cause:* On receipt of information, including a complaint by a worker, concerning an alleged violation of Section 2258.023, Texas Government Code, by a Contractor or Subcontractor, the City shall make an initial determination, before the 31st day after the date the City receives the information, as to whether good cause exists to believe that the violation occurred. The City shall notify in writing the Contractor or Subcontractor and any affected worker of its initial determination. Upon the City's determination that there is good cause to believe the Contractor or Subcontractor has violated Chapter 2258, the City shall retain the full amounts claimed by the claimant or claimants as the difference between wages paid and wages due under the prevailing wage rates, such amounts being retained from successive progress payments pending a final determination of the violation.
- D. *Arbitration Required if Violation Not Resolved:* An issue relating to an alleged violation of Section 2258.023, Texas Government Code, including a penalty owed to the City or an affected worker, shall be submitted to binding arbitration in accordance with the Texas General Arbitration Act (Article 224 et seq., Revised Statutes) if the Contractor or Subcontractor and any affected worker does not resolve the issue by agreement before the 15th day after the date the City makes its initial determination pursuant to Paragraph 7.09.C. If the persons required to arbitrate under this section do not agree on an arbitrator before the 11th day after the date that arbitration is required, a district court shall appoint an arbitrator on the petition of any of the persons. The City is not a party in the arbitration. The decision and award of the arbitrator is final and binding on all parties and may be enforced in any court of competent jurisdiction.
- E. *Records to be Maintained:* The Contractor and each Subcontractor shall, for a period of three (3) years following the date of Final Acceptance, maintain records that show (i) the name and occupation of each worker employed by the Contractor in the construction of the Work provided for in this Contract; and (ii) the actual per diem wages paid to each worker. The records shall be available in Denton County, Texas at all reasonable hours for inspection by the City. The provisions of Paragraph 7.23, Right to Audit, shall pertain to this inspection.
- F. *Progress Payments:* With each progress payment request or payroll period, whichever is less, the Contractor shall submit an affidavit stating that the Contractor has complied with the requirements of Chapter 2258, Texas Government Code.

- G. *Posting of Wage Rates:* The Contractor shall post prevailing wage rates in a conspicuous place at the Site at all times.
- H. *Subcontractor Compliance:* The Contractor shall include in its subcontracts and/or shall otherwise require all of its Subcontractors to comply with Paragraphs 7.09.A through 7.09.G.

#### 7.10 *Patent Fees and Royalties*

- A. Contractor shall pay all patent or license fees and royalties and pay all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If an invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of City, its use is subject to patent rights or copyrights calling for the payment of any patent or license fee or royalty to others, the existence of such rights will be disclosed in the Contract Documents. Failure of the City to disclose such information does not relieve the Contractor from its obligations to pay said fees or, royalties or costs to others.
- B. ***TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS CITY, AND ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS, DIRECTORS, MEMBERS, PARTNERS, EMPLOYEES, AGENTS, CONSULTANTS AND SUBCONTRACTORS OF EACH AND ANY OF THEM, FROM AND AGAINST ALL CLAIMS, COSTS, LOSSES, AND DAMAGES (INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS, AND OTHER PROFESSIONALS AND ALL COURT OR ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS) ARISING OUT OF OR RELATING TO ANY INFRINGEMENT OF PATENT RIGHTS OR COPYRIGHTS INCIDENT TO THE USE IN THE PERFORMANCE OF THE WORK OR RESULTING FROM THE INCORPORATION IN THE WORK OF ANY INVENTION, DESIGN, PROCESS, PRODUCT, OR DEVICE.***

#### 7.11 *Permits and Utilities*

- A. *Contractor obtained permits and licenses.* Unless otherwise expressly provided in the Contract Documents, Contractor shall obtain and pay for all construction permits and licenses. City shall provide reasonable assistance to Contractor, if necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work applicable at the time the Notice of Award is issued, except for permits provided by the City as specified in Paragraph 7.11.B. City shall pay the charges of utility service providers for connections for providing permanent service to the Work.
- B. *City obtained permits and licenses.* City will obtain and pay for those permits and licenses identified as City's responsibility in the Supplementary Conditions or Contract Documents. It will be the Contractor's responsibility to comply with and carry out the provisions of the permit. If the Contractor initiates changes to the Contract and the City approves the changes, the Contractor is responsible for obtaining clearances and coordinating with the appropriate regulatory agency. relating to the changes. The City will not reimburse the Contractor for any cost associated with the requirements of any City acquired permit. The following are permits the City will obtain if required:
  - 1. Texas Department of Transportation Permits
  - 2. U.S. Army Corps of Engineers Permits

3. Texas Commission on Environmental Quality Permits
  4. Railroad Company Permits
  5. Texas Department of Licensing and Regulation (TDLR) Permits
- C. *Outstanding permits and licenses.* Any outstanding permits and licenses are anticipated to be acquired in accordance with the schedule set forth in the Supplementary Conditions. The Project Schedule submitted by the Contractor in accordance with the Contract Documents must consider any outstanding permits and licenses.

#### 7.12 *Taxes*

- A. On issuance of a Notice of Award by the City, an organization which qualifying for exemption pursuant to Texas Tax Code, Subchapter H (as amended), the Contractor may purchase, rent or lease all materials, supplies and equipment used or consumed in the performance of this contract by issuing to its Supplier an exemption certificate in lieu of the tax, said exemption certificate to comply with State Comptroller's Rulings applicable to Texas Tax Code, Subchapter H. Any such exemption certificate issued to the Contractor in lieu of the tax shall be subject to and shall comply with all applicable rulings pertaining to the Texas Tax Code, Subchapter H.
- B. Texas tax permits and information may be obtained from:
1. Comptroller of Public Accounts  
Sales Tax Division  
Capitol Station  
Austin, TX 78711; or
  2. <http://www.window.state.tx.us/taxinfo/taxforms/93-forms.html>

#### 7.13 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, City shall not be responsible for monitoring Contractor's compliance with any Laws and Regulations.
- B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws and Regulations, Contractor shall be liable for all resulting claims, costs losses, and damages, and shall indemnify and hold harmless City, and its officers, elected and appointed officials, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action.
- C. Changes in Laws and Regulations not known at the time of the City's issuance of a Notice of Award having an effect on the cost or time of performance of the Work may be the subject of an adjustment in Contract Price or Contract Time.

#### 7.14 *Record Documents*

- A. Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Change Orders, Field Orders, written interpretations and clarifications, and approved Shop Drawings. Contractor shall keep such record documents in

good order and annotate them to show changes made during construction. Contractor shall include accurate locations for buried and imbedded items. These record documents, together with all approved Samples, will be available to City for reference. Upon completion of the Work, Contractor shall deliver these record documents to City prior to Final Inspection.

#### 7.15 *Safety and Protection*

- A. As between City and Contractor, Contractor shall be responsible for the safety of persons and property in the performance of the Work, for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work and for compliance with applicable safety Laws and Regulations.
- B. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs. Contractor shall inform the City in writing of Contractor's designated safety representative at the Site.
- C. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
  - 1. all persons on the Site or who may be affected by the Work;
  - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
  - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- D. All damage, injury, or loss to any property referred to in Paragraph 7.1515.C.2 or 7.1515.C.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be the responsibility of and remedied by Contractor at its expense.
- E. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall implement, erect and maintain all necessary safeguards for such safety and protection.
- F. Contractor shall notify City; the owners of adjacent property; the owners of Underground Facilities and other utilities (if the identity of such owners is known to Contractor); and other contractors and utility owners performing work at or adjacent to the Site, in writing, when Contractor knows that prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
- G. Contractor shall comply with the applicable requirements of City's safety programs, if any.
- H. Contractor shall inform City in advance in writing of the specific requirements of Contractor's safety program with which City's and Engineer's employees and representatives must comply while at the Site.

- I. Contractor's duties and responsibilities for safety and protection will continue until all the Work is completed and City has issued a Letter of Final Acceptance.
- J. Contractor's duties and responsibilities for safety and protection will resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

#### 7.16 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of safety data sheets (formerly known as material safety data sheets) or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws and Regulations.

#### 7.17 *Emergencies and/or Rectification*

- A. In the event of threatened or actual emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to immediately act to prevent damage, injury, or loss. Contractor shall give City prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused by an emergency or are required as a result of Contractor's response to an emergency. If City determines that a change in the Contract Documents is required because of an emergency or Contractor's response, a Change Order may be issued.
- B. Should the Contractor fail to respond to a request from the City to rectify any discrepancies, omissions, or correction necessary to conform with the requirements of the Contract Documents, the City shall give the Contractor written notice that such work or changes are to be performed. The written notice shall direct attention to the discrepant condition and request the Contractor to take remedial action to correct the condition. In the event the Contractor does not take proper action within 24 hours to fulfill this written request or fails to show just cause for not taking the proper action, within 24 hours, the City may take such remedial action with City resources or by contract. The City shall deduct an amount equal to the entire cost for such remedial action, plus 25% from any funds due or to become due the Contractor on the Project.

#### 7.18 *Submittals*

- A. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall submit required Submittals to City for review and acceptance in accordance with the accepted Schedule of Submittals (as required by Paragraph 2.03).
  - 1. Contractor shall submit the Submittals in accordance with Section 01 33 00 of the General Requirements.
  - 2. Data shown on the Submittals must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to demonstrate to City the services, materials, and equipment Contractor proposes to provide, and to enable City to review the information for the limited purposes required by Paragraph 7.18.C.
  - 3. Submittals reviewed and accepted by City for conformance with the design concept shall be executed in conformity with the Contract Documents unless otherwise required by City.

4. When Submittals are submitted for the purpose of showing the installation in greater detail, their review shall not excuse Contractor from requirements shown on the Drawings and Specifications.
  5. For-Information-Only submittals upon which the City is not expected to conduct a review or take responsive action may be so identified in the Contract Documents.
  6. Contractor shall submit the required number of Samples specified in the Specifications.
  7. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which it is intended and other data as City may require to enable City to review the Submittal for the limited purposes set forth in Paragraph 7.18.C.
- B. Where a Submittal is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to City's review and acceptance of the pertinent submittal will be at the sole risk, expense and responsibility of Contractor.
- C. City's Review
1. City will provide timely review of Submittals in accordance with the accepted Schedule of Submittals. City's review and acceptance will be to determine if the items covered by the Submittals will, after installation or incorporation in the Work, comply with the requirements of the Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
  2. City's review and acceptance will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence or procedure of construction is specifically and expressly called for by the Contract Documents), or to safety precautions or programs incident thereto.
  3. City's review and acceptance of a separate item as such will not indicate approval of the assembly in which the item functions.
  4. City's review and acceptance of a Submittal will not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Section 01 33 00 of the General Requirements, and City has given written acceptance of each such variation by specific written notation thereof incorporated in or accompanying the Submittal.
  5. City's review and acceptance of a Submittal will not relieve Contractor from responsibility for complying with the requirements of the Contract Documents.
  6. City's review and acceptance of a Submittal, or of a variation from the requirements of the Contract Documents, will not, under any circumstances, change the Contract Time or Contract Price, unless such changes are included in a Change Order.
  7. Neither City's receipt, review, or acceptance of a Submittal will result in such item becoming a Contract Document.
  8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in accepted Submittals, subject to the provisions of Section 01 33 00 of the General Requirements.

#### 7.19 *Continuing the Work*

- A. Except as otherwise provided, Contractor shall carry on the Work and adhere to the Project Schedule during all disputes or disagreements with City. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as City and Contractor may otherwise agree in writing.

#### 7.20 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to City that all Work will be in accordance with the Contract Documents and will not be defective. City and its officers, elected and appointed officials, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on Contractor's warranty and guarantee.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
  - 1. abuse, or improper modification, maintenance, or operation, by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
  - 2. normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents, a release of Contractor's obligation to perform the Work in accordance with the Contract Documents, or a release of Contractor's warranty and guarantee under this Paragraph 7.20:
  - 1. Observations by Engineer or City;
  - 2. Recommendation by Engineer or payment by City of any progress or final payment;
  - 3. The issuance of a letter or certificate of Final Acceptance by City or any payment related thereto by City;
  - 4. Use or occupancy of the Work or any part thereof by City;
  - 5. Any review and acceptance of a Submittal by City;
  - 6. Any inspection, test, or acceptance by others; or
  - 7. Any correction of defective Work by City.
- D. The Contractor shall remedy any defects or damages in the Work and pay for any damage to other work or property resulting therefrom which shall appear within a period of two (2) years from the date of Substantial Completion of the Work unless a longer period is specified. Contractor shall furnish a good and sufficient maintenance bond, complying with the requirements of Paragraph 6.02.B. The City will give notice of observed defects with reasonable promptness.

#### 7.21 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures.



- B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, City will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.
- C. If a Submittal related to the requirements indicated in Paragraph 7.22.B is prepared by Contractor, a Subcontractor, or others for submittal to City, then such Submittal must bear the written approval of Contractor's design professional when submitted by Contractor to City.
- D. City shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by Contractor under the conditions indicated in Paragraph 7.22.B, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.
- E. Pursuant to this Paragraph 7.22, City's review, acceptance, and other determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by Contractor pursuant to the conditions indicated in Paragraph 7.22.B, will be only for the following limited purposes:
  - 1. Checking for conformance with the requirements of this Paragraph 7.22;
  - 2. Confirming that Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and
  - 3. Establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents.

#### 7.22 *Right to Audit*

- A. The City shall have the right to audit and make copies of the books, records and computations pertaining to the Contract. The Contractor shall retain such books, records, documents and other evidence pertaining to the Contract during the term of the Contract and for five years thereafter, except if an audit is in progress or audit findings are yet unresolved, in which case records shall be kept until all audit tasks are completed and resolved. These books, records, documents and other evidence shall be made available, in Denton County, Texas within ten (10) Business Days of City's written request. Further, the Contractor shall also require all Subcontractors, material suppliers, and other payees to retain all books, records, documents and other evidence pertaining to the Contract, and to allow the City similar access to those documents. All books and records will be made available within Denton County, Texas. Except as otherwise provided herein, the cost of the audit will be borne by the City unless the audit reveals an overpayment of 1% or greater. If the City is undertaking an audit or inspection pursuant to Paragraph 7.09 or if an overpayment of 1% or greater occurs, the City's reasonable cost of the audit, including any travel costs, must be paid by the Contractor within five (5) Business Days of receipt of City's invoice for such costs.
- B. Failure to comply with the provisions of this section shall be a material breach of the Contract and shall constitute, in the City's sole discretion, grounds for termination thereof. Each of the terms "books", "records", "documents" and "other evidence", as used above, shall be

construed to include drafts and electronic files, even if such drafts or electronic files are subsequently used to generate or prepare a final printed document.

#### 7.23 *Nondiscrimination*

- A. The City is responsible for operating Public Transportation Programs and implementing transit-related projects, funded in part with Federal financial assistance awarded by the U.S. Department of Transportation and the Federal Transit Administration (FTA), without discriminating against any person in the United States on the basis of race, color, or national origin.
- B. Contractor shall comply with the requirements of *Title VI, Civil Rights Act of 1964 as amended* and the regulations promulgated thereunder, as may be further defined in the Supplementary Conditions, for any project receiving Federal assistance.

### ARTICLE 8 – OTHER WORK AT THE SITE

#### 8.01 *Other Work*

- A. In addition to and apart from the Work under the Contract Documents, the City may perform other work at or adjacent to the Site. Such other work may be performed by City's employees, or through contracts between the City and third parties. City may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If City performs other work at or adjacent to the Site with City's employees, or through contracts for such other work, then City shall give Contractor written notice thereof prior to starting any such other work, if such other work is not noted in the Contract Documents.
- C. Contractor shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and City, if City is performing other work with City's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.
- D. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of City and the others whose work will be affected.
- E. If the proper execution or results of any part of Contractor's Work depends upon work performed by others, Contractor shall inspect such other work and promptly report to City in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work that could not have been discovered through a proper inspection.
- F. The provisions of this Article 8 are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with City, or that is performed without having been arranged by City. If such work occurs, then any related delay, disruption, or interference incurred by Contractor is governed by the provisions of Paragraph 4.03.D.3.

## 8.02 *Coordination*

- A. If City intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with City's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:
  - 1. The identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
  - 2. An itemization of the specific matters to be covered by such authority and responsibility; and
  - 3. The extent of such authority and responsibilities.
- B. Unless otherwise provided in the Supplementary Conditions, City shall have authority for such coordination.

## 8.03 *Legal Relationships*

- A. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of City, any other contractor, or any utility owner performing other work at or adjacent to the Site.
  - 1. When City is performing other work at or adjacent to the Site with City's employees, Contractor shall be liable to City for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by City as a result of Contractor's failure to take reasonable and customary measures with respect to City's other work.
- B. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any Damage Claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, City, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify, defend and hold harmless City and Engineer, and the officers, elected and appointed officials, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

# ARTICLE 9 – CITY'S RESPONSIBILITIES

## 9.01 *Communications to Contractor*

- A. Except as otherwise provided in the Supplementary Conditions, City shall issue all communications to Contractor.

## 9.02 *Furnish Data*

- A. City shall promptly furnish the data required of City under the Contract Documents.

**9.03** *Pay When Due*

- A. City shall make payments to Contractor when they are due in accordance with and subject to the provisions of Article 14.

**9.04** *Lands and Easements; Reports, Tests, and Drawings*

- A. City's duties with respect to providing lands and easements are set forth in Paragraph 5.01.
- B. Article 5 refers to City's identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at or contiguous to the Site that have been utilized by City in preparing the Contract Documents.

**9.05** *Change Orders*

- A. City's responsibilities with respect to Change Orders are set forth in Article 11.

**9.06** *Inspections, Tests, and Approvals*

- A. City's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 13.02.DD.

**9.07** *Limitations on City's Responsibilities*

- A. The City shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. City will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

**9.08** *Undisclosed Hazardous Environmental Condition*

- A. City's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

**9.09** *Compliance with Safety Program*

- A. While at the Site, City's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which City has been informed in advance in writing pursuant to Paragraph 7.15.

**ARTICLE 10 – CITY'S OBSERVATION DURING CONSTRUCTION****10.01** *City's Project Manager or Duly Authorized Representative*

- A. City will provide a Project Manager or duly authorized representative during the construction period. The duties and responsibilities and the limitations of authority of City's Project Manager or duly appointed representative during construction are set forth in the Contract Documents.
- B. City's Project Manager for these Contract Documents is as set forth in the Supplementary Conditions. City will establish a duly authorized representative at the Preconstruction Meeting in accordance with Section 01 31 19 of the General Requirements.

#### 10.02 *Visits to Site*

- A. City will make visits to the Site at intervals appropriate to the various stages of construction as City deems necessary in order to observe the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, City will determine, in general, if the Work is proceeding in accordance with the Contract Documents. City will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. City's efforts will be directed toward providing City a greater degree of confidence that the completed Work will conform generally to the Contract Documents.
- B. City's visits and observations are subject to all the limitations on City's responsibility set forth in Paragraph 9.07. Particularly, but without limitation, during or as a result of City's visits or observations of Contractor's Work, City will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

#### 10.03 *Determinations for Work Performed*

- A. As applicable, Contractor will determine the actual quantities and classifications of Work performed.. City's Project Manager or duly authorized representative will review with Contractor the preliminary determinations on such matters before rendering a written recommendation. City's written decision will be final (except as modified to reflect changed factual conditions or more accurate data).

#### 10.04 *Decisions on Requirements of Contract Documents and Acceptability of Work*

- A. City will be the interpreter of the requirements of the Contract Documents and judge the acceptability of the Work thereunder.
- B. City will render a written decision on any issue referred.
- C. City's written decision on the issue referred will be final and binding on the Contractor, subject to the provisions of Paragraph 11.07.

### **ARTICLE 11 – CHANGES IN THE WORK; CLAIMS; EXTRA WORK**

#### 11.01 *Amending and Supplementing the Contract*

- A. The Contract may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof, including in the Contract Price or Contract Time, but such amendment will be made by Change Order only.
- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work not involving a change in Contract Price or Contract Time, may be authorized, by one of the following ways:
  - 1. A Field Order; or
  - 2. City's review of a Submittal (subject to the provisions of Paragraph 7.18.C); or
  - 3. City's written interpretation or clarification.

#### 11.02 *Execution of Change Orders*

- A. City and Contractor shall execute appropriate Change Orders covering:
  - 1. Changes in the Contract Price or Contract Time which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed..
  - 2. Changes in the Work which are: (a) ordered by City pursuant to Paragraph 11.04, (b) required because of City's acceptance of defective Work under Paragraph 13.05 or City's correction of defective Work under Paragraph 13.08, or (c) as otherwise agreed to by the parties.

#### 11.03 *Field Orders*

- A. City may authorize minor variations and deviations in changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Time and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on both the City and Contractor, which shall perform the Work involved promptly.

#### 11.04 *Authorized Changes in the Work – Extra Work*

- A. Without invalidating the Contract and without notice to any surety, City may, at any time or from time to time, order Extra Work. Upon notice of such Extra Work, Contractor shall proceed with the Work involved only upon receiving written notice from City. Extra Work will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided). Extra Work shall be memorialized by a Change Order which may or may not precede an order of Extra Work.
- B. For minor changes of Work not requiring changes to Contract Time or Contract Price, a Field Order may be issued by City.

#### 11.05 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Time with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented as allowed herein, except in certain cases of an emergency as provided in Paragraph 7.17.A.

#### 11.06 *Dispute of Extra Work*

- A. Should a difference arise as to what does or does not constitute Extra Work, or as to the payment for such Extra Work, and the City requires its performance, the Contractor shall proceed with the Extra Work after making written request for a Change Order and shall keep accurate account of the actual reasonable cost thereof. Contract Claims regarding Extra Work shall be made pursuant to Paragraph 11.07.
- B. The Contractor shall furnish the City such records of all deviations from the original Contract Documents as may be necessary to enable the City to prepare for permanent record a corrected set of plans showing the actual work performed.
- C. The compensation agreed upon for Extra Work whether or not initiated by a Change Order shall be the full, complete and final payment for all charges, fees and costs Contractor incurs as a result of or relating to the Extra Work, whether said charges, fees or costs are known, unknown, foreseen or unforeseen at that time, including without limitation, any charges, fees

or costs for delay, extended overhead, ripple or impact cost, or any other effect on changed or unchanged work as a result of the Extra Work.

#### 11.07 *Contract Claims Process*

- A. *City's Decision Required:* All Contract Claims, except those waived pursuant to Paragraph 14.08, shall be referred to the City for decision. A decision by City shall be required as a condition precedent to any exercise by Contractor of any rights or remedies he may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Contract Claims.
- B. *Notice:*
  - 1. Written notice stating the general nature of each Contract Claim shall be delivered by the Contractor to City no later than 15 days after the start of the event giving rise thereto. The responsibility to substantiate a Contract Claim shall rest with the party making the Contract Claim.
  - 2. Notice of the amount or extent of the Contract Claim, with supporting data shall be delivered to the City no later than 45 days after the start of the event giving rise thereto (unless the City notifies Contractor in writing that City will allow additional time for Contractor to submit additional or more accurate data in support of such Contract Claim).
  - 3. A Contract Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 11.08.
  - 4. A Contract Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of Paragraph 11.09.
  - 5. Each Contract Claim shall be accompanied by Contractor's written statement that the adjustment claimed is the entire adjustment to which the Contractor believes it is entitled as a result of said event.
  - 6. The City shall submit any response to the Contractor within 30 days after receipt of the Contractor's last submittal (unless in connection with the Contract Claim (unless Contractor allows the City additional time to submit a response).
- C. *City's Action:* City will review each Contract Claim and, within 30 days after receipt of the last submittal of the Contractor unless action by City's Council is required, take one of the following actions in writing:
  - 1. deny the Contract Claim in whole or in part;
  - 2. approve the Contract Claim; or
  - 3. notify the Contractor that the City is unable to resolve the Contract Claim if, in the City's sole discretion, it would be inappropriate for the City to do so. For purposes of further resolution of the Contract Claim, such notice shall be deemed a denial.
- D. City's written action under this Paragraph 11.07 will be final and binding, unless City or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.
- E. No Contract Claim for an adjustment in Contract Price or Contract Time will be valid if not submitted in accordance with this Paragraph 11.07.

- F. If the City fails to take any action pursuant to this Paragraph 11.07, the Contract Claim is considered to have been denied by the City.

**11.08 Change of Contract Price**

- A. The Contract Price may only be changed by a Change Order.
- B. The value of any Work covered by a Change Order will be determined as follows:
1. Where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 12.03);
  2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum or unit price (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.08.C.2), and shall include the cost of any secondary impacts that are foreseeable at the time of pricing the cost of Extra Work; or
  3. Where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum or unit price, then on the basis of the Cost of the Work (determined as provided in Paragraph 12.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.08.C).
- C. *Contractor's Fee*: The Contractor's fee for overhead and profit will be determined as follows:
1. A mutually acceptable fixed fee; or
  2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:  
  
For costs incurred under Paragraphs 12.01.B.1, 12.01.B.2, and 12.01.B.3, the Contractor's fee will be 15 percent.
    - a. For costs incurred under Paragraph 12.01.B.4, the Contractor's fee will be 5 percent;
      - 1) Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.08.C.2.a and 11.08.C.2.b is that the Contractor's fee will be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 12.01.B.1, 12.01.B.2, and 12.01.B.3 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, in no case shall the cumulative total of fees paid be in excess of 25% of the Cost of the Work;
    - b. No fee will be payable on the basis of costs itemized under Paragraphs 12.01.B.5, 12.01.B.6, and 12.01.C;
    - c. The amount of credit to be allowed by Contractor to City for any change which results in a net decrease in Cost of the Work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to 5 percent of such actual net decrease in Cost of the Work; and



### 11.09 *Change of Contract Time*

- A. The Contract Time may only be changed by a Change Order.
- B. No extension of the Contract Time will be allowed under a Change Order for Extra Work or for claimed delay unless the Extra Work contemplated or claimed delay is shown to be on the critical path of the Project Schedule or Contractor can show by critical path method analysis how the Extra Work or claimed delay adversely affects the critical path.
- C. Delay, disruption, and interference in the Work, and any related changes in Contract Time, are addressed in and governed by Paragraph 4.03.

### 11.10 *Notification to Surety*

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Time), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted by the Contractor to reflect the effect of any such change.

## **ARTICLE 12 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK; PLANS QUANTITY MEASUREMENT**

### 12.01 *Cost of the Work*

- A. *Purposes for Determination of Cost of the Work:* The term “Cost of the Work” means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 12.01 are used for two distinct purposes:
  - 1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or
  - 2. When needed to determine the value of a Change Order. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included:* The term, “Cost of the Work” means the sum of all costs, except those excluded in Paragraph 12.01.C, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work is covered by a Change Order, the costs reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work. Such costs shall be in amounts no higher than those calculated based on the prevailing wage rates contained in the Contract Documents, shall not include any of the costs itemized in Paragraph 12.01.C, and may include as applicable, but not be limited to the following items:
  - 1. Payroll costs or stipulated rates for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by City and Contractor. Such employees shall include, without limitation, superintendents, foremen, safety managers, safety representatives, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work will be apportioned on the basis of their time spent on the Work. Payroll costs shall include, salaries and wages plus the cost of fringe benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health

and retirement benefits, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours on Business Days, during Weekend Working Hours, or on a state or federal holiday observed by the City, shall be included in the above to the extent authorized by City.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith.
3. Rentals of all construction equipment and machinery and the parts thereof, whether rented from Contractor or others, in accordance with rental agreements approved in writing by City, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements, and the Contract Documents. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
4. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by City, Contractor shall obtain competitive bids from subcontractors acceptable to City. Contractor shall deliver such bids to City, which will then determine, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee will be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 12.01 and Paragraph 11.08.C.
5. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed or retained for services specifically related to the Work and specifically included in the agreed upon schedule of job classifications referred to in Paragraph 12.01.B.1 or otherwise specifically included in the Contract.
6. Supplemental costs consisting of the following:
  - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
  - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, and temporary office or facilities at the Site, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
  - c. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations, excluding those taxes for which an exemption is available as described in Paragraph 7.12.
  - d. Deposits lost for causes other than the negligence or willful misconduct of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
  - e. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work, provided such losses and damages have resulted from causes other than the negligence or willful misconduct of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for

whose acts any of them may be liable. Such losses include settlements made with the written consent and approval of City. No such losses, damages, and expenses will be included in the Cost of the Work for the purpose of determining Contractor's fee.

- f. The cost of utilities, fuel, and sanitary facilities at the Site.
- g. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
- h. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.

C. *Costs Excluded:* The term Cost of the Work does not include any of the following items:

- 1. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 12.01.B.1 or otherwise specifically covered in the Contract. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
- 2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
- 3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
- 4. Costs due to the acts, omissions, negligence or willful misconduct of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
- 5. Other overhead or general expense costs of any kind.

D. *Contractor's Fee*

- 1. When the Work as a whole is performed on the basis of cost-plus-a-fee, then:
  - a. Contractor's fee for the Work set forth in the Contract Documents as of the Effective Date of the Agreement will be determined as set forth in the Contract.
  - b. for any Work covered by a Change Order for an adjustment in Contract Price on the basis of Cost of the Work, Contractor's fee will be determined as set forth in Paragraph 11.08.C.
- 2. When the Work as a whole is performed on the basis of a stipulated sum, or any other basis other than cost-plus-a-fee, then Contractor's fee for any Work covered by a Change Order for an adjustment in Contract Price on the basis of Cost of the Work will be determined in accordance with Paragraph 11.08.C.2.

E. *Documentation and Audit:* Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 12, Contractor and pertinent Subcontractors will establish and maintain

records of the costs in accordance with generally accepted accounting practices, and submit in a form acceptable to City an itemized cost breakdown together with supporting data. Subject to prior written notice, City will be afforded reasonable access, during normal business hours, to all Contractor's accounts, records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and Contractor's fee. Contractor shall preserve all such documents for a period of three years after the final payment by City. Contractor will be responsible for ensuring that pertinent Subcontractors will afford such access to City, and preserve such documents, to the same extent as is required of Contractor.

#### 12.02 *Unit Price Work*

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work multiplied by the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by City subject to the provisions of Paragraph 10.03.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item. Work described in the Contract Documents, or reasonably inferred as required for a functionally complete installation, but not identified in the listing of unit price items shall be considered incidental to Unit Price Work listed and the cost of incidental work included as part of the unit price.
- D. Adjustments in Contract Price
  - 1. City may make an adjustment in the Contract Price in accordance with Paragraph 11.08 if:
    - a. the quantity of the item of Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
    - b. there is no corresponding adjustment with respect to any other item of Work.
  - 2. Adjusted unit prices will apply to all units of that item.
- E. Increased or Decreased Quantities: The City reserves the right to order Extra Work in accordance with Paragraph 11.04.
  - 1. If the changes in quantities or the alterations do not significantly change the character of the Work under the Contract Documents, the altered Work will be paid for at the Contract unit price.
  - 2. If the changes in quantities or alterations materially and significantly change the character of the Work, the Contract will be amended by a Change Order.
  - 3. If no unit prices exist, any increase or decrease in quantities will be considered Extra Work and the Contract will be amended by a Change Order in accordance with Article 11.
  - 4. A significant change in the character of Work occurs when:

- a. the character of work for any Item as altered differs materially or significantly in kind or nature from that in the Contract; or
  - b. a Major Item of work varies by more than 25% from the original Contract quantity.
5. When the quantity of work to be done under any Major Item of the Contract is more than 125% of the original quantity stated in the Contract, then either party to the Contract may request an adjustment to the unit price on the portion of the work that is above 125%.
6. When the quantity of work to be done under any Major Item of the Contract is less than 75% of the original quantity stated in the Contract, then either party to the Contract may request an adjustment to the unit price.

#### 12.03 *Plans Quantity Measurement for Unclassified Excavation or Embankment*

- A. Plans quantities may or may not represent the exact quantity of Work performed or material moved, handled, or placed during the term of the Contract. The estimated bid quantities are designated as final payment quantities, unless revised in accordance with the Contract.
- B. If the total actual quantity measured for an individual item varies by more than 25% (or as stipulated under "Price and Payment Procedures" for specific Items) from the total estimated quantity for an individual Item originally shown in the Contract Documents, an adjustment may be made to the quantity of authorized Work done for payment purposes. The party to the Contract requesting the adjustment will provide field measurements and calculations showing the final quantity for which payment will be made. Payment for revised quantity will be made at the unit price bid for that Item, except as provided for in Article 11.
- C. When quantities are revised by a change in design approved by the City, by Change Order, or to correct an error, or to correct an error on the plans, the plans quantity will be increased or decreased by the amount identified in the approved change, and the 25% variance provisions of Paragraph 12.04.B will apply to the new plans quantity.
- D. If the total Contract quantity multiplied by the unit price bid for an individual Item is less than \$250 and the Item is not originally a plans quantity Item, then the Item may be paid as a plans quantity Item if the City and Contractor agree in writing to fix the final quantity as a plans quantity.
- E. For callout work or non-site specific Contracts, the plans quantity measurement requirements are not applicable.

### **ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK**

#### 13.01 *Access to Work*

- A. City and its Engineer, consultants, representatives, employees, and independent testing laboratories, and authorities having jurisdiction shall have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply with such procedures and programs as applicable.

### 13.02 *Tests and Inspections*

- A. Contractor shall give City timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. If the Contract Documents or any Laws and Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish City the required certificates of inspection, testing or approval, except that those fees specifically identified in the Supplementary Conditions or any Texas Department of Licensure and Regulation (TDLR) inspections, which shall will be paid as described in the Supplementary Conditions.
- C. Contractor shall be responsible for arranging, obtaining, and paying for all inspections, tests, re-tests, and approvals required:
  - 1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to City;
  - 2. to attain City's acceptance of materials or equipment to be incorporated in the Work;
  - 3. by manufacturers of equipment furnished under the Contract Documents;
  - 4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
  - 5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

Such inspections and tests will be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to City.

- D. City may arrange for the services of an independent testing laboratory ("Testing Lab") to perform any inspections or tests ("Testing") for any part of the Work, as determined solely by City.
  - 1. City will coordinate such Testing to the extent possible, with Contractor;
  - 2. Should any Testing under this Section 13.03.D result in a "fail", "did not pass" or other similar negative result, the Contractor shall be responsible for paying for any and all retests. Contractor's cancellation without cause of City initiated Testing shall be deemed a negative result and require a retest.
  - 3. Any amounts owed for any retest under this Section 13.02.D shall be paid directly to the Testing Lab by Contractor. City will forward all invoices for retests to Contractor.
  - 4. If Contractor fails to pay the Testing Lab, City will not issue Final Payment until the Testing Lab is paid.
- E. If the Contract Documents require the Work (or part thereof) to be approved by City or another designated individual or entity, then Contractor shall assume full responsibility for seeking and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without the written approval of City, Contractor shall, if requested by City, uncover

such Work for observation. Such uncovering and the recovering of such Work will be at Contractor's expense.

### 13.03 *Defective Work*

- A. *Contractor's Obligation:* It is Contractor's obligation to assure that the Work is not defective.
- B. *City's Authority:* City has the authority to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects:* Written notice of all defective Work of which City has actual knowledge will be given to Contractor.
- D. *Correction, or Removal and Replacement:* Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if City has rejected the defective Work, shall remove the defective Work from the Project and replace it with Work that is not defective. Failure to require the removal of any defective Work shall not constitute acceptance of such Work.
- E. *Preservation of Warranties:* When correcting defective Work, Contractor shall take no action that would void or otherwise impair City's warranty and guarantee, if any, on said Work.
- F. *Costs and Damages:* In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Contractor or City by governmental authorities because the Work is defective, and the costs of repair, replacement or reconstruction of work of others resulting from defective Work.

### 13.04 *Rejecting Defective Work*

- A. City will have authority to reject Work which City believes to be defective or will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. City will have authority to conduct special inspection or testing of the Work as provided in this Article 13, whether or not the Work is fabricated, installed, or completed.

### 13.05 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, City prefers to accept it, City may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to City's evaluation of and determination to accept such defective Work, and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to Final Acceptance, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and City shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of the Work so accepted.

### 13.06 *Uncovering Work*

- A. City has the authority to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.

- B. If any Work is covered contrary to the Contract Documents or specific instructions of City and if requested by City, Contractor shall uncover such Work for City's observation, inspection or testing and then replace the covering, all at Contractor's expense.
- C. If City considers it necessary or advisable that covered Work be observed by City or inspected or tested by others, then Contractor, at City's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as City may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.
  - 1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others). City shall be entitled to accept defective Work in accordance with Paragraph 13.05 and in such case Contractor shall still be responsible for all costs associated with exposing, observing, and testing defective Work.
  - 2. If the uncovered Work is not found to be defective, Contractor shall be allowed an extension of the Contract Time to the extent directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction.

#### 13.07 *City May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or Contractor fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then City may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been corrected or eliminated; however, this right of City to stop the Work will not give rise to any duty on the part of City to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or any employee or agent of, any of them.

#### 13.08 *City May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from City to correct defective Work, or to remove and replace defective Work as required by City, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, then City may, after providing 7 days' advance written notice to Contractor, correct or remedy any such deficiency.
- B. In connection with such corrective or remedial action, City may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which City has paid Contractor but which are stored elsewhere. Contractor shall allow City, City's representatives, agents and employees, and City's other contractors access to the Site to enable City to exercise the rights and remedies under this Paragraph 13.08.
- C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court, or arbitration or other dispute resolution costs) incurred or sustained by City in exercising the rights and remedies under this Paragraph 13.08 will be the responsibility of and will be charged against Contractor. A Change Order will be issued incorporating the necessary revisions in the Contract



Documents with respect to the Work, and City shall be entitled to an appropriate decrease in the Contract Price. Such claims, costs, losses and damages will include, but not be limited to, all costs of repair or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

- D. Contractor shall not be allowed an extension of the Contract Time because of any delay in the performance of the Work attributable to the exercise by City of City's rights and remedies under this Paragraph 13.08.

#### **ARTICLE 14 – PAYMENTS TO CONTRACTOR; COMPLETION; CORRECTION PERIOD**

##### **14.01 *Progress Payments***

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Paragraph 2.03 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to City. Progress payments for Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 12.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. Applications for Payments
1. Contractor is responsible for providing all information as required to become a vendor of the City.
  2. At least 20 days before the date established in the General Requirements for each progress payment (but not more often than once a month), Contractor shall submit to City for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.
  3. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment must also be accompanied by: (a) bill of sale, invoice, or purchase order payments, copies of cancelled checks or other documentation establishing full payment by Contractor for the materials and equipment; (b) at City's request, documentation warranting that City has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, or other arrangements to protect City's interest therein, all of which must be satisfactory to City.
  4. Beginning with the second Application for Payment, each Application must include an affidavit of Contractor stating that all previous progress payments received on account of the Work by Contractor have been applied to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
  5. The amount of retainage with respect to progress payments will be as stipulated in the Contract Documents.
- C. Review of Applications
1. City will, after receipt of each Application for Payment, either indicate in writing it will proceed to process the Application for Payment or return the Application to Contractor

indicating reasons for refusing payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.

2. City's processing of any payment requested in an Application for Payment will be based on City's observations of the executed Work, and on City's review of the Application for Payment and the accompanying data and schedules, that based City's actual knowledge:
  - a. the Work has progressed to the point indicated; and
  - b. the quality and/or quantity of the Work is generally in accordance with the Contract Documents (subject to any subsequent evaluations of the Work, an evaluation of the Work as a functioning whole prior to or upon Final Acceptance, the results of any subsequent tests or inspections called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraphs 10.05 and 12.03, and any other qualifications stated).
3. Processing any such payment will not thereby be deemed to have represented that:
  - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work; or
  - b. there are no other matters or issues between the parties that might entitle Contractor to be paid additionally by City or entitle City to withhold payment to Contractor; or
  - c. Contractor has complied with Laws and Regulations applicable to Contractor's performance of the Work.
4. City may refuse to process or pay the whole or any part of any payment because of subsequently discovered evidence or the results of subsequent inspections or tests, and may revise or revoke any such payment previously made, to such extent as may be necessary to protect City from loss because:
  - a. the Work is defective, or the completed Work has been damaged by the Contractor or his subcontractors, requiring correction or replacement;
  - b. there are discrepancies in quantities contained in previous applications for payment;
  - c. the Contract Price has been reduced by Change Orders;
  - d. City has been required to correct defective Work in accordance with Paragraph 13.08, or has accepted defective Work pursuant to Paragraph 13.05;
  - e. City has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
  - f. City has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. Retainage:

1. For all contracts, retainage shall be five percent (5%).

E. *Liquidated Damages*: For each calendar day that any work shall remain uncompleted after the time specified in the Contract Documents, the sum per day specified in the Agreement will be paid by the Contractor to the City, not as a penalty, but as liquidated damages suffered by the

City. If feasible, the parties may agree to have the liquidated damages deducted from any amounts owned to Contractor by City instead of being paid directly to City by Contractor.

F. *Payment*: Contractor will be paid pursuant to the requirements of this Article 14 and payment will become due in accordance with the Contract Documents.

G. Reduction in Payment

1. City may refuse to make payment of the of the amount requested because:

- a. Claims have been made against City based on Contractor's performance or furnishing of the Work, or City has incurred costs, losses, or damages resulting from Contractor's performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, or patent infringement;
- b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
- c. Contractor has failed to provide and maintain required bonds or insurance;
- d. City has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
- e. City has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
- f. The Work is defective, requiring correction or replacement;
- g. City has been required to correct defective Work in accordance with Paragraph 13.08, or has accepted defective Work pursuant to Paragraph 13.05;
- h. The Contract Price has been reduced by Change Orders;
- i. An event has occurred that would constitute a default by Contractor and therefore justify a termination for cause;
- j. Liquidated or other damages have accrued as a result of Contractor's failure to achieve Milestones or Final Acceptance of the Work;
- k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to City to secure the satisfaction and discharge of such Liens;
- l. Other items entitle City to a set-off against the payment amount requested; or
- m. City has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.

2. If City refuses to make payment of the amount requested, City will give Contractor written notice stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. City shall pay Contractor the amount so withheld, or any adjustment thereto agreed to by City and Contractor, within a reasonable time after Contractor remedies the reasons for such action to the satisfaction of City and City has confirmed such action.

#### 14.02 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to City no later than the time of payment free and clear of all Liens.

#### 14.03 *Partial Utilization*

- A. Prior to Final Acceptance of all the Work, City may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which City determines constitutes a separately functioning and usable part of the Work that can be used by City for its intended purpose without significant interference with Contractor's performance of the remainder of the Work. City at any time may notify Contractor in writing to of any such part of the Work which City determines to be ready for its intended use. In addition, City may request in writing that Contractor permit City to use or occupy any such part of the Work that City believes to be substantially complete, subject to the following conditions:
  - 1. At any time, Contractor may notify City that Contractor considers any such part of the Work ready for its intended use.
  - 2. Within a reasonable time after notification as enumerated in Paragraph 14.03, City and Contractor shall make an inspection of that part of the Work to determine its status of completion. If City does not consider that part of the Work to be substantially complete, City will notify Contractor in writing giving the reasons therefor.
  - 3. Partial Utilization by City will not constitute Final Acceptance by City.

#### 14.04 *Final Inspection*

- A. Upon written notice from Contractor that the entire Work is complete in accordance with the Contract Documents:
  - 1. City will promptly schedule a Final Inspection with Contractor.
  - 2. City will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.
- B. City reserves the right to deny request for Final Inspection if City determines that the entire Work is not sufficiently complete to warrant a Final Inspection.

#### 14.05 *Final Acceptance*

- A. Upon completion by Contractor to City's satisfaction, of any and all Work in accordance with the Contract Documents, including any corrections or additional Work identified in the Final Inspection and delivery of all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurances, certificates of inspection, annotated record documents and other required documents in accordance with the Contract Documents, City will issue to Contractor a letter of Final Acceptance.

#### 14.06 *Final Payment*

- A. Application for Payment

1. Upon receipt of a letter of Final Acceptance from City, Contractor may make application for Final Payment following the procedures for requesting payments in accordance with the Contract Documents.
2. The final Application for Payment must be accompanied (except as previously delivered) by:
  - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 6.03;
  - b. consent of the surety, if any, to final payment;
  - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to City free and clear of any Liens or other title defects or will so pass upon final payment.
  - d. a list of all Contract Claims or Damage Claims against City that Contractor believes are unsettled; and
  - e. affidavits of payments and complete and legally effective releases or waivers (satisfactory to City) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
- B. Payment Becomes Due: The final payment requested by Contractor, less previous payments made and less any sum to which City is entitled, including but not limited to liquidated damages, will become due and payable:
  1. After City's acceptance of the Application for Payment and accompanying documentation; and
  2. After all Damage Claims have been resolved:
    - a. directly by the Contractor; or
    - b. Contractor provides evidence that the Damage Claim has been reported to Contractor's insurance provider for resolution.

The making of the final payment by the City shall not relieve the Contractor of any guarantees or other requirements of the Contract that continue thereafter.

#### 14.07 *Final Completion Delayed and Partial Retainage Release*

- A. If final completion of the Work is significantly delayed, and if City so confirms, City may, upon receipt of Contractor's final Application for Payment, 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 to be held by City for Work not fully completed or corrected is less than the retainage stipulated in Paragraph 14.01.D, and if bonds have been furnished as required in Paragraph 6.02, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to City with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Contract Claims.
- B. *Partial Retainage Release.* If the Contract provides for separate establishment and maintenance periods and/or test and performance periods following the completion of all other construction in the Contract Documents for all Work locations, the City may release a portion

of the amount retained provided that all other work is completed as determined by the City. Before the release, all submittals and final quantities must be completed and accepted for all other work. An amount sufficient to ensure Contract compliance will be retained.

#### 14.08 *Waiver of Claims*

- A. The acceptance of final payment will constitute a waiver and release by Contractor of all claims, rights, causes of action, or liabilities, including Contract Claims, against City arising out of, related to or under the Contract or for any act, omission or neglect of City.

#### 14.09 *Correction Period*

- A. If within two (2) years after the date of Substantial Completion (or such longer period of time as may be prescribed by the Contract Documents) any Work has been found to be defective, or Contractor's repair of any damages to the Site, adjacent areas, or areas made available for Contractor's use by City has been found to be defective, then after receipt of City's written notice of defect, Contractor shall promptly, without cost to City and in accordance with City's written instructions:
  - 1. correct the defective repairs to the Site or such adjacent areas, or areas made available for Contractor's use by City;
  - 2. correct such defective Work;
  - 3. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by City, and
  - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting from the corrective measures.
- B. If Contractor does not promptly comply with the terms of City's written instructions, or in an emergency where delay would cause serious risk of loss or damage, City may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others).
- C. In special circumstances where a particular item of equipment is placed in continuous service before Final Acceptance of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected, repaired or removed and replaced under this Paragraph 14.09, the correction period hereunder with respect to such Work may be extended for an additional period of one year after the end of the initial correction period.
- E. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this Paragraph 14.09 are not to be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

**ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION****15.01** *City May Suspend Work*

- A. At any time and without cause, City may suspend the Work or any portion thereof by written notice to Contractor. City may fix the date on which Work will be resumed in such notice, and Contractor shall resume the Work on the date so fixed.
- B. Should the Contractor not be able to complete a portion of the Project due to causes beyond the control of and without the fault or negligence of the Contractor, and should it be determined by mutual consent of the Contractor and City that a solution to allow construction to proceed is not available within a reasonable period of time, Contractor may request an extension in Contract Time, directly attributable to any such suspension.
- C. If it should become necessary to suspend 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 nor become damaged in any way; Contractor shall take every precaution to prevent damage or deterioration of the work performed; and Contractor shall provide suitable drainage about the work, and erect temporary structures where necessary.
- D. Contractor may be reimbursed for the cost of moving its equipment off the job and returning the necessary equipment to the job when it is determined by the City that construction may be resumed. Such reimbursement shall be based on actual cost to the Contractor of moving the equipment and no profit or overhead will be allowed. Reimbursement may not be allowed if the equipment is moved to another construction project for the City.

**15.02** *City May Terminate for Cause*

- A. The occurrence of any one or more of the following events by way of example, but not of limitation, may justify termination for cause:
  - 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the Project Schedule established under Paragraph 2.06 as adjusted from time to time pursuant to Paragraph 7.05);
  - 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract; or
  - 3. Contractor's disregard of Laws and Regulations of any public body having jurisdiction; or
  - 4. Contractor's repeated disregard of the authority of City; or
  - 5. Contractor's failure to promptly make good any defect in materials or workmanship, or defects of any nature, the correction of which has been directed in writing by the City; or
  - 6. Substantial indication that the Contractor has made an unauthorized assignment of the Contract or any funds due therefrom for the benefit of any creditor or for any other purpose; or
  - 7. Substantial indication that the Contractor has become insolvent or bankrupt, or otherwise financially unable to perform the Work satisfactorily; or
  - 8. Contractor commences legal action in a court of competent jurisdiction against the City.

- B. If one or more of the events identified in Paragraph 15.02.A occurs, City will provide written notice to Contractor and Surety to arrange a conference with Contractor and Surety to address Contractor's failure to perform the Work. The conference shall be held not later than 15 days after receipt of notice. by both Contractor and surety.
1. If the City, the Contractor, and the Surety do not agree to allow the Contractor to proceed to perform the Contract, the City may, to the extent permitted by Laws and Regulations, declare a Contractor default and formally terminate the Contractor's right to complete the Contract. Contractor default shall not be declared earlier than 20 days after the Contractor and Surety have received notice of the conference to address Contractor's failure to perform the Work.
  2. If Contractor's services are terminated, Surety shall be obligated to take over and perform the Work. If Surety does not commence performance thereof within 15 consecutive calendar days after date of an additional written notice demanding Surety's performance of its obligations, then City, without process or action at law, may take over any portion of the Work and complete it as described below.
    - a. If City completes the Work, City may exclude Contractor and Surety from the Site and take possession of the Work, and all materials and equipment stored at the Site or for which City has paid Contractor, but which are stored elsewhere, and the Work as City may deem expedient.
  3. Whether City or Surety completes the Work, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by City, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to City. Such claims, costs, losses, and damages incurred by City will be incorporated in a Change Order, provided that when exercising any rights or remedies under this Paragraph 15.02, City shall not be required to obtain the lowest price for the Work performed.
  4. Neither City, nor any of its respective consultants, agents, officers, elected or appointed officials, directors or employees shall be in any way liable or accountable to Contractor or Surety for the method by which the completion of the said Work, or any portion thereof, may be accomplished or for the price paid therefor.
  5. City, notwithstanding the method used in completing the Contract, shall not forfeit the right to recover damages from Contractor or Surety for Contractor's failure to timely complete the entire Contract. Contractor shall not be entitled to any claim, counterclaim or offset on account of the method used by City in completing the Contract.
  6. Maintenance of the Work shall continue to be Contractor's and Surety's responsibilities as provided for in the bond requirements of the Contract Documents or any special guarantees provided for under the Contract Documents or any other obligations otherwise under the Contract or prescribed by law.
- C. Notwithstanding Paragraph 15.02.B, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to



perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.

- D. Where Contractor's services have been so terminated by City, the termination will not affect any rights or remedies of City against Contractor then existing or which may thereafter accrue, or any rights or remedies of City against Contractor or Surety. Any retention or payment of money due Contractor by City will not release Contractor from liability.
- E. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.02, the termination procedures of that bond shall not supersede the provisions of this Article 15.

15.03 *City May Terminate for Convenience*

- A. City may, without cause and without prejudice to any other right or remedy of City, terminate the Contract, in whole or in part. Any termination shall be affected by giving notice of the termination to the Contractor specifying the extent to which performance of Work under the contract is terminated, and the date upon which such termination becomes effective. Notice shall be deemed validly given if given in accordance with Paragraph 17.01.A.
- B. After a notice of termination, has been given, and except as otherwise directed by the City, the Contractor shall:
  - 1. stop work under the Contract on the date and to the extent specified in the notice of termination;
  - 2. place no further orders or subcontracts for materials, services or facilities except as may be necessary for completion of such portion of the Work under the Contract as is not terminated;
  - 3. terminate all orders and subcontracts to the extent that they relate to the performance of the Work terminated by notice of termination;
  - 4. transfer title to the City and deliver in the manner, at the times, and to the extent, if any, directed by the City:
    - a. the fabricated or unfabricated parts, Work in progress, completed Work, supplies and other material produced as a part of, or acquired in connection with the performance of, the Work terminated by the notice of the termination; and
    - b. the completed, or partially completed plans, drawings, information and other property which, if the Contract had been completed, would have been required to be furnished to the City.
  - 5. complete performance of such Work as shall not have been terminated by the notice of termination; and
  - 6. take such action as may be necessary, or as the City may direct, for the protection and preservation of the property related to the Contract that is in the possession of the Contractor and in which the City has or may acquire the rest.
- C. At a time not later than 30 days after the termination date specified in the notice of termination, the Contractor may submit to the City a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of in accordance with the Contract, exclusive of items the disposition of which has been directed or authorized by City.

- D. Not later than 15 days after Contractor's submission of the certified list to City pursuant to Paragraph 15.03.C, the City shall accept title to such items, subject to verification of the list by the City upon removal of the items or, If the items are stored, then City shall have 45 days after submission of the list, to verify the list submitted and accept title to such items. Any necessary adjustments to correct the list as submitted, shall be made prior to final settlement.
- E. Not later than 60 days after the notice of termination has been given, the Contractor shall submit its termination claim to the City in the form and with the certification prescribed by the City. Unless an extension request is made in writing within such 60-day period by the Contractor, and granted by the City, any and all such claims of Contractor that are not submitted to City within such 60-day period shall be conclusively deemed waived.
- F. Should a termination claim be timely submitted to the City, Contractor shall be paid for (without duplication of any items):
  - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work calculated and determined in accordance with the Contract Documents;
  - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses calculated and determined in accordance with the Contract Documents; and
  - 3. reasonable expenses directly attributable to reasonable and necessary wind-down and termination activities, without any overhead or profit.
- G. In the event of the failure of the Contractor and City to agree upon the whole amount to be paid to the Contractor by reason of the termination of the Work, the City shall determine, on the basis of information submitted and available to it, the amount, if any, due to the Contractor by reason of the termination and City shall pay to the Contractor the amounts so determined. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of, related to or resulting from such termination.

## **ARTICLE 16 – RESOLUTION OF DISPUTES**

### **16.01 *Methods and Procedures***

- A. Either City or Contractor may request mediation of any Contract Claim submitted for a decision under Paragraph 11.07 before such decision becomes final and binding. The request for mediation shall be submitted to the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 11.07.E.
- B. City and Contractor shall participate in the mediation process in good faith. The process shall be commenced within 60 calendar days of filing of the request.
- C. The parties shall agree on a mediator; however, if they cannot agree within 14 calendar days then the Denton County Alternative Dispute Resolution Program (“DCAP”) shall appoint a mediator. The mediation session shall be held within 45 days of the retention of the mediator, and last for at least one full mediation day, before any party has the option to withdraw from the process. The parties may agree to continue the mediation process beyond one day, until

there is a settlement agreement, or one party, or the mediator, states that there is no reason to continue because of an impasse that cannot be overcome and sends a “notice of termination of mediation.” All reasonable efforts will be made to complete the mediation within 30 days of the first mediation session. All costs of mediation shall be borne equally by the parties.

- D. All communications, both written and oral, during Phases A and B are confidential and shall be treated as settlement negotiations for purposes of applicable rules of evidence; however, documents generated in the ordinary course of business prior to the Dispute, that would otherwise be discoverable, do not become confidential simply because they are used in the Negotiation and/or Mediation process.
- E. The process shall be confidential based on terms acceptable to the mediator and/or mediation service provider.
- F. If the Contract Claim is not resolved by mediation, City’s action under Paragraph 11.07.C or a denial pursuant to Paragraphs 11.07.C.3 or 11.07.D shall become final and binding 30 days after termination of the mediation unless, within that time period, City or Contractor:
  - 1. elects in writing to invoke any other dispute resolution process provided for in the Supplementary Conditions; or
  - 2. agrees with the other party to submit the Contract Claim to another dispute resolution process; or
  - 3. gives written notice to the other party of the intent to submit the Contract Claim to a court of competent jurisdiction as set forth within the Contract Documents.

## ARTICLE 17 – MISCELLANEOUS

### 17.01 *Giving Notice*

- A. Whenever any provision of the Contract requires the giving of written notice, it will be deemed to have been validly given if delivered:
  - 1. in person, by a commercial courier service or otherwise, if to City, to the duly authorized representative of City identified in the Contract Documents or to City’s Project Manager or, if to Contractor, to a member of the firm or to an officer of the corporation for whom it is intended; or
  - 2. by registered or certified mail, postage prepaid, to the recipient’s place of business; or
  - 3. by e-mail to the recipient.

### 17.02 *Computation of Time*

- A. When any period of time is referred to in the Contract by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day that is a state or federal holiday observed by the City, the next Business Day shall become the last day of the period.

### 17.03 *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws and Regulations, in equity, by special warranty or

guarantee, or by other provisions of the Contract. The provisions of this Paragraph 17.03 will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

**17.04** *No Waiver*

- A. A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Contract.
- B. The City has not waived its sovereign immunity except as expressly set forth in Subchapter I, Chapter 271 of the Texas Local Government Code or as expressly waived by other statute.

**17.05** *Survival of Obligations*

All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and Final Acceptance of the Work or termination of the Contract or of the services of Contractor.

**17.06** *Assignment of Contract*

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party to this Contract of any rights under or interests in the Contract will be binding on the other party without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract.

**17.07** *Successors and Assigns*

- A. City and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

**17.08** *Governing Law*

- A. The Contract shall be construed in accordance with the laws of the State of Texas without regard to conflicts of law principles.

**17.09** *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

**Exhibit Prevailing Wage Rates**

"General Decision Number: TX20220025 02/25/2022

Superseded General Decision Number: TX20210025

State: Texas

Construction Type: Highway

Counties: Archer, Callahan, Clay, Collin, Dallas, Delta, Denton, Ellis, Grayson, Hunt, Johnson, Jones, Kaufman, Parker, Rockwall, Tarrant and Wise Counties in Texas.

HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects & railroad construction; bascule, suspension & spandrel arch bridges designed for commercial navigation, bridges involving marine construction; and other major bridges).

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	<ul style="list-style-type: none"> <li>. Executive Order 14026 generally applies to the contract.</li> <li>. The contractor must pay all covered workers at least \$15.00 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2022.</li> </ul>
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	<ul style="list-style-type: none"> <li>. Executive Order 13658 generally applies to the contract.</li> <li>. The contractor must pay all covered workers at least \$11.25 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2022.</li> </ul>

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at

[https://www.dol.gov/agencies/whd/government-contracts.](https://www.dol.gov/agencies/whd/government-contracts)

Modification Number	Publication Date
0	01/07/2022
1	02/25/2022

\* SUTX2011-007 08/03/2011

Rates	Fringes
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CONCRETE FINISHER (Paving and Structures).....\$ 14.12 \*\*

ELECTRICIAN.....\$ 19.80

#### FORM BUILDER/FORM SETTER

Paving & Curb.....\$ 13.16 \*\*

Structures.....\$ 13.84 \*\*

#### LABORER

Asphalt Raker.....\$ 12.69 \*\*

Flagger.....\$ 10.06 \*\*

Laborer, Common.....\$ 10.72 \*\*

Laborer, Utility.....\$ 12.32 \*\*

Pipelayer.....\$ 13.24 \*\*

Work Zone Barricade

Servicer.....\$ 11.68 \*\*

#### POWER EQUIPMENT OPERATOR:

Asphalt Distributor.....\$ 15.32

Asphalt Paving Machine.....\$ 13.99 \*\*

Broom or Sweeper.....\$ 11.74 \*\*

Concrete Pavement

Finishing Machine.....\$ 16.05

Concrete Saw.....\$ 14.48 \*\*

Crane Operator, Lattice

Boom 80 Tons or Less.....\$ 17.27

Crane Operator, Lattice

Boom over 80 Tons.....\$ 20.52

Crane, Hydraulic 80 Tons

or Less.....\$ 18.12

Crawler Tractor.....\$ 14.07 \*\*

Excavator, 50,000 pounds

or less.....\$ 17.19

Excavator, over 50,000

pounds.....\$ 16.99

Foundation Drill , Truck

Mounted.....\$ 21.07

Foundation Drill, Crawler

Mounted.....\$ 17.99

Front End Loader 3 CY or

Less.....\$ 13.69 \*\*

Front End Loader, over 3 CY.\$ 14.72 \*\*

Loader/Backhoe.....\$ 15.18

Mechanic.....\$ 17.68

Milling Machine.....\$ 14.32 \*\*

Motor Grader, Fine Grade....\$ 17.19

Motor Grader, Rough.....\$ 16.02

Pavement Marking Machine....\$ 13.63 \*\*

Reclaimer/Pulverizer.....\$ 11.01 \*\*

Roller, Asphalt.....\$ 13.08 \*\*

Roller, Other.....\$ 11.51 \*\*

Scraper.....\$ 12.96 \*\*

Small Slipform Machine.....\$ 15.96

Spreader Box.....\$ 14.73 \*\*

Servicer.....\$ 14.58 \*\*

Steel Worker (Reinforcing).....\$ 16.18

#### TRUCK DRIVER

Lowboy-Float.....\$ 16.24

Off Road Hauler.....\$ 12.25 \*\*

Single Axle.....\$ 12.31 \*\*

Single or Tandem Axle Dump

Truck.....\$ 12.62 \*\*

Tandem Axle Tractor with

Semi Trailer.....\$ 12.86 \*\*

Transit-Mix.....\$ 14.14 \*\*

WELDER.....\$ 14.84 \*\*

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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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\*\* Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$15.00) or 13658 (\$11.25). Please see the Note at the top of the wage determination for more information.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

## Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

## Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

## Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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## WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can



be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

=====

END OF GENERAL DECISION"

"General Decision Number: TX20220018 04/29/2022

Superseded General Decision Number: TX20210018

State: Texas

Construction Type: Heavy

Counties: Collin, Dallas, Denton, Ellis, Kaufman and Rockwall  
Counties in Texas.

Water and Sewer Lines/Utilities (Including Related Tunneling  
Where the Tunnel is 48" or Less in Diameter)

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60).

<p>If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:</p>	<ul style="list-style-type: none"> <li>. Executive Order 14026 generally applies to the contract.</li> <li>. The contractor must pay all covered workers at least \$15.00 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2022.</li> </ul>
<p>If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:</p>	<ul style="list-style-type: none"> <li>. Executive Order 13658 generally applies to the contract.</li> <li>. The contractor must pay all covered workers at least \$11.25 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2022.</li> </ul>

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Modification Number      Publication Date

0	01/07/2022
1	02/25/2022
2	04/29/2022

\* PLUM0100-002 11/01/2021

	Rates	Fringes
Plumbers and Pipefitters.....	\$ 34.48	13.07

\* SUTX1991-004 09/23/1991

	Rates	Fringes
--	-------	---------

Laborers:

Common.....	\$ 7.25 **
Utility.....	\$ 7.467 **

Pipelayer.....	\$ 7.828 **
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Power equipment operators:

Backhoe.....	\$ 10.804 **
Crane.....	\$ 10.942 **
Front End Loader.....	\$ 9.163 **
Tunneling Machine (48" or less).....	\$ 9.163 **

TRUCK DRIVER.....	\$ 8.528 **
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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

\*\*\*\*\*

\*\* Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$15.00) or 13658 (\$11.25). Please see the Note at the top of the wage determination for more information.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

#### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

#### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of

each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

=====

END OF GENERAL DECISIO"



**Certificate Of Completion**

Envelope Id: 9A21BACF887D42E08F13E5E75BF8CE54

Status: Completed

Subject: Please DocuSign: City Council Contract 7714 CMAR Construction Services for SED-B

Source Envelope:

Document Pages: 155

Signatures: 5

Envelope Originator:

Certificate Pages: 6

Initials: 1

Cori Power

AutoNav: Enabled

901B Texas Street

Envelopel Stamping: Enabled

Denton, TX 76209

Time Zone: (UTC-06:00) Central Time (US &amp; Canada)

cori.power@cityofdenton.com

IP Address: 198.49.140.104

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Status: Original

Holder: Cori Power

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10/18/2022 3:08:59 PM

cori.power@cityofdenton.com

**Signer Events****Signature****Timestamp**

Cori Power

**Completed**

Sent: 10/18/2022 3:16:49 PM

cori.power@cityofdenton.com

Viewed: 10/18/2022 3:17:00 PM

Senior Buyer

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City of Denton

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Security Level: Email, Account Authentication  
(None)**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Lori Hewell



Sent: 10/18/2022 3:17:22 PM

lori.hewell@cityofdenton.com

Viewed: 10/18/2022 3:21:38 PM

Purchasing Manager

Signed: 10/18/2022 3:24:21 PM

City of Denton

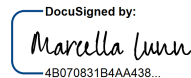
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Security Level: Email, Account Authentication  
(None)

Using IP Address: 198.49.140.10

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Marcella Lunn



Sent: 10/18/2022 3:24:27 PM

marcella.lunn@cityofdenton.com

Viewed: 10/20/2022 5:20:09 PM

Deputy City Attorney

Signed: 10/20/2022 5:28:48 PM

City of Denton

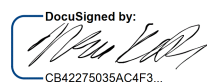
Signature Adoption: Pre-selected Style

Security Level: Email, Account Authentication  
(None)

Using IP Address: 198.49.140.104

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Nathan Kowallis



Sent: 10/20/2022 5:28:54 PM

nkowallis@mccarthy.com

Viewed: 10/20/2022 10:06:31 PM

Sr. Vice President

Signed: 10/20/2022 10:12:59 PM

Security Level: Email, Account Authentication  
(None)

Signature Adoption: Drawn on Device


Using IP Address: 107.141.25.115

Signed using mobile

**Electronic Record and Signature Disclosure:**

Accepted: 11/12/2021 1:35:52 PM

ID: e4fd10dc-8d02-4ba3-902d-fde0b0d11585

Signer Events	Signature	Timestamp
<p>Rebecca Diviney  Rebecca.Diviney@cityofdenton.com  Director of Capital Projects/City Engineer  Capital Projects/Engineering  Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b>  Accepted: 10/21/2022 5:22:35 AM  ID: ea42f142-fc84-4ddc-8d7b-b0b111f02788</p>	<div>DocuSigned by:    CE9F2B4E4B6745F...</div> <p>Signature Adoption: Pre-selected Style  Using IP Address: 47.222.20.2  Signed using mobile</p>	<p>Sent: 10/20/2022 10:13:05 PM  Viewed: 10/21/2022 5:22:35 AM  Signed: 10/21/2022 5:23:09 AM</p>
<p>Cheyenne Defee  cheyenne.defee@cityofdenton.com  Procurement Administration Supervisor  City of Denton  Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b>  Not Offered via DocuSign</p>	<p><b>Completed</b></p> <p>Using IP Address: 198.49.140.10</p>	<p>Sent: 10/21/2022 5:23:15 AM  Viewed: 11/16/2022 9:27:48 AM  Signed: 11/16/2022 9:28:16 AM</p>
<p>Sara Hensley  sara.hensley@cityofdenton.com  City Manager  City of Denton  Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b>  Not Offered via DocuSign</p>	<div>DocuSigned by:    5236DB296270423...</div> <p>Signature Adoption: Pre-selected Style  Using IP Address: 107.77.198.132  Signed using mobile</p>	<p>Sent: 11/16/2022 9:28:23 AM  Viewed: 11/16/2022 9:29:05 AM  Signed: 11/16/2022 9:29:16 AM</p>
<p>Rosa Rios  rosa.rios@cityofdenton.com  City Secretary  Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b>  Accepted: 11/16/2022 4:36:38 PM  ID: a5de48cb-ae30-43b1-b045-5ec8db03aa60</p>	<div>DocuSigned by:    1C5CA8C5E175493...</div> <p>Signature Adoption: Pre-selected Style  Using IP Address: 198.49.140.10</p>	<p>Sent: 11/16/2022 9:29:22 AM  Viewed: 11/16/2022 4:36:38 PM  Signed: 11/16/2022 4:37:27 PM</p>
In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
<p>Cheyenne Defee  cheyenne.defee@cityofdenton.com  Procurement Administration Supervisor  City of Denton  Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b>  Not Offered via DocuSign</p>	<div>COPIED</div>	<p>Sent: 10/18/2022 3:17:22 PM</p>



Carbon Copy Events	Status	Timestamp
Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	COPIED	Sent: 10/21/2022 5:23:15 AM Viewed: 10/21/2022 11:00:55 AM
City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	COPIED	Sent: 11/16/2022 4:37:34 PM
Seth Garcia Seth.Garcia@cityofdenton.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Accepted: 11/16/2022 8:06:08 AM ID: 16b02fb2-3290-4011-8eaa-11fe59718ae9	COPIED	Sent: 11/16/2022 4:37:37 PM Viewed: 11/16/2022 4:47:04 PM
Colleen Martindale CMartindale@mccarthy.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	COPIED	Sent: 11/16/2022 4:37:41 PM
David Wallace DRWallace@mccarthy.com Project Director Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	COPIED	Sent: 11/16/2022 4:37:44 PM Viewed: 11/16/2022 4:43:16 PM
Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	COPIED	Sent: 11/16/2022 4:37:47 PM
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Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	10/18/2022 3:16:49 PM
Certified Delivered	Security Checked	11/16/2022 4:36:38 PM
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Completed	Security Checked	11/16/2022 4:37:47 PM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

## **ELECTRONIC RECORD AND SIGNATURE DISCLOSURE**

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If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

### **Consequences of changing your mind**

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

### **All notices and disclosures will be sent to you electronically**

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

**How to contact City of Denton:**

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com)

**To advise City of Denton of your new e-mail address**

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at [melissa.kraft@cityofdenton.com](mailto:melissa.kraft@cityofdenton.com) and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

In addition, you must notify DocuSign, Inc to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in DocuSign.

**To request paper copies from City of Denton**

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com) and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

**To withdraw your consent with City of Denton**

To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your DocuSign account, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com) and in the body of such request you must state your e-mail, full name, US Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

**Required hardware and software**

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none"><li>•Allow per session cookies</li><li>•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection</li></ul>

\*\* These minimum requirements are subject to change. If these requirements change, we will provide you with an email message at the email address we have on file for you at that time providing you with the revised hardware and software requirements, at which time you will have the right to withdraw your consent.

**Acknowledging your access and consent to receive materials electronically**

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

By checking the 'I Agree' box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC RECORD AND SIGNATURE DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify City of Denton as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by City of Denton during the course of my relationship with you.

CONTINGENCY USE AUTHORIZATION (CUA)		CUA No.: 1
#7714 CMAR for Southeast Denton Package B		Effective Date: 4/7/2023
City of Denton 401 N Elm St Denton, TX 76201 Seth Garcia / Capital Projects	McCarthy Building Companies Inc 12851 Manchester Rd Saint Louis, MO 63131 Riley Seahorn	
Notice to Proceed Date: Tuesday, January 17, 2023		Completion Date: Sunday, May 5, 2024
Original Contract Days: 465		This CO Days Request: 9
Prior Approved CO Days: 0		New Contract Days: 474
THE SCHEDULE OF VALUES IS REALLOCATED AS FOLLOWS:		
ITEM No.	DESCRIPTION OF REVISIONS	Change from Owner's Contingency to Construction Manager's Cost of Work
1	Scope Changes from 90% to 100% design	\$33,714.00
	Subtotal:	\$33,714.00
Original GMP Amount: \$21,014,409.00 Owner's Contingency: \$567,969.00 Prior Approved CUA's: \$0.00 This CUA Request: \$33,714.00 Owner's Contingency Remaining: \$534,255.00 Revised GMP Amount: \$21,048,123.00		
NOT VALID UNTIL SIGNED BY CONTRACTOR, AND OWNER. This CUA is specific and final as to price, with no reservations or other provisions allowing for future additional money for these particular reallocation(s), as identified and fully compensated above, and more fully described in the PCOs they reference. Signature of the Construction Manager indicates its agreement herewith, including adjustments to the Contract Time, if any. This CUA does not change the Contract Sum.		
Authorizations:		
McCarthy Building Companies Inc Construction Manager DocuSigned by: Riley Seahorn Signature	City of Denton Owner DocuSigned by: Seth Garcia Signature	DocuSigned by: Trevor Crain Signature
Riley Seahorn, Project Manager	Seth Garcia, Program Manager	Trevor Crain, Director of Capital Projects
Name, Title		Name
		DocuSigned by: Cori Power Purchasing Agent
		Cori Power, Purchasing Supervisor
		Name

CONTINGENCY USE AUTHORIZATION (CUA)		CUA No.: 2	
#7144 Southeast Denton Package B		Effective Date: 11/15/2022	
City of Denton 401 N. Elm St. Denton, TX 76201 Scott Fettig / Captial Projects		McCarthy Building Companies Inc. 12851 Manchester Rd. St. Louis, MO 63131 Riley Seahorn	
Notice to Proceed Date: Tuesday, January 17, 2023		Completion Date: Thursday, May 30, 2024	
Original Contract Days: 479		This CO Days Request: 11	
Prior Approved CO Days: 9		New Contract Days: 499	
THE SCHEDULE OF VALUES IS REALLOCATED AS FOLLOWS:			
ITEM No.	DESCRIPTION OF REVISIONS	Owner's Contingency Impact	Change to Construction Manager's Cost of Work
1	PCO-003 Smith P2: 12x6 Tee and Valve (630477523.1360.40100)	(\$12,127.00)	\$12,127.00
2	PCO-004 Smith P2: Sewer Bore Pit Adjustment (640458545.1360.40100)	(\$15,552.00)	\$15,552.00
3	PCO-005 Smith P2: Water Bore Pit Adjustment (630477523.1360.40100)	(\$4,910.00)	\$4,910.00
4	PCO-006 Prairie P6: RCP & Gasline Repairs (350517473.1360.40100)	(\$5,776.00)	\$5,776.00
5	PCO-007 Prairie P6: Concrete Wall (350517473.1360.40100)	(\$4,001.00)	\$4,001.00
6	PCO-008 Wainwright P2: Diff Subgrade (350517473.1360.40100)	(\$26,273.00)	\$26,273.00
7	PCO-009 Prairie P6: Diff Subgrade (350517473.1360.40100)	(\$27,855.00)	\$27,855.00
8	PCO-010 W. Sycaore: Additional Water Bends (630477523.1360.40100)	(\$5,289.00)	\$5,289.00
Subtotal:		(\$101,783.00)	\$101,783.00
Original GMP Amount:		\$21,014,409.00	
Owner's Contingency:		\$567,969.00	
Prior Approved CUA's:		\$33,714.00	
This CUA Request:		\$101,783.00	
Owner's Contingency Remaining:		\$432,472.00	
Revised GMP Amount:		\$21,149,906.00	
NOT VALID UNTIL SIGNED BY CONTRACTOR, ENGINEER, AND OWNER.			
This CUA is specific and final as to price, with no reservations or other provisions allowing for future additional money for these particular reallocation(s), as identified and fully compensated above, and more fully described in the PCOs they reference. Signature of the Construction Manager indicates its agreement herewith, including adjustments to the Contract Time, if any. This CUA does not change the Contract Sum.			
Authorizations:			
McCarthy Building Companies Inc. City of Denton			
Construction Manager		Owner	
Unosigned by: Riley Seahorn Signature	Unosigned by: Scott Fettig Signature	Unosigned by: Trevor Crain Signature	
Riley Seahorn Project Manager		Trevor Crain Director of Capital Projects	
Name, Title		Name	
		Unosigned by: Lori Hewell Purchasing Agent	
		Lori Hewell Purchasing Manager	
		Name	

CONTINGENCY USE AUTHORIZATION (CUA)

CUA No.: 3

#7714 Southeast Denton Package B (PO# 202177)

Effective Date: 2/6/2024

City of Denton  
401 N. Elm St.  
Denton, TX 76201  
Scott Fettig / Capitial Projects

McCarthy Building Companies Inc.  
12851 Manchester Rd.  
St. Louis, MO 63131  
Riley Seahorn

Notice to Proceed Date: Tuesday, January 17, 2023

Completion Date: Friday, June 7, 2024

Original Contract Days: 479

This CO Days Request: 8

Prior Approved CO Days: 20

New Contract Days: 507

THE SCHEDULE OF VALUES IS REALLOCATED AS FOLLOWS:

ITEM No.	DESCRIPTION OF REVISIONS	Owner's Contingency Impact	Change to Construction Manager's Cost of Work
1	PCO-012 - Bradshaw P2 Additiaonal Sewer & Structures (640458545.1360.40100)	(\$54,576.00)	\$54,576.00
2	PCO-014 - Prairie P6 Manhole Adjustment for RCP Jnt. Box (640458545.1360.40100)	(\$6,565.00)	\$6,565.00
3	PCO-015 - Smith St. P2 12X6 Tee Cancelled from COD (630477523.1360.40100)	(\$6,917.00)	\$6,917.00
4	PCO-016 - Smith St. Fire Hydrant (630477523.1360.40100)	(\$17,961.00)	\$17,961.00
5	PCO-017 - Industrial P3 8" Waterline Conflict & Casing in Fire Line (630477523.1360.40100)	(\$16,217.00)	\$16,217.00
6	PCO-018 - Myrtle Demo and Adjust Sewer Slide (640458545.1360.40100)	(\$7,315.00)	\$7,315.00
7	PCO-019 - Myrtle 8" Sewer Conflict & Casing at Fire line (640458545.1360.40100)	(\$14,665.00)	\$14,665.00
8	PCO-020 - Industrial P3 8" Water Saddle and Valve (630477523.1360.40100)	(\$22,749.00)	\$22,749.00
9	PCO-021 - Smith St. P1 Asphalt Repair from Diesel Leak (350517473.1360.40100)	(\$15,639.00)	\$15,639.00
10	PCO-022 - Smith St. P2 Fire Line Tie In (630477523.1360.40100)	(\$7,228.00)	\$7,228.00
11	PCO-023 - Subgrade Rework due to Elements Exposure (630477523.1360.40100)	(\$10,771.00)	\$10,771.00
12	PCO-024 - Water Service Tie-in Locates for P2 (630477523.1360.40100)	(\$3,625.00)	\$3,625.00
Subtotal:		(\$184,228.00)	\$184,228.00

Original GMP Amount:

\$21,014,409.00

Owner's Contingency:

\$567,969.00

Prior Approved CUA's:

\$135,497.00

This CUA Request:

\$184,228.00

Owner's Contingency Remaining:

\$248,244.00

Revised GMP Amount:

\$21,334,134.00

NOT VALID UNTIL SIGNED BY CONTRACTOR, ENGINEER, AND OWNER.  
This CUA is specific and final as to price, with no reservations or other provisions allowing for future additional money for these particular reallocation(s), as identified and fully compensated above, and more fully described in the PCOs they reference. Signature of the Construction Manager indicates its agreement herewith, including adjustments to the Contract Time, if any. This CUA does not change the Contract Sum.

Authorizations:

McCarthy Building Companies Inc.

City of Denton

Construction Manager

DocuSigned by:

Riley Seahorn

Signature

Owner

DocuSigned by:

Scott Fettig

Signature

DocuSigned by:

Trevor Crain, PMP

Signature

Riley Seahorn

Project Manager

Scott Fettig Sr.

PM

Trevor Crain, PMP

Director of Capital Projects

Name, Title

Name, Title

Name

DocuSigned by:

Lori Hewell

Purchasing Agent

Lori Hewell

Purchasing Manager

Name

CONTINGENCY USE AUTHORIZATION (CUA)		CUA No.: 4	
#7144 Southeast Denton Package B (PO# 202177)		Effective Date: 3/11/2024	
City of Denton 401 N. Elm St. Denton, TX 76201 Scott Fettig / Capital Projects		McCarthy Building Companies Inc. 12851 Manchester Rd. St. Louis, MO 63131 Riley Seahorn	
Notice to Proceed Date: Tuesday, January 17, 2023		Completion Date: Wednesday, May 29, 2024	
Original Contract Days: 465		This CO Days Request: 5	
Prior Approved CO Days: 28		New Contract Days: 498	
THE SCHEDULE OF VALUES IS REALLOCATED AS FOLLOWS:			
ITEM No.	DESCRIPTION OF REVISIONS	Owner's Contingency Impact	Change to Construction Manager's Cost of Work
1	PCO-026 - Additional Stamped Colored Concrete (350539473.1360.40100)	(\$7,857.00)	\$7,857.00
2	PCO-028 - 515 Wainwright Reroute Customer Service (630477523.1360.40100)	(\$1,346.00)	\$1,346.00
3	PCO-029 - Wainwright 4" fire line tie-in and Tap and Valve (630477523.1360.40100)	(\$11,100.00)	\$11,100.00
4	PCO-030 - Pothole and Locate end of existing 12" @ Myrtle (630477523.1360.40100)	(\$9,186.00)	\$9,186.00
Subtotal:		(\$29,489.00)	\$29,489.00
Original GMP Amount:		\$21,014,409.00	
Owner's Contingency:		\$567,969.00	
Prior Approved CUA's:		\$319,725.00	
This CUA Request:		\$29,489.00	
Owner's Contingency Remaining:		\$218,755.00	
Revised GMP Amount:		\$21,363,623.00	
NOT VALID UNTIL SIGNED BY CONTRACTOR, ENGINEER, AND OWNER. This CUA is specific and final as to price, with no reservations or other provisions allowing for future additional money for these particular reallocation(s), as identified and fully compensated above, and more fully described in the PCOs they reference. Signature of the Construction Manager indicates its agreement herewith, including adjustments to the Contract Time, if any. This CUA does not change the Contract Sum.			
Authorizations:			
McCarthy Building Companies Inc. Construction Manager DocuSigned by: Riley Seahorn Signature 04B6C449...		City of Denton Owner DocuSigned by: Scott Fettig Signature 07F44A1...	
Riley Seahorn, Project Manager		Trevor Crain, Director of Capital Projects	
Name, Title		Name	
		DocuSigned by: Lori Hewell Signature 13E10834587C405...	
		Purchasing Agent	
		Lori Hewell Purchasing Manager	
		Name	



CONTINGENCY USE AUTHORIZATION (CUA)		CUA No.: 5	
#7144 Southeast Denton Package B (PO# 202177)		Effective Date: 6/30/2024	
City of Denton 401 N. Elm St. Denton, TX 76201 Scott Fettig / Capital Projects		McCarthy Building Companies Inc. 12851 Manchester Rd. St. Louis, MO 63131 Riley Seahorn	
Notice to Proceed Date: Tuesday, January 17, 2023		Completion Date: Wednesday, June 5, 2024	
Original Contract Days: 465		This CO Days Request: 7	
Prior Approved CO Days: 33		New Contract Days: 505	
THE SCHEDULE OF VALUES IS REALLOCATED AS FOLLOWS:			
ITEM No.	DESCRIPTION OF REVISIONS	Owner's Contingency Impact	Change to Construction Manager's Cost of Work
1	PCO-011 - NTXC Smith St. ACP Adj and Impact (640458545.1360.40100)	(\$30,550.00)	\$30,550.00
2	PCO-031 - Maple install add. 4" sewer service (640458545.1360.40100)	(\$6,839.00)	\$6,839.00
3	PCO-034 - E. Sycamore add. 6" sewer service (640458545.1360.40100)	(\$16,322.00)	\$16,322.00
4	PCO-035 - Maple Concrete flow fill demo around gas (350517473.1360.40100)	(\$2,868.00)	\$2,868.00
5	PCO-036 - Maple add two 1" water services (630477523.1360.40100)	(\$6,967.00)	\$6,967.00
6	PCO-037 - Maple exploratory dig to locate extisting waterline (630477523.1360.40100)	(\$14,528.00)	\$14,528.00
7	PCO-038 - Myrtle add 4' MH & bypass (640458545.1360.40100)	(\$15,822.00)	\$15,822.00
8	PCO-040 - Myrtle add. 1" water service (630477523.1360.40100)	(\$3,118.00)	\$3,118.00
9	PCO-041 - Pierce demo exst. Flowfill in conflict with trench (630477523.1360.40100)	(\$3,395.00)	\$3,395.00
10	PCO-043 - 410 Smith driveway (350517473.1360.40100)	(\$4,335.00)	\$4,335.00
11	PCO-047 - Prairie add sod and sidewalk (350517473.1360.40100)	(\$21,886.00)	\$21,886.00
12	PCO-052 - Cap 12" waterline (2x) help COD locate (630477523.1360.40100)	(\$7,808.00)	\$7,808.00
13	PCO-053 - W Sycamore 3 add water services (630477523.1360.40100)	(\$21,130.00)	\$21,130.00
14	PCO-057 - Wainwright 12in WL revision (630477523.1360.40100)	(\$1,979.00)	\$1,979.00
15	PCO-058 - Wainwright @prairie cut and cap ext. 12" WL (630477523.1360.40100)	(\$5,441.00)	\$5,441.00
16	PCO-061 - W. Sycamore demo/prep add. water services (630477523.1360.40100)	(\$18,433.00)	\$18,433.00
Subtotal:		(\$181,421.00)	\$181,421.00
Original GMP Amount:		\$21,014,409.00	
Owner's Contingency:		\$567,969.00	
Prior Approved CUA's:		\$349,214.00	
This CUA Request:		\$181,421.00	
Owner's Contingency Remaining:		\$37,334.00	
Revised GMP Amount:		\$21,545,044.00	
NOT VALID UNTIL SIGNED BY CONTRACTOR, ENGINEER, AND OWNER. This CUA is specific and final as to price, with no reservations or other provisions allowing for future additional money for these particular reallocation(s), as identified and fully compensated above, and more fully described in the PCOs they reference. Signature of the Construction Manager indicates its agreement herewith, including adjustments to the Contract Time, if any. This CUA does not change the Contract Sum.			
Authorizations:			
McCarthy Building Companies Inc. City of Denton			
Construction Manager		Owner	
DocuSigned by: Riley Seahorn		DocuSigned by: Scott Fettig	
Signature		Signature	
Riley Seahorn, Project Manager		Scott Fettig, Sr. PM	
Name, Title		Name, Title	
		DocuSigned by: Trevor Crain	
		Signature	
		Trevor Crain	
		Name	
		DocuSigned by: Lori Hewell	
		Signature	
		Lori Hewell	
		Name	

ORDINANCE NO. 25-511

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE CHANGE ORDER NO. 1 TO THE CONSTRUCTION MANAGER AT RISK CONTRACT WITH MCCARTHY BUILDING COMPANIES, INC., FOR CONSTRUCTION PHASE SERVICES FOR SOUTHEAST DENTON PACKAGE B (SED-B) IMPROVEMENTS FOR THE CAPITAL PROJECTS DEPARTMENT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFQ 7714 – CHANGE ORDER NO. 1 IN THE NOT-TO-EXCEED AMOUNT OF \$544,645.00, FOR A TOTAL CONTRACT AWARD AGGREGATED TO \$22,127,023.00).

WHEREAS, on November 15, 2022, by Ordinance No. 22-2282, the City Council awarded a contract to McCarthy Building Companies, Inc., in the amount of \$21,582,378.00, for construction phase services for Southeast Denton Package B (SED-B) Improvements for the Capital Projects Department; and

WHEREAS, this procurement was undertaken as part of the City's governmental function; and

WHEREAS, the Staff having recommended, and the City Manager having recommended to the Council that a change order be authorized to amend such contract agreement with respect to the scope of work and an increase in the payment amount; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. Change Order No. 1, increasing the amount of the contract between the City and McCarthy Building Companies, Inc., which is on file in the office of the Purchasing Agent, in the amount of Five Hundred Forty-Four Thousand Six Hundred Forty-Five and 0/100 (\$544,645.00) dollars, is hereby approved and the expenditure of funds therefore is hereby authorized in accordance with said change order. The total purchase order amount increases to \$22,127,023.00.

SECTION 2. This ordinance shall become effective immediately upon its passage and approval.

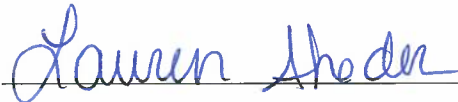
The motion to approve this ordinance was made by Brandon Chase McGee and seconded by Brian Beck. This ordinance was passed and approved by the following vote [ 6 - 0 ]:

	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	<u>  X  </u>	<u>          </u>	<u>          </u>	<u>          </u>
Vicki Byrd, District 1:	<u>          </u>	<u>          </u>	<u>          </u>	<u>  X  </u>
Brian Beck, District 2:	<u>  X  </u>	<u>          </u>	<u>          </u>	<u>          </u>
Paul Meltzer, District 3:	<u>  X  </u>	<u>          </u>	<u>          </u>	<u>          </u>
Joe Holland, District 4:	<u>  X  </u>	<u>          </u>	<u>          </u>	<u>          </u>
Brandon Chase McGee, At Large Place 5:	<u>  X  </u>	<u>          </u>	<u>          </u>	<u>          </u>
Jill Jester, At Large Place 6:	<u>  X  </u>	<u>          </u>	<u>          </u>	<u>          </u>

PASSED AND APPROVED this the 25th day of March, 2025.

  
 \_\_\_\_\_  
 GERARD HUDSPETH, MAYOR

ATTEST:  
 LAUREN THODEN, CITY SECRETARY

BY:   
 \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
 MACK REINWAND, CITY ATTORNEY

BY:   
 \_\_\_\_\_





Docusign City Council Transmittal Coversheet

FILE	7714
File Name	CMAR SED-B Change Order No. 1
Purchasing Contact	Cori Power
City Council Target Date	MARCH 25, 2025
Piggy Back Option	Not Applicable
Contract Expiration	N/A
Ordinance	25-511

## CONSTRUCTION MANAGER AT RISK (CMAR) CHANGE ORDER (CO) FORM



### OWNER

City of Denton  
410 N Elm Street  
Denton, TX 76201  
Scott Fettig  
Project Manager

### CM@Risk

McCarthy Building Compaines, Inc.  
12851 Manchester Rd.  
St. Louis, MO 63131  
David Wallace

Dept: Capital Projects

Project: Southeast Denton Package B

Date: 2/7/2025

CO NO.: 1

Contract Authorized Date: 11/1/21  
Notice to Proceed Issued: 1/17/23

PMO/Contract# 210001-4  
CSP/CMAR No: 7714  
Purchase Order No: 202177

### THE CONTRACT IS CHANGED AS FOLLOWS:

These funds are being added to the "Owner's Contingency" line item in the GMP Cost Model, and are for the Owner's exclusive use as specified in Section 5.1.3 of the Agreement

Original GMP Amount:	\$21,582,378.00
Previously Authorized Change Orders	\$0.00
Current GMP Amount	\$21,582,378.00
This Change Order Request:	\$544,645.00
<b>Revised GMP Amount:</b>	<b>\$22,127,023.00</b>

### AUTHORIZATIONS

<p><b>McCarthy Building Compaines, Inc.</b> Construction Manager At Risk</p> <p>Signed by: <u>David Wallace</u> <small>SIGNATURE DA455...</small></p> <p>David Wallace Project Director <small>NAME and TITLE</small></p>	<p><b>City of Denton</b> City</p> <p>DocuSigned by: <u>Sara Hensley</u> <small>SIGNATURE 5038596288270423...</small></p>	
---	--	--

ATTEST: LAUREN THODEN, CITY SECRETARY

By: Lauren Thoden  
DocuSigned by: D09D09CAD33D487...

APPROVED AS TO LEGAL FORM:

MACK REINWAND, CITY ATTORNEY

By: Marcella Lunn  
DocuSigned by: B070831B4AA438...

This change order has been both reviewed and approved as to financial and operational obligations and business terms.

By: Trevor Crain  
Signed by: 7B46EEAB11BC4F2...

Name: Trevor Crain

Title: Director of Capital Projects

Department: Capital Projects

# CONFLICT OF INTEREST QUESTIONNAIRE -

FORM CIQ

## For vendor or other person doing business with local governmental entity

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) and by City of Denton Ethics Code, Ordinance 18-757.

By law this questionnaire must be filed with the records administrator of the local government 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.

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

McCarthy Building Companies, Inc.

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 in this section is being disclosed.

\_\_\_\_\_  
Name of Officer

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. This section, (item 3 including subparts A, B, C & D), must be completed for each officer with whom the vendor has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section 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 named in this section AND the taxable income is not received from the local governmental entity?

☐

Yes

☐

No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of one percent or more?

☐

Yes

☐

No

D. Describe each employment or business and family relationship with the local government officer named in this section.

4 ☒ I have no Conflict of Interest to disclose.

5 Signed by:

David Wallace

Signature of vendor doing business with the governmental entity

2/17/2025

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](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.

### **City of Denton Ethics Code Ordinance Number 18-757**

**Definitions:**

**Relative:** a family member related to a City Official within the third 3<sup>rd</sup> degree of affinity (marriage) or consanguinity (blood or adoption)

**City Official:** for purpose of this article, the term consists of the Council Members, Department Heads, or member of the Board of Ethics, Planning and zoning Commission Members, Board of Adjustment, Historic Landmark Commission, or Public Utilities Board

**Vendor:** a person who provides or seeks to provide goods, services, and/or real property to the City in exchange for compensation. This definition does not include those property owners from whom the City acquires public right-of-way or other real property interests for public use.

Per the City of Denton Ethics Code, Section 2-273. – Prohibitions

- (3) It shall be a violation of this Article for a Vendor to offer or give a Gift to City Official exceeding fifty dollars (\$50.00) per gift, or multiple gifts cumulatively valued at more than two hundred dollars (\$200.00) per a single fiscal year.

Per the City of Denton Ethics Code, Section 2-282. – Disposition (b), (5) Ineligibility

If the Board of Ethics finds that a Vendor has violated this Article, the Board may recommend to the City Manager that the Vendor be deemed ineligible to enter into a City contract or other arrangement for goods, services, or real property, for a period of one (1) year.