

**SERVICE AGREEMENT NO. 3911**  
**CONTRACT FOR PROFESSIONAL SERVICES**

**FOR PROJECT 18180D Fire Station No. 3 Morgan Street Design**

The City of Corpus Christi, a Texas home rule municipal corporation, P.O. Box 9277, Corpus Christi, Nueces County, Texas 78469-9277 (City) acting through its duly authorized City Manager or Designee (Director) and **BRW Architects**, 175 Century Square Drive, College Station, Texas 77840(Consultant), hereby agree as follows:

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## ARTICLE I – SCOPE OF SERVICES

1.1 City and Consultant agree that the services provided are properly described in the Scope of Services, which is incorporated herein and attached to this Agreement as **Exhibit A**. The Scope of Services shall include all associated services required for Consultant to provide such Services, pursuant to this Agreement, and any and all Services that would normally be required by law or common due diligence in accordance with the standard of care defined in Article XIII of this Agreement. The approved Scope of Services defines the services to be performed by Consultant under this Agreement. Consultant will perform the Services in accordance with **Exhibit A** and with Consultant's response to the Request for Qualifications related to this project, which response is incorporated by reference into this Agreement as if set out here in its entirety.

1.2 Consultant shall follow City Codes and Standards effective at the time of the execution of the contract. At review milestones, the Consultant and City will review the progress of the plans to ensure that City Codes and Standards are followed unless specifically and explicitly excluded from doing so in the approved Scope of Services attached as **Exhibit A**. A request made by either party to deviate from City standards after the contract is executed must be in writing.

1.3 Consultant shall provide labor, equipment and transportation necessary to complete all services agreed to hereunder in a timely manner throughout the term of the Agreement. Persons retained by Consultant to perform work pursuant to this Agreement shall be employees or subconsultants of Consultant. Upon request, Consultant must provide City with a list of all subconsultants that includes the services performed by subconsultant and the % of work performed by subconsultant (in dollars). Changes in Consultant's proposed team as specified in the SOQ or Scope of Services must be agreed to by the City in writing.

1.4 Consultant shall not begin work on any phase/task authorized under this Agreement until they are briefed on the scope of the Project and are notified in writing to proceed. If the scope of the Project changes, either Consultant or City may request a review of the changes with an appropriate adjustment in compensation.

1.5 Consultant will provide monthly status updates (project progress or delays) in the format requested by the City with each monthly invoice.

1.6 For design services, Consultant agrees to render the professional services necessary for the advancement of the Project through Final Completion of the Construction Contract. Consultant acknowledges and accepts its responsibilities, as defined and described in City's General Conditions for Construction Contracts, excerpt attached as **Exhibit D**.

1.6.1 The Consultant agrees to serve as the City's Designer as defined in the General Conditions and will consult and advise the City on matters related to the Consultant's Scope of Services during the performance of the Consultant's services.

1.6.2 The Consultant agrees to prepare plans, specification, bid and contract documents and to analyze bids and evaluate the documents submitted by bidders.

1.6.3 The Consultant agrees to assist the City in evaluating the qualifications of the prospective contractors, subcontractors and suppliers.

1.7 For projects that require subsurface utility investigation:

1.7.1 The Consultant agrees to prepare and submit to the City prior to the 60% submittal a signed and sealed report identifying all utilities within the project area at the Quality Level specified in **Exhibits A** and **A-1**. It is assumed that all utilities will be identified using Quality Level A exploratory excavation unless stated otherwise.

1.7.2 Utilities that should be identified include but are not limited to utilities owned by the City, local franchises, electric companies, communication companies, private pipeline companies and 3<sup>rd</sup> party owners/operators.

1.8 For project with potential utility conflicts:

1.8.1 The Consultant agrees to coordinate the verification and resolution of all potential utility conflicts.

1.8.2 The Consultant agrees to prepare and submit a monthly Utility Coordination Matrix to the City.

1.9 The Consultant agrees to complete the Scope of Services in accordance with the approved project schedule and budget as defined in **Exhibit A**, including completing the work in phases defined therein.

1.10 The Consultant agrees to conduct all communication through and perform all project-related functions utilizing the City's project management system known as e-Builder. This includes all correspondence, submittals, payment requests and processing, contract amendments and construction phase activities.

## ARTICLE II – QUALITY CONTROL

2.1 The Consultant agrees to perform quality assurance-quality control/constructability reviews (QCP Review). The City reserves the right to retain a separate consultant to perform additional QCP services for the City.

2.2 The Consultant will perform QCP Reviews at intervals during the Project to ensure deliverables satisfy applicable industry quality standards and meet the requirements of the Project scope. Based on the findings of the QCP Review, the Consultant must reconcile the Project Scope and the Opinion of Probable Cost (OPC), as needed.

2.3 Final construction documents that do not meet City standards in effect at the time of the execution of this Agreement may be rejected. If final construction documents are found not to be in compliance with this Agreement, Consultant will not be compensated for having to resubmit documents.

## ARTICLE III – COMPENSATION

3.1 The Compensation for all services (Basic and Additional) included in this Agreement and in the Scope of Services for this Agreement shall not exceed **\$ 620,400.00**

3.2 The Consultant's fee will be on a lump sum or time and materials (T&M) basis as detailed in **Exhibit A** and will be full and total compensation for all services and for all expenses incurred in performing these services. Consultant shall submit a Rate Schedule with their proposal.

3.3 The Consultant agrees to complete the Scope of Services in accordance with the approved project schedule and budget as defined in **Exhibit A**, including completing the work in phases defined therein.

3.4 The Director of Engineering Services may request the Consultant to undertake additional services or tasks provided that no increase in fee is required. Services or tasks requiring an increase of fee will be mutually agreed and evidenced in writing as an amendment to this contract. Consultant shall notify the City within three (3) days of notice if tasks requested requires an additional fee.

3.5 Monthly invoices will be submitted in accordance with the Payment Request as shown in **Exhibit B**. Each invoice will include the Consultant's estimate of the proportion of the contracted services completed at the time

of billing. For work performed on a T&M Basis, the invoice shall include documentation that shows who worked on the Project, the number of hours that each individual worked, the applicable rates from the Rate Schedule and any reimbursable expenses associated with the work. City will make prompt monthly payments in response to Consultant's monthly invoices in compliance with the Texas Prompt Payment Act.

3.6 Principals may only bill at the agreed hourly rate for Principals (as defined in the Rate Schedule) when acting in that capacity. Principals acting in the capacity of staff must bill at applicable staff rates.

3.7 Consultant certifies that title to all services covered by a Payment Request shall pass to City no later than the time of payment. Consultant further certifies that, upon submittal of a Payment Request, all services for which Payment Requests have been previously issued and payments received from City shall, to the best of Consultant's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of Consultant or other persons or entities making a claim by reason of having provided labor or services relating to this Agreement. **Consultant shall indemnify and hold City harmless from any liens, claims, security interests or encumbrances filed by anyone claiming by, through or under the items covered by payments made by City to Consultant.**

3.8 The final payment due hereunder shall not be paid until all reports, data and documents have been submitted, received, accepted and approved by City. Final billing shall indicate "Final Bill – no additional compensation is due to Consultant."

3.9 City may withhold compensation to such extent as may be necessary, in City's opinion, to protect City from damage or loss for which Consultant is responsible, because of:

3.9.1 delays in the performance of Consultant's work;

3.9.2 failure of Consultant to make payments to subconsultants or vendors for labor, materials or equipment;

3.9.3 damage to City; or

3.9.4 persistent failure by Consultant to carry out the performance of its services in accordance with this Agreement.

3.10 When the above reasons for withholding are removed or remedied by Consultant, compensation of the amount withheld shall be made within 30 days. City shall not be deemed in default by reason of withholding compensation as provided under this Agreement.

3.11 In the event of any dispute(s) between the Parties regarding the amount properly compensable for any phase or as final compensation or regarding any amount that may be withheld by City, Consultant shall be required to make a claim pursuant to and in accordance with the terms of this Agreement and follow the procedures provided herein for the resolution of such dispute. In the event Consultant does not initiate and follow the claims procedures as required by the terms of this Agreement, any such claim shall be waived.

3.12 Request of final compensation by Consultant shall constitute a waiver of claims except those previously made in writing and identified by Consultant as unsettled at the time of final Payment Request.

3.13 All funding obligations of the City under this Agreement are subject to the appropriation of funds in its annual budget. The City may direct the Consultant to suspend work pending receipt and appropriation of funds. The right to suspend work under this provision does not relieve the City of its obligation to make payments in accordance with section 3.5 above for services provided up to the date of suspension.

## ARTICLE IV – TIME AND PERIOD OF SERVICE

- 4.1 This Agreement shall be effective upon the signature of the City Manager or designee (Effective Date).
- 4.2 The Consultant agrees to begin work on those authorized Services for this contract upon receipt of the Notice to Proceed from the Contracts and Procurement Department. Work will not begin on any phase or any Additional Services until requested in writing by the Consultant and written authorization is provided by the Director of Engineering Services.
- 4.3 Time is of the essence for this Agreement. Consultant shall perform and complete its obligations under this Agreement in a prompt and continuous manner so as to not delay the Work for the Project, in accordance with the schedules approved by City. The Consultant and City are aware that many factors may affect the Consultant's ability to complete the services to be provided under this agreement. The Consultant must notify the City within ten business days of becoming aware of a factor that may affect the Consultant's ability to complete the services hereunder.
- 4.4 City shall perform its obligations of review and approval in a prompt and continuous manner so as to not delay the project.
- 4.5 This Agreement shall remain in force for a period which may reasonably be required for completion of the Project, including any extra work and any required extensions thereto, unless terminated as provided for in this Agreement. For construction design services, "completion of the Project" refers to acceptance by the City of the construction phase of the Project, i.e., Final Completion.

## ARTICLE V – OPINIONS OF COST

- 5.1 The Opinion of Probable Cost (OPC) is computed by the Consultant and includes the total cost for construction of the Project.
- 5.2 The OPC does not include the cost of the land, rights-of-way or other costs which are the responsibility of the City.
- 5.3 Since Consultant has no control over a construction contractor's cost of labor, materials or equipment, or over the contractor's methods of determining prices, or over competitive bidding or market conditions, Consultant's opinions of probable Project Cost or Construction Cost provided herein are to be made on the basis of Consultant's experience and qualifications and represent Consultant's best judgment as a design professional familiar with the construction industry, but Consultant cannot and does not guarantee proposals, bids or the construction cost shall not vary from the OPC prepared by Consultant.

## ARTICLE VI – INSURANCE REQUIREMENTS

- 6.1 Consultant must not commence work under this Agreement until all insurance required has been obtained and such insurance has been approved by the City. Consultant must not allow any subcontractor to commence work until all similar insurance required of any subcontractor has been obtained.
- 6.2 Insurance Requirements are shown in **EXHIBIT C**.

## ARTICLE VII – INDEMNIFICATION

**Consultant shall fully indemnify and hold harmless the City of Corpus Christi and its officials,**

**officers, agents, employees, excluding the engineer or architect or that person's agent, employee or subconsultant, over which the City exercises control ("Indemnitee") from and against any and all claims, damages, liabilities or costs, including reasonable attorney fees and court costs, to the extent that the damage is caused by or results from an act of negligence, intentional tort, intellectual property infringement or failure to pay a subcontractor or supplier committed by Consultant or its agent, Consultant under contract or another entity over which Consultant exercises control while in the exercise of rights or performance of the duties under this agreement. This indemnification does not apply to any liability resulting from the negligent acts or omissions of the City or its employees, to the extent of such negligence.**

**Consultant shall defend Indemnitee, with counsel satisfactory to the City Attorney, from and against any and all claims, damages, liabilities or costs, including reasonable attorney fees and court costs, if the claim is not based wholly or partly on the negligence of, fault of or breach of contract by Indemnitee. If a claim is based wholly or partly on the negligence of, fault of or breach of contract by Indemnitee, the Consultant shall reimburse the City's reasonable attorney's fees in proportion to the Consultant's liability.**

**Consultant must advise City in writing within 24 hours of any claim or demand against City or Consultant known to Consultant related to or arising out of Consultant's activities under this Agreement.**

## ARTICLE VIII – TERMINATION OF AGREEMENT

### 8.1 By Consultant:

8.1.1 The City reserves the right to suspend this Agreement at the end of any phase for the convenience of the City by issuing a written and signed Notice of Suspension. The Consultant may terminate this Agreement for convenience in the event such suspension extends for a period beyond 120 calendar days by delivering a Notice of Termination to the City.

8.1.2 The Consultant must follow the Termination Procedure outlined in this Agreement.

### 8.2 By City:

8.2.1 The City may terminate this agreement for convenience upon seven days written notice to the Consultant at the address of record.

8.2.2 The City may terminate this agreement for cause upon ten days written notice to the Consultant. If Consultant begins, within three days of receipt of such notice, to correct its failure and proceeds to diligently cure such failure within the ten days, the agreement will not terminate. If the Consultant again fails to perform under this agreement, the City may terminate the agreement for cause upon seven days written notice to the Consultant with no additional cure period. If the City terminates for cause, the City may reject any and all proposals submitted by Consultant for up to two years.

### 8.3 Termination Procedure

8.3.1 Upon receipt of a Notice of Termination and prior to the effective date of termination, unless the notice otherwise directs or Consultant takes action to cure a failure to perform under the cure period, Consultant shall immediately begin the phase-out and discontinuance of all services in connection with the performance of this Agreement. Within 30 calendar days after receipt of the Notice of Termination, unless Consultant has successfully cured a failure to perform, Consultant shall submit a statement

showing in detail the services performed under this Agreement prior to the effective date of termination. City retains the option to grant an extension to the time period for submittal of such statement.

8.3.2 Consultant shall submit all completed and/or partially completed work under this Agreement, including but not limited to specifications, designs, plans and exhibits.

8.3.3 Upon receipt of documents described in the Termination Procedure and absent any reason why City may be compelled to withhold fees, Consultant will be compensated for its services based upon a Time & Materials calculation or Consultant and City's estimate of the proportion of the total services actually completed at the time of termination. There will be no compensation for anticipated profits on services not completed.

8.3.4 Consultant acknowledges that City is a public entity and has a duty to document the expenditure of public funds. The failure of Consultant to comply with the submittal of the statement and documents, as required above, shall constitute a waiver by Consultant of any and all rights or claims to payment for services performed under this Agreement.

## ARTICLE IX – RIGHT OF REVIEW AND AUDIT

9.1 Consultant grants City, or its designees, the right to audit, examine or inspect, at City's election, all of Consultant's records relating to the performance of the Work under this Agreement, during the term of this Agreement and retention period herein. The audit, examination or inspection may be performed by a City designee, which may include its internal auditors or an outside representative engaged by City. Consultant agrees to retain its records for a minimum of four years following termination of the Agreement, unless there is an ongoing dispute under this Agreement, then such retention period shall extend until final resolution of the dispute.

9.2 Consultant's records include any and all information, materials and data of every kind and character generated as a result of and relevant to the Work under this Agreement (Consultant's Records). Examples include billings, books, general ledger, cost ledgers, invoices, production sheets, documents, correspondence, meeting notes, subscriptions, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, reports, drawings, receipts, vouchers, memoranda, time sheets, payroll records, policies, procedures, and any and all other agreements, sources of information and matters that may, in City's and Consultant's reasonable judgment, have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Agreement Documents.

9.3 City agrees that it shall exercise the right to audit, examine or inspect Consultant's Records only during Consultant's regular business hours. Consultant agrees to allow City's designee access to all of Consultant's Records, Consultant's facilities and Consultant's current employees, deemed necessary by City or its designee(s), to perform such audit, inspection or examination. Consultant also agrees to provide adequate and appropriate work space necessary to City or its designees to conduct such audits, inspections or examinations.

9.4 Consultant shall include this audit clause in any subcontractor, supplier or vendor contract.

## ARTICLE X – OWNER REMEDIES

10.1 The City and Consultant agree that in the event the City suffers actual damages, the City may elect to pursue its actual damages and any other remedy allowed by law. This includes but is not limited to:

10.1.1 Failure of the Consultant to make adequate progress and endanger timely and successful completion of the Project, which includes failure of subconsultants to meet contractual obligations;

10.1.2 Failure of the Consultant to design in compliance with the laws of the City, State and/or federal governments, such that subsequent compliance costs exceed expenditures that would have been involved had services been properly executed by the Consultant.

10.1.3 Losses are incurred because of errors and/or omissions in the design, working drawings, specifications or other documents prepared by the Consultant to the extent that the financial losses are greater than the City would have originally paid had there not been errors and/or omissions in the documents.

10.2 When the City incurs non-value added work costs for change orders due to design errors and/or omissions, the City will send the Consultant a letter that includes:

- (1) Summary of facts with supporting documentation;
- (2) Instructions for Consultant to revise design documents, if appropriate, at Consultant's expense;
- (3) Calculation of non-value added work costs incurred by the City; and
- (4) Deadline for Consultant's response.

10.3 The Consultant may be required to revise bid documents and re-advertise the Project at the Consultant's sole cost if, in the City's judgment, the Consultant generates excessive addenda, either in terms of the nature of the revision or the actual number of changes due to the Consultant's errors or omissions.

10.4 The City may withhold or nullify the whole or part of any payment as detailed in Article III.

## ARTICLE XI – CONSULTANT REMEDIES

11.1 If Consultant is delayed due to uncontrollable circumstances, such as strikes, riots, acts of God, national emergency, epidemics, acts of the public enemy, governmental restrictions, laws or regulations or any other causes beyond Consultant's and City's reasonable control, an extension of the Project schedule in an amount equal to the time lost due to such delay shall be Consultant's sole and exclusive remedy. The revised schedule should be approved in writing with a documented reason for granting the extension.

11.2 The City agrees that the Consultant is not responsible for damages arising from any cause beyond Consultant's reasonable control.

11.3 If Consultant requests a remedy for a condition not specified above, Consultant must file a Claim as provided in this Agreement.

## ARTICLE XII – CLAIMS AND DISPUTE RESOLUTION

### 12.1 Filing of Claims

12.1.1 Claims arising from the circumstances identified in this Agreement or other occurrences or events, shall be made by Written Notice delivered by the party making the Claim to the other party within 21 calendar days after the start of the occurrence or event giving rise to the Claim and stating the general nature of the Claim.

12.1.2 Every Claim of Consultant, whether for additional compensation, additional time or other relief, shall be signed and sworn to by a person authorized to bind the Consultant by his/her signature, verifying the truth and accuracy of the Claim.

12.1.3 The responsibility to substantiate a claim rests with the party making the Claim.



12.1.4 Within 30 calendar days of receipt of notice and supporting documentation, City will meet to discuss the request, after which an offer of settlement or a notification of no settlement offer will be sent to Consultant. If Consultant is not satisfied with the proposal presented, Consultant will have 30 calendar days in which to (i) submit additional supporting data requested by the City, (ii) modify the initial request for remedy or (iii) request Mediation.

12.1.5 Pending final resolution of a claim, except as otherwise agreed in writing, Consultant shall proceed diligently with performance of the Agreement, and City shall continue to make payments in accordance with this Agreement.

## 12.2 Mediation

12.2.1 All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

12.2.2 Before invoking mediation, the Parties agree that they shall first try to resolve any dispute arising out of or related to this Agreement through discussions directly between those senior management representatives within their respective organizations who have overall managerial responsibility for similar projects. This step shall be a condition precedent to the use of mediation. If the parties' senior management representatives cannot resolve the dispute within 30 calendar days after a Party delivers a written notice of such dispute, then the Parties shall proceed with the mediation process contained herein.

12.2.2.1 In the event that City or Consultant shall contend that the other has committed a material breach of this Agreement, the Party alleging such breach shall, as a condition precedent to filing any lawsuit, request mediation of the dispute.

12.2.2.2 Request for mediation shall be in writing, and shall request that the mediation commence no less than 30 or more than 90 calendar days following the date of the request, except upon agreement of both parties.

12.2.2.3 In the event City and Consultant are unable to agree to a date for the mediation or to the identity of the mediator or mediators within 30 calendar days of the request for mediation, all conditions precedent in this Article shall be deemed to have occurred.

12.2.2.4 The parties shall share the mediator's fee. Venue for mediation shall be Nueces County, Texas. Any agreement reached in mediation shall be enforceable as a settlement agreement in any court having jurisdiction thereof. No provision of this Agreement shall waive any immunity or defense. No provision of this Agreement is a consent to suit.

12.3 In calculating the amount of any Claim or any measure of damages for breach of contract, the following standards shall apply both to claims by Consultant and to claims by City:

12.3.1 In no event shall either Party be liable, whether in contract or tort or otherwise, to the other Party for loss of profits, delay damages or for any special incidental or consequential loss or damage of any nature arising at any time or from any cause whatsoever;

12.3.2 Damages are limited to extra costs specifically shown to have been directly caused by a proven wrong for which the other Party is claimed to be responsible.

12.4 In case of litigation between the parties, Consultant and City agree that neither party shall be responsible for payment of attorney's fees pursuant to any law or other provision for payment of attorneys' fees. Both Parties expressly waive any claim to attorney's fees should litigation result from any dispute between the parties to this

Agreement.

12.5 In case of litigation between the parties, Consultant and City agree that they have knowingly waived and do hereby waive the right to trial by jury and have instead agreed, in the event of any litigation arising out of or connected to this Agreement, to proceed with a trial before the court, unless both parties subsequently agree otherwise in writing.

12.6 No Waiver of Governmental Immunity. **This Agreement is to perform a governmental function solely for the public benefit. Nothing in this Agreement shall be construed to waive City's governmental immunity from lawsuit, which immunity is expressly retained to the extent it is not clearly and unambiguously waived by state law.**

### ARTICLE XIII – MISCELLANEOUS PROVISIONS

13.1 Assignability. Neither party will assign, transfer or delegate any of its obligations or duties under this Agreement contract to any other person and/or party without the prior written consent of the other party, except for routine duties delegated to personnel of the Consultant staff. This includes subcontracts entered into for services under this Agreement. If the Consultant is a partnership or joint venture, then in the event of the termination of the partnership or joint venture, this contract will inure to the individual benefit of such partner or partners as the City may designate. No part of the Consultant fee may be assigned in advance of receipt by the Consultant without written consent of the City.

The City will not pay the fees of expert or technical assistance and consultants unless such employment, including the rate of compensation, has been approved in writing by the City.

13.2 Provisions Required by Law. Each applicable provision and clause required by law to be inserted into the Agreement shall be deemed to be enacted herein, and the Agreement shall be read and enforced as though each were physically included herein.

13.3 Public Information. The requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract and the Consultant agrees that the contract can be terminated if the Consultant knowingly or intentionally fails to comply with a requirement of that subchapter.

13.4 Standard of Care. Services provided by Consultant under this Agreement shall be performed with the professional skill and care ordinarily provided by competent licensed professionals practicing under the same or similar circumstances and professional license; and performed as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect.

13.5 Licensing. Consultant shall be represented by personnel with appropriate licensure, registration and/or certification(s) at meetings of any official nature concerning the Project, including scope meetings, review meetings, pre-bid meetings and preconstruction meetings.

13.6 Independent Contractor. The relationship between the City and Consultant under this Agreement shall be that of independent contractor. City may explain to Consultant the City's goals and objectives in regard to the services to be performed by Consultant, but the City shall not direct Consultant on how or in what manner these goals and objectives are to be met.

13.7 Entire Agreement. This Agreement represents the entire and integrated Agreement between City and Consultant and supersedes all prior negotiations, representations or agreements, either oral or written. This Agreement may be amended only by written instrument signed by both the City and Consultant.

13.8 No Third Party Beneficiaries. Nothing in this Agreement can be construed to create rights in any entity other than the City and Consultant. Neither the City nor Consultant intends to create third party beneficiaries by entering into this Agreement.

13.9 Disclosure of Interest. Consultant agrees to comply with City of Corpus Christi Ordinance No. 17112 and complete the *Disclosure of Interests* form.

13.10 Certificate of Interested Parties. For contracts greater than \$50,000, Consultant agrees to comply with Texas Government Code section 2252.908 and complete Form 1295 Certificate of Interested Parties as part of this agreement. Form 1295 must be electronically filed with the Texas Ethics Commission at [https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm). The form must then be printed, signed and filed with the City. For more information, please review the Texas Ethics Commission Rules at <https://www.ethics.state.tx.us/legal/ch46.html>.

13.11 Conflict of Interest. Consultant agrees, in compliance with Chapter 176 of the Texas Local Government Code, to complete and file Form CIQ with the City Secretary's Office. For more information and to determine if you need to file a Form CIQ, please review the information on the City Secretary's website at <http://www.cctexas.com/government/city-secretary/conflict-disclosure/index>.

13.11 Title VI Assurance. The Consultant shall prohibit discrimination in employment based upon race, color, religion, national origin, gender, disability or age.

13.12 Controlling Law. This Agreement is governed by the laws of the State of Texas without regard to its conflicts of laws. Venue for legal proceedings lies exclusively in Nueces County, Texas. Cases must be filed and tried in Nueces County and cannot be removed from Nueces County.

13.13 Severability. If, for any reason, any one or more Articles and/or paragraphs of this Agreement are held invalid or unenforceable, such invalidity or unenforceability shall not affect, impair or invalidate the remaining Articles and/or paragraphs of this Agreement but shall be confined in its effect to the specific Article, sentences, clauses or parts of this Agreement held invalid or unenforceable, and the invalidity or unenforceability of any Article, sentence, clause or parts of this Agreement, in any one or more instance, shall not affect or prejudice in any way the validity of this Agreement in any other instance.

13.14 Conflict Resolution Between Documents. Consultant hereby agrees and acknowledges if anything contained in the Consultant-prepared **Exhibit A**, Consultant's Scope of Services, the Consultant's response to the Request for Qualifications related to this project, or in any other document prepared by Consultant and included herein, is in conflict with Articles I-XIII of this Agreement (Articles), the Articles shall take precedence and control to resolve said conflict.

[Signature Page Follows]





~~July 22, 2021 Revised August 10, 2021; Revised August 24, 2021; Revised September 24, 2021~~

## **Professional Services Proposal**

**City of Corpus Christi, Texas**  
**Fire Station 3**  
**Project Number: 21085**

**ATTN: Jeffrey Edmonds, PE., Director of Engineering Services**

BRW Architects is pleased to submit this proposal for architectural services to design Fire Station No. 3 for the City of Corpus Christi.

The project scope, scope of services, project schedule, and compensation are described below:

### **1. INITIAL INFORMATION**

**Scope** - The professional architectural services are for the design and construction of a new state-of-the-art single-story Fire Station 3 located at the intersection of Morgan and Brownlee. The new station will replace the antiquated Fire Station 3 located adjacent from the site. The new station will meet current firefighting operations and standards that will allow for faster turnout times and cleaner work environments for the safety of firefighters. The new station will be approximately 13,000-13,500 SF; 5-bay station. The new facility will accommodate 15 firefighters (male/female), dayroom, kitchen, weight room, and a new classroom-training/community room. The Construction Budget is \$6.5 Million.

### **2. ARCHITECTS RESPONSIBILITIES**

**A. The Architect shall provide the professional services as set forth in this agreement.**

#### **B. Architectural**

- Description of the basic services listed below under Scope of Services by Project Phases for the Corpus Christi Fire Station 3 Facility.
- Preparation or assistance of Solicitation and Contract Document Procedures
- Furniture, Fixture & Equipment (FF&E) Plans/Specs

#### **C. Landscape Architecture**

- Landscape design to meet zoning ordinance requirements as applicable and drought-tolerant / Native vegetation goals
- Decorative Fencing as required around rear of station

#### **D. Landscape Irrigation**

- Irrigation system design and documentation plans and specs

#### **E. Civil Engineering**

- Drainage, grading and paving design
- Grading spot elevation adequate for TAS compliance
- On-site water, gas, and sewer utilities
- On-site electrical
- Geotechnical Survey for foundation and paving design recommendations.
- Storm Water Pollutant Prevention Plan (SWPPP to be provided by Contractor)

#### **F. Structural Engineering**

- Structural foundation
- Structural framing

- TDI Windstorm Certification

**G. Mechanical, Plumbing and Electrical Engineering**

- Mechanical systems, including temperature controls systems and written sequence of operations
- Fire Protection (sprinkler system)
- Electrical power, lighting, and fire alarm systems
- Coordination with utility companies for electrical power, telephone, fiber, cable TV, etc. service entrances
- Emergency generator (Natural Gas)

**H. Additional Services to be provided by Architect:**

- Station radio, antenna, and alerting systems.
- Audio / Visual Equipment
- Building Security Equipment
- Building and site review submittal

**I. Additional Services Upon Request**

- Preemption signal for the light located at the corner of Morgan and Brownlee
- Traffic analysis and traffic signals
- Detention Pond design and review process

**3. EXCLUSIONS FROM BASIC SERVICES**

**A. The services shown below are not anticipated at this time; however, project requirements identified during design may require them to be added.**

**B. Architectural**

- LEED Design / LEED Certification
- Full-time on-site construction observation
- Environmental or hazardous materials conditions / issues
- Preparation or assistance of additional bid packages after the initial bid

**C. Demolition**

- Demolition of buildings and other structures.

**D. Civil Engineering**

- Underground detention design and review process
- Zoning modifications, including street abandonments, easements
- Environmental II or hazardous materials conditions / issues
- Platting, Boundary and Topographical Survey

**E. Mechanical, Electrical and Plumbing Engineering**

- Building utility bill estimates
- Acoustical Design and Documentation
- Energy Efficient / Life Cycle
- Telecommunications and computer equipment and wiring, including voice data, cable TV, fiber optic Cabling, wire management systems and terminations. (City IT Department will provide fiber optic cable and data drops. Conduit for the data drops to be installed by contractor).

**4. OWNER RESPONSIBILITIES**

**A.** The Owner shall not increase or decrease the overall budget, or the portion the budget allocated for construction or contingencies, without modifying the agreement of the Architect to the corresponding change in the project scope, quality, and/or professional service fees.

**B.** The Owner shall provide written comments within fourteen-twenty-one (14-21) calendar days pertaining to documents submitted by the Architect in order to avoid unreasonable delay in the orderly and

sequential progress of the Architects' services. The Owner shall not modify a decision once given to the Architect without additional compensation to the Architect.

## **5. OWNER PROVIDED SERVICES AND SYSTEMS**

- A.** The Owner shall furnish services or building systems other than Basic Services or authorize the Architect in writing to furnish them as an Additional Service, when such services are required to complete the project, provided that the City may use another subcontractor to provide the following services. These services may include those listed below as applicable:
- Laboratory materials testing / inspections (during construction)

## **6. SCOPE OF SERVICES BY PROJECT PHASE**

### **A. Kick Off Meeting**

- Review scope of work with project team. Identify contact information as well as chain of command for distributing information.

### **B. Programming**

- BRW, working with Corpus Christi Fire Department and city staff, will review the program of spaces for the New Station No. 3.

### **C. Code Research**

- Research the International Building Code requirements as well as plumbing, electrical, lighting, and mechanical, site, floodplain, TAS by identifying requirements and restrictions related to the new Fire Station No. 3.

### **D. Schematic Design**

- Schematic Design documents shall include a site plan, building plans, sections, elevations and renderings. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing. The Schematic Design phase shall include three (3) working design meetings with the Owner.
- Meet with City of Corpus Christi Development Services Department for Early Assistance Meeting. (3-weeks to schedule)
- BRW will provide a statement of probable cost at the completion of Schematic Design, which will be a general estimate developed from several cost data bases including our own to determine the cost per square foot.

### **E. Design Development**

- BRW will develop the Schematic Design to greater detail. The Architect shall provide Design Development Documents based on the approved Schematic Design Documents and probable cost of the Work. The Design Development Documents shall illustrate and describe the refinement of the design establishing the scope, relationships, forms, size and appearance of the project by means of plans, sections and elevations, typical construction details, and outline specifications. The Design Development Documents shall include in general the quality levels for major materials and project systems.
- During the design process, the Architect shall work with the Owner and user group to coordinate the scope of the project. At the completion of Design Development, the Architect shall update the probable cost of the Work and the project schedule. The Architect shall advise the Owner of any changes from previous cost projections due to adjustments in the project scope, refinement of the probable cost of the work, or general market conditions. If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget, the Architect shall make appropriate

recommendations to the Owner to adjust the project's size, quality or budget, and the Owner shall cooperate with the Architect in making such adjustments.

- BRW will provide preliminary Civil, Structural, Mechanical, Electrical, and Plumbing engineering. Design and coordination with the Owner's IT department will be implemented at this phase. During this phase interior elevations will be developed and BRW will review finish materials, lighting, and furniture. BRW will review with the Owner, equipment and furniture that are owner supplied vs. items supplied by the contractor during construction. Door hardware will be outlined and reviewed. BRW will prepare an outline for materials and products used for specifications.
- Our civil engineer will evaluate our site conditions along with parking requirements, drainage, landscaping and irrigation.
- Meetings and Deliverables. The Design Development phase shall include two (2) working design meetings with the Owner. City of Corpus Christi requires 2 hard copy conformed sets after Bid Phase; Two half size (11" x 17") "conformed" plan sets at the end of the bid phase. Furthermore two (2) 8.5" x 11" project manuals (front ends).
- BRW will provide a statement of probable cost at the completion of Design Development, which will be a general estimate developed from several cost data bases including our own to determine the cost per square foot and general costs of selected materials and methods. BRW will submit the estimate in PDF/electronic format.

#### **F. Construction Documents**

- The Architect shall provide Construction Documents based on the approved Design Development Documents and updated probable cost of the Work. The Construction Documents shall set forth in detail the requirements for construction of the Project. The Construction Documents shall include Drawings and Specifications that establish in detail the quality levels of materials and project systems required for construction.
- The Architect shall update the estimate of the Cost of the Work and project schedule at 30%, 60% and 90% completion of Construction Documents. The statement of Probable Cost shall be an estimate to include materials, equipment, component systems and construction types for construction costs. The Statement of Probable Cost will also include project costs consisting of alternates to the bid, owner provided furniture and equipment, an allowance for construction testing, along with the contingency. The contingency includes Owner Generated Changes, Architectural and Engineering Design Contingency, and Unforeseen Construction Conditions. It is recognized that neither the Architect nor the Owner has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, over competitive bidding, or market conditions. Accordingly, the Architect acknowledges that the bids may vary from the Owner's budget or the Architect's cost estimate.
- During the development of the Construction Documents, the Architects shall prepare a Project Manual including (1) bidding and procurement information which describes the time, place and conditions of bidding; bidding or proposal forms; and (2) the Conditions of the contract for Construction (General, Supplementary and other Conditions).
- Construction Documents phase deliverables shall include PDF documents at 30% completion and 90% completion for the Owner's review and comment. Final deliverables at 100% completion shall include and one electronic file of the Contract Documents in PDF format and Specifications in PDF format.
- Final design and coordination of the mechanical, electrical, and plumbing will be completed. Mechanical engineering will include sizing of equipment, ducts, diffusers, dampers, and appropriate calculations. Plumbing engineer will include design of wastewater system tied into the existing system, supply water, and gas system. Electrical engineer will provide lighting, speaker system, phone, cable, and data wiring. Civil engineering work will be reviewed and coordinated, and final details will be drawn and specified.



- Upon receiving a letter of notice to proceed, BRW will update the building project schedule.
- Prepare complete Construction Documents, Specifications, Architect's Cost Estimate and Schedule and submit for Permit. Submit plans to Developmental Services Department for their review.
- BRW will be responsible for submitting construction documents to Development Services (DS) for plan review. Engineering Services (ES) will process plan review and permit fees internally to Development Services. BRW will be responsible for addressing any DS code comments and providing ES with a permit ready set of construction documents. ES understands that DS will not release the permit until a contractor of record is identified after bid opening.
- Submit plans and coordinate with Texas Department of Licensing and Regulation (TDLR) or Registered Accessibility Specialist (RAS) for accessibility review and city permitting. Obtain EAB Number and Plan Review Report and approval for permit.
- Coordination of all architectural drawings will be detailed and finalized. Specifications will be coordinated with drawings and completed. BRW shall assist in the solicitation for inclusion in the specifications.
- The Construction Documentation Phase shall consist of five (5) meetings. Construction Documents phase deliverables shall include two full-size sets of documents at 30% completion and 90% completion for the Owner's review and comment. Final deliverables will be coordinated and submitted per standard process with engineering services; submittals at 30/60/90/100.

**G. Bidding includes the following**

- BRW will assist the City of Corpus Christi by providing electronic (PDF) drawings and specifications. The City of Corpus Christi Contracts and Procurement Department will request bids through Civcast.
- The Owner intends to utilize Competitive Sealed Proposal delivery method for the project. The term "competitive bidding" and "competitive sealed proposals" as used in this agreement shall mean the same method of construction procurement ultimately selected by the Owner. BRW will provide drawings and specifications to the Owner for posting.
- The Architect shall prepare responses to questions from proposers and provide clarifications and interpretations of the Contract Documents in the form of Addenda.
- The Architect shall consider requests for substitutions during the pricing period, as permitted by the Contract Documents, and shall prepare Addenda including approved substitutions.
- The Architect will participate a pre-proposal conference for prospective bidders.
- BRW will assist the City during the bidding phase.

**H. Construction Administration**

- Participate in Pre-Construction Meeting (Webex).
- Attend and chair (or as requested by Project Manager) construction progress meetings based roughly on one (1) meeting per month on site.
- The Architect shall not have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction as selected by the Contractor, or for the safety precautions and programs incident to the work of the Contractor, or for the failure of the Contractor to comply with laws, rules, regulations, ordinances, codes or orders applicable to the Contractor furnishing and performing the work.

- The Architect shall review and approve or take other appropriate action upon Contractor's submittals such as shop drawings, product data, samples, and mock-ups for general conformance with information given and the design concept expressed in the Contract Documents. Review is not conducted for the purpose of determining the accuracy, completeness, or quantities, or for substantiating instructions for installation or performance of equipment or systems.
- The Architect shall visit the site to become generally familiar with the progress of the quality of the work completed (assuming work is ongoing). The Architect's representative shall attend pre-arranged progress meetings and prepare field reports described the status of the work and any deviations observed from the Construction Documents.
- Through the construction administration activities with monthly progress meetings, submittal approvals, RFI's, change orders, construction schedule approval, and project close-out, BRW will serve as the representative of the Owner during construction to observe the construction effort and the general conformance by the construction contractor with the construction drawings and specifications.
- Architect shall perform final closeout procedures as defined in the Contract Documents, including preparation and verification of Punch Lists for the Contractor's use and transfer red-lined drawings into as set of as-builts.
- Construction Administration services beyond the following limits shall be an Additional Service:
  - Evaluation of Contractor's substitution requests after thirty (30) days following the execution of the contract.
  - Owner requested project scope changes resulting in changes to the Construction Documents.
  - Evaluation of claims submitted by the Contractor in connection with the work.
  - One (1) year warranty walk through after completion.
- Construction Administration services provided more than sixty (60) days after the date of the Substantial Completion, originally established in the construction contract shall be Additional Services, with the exception of final completion and project closeout, and warranty walk. The monthly lump-sum fee for extended Construction Administration (CA) services shall be the CA portion of the fee divided by the number of months for construction originally established in the construction contract.

## 6. TRAVEL

- A. Twenty-four visits to the site by BRW over the duration of the Project. The 24 visits by project team shall be split into 10 visits during design and 14 visits during construction and any additional site visits requested by the Owner shall be reimbursable expenses to BRW. Additional reimbursement excludes additional site visits required to correct design errors or omissions.

## 7. COMPENSATION

- A. Payment for Architectural services is not to exceed an amount of **\$620,400** to be invoiced monthly based on the percentage of the hourly not to exceed amount projected.
- B. Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as stated below.
- C. If the Construction Budget increases by more than 5% prior to acceptance of the construction contractor's competitive sealed proposal or construction manager's guaranteed maximum price, the Architect shall bill for additional services on the adjusted cost at a rate 9%.

### D. COST BREAKDOWN BY PHASES

Preliminary Phase (20%)	\$123,800.00
Design Phase (55%)	\$340,450.00
Bid Phase (5%)	\$30,950.00
Construction Admin Phase (20%)	\$123,800.00

**E. COST BREAKDOWN BY DESIGN DISCIPLINE**

Architectural	\$402,000.00
Structural	\$34,400.00
MEP	\$80,400.00
Civil	\$40,100.00
Landscape & Irrigation	\$17,200.00
<b>TOTAL BASIC SERVICE</b>	<b>\$574,100.00</b>

**F. ADDITIONAL SERVICES**

MEP Commissioning	\$19,700.00
Detention	\$6,500.00
Traffic Analysis / Traffic Signals	\$5,400.00
Fire Alarm / Fire Suppression Engineering	\$14,700.00

**TOTAL BASIC and ADD SERVICES \$620,400.00**

**G. COST OF THE WORK**

- In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques.

**H. BILLING RATES**

The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.

• Site Principal / Engineer	\$240.00/hour
• Sr. Project Manager / Engineer	\$185.00/hour
• Project Manager / Engineer	\$170.00/hour
• Project Architect / Engineer	\$150.00/hour
• Architect / Engineer	\$125.00/hour
• Intern Architect I / Engineer	\$105.00/hour
• Intern Architect II / Engineer	\$85.00/hour
• Admin	\$70.00/hour

**I. Additional Services**

- Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services shall entitle the Architect to compensation and an appropriate adjustment in the Architect's schedule. Additional Services will be negotiated on a lump sum basis.
- Upon recognizing the need to perform Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner's written authorization.
- If the services covered by this Agreement have not been completed within six (6) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

**J. BRW does not anticipate compensation for reimbursable expenses. Travel and other related expenses are figured into the overall fee.**

- K. Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid thirty days (30) days after the invoice date shall bear interest at the rate of 5% or the maximum rate allowed under Chapter 2251, Texas Government Code.

## 8. PROJECT SCHEDULE

We anticipate the following time periods for the project phases:

PROJECT PHASE	COMPLETED
Programming/ Schematic Design (30%)	8 weeks
Design Development (60% & 90%)	4 weeks
Construction Documents (100%)	10 weeks
City review	8 weeks
Permit review	2-3 weeks
Bidding	8 weeks (2 months)
City Council	4 weeks
Building Construction	12-14 months

### SUBMITTAL REQUIREMENTS –

- 30% **Programming / Schematic Design** – One submittal each for review and one review meeting one week after submittal.
- 60% - 90% **Design Development** – One submittal each, one review meeting each two weeks after submittal.
- 100% - S&S **Construction Documents** – One submittal and one review meeting two weeks after. Also, Final Bid Document submittal after Development Services Department Reviews.

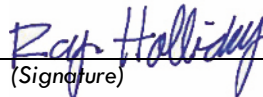
\*Total of four (4) Design Submittals and four (4) Follow Up review meetings and one (1) final Bid Document Submittal.

## 9. SCOPE AGREEMENT

Agreement represents the entire and integrated agreement between Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral.

This Agreement entered as of the day and year first written above.

**ARCHITECT**

  
(Signature)

**Ray W. Holliday, AIA, ASLA, ASID, APA, Principal**  
Brown Reynolds Watford Architects, Inc.

**COMPLETE PROJECT NAME**

Project No. XXXX

Invoice No. 12345

Invoice Date 01/01/2017

	Contract		Amd No. 1		Amd No. 2		Total Contract		Current Invoice	Previous Invoice	Total Invoice	Remaining Balance	Percent Complete
<b>Basic Services:</b>													
Preliminary Phase	\$1,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$1,000.00	\$1,000.00	\$0.00	\$1,000.00	\$1,000.00	\$1,000.00	\$0.00	100.0%
Design Phase	\$2,000.00	\$1,000.00	\$0.00	\$0.00	\$0.00	\$3,000.00	\$3,000.00	\$1,000.00	\$500.00	\$1,500.00	\$1,500.00	\$1,500.00	50.0%
Bid Phase	\$500.00	\$0.00	\$0.00	\$250.00	\$0.00	\$750.00	\$750.00	\$0.00	\$0.00	\$0.00	\$0.00	\$750.00	0.0%
Construction Phase	\$2,500.00	\$0.00	\$0.00	\$1,000.00	\$0.00	\$3,500.00	\$3,500.00	\$0.00	\$0.00	\$0.00	\$0.00	\$3,500.00	0.0%
Subtotal Basic Services	\$6,000.00	\$1,000.00	\$1,250.00	\$1,250.00	\$1,250.00	\$8,250.00	\$8,250.00	\$1,000.00	\$1,500.00	\$2,500.00	\$2,500.00	\$5,750.00	30.3%
<b>Additional Services:</b>													
Permitting	\$2,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$2,000.00	\$2,000.00	\$500.00	\$0.00	\$500.00	\$500.00	\$1,500.00	25.0%
Warranty Phase	\$0.00	\$1,120.00	\$0.00	\$0.00	\$0.00	\$1,120.00	\$1,120.00	\$0.00	\$0.00	\$0.00	\$0.00	\$1,120.00	0.0%
Inspection	\$0.00	\$0.00	\$0.00	\$1,627.00	\$0.00	\$1,627.00	\$1,627.00	\$0.00	\$0.00	\$0.00	\$0.00	\$1,627.00	0.0%
Platting Survey	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD
O & M Manuals	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD
SCADA	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD
Subtotal Additional Services	\$2,000.00	\$1,120.00	\$1,120.00	\$1,627.00	\$1,627.00	\$4,747.00	\$4,747.00	\$500.00	\$0.00	\$500.00	\$500.00	\$4,247.00	10.5%
<b>Summary of Fees:</b>													
Basic Services Fees	\$6,000.00	\$1,000.00	\$1,250.00	\$1,250.00	\$1,250.00	\$8,250.00	\$8,250.00	\$1,000.00	\$1,500.00	\$2,500.00	\$2,500.00	\$5,750.00	30.3%
Additional Services Fees	\$2,000.00	\$1,120.00	\$1,120.00	\$1,627.00	\$1,627.00	\$4,747.00	\$4,747.00	\$500.00	\$0.00	\$500.00	\$500.00	\$4,247.00	10.5%
<b>Total of Fees</b>	\$8,000.00	\$2,120.00	\$2,120.00	\$2,877.00	\$2,877.00	\$12,997.00	\$12,997.00	\$1,500.00	\$1,500.00	\$3,000.00	\$3,000.00	\$9,997.00	23.1%

**Notes:**

**A PURCHASE ORDER NUMBER MUST BE INCLUDED ON ALL INVOICES AND INVOICE CORRESPONDENCE. FAILURE TO COMPLY WILL RESULT IN DELAYED PAYMENT OF INVOICES.**

If needed, update this sample form based on the contract requirements.

If applicable, refer to the contract for information on what to include with time and materials (T&M).

EXHIBIT C

**Insurance Requirements**

**Pre-Design, Design and General Consulting Contracts**

1.1 Consultant must not commence work under this agreement until all required insurance has been obtained and such insurance has been approved by the City. Consultant must not allow any subcontractor to commence work until all similar insurance required of any subcontractor has been obtained.

1.2 Consultant must furnish to the Director of Engineering Services with the signed agreement a copy of Certificates of Insurance (COI) with applicable policy endorsements showing the following minimum coverage by an insurance company(s) acceptable to the City's Risk Manager. **A waiver of subrogation is required on all applicable policies. Endorsements must be provided with COI. Project name and or number must be listed in Description Box of COI.**

TYPE OF INSURANCE	MINIMUM INSURANCE COVERAGE
<b>30-written day notice of cancellation, required on all certificates or by applicable policy endorsements</b>	<b>Bodily Injury and Property Damage</b> Per occurrence - aggregate
PROFESSIONAL LIABILITY (Errors and Omissions)	\$1,000,000 Per Claim  If claims made policy, retro date must be prior to inception of agreement, have 3-year reporting period provisions or be maintained for 3 years after project completion.

1.3 In the event of accidents of any kind related to this agreement, Consultant must furnish the City with copies of all reports of any accidents within 10 days of the accident.

1.4 Consultant shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Consultant's sole expense, insurance coverage written on an occurrence basis, with the exception of professional liability, which may be on a per claims made basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- VII. **Consultant is required to provide City with renewal Certificates.**

1.5 Consultant is required to submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Consultant shall pay any costs incurred resulting from said changes. All notices under this Article shall be given to City at the following address:

City of Corpus Christi  
Attn: Engineering Services  
P.O. Box 9277  
Corpus Christi, TX 78469-9277

**1.6 Consultant agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:**

1.6.1 Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation or non-renewal of coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

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

1.8 In addition to any other remedies the City may have upon Consultant's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Consultant to remove the exhibit hereunder, and/or withhold any payment(s) if any, which become due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof.

1.9 Nothing herein contained shall be construed as limiting in any way the extent to which Consultant may be held responsible for payments of damages to persons or property resulting from Consultant's or its subcontractor's performance of the work covered under this agreement.

1.10 It is agreed that Consultant's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of Corpus Christi for liability arising out of operations under this agreement.

1.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this agreement.

**Excerpt from FORM 00 72 00 GENERAL CONDITIONS for Construction Projects related to design services**

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## ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

### 1.01 Defined Terms

- A. Terms with initial capital letters, including the term’s singular and plural forms, have the meanings indicated in this paragraph wherever used in the Bidding Requirements or Contract Documents. In addition to the terms specifically defined, terms with initial capital letters in the Contract Documents may include references to identified articles and paragraphs, and the titles of other documents or forms.
1. Addenda - Documents issued prior to the receipt of Bids which clarify or modify the Bidding Requirements or the proposed Contract Documents.
  2. Agreement - The document executed between Owner and Contractor covering the Work.
  3. Alternative Dispute Resolution - The process by which a disputed Claim may be settled as an alternative to litigation, if Owner and Contractor cannot reach an agreement between themselves.
  4. Application for Payment - The forms used by Contractor to request payments from Owner and the supporting documentation required by the Contract Documents.
  5. Award Date – The date the City Council of the City of Corpus Christi (City) authorizes the City Manager or designee to execute the Contract on behalf of the City.
  6. Bid - The documents submitted by a Bidder to establish the proposed Contract Price and Contract Times and provide other information and certifications as required by the Bidding Requirements.
  7. Bidding Documents - The Bidding Requirements, the proposed Contract Documents, and Addenda.
  8. Bidder - An individual or entity that submits a Bid to Owner.
  9. Bidding Requirements - The Invitation for Bids, Instructions to Bidders, Bid Security, Bid Form and attachments, and required certifications.
  10. Bid Security - The financial security in the form of a bid bond provided by Bidder at the time the Bid is submitted and held by Owner until the Agreement is executed and the evidence of insurance and Bonds required by the Contract Documents are provided. A cashier’s check, certified check, money order or bank draft from any State or National Bank will also be acceptable.
  11. Bonds - Performance Bond, Payment Bond, Maintenance Bond, and other Surety instruments executed by Surety. When in singular form, refers to individual instrument.
  12. Change Order - A document issued on or after the Effective Date of the Contract and signed by Owner and Contractor which modifies the Work, Contract Price, Contract Times, or terms and conditions of the Contract.
  13. Change Proposal - A document submitted by Contractor in accordance with the requirements of the Contract Documents:
    - a. Requesting an adjustment in Contract Price or Contract Times;

- b. Contesting an initial decision concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents;
  - c. Challenging a set-off against payment due; or
  - d. Seeking a Modification with respect to the terms of the Contract.
14. City Engineer - The Corpus Christi City Engineer and/or his designated representative as identified at the preconstruction conference or in the Notice to Proceed.
  15. Claim - A demand or assertion by Owner or Contractor submitted in accordance with the requirements of the Contract Documents. A demand for money or services by an entity other than the Owner or Contractor is not a Claim.
  16. Constituent of Concern - Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), hazardous wastes, and substances, products, wastes, or other materials that are or become listed, regulated, or addressed pursuant to:
    - a. The Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”);
    - b. The Hazardous Materials Transportation Act, 49 U.S.C. §§5101 et seq.;
    - c. The Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”);
    - d. The Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.;
    - e. The Clean Water Act, 33 U.S.C. §§1251 et seq.;
    - f. The Clean Air Act, 42 U.S.C. §§7401 et seq.; or
    - g. Any other Laws or Regulations regulating, relating to, or imposing liability or standards of conduct concerning hazardous, toxic, or dangerous waste, substance, or material.
  17. Contract - The entire integrated set of documents concerning the Work and describing the relationship between the Owner and Contractor.
  18. Contract Amendment - A document issued on or after the Effective Date of the Contract and signed by Owner and Contractor which:
    - a. Authorizes new phases of the Work and establishes the Contract Price, Contract Times, or terms and conditions of the Contract for the new phase of Work; or
    - b. Modifies the terms and conditions of the Contract, but does not make changes in the Work.
  19. Contract Documents - Those items designated as Contract Documents in the Agreement.
  20. Contract Price - The monetary amount stated in the Agreement and as adjusted by Modifications, and increases or decreases in unit price quantities, if any, that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents.
  21. Contract Times - The number of days or the dates by which Contractor must:
    - a. Achieve specified Milestones;

- b. Achieve Substantial Completion; and
  - c. Complete the Work.
22. Contractor - The individual or entity with which Owner has contracted for performance of the Work.
23. Contractor's Team - Contractor and Subcontractors, Suppliers, individuals, or entities directly or indirectly employed or retained by them to perform part of the Work or anyone for whose acts they may be liable.
24. Cost of the Work - The sum of costs incurred for the proper performance of the Work as allowed by Article 15.
25. Defective - When applied to Work, refers to Work that is unsatisfactory, faulty, or deficient in that it:
- a. Does not conform to the Contract Documents;
  - b. Does not meet the requirements of applicable inspections, reference standards, tests, or approvals referred to in the Contract Documents; or
  - c. Has been damaged or stolen prior to OAR's recommendation of final payment unless responsibility for the protection of the Work has been assumed by Owner at Substantial Completion in accordance with Paragraphs 17.12 or 17.13.
26. **Designer** - The individuals or entity named as **Designer** in the Agreement and the subconsultants, individuals, or entities directly or indirectly employed or retained by **Designer** to provide design or other technical services to the Owner. **Designer** has responsibility for engineering or architectural design and technical issues related to the Contract Documents. **Designers** are Licensed Professional Engineers, Registered Architects or Registered Landscape Architects qualified to practice their profession in the State of Texas.
27. Drawings - The part of the Contract that graphically shows the scope, extent, and character of the Work. Shop Drawings and other Contractor documents are not Drawings.
28. Effective Date of the Contract - The date indicated in the Agreement on which the City Manager or designee has signed the Contract.
29. Field Order - A document issued by OAR or **Designer** requiring changes in the Work that do not change the Contract Price or the Contract Times.
30. Hazardous Environmental Condition - The presence of Constituents of Concern at the Site in quantities or circumstances that may present a danger to persons or property exposed to Constituents of Concern. The presence of Constituents of Concern at the Site necessary for the execution of the Work or to be incorporated in the Work is not a Hazardous Environmental Condition provided these Constituents of Concern are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract.
31. Indemnified Costs - All costs, losses, damages, and legal or other dispute resolution costs resulting from claims or demands against Owner's Indemnitees. These costs include fees for engineers, architects, attorneys, and other professionals.

32. Laws and Regulations; Laws or Regulations - Applicable laws, statutes, rules, regulations, ordinances, codes, and orders of governmental bodies, agencies, authorities, and courts having jurisdiction over the Project.
33. Liens - Charges, security interests, or encumbrances upon Contract related funds, real property, or personal property.
34. Milestone - A principal event in the performance of the Work that Contractor is required by Contract to complete by a specified date or within a specified period of time.
35. Modification - Change made to the Contract Documents by one of the following methods:
  - a. Contract Amendment;
  - b. Change Order;
  - c. Field Order; or
  - d. Work Change Directive.
36. Notice of Award - The notice of Owner's intent to enter into a contract with the Selected Bidder.
37. Notice to Proceed - A notice to Contractor of the Contract Times and the date Work is to begin.
38. Owner - The City of Corpus Christi (City), a Texas home-rule municipal corporation and political subdivision organized under the laws of the State of Texas, acting by and through its duly authorized City Manager and his designee, the City Engineer (the Director of Engineering Services), and the City's officers, employees, agents, or representatives, authorized to administer design and construction of the Project.
39. Owner's Authorized Representative or OAR - The individual or entity named as OAR in the Agreement and the consultants, subconsultants, individuals, or entities directly or indirectly employed or retained by them to provide construction management services to the Owner. The OAR may be an employee of the Owner.
40. Owner's Indemnitees - Each member of the OPT and their officers, directors, members, partners, employees, agents, consultants, and subcontractors.
41. Owner's Project Team or OPT - The Owner, Owner's Authorized Representative, Resident Project Representative, **Designer**, and the consultants, subconsultants, individuals, or entities directly or indirectly employed or retained by them to provide services to the Owner.
42. Partial Occupancy or Use - Use by Owner of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.
43. Progress Schedule - A schedule prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times. The Progress Schedule must be a Critical Path Method (CPM) Schedule.
44. Project - The total undertaking to be accomplished for Owner under the Contract Documents.

45. Resident Project Representative or RPR - The authorized representative of OPT assigned to assist OAR at the Site. As used herein, the term Resident Project Representative includes assistants and field staff of the OAR.
46. Samples - Physical examples of materials, equipment, or workmanship representing some portion of the Work that are used to establish the standards for that portion of the Work.
47. Schedule of Documents - A schedule of required documents, prepared, and maintained by Contractor.
48. 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 Contractor's Applications for Payment.
49. Selected Bidder - The Bidder to which Owner intends to award the Contract.
50. Shop Drawings - All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
51. Site - Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed. The Site includes rights-of-way, easements, and other lands furnished by Owner which are designated for use by the Contractor.
52. Specifications - The part of the Contract that describes the requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
53. Subcontractor - An individual or entity having a direct contract with Contractor or with other Subcontractors or Suppliers for the performance of a part of the Work.
54. Substantial Completion - The point where the Work or a specified part of the Work is sufficiently complete to be used for its intended purpose in accordance with the Contract Documents.
55. Supplementary Conditions - The part of the Contract that amends or supplements the General Conditions.
56. Supplier - A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with Subcontractors or other Suppliers to furnish materials or equipment to be incorporated in the Work.
57. Technical Data - Those items expressly identified as Technical Data in the Supplementary Conditions with respect to either:
  - a. Subsurface conditions at the Site;
  - b. Physical conditions relating to existing surface or subsurface structures at the Site, except Underground Facilities; or
  - c. Hazardous Environmental Conditions at the Site.
58. Underground Facilities - All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, other similar facilities or appurtenances, and encasements containing these facilities which are used to convey electricity, gases,

steam, liquid petroleum products, telephone or other communications, fiber optic transmissions, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

- 59. Unit Price Work - Work to be paid for on the basis of unit prices.
- 60. Work - The construction of the Project or its component parts as required by the Contract Documents.
- 61. Work Change Directive - A directive issued to Contractor on or after the Effective Date of the Contract ordering an addition, deletion, or revision in the Work. The Work Change Directive serves as a memorandum of understanding regarding the directive until a Change Order can be issued.

## 1.02 Terminology

- A. The words and terms discussed in this Paragraph 1.02 are not defined, but when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. It is understood that the cost for performing Work is included in the Contract Price and no additional compensation is to be paid by Owner unless specifically stated otherwise in the Contract Documents. Expressions including or similar to “at no additional cost to Owner,” “at Contractor’s expense,” or similar words mean that the Contractor is to perform or provide specified operation of Work without an increase in the Contract Price.
- C. The terms “day” or “calendar day” mean a calendar day of 24 hours measured from midnight to the next midnight.
- D. The meaning and intent of certain terms or adjectives are described as follows:
  - 1. The terms “as allowed,” “as approved,” “as ordered,” “as directed,” or similar terms in the Contract Documents indicate an exercise of professional judgment by the OPT.
  - 2. Adjectives including or similar to “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or similar adjectives are used to describe a determination of OPT regarding the Work.
  - 3. Any exercise of professional judgment by the OPT will be made solely to evaluate the Work for general compliance with the Contract Documents unless there is a specific statement in the Contract Documents indicating otherwise.
  - 4. The use of these or similar terms or adjectives does not assign a duty or give OPT authority to supervise or direct the performance of the Work, or assign a duty or give authority to the OPT to undertake responsibilities contrary to the provisions of Articles 9 or 10 or other provisions of the Contract Documents.
- E. The use of the words “furnish,” “install,” “perform,” and “provide” have the following meanings when used in connection with services, materials, or equipment:
  - 1. Furnish means to supply and deliver the specified services, materials, or equipment to the Site or other specified location ready for use or installation.
  - 2. Install means to complete construction or assembly of the specified services, materials, or equipment so they are ready for their intended use.

3. Perform or provide means to furnish and install specified services, materials, or equipment, complete and ready for their intended use.
  4. Perform or provide the specified services, materials, or equipment complete and ready for intended use if the Contract Documents require specific services, materials, or equipment, but do not expressly use the words “furnish,” “install,” “perform,” or “provide.”
- F. Contract Documents are written in modified brief style:
1. Requirements apply to all Work of the same kind, class, and type even though the word “all” is not stated.
  2. Simple imperative sentence structure is used which places a verb as the first word in the sentence. It is understood that the words “furnish,” “install,” “perform,” “provide,” or similar words include the meaning of the phrase “The Contractor shall...” before these words.
  3. Unless specifically stated that action is to be taken by the OPT or others, it is understood that the action described is a requirement of the Contractor.
- G. Words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with this recognized meaning unless stated otherwise in the Contract Documents.
- H. Written documents are required where reference is made to notices, reports, approvals, consents, documents, statements, instructions, opinions or other types of communications required by the Contract Documents. Approval and consent documents must be received by Contractor prior to the action or decision for which approval or consent is given. These may be made in printed or electronic format through the OPT’s project management information system or other electronic media as required by the Contract Documents or approved by the OAR.
- I. Giving notice as required by the Contract Documents may be by printed or electronic media using a method that requires acknowledgment of the receipt of that notice.

## **ARTICLE 2 – PRELIMINARY MATTERS**

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

### **3.01 Intent**

- B. Provide equipment that is functionally complete as described in the Contract Documents. The Drawings and Specifications do not indicate or describe all of the Work required to complete the installation of products purchased by the Owner or Contractor. Additional details required for the correct installation of selected products are to be provided by the Contractor and coordinated with the **Designer** through the OAR.

### **3.02 Reference Standards**

Comply with applicable construction industry standards, whether referenced or not.

1. Standards referenced in the Contract Documents govern over standards not referenced but recognized as applicable in the construction industry.

2. Comply with the requirements of the Contract Documents if they produce a higher quality of Work than the applicable construction industry standards.
3. **Designer** determines whether a code or standard is applicable, which of several are applicable, or if the Contract Documents produce a higher quality of Work.

3.03 Reporting and Resolving Discrepancies

3.04 Interpretation of the Contract Documents

Submit questions regarding the design of the Project described in the Contract Documents to the OAR immediately after those questions arise. OAR is to request an interpretation of the Contract Documents from the **Designer**. **Designer** is to respond to these questions by providing an interpretation of the Contract Documents. OAR will coordinate the response of the OPT to Contractor.

- C. OPT may initiate a Modification to the Contract Documents through the OAR if a response to the question indicates that a change in the Contract Documents is required. Contractor may appeal **Designer's** or OAR's interpretation by submitting a Change Proposal.

**ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK**

**ARTICLE 5 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS**

5.01 Availability of Lands

5.02 Use of Site and Other Areas

5.03 Subsurface and Physical Conditions

5.04 Differing Subsurface or Physical Conditions

OAR is to notify the OPT after receiving notice of a differing subsurface or physical condition from the Contractor. **Designer** is to:

1. Promptly review the subsurface or physical condition;
  2. Determine the necessity of OPT's obtaining additional exploration or tests with respect to the subsurface or physical condition;
  3. Determine if the subsurface or physical condition falls within one or more of the differing Site condition categories in Paragraph 5.04.A;
  4. Prepare recommendations to OPT regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question;
  5. Determine the need for changes in the Drawings or Specifications; and
  6. Advise OPT of **Designer's** findings, conclusions, and recommendations.
- C. OAR is to issue a statement to Contractor regarding the subsurface or physical condition in question and recommend action as appropriate after review of **Designer's** findings, conclusions, and recommendations.



## 5.05 Underground Facilities

The **Designer** is to take the following action after receiving notice from the OAR:

1. Promptly review the Underground Facility and conclude whether the Underground Facility was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy;
  2. Prepare recommendations to OPT regarding the Contractor's resumption of Work in connection with this Underground Facility;
  3. Determine the extent to which a change is required in the Drawings or Specifications to document the consequences of the existence or location of the Underground Facility; and
  4. Advise OAR of **Designer's** findings, conclusions, and recommendations and provide revised Drawings and Specifications if required.
- D. OAR is to issue a statement to Contractor regarding the Underground Facility in question and recommend action as appropriate after review of **Designer's** findings, conclusions, and recommendations.

## ARTICLE 6 – BONDS AND INSURANCE

## ARTICLE 7 – CONTRACTOR'S RESPONSIBILITIES

## ARTICLE 8 – OTHER WORK AT THE SITE

## ARTICLE 9 – OWNER'S AND OPT'S RESPONSIBILITIES

### 9.01 Communications to Contractor

- A. OPT issues communications to Contractor through OAR except as otherwise provided in the Contract Documents.

### 9.02 Replacement of Owner's Project Team Members

- A. Owner may replace members of the OPT at its discretion.

### 9.03 Furnish Data

- A. OPT is to furnish the data required of OPT under the Contract Documents.

### 9.04 Pay When Due

### 9.05 Lands and Easements; Reports and Tests

- A. Owner's duties with respect to providing lands and easements are described in Paragraph 5.01. OPT will make copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions relating to existing surface or subsurface structures at the Site available to Contractor in accordance with Paragraph 5.03.

- 9.06 Insurance
- 9.07 Modifications
- 9.08 Inspections, Tests, and Approvals
  - A. OPT's responsibility with respect to certain inspections, tests, and approvals are described in Paragraph 16.02.
- 9.09 Limitations on OPT's Responsibilities
  - A. The OPT does not supervise, direct, or have control or authority over, and is not responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or related safety precautions and programs, or for failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. OPT is not responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- 9.10 Undisclosed Hazardous Environmental Condition
  - A. OPT's responsibility for undisclosed Hazardous Environmental Conditions is described in Paragraph 5.06.
- 9.11 Compliance with Safety Program
  - A. Contractor is to inform the OPT of its safety programs and OPT is to comply with the specific applicable requirements of this program.

## **ARTICLE 10 – OAR'S AND DESIGNER'S STATUS DURING CONSTRUCTION**

- 10.01 Owner's Representative
  - A. OAR is Owner's representative. The duties and responsibilities and the limitations of authority of OAR as Owner's representative are described in the Contract Documents.
- 10.02 Visits to Site
  - A. **Designer** is to make periodic visits to the Site to observe the progress and quality of the Work. **Designer** is to determine, in general, if the Work is proceeding in accordance with the Contract Documents based on observations made during these visits. **Designer** is not required to make exhaustive or continuous inspections to check the quality or quantity of the Work. **Designer** is to inform the OPT of issues or concerns and OAR is to work with Contractor to address these issues or concerns. **Designer**'s visits and observations are subject to the limitations on **Designer**'s authority and responsibility described in Paragraphs 9.09 and 10.07.
  - B. OAR is to observe the Work to check the quality and quantity of Work, implement Owner's quality assurance program, and administer the Contract as Owner's representative as described in the Contract Documents. OAR's visits and observations are subject to the limitations on OAR's authority and responsibility described in Paragraphs 9.09 and 10.07.

### 10.03 Resident Project Representatives

- A. Resident Project Representatives assist OAR in observing the progress and quality of the Work at the Site. The limitations on Resident Project Representatives' authority and responsibility are described in Paragraphs 9.09 and 10.07.

### 10.04 Rejecting Defective Work

- A. OPT has the authority to reject Work in accordance with Article 16. OAR is to issue a Defective Work Notice to Contractor and document when Defective Work has been corrected or accepted in accordance with Article 16.

### 10.05 Shop Drawings, Modifications and Payments

- A. **Designer's** authority related to Shop Drawings and Samples are described in the Contract Documents.
- B. **Designer's** authority related to design calculations and design drawings submitted in response to a delegation of professional design services are described in Paragraph 7.15.
- C. OAR and **Designer's** authority related to Modifications is described in Article 11.
- D. OAR's authority related to Applications for Payment is described in Articles 15 and 17.

### 10.06 Decisions on Requirements of Contract Documents and Acceptability of Work

- A. OAR is to render decisions regarding non-technical or contractual / administrative requirements of the Contract Documents and will coordinate the response of the OPT to Contractor.
- B. **Designer** is to render decisions regarding the conformance of the Work to the requirements of the Contract Documents. **Designer** will render a decision to either correct the Defective Work, or accept the Work under the provisions of Paragraph 16.04, if Work does not conform to the Contract Documents. OAR will coordinate the response of the OPT to Contractor.
- C. OAR will issue a Request for a Change Proposal if a Modification is required. OAR will provide documentation for changes related to the non-technical or contractual / administrative requirements of the Contract Documents. **Designer** will provide documentation if design related changes are required.
- D. Contractor may appeal **Designer's** decision by submitting a Change Proposal if Contractor does not agree with the **Designer's** decision.

### 10.07 Limitations on OAR's and **Designer's** Authority and Responsibilities

- A. OPT is not responsible for the acts or omissions of Contractor's Team. No actions or failure to act, or decisions made in good faith to exercise or not exercise the authority or responsibility available under the Contract Documents creates a duty in contract, tort, or otherwise of the OPT to the Contractor or members of the Contractor's Team.

## ARTICLE 11 – AMENDING THE CONTRACT DOCUMENTS; CHANGES IN THE WORK

### ARTICLE 12 – CHANGE MANAGEMENT

#### 12.01 Requests for Change Proposal

- A. **Designer** will initiate Modifications by issuing a Request for a Change Proposal (RCP).
1. **Designer** will prepare a description of proposed Modifications.
  2. **Designer** will issue the Request for a Change Proposal form to Contractor. A number will be assigned to the Request for a Change Proposal when issued.
  3. Return a Change Proposal in accordance with Paragraph 12.02 to the **Designer** for evaluation by the OPT.

#### 12.02 Change Proposals

- A. Submit a Change Proposal (CP) to the **Designer** for Contractor initiated changes in the Contract Documents or in response to a Request for Change Proposal.
1. Use the Change Proposal form provided.
  2. Assign a number to the Change Proposal when issued.
  3. Include with the Change Proposal:
    - a. A complete description of the proposed Modification if Contractor initiated or proposed changes to the OPT's description of the proposed Modification.
    - b. The reason the Modification is requested, if not in response to a Request for a Change Proposal.
    - c. A detailed breakdown of the cost of the change if the Modification requires a change in Contract Price. The itemized breakdown is to include:
      - 1) List of materials and equipment to be installed;
      - 2) Man hours for labor by classification;
      - 3) Equipment used in construction;
      - 4) Consumable supplies, fuels, and materials;
      - 5) Royalties and patent fees;
      - 6) Bonds and insurance;
      - 7) Overhead and profit;
      - 8) Field office costs;
      - 9) Home office cost; and
      - 10) Other items of cost.
    - d. Provide the level of detail outlined in the paragraph above for each Subcontractor or Supplier actually performing the Work if Work is to be provided by a Subcontractor or Supplier. Indicate appropriate Contractor mark-ups for Work

provided through Subcontractors and Suppliers. Provide the level of detail outline in the paragraph above for self-performed Work.

- e. Submit Change Proposals that comply with Article 15 for Cost of Work.
  - f. Provide a revised schedule. Show the effect of the change on the Project Schedule and the Contract Times.
- B. Submit a Change Proposal to the **Designer** to request a Field Order.
- C. A Change Proposal is required for all substitutions or deviations from the Contract Documents.
- D. Request changes to products in accordance with Article 25.

#### 12.03 **Designer** Will Evaluate Request for Modification

- A. **Designer** will issue a Modification per Article 11 if the Change Proposal is acceptable to the Owner. **Designer** will issue a Change Order or Contract Amendment for any changes in Contract Price or Contract Times.
- 1. Change Orders and Contract Amendments will be sent to the Contractor for execution with a copy to the Owner recommending approval. A Work Change Directive may be issued if Work needs to progress before the Change Order or Contract Amendment can be authorized by the Owner.
  - 2. Work Change Directives, Change Orders, and Contract Amendments can only be approved by the Owner.
    - a. Work performed on the Change Proposal prior to receiving a Work Change Directive or approval of the Change Order or Contract Amendment is performed at the Contractor's risk.
    - b. No payment will be made for Work on Change Orders or Contract Amendments until approved by the Owner.
- B. The Contractor may be informed that the Request for a Change Proposal is not approved and construction is to proceed in accordance with the Contract Documents.

### **ARTICLE 13 – CLAIMS**

#### 13.01 Claims

#### 13.02 Claims Process

- A. Claims must be initiated by written notice. Notice must conspicuously state that it is a notice of a Claim in the subject line or first sentence. Notice must also list the date of first occurrence of the claimed event.
- B. Claims by Contractor must be in writing and delivered to the Owner, **Designer** and the OAR within 7 days:
- 1. After the start of the event giving rise to the Claim; or
  - 2. After a final decision on a Change Proposal has been made.

- C. Claims by Contractor that are not received within the time period provided by section 13.02(B) are waived. Owner may choose to deny such Claims without a formal review. Any Claims by Contractor that are not brought within 90 days following the termination of the Contract are waived and shall be automatically deemed denied.
- D. Claims by Owner must be submitted by written notice to Contractor.
- E. The responsibility to substantiate a Claim rests with the entity making the Claim. Claims must contain sufficient detail to allow the other party to fully review the Claim.
  - 1. Claims seeking an adjustment of Contract Price must include the Contractor's job cost report. Provide additional documentation as requested by OAR.
  - 2. Claims seeking an adjustment of Contract Time must include native schedule files in Primavera or MS Project digital format. Provide additional documentation as requested by OAR.
- F. Contractor must certify that the Claim is made in good faith, that the supporting data is accurate and complete, and that to the best of Contractor's knowledge and belief, the relief requested accurately reflects the full compensation to which Contractor is entitled.
- G. Claims by Contractor against Owner and Claims by Owner against Contractor, including those alleging an error or omission by **Designer** but excluding those arising under Section 7.12, shall be referred initially to **Designer** for consideration and recommendation to Owner.
- H. **Designer** may review a Claim by Contractor within 30 days of receipt of the Claim and take one or more of the following actions:
  - 1. Request additional supporting data from the party who made the Claim;
  - 2. Issue a recommendation;
  - 3. Suggest a compromise; or
  - 4. Advise the parties that **Designer** is not able to make a recommendation due to insufficient information or a conflict of interest.
- I. If the **Designer** does not take any action, the claim shall be deemed denied.
- J. The Contractor and the Owner shall seek to resolve the Claim through the exchange of information and direct negotiations. If no agreement is reached within 90 days, the Claim shall be deemed denied. The Owner and Contractor may extend the time for resolving the Claim by mutual agreement. Notify OAR of any actions taken on a Claim.
- K. Owner and Contractor may mutually agree to mediate the underlying dispute at any time after a recommendation is issued by the **Designer**.

**ARTICLE 14 – PREVAILING WAGE RATE REQUIREMENTS**

**ARTICLE 15 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK**

**ARTICLE 16 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK**

**ARTICLE 17 – PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD**

**ARTICLE 18 – SUSPENSION OF WORK AND TERMINATION**

**ARTICLE 19 – PROJECT MANAGEMENT**

**ARTICLE 20 – PROJECT COORDINATION**

20.01 Work Included

20.02 Document Submittal

20.03 Communication During Project

- A. The OAR is to be the first point of contact for all parties on matters concerning this Project.
- B. The **Designer** will coordinate correspondence concerning:
  - 1. Documents, including Applications for Payment.
  - 2. Clarification and interpretation of the Contract Documents.
  - 3. Contract Modifications.
  - 4. Observation of Work and testing.
  - 5. Claims.

20.04 Requests for Information

- A. Submit Request for Information (RFI) to the **Designer** to obtain additional information or clarification of the Contract Documents.
  - 1. Submit a separate RFI for each item on the form provided.
  - 2. Attach adequate information to permit a written response without further clarification. **Designer** will return requests that do not have adequate information to the Contractor for additional information. Contractor is responsible for all delays resulting from multiple document submittals due to inadequate information.
  - 3. A response will be made when adequate information is provided. Response will be made on the RFI form or in attached information.
- B. Response to an RFI is given to provide additional information, interpretation, or clarification of the requirements of the Contract Documents, and does not modify the Contract Documents.
- C. **Designer** will initiate a Request for a Change Proposal (RCP) per Article 12 if the RFI indicates that a Contract Modification is required.

## ARTICLE 21 – QUALITY MANAGEMENT

## ARTICLE 22 – FINAL RESOLUTION OF DISPUTES

## ARTICLE 23 – MINORITY/MBE/DBE PARTICIPATION POLICY

## ARTICLE 24 – DOCUMENT MANAGEMENT

## ARTICLE 25 – SHOP DRAWINGS

### 25.01 Work Included

- A. Shop Drawings are required for those products that cannot adequately be described in the Contract Documents to allow fabrication, erection, or installation of the product without additional detailed information from the Supplier.
- B. Submit Shop Drawings as required by the Contract Documents and as reasonably requested by the OPT to:
  1. Record the products incorporated into the Project for the Owner;
  2. Provide detailed information for the products proposed for the Project regarding their fabrication, installation, commissioning, and testing; and
  3. Allow the Designer to advise the Owner if products proposed for the Project by the Contractor conform, in general, to the design concepts of the Contract Documents.

### 25.02 Quality Assurance

### 25.03 Contractor's Responsibilities

### 25.04 Shop Drawing Requirements

- A. Provide adequate information in Shop Drawings and Samples so Designer can:
  1. Assist the Owner in selecting colors, textures, or other aesthetic features.
  2. Compare the proposed features of the product with the specified features and advise Owner that the product does, in general, conform to the Contract Documents.
  3. Compare the performance features of the proposed product with those specified and advise the Owner that the product does, in general, conform to the performance criteria specified in the Contract Documents.
  4. Review required certifications, guarantees, warranties, and service agreements for compliance with the Contract Documents.



- 25.05 Special Certifications and Reports
- 25.06 Warranties and Guarantees
- 25.07 Shop Drawing Submittal Procedures
- 25.08 Sample and Mockup Submittal Procedures
- 25.09 Requests for Deviation
- 25.10 **Designer** Responsibilities

- A. Shop Drawings will be received by the **Designer**. **Designer** will log the documents and review per this Article for general conformance with the Contract Documents.
  - 1. **Designer**'s review and approval will be only to determine if the products described in the Shop Drawing or Sample will, after installation or incorporation into the Work, conform to the information given in 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. **Designer**'s review and approval will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs incident thereto.
  - 3. **Designer**'s review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
- B. Comments will be made on items called to the attention of the **Designer** for review and comment. Any marks made by the **Designer** do not constitute a blanket review of the document submittal or relieve the Contractor from responsibility for errors or deviations from the Contract requirements.
  - 1. **Designer** will respond to Contractor's markups by either making markups directly in the Shop Drawings file using the color green or by attaching a Document Review Comments form with review comments.
  - 2. Shop Drawings that are reviewed will be returned with one or more of the following status designations:
    - a. Approved: Shop Drawing is found to be acceptable as submitted.
    - b. Approved as Noted: Shop Drawing is Approved so long as corrections or notations made by **Designer** are incorporated into the Show Drawing.
    - c. Not Approved: Shop Drawing or products described are not acceptable.
  - 3. Shop Drawing will also be designated for one of the following actions:
    - a. Final distribution: Shop Drawing is acceptable without further action and has been filed as a record document.
    - b. Shop Drawing not required: A Shop Drawing was not required by the Contract Documents. Resubmit the document per Article 26.

- c. Cancelled: This action indicates that for some reason, the Shop Drawing is to be removed from consideration and all efforts regarding the processing of that document are to cease.
  - d. Revise and resubmit: Shop Drawing has deviations from the Contract Documents, significant errors, or is inadequate and must be revised and resubmitted for subsequent review.
  - e. Resubmit with corrections made: Shop Drawing is “Approved as Noted,” but has significant markups. Make correction and notations to provide a revised document with markup incorporated into the original document so that no markups are required.
  - f. Returned without review due to excessive deficiencies: Document does not meet the requirement of the Specifications for presentation or content to the point where continuing to review the document would be counterproductive to the review process or clearly does not meet the requirements of the Contract Documents. Revise the Shop Drawing to comply with the requirements of this Section and resubmit.
  - g. Actions a through c will close out the Shop Drawing review process and no further action is required as a Shop Drawing. Actions d through f require follow up action to close out the review process.
- 4. Drawings with a significant or substantial number of markings by the Contractor may be marked “Approved as Noted” and “Resubmit with corrections made.” These drawings are to be revised to provide a clean record of the Shop Drawing. Proceed with ordering products as the documents are revised.
  - 5. Dimensions or other data that does not appear to conform to the Contract Documents will be marked as “At Variance With” (AVW) the Contract Documents or other information provided. The Contractor is to make revisions as appropriate to comply with the Contract Documents.
- C. Bring deviations to the Shop Drawings to the attention of the **Designer** for approval by using the Shop Drawing Deviation Request form. Use a single line for each requested deviation so the Status and Action for each deviation can be determined for that requested deviation. If approval or rejection of a requested deviation will impact other requested deviations, then all related deviations should be included in that requested deviation line so the status and action can be determined on the requested deviation as a whole.
  - D. Requested deviations will be reviewed as possible Modification to the Contract Documents.
    - 1. A Requested deviation will be rejected as “Not Approved” if the requested deviation is unacceptable. Contractor is to revise and resubmit the Shop Drawing with corrections for approval.
    - 2. A Field Order will be issued by the **Designer** for deviations approved by the **Designer** if the requested deviation is acceptable and if the requested deviation will not result in a change in Contract Price or Contract Times. Requested deviations from the Contract Documents may only be approved by Field Order.
    - 3. A requested deviation will be rejected if the requested deviation is acceptable but the requested deviation will or should result in a change in Contract Price or Contract Times.

Submit any requested deviation that requires a change in Contract Price or Contract Times as a Change Proposal for approval prior to resubmitting the Shop Drawing.

- E. Contractor is to resubmit the Shop Drawing until it is acceptable and marked Approved or Approved as Noted and is assigned an action per Paragraph 25.10.B that indicates that the Shop Drawing process is closed.
- F. Information that is submitted as a Shop Drawings that should be submitted as Record Data or other type of document, or is not required may be returned without review, or may be deleted. No further action is required and the Shop Drawing process for this document will be closed.

## **ARTICLE 26 – RECORD DATA**

26.01 Work Included

26.02 Quality Assurance

26.03 Contractor’s Responsibilities

26.04 Record Data Requirements

26.05 Special Certifications and Reports

26.06 Warranties and Guarantees

26.07 Record Data Submittal Procedures

26.08 **Designer**’s Responsibilities

- A. Record Data will be received by the **Designer**, logged, and provided to Owner as the Project record.
  - 1. Record Data may be reviewed to see that the information provided is adequate for the purpose intended. Record Data not meeting the requirements of Paragraph 26.02 may be rejected as unacceptable.
  - 2. Record Data is not reviewed for compliance with the Contract Documents. Comments may be returned if deviations from the Contract Documents are noted during the cursory review performed to see that the information is adequate.
  - 3. Contractor’s responsibility for full compliance with the Contract Documents is not relieved by the review of Record Data. Contract modifications can only be approved by a Modification.
- B. **Designer** may take the following action in processing Record Data:
  - 1. File Record Data as received if the cursory review indicates that the document meets the requirements of Paragraph 26.02. Document will be given the status of “Filed as Received” and no further action is required on that Record Data.
  - 2. Reject the Record Data for one of the following reasons:
    - a. The document submittal requirements of the Contract Documents indicate that the document submitted as Record Data should have been submitted as a Shop

Drawing. The Record Data will be marked "Rejected" and "Submit Shop Drawing." No further action is required on this document as Record Data and the Record Data process will be closed. Resubmit the document as a Shop Drawing per Article 25.

- b. The cursory review indicates that the document does not meet the requirements of Paragraph 26.02. The Record Data will be marked "Rejected" and "Revise and Resubmit." Contractor is to resubmit the Record Data until it is acceptable and marked "Filed as Received." When Record Data is filed, no further action is required and the Record Data process will be closed.
  - c. The Record Data is not required by the Contract Documents nor is the Record Data applicable to the Project. The Record Data will be marked "Rejected" and "Cancel - Not Required." No further action is required and the Record Data process will be closed.
- C. Contractor is to resubmit the Record Data until it is acceptable and marked "Filed as Received."

#### **ARTICLE 27 – CONSTRUCTION PROGRESS SCHEDULE**

#### **ARTICLE 28 – VIDEO AND PHOTOGRAPHIC DOCUMENTATION**

#### **ARTICLE 29 – EXECUTION AND CLOSEOUT**

##### 29.01 Substantial Completion

- A. Notify the **Designer** that the Work or a designated portion of the Work is substantially complete per the General Conditions. Include a list of the items remaining to be completed or corrected before the Project will be considered to be complete.
- B. OPT will visit the Site to observe the Work within a reasonable time after notification is received to determine the status of the Project.
- C. **Designer** will notify the Contractor that the Work is either substantially complete or that additional Work must be performed before the Project will be considered substantially complete.
  - 1. **Designer** will notify the Contractor of items that must be completed before the Project will be considered substantially complete.
  - 2. Correct the noted deficiencies in the Work.
  - 3. Notify the **Designer** when the items of Work in the **Designer**'s notice have been completed.
  - 4. OPT will revisit the Site and repeat the process.
  - 5. **Designer** will issue a Certificate of Substantial Completion to the Contractor when the OPT considers the Project to be substantially complete. The Certificate will include a tentative list of items to be corrected before Final Payment will be recommended.
  - 6. Review the list and notify the **Designer** of any objections to items on the list within 10 days after receiving the Certificate of Substantial Completion.

## 29.02 Final Inspections

- A. Notify the **Designer** when:
  - 1. Work has been completed in compliance with the Contract Documents;
  - 2. Equipment and systems have been tested per Contract Documents and are fully operational;
  - 3. Final Operations and Maintenance Manuals have been provided to the Owner and all operator training has been completed;
  - 4. Specified spare parts and special tools have been provided; and
  - 5. Work is complete and ready for final inspection.
- B. OPT will visit the Site to determine if the Project is complete and ready for Final Payment within a reasonable time after the notice is received.
- C. **Designer** will notify the Contractor that the Project is complete or will notify the Contractor that Work is Defective.
- D. Take immediate steps to correct Defective Work. Notify the **Designer** when Defective Work has corrected. OPT will visit the Site to determine if the Project is complete and the Work is acceptable. **Designer** will notify the Contractor that the Project is complete or will notify the Contractor that Work is Defective.
- E. Submit the Request for Final Payment with the closeout documents described in Paragraph 29.06 if notified that the Project is complete and the Work is acceptable.

## ARTICLE 30 – MISCELLANEOUS

**END OF SECTION**



SUPPLIER NUMBER \_\_\_\_\_  
TO BE ASSIGNED BY CITY  
PURCHASING DIVISION

## CITY OF CORPUS CHRISTI DISCLOSURE OF INTEREST

City of Corpus Christi Ordinance 17112, as amended, requires all persons or firms seeking to do business with the City to provide the following information. Every question must be answered. If the question is not applicable, answer with "NA". See reverse side for Filing Requirements, Certifications and definitions.

**COMPANY NAME:** \_\_\_\_\_

**P. O. BOX:** \_\_\_\_\_

**STREET ADDRESS:** \_\_\_\_\_ **CITY:** \_\_\_\_\_ **ZIP:** \_\_\_\_\_

FIRM IS:      1. Corporation            2. Partnership            3. Sole Owner        
                  4. Association            5. Other     

### DISCLOSURE QUESTIONS

If additional space is necessary, please use the reverse side of this page or attach separate sheet.

1. State the names of each "employee" of the City of Corpus Christi having an "ownership interest" constituting 3% or more of the ownership in the above named "firm."

Name	Job Title and City Department (if known)
N/A	
_____	_____
_____	_____
_____	_____

2. State the names of each "official" of the City of Corpus Christi having an "ownership interest" constituting 3% or more of the ownership in the above named "firm."

Name	Title
N/A	
_____	_____
_____	_____
_____	_____

3. State the names of each "board member" of the City of Corpus Christi having an "ownership interest" constituting 3% or more of the ownership in the above named "firm."

Name	Board, Commission or Committee
N/A	
_____	_____
_____	_____
_____	_____

4. State the names of each employee or officer of a "consultant" for the City of Corpus Christi who worked on any matter related to the subject of this contract and has an "ownership interest" constituting 3% or more of the ownership in the above named "firm."

Name	Consultant
N/A	
_____	_____
_____	_____
_____	_____

**FILING REQUIREMENTS**

If a person who requests official action on a matter knows that the requested action will confer an economic benefit on any City official or employee that is distinguishable from the effect that the action will have on members of the public in general or a substantial segment thereof, you shall disclose that fact in a signed writing to the City official, employee or body that has been requested to act in the matter, unless the interest of the City official or employee in the matter is apparent. The disclosure shall also be made in a signed writing filed with the City Secretary. [Ethics Ordinance Section 2-349 (d)]

**CERTIFICATION**

I certify that all information provided is true and correct as of the date of this statement, that I have not knowingly withheld disclosure of any information requested; and that supplemental statements will be promptly submitted to the City of Corpus Christi, Texas as changes occur.

**Certifying Person:** \_\_\_\_\_ **Title:** \_\_\_\_\_  
(Type or Print)

**Signature of Certifying Person:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**DEFINITIONS**

- a. "Board member." A member of any board, commission, or committee appointed by the City Council of the City of Corpus Christi, Texas.
- b. "Economic benefit". An action that is likely to affect an economic interest if it is likely to have an effect on that interest that is distinguishable from its effect on members of the public in general or a substantial segment thereof.
- c. "Employee." Any person employed by the City of Corpus Christi, Texas either on a full or part-time basis, but not as an independent contractor.
- d. "Firm." Any entity operated for economic gain, whether professional, industrial or commercial, and whether established to produce or deal with a product or service, including but not limited to, entities operated in the form of sole proprietorship, as self-employed person, partnership, corporation, joint stock company, joint venture, receivership or trust, and entities which for purposes of taxation are treated as non-profit organizations.
- e. "Official." The Mayor, members of the City Council, City Manager, Deputy City Manager, Assistant City Managers, Department and Division Heads, and Municipal Court Judges of the City of Corpus Christi, Texas.
- f. "Ownership Interest." Legal or equitable interest, whether actually or constructively held, in a firm, including when such interest is held through an agent, trust, estate, or holding entity. "Constructively held" refers to holdings or control established through voting trusts, proxies, or special terms of venture or partnership agreements."
- g. "Consultant." Any person or firm, such as engineers and architects, hired by the City of Corpus Christi for the purpose of professional consultation and recommendation.