

SERVICE AGREEMENT NO. 3279
MASTER SERVICE AGREEMENT FOR PROFESSIONAL SERVICES
Corpus Christi International Airport (CCIA)

This Agreement is between 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 and Garver, LLC, 3755 S. Capital of Texas Highway, Suite 325, Austin, Texas 7874-8810 (Consultant).

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ARTICLE I – PROJECT TASK ORDER

- 1.1 This Agreement shall apply to as many tasks as City and Consultant agree will be performed under the terms and conditions of this Agreement. Each task Consultant performs for City hereunder shall be designated a Task Order. No Task Order shall be binding or enforceable unless and until it has been properly executed by both City and Consultant. The general scope for these Task Orders is outlined in **Exhibit A. More specific scopes of work will be issued for pricing when a task order is needed.** Task Orders shall become a supplemental agreement to this Agreement.
- 1.2 The Consultant shall provide its Scope of Services, to be included in each Task Order. 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 which would normally be required by law or common due diligence in accordance with the standard of care defined in Article XII of this Agreement. Consultant will perform the Services in accordance with the approved Scope of Services 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.
- 1.3 Under this Agreement, Consultant will provide services on a Task Order basis for a range of services related to assisting Engineering Services with professional engineering, architecture and construction services related to execution of Capital Improvements Programs. All work will be subject to authorization from City. A detailed Scope of Services and fee estimate will be developed for each task prior to execution of work.
- 1.4 Consultant shall follow City Codes and Standards effective at the time of the execution of individual Task Orders. 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 Task Order. A request made by either party to deviate from City standards after the contract is executed must be in writing.
- 1.5 Consultant must perform tasks and submit deliverables as detailed in each approved Task Order.
- 1.6 Consultant must provide all labor, equipment and transportation necessary to complete all services agreed to 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. Consultant must provide City with a list of all subconsultants that includes the services performed by the subconsultant and the percentage of work performed by the subconsultant. Changes in Consultant's team that provides services under this Agreement must be agreed to by the City in writing.
- 1.7 Consultant must not begin work on any Task Order authorized under this Agreement until they are briefed on the scope of the Project and are issued the fully executed Task Order to proceed.
- 1.8 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 the City's General Conditions for Construction Contracts, an excerpt of which is attached as an exhibit to this Agreement.
- 1.9 Notwithstanding any provision to the contrary, aside from Consultant's direct subconsultants, Consultant shall not at any time supervise, direct, control or have authority over any contractor's work, nor shall Consultant have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any such contractor, or the safety precautions and programs incident thereto, for security or safety at the project site, nor for any failure of a contractor to comply with laws and regulations applicable to that contractor's services. Consultant shall not be

responsible for the acts or omissions of any contractor for whom it does not have a direct contract. Consultant neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the construction contract documents applicable to the contractor's work, even when Consultant is performing construction phase services.

- 1.10 Mandatory Contract Provisions for Airport Projects. Consultant must comply with all mandatory federal contract provisions for Professional Services (A/E) Contracts, included as **Exhibit G**. Consultant agrees to include the contract provisions in **Exhibit G** in each subcontract and require each subconsultant to include these contract provisions in all subcontracts. Consultant agrees to incorporate applicable requirements of the contract provisions in **Exhibit G** by reference for work done under any purchase orders, rental agreements or other agreements for supplies or services.
- 1.11 For projects that require subsurface utility investigation:
 - 1.11.1 The Consultant agrees to prepare and submit to the City a signed and sealed report identifying all utilities within the project area at the Quality Level specified in the Task Order. It is assumed that all utilities will be identified using Quality Level A exploratory excavation unless stated otherwise.
 - 1.11.2 Utilities that should be identified include, but are not limited to, City-owned utilities, local franchises, electric companies, communication companies, private pipeline companies and 3rd party owners/operators.
- 1.12 For project with potential utility conflicts:
 - 1.12.1 The Consultant agrees to coordinate the verification and resolution of all potential utility conflicts.
 - 1.12.2 The Consultant agrees to prepare and submit a monthly Utility Coordination Matrix to the City.

ARTICLE II – COMPENSATION

- 2.1 The Compensation for all services included in this Agreement by Task Orders shall not exceed **\$7,500,000.00**.
- 2.2 The Consultant's fee for each Task Order will be on a lump sum or time and materials (T&M) basis with a negotiated not-to-exceed amount. The fees will not exceed those identified and will be full and total compensation for all services outlined in each Task Order, and for all expenses incurred in performing these services.
- 2.3 Consultant shall price Task Orders in accordance with **Exhibit B, Rate Schedule**, subject to approval by the City.
- 2.4 Monthly invoices will be submitted in accordance with the Payment Request as shown in **Exhibit C**. 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.
 - 2.4.1 Principals may only bill at the hourly rate of Principals when acting in that capacity. Principals

acting in the capacity of staff must bill at staff rates. The Consultant shall provide documentation with each payment request that clearly indicates how that individual's time is allocated and the justification for that allocation.

- 2.5 In the event of any dispute(s) between the Parties regarding the amount properly compensable for any Task Order 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 provided in this Agreement in a timely manner and as required by the terms thereof, any such claim shall be waived. 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.
- 2.6 Any fee payable under this Agreement is subject to the availability of funds. The Consultant may be directed 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 2.5 above for services provided up to the date of suspension.

ARTICLE III – QUALITY CONTROL PLAN

- 3.1 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.
- 3.2 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 Opinion of Probable Cost (OPC) as needed.
- 3.3 Documents that do not meet City standards in effect at the time of the execution of a related Task Order may be rejected. If documents are found not to be in compliance with this Agreement, Consultant will not be compensated for having to resubmit documents.

ARTICLE IV – OPINIONS OF COST

- 4.1 The Opinion of Probable Cost (OPC) is computed by the Consultant and includes the total cost for construction of the Project.
- 4.2 The OPC does not include the cost of the land, rights-of-way or other costs which are the responsibility of the City.
- 4.3 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 V – INSURANCE REQUIREMENTS

- 5.1 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.
- 5.2 Insurance Requirements are shown in **EXHIBIT D**.

ARTICLE VI - INDEMNIFICATION

Consultant shall fully indemnify and hold harmless the City of Corpus Christi and its officials, officers, agents, employees 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 (except from intellectual property provided by City), 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 VII – TERM; RENEWALS; TIMES FOR RENDERING SERVICE

- 7.1 This Agreement shall be effective upon the signature of the City Manager or designee (Effective Date).
- 7.2 This Agreement shall be applicable to Task Orders issued hereunder from the Effective Date of the Agreement until Task Orders are complete.
- 7.3 The term of this Agreement shall be for a period of **five** years beginning on the Effective Date, unless extended by authority of the City Manager or designee.
- 7.4 The times for performing services or providing deliverables will be stated in each Task Order. If no times are so stated, Consultant will perform services and provide deliverables within a reasonable time.

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. Consultant shall submit all completed and/or partially completed work under this Agreement, including but not limited to specifications, designs, plans and exhibits. Consultant shall mark partially completed work as "Draft" and does not guarantee the accuracy or reliability of partially completed work submitted in accordance with this Article.

8.3.2 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.

8.3.3 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. Except to the extent allowed under applicable law, notwithstanding anything in this Agreement, records shall not be provided related to lump sum services, unit prices, fixed fees or rates agreed upon to the extent the information contains Consultant's proprietary financial information.

- 9.2 "Consultant's records" include any and all information, materials and data of every kind and character generated as a result of the Work under this Agreement. 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, federal and state tax filings for issue in questions and any and all other agreements, sources of information and matters that may, in City's 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 City's regular business hours. Upon reasonable prior notice, Consultant agrees to allow City's designee access to all of Consultant's records, Consultant's facilities and Consultant's current or former 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 use commercially reasonable efforts to 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 defects, errors and 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 defects, errors and omissions in the documents.
- 10.2 The City may assert a claim against the Consultant's professional liability insurance as appropriate when other remedies are not available or offered for design deficiencies discovered during and after Project construction.
- 10.3 When the City incurs non-value added work costs for change orders due to design errors 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, as part of Consultant's existing, authorized fees;
- (3) Calculation of non-value added work costs incurred by the City; and
- (4) Deadline for Consultant's response.

10.4 During the bid phase for construction, 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.

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

ARTICLE XI – CONSULTANT REMEDIES

11.1 If Consultant is delayed due to uncontrollable circumstances, such as strikes, riots, acts of God, national emergency, 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 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 Alternative Dispute Resolution.

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 Alternative Dispute Resolution

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.

12.2.3 Mediation

12.2.3.1 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.

12.2.3.2 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.

12.2.3.3 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.

12.2.3.4 The parties shall share the mediator's fee. Venue for any mediation or lawsuit arising under this Agreement 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 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 in this Agreement.

12.4 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.

12.5 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 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 Ownership of Documents. Consultant agrees that upon payment, City shall exclusively own any and all information in whatsoever form and character produced and/or maintained pursuant to or as a result of this Agreement, including contract documents (plans and specifications), drawings and submittal data; provided however, any and all underlying intellectual property, if any (unless provided by City), shall remain the property of Consultant such that Consultant may continue to perform its business in the normal course. Consultant may make a copy for its files. Any reuse, without specific written verification or adaptation by Consultant, shall be a City's sole risk and without liability or legal exposure to Consultant. The City agrees that any modification of the plans will be evidenced on the plans and be signed and sealed by a professional engineer prior to re-use of modified plans.
- 13.3 Standard of Care. Services provided by Consultant under this Agreement shall be performed with the professional skill and care ordinarily provided by competent engineers or architects 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.
- 13.4 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.
- 13.5 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.
- 13.6 Entire Agreement. This Agreement, including Task Orders, 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.
- 13.7 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.
- 13.8 Disclosure of Interest. Consultant agrees to comply with City of Corpus Christi Ordinance No. 17112 and complete the *Disclosure of Interests* form as part of this contract.
- 13.9 Certificate of Interested Parties. 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. 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>.

- 13.10 Conflict of Interest. Consultant agrees to comply with Chapter 176 of the Texas Local Government Code and file Form CIQ with the City Secretary's Office, if required. 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.ctexas.com/government/city-secretary/conflict-disclosure/index>
- 13.11 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.
- 13.12 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.
- 13.13 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.
- 13.14 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.
- 13.15 Conflict Resolution Between Documents. Consultant hereby agrees and acknowledges if anything contained in any documents prepared by Consultant and included herein is in conflict with Articles I - XII of this Agreement (Articles) and/or an approved Task Order, the Articles and/or the Task Order shall take precedence and control to resolve said conflict.
- 13.16 Title VI Assurance. The Consultant shall prohibit discrimination in employment based upon race, color, religion, national origin, gender, disability or age.

CITY OF CORPUS CHRISTI

 Michael Rodriguez (Date)
 Chief of Staff

GARVER, LLC

 Josh Crawford, P.E. (Date)
 Texas Aviation Director
 3755 S. Capital of Texas Highway, Suite 325
 Austin, Texas 7874-8810
 (512) 485-0014
 jbcrawford@garverusa.com

APPROVED AS TO LEGAL FORM

 Assistant City Attorney (Date)
 for City Attorney

ATTEST

 Rebecca Huerta, City Secretary

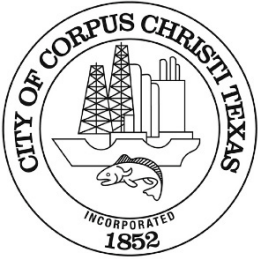


EXHIBIT A

SCOPE OF SERVICES

This Master Services Agreement will meet the ongoing needs of the approved Airport Capital Improvement Program and Operational & Maintenance Projects. Task Orders will be issued for the types of services listed below:

13.16.1 Planning Services

This category includes studies under the broad headings of airport system and master planning, airport noise compatibility planning and environmental assessments and related studies. These studies include, *but are not limited to*, the following activities:

- Design Study to establish framework and detailed work program.
- Data Collection and facility inventories
- Aeronautical forecasts and Demand/Capacity Analysis.
- Facility requirements determination.
- Airfield modeling for capacity and delay.
- Airport layout and terminal plan development
- Airport noise studies under 14 CFR parts 150 and 161.
- Compatible land-use planning in the vicinity of airports.
- Airport site selection studies.
- Airport development schedules and cost estimates.
- Airport financial planning and benefit cost analysis.
- Participate in public hearings relating to airport development projects.
- Airport business plans
- Specific airport landside or airside plans
- Air service studies
- Environmental planning to include categorical exclusions and/or Environmental Assessments.

13.16.2 Architectural/Engineering Services

The Contractor/Consultant shall provide basic A/E services normally required for airport development projects. These services are generally of an architectural, civil, geotechnical, structural, mechanical, and electrical engineering nature. In addition, there may be some services outside those normally considered basic. The basic services are usually conducted in, *but are not limited to*, the four distinct and sequential phases summarized below:

1. Preliminary Phase

- Conferring with the City of Corpus Christi on project requirements, finances, schedules, early phases of the project, and other pertinent matters and meeting with FAA and other concerned agencies and parties on matters affecting the projects.
- Planning, procuring, and/or prepare surveys, FAA Overall Development Objectives Sheets, geotechnical, engineering investigations and engineering studies for preliminary design
- Develop design schematics, sketches, environmental and aesthetic considerations, project recommendations and preliminary layouts and cost estimates.

2. Design Phase

- Conducting and attending meetings and design conferences to obtain information and to coordinate or resolve design matters.
- Collecting engineering data and undertaking field investigation; performing architectural, engineering and special environmental studies.
- Preparing engineering reports and recommendations.
- Preparing detailed plans, specifications, cost estimates, and design/construction schedules.
- Preparing construction safety plans.
- Printing and providing necessary copies of engineering drawings and contract specifications.

3. Bidding Phase

- Participate in the pre-bid conference to discuss scope of work and to answer scope questions
- Review all questions concerning the bid documents and prepare any revisions to the plans, specifications and bid forms that may be necessary.
- Assist the City of Corpus Christi in analyzing bid results and preparing conformed drawings and conformed Contract Documents.

4. Construction Phase

- Provide consultation, represent the City of Corpus Christi at preconstruction conferences, inspect work in progress, review and approve shop drawings, review, analyze and approve lab results, prepare and negotiate change orders and agreements, review performance tests required, determine amounts owed to contractors, assist in preparing payment requests, make final inspections and submit punch-list, confer on warranty issues and review operations and maintenance manuals, etc.

13.16.3 Other

13.16.3.1 Airspace studies.

- 13.16.3.2 Project Programming and scoping.
- 13.16.3.3 Cost estimating.
- 13.16.3.4 FAA grant and PFC application preparation.
- 13.16.3.5 Geotechnical Testing.
- 13.16.3.6 Construction Materials Testing.
- 13.16.3.7 Land Acquisition
- 13.16.3.8 Project documentation and permitting processes.
- 13.16.3.9 Environmental Assessments for Land Acquisition.
- 13.16.3.10 Public Parking Enhancements.
- 13.16.3.11 Any other work which may arise from a reprioritization of projects or immediate airport needs.

In addition to working on specific projects, the successful Contractor/Consultant will be expected to act as a staff member of the Department of Aviation to provide advice and assistance on engineering, planning, and other aviation-related matters.

Partial List of CCIA Projects

The City of Corpus Christi may choose at its discretion to delete, add, or change any of the projects listed below as needs dictate.

1. Terminal Improvements – This project includes multiple facets of the Terminal, including improvements to Passenger Boarding Bridges, Roof, Windows, Baggage Systems, Restrooms, Public Areas, Escalators, Elevators, Energy Management System, Cooling Towers, Security Issues and Street Repairs.

2. Runway / Taxiway Rehabilitation, Holding Positions - Improvements will consist primarily of milling and overlaying the pavement within the holding position where previous thermoplastic markings were installed for each connector taxiway approaching the runways. Cold tar application and pavement markings.

3. Aircraft Rescue Fire Fighting Station Apron Improvements - The project will consist of extending the vehicle apron surrounding the Aircraft Rescue Fire Fighting (ARFF) station, replace portions of damaged concrete panels. The existing apron has shown signs of deterioration and base failures and needs replacement. The apron extension will allow adequate clearance for the ARFF trucks to maneuver around the station and pull-through the bays verse backing up into the bays.

4. Quick Turn-Around Facility Improvements - The Quick Turn Around Facility (QTA) consolidates the airports' rental car maintenance and storage operations. The design will consist of a total remodel of the current facility which will include replacement of the car wash 5- Touch Brush System, Rinse Arch- Fresh Water System, Reverse Osmosis Rinse unit and associated equipment. The improved Quick Turn Around Facility (QTA) will be a LEED Certified Building consolidating the rental car maintenance and storage operations. The

facility will allow the fueling, wash and vacuum, light maintenance, and storage of fleet rental car vehicles that service the Airport.

5. Public Cell Phone Lot/ TNC Staging - A “cell-phone lot” is a parking lot where people can wait for arriving passengers. The Transportation Network Company (TNC) Staging lot is a staging area for these company vehicles to park while awaiting their customer’s arrival. The purpose of these lots is to reduce traffic and wear and tear of airport roads created by vehicles continuously circling on airport roadways and congestion at airport terminal by providing another location for vehicles to wait until their passenger(s) notify them, via their personal communication devices, of their arrival and location. They were created as a solution to security measures to prevent cars from parking curbside when picking up passengers. Many airports currently offer this option for alleviating traffic congestion and improving security and safety.

6. CCIA Airfield Pavement Assessment (last updated in 2016) - This project is for Airport Pavement Management Program/Assessment (PMP) which includes collecting, analyzing, maintaining and reporting pavement data at Corpus Christi International as described in FAA Order 5100.38, Airport Improvement Program Handbook for Federally Funded Airports. The PMP assists airports in finding optimum strategies for maintaining pavements in safe serviceable condition over a given period for the least cost. The scope of the assessment will be divided into two parts: Part A – Inspection, testing, and evaluation of airside pavements for development of Pavement Condition Index (PCI) and Pavement Classification Number (PCN) values. Part A will include a 5-year pavement maintenance plan. Part B – Development of a maintenance training manual. Part B will include staff training on performing routine maintenance and updating PAVER Database.

7. Airport Master Plan /ALP Update - Airport Master Plan is a comprehensive study of Corpus Christi International Airport and describes short-, medium-, and long-term development plans to meet future aviation demand. CCIA's Master Plan was last updated in 2007. Federal Aviation Administration encourages updating Master Plans approximately every 5 years to reflect changing conditions. Master Plan will include Airport Layout Plan (ALP) Update and Part150 Noise Compatibility Study.

8. International Drive - This project is multi-year and may include the following: landscaping, plant trees, etc., long-term cell phone lot installation, monument sign, Business Park signage and frontage, wayfinding, art, dog park and rental car return road.

Consultant Proposal / Rate Sheet

Each Task Order will be negotiated over the 5 year period according to FAA requirements.

As applicable, Consultant will provide rate sheets with each T&M Tasks Order or sub-tasks within Task Orders. For 2021, Garver's current rates are shown below. These will be negotiated annually with each task order and are subject to change.

Garver 2021 Rates

Engineers / Architects	
E-1.....	\$141.00
E-2.....	\$167.00
E-3.....	\$196.00
E-4.....	\$231.00
E-5.....	\$284.00
E-6.....	\$351.00
E-7.....	\$409.00
Planners / Environmental Specialist	
P-1.....	\$171.00
P-2.....	\$202.00
P-3.....	\$248.00
Designers	
D-1.....	\$127.00
D-2.....	\$144.00
D-3.....	\$171.00
D-4.....	\$200.00
Technicians	
T-1.....	\$109.00
T-2.....	\$148.00
T-3.....	\$160.00
Surveyors	
S-1.....	\$68.00
S-2.....	\$81.00
S-3.....	\$112.00
S-4.....	\$153.00
S-5.....	\$202.00
S-6.....	\$236.00
2-Man Crew (Survey).....	\$257.00
3-Man Crew (Survey).....	\$311.00
2-Man Crew (GPS Survey).....	\$304.00
3-Man Crew (GPS Survey).....	\$357.00
Construction Observation	
C-1.....	\$120.00
C-2.....	\$151.00
C-3.....	\$182.00

C-4.....	\$236.00
Administration	
X-1.....	\$82.00
X-2.....	\$104.00
X-3.....	\$167.00
X-4.....	\$197.00
X-5.....	\$207.00
X-6.....	\$246.00

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
Basic Services:													
Preliminary Phase	\$1,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$1,000.00	\$0.00	\$1,000.00	\$1,000.00	\$0.00	\$0.00	100.0%
Design Phase	\$2,000.00	\$1,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$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	\$0.00	\$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	\$0.00	\$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	\$1,000.00	\$1,250.00	\$0.00	\$0.00	\$8,250.00	\$1,000.00	\$1,500.00	\$2,500.00	\$2,500.00	\$5,750.00	30.3%
Additional Services:													
Permitting	\$2,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$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	\$0.00	\$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	\$0.00	\$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	\$0.00	\$0.00	\$4,747.00	\$500.00	\$0.00	\$500.00	\$500.00	\$4,247.00	10.5%
Summary of Fees:													
Basic Services Fees	\$6,000.00	\$1,000.00	\$1,000.00	\$1,250.00	\$0.00	\$0.00	\$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	\$0.00	\$0.00	\$4,747.00	\$500.00	\$0.00	\$500.00	\$500.00	\$4,247.00	10.5%
Total of Fees	\$8,000.00	\$2,120.00	\$2,120.00	\$2,877.00	\$0.00	\$0.00	\$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 D

Insurance Requirements

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 insurance commensurate to the applicable scope of work 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) showing the following minimum coverage by an insurance company(s) acceptable to the City's Risk Manager. **The City must be listed as an additional insured on the General liability and Auto Liability policies, and a waiver of subrogation is required on all applicable policies. Project name and or number must be listed in Description Box of COI.**

TYPE OF INSURANCE	MINIMUM INSURANCE COVERAGE
30-written day notice of cancellation, required on all certificates or by applicable policy endorsements	Bodily Injury and Property Damage Per occurrence - aggregate
Commercial General Liability including: 1. Commercial Broad Form 2. Premises – Operations 3. Products/ Completed Operations 4. Contractual Liability 5. Independent Contractors 6. Personal Injury- Advertising Injury	\$1,000,000 Per Occurrence \$2,000,000 Aggregate
AUTO LIABILITY (including) 1. Owned 2. Hired and Non-Owned 3. Rented/Leased	\$500,000 Combined Single Limit
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 and identify any limitations regarding who is insured.
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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. 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 List the City and its officers, officials, employees and elected representatives as additional insured by endorsement as respects operations, completed operation and activities of, or on behalf of, the named insured performed under contract with the City with the exception of Worker's Compensation, and the professional liability/Errors & Omissions policies;
- 1.6.2 Provide for an endorsement that the "other insurance" clause shall not apply to the City of Corpus Christi where the City is an additional insured shown on the policy;
- 1.6.3 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. Notwithstanding, notice may be provided by Consultant where carriers refuse to provide to City.

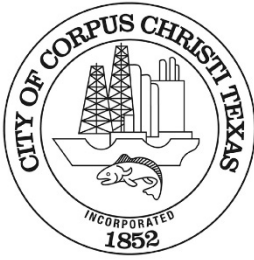
1.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Consultant shall provide a replacement Certificate of Insurance to City. City shall have the option to suspend Consultant's performance should there be a lapse in coverage at any time during this contract. Failure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



CITY OF CORPUS CHRISTI DISCLOSURE OF INTEREST

RFQ No. 3279

Professional Engineering Services for Corpus Christi International Airport

Corpus Christi Code § 2-349, 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 next page for Filing Requirements, Certification and Definitions.

COMPANY NAME: Garver, LLC

P. O. BOX: N/A STREET ADDRESS: 3755 S Capital of Texas Highway, Ste. 325

CITY: Austin STATE: Texas ZIP: 78704 - 8810

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

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)
<u>N/A</u>	<u></u>
<u></u>	<u></u>
<u></u>	<u></u>

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
<u>N/A</u>	<u></u>
<u></u>	<u></u>
<u></u>	<u></u>

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
<u>N/A</u>	<u></u>
<u></u>	<u></u>
<u></u>	<u></u>

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
<u>N/A</u>	<u></u>
<u></u>	<u></u>
<u></u>	<u></u>

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: Michael Griffin, PE Title: Senior Vice President

Signature of
Certifying Person:  Date: 12/23/2020

DEFINITIONS

- a. "Board member." A member of any board, commission, or committee of the city, including the board of any corporation created by the city.
- 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, whether under civil service or not, including part-time employees and employees of any corporation created by the city.
- 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.

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

EXHIBIT G:

FEDERAL REQUIREMENTS

FEDERAL REQUIREMENTS

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FEDERAL REQUIREMENTS: FR-A1

ACCESS TO RECORDS AND REPORTS

The Contractor shall maintain an acceptable cost accounting system. The Contractor agrees to provide the City, the Federal Aviation Administration, and the Comptroller General of the United States, or any of their duly authorized representatives, access to any books, documents, papers, and records of the Contractor which are directly pertinent to the specific Contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records and reports required under this Contract for a period of not less than three years after final payment is made and all pending matters are closed.

Reference: 2 CFR § 200.333, 2 CFR § 200.336 & FAA Order 5100.38

FEDERAL REQUIREMENTS: FR-A2
AFFIRMATIVE ACTION REQUIREMENT

NOT APPLICABLE FOR THIS CONTRACT

FEDERAL REQUIREMENTS: FR-A3

BREACH OF CONTRACT

Any violation or breach of terms of this Contract on the part of the Contractor or its subcontractors may result in the suspension or termination of this Contract or such other action that may be necessary to enforce the rights of the parties of this agreement.

City will provide Contractor written notice that describes the nature of the breach and corrective actions the Contractor must undertake in order to avoid termination of the Contract. City reserves the right to withhold payments to Contractor until such time the Contractor corrects the breach or the City elects to terminate the Contract. The City's notice will identify a specific date by which the Contractor must correct the breach. City may proceed with termination of the Contract if the Contractor fails to correct the breach by deadline indicated in the City's notice.

The duties and obligations imposed by the Contract documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

Reference: 2 CFR § 200 Appendix II(A)

FEDERAL REQUIREMENTS: FR-A4

BUY AMERICAN PREFERENCE

NOT APPLICABLE FOR THIS CONTRACT

FEDERAL REQUIREMENTS: FR-A5

CIVIL RIGHTS - GENERAL

The contractor agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the contractor and subtier contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

Reference: 49 USC § 47123

FEDERAL REQUIREMENTS: FR-A6

CIVIL RIGHTS - TITLE VI ASSURANCE

Compliance with Nondiscrimination Requirements

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts And Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate either directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR, part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts And Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the City or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Nondiscrimination provisions of this contract, the City will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

a. Withholding of payments to the contractor under the contract until the contractor complies; and/or

b. Cancelling, terminating, or suspending a contract, in whole or in part.

6. Incorporation of Provisions: The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the City or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with, litigation with a subcontractor, or supplier because of such direction, the contractor may request the City to enter into any litigation to protect the interests of the City. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);

- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

Reference: 49 USC § 47123 and FAA Order 1400.11

FEDERAL REQUIREMENTS: FR-A7

CLEAN AIR AND WATER POLLUTION CONTROL

Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 U.S.C. § 740-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). The Contractor agrees to report any violation to the City immediately upon discovery. The City assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration.

Contractor must include this requirement in all subcontracts that exceed \$150,000.

Reference: 2 CFR § 200, Appendix II(G)

FEDERAL REQUIREMENTS: FR-A8

CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS

NOT APPLICABLE FOR THIS CONTRACT

FEDERAL REQUIREMENTS: FR-A9

COPELAND "ANTI-KICKBACK" ACT

NOT APPLICABLE FOR THIS CONTRACT

FEDERAL REQUIREMENTS: FR-A10

DAVIS - BACON REQUIREMENTS

NOT APPLICABLE FOR THIS CONTRACT

FEDERAL REQUIREMENTS: FR-A11

CERTIFICATION OF OFFEROR/BIDDER REGARDING DEBARMENT

By submitting a bid/proposal under this solicitation, the Contractor certifies that neither it nor its principals is presently debarred or suspended by any Federal department or agency from participation in this transaction.

The successful bidder, by administering each lower tier subcontract that exceeds \$25,000 as a "covered transaction," must verify each lower tier participant of a "covered transaction" under the project is not presently debarred or otherwise disqualified from participation in this federally assisted project. The successful bidder will accomplish this by:

1. Checking the System for Award Management at website: <http://www.sam.gov>
2. Collecting a certification statement similar to the Certificate Regarding Debarment and Suspension (Bidder or Offeror), above.
3. Inserting a clause or condition in the covered transaction with the lower tier contract.

If the FAA later determines that a lower tier participant failed to disclose to a higher tier participant that it was excluded or disqualified at the time it entered the covered transaction, the FAA may pursue any available remedies, including suspension and debarment of the non-compliant participant.

Reference: 2 CFR part 180 (Subpart C), 2 CFR part 1200, DOT Order 4200.5

FEDERAL REQUIREMENTS: FR-A12

DISADVANTAGED BUSINESS ENTERPRISE

Contract Assurance (§26.13) - The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy, as the recipient deems appropriate.

Prompt Payment (§26.29) - The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than **10** days from the receipt of each payment the prime contractor receives from the City. The prime contractor agrees further to return retainage payments to each subcontractor within **30** days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City. This clause applies to both DBE and non-DBE subcontractors.

Reference: 49 CFR part 26

FEDERAL REQUIREMENTS: FR-A13

TEXTING WHEN DRIVING

In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving" (10/1/2009) and DOT Order 3902.10 "Text Messaging While Driving" (12/30/2009), the FAA encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or sub-grant.

In support of this initiative, the City encourages the Contractor to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. The Contractor must include the substance of this clause in all sub-tier contracts exceeding \$3,500 and involve driving a motor vehicle in performance of work activities associated with the project.

Reference: Executive Order 13513 and DOT Order 3902.10

FEDERAL REQUIREMENTS: FR-A14

ENERGY CONSERVATION REQUIREMENTS

The Contractor and subcontractor agree to comply with mandatory standards and policies relating to energy efficiency as contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201 *et seq*).

Reference: 2 CFR § 200, Appendix II(H)

FEDERAL REQUIREMENTS: FR-A15
EQUAL EMPLOYMENT OPPORTUNITY (E.E.O.)

NOT APPLICABLE FOR THIS CONTRACT

FEDERAL REQUIREMENTS: FR-A16

FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers.

The Contractor has full responsibility to monitor compliance to the referenced statute or regulation. The Contractor must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

Reference: 29 U.S.C. § 201, et seq.

FEDERAL REQUIREMENTS: FR-A17

CERTIFICATION REGARDING LOBBYING

The bidder or offeror certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Bidder or Offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Reference: 31 U.S.C. § 1352 – Byrd Anti-Lobbying Amendment, 2 CFR part 200, Appendix II(J) and 49 CFR part 20, Appendix A

FEDERAL REQUIREMENTS: FR-A18

PROHIBITION OF SEGREGATED FACILITIES

NOT APPLICABLE FOR THIS CONTRACT

FEDERAL REQUIREMENTS: FR-A19

OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Contractor retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Contractor must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

Reference: 20 CFR part 1910

FEDERAL REQUIREMENTS: FR-A20

PROCUREMENT OF RECOVERED MATERIALS

NOT APPLICABLE FOR THIS CONTRACT

FEDERAL REQUIREMENTS: FR-A21

RIGHT TO INVENTIONS

NOT APPLICABLE FOR THIS CONTRACT

FEDERAL REQUIREMENTS: FR-A22

SEISMIC SAFETY

NOT APPLICABLE FOR THIS CONTRACT

FEDERAL REQUIREMENTS: FR-A23

TERMINATION OF CONTRACT

Termination for Convenience (Construction & Equipment Contracts)

The City may terminate this Contract in whole or in part at any time by providing written notice to the Contractor. Such action may be without cause and without prejudice to any other right or remedy of City. Upon receipt of a written notice of termination, except as explicitly directed by the City, the Contractor shall immediately proceed with the following obligations regardless of any delay in determining or adjusting amounts due under this clause:

1. Contractor must immediately discontinue work as specified in the written notice.
2. Terminate all subcontracts to the extent they relate to the work terminated under the notice.
3. Discontinue orders for materials and services except as directed by the written notice.
4. Deliver to the City all fabricated and partially fabricated parts, completed and partially completed work, supplies, equipment and materials acquired prior to termination of the work and as directed in the written notice.
5. Complete performance of the work not terminated by the notice.
6. Take action as directed by the City to protect and preserve property and work related to this Contract that City will take possession.

City agrees to pay Contractor for:

- a) completed and acceptable work executed in accordance with the contract documents prior to the effective date of termination;
- b) documented expenses sustained prior to the effective date of termination in performing work and furnishing labor, materials, or equipment as required by the contract documents in connection with uncompleted work;
- c) reasonable and substantiated claims, costs and damages incurred in settlement of terminated contracts with Subcontractors and Suppliers; and
- d) reasonable and substantiated expenses to the Contractor directly attributable to City's termination action.

City will not pay Contractor for loss of anticipated profits or revenue or other economic loss arising out of or resulting from the City's termination action.

The rights and remedies this clause provides are in addition to any other rights and remedies provided by law or under this Contract.

Termination for Default (Equipment)

The City may, by written notice of default to the Contractor, terminate all or part of this Contract if the Contractor:

1. Fails to commence the Work under the Contract within the time specified in the Notice- to Proceed;
2. Fails to make adequate progress as to endanger performance of this Contract in accordance with its terms;
3. Fails to make delivery of the equipment within the time specified in the Contract, including any City approved extensions;
4. Fails to comply with material provisions of the Contract;
5. Submits certifications made under the Contract and as part of their proposal that include false or fraudulent statements; or
6. Becomes insolvent or declares bankruptcy.

If one or more of the stated events occur, the City will give notice in writing to the Contractor and Surety of its intent to terminate the Contract for cause. At the City's discretion, the notice may allow the Contractor and Surety an opportunity to cure the breach or default.

If within 10 days of the receipt of notice, the Contractor or Surety fails to remedy the breach or default to the satisfaction of the City, the City has authority to acquire equipment by other procurement action. The Contractor will be liable to the City for any excess costs the City incurs for acquiring such similar equipment.

Payment for completed equipment delivered to and accepted by the City shall be at the Contract price. The City may withhold from amounts otherwise due the Contractor for such completed equipment such sum as the City determines to be necessary to protect the City against loss because of Contractor default.

City will not terminate the Contractor's right to proceed with the Work under this clause if the delay in completing the work arises from unforeseeable causes beyond the control

and without the fault or negligence of the Contractor. Examples of such acceptable causes include: acts of God, acts of the City, acts of another Contractor in the performance of a contract with the City, and severe weather events that substantially exceed normal conditions for the location.

If, after termination of the Contractor's right to proceed, the City determines that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the City issued the termination for the convenience the City.

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

Reference: 2 CFR § 200 Appendix II(B), FAA Advisory Circular 150/5370-10, Section 80-09

FEDERAL REQUIREMENTS: FR-A24

TRADE RESTRICTION CERTIFICATION

By submission of an offer, the Offeror certifies that with respect to this solicitation and any resultant contract, the Offeror –

- a. is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (U.S.T.R.);
- b. has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country included on the list of countries that discriminate against U.S. firms as published by the U.S.T.R.; and
- c. has not entered into any subcontract for any product to be used on the Federal on the project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

The Offeror/Contractor must provide immediate written notice to the City if the Offeror/Contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The Contractor must require subcontractors provide immediate written notice to the Contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to an Offeror or subcontractor:

- (1) who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R. or
- (2) whose subcontractors are owned or controlled by one or more citizens or nationals of a foreign country on such U.S.T.R. list or
- (3) who incorporates in the public works project any product of a foreign country on such U.S.T.R. list;

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a Contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

The Offeror agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in all lower tier subcontracts. The Contractor may rely on the certification of a prospective subcontractor that it is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by U.S.T.R, unless the Offeror has knowledge that the certification is erroneous.

This certification is a material representation of fact upon which reliance was placed when making an award. If it is later determined that the Contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through the City cancellation of the Contract or subcontract for default at no cost to the City or the FAA.

Reference: 49 USC § 50104 and 49 CFR part 30

FEDERAL REQUIREMENTS: FR-A25

VETERAN'S PREFERENCE

In the employment of labor (excluding executive, administrative, and supervisory positions), the Contractor and all sub-tier contractors must give preference to covered veterans as defined within Title 49 United States Code Section 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 U.S.C. 632) owned and controlled by disabled veterans. This preference only applies when there are covered veterans readily available and qualified to perform the work to which the employment relates.

Reference: 49 USC § 47112(c)