

RESOLUTION NO. R-2022-91

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS APPROVING A CONTRACT WITH ARCHER WESTERN CONSTRUCTION, LLC. TO PROVIDE CONSTRUCTION MANAGER AT RISK SERVICES FOR A NOT TO EXCEED AMOUNT OF THIRTY-FIVE MILLION, SEVEN HUNDRED NINETY-SIX THOUSAND, TWO HUNDRED SEVENTEEN DOLLARS (\$35,796,217); AUTHORIZING THE CITY MANAGER TO EXECUTE ALL NECESSARY DOCUMENTS; PROVIDING FOR A REPEALING CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of Bastrop City Council understands the Construction Manager at Risk (CM@Risk) method of delivery generally brings overall value and cost savings to construction projects; and

WHEREAS, the Archer Western Construction, LLC is an Owner advocate and manages the project with the Owner's best interest in mind at all times; and

WHEREAS, constructability and value to the Owner are afforded by the Value Engineering expertise brought to the process by the CM@Risk; and

WHEREAS, the services provided by Archer Western Construction, LLC are professional services like architectural, engineering, surveying, etc. and the CM@Risk's purpose is not only to construct the project, but to manage the coordination and all construction activities of the project. This management focus adds much value to the project; and

WHEREAS, the Simbsboro Aquifer Water Treatment Plant, Well Field and Transmission Facilities is a complex project that will benefit by these services.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS:

Section 1. The City Council of the City of Bastrop, Texas has determined Archer Western Construction, LLC to be a subject matter expert in the construction manager at risk delivery method and agree to a Guaranteed Maximum Price of Thirty-Five Million, Seven Hundred Ninety-Six Thousand, Two Hundred Seventeen Dollars (\$35,796,217).

Section 2. The City Manager is hereby authorized to execute a contract with Archer Western Construction, LLC in an amount not to exceed of Thirty-Five Million, Seven Hundred Ninety-Six Thousand, Two Hundred Seventeen Dollars (\$35,796,217), as well as all other necessary documents.

Section 3. This resolution shall take effect immediately from and after its passage, and it is duly resolved.

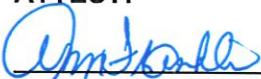
DULY RESOLVED AND ADOPTED by the City Council of the City of Bastrop this 11th day of October 2022.

APPROVED:



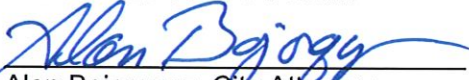
Connie B. Schroeder, Mayor

ATTEST:



Ann Franklin, City Secretary

APPROVED AS TO FORM:



Alan Bojorquez, City Attorney



CITY OF BASTROP, TEXAS

**SIMSBORO AQUIFER WATER TREATMENT PLANT,
WELL FIELD AND TRANSMISSION FACILITIES**

**AGREEMENT FOR
CONSTRUCTION MANAGER AT RISK
CONSTRUCTION PHASE SERVICES**

(Clean Version 2022.24.6)

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**SIMSBORO AQUIFER WATER TREATMENT PLANTWELL FIELD AND TRANSMISSION FACILITIES
CONSTRUCTION MANAGER AT RISK CONSTRUCTION SERVICES**

THIS AGREEMENT made and entered by and between City of Bastrop, a Texas municipal corporation, hereinafter designated the "CITY" or "OWNER", and Archer Western Construction, LLC, hereinafter designated the "CONSTRUCTION MANAGER AT RISK" or "CM@Risk", collectively referred to herein as, "the parties". This Agreement is hereby authorized to be entered into by the City of Bastrop by and through Resolution No. R-2022-91, approved and entered into on the 11th day of October, 2022.

RECITALS

WHEREAS, the City Manager of the City of Bastrop, Texas, is authorized and empowered by provisions of the City Charter to negotiate and execute any and all contracts for construction services for the City of Bastrop; and

WHEREAS, the City intends to construct SIMSBORO AQUIFER WATER TREATMENT PLANT, WELL FIELD AND TRANSMISSION FACILITIES as more fully described in Exhibit A attached, hereinafter referred to as "PROJECT"; and

WHEREAS, the City has entered that certain contract with FREESE AND NICHOLS, INC. hereinafter referred to as the "Design Professional" dated July 17, 2020, to undertake the design, and construction phase services including construction administration, general engineering representation and resident project representation of said Project; and

WHEREAS, the CM@Risk has represented to the City the ability to provide construction management services and to construct the Project, and based on this representation the City intends to engage the CM@Risk to provide these services and construct the Project; and

WHEREAS Resolution No. R-2021-27 executed on the 23rd day of January 2022, authorizing an agreement, by and between City and CM@Risk to perform Design Phase Services, whereby those services shall continue during the administration of this Agreement; and

NOW THEREFORE, for and in consideration of the mutual covenants and considerations hereinafter contained, the City and the CM@Risk hereby agree as follows:

Article 1 - Definitions

"Agreement ("Contract") - shall mean this written document signed by the City and CM@Risk, as may be amended, covering the construction phase of the Project, which shall include any and all other documents referenced herein, attached hereto and made part of this Contract.

"As-Built Drawings" - shall mean the revised set of drawings provided by the CM@Risk, at any stage of the Work.

"Authorized Changes" – shall mean changes to the Work authorized by the City by Change Order, Change Directive or Field Order.

"Change Directive" - shall mean a written order prepared and signed by City, directing a change in the Work prior to agreement on an adjustment in the Contract Price and the Contract Time. A sample Change Directive is attached hereto and incorporated by reference herein as Exhibit E.

"Change Order" - shall mean an amendment to this Agreement after execution hereof, including any and all amendments in writing and agreed to by the parties herein, to the GMP Plans and Specifications. A sample Change Order is attached hereto and incorporated by reference herein as Exhibit F.

"Change Proposal" - shall mean a written request by CM@Risk, duly submitted in accordance with the requirements of the Contract Documents requesting an adjustment in the Contract Price and/or Contract Time.

"CM@Risk's Contingency" - shall mean a sum included in the GMP that is not allocated to any item in the Cost of the Work. It shall be for CM@Risk's use as may be required for costs incurred in the Work from unforeseen causes or details that could not have been anticipated by the CM@Risk at the time of the City's approval of the GMP, provided however that the CM@Risk Contingency shall not be used for changes in the Work.

"Contract Documents" - shall mean this Agreement (also referred to as the "Prime Contract"), the Design Phase Contract and any and all modifications and amendments thereto, and all conditions, requirements, specifications, drawings and addendum, and all modifications and amendments, thereto.

"Construction Documents" - shall mean the Project Manual developed for the construction of the Project, including the plans, specifications, and drawings prepared by the Design Professional (herein defined below) and issued as approved for construction, signed and acceptable for permitting by the Design Professional.

"Construction Contract Timeline" - shall mean the Days as set forth herein at Article 4 for the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion and Final Acceptance (as defined herein below) of the Work (as defined herein below).

"Construction Fee" - shall mean the lump sum amount for CM@Risk's administrative costs for branch or home office overhead, and profit.

"Contract Price" – shall mean the value of services provided under this Agreement as defined herein at Article 5 and articulated in the Schedule of Values. Contract Price shall be the total of the amount in the Guaranteed Maximum Price ("GMP") Proposal as approved by the City, plus an amount for Owner's Contingency as determined by the City, as may be adjusted by a Change Order.

"Cost of the Work" - shall mean the direct costs necessarily incurred by the CM@Risk in the proper performance of the Work. The Cost of the Work shall include direct labor costs, subcontract costs, costs of materials and equipment incorporated in the completed construction, costs of other materials and equipment, temporary facilities, permit and license fees, materials testing, and related items. The Cost of the Work shall not include the CM@Risk's Construction Fee, General Conditions Costs or CM@Risk's Contingency.

"Critical Path Schedule" - shall mean the longest sequence of activities from the start of the Work to the Substantial Completion of the Project.

"Day(s)" - shall mean calendar days unless otherwise specifically noted in the Contract Documents.

"Design Phase Contract" - shall mean the agreement between the City and CM@Risk for Services provided by the CM@Risk during the design phase of the Project.

"Design Professional" shall mean a qualified, licensed design professional who furnishes design and/or construction administration services required for the Project and is responsible for the design of all portions of the Project and the preparation of drawings and specifications for the construction of the Project.

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

"Field Order" - shall mean a document issued by the Resident Project Representative or Design Professional requiring changes in the Work that do not change the Contract Price or Contract Time except as provided in Section 6.3.4.

"Final Acceptance" - shall mean the completion of the Work in accordance with Section 4.2.8 herein.

"Final Record Drawing" - During the progress of the Work the CM@Risk must keep one set of prints marked to show the final location, final grades, sizes and types of various facilities, equipment, piping, valves, instruments and other major items of the Work. The CM@Risk must furnish to the Design Professional this set of prints, the "As-Built", which shall include all the redlines, if applicable. That shows the Project as constructed, before the Owner releases the final payment to the CM@Risk. The Design Professional will use this set of "As-Built" drawings to develop the Record Drawings.

"Float" - shall mean the number of Days that an activity can be delayed without lengthening the Critical Path Schedule and extending the Substantial Completion date.

"General Conditions Costs" - shall mean costs for the CM@Risk during the construction phase as defined in Section 5.5.3.

"Guaranteed Maximum Price" or "GMP" shall mean the sum of the maximum Cost of the Work; the Construction Fee; General Conditions Costs, and CM@Risk's Contingency including authorized adjustments.

"GMP Proposal" shall mean the proposal submitted by CM@Risk that sets forth its Guaranteed Maximum Price and all assumptions and/or clarifications concerning the Contract Documents and Project upon which the GMP is based.

"GMP No. 1" - shall mean the first GMP. Additional GMP Proposals will be indicated by a sequential GMP No. based on the sequence for which they are developed and submitted.

"GMP Plans and Specifications" - shall mean the plans and specifications upon which the Guaranteed Maximum Price proposal is based as listed in the GMP proposal.

"Legal Requirements" - shall mean all applicable federal, state, and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-governmental entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work or performance of this Contract.

"Notice to Proceed" or "NTP" - shall mean the directive issued by the City, authorizing the CM@Risk to start the Project.

"Owner's Contingency" - shall mean a fund to cover cost growth during the Project to be used at the discretion of the City for costs associated with the City's directed changes, or unforeseen site conditions.

"Owner's Project Team" ("OPT") - shall mean the Design Professional and consultants, subconsultants, individuals, or entities directly or indirectly employed or retained by them to provide services to City.

"Performance Period" - shall mean the period of time allotted in the Contract Documents to Substantially Complete the Work comprised within a GMP. The Performance Period shall be stated with each GMP Proposal and shown on the Project Schedule.

"Payment Request" - shall mean the City form, attached hereto and incorporated herein for reference as Exhibit F, used by the CM@Risk to request progress payments for Work in accordance with Article 7 herein.

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

"Project" - shall mean the Work to be completed under the terms and conditions of this Agreement, and in Exhibit A attached hereto, and as both may be amended by the parties hereof.

"Project Manual" - shall mean a portion of the Contract Documents usually consisting of information published about the Project site and conditions under which the Project Improvements are to be constructed, contractual terms and conditions and technical specifications relating to construction of the Project Improvements.

"Project Record Documents" - shall mean the documents created pursuant to Section 2.10 herein.

"Resident Project Representative" - Resident Project Representative (RPR) shall mean the Design Professional's representative at the project site, acting as directed by and under the supervision of the Design Professional. RPR shall act as liaison with CM@Risk, and provide construction contract administration, review of work, construction inspection, rejection of defective work, coordination of Quality Control inspections and tests.

"Samples" - shall mean physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be evaluated.

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

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

"Site" - shall mean the land or premises on which the Project is located.

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

"Subcontractor" - shall mean an individual or firm having a direct contract with the CM@Risk or any other individual or firm having a contract with the aforesaid individual or firm at any tier, who undertakes to perform a part of the construction phase Work for which the CM@Risk is responsible.

"Substantial Completion" - shall mean when the Work is sufficiently complete pursuant to the requirements of the Contract Documents to the City's sole satisfaction, to enable City to occupy and use the Project.

"Supplier" - shall mean a manufacturer, fabricator, supplier, distributor, material man or vendor having a direct contract with CM@Risk or any Subcontractor to furnish materials or equipment to be incorporated into the construction phase of the Work by CM@Risk or any Subcontractor.

"Work" - shall mean the entire construction of the Project and/or the various separately identifiable parts thereof required in this Agreement to be furnished during the construction phase. Work shall be performing or furnishing labor and incorporating materials, resources, and equipment into the construction, and performing or furnishing services and documents as required by the Contract Documents for the construction phase.

Article 2 - CM@Risk's Services and Responsibilities

- 2.1.** CM@Risk understands and agrees that it shall furnish any and all labor, materials, equipment, transportation, utilities, services and facilities required to perform all Work required by the Contract Documents, and to completely and totally construct the same and install the material therein for the City. All Work will be performed in a good and workmanlike and substantial manner and within the care and skill of a qualified CM@Risk in Bastrop, Texas. The Work shall be to the sole satisfaction of the City, strictly pursuant to and in conformity with the Project's Contract Documents and as may be modified in writing and agreed to by the Parties herein. It is not required that the services be performed in the sequence in which they are described. The CM@Risk shall not be entitled to an increase in the GMP, as hereinafter described in Article 5, due to the absence of any detail or specification CM@Risk could have reasonably inferred would be required for any construction or that may be reasonably inferred, as the Work progresses in order to complete the construction of the Project, except as otherwise provided in the Contract Documents. If an item or system is either shown or specified, all material and equipment required for the proper installation of such item or system, necessary to make a complete operating installation shall be provided whether detailed or specified, omitting only such parts as are specifically excepted by the City.
- 2.2. General Services**
- 2.2.1.** CM@Risk understands and agrees that notwithstanding anything to the contrary herein, City and CM@Risk hereby agree and acknowledge that the City is entering into this Agreement in reliance on CM@Risk's special and unique abilities with respect to performing its obligations hereunder, and CM@Risk hereby acknowledges, understands and accepts the relationship of trust and confidence established between it and the City by this Agreement. CM@Risk hereby covenants with City to use its best efforts, skill, judgment, and abilities to perform the services hereunder and to further the interests of City in accordance with City's requirements and procedures, and in compliance with all applicable, federal, state, and local municipal laws, regulations, codes, ordinances, orders and with those of any other governmental or quasi-governmental body or agency, having jurisdiction over the Project or this Contract. CM@Risk hereby warrants, represents, covenants, and agrees that there are no obligations, commitments, or impediments of any kind that will limit or prevent performance of the services required hereunder.
- 2.2.2.** CM@Risk hereby warrants that its Representative as defined in Section 8.4.2 herein shall be reasonably available to City and shall have the necessary expertise and experience required to supervise the Work. CM@Risk's Representative shall communicate regularly with City but not less than once a week and shall be vested with the authority to act on behalf of CM@Risk. CM@Risk's Representative may be replaced only with the written consent of City, which consent shall not be unreasonably withheld.
- 2.2.3.** CM@Risk understands and agrees that it shall utilize the Project Management Information System (PMIS), defined herein as one or more software applications and a methodical process for collecting and using Project information for management, processing, workflow, storage and status reporting of all construction related documentation, said PMIS being provided and maintained by the Design Professional.
- 2.2.4.** The CM@Risk warrants, represents, covenants, and agrees that all persons connected with the CM@Risk who are directly in charge of its services under this Agreement are duly registered and/or licensed under the laws, rules and regulations and have the requisite training and skill to perform their role.

2.3. Government Approvals and Permits

- 2.3.1.** CM@Risk understands and agrees that unless otherwise provided, CM@Risk shall obtain or assist the City in obtaining all permits, approvals and licenses required for the performance of the Work from any government or quasi-governmental entity or agency having jurisdiction over the Project. The CM@Risk shall obtain the required storm water pollution prevention plan permit and the City, with assistance of Design Professional, shall obtain all other environmental permits.
- 2.3.2.** CM@Risk understands and agrees to furnish copies of these permits and notices to the City's Representative prior to starting the permitted activity. In the case of Fire Department permits, a copy of the application for permit shall also be provided to the City's Representative. Notwithstanding anything to the contrary herein, CM@Risk further understands and agrees that City shall not be liable for any violation by CM@Risk of any permits or notice requirements and shall not be liable for CM@Risk's inability to acquire any permits specifically delegated to CM@Risk in the Contract Documents. CM@Risk shall immediately notify City in writing of any difficulties or inability to acquire any permits.
- 2.3.3.** CM@Risk understands and agrees that City shall be responsible for all City of Bastrop review and permit(s) fees for building and demolition permits. City shall pay for review and permit fees for grading and drainage, water, sewer right-of-way and landscaping. City shall also pay for utility design fees for permanent services.
- 2.3.4.** CM@Risk understands and agrees that all other permit and review fees required by City ordinance, not specifically listed in Division 2.3.3 herein above shall also be waived by City. City shall be responsible for the cost of water meter(s), water and sewer taps, fire lines and taps, and all water bills on the project meters until Final Completion of the Project. CM@Risk shall also be responsible for temporary arrangements (e.g., piping, equipment) to provide for construction water.

2.4. Pre-construction Conference

- 2.4.1.** CM@Risk understands and agrees that prior to the commencement of any Work, the RPR shall schedule a pre-construction conference.
- 2.4.2.** CM@Risk understands and agrees that the purpose of this conference is to establish a working relationship between the CM@Risk, OPT, various City agencies, and utility firms. The agenda will include, but may not be limited to, critical elements of the work schedule, submittal schedule, cost breakdown of major lump sum items, Payment Requests and processing, coordination with the involved utility firms, the level of Project Record Documents required and communication protocols, contact information for routine communication and emergency contacts for all parties involved in the course of construction.
- 2.4.3.** The CM@Risk understands and agrees that it shall provide a Schedule of Values based on the categories used in the buyout of the Work but said Schedule of Values shall not be greater than the approved GMP, and shall identify the CM@Risk's Contingency. The Schedule of Values shall subdivide the Work into all items comprising the Work.
- 2.4.4.** CM@Risk understands and agrees that minimum attendance by the CM@Risk shall be by the CM@Risk's Representative, who is authorized to execute and sign documents on behalf of the firm, the project manager, the job superintendent, and the CM@Risk's safety officer.

2.5. Control of the Work

- 2.5.1.** CM@Risk understands and agrees that unless otherwise provided in the Contract Documents CM@Risk shall provide the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities, and other temporary facilities to permit

completion of the Work consistent with the Contract Documents.

- 2.5.2. CM@Risk understands and agrees that it shall perform all construction activities efficiently and with the requisite expertise, skill, and competence to satisfy the requirements of the Contract Documents to the City's sole satisfaction. CM@Risk shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.
- 2.5.3. CM@Risk understands and agrees that it shall prepare bid documents and assist the City to publicly advertise and receive proposals from subcontractors for the performance of all major elements of the Work other than the minor work that may be included in the general conditions.
- 2.5.4. CM@Risk understands and agrees that it may seek to self-perform portions of the Work if it submits its proposal for those portions of the Work in the same manner as all other subcontractors, and if City determines that the CM@Risk's proposal provides the best value for the City. CM@Risk further understands and agrees that in the event CM@Risk submits a proposal for any portion of the Work, it shall not review any subcontractor proposals submitted or determine which proposal provides the best value for the City for that particular portion of the Work.
- 2.5.5. CM@Risk understands and agrees that for those portions of the Work that CM@Risk does not submit a proposal, CM@Risk shall review all subcontractor proposals in a manner that does not disclose the contents of proposal during the selection process to a person not employed by the CM@Risk, Design Professional, or City. All proposals shall be made available to the City upon request, and to the public after the award of the contract or the seventh day after the date of final selection of proposals, whichever is later.
- 2.5.6. CM@Risk understands and agrees that for those portions of the Work that CM@Risk does submit a proposal, City shall review all proposals and determine which proposal provides the best value for the City. All proposals shall be made available to the CM@Risk upon request, and to the public after the award of the contract or the seventh day after the date of final selection of proposals, whichever is later.
- 2.5.7. CM@Risk understands and agrees that if after CM@Risk reviews, evaluates, and recommends to the City a proposal from a subcontractor but the City determines another proposal will provide the best value to the City and requires another proposal to be accepted by the CM@Risk, the City shall compensate the CM@Risk by a change in GMP for any additional cost that the CM@Risk incurs because of the City's requirement that another proposal be accepted. However, this section will only apply if the GMP is provided to City prior to the bids being received. CM@Risk and City both agree that in the event an issue arises regarding a price change, CM@Risk will notify City in writing and the parties shall negotiate any change in price.
- 2.5.8. CM@Risk understands and agrees that it shall provide written notice to City in advance of the identities of all Subcontractors with which it intends to subcontract. CM@Risk shall not subcontract with any Subcontractor without City's express written approval of said Subcontractor, which said approval shall not be unreasonably withheld. Such notice shall be given sufficiently in advance to permit City adequate time for review without delay to the Project and allowing time for CM@Risk to make substitute selections, but in no event shall such notice be given less than ten (10) days before the intended subcontract date. CM@Risk shall notify City in writing prior to soliciting proposals from potential subcontractors. CM@Risk's shall not change Subcontractors after City approval for constructing the Work without City's prior written approval, which shall not be unreasonably withheld. CM@Risk also understands and agrees that it shall not incur any subcontract costs prior to issuance by City of Notice to Proceed for such Work. CM@Risk further understands and agrees that it shall not receive payment for any unauthorized Work or Work performed prior to issuance by City of the Notice to Proceed.

- 2.5.9. CM@Risk understands and agrees that its superintendent or other authorized representative with the requisite expertise, skill and competence to execute the work shall be present at the Site at all times during construction activities.
- 2.5.10. CM@Risk understands and agrees that all elements of the Work shall be under the direct supervision of CM@Risk's designated representative on the Site, who shall have the authority to take actions required to properly carry out that particular element of the Work. Failure to comply with this provision may result in a stop or suspension of the Work by the City, pursuant to and in accordance with Article 9 hereof. CM@Risk understands and acknowledges that where the Contract Documents require that a particular product be installed and/or applied by an applicator approved by the manufacturer, it is the CM@Risk's responsibility to ensure the Subcontractor employed for such Work is approved by the manufacturer.
- 2.5.11. CM@Risk acknowledges and agrees that prior to ordering materials or doing the Work, the CM@Risk and each Subcontractor shall verify measurements at the Site and shall be responsible for the correctness of such measurements. No increase to the approved GMP shall be allowed because of any differences between actual dimensions and the dimensions indicated in the Contract Documents; differences, that are identified, shall be submitted to the OPT for resolution prior to proceeding with the Work.
- 2.5.12. The CM@Risk understands and agrees to take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the CM@Risk with the Contract Documents prior to commencing activities hereunder. Any errors, inconsistencies, or omissions discovered shall be reported to the OPT immediately upon discovery.
- 2.5.13. The CM@Risk understands and agrees to establish and maintain all primary building and construction grades, lines, levels, and benchmarks, and shall be responsible for accuracy and protection of same. CM@Risk also agrees that this element of the Work shall be performed or supervised by a licensed civil engineer or surveyor in the State of Texas hired by CM@Risk and approved by the City.
- 2.5.14. CM@Risk understands and agrees that any person employed by the CM@Risk or any Subcontractor who, in the sole opinion of the City, does not perform their work in a proper, skillful, and safe workmanlike manner or is intemperate or disorderly shall, at the written request of the City, be removed from the Work by CM@Risk or Subcontractor employing such person and shall not be employed again in any portion of Work without the express written approval of the City.
- 2.5.15. CM@Risk agrees to assume responsibility for the proper performance of the work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between City and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.
- 2.5.16. CM@Risk shall coordinate the activities of all Subcontractors. CM@Risk understands and agrees that if City performs other work unrelated to this Contract on the Project or at the Site with separate contractors under City's control, CM@Risk shall reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without any disruption in the Work to be performed hereunder.
- 2.6. Control of the Work Site**
- 2.6.1. CM@Risk understands and agrees that throughout all phases of construction, including suspension of Work, it shall keep the Site reasonably free from debris, trash and construction and any and all other wastes to permit CM@Risk to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. CM@Risk also agrees that upon Substantial Completion of the Work, or a portion of the Work, it shall remove all debris,

trash, construction and any and all other wastes, materials, equipment, machinery, and tools arising from the Work or applicable portions thereof to permit City to occupy the Project or a portion of the Project for its intended use.

- 2.6.2. CM@Risk understands and agrees that it shall take all reasonable steps, procedures or means to prevent any dust nuisance due to construction operations. The dust control measures shall be maintained at all times to the sole satisfaction of the City and in accordance with all Legal Requirements.
- 2.6.3. CM@Risk understands and agrees that it shall maintain ADA and ANSI accessibility requirements during construction activities in an occupied building or facility. ADA and ANSI accessibility requirements shall include, but not be limited to, parking, building access, entrances, exits, restrooms, areas of refuge, and emergency exit paths of travel. CM@Risk also understands and agrees that it shall be responsible for the coordination of all Work to minimize disruption to building occupants and facilities.
- 2.6.4. CM@Risk understands and agrees that only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Site. CM@Risk also understands and agrees that when equipment is no longer required for the Work, it shall be removed promptly from the Site. Protection of construction materials and equipment stored at the Site from weather, theft, damage, and all other adversity is solely the responsibility of the CM@Risk.
- 2.6.5. CM@Risk understands and agrees that it shall maintain at the Project site and make available to City when reasonably requested, updated records of subcontractors, drawings, examples, purchases, materials, equipment, maintenance and operating manuals and instructions, and other construction related documents, including all changes and revisions, a directory of personnel, Project correspondence, inspections procedures (as prepared by others), changes to Contract Documents, time extensions, progress payment data, Final Acceptance procedures, and instructions from City.

2.7. Shop Drawings, Product Data and Samples

- 2.7.1. CM@Risk understands and acknowledges that Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. CM@Risk understands and acknowledges that the purpose of their submittal is to demonstrate, for those portions of the Work for which submittals are required, the way CM@Risk proposes to conform to the information provided and the design concept expressed in the Contract Documents.
- 2.7.2. CM@Risk understands and agrees that it shall review, approve, verify, and submit to the Design Professional all Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents in accordance with the approved GMP schedule as shown in Exhibit B. CM@Risk understands and acknowledges that submittals made by the CM@Risk that are not required by the Contract Documents may be returned without action.
- 2.7.3. CM@Risk understands and agrees that it shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples, or similar submittals until the respective submittal has been approved by the OPT. Such Work shall be in accordance with approved submittals.
- 2.7.4. CM@Risk understands and agrees that by approving, verifying, and submitting Shop Drawings, Product Data, Samples and similar submittals, it represents that it has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.
- 2.7.5. CM@Risk understands and agrees that CM@Risk shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the approval by the OPT of Shop

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

- 2.7.6. CM@Risk understands and agrees that CM@Risk shall inform OPT in writing of any revisions to Shop Drawings, Product Data, Samples, or similar submittals, other than those previously requested by the OPT.
- 2.7.7. CM@Risk understands and acknowledges that informational submittals upon which the OPT is not expected to take responsive action shall be identified as such in the Document Control Process as set forth in the Contract Documents.
- 2.7.8. CM@Risk understands and agrees that when professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the OPT shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.
- 2.8. **Quality Control, Testing and Inspection**
- 2.8.1. CM@Risk understands and agrees that all materials used in the Work shall be new and unused, unless otherwise noted, and shall meet all quality requirements of the Contract Documents and approved Shop Drawings and Product Data.
- 2.8.2. CM@Risk understands and agrees that all construction materials to be used on the Work or incorporated into the Work, equipment, plant, tools, appliances, or methods to be used in the Work may be subject to the inspection and approval or rejection by the City within City's sole discretion. CM@Risk also understands and agrees that any material rejected by the City shall be removed immediately and replaced in a manner acceptable to City.
- 2.8.3. CM@Risk understands and agrees that the procedures and methods used to sample and test material shall be solely determined by the City.
- 2.8.4. CM@Risk understands and acknowledges that the City shall select a pre-qualified Independent Testing Laboratory and shall pay for the initial City acceptance testing. Work of Independent Testing Laboratory shall be observed and coordinated by the Resident Project Representative and interpreted by the OPT.
- 2.8.5. CM@Risk understands and agrees that any tests indicating noncompliance with the Contract Documents shall be retested, and the cost of retesting shall be the responsibility of CM@Risk. CM@Risk also understands and agrees that CM@Risk's Contingency shall not be utilized for the cost of re-testing.
- 2.8.6. CM@Risk understands and agrees that all retesting shall be performed by the same testing agency.
- 2.8.7. CM@Risk understands and agrees to cooperate with the selected testing laboratory and all others responsible for testing and inspecting the work and shall provide reasonable access to the Work upon request.
- 2.8.8. CM@Risk understands and agrees that at the option of the City, materials may be approved at the source of supply before delivery begins.
- 2.8.9. CM@Risk understands and agrees that Code compliance testing and inspections required by codes or ordinances, or by a plan approval authority shall be the responsibility of and shall be paid by CM@Risk as a Cost of the Work, unless otherwise provided in the Contract Documents.

2.8.10. CM@Risk understands and agrees that CM@Risk's convenience and quality control testing and inspections shall be the sole responsibility of CM@Risk.

2.9. Trade Names and Substitutions

2.9.1. CM@Risk understands and agrees that substitutions and alternate items to Contract Document references to equipment, materials or patented processes by manufacturer, trade name, make or catalog number, unless indicated that no substitutions are permitted, may be permitted, subject to the following:

2.9.1.1 CM@Risk understands and agrees that the substitution shall be submitted by CM@Risk in writing for approval by the OPT.

2.9.1.2 CM@Risk understands and agrees that it shall certify that the substitution will perform the functions and achieve the results required by the general design, be similar and of equal substance, and be suited to the same use as that specified.

2.9.1.3 CM@Risk understands and agrees that the submittal shall state any required changes in the Contract Documents to adapt the design of the proposed substitution.

2.9.1.4 CM@Risk understands and agrees that the submittal shall contain an itemized estimate of all costs and credits that will result directly and indirectly from the acceptance of such substitution, including an estimate of the cost of design, license fees, royalties, and testing. The submittal shall also include any adjustment in the Contract Time created by the substitution.

2.9.2 CM@Risk understands and agrees that CM@Risk, if requested by the OPT, shall submit Samples or any additional information that may be necessary to evaluate the acceptability of the substitution.

2.9.3 CM@Risk understands and agrees that the decision shall be solely the City's decision based on analysis and recommendation of the OPT. OPT shall notify CM@Risk in writing as to whether the substitution has been accepted or rejected. If the OPT does not respond in a timely manner, CM@Risk shall continue to perform the Work in accordance with the Contract Documents and the substitution shall be considered rejected.

2.10. Project Record Documents

2.10.1. CM@Risk understands and agrees that during the construction period, it shall maintain at the jobsite a set of blue-line or black-line prints of the Construction Document drawings and shop drawings for Project Record Document purposes. Said Construction Document drawings shall be updated and made available to City for verification on a monthly basis from the date of first submission.

2.10.2. CM@Risk understands and agrees that it shall mark these drawings to indicate the actual installation where the installation varies appreciably from the original Construction Documents. CM@Risk shall specifically indicate information on concealed elements that would be difficult to identify or measure and record later. Items required to be indicated and marked shall include, but are not limited to the following:

- Dimensional changes to the drawings.
- Revisions to details shown on drawings
- Depths of foundations below first floor
- Locations and depths of underground utilities
- Revisions to routing of piping and conduits.
- Revisions to electrical circuitry.
- Actual equipment locations.
- Duct size and routing.
- Locations of concealed internal utilities.
- Changes made by Change Order.
- Details not on original Contract Drawings.

2.10.3. CM@Risk understands and agrees that it shall mark completely and accurately Project

Record Drawing prints of Construction Documents or Shop Drawings, whichever is the most capable of indicating the actual physical condition. Where Shop Drawings are marked, show cross-reference on the Construction Documents' location.

- 2.10.4. CM@Risk understands and agrees that CM@Risk shall be responsible for the creation of record and as-built drawings as the work progresses, and the procurement of warranties and guarantees. CM@Risk shall also mark Project Record Drawings sets with red erasable colored pencil.
- 2.10.5. CM@Risk understands and agrees that CM@Risk shall note RFI Numbers, Change Order numbers, etc., as required to identify the source of the change to the Construction Documents.
- 2.10.6. CM@Risk understands and agrees that CM@Risk shall as a condition of Substantial Completion, submit Project Record Drawing and Shop Drawings prints to the OPT for review and comment.
- 2.10.7. CM@Risk understands and agrees that upon receipt of the reviewed Project Record Drawings from the OPT, the CM@Risk shall correct any deficiencies and/or omissions to the drawings and re-submit to the OPT within fourteen (14) Days.
- 2.10.8. CM@Risk understands and agrees that Final Record Drawings shall be produced by Design Professional.
- 2.11. **Project Safety**
 - 2.11.1. CM@Risk understands and acknowledges the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto.
 - 2.11.2. CM@Risk understands and agrees that it shall be responsible for implementing and monitoring all safety precautions and programs related to the performance of the Work. CM@Risk also understands and agrees that it shall review the safety programs developed by each of the subcontractors and prepare and submit to the OPT its comprehensive safety program that complies with all Legal Requirements upon completion of the document outlining and describing the program. CM@Risk shall also ensure compliance by the Subcontractors of their contractual safety requirements.
 - 2.11.3. CM@Risk understands and agrees that it shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, CM@Risk's Safety Representative shall be an individual stationed at the Site who may have other responsibilities on the Project in addition to safety.
 - 2.11.4. CM@Risk understands and agrees that the Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with CM@Risk's personnel, Subcontractors, and others as applicable.
 - 2.11.5. CM@Risk understands and agrees that it and its Subcontractors shall comply with all Legal Requirements relating to safety, as well as any City-specific safety requirements set forth in the Contract Documents, provided that such City-specific requirements do not violate or conflict with any applicable Legal Requirement. In the event of any conflict or violation, the Legal Requirement shall supersede and control.
 - 2.11.6. CM@Risk understands and agrees that CM@Risk shall immediately report in writing to the RPR any safety-related injury, loss, damage, or accident arising from the Work and, to the

extent mandated by Legal Requirements, to all government or quasi-governmental authorities or agencies having jurisdiction over safety- related matters involving the Project or the Work.

2.12. Warranty

- 2.12.1. CM@Risk warrants to City that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship.
- 2.12.2. CM@Risk's warranty obligation for the Work shall be for one (1) year from the date of Substantial Completion of the Work.
- 2.12.3. CM@Risk understands and agrees that nothing in this warranty is intended to limit any manufacturer's warranty that provides City with greater warranty rights than set forth in this Section or the Contract Documents. CM@Risk shall provide City with all manufacturers' warranties upon Substantial Completion.

2.13 Correction of Defective Work

- 2.13.1. CM@Risk understands and agrees to correct any Work that is found not to be in conformance with the Contract Documents, including that part of the Work subject to Section 2.12 above, within a period of one (1) year from the date of Substantial Completion of the Work, or within such longer period to the extent required by the Contract Documents. CM@Risk also understands and agrees that any payments, or partial or the entire use or occupancy of the Project by the City, shall not constitute acceptance of Work not in conformance with the Contract Documents.
- 2.13.2. During the Work, CM@Risk understands and agrees that it shall commence correction of such nonconforming Work upon written notification by the OPT. This includes the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. CM@Risk further understands and agrees that if it fails to commence correction upon written notice, City, in addition to any other remedies provided under the Contract Documents, may, but shall not be obligated to correct such nonconforming Work itself.
- 2.13.3. CM@Risk understands and agrees that it shall, commence correction of nonconforming Work within seven (7) Days of receipt of written notice from OPT.
- 2.13.4. If the nonconforming Work creates an emergency requiring an immediate response, the CM@Risk will respond and initiate corrections within twenty-four hours.
- 2.13.5. If City does perform such corrective Work or commence performance within the time prescribed above in Sub-Sections 2.13.3 and 2.13.4, CM@Risk understands and agrees that it shall be responsible for all reasonable costs incurred by City in performing such correction.
- 2.13.6. The one (1) year period referenced in Division 2.13.1 above applies only to CM@Risk's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies City may have regarding CM@Risk's other obligations under the Contract Documents.

Article 3 - City's Services and Responsibilities

- 3.1 Duty to Cooperate.**
- 3.1.1** City shall, throughout the performance of the Work, cooperate with CM@Risk and perform its responsibilities, obligations, and services in a timely manner to facilitate CM@Risk's timely and efficient performance of the Work and so as not to delay or interfere with CM@Risk's performance of its obligations under the Contract Documents.
- 3.1.2** City shall coordinate with and furnish at CM@Risk's request at no cost to the CM@Risk, a CADD file of the Construction Documents in a format compatible with City of Bastrop Engineering CADD technology.
- 3.2 City's Representative**
- 3.2.1** City's Representative shall be responsible for providing City-supplied information and approvals in a timely manner to permit CM@Risk to fulfill its obligations under the Contract Documents.
- 3.2.2** City's Representative shall also provide CM@Risk with written notice if it observes any failure on the part of CM@Risk to fulfill its contractual obligations, including any default, defect in the Project, non-conformance, or breach of any of the Contract Documents. CM@Risk understands and acknowledges that failure of City to provide notice, in writing or otherwise, of any failure, default, defect, non-conformance, or breach does not waive City's rights to any remedies it possesses at law or in equity against CM@Risk for its failure, default, defect, non-conformance, or breach of the Contract Documents. Likewise, City understands and acknowledges that failure of CM@Risk to provide notice, in writing or otherwise, of any failure, default, defect, non-conformance, or breach does not waive CM@Risk's rights to any remedies it possesses at law or in equity against City for its failure, default, defect, non-conformance, or breach of the Contract Documents.
- 3.2.3** The City may utilize a Resident Project Representative (RPR) of the Design Professional to assist the City during construction in observing the performance of CM@Risk. The RPR is for the purpose of assisting the City and shall not be confused with any inspector from a City regulatory agency.
- 3.2.4** Through onsite observation of the Work in progress and field checks of materials and equipment, the RPR shall monitor CM@Risk's performance for any and all defects and deficiencies in the Work.
- 3.2.5** The RPR shall be authorized to inspect all Work and materials furnished. Such inspection may extend to all or part of the Work and to the preparation, fabrication or manufacture of the materials to be used.
- 3.2.6** The RPR shall not be authorized to issue instructions contrary to the Construction Documents or to act as a foreman or representative for CM@Risk.
- 3.2.7** The RPR shall have the authority to reject work or materials. Any disputes or issues regarding the RPR's rejection of work or materials shall be resolved by the City's representative.
- 3.2.8** CM@Risk understands and agrees that in providing said Construction Management services, City shall not be responsible for or give the City control over construction means, methods, techniques, sequences or procedures or for safety precautions or programs or responsibility for CM@Risk's failure to perform the work in accordance with Contract Documents.

3.3 Permit Review and Inspections.

3.3.1 CM@Risk understands and acknowledges that agencies of the City, such as Developmental Services, Fire and Planning Departments, enforce Legal Requirements. Said enforcement activities are not subject to any of the provisions of this Contract.

Article 4 - Contract Time

4.1. **Contract Time.**

- 4.1.1. CM@Risk understands and agrees that Notice to Proceed or "NTP" shall be issued by the City within fourteen (14) days upon agreement between the parties on the GMP, establishing the commencement date for the Project authorizing the CM@Risk to start the Work as described herein. Such notice shall be provided to the CM@Risk at least seven (7) days prior to the commencement date stipulated herein and shall be provided no later than thirty (30) days after the GMP Proposal and all the required documentation is received by the City.
- 4.1.2. CM@Risk understands and agrees that Contract Time shall start with the commencement date established in the Notice to Proceed and end with Substantial Completion.
- 4.1.3. CM@Risk understands and agrees that if Project involves more than one GMP, each GMP shall establish a separate commencement date, date of Substantial Completion and Performance Period. The Performance Periods may not be sequential and may run concurrently.
- 4.1.4. CM@Risk understands and agrees that it shall commence performance of the Work and achieve the Performance Periods and Contract Time by the commencement date specified in the NTP.
- 4.1.5. CM@Risk understands and agrees that all of the times set forth in this Article 4 shall be subject to adjustment in accordance with and as permitted by Article 6 herein, including but not limited to changes in Contract Times due to Project delays, including errors, discrepancies, omissions, changes in work, Legal Requirements, Change Directives and orders, emergencies and/or acts of God.

4.2. **Substantial Completion**

- 4.2.1. CM@Risk understands and agrees that Substantial Completion shall be in accordance with its definition in Article 1 and with the criteria set forth in the Notice to Proceed, which may include, but is not limited to:
 - 4.2.1.1. approval by City Fire Marshall and local authorities (issuance of Certificate of Occupancy, if applicable);
 - 4.2.1.2. all systems in place, constructed and functional as required by the contract documents, and displayed to the City or its representative;
 - 4.2.1.3. all materials and equipment installed;
 - 4.2.1.4. all systems reviewed and accepted by the City;
 - 4.2.1.5. all O&M materials, draft O&M manual and As-built documents reviewed and accepted by the City;
 - 4.2.1.6. City operation and maintenance training complete;
 - 4.2.1.7. ability to meet all applicable regulatory permit requirements;
 - 4.2.1.8. HVAC test and balance completed; and
 - 4.2.1.9. site work.
- 4.2.2. Substantial Completion shall be for the entire Project unless a partial Substantial Completion is identified in the approved GMP schedule and stated in the Notice to Proceed letter.
- 4.2.3. CM@Risk understands and agrees that prior to notifying the RPR in accordance with Division 4.2.4 herein below, the CM@Risk shall inspect the Work and prepare and submit to the RPR a comprehensive list of items to be completed or corrected. The CM@Risk shall submit the completed and corrected items on the list within thirty (30) days of the issuance of the Certificate of Substantial Completion or as otherwise agreed to by the parties. CM@Risk further agrees that failure to include an item on such list does not alter the responsibility of the CM@Risk to complete all Work in accordance with the Contract Documents.

- 4.2.4. CM@Risk shall notify RPR when it believes the Work, or to the extent permitted in the Contract Documents, is Substantially Complete.
- 4.2.5. CM@Risk understands and acknowledges that within five (5) days of RPR's receipt of CM@Risk's notice, City, RPR, Design Professional and CM@Risk shall jointly inspect said Work to verify that it is Substantially Complete in accordance with the requirements of the Contract Documents.
- 4.2.6. CM@Risk understands and agrees that if said Work is Substantially Complete, City shall prepare a Certificate of Substantial Completion upon recommendation of the RPR and Design Professional, which shall be defined herein as a document that will set forth:
 - 4.2.6.1. The date of Substantial Completion of the Work or portion thereof, which shall be the date of CM@R's notice if Substantial Completion has been achieved; and
 - 4.2.6.2. A list of remaining items of Work that shall be completed within thirty (30) days before Final Acceptance or as otherwise agreed to by the parties.
 - 4.2.6.3. Provide an acknowledgment that all warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.
- 4.2.7. CM@Risk understands and agrees that City, at its option, may use a portion of the Work that has been determined to be Substantially Complete, provided, however, that:
 - 4.2.7.1. A Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in Division 4.2.6 herein above.
 - 4.2.7.2. CM@Risk and City have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project, and
 - 4.2.7.3. City and CM@Risk agree that City's use or occupancy will not interfere with CM@Risk's completion of the remaining Work.
- 4.2.8. CM@Risk understands and agrees that upon receipt of written notice that the Work or identified portions of the Work is ready for final inspection and acceptance, City, RPR, Design Professional and CM@Risk shall jointly inspect to verify that the remaining items of Work have been completed as set forth in Division 4.2.6 herein above. The City based on the RPR's and Design Professional's letter of recommendation of Final Acceptance shall issue a Final Acceptance Letter and payment pursuant to Section 7.5 herein below.
- 4.3. **Liquidated Damages.**
 - 4.3.1. CM@Risk understands and acknowledges that if Substantial Completion is not accomplished within the Contract Time as adjusted, City will suffer damages difficult to determine and accurately specify. CM@Risk further acknowledges and agrees that if Substantial Completion is not accomplished within the Contract Time as adjusted, CM@Risk shall pay the City \$4,250.00 (Four Thousand, Two Hundred Fifty Dollars) as liquidated damages for each Day that Substantial Completion extends beyond the date determined by the Contract Time as adjusted. Such liquidated damages shall be the City's sole and exclusive remedy for CM@R's delay in reaching Substantial Completion.
 - 4.3.2. CM@Risk understands and acknowledges that if Final Completion is not accomplished within the Contract Time as adjusted, City will suffer damages difficult to determine and accurately specify. CM@Risk further acknowledges and agrees that if Final Completion is not accomplished within the Contract Time as adjusted, CM@Risk shall pay the City \$1,500.00 (One Thousand Five Hundred Dollars) as liquidated damages for each Day that Final Completion extends beyond the date determined by the Contract Time as adjusted. Such liquidated damages shall be the City's sole and exclusive remedy for CM@R's delay in reaching Final Completion.
- 4.4. **Project Schedule**
 - 4.4.1. CM@Risk understands and agrees that the Project Schedule approved as part of a GMP

- shall be updated and maintained throughout the Work.
- 4.4.2. CM@Risk understands and agrees that the Project Schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve CM@Risk of its obligations to complete the Work within the Contract Time, as such dates may be adjusted in accordance with the Contract Documents.
 - 4.4.3. CM@Risk understands and agrees that updated Project Schedules shall be submitted monthly to the City as part of the Payment Request as specified in Article 7.1.
 - 4.4.4. CM@Risk understands and agrees that it shall provide OPT with a monthly status report with each Project Schedule detailing the progress of the Work, including:
 - 4.4.4.1. Whether the Work is proceeding in accordance with the Project Schedule.
 - 4.4.4.2. Whether any discrepancies, conflicts, or ambiguities are found to exist in the Contract Documents that require resolution; and
 - 4.4.4.3. Whether other items require resolution so as not to jeopardize CM@Risk's ability to complete the Work as presented in the GMP proposal and within the Contract Time.
 - 4.4.5. CM@Risk understands and agrees that with each Project Schedule submittal, it shall include a transmittal letter including the following:
 - 4.4.5.1. Description of problem tasks (referenced to field instructions, requests for information (RFIs)), as appropriate.
 - 4.4.5.2. Current and anticipated delays including:
 - o Cause of the delay
 - o Corrective action and schedule adjustments to correct the delay
 - o Known or potential impact of the delay on other activities, milestones, and the date of Substantial Completion.
 - 4.4.5.3. Changes in the sequence of construction of the Work and resulting changes in the Critical Path Schedule logic.
 - 4.4.5.4. Pending items and status
 - 4.4.5.5. Substantial Completion date status:
 - o If ahead of schedule, the number of calendar Days ahead.
 - o If behind schedule, the number of calendar Days behind.
 - 4.4.5.6. Other project or scheduling concerns
 - 4.4.6. CM@Risk understands and agrees that OPT's review of and response to the Project Schedule is only for general conformance with the scheduling requirements of the Contract Documents. Said review shall not relieve the CM@Risk from compliance with the requirements of the Contract Documents or be construed as relieving the CM@Risk of its complete and exclusive control over the means, methods, sequences, and techniques for executing the Work.
 - 4.4.7. CM@Risk understands and acknowledges that the Project Schedule shall include a Critical Path Method (CPM) diagram schedule, as described herein below, that shall show the sequence of activities, the interdependence of each activity and indicate the Critical Path activities. Any delay in the start or completion of a Critical Path activity by definition will impact the Substantial Completion date of the project.
 - 4.4.8. CM@Risk understands and acknowledges that the CPM diagram schedule shall be in Days and indicate duration, earliest and latest start and finish dates for all activities, and total Float times for all activities except critical activities. The CMP diagram shall be presented in a time scaled graphical format for the Project as a whole.
 - 4.4.8.1. CM@Risk understands and acknowledges that the CPM diagram schedule shall indicate all relationships between activities.
 - 4.4.8.2. CM@Risk understands and acknowledges that the activities making up the schedule shall be in sufficient detail to assure that adequate planning has been completed for proper

- execution of the Work and that it provides an appropriate basis for monitoring and evaluating the progress of the Work.
- 4.4.8.3. CM@Risk understands and acknowledges that the CPM diagram schedule shall be based upon activities that coincide with the Schedule of Values.
 - 4.4.8.4. CM@Risk understands and acknowledges that the CPM diagram schedule shall show all critical submittals associated with each work activity and the review time for each submittal.
 - 4.4.8.5. CM@Risk understands and acknowledges that the Project Schedule shall show milestones, including milestones for Owner-furnished information, and shall include activities for Owner-furnished equipment and furniture when those activities are interrelated with the CM@Risk activities.
 - 4.4.8.6. CM@Risk understands and acknowledges that the Project Schedule shall include a Critical Path activity that reflects anticipated rain delay during the performance of this Agreement and/or the Contract Documents. CM@Risk further acknowledges that the duration shall reflect the average climatic range and usual industrial conditions prevailing in the locality of the site. CM@Risk agrees that weather data shall be based on information provided by the National Weather Services or other approved source.
 - 4.4.8.7. CM@Risk understands and acknowledges that the Project Schedule shall consider the Contract Times in accordance with Article 6 hereunder.
- 4.4.9. Float time shall be as prescribed below.
- 4.4.9.1. CM@Risk understands and acknowledges that the total Float within the overall Project Schedule is not for the exclusive use of either the City or the CM@Risk but is jointly owned by both and is a resource available to and shared by both parties as needed to meet contract milestones and the Project Contract Time.
 - 4.4.9.2. CM@Risk understands and agrees that it shall not sequester shared Float through such tactics as extending activity duration estimates to consume available Float, using preferential logic, or using extensive crew/resource sequencing, etc. CM@Risk further agrees that since Float time within the Project Schedule is jointly owned, no time extensions shall be granted nor delay damages paid until a delay occurs that extends the Work beyond the Substantial Completion date.
 - 4.4.9.3. CM@Risk understands and agrees that since Float time within the Project Schedule is jointly owned, it is acknowledged that City-caused delays on the Project may be offset by City-caused time savings (i.e., Critical Path submittals returned in less time than allowed by the Contract, approval of substitution requests and credit changes that result in savings of time to the CM@Risk, etc.). In such an event, the CM@Risk agrees it shall not be entitled to receive a time extension or delay damages until all City-caused time savings are exceeded, and the Substantial Completion date is also exceeded.

Article 5- Contract Price

- 5.1. Contract Price**
- 5.2.** CM@Risk understands and agrees to perform all Work as aforesaid for the construction of said improvements and to completely construct the same and install the material therein, as called for by this Agreement free and clear of all claims, liens, and charges whatsoever, in the manner and under the conditions specified within the time, or times, stated in the approved GMP Proposal at its own proper cost and expense.
- 5.3.** CM@Risk understands and agrees that this Agreement, as awarded, is for the stated work and understands that payment for the total Work will be made based on the indicated amount(s), per the terms and conditions of this Agreement.
- 5.4.** CM@Risk understands and agrees that Contract Price shall be as approved in the Guaranteed Maximum Price Proposal, attached hereto as Exhibit B, plus an amount for Owner's Contingency as determined by the City, as adjusted by change order.
- 5.5.** CM@Risk understands and agrees that the Guaranteed Maximum Price shall be composed of the following not-to-exceed cost reimbursable or lump sum amounts, including Authorized Changes in Contract Price by Change Order as defined in Article 6 herein below:
- 5.5.1.** CM@Risk understands and agrees that Cost of the Work shall mean the direct costs necessarily incurred by the CM@Risk in the proper performance of the Work. The Cost of the Work shall include direct labor costs, subcontract costs, costs of materials and equipment incorporated in the completed construction, costs of other materials and equipment, temporary facilities, permit and license fees, materials testing, and related items. The Cost of the Work shall not include the CM@Risk's Construction Fee, General Conditions Costs or CM@Risk's Contingency.
- 5.5.2.** CM@Risk understands and agrees that Construction Fee is the lump sum amount for CM@Risk's administrative costs for branch or home office overhead, and profit.
- 5.5.3.** CM@Risk understands and agrees that General Conditions Cost is the lump sum amount for the CM@Risk costs during the construction phase including:
- 5.5.3.1** Payroll costs for project manager for CM@Risk for work conducted at the site.
- 5.5.3.2** payroll costs for the superintendent and full-time general foremen.
- 5.5.3.3** payroll costs for other management personnel resident and working at the site.
- 5.5.3.4** workers not included as direct labor costs engaged in support (e.g., loading/unloading, clean-up, etc.).
- 5.5.3.5** costs of offices and temporary facilities including office materials, office supplies, office equipment and minor expenses.
- 5.5.3.6** costs of utilities, fuel, sanitary facilities, telephone and data services at the site.
- 5.5.3.7** costs of liability insurance premiums not included in labor burdens for direct labor costs.
- 5.5.3.8** costs of bond premiums; and
- 5.5.3.9** costs of consultants not in the direct employ of the CM@Risk or Subcontractors.
- 5.5.4.** CM@Risk understands and agrees that CM@Risk's Contingency shall mean the lump sum amount included in the GMP that is not allocated to any item in the Cost of the Work. It shall be for CM@Risk's use as may be required for costs incurred in the Work from unforeseen causes or details that could not have been anticipated by the CM@Risk at the time of the City's approval of the GMP, provided however that the CM@Risk Contingency shall not be used for changes in the Work.

5.6. **Contract Price**

<u>Guaranteed Maximum Price</u>	29,616,768
Cost of Work	\$ _____
Construction Fee	\$ <u>2,369,341</u>
General Conditions	\$ <u>2,310,108</u>
CM@Risk's Contingency	\$ <u>1,000,000</u>
Total GMP Price	\$ <u>35,296,217</u>
Owner's Contingency	\$ <u>500,000</u>
Total Contract Price	\$ <u>35,796,217</u>

(Contract Price - Written Amount)

Thirty-Five Million, Seven Hundred Ninety-Six Thousand, Two Hundred Seventeen and no/00

- 5.6.1. CM@Risk agrees that the Cost of the Work is actual costs and is a not-to-exceed reimbursable amount except for changes as otherwise provided in the Agreement.
- 5.6.2. CM@Risk understands and agrees to be at risk to cover any additional Project costs except for changes as otherwise provided in the Agreement.
- 5.6.3. CM@Risk understands and agrees that any amounts in excess of the actual Cost of the Work and/or CM@Risk's Contingency shall revert to the City except for changes as otherwise provided in the Agreement.
- 5.7.4. CM@Risk understands and agrees that the General Conditions Costs and the Construction Fee are firm fixed lump sums, but subject to adjustments as permitted in the Contract Documents.
- 5.7.5. CM@Risk understands and agrees that its Contingency is an amount it may use under the following conditions:
 - 5.7.5.1 for increases in the Cost of the Work, upon written approval from City, that are not due to changes in the Work; or
 - 5.7.5.2 for increases in General Condition Costs, upon written approval from City, that are not due to changes in the Work.
- 5.7.6. CM@Risk understands and acknowledges that its Contingency is assumed to be a direct Project cost, so it has received all markups at the time of GMP submission.
- 5.7.7. CM@Risk understands and acknowledges that when it utilizes its Contingency funds, it shall make the appropriate changes to the Schedule of Values with the next regular progress payment request. CM@Risk agrees that it shall deduct the amount of CM@Risk's Contingency funds used from its Contingency line item and add the same amount to the line item on the Schedule of Values where the funds were used. CM@Risk agrees that if its Contingency funds are used for a new line item that was not given with the original Schedule of Values, that it will be so indicated.
- 5.7.8. CM@Risk understands and acknowledges that taxes are deemed to include all sales, use, consumer, and other taxes that are applicable to purchases made for the City, legally enacted when negotiations of the GMP were concluded, whether yet effective or merely scheduled to go into effect. CM@Risk further acknowledges that taxes are actual costs and is a not-to-exceed reimbursable amount.
- 5.7.9. CM@Risk understands and acknowledges that when City authorizes use of Owner's Contingency funds, it shall make the appropriate changes to the Schedule of Values with the next regular progress payment request. CM@Risk agrees that it shall deduct the amount of Owner's Contingency funds used from the Owner's Contingency line item and add the same

amount to the line item on the Schedule of Values where the funds were used. CM@Risk agrees that if Owner's Contingency funds are used for a new line item that was not given with the original Schedule of Values, that it will be so indicated. CM@Risk further acknowledges that markups for Construction Fee and taxes shall be applied by the CM@Risk at the time that Owner's Contingency is used.

- 5.7.10. CM@Risk understands and acknowledges that the GMP is subject to adjustments made in accordance with Article 6 herein below, and by GMP amendments to this Agreement.
- 5.7.11. CM@Risk understands and acknowledges that GMP amendments are accumulative except for Contingency. CM@Risk further acknowledges that the amount of Contingency for each GMP amendment shall be negotiated separately.
- 5.7.12. CM@Risk understands and acknowledges that if the GMP requires an adjustment due to changes in the Work or other causes as allowed in the Contract Documents, the cost of such changes is determined in accordance with Article 6 herein below. CM@Risk further acknowledges that the markups that shall be allowed on such changes shall be no greater than the markups delineated in the approved GMP proposal.

Article 6 - Changes to the Contract Price and Time

6.1. Delays to the Work

- 6.1.1. CM@Risk understands and agrees that if CM@Risk is delayed in the performance of the Work that will cause a change in the date of Substantial Completion due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom CM@Risk is responsible, the Contract Times for performance shall be reasonably extended by Change Order.
- 6.1.2. The CM@Risk shall request an increase in the Contract Time by written change proposal including an estimate of probable effect of delay on progress of the Work. In the case of a continuing delay only one request is necessary. Such notice shall not be later than fourteen (14) Days after such condition or event has been encountered.
- 6.1.3. CM@Risk understands and agrees that the events that will entitle CM@Risk to an extension of the Contract Time shall include, but not be limited to, upon City's written approval and in accordance with the Contract Documents, acts or omissions of City or anyone under City's control including separate contractors (collectively Owner-Caused Delay), certain changes in the Work that result in additional scope, Differing Site Conditions, Hazardous Materials, delays by regulating agencies, Force Majeure, which shall mean herein unforeseeable circumstances that prevent someone from fulfilling a contract obligation, and unusual delays in transportation, not reasonably anticipated.
- 6.1.4. CM@Risk understands and agrees that if adverse weather conditions are the basis for a request for additional Contract Time, such requests shall be documented by data substantiating that weather conditions were abnormal for the period and that weather conditions had an adverse effect on progress of Critical Path activities required to be completed on schedule to achieve Substantial Completion.
- 6.1.5. CM@Risk understands and agrees that permitting CM@Risk to proceed to complete any Work, or any part of the Work, after the date to which the time of completion may have been extended, shall in no way act as a waiver on the part of the City of any of its legal rights or remedies to which the City is entitled at law or in equity.

6.2. Errors, Discrepancies and Omissions

- 6.2.1. CM@Risk understands and agrees that if CM@Risk observes errors, discrepancies, or omissions in the Contract Documents, it shall promptly notify the Design Professional and request clarification.
- 6.2.2. CM@Risk understands and agrees that if CM@Risk proceeds with the Work affected by said known errors, discrepancies, or omissions, without receiving such clarifications, it does so at its own risk. CM@Risk further agrees that adjustments involving such circumstances made by CM@Risk prior to clarification by the Design Professional shall be at CM@Risk's risk.

6.3. City Requested Change in Work

- 6.3.1. The City reserves the right to make, at any time during the progress of the Work, such alterations as may be found necessary or in the City's best interest.
- 6.3.2. Such alterations and changes in the Work shall not invalidate this Agreement nor release the surety and the CM@Risk agrees to perform the Work as altered, the same as if it had been a part of the original Contract Documents subject to an adjustment to the Contract Price and/or Contract Times in accordance with this Article 6.

6.3.3. The City shall request a Change Proposal from CM@Risk, and an equitable adjustment in the Contract Price and/or Contract Times shall be made in writing and shall be based upon a mutually agreed cost and time.

6.3.4. Design Professional may require minor changes in the Work that do not change the Contract Price or Contract Times using a Field Order through RPR. RPR may issue a Field Order for non-technical, administrative issues. CM@Risk shall submit a Change Proposal if it believes that a Field Order justifies an adjustment in the Contract Price or Contract Times before proceeding with the Work described in the Field Order.

6.3.5. If the City and Contractor agree that the change increases or decreases the Contract Price or the time to achieve Substantial Completion, the City will issue a Change Order within thirty (30) days of the decision to equitably adjust the Contract Price or Contract Time. The Contractor must continue the Work pending Contractor's receipt of the City's executed Change Order. Minor changes that are consistent with the scope of Work or do not affect the time for Substantial Completion will not result in a Change Order to increase the Contract Price or to extend the time to achieve Substantial Completion.

6.4. Legal Requirements

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

6.5. Change Directives and Change Orders

6.5.1. City and CM@Risk shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for a Change Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the adjustment.

6.5.2. All changes in Work authorized by Change Orders shall be performed under the conditions of the Contract Documents.

6.6. Minor Changes in the Work

6.6.1. The City shall have authority to order minor changes in Work that do not materially and adversely affect the Work, including the design, quality, performance, and workmanship required by the Contract Documents. Such changes shall be affected by written order and shall be binding on the City and CM@Risk. The CM@Risk shall carry out such written orders promptly provided that CM@Risk shall submit a Change Proposal if it determines, along with the concurrence of the RPR, that a minor change justifies an adjustment in the Contract Price or Contract Times before proceeding with the Work at issue.

6.6.2. CM@Risk may make minor changes in Work, provided, however that CM@Risk shall promptly inform City, in writing, of any such changes and record such changes, if appropriate, on the Project Record Documents maintained by CM@Risk.

6.6.3. CM@Risk understands and agrees minor changes in Work will not involve an adjustment in the Contract Price and/or Contract Times.

6.7. Contract Price Adjustments

6.7.1. CM@Risk understands and agrees the increase or decrease in Contract Price resulting from a change in the Work, Differing Site Conditions, or hazardous materials that could not have been reasonably foreseen by CM@Risk, shall be determined by one or more of the following

methods:

- 6.7.1.1. Unit prices set forth in the Agreement or as subsequently agreed to between the parties; or
- 6.7.1.2. A mutually accepted, lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by City; or
- 6.7.1.3. Cost of the Work, General conditions costs, if applicable, and Construction fee.

CM@Risk understands and agrees that if CM@Risk has reasonable knowledge of Hazardous Materials and neither Engineer or CM@Risk recommended further investigation, which causes damage or further damage to the property, than both parties shall share the costs.

- 6.7.2. CM@Risk understands and agrees that the markups that shall be allowed on such changes shall be no greater than the markups delineated in the approved GMP proposal as shown on Exhibit B.
- 6.7.3. CM@Risk understands and agrees that if an increase or decrease cannot be agreed to as set forth in Subsections 6.7.1.1 through 6.7.1.3 herein above, and City issues a Change Directive, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit, as set forth in this Agreement. CM@Risk shall maintain a documented, itemized accounting evidencing the expenses and savings associated with such changes.
- 6.7.4. CM@Risk understands and agrees that if City and CM@Risk disagree upon whether CM@Risk is entitled to be paid for any services required by City, or if there are any other disagreements over the scope of Work or proposed changes to the Work, City and CM@Risk shall resolve the disagreement pursuant to Article 8 herein below.
- 6.7.5. As part of the negotiation process, CM@Risk shall furnish City with a good faith estimate of the costs to perform the disputed services in accordance with City's interpretations.
- 6.7.6. CM@Risk understands and agrees that if the parties are unable to agree and City expects the CM@Risk to perform the services in accordance with City's interpretations, CM@Risk shall proceed to perform the disputed services, conditioned upon City issuing a written order to CM@Risk as follows:
 - 6.7.6.1. directs CM@Risk to proceed; and
 - 6.7.6.2. specifies City's interpretation of the services that are to be performed.
- 6.8. **Emergencies.** In any emergency affecting the safety of persons and/or property, CM@Risk shall act, at its discretion, to prevent threatened damage, injury, or loss. Any change in the Contract Price and/or Contract Time resulting from emergency work under this Division shall be determined as provided in this Article.

Article 7- Procedure for Payment

- 7.0. City agrees to pay CM@RISK the actual Cost of the Work and any applicable General Conditions Costs including, insurance and bonding, and CM@Risk's Construction Fee, but no more than the GMP as adjusted by any Change Orders. Payment for the specific work hereunder shall be made in accordance with payment provisions detailed below.
- 7.1. **GMP Payment Request**
 - 7.1.1. CM@Risk understands and agrees that at the pre-construction conference provided in Section 2.4 hereof, CM@Risk shall submit for City, RPR and Design Professional review and approval a Schedule of Values. The Schedule of Values will serve as the basis for monthly progress payments made to CM@Risk throughout the Work.
 - 7.1.2. CM@Risk understands and agrees that at least five (5) working days prior to the date established for a Payment Request, CM@Risk shall submit an updated Project Schedule and meet with the RPR to review the progress of the Work as reflected on the Payment Request.
 - 7.1.3. CM@Risk understands and agrees that the Payment Request shall constitute CM@Risk's representation that the Work has been performed consistent with the Contract Documents, has progressed to the point indicated in the Payment Request, and that all Work shall pass to City free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project and payment, therefore.
 - 7.1.4. CM@Risk understands and agrees that the Payment Request may request payment for stored equipment and materials, so long as CM@Risk provides evidence of said storage to City's satisfaction, if construction progress is in reasonable conformance with the approved Project Schedule.
 - 7.1.5. CM@Risk understands and agrees that for equipment and materials suitably stored at the Site, the equipment and materials shall be protected by insurance in accordance with the insurance requirements set out in Article 10 hereof, and City shall receive the equipment and materials free and clear of all liens and encumbrances upon payment, therefore. CM@Risk shall comply with City's requirements herein and all Legal Requirements on storing and protecting material on Site.
 - 7.1.6. CM@Risk understands and agrees that for materials and equipment stored off the Site and included in the Payment Request, City shall approve the storage in writing upon submission to City of evidence satisfactory to City of said storage. The material and equipment shall be stored within Bastrop County and shall be reasonably accessible for City's inspection. CM@Risk further understands and agrees that it must protect the City's interest and shall include applicable insurance, bonding, storage, and transportation to the Site. CM@Risk shall comply with City's requirements herein and all Legal Requirements on storing and protecting material off Site.
 - 7.1.7. CM@Risk understands and agrees that in addition to any other insurance requirements in Article 10 below, all bonds and insurance required for stored materials shall name the City as the loss payee and an additional insured to the extent of its interest in the stored materials.
 - 7.1.8. CM@Risk understands and agrees that it shall submit payment requests to the City on or about the 5th day of each month beginning with the first month after the construction Notice To Proceed.
 - 7.1.9. CM@Risk understands and agrees that in addition to the payment procedures described herein, CM@Risk shall submit with each application for payment a Schedule of Values

percent complete along with any receipts, invoices with check vouchers or other documentation of payment, petty cash account information, payrolls, and any and all other documentation that City shall deem necessary to support the amount requested.

7.2. Payment of GMP

7.2.1. CM@Risk understands and agrees that payment shall be made no later than thirty (30) calendar Days after the Payment Request is certified and approved, but in each case less the total of payments previously made and less amounts properly retained under Section 7.3 herein below.

7.2.2. CM@Risk understands and agrees that City shall pay CM@Risk all amounts properly due. If City determines that CM@Risk is not entitled to all or part of a Payment Request, it shall notify CM@Risk in writing within fourteen (14) Days after the date Payment Request is received by the City. The notice shall indicate the specific amounts City intends to withhold, the reasons and contractual basis for the withholding, and the specific measures CM@Risk must take to rectify City's concerns to City's satisfaction. If the parties cannot resolve said concerns, CM@Risk may pursue its rights under the Contract Documents, including those under Article 8 hereof.

7.2.3. City shall have the right to withhold from payments due CM@Risk such sums as are necessary to protect City at the City's sole discretion, against any loss or damage which may result in negligence by CM@Risk or failure of CM@Risk to perform CM@Risk's obligations under this Agreement.

7.3. Retention on GMP

7.3.1. CM@Risk understands and agrees that progress payments shall be made in an amount equal to ninety-five percent (95%) of the total earned value to date for completed Work and properly stored materials. The remaining five percent (5%) of the total earned value to date will be held as retainage. City may increase retainage to ten percent (10%) if progress on the Project is considered to be unsatisfactory. City will deposit retainage in excess of 5 percent in an interest-bearing account. Interest earned by that account will be paid to CM@Risk in accordance with Tex. Gov't Code Chapter 2252.

7.3.2. CM@Risk understands and agrees that upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, City shall release to CM@Risk all retained amounts relating, as applicable, to the entire Work or substantially completed portion of the Work, less an amount up to two- and one-half times (2.5) the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.

7.4. Final Payment

7.4.1. CM@Risk understands and agrees that after receipt of a final Payment Request, City shall make final payment sixty (60) days after the receipt by the City, provided that CM@Risk has completed all of the Work in conformance with the Contract Documents and a Final Acceptance Letter has been issued by the City.

7.4.2. CM@Risk understands and agrees that at the time of submission of its final Payment Request, CM@Risk shall provide the following information:

7.4.2.1. An affidavit, a sample of which is attached hereto as Exhibit "H", that there are no claims, obligations, or liens outstanding or unsatisfied for labor, services, material, equipment, taxes, or other items performed, furnished, or incurred for or in connection with the Work that will in any way affect City's interests. A general release executed by CM@Risk waiving, upon receipt of final payment by CM@Risk, all claims, except those claims previously made in writing to City and remaining unsettled at the time of final payment; and

7.4.2.2. Consent of CM@Risk's surety to final payment in writing.

7.4.3. CM@Risk understands and agrees that it shall not claim damages for any delay or hindrance other than a delay or hindrance for which the Contract Documents permit an adjustment to the Contract Price. CM@Risk understands and agrees that in the event of delay or hindrance that is no fault of CM@Risk, an extension of time shall be the CM@Risk's sole remedy unless the Contract Documents otherwise provide for an adjustment to the Contract Price for such delay or hindrance.

7.5. **Payments to Subcontractors or Suppliers**

7.5.1. CM@Risk understands and agrees that it shall pay its Subcontractors or suppliers within ten (10) Days of receipt of each progress payment from the City and shall provide City evidence of same in writing with the next payment application. CM@Risk shall pay for Work performed or materials supplied by each Subcontractor or supplier as accepted and approved by the City with each progress payment. In addition, any reduction of retention by the City to the CM@Risk shall result in a corresponding reduction in retention to Subcontractors or suppliers who have performed work to City's satisfaction. CM@Risk shall pay Subcontractors or suppliers the reduced retention within fourteen (14) Days of the payment of the reduction of the retention to the CM@Risk. No contract between CM@Risk and its Subcontractors and suppliers may materially alter the rights of any Subcontractor or supplier to receive prompt payment and retention reduction as provided herein.

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

7.5.2.1. provide CM@Risk with a notice of default in accordance with Article 9 hereunder.

7.5.2.2. withhold future payments including retention until proper payment has been made to Subcontractors or suppliers in accordance with these provisions.

7.5.2.3. reject all future offers to perform work for the City from the CM@Risk for a period not to exceed one year from Substantial Completion date of this Project; or

7.5.2.4. terminate this Agreement in accordance with Article 9 hereunder.

7.5.3. Intentionally omitted.

7.5.4. CM@Risk understands and agrees that should the City fail or delay in exercising or enforcing any right, power, privilege, or remedy under this Section, such failure or delay shall not be deemed a waiver, release, or modification of the requirements of this Section or of any of the terms or provisions thereof.

7.5.5. CM@Risk understands and agrees that it shall include these prompt payment provisions in every subcontract, including procurement of materials and leases of equipment for this Agreement.

7.6. **Record Keeping and Finance Controls**

7.6.1. CM@Risk understands and agrees that records of the CM@Risk's direct personnel payroll, reimbursable expenses pertaining to this Project and records of accounts between the City and CM@Risk shall be kept on a generally recognized accounting basis and shall be available for three years after Final Acceptance of the Project.

7.6.2. CM@Risk understands and agrees that City, its authorized representative, and/or the appropriate federal agency, reserve the right to audit the CM@Risk's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate Contract Documents and any Change Orders.

7.6.3. CM@Risk understands and agrees that City reserves the right to decrease Contract Price and/or payments made hereunder if, upon audit of the CM@Risk's records, the audit discloses that CM@Risk has provided false, misleading, or inaccurate cost and pricing data and/or information.

- 7.6.4. CM@Risk understands and agrees that it shall include a similar provision in all its agreements with Subconsultants and Subcontractors providing services under the Contract Documents to ensure the City, its authorized representative, and/or the appropriate federal agency, has access to the Subconsultants' and Subcontractors' records to verify the accuracy of cost and pricing data.
- 7.6.5. CM@Risk understands and agrees that City reserves the right to decrease Contract Price and/or payments made hereunder if the above provision is not included in CM@Risk's Subconsultant's and Subcontractor's contracts, and one or more Subconsultants and/or Subcontractors do not allow the City access to audit their records to verify the accuracy and appropriateness of pricing data.

Article 8- Claims and Disputes

8.1. Requests for Contract Adjustments and Relief

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

8.2. Dispute Avoidance and Resolution

- 8.2.1. The parties hereby fully agree to communicate on a regular basis regarding the Project to avoid or minimize disputes. If a dispute arises, CM@Risk and City shall each commit to resolving said dispute in an amicable, professional, and expeditious manner to avoid delays and disruptions to the Work.
- 8.2.2. CM@Risk and City agree to first attempt to resolve disputes at the field level between CM@Risk's Representative and RPR.
- 8.2.3. CM@Risk understands and agrees that if a dispute cannot be resolved through CM@Risk's Representative and RPR, CM@Risk's Senior Representative, RPR, Design Professional and City's Senior Representative, shall upon the request of either party, meet promptly, but in no case later than thirty (30) days after said request is made to resolve said dispute. Prior to any meetings between the Senior Representatives, the parties shall exchange relevant information that will assist the parties in resolving the dispute.
- 8.2.4. If said meeting fails to resolve the dispute, the CM@Risk understands and agrees that the City may elect to conduct non-binding mediation in an effort to resolve the dispute.

8.3. Duty to Continue Performance

- 8.3.1. CM@Risk understands and agrees that unless provided to the contrary in the Contract Documents, CM@Risk shall continue to perform the Work and City shall continue to satisfy its payment obligations to CM@Risk, pending the final resolution of any dispute between CM@Risk and City.

8.4. Representatives of the Parties

8.4.1. City's Representatives

- 8.4.1.1. City Manager designates the individual listed below or his/her designee as Senior

Representative ("City's Senior Representative"):

CITY'S SR. REPRESENTATIVE

Director of Engineering and Capital Project Management
1311 Chestnut/P.O. Box 427-1311
Bastrop, Texas 78602
(512) 332-8847

- 8.4.1.2. City Manager designates the individual listed below as its Representative ("City's Representative"):

CITY'S REPRESENTATIVE

Director of Public Works
1311 Chestnut/P.O. Box 427-300
Bastrop, Texas 78602
(512) 332-8960

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

- 8.4.2.1. CM@Risk designates the individual listed below as its Senior Representative ("CM@Risk's Senior Representative"), which individual has the authority and responsibility for resolving disputes under Division 8.2.3 hereof:

CM@Risk's SR. REPRESENTATIVE

Mark Tepera, Program Manager
1411 Greenway Drive
Irving, TX 75038
(972) 457-8535

- 8.4.2.2. CM@Risk designates the individual listed below as its Representative ("CM@Risk's Representative"), which individual has the authority and responsibility set forth in Division 8.2.2 hereof:

CM@Risk's REPRESENTATIVE

Thor Bensen, Senior Project Manager
1411 Greenway Drive
Irving, TX 75308
(512) 563-2669

Article 9 – Suspension and Termination

9.1. City's Right to Stop Work

9.1.1. CM@Risk understands and agrees that City may, in its sole discretion and with or without cause, order CM@Risk in writing to stop and suspend the Work. Said suspension shall not exceed one hundred and eighty (180) consecutive Days. If said suspension is an Owner-Caused Delay, CM@Risk's sole remedy shall be an extension of time if it affects the Critical Path Schedule.

9.2. Termination for Convenience

9.2.1. CM@Risk understands and agrees that upon receipt of written notice to CM@Risk, City may, in its sole discretion, and with or without cause, elect to terminate this Agreement. In such event, City shall pay CM@Risk only the direct value of its completed Work and materials supplied as of the date of termination and the reasonable costs and expenses attributable to said termination. CM@Risk understands and agrees that it shall be entitled to profit and overhead on completed Work only but shall not be entitled to anticipated profit or anticipated overhead.

9.2.2. CM@Risk understands and agrees that if the City suspends the Work for one hundred and eighty-one (181) consecutive Days or more, such suspension shall be deemed a termination for convenience.

9.2.3. CM@Risk understands and agrees that upon said termination, the CM@Risk shall proceed with the following obligations:

9.2.3.1. Stop Work as specified in the notice.

9.2.3.2. Place no further subcontracts or orders.

9.2.3.3. Terminate all subcontracts to the extent they relate to the Work terminated.

9.2.3.4. Assign to the City all right, title and interest of the CM@Risk under the subcontracts terminated, in which case the City shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

9.2.3.5. Take any action that may be necessary for the protection and preservation of the property related to the Contract that is in the possession of the CM@Risk and that the City has or may acquire an interest.

9.2.4. CM@Risk understands and agrees that CM@Risk shall submit complete termination inventory schedules no later than one hundred twenty-one (121) Days from the date of the notice of termination.

9.2.5. CM@Risk understands and agrees that City shall pay CM@Risk the following:

9.2.5.1. The direct value of its completed Work and materials supplied as of the date of termination.

9.2.5.2. The reasonable costs and expenses attributable to such termination.

9.2.6. CM@Risk understands and agrees that it shall be entitled to profit and overhead on completed Work only but shall not be entitled to anticipated profit or anticipated overhead. If City reasonably determines that the CM@Risk would have sustained a loss on the entire Work had it been completed, the CM@Risk shall not be allowed profit and the City shall reduce the settlement to reflect the indicated rate of loss.

9.2.7. CM@Risk understands and agrees that it shall maintain all records and documents for three years after final settlement. These records shall be maintained and subject to auditing as prescribed in Section 7.6 hereof.

9.3. City's Right to Perform and Terminate for Cause

9.3.1. CM@Risk understands and agrees that if the City provides the CM@Risk with a written order

to provide adequate maintenance of traffic, adequate cleanup, adequate dust control or to correct deficiencies or damage resulting from abnormal weather conditions, and CM@Risk fails to comply in a time frame specified, the City may have work accomplished by other sources, and CM@Risk shall be responsible for such costs.

- 9.3.2. CM@Risk understands and agrees that if CM@Risk persistently fails to:
- 9.3.2.1. provide a sufficient number of skilled workers, or
 - 9.3.2.2. supply the materials required by the Contract Documents, or
 - 9.3.2.3. comply with applicable Legal Requirements, or
 - 9.3.2.4. timely pay Subconsultants and/or Subcontractors, provided Contractor has been paid by Owner for such work or materials, or
 - 9.3.2.5. perform the Work with promptness and diligence to ensure that the Work is completed within the Contract Times, as such times may be adjusted, or
 - 9.3.2.6. perform material obligations under the Contract Documents, City shall consider the aforementioned an Event of Default ("Event") and may, following a period for CM@Risk to cure such Event as specified herein, in addition to any other rights and remedies provided in the Contract Documents or by law, exercise its rights set forth in Divisions 9.3.3 and 9.3.4 herein below.
- 9.3.3. CM@Risk understands and agrees that upon the occurrence of an Event as set forth in Division 9.3.2 herein above, City shall provide written Notice of Event of Default to CM@Risk that it intends to terminate this Agreement unless the Event cited is cured, or CM@Risk commences to cure within seven (7) Days of CM@Risk's receipt of such notice.
- 9.3.4. CM@Risk understands and agrees that if it fails to cure, or commences to cure said Event, then City shall give a second written Notice of Event of Default to CM@Risk of its intent to terminate within an additional seven (7) Day period.
- 9.3.5. CM@Risk understands and agrees that if it, within such second seven (7) Day period, fails to cure, or commences to cure, said Event, then City may declare this Agreement terminated for failure to cure an Event of Default by providing written Notice of Default to CM@Risk.
- 9.3.6. CM@Risk understands and agrees that upon declaring this Agreement terminated pursuant to Subsection 9.3.5 herein above, City may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which CM@Risk shall hereby transfer, assign and set over to City for said purpose, and may employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items.
- 9.3.7. CM@Risk understands and agrees that in the event of said termination, CM@Risk shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, the CM@Risk shall only be entitled to be paid for Work performed and accepted by the City prior to Event of Default.
- 9.3.8. CM@Risk understands and agrees that if City's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then CM@Risk shall be obligated to pay the difference to City. Said costs and expenses shall include, but not be limited to, the cost of completing the Work, including any losses, damages, costs and expense, incurred by City in connection with the procurement to complete the Project, and any other remedies afforded to City provided by law.
- 9.3.9. CM@Risk understands and agrees that if City improperly terminates the Agreement for cause, the termination for cause shall be converted to a termination for convenience, in accordance with the provisions of Section 9.2 hereof.

Article 10 - Insurance and Bonds

10.1. Insurance Requirements

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

10.1.2 CM@Risk understands and agrees that the insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement.

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

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

10.2.1 Commercial General Liability – Occurrence Form

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

- General Aggregate/for this Project \$2,000,000/\$1,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Each Occurrence \$1,000,000

The policy shall be endorsed to include the following additional insured language: "The City of Bastrop shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the CM@Risk".

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

Combined Single Limit (CSL) \$1,000,000

The policy shall be endorsed to include the following additional insured language: "The City of Bastrop shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the CM@Risk, including automobiles owned, leased, hired or borrowed by the CM@Risk".

10.2.3 Worker's Compensation and Employers' Liability

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

The policy shall contain a waiver of subrogation against the City of Bastrop.

10.2.4 Builders' Risk Insurance or Installation Floater

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

The City of Bastrop, the CM@Risk, and Subcontractors, shall be Named Insureds on the policy.

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

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

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

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

Policy shall contain a waiver of subrogation against the City of Bastrop.

CM@Risk shall be responsible for the payment of all policy premiums and deductibles.

10.3 Additional Insurance Requirements

10.3.1 The policies shall include, or be endorsed to include the following provisions:

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

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

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

10.4 Notice of Cancellation

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

10.5 Acceptability of Insurers

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

10.6 Verification of Coverage

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

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

10.6.3 All certificates required by this Agreement shall be sent directly to City's Representative. The City project/contract number and project description shall be noted on the certificate of insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Agreement at any time.

10.6.4 **If the Certificate of Insurance reflecting policy coverage and cancellation notice does not conform to the City's requirements, the CM@Risk must Submit a current insurance certificate (dated within fifteen (15) Days of the Payment Request submittal) with each Payment Request form. The Payment Request will be rejected if the insurance certificate is not submitted with the Payment Request.**

10.7 Subcontractors

10.7.1 CM@Risks' certificate(s) shall include all Subcontractors as additional insureds under the Builder's Risk policy and CM@Risk shall provide to the City separate certificates and endorsements for each Subcontractor. All coverages for Subcontractors shall be subject to the minimum requirements identified above.

10.8 Approval

10.8.1 Any modification or variation from the insurance requirements in this Contract shall be made by the City's Sr. Representative, whose decision shall be final. Said action shall not require a formal Contract amendment but may be made by administrative action.

10.9 Bonds and Other Performance Security.

10.9.1 Prior to execution of this Agreement, the CM@Risk shall provide a performance bond and a labor and materials bond, each in an amount equal to the total contract price of the GMP set forth in this Agreement.

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

10.9.3 The bonds shall be made payable and acceptable to the City of Bastrop.

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

- If one Power of Attorney is submitted, it shall be for twice the total Contract Price of the GMP.
- If two Powers of Attorney are submitted, each shall be for the total Contract Price of the GMP. Personal or individual bonds are not acceptable.

10.9.5 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract Documents, the CM@Risk shall promptly furnish a copy of the bonds or shall permit a copy to be made.

10.9.6 All bonds submitted for this project shall be provided by a company that has been rated AM Best rating of "A- or better for the prior four quarters" by the A.M. Best Company.

Article 11 - Indemnification

- 11.1. Indemnification
- 11.1.1 CM@RISK covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY to the extent directly or indirectly arising out of, resulting from or related to CM@RISK's activities under this AGREEMENT, including any acts or omissions of CM@RISK, any agent, officer, director, representative, employee, or subcontractor of CM@RISK, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this AGREEMENT, all without however, waiving any governmental immunity available to the CITY under Texas Law and without waiving any defenses of the parties under Texas Law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL NOT APPLY WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OR FAULT OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, VOLUNTEERS AND/OR REPRESENTATIVES OF CITY, UNDER THIS AGREEMENT.
- 11.1.2 It is the EXPRESS INTENT of the parties to this AGREEMENT that the INDEMNITY provided for in this section shall apply to the fullest extent permitted by applicable law. CM@RISK further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.
- 11.1.3 The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.
- 11.1.4 CM@RISK shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CM@RISK or known to CM@RISK or related to or arising out of CM@RISK's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at CM@RISK's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CM@RISK of any of its obligations under this paragraph.

Article 12 – General Provisions

- 12.1 Contract Documents**
- 12.1.1** In the event of any inconsistency, conflict, or ambiguity between or among the drawings, given dimensions shall control over scaled measurements, and large-scale drawings shall control over small-scale drawings.
- 12.1.2** In the event of any inconsistency, conflict, or ambiguity between or among Specifications and Plans, Specifications shall control over Plans
- 12.1.3** In the event of any inconsistency, conflict, or ambiguity between the Agreement and the Design Phase Contract, the Agreement shall control over the Design Phase Contract.
- 12.1.4** The headings used in this Agreement, or any other Contract Documents, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.
- 12.1.5** The Contract Documents form the entire agreement between City and CM@Risk and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.
- 12.2 Amendments.** The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.
- 12.3 Time is of the Essence.** City and CM@Risk mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.
- 12.4 Mutual Obligations.** City and CM@Risk commit at all times to cooperate fully with each other and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.
- 12.5 Cooperation and Further Documentation.** The CM@Risk agrees to provide the City such other duly executed documents as shall be reasonably requested by the City to implement the intent of the Contract Documents.
- 12.6 Assignment.** Neither CM@Risk nor City shall, without the written consent of the other, assign, transfer or sublet any portion of this Agreement or part of the Work or the obligations required by the Contract Documents.
- 12.7 Successorship.** CM@Risk and City intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.
- 12.8 Third Party Beneficiary.** Nothing hereunder or under any of the other Contract Documents shall be construed to give any rights or benefits to anyone other than the City and the CM@Risk, and all duties and responsibilities undertaken pursuant to the Contract Documents will be for the sole and exclusive benefit of City and the CM@Risk and not for the benefit of any other party.
- 12.9 Governing Law.** The Agreement and all Contract Documents shall be deemed to be made under and shall be construed in accordance with and governed by the laws of the State of Texas without regard to the conflicts or choice of law provisions thereof. Any action to enforce any provision of this Contract or to obtain any remedy with respect hereto shall be brought in the Superior Court, Bastrop County, Texas, and for this purpose, each party hereby expressly and irrevocably consents to the jurisdiction and venue of such Court.
- 12.10 Severability.** If any provision of the Contract Documents or the application thereof to any

person or circumstance shall be invalid, illegal, or unenforceable to any extent, the remainder of the Contract Documents and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

- 12.11 Compliance with Federal Laws.** CM@Risk understands and acknowledges the applicability of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989 to it. The CM@Risk agrees to comply with these laws in performing the Contract Documents and to permit the City to verify such compliance.
- 12.12 Legal Requirements.** CM@Risk shall perform all Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements. It is not the CM@Risk's responsibility to ascertain that the Construction Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if the CM@Risk recognizes that portions of the Construction Documents are at variance therewith, the CM@Risk shall promptly notify the Design Professional and City in writing, describing the apparent variance or deficiency.
- 12.13 Fair Treatment of Workers.** The CM@Risk shall keep fully informed of all Federal and State laws, County and City ordinances, regulations, codes and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any way affect the conduct of the work. CM@Risk shall at all times observe and comply with all such laws, ordinances, regulations, codes, orders and decrees; this includes, but is not limited to laws and regulations ensuring fair and equal treatment for all employees and against unfair employment practices, including OSHA and the Fair Labor Standards Act (FLSA).
- 12.14 Independent Contractor.** The CM@Risk is and shall be an independent contractor. Any provisions in the Contract Documents that may appear to give the City the right to direct the CM@Risk as to the details of accomplishing the Work or to exercise a measure of control over the Work means that the CM@Risk shall follow the wishes of the City as to the results of the Work only. These results shall comply with all applicable laws and ordinances.
- 12.15 Survival.** All warranties, representations and indemnifications by the CM@Risk shall survive the completion or termination of this Agreement.
- 12.16 Covenant Against Contingent Fees.** The CM@Risk warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, and that no member of the City Council, or any employee of the City of Bastrop has any interest, financially, or otherwise, in the firm. For breach or violation of this warrant, the City of Bastrop shall have the right to annul this Agreement without liability, or at its discretion to deduct from the Contract Price or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.
- 12.17 No Waiver.** The failure of either party to enforce any of the provisions of the Contract Documents or to require performance of the other party of any of the provisions hereof shall not be construed to be a waiver of such provisions, nor shall it affect the validity of the Contract Documents or any part thereof, or the right of either party to thereafter enforce each and every provision.
- 12.18 Notice**
- 12.18.1** Unless otherwise provided, any notice, request, instruction, or other document to be given under this Agreement by any party to any other party shall be in writing and shall be delivered in person or by courier or facsimile transmission or mailed by certified mail, postage prepaid, return receipt requested and shall be deemed given upon (a) confirmation of receipt of a facsimile transmission, (b) confirmed delivery by hand or standard overnight mail or (c) upon the expiration of three (3) business days after the day mailed by certified mail, as follows:

To City:	Fabiola De Carvalho, MIAM Director Engineering and Capital Project Management 1311 Chestnut Street Bastrop, TX 78602
To CM@Risk	Mark Tepera, Program Manager Archer Western Construction, LLC 1411 Greenway Drive Irving, TX 75306 Copy to Peter Glimco, General Counsel
Copy to: Design Professional (if applicable)	Kendall King, Project Principal Freese and Nichols, Inc. 10431 Morado Circle Austin, TX 78759

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

12.18.2 Notices Related to Payment, Bonds. Any notice, request, instruction, or other document to be given under this Agreement by any party to any other party related to payment, bonds, or other instrument securing the performance of this Agreement, including but not limited to, bid bonds, performance bonds, payment bonds, shall be in writing and shall be delivered in person or by courier or facsimile transmission or mailed by certified mail, postage prepaid, return receipt requested and shall be deemed given upon (a) confirmation of receipt of a facsimile transmission, (b) confirmed delivery by hand or standard overnight mail or (c) upon the expiration of three (3) business days after the day mailed by certified mail, as follows:

To City:	Fabiola De Carvalho, MIAM Director Engineering and Capital Project Management 1311 Chestnut Street Bastrop, TX 78602
To CM@Risk	Mark Tepera, Program Manager Archer Western Construction, LLC 1411 Greenway Drive Irving, TX 75306
Copy to: Design Professional (if applicable)	Kendall King, Project Principal Freese and Nichols, Inc. 10431 Morado Circle Austin, TX 78759

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

12.19 Equal Opportunity/Affirmative Action

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

subcontracts, job-consultant contracts of this Contract entered into by the CM@Risk.

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

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

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

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

The CM@Risk further agrees that the above two paragraphs will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled, and union labor, or who may perform any such labor or services in connection with this contract.

12.20 Confidentiality of Plans & Specifications

12.20.1 Any plans or specifications CM@Risk receives from City regarding this Project are for official use only. CM@Risk may not share them with others except as required to fulfill the obligations of this Contract.

12.20.2 All Record Documents, Shop Drawings and other plans or drawings prepared or submitted by the CM@Risk shall include the following language: "These plans are for official use only and may not be shared with others except as required to fulfill the obligations of the Agreement by and between Archer Western Construction, LLC and the City of Bastrop".

12.21 CM@Risk and Subcontractor Employee Security Inquiries

12.21.1 The parties acknowledge that security measures required in this Section are necessary in order to preserve and protect the public health, safety and welfare. In addition to the specific measures set forth below, CM@RISK shall take such other measures as it deems reasonable and necessary to further preserve and protect the public health, safety and welfare.

12.21.2 Security Inquiries. CM@Risk acknowledges that all of the employees that it provides pursuant to this Agreement shall be subject to background and security checks and screening ("Security Inquiries"). CM@Risk shall perform all such security inquiries and shall make the results available to City for all employees considered for performing work (including supervision and oversight) under this Agreement. City may make further security inquiries. Whether or not further security inquiries are made by City, City may, at its sole, absolute, and unfettered discretion, accept or reject any or all of the employees proposed by CM@Risk for performing work under this Agreement. Employees rejected by City for performing services under this Agreement may still be engaged by CM@Risk for other work not involving the City of Bastrop. An employee rejected for work under this Agreement shall not be proposed to perform work under other City contracts or engagements without City's prior written approval.

- 12.21.3 Criteria for Evaluating Security Inquiries.** Once formally adopted by City, criteria for excluding an individual from performing work under this Agreement shall be communicated by City to CM@Risk and used by CM@Risk as a factor in making its decision. Prior to such adoption, CM@Risk shall use its best judgment in making its decision.
- 12.21.4 Additional City Rights Regarding Security Inquiries.** In addition to the foregoing, City reserves the right to: (1) have an employee/prospective employee of CM@Risk be required to provide fingerprints and execute such other documentation as may be necessary to obtain criminal justice information; (2) act on newly acquired information whether or not such information should have been previously discovered; (3) unilaterally change its standards and criteria relative to the acceptability of CM@Risk 's employees and/or prospective employees; and, (4) object, at any time and for any reason, to an employee of CM@Risk performing work (including supervision and oversight) under this Agreement.
- 12.21.5 Terms of This Provision Applicable to all of CM@Risk Contracts and Subcontracts.** CM@Risk shall include the terms of this provision for employee background and security checks and screening in all contracts and subcontracts for work performed under this Agreement, including supervision and oversight.
- 12.21.6 Materiality of Security Inquiry Provisions.** The Security Inquiry provisions of this Agreement, as set forth above, are material to City 's entry into this Agreement and any breach thereof by CM@Risk may, at City's option, sole and unfettered discretion, be considered to be an Event of Default.
- 12.22 Hazardous Materials**
- 12.22.1** Unless included in the Work, if the CM@Risk encounters onsite material that he reasonably believes to contain asbestos, polychlorinated biphenyl (PCB), or other hazardous substances or materials regulated by Public Health Laws, it shall immediately stop work and report the condition to the City.
- 12.22.2** If the material is found to contain asbestos, PCB or other hazardous substances or materials regulated by Public Health Laws, the CM@Risk shall not resume work in the affected area until the material has been abated or rendered harmless. The CM@Risk and the City may agree, in writing, to continue work in non-affected areas onsite.
- 12.22.3** An extension of Contract Time and an adjustment to the Contract Price may be granted in accordance with Article 6 hereof.
- 12.22.4** The CM@Risk shall comply with all applicable laws/ordinances and regulations and take all appropriate health and safety precautions upon discovery. The City shall be deemed the generator of all Hazardous Materials at the Site and CM@Risk shall have no liability to the City or third parties for losses arising out of Hazardous Materials except to the extent CM@Risk is negligent in handling such Hazardous Materials.
- 12.23 Traffic Control.** CM@Risk shall comply with all provisions of the City of Bastrop Design Manual and any other traffic control provisions as may be provided in the technical specifications.
- 12.24 Other Requirements**
- 12.24.1 Prohibition on Contracts with Companies Engaged in Business with Iran, Sudan, or Foreign Terrorist Organizations.**
- 12.24.1.1** Tex. Gov't Code Chapter 2252, Subchapter F, prohibits the award of governmental contracts to companies engaged in business with Iran, Sudan, or foreign terrorist organizations.
- 12.24.1.2** By signing this Agreement, CM@Risk hereby certifies that it is not ineligible to be awarded this Contract under Chapter 2252, Subchapter F.

12.24.2 Prohibition on Contracts with Certain Companies that Boycott Israel

12.24.2.1 Tex. Gov't Code Chapter 2271 prohibits the award of governmental contracts to companies boycotting Israel.

12.24.2.2 By signing this Agreement, CM@Risk hereby certifies that it does not boycott Israel and will not boycott Israel during the term of this Contract.

12.1.1 Certificate of Interested Parties: Contractor shall complete and submit a Certificate of Interested Parties (Form 1295) to the City with the signed Agreement as required by Tex. Gov't Code Section 2252.908.

13 Consequential Damages. Notwithstanding any other provisions of this Agreement to the contrary and to the fullest extent permitted by law, the City and CM@Risk, on behalf of themselves, their affiliates and their directors, officers and employees, mutually waive all claims against the other for any loss of funding, loss of profits, loss of revenue, loss of opportunity, and any other special, consequential or indirect losses.

IN WITNESS WHEREOF, two (2) identical counterparts of this Agreement each of which shall for all purposes be deemed an original thereof, have been duly executed by the parties herein above named, on the date and year first above written.

ARCHER WESTERN CONSTRUCTION, LLC

By: _____

Title: _____

VP/BUSINESS GROUP LEADER

CITY OF BASTROP

By: _____

Date: _____

10/31/22

Recommended:

By: _____

(Department)

ATTEST:

City Clerk

ATTEST: (Signature and Title)

Approved by City Council:

Date:

APPROVED AS TO FORM:

City Attorney



(Corporate Seal)

[Handwritten Signature]

[Handwritten Signature]
City Clerk

[Handwritten Signature]
City Attorney

Attachments: EXHIBIT A – PROJECT DESCRIPTION
EXHIBIT B – APPROVED GMP PROPOSAL
EXHIBIT C – TECHNICAL SPECIFICATIONS
EXHIBIT D – CONSTRUCTION DRAWINGS
EXHIBIT E – SAMPLE CHANGE DIRECTIVE
FORM
EXHIBIT F – SAMPLE CHANGE ORDER FORM
EXHIBIT G – SAMPLE PAY REQUEST FORM
EXHIBIT H – SAMPLE AFFIDAVIT FOR FINAL PAYMENT OF DEBTS AND
CLAIMS

EXHIBIT A - PROJECT DESCRIPTION

The City of Bastrop is in the process of converting its water supply source from shallow alluvial wells primarily fed by the Colorado River to deep wells that draw from the Simsboro Aquifer; which will provide the City with a reliable, resilient, drinking water supply. The project consists of the following:

- ❖ A new well field and production facilities
 - Three additional wells will be needed to meet Phase 1 flows, which consist of an average production capacity of 3 MGD and a peak capacity of 6 MGD. Water collection piping and access roads will also be installed to each of the new wells.
- ❖ Groundwater treatment facilities
 - Based on water quality sampling, a WTP primarily focusing on iron and manganese removal will be needed. It will consist of chemical addition facilities housed in a chemical building and gravity filters housed in a filter building.
- ❖ Low Lift pump station
 - Once treated, water will be pumped from the filter effluent to a 0.5 MG clearwell through the Low Lift pump station
- ❖ Ground Storage Tank (clearwell)
 - 0.5 MG clearwell,
- ❖ Backwash pump station
 - Backwash pumps will pull water from the clearwell and send it through the treatment plant to clean the filters
- ❖ Transmission piping – water will be conveyed through the 24-inch diameter, 21,500 lf transmission pipeline to GSTs at the Willow Site.
- ❖ Lift Station and Force Main
 - A 21,500 lf wastewater forcemain will run along the same route as the transmission pipeline to convey wastewater generated during filter backwash and in the Filter Building to the City's wastewater collection system.
- ❖ Associated services
 - Electrical and instrumentation
 - Site development and access
- ❖ Various site improvements, paving, grading, fencing, landscaping.

EXHIBIT B – APPROVED GMP PROPOSAL

GMP 1 Proposal is made part of this agreement by reference and on file with the:

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

EXHIBIT C – TECHNICAL SPECIFICATIONS

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

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

EXHIBIT D – CONSTRUCTION DRAWINGS

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

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

EXHIBIT E – SAMPLE CHANGE DIRECTIVE FORM

Project	Simsboro Aquifer Water Treatment Plant, Well Field and Transmission Facilities	Project Number
Owner	City of Bastrop, Texas	BAS18568
Contractor	Archer Western Construction	
Const. Manager	Freese and Nichols, Inc.	
Design Professional	Freese and Nichols, Inc.	
Work Change Directive No.	Description	
Specification	Detail	
Drawing No.	Description	
<p>Make the following additions, modifications, or deletions to the Work described in the Contract Documents:</p>		
<p><i>Owner directs Contractor to proceed with Work described in this Work Change Directive. Compensation for this Work will be determined using the methods described below. Costs for the Work Change Directive may not exceed the total authorized compensation shown for this Work Change Directive shown below without authorization of the Owner by other Work Change Directives or by Change Order. Contractor is to submit a Change Proposal when impacts on Contract Price and Contract Times can be determined. A Change Order will be issued to incorporate changes in Contract Price or Contract Times.</i></p>		
<p>Basis of Compensation</p> <p><input type="checkbox"/> Unit Prices <input type="checkbox"/> Lump Sum calculated using Cost of Work provisions in the Contract</p> <p><input type="checkbox"/> Time and Materials using Cost of Work provisions in the Contract</p> <p>Compensation for this Work Change Directive may not exceed \$ _____</p>		
<p>Required Documentation</p> <p><input type="checkbox"/> Detailed cost breakdown attached showing labor, materials, equipment, and all other costs for this change</p> <p><input type="checkbox"/> Schedule attached to show impacts and justification for requested change in Contract Times</p>		
<p>Reason for Work Change Directive</p>		
<p>Recommended by Design Professional</p>		<p>Recommended by Resident Project Representative</p>
<p>_____ Name</p>	<p>_____ Date</p>	<p>_____ Name</p>
<p>Approved by Owner</p>		<p>Received by Contractor</p>
<p>_____ Name</p>	<p>_____ Date</p>	<p>_____ Name</p>
		<p>_____ Date</p>

EXHIBIT F – SAMPLE CHANGE ORDER FORM

Project	Simsboro Aquifer Water Treatment Plant, Well Field and Transmission Facilities	Project Number
Owner	City of Bastrop, TX	BAS18568
Contractor	Archer Western Construction	
Const. Manager	Freese and Nichols, Inc.	
Design Professional	Freese and Nichols, Inc.	
Change Order		
No.	_____	Date _____
Make the following modifications to the Contract Documents:		
Item	Description	Change Amount
1		\$ _____
2		\$ _____
3		\$ _____
4		\$ _____
5		\$ _____
Net Change in Contract Price this Change Order		\$ _____
Net Change in Contract Times this Change Order		_____ days
<p><i>The compensation in this Change Order is the full, complete, and final compensation for all costs Contractor may incur because of or relating to this change whether said costs are known, unknown, foreseen, or unforeseen at this time, including without limitation, any cost for delay, extended overhead, ripple or impact cost, or any other effect on changed or unchanged Work because of this Change Order. The changes in Contract Times are the complete and final adjustments for impacts from this change to the ability of Contractor to complete the Work within the Contract Times and are the only adjustments to which Contractor is entitled. All terms and provisions of the Contract Documents remain in effect except as specifically modified by this Change Order.</i></p>		
a. Original Contract Price		\$ _____
b. Previously Approved Change Order/Contract Amendment Amounts		\$ _____
c. Adjusted Contract Price (a + b)		\$ _____
d. Contract Amendment Amount		\$ _____
e. Revised Contract Price (c + d)		\$ _____
f. Percent Change in Contract Price to Date		_____ %
	Original	Previous
		Current
Substantial Completion		
Date	_____	_____
Final Completion Date	_____	_____
Recommended by Design Professional		Recommended by Resident Project Representative
_____ <i>Name</i>	_____ <i>Date</i>	_____ <i>Name</i>
Approved by Contractor		Approved by Owner
_____ <i>Name</i>	_____ <i>Date</i>	_____ <i>Name</i>
		_____ <i>Date</i>

EXHIBIT G – SAMPLE PAY REQUEST FORM

Standard AIA G702/G703 Forms to be used with additional spreadsheets included for tracking CMAR and Owner Contingencies and their usage.

EXHIBIT H – SAMPLE AFFIDAVIT FOR FINAL PAYMENT OF DEBTS AND CLAIMS

Project	Simsboro Aquifer Water Treatment Plant, Well Field and Transmission Facilities	Project Number
Owner	City of Bastrop	BAS18568
Contractor	Archer Western Construction	
Construction Manager	Freese and Nichols, Inc.	
Design Professional	Freese and Nichols, Inc.	

Contractor, in accordance with the Contract Documents, hereby certifies that, except as listed below, all obligations for all materials and equipment furnished, for all work, labor, and services performed, and for all known indebtedness and claims against Contractor for damages arising in any manner in connection with the performance of the Contract referenced above for which Owner or its property might in any way be held responsible have been paid in full or have otherwise been satisfied in full.

Exceptions
If none, write "None." Contractor must furnish a bond, acceptable to the Owner, for each exception.

By _____
(signature)

Date _____
(date signed)

Name _____
(typed or printed)

Title _____
(typed or printed)

Representing _____
(typed or printed)

Notary Attest
 Sworn to (or affirmed) and subscribed before on _____
(month, day, year)

Personally Known Produced Identification, Type and No. of ID

By _____
(notary's signature)

Name _____
(typed or printed)

Notary Public - State of _____
(typed or printed)

My commission expires _____
(expiration date)

(Notary Seal)