

101561

AN ORDINANCE

APPROVING THE DESIGN/BUILD AGREEMENT WITH ZACHRY CONSTRUCTION CORPORATION FOR CONSTRUCTION OF THE EMERGENCY OPERATIONS CENTER PROJECT LOCATED AT BROOKS CITY BASE IN COUNCIL DISTRICT 3 IN AN AMOUNT NOT TO EXCEED \$18,664,280.00; AUTHORIZING \$1,148,303.00 FOR PROJECT CONTINGENCY, AND \$275,000.00 FOR CAPITAL ADMINISTRATION COSTS; ACCEPTING A PROPOSAL AND AUTHORIZING AN AMENDMENT TO A PROFESSIONAL SERVICES AGREEMENT WITH FACILITY PROGRAMMING, LTD., DBA FACILITY PROGRAMMING AND CONSULTING IN THE AMOUNT OF \$300,300.00 FOR PHASE "C" PROFESSIONAL SERVICES FOR A TOTAL ORDINANCE AMOUNT OF \$20,387,883.00, \$17,060,580.00 OF SAID TOTAL FROM GENERAL OBLIGATION PUBLIC HEALTH AND SAFETY IMPROVEMENT BONDS AND \$3,327,303.00 FUNDED BY BEXAR COUNTY; APPROPRIATING FUNDS AND PROVIDING FOR PAYMENT.

* * * * *

WHEREAS, on August 18, 2005, through Ordinance 101223, the City Council authorized the negotiations of a design/build agreement with Zachry Construction Corporation in accordance with the proposal submitted for construction of an Emergency Operations Center; and

WHEREAS, the parties have negotiated the terms of an agreement for design and construction of the Emergency Operations Center project, **NOW THEREFORE**,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager or his designee is hereby authorized to execute a design/build agreement with Zachry Construction Corporation in an amount not to exceed \$18,664,280.00. A copy of said agreement in substantial form, without Exhibits, is appended hereto and incorporated for all purposes as **Attachment A**. The proposed agreement must be executed within 45 days of signing of this Ordinance; otherwise, the agreement must be considered through a subsequent ordinance. Should an agreement be negotiated which substantially varies from the terms of the attached, the agreement must be considered through a subsequent ordinance.

SECTION 2. The proposal of Facility Programming Ltd., dba Facility Programming and Consulting for an amendment to a previously executed Professional Services Agreement in the amount of \$300,300.00 is hereby accepted. A copy of the proposal, in its substantial form, is appended hereto as **Attachment B**.

SECTION 3. The amounts of \$1,148,303.00 for Project Contingency and \$275,000.00 for Capital Administration costs are hereby authorized.

SECTION 4. The following financial adjustments area hereby authorized to effect this Ordinance:

(a) The amount of \$17,060,580.00 is appropriated in SAP fund 45805000, 2003 General Obligation Public Health and Safety Improvement Bonds, WBS **GO-00048-01-01-10** 6102100 - Interfund Transfers Out, entitled Transfer to **23-02036-90-04** of \$17,060,580.00 is authorized to be transferred to SAP fund 45099000.

(b) The budget in SAP fund 45099000, Project Definition 23-02036, Emergency Operations Center Project, shall be revised by increasing WBS element **23-02036-90-04**, entitled TRF FR WBS **GO-00048-01-01-10** , SAP GL Account 6101100 - Interfund Transfers In, by the amount of \$17,060,580.00

(c) Funds are authorized to be received from Bexar County, fund 40099000, Project Definition 23-02036, Emergency Operations Center Project, shall be revised by increasing WBS element **23-02036-90-06**, entitled TRF FR **Bexar County**, SAP GL Account 6101100 - Interfund Transfers In, by the amount of \$3,327,303.00.

(d) The amount of \$15,336,977.00 is appropriated in Fund 45099000 Project Definition 23-02036, Emergency Operations Center Project, WBS element 23-02036-05-02-01 GL 5201140 and is authorized to be encumbered and made payable to Zachry Construction Corporation, when a purchase order is issued.

(e) The amount of \$3,327,303.00 is appropriated in Fund 40099000 Project Definition 23-02036, Emergency Operations Center Project, WBS element 23-02036-05-02-01, GL 5201140 and is authorized to be encumbered and made payable to Zachry Construction Corporation, when a purchase order is issued.

(f) The amount of \$1,148,303.00 is appropriated in Fund 45099000 Project Definition 23-02036, Emergency Operations Center Project, WBS element 23-02036-05-06, GL 5201140 and is authorized to be encumbered and made payable for Project Contingency, when a purchase order is issued.

(g) The amount of \$275,000.00 is appropriated in Fund 45099000 Project Definition 23-02036, Emergency Operations Center Project, WBS element 23-02036-01-04, GL 5402010 and is authorized to be encumbered and made payable for Design Capital Administration Cost, when a purchase order is issued.

(h) The amount of \$300,300.00 is appropriated in Fund 45099000 Project Definition 23-02036, Emergency Operations Center Project, WBS element 23-02036-01-02, GL 5201100 and is authorized to be encumbered and made payable for Design Cost, when a purchase order is issued.

SECTION 5. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager, or his/her designee, correct allocation to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 6. This ordinance shall be effective on the 30th day of October 2005.

PASSED AND APPROVED this 20th day of October, 2005.



M A Y O R

PHIL HARDBERGER

ATTEST:

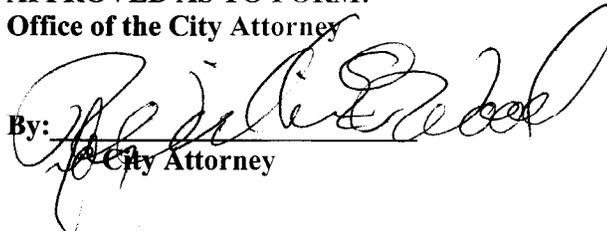


City Clerk

APPROVED AS TO FORM:

Office of the City Attorney

By:



City Attorney

Agenda Voting Results

Name: 7.
Date: 10/20/05
Time: 10:10:25 AM

Vote Type: Multiple selection

Description: An Ordinance authorizing the City Manager or his designee to enter into an Agreement for Design/Build Services with Zachry Construction Corporation in an amount not to exceed \$18,664,280.00; authorizing \$1,148,303.00 for project contingency, and \$275,000.00 for capital administration cost; accepting a proposal and authorizing an amendment to a professional services agreement with Facility Programming, Ltd., dba Facility Programming and Consulting in the amount of \$300,300.00 for Phase "C" professional services, for a total amount of \$20,387,883.00, \$17,060,580.00 of which is available from the 2003-2007 General Obligation Public Health and Safety Improvement Bonds and \$3,327,303.00 funded by Bexar County, in connection with the Emergency Operations Center (EOC) Project, located at Brooks-City Base in District 3; appropriating funds and providing for payment. [Presented by Thomas Wendorf, Director, Public Works; Melissa Byrne Vossmer, Assistant City Manager]

Voter	Group	Status	Yes	No	Abstain
ROGER O. FLORES	DISTRICT 1		x		
SHEILA D. MCNEIL	DISTRICT 2		x		
ROLAND GUTIERREZ	DISTRICT 3		x		
RICHARD PEREZ	DISTRICT 4		x		
PATTI RADLE	DISTRICT 5		x		
DELICIA HERRERA	DISTRICT 6		x		
ELENA K. GUAJARDO	DISTRICT 7		x		
ART A. HALL	DISTRICT 8		x		
KEVIN A. WOLFF	DISTRICT 9		x		
CHIP HAASS	DISTRICT_10		x		
MAYOR PHIL HARDBERGER	MAYOR		x		

**AGREEMENT BETWEEN CITY OF SAN ANTONIO AND
DESIGN-BUILD CONTRACTOR FOR EMERGENCY
OPERATIONS CENTER**

ATTACHMENT A (without supplements and exhibits)

**AGREEMENT BETWEEN CITY OF SAN ANTONIO AND DESIGN-BUILD CONTRACTOR
FOR EMERGENCY OPERATIONS CENTER**

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**AGREEMENT BETWEEN CITY OF SAN ANTONIO AND
DESIGN-BUILD CONTRACTOR FOR EMERGENCY OPERATIONS CENTER**

This Agreement is made as of _____, 2005 (the "Effective Date"), by and between The Owner: City of San Antonio, Municipal Plaza Building, 114 West Commerce, San Antonio, Texas 78205, and Design-Build Contractor, Zachry Construction Company, for Design and Construction of the Emergency Operations Center ("Emergency Operations Center," "EOC" or "Project").

The Owner and the Design-Build Contractor agree as follows:

**ARTICLE 1
SCOPE OF WORK**

1.1 The Design-Build Contractor acknowledges it has fiduciary obligations to the Owner in the performance of the Agreement, and has overall responsibility for, and shall provide, completion of the Design Services and all Construction Services as well as furnish all materials, equipment, tools and labor as necessary or reasonably inferable to complete the Project, or any phase of the Project, in accordance with the Owner's requirements and the terms of this Agreement.

**ARTICLE 2
CONTRACT DOCUMENTS**

2.1 The Contract Documents consist of:

- o This Agreement and all exhibits thereto;
- o All Change Orders issued after the Effective Date of this Agreement;
- o The Drawings and Specifications developed by Design-Build Contractor and accepted by Owner;
- o The Drawings and Specifications developed or prepared by Owner's employees and/or independent consultants, if any;
- o Project Manuals developed for the design or construction of the Project; and
- o Any other documents listed in this Agreement including the Request for Qualifications, Request for Proposal, proposal and contract calculations.

2.2 The Contract Documents form the entire and integrated contract ("Contract") between Owner and Design-Build Contractor and supersede all prior negotiations, representations or agreements, written or oral, prior to the Effective Date of this Agreement.

**ARTICLE 3
DEFINITIONS**

3.1 The terms, words and phrases used in the Contract Documents shall have the meanings given in the General Conditions and Supplementary Conditions and as follows:

3.1.1 "Design-Build Contractor" means the legal entity that executes the Agreement to provide Design and Construction Services for the Project.

3.1.2 "Direct Salary Expense" or "DSE" means the actual gross salary, expressed on an hourly wage basis, of Design-Build Contractor's employees and consultants directly engaged on the Project. For DSE purposes, Design-Build Contractor's employees include, but are not limited to, architects, officers, principals, engineers, designers, job captains, draftspersons, and specification writers, who are performing consultation, research or

design, or who are producing drawings, specifications, plans, or other documents pertaining to the Project, or who are performing services that are directly attributable to and necessary for the Project. These individuals/positions are identified by the Design-Build Contractor in Exhibit "A" to this Agreement.

3.1.3 "Architect/Engineer DSE Multiplier" means the amount by which an approved Direct Salary Expense (DSE) charge is increased to compensate Design-Build Contractor's design component for its indirect employee expenses, overhead and profit. Indirect employee expenses include, but are not limited to mandatory or customary fringe benefits and employee benefits such as employer paid insurance, sick leave, holidays, vacation, pensions and similar contributions and other salary additions such as bonuses. Overhead expenses include, but are not limited to, home office expenses, and salaries of bookkeepers, secretaries, clerks, and the like. The DSE Multiplier must be agreed to by the parties in advance of any DSE charge.

3.1.4 "Construction DSE Multiplier" means the amount by which an approved Direct Salary Expense (DSE) charge is increased to compensate Design-Build Contractor's construction component for its indirect employee expenses. The Construction DSE Multiplier covers only the statutory amounts (such as FICA, Medicare etc.), employer paid insurance and vacation, holiday and sick leave only without any other expenses such as bonuses, overhead such as training, automobiles and reimbursable expenses, etc... This DSE Multiplier shall be used for all labor associated with the General Conditions. The Construction DSE Multiplier must be agreed to by the parties in advance of any DSE charge.

3.1.5 "Contract General Conditions" means the additional contract provisions described in Exhibit "B", General Conditions, and Exhibit "C", Supplementary Conditions.

3.1.6 "Design-Build Contractor's General Conditions" are the allowable costs for managing the construction in the field.

3.1.7 "Project Architect" means the professional architect or engineer employed by the Design-Build Contractor to perform all or part of the Design Services in accordance with the Contract. The Project Architect and its professional consultants must be qualified to perform the Design Services and licensed in the State of Texas in their respective professions and in compliance with all applicable laws.

3.1.8 "Design-Build Budget Limitation" or "DBBL" means the Owner's established upper cost limit, or construction budget, for the Project. DBBL includes all costs for pre-design services, schematic design, design development, construction documents, construction administration, general conditions, cost of work, contingency, and fee for the Design-Build Contractor and all of his vendors, suppliers, and subcontractors. The Design-Build Contractor is obligated to meet all contract conditions while designing and constructing the Project within the DBBL.

3.1.9 "Subcontractor" means a person or entity that has an agreement with the Design-Build Contractor to perform any portion of the Work.

3.1.10 "Work" all services, labor, materials, supplies, and equipment which are required or reasonably inferable to complete the Project in strict accordance with the requirements of the Contract Documents. Work includes, but is not limited to, the Design Services, the GMP, the Construction Services, and any additional services and other services required. The term "reasonably inferable" takes into consideration the understanding of the parties hereto that not every detail will be shown on the Drawings and included in the Specifications.

3.1.11 "Owner" means the owner of the Emergency Operations Center which will be jointly owned by the City of San Antonio and County of Bexar. All references to the term Owner shall mean the City of San Antonio and County of Bexar unless stated otherwise. The parties recognize the County of Bexar as being a third party beneficiary to this Agreement.

3.1.12 "Construction Cost Limitation" or "CCL" means the maximum monetary amount payable to the Design-Build Contractor for all construction phase services, materials, labor, and other work required for

the completion of the Work in accordance with the Contract Documents. The CCL includes, without limitation, the General Conditions costs, the Cost of the Work, the Construction Phase Fee and the Design/Build Contractor's contingency. The CCL may be adjusted by the parties for changes in the scope of the Project before or after acceptance of the GMP. The CCL does not include the Design-Build Contractor's pre-construction phase fee, or Owner's contingency or Owner's special cash allowance.

ARTICLE 4

DESIGN SERVICES

4.1 GENERAL RESPONSIBILITIES

4.1.1 Design-Build Contractor shall designate in writing a representative who is responsible for the day-to-day management of the Design Services. The designated representative shall be the Owner's primary contact during the Design Services Phase and shall be available as required for the benefit of the Project and the Owner. The designated representative shall be authorized to act on behalf of, and to bind, the Design-Build Contractor in all matters including signatory authority for Pay Applications and Change Orders. The designated representative shall not be changed without advance written approval from the Owner, which approval shall not be unreasonably withheld.

4.1.2 Design-Build Contractor shall enter into separate agreements with a Project Architect and other qualified professionals as required for performance of the Design Services. Design-Build Contractor certifies that the Project Architect and all other professional consultants have been or will be selected on the basis of competence and qualifications pursuant to Texas Local Government Code Section 272.119 and all other applicable laws. Design-Build Contractor shall not perform any architectural or engineering services directly unless Design-Build Contractor is licensed in Texas to perform such services. All drawings, specifications, and other design documents shall bear the seal of the licensed professional who prepared them in accordance with the applicable laws and regulations of the State of Texas. Design-Build Contractor shall not subcontract any of the design to its construction subcontractors except for shop drawings or technical submittals as required by the specifications.

4.1.3 Design-Build Contractor shall be solely responsible for all obligations to the Project Architect and shall pay for the services of the Project Architect and all other professional service providers out of the fees for this Agreement. However, the Owner shall be identified as an intended beneficiary in all such agreements and the Project Architect and all other professional service providers shall acknowledge that they owe a duty of professional care to the Owner for the Design Services provided for the Project. Nothing in this Agreement shall create any contractual obligation from the Owner to the Project Architect or other design professionals not hired directly by the Owner.

4.1.4 The Design-Build Contractor shall be responsible for managing the Design Services so as to insure that the Project, as designed, can be constructed for an amount that is within the CCL of the DBBL and will achieve the energy and operational savings required by the Contract. The obligation to design the Project so as to achieve the Program objectives of scope and cost shall continue through completion and acceptance of Construction Documents. Any adjustment to the scope or quality considered necessary to comply with the CCL or the Program during the Design Phase shall be mutually agreed upon and shall be considered normal to that process.

4.1.5 The Design-Build Contractor shall submit the names of all proposed consultants for Design Services, including the Project Architect and any of its consultants, for approval by the Owner, which approval shall not be unreasonably withheld. The Design-Build Contractor shall provide the Owner with a copy of the fully executed contract or agreement authorizing services by any such consultant. All such contracts shall provide that the consultants are bound to Design-Build Contractor in the same manner and to the same extent as Design-Build Contractor is bound to Owner.

4.1.6 The Design Services shall incorporate current technology as appropriate and acceptable to the Owner.

4.1.7 The Design-Build Contractor shall establish constructability and value engineering review programs and reporting that conforms to accepted industry practices to identify and document project cost and schedule savings. The Design-Build Contractor shall report project constructability status monthly. The report shall be part of the monthly project status review. The reporting requirements shall continue throughout the duration of the Project.

4.1.8 The Design-Build Contractor agrees to meet prevailing standards of care with respect to the sufficiency and completeness of all Design Services performed. All drawings, specifications, and other information furnished or provided by Design-Build Contractor shall be free from material errors and omissions. Approval or acceptance of any Design Services by Owner shall not in any way release Design-Build Contractor from any duty, responsibility or liability for such services, it being understood that Owner is at all times relying upon Design-Build Contractor's skill and knowledge in performing the Design Phase Services.

4.1.9 Owner shall have the right to reject any defective Design Services or other defective Work on the Project of which Owner becomes aware and Design-Build Contractor shall promptly correct any such defect at Design-Build Contractor's expense. Should any portion of the Project Work be damaged or defective due to an error or omission in the Design Services, including errors or omissions in any plans, drawings, specifications, and other construction document materials prepared or furnished by Design-Build Contractor, Design-Build Contractor shall promptly correct any such damage or defect at no additional cost to the Owner. Should the Design-Build Contractor refuse or neglect to correct any such damage or defect within a reasonable time after notice, Owner may cause the damage or defect to be corrected and Design-Build Contractor shall reimburse Owner for all expenses incurred to correct the damage or defect on demand.

4.1.10 Owner may elect, at its option, to construct the Project in different phases. Such phases may or may not overlap. Design-Build Contractor shall perform Design Services in packages as appropriate to each phase of construction which may result in different schedules and reviews for the completion of each design phase and for each phase of planned construction. The Owner may elect, at its option, to establish a different CCL for each such phase. In any event, the Design-Build Contractor shall be responsible to meet the Project's Schedule.

4.1.11 The Design-Build Contractor's Preconstruction Phase Services are those services described in Sections 4.2 through 4.8, for which compensation is provided as the Preconstruction Phase Fee amount in this Agreement.

4.1.12 The Design-Build Contractor shall not proceed to any subsequent stage of Design Services until Owner has authorized Design-Build Contractor to proceed in writing, except at the Design-Build Contractor's sole financial risk.

4.2 PRE-DESIGN SERVICES PHASE

4.2.1 The Design-Build Contractor shall provide a preliminary evaluation of the Owner's Design Criteria (if any), Program.

4.2.2 The Design-Build Contractor shall visit the Site to become sufficiently familiar with any existing facilities, systems and conditions to insure that the Project as designed will functionally interface with any existing conditions.

4.2.3 The Design-Build Contractor shall review all laws and local jurisdiction regulations applicable to the design and construction of the Project and advise the Owner if any program requirement may cause a violation of such laws.

4.3 CONSTRUCTION DOCUMENTS PHASE

4.3.1 Based on the approved Design Development Documents, any further adjustments to the Facility Program, the CCL and the GMP, the Design-Build Contractor shall prepare Construction Documents consisting of Drawings and Specifications and submit them to the Owner for approval. The Construction

Documents shall set forth in detail the requirements for construction of the Project. The Construction Documents shall provide for the construction of the Project within the CCL.

4.3.2 The Construction Documents shall be consistent in all material respects with the design presented in the Request for Proposal process and Design-Build Contractor's prior design proposals to Owner and within the approved GMP.

4.3.3 The Design-Build Contractor shall advise the Owner regarding construction phasing and scheduling, the construction contract time period, and such other construction conditions considered appropriate for the Project.

4.3.4 The Design-Build Contractor shall assist and advise the Owner in connection with the Owner's responsibility and procedures for obtaining approval of authorities having jurisdiction over the Project.

4.3.5 The Design-Build Contractor shall furnish and deliver to the Owner all requested complete printed sets of Construction Documents.

4.3.6 Following Owner's approval of the Construction Documents, Design-Build Contractor shall deliver to the Owner Computer-aided Design ("CAD") system copies of the Construction Documents in the format and media specified by the Owner, plus one (1) set of reproducible and one (1) blue line set, duly sealed.

4.3.7 Following Owner's approval of the Construction Documents, Design-Build Contractor shall not be entitled to any adjustment in the approved GMP except for changes in Project scope or quality which materially increase or decrease the cost to construct the Project or the time required to construct the Project, that are ordered by Owner in writing in accordance with the General Conditions (B) and Supplementary Conditions (C).

4.4 CONSTRUCTION COST ESTIMATES

4.4.1 The Design-Build Contractor shall prepare and provide detailed construction cost estimates in a form acceptable to the Owner with the plans and specifications submitted for review at the completion of all required review stages of the Construction Documents Phase. These cost estimates shall affirm the expected (or guaranteed) construction cost of the Project to the Owner in writing.

4.4.2 Should any construction cost estimate exceed the CCL, the Owner shall either increase, the limitation to accommodate the increase or direct the Design-Build Contractor to revise the design to bring the estimated cost within the CCL should any construction cost estimate fall significantly below the CCL, the Owner and Design-Build Contractor shall mutually agree on changes to the Project scope or the CCL.

4.5 REVIEW DRAWINGS

4.5.1 The Design-Build Contractor, at its sole expense, shall provide Owner with ten (10) design document review sets at each review stage.

4.5.2 The Design-Build Contractor shall incorporate into the documents such corrections and amendments as the Owner requests at each phase review. Any additional cost incurred due to Design-Build Contractor's failure to incorporate Owner's requested corrections and amendments shall be born by the Design-Build Contractor.

4.5.3 Design-Build Contractor shall identify to Owner in writing anything in Design-Build Contractor's drawings and specifications and any drawings, plans, sketches, instructions, information, requirements, procedures, requests for action, and other data supplied to Design-Build Contractor (by Owner or any other party) that Design-Build Contractor regards as unsuitable, improper, or inaccurate in connection with the purposes for which such documents or data are furnished. Design-Build Contractor shall be solely responsible for the use of such documents or data unless Design-Build Contractor advises Owner in writing that in its opinion such documents or data are unsuitable, improper, or inaccurate and Owner instructs the Design-Build Contractor in writing to proceed in accordance with the documents or data as originally given.

4.5.4 The Design-Build Contractor shall pay all costs for plans, specifications and other design and construction documents used by the Design-Build Contractor and its consultants and Subcontractors, and all

documents produced for review by the Owner, except for changes generated solely by Owner.

4.5.5 If any of the plans, specifications and other design and construction documents or other Work materials produced or used by Design-Build Contractor pursuant to this Agreement are damaged or destroyed by fire or other casualty, Design-Build Contractor shall prepare and provide Owner with new copies of any such documents or materials, at no additional cost to Owner, unless Design-Build Contractor or Owner has a complete and undamaged set thereof.

4.6 CONSTRUCTION ADMINISTRATION SERVICES

4.6.1 The Design-Build Contractor shall furnish the following Construction Administration Services as part of Construction Services, and without additional cost to Owner.

4.6.2 The Project Architect, and its consultants, shall inspect the Project Site at intervals appropriate to the type and stage of construction progress and as otherwise required by this Agreement to observe the progress and quality of the Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. On the basis of such onsite observations, the Project Architect shall observe the progress and quality of the Work, and shall endeavor to guard the Owner against defects and deficiencies in the Work.

4.6.3 In addition to site visits for general inspection and observation, the Project Architect shall visit the Site for specific purposes related to certification of progress payments, start-up or mock-up reviews for significant work activities and for formal inspections of the Work. The Design-Build Contractor shall provide written reports of all site visits to the Owner within five (5) business days.

4.6.4 The Design-Build Contractor shall establish and maintain a numbering and tracking system for all Project records, including changes, requests for information, submittals, and supplementary instructions and shall provide updated records at each Owner's meeting and when requested.

4.6.5 The Design-Build Contractor shall administer all regular progress and special meetings scheduled by the Owner and shall promptly provide meeting minutes to all parties within five (5) business days. The Project Architect shall attend the Design-Build Contractor's regularly scheduled planning meetings.

4.6.6 The Design-Build Contractor shall prepare an agenda for and conduct job conferences for attendance by representatives of the Design-Build Contractor, major Trade Contractors and Subcontractors, the Project Architect and Owner representatives, and prepare and distribute meeting minutes and construction status reports.

4.6.7 The Project Architect, through the Design-Build Contractor and with the approval of the Owner, shall interpret the technical requirements of the Contract Documents. The Project Architect, through the Design-Build Contractor, shall render interpretations necessary for the proper execution or progress of the Work with reasonable promptness on written request of either the Owner or the Design-Build Contractor, and shall render written recommendations to the Owner within a reasonable time on matters relating to the execution or progress of the Work or the interpretation of the Contract Documents. Interpretations and recommendations rendered by Design-Build Contractor's Project Architect in accordance with this provision shall be approved, authorized, or concurred with, by the Owner's representative prior to being utilized or relied upon in the progress of the work.

4.6.8 The Project Architect, through the Design-Build Contractor, shall provide consultation for the purpose of clarification and interpretation of the intent and scope of the Construction Documents. Project Architect's interpretations and recommendations shall be consistent with the intent of and reasonably inferable from the Contract Documents. Project Architect's interpretations shall be made in written and/or graphic form including, if necessary or appropriate, supplemental documents to amplify or clarify portions of the Construction Documents. Interpretations and recommendations rendered by Design-Build Contractor's Project Architect in accordance with this provision shall be approved, authorized, or concurred with, by the Owner's representative prior to being utilized or relied upon in the progress of the work.

4.6.9 The Project Architect shall review, recommend approval, or take other appropriate action upon the

Design-Build Contractor's submittals such as Shop Drawings, Product Data and Samples. The Design-Build Contractor shall provide to the Owner an adequate number of copies of each submittal to the Owner for review and approval..

4.6.10 The Project Architect shall, with Owner's approval, have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time, which are not inconsistent with the intent of the Contract Documents. The Project Architect shall prepare revised Contract Drawings, where appropriate, to illustrate and document the work required by the Change.

4.6.11 All proposed changes to drawings, plans and specifications, regardless of how initiated, shall be fully described in the document depicting them as to scope of work added, removed, or changed. The original copies of the Construction Documents may be revised to show such changes, provided that all such revisions shall be separately recorded on media acceptable to Owner, including, without limitation, CAD. Such revisions shall be clearly indicated and a current revision date shall be included on the reproducible copy. Changes to the specifications shall be made by consecutively numbered and dated revision addenda. All changes to design documents or specifications will be identified by date of change, revision number and other customary identification references. Areas changed on drawings will be "clouded" to show each change. Clouds designating previous changes will be removed so that only the most recent changes will be clouded. Areas changed in specifications shall be bolded, and treated in the same manner as changes on drawings.

4.6.12 The Project Architect shall participate in concealed space inspections, systems start-up inspections, Substantial Completion and Final Inspections to determine the dates of Substantial Completion and Final Acceptance. The Project Architect shall also participate in the Owner's final walk thru inspection one (1) year after Final Completion.

4.6.13 The Project Architect, through the Design-Build Contractor, shall assist the Owner in checking as-built drawings during the course of the Work and shall review final as-built documents for completeness and compliance with Contract requirements. . Final as-built drawings shall be approved, authorized, or concurred with, by the Owner's representative prior to final payment to the Contractor.

4.6.14 The Design-Build Contractor shall provide project record documents in the system and manner required by the Owner. At a minimum, project record documents shall be provided electronically in the current version of AutoCAD. The Owner may require, at its sole option, that the Design-Build Contractor store and modify contract documents using an Owner furnished document control system.

4.6.15 The Project Architect shall assist the Owner and/or Owner's consultants in preparation and administration of construction punchlists.

4.7 ADDITIONAL DESIGN SERVICES

4.7.1 Additional Services shall be provided by the Design-Build Contractor and paid for by the Owner if authorized in writing by the Owner. Prior to commencing any Additional Service, Design-Build Contractor shall submit to the Owner an Additional Services Proposal in a form acceptable to the Owner. The Additional Services Proposal shall describe in detail the nature or scope of the Additional Services, the basis upon which Design-Build Contractor believes that such services are Additional Services, the maximum amount of fees and reimbursable expenses for performance of the Additional Services, and a proposed schedule for the performance of the Additional Service. Design-Build Contractor shall proceed with the Additional Service only after written acceptance by Owner of the Additional Services Proposal.

4.7.2 Upon acceptance by Owner, each Additional Services Proposal and the services performed by Design-Build Contractor pursuant to such Additional Services Proposal shall become part of this Agreement and shall be subject to all the terms and conditions of this Agreement, as fully and completely as though the same had been included in this Agreement as a Basic Service at the original execution of this Agreement.

4.7.3 The following services are examples of what would normally be considered Additional Services:

4.7.3.1 Providing financial feasibility or other special studies other than as they relate to energy conservation and guaranteed savings, and the cost of the Project.

4.7.3.2 Providing services relative to future facilities, systems and equipment which are not intended to be constructed during the Construction Phase.

4.7.3.3 Providing coordination of Work performed by Owner's separate contractors or by the Owner's own employees, except where such work interfaces with the work of the Design-Build Contractor, such as demolition or other contractors working at the Site or adjacent sites.

4.7.3.4 Providing services in connection with the Work of separate consultants retained by the Owner.

4.7.3.5 Providing services for planning tenant or rental spaces.

4.7.3.6 Making revisions in Drawings, Specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given by the Owner or due to Changes approved by the Owner and not due to errors or omissions by the Project Architect.

4.7.3.7 Making revisions in Drawings, Specifications or other documents when such revisions are required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents.

4.7.3.8 Providing consultation concerning replacement of any Work damaged by fire or other cause during construction, and furnishing services as may be required in connection with the replacement of such Work provided that the damage was not caused wholly or in part by the Design-Build Contractor or a Subcontractor.

4.7.3.9 Providing services after Final Payment or expiration of the Warranty, whichever is later, except as otherwise required by the Contract.

4.7.3.10 Preparing to serve or serving as an expert witness at the request of the Owner in connection with any public hearing, arbitration proceeding or legal proceeding.

4.7.3.11 Providing a Hazardous Material Abatement Consultant.

4.8 TECHNOLOGY ACQUISITION

All hardware requirements set out in the RFP, and attachments thereto, are the minimum requirements. The Design-Build Contractor's product shall meet or exceed those requirements. The product selected shall meet the operational, functional, and performance requirements specified in the RFP, and attachments. Additionally, due to the rapid advancement and antiquation of technology related products, the supplied product shall be the "contemporary technical equivalent" of that specified. "Contemporary technical equivalent" shall be based on a comparison of technology at the time of publication of the specifications to the technology at the time of the first product submittal. Final product approval is at the sole discretion of the Owner.

ARTICLE 5 **GUARANTEED MAXIMUM PRICE**

5.1 Prior to the execution of this Agreement, and incorporated as Exhibit D to this Agreement is Design-Build Contractor's GMP. Design-Build Contractor certifies the GMP was prepared and includes, without caveats, a breakdown of Design-Build Contractor's estimated costs organized by trade; allowance amounts by item; contingency amounts; the Construction Phase Fee, a Contract Time and date of Substantial Completion, and other items required by the Owner.

5.2 The GMP includes a written statement describing how it was derived and prepared. The GMP specifically identifies the Drawings, Specifications and other construction documents relied on, the addenda incorporated, any exceptions to the Owner's General Conditions or Supplementary Conditions or to the terms of this Agreement, the allowances, and all clarifications and assumptions made by the Design-Build

Contractor due to the incompleteness of the Drawings and Specifications. (See Exhibits contained within Tab B of proposal submitted by Contractor.)

5.3 Design-Build Contractor warrants the GMP allows for the continued development and completion of the Drawings and Specifications which are reasonably inferable, except for material changes in scope or quality. The GMP includes "Design-Build Contractor Contingency" to allow for additional costs of the Work arising out of such development and completion, as well as bidding variations and price escalations which would not qualify as a formal Change Order. Amounts attributable to clarifications, assumptions, and further development and completion of the Drawings and Specifications shall be specified in an itemized breakdown as part of the GMP. Wherever the Design-Build Contractor has not developed a full design or specifications to fully describe a building item or system, Design-Build Contractor shall develop performance-based specifications that are included in the GMP.

5.4 The GMP and the GMP Contract Documents are intended to address all items, assumptions, costs, contingencies, schedules and other matters necessary and relevant for proper execution and completion of the Work for the GMP. The Design-Build Contractor shall provide a fully functional and operational facility as intended in the GMP. The GMP and the GMP Contract Documents are complementary, and what is required by one shall be binding as if required by all. If there is an irreconcilable conflict between or among the various documents that make up the GMP and the GMP Contract Documents, the interpretation that provides for the higher quality or quantity of materials and/or workmanship shall prevail over all other interpretations.

5.5 The GMP shall adopt and incorporate all of the terms and conditions of this Agreement and all other documents that comprise the Contract between the Owner and the Design-Build Contractor. Any exceptions to or modifications of such terms and conditions proposed by the Design-Build Contractor in the GMP shall not be effective unless they are expressly stated and conspicuously identified in the GMP and are specifically accepted and approved by the Owner.

5.6 Following execution of this Agreement, Design-Build Contractor shall be responsible for developing all Construction Documents that, when complete, the documents incorporate and address all qualifications, assumptions, clarifications, exclusions and value engineering issues contained in the GMP. The Design-Build Contractor and the Project Architect shall jointly provide to Owner monthly status reports on the progress of incorporation of all such qualifications, assumptions, clarifications, exclusions, value engineering issues and all other matters relevant to the GMP.

5.7 The Design-Build Contractor shall not be entitled to an increase in the GMP due to the absence of any detail or specification the Design-Build Contractor may require, or for any construction which may be found necessary as the Work progresses, in order to complete the construction of the Project. If an item or system is either shown or specified, all material and equipment required for the proper installation of such item or system and needed to make a complete operating installation shall be provided whether or not detailed or specified, omitting only such parts as are specifically excepted by the Owner. Design-Build Contractor is responsible for all design, including incidental designing/detailing for shop drawing purposes, except for design provided by Owner, or Owner's independent Design Consultants, if any.

5.8 Expenditures from the Design-Build Contractor Contingency Fund must be made by Change Order approved by the Owner, which approval will not be unreasonably withheld. The Change Order shall provide complete documentation, to the Owner's satisfaction, describing in detail the scope of work affected and the associated costs. These expenditures do not alter the total Contract Price. Any unused portion of the Design-Build Contingency Fund will be deducted from the Final Payment. Any balance remaining in the Design-Build Contractor Contingency Fund at the end of the Project shall be returned to the Owner by deductive Change Order.

ARTICLE 6

CONSTRUCTION SERVICES

6.1 The Construction Phase shall be deemed to commence upon the earlier of: (i) the date specified in a Notice to Proceed issued by Owner after approval of this Agreement; (ii) the issuance of a Purchase Order by Design-Build Contractor for materials or equipment for the Project after prior written authorization by Owner; or (iii) award of a subcontract in accordance with the requirements of this Contract after prior written authorization by Owner. Design Services may overlap the Construction Services phase of the Project.

6.2 Design-Build Contractor shall designate in writing a representative who is responsible for the day-to-day management of the Construction Services. The designated representative shall be the Owner's primary contact during the construction phase and shall be available as required for the benefit of the Project and the Owner. The designated representative shall be authorized to act on behalf of, and bind, the Design-Build Contractor in all matters related to Construction Services including, but not limited to, execution of progress payments, Change Orders, and Additional Service requisitions. The designated representative shall not be changed without advance written approval from the Owner. The position of designated representative is a separate position from that of resident superintendent described in the Supplementary Conditions, Article 7, Section 7.7.3.

6.3 Unless otherwise provided for in the Contract, Design-Build Contractor shall provide, or cause to be provided, and shall pay for all Design Services, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary or reasonably inferable for proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated into the Work.

6.4 The Design-Build Contractor shall be responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work. The Design-Build Contractor shall keep the Owner informed of the progress and quality of the Work.

6.5 The Design-Build Contractor shall prepare and submit a Schedule of Work for the Owner's written approval. This Schedule shall indicate the dates for the start and completion of the various phases of construction milestones, including dates when information and approvals are required from the Owner. The Design-Build Contractor shall update this Schedule at regular intervals as required by the conditions of the Work and with the written approval of the Owner.

6.6 The Design-Build Contractor warrants to the Owner that the materials and equipment provided under the Contract will be of good quality and new unless otherwise required or permitted by the Contract; that the construction will be free from faults and defects; and that the construction will conform to the requirements of the Contract. The Design-Build Contractor shall be responsible for timely correction of Work that does not comply with the Contract Documents.

6.7 The Design-Build Contractor's responsibilities for all safety precautions and programs, including environmental safety and control, in connection with the Work are set out in the Supplementary Conditions, Article 9. Design-Build Contractor shall ensure Subcontractors' compliance with the safety precautions and programs.

6.8 The Design-Build Contractors Construction Services and obligations are further described in the General and Supplementary Conditions and other Contract Documents. The Design-Build Contractors Construction Services and obligations are further described in the General and Supplementary Conditions and other Contract Documents.

ARTICLE 7

DESIGN-BUILD CONTRACTOR'S PERSONNEL AND SUBCONTRACTORS

7.1 Before execution of this Agreement and before entering into any subcontract agreements related to the Work on the Project, the Design-Build Contractor shall identify in writing to the Owner its employees,

personnel, Project Architect, and all other associated subconsultants to be assigned to the Project and the DSE hourly wage for each of them. Exhibit "A", Personnel Titles, Hourly Rates, and DSE Multipliers, has been incorporated in the Agreement for that purpose. Design-Build Contractor shall not assign to the Project or contract with any person or entity to which Owner has a reasonable objection. After approval by the Owner, Design-Build Contractor shall not remove or replace the personnel and entities assigned to the Project except with the Owner's prior written consent which shall not be unreasonably withheld. Design-Build Contractor shall promptly update the personnel list, as required.

7.2 The Design-Build Contractor shall solicit Competitive Sealed Proposals for each subcontracting and materials package issued for the Work and shall notify the Owner in advance in writing of the date it will receive such proposals. Solicitation for subcontractors and materials shall be in accordance with Small, Minority, and Women-Owned Business Outreach Plans specified in Design-Build Contractor's Proposal to Owner. Based on the Proposals, Design-Build Contractor, in cooperation with the Owner, shall identify the Proposals that provide the best value for the Project. The Design-Build Contractor shall document the actual Cost of Work at buyout as compared to the GMP, and shall report this information to the Owner immediately following receipt of Proposals for each subcontracting package. Owner shall be entitled to recover any savings realized between the GMP and the buyout price for subcontracting work, provided however, that Design-Build Contractor may use such savings to offset other buyout packages that exceed the amounts identified in the GMP, so long as the total Cost of Work proposed in the GMP does not increase.

7.3 Design-Build Contractor shall identify every Subcontractor it intends to use on the Project to the Owner for approval in writing before entering into any such subcontract. Design-Build Contractor shall not use any Subcontractor to which Owner has a reasonable objection. Design-Build Contractor shall not be required to subcontract with any Subcontractor to which it has reasonable objection. If Design-Build Contractor intends to perform any Work, other than General Conditions Work, it shall notify Owner in writing in advance. Following Owner's approval of Design-Build Contractor's Subcontractors, they shall not be changed without Owner's prior written consent, which shall not be unreasonably withheld. Design-Build Contractor shall not incur any Subcontract costs prior to issuance by Owner of a Notice to Proceed for such Work.

ARTICLE 8

OWNER'S RESPONSIBILITIES

8.1 The Owner, in the previously-issued Request for Qualifications and Request for Proposals provided a budget and Schedule for the Project. The budget included the DBBL, contingencies for changes in the Work during construction, and other costs which are the responsibility of the Owner. The Schedule set forth the Owner's plan for milestone dates and completion of the Project.

8.2 The Owner will designate an Owner's representative with authority to act on the Owner's behalf with respect to the Project. The Owner's representative shall examine the documents submitted by the Design-Build Contractor and shall render decisions pertaining thereto. Unless otherwise specifically provided for, the Owner's designated representative is the single point of contact between the Owner and the Design-Build Contractor.

8.3 The Owner, at Owner's cost, will secure the services of special consultants to develop such additional information as may be necessary for the design of the Project. The Design-Build Contractor shall provide the Owner with parameters for inclusion in the Owner's instructions to such consultants.

8.4 The Owner shall furnish all legal, accounting, auditing and insurance counseling services for itself as may be necessary for the Project.

8.5 The Owner shall examine the Design Documents submitted by the Design-Build Contractor and provide comments concerning corrections or amendments to such documents in writing to the Design-Build Contractor. The Owner may obtain independent review of the Design Documents by its own Design Consultant. The Owner may require the Design-Build Contractor to halt production during design review.

8.6 The Owner shall furnish required information and services and shall render approvals and decisions as expeditiously as is consistent with reasonable skill and care and the orderly progress of the Design-Build Contractor's services.

8.7 The Owner may designate one or more Construction Inspectors who shall be given access to the Work as requested or needed. The provision of such Inspectors by Owner shall not reduce or lessen in any respect the Design-Build Contractor's responsibilities for the Work. Design-Build Contractor shall remain fully and solely responsible for the drawings, specifications, and other contract documents furnished or provided by Design-Build Contractor, and for constructing the Project in strict accordance with the Contract Documents.

ARTICLE 9

OWNERSHIP AND USE OF DOCUMENTS

9.1 The Design-Build Contractor shall provide to the Owner the originals of the following documents: drawings, specifications and other documents or items prepared for the Project, in written reproducible form and electronic form (AutoCAD diskette) of the original design and the "record" drawings, signed and sealed by the Architect to be used by the Owner as the Owner deems necessary without violating any copyrights of the Architect. The Owner acknowledges the Architect's construction documents, including electronic files, as instruments of professional service. Nevertheless, the final construction documents prepared under this Agreement shall become the property of the Owner upon completion of the services and payment of all monies due to the Design-Build Contractor. The Owner shall not reuse or make modifications to the Construction Documents without the prior written authorization of the Design-Builder/Architect.

9.2 The Design-Build Contractor shall provide the Owner with the electronic form of the drawings, specifications and other documents prepared by the Design-Build Contractor throughout the course of the Project.

9.3 If the Contract is terminated by the Owner, at any stage of the Agreement, the Design-Build Contractor shall grant the Owner a limited license that allows the Owner to use the documents to complete the Project.

ARTICLE 10

TIME

10.1 Unless otherwise approved, the Owner and the Design-Build Contractor shall perform their respective obligations under the Contract as expeditiously as is consistent with reasonable skill and care and the orderly progress of the Work.

10.2 Times stated in the Contract Documents are of the essence. The Design-Build Contractor shall be responsible for schedule updating and reporting throughout the Project, during both Design Services and Construction Services.

10.3 Prior to commencement of Design Services, the Design-Build Contractor shall submit for the Owner's approval a detailed Schedule for the performance of the Design Services. The Design Services Schedule shall include reasonable periods of time for the Owner's review and approval of design drawings and for approval of authorities, including the City's Historic and Design Review Commission, having jurisdiction over the Project. Upon acceptance by the Owner, the Design Services Schedule shall not be modified except for good cause including but not limited to, delay in owner approval, as approved by the Owner at the Owner's sole option and discretion. The Design Services shall commence when the Owner issues a Notice-to-Proceed designating the date for commencement. The Design-Build Contractor shall complete the Design Services as set forth in the approved Design Services Schedule.

10.4 Prior to commencement of Construction Services, the Design-Build Contractor shall submit for the Owner's approval a detailed schedule for the performance of Construction Services. The Construction Phase Schedule shall include reasonable periods of time for the Owner's review and approval of submissions and for approval of authorities, including the City's Historic and Design Review Commission, having jurisdiction over the Project. The Construction Phase Schedule shall not be modified except for good cause as approved by the Owner at the Owner's sole option and discretion. The Design-Build Contractor shall provide the Owner with detailed and accurate monthly invoices which also include the following items:

- 10.4.1 A copy of the original schedule with marked up changes showing original activities and modified ones (as applicable).
- 10.4.2 Schedule changes (if any).
- 10.4.3 Schedule update – progress accomplished thus far.
- 10.4.4 Next month's activities and milestones.
- 10.4.5 Any time savings or delays experienced thus far and an explanation as to why.
- 10.4.6 A plan on how the Design-Build Contractor would recover from any delays.
- 10.4.7 Progress photos of construction activities.
- 10.4.8 Status of buy-outs against the GMP and technical submittals and shop drawings
- 10.4.9 Any safety incidents recorded for the period covered in the report.

ARTICLE 11 **PAYMENTS**

11.1 Payments for Design Services shall be made at the completion of Construction Documents or, with the Owner's approval, monthly, based on the percentage completion of Services performed within each approved phase of Design as demonstrated by work product. Design Services shall be billed separately from Construction Services and Cost of Work. Construction Administration Services shall be billed separately within the billings for Construction Services and not as a Cost of Work. All Pay Applications shall be submitted on approved forms. Billings shall accurately and completely detail Subcontractor Pay Applications and payments.

11.2 Payment for approved Additional Services and Reimbursable Expenses shall be made monthly based upon demonstrated work product, upon presentation of the Design-Build Contractor's statement of services rendered or expenses incurred.

11.3 With each Pay Application, Design-Build Contractor shall submit all receipts, invoices with check vouchers, or other evidence of payment, petty cash account information, payrolls, and any and all other evidence which Owner shall deem necessary to support the amount requested. With regard to Pay Applications for materials, Design-Build Contractor shall provide copies of bills of lading, invoices, delivery receipts or other evidence of the location and value of such materials.

11.4 The Design-Build Contractor's Construction Services Fee shall be shown as a separate line item on the Schedule of Values. In determining the percentage of completion, Design-Build Contractor shall use the lesser of the total percentage of the Work actually completed for each classification on the Schedule of Values, or the percentage of the GMP allocable to that item which has been actually incurred and demonstrated as an expense by the Design-Build Contractor. The amount requested for such fee shall be in the same proportion to the total fee as the amount requested for the Cost of the Work relative to the total Cost of the Work used in deriving the then current GMP.

11.5 Retainage, as specified in the Supplementary Conditions, Article 13, Section 13.5, will be applied to the entire amount requested, including the Cost of the Work and the Design-Build Contractor's Construction Phase Fee.

11.6 Each Schedule of Values submitted shall maintain the originally established value for each work classification line item or Subcontractor, and shall contain any revisions to costs or cost estimates for each such classification or Subcontractor. The format and tracking method of the original Schedule of Values, and of all updates thereto, shall be subject to the approval of Owner. The Owner may require that Payment Applications be submitted electronically. If at any time, the amount shown on the Schedule of Values exceeds the GMP allocable to that classification or Subcontractor, then the amount payable to Design-Build Contractor by the Owner shall be reduced by the amount of such excess. At all times, the estimated cost of performing the uncompleted and unpaid portion of the Work (including Design-Build Contractor's fee) shall not exceed the unpaid balance of the GMP (less retainage on Work previously completed).

11.7 Payments to Subcontractors included in a Payment Application shall not exceed the percentage of Work allocable to that Subcontractor for each respective Schedule of Values classification which has been actually completed.

11.8 Owner shall have the right to reduce any Payment Application by such sums as are necessary to protect Owner against any loss or damage which may result from negligence by Design-Build Contractor or failure of Design-Build Contractor to perform Design-Build Contractor's obligations under the Contract and as provided under Supplementary Conditions, Article 13, Section 13.6.

11.9 Design-Build Contractor's Application for Final Payment shall not be made until Design-Build Contractor delivers to Owner a complete release of all liens arising out of this Agreement and an affidavit that the release includes and covers all materials and services over which Design-Build Contractor has control and for which a lien could be filed. Alternatively, Design-Build Contractor may furnish a bond satisfactory to Owner to indemnify Owner against any lien. If any lien remains unsatisfied after all payments are made, Design-Build Contractor shall refund to Owner all monies Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees, and Owner shall have all remedies at law and in equity.

11.10 Owner shall have no obligation to make Final Payment until a final accounting of the Cost of the Work has been submitted by Design-Build Contractor and has been verified by Owner. The aggregate total of payments to Design-Build Contractor shall not exceed the total of the actual Cost of the Work as verified by Owner from Design-Build Contractor's final accounting, plus the applicable Design-Build Contractor's Construction Fee, as certified for payment in accordance with the Contract. In no event shall the aggregate sum of construction payments to the Design-Build Contractor exceed the GMP. If payments made to Design-Build Contractor exceed that which is due and owing, then Design-Build Contractor shall promptly refund such excess to Owner. See Supplementary Conditions, Article 16, Final Acceptance and Payment, for additional terms relating to same.

11.11 Notwithstanding any other contractual provision to the contrary, Owner shall not be obligated to make any payment to the extent necessary to protect the Owner from loss (whether a progress payment or Final Payment) to Design-Build Contractor under any of the following circumstances:

11.11.1 If the making of such payment would be materially prejudicial to the Owner;

11.11.2 Design-Build Contractor is in breach or default under the Contract;

11.11.3 Any part of such payment is attributable to services which are not performed in accordance with the Contract; provided, however, such payment shall be made as to the part thereof attributable to services which were performed in accordance with the Contract;

11.11.4 Design-Build Contractor has failed to make payments promptly to Subcontractors, consultants or other third parties used in connection with any services for which Owner has made payment to Design-Build Contractor;

11.11.5 If Owner, in its good faith judgment, determines that the portion of the compensation then remaining unpaid will not be sufficient to complete the services in accordance with this Agreement; or

11.11.6 Design-Build Contractor has persistently failed to meet schedule requirements.

11.12 Nothing contained herein shall require the Owner to pay the Design-Build Contractor an aggregate amount for Construction Services that exceeds the GMP or to make any payment if, in the Owner's belief, the cost to complete the Work would exceed the GMP less previous payments to Design-Build Contractor.

11.13 No partial payment made hereunder shall constitute, or be construed to constitute, final acceptance or approval of that part of the services to which such partial payment relates, or a release of Design-Build Contractor from any of its obligations hereunder or liabilities with respect to such services.

11.14 Design-Build Contractor shall promptly pay all bills for labor and material performed and furnished by others in connection with the performance of the services.

11.15 Owner shall have the right to verify and audit the details set forth in Design-Build Contractor's billings, certificates, accountings, cost data, and statements, either before or after payment, by: (1) inspecting the books and records of Design-Build Contractor during normal business hours; (2) examining any reports with respect to this Project; (3) interviewing Design-Build Contractor's business employees; (4) visiting the Project Site; and (5) other reasonable action. Design-Build Contractor's records shall be kept on the basis of generally accepted accounting principles, but no less than four (4) years after final completion of the project.

11.16 The acceptance by Design-Build Contractor of Final Payment under this Agreement shall constitute a full and complete release of Owner from any and all claims, demands, and causes of action whatsoever which Design-Build Contractor or Design-Build Contractor's successors have or may have against Owner under the provisions of this Agreement except those previously made in writing and identified by Design-Build Contractor as unsettled at the time of the final request for payment.

11.17 Owner's ability to compensate the Design-Build Contractor will be dependent upon there being no material adverse change in either the City of San Antonio's or County of Bexar's bonding capacity or their ability to sell the General Obligation Bonds approved by voters in 2003 upon terms reasonably acceptable to the City and the County.

11.18 Owner, as public entities, has a duty to document the expenditure of public funds. Design-Build Contractor acknowledges this duty on the part of the Owner. To this end, Design-Build Contractor understands that the failure of Design-Build Contractor to substantially comply with the submittal of the statements and documents, as required herein, shall constitute a waiver by the Design-Build Contractor of any portion of the compensation for which Design-Build Contractor did not supply such necessary statements and/or documents. It being understood by the parties that the requirements hereof are intended to emphasize the necessity of providing proper documentation for payment because of the Owner's accountability to the public and not as a means to withhold payments from Design-Build Contractor for inconsequential errors in the submission of documentation. Should the Owner notice a deficiency in a statement or document submitted by Design-Build Contractor, Owner shall notify Design-Build Contractor of the deficiency and allow Design-Build Contractor to correct the deficiency and resubmit the affected statement or document.

ARTICLE 12

REIMBURSABLE EXPENSES

12.1 Reimbursable Expenses are in addition to Compensation for Basic and Additional Services, and include actual out-of-pocket reasonable expenditures made by Design-Build Contractor and its employees and consultants incurred solely and directly in connection with the Work for the following items:

12.1.1 Fees paid for securing approval of authorities having jurisdiction over the Project.

12.1.2 Professional models. One (1) final color rendering shall be provided to Owner at completion of the Project and shall be included in the GMP. Progress 3D CADD models shall be included in the Design fee.

12.2 Owner shall not pay a mark-up on any reimbursable expenses. Design-Build Contractor shall submit receipts for all reimbursable expenses along with any reimbursement request.

ARTICLE 13 **COST OF THE WORK**

13.1 The term "Cost of the Work" means costs which the Design-Build Contractor actually and necessarily incurs constructing the Work in strict compliance with the Contract Documents. Cost of the Work includes the cost of Design-Build Contractor's General Conditions for the Work, the cost of the Work itself, and the costs of the Design-Build Contractor's Contingency. The costs associated with Design Services and Construction Administration are not Cost of the Work items within the terms and conditions of this Contract.

13.2 References in the General Conditions and Supplementary Conditions relating to adjustments in "cost" or "costs" refer to adjustments to the Cost of the Work.

13.3 COST OF THE WORK INCLUDES:

13.3.1 Labor and Administrative:

Reasonable and customary wages or salaries of Design-Build Contractor's supervisory and administrative personnel who are stationed full-time at the Site with the Owner's prior consent. The Design-Build Contractor designated representative's salary shall be included in the General Conditions costs. The Superintendent's salary and other full-time personnel stationed at the Site shall be included in the General Conditions costs, with an associated breakdown by personnel category.

Costs paid or incurred by Design-Build Contractor for labor costs arising out of taxes, insurance, and benefits which are (i) required by law; (ii) required by collective bargaining agreements; or (iii) otherwise customary, so long as such costs are based on wages and salaries which are properly included in the Cost of the Work as defined herein.

Reasonable and customary travel expenses of Design-Build Contractor's personnel incurred directly and solely in support of the Project and approved in advance in writing by Owner.

Costs of long-distance telephone calls, telegrams, postage, package delivery and courier service, telephone service, and reasonable and customary petty cash expenses of Design-Build Contractor's jobsite office, incurred directly and solely in support of the Work, and all incurred at the site.

13.3.2 Materials, Equipment, Tools, Rentals:

Costs of materials and equipment to be incorporated into the Work, including transportation charges, and a reasonable and customary allowance for waste and spoilage. Owner shall be entitled to take possession of excess materials not incorporated into the Work, or at Owner's option, Design-Build Contractor shall sell such materials and deduct the gross proceeds from the Cost of the Work.

Costs of materials, supplies, temporary facilities, equipment, and hand tools except for those customarily owned by construction workers, all provided at the site by Design-Build Contractor, if such items are fully consumed in the construction of the Work. Cost for used items shall be based on fair market value and may include costs of transportation, installation, minor maintenance costs, and removal. If the item is not fully consumed, then the cost shall be based on cost of the item minus its fair market salvage value.

Rental charges for temporary facilities, equipment, and hand tools except for those customarily owned by construction workers, all provided at the site by Design-Build Contractor, and may include transportation, installation, and minor maintenance costs, and removals all so long as Design-Build

Contractor obtains Owner's prior written approval of such items and the rental rates. If tools, machinery or construction equipment are rented from the Design-Build Contractor, the amount of such rental, the rate of such rentals, including the freight and delivery cost thereon and all operating expenses except labor, shall be determined by application of "Contractor's Equipment Cost Guide," latest edition published by the AGC, but shall in no event be higher than the prevailing competitive rates paid in the locality for similar equipment. In no event shall the aggregate rental cost exceed the purchase price and maintenance cost of the item. In the event equipment can be purchased for an amount comparable to the aggregate rental cost of said equipment, Design-Build Contractor shall purchase such equipment and turn it over to Owner upon final completion of the Work, or, at Owner's option, credit to the Owner with the amount of the fair market resale value.

Site debris removal and disposal costs in accordance with all applicable laws and regulations.

Subcontracts: Payments made to Subcontractors by Design-Build Contractor for the construction of the Work in accordance with the Contract Documents and the requirements of the subcontracts with such Subcontractors.

Adjustments to the Cost of Work due to concealed conditions are addressed in Supplementary Conditions, Article 20, Section 20.9.

13.3.3 Other Costs:

- a. Owner is a governmental entity and Design-Build Contractor shall avail itself of all exemptions that may exist for such taxes based on Owner's status.
- b. Intellectual property royalties and licenses for items specifically required by the Contract Documents which are, or will be, incorporated into the Work.
- c. Forfeited deposits, but only if such deposit has been forfeited in the absence of any fault or negligence of Design-Build Contractor.
- d. Other costs approved in advance in writing by Owner at Owner's sole option and discretion.

13.4 COSTS TO BE EXCLUDED FROM THE COST OF THE WORK:

- a. Costs including, but not limited to, the failure to perform of any Subcontractor or the bankruptcy or insolvency of any Subcontractor.
- b. Legal and administrative costs to review and negotiate Contract Documents.
- c. Travel and subsistence expenses of Design-Build Contractor, its officers or employees incurred while traveling between the Project and Design-Build Contractor's principal or branch offices, and travel in the metropolitan area of the Project.
- d. Fines, penalties, sanctions or impositions assessed or imposed by any governmental body, instrumentality or tribunal arising from the fault of Design-Build Contractor.
- e. Costs incurred by Design-Build Contractor resulting from the failure of Design-Build Contractor or its Subcontractors to coordinate their work with that of Owner and its consultants, if any, after agreeing to the schedules therefore, or failure of Design-Build Contractor to comply with directives of Owner not in conflict with said schedules.
- f. Cost for obtaining the required insurance coverage, including premiums and deductibles as well as costs for obtaining performance and payment bonds.
- g. Personnel costs, including, without limitation, wages, salaries, and benefits, except for personnel

based at the Site office and the designated representative assigned to this Project.

- h. Any and all overhead expenses or office expense at any location, except Site office expense to the extent specifically included herein.
- i. Costs related to Design-Build Contractor's indemnification obligations under the Contract.
- j. The cost of capital, including, without limitation, interest on capital, regardless of whether it is related to the Project.
- k. Any cost arising out of a breach of this Contract or the fault or negligence of Design-Build Contractor, its Subcontractors, or any person or entity for whom they may be liable, including, without limitation, costs related to defective, rejected, or nonconforming work, materials or equipment, damage to persons or property, errors and omissions with respect to Design Services provided or furnished by Design-Build Contractor, and failure to coordinate the Design Services provided or furnished by Design-Build Contractor.
- l. Liquidated or actual damages imposed by Owner for failure of Design-Build Contractor to complete the Work within the Contract Time.
- m. Any cost arising out of the failure of Design-Build Contractor to complete the Plans and Specifications in a timely manner.
- n. Costs of Design-Build Contractor's architects, engineers, and other entities and personnel performing Design Services.
- o. Any and all costs not specifically authorized herein, including, without limitation, any cost which would cause the GMP to be exceeded.
- p. Permit and Inspection fees.
- q. Costs of all inspection services, testing of construction materials engineering, verification testing for acceptance of the EOC facility by Owner.

13.5 DISCOUNTS, REBATES AND REFUNDS

The Cost of the Work to be paid by Owner shall be credited with the following items:

- a. Proceeds from the sale of tools, materials, equipment, or temporary structures which have been charged to the Work other than by way of rental, and remaining after completion, whether such sale is made to the Owner, the Design-Build Contractor, or to some other party. Any such sale, if made to others than the Owner, shall be at fair market price. Upon completion of the Work or when no longer required, all tools, construction equipment and materials purchased for the Work shall be sold, and the Design-Build Contractor shall use its best efforts to obtain the highest price for such sales.
- b. If Owner makes funds available to Design-Build Contractor, discounts earned by the Design-Build Contractor through advance or prompt payments. The Design-Build Contractor shall obtain all possible trade and time discounts on bills for material furnished, and shall pay said bills within the highest discount periods. The Design-Build Contractor shall purchase materials for this Project in such quantities as will provide the most advantageous prices to the Owner.
- c. Reasonable market value as approved by the Owner at the time of removal of all materials, tools, and equipment purchased for the work, upon completion of the work retained by the Design-Build Contractor.
- d. Rebates, discounts, or commissions allowed to and collected by the Design-Build Contractor from suppliers of materials or from subcontractors, together with all other refunds, returns, or credits received for return of materials, and sales taxes.
- e. Design-Build Contractor shall reimburse Owner for deposits made by Owner and not returned to

Owner due to the fault of the Design-Build Contractor. Should Design-Build Contractor not promptly so reimburse Owner upon demand, Owner shall be entitled to recover said amount from Design-Build Contractor, including, but not limited to, by deducting the amount from payments due the Design-Build Contractor.

ARTICLE 14
CONSTRUCTION PHASE FEE

14.1 The Design-Build Contractor's Construction Phase Fee shall cover the Design-Build Contractor's profit, overhead and expenses in connection with maintaining and operating Design-Build Contractor's main office and any branch or field offices, except the field office for this Project.

14.2 References in the Supplementary Conditions to Design-Build Contractor's "overhead" and "profit" refer to the Design-Build Contractor's Construction Phase Fee.

14.3 The Design-Build Contractor's Construction Phase Fee includes:

- a. Salaries of Design-Build Contractor's designated representative, Site superintendent, estimators and schedulers when not directly assigned to the Project.
- b. Salaries of persons employed in the main or branch offices of the Design-Build Contractor whose time is devoted to the general conduct of the Design-Build Contractor's business.
- c. Overhead or general expenses of any kind unless specifically addressed otherwise herein.
- d. Services and expenses of the human resources, accounting, budget control, audit and management information systems (other than preconstruction services) relating to accounting in Design-Build Contractor's office, even if at the Site.
- e. Interest on the Design-Build Contractor's capital or on money borrowed by the Design-Build Contractor, including the capital employed by the Design-Build Contractor in the performance of the Work.
- f. Amounts required to be paid by Design-Build Contractor for Federal and/or State income and franchise taxes.
- g. Purchase/lease of jobsite vehicles and their maintenance costs.
- h. Purchase/rental of jobsite radios and communications equipment.
- i. Purchase/rental of jobsite computer hardware, software, and other electronic equipment.
- j. Purchase/rental of jobsite phone systems including cellular and digital pagers.

ARTICLE 15
CONTRACT SAVINGS

15.1 If the sum of the Design-Build Contractor's actual Cost of the Work including General Conditions, Supplementary Conditions, Cost of the Work, Contingencies, Fees, Design Services, and Construction Administration is less than the GMP, then the entire savings shall be returned to the Owner by a final adjustment being made to the Contract Amount.

ARTICLE 16
PRE-EXISTING CONDITIONS, DESIGN ERRORS, AND OMISSIONS

16.1 The Design-Build Contractor acknowledges that it was afforded unrestricted access to the existing conditions on the Project Site and it has thoroughly investigated those conditions. The results of Design-Build Contractor's investigation have been taken into account in establishing the GMP. Therefore, Design-Build Contractor shall not make, or be entitled to, any claim for any adjustment to the Contract Time or the Contract Sum for Project conditions that Design-Build Contractor discovered or, in the exercise of reasonable care, should have discovered in Design-Build Contractor's investigation. The Design Build Contractor shall not be liable for existing environmental conditions including but not limited to environmental impact issues not revealed by Geotechnical Investigation. All environmental remediation shall be by the Owner.

16.2 Design-Build Contractor is responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished under the Contract. Design-Build Contractor shall be responsible for discovering and correcting any error, omission, conflict, inconsistency or lack of clarity, in the Construction Documents prepared by Design-Build Contractor. Design-Build Contractor shall be responsible for all costs, including the cost of redoing or remedying the Work and time delays resulting from any error or omission in the Construction Documents.

ARTICLE 17

BONDS AND INSURANCE

17.1 PERFORMANCE AND PAYMENT BONDS

17.1.1 Within ten (10) days of the Effective Date of the Agreement, Design-Build Contractor shall provide, at its sole expense, performance and payment bonds on the forms in Exhibit "E". The penal sum of the payment and performance bonds shall be equal to the GMP less the cost for Design Services.

17.1.2 Corporate sureties authorized to issue bonds shall be qualified and comply with relevant provisions of the Texas Insurance Code.

17.1.3 Each bond shall be executed by a corporate surety or sureties authorized to do business in the State of Texas and acceptable to the Owner. If any bond is for more than ten percent (10%) of the surety's capital and surplus, the Owner may require certification that the company has reinsured the excess portion with one or more reinsurers authorized, accredited, or trusted to do business in the State. A reinsurer may not reinsure for more than ten percent (10%) of its capital and surplus. If a surety upon a bond loses its authority to do business in the State, the Contractor shall within thirty (30) days after such loss furnish a replacement bond at no added cost to the Owner.

17.1.4 Sureties shall be listed on the Department of the Treasury's Listing of Approved Sureties stating companies holding Certificates of Authority as acceptable sureties on Federal Bonds and acceptable reinsuring companies (Department Circular 570).

17.1.5 Each bond shall be accompanied by a valid power-of-attorney (issued by the surety company and attached, signed and sealed with the corporate embossed seal, to the bond) authorizing the attorney-in-fact signing the bond to commit the company to the terms of the bond, and stating the limit in the amount for which the attorney can issue a single bond.

17.1.6 The process of requiring and accepting bonds and making claims there under shall be conducted in compliance with Texas Local Government Code, Chapter 271, Subchapter H, Subsection 271.119 (i) and Texas Government Code, Chapter 2253. In the event of a conflict in the provisions of Chapter 271, Texas Local Government Code, and Chapter 2253, Texas Government Code, the terms of Chapter 271 shall govern.

17.1.7 Additional Bond Security. The Contractor shall promptly furnish additional security required to protect the Owner and persons supplying labor or materials under this Contract if any surety on any bond furnished with this Contract becomes unacceptable to the Owner; or any surety fails to furnish reports on its

financial condition as required by the Owner; or the GMP is increased so that the penal sum of any bond becomes inadequate in the opinion of the Owner.

17.2 INSURANCE

17.2.1 The insurance coverage and the requirements set out in Section 17.2 are intended to compensate both the City and the County with regard to their respective ownership interests in the EOC for any losses incurred by those parties as a result of Design-Build Contractor's performance under the Contract. In addition, Brooks Development Authority, owner of the real property on which the EOC will be located and landlord to Owner under the Ground Lease Agreement, approved by City of San Antonio, City Council on May 19, 2005 shall be named as Additional Insured on the insurance coverage as reflected in this Section. All requirements in this Section pertaining to Certificates of Insurance will jointly name City and County as Additional Insureds and Brooks Development Authority, if required. All documentation and notices required to be sent to Owner will be forwarded to City and County as provided herein.

17.2.2 Prior to commencement of any Work under the Contract, Design-Build Contractor shall furnish original completed Certificates of Insurance to the Owner (being both City and County Risk Managers) which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The original certificate(s) must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the Owner. The Owner shall have no duty to pay or perform under the Contract until such Certificates shall have been delivered to the Owner and no officers or employees, other than the City's and County's Risk Managers, jointly, shall have authority to waive this requirement.

17.2.3 The Owner reserves the right to review the insurance requirements of this Section during the effective period of the Contract and any extension or renewal hereof and to modify insurance coverage and limits when deemed necessary and prudent by the City's Risk Manager and/or County's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Contract, but in no instance will the Owner allow modification whereupon the Owner may incur increased risk.

17.2.4 The Design-Build Contractor's financial integrity is of interest to the Owner, therefore, subject to Design-Build Contractor's right to maintain reasonable deductibles in such amounts as are approved by the Owner, Design-Build Contractor shall obtain and maintain in full force and effect for the duration of the Contract, and any extension thereof, at Design-Build Contractor's sole expense, including all costs for premiums and deductibles, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas otherwise acceptable to the Owner.

17.2.5 Design-Build Contractor shall obtain and maintain the following types of coverage at the limits stated during the term of the Agreement:

<u>TYPE</u>	<u>AMOUNT</u>
1. Worker's Compensation and Employer's Liability	Statutory \$500,000/\$500,000/\$500,000
2. Commercial General (Public) Liability* Insurance to include coverage for the following:	Combined Single Limit for Bodily Injury and Property Damage: \$1,000,000 per occurrence or its equivalent with a \$2,000,000 Aggregate.

- A) Premises/Operation
- B) Independent Contractors
(If applicable)
- C) Products/Completed Operations
- D) Personal Injury
- E) Contractual Liability
- F) Explosion, Collapse and
underground Property Damage
(If applicable)
- G) Broad Form Property Damage, to
include Fire Legal Liability
(If applicable)

- | | |
|--|---|
| 3. Business Automobile Liability * | Combined Single Limit for Bodily Injury and
Property Damage: \$1,000,000 per occurrence
or its Equivalent |
| A) Owned/Leased Vehicles | |
| B) Non-owned Vehicles | |
| C) Hired Vehicles | |
| | |
| 4. Professional Liability, including Errors
and Omissions: | |
| Architects and Engineers | \$3,000,000 per occurrence;
\$3,000,000 aggregate |
| | |
| 5. Umbrella Excess Liability Insurance *: | |
| Bodily Injury/Property
Damage/Products/Completed Operations | \$10,000,000 per occurrence;
\$20,000,000 aggregate |
| | |
| 6. Payment/Performance bond | \$(GMP less cost of Design Services) |

*Brooks Development Authority to be included in coverage.

17.2.6 The following additional insurance coverage is required only if the Project includes Hazardous Environmental work.

- | | |
|---|-------------|
| 1. Motor truck carriers pollution
liability including cleanup costs* | \$5,000,000 |
| 2. Contractor's Pollution Liability -Including
Clean Up* | \$1,000,000 |

*Brooks Development Authority to be included in coverage.

17.2.7 The Design-Build Contractor shall be liable for the first tier Subcontractor' insurance coverage appropriate to their scope of Work given the above guidelines, and in the event a first tier Subcontractor is unable to furnish insurance in the limits required by the Design-Build Contractor, the Design-Build Contractor shall endorse the first tier Subcontractors as Additional Insureds on the applicable Design-

Build Contractor policies. Design-Build Contractor shall be responsible for obtaining Certificates of Insurance from the first tier Subcontractors, and upon request furnish copies to the Owner.

17.2.8 The Owner shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the Owner, and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Upon such request by the Owner, the Design-Build Contractor shall exercise reasonable efforts to accomplish such changes in policy coverage, and shall pay the cost thereof.

17.2.9 Design-Build Contractor agrees that with respect to the above-required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions;

- 17.2.9.1 Name the Owner and Brooks Development Authority and their officers, employees, and elected representatives as Additional Insureds with respect to operations and activities of, or on behalf of, the named insureds performed under contract with the Owner, with the exception of the worker's compensation and professional liability policies;
- 17.2.9.2 The Design-Build Contractor's insurance shall be deemed primary with respect to any insurance or self insurance carried by the Owner and/or Brooks Development Authority for liability arising out of operations under the Contract with the Owner; and
- 17.2.9.3 Worker's compensation and employers' liability policy will provide a waiver of subrogation in favor of the Owner and Brooks Development Authority.

17.2.10 Design-Build Contractor shall notify the Owner in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, or ten (10) days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the Owner at the following address:

CITY OF SAN ANTONIO

City Engineer, Public Works Department
Municipal Plaza Building
114 W. Commerce, 6th Floor
San Antonio, Texas 78205

City Clerk's Office
P.O. Box 839966
San Antonio, Texas 78283-3966

BEXAR COUNTY

Executive Director
Infrastructure Services Department
233 N. Pecos, Suite 420
San Antonio, Texas 78207

Bexar County Risk Manager
Bexar County Auditor's Office
212 Stumberg, Suite 100
San Antonio, Texas 78204

17.2.11 If Design-Build Contractor fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the Owner may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement; however, procuring of said insurance by the Owner is an alternative to other remedies the Owner may have, and is not the exclusive remedy for failure of Design-Build Contractor to maintain said insurance or secure such endorsement. In addition to any other remedies the Owner may have upon Design-Build Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the Owner shall have the right to order Design-Build Contractor to stop work hereunder, and/or withhold any payment(s) which become due, to Design-Build Contractor hereunder until Design-Build Contractor demonstrates compliance with the requirements hereof.

17.2.12 Nothing herein contained shall be construed as limiting in any way the extent to which Design-Build Contractor may be held responsible for payments of damages to persons or property resulting from Design-Build Contractor's or its subcontractors' performance of the Work covered under this Agreement.

17.2.13 All Risk, Builder's Risk Insurance: Design-Build Contractor shall provide, keep in force, and at its own cost maintain at all times during the conduct and progress of the Work policies of insurance in the Contract Amount in order to amply indemnify itself and the Owner as their interests may appear against all risks or loss or damage to the Emergency Operations Center building and/or construction materials on the Project Site and all off-site storage of construction materials. Such policy shall be open to the inspection of the Owner. If the Contractor fails to show the policy on request, the Owner may insure its own interest and charge the cost thereof to the Design-Build Contractor.

17.2.14 The Design-Build Contractor shall be required to provide worker's compensation coverage through a group plan for each employee of the Design-Build Contractor employed on the Project.

17.2.15 The Design-Build Contractor shall provide all required Certificates of Coverage for all persons providing Services on the Project, in accordance with the Texas Worker's Compensation Commission, Rule 110.110 (E) (1), and attachment to this Section. The Design-Build Contractor will be required to:

17.2.16 Provide coverage and Certificates of Coverage for all its employees.

17.2.16.1 Obtain and provide the Owner all required Certificates of Coverage for all persons providing Services on the Project.

17.2.16.2 Notify the Owner in writing, by certified mail or personal delivery, within ten (10) days after changes that materially affects any provisions of the coverage.

17.2.16.3 Post notices on each Project Site, and contractually require all Subcontractors to do the same.

17.2.17 In the submission of the Certificates of Insurance, the insurance companies must agree to provide notice of cancellation of any insurance to the Owner thirty (30) days prior to such cancellation of policies covered by the Certificates.

17.2.18 Design-Build Contractor shall include a provision in all contracts with its Subcontractors requiring the Subcontractors to name Owner and Brooks Development Authority as Additional Insureds

on the general liability insurance policies maintained by such Subcontractors. Design-Build Contractor also shall include a provision in such subcontracts requiring its Subcontractors to maintain statutory worker's compensation insurance for all employees of subcontractors with a waiver of subrogation in favor of Owner and Brooks Development Authority. Design-Build Contractor shall provide Owner, at Owner's request, with Certificates of Insurance evidencing that the coverages have been obtained by the Subcontractors and that Owner and Brooks Development Authority have been named as Additional Insureds.

ARTICLE 18 **DISPUTES**

18.1 It is the Owner's policy to try to resolve controversies by mutual agreement. In appropriate circumstances, discussions between parties can aid in the resolution of differences. Such discussions are encouraged. In the event that resolution is not reached, the Owner and Design-Build Contractor agree to mediation to resolve their differences, with each party paying its own attorney's fees and sharing equally the cost of the mediation. The Design-Build Contractor agrees to exhaust its administrative remedies prior to seeking judicial relief of any type in connection with any matter related to this Contract.

18.2 Except as otherwise provided in the Contract, any dispute concerning a question of fact or law arising under or related to the Contract which is not disposed of by agreement shall be decided by the Owner, who shall reduce its decision to writing and furnish a copy thereof to the Design-Build Contractor. The decision of the Owner shall be final and conclusive unless, on or before the thirtieth (30th) day from the date of such decision, the Design-Build Contractor furnishes a written appeal to the Owner. The decision of the Owner on such appeal shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. No action challenging such decision shall be brought more than two (2) years from the date of the decision. In connection with any appeal, the Design-Build Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending the final resolution of a dispute hereunder, the Design-Build Contractor shall proceed diligently with the performance of the Contract and in accordance with the Owner's decision.

18.3 If it is determined on appeal that the Owner's interpretation of the Contract, direction to the Design-Build Contractor, or any other action required by the decision was an erroneous determination of the rights and obligations of the parties under the Contract, the Design-Build Contractor's remedy shall be the same as if such action were a Change Order to the Contract.

ARTICLE 19 **TERMINATION OF CONTRACT PRIOR TO COMPLETION**

19.1 TERMINATION BY OWNER

19.1.1 The Contract may be terminated by the Owner, at Owner's discretion, during any phase of the Project upon at least seven (7) days written notice to the Design-Build Contractor with Owner having no further obligations other than to compensate Design-Build Contractor as provided in Section 19.1.2.

19.1.2 In the event of termination by Owner under Section 19.1.1, the Design-Build Contractor shall be entitled to compensation for all unpaid Services performed up to the date of receipt of the notice of termination ("Notice of Termination") together with Reimbursable Expenses then due, provided those Services were performed in a manner satisfactory to Owner and Design-Build Contractor furnishes Owner with the documentation and materials required in Subsection 19.3.3.

19.2 DEFAULT

19.2.1 The Contract may be terminated by either party for substantial failure by the other party to perform (through no fault of the terminating party) in accordance with the terms of the Contract. The terminating party must issue a signed, written Notice of Termination to the other party describing in detail the matter constituting a default. Upon receipt of such written Notice of Termination, the party in receipt shall have a period of seven (7) days to cure any failure to perform under the Contract. Upon the completion of such seven (7) day period commencing upon receipt of the Notice of Termination, if such party has not cured any failure to perform, such termination shall become automatically effective.

19.2.2 If Owner terminates the Contract due to Design-Build Contractor's breach of a material duty or obligation under the Contract under the Contract, Owner shall have the right to refuse to accept and not pay Design-Build Contractor for any partially completed Work and to offset any amounts due Design-Build Contractor by the amount of any damages for which Design-Build Contractor is liable to Owner under the terms of the Contract.

19.3 REQUIREMENTS FOLLOWING TERMINATION AT OWNER'S DISCRETION OR UPON DEFAULT

19.3.1 In the event of termination in accordance with this Article 19, Design-Build Contractor shall, upon receipt of Notice of Termination, unless otherwise directed by Owner, stop work on the date specified in the Notice. In addition, Design-Build Contractor shall take all reasonable steps to mitigate and minimize termination costs including the immediate issuance of stop work orders. Design-Build Contractor shall: (1) take such action as may be necessary in order to protect and preserve Owner's materials and property; (2) cancel all orders; (3) assign to Owner and deliver, to the location designated by Owner, all noncancellable orders that are not capable of use except in the performance of the Contract that have been specifically developed for the sole purpose of this Contract; and (4) deliver to Owner all Contract materials located at any off-site facilities. Design-Build Contractor shall take no action after receipt of the Notice of Termination which would increase any amounts payable by Owner under the Contract.

19.3.2 Termination of the Contract shall not relieve Design-Build Contractor or any of its employees, Subcontractors, or consultants of liability for violations of the Contract or for any act or omission or negligence. In the event of a termination, Design-Build Contractor hereby consents to employment by Owner of a substitute Design-Build Contractor to complete the Work under the Contract, with the substitute Design-Build Contractor having all rights and privileges of the original Design-Build Contractor.

19.3.3 Within ten (10) days of the date of the Notice of Termination of the Contract by either party, Design-Build Contractor shall furnish to Owner all statements, accounts, reports, drawings, specifications, and all other material and documentation prepared by Design-Build Contractor in connection with Design-Build Contractor's responsibilities hereunder. Owner shall have the right to use the ideas and designs therein contained for the completion of the Work described in the Contract and for completion of the Project.

19.3.4 The parties shall not consider either party's failure to declare immediately an event of default, or any party's failure to take any action with respect to an event of default, as a waiver of default by either party.

19.3.5 Upon termination of the Contract, neither party will have any further obligations to the other except for: (1) the payment of compensation earned prior to the effective date of the termination and previously unbilled; (2) any liability for any breach of the Contract occurring prior to termination; and (3) any provisions of the Contract which survive termination of the Contract.

ARTICLE 20 **INDEMNIFICATION**

20.1 DESIGN-BUILD CONTRACTOR COVENANTS AND AGREES TO FULLY INDEMNIFY, DEFEND, AND HOLD HARMLESS, THE OWNER AND THEIR ELECTED OFFICIALS, EMPLOYEES, OFFICERS, AGENTS, AND REPRESENTATIVES, INDIVIDUALLY OR COLLECTIVELY, (EACH AND "INDEMNIFIED PERSON") FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, INTEREST, PENALTIES, ATTORNEY'S FEES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY, SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO: (1) PERSONAL OR BODILY INJURY, DEATH AND PROPERTY DAMAGE, MADE UPON THE AN INDEMNIFIED PERSON DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM, OR RELATED TO, DESIGN-BUILD CONTRACTOR'S ACTIVITIES UNDER THE CONTRACT, INCLUDING ANY ACTS OR OMISSIONS OF DESIGN-BUILD CONTRACTOR, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONTRACTOR OF DESIGN-BUILD CONTRACTOR, AND ITS RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OF PERFORMANCE OF ITS RIGHTS, DUTIES, OR OBLIGATIONS UNDER THIS CONTRACT; (2) CLAIMS ARISING FROM VIOLATIONS, OR FAILURE TO COMPLY WITH, ANY FEDERAL, STATE, OR LOCAL LAW, ORDINANCE OR REGULATION, INCLUDING, BUT NOT LIMITED TO, LAWS GOVERNING LABOR, EQUAL EMPLOYMENT OPPORTUNITIES, SAFETY AND ENVIRONMENTAL PROTECTION; (3) CLAIMS ATTRIBUTABLE TO DESIGN-BUILD CONTRACTOR'S FAILURE TO FOLLOW THE REQUIREMENTS AND PROCEDURES SET OUT IN THE SUPPLEMENTARY CONDITIONS, ARTICLE 9, SUBSECTION 9.6, UPON ENCOUNTERING ANY PREVIOUSLY UNKNOWN POTENTIALLY HAZARDOUS MATERIAL OR OTHER MATERIALS POTENTIALLY CONTAMINATED BY HAZARDOUS MATERIAL; (4) CLAIMS OR LOSSES INCURRED IF A STATUTORY PAYMENT OR PERFORMANCE BOND IS NOT HONORED BY A SURETY; AND (5) CLAIMS ARISING FROM ANY BREACH OR DEFAULT OF DESIGN-BUILD CONTRACTOR IN ITS PERFORMANCE OF ANY TERM OR COVENANT TO BE PERFORMED PURSUANT TO THE CONTRACT, ALL WITHOUT HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO OWNER UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE INDEMNIFIED PERSONS UNDER TEXAS LAW. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN PART FROM THE NEGLIGENCE OF, AN INDEMNIFIED PERSON UNDER THE CONTRACT; HOWEVER THE INDEMNITY IS LIMITED TO THE PERCENTAGE OF CONTRIBUTORY NEGLIGENCE FOR WHICH DESIGN-BUILD CONTRACTOR IS DETERMINED TO BE RESPONSIBLE. 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. DESIGN-BUILD CONTRACTOR, IF SELECTED, SHALL ADVISE THE OWNER IN WRITING WITHIN TWENTY-FOUR (24) HOURS OF ANY CLAIM OR DEMAND AGAINST AN INDEMNIFIED PERSON OR DESIGN-BUILD CONTRACTOR, KNOWN TO DESIGN-BUILD CONTRACTOR, RELATING TO OR ARISING OUT OF DESIGN-BUILD CONTRACTOR'S ACTIVITIES UNDER THE CONTRACT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT DESIGN-BUILD CONTRACTOR'S SOLE EXPENSE. THE INDEMNIFIED PERSON SHALL HAVE THE RIGHT, AT ITS OPTION, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING DESIGN-BUILD CONTRACTOR OF ANY OF ITS OBLIGATIONS UNDER THIS PROVISION.

IT IS THE EXPRESS INTENT OF THE PARTIES TO THE CONTRACT, THAT THE INDEMNITY PROVIDED FOR IN THIS SECTION, IS AN INDEMNITY EXTENDED BY DESIGN-BUILD CONTRACTOR TO INDEMNIFY, PROTECT AND HOLD HARMLESS, THE INDEMNIFIED PERSONS FROM THE CONSEQUENCES OF THEIR OWN NEGLIGENCE, PROVIDED HOWEVER, THAT THE INDEMNITY PROVIDED FOR IN THIS SECTION SHALL APPLY ONLY WHEN THE NEGLIGENT ACT OF AN INDEMNIFIED PERSON IS A CONTRIBUTORY CAUSE OF THE RESULTANT INJURY, DEATH, OR DAMAGE, AND SHALL HAVE NO APPLICATION WHEN THE NEGLIGENT ACT OF AN INDEMNIFIED PERSON IS THE SOLE CAUSE OF THE RESULTANT INJURY, DEATH, OR DAMAGE. DESIGN-BUILD CONTRACTOR FURTHER AGREES TO DEFEND, AT ITS OWN EXPENSE AND ON BEHALF OF THE INDEMNIFIED PERSON AND IN THE NAME OF THE INDEMNIFIED PERSON, ANY CLAIM OR SUIT BROUGHT AGAINST AN INDEMNIFIED PERSON. IN CONNECTION WITH ANY SUCH INJURY, DEATH, OR DAMAGE FOR WHICH THIS INDEMNITY SHALL APPLY, AS SET FORTH HEREIN.

20.2 DESIGN-BUILD CONTRACTOR SHALL FULLY INDEMNIFY, DEFEND, AND HOLD HARMLESS THE OWNER FROM AND AGAINST ALL CLAIMS, DAMAGES, JUDGMENTS AND LOSS ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY UNITED STATES PATENT, COPYRIGHT, OR INTELLECTUAL PROPERTY RIGHT ARISING BY OR OUT OF ANY OF THE WORK PERFORMED HEREUNDER OR THE USE BY DESIGN-BUILD CONTRACTOR, OR BY OWNER AT THE DIRECTION OF DESIGN-BUILD CONTRACTOR, OF ANY ARTICLE OR MATERIAL. UPON BECOMING AWARE OF A SUIT OR THREAT OF SUIT FOR PATENT, COPYRIGHT INFRINGEMENT OR INTELLECTUAL PROPERTY RIGHT INFRINGEMENT. OWNER SHALL PROMPTLY NOTIFY DESIGN-BUILD CONTRACTOR AND DESIGN-BUILD CONTRACTOR SHALL BE GIVEN FULL OPPORTUNITY TO NEGOTIATE A SETTLEMENT. DESIGN-BUILD CONTRACTOR DOES NOT WARRANT AGAINST INFRINGEMENT BY REASON OF OWNER'S DESIGN OF ARTICLES OR THE USE THEREOF IN COMBINATION WITH OTHER MATERIALS OR IN THE OPERATION OF ANY PROCESS. IN THE EVENT OF LITIGATION, OWNER AGREES TO COOPERATE REASONABLY WITH DESIGN-BUILD CONTRACTOR AND OWNER SHALL BE ENTITLED, IN CONNECTION WITH ANY SUCH LITIGATION, TO BE REPRESENTED BY COUNSEL HIRED BY OWNER AT DESIGN-BUILD CONTRACTOR'S SOLE EXPENSE. AT ITS OPTION, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING DESIGN-BUILD CONTRACTOR OF ANY OF ITS OBLIGATIONS UNDER THIS PROVISION.

20.3 The indemnities contained herein shall survive the termination of this Agreement for any reason whatsoever.

ARTICLE 21 **SPECIAL WARRANTIES**

21.1 Notwithstanding anything to the contrary contained in the Contract, Owner and Design-Build Contractor agree and acknowledge that Owner is entering into the Contract in reliance on Design-Build Contractor's representations regarding its expertise and ability to provide Design-Build services. Design-Build Contractor covenants with Owner to use its best efforts, skill, judgment, and abilities to perform the obligations hereunder and to further the interests of Owner in accordance with Owner's requirements and procedures, in accordance with the usual and customary high standards of Design-Build Contractor's profession or business and in compliance with all applicable Federal, State, municipal, laws, regulations, codes, ordinances, and orders and with those of any other body having jurisdiction.

21.2 Should Design-Build Contractor fail to comply with the standard of care required herein, Design-

Build Contractor's responsibilities under this Agreement, or the applicable laws, regulations, codes, ordinances, and orders, Design-Build Contractor hereby agrees to bear the full cost of correcting Design-Build Contractor's Work and Services, those of its Consultants and Subcontractors, and those of any others who have acted in reliance thereon.

21.3 The Design-Build Contractor warrants, represents, covenants, and agrees that all of the Services to be performed by the Design-Build Contractor under or pursuant to the Contract shall be of the standard and quality which prevail among similar businesses and organizations of comparable experience, size, knowledge and skill engaged in providing similar services in major United States urban areas under the same or similar circumstances and involving a project such as the Project.

21.4 The Design-Build Contractor's duties as set forth herein shall at no time be in any way diminished by reason of any approval by the Owner, nor shall the Design-Build Contractor be released from any liability by reason of such approval by the Owner, it being understood that the Owner at all times is ultimately relying upon the Design-Build Contractor's skill and knowledge in performing the services required hereunder.

21.5 The Design-Build Contractor warrants, represents, covenants, and agrees that all persons connected with the Design-Build Contractor directly or indirectly in charge of its services are duly registered and/or licensed under the laws, rules and regulations of any authority having jurisdiction, if so required by such laws, rules and regulations.

21.6 The Design-Build Contractor warrants, represents, covenants, and agrees to furnish efficient business administration and superintendence and perform its services hereunder or pursuant to this Agreement in the best way and in the most expeditious and economical manner consistent with the interests of Owner.

21.7 Design-Build Contractor warrants, represents, covenants, and agrees that there are no obligations, commitments, or impediments of any kind that will limit or prevent performance of the obligations required hereunder.

21.8 Design-Build Contractor warrants, represents, and agrees that the individual executing this Agreement on behalf of the Design-Build Contractor has been duly authorized to act for and bind the Design-Build Contractor.

21.9 Except for the obligation of Owner to pay the Design-Build Contractor certain fees, costs, and expenses pursuant to the terms of the Contract, Owner shall have no liability to the Design-Build Contractor or to anyone claiming through or under Design-Build Contractor by reason of the execution or performance of the Contract. Notwithstanding any obligation or liability of Owner to Design-Build Contractor, no present or future partner, affiliate, agent, officer, director, or employee of the Owner, or of the components comprising or anyone claiming under Owner has or shall have any personal liability to Design-Build Contractor, or to anyone claiming through or under Design-Build Contractor by reason of the execution or performance of the Contract.

ARTICLE 22

TESTS AND INSPECTIONS

22.1 If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Work to be inspected, tested or approved, Owner, or an inspector hired by Owner at Owner's expense, shall perform such tests. Should the material or Work fail to comply with the requirements of the Contract Documents, the Design-Build Contractor shall bear all costs of the retesting by Owner's inspector as well as the cost of replacement of unsatisfactory material or Work.

22.2 When directed by the Owner, demonstration of a material's compliance with the Specifications shall be made by one of the following:

22.2.1 Manufacturer's certificate of compliance.

22.2.2 Mill Certificate.

22.2.3 Testing Laboratory certification.

22.2.4 Report of actual laboratory test from the Owner's laboratory or from a laboratory satisfactory to the Owner. Samples tested shall be selected by the Owner and the method of testing shall comply with professional societies' standard specifications.

22.3 Materials incorporated into the Project shall be new, unless otherwise specified, and may be subject to routine tests as specified or as deemed necessary by the Owner to insure their compliance with the specifications. Materials to be tested by Owner, or an inspector hired by Owner at the Owner's expense, may include, but are not limited to, the following:

22.3.1 Concrete – Primary mix design, slump tests and cylinder compression tests.

22.3.2 Steel – Tensile tests.

22.3.3 Welds – Field inspection and X-ray equipment

22.3.4 Soils – Subsoil investigation, physical analysis and compaction tests.

22.3.5 Pavements – Physical analysis and compaction tests.

22.3.6 Roofing – Samples cut from in-place roof.

22.3.7 Windows, curtain walls, skylights.

22.4 Any other basic materials for which standard laboratory test procedures have been established may also be included if doubt as to their quality should arise. Any testing, as described, will be done at the discretion of the Owner, who will bear all costs. Although Owner shall have primary responsibility for testing samples, Design-Build Contractor shall cooperate with Owner in selecting samples of sufficient size for test purposes and assisting Owner in preparing samples for tests, if requested by Owner. All tests will be in accordance with standard test procedures and will be performed by a laboratory selected by the Owner and Owner shall pay for those tests. Results of all tests will be provided to the Owner and the Design-Build Contractor.

22.5 Tests to be provided by the Owner, at Owner's expense, include:

22.5.1 Any test of basic material or fabricated equipment offered as a substitute for a specified item on which a test may be required in order to prove its compliance with the Specifications.

22.5.2 Tests on mechanical systems required to insure their proper installation and operation.

22.6 Should any of the routine tests indicate that a material does not comply with the job requirements, the burden of proof of compliance shall be with the Design-Build Contractor, subject to the following conditions:

22.6.1 Quality and nature of tests will be determined by the Owner and all tests will be conducted by an inspector hired by Owner.

22.6.2 All tests shall be conducted in the presence of the Owner, or Owner's representative.

22.6.3 If noncompliance is proved, laboratory fees for retesting will be paid by the Design-Build Contractor through deduction from the Final Payment.

22.6.4 Proof of noncompliance will make the Design-Build Contractor liable for any corrective action which the Owner feels is prudent, including complete removal and replacement of defective material.

22.6.5 Subsequent tests on original or replaced materials conducted as a result of prior failure will be paid by the Design-Build Contractor through a deduction to the Final Payment.

22.7 The Owner may require and arrange for special inspection, testing or approval of material or Work in addition to that which may be specified for compliance with requirements of the Contract Documents. The costs of special testing shall be at Owner's expense and will be performed by an inspector hired by Owner. However, Design-Build Contractor shall pay the entire cost of any retesting inspector that conducted the initial testing, whether routine or special, required because of the failure of a prior test. The costs to be paid by Design-Build Contractor for all retesting shall be deducted from the Final Payment.

22.8 Design-Build Contractor's Testing. Nothing contained herein is intended to imply that the Design-Build Contractor does not have the right to have tests performed on any material at any time for its own information and job control so long as the Owner is not charged for costs or forced to rely upon such tests when appraising quality of materials. Any modification of, or elaboration on, these test procedures which may be included for specific materials under their respective specification sections shall take precedence over these procedures and all testing required in the technical specification sections shall be the responsibility of the Owner to coordinate and pay for.

22.9 The word "Work" includes, but is not limited to, materials, workmanship, and manufacture and fabrication of components.

22.10 The Design-Build Contractor shall maintain an inspection system acceptable to the Owner and perform such inspections as will insure that the Work conforms to the Contract Documents. The Design-Build Contractor shall maintain complete inspection records and make them available to the Owner at Owner's request. All Work shall be conducted under the general direction of the Owner and is subject to inspection and testing by the Owner and/or the Owner's consultants at places and at reasonable times before acceptance.

22.11 Inspections and tests by the Owner are for the sole benefit of the Owner at Owner's expense and do not:

22.11.1 relieve the Contractor of responsibility for providing adequate quality control measures;

22.11.2 relieve the Contractor of responsibility for damage to or loss of the material before acceptance;

22.11.3 constitute or imply acceptance; or

22.11.4 affect the continuing rights of the Owner after acceptance of the completed work.

22.12 The presence or absence of an inspector from the Owner does not relieve the Design-Build Contractor from any contract requirements, nor is the inspector authorized to change any term or condition or waive any requirement of the Specifications without the Owner's written authorization.

22.13 The Owner may deduct from the Final Payment to the Design-Build Contractor any additional costs for inspections or tests when Work is not ready at the time specified by the Design-Build Contractor for inspection or test, or when prior rejection makes re-inspections or retests necessary. The Owner shall perform

all inspections and tests in a manner that will not unnecessarily delay the Work. Special, full size and performance tests shall be performed.

22.14 The Design-Build Contractor shall, without charge, replace or correct Work found by the Owner not to conform to Contract Documents, whether found before or after Substantial Completion, and whether or not fabricated, installed or completed, unless the Owner consents to accept the Work with an appropriate reduction in Contract Price. The Design-Build Contractor shall promptly segregate and remove rejected material from the Site.

22.15 If the Design-Build Contractor does not promptly replace or correct rejected Work, the Owner may: by contract or otherwise, replace or correct the Work and charge the cost to the Design-Build Contractor.

22.16 If, before acceptance of the entire Work, the Owner decides to examine already completed Work by uncovering it, removing it or tearing it out, the Design-Build Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the Work is found to be defective or nonconforming in any material respect due to the fault of the Design-Build Contractor or its Subcontractors, the Design-Build Contractor shall pay for the examination and for satisfactory reconstruction through a deduction to its Final Payment. However, if the Work is found to meet requirements of the Contract Documents, the Owner shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the Work was thereby delayed, an extension of time.

22.17 Unless otherwise specified in the Contract, the Owner shall accept, as promptly as practicable after completion and inspection, all Work required by the Contract or that portion of the Work the Owner determines can be accepted separately. Subject to the provisions of the Warranty of Construction clause hereof, acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the Owner's rights under any warranty or guarantee.

22.18 The Design-Build Contractor shall not cover up any Work with finishing materials or other building components prior to providing the Owner an opportunity to perform an inspection of the Work.

22.19 The Design-Build Contractor shall be responsible for providing notification of at least five (5) working days or as mutually agreed, to the Owner of the anticipated need for a cover up inspection. Should the Owner fail to respond to the requested inspection within the five (5) working day period, or as mutually agreed, the Design-Build Contractor may proceed with the particular cover up Work identified in the notification. The five (5) working day notice requirement may be reduced or waived by the Owner's ability to respond in less time.

22.20 The Owner has the authority to reject and condemn Work which does not meet the requirements of the Contract Documents, and to order such Work removed and replaced. The Owner shall interpret the Contract Documents and shall be the final judge of the acceptability of the Work under the Documents. If any materials or Work are condemned or rejected by the Owner, the Design-Build Contractor shall proceed to remove materials, whether worked or un-worked, and to take down all portions of the Work condemned. Design-Build Contractor shall make good all Work damaged or destroyed by the removal and replacement process.

22.21 The Design-Build Contractor shall, without charge or assessment against the Design-Build Contractor's Contingency Fund, replace any material or correct any workmanship found by the Owner not to conform to the Contract Documents, unless, in the public interest, the Owner consents in writing to accept such material or workmanship with an appropriate adjustment in the Contract Price. The Design-Build Contractor shall promptly correct all Work rejected by the Owner as defective or as failing to conform to the Contract Documents whether observed before or after the Date of Substantial Completion or final inspection and acceptance and whether or not fabricated, installed or completed. The Design-Build Contractor shall bear all costs of correcting such rejected Work.

22.22 See Supplementary Conditions, Article 14, Closing Inspections, for provisions pertaining to Substantial Completion Inspection, Final Inspection, and Additional Inspections.

ARTICLE 23
CERTIFICATION OF NO ASBESTOS-CONTAINING MATERIALS

23.1 Design-Build Contractor shall provide a certification statement, included with each materials submittal, stating that no asbestos containing materials or work is included within the scope of the proposed submittal.

23.2 The Design-Build Contractor shall provide, at Substantial Completion, a notarized certification to the Owner that no asbestos containing materials or work was provided, installed, furnished or added to the Project.

23.3 The Design-Build Contractor shall take whatever measures he deems necessary to insure that all employees, suppliers, fabricators, materialmen, subcontractors, or their assigns, comply with this requirement.

23.4 The Design-Build Contractor shall insure compliance with the Asbestos Hazard Emergency Response Act (AHERA – 40 CFR 763-99 (7)) from all of its Subcontractors and assigns as listed above. All materials used on this project shall be certified as non Asbestos Containing Building Materials (ACBM).

23.5 Every Subcontractor shall provide a notarized statement that no ACBM has been used, provided, or left on this Project.

23.6 The Design-Build Contractor shall provide to the extent deemed necessary for compliance by the State, data sheets and/or labels as proof of compliance.

23.7 The Design-Build Contractor shall provide a notarized certification that no ACBM's were used.

ARTICLE 24
MISCELLANEOUS PROVISIONS

24.1 Assignment. The Owner and Design-Build Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. As the Contract is a personal services contract for the services of the Design-Build Contractor, Design-Build Contractor shall not assign its rights, duties or obligations under the Contract Documents or any rights to any amount due or to become due without the written consent of the Owner. If the Design-Build Contractor attempts to make such an assignment without such consent, the Design-Build Contractor shall nevertheless remain legally responsible for all obligations under the Contract. Any entity or person which shall succeed to the rights of Owner shall be entitled to enforce the rights of Owner hereunder. Any assignment by Design-Build Contractor without prior written consent from Owner shall be void.

24.2 The Owner has the right to assign its rights under the Contract Documents and shall be released from its obligations under the Contract Documents upon written assumption thereof by the assignee and the Design-Build Contractor's written consent, which shall not be unreasonably withheld, conditioned, or delayed. The Owner may, without consent of the Design-Build Contractor, assign the Contract to any lender or other third party providing financing for the Project. In such an event, the lender or third party shall have the right to assume the Owner's rights and obligations under the Contract Documents and the Design-Build Contractor will remain fully obligated to perform under the Contract Documents. The Design-Build Contractor shall execute all consents reasonably required to facilitate such assignment. The Owner may also assign the obligations and duties of the Design-Build Contractor to any party that controls, is controlled by, or is under common control with Owner, without obtaining Design-Build Contractor's consent. In connection with financing of this Project, the Design-Build Contractor and all Subcontractors of any tier shall execute and deliver any and all instruments reasonable required by the Owner or any lender or other third party providing financing for the Project. Design-Build Contractor

agrees to waive or subordinate its lien rights, if any, to the rights of any such lenders or third party providing financing for the Project. Design-Build Contractor also agrees to follow any administration or reporting procedures reasonably required by such lenders or third party and cooperate with Owner in satisfying the reasonable requests and requirements of such lenders or third party.

24.3 Family Code Child Support Certification. By signing this Agreement, the undersigned certifies as follows: "Under Section 231.006, *Texas Family Code*, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate."

24.4 Sales Tax Certification. By signing this Agreement, the undersigned certifies as follows: "Under Section 2155.004, *Texas Government Code*, the Contractor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified Contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."

24.5 This Agreement, and each of its provisions, shall be binding upon the parties and may not be waived, modified, amended or altered except in writing and signed by Design-Build Contractor and Owner.

24.6 Captions. The captions of paragraphs in this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

24.7 Governing Law and Venue. This Agreement and all of the rights and obligations of the parties hereto and all of the terms and conditions hereof shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas, Bexar County, Texas shall be the sole place of venue for any legal action arising from or related to this Contract or the Project in which the Owner is a party.

24.8 Waivers. No delay or omission by either of the parties hereto in exercising any right or power accruing upon the non-compliance or failure of performance by the other party hereto of any of the provisions of this Agreement shall impair any such right or power, or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions or agreements hereof to be performed by the other party hereto shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

24.9 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted assigns and successors.

24.10 Records. All of Design-Build Contractor's books, records, documents, and papers pertaining to this Project, including plans and specifications for construction as well as accounting documentation of costs, expenses, and payrolls of employees working on the Project shall be available to Owner or Owner's authorized representative at mutually convenient times for a minimum period of four (4) years after final completion of the project and other pending matters concerning the Contract have been closed. Owner shall have the right to verify the details set forth in Design-Build Contractor's billings, certificates, and statements either before or after payment therefore, by: (1) inspecting the books and records of Design-Build Contractor's during normal business hours; (2) examining any reports or documentation with respect to this Project; (3) interviewing Design-Build Contractor's employees. Design-Build Contractor further agrees to make these requirements applied to any all Subcontractor contracts in which Design-Build Contractor has a contractual relationship for the services performed under the Contract. Any inspection or review conducted hereunder by Owner shall be at the Owner's sole cost and expense.

24.11 Notices. All notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Agreement shall be in writing. Written notice shall be deemed to have been given when delivered in person to the designated representative of the Design-Build Contractor or Owner for whom it is intended; or sent by registered or certified U. S. mail to the last known business address of the designated representative; or transmitted by fax machine to the last known

Design-Build Contractor Construction Phase Fee	\$1,032,344.00
Design-Build Contractor General Conditions	\$451,935.00
AE Construction Administration	\$472,066.00
Cost of Work Less Technology	\$10,908,270.00
Cost of Technology	\$4,722,846.00
Alternates (See Exhibit D.1)	\$287,650.00
Design-Build Contractor's Contingency	\$-----
Owner's Contingency	\$-----
Construction Services Subtotal	\$17,875,111.00

SUMMARY OF COMPENSATION

Preconstruction Services	\$789,169.00
Construction Services	\$17,875,111.00
Alternates (See Exhibit H)	\$287,650.00
TOTAL FEE	\$18,664,280.00

ARTICLE 26 TIME OF COMPLETION

26.1 The Construction Phase shall be deemed to commence upon the earlier of (i) the date specified in a Notice to Proceed issued by Owner after approval of the GMP; (ii) the issuance of a purchase order by Design-Build Contractor for materials or equipment for the Project after prior written authorization by Owner; or (iii) award of a subcontract in accordance with the requirements of the Contract after prior written authorization by Owner. The Design-Build Contractor shall substantially complete the Work within six hundred and twenty-one (621) Calendar Days of the Owner's Notice-to-Proceed for the Work. This Substantial Completion Date is subject to adjustment by time extensions granted by Change Order.

26.2 The time set forth for completion of the Work is an essential element of the Contract.

26.3 In computing Change Order requests for delays due to inclement weather (precipitation delays) Design-Build Contractor shall include in its schedule the precipitation shown in the 30-year statistical record of the National Oceanic and Atmospheric Administration (NOAA) for the San Antonio area. If during construction Design-Build Contractor claims a weather delay, it must demonstrate to Owner that its critical construction activities have been impacted by precipitation over and above the values recorded by NOAA in that given month. For additional terms regarding delays due to adverse weather conditions, refer to General Conditions, Exhibit B, Sections 11, 12, and 13.

26.4 The Design-Build Contractor acknowledges City's required occupancy date is no later than December 2007, and Design-Build Contractor shall achieve all work necessary to accommodate schedule within Guaranteed Maximum Price of \$18,664,280.00, notwithstanding changes authorized by the Owner.

ARTICLE 27
NOTICES

27.1 Notices required by this Agreement shall be sent to the following persons at the indicated locations. A party shall not change the person or the address for notices without prior written approval of the other part

<p>If to Owner: City Engineer, Public Works Dept. City of San Antonio Municipal Plaza Building 114 W. Commerce, 6th Floor. San Antonio, Texas 78205</p> <p>With copy to: Executive Director Bexar County Infrastructure Services Department 233 N. Pecos, Suite 420 San Antonio, Texas 78207</p>	<p>If to Design-Build Contractor: Steve Zander Zachry Construction Corporation 527 Logwood San Antonio, TX 78221 P: 210.475.8000 F: 210.475.8796</p> <p>With copy to: Rene M. Garcia Zachry Construction Corporation 527 Logwood San Antonio, TX 78221 P: 210.475.8000 F: 210.475.8796</p>
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ARTICLE 28
ENTIRE AGREEMENT

28.1 The Contract Documents supersede all prior discussions and agreements (oral and written) between the parties relating to the subject matter hereof and constitute the entire agreement. In the event of conflict in the provisions of the Contract Documents, which is irreconcilable, , the conflict shall be resolved by giving precedence in the following order: (a) the Exhibits; (b) the Agreement; (c) the proposal; and (d) the RFP. Conflicts existing within the Exhibits shall be resolved by giving precedence to the Exhibit containing the most specific provisions addressing the matter in conflict. With regard to conflicts between or among the Drawings and Specifications, refer to the Supplementary Conditions, Article 4.3, Resolution of Conflicts in Documents. It is the intention of the parties that the provisions of the Contract Documents be harmonized, if possible, so that effect is given to each provision.

EXHIBITS

The following exhibits are incorporated by reference as part of this Agreement and the Contract:

Exhibit A	Personnel Titles, Hourly Rates, and DSE Multipliers
Exhibit B	General Conditions
Exhibit C	Supplementary Conditions

Exhibit D	Guaranteed Maximum Price
Exhibit D.1	Contract Calculations
Exhibit E	Payment and Performance Bonds
Exhibit F	Small Business Economic Development Advocacy (SBEDA) Program
Exhibit F.1	City of San Antonio SBEDA Ordinance
Exhibit G	Wage Rate Determination
Exhibit G.1	Building Construction Wage Rates
Exhibit G.2	Heavy Highway Wage Rates
Exhibit G.3	City of San Antonio Wage Rate Ordinances 71312 and 60110

*City of San Antonio
Emergency Operations Center*

October 3, 2005

Scope of Services

Total Services	\$300,300
Total Project	\$300,300
Phase C Proposal	\$300,300

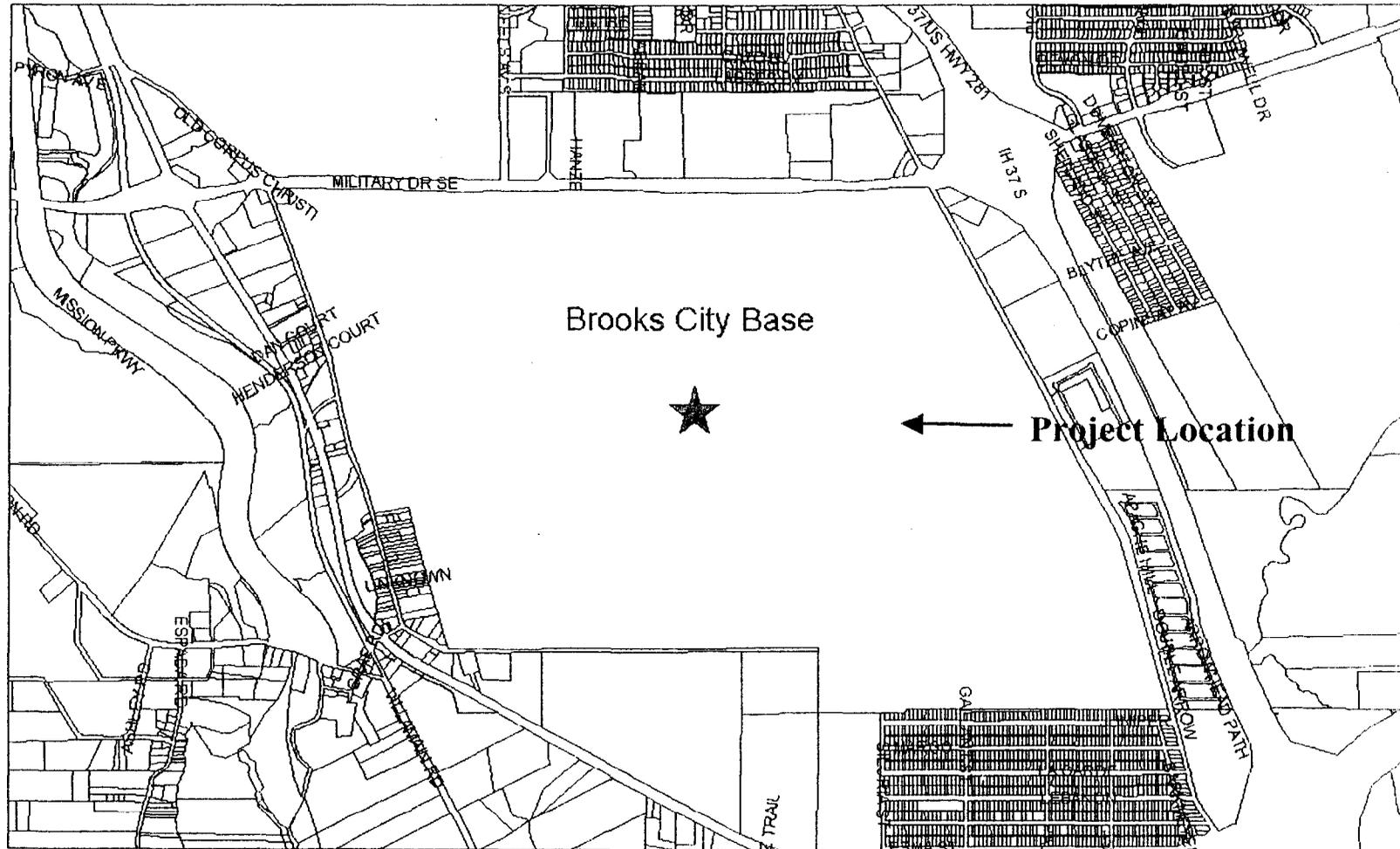
Services Summary

Architectural Program Conformance	\$135,300
Coordinate Design Build Team Issues	\$105,600
Coordinate The Core Partners Issues	\$33,000
Limited Project Management Issues	\$26,400
Total Services	\$300,300

Services Description

Program Conformance	\$135,300
Monitor design and construction drawings to ensure the intent of the programming is followed Ensure that the minimum design criteria is adhered to Monitor Construction to ensure compliance with the program and the minimum design criteria	
Coordinate Design Build Team Issues	\$105,600
Monitor "on time and on budget" Respond to Design Build team issues Facilitate peer reviews at milestone dates (design/construction)	
Coordinate Core Partners Issues	\$33,000
Coordinate potential changes from City of San Antonio Office of Emergency Management, ITSD, Media Relations, 311 Bexar County Office of Emergency Management, ITSD, Media Relations	
Limited Project Management Services	\$26,400
Assist Public Works in addressing project issues Attend project meetings (as requested) Assist City of San Antonio in management of the project contingency Advise the City of San Antonio on change orders Advise the City of San Antonio on issues regarding design, construction, and project closeout	
Total Basic Services	\$300,300

<ul style="list-style-type: none"> • Strategic Facilities Planning • Architectural Programming • Space Utilization Analysis • Needs Assessment • Project Definition • Design Criteria 	Frost Bank Tower/Suite 1170 100 West Houston Street San Antonio, Texas 78205 210/228-9600 210/228-9697 Fax facilityprogramming.com
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Emergency Operations Center

Council District No. 3



G.I.S. Location Map

City of San Antonio Discretionary Contracts Disclosure

For use of this form, see Section 2-59 through 2-61 of the City Code (Ethics Code)
Attach additional sheets if space provided is not sufficient.

(1) Identify any individual or business entity¹ that is a **party** to the discretionary contract:

Zachry Construction Corporation

(2) Identify any individual or business entity which is a **partner, parent or subsidiary** business entity, of any individual or business entity identified above in Box (1):

No partner, parent or subsidiary; or

List partner, parent or subsidiary of each party to the contract and identify the corresponding party:

Parent: Zachry Group, Inc.

Subsidiaries:

Plant Constructors, Inc. -

H.B. Zachry Company

H. B. Zachry Company (International)

Zachry Construction Corporation (San Antonio)

Road & Bridge Builders. Inc.

Zachry Affiliated Services, Inc.

Bexar Equipment Company

(3) Identify any individual or business entity that would be a **subcontractor** on the discretionary contract.

No subcontractor(s); or

List subcontractors:

Ellerbe Becket

(4) Identify any **lobbyist or public relations firm** employed by any party to the discretionary contract for purposes related to seeking the discretionary contract.

No lobbyist or public relations firm employed; or

List lobbyists or public relations firms:

¹ A *business entity* means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law. A sole proprietor should list the name of the individual and the d/b/a, if any.

City of San Antonio Discretionary Contracts Disclosure

*For use of this form, see Section 2-59 through 2-61 of the City Code (Ethics Code)
Attach additional sheets if space provided is not sufficient.*

(5) Political Contributions

List all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made to any *current or former member* of City Council, any *candidate* for City Council, or to any *political action committee* that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under Box (1), (2), (3) or (4) above, or by the officers, owners of any business entity listed in Box (1), (2) or (3):

No contributions made; If contributions made, list below:

By Whom Made:	To Whom Made:	Amount:	Date of Contribution:
See Attached Exhibit A			

(6) Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city must disclose any known facts which, reasonably understood, raise a question² as to whether any city official or employee would violate Section 2-43 of the City Code (Ethics Code), ("conflicts of interest") by participating in official action relating to the discretionary contract.

Party not aware of facts which would raise a "conflicts-of-interest" issue under Section 2-43 of the City Code; or

Party aware of the following facts:

This form is required to be supplemented in the event there is any change in the information before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed, whichever occurs first.

Signature:



Steve Zander

Title: VP/Building Construction

Company or D/B/A:

Zachry Construction Corporation

Date:

July 07, 2005

² For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.

Exhibit A
June 10, 2003 - August 10, 2005

By Whom	To Whom		Amount	Date
Jim Zachry	Hall	Art	\$250	7/19/05
Jim Zachry	Hardberger	Phil	\$500	7/19/05
Jim Zachry	Herrera	Delicia	\$250	07/19/2005
John Zachry	Herrera	Delicia	\$250	07/13/2005
Jeff Rochelle	Hall	Art	\$250	7/12/05
Jeff Rochelle	Herrera	Delicia	\$250	07/12/2005
Bartell Zachry	Herrera	Delicia	\$250	07/12/2005
Mr. & Mrs. Murray Johnston	Hardberger	Phil	\$1,000	7/8/05
David Zachry	Herrera	Delicia	\$250	07/08/2005
David Zachry	Hall	Art	\$500	7/6/05
David Zachry	Hardberger	Phil	\$1,000	7/6/05
John Zachry	Hall	Art	\$500	6/30/05
Bartell Zachry	Hall	Art	\$500	6/30/05
Mollie Zachry	Hardberger	Phil	\$1,000	6/30/05
John Zachry	Hardberger	Phil	\$1,000	6/30/05
Bartell Zachry	Hardberger	Phil	\$1,000	6/30/05
Karen Lee Zachry	Hardberger	Phil	\$1,000	6/29/05
Vicky Waddy	Hardberger	Phil	\$700	6/3/05
Linda Wright	Hardberger	Phil	\$50	6/1/05
Bartell Zachry	Garza	Ed	\$1,000	5/26/05
Ken Wolf	Hardberger	Phil	\$225	5/26/05
Anne Rochelle	Hardberger	Phil	\$1,000	5/24/05
Tom Hannigan	Hardberger	Phil	\$150	5/23/05
Jeff Rochelle	Hardberger	Phil	\$1,000	5/23/05
Mr. & Mrs. Bob Engberg	Hardberger	Phil	\$250	5/20/05
Mr. & Mrs. Ken Oleson	McNeil	Sheila	\$250	5/20/05
Vicky Waddy	Hardberger	Phil	\$289	5/19/05
Fred Lueck	Hardberger	Phil	\$500	5/18/05
Laura Zachry	Hardberger	Phil	\$1,000	5/17/05
Jim Zachry	Hardberger	Phil	\$1,000	5/17/05
David Zachry	Lopez	Ray	\$250	5/17/05
Jim Zachry	Lopez	Ray	\$500	5/17/05
John Zachry	Lopez	Ray	\$250	5/17/05
David Zachry	McNeil	Sheila	\$250	5/17/05
Jim Zachry	McNeil	Sheila	\$500	5/17/05
John Zachry	McNeil	Sheila	\$250	5/17/05
Mollie Zachry	Hardberger	Phil	\$1,000	5/16/05
Ken Wolf	Hardberger	Phil	\$150	5/16/05
David Zachry	Hardberger	Phil	\$1,000	5/16/05
John Zachry	Hardberger	Phil	\$1,000	5/16/05

Exhibit A
June 10, 2003 - August 10, 2005

By Whom	To Whom		Amount	Date
Bartell Zachry	Lopez	Ray	\$500	5/16/05
Bartell Zachry	McNeil	Sheila	\$500	5/16/05
Vicky Waddy	McNeil	Sheila	\$250	5/16/05
Bartell Zachry	Schubert	Carroll	\$1,000	5/16/05
Mr. & Mrs. Murray Johnston	Hardberger	Phil	\$2,000	5/11/05
Karen Lee Zachry	Hardberger	Phil	\$1,000	5/9/05
Gonzalo Ornelas	Hardberger	Phil	\$1,000	5/8/05
Ray Wenz	Hardberger	Phil	\$500	5/2/05
Mr. & Mrs. Joe Lozano	Hardberger	Phil	\$300	5/2/05
Fred Lueck	Hardberger	Phil	\$750	5/2/05
Bob Kalt	Hardberger	Phil	\$500	5/2/05
Cathy O. Green	Hardberger	Phil	\$500	5/2/05
Debbie McDonald	Hardberger	Phil	\$500	5/2/05
Steve Hoech	Hardberger	Phil	\$200	5/1/05
Ken Wolf	Hardberger	Phil	\$200	4/30/05
Ed Bardgett	Hardberger	Phil	\$200	4/29/05
Ralph Biediger	Hardberger	Phil	\$200	4/29/05
Charlie Ebrom	Hardberger	Phil	\$1,000	4/29/05
Raymond Suire	Wolff	Kevin	\$75	4/29/05
Mr. & Mrs. Keith Manning	Hardberger	Phil	\$750	4/28/05
Bartell Zachry	Flores	Roger	\$500	4/18/05
Bartell Zachry	Hall	Art	\$500	4/18/05
Mr. & Mrs. Ken Oleson	Hardberger	Phil	\$750	4/13/05
Mr. & Mrs. Raymond Suire	Hardberger	Phil	\$60	4/12/05
Richard Reed	Hardberger	Phil	\$125	4/11/05
Mr. & Mrs. Tim Watt	Hardberger	Phil	\$100	4/11/05
Mr. & Mrs. Tim Hildenbrand	Hardberger	Phil	\$125	4/11/05
Mr. & Mrs. Keith Manning	Hardberger	Phil	\$250	4/11/05
Mr. & Mrs. Joe Lozano	Hardberger	Phil	\$125	4/11/05
Linda Wright	Hardberger	Phil	\$75	4/11/05
D. Kirk McDonald	Hardberger	Phil	\$250	4/11/05
Fred Lueck	Hardberger	Phil	\$250	4/11/05
Mr. & Mrs. Ken Oleson	Hardberger	Phil	\$250	4/8/05
Bob Engberg	Schauer	Steven	\$250	4/5/05
Bartell Zachry	Lopez	Ray	\$500	3/15/05
Jim Zachry	Flores	Roger	\$500	3/12/05
Jim Zachry	Hall	Art	\$500	3/12/05
Jim Zachry	Lopez	Ray	\$500	3/12/05
Jim Zachry	Perez	Richard	\$500	3/12/05
Jim Zachry	Radle	Patti	\$500	3/12/05

Exhibit A
June 10, 2003 - August 10, 2005

By Whom	To Whom		Amount	Date
Jim Zachry	Wolff	Kevin	\$500	3/12/05
Vicky Waddy	Hall	Art	\$150	3/10/05
Ken Wolf	Hall	Art	\$100	3/10/05
Vicky Waddy	Lopez	Ray	\$150	3/10/05
Cathy O. Green	Radle	Patti	\$150	3/10/05
Vicky Waddy	Wolff	Kevin	\$150	3/10/05
Jeff Rochelle	Flores	Roger	\$100	3/7/05
David Zachry	Flores	Roger	\$500	3/7/05
David Zachry	Hall	Art	\$250	3/7/05
Colleen Goff	Hardberger	Phil	\$125	3/7/05
David Zachry	Lopez	Ray	\$250	3/7/05
David Zachry	Perez	Richard	\$500	3/7/05
David Zachry	Radle	Patti	\$250	3/7/05
David Zachry	Wolff	Kevin	\$250	3/7/05
John Zachry	Flores	Roger	\$500	3/4/05
John Zachry	Hall	Art	\$250	3/4/05
Mr. & Mrs. Murray Johnston	Lopez	Ray	\$100	3/4/05
John Zachry	Lopez	Ray	\$250	3/4/05
Mr. & Mrs. Murray Johnston	Perez	Richard	\$250	3/4/05
John Zachry	Perez	Richard	\$500	3/4/05
Mr. & Mrs. Murray Johnston	Radle	Patti	\$250	3/4/05
John Zachry	Radle	Patti	\$250	3/4/05
Mr. & Mrs. Murray Johnston	Wolff	Kevin	\$250	3/4/05
John Zachry	Wolff	Kevin	\$250	3/4/05
Ken Wolf	Hardberger	Phil	\$100	3/2/05
Ken Wolf	Lopez	Ray	\$100	3/2/05
Jeff Rochelle	Williams	Joel	\$500	3/2/05
Jim Zachry	Williams	Joel	\$500	2/22/05
Mr. & Mrs. Ken Oleson	Williams	Joel	\$250	2/21/05
Bartell Zachry	Williams	Joel	\$500	2/21/05
Ken Wolf	Williams	Joel	\$250	2/18/05
John Zachry	Williams	Joel	\$250	2/18/05
David Zachry	Williams	Joel	\$250	2/18/05
Nancy Zachry	Schubert	Carroll	\$500	2/11/05
Mr. & Mrs. Murray Johnston	Hardberger	Phil	\$1,000	2/7/05
Ken Wolf	Wolff	Kevin	\$100	1/31/05
Jeff Rochelle	Hall	Art	\$250	12/31/04
Bartell Zachry	Garza	Ed	\$1,000	12/21/04
Cathy O. Green	Hardberger	Phil	\$500	12/6/04
Raymond Suire	Hardberger	Phil	\$100	11/19/04

Exhibit A
June 10, 2003 - August 10, 2005

By Whom	To Whom		Amount	Date
Mr. & Mrs. Murray Johnston	Hardberger	Phil	\$1,000	8/10/04
Vicky Waddy	Hardberger	Phil	\$1,000	8/9/04
Bartell Zachry	Wolff	Kevin	\$500	8/5/04
Mollie Zachry	Hardberger	Phil	\$1,000	7/28/04
Jeff Rochelle	Hardberger	Phil	\$1,000	7/28/04
Bartell Zachry	Hardberger	Phil	\$1,000	7/28/04
Anne Rochelle	Hardberger	Phil	\$1,000	7/28/04
Karen Lee Zachry	Hardberger	Phil	\$5,000	7/26/04
Laura Zachry	Hardberger	Phil	\$1,000	7/23/04
John Zachry	Hardberger	Phil	\$1,000	7/23/04
David Zachry	Hardberger	Phil	\$1,000	7/23/04
Ken Oleson	Williams	Joel	\$250	6/9/04
Jim Zachry	Williams	Joel	\$250	6/4/04
Jeff Rochelle	Williams	Joel	\$250	6/3/04
Bartell Zachry	Williams	Joel	\$250	6/3/04
Bartell Zachry	Flores	Roger	\$500	11/26/03
David Zachry	Flores	Roger	\$1,500	11/19/03
Cathy O. Green	Schubert	Carroll	\$100	8/10/03
Mr. & Mrs. Murray Johnston	Perez	Richard	\$100	6/18/03
John Zachry	Perez	Richard	\$200	6/18/03
David Zachry	Perez	Richard	\$200	6/18/03
Vicky Waddy	Perez	Richard	\$100	6/10/03
Bartell Zachry	Perez	Richard	\$500	6/10/03

CITY OF SAN ANTONIO
Discretionary Contracts Disclosure

For use of this form, see Section 2-59 through 2-61 of the City Code (Ethics Code)
Attach additional sheets if space provided is not sufficient.
State "Not Applicable" for questions that do not apply.

(1) Identify any individual or business entity¹ that is a **party** to the discretionary contract:

FACILITY PROGRAMMING AND CONSULTING
(FACILITY PROGRAMMING LTD)

(2) Identify any individual or business entity which is a **partner, parent** or **subsidiary** business entity, of any individual or business entity identified above in Box (1):

No partner, parent or subsidiary; or

List partner, parent or subsidiary of each party to the contract and identify the corresponding party:

(3) Identify any individual or business entity that would be a **subcontractor** on the discretionary contract.

No subcontractor(s); or

List subcontractors:

ROSS & BARUZZINI, INC.

(4) Identify any **lobbyist** or **public relations firm** employed by any party to the discretionary contract for purposes related to seeking the discretionary contract.

No lobbyist or public relations firm employed; or

List lobbyists or public relations firms:

¹ A *business entity* means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law. A sole proprietor should list the name of the individual and the d/b/a, if any.

(5) Political Contributions

List all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made to any *current* or *former member* of City Council, any *candidate* for City Council, or to any *political action committee* that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under Box (1), (2), (3) or (4) above, or by the officers, owners of any business entity listed in Box (1), (2) or (3):

<input type="checkbox"/> No contributions made; If contributions made, list below:			
By Whom Made:	To Whom Made:	Amount:	Date of Contribution:
DOUG LOWE	RICHARD PEREZ	\$250	FEB 16, 2005

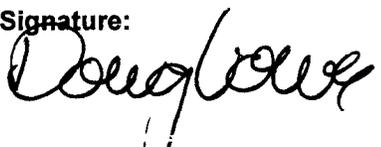
(6) Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city must disclose any known facts which, reasonably understood, raise a question² as to whether any city official or employee would violate Section 2-43 of the City Code (Ethics Code), ("conflicts of interest") by participating in official action relating to the discretionary contract.

Party not aware of facts which would raise a "conflicts-of-interest" issue under Section 2-43 of the City Code; or

Party aware of the following facts:

This form is required to be supplemented in the event there is any change in the information before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed, whichever occurs first.

Signature: 	Title: PRESIDENT Company or D/B/A: FACILITY PROGRAMMING AND CONSULTING	Date: OCT 4, 2005
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² For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.

*City of San Antonio
Emergency Operations Center*

October 3, 2005

Scope of Services

Total Services	\$300,300
Total Project	\$300,300

Phase C Proposal	\$300,300
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Services Summary

Architectural Program Conformance	\$135,300
Coordinate Design Build Team Issues	\$105,600
Coordinate The Core Partners Issues	\$33,000
Limited Project Management Issues	\$26,400
Total Services	\$300,300

Services Description

Program Conformance	\$135,300
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Monitor design and construction drawings to ensure the intent of the programming is followed

Ensure that the minimum design criteria is adhered to

Monitor Construction to ensure compliance with the program and the minimum design criteria

Coordinate Design Build Team Issues	\$105,600
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Monitor "on time and on budget"

Respond to Design Build team issues

Facilitate peer reviews at milestone dates (design/construction)

Coordinate Core Partners Issues	\$33,000
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Coordinate potential changes from

City of San Antonio Office of Emergency Management, ITSD, Media Relations, 311

Bexar County Office of Emergency Management, ITSD, Media Relations

Limited Project Management Services	\$26,400
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Assist Public Works in addressing project issues

Attend project meetings (as requested)

Assist City of San Antonio in management of the project contingency

Advise the City of San Antonio on change orders

Advise the City of San Antonio on issues regarding design, construction, and project closeout

Total Basic Services	\$300,300
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- Strategic Facilities Planning
 - Architectural Programming
 - Space Utilization Analysis
 - Needs Assessment
 - Project Definition
 - Design Criteria
- Frost Bank Tower/Suite 1170
100 West Houston Street
San Antonio, Texas 78205
210/228-9600
210/228-9697 Fax
facilityprogramming.com