

COMPETITIVE SEALED PROPOSAL
FOR
2020 JOB ORDER CONTRACT FOR
CITY OF AUSTIN FACILITY
IMPROVEMENTS

SOLICITATION NO.: CLMB333

SOLICITATION ISSUED ON:
April 20, 2020



VOLUME 1 OF 1

SEALED PROPOSALS DUE: June 11, 2020

PRIOR TO: 3:00 PM

DELIVER TO:
City of Austin
Capital Contracting Office
One Texas Center
Barton Springs Road, Suite 1045-C
Austin, Texas 78704

-OR-

Submit electronically via Austin Finance Online

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FOR THE JOB ORDER CONTRACTING PROGRAM
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(03/24/2020)**

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INVITATION FOR PROPOSALS
Section 00020JOC

1. OVERVIEW AND PROJECT INFORMATION

The City of Austin (City), hereafter referred to as Owner, desires to select approximately eight (8) General Contractors on the basis of Competitive Sealed Proposals (CSP) for a Job Order Contracting Program. This solicitation complies with applicable City Policy and state of Texas law, including Texas Government Code Title 10, Subtitle D, Chapter 2269. Owner will select the successful Offerors that offer the best value to the City based on the published Evaluation Criteria and on its final ranking.

The Job Order Contracting Program will consist of base contracts with qualified contractors for the purpose of performing Job Order Assignments on a recurring basis. The Contract will be for an Initial Term of 24 months, with option of 3 possible 12-month terms.

Most Job Order Assignments will be for Contract Amounts up to \$300,000.00. Any Job Order Assignment over \$500,000.00 must be approved by the Austin City Council. The maximum aggregate contract price is \$48,000,000.00 and will be the amount allocated to the overall City of Austin Job Order Contracting Program. While it is anticipated that this amount will be allocated on a roughly proportionate basis between the selected Contractors, there is no guarantee of the number of Job Order Assignments or the dollar value of the assignments. Individual Job Order Assignments will be awarded on a rotational basis; they will not be competed amongst the JOC Contractors.

Below is a summary of information related to this Solicitation. Offerors are cautioned to refer to all other sections of the Solicitation Documents, Clarifications and/or Addenda for further details. Evaluation Criteria are specified in Section 00101JOC.

Owner is requesting Proposals for furnishing all labor, materials, equipment, supervision, incidentals and performing all Work required for the following Project:

Project:	2020 Job Order Contract for City Facility Improvements
Located at:	Various City of Austin Facilities
Solicitation No.:	CLMB333

The Work consists of performing maintenance, repair, alteration, renovation, remediation and/or minor construction of City of Austin facilities. Various trades will consist of, but not limited to building envelope, mechanical systems, electrical systems, plumbing systems, carpentry, masonry, finishes, fixed kitchen or industrial equipment, communications cabling, paving, site drainage, etc. Work locations may include any building, facility, or installation in the City of Austin's real property inventory.

Contractor(s) shall be responsible for providing all labor, materials, tools, instruments, supplies, equipment, transportation, mobilization, insurance, subcontracts, bonds, supervision, management, reports, incidentals, and quality control necessary to perform construction management and construction work for the minor construction, repair, rehabilitation and/or alteration of City facilities. Contractor(s) shall maintain a team capable of carrying a workload of up to ten (10) concurrent assignments actively in the construction phase.

The Job Order Assignments will define the Work by applicable Statements of Scope, Drawings and Specifications, and other details and the Contract Amounts will be determined by applying a Contractor Coefficient to the unit prices contained in the standardized Unit

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Price Book (UPB) and other criteria described in the Contract Documents. Any individual Job Order Assignments may require the coordination of and performance by multiple trades and disciplines.

The Job Order Assignment Proposal Request will identify individual assignment requirements. The Contractor will attend a project site visit, develop a proposal with a line-item cost estimate, using the UPB via computerized cost estimating system, and submit it to the City for approval. Upon approval of a Job Order Assignment, the City will issue a notice to proceed and the Contractor will provide all materials, labor, tools, equipment, supervision, project management, safety, and quality control to successfully and timely complete the assignment.

The current Job Order Contract, in place since August 2017, has been heavily utilized. Sixty-eight (68) assignments have been executed with \$16,256,504.95 encumbered through February 3, 2020. Additional assignments are being developed, bringing the anticipated number of assignments to ninety-seven (97) with a projected amount of \$21,970,156.26 encumbered by the end of fiscal year 2020. Assignments have covered a large range of project types including: EV charging stations (25); accessibility, safety & code upgrades (13); plumbing & piping (9); pre-fab buildings (7); paving & drainage (7); renovations (6); enclosures & structures (5); fixed equipment (4); HVAC improvements (4); security upgrades (3); landscaping (3); flooring & ceilings (3); window & door upgrades (2); district cooling heat exchangers (2); electrical & lighting (1); demolition & remediation (1); foundation repair (1).

2. SOLICITATION DOCUMENTS

Solicitation Documents are obtained through the City's Vendor Connection website, log on www.austintexas.gov/financeonline/vendor_connection/index.cfm.

All addenda and answers to Proposers' questions will also be posted in the attachments section for each solicitation on the City's Vendor Connection website.

3. SUBMISSION OF PROPOSAL

The Offeror must either submit one (1) digital/electronic version of the proposal on CD or Flash Drive in a sealed container, or proposals may be submitted electronically via Austin Finance Online (see Appendix 1 Solicitation Attachment No. 1 – Submitting Offers Online using eResponse).

Proposals must be received at the following location or electronically via Austin Finance Online prior to the date and time set forth below:

**ALL PROPOSALS ARE DUE PRIOR TO (Austin time) 3:00 PM on June 11, 2020.
PROPOSALS WILL BE OPENED AT (Austin time) 4:00 PM June 11, 2020.**

Proposal may be mailed or delivered (in person or by Federal Express, Express Mail or other delivery service) using the appropriate address below:

Address for US Mail (If mailed to the physical address, the proposal will be returned unopened)	Address for Hand Delivery, FedEx, UPS or Courier
City of Austin	City of Austin, One Texas Center
Capital Contracting Office	Capital Contracting Office
P. O. Box 1088	505 Barton Springs Road, Suite 1045-B
Austin, Texas 78767-8845	Austin, Texas 78704

NOTE: Proposals must either be received and time stamped in the Capital Contracting Office prior to the Due Date and Time or submitted electronically via Austin Finance Online. It is the responsibility of the Offeror to ensure that their Proposal arrives at the reception desk in the Capital Contracting Office prior to the time and date indicated. Arrival at the City's mailroom, mail terminal, or post office box will not constitute the Proposal arriving on time.

Each proposal must be completed and signed by persons(s) authorized to bind individual, partnership, firm, corporation, or any other legal entity submitting the proposal and shall include the following:

- One copy of Cost Proposal form (Section 00300JOC)
- Acknowledgement of receipt of Addenda issued in spaces provided in Cost Proposal form
- Required information as indicated in the solicitation documents
- One copy of Coefficient Form (Appendix 2) only for responses submitted electronically in Austin Finance Online

Due to the unprecedented event of COVID-19 and to help prevent the further spread, Capital Contracting Office will NOT be conducting an in-person proposal opening. Offerors must either submit their proposals no earlier than 11:00 AM and prior to 3:00 PM on the day proposals are due to the Capital Contracting Office physical location, or must submit proposals electronically via Austin Finance Online prior to 3:00 PM on the day proposals are due.

Offerors may watch the proposal opening online at 4:00 PM the day proposals are due using the following Web link: [CCO Web Bid Opening Click Here](#)

ALL PROPOSALS NOT RECEIVED PRIOR TO THE DATE AND TIME SET FORTH ABOVE WILL NOT BE ACCEPTED FOR CONSIDERATION. The time stamp clock in SUITE 1045B is the time of record and is verified with www.time.gov, the official U.S. time. For proposals submitted electronically via Austin Finance Online, the time of record is the time received in Austin Finance Online.

4. VENDOR REGISTRATION AND NON-DISCRIMINATION

Prime Contractors must be registered with the OWNER prior to submitting a proposal electronically via Austin Finance Online. All Subcontractors must be registered with the OWNER prior to execution of a contract. Prime Contractors are responsible for ensuring that their Subcontractors are registered as vendors with the City of Austin. Registration can be done through the OWNER's on-line Vendor Registration system. Log onto and follow directions: <https://www.ci.austin.tx.us/vss/Advantage>.

The City of Austin, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all Proposers that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit Proposals in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

5. MBE/WBE PROCUREMENT PROGRAM

All City procurements are subject to the City's Minority-Owned and Women-Owned Business Enterprise Procurement Program found at Chapter 2-9-A of the City Code, as amended. The Program provides Minority-Owned and Women-Owned Business Enterprises (MBEs/WBEs) or

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Disadvantaged Business Enterprises (DBEs) full opportunity to participate in all City contracts. No subcontracting goals have been established for this solicitation. Goals for MBE/WBE or DBE participation will be established for each individual Job Order Assignment. Information on achieving the goals or documenting good faith efforts to achieve the goals will be contained in the MBE/WBE Procurement Program Package or DBE Procurement Program Package attached to each individual Job Order Assignment. When goals are established, Proposers are required to complete and return the MBE/WBE or DBE Compliance Plan with their Job Order Assignment Proposals.

6. ANTICIPATED SELECTION SCHEDULE

The evaluation, ranking, and negotiations for selection of the prime contractor for this project is anticipated to be completed and submitted to the Austin City Council for action by August 27, 2020.

If Owner is unable to negotiate a satisfactory contract with a top-ranked firm within **45** calendar days, Owner will formally end negotiations with that firm in writing and may proceed to the next offeror in the order of the selection ranking, until a contract is reached or all negotiations end. The Owner, in its complete discretion, may elect to extend the time for negotiations with any firm for an additional period of time.

7. BONDS AND INSURANCE

Performance and payment bonds when required shall be executed on forms furnished by OWNER. Performance bonds will be required for Job Order Assignments of \$100,000 or greater. Payment bonds will be required for Job Order Assignments of \$50,000 or greater. No bonds will be required on Job Order Assignments under \$50,000. Each bond shall be issued in an amount of one hundred percent (100%) of the Job Order Assignment by a solvent corporate surety company authorized to do business in the State of Texas, and shall meet any other requirements established by law or by OWNER pursuant to applicable law.

Minimum insurance requirements are specified in Section 00810JOC, Supplemental General Conditions. If any Job Order Assignment has insurance requirements over the minimum stated in Section 00810JOC, the additional premium shall be reimbursed at cost for the time spent on the specific assignment.

8. WAGE COMPLIANCE

Minimum wage rates have been established and are specified in Section 00830, Wage Rates and Payroll Reporting. Prevailing wage rates (as specified in Sections 00830BC and 00830HH) shall be applied for the rates current at the time of execution of the Section 00500JOC Agreement for each Job Order Assignment.

9. CONTRACT TIME

The Contract will be for an Initial Term of 24 months, with option of 3 possible 12-month terms. Extension of the Contract will be at the mutual agreement of both the OWNER and the CONTRACTOR. If the CONTRACTOR chooses not to renew, a hold over extension of the Contract term for up to 120 calendar days may be implemented by the OWNER to allow time for re-soliciting. The OWNER reserves the right not to offer an extension. Job Order Assignments may be issued at any time during the term of the Contract. Job Order Assignments not completed by the expiration date of the Contract are subject to the terms and conditions of the Contract which will continue in full force and effect.

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Contract Time is of the essence and all Work on each Job Order Assignment shall be substantially completed by the date specified by the OWNER in the Notice to Proceed letter for each specific assignment.

Final completion shall be achieved within thirty (30) Calendar Days after substantial completion.

Liquidated damages for failure to substantially complete the work and failure to achieve final completion within thirty (30) Calendar Days after substantial completion will be assessed on each Job Order Assignment and will be established in the 00500 Assignment Agreement as applicable.

10. OWNER'S RIGHTS

OWNER reserves the right to reject any or all Proposals and to waive any minor informality in any Proposal or solicitation procedure (a minor informality is one that does not affect the competitiveness of the Proposal).

11. PRE-PROPOSAL MEETING

Due to the unprecedented event of COVID-19 and to help prevent the further spread, Capital Contracting Office will be conducting a Pre-Proposal webinar. This **non-mandatory** Pre-Proposal Conference will be held on May 6, 2020, 9:00AM (Austin time). Proposers can participate in the webinar and teleconference by following this link: <https://teams.microsoft.com/l/meetup-join/19%3ameeting_N2Y3YjFiN2ItNGYzNy00ODRILWFmMjktNjQ4ZTCxZmZhMGU4%40threa.d.v2/0?context=%7b%22Tid%22%3a%225c5e19f6-a6ab-4b45-b1d0-be4608a9a67f%22%2c%22Oid%22%3a%22a99d762b-6ce8-454c-a9e5-029b0b08ac42%22%7d> or by calling +1 512-831-7858 United States, Austin (Toll), Conference ID: 609 324 143#.

Attendance is not mandatory unless otherwise stated. Proposers must attend any mandatory Pre-Proposal Conference and are encouraged to attend any non-mandatory Pre-Proposal Conference to ensure their understanding of OWNER's Proposal and contracting requirements, particularly MBE/WBE or DBE Procurement Program requirements. If the Pre-Proposal Conference is mandatory the Proposer must arrive and sign-in within fifteen (15) minutes of the scheduled start time of the meeting, otherwise the Proposer will not be allowed to submit a Proposal for the project.

A 2020 Job Order Contracting Event was held on February 12, 2020 and the presented materials are available on the internet at <http://www.austintexas.gov/department/outreach-and-events>. Topics presented include: Job Order Contracting Overview; Wage Compliance Program for Job Order Contracts; Setting a Coefficient for Job Order Contracting; Small & Minority Business Resource Department 2020 Job Order Contracting Program Requirements. The direct link to the presentation slides is: http://www.austintexas.gov/sites/default/files/files/2020_JOC_Event_Presentation.pdf. The direct link to the event recording is: <http://austintx.swagit.com/play/02132020-1466>.

12. SERVICE DISABLED VETERAN BUSINESS ENTERPRISE (SDVBE) PROGRAM

This Contract is subject to the provisions of the City's Interim Service-Disabled Veteran Owned Business Enterprise (SDVBE) Program as established by City Council Resolution No. 20160303-016. **See the Service-Disabled Veteran Owned Business Enterprise Contractor Certification Form 00480 included in the Solicitation.** If a respondent is a SDVBE, and wants to participate in the Program, the City requires a certification

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with their Offer certifying that they are State Historically Underutilized Business (HUB) Service-Disabled Veteran Owned Business.

13. ANTI-LOBBYING AND PROCUREMENT

On June 14, 2018, the Austin City Council adopted Ordinance No. 20180614-056 replacing Chapter 2.7, Article 6 of the City Code relating to Anti-Lobbying and Procurement. The policy defined in this Code applies to Solicitations for goods and/or services requiring City Council approval under City Charter Article VII, Section 15 (Purchase Procedures). The City requires Offerors submitting Offers on this Solicitation to certify that the Offeror has not in any way directly or indirectly had communication restricted in the ordinance section 2-7-104 during the No-Lobbying Period as defined in the Ordinance. The text of the City Ordinance is posted on the Internet at:

https://assets.austintexas.gov/purchase/downloads/New_ALO_Ordinance_No_20180614-056.pdf

14. AUTHORIZED CONTACT PERSONS

The persons listed below may be contacted for information regarding the Invitation for Proposal.

CAPITAL CONTRACTING OFFICE CONTACT: Kevin Benson phone 512-974-6203, email kevin.benson@austintexas.gov

SMALL & MINORITY BUSINESS RESOURCES DEPARTMENT CONTACT: Jessica Oberembt, phone 512-974-7256, email jessica.oberembt@austintexas.gov

END

INSTRUCTIONS TO OFFERORS

Section 00100JOC

1. PREPARATION OF PROPOSALS

1.1 Proposal Documents. Each Proposal should be prepared simply and economically, providing a straightforward, concise description of the Offeror's ability to meet the requirements of this solicitation. Elaborate bindings, colored displays, promotional materials and so forth are not desired. Emphasis should be on completeness, clarity of content, responsiveness to the requirements, and an understanding of the City's (Owner's) needs. Offeror shall also comply with proposal requirements of Section 00101JOC, Evaluation Criteria including page number limitations.

1.2 Modifications to Proposal. Proposals may be modified in writing at any time prior to the due date and time. The person signing the Proposal shall initial any modifications to the Proposal.

1.3 Professional Services. Services that are defined as professional services under the Professional Services Procurement Act, Chapter 2254 of the Texas Government Code (for example: registered professional land surveyors, professional architects, and professional engineers) are prohibited from procurement under the Job Order Contracting with the exception of Construction Staking/Layout Surveying.

1.4 Sales Tax Exemption. The Owner is a tax-exempt organization as defined by Chapter 11 of the Property Tax Code of Texas. Proposed prices shall not include sales tax on materials, supplies, or equipment that are incorporated into the real property interest of the Owner or are otherwise completely used and consumed in the performance of the Contract. Owner will furnish Contractor with a Sales Tax Exemption Certificate to be issued to Suppliers in lieu of the tax.

1.5 Addenda. Offeror shall be knowledgeable of all Addenda issued and shall acknowledge all Addenda in spaces provided on proposal form. Further information regarding the Solicitation Documents and the Project may be obtained from the City's Project Manager or Contract Procurement Representative listed in Section 00020JOC, Invitation for Proposals.

1.6 Required Items. Offers must include all specified items in this section and be submitted in accordance with Evaluation Criteria.

1.7 Disclosure of Proprietary Information. All materials submitted to Owner become public property and are subject to the Texas Public Information Act, Government Code Chapter 552, upon receipt. If Offeror does not desire proprietary information in the Proposal to be disclosed, each page must be identified and marked "proprietary" at time of submittal. Owner will, to the extent allowed by law, endeavor to protect such information from disclosure. The final decision as to what information must be disclosed, however, lies with the Texas Attorney General. Failure to identify proprietary information will result in all unmarked sections being deemed non-proprietary and available upon public request.

1.8 Costs of Preparing Proposal. All cost directly or indirectly related to preparation of a Proposal to this Solicitation or any oral presentation required to supplement and/or clarify a Proposal, which may be required by Owner, shall be the sole responsibility of the Offeror.

1.9 Further Information. Information may be obtained by calling the City's Project Manager listed in Section 00020JOC, Invitation for Proposals. Persons desiring further information or interpretation of the solicitation requirements shall make a written request for

such information to Owner no later than seven (7) working days before Proposal submittal due date and time. Interpretation of Solicitation Documents will be made by Addendum **only** and a copy of each Addendum is available through the City's Vendor Connection website. Log on to the site below and follow directions as required:

https://www.austintexas.gov/financeonline/vendor_connection/index.cfm.

1.10 Legal Status of Offeror. Only individual firms or lawfully formed formal business organizations may apply, unless, if Offeror does not meet the foregoing criteria, Offeror states in writing to Owner that, if awarded the contract, it will form a formal business organization in a timely manner so as not to delay the Project. Any associations will be disqualified (this does not preclude Offeror from having subcontractors/subconsultants). Owner will contract only with individual firms or formal organizations such as a) joint ventures, b) limited liability corporations, c) partnerships, or d) corporations authorized to do business in the state of Texas.

1.11 Anti-Lobbying and Procurement. On June 14, 2018, the Austin City Council adopted Ordinance No. 20180614-056 replacing Chapter 2.7, Article 6 of the City Code relating to Anti-Lobbying and Procurement. The policy defined in this Code applies to Solicitations for goods and/or services requiring City Council approval under City Charter Article VII, Section 15 (Purchase Procedures). The City requires Offerors submitting Offers on this Solicitation to certify that the Offeror has not in any way directly or indirectly had communication restricted in the ordinance section 2-7-104 during the No-Lobbying Period as defined in the Ordinance. The text of the City Ordinance is posted on the Internet at:

https://assets.austintexas.gov/purchase/downloads/New_ALO_Ordinance_No_20180614-056.pdf

1.12 City's Minority-Owned and Women-Owned Business Enterprise (MBE/WBE) Program Requirements.

The Offeror will be required to submit a MBE-WBE Procurement Program Statement of Responsibility form (Appendix 3) with their solicitation response stating that they will comply with the MBE/WBE requirements at the Job Order Assignment level. MBE/WBE goals will be established for each individual Job Order Assignment issued under the Job Order Contract resulting from this solicitation.

Good Faith Efforts. When a Contractor cannot achieve the MBE/WBE goals or subgoals established for the assignment, the Contractor must document its Good Faith Efforts to meet the goals or subgoals. Good Faith Effort evaluations will consider, at a minimum, the Contractor's efforts to do the following:

- .1 Soliciting through at least two reasonable, available and verifiable means MBEs/WBEs within the Significant Local Business Presence boundaries at least seven (7) business days prior to the Contractor's job order assignment proposal submission to allow the MBEs/WBEs to respond to the assignment.
- .2 Providing interested MBEs/WBEs adequate information about the job assignment documents and requirements, in a timely manner to assist them in responding to the assignment.
- .3 Negotiating in good faith with interested MBEs/WBEs that have submitted bids to the Contractor.

- .4 Publishing notice in a local publication such as a newspaper, trade association publication or via electronic/social media.
- .5 Not rejecting MBEs/WBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities.
- .6 Making economically feasible portions of the work available to MBE/WBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available MBE/WBE subcontractors and suppliers, so as to facilitate meeting the goals or subgoals.
- .7 The ability or desire of the Contractor to perform the project work with its own organization does not relieve the Contractor of the responsibility to make Good Faith Efforts.
- .8 Contractors are not required to accept higher quotes in order to meet the goals or subgoals.
- .9 Effectively using the services of Minority Person/Women community organizations; Minority Person/Women Contractors groups; local, state and federal Minority Person/Women business assistance offices; and other organizations to provide assistance in solicitation and utilization of MBEs, WBEs and/or DBEs.
- .10 In assessing minimum Good Faith Efforts, the Owner may consider (1) whether the Contractor sought guidance from the City of Austin Small and Minority Business Resources Department (SMBR) on any question regarding compliance with these requirements; and (2) the performance of other Contractors in meeting the goals.

Bid shopping is not allowed in conjunction with a job order assignment and may result in an MBE/WBE Program violation issued to the Contractor.

2. MINIMUM WAGES

Workers on the Project shall be paid not less than wage rates, including fringe benefits, as published by the Department of Labor (DOL) for Building Construction and Heavy and Highway Trades "AS APPLICABLE" and/or the \$15.00 minimum wage required by City of Austin Ordinance No. 20160324-015, whichever is higher. The Total Minimum Wage required can be met using any combination of cash and non-cash qualified fringe benefits provided the cash component meets or exceeds the \$15.00 minimum wage required.

3. PERFORMANCE AND PAYMENT BONDS

When performance and/or payment bonds are required, each shall be issued in an amount equal to the Job Order Agreement Amount as security for the faithful performance and/or payment of all Contractor's obligations under the Contract Documents. Performance bonds will be required for Job Order Assignments of \$100,000 or greater. Payment bonds will be required for Job Order Assignments of \$50,000 or greater. No bonds will be required on Job Order Assignments under \$50,000. Performance and payment bonds shall be issued in an amount of one hundred percent (100%) of the Job Order Assignment Amount by a solvent corporate surety authorized to do business in the State of Texas, and shall meet any other requirements established by law or by Owner pursuant to applicable law.

4. OPENING OF PROPOSALS

Proposals will be opened in a manner that avoids disclosure of the contents to competing Offerors and keeps the contents confidential during negotiations. Until the negotiations are completed, only the number, identity and proposed price of the Offerors submitting Proposals will be made available to the public.

5. WITHDRAWAL OF PROPOSAL

Proposal may be withdrawn by Offeror, prior to the time set for receipt of Proposals. For withdrawal of electronic proposals, see Appendix 1 Solicitation Attachment No. 1 – Submitting Offers Online using eResponse.

6. REJECTION OF PROPOSAL

Owner reserves the right to reject any or all Proposals and to waive any minor informality in any Proposal or solicitation procedure (a minor informality is one that does not affect the competitiveness of the Offerors).

6.1 The following **will** be cause to reject a Proposal:

- .1 More than one Proposal for same Work from an individual, firm, partnership or corporation.
- .2 Evidence of collusion among Offerors.
- .3 Sworn testimony or discovery in pending litigation with Owner which discloses misconduct or willful refusal by Contractor to comply with subject contract or instructions of Owner.
- .4 Failure to submit MBE/WBE Statement of Responsibility.
- .5 Failure to have an authorized agent of the Offeror to attend the mandatory Pre-Proposal Meeting, if applicable.
- .6 Proposals received from an Offeror who has been debarred or suspended by Owner's Purchasing Officer.
- .7 Proposals received from an Offeror when its principals are currently debarred or suspended by Federal, State or City governmental agencies. (Applicable for Proposal amounts equal to or in excess of \$25,000.00).
- .8 Failure to identify a Standard Working Hours Coefficient, Non-Standard Working Hours Coefficient, and a Non-Pre-Priced Item Coefficient in the 00300JOC.

6.2 The following **may** be cause to reject a Proposal or influence evaluations and ranking of Proposal:

- .1 Poor performance in execution of work under a previous City of Austin contract.
- .2 Evidence of poor performance on previous Projects as documented in Owner's project performance evaluations.
- .3 Failure to achieve reasonable progress on an existing City of Austin contract.
- .4 Default on previous contracts or failure to execute Contract after award.
- .5 Evidence of failure to pay Subcontractors, Suppliers or employees in accordance with Contract requirements.
- .6 Proposals containing omissions, alterations of form, additions, qualifications or conditions not called for by Owner, or incomplete Proposals may be rejected. In any case of ambiguity or lack of clarity in the Proposal, Owner reserves right to determine most advantageous Proposal or to reject the Proposal.
- .7 Failure to acknowledge receipt of Addenda.
- .8 Failure to submit any of the items specified in the Evaluation Criteria, Section 00101JOC, or within this Request for Proposal.

- .9 Failure to submit post-proposal information within the allotted time(s), if applicable.
- .10 Failure to timely execute this Contract after award.
- .11 Previous environmental violations resulting in fines or citations by a governmental entity (i.e. U.S. Environmental Protection Agency, Texas Commission on Environmental Quality, etc.).
- .12 Unacceptable safety record and/or safety program as set forth in Evaluation Criteria, Item 3 of Section 00101JOC.
- .13 Failure of Offeror to demonstrate its experience with projects of similar size, scope, and complexity.
- .14 Evidence of Offeror's lack of sufficient resources, workforce, equipment or supervision.

7. SUBMISSION OF POST PROPOSAL INFORMATION

Offeror shall submit information as requested by Owner prior to or during contract negotiations.

8. RELEASE OF INFORMATION

Under Texas law, information relating to this Solicitation may be kept confidential until a contract has been awarded. Owner shall not release information relative to this Solicitation during the proposal evaluation process or prior to contract award, except as otherwise required by law.

9. AWARD AND EXECUTION OF CONTRACT

Owner will process Proposals expeditiously. The Owner will evaluate and rank each proposal with respect to the evaluation factors contained in this Solicitation. Award of Contract will be to the Offeror providing the best value to the Owner. The Owner reserves the right to negotiate all elements which comprise the Proposal to ensure that the best possible consideration is afforded to all concerned. The Owner and/or its Engineer or Architect may discuss with the selected Offeror options for a scope or time modification and any price change associated with the modifications.

If the Owner is unable to negotiate a satisfactory contract with the top-ranked Offeror, Owner shall end negotiations with that Offeror in writing and may proceed to the next Offeror in the order of selection ranking until a Contract is reached or all Proposals are rejected.

The City Manager or his/her designee will sign the Contract after award and submission of required documentation by Offeror. The Contract will not be binding upon Owner until it has been executed by both parties. Owner will process the Contract expeditiously. However, Owner will not be liable for any delays prior to the award or execution of Contract.

10. PROTEST PROCEDURES

The Owner's Capital Contracting Office (CCO) Officer has the authority to settle or resolve any claim of an alleged deficiency or protest. The procedures for notifying Owner of an alleged deficiency or filing a protest are listed below. If you fail to comply with any of these requirements, the CCO Officer may dismiss your complaint or protest.

Prior to Solicitation opening: If you are a prospective Offeror and you become aware of the facts regarding what you believe is a deficiency in the solicitation process before the Response

is opened, you must notify Owner in writing of the alleged deficiency before that date, giving Owner an opportunity to resolve the situation prior to the Solicitation Proposal opening.

After Solicitation opening: If you submit a Response to Owner and (1) you have been found non-responsive, or (2) you believe that there has been a deficiency in the solicitation process or the award, you have the opportunity to protest the solicitation process or the recommended award as follows:

10.1 You must file written notice of your intent to protest within four (4) calendar days of the date that you know or should have known of the facts relating to the protest. If you do not file a written notice of intent within this time, you have waived all rights to protest the solicitation process or the award.

10.2 You must file your written protest within fourteen (14) calendar days of the date that you know or should have known of the facts relating to the protest unless you know of the facts before the Proposal has been opened. If you know of the facts before that date, you must notify Owner as stated above.

10.3 You must submit your protest in writing and must include the following information:

- your name, address, telephone, and email address;
- the solicitation number and the CIP number, if applicable;
- a detailed statement of the factual grounds for the protest, including copies of any relevant documents.

10.4 Your protest must be concise and presented logically and factually to help with Owner's review.

10.5 When Owner receives a timely written protest, the CCO Officer will determine whether the grounds for your protest are sufficient. If the CCO Officer decides that the grounds are sufficient, CCO will schedule a protest hearing, usually within five (5) working days. If the CCO Officer determines that your grounds are insufficient, you will be notified of that decision in writing.

10.6 The protest hearing is informal and is not subject to the Open Meetings Act. The purpose of the hearing is to give you a chance to present your case, it is not an adversarial proceeding. Those who may attend from Owner are: representatives from the department that requested the purchase, the Law Department, CCO, and other appropriate City staff. You may bring a representative or anyone else that will present information to support the factual grounds for your protest with you to the hearing.

10.7 A decision will usually be made within fifteen (15) calendar days after the hearing.

10.8 The CCO Officer will send you a copy of the hearing decision after the appropriate City staff has reviewed the decision.

10.9 When a protest is filed, Owner usually will not make an award until a decision on the protest is made. However, Owner will not delay an award if the City Manager or the CCO Officer determines that:

- Owner urgently requires the supplies or services to be purchased, or
- failure to make an award promptly will unduly delay delivery or performance.
- In those instances, CCO will notify you and make every effort to resolve your protest before the award.

The protest or notice of intent and the protest shall be submitted in writing to the following address:

Address for US Mail (If mailed to the physical address, the proposal will be returned unopened)	Address for Hand Delivery, FedEx, UPS or Courier
City of Austin	City of Austin, One Texas Center
Capital Contracting Office	Capital Contracting Office
P. O. Box 1088	505 Barton Springs Road, Suite 1045-A
Austin, Texas 78767-1088	Austin, Texas 78704

11. SIGNATURE REQUIREMENTS

The Proposal, any subsequent supporting documents and Contract must be executed in the Offeror's full name and legal entity status by an authorized representative of the Offeror. Accordingly, a partnership/joint venture must file its partnership/joint venture agreement, a corporation must file its articles and bylaws, a limited liability company must file its certificate of organization and article of organization and regulations, and a limited partnership must file not only limited partnership agreement and the certificate of limited partnership, but also the documentation for its general partner, and any Offeror must file a copy of any assumed name certificate, or such limited portion of such documents reasonably establishing signature authority.

12. TEXAS ETHICS COMMISSION INTERESTED PARTIES DISCLOSURE FORM

12.1 Definitions:

"Interested Party" – means a person who has a controlling interest in a Business Entity with whom the Owner contacts or who actively participates in facilitating the Contract or negotiating the terms of the Contract, including a broker, intermediary, adviser, or attorney for the Business Entity.

"Business Entity" – means any entity recognized by law through which business is conducted, including a sole proprietorship, partnership, or corporation.

12.2 As a condition to entering the Contract, the Business Entity constituting the successful Bidder must provide a Texas Ethics Commission Certificate of Interested Parties Form to the Owner at the time the Business Entity/Bidder submits the signed Contract to the Owner in full compliance with the following requirements under which the successful Bidder shall:

- (i) go to the Ethics Commission's website (www.ethics.state.tx.us) and
- (ii) complete the "Interested Parties" information, in accordance with the requirements of the Texas Ethics Commission Rules published at Title 1, Part 2, Chapter 46, of the Texas Administrative Code and available on the referenced website;
- (iii) include the City's contract identification number;
- (iv) include a short description of the goods or services to be used by the City; and
- (v) indicate whether each interested party has a controlling interest in the business entity, is an intermediary in the contract for which the disclosure is being filed, or both.

- 12.3** In accordance with the Commission Rules, the Certificate of Filing and completed Certificate of Interested Parties must be: 1) printed, 2) signed by an authorized agent of the business entity, and 3) submitted to the City at the time of the submission of the signed contract to the City. The City then must notify the Ethics Commission in electronic format of receipt of the document within 30 days of contracting and the Commission will make the disclosure of interested parties available to the public on its website.

13. PARTNERING

In order to complete the Work in a manner that is most beneficial to the Owner and Contractor, Owner and Contractor may form a "Partnering Team", which will include the E/A, and any major Subcontractors. This partnering relationship will draw on the strength of all parties to identify and achieve mutual goals. The objectives of this partnering relationship are effective and efficient communication and Contract performance, which is intended to ensure that the Project is completed within budget, on schedule, and in accordance with the Drawings and Specifications and other Contract requirements. While the partnering relationship will be multilateral in makeup and participation will be totally voluntary, the Owner and Contractor agree to cooperate and use reasonable good faith efforts to discuss and resolve any and all Project issues and disputes.

END

EVALUATION CRITERIA

Section 00101JOC

Overview: This procurement is being issued in compliance with applicable City of Austin Policy for selecting and awarding facility (building) projects by a Request for Competitive Sealed Proposal method set forth in Texas Government Code 2269. **The City anticipates selecting approximately eight (8) Offerors that offer the "best value" to the City based on the evaluation of the following criteria.**

Criteria Item #	Title	Max Points
1	MBE/ WBE Procurement Program Statement of Responsibility	Y/N
2	Offeror's Financial Capability	Y/N
3	Safety Record	Y/N
4	Acceptable Documentation	Y/N
		Max Points
5	Price	20
6	Prime Firm's Comparable Experience	20
7	Past Performance on City of Austin Issues	10
8	Key Personnel Comparable Experience	20
9	Organizational Structure and Business Practices	15
10	Quality of Goods and Services by Sustainability	10
11	Sample Project	20
	SUBTOTAL	115
12	Service Disabled Veteran Business Enterprise (SDVBE)	3.45

Item 1: MBE/WBE Procurement Program Statement of Responsibility Yes or No

There are no goals established for the solicitation. MBE/WBE participation goals will be set for each individual Job Order Assignment. For the solicitation, the Offeror must complete a MBE/WBE Procurement Program Statement of Responsibility (Appendix 3) acknowledging their intent to comply with the City's MBE/WBE participation requirements or to make GFE to meet the goals established for each Job Order Assignment.

Offeror must submit:

MBE/WBE Procurement Program Statement of Responsibility

The Offeror must either submit one (1) digital/electronic version on CD or Flash Drive in a sealed container, or electronically via Austin Finance Online. The Offeror is cautioned to refer to all other sections of the Solicitation Documents, Clarifications and/or Addenda for further details.

Item 2: Offeror's Financial Capability Yes or No

The Offeror must provide evidence of financial capability and stability. Offeror's financial capability must be appropriate to the size and scope of this Project.

Offeror must submit:

Letter from Offeror's Surety stating Offeror's ability to acquire bonding in the full amount of the project and the maximum limits to be applied if applicable.

Item 3: Safety Record **Yes or No**

Offeror must submit safety experience information. The following factors may be considered, but are not limited to: Experience Modifier Rate, Lost Time Incident Rate, Total Recordable Case Rate, Safety Program, and OSHA Citations.

If based on the entirety of the Offeror's safety record, industry standards, and the risks associated with the current Project, the Offeror is found to have an unacceptable safety record the Offeror's response may be considered non-responsive and may not be considered for award.

Offeror must submit:

- Section 00410 – Statement of Offeror's Safety Experience

Item 4: Acceptable Documentation **Yes or No**

Submit the following documents, which are in addition to documents required in the other Evaluation Items.

- Section 00400JOC, Attachment A, Offeror's Information
- Section 00400JOC, Attachment B, Authentication of Submittal
- Section 00405, Certificate of Non-Suspension or Debarment

Item 5: Price **20 points max**

Offeror must submit:

- Section 00300JOC, Proposal form
- Supporting calculations for each of the Coefficients

Offeror must submit Coefficients to cover overhead, profit, and any other costs that are not included in the Unit Price Book (UPB), which for the purposes of this contract is the R.S. Means Master Composite Cost Data, including all updates. The Offeror's Coefficients are numerical values, to three (3) decimal places, that the Offeror proposes as a multiplier to the UPB, after the Austin, Texas City Cost Index Adjustment.

For example, if the labor unit price for painting 1 square foot of gypsum board from the R.S. Means bare labor cost, after city cost adjustment, is \$15.00 and the coefficient is 0.85, the unit labor price for the item would be \$12.75 ($\$15.00 \times 0.85 = \12.75). The coefficient shall be the net decrease from or increase to the UPB "Bare Total" column.

Offerors are required to submit Coefficients Standard Working Hours (7:00am-6:00pm Monday-Friday), Non-Standard Working Hours (6:00pm-7:00am Monday-Friday, Weekends, and Holidays), and Non-Priced Items as required in the Cost Proposal Form, Section 00300JOC.

Pre-Priced Items (Unit Price Book):

Standard Working Hours Coefficient (10 Points) - The lowest coefficient for Standard Working Hours receives 10 points, with others receiving a pro rata percentage of 10 points based on a percentage comparison with the lowest coefficient proposed for Standard Working Hours.

Non-Standard Working Hours Coefficient (5 Points) - The lowest coefficient for Non-Standard Working Hours receives 5 points, with others receiving a pro rata percentage of 5 points based on a percentage comparison with the lowest coefficient proposed for Non-Standard Working Hours.

Non-Pre-Priced Items:

Non-Pre-Priced Item Coefficient (5 Points) - The lowest coefficient for Non-Priced Items receives 5 points, with others receiving a pro rata percentage of 5 points based on a percentage comparison with the lowest coefficient proposed for Non-Priced Items.

The lowest Standard Working Hours Coefficient receives ten (10) points, with others receiving a percentage of points based on a percentage comparison with the lowest coefficient. For illustrative purposes, if the lowest Standard Working Hours Coefficient is 0.850, that price is weighted "1.000" ($0.850/0.850 = 1.000$) and receives 10.00 points ($1.000 \times 10 = 10.00$).

A coefficient of 1.000 for the same proposal would be weighted "0.850" ($0.850/1.000 = 0.850$) and receive 8.5 points ($0.850 \times 10 = 8.5$).

Likewise, a coefficient of 1.200 would be weighted at "0.708" ($0.850/1.200 = 0.708$) and receive 7.08 points ($0.708 \times 10 = 7.08$).

Item 6: Prime Contractor's Comparable Experience 20 points max

List and describe prime contractor's construction experience for five (5) successfully completed projects within the past ten (10) years of comparable size, scope and complexity to the Work described in the Contract Documents as requested below.

TECHNICAL CONSTRUCTION/EXPERIENCE REQUIRED

- Oversight and management of multiple subcontractors.
- Oversight and management of at least ten (10) concurrent projects actively in the construction phase while maintaining a critical path schedule on all projects.
- Oversight and management of: plumbing, masonry, carpentry, concrete, landscaping, HVAC, electrical, demolition, remediation, historical preservation, site/civil, paving and drainage, roofing/building envelope, interior finishes, prefabricated buildings.
- Experience working in an environment that operates 24 hours a day/7 days a week with personnel living and working in the facility.
- Experience in adapting to changing site conditions and projects.

Offeror must submit:

Section 00400JOC, Attachment C, Experience of Offeror (two pages maximum per contract)

Item 7: Past Performance on City of Austin Projects 10 points max

Offerors who have had Contractor Performance Evaluations completed for previous projects with the City of Austin, and have had **no issues**, will receive an average of their five year scores. Offerors who have had **no previous projects** with the City of Austin will receive an average of all the contractor's performance evaluation five year scores.

Item 8: Key Personnel Comparable Experience 20 points max

List and describe a minimum of five (5) successfully completed projects within the past ten (10) years of comparable size, scope and complexity to the Work described in the Contract Documents for each Key Personnel of the Prime Contractor.

Key personnel to be evaluated are:

- Project Manager (7 points)
- Project Superintendent (7 points)
- Project Estimator (6 points)

Offeror must submit:

- Section 00400JOC, Attachment D – One (1) page per project per key personnel.
- Resumes of Key Personnel – One (1) page per individual.
- Letters of commitment that the named individuals will be those working on the project and the expected percentage of the project onsite. – One (1) page per individual.

Item 9: Organizational Structure and Business Practices 15 points max

Offeror must submit:

- Organizational Chart (2 points)** - Provide a detailed explanation and organizational chart which **specifies project leadership** and reporting responsibilities of key personnel within your team including communications with the Project Architect/Engineer and the Owner's project manager. (Organizational Chart may be provided on legal or ledger-size paper.) One (1) page limit for organizational chart and one (1) page limit for explanation.
- Assignment Capacity (4 points)** – Describe your team's capacity to effectively maintain at least ten (10) concurrent assignments actively in the construction phase without negative impact to the delivery schedules. Describe the strategies that will be used to maintain that capacity throughout the duration of the contract. Two (2) page limit.
- Schedule Strategies (2 points)** - Provide potential strategies that can be used in the proposal to minimize delays, maximize value of project, avoid unknowns, include additional MBE/WBE firms, and areas for possible time savings. One (1) page limit.
- Work Experience with Austin-Area Issues (2 points)** - Describe your team's experience with requirements of the City of Austin code requirements, LEED and energy efficiency initiatives, transportation management include R.O.W closure and coordination/permits. One (1) page limit.
- Outreach Practices (5 points)** – Describe your company's business practices and internal policies on providing opportunities for MBE/WBEs, DBEs, HUBs, and other historically underutilized businesses. Explain all

efforts to build a sound and stable partnership with multiple MBE/WBEs in each trade to improve capacity and participation. Explain all partnering or mentoring activities performed to assist the subcontractors in improving their business. This could include areas such as improving written proposals, better cost estimating, and improving the financial records. Please include the methodology on how the determination of improvement is made. Two (2) page limit.

Item 10: Quality of Goods and Services by Sustainability 10 points max

- Sustainable Practices (5 points maximum)** – Describe your company’s business practices and internal policies on use of recycled, reclaimed, or refurbished construction materials, and for water and energy conservation, reducing greenhouse gas emissions, and purchasing environmentally preferable products. Two (2) page limit.
- Local Business Presence (5 points maximum)** - The City seeks opportunities for businesses with a Local Business Presence in the Austin Corporate City Limits to participate on City contracts thereby providing a minimal environmental footprint through reduced transportation time and costs associated with Project delivery. A firm is considered to have a Local Business Presence if the firm is headquartered in the Austin Corporate City Limits, or has a branch office located in the Austin Corporate City Limits in operation for the last five (5) years. The City defines headquarters as the administrative center where most of the important functions and full responsibility for managing and coordinating the business activities of the firm are located. The City defines branch office as a smaller, remotely located office that is separate from a firm’s headquarters that offers the services requested and required under this solicitation.

Offeror must submit:

- Section 00461CCO, Local Business Presence ID Form

Item 11: Sample Project 20 points max

The sample project consists of two fictional offices, which require renovation. There will be no site visit of these offices, and no drawings or specifications exist beyond what is stated below. The Offeror is expected to prepare a line item estimate using the unit price book, and present it with in a preliminary proposal, which will consist of: a preliminary proposal cover letter, line item estimate, and a sample schedule of construction. Due to no site visit, the Offeror is expected to use assumptions, clarifications, exceptions and exclusions within their preliminary proposal cover letter in order in assist with the narrative of the scope of work as it was priced using the unit price book. Line items for Prime Contractor work will use “Left Hand RSMeans” method (from the bare cost column) of the unit price book and line items for Subcontractor work will use “Right Hand RSMeans” method (from the total including O&P column of the unit price book), modified by the 2019 City Cost Index for Austin Texas (82.50%), and the Offerors coefficient of 1.100 for both price and non-priced line items. Line items in the estimate must have notations for which pricing methodology is utilized and whether they are for Prime Contractor of Subcontractor work. Division 1 line items are prohibited and no bonds are required.

This is the information provided for the Sample Project:

Project Title: Remodel Offices, 1045A and 1045B

Project Number: CLMBJOC2020 – 1111

Project Manager: Rick Selin

Location: One Texas Center, Suite 1045, 505 Barton Springs Road, Austin, Texas

General Conditions

- The contractor shall provide all labor, equipment, testing, transportation, and supervision to accomplish the following in accordance with requirements contained in the original contract specifications.
- The contractor shall submit all materials prior to using and provide all required red-line drawings, training, O&M manuals, and/or documentation to the project manager prior to final inspection.
- Only items incorporated into this document from the accepted proposal shall be considered part of this statement of work.
- The point of contact for this project is Rick Selin.
- Work will be performed during normal standard working hours.
- Room will be empty for contractor to work in; modular furniture will be removed and reinstalled by others.
- Material submittals will be required for flooring, ceiling grid and tiles and paint.
- There is no lead, asbestos or hazardous materials on this project site.

Scope of Work

Room 1045A. Room measurements are 50' x 50' with 12' high ceilings.

- Demolition: Dumpster will be placed 94' outside of the building on southeast end parking lot. Remove existing 32-ounce nylon carpet, 4" vinyl wall base and corners, and 2' x 4' ceiling grid and tiles. Remove 15 each duplex receptacle and 2 single pole light switch plates. Assume 20% of flooring will require scarifying. [Subcontractor]
- Remove and Reinstall: Remove and reinstall twelve 2' x 4' light fixtures and six 2' x 2' T bar diffusers [Subcontractor]; two audio speakers [Prime Contractor].
- Finishes: Assume 20% of flooring will require patching and leveling. Furnish and install 32-ounce nylon carpet with stain fiber additive and bold concept border and pattern, 4" vinyl wall base and corners and 2' x 2' ceiling grid with tegular tiles. Paint walls, doors, door frame, trim and windows with two coats zero VOC latex. [Prime Contractor]
- Electrical: Furnish and install 15 each stainless-steel duplex receptacle and 2 single pole light switch plates. [Prime Contractor]

Room 1045B. Room measurements are 50' x 25' with 12' high ceilings.

- Demolition: Dumpster will be placed 94' outside of the building on southeast end parking lot. Remove existing 32-ounce nylon carpet, 4" vinyl wall base and corners, and 2' x 4' ceiling grid and tiles. Remove 15 each duplex receptacle and 2 single pole light switch plates. Assume 20% of flooring will require scarifying. [Subcontractor]
- Remove and Reinstall: Remove and reinstall ten 2' x 4' light fixtures and four 2' x 2' T bar diffusers [Subcontractor]; one audio speaker [Prime Contractor].
- Finishes: Assume 20% of flooring will require patching and leveling. Furnish and install 32-ounce nylon carpet with stain fiber additive and bold concept border and pattern, 4" vinyl wall base and corners and 2' x 2' ceiling grid with tegular tiles. Paint walls, doors, door frame, trim and windows with

two coats zero VOC latex. Provide and install 10 each custom-special order ½" stainless steel widgets on the interior walls. [Prime Contractor]

- Electrical: Furnish and install 15 each stainless-steel duplex receptacle and 2 single pole light switch plates. [Prime Contractor]

Offeror must submit:

- Proposal Letter
- R.S. Means Line Item Estimate
- Proposed Construction Schedule

Item 12: Service Disabled Veteran Business Enterprise (SDVBE) 3.45 points max

This Contract is subject to the provisions of the City's Interim Service-Disabled Veteran Owned Business Enterprise (SDVBE) Program as established by City Council Resolution No. 20160303-016. If a respondent is a SDVBE, the City requires a certification with their Offer certifying that they are State Historically Underutilized Business (HUB) Service-Disabled Veteran Owned Businesses.

The City seeks opportunities for SDVBE certified firms to participate on City contracts. A firm (Prime Contractor) is considered an SDVBE if the firm is certified by the State of Texas, Historically Underutilized Business (HUB) Program with the State Comptroller's Office. Firms that meet this qualification shall receive a 3% preference of the total possible evaluation points toward their formal proposal, excluding interview points. (See Section 00101JOC, Evaluation Criteria – Overview for "Total Possible Points") The SDVBE preference only applies to Prime Contractors responding to Request for Proposals (RFP), not any subcontractors utilized.

NOTE: The maximum SDVBE additional points of 3% of the total evaluated points, for certified firms will only pertain to the solicitation Evaluation Criteria used to determine the "best-value" or most-qualified respondent, as associated only to "Step One" that includes initial review, evaluation and ranking of proposals. The SDVBE 3% will not be added to any additional scores or evaluations resulting from Interviews or other subsequent evaluation processes.

Offeror must submit:

- Section 00480JOC, Service-Disabled Veteran Owned Business Enterprise (SDVBE) Program Acknowledgement form
- Copy of Certification from U. S. Department of Veteran Affairs, stating Service-Disabled Veteran status

END

GEOTECHNICAL DATA

Section 00220JOC

1. OVERVIEW

Depending on individual Job Order Assignment requirements, OWNER may have obtained geotechnical information, which may include laboratory test results and logs of borings from geotechnical consultants. That information will be included in this section and/or on the Drawings. The CONTRACTOR shall be familiar with the subsurface materials and conditions on the Project and shall be knowledgeable of how they will affect the Work. The following is a partial listing of sources of information available to the CONTRACTOR about subsurface materials and conditions: the geotechnical information provided by the OWNER; geologic maps, publications and reports available from the University of Texas Bureau of Economic Geology at the J.J. Pickle Research Center in Austin, Texas; subcontractors familiar with local ground conditions; and, local consulting geologists and geotechnical engineers. The CONTRACTOR may make their own subsurface investigations.

END

COST PROPOSAL
Section 00300JOC

In compliance with applicable City Policy and state of Texas law, including Texas Government Code Title 10, Subtitle F, Chapter 2269 and in response to this Request for Proposal, the undersigned offers the proposal for the following Project for the City of Austin, Texas:

Solicitation No.:	CLMB333
Project:	2020 Job Order Contract for City Facility Improvements

Having examined the Request for Proposal documents issued by the City of Austin for the Job Order Contracting Program and Addenda, having conducted all inquiries deemed necessary and proper; hereby proposes to furnish all labor, permits, material, machinery, tools, supplies and equipment, and incidentals, and to perform all Work described in the Request for Proposal for the applicable prices set forth in the Unit Price Book and the defined Coefficients submitted with this Proposal. Pre-Priced Items are those items listed in the Unit Price Book. Non-Pre-Priced Items include those incidental items of Work necessary to provide an entire finished Job Order Assignment, which items must be competitively procured by the Offeror in the course of the development of the specific Job Order Assignment.

A. Pre-Priced Items (Unit Price Book)	
1. Standard Working Hours Coefficient	_____ . _____ _____ _____
2. Non-Standard Working Hours Coefficient	_____ . _____ _____ _____
B. Non-Pre-Priced Items	
1. Non-Pre-Priced Item Coefficient	_____ . _____ _____ _____
(Coefficients must be extended to three decimal places.)	

The Base Proposal amount will be evaluated per Section 00101JOC. Award of a Contract will be to the Offeror providing the best value to Owner. Owner reserves the right to negotiate all elements which comprise the Proposal to ensure that the best possible consideration is afforded to all concerned. The Owner and/or its Engineer or Architect may discuss with the selected Offeror options for a scope or time modification and any price change associated with the modifications.

Standard Working Hours are from 7:00 a.m. to 6:00 p.m. U.S. Central Time, Monday – Friday (excluding Holidays).

Non-Standard Working Hours are anytime between 6:00 p.m. and 7:00 a.m., Monday - Friday and anytime on Saturday, Sunday, or Holidays.

Refer to **Attachment A-1** to this section for information necessary to calculate Coefficients.

The Offeror shall provide the Owner with a fully detailed copy of all of its calculations used to develop its proposed Coefficients along with its Proposal.

Any resulting Job Order Contract will be for an initial two (2) year term with three (3) additional one (1) year terms available at the Owner's option. The Coefficients may be adjusted at the commencement of any additional term based upon the R.S. Means Master Composite Data City Cost Index for Austin, Texas using the "01-46 Weighted Average" or, at the Owner's discretion, the Construction Cost Index as reported by Engineering News Record.

TIME OF COMPLETION: The undersigned Offeror agrees to commence work on the date specified in the written "Notice to Proceed" for each Job Order Assignment to be issued by the Owner and to **substantially** complete construction of the improvements by the date specified by the Owner in the Notice to Proceed letter. **If a Substantial Completion date has been specified, the Offeror further agrees to reach Final Completion within Thirty (30) Calendar Days after Substantial Completion.** The Offeror further agrees that should the Offeror fail to **substantially** complete the Work by the date indicated in the Notice to Proceed letter or as subsequently adjusted, Offeror shall pay the liquidated damages for each consecutive day thereafter as provided below; unless the Owner elects to pursue any other action allowed by law.

LIQUIDATED DAMAGES: The Offeror understands and agrees that the timely completion of the described Work is of the essence. The Offeror and Owner further agree that the Owner's actual damages for delay caused by failure to timely complete the Project are difficult, if not impossible to measure. However, with respect to the additional administrative and consultant costs to be incurred by Owner, the reasonable estimate of such damages has been calculated and agreed to by Owner and Offeror. Therefore, the Offeror and the Owner agree that for each and every **Calendar Day** the Work or any portion thereof, remains incomplete after the **Substantial Completion** date as established by the above paragraph, Time of Completion, payment will be due to the Owner in the amount as specified for each Job Order Assignment in the Section 00500 Assignment Agreement per **Calendar Day** as liquidated damages, not as a penalty, but for delay damages to the Owner. **If both Substantial and Final Completion dates have been specified, the Offeror and the Owner further agree that for each and every Calendar Day the Work or any portion thereof, remains incomplete after the Final Completion date as established by the above paragraph, Time of Completion, payment will be due to the Owner in the amount as specified for each Job Order Assignment in the Section 00500 Assignment Agreement per Calendar Day as liquidated damages, not as a penalty, but for delay damages to the Owner.** Such amount shall be deducted by the Owner from any Contract payment due. In the event of a default or breach by the Contractor and demand is made upon the surety to complete the project, in accordance with the Contract Documents, the surety shall be liable for liquidated damages pursuant to the Contract Documents in the same manner as the Contractor would have been.

WAIVER OF ATTORNEY FEES: In submitting its proposal, in consideration for the waiver of its right to attorney's fees by the Owner, the Offeror knowingly and intentionally agrees to and shall waive the right to attorney's fees under Section 271.153 of the Texas Local Government Code in any administrative proceeding, alternative dispute resolution proceeding, or litigation arising out of or connected to any Contract awarded pursuant to this solicitation process.

Owner reserves the right to reject any or all Proposals and to waive any minor informality in any Proposal or solicitation procedure (a minor informality is one that does not affect the competitiveness of the Offer).

The undersigned acknowledges receipt of the following addenda:

Addendum No. 1 dated _____ Received _____
Addendum No. 2 dated _____ Received _____
Addendum No. 3 dated _____ Received _____
Addendum No. 4 dated _____ Received _____

PROPOSAL DOCUMENT EXECUTION AND ACKNOWLEDGEMENT: The undersigned Offeror certifies that the Offeror has read and understands Section 00020, Section 00100, and all other

requirements applicable to the solicitation process provided in the Proposal and Contract Documents.

OFFEROR’S CERTIFICATION OF NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING (Section 00440): The undersigned Offeror, by its signature, represents and certifies that it has read and can affirmatively swear and subscribe to the statements in Section 00440 Non-Collusion, Non-Conflict of Interest, and Anti-Lobbying Certification. If the Offeror cannot affirmatively swear and subscribe to any of the statements in Section 00440, Offeror represents and certifies that it has provided a detailed written explanation with its Proposal on separate pages annexed hereto. The undersigned Offeror further certifies that it has not in any way directly or indirectly had communication restricted in the City Code Chapter 2-7, Article 6 (Anti-Lobbying and Procurement) during the No-Lobbying Period as defined in Chapter 2-7.

OFFEROR’S CERTIFICATION AS TO NONRESIDENT PROVISIONS (Section 00475): The undersigned Offeror certifies that it has read Section 00475 Nonresident Offeror Provisions and **Offeror certifies that Offeror is a resident of _____** (Offeror must write in the blank the state of which Offeror is a resident).

Offeror will initial the blank set forth below to represent and certify that the Offeror has completed, executed, and enclosed the corresponding Proposal Documents with the Proposal.

____ MBE/WBE Statement of Responsibility Document

The undersigned, by their signature, represents that they are submitting a binding offer and are authorized to bind the respondent to fully comply with the solicitation documents contained herein. The Respondent, by submitting and signing below, certifies that they have received and read all sections of the entire solicitation document including all revisions, addenda and documents incorporated by reference, and agree to be bound by the terms therein.

Corporate Secretary, *if Offeror is a Corporation

Offeror

Email for Secretary

Authorized Signature/Print Name

(Seal)

Title

Date

Address

Telephone Number / FAX Number

Email for Person Signing Proposal

Email for Offeror's Primary Contact Person

End

Attachment A1
Approved and Excluded Items in Coefficient

Coefficient: The Offeror's price coefficient factor will be considered to include and must include all contractor overhead and profit and any other costs of the Work not included in the Unit Price Book items for the Work and not otherwise performed and paid by Owner, including but not limited to, the following:

- Overhead & Profit (prime contractor)
- The following CSI Division 1 section requirements and related R.S. Means line item costs:
 - Section 01 11 Summary of Work
 - Exceptions: Section 01 11 31 Professional Consultants are not authorized to be procured under the Job Order Contract.
 - Section 01 21 Allowances
 - Exceptions: Section 01 21 53.60 Security Factors
 - Section 01 31 Project Management and Coordination
 - Exceptions: Section 01 31 13.20 Field Personnel for project management and supervision beyond that covered by roving staff and administrative staff required for processing grant-related project paperwork
 - Section 01 32 Construction Progress Documentation
 - Section 01 41 Regulatory Requirements
 - Exceptions: site plan and building permit costs which will be added to each Job Assignment as appropriate and paid at actual cost plus the Non-Pre-Priced Coefficient)
 - Section 01 45 Quality Control
 - Exceptions: special inspections and/or testing requirements beyond those required for standard trade permits
 - Section 01 51 Temporary Utilities
 - Section 01 52 Construction Facilities
 - Section 01 54 Construction Aids
 - Exceptions:
 - ❖ Section 01 54 16 Temporary Hoists, Section 01 54 19 Temporary Cranes, Section 01 54 23 Temporary Scaffolding and Platforms, and Section 01 54 26 Temporary Swing Staging for any work over three (3) stories of a building over the height of fifteen (15) feet above any particular work surface
 - ❖ Section 01 54 33 10 Concrete Equipment Rental for: core drills; curb builders; truck mounted concrete pumps; shotcrete pump rigs; concrete transit mixers
 - ❖ Section 01 54 33 20 Earthwork Equipment Rental for: aggregate spreaders; augers; horizontal boring machines; gradalls, brush chippers; clamshell buckets; dragline buckets; pile driving hammers; log chippers; loggers; mulchers; rakes; landfill compactors; rotary mowers; scrapers; screening plants; crawler mounted shovels; stump chippers; tree spades

- ❖ Section 01 54 33 40 General Equipment Rental for: aerial lifts, articulating booms, telescoping booms, and forklifts for any work over three (3) stories of a building over the height of fifteen (15) feet above any particular work surface and over three hundred (300) feet of the project site, material delivery, layout, assembly, and measuring; barricades and barrels beyond the minimum requirements to protect the immediate work area, or for vehicle traffic control purposes; asphalt distributors; emulsion sprayers; foam spray rigs; pavers; trailer mounted cable reels for high voltage line work; portable cable/wire puller; tram cars for high voltage line work; trench boxes; vacuum trucks; wrecking balls; generators 25 kW or larger; toilets
- ❖ Section 01 54 33 50 Highway Equipment Rental
- ❖ Section 01 54 33 60 Lifting and Hoisting Equipment Rental for any work over three (3) stories of a building over the height of fifteen (15) feet above any particular work surface
- ❖ Section 01 54 33 70 Wellpoint Equipment Rental
- ❖ Section 01 54 33 80 Marine Equipment Rental
- Section 01 55 Vehicular Access and Parking
 - Exceptions: vehicular access and parking established beyond the minimum requirements to protect the immediate work area, pathways to the work area through non-work areas, and protection of furniture, equipment, or other City property in the proximity of the work area
- Section 01 56 Temporary Barriers and Enclosures
 - Exceptions: temporary barriers and enclosures beyond the minimum requirements to protect the immediate work area, pathways to the work area through non-work areas, and protection of furniture, equipment, or other City property in the proximity of the work area
- Section 01 58 Project Identification
- Section 01 66 Product Storage and Handling Requirements
 - Exceptions: loading, unloading, and storing of materials to vehicle and job site, tools of the trade, moving and storage of tools, material and equipment handling over three (3) stories of a building, and over fifteen (15) feet above finished floor height, and over three hundred (300) feet of the project site, material delivery, layout, assembly, and measuring
- Section 01 71 Examination and Preparation
- Section 01 74 Cleaning and Waste Management
 - Exceptions: clean up beyond daily minimum requirements for maintaining a safe and organized jobsite
- Section 01 76 Protecting Installed Construction
- Section 01 93 Facilities Maintenance
 - Exceptions: Section 01 93 13 Facilities Maintenance Procedures
- Compliance with all laws
- Submittals: Costs for preparation of reports, correspondence and documentation required by law or the Contract shall be included as well as costs to provide submittals, interface with the City, and coordinate with facility occupants

- Pre-proposal site visits
- All waste and excess materials (not accounted for in line item values)
- Sustainable Construction Practices: Sustainable construction aims at reducing the environmental impact of a building over its entire lifetime, while optimizing its economic viability and the comfort and safety of its occupants. Contractor will initiate an effective waste minimization and management process, focused on material recycling and reduction of the volume of building material debris from being placed to area landfills.
- Interest associated with funding of equipment and payroll
- Depreciation of mobile offices, if applicable
- Employee wages, payroll taxes, insurance and fringe benefits
- Risk of lower than expected contract dollar volume
- Risk of high inflation costs
- Risk of poor subcontractor performance
- Other risks of doing business
- Business taxes, contributions, memberships, corporate headquarters support
- Any and all subcontractor costs
- Other incidental costs

Excluded Costs from Coefficient

- Overhead & Profit (subcontractors)
- The following Division 1 Sections (as notated above):
 - Section 01 21 53.60 Security Factors (can be submitted as a line item cost when applicable)
 - Section 01 31 13.20 Field Personnel for project management and supervision beyond that covered by roving staff and administrative staff required for processing grant-related project paperwork (can be submitted as a line item cost when applicable)
 - Section 01 41 Regulatory Requirements for site plan and building permit costs (will be added to each Job Assignment as appropriate and paid at actual cost plus the Non-Pre-Priced Coefficient)
 - Section 01 45 Quality Control when special inspections and/or testing requirements are beyond those required for standard trade permits (can be submitted as a line item cost when applicable)
 - Section 01 54 16 Temporary Hoists, Section 01 54 19 Temporary Cranes, Section 01 54 23 Temporary Scaffolding and Platforms, and Section 01 54 26 Temporary Swing Staging for any work over three (3) stories of a building over the height of fifteen (15) feet above any particular work surface (can be submitted as a line item cost when applicable)
 - Section 01 54 33 10 Concrete Equipment Rental for: core drills; curb builders; truck mounted concrete pumps; shotcrete pump rigs; concrete transit mixers (can be submitted as a line item cost when applicable)
 - Section 01 54 33 20 Earthwork Equipment Rental for: aggregate spreaders; augers; horizontal boring machines; gradalls, brush chippers; clamshell buckets; dragline buckets; pile driving hammers; log chippers; loggers; mulchers; rakes; landfill compactors; rotary mowers; scrapers; screening plants; crawler mounted

shovels; stump chippers; tree spades (can be submitted as a line item cost when applicable)

- Section 01 54 33 40 General Equipment Rental for: aerial lifts, articulating booms, telescoping booms, and forklifts for any work over three (3) stories of a building over the height of fifteen (15) feet above any particular work surface and over three hundred (300) feet of the project site, material delivery, layout, assembly, and measuring; barricades and barrels beyond the minimum requirements to protect the immediate work area, or for vehicle traffic control purposes; asphalt distributors; emulsion sprayers; foam spray rigs; pavers; trailer mounted cable reels for high voltage line work; portable cable/wire puller; tram cars for high voltage line work; trench boxes; vacuum trucks; wrecking balls; generators 25 kW or larger; toilets (can be submitted as a line item cost when applicable)
 - Section 01 54 33 50 Highway Equipment Rental (can be submitted as a line item cost when applicable)
 - Section 01 54 33 60 Lifting and Hoisting Equipment Rental for any work over three (3) stories of a building over the height of fifteen (15) feet above any particular work surface (can be submitted as a line item cost when applicable)
 - Section 01 54 33 70 Wellpoint Equipment Rental (can be submitted as a line item cost when applicable)
 - Section 01 54 33 80 Marine Equipment Rental (can be submitted as a line item cost when applicable)
 - Section 01 55 Vehicular Access and Parking when vehicular access and parking is established beyond the minimum requirements to protect the immediate work area, pathways to the work area through non-work areas, and protection of furniture, equipment, or other City property in the proximity of the work area (can be submitted as a line item cost when applicable)
 - Section 01 56 Temporary Barriers and Enclosures when temporary barriers and enclosures are beyond the minimum requirements to protect the immediate work area, pathways to the work area through non-work areas, and protection of furniture, equipment, or other City property in the proximity of the work area (can be submitted as a line item cost when applicable)
 - Section 01 66 Product Storage and Handling Requirements when loading, unloading, and storing of materials to vehicle and job site, tools of the trade, moving and storage of tools, material and equipment handling is over three (3) stories of a building, and over fifteen (15) feet above finished floor height, and over three hundred (300) feet of the project site, material delivery, layout, assembly, and measuring (can be submitted as a line item cost when applicable)
 - Section 01 74 Cleaning and Waste Management when clean up is beyond daily minimum requirements for maintaining a safe and organized jobsite (can be submitted as a line item cost when applicable)
 - Section 01 93 13 Facilities Maintenance Procedures (can be submitted as a line item cost when applicable)
- Legal and administrative costs to review and negotiate the Contract Documents.
 - Fines, penalties, sanctions or impositions assessed or imposed by any governmental body, instrumentality or tribunal arising from the fault of Job Order Contractor.
 - Costs incurred by Job Order Contractor resulting from the failure of Contractor or its Subcontractors to coordinate their work with that of Owner and Owner's Third Party Contractors.

- Costs resulting from the failure of Job Order Contractor or any Subcontractor to procure and maintain insurance as and to the extent required by the Contract Documents.
- Costs related to Job Order Contractor's indemnification obligations pursuant to the 00700JOC General Conditions.
- The cost of capital, including, without limitation, interest on capital, regardless of whether it is related to the Project.
- Liquidated or actual damages imposed by Owner for failure of Job Order Contractor to achieve substantial completion by the date specified in the Notice to Proceed letter and final completion within thirty (30) calendar days of substantial completion for each Job Order Assignment.
- Costs of payment and performance bonds.

Unit Price Book, Line Item Usage Clarifications

- Professional services covered by Division 1 Section 01 11 31 – Professional Consultants and Division 2 Section 02 21 Surveys (e.g. architectural, engineering, or surveying) are not authorized to be procured under the Job Order Contract with the exception of Construction Staking/Layout Surveys.
- Any costs included in the Coefficients shall not be included as line item costs from the UPB.
- Any CSI Division 1 line items identified above as part of the Coefficients are excluded from the UPB; only the following CSI Division 1 line items are authorized as stated below:
 - Section 01 21 53.60 Security Factors (can be submitted as a line item cost when applicable)
 - Section 01 31 13.20 Field Personnel for project management and supervision beyond that covered by roving staff and administrative staff required for processing grant-related project paperwork (can be submitted as a line item cost when applicable)
 - Section 01 41 Regulatory Requirements for site plan and building permit costs (will be added to each Job Assignment as appropriate and paid at actual cost plus the Non-Pre-Priced Coefficient)
 - Section 01 45 Quality Control when special inspections and/or testing requirements are beyond those required for standard trade permits (can be submitted as a line item cost when applicable)
 - Section 01 54 16 Temporary Hoists, Section 01 54 19 Temporary Cranes, Section 01 54 23 Temporary Scaffolding and Platforms, and Section 01 54 26 Temporary Swing Staging for any work over three (3) stories of a building over the height of fifteen (15) feet above any particular work surface (can be submitted as a line item cost when applicable)
 - Section 01 54 33 10 Concrete Equipment Rental for: core drills; curb builders; truck mounted concrete pumps; shotcrete pump rigs; concrete transit mixers (can be submitted as a line item cost when applicable)
 - Section 01 54 33 20 Earthwork Equipment Rental for: aggregate spreaders; augers; horizontal boring machines; gradalls, brush chippers; clamshell buckets; dragline buckets; pile driving hammers; log chippers; loggers; mulchers; rakes; landfill compactors; rotary mowers; scrapers; screening plants; crawler mounted shovels; stump chippers; tree spades (can be submitted as a line item cost when applicable)
 - Section 01 54 33 40 General Equipment Rental for: aerial lifts, articulating booms, telescoping booms, and forklifts for any work over three (3) stories of a building

over the height of fifteen (15) feet above any particular work surface and over three hundred (300) feet of the project site, material delivery, layout, assembly, and measuring; barricades and barrels beyond the minimum requirements to protect the immediate work area, or for vehicle traffic control purposes; asphalt distributors; emulsion sprayers; foam spray rigs; pavers; trailer mounted cable reels for high voltage line work; portable cable/wire puller; tram cars for high voltage line work; trench boxes; vacuum trucks; wrecking balls; generators 25 kW or larger; toilets (can be submitted as a line item cost when applicable)

- Section 01 54 33 50 Highway Equipment Rental (can be submitted as a line item cost when applicable)
 - Section 01 54 33 60 Lifting and Hoisting Equipment Rental for any work over three (3) stories of a building over the height of fifteen (15) feet above any particular work surface (can be submitted as a line item cost when applicable)
 - Section 01 54 33 70 Wellpoint Equipment Rental (can be submitted as a line item cost when applicable)
 - Section 01 54 33 80 Marine Equipment Rental (can be submitted as a line item cost when applicable)
 - Section 01 55 Vehicular Access and Parking when vehicular access and parking is established beyond the minimum requirements to protect the immediate work area, pathways to the work area through non-work areas, and protection of furniture, equipment, or other City property in the proximity of the work area (can be submitted as a line item cost when applicable)
 - Section 01 56 Temporary Barriers and Enclosures when temporary barriers and enclosures are beyond the minimum requirements to protect the immediate work area, pathways to the work area through non-work areas, and protection of furniture, equipment, or other City property in the proximity of the work area (can be submitted as a line item cost when applicable)
 - Section 01 66 Product Storage and Handling Requirements when loading, unloading, and storing of materials to vehicle and job site, tools of the trade, moving and storage of tools, material and equipment handling is over three (3) stories of a building, and over fifteen (15) feet above finished floor height, and over three hundred (300) feet of the project site, material delivery, layout, assembly, and measuring (can be submitted as a line item cost when applicable)
 - Section 01 74 Cleaning and Waste Management when clean up is beyond daily minimum requirements for maintaining a safe and organized jobsite (can be submitted as a line item cost when applicable)
 - Section 01 93 13 Facilities Maintenance Procedures (can be submitted as a line item cost when applicable)
- The Unit Price Book R.S. Means Master Composite Cost data for line item pricing will be updated quarterly with the release of updated cost data, including the corresponding Austin, Texas City Costs Index. Therefore, at no time during the initial term and optional terms, will increase adjustments be allowed to the Contractor's Coefficients.
 - The Contractor shall be bound to the line item pricing listed in the UPB. The Contractor shall not use modifiers or adjust line item pricing to match subcontractor costs or market conditions; modifiers or adjustments may only be used to reflect working conditions.
 - Work to be self-performed by the prime contractor shall use left hand R.S. Means and be based on the bare material, labor, and equipment costs.
 - Work to be performed by subcontractors shall use right hand R.S. Means and be based on the total bare material, labor, and equipment costs including overhead and profit. Overhead and profit shall only be applied to work to be performed by subcontractors and

is intended to be passed through to the subcontractors as a means to address pricing issues from market conditions and drive greater subcontractor participation.

- No contingency is to be included, because the UPB and the Offeror's coefficient represent the actual cost for all work performed.
- While the Contractor may find differences with the Unit Price Book, in comparison to local market cost, it is the sole responsibility of the Contractor to verify ALL items within the Unit Price Book and make the appropriate adjustment per the Contractor's coefficient.
- All prices in the UPB are for completed in-place construction.
- The line items stated in the Unit Price Book include labor, materials and equipment for a complete and in place installation associated to a specific construction project. The contractor shall assume all risk for labor, material and equipment rate increases after award of a contract.
- Costs for expendable supplies, lubricants, wear and tear on tools are incidental to the UPB cost of construction and will not be paid separately. Except for cabling related to work, line item descriptions which list material or equipment to be brand name or manufacturer "Type" will be considered as "or equal" but will contain all the essential salient characteristics of the brand name or manufacturer's material or equipment.
- When prices are listed in the UPB, as minimum, average, and maximum for the same work, the average price shall be used. Where prices are listed in the UPB for minimum and maximum for the same work, items whose daily output indicates one crew day or more of work shall use minimum prices and items whose daily output indicates less than one crew day shall use maximum prices.
- Working distances are standardized, and considered as included with the Contractor's Coefficients: Up to fifteen (15) feet above finished floor, material handling for three hundred (300) feet in distance, inclusive of demolition debris, and within three (3) stories of a building. The appropriate starting point for working distances associated to Unit Price Book Line Items will be determined per each Job Order Assignment.
- General construction tools, equipment, and vehicles will be considered at cost of the Contractor and included within consideration of the Contractor's Coefficients. Exceptions for the rental of specialized equipment (e.g. cranes) can be requested on an assignment by assignment basis.
- Square, level and plumb, are the sole responsibility of the Contractor, measuring, layout and/or staking out in conjunction with drawing specifications and joint scope will be considered include within the Contractor's Coefficients.
- Activities associated to labor, within the line items: manual loading, unloading, and storing of materials to vehicle and job site, tools of the trade, moving and storage of tools, material and equipment handling up to three (3) stories of a building, and to fifteen (15) feet above finished floor height and up to three hundred (300) feet of the project site, material delivery, layout, assembly, and measuring are considered in the Contractor's Coefficients.
- Items associated to materials, within the line items: All materials will be sales tax exempt, inclusive of all related/associated accessories necessary for proper manufacturer or specification installation, submittals, sample and shop drawings, and delivery of material within three hundred (300) feet of the project site.
- Items associated to equipment, within the line items: loading, unloading, storage, handling up to three (3) stories of a building, and to fifteen (15) feet above finished floor height and up to three hundred (300) feet of the project site and installation into its final location.
- Demolition lines items do exist for each section of the UPB, but they are limited. Since the installation line items are more prevalent, they may be turned into demolition line items by removing all associated material and equipment and using only half of the labor cost.

Unless a line item description states differently, demolition is the complete removal of a selected item, clean-up of the area, loading and handling of demolished material into a dumpster, truck or trailer within three hundred (300) feet of the project site. Smaller item(s) requiring removal during demolition that are attached to larger item(s) (i.e., toilet accessories to a toilet partition, insulation on ductwork, etc.) will be included in the larger items removal line item.

- Owner requested salvaged material, will not cost any more than a demolition line item. Contractor will be held responsible for a salvaged items disposition, until it is turn over to the Owner. Salvaged material may not be removed from project site as it may be reinstalled or retained until the Owner can make appropriate accommodations. Storing of salvaged material will be treated as protection of Owner property until removed from the project site. Anything associated to the removing of salvaged material from the project site will be considered per appropriate line items within the Unit Price Book.

Non-Pre-Priced Item Usage Clarifications

- Any costs included in the Coefficients shall not be included in Non-Pre-Priced Item costs.
- The Non-Pre-Priced Item Coefficient cannot be applied in combination (stacked) with the Standard Working Hour or Non-Standard Working Hour Coefficient; it is a standalone coefficient regardless of the working hour period associated with the Non-Pre-Priced line item.
- Any costs listed as line items in the UPB shall not be costed as Non-Pre-Priced Items.
- Work to be self-performed by the prime contractor shall use left hand R.S. Means and be based on the bare material, labor, and equipment costs.
- Work to be performed by subcontractors shall use right hand R.S. Means and be based on the total bare material, labor, and equipment costs including overhead and profit. Overhead and profit shall only be applied to work, materials, and equipment to be performed or provided by subcontractors.
- The Contractor shall furnish, unless otherwise directed, a breakdown in sufficient detail to permit an analysis of all material, labor, equipment, and Subcontractor costs associated with the item.
- Any amount claimed for Subcontractors shall require quotations from at least three sources and be supported by a similar cost breakdown, which shall show Subcontractors by prime and others.
- All such costs claimed are subject to negotiation and reconciliation consistent with the intent of the Job Order Contracting method and the accountability required in public contracting.

STATEMENT OF EXPERIENCE
Section 00400JOC

Attachment A
(Criteria Item 4)
OFFEROR'S INFORMATION

Offeror must answer all questions completely and all information must be clear, accurate and comprehensive. If necessary, questions may be answered on separate attached sheets.

If Offeror is a Joint Venture, complete Attachment A for **each** joint venture firm(s).

A.	Name of Offeror:	
	Parent company if subsidiary:	
	Offeror's Permanent Address:	
	Branch office, if applicable:	
	Offeror's Phone No.:	

B.	Number of Years in Business:	
C.	Indicate whether Offeror is a partnership, corporation, joint venture, or individual:	
	State in which incorporation or license to operate:	
	If a Joint Venture, Percentage Control:	
D.	Federal Tax ID:	Vendor Code:

E.	Name of Contact Person:	
	Address:	
	Phone:	Email:

F.	If different from "Contact Person", provide name of individual in your organization authorized to negotiate contract terms and render binding decisions on contract matters:	
	Address:	
	Phone:	Email:

G.	Has the Offeror defaulted on a contract? YES (___) NO (___)
	If yes, please explain. Add additional sheets if necessary.

H.	Currently or in the last five (5) years has Offeror been a party to any claims, judgments or lawsuits as a part of any project to which it was involved? YES (___) NO (___)
	If yes, please explain. Add additional sheets if necessary.

I.	Is the Offeror or principals of Offeror now, or has the Offeror or principals of Offeror, ever been involved in any bankruptcy or reorganization proceedings? YES (___) NO (___)
	If yes, please explain. Add additional sheets if necessary.

J.	Describe the quantity and nature of any work, interest in work, partnership interest, land ownership or other interest in any project, property or business dealing within the proposed project area or part or current business relationship which may give rise to a potential conflict of interest for your firm or associated firms in the execution of this project:

K.	Texas Board of Professional Engineers (TBPE) Registration No.: (IF APPLICABLE)	
----	---	--

L.	Registered Architect (TBAE) Registration No.: (IF APPLICABLE)	
----	---	--

END

STATEMENT OF EXPERIENCE
Section 00400JOC

Attachment B
(Criteria Item 4)
AUTHENTICATION OF SUBMITTAL

ACKNOWLEDGEMENT

THE STATE OF TEXAS
COUNTY OF TRAVIS

I certify that my responses and the information provided are true and correct to the best of my personal knowledge and belief and that I have made no willful misrepresentations in this Section, nor have I withheld any relevant information in my statements and answers to questions. I am aware that any information given by me in this Section may be investigated and I hereby give my full permission for any such investigation and I fully acknowledge that any misrepresentations or omissions in my responses and information may cause my offer to be rejected.

OFFEROR'S FULL NAME AND ENTITY STATUS:

Signature, Authorized Representative of Offeror

Title

Date

END

STATEMENT OF EXPERIENCE
Section 00400JOC

Attachment C
(Criteria Item 6)
EXPERIENCE OF OFFEROR
DUPLICATE FORM AS NECESSARY - ONE PAGE PER PROJECT

PROJECT OWNER/CLIENT		POC	
PHONE		EMAIL	
ADDRESS			

PROJECT NAME/LOCATION:			
DESCRIBE SCOPE OF WORK:			
EXPLAIN COMPARABLE SIZE, SCOPE AND COMPLEXITY TO THE WORK DESCRIBED IN SECTION 00020, INVITATION FOR PROPOSALS, OVERVIEW AND PROJECT INFORMATION:			
INITIAL CONTRACT AMOUNT:	\$	FINAL CONTRACT AMOUNT:	\$
SUBSTANTIAL COMPLETION DATE:		ACTUAL COMPLETION DATE:	
DESCRIBE YOUR EXPERIENCE MANAGING MULTIPLE SUBCONTRACTORS AND MULTIPLE CONCURRENT PROJECTS ACTIVELY IN THE CONSTRUCTION PHASE:			
EXPLAIN YOUR EXPERIENCE WITH BUILDING RENOVATION AND CONSTRUCTION:			
EXPLAIN YOUR EXPERIENCE WITH REMEDIATION, DEMOLITION, AND HISTORICAL PRESERVATION:			
EXPLAIN YOUR EXPERIENCE INSTALLING MECHANICAL, ELECTRICAL AND PLUMBING:			
EXPLAIN YOUR EXPERIENCE WITH MASONRY, CARPENTRY, AND CONCRETE:			
EXPLAIN YOUR EXPERIENCE WITH ROOFING AND BUILDING ENVELOPE IMPROVEMENTS:			
EXPLAIN YOUR EXPERIENCE WITH PREFABRICATED BUILDINGS:			
EXPLAIN YOUR EXPERIENCE WITH LANDSCAPING, PAVING, DRAINAGE, AND SITE/CIVIL WORK:			

EXPLAIN YOUR EXPERIENCE WITH CHARGEPOINT LEVEL 2 (MODEL CPF25) AND DC FAST (MODEL CPE250) ELECTRIC VEHICLE (EV) CHARGING STATIONS:

EXPLAIN YOUR EXPERIENCE WITH JOB ORDER CONTRACTING, IDIQ CONTRACTOS, OR ASSIGNMENT BASED CONTRACTS:

EXPLAIN YOUR EXPERIENCE WITH LEED AND SUSTAINABLE CONSTRUCTION PRACTICES:

DESCRIBE MBE/WBE, HUB, AND SMALL BUSINESS REQUIREMENTS AND YOUR PARTICIPATION:

STATEMENT OF EXPERIENCE
Section 00400JOC

Attachment D
(Criteria Item 8)
EXPERIENCE OF KEY PERSONNEL

(Project Manager, Project Superintendent, Project Estimator)

DUPLICATE FORM AS NECESSARY - ONE PAGE PER PROJECT, PER INDIVIDUAL

NAME OF KEY PERSONNEL		TITLE	
COMPANY / EMPLOYER		PHONE	

PROJECT OWNER/CLIENT		POC	
PHONE		EMAIL	
ADDRESS			

PROJECT NAME/LOCATION:			
DESCRIBE SCOPE OF WORK:			
EXPLAIN COMPARABLE SIZE, SCOPE AND COMPLEXITY TO THE WORK DESCRIBED IN SECTION 00020, INVITATION FOR PROPOSALS, OVERVIEW AND PROJECT INFORMATION:			
INITIAL CONTRACT AMOUNT:	\$	FINAL CONTRACT AMOUNT:	\$
SUBSTANTIAL COMPLETION DATE:		ACTUAL COMPLETION DATE:	
EXPLAIN ANY INCREASES IN CONTRACT SCHEDULE IN EXCESS OF THE INITIAL SUBSTANTIAL COMPLETION:			
EXPLAIN ANY INCREASES IN CONTRACT AMOUNT THAT OCCURRED IN EXCESS OF THE INITIAL CONTRACT AMOUNT:			
EXPLAIN TASKS OR ACTIVITIES UNDERTAKEN TO IMPROVE THE PROJECT SCHEDULE, OR CONTRACT AMOUNT OF THE PROJECT:			
DESCRIBE CRITICAL ISSUES ENCOUNTERED IN THE PROJECT AND STEPS TAKEN TO CORRECT AND/OR MINIMIZE IMPACT TO SCOPE, SCHEDULE AND CONTRACT AMOUNT:			
HOW DID YOUR FIRM INCORPORATED ENVIRONMENTAL AND SUSTAINABILITY TASKS INTO THE PROJECT.			
DESCRIBE MBE/WBE, HUB, AND SMALL BUSINESS REQUIREMENTS AND YOUR PARTICIPATION:			

EXPLAIN YOUR EXPERIENCE WITH CHARGEPOINT LEVEL 2 (MODEL CPF25) AND DC FAST (MODEL CPE250) ELECTRIC VEHICLE (EV) CHARGING STATIONS AND STATE IF YOU HOLD INSTALLER CERTIFICATIONS:

EXPLAIN YOUR EXPERIENCE WITH JOB ORDER CONTRACTING, IDIQ CONTRACTOS, OR ASSIGNMENT BASED CONTRACTS AND STATE IF YOU HOLD A CENTER FOR JOB ORDER CONTRACTING EXCELLENCE PROFESSIONAL CERTIFICATION.

CERTIFICATE OF NON-SUSPENSION OR DEBARMENT

Section 00405

Solicitation Number: _____ (to be filled in by Contractor)

The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000.00 and all non-procurement transactions. This certification is required for all bidders on all City of Austin Contracts to be awarded with values equal to or in excess of \$25,000.00 and all non-procurement transactions.

The CONTRACTOR hereby certifies that its firm and its principals are not currently suspended or debarred from bidding on any Federal, State, or City of Austin Contracts.

Contractor's full name and entity status:

(Name/Signature of Authorized Official)

Title

Date

END

REGULATORY NOTICE AND CITATION HISTORY DATA	
<p>Provide bidder's information regarding regulatory OSHA and/or Environmental Protection Agency Notices and Citations as follows:</p> <p>Describe federal, state, city/municipal or county OSHA notices of noncompliance or citations issued to or received by the bidder within the past three years or any notices from any environmental protection agency, including any notices or citations from any state agency or local government responsible for enforcing environmental protection or other health and safety laws or regulations of any state of the United States, received within the past three years.</p>	<p>Provide a description of each on the OSHA/EPA form on the following page to include:</p> <ul style="list-style-type: none"> • Date of Citation/Notices • Issuing agency • Standard cited • Level of violation (i.e. serious, willful) • Dates and brief description(s) of the event(s) • Brief description(s) of actions taken to correct the violation(s) • Current status (Open, Closed, Contested) • If Closed, date of Closure • If Open, estimated date of Closure
<p>Bidder may include additional information explaining any related circumstances.</p>	
<p>Evaluation: Information may be verified by referring to respective agency. More than two serious or more than one willful or repeated violation (investigation completed) within the past three years may deem the Bidder non-responsive.</p>	

Bidding Requirements, Contract Forms and Conditions of the Contract

OSHA and/or Environmental Protection Agency Notices Within Past Three Years						
Date of Citation or Notice	Issuing Agency	Violation Level (i.e. serious, willful)	Brief description of event	Brief description of actions taken to correct violation(s)	Current Status (Open, Closed, Contested)	Closed Date, or if Open, estimated Close Date

INJURY AND ILLNESS INCIDENCE RATE DATA	
Provide bidder's *Total Case Incidence Rate(s) (TCIR) for the 3 most recent calendar years. Attach bidder's OSHA 300 and 300A logs for the past 3 years.	TCIR Rates: Current Rate: _____ 1 Year Ago: _____ 2 Years Ago: _____
DAYS AWAY, RESTRICTED, AND TRANSFER RATE DATA	
Provide bidder's **Days Away, Restricted, and Transfer Rate(s) (DART) for the three most recent calendar years.	DART Rates: Current Rate: _____ 1 Year Ago: _____ 2 Years Ago: _____
Bidder may include additional information explaining any circumstances that may have affected the submitted rates and/or their associated three year trends.	
Evaluation: Rates will be compared to the most recently published Bureau of Labor Statistics (BLS) national average for the Standard Industrial Classification code (SIC) or North American Industrial Classification Systems (NAICS) code for the construction industry. For consideration of another code within the construction industry, the Bidder must provide the code and justification. Bidders with a 3-year TCIR or DART average that exceeds the 3-year TCIR or DART industry average may be deemed non-responsive.	

**TCIR – To calculate the calendar year TCIR, determine the total number of all recordable injuries and illnesses that occurred during the year in question, divide that total by the total number of hours worked by all employees during that year, and multiply the result by 200,000.*

*** DART – To calculate the calendar year DART, determine the total number of recordable injuries and illnesses resulting in days away from work, restricted work activity, and/or job transfer that occurred during the year in question, divide that total by the total number of hours worked by all employees during that year, and multiply the result by 200,000.*

ACKNOWLEDGEMENT

THE STATE OF TEXAS

COUNTY OF TRAVIS

I certify that my responses and the information I have provided are true and correct to the best of my personal knowledge and belief and I have made no willful misrepresentations in this, or withheld any relevant information in my statements. I am aware that any information given by me in response to this Section 00410 may be investigated and I hereby give my full permission for any such investigations, and I fully acknowledge that any misrepresentations or omissions in my responses and information may cause my bid to be rejected or cause any contract based on misrepresentations to be cancelled.

Contractor's full name and entity status:

(Name/Signature of Authorized Official)

Title

Date

END

LOCAL BUSINESS PRESENCE IDENTIFICATION FORM
Section 00461

(Criteria Item 9)

OFFEROR MUST SUBMIT THE FOLLOWING INFORMATION.

OFFEROR:

COMPANY NAME:					
Street Address, Zip:					
Is your Company in the Austin Corporate City Limits (ACCL)?		Which applies to your ACCL office?		Has your business been at this location for the past 5 years? *	
Yes	No	Headquarters	Branch Office	Yes	No

* If NO, Please provide addresses for previous 5 years as an attachment

USE ADDITIONAL PAGES AS NECESSARY

ACKNOWLEDGEMENT

THE STATE OF TEXAS

COUNTY OF TRAVIS

I certify that my responses and the information provided on **Form 00461** are true and correct to the best of my personal knowledge and belief and that I have made no willful misrepresentations in this Section, nor have I withheld any relevant information in my statements and answers to questions. I am aware that any information given by me in this Section may be investigated and I hereby give my full permission for any such investigation and I fully acknowledge that any misrepresentations or omissions in my responses and information may cause my offer to be rejected.

OFFEROR'S FULL NAME AND ENTITY STATUS:

Signature, Authorized Representative of Offeror

Title

Date

Subscribed and sworn to before me this _____ day of _____, 20_____.

Notary Public

My Commission Expires _____

END

NONRESIDENT BIDDER PROVISIONS

Section 00475

Solicitation Number: _____ (to be filled in by Contractor)

Bidder must answer the following questions in accordance with Vernon's Texas Statutes and Codes Annotated Government Code § 2252.002, as amended:

A. Is the bidder that is making and submitting this bid a "resident bidder" or a "non-resident bidder"?

Answer: _____

(1) Texas Resident Bidder - A bidder whose principal place of business is in Texas and includes a Contractor whose ultimate parent company or majority owner has its principal place of business in Texas.

(2) Nonresident Bidder - A bidder who is not a Texas Resident Bidder.

B. If the Bidder is a "Nonresident Bidder", does the state, in which the Nonresident Bidder's principal place of business is located, have a law requiring a Nonresident Bidder of that state to bid a certain amount or percentage under the bid of a Resident Bidder of that state in order for the nonresident bidder of that state to be awarded a contract on his bid in such state?

Answer: Yes No Which state? _____

If the answer to Question B is "yes", then what amount or percentage must a Texas Resident Bidder bid under the bid price of a Resident Bidder of that state in order to be awarded a contract on such bid in said state?

Answer: _____

END

SERVICE DISABLED VETERAN BUSINESS ENTERPRISE (SDVBE)
Section 00480JOC

(Section 00101 - Evaluation Criteria Item 12)

**AUTHENTICATION
OF
SERVICE DISABLED VETERAN BUSINESS ENTERPRISE (SDVBE)**

ACKNOWLEDGEMENT

Pursuant to the Service-Disabled Veteran Owned-Business Enterprise (SDVBE) Program (reference Section 00020JOC– Request for Proposals), all proposers responding to this solicitation must complete and return this form for proper consideration of the proposal. Firms that are certified by the State of Texas, Historically Underutilized Business HUB Program with the State Comptroller’s Office as a Service-Disabled Veteran Owned Business Enterprise (SDVBE) shall receive a 3% preference towards their formal proposal.

Vendor understands that in no instance shall the SDVBE program, price or scoring preference be combined with any other City preference program to exceed 3% in response to any City solicitation.

See City Council ([Resolution No. 20160303-016](#)) for more information on the resolution.

Company Name _____

- I **AM** a Service-Disabled Veteran Owned Business Enterprise properly certified by the State of Texas, Historically Underutilized Business HUB Program with the State Comptroller’s Office.

Date Certified _____

State of Texas Vendor ID _____

Certification Expiration _____

AND

- I **HAVE** attached my letter from the U.S. Department of Veterans Affairs stating that I am a Service-Disabled Veteran to my proposal.

DECLARATION: I HEREBY DECLARE THAT THE ABOVE INFORMATION IS TRUE AND ACCURATE AND ACKNOWLEDGE THAT FRAUDULENT STATEMENTS MADE ON THIS CERTIFICATION MAY RESULT IN CONTRACT TERMINATION, POSSIBLE SUSPENSION OR DEBARMENT, OR RESULT IN LEGAL ACTION.

OFFEROR'S FULL NAME AND ENTITY STATUS:

Signature, Authorized Representative of Offeror

Title

Date

END

Solicitation Requirements, Contract Forms and Conditions of the Contract
AGREEMENT SECTION
Section 00500JOC

STATE OF TEXAS
COUNTY OF TRAVIS

THIS AGREEMENT is made and entered into by and between the City of Austin, Texas, a municipal corporation, organized and existing under laws of State of Texas, acting through its City Manager or other duly authorized designee, hereinafter referred to as the "OWNER," and _____, of the City of _____, County of _____, and State of _____, hereinafter referred to as the "CONTRACTOR."

In consideration of the promises, performances, payments and agreements set forth herein CONTRACTOR hereby agrees to commence and complete Job Order Assignments under the following Project:

2020 Job Order Contract for City Facility Improvements

The Contract will be for an initial two (2) year term, with three (3) possible one (1) year extension options. Extension of the Contract will be at the mutual agreement of both the OWNER and the CONTRACTOR. If the CONTRACTOR chooses not to renew, a hold over extension of the Contract term for up to 120 calendar days may be implemented by the OWNER to allow time for re-soliciting. The OWNER reserves the right not to offer an extension. Work Assignments may be issued at any time during the term of the Contract. Job Order Assignments not completed by the expiration date of the Contract are subject to the terms and conditions of the Contract which will continue in full force and effect.

The total potential Contract Amount will be \$48,000,000 divided among 8 contractors for the initial Contract Term and all extension options combined, which may be increased subject to the availability of funding and further approval of the Austin City Council. There is no minimum guaranteed value to be awarded under this Contract.

The CONTRACTOR will base its proposal on the CONTRACTOR's coefficients set forth in the Cost Proposal Form, which will only be used for the purpose of the comparison and evaluation of Proposals. The OWNER will subsequently issue Job Order Assignments based on the OWNER's needs up to the aggregated Contract Amount.

All Work shall be in accordance with the individual Job Order Assignment documents, Drawings and Addenda, which are incorporated herein by reference and made a part hereof and which have been/will be approved and provided by OWNER. OWNER agrees to pay the CONTRACTOR the amounts to be developed and agreed upon on a Job Order Assignment by Job Order Assignment basis under the processes and procedures outlined in the contact documents.

The CONTRACTOR hereby agrees to commence work on the date specified in the written "Notice to Proceed" to be issued by the OWNER for each Job Order Assignment and to **substantially** complete construction of the improvements, as required by the individual Job Order Assignment documents for the Work by the date specified by the Owner in the Notice to Proceed letter. **If a Substantial Completion date has been specified, the CONTRACTOR further agrees to**

Bidding Requirements, Contract Forms and Conditions of the Contract
GENERAL CONDITIONS OF THE CONTRACT
Section 00700

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ARTICLE 1 – DEFINITIONS

Whenever used in these General Conditions or in the other Contract Documents the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

- 1.1 Addendum** - Written instruments issued by the Contract Awarding Authority which clarify, correct or change the bidding requirements or the Contract Documents prior to the Due Date. "Addenda" is the plural form of Addendum.
- 1.2 Agreement** - Prescribed form, Section 00500.
- 1.3 Alternative Dispute Resolution** - The process by which a disputed Claim may be settled if the OWNER and the CONTRACTOR cannot reach an agreement between themselves, as an alternative to litigation.
- 1.4 Bid** - A complete, properly signed response to an Invitation for Bid that, if accepted, would bind the Bidder to perform the resultant Contract.
- 1.5 Bidder** - A person, firm, or entity that submits a Bid in response to a Solicitation. Any Bidder may be represented by an agent after submitting evidence demonstrating the agent's authority. The agent cannot certify as to his own agency status.
- 1.6 Bid Documents** - The advertisement or Invitation for Bids, instructions to Bidders, the Bid form, the Contract Documents and Addenda.
- 1.7 Calendar Day** - Any day of the week; no days being excepted. Work on Saturdays, Sundays, and/or Legal Holidays shall be coordinated with OWNER.
- 1.8 Change Directive** - A written directive to CONTRACTOR, signed by OWNER, ordering a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Amount or Contract Time, or both. A Change Directive may be used in the absence of total agreement on the terms of a Change Order. A Change Directive does not change the Contract Amount or Contract Time, but is evidence that the parties expect that the change directed or documented by a Change Directive will be incorporated in a subsequently issued Change Order.
- 1.9 Change Orders** - Written agreements entered into between CONTRACTOR and OWNER authorizing an addition, deletion, or revision to the Contract, issued on or after the Execution Date of the Agreement.
- 1.10 Claim** - A written demand seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract.
- 1.11 Contract** - The binding legal agreement between the OWNER and the CONTRACTOR. The Contract represents the entire and integrated agreement between OWNER and CONTRACTOR for performance of the Work, as evidenced by the Contract Documents.
- 1.12 Contract Amount** - The moneys payable by OWNER to CONTRACTOR for completion of the Work in accordance with the Contract Documents.
- 1.13 Contract Awarding Authority** - A City department authorized to enter into Contracts on behalf of the City.
- 1.14 Contract Documents** - Project Manual, Drawings, Addenda and Change Orders.
- 1.15 Contract Time** - The number of days allowed for completion of the Work as defined by the Contract. When any period is referred to in days, it will be computed to exclude the first and include the last day of such period. A day of twenty-four hours measured from midnight to the next midnight will constitute a day.

- 1.16 CONTRACTOR** - The individual, firm, corporation, or other business entity with whom OWNER has entered into the Contract for performance of the Work.
- 1.17 Critical Path** - The longest series of tasks that runs consecutively from the beginning to the end of the project, as determined by duration and workflow sequence. This longest path sets the managerial standard for how quickly a project can be completed, given appropriate resources.
- 1.18 Drawings** - Those portions of the Contract Documents which are graphic representations of the scope, extent and character of the Work to be furnished and performed by CONTRACTOR and which have been approved by OWNER. Drawings may include plans, elevations, sections, details, schedules and diagrams. Shop Drawings are not Drawings as so defined.
- 1.19 Due Date** - The date and time specified for receipt of Bids.
- 1.20 Engineer/Architect (E/A)** - The OWNER's design professional identified as such in the Contract. The titles of "Architect/Engineer," "Architect" and "Engineer" used in the Contract Documents shall read the same as Engineer/Architect (E/A). Nothing contained in the Contract Documents shall create any contractual or agency relationship between E/A and CONTRACTOR.
- 1.21 Equal** - The terms "equal" or "approved equal" shall have the same meaning.
- 1.22 Execution Date** - Date of last signature of the parties to the Agreement.
- 1.23 Field Order** - A written order issued by Owner's Representative which orders minor changes in the Work and which does not involve a change in the Contract Amount or the Contract Time.
- 1.24 Final Completion** - The point in time when OWNER determines that all Work has been completed and final payment to CONTRACTOR will be made in accordance with the Contract Documents.
- 1.25 Force Account** - a basis of payment for the direct performance of Work with payment based on the actual cost of the labor, equipment and materials furnished and consideration for overhead and profit as set forth in Section 11.5.
- 1.26 Inspector** - The authorized representative of any regulatory agency that has jurisdiction over any portion of the Work.
- 1.27 Invitation for Bid (IFB)** - a Solicitation requesting pricing for a specified Good or Service which has been advertised for Bid in a newspaper and/or the Internet.

1.28 Legal Holidays

1.28.1 The following are recognized by the OWNER:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

- 1.28.2** If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.
- 1.28.3** Christmas Eve is observed only if it falls on a Monday through Thursday. If Christmas Eve falls on a Friday, that day is observed as the Christmas Day holiday.
- 1.29 Milestones** - A significant event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.
- 1.30 Notice to Proceed** - A Written Notice given by OWNER to CONTRACTOR fixing the date on which the Contract Times will commence to run and on which CONTRACTOR shall start to perform CONTRACTOR's obligations under the Contract Documents.
- 1.31 OWNER** - City of Austin, Texas, a municipal corporation, home rule city and political subdivision organized and existing under the laws of the State of Texas, acting through the City Manager or his/her designee, officers, agents or employees to administer design and construction of the Project.
- 1.32 Owner's Representative** - The designated representative of the OWNER. The Owner's Representative will be identified at the pre-construction conference.
- 1.33 Partial Occupancy or Use** - Use by OWNER of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work, provided OWNER and CONTRACTOR have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, utilities, corrective work, insurance and warranties.
- 1.34 Project** - The subject of the Work and its intended result.
- 1.35 Project Manual** - That portion of the Contract Documents which may include the following: introductory information; bidding requirements, Contract forms and General and Supplemental General Conditions; General Requirements; Specifications; Drawings; MBE/WBE or DBE Procurement Program Package; Project Safety Manual; and Addenda.
- 1.36 Resident Project Representative** - The authorized representative of E/A who may be assigned to the site or any part thereof.
- 1.37 Shop Drawings** - All drawings, diagrams, illustrations, schedules and other data or information which are specifically prepared or assembled by or for CONTRACTOR and submitted by CONTRACTOR as required by the Contract Documents.
- 1.38 Specifications** - Those portions of the Contract Documents consisting of written technical descriptions as applied to the Work, which set forth to CONTRACTOR, in detail, the requirements which must be met by all materials, equipment, construction systems, standards, workmanship, equipment and services in order to render a completed and useful project.
- 1.39 Solicitation** - Solicitation means, as applicable, an Invitation for Bid or a Request for Proposal.
- 1.40 Substantial Completion** - The stage in the progress of the Work when the Work, or designated portion thereof, is sufficiently complete in accordance with the Contract Documents so OWNER can occupy or utilize the Work for its intended use, as evidenced by a Certificate of Substantial Completion approved by OWNER.
- 1.41 Subcontractor** - An individual, firm, corporation, or other business entity having a direct contract with CONTRACTOR for the performance of a portion of the Work under the Contract.

- 1.42 Sub-Subcontractor** - A person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the work.
- 1.43 Superintendent** - The representative of CONTRACTOR authorized in writing to receive and fulfill instructions from the Owner's Representative, and who shall supervise and direct construction of the Work.
- 1.44 Supplemental General Conditions** - The part of the Contract Documents which amends or supplements the General Conditions. All General Conditions which are not so amended or supplemented remain in full force and effect.
- 1.45 Supplier** - An individual or entity having a direct contract with CONTRACTOR or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by CONTRACTOR or any Subcontractor.
- 1.46 Time Extension Request** - An approved request for time extension on a form acceptable to OWNER.
- 1.47 Work** - The entire completed construction, or the various separately identifiable parts thereof, required to be furnished under the Contract Documents.
- 1.48 Working Day** - Any day of the week, not including Saturdays, Sundays, or Legal Holidays in which conditions under the CONTRACTOR's control will permit work for a continuous period of not less than seven (7) hours between 7:00 a.m. and 6:00 p.m. If other contract documents reduce the continuous period available for work to less than seven (7) hours, those reduced hours shall be considered a Working Day. Upon agreement with Owner's Representative, work on Saturdays, Sundays, and/or Legal Holidays may be allowed and will be considered a Working Day.
- 1.49 Working Hours**
- 1.49.1 Working Day Contract:** All Work shall be done between 7:00 a.m. and 6:00 p.m. unless otherwise authorized by Owner's Representative. However, emergency work may be done without prior permission as indicated in paragraph 6.11.5. If night Work is authorized and conditions under CONTRACTOR's control will permit Work for a continuous period of not less than seven (7) hours between 12:00 a.m. and 11:59 p.m. it will be considered a Working Day. Night Work may be revoked at any time by OWNER if CONTRACTOR fails to maintain adequate equipment and supervision for the prosecution and control of the night Work.
- 1.49.2 Calendar Day Contract:** All Work shall be done between 7:00 a.m. and 6:00 p.m. unless authorized by Owner's Representative. However, emergency work may be done without prior permission as indicated in paragraph 6.11.5. Night Work may be revoked at any time by OWNER if CONTRACTOR fails to maintain adequate equipment and supervision for the prosecution and control of the night Work.
- 1.50 Written Notice** - Written communication between OWNER and CONTRACTOR. Written Notice shall be deemed to have been duly served if delivered in person to Owner's Representative or CONTRACTOR's duly authorized representative, or if delivered at or sent by registered or certified mail to the attention of Owner's Representative or CONTRACTOR's duly authorized representative at the last business address known to the party giving notice.

ARTICLE 2 - PRELIMINARY MATTERS

- 2.1 Delivery of Agreement, Bonds, Insurance, etc.:** Within five (5) Working Days after written notification of award of Contract, CONTRACTOR shall deliver to OWNER signed Agreement, Bond(s), Insurance Certificate(s) and other documentation required for execution of Contract.
- 2.2 Copies of Documents:** OWNER shall furnish to CONTRACTOR (1) copy of the executed Project Manual, one (1) set of Drawings and one (1) copy of the Contract Documents in .pdf format. Additional copies will be furnished, upon request, at the cost specified in the Supplemental General Conditions."
- 2.3 Commencement of Contract Times; Notice to Proceed:** The Contract Time(s) will begin to run on the day indicated in the Notice to Proceed. Notice to Proceed will be given at any time within sixty (60) calendar days after the Execution Date of the Agreement, unless extended by written agreement of the parties.
- 2.4 Before Starting Construction:**
- 2.4.1** No Work shall be done at the site prior to the preconstruction conference without OWNER's approval. Before undertaking each part of the Work, CONTRACTOR shall carefully study the Contract Documents to check and verify pertinent figures shown thereon compare accurately to all applicable field measurements. CONTRACTOR shall promptly report in writing to Owner's Representative any conflict, error, ambiguity or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from Owner's Representative before proceeding with any Work affected thereby. CONTRACTOR shall be liable to OWNER for failure to report any conflict, error, ambiguity or discrepancy in the Contract Documents of which CONTRACTOR knew or reasonably should have known.
- 2.4.2** It is mutually agreed between CONTRACTOR and OWNER that successful completion of the Work within the Contract completion date is of primary importance. Therefore, the CONTRACTOR hereby agrees to submit to the Owner's Representative for review and approval, or acceptance, as appropriate, all information requested within this section, including a Baseline Schedule, no later than five working days prior to the preconstruction conference. The Owner's Representative will schedule the preconstruction conference upon the timely submittal of the required documents, unless time is extended by written mutual agreement. CONTRACTOR will submit the following:
- .1** A proposed Baseline Schedule developed using Microsoft Project software, unless otherwise approved by Owner's Representative ("Baseline Schedule") to confirm that all Work will be completed within the Contract time. The Baseline Schedule must (i) indicate the times (number of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents, (ii) identify the Critical Path for completing the Work, (iii) identify when all Subcontractors will be utilized, and (iv) take into consideration any limitations on Working Hours, including baseline Rain Days on Calendar Day Contracts, and (v) be prepared accordance with Section 01310, Schedules and Reports, if applicable; otherwise in accordance with Section 01300, Submittals. This Baseline Schedule, a copy of which shall be made available at the job site(s), must contain sufficient detail to indicate that the CONTRACTOR has properly identified required Work elements and tasks, has provided for a sufficient and proper workforce and integration of Subcontractors, has provided sufficient

resources and has considered the proper sequencing of the Work required to result in a successful Project that can be completed within the Contract time;

- .2 An organizational chart showing the principals and management personnel who will be involved with the Work, including each one's responsibilities for the Work;
- .3 To the extent not set forth in the Section 00400 Statement of Contractor's Experience, a complete listing of the CONTRACTOR's employees proposed for the Work. List each one by name and job title, and show length of employment with CONTRACTOR;
- .4 To the extent not set forth in the Section 00410 Statement of Bidder's Safety Experience, a discussion and confirmation of the CONTRACTOR's commitment to safety by providing a copy of its employee's safety handbook and the safety records for the past three years of CONTRACTOR's proposed project manager and Superintendent;
- .5 A preliminary schedule of Shop Drawing and sample submittals;
- .6 A preliminary schedule of values for all of the Work, subdivided into component parts in sufficient detail to serve as the basis for progress payments during construction. Such prices will be deemed to include an appropriate amount of overhead and profit applicable to each item of Work;
- .7 To the extent not set forth in the Section 00400 Statement of Contractor's Experience, a letter designating CONTRACTOR's Superintendent and project manager, and a confirmation of past project experience for the CONTRACTOR's Superintendent and project manager specifically intended for the Work;
- .8 A letter from CONTRACTOR and Subcontractor(s) listing salaried specialists. A salaried specialist is anyone except an hourly worker whose wage rate is governed by Section 00830 of this agreement;
- .9 A letter designating the project's Safety Representative along with a copy of their Department of Labor-issued OSHA card proving completion of the OSHA 30-hour Construction Safety and Health training class in the OSHA Outreach Training Program;
- .10 If applicable, an excavation safety system plan;
- .11 If applicable, a plan illustrating proposed locations of temporary facilities;
- .12 A completed Non-Use of Asbestos Affidavit (Prior to Construction);
- .13 A letter designating the Texas Registered Professional Land Surveyor for layout of the Work, if the Work requires the services of a surveyor; and
- .14 Copies of the Department of Labor-issued OSHA cards proving completion of the OSHA 10-hour Construction Safety and Health training class in the OSHA Outreach Training Program for each worker (defined as a person covered by a prevailing wage determination) that will initially be on site. Note that workers must possess other OSHA-required training as the work dictates in accordance with the OSHA Act; and specifically, the contractor must meet the required provisions in 509S Excavation Safety Systems required prior to commencing excavation;

.15 A certificate of worker’s compensation insurance coverage for all persons providing services on the Project (refer to 5.2.1.3 in Section 00700 for definition of persons providing services on the Project);

.16 A Construction Equipment Emissions Reduction Plan.

2.4.3 Neither the acceptance nor the approval of any of the submittals required in paragraph 2.4.2, above, will constitute the adoption, affirmation, or direction of the CONTRACTOR’S means and methods.

2.5 **Preconstruction Conference:** Prior to commencement of Work at the site, CONTRACTOR must attend a preconstruction conference with Owner’s Representative and others, as set forth in Division 1. Additionally, prior to commencement of work, the CONTRACTOR shall host a preconstruction conference for the Subcontractors identified on the originally approved compliance plan, Owner’s Representative and others, as set forth in Division 1. The CONTRACTOR shall notify all Subcontractors five (5) working days prior to the preconstruction conference. If the CONTRACTOR has included Subcontractors in the initial preconstruction conference, the additional Subcontractor preconstruction conference will not be required.

2.6 **Initially Acceptable Schedules:** Unless otherwise provided in the Contract Documents, CONTRACTOR shall obtain approval of Owner's Representative on the Baseline Schedule submitted in accordance with paragraph 2.4.2.1 and Division 1 before the first progress payment will be made to CONTRACTOR. The Baseline Schedule must provide for an orderly progression of the designated portion of the Work to completion within any specified Milestones and Contract Times. Acceptance of the schedule by Owner's Representative will neither impose on Owner's Representative responsibility or liability for the sequencing, scheduling or progress of the Work nor interfere with or relieve CONTRACTOR from CONTRACTOR's full responsibility for such Work. CONTRACTOR's schedule of Shop Drawings and sample submissions must provide an acceptable basis for reviewing and processing the required submittals. CONTRACTOR's schedule of values must conform to the requirements set forth in Division 1.

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.1 Intent:

3.1.1 The intent of the Contract Documents is to include all information necessary for the proper execution and timely completion of the Work by CONTRACTOR. The CONTRACTOR will execute the Work described in and reasonably inferable from the Contract Documents as necessary to produce the results indicated by the Contract Documents. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. In cases of disagreement, the following order of precedence shall generally govern (top item receiving priority of interpretation):

- Signed Agreement
- Addendum to the Contract Documents, including approved changes
- Supplemental General Conditions
- General Conditions
- Other Bidding Requirements and Contract Forms
- Special Provisions to the Standard Technical Specifications
- Special Specifications
- Standard Technical Specifications

Drawings (figured dimensions shall govern over scaled dimensions)
Project Safety Manual (if applicable),

with the understanding that a common sense approach will be utilized as necessary so that the Contract Documents produce the intended response.

3.1.2 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

3.2 Reporting and Resolving Discrepancies: If, during the performance of the Work, CONTRACTOR discovers any conflict, error, ambiguity or discrepancy within the Contract Documents or between the Contract Documents and any provisions of any such law or regulation applicable to the performance of the Work or of any such standard, specification, manual or code or instructions of any Supplier, CONTRACTOR shall report it to Owner's Representative in writing at once, and CONTRACTOR shall not proceed with the Work affected thereby until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in paragraph 3.3.1 or 3.3.2. CONTRACTOR shall be liable to OWNER for failure to report any such conflict, error, ambiguity or discrepancy of which CONTRACTOR knew or reasonably should have known.

3.3 Modifying and Supplementing Contract Documents:

3.3.1 The Contract Documents may be modified to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions by change order or contract amendment.

3.3.2 In addition, the requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, in one or more of the following ways:

- .1 Field Order.
- .2 Review of a Shop Drawing or sample.
- .3 Written interpretation or clarification.

3.4 Reuse of Documents Prohibited: CONTRACTOR and any Subcontractor or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with OWNER: (i) shall not have or acquire any title to or ownership rights in any of the Drawings, Specifications or other documents (or copies of any thereof) prepared by or bearing the seal of E/A or E/A's consultant, and (ii) shall not reuse any of such Drawings, Specifications, other documents or copies on extensions of the Project or any other project without written consent of OWNER and E/A.

3.5 In the event of the breach by the OWNER or CONTRACTOR of any of its obligations under the Contract, so as to support a claim by the other party, the provisions of this Contract will be equitably construed to allow the resolution of such a claim and all of the other provisions of this Contract shall continue in full force and effect as to the rights, responsibilities, and remedies of the OWNER and CONTRACTOR.

ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS

4.1 Availability of Lands: The OWNER will provide access to all land and interests in land required for the Work and will notify CONTRACTOR of any restrictions in such access. CONTRACTOR may make a claim if OWNER fails to provide timely access to the Work.

CONTRACTOR must obtain any additional temporary construction facilities, stockpiling or storage sites not otherwise provided.

4.2 Subsurface and Physical Conditions:

4.2.1 CONTRACTOR specifically represents that it has carefully examined the plans, the geotechnical report, if any, and the site of the proposed Work and is thoroughly familiar with all of the conditions surrounding construction of the Project, having had the opportunity to conduct any and all additional inquiry, tests and investigation that he/she deems necessary and proper. CONTRACTOR acknowledges the receipt of the geotechnical report, if any, and agrees that the report, while it is an accurate record of the geotechnical conditions at the boring locations, is not a guarantee of specific site conditions which may vary between boring locations.

4.2.2 CONTRACTOR must notify OWNER in writing as soon as reasonably possible, but no later than three (3) calendar days, if unforeseen conditions are encountered at the site which are (i) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (ii) unknown physical conditions of an unusual nature, that differ materially from those normally encountered in the type of work being performed under this Contract. CONTRACTOR may not disturb the conditions until OWNER conducts an investigation. Owner's Representative and E/A will promptly investigate such conditions with E/A. If it is determined that such conditions differ materially and cause an increase or decrease in the CONTRACTOR's cost of or time required for performance of any part of the Work, Owner's Representative will recommend an equitable adjustment in the Contract Amount or Contract Time, or both. If it is determined that such conditions are not materially different from those indicated in the Contract Documents, Owner's Representative will notify CONTRACTOR in writing of such findings and the Contract will not be adjusted. CONTRACTOR may dispute such a determination in accordance with Article 16.

4.2.3 Notwithstanding any other provision of this Contract, CONTRACTOR is solely responsible for the location and protection of any and all public utility lines and utility customer service lines in the Work area. "Public utility lines" means the utility distribution and supply system, and "utility customer service lines" means the utility lines connecting customers to the utility distribution and collection system. Generally, existing utility customer service line connections are not shown on the Drawings. CONTRACTOR shall notify "One Call" and exercise due care to locate, mark, uncover and otherwise protect all such lines in the construction zone and any of CONTRACTOR's work or storage areas. CONTRACTOR's responsibility for the location and protection of utilities is primary and nondelegable. CONTRACTOR shall indemnify or reimburse such expenses or costs (including fines that may be levied against OWNER) that may result from unauthorized or accidental damage to all public lines and utility customer service lines in the work area. OWNER reserves the right to repair any damage CONTRACTOR causes to such utilities at CONTRACTOR's expense. If a public line and/or customer service line is damaged by CONTRACTOR, CONTRACTOR shall give verbal notice within one (1) hour and written notice within twenty-four (24) hours to the Owner's Representative.

4.2.4 CONTRACTOR shall take reasonable precaution to avoid disturbing primitive records and antiquities of archaeological, paleontological or historical significance. No objects of this nature shall be disturbed without written permission of OWNER and Texas Historical Commission. When such objects are uncovered unexpectedly,

CONTRACTOR shall stop all Work in close proximity and notify Owner's Representative and Texas Historical Commission of their presence and shall not disturb them until written permission and permit to do so is granted. All primitive rights and antiquities uncovered on OWNER's property shall remain property of State of Texas, Texas Historical Commission conforming to Texas Natural Resources Code. If it is determined by OWNER, in consultation with Texas Historical Commission, that exploration or excavation of primitive records or antiquities on Project site is necessary to avoid loss, CONTRACTOR shall cooperate in salvage work attendant to preservation. If the Work stoppage or salvage work causes an increase in CONTRACTOR's cost of, or time required for, performance of the Work, the Contract Amount and/or Contract Time will be equitably adjusted.

4.3 Reference Points: Unless otherwise specified, all control lines and bench marks suitable for use in layout will be furnished by OWNER. Lay out of the Work shall be performed in accordance with Division 1. Controls, bench marks and property boundary markers shall be carefully preserved by CONTRACTOR by use of flags, staffs or other visible devices and in case of destruction or removal by CONTRACTOR or its employees, such controls and bench marks shall be replaced by a Registered Professional Land Surveyor at CONTRACTOR's expense. City of Austin survey monuments damaged by CONTRACTOR will be reestablished by OWNER at CONTRACTOR's expense.

4.4 Hazardous Materials:

4.4.1 To the extent provided by applicable law, OWNER shall be responsible for any hazardous material uncovered or revealed at the site which was not shown, indicated or identified in the Contract Documents to be within the scope of the Work and which may present a substantial danger to persons or property exposed thereto in connection with the Work at the site. CONTRACTOR shall immediately notify Owner's Representative of any suspected hazardous materials encountered before or during performance of the Work and shall take all necessary precautions to avoid further disturbance of the materials.

4.4.2 CONTRACTOR shall be responsible for any hazardous materials brought to the site by CONTRACTOR, Subcontractor, Suppliers or anyone else for whom CONTRACTOR is responsible.

4.4.3 No asbestos-containing materials shall be incorporated into the Work or brought on Project site without prior approval of OWNER. The CONTRACTOR shall not knowingly use, specify, request or approve for use any asbestos containing materials or lead-based paint without the OWNER'S written approval. When a specific product is specified, the CONTRACTOR shall endeavor to verify that the product does not include asbestos containing material.

4.4.4 Refer to Division 1 for hazardous material definitions and procedures.

.1 Unless otherwise expressly provided in the Contract Documents to be part of the Work, CONTRACTOR is not responsible for any unexpected Hazardous Materials encountered at the site. Upon encountering any Hazardous Conditions, CONTRACTOR must stop Work immediately in the affected area and duly notify OWNER and, if required by applicable law or regulations, all government or quasi-government entities with jurisdiction over the Project or site.

.2 Upon receiving notice of the presence of suspected Hazardous Materials, OWNER shall take the necessary measures required to ensure that the Hazardous Materials are remediated or rendered harmless. Such necessary measures shall include OWNER retaining qualified independent experts to (i)

ascertain whether Hazardous Materials have actually been encountered, and, if they have been encountered, (ii) prescribe the remedial measures that OWNER must take either to remove the Hazardous Materials or render the Hazardous Materials harmless.

- .3 CONTRACTOR shall be obligated to resume Work at the affected area of the Project only after OWNER's Representative provides written certification that (i) the Hazardous Materials have been removed or rendered harmless and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or site. The CONTRACTOR shall be responsible for continuing the Work in the unaffected portion of the Project and site.
- .4 CONTRACTOR will be entitled, in accordance with these General Conditions, to an adjustment in its Contract Amount and/or Contract Time(s) to the extent CONTRACTOR's cost and/or time of performance have been adversely impacted by the presence of Hazardous Materials.
- .5 Notwithstanding the preceding provisions of this Section 4.1, OWNER is not responsible for Hazardous Materials introduced to the Site by CONTRACTOR, Subcontractors or anyone for whose acts they may be liable. CONTRACTOR shall indemnify, defend and hold harmless OWNER and OWNER's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those hazardous materials introduced to the site by CONTRACTOR, Subcontractors or anyone for whose acts they may be liable.

4.4.5 CONTRACTOR shall be responsible for use, storage and remediation of any hazardous materials brought to the Site by CONTRACTOR, Subcontractors, Suppliers or anyone else for whom CONTRACTOR is responsible.

ARTICLE 5 - BONDS AND INSURANCE

5.1 Surety and Insurance Companies: All bonds and insurance required by the Contract Documents shall be obtained from solvent surety or insurance companies that are duly licensed by the State of Texas and authorized to issue bonds or insurance policies for the limits and coverages required by the Contract Documents. The bonds shall be in a form acceptable to OWNER and shall be issued by a surety which complies with the requirements of Texas Insurance Code, Title 12, Chapter 3503. The surety must obtain reinsurance for any portion of the risk that exceeds 10% of the surety's capital and surplus. For bonds exceeding \$100,000, the surety must also hold a certificate of authority from the U.S. Secretary of the Treasury or have obtained reinsurance for any liability in excess of \$1,000,000 from a reinsurer that is authorized as a reinsurer in Texas or holds a certificate of authority from the U.S. Secretary of the Treasury. In the event that the proposed surety for a contract award in excess of \$100,000 does not hold a certificate of authority from the U.S. Secretary of the Treasury and/or its proposed reinsurer does not hold a certificate of authority from the U.S. Secretary of the Treasury, the OWNER may require additional financial solvency information from the Bidder/Contractor and the proposed surety company and/or reinsurer as part of the 00400 Statement of Bidders Experience and determination of bidder responsibility in the award of the Contract.

5.2 Workers' Compensation Insurance Coverage:

5.2.1 Definitions:

- .1 Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (DWC-81, DCW-82, DCW-83, or DCW84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on the Project, for the duration of the Project.
 - .2 Duration of the Project - includes the time from the beginning of the Work on the Project until the CONTRACTOR's/ person's Work on the Project has been completed and accepted by OWNER.
 - .3 Persons providing services on the Project ("subcontractor" in Texas Labor Code, Section 406.096) - includes all persons or entities performing all or part of the services the CONTRACTOR has undertaken to perform on the Project, regardless of whether that person contracted directly with the CONTRACTOR and regardless of whether that person has employees. This includes, without limitation, independent contractors, Subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the Project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.
- 5.2.2** CONTRACTOR shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the CONTRACTOR providing services on the Project, for the duration of the Project.
- 5.2.3** CONTRACTOR must provide a certificate of coverage to OWNER prior to being awarded the Contract.
- 5.2.4** If the coverage period shown on the CONTRACTOR's current certificate of coverage ends during the duration of the Project, the CONTRACTOR must, prior to the end of the coverage period, file a new certificate of coverage with OWNER showing that coverage has been extended.
- 5.2.5** CONTRACTOR shall obtain from each person providing services on the Project, and provide to OWNER:
- .1 A certificate of coverage, prior to that person beginning Work on the Project, so OWNER will have on file certificates of coverage showing coverage for all persons providing services on the Project; and
 - .2 No later than seven (7) days after receipt by CONTRACTOR, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.
- 5.2.6** CONTRACTOR shall retain all required certificates of coverage for the duration of the Project and for one (1) year thereafter.
- 5.2.7** CONTRACTOR shall notify OWNER in writing by certified mail or personal delivery, within ten (10) days after CONTRACTOR knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.

- 5.2.8** CONTRACTOR shall post on each Project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- 5.2.9** CONTRACTOR shall contractually require each person with whom it contracts to provide services on a Project, to:
- .1** Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the Project, for the duration of the Project;
 - .2** Provide to CONTRACTOR, prior to that person beginning Work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project, for the duration of the Project;
 - .3** Provide CONTRACTOR, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
 - .4** Obtain from each other person with whom it contracts, and provide to CONTRACTOR: a) a certificate of coverage, prior to the other person beginning Work on the Project; and b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
 - .5** Retain all required certificates of coverage on file for the duration of the Project and for one (1) year thereafter;
 - .6** Notify OWNER in writing by certified mail or personal delivery, within ten (10) days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and
 - .7** Contractually require each person with whom it contracts, to perform as required by paragraphs 5.2.9.1 - 5.2.9.7, with the certificates of coverage to be provided to the person for whom they are providing services.
- 5.2.10** By signing this Contract or providing or causing to be provided a certificate of coverage, CONTRACTOR is representing to OWNER that all employees of the CONTRACTOR who will provide services on the Project will be covered by workers' compensation coverage for the duration of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Texas Worker's Compensation Commission's Division of Self- Insurance Regulation. Providing false or misleading information may subject CONTRACTOR to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- 5.2.11** CONTRACTOR's failure to comply with any of these provisions is a breach of Contract by CONTRACTOR which entitles OWNER to declare the Contract void if CONTRACTOR does not remedy the breach within ten (10) days after receipt of notice of breach from OWNER.

5.3 Other Bond and Insurance Requirements: For additional insurance requirements, refer to the Supplemental General Conditions.

5.4 Bonds:

5.4.1 General.

- .1 Bonds, when required, shall be executed on forms furnished by or acceptable to OWNER. All bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.
- .2 If the surety on any bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in the State of Texas or it ceases to meet the requirements of the preceding paragraph, CONTRACTOR shall within ten (10) days thereafter substitute another bond and surety, both of which must be acceptable to OWNER.
- .3 When Performance Bonds and/or Payment Bonds are required, each shall be issued in an amount of one hundred percent (100%) of the Contract Amount as security for the faithful performance and/or payment of all CONTRACTOR's obligations under the Contract Documents. Performance Bonds and Payment Bonds shall be issued by a solvent surety company authorized to do business in the State of Texas, and shall meet any other requirements established by law or by OWNER pursuant to applicable law. Any surety duly authorized to do business in Texas may write Performance and Payment Bonds on a project without reinsurance to the limit of ten percent (10%) of its capital and surplus. Such a surety must reinsure any obligations over ten percent (10%).

5.4.2 Performance Bond.

- .1 If the Contract Amount exceeds \$100,000, CONTRACTOR shall furnish OWNER with a Performance Bond in the form set out in Section 00610.
- .2 If the Contract Amount exceeds \$25,000 but is less than or equal to \$100,000, CONTRACTOR shall furnish OWNER with a Performance Bond in the form set out in Section 00610, unless the original Contract Time is 60 Calendar Days/40 Working Days or less, in which case CONTRACTOR can agree to the following terms and conditions for payment in lieu of providing a Performance Bond: no moneys will be paid to CONTRACTOR until completion and acceptance of the Work by OWNER; CONTRACTOR shall be entitled to receive 95% of the Contract Amount following Final Completion, and the remaining 5% of the Contract Amount following the one (1) year warranty period.
- .3 If the Contract Amount is less than or equal to \$25,000, CONTRACTOR will not be required to furnish a Performance Bond; provided that no moneys will be paid to CONTRACTOR until completion and acceptance of the Work by OWNER under the following terms and conditions: CONTRACTOR shall be entitled to receive 95% of the Contract Amount following Final Completion, and the remaining 5% of the Contract Amount following the one (1) year warranty period.
- .4 If a Performance Bond is required to be furnished, it shall extend for the one (1) year warranty period.

5.4.3 Payment Bond.

- .1 If the Contract Amount exceeds \$50,000, CONTRACTOR shall furnish OWNER with a Payment Bond in the form set out in Section 00620.

- .2 If the Contract Amount is less than or equal to \$50,000, CONTRACTOR will not be required to furnish a Payment Bond; provided that no moneys will be paid to CONTRACTOR until completion and acceptance of the Work by OWNER under the terms and conditions specified in paragraph 5.4.2.3.

5.4.4 Maintenance Bond: If the Contract Documents contemplate a period of maintenance beyond the one (1) year contractual warranty period, OWNER agrees that any bond to be required for such maintenance work will be in the amount of the maintenance work during any extended maintenance period.

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

6.1 Supervision and Superintendence:

6.1.1 CONTRACTOR shall supervise, inspect and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences and procedures of construction. CONTRACTOR shall be responsible to see that the completed Work complies accurately with the Contract Documents.

6.1.2 CONTRACTOR shall have a competent, qualified Superintendent on the Work at all times that work is in progress. To be qualified, at a minimum, the Superintendent must be effective at (a) communicating both verbally and in writing with the OWNER's representative; (b) receiving and fulfilling instructions from the Owner's Representative; (c) supervising and directing the construction of the Work; (d) reading and interpreting the plans and specifications; (e) writing, preparing and submitting necessary paperwork; and (f) understanding work sequencing and scheduling. The Superintendent will be CONTRACTOR's representative on the Work and shall have the authority to act on the behalf of CONTRACTOR. All communications given to the Superintendent shall be as binding as if given to CONTRACTOR. Either CONTRACTOR or the Superintendent shall provide a cellular telephone number and an emergency and home telephone number at which one or the other may be reached if necessary when work is not in progress. The Superintendent must be an employee of the CONTRACTOR, unless such requirement is waived in writing by the Owner's Representative. If the CONTRACTOR proposes a management structure with a Project Manager supervising, directing, and managing construction of the work in addition to or in substitution of a Superintendent, the requirements of these Construction Documents with respect to the Superintendent shall likewise apply to any such Project Manager.

- .1 CONTRACTOR shall present the resume of the proposed Superintendent to the Owner's Representative showing evidence of experience and successful superintendence and direction of work of a similar scale and complexity. If, in the opinion of the Owner's Representative, the proposed Superintendent does not indicate sufficient experience in line with the Work, he/she will not be allowed to be the designated Superintendent for the Work.
- .2 The Superintendent shall not be replaced without Written Notice to Owner's Representative. If CONTRACTOR deems it necessary to replace the Superintendent, CONTRACTOR shall provide the necessary information for approval, as stated above, on the proposed new Superintendent.

- .3 A qualified substitute Superintendent may be designated in the event that the designated Superintendent is temporarily away from the Work, but not to exceed a time limit acceptable to the Owner's Representative. CONTRACTOR shall replace the Superintendent upon OWNER's request in the event the Superintendent is unable to perform to OWNER's satisfaction.

6.2 Labor, Materials and Equipment:

- 6.2.1** CONTRACTOR shall maintain a work force adequate to accomplish the Work within the Contract Time. CONTRACTOR agrees to employ only orderly and competent workers, skillful in performance of the type of Work required under this Contract. CONTRACTOR, Subcontractors, Sub-subcontractors, and their employees may not use or possess any alcoholic or other intoxicating beverages, illegal drugs or controlled substances while on the job or on OWNER's property, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job. Subject to the applicable provisions of Texas law, CONTRACTOR, Subcontractors, Sub-subcontractors, and their employees may not use or possess any firearms or other weapons while on the job or on OWNER'S property. If OWNER or Owner's Representative notifies CONTRACTOR that any worker or representative of Contractor is incompetent, disorderly, abusive, or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms in contravention of the applicable provisions of Texas law, or has possessed or was under the influence of alcohol or drugs on the job, CONTRACTOR shall immediately remove such worker or representative, including an officer or owner of CONTRACTOR, from performing Contract Work, and may not employ such worker or representative again on Contract Work without OWNER's prior written consent. CONTRACTOR shall at all times maintain good discipline and order on or off the site in all matters pertaining to the Project. Workers on Project shall be paid not less than wage rates, including fringe benefits, as published by the Department of Labor (DOL) for Building Construction and Heavy and Highway Trades "AS APPLICABLE" and/or the minimum wage required by City of Austin Ordinance No. 20160324-015, whichever is higher. The Total Minimum Wage required can be met using any combination of cash and non-cash qualified fringe benefits provided the cash component meets or exceeds the minimum wage required.
- 6.2.2** Unless otherwise specified in Division 1, CONTRACTOR shall provide and pay for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and completion of the Work.
- 6.2.3** All materials and equipment shall be of good quality and new (including new products made of recycled materials, pursuant to Section 361.426 of the Texas Health & Safety Code), except as otherwise provided in the Contract Documents. If required by Owner's Representative, CONTRACTOR shall furnish satisfactory evidence (reports of required tests, manufacturer's certificates of compliance with material requirements, mill reports, etc.) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with instructions of the applicable Supplier, except as otherwise provided in the Contract Documents.
- 6.2.4** Substitutes and "Approved Equal" Items:
 - .1 Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the

type, function and quality required. Unless the specification or description contains words reading that no like, equivalent or "approved equal" item or no substitution is permitted, other items of material or equipment of other Suppliers may be submitted by CONTRACTOR, at CONTRACTOR'S sole risk, including disruptions to the Critical Path of the Progress Schedule, to E/A through Owner's Representative under the following circumstances:

- .1.1** "Approved Equal": If in E/A's sole discretion an item of material or equipment proposed by CONTRACTOR is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by E/A as an "approved equal" item, in which case review of the proposed item may, in E/A's sole discretion, be accomplished without compliance with some or all of the requirements for evaluation of proposed substitute items. CONTRACTOR shall provide E/A with the documentation required for E/A to make its determination.
- .1.2** Substitute Items: If in E/A's sole discretion an item of material or equipment proposed by CONTRACTOR does not qualify as an "approved equal" item under subparagraph 6.2.4.1.1, it will be considered a proposed substitute item. CONTRACTOR shall submit sufficient information as provided in Division 1 to allow E/A to determine that the item of material or equipment proposed is essentially equivalent to that named and a substitute therefor.
- .2** Substitute Construction Methods and Procedures: If a specific means, method, technique, sequence or procedure of construction is shown or indicated in and expressly required by the Contract Documents, CONTRACTOR may, at CONTRACTOR'S sole risk, including disruptions to the Critical Path of the Progress Schedule, with prior approval of E/A furnish or utilize a substitute means, method, technique, sequence, or procedure of construction. CONTRACTOR shall submit sufficient information to Owner's Representative to allow E/A, in E/A's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The procedure for review by E/A will be same as that provided for substitute items in Division 1.
- .3** E/A's Evaluation: E/A will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to subparagraphs 6.2.4.1.1 and 6.2.4.1.2. E/A will be the sole judge of acceptability. No "approved equal" or substitute shall be ordered, installed, or utilized until E/A's review is complete, which will be evidenced by either a Change Order or completion of the Shop Drawing review procedure. OWNER may require CONTRACTOR to furnish at CONTRACTOR's expense a special performance guarantee or other surety bond with respect to any "approved equal" or substitute or for any other delay or disruption to the Critical Path of the Project Schedule attributable to any such substitution. OWNER shall not be responsible for any delay due to review time for any "approved equal" or substitute.
- .4** CONTRACTOR's Expense: All data and documentation to be provided by CONTRACTOR in support of any proposed "approved equal" or substitute item will be at CONTRACTOR's expense.
- .5** The approval of the E/A will not relieve the CONTRACTOR from primary responsibility and liability for the suitability and performance of any proposed substitute item, method or procedure and will not relieve CONTRACTOR from

its primary responsibility and liability for curing defective Work and performing warranty work, which the CONTRACTOR shall cure and perform, regardless of any claim the CONTRACTOR may choose to advance against the E/A or manufacturer.

6.2.5 CONTRACTOR agrees to assign to OWNER any rights it may have to bring antitrust suits against its Suppliers for overcharges on materials incorporated in the Project growing out of illegal price fixing agreements. CONTRACTOR further agrees to cooperate with OWNER should OWNER wish to prosecute suits against Suppliers for illegal price fixing.

6.3 Progress Schedule: Unless otherwise provided in Division 1, CONTRACTOR shall adhere to the Baseline Schedule established in accordance with paragraph 2.6 as it may be adjusted from time to time as provided below:

6.3.1 CONTRACTOR shall submit to Owner's Representative for review and approval any proposed adjustments in the Progress Schedule that will not change the Contract Times or Milestones on a monthly basis. Any such proposed adjustments must be substantiated with documentation of any changes to the underlying logic of the Progress Schedule. CONTRACTOR's Progress Schedule must show how the CONTRACTOR will consistently advance the progress of the Work in accordance with the Critical Path of the Work and the Contract Time or Milestones. Such adjustments will conform generally to the Progress Schedule then in effect and additionally will comply with any provisions of Division 1 applicable thereto.

6.3.2 Proposed adjustments in the Progress Schedule that will change the Contract Times or Milestones shall be submitted in accordance with the requirements of Article 12. Any such proposed adjustments must be substantiated with documentation of any changes to the underlying logic of the Progress Schedule. Such adjustments may only be made by a Change Order or Time Extension Request in accordance with Article 12.

6.4 Concerning Subcontractors, Suppliers and Others:

6.4.1 Assignment: CONTRACTOR agrees to retain direct control of and give direct attention to the fulfillment of this Contract. CONTRACTOR agrees not to, by Power of Attorney, or otherwise, assign said Contract without the prior written consent of OWNER. In addition, without OWNER'S written consent, the CONTRACTOR will not subcontract the performance of the entire Work or the supervision and direction of the Work.

6.4.2 Award of Subcontracts for Portions of the Work: CONTRACTOR shall not employ any Subcontractor, Supplier or other person or organization, whether initially or as a substitute, against whom OWNER may have reasonable objection. OWNER will communicate such objections by Written Notice. If OWNER requires a change without good cause of any Subcontractor, person or organization previously accepted by OWNER, the Contract Amount shall be increased or decreased by the difference in the cost occasioned by any such change, and appropriate Change Order shall be issued. CONTRACTOR shall not substitute any Subcontractor, person or organization that has been accepted by OWNER, unless the substitute has been accepted in writing by OWNER. No acceptance by OWNER of any Subcontractor, Supplier or other person or organization shall constitute a waiver of any right of OWNER to reject defective Work.

6.4.3 CONTRACTOR shall enter into written agreements with all Subcontractors and Suppliers which specifically binds the Subcontractors or Suppliers to the applicable terms and conditions of the Contract Documents for the benefit of OWNER and E/A.

The OWNER reserves the right to specify that certain requirements shall be adhered to by all Subcontractors and Sub-subcontractors as indicated in other portions of the Contract Documents and these requirements shall be made a part of the agreement between CONTRACTOR and Subcontractor or Supplier. Subject to and in accordance with the above requirements, the CONTRACTOR must provide and will be deemed for all purposes to have provided in its contracts with major Subcontractors or Suppliers on the Project (those contracts of more than \$10,000) the following specific provision: alternative dispute resolution (paragraphs 16.2 and 16.3), which shall be mandatory in the event of a subcontractor or supplier claim and a prerequisite for the submission of any derivative claim. The CONTRACTOR's standard subcontract form is subject to the OWNER's review and approval. The OWNER may request and the CONTRACTOR will provide within five (5) working days a copy of any subcontract requested by the OWNER.

- 6.4.4** CONTRACTOR shall be fully responsible to OWNER for all acts and omissions of the Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR just as CONTRACTOR is responsible for CONTRACTOR's own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier or other person or organization any contractual relationship between OWNER and any such Subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of OWNER or E/A to pay or to see to the payment of any moneys due any such Subcontractor, Supplier or other person or organization except as may otherwise be required by laws and regulations.
- 6.4.5** CONTRACTOR shall be solely responsible for efficiently scheduling and coordinating the Work of Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR in order to avoid any delays or inefficiencies in the prosecution of the Work. CONTRACTOR shall require all Subcontractors, Suppliers and such other persons and organizations performing or furnishing any of the Work to communicate with Owner's Representative through CONTRACTOR.
- 6.4.6** The divisions and sections of the Specifications and the identifications of any Drawings shall not control CONTRACTOR in dividing or delineating the Work to be performed by any specific trade.
- 6.4.7** CONTRACTOR shall pay each Subcontractor and Supplier their appropriate share of payments made to CONTRACTOR not later than ten (10) Calendar Days of CONTRACTOR's receipt of payment from OWNER. Upon request from Owner, the CONTRACTOR has two (2) Working Days to provide documentation verifying Payment to Subcontractor(s). The CONTRACTOR is required to notify the Subcontractor(s) in writing of rejection of Application for Payment within two (2) Working Days following notification by Owner. Failure of CONTRACTOR to make payments to Subcontractors or for labor, materials or equipment in accordance to this contract, may be cause to reject future Bids by the CONTRACTOR in accordance with Section 00100 9.B.4 and may be cause to reject payment in accordance with 00700 14.4.1.3.
- 6.4.8** To the extent allowed by Texas law, the OWNER shall be deemed to be a third party beneficiary to each subcontract and may, if OWNER elects, following a termination of the CONTRACTOR, require that the Subcontractor(s) perform all or a portion of unperformed duties and obligations under its subcontract(s) for the benefit of the OWNER, rather than the CONTRACTOR; however, if the OWNER requires any such performance by a Subcontractor for the OWNER's direct benefit, then the OWNER

shall be bound and obligated to pay such Subcontractor the reasonable value for all Work performed by such Subcontractor to the date of the termination of the CONTRACTOR, less previous payments, and for all Work performed thereafter. In the event that the OWNER elects to invoke its right under this section, OWNER will provide notice of such election to the CONTRACTOR and the affected Subcontractor(s).

6.5 Patent Fees and Royalties:

6.5.1 CONTRACTOR shall be responsible at all times for compliance with applicable patents or copyrights encompassing, in whole or in part, any design, device, material, or process utilized, directly or indirectly, in the performance of the Work or the formulation or presentation of its Bid.

6.5.2 CONTRACTOR shall pay all royalties and license fees and shall provide, prior to commencement of Work hereunder and at all times during the performance of same, for lawful use of any design, device, material or process covered by letters, patent or copyright by suitable legal agreement with the patentee, copyright holder, or their duly authorized representative whether or not a particular design, device, material, or process is specified by OWNER.

6.5.3 CONTRACTOR shall defend all suits or claims for infringement of any patent or copyright and shall save OWNER harmless from any loss or liability, direct or indirect, arising with respect to CONTRACTOR's process in the formulation of its Bid or the performance of the Work or otherwise arising in connection therewith. OWNER reserves the right to provide its own defense to any suit or claim of infringement of any patent or copyright in which event CONTRACTOR shall indemnify and save harmless OWNER from all costs and expenses of such defense as well as satisfaction of all judgments entered against OWNER.

6.5.4 OWNER shall have the right to stop the Work and/or terminate this Agreement at any time in the event CONTRACTOR fails to disclose to OWNER that CONTRACTOR's work methodology includes the use of any infringing design, device, material or process.

6.6 Permits, Fees: Unless otherwise provided in the Supplemental General Conditions, CONTRACTOR shall obtain and pay for all construction permits, licenses and fees required for prosecution of the Work.

6.7 Laws and Regulations:

6.7.1 CONTRACTOR shall give all notices and comply with all laws and regulations applicable to furnishing and performing the Work, including arranging for and obtaining any required inspections, tests, approvals or certifications from any public body having jurisdiction over the Work or any part thereof. Except where otherwise expressly required by applicable laws and regulations, neither OWNER nor E/A shall be responsible for monitoring CONTRACTOR's compliance with any laws and regulations.

6.7.2 Maintaining clean water, air and earth or improving thereon shall be regarded as of prime importance. CONTRACTOR shall plan and execute its operations in compliance with all applicable Federal, State and local laws and regulations concerning control and abatement of water pollution and prevention and control of air pollution.

6.7.3 If CONTRACTOR performs any Work knowing or having reason to know that it is contrary to laws or regulations, CONTRACTOR shall bear all claims, costs, losses and damages arising therefrom; however, it shall not be CONTRACTOR's primary responsibility to make certain that the Specifications and Drawings are in accordance

with laws and regulations, but this does not relieve CONTRACTOR of CONTRACTOR's obligations under Article 3.

6.8 Taxes:

- 6.8.1** CONTRACTOR shall pay only those sales, consumer, use and other similar taxes required to be paid by CONTRACTOR in accordance with the laws and regulations of the State of Texas in the performance of this public works contract.
- 6.8.2** OWNER is an exempt organization as defined by Chapter 11 of the Property Tax Code of Texas and is thereby exempt from payment of Sales Tax under Chapter 151, Limited Use Sales, Excise and Use Tax, Texas Tax Code, and Article 1066 (C), Local Sales and Use Tax Act, Revised Civil Statutes of Texas.

6.9 Use of Premises:

- 6.9.1** CONTRACTOR shall confine construction equipment, the storage of materials and equipment and the operations of workers to the site and land and areas identified in and permitted by the Contract Documents and other land and areas permitted by laws and regulations, right-of-way, permits and easements, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any adjacent land or areas, resulting from the performance of the Work. Should any claim be made by any such owner or occupant because of or in connection with the performance of the Work, CONTRACTOR shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law. CONTRACTOR shall indemnify, defend and hold harmless OWNER, E/A, E/A'S Consultants and anyone directly or indirectly employed by any of them from and against all claims, costs, losses and damages (including court costs and reasonable attorney's fees) arising out of or resulting from any claim or action, legal or equitable, brought by any such owner or occupant against OWNER, E/A or any other party indemnified hereunder to the extent caused by or based upon performance of the work or failure to perform the Work.
- 6.9.2** During the progress of the Work and on a daily basis, CONTRACTOR shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work, CONTRACTOR shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery and surplus materials. CONTRACTOR shall leave the site clean and ready for occupancy by OWNER at Substantial Completion of the Work. CONTRACTOR shall, at a minimum, restore to original condition all property not designated for alteration by the Contract Documents. If the CONTRACTOR fails to clean up at the completion of the Work, OWNER may do so and the cost thereof will be charged against the CONTRACTOR.
- 6.9.3** CONTRACTOR shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall CONTRACTOR subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

- 6.10 Record Documents:** CONTRACTOR shall maintain in a safe place at the site, or other location acceptable to OWNER, one (1) record copy of all Drawings, Specifications, Addenda, Change Orders, Change Directives, Field Orders and written interpretations and clarifications (issued pursuant to paragraph 9.5) in good order and annotated to show all changes made during construction. These record documents together with all final samples and all final Shop Drawings will be available to OWNER and E/A for reference during performance of the

Work. Upon Substantial Completion of the Work, these record documents, samples and Shop Drawings shall be promptly delivered to Owner's Representative.

6.11 Safety and Protection:

6.11.1 CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Upon request, and prior to installation of measures, CONTRACTOR shall submit a site security plan for approval by OWNER. By reviewing the plan or making recommendations or comments, OWNER will not assume liability nor will CONTRACTOR be relieved of liability for damage, injury or loss. CONTRACTOR shall take all necessary precautions for the safety of and shall provide the necessary protection to prevent damage, injury or loss to:

- .1 all persons on the Work site or who may be affected by the Work;
- .2 all the Work and materials and equipment to be incorporated therein, whether in storage on or off the site; and
- .3 other property at the site or adjacent thereto, including, but not limited to, trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and underground facilities not designated for removal, relocation or replacement in the course of construction.

6.11.2 CONTRACTOR shall comply with all applicable laws and regulations of any public body having jurisdiction for safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property and of underground facilities, and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property. All damage, injury or loss to any property referred to in paragraph 6.11.1.2 and 6.11.1.3 caused, directly or indirectly, in whole or in part, by CONTRACTOR, Subcontractor, Supplier or any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of OWNER, or E/A, or E/A's consultant or anyone employed by any of them or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the faults or negligence of CONTRACTOR or any Subcontractor, Supplier or other person or organization directly or indirectly employed by any of them). CONTRACTOR's duties and responsibilities for safety and protection of the Work shall continue until such time as all the Work is completed and Owner's Representative has issued a notice to OWNER and CONTRACTOR in accordance with Article 14 that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion). Without limitation, CONTRACTOR shall comply with the following specific provisions:

It shall be the duty and responsibility of CONTRACTOR and all of its subcontractors to be familiar with and comply with 29 USC Section 651, et seq., the Occupational Safety and Health Act of 1970, as amended ("OSHA") and to enforce and comply with all provisions of this Act.

The CONTRACTOR and all of its subcontractors shall comply with all applicable requirements of Subpart P of Part 1926 of 29 C.F.R, OSHA Safety and Health Standards, Texas Health and Safety Code Section 756.023, as amended, and shall submit a unit price for the particular excavation safety systems to be utilized by the Contractor for all excavations which exceed a depth of five feet (5').

Before commencing any excavation which will exceed a depth of five feet (5'), the CONTRACTOR shall provide the Owner with detailed plans and specifications regarding the safety systems to be utilized. Said plans and specifications shall include a certification from a Texas licensed professional engineer indicating full compliance with the OSHA provisions cited above.

6.11.3 Safety Representative: CONTRACTOR shall designate in writing a qualified and experienced safety representative (the "Safety Representative") at the site whose duties and responsibilities shall include safety training; identifying and mitigating hazardous conditions and unsafe work practices; and developing, maintaining and supervising the implementation of safe work practices and safety programs as deemed necessary and appropriate for the Project. The term "Safety Representative" includes any designated Safety Supervisor, Superintendent or Safety Manager. The Safety Representative shall exercise due diligence in the execution of all Project related safety duties. Upon request of OWNER, CONTRACTOR shall provide certifications or other acceptable documentation of the Safety Representative's qualifications. The following requirements will be effective as of September 1, 2010:

- .1 The Safety Representative shall present certification of completion of the OSHA 30-hour Construction Industry Training Outreach Program described at: http://www.osha.gov/dte/outreach/construction_generalindustry/construction.html
- .2 The Safety Representative shall verify that all construction workers (defined as persons covered by a prevailing wage determination) on the job site, whether employed by the CONTRACTOR or subcontractors, have completed the OSHA 10-hour Construction Industry Training Outreach Program described at: http://www.osha.gov/dte/outreach/construction_generalindustry/construction.html. The Safety Representative must receive a certificate of training completion before allowing a worker on site and shall have all such certificates available for inspection by the OWNER.
- .3 The Safety Representative shall ensure that workers, including designated competent persons, have completed all applicable OSHA specific or other training needed to perform their job assignments. Training topics applicable to the scope of the current Project may include, but are not limited to, scaffolds, fall protection, cranes, excavations, electrical safety, tools, concrete and masonry construction, steel erection, operation of motor vehicles and mechanized equipment.
- .4 The Safety Representative shall post notice on the site of the Work stating that all workers shall have completed OSHA Construction Industry Training. The Owner may require, and the Safety Representative should consider providing a means of readily identifying workers who have completed the required training to monitor compliance with these requirements.
- .5 The Safety Representative shall ensure that all required OSHA and Workers Compensation notices to workers are posted in English and Spanish at one or more conspicuous locations on the work site.

6.11.4 Hazard Communication Programs: CONTRACTOR shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the site in accordance with laws and regulations.

6.11.5 Emergencies:

- .1 In emergencies affecting the safety or protection of persons or the Work at the site or adjacent thereto, CONTRACTOR, without special instruction or authorization from OWNER or E/A, is obligated to act reasonably to prevent threatened damage, injury or loss and to mitigate damage or loss to the Work. CONTRACTOR shall give Owner's Representative telephone notification as soon as reasonably practical and a prompt written notice if CONTRACTOR believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If Owner's Representative determines that a change in the Contract Documents is required because of the action taken by CONTRACTOR in response to such an emergency, a Change Directive or Change Order will be issued to document the consequences of such action; otherwise OWNER will not be responsible for CONTRACTOR's emergency action.
- .2 Authorized agents of CONTRACTOR shall respond immediately to call-out at any time of any day or night when circumstances warrant the presence on Project site of CONTRACTOR or his agent to protect the Work or adjacent property from damage, restriction or limitation or to take such action or measures pertaining to the Work as may be necessary to provide for the safety of the public. Should CONTRACTOR and/or their agent fail to respond and take action to alleviate such an emergency situation, OWNER may direct other forces to take action as necessary to remedy the emergency condition, and OWNER will deduct any cost of such remedial action from the funds due CONTRACTOR under this Contract.
- .3 In the event there is an accident involving injury to any individual or damage to any property on or near the Work, CONTRACTOR shall provide to Owner's Representative verbal notification within one (1) hour and written notification within twenty-four (24) hours of the event and shall be responsible for recording the location of the event and the circumstances surrounding the event through photographs, interviewing witnesses, obtaining medical reports, police accident reports and other documentation that describes the event. Copies of such documentation shall be provided to Owner's Representative, for OWNER's and E/A's records, within forty-eight (48) hours of the event. Contractor shall cooperate with OWNER on any OWNER investigation of any such incident.

6.11.6 Rest Breaks:

- .1 Except as provided in subsection 6.11.6.2 below, an employee performing construction activity at a construction site is entitled to a rest break of not less than ten (10) minutes for every four (4) hours worked. No employee may be required to work more than 3.5 hours without a rest break. A rest break means a break from work within working hours, excluding meal breaks, during which an employee may not work. A rest break shall be scheduled as near as possible to the midpoint of the work period.
- .2 An employee is not entitled to a rest break under subsection 6.11.6.1 on any day the employee works less than 3.5 hours or spends more than half of his or her work time engaged in non-strenuous labor in a climate controlled environment.
- .3 A sign describing the requirements of this Section 6.11.6 in English and Spanish shall be posted by the employer in each establishment subject to the requirement of a rest break in a conspicuous place or places where notices to

employees are customarily posted, in accordance with the OWNER's then current rules for size, content, and location of such signage.

- .4 The violation of Ordinance No. 20100729-047, enacted July 29, 2010, which establishes the rest break requirements set forth above, may be enforced with criminal penalties and civil remedies, as set forth in the Ordinance.

6.11.7 If the Contractor fails to carry out the Work in accordance with the Contract Documents so that a safety violation has occurred, the Owner may order the Contractor to stop the Work or any portion thereof, until the cause for such order has been eliminated. However, the right of the Owner to stop the Work under this paragraph shall not give rise to a duty on the part of the Owner to supervise the Contractor's Work or to control the Contractor's means and methods or to exercise this right for the benefit of the Contractor or any other person or entity. All time lost due to Project shut down will be the Contractor's sole responsibility, will be charged against the Contract Time, and the Contractor will be responsible for any and all expenses incurred. This provision is in addition to and supplemental to the applicable provisions of the Project's ROCIP Safety Manual.

6.11.8 Confined Space Program

- .1 Contractor acknowledges and agrees that the Owner is temporarily transferring management and control of the site of the Work to the Contractor for the purpose of constructing the Project. The Contractor's responsibilities to manage the Work includes the responsibility to manage the property for purposes of compliance with 29 CFR 1926 subpart AA. To the best of Owner's knowledge and belief, Owner has provided the following information in the plans and specifications and other Contract Documents: (i) the location of each known permit space, (ii) the hazards or potential hazards in each space or the reason it is a permit space; and (iii) any precautions that the Owner or any previous contractor has implemented for the protection of employees in the permit space. This transfer will result in the Contractor being both the host employer and the controlling contractor for this portion of the Work.

6.12 Continuing the Work: CONTRACTOR shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with OWNER. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as OWNER and CONTRACTOR may otherwise agree in writing.

6.13 CONTRACTOR's General Warranty and Guarantee:

6.13.1 CONTRACTOR warrants and guarantees to OWNER that all Work will conform to the plans and specifications, be performed in a good and workmanlike manner in accordance with the Contract Documents and will not be defective. This warranty will survive the termination or expiration of the Contract. CONTRACTOR's warranty and guarantee hereunder excludes defects or damage caused by:

- .1 abuse, modification or improper maintenance or operation by persons other than CONTRACTOR, Subcontractors or Suppliers; or
- .2 normal wear and tear under normal usage.

6.13.2 CONTRACTOR's obligation to perform and complete the Work in a good and workmanlike manner in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance

with the Contract Documents or a release of CONTRACTOR's obligation to perform the Work in accordance with the Contract Documents:

- .1 observations by Owner's Representative and/or E/A;
- .2 recommendation of any progress or final payment by Owner's Representative;
- .3 the issuance of a certificate of Substantial Completion or any payment by OWNER to CONTRACTOR under the Contract Documents;
- .4 use or occupancy of the Work or any part thereof by OWNER;
- .5 any acceptance by OWNER or any failure to do so;
- .6 any review of a Shop Drawing or sample submittal;
- .7 any inspection, test or approval by others; or
- .8 any correction of defective Work by OWNER.

6.14 INDEMNIFICATION:

6.14.1 CONTRACTOR shall defend, indemnify and hold harmless OWNER, E/A, E/A'S Consultants and Sub consultants and their respective officers, directors, partners, employees, agents and other Consultants and any of them (the "INDEMNIFIED PARTIES") from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from the performance of the Work, provided that any such claim, cost, loss or damage:

- .1 Is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself), including the loss of use resulting therefrom, and
- .2 Is caused in whole or in part by any negligent act or omission of CONTRACTOR, any Subcontractor, any Supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by any negligence or omission of the INDEMNIFIED PARTIES hereunder or whether liability is imposed upon such INDEMNIFIED PARTY by laws and regulations regardless of the negligence of any such person or entity.

In the event that indemnification of the INDEMNIFIED PARTIES is prohibited by law, CONTRACTOR shall nonetheless be solely responsible for any liability arising out of or resulting from the performance of the Work, subject to the limitations set forth above, and shall indemnify and hold harmless the remaining INDEMNIFIED PARTIES, who may be legally indemnified, from such liability of the CONTRACTOR and the associated costs described above.

6.14.2 The indemnification obligation under paragraph 6.14.1 shall not be limited in any way by any limitation on the amount or type of damages, or compensation or benefits payable by or for CONTRACTOR or any such Subcontractor, Supplier or other person or organization under workers' compensation acts, disability benefit acts or other employee benefit acts.

6.14.3 The obligations of CONTRACTOR under paragraph 6.14.1 shall not extend to the liability of OWNER, E/A, E/A's consultants, and their officers, directors, partners, employees or agents caused primarily by negligent preparation of maps, drawings,

surveys, designs or specifications upon which is placed the applicable state-authorized design professional seal of OWNER's, E/A's or E/A's consultant's officers, directors, partners, employees or agents.

6.14.4 In the event CONTRACTOR fails to follow OWNER's directives concerning use of the site, scheduling or course of construction, or engages in other conduct which proximately causes damage to property based on inverse condemnation or otherwise, then and in that event, CONTRACTOR shall indemnify OWNER against all costs resulting from such claims.

6.14.5 In the event CONTRACTOR unreasonably delays progress of the work being done by others on the site so as to cause loss for which OWNER becomes liable, then CONTRACTOR shall indemnify OWNER from and reimburse OWNER for such loss.

6.15 Survival of Obligations: All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion and acceptance of the Work and termination or completion of the Agreement.

6.16 Losses from Natural Causes: Unless otherwise specified, all loss or damage to CONTRACTOR arising out of the nature of the Work to be done or from action of the elements, floods or from unforeseeable circumstances in prosecution of the Work or from unusual obstructions or difficulties which may be encountered in prosecution of the Work, shall be sustained and borne by CONTRACTOR at its own cost and expense.

6.17 Notice of Claim: Should CONTRACTOR suffer injury or damage to person or property because of any error, omission or act of OWNER or of any of OWNER's employees or agents or others for whose acts OWNER is liable, a Claim must be made to the other party within thirty (30) calendar days of the event giving rise to such injury or damage. The provisions of this paragraph 6.17 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or statute of repose.

6.18 Liquidated Damages: CONTRACTOR or its Surety shall be liable for liquidated damages for the failure of the CONTRACTOR to timely complete the Work or any portion thereof within the Contract Time.

ARTICLE 7 - OTHER WORK

7.1 OWNER may perform other work related to the Project at the site by OWNER's own forces, or let other contracts therefor, or have other work performed by utility owners. CONTRACTOR and OWNER agree to and shall use best efforts to cooperate and coordinate the Work with others performing work and other work related to the Project in order to avoid conflicts and delays in the Work. If CONTRACTOR believes that delay or additional cost is involved because of such action by OWNER, CONTRACTOR may make a Claim as provided in Article 11 or 12.

7.2 CONTRACTOR shall afford other contractors who are in a contract with OWNER and each utility owner (and OWNER, if OWNER is performing the additional work with OWNER's employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly connect and coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, CONTRACTOR shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate

with such other work. CONTRACTOR shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of Owner's Representative and the other contractors whose work will be affected. CONTRACTOR shall promptly remedy damage wrongfully caused by CONTRACTOR to completed or partially completed construction or to property of the OWNER or separate contractors.

- 7.3** If the proper execution or results of any part of CONTRACTOR's Work depends upon work performed by others under this Article 7, CONTRACTOR shall inspect such other work and promptly report to Owner's Representative in writing any delays, defects or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of CONTRACTOR's Work. CONTRACTOR's failure to report will constitute an acceptance of such other work as fit and proper for integration with CONTRACTOR's Work except for latent or non-apparent defects and deficiencies in such other work.
- 7.4** OWNER shall provide for coordination of the activities of the OWNER's own forces and of each separate contractor with the Work of CONTRACTOR, who shall cooperate with them. CONTRACTOR shall participate with other separate contractors and Owner's Representative in reviewing their construction Progress Schedules when directed to do so. On the basis of such review, CONTRACTOR shall make any revisions to the construction Progress Schedule deemed necessary after a joint review and mutual agreement. The agreed upon construction Progress Schedules shall then constitute the Progress Schedules to be used by CONTRACTOR, separate contractors and OWNER until subsequently revised.
- 7.5** Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor.

ARTICLE 8 - OWNER'S RESPONSIBILITIES

- 8.1** Prior to the start of construction, OWNER will designate in writing a person or entity to act as Owner's Representative during construction. Except as otherwise provided in these General Conditions, OWNER shall issue all communications to CONTRACTOR through Owner's Representative.
- 8.2** OWNER will not supervise, direct, control or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences or procedures of construction or the safety precautions and programs incident thereto. OWNER is not responsible for any failure of CONTRACTOR to comply with laws and regulations applicable to furnishing or performing the Work. OWNER is not responsible for CONTRACTOR's failure to perform or furnish the Work in accordance with the Contract Documents. Failure or omission of OWNER to discover, or object to or condemn any defective Work or material shall not release CONTRACTOR from the obligation to properly and fully perform the Contract.
- 8.3** OWNER is not responsible for the acts or omissions of CONTRACTOR, or of any Subcontractor, any Supplier, or of any other person or organization performing or furnishing any of the Work. CONTRACTOR acknowledges and agrees that OWNER'S direction to perform Work in accordance with the approved Progress Schedule is not a demand for acceleration or a dictation of CONTRACTOR'S means or methods.
- 8.4** Information or services under the OWNER's control shall be furnished by the OWNER with reasonable promptness to avoid delay in orderly progress of the Work. The OWNER shall have a reasonable amount of time to investigate site conditions, review submittals, analyze requests for changes, and to make other decisions in the orderly administration of the Contract. CONTRACTOR must notify the OWNER in writing, if the time for the investigation,

review, analysis of any submittals, required for changes or otherwise required for OWNER'S decision, impacts in any way the Critical Path of the approved Progress Schedule.

- 8.5** The foregoing are in addition to other duties and responsibilities of the OWNER enumerated herein and especially those in respect to Article 4 (Availability of Lands; Subsurface and Physical Conditions; Reference Points), Article 7 (Other Work) and Article 14 (Payments to CONTRACTOR and Completion).
- 8.6 Notice of Claim:** Should OWNER suffer injury or damage to person or property because of any error, omission or act of CONTRACTOR or of any of CONTRACTOR's employees or agents or others for whose acts CONTRACTOR is liable, a Claim will be made to the other party within thirty (30) calendar days of receipt of actual or constructive notice of the event giving rise to such injury or damage. The provisions of this paragraph 8.6 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or statute of repose.

ARTICLE 9 - ENGINEER/ARCHITECT'S STATUS DURING CONSTRUCTION

9.1 E/A's Authority and Responsibilities:

- 9.1.1** The duties and responsibilities and the limitations of authority of E/A during construction, as set forth in the Contract Documents, may be assigned or assumed by the OWNER, but shall not be extended without written consent of OWNER and/or E/A. The assignment of any authority, duties or responsibilities to E/A under the Contract Documents, or under any agreement between OWNER and E/A, or any undertaking, exercise or performance thereof by E/A, is intended to be for the sole and exclusive benefit of OWNER and not for the benefit of CONTRACTOR, Subcontractor, Supplier, or any other person or organization, or for any surety or employee or agent of any of them.
- 9.1.2** E/A will not supervise, direct, control or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto. E/A is not responsible for any failure of CONTRACTOR to comply with laws and regulations applicable to the furnishing or performing the Work. E/A is not responsible for CONTRACTOR's failure to perform or furnish the Work in accordance with the Contract Documents. Failure or omission of E/A to discover, or object to or condemn any defective Work or material shall not release CONTRACTOR from the obligation to properly and fully perform the Contract.
- 9.1.3** E/A is not responsible for the acts or omissions of CONTRACTOR, or of any Subcontractor, any Supplier, or of any other person or organization performing or furnishing any of the Work.
- 9.1.4** If OWNER and E/A agree, E/A will review the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection, tests and approvals and other documentation required to be delivered by Article 14, but only to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests and approvals that the results certified indicate compliance with, the Contract Documents.
- 9.1.5** The limitations upon authority and responsibility set forth in this paragraph 9.1 shall also apply to E/A's Consultants, Resident Project Representative and assistants.

- 9.2 E/A as Owner's Representative:** E/A may be designated as the Owner's Representative under paragraph 8.1.
- 9.3 Visits to Site:** If OWNER and E/A agree, E/A will make visits to the site at intervals appropriate to the various stages of construction as E/A deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of CONTRACTOR's executed Work. Based on information obtained during such visits and observations, E/A will endeavor for the benefit of OWNER to determine, in general, if the Work is proceeding in accordance with the Contract Documents. E/A will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. E/A's efforts will be directed toward providing for OWNER a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and on-site observations, E/A will keep OWNER informed of the progress of the Work and will endeavor to guard OWNER against defective Work. E/A's visits and on-site observations are subject to all the limitations on E/A's authority and responsibility set forth in paragraph 9.1.
- 9.4 Resident Project Representative:** If OWNER and E/A agree, E/A will furnish a Resident Project Representative to assist E/A in providing more continuous observation of the Work. The responsibilities and authority and limitations of any such Resident Project Representative and assistants will be as provided in paragraph 9.1 and in the Supplemental General Conditions. OWNER may designate another representative or agent to represent OWNER at the site who is not E/A, E/A's consultant, agent or employee.
- 9.5 Clarifications and Interpretations:** E/A may determine that written clarifications or interpretations of the requirements of the Contract Documents (in the form of drawings or otherwise) are necessary. Such written clarifications or interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents, will be issued with reasonable promptness by Owner's Representative and will be binding on OWNER and CONTRACTOR. If OWNER or CONTRACTOR believes that a written clarification or interpretation justifies an adjustment in the Contract Amount or the Contract Times, OWNER or CONTRACTOR may make a Claim therefor as provided in Article 11 or 12.
- 9.6 Rejecting Defective Work:** E/A will recommend that OWNER disapprove or reject Work which E/A believes to be defective, or believes will not produce a completed Project that conforms to the Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
- 9.7 Shop Drawings:** Refer to Division 1 for E/A's authority concerning Shop Drawings.

ARTICLE 10 - CHANGES IN THE WORK

10.1 Changes:

- 10.1.1** Without invalidating the Contract and without notice to any surety, OWNER may, at any time or from time to time, order additions, deletions or revisions in the Work. Such changes in the Work will be authorized by Change Order, Change Directive or Field Order. In the event that the OWNER and the CONTRACTOR are unable to negotiate the terms of a Change Order for the performance of additional Work, the OWNER may, at its election, perform such additional Work with its own forces or with another contractor and such work will be considered "Other Work" in accordance with Article 7.
- 10.1.2** Changes in the Work shall be performed under applicable provisions of the Contract Documents, and CONTRACTOR shall proceed promptly, unless otherwise

provided in the Change Order, Change Directive or Field Order. CONTRACTOR's proposals for changes in the Contract Amount and/or Contract Time shall be submitted within ten (10) Calendar Days of request by Owner's Representative, including impacts to the approved Progress Schedule, unless Owner's Representative grants an extension. OWNER will review each proposal and respond to CONTRACTOR within ten (10) Calendar Days. After review by OWNER, CONTRACTOR shall provide any supporting data requested by Owner's Representative within seven (7) Calendar Days, unless Owner's Representative grants an extension. OWNER will determine within seven (7) Calendar Days whether to pursue the change in Work.

- 10.1.3** CONTRACTOR shall not be entitled to an increase in the Contract Amount or an extension of the Contract Times with respect to any Work performed that is not required by the Contract Documents as amended, modified and supplemented as provided in paragraphs 3.3.1 and 3.3.2, except in the case of an emergency as provided in paragraph 6.11.5 or in the case of uncovering Work as provided in paragraph 13.4.
- 10.1.4** Except in the case of an emergency as provided in paragraph 6.11.5, a Change Order or Change Directive is required before CONTRACTOR commences any activities associated with a change in the Work which, in CONTRACTOR 's opinion, will result in a change in the Contract Amount and/or Contract Times.
- 10.1.5** If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Amount or Contract Times) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be CONTRACTOR's responsibility, and the amount of each applicable Bond will be adjusted accordingly.

10.2 Change Orders:

- 10.2.1** OWNER and CONTRACTOR shall execute appropriate written Change Orders covering:
 - .1** a change in the Work;
 - .2** the amount of the adjustment in the Contract Amount, if any; and
 - .3** the extent of the adjustment in the Contract Time, if any.
- 10.2.2** An executed Change Order shall represent the complete, equitable, and final amount of adjustment in the Contract Amount and/or Contract Time owed to CONTRACTOR or OWNER as a result of the occurrence or event causing the change in the Work encompassed by the Change Order.

10.3 Change Directives:

- 10.3.1** Without invalidating the Contract, OWNER may, by written Change Directive, using the Force Account method, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Amount and Contract Time being adjusted as necessary. "Force Account" means a basis of payment for the direct performance of Work with payment based on the actual cost of the labor, equipment and materials furnished and consideration for overhead and profit as set forth in Section 11.5, below. A Change Directive shall be used in the absence of complete and prompt agreement on the terms of a Change Order. Where practicable, any items of Work that may be agreed upon, prior to the performance of Work under this Section, will be included in a separate

Change Order. For example, the cost of the installation of additional asphalt may be agreed upon based on the unit prices in the Bid.

- 10.3.2** If the Change Directive provides for an adjustment to the Contract Amount, the adjustment shall be based on the method provided in paragraph 11.5.
- 10.3.3** A Change Directive shall be effective immediately and shall be recorded later by preparation and execution of an appropriate Change Order.
- 10.3.4** Upon receipt of a Change Directive, CONTRACTOR shall promptly proceed with the change in the Work involved, provided, prior to the commencement of any Work under this section, the CONTRACTOR must submit its proposed Work plan, anticipated schedule, and a list of its work force and equipment proposed to be used in the Work for OWNER'S approval. Upon such approval, CONTRACTOR must promptly commence and make continuous progress in the Work. The OWNER reserves the right to withhold payment for low production or lack of progress.

10.4 Field Order:

- 10.4.1** Owner's Representative may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Amount or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These shall be accomplished by written Field Order and shall be binding on OWNER and on CONTRACTOR who shall perform the Work involved promptly.
- 10.4.2** If CONTRACTOR believes that a Field Order would require an adjustment in the Contract Amount and/or Contract Times, CONTRACTOR shall make a prompt written request to Owner's Representative for a Change Order. Any request by CONTRACTOR for an adjustment in Contract Amount and/or Contract Times must be made in writing prior to beginning the work covered by the Field Order.

- 10.5 No Damages for Delay:** CONTRACTOR shall receive no compensation for delays or hindrances to the Work, except when direct and unavoidable extra cost to CONTRACTOR is caused by failure of OWNER to provide information or material, if any, which is to be furnished by OWNER or access to the Work and only to the extent that such acts continue after the CONTRACTOR furnishes OWNER with written notice of such failure. When such extra compensation is claimed a written statement thereof shall be presented by CONTRACTOR to OWNER and if by OWNER found correct shall be approved. If delay is caused by specific orders given by OWNER to stop work or by performance of extra Work or by failure of OWNER to provide material or necessary instructions for carrying on the Work, then such delay will entitle CONTRACTOR to an equivalent extension of time, CONTRACTOR's application for which shall, however, be subject to approval of OWNER. No such extension of time shall release CONTRACTOR or surety on its performance bond from all CONTRACTOR's obligations hereunder which shall remain in full force until discharge of the Contract. In no event shall the CONTRACTOR be entitled to any compensation or recovery of any special damages in connection with any delays, including without limitation: consequential damages, lost opportunity costs, impact damages, or other similar damages. The OWNER'S exercise of any of its rights or remedies under the Contract Documents (including without limitation ordering changes in the Work, or directing suspension, rescheduling, or correction of the Work), regardless of the extent or frequency of the OWNER'S exercise of such rights or remedies, shall not be construed as active interference in the CONTRACTOR'S performance of the Work. Except as otherwise provided herein, an extension of Contract Time, to the extent permitted under Article 12, shall be the sole remedy of the CONTRACTOR for any acknowledged delays.

ARTICLE 11 - CHANGE OF CONTRACT AMOUNT

- 11.1** The Contract Amount is stated in the Agreement and, including authorized adjustments, is the total amount payable by OWNER to CONTRACTOR for performance of the Work under the Contract Documents.
- 11.2** The original Contract Amount may not be increased by more than twenty-five percent (25%) and it may not be decreased more than twenty-five percent (25%) without the consent of the CONTRACTOR to such decrease, except in the event of a termination for convenience under paragraph 15.2 or the failure of the City Council to appropriate sufficient funding for the Project, in which events it is agreed that the consent of the CONTRACTOR will not be required.
- 11.3** The Contract Amount shall only be changed by a Change Order. Any claim for an adjustment in the Contract Amount shall be made by Written Notice delivered by the party making the Claim to the other party promptly (but in no event later than thirty (30) calendar days) after the start of the occurrence or event giving rise to the Claim and stating the general nature of the Claim. Notice of the amount of the Claim with supporting data shall be delivered within thirty (30) calendar days after Written Notice of Claim is delivered by claimant, and shall represent that the adjustment claimed covers all known amounts to which claimant is entitled as a result of said occurrence or event. If OWNER and CONTRACTOR cannot otherwise agree, all Claims for adjustment in the Contract Amount shall be determined as set out in Article 16.
- 11.4** Determination of Value of Work:
- 11.4.1** The value of any Work covered by a Change Order for an adjustment in the Contract Amount will be determined by one or more of the following methods:
- .1** by application of unit prices contained in the Contract Documents to the quantities of the items involved.
 - .2** by a mutually agreed unit price, or lump sum properly itemized and supported by sufficient substantiating data, including documentation by subcontractors performing the work, to permit evaluation.
 - .3** by cost of Work plus CONTRACTOR's fee for all overhead costs and profit (determined as provided in paragraph 11.5).
 - .4** No cost will be included in the change order for time spent preparing the change order, nor will costs be included for an estimate of time to negotiate the change order costs for machinery, tools, or equipment as described in subparagraph 11.5.3
- 11.4.2** Before using the method described in paragraph 11.4.1.3, OWNER and CONTRACTOR agree to negotiate a Change Order using the methods identified in paragraphs 11.4.1.1 and 11.4.1.2, as appropriate, to determine the adjustment in the Contract Amount.
- 11.5** **Cost of Work:** If neither of the methods defined in paragraphs 11.4.1.1 nor 11.4.1.2 can be agreed upon before a change in the Work is commenced which will result in an adjustment in the Contract Amount, then the change in the Work will be performed by Change Directive, using the Force Account method, and payment will be made as follows:
- 11.5.1** For all personnel, CONTRACTOR will receive actual field cost wage rates for each hour that said personnel are actually engaged in such Work, as substantiated by its certified payroll, to which will be added an amount equal to twenty-five percent

(25%) of the sum thereof as compensation for CONTRACTOR's total overhead, profit, and small tools. No separate charge will be made by CONTRACTOR or its Subcontractor(s) for organization or overhead expenses. In no case will the rate of wage be less than the minimum shown in the Contract for a particular category. CONTRACTOR will also receive an amount equal to 55% of the wages paid personnel, excluding the 25% compensation provided above, for CONTRACTOR's and any effected Subcontractor's cost of premiums on public liability insurance, workers' compensation insurance, social security and unemployment insurance. No charge for superintendence will be made unless considered necessary and ordered by OWNER.

- 11.5.2** CONTRACTOR will receive the actual cost, including freight charges, of the materials used and installed on such Work, to which costs will be added a sum equal to twenty-five percent (25%) thereof as compensation for CONTRACTOR's and any affected Subcontractor's total overhead and profit. In case material invoices indicate a discount may be taken, the actual cost will be the invoice price minus the discount.
- 11.5.3** For machinery, trucks, power tools, or other similar equipment (the "equipment") agreed to be necessary by OWNER and CONTRACTOR, OWNER will allow CONTRACTOR the Regional and Model Year adjusted Monthly Ownership Cost divided by 176 plus the Hourly Estimated Operating Costs as given in the latest edition of the "Rental Rate Blue Book" as published by EquipmentWatch (1-800-669-3282) for each hour that said equipment is in use on such work. The established equipment rates will be paid for each hour that the equipment is utilized in the Work. In the event that the equipment is used intermittently during the Work, full payment for an eight-hour day will be made if the equipment is not idle more than four (4) hours of the day. If the equipment is idle more than four (4) hours in a day, then payment will be made only for the actual hours worked. No additional compensation will be allowed on the equipment for CONTRACTOR's or any affected Subcontractor's overhead and profit. OWNER may accept an actual rental invoice in lieu of the method of calculation set forth in paragraph 11.5.3 for equipment rented exclusively for Force Account Work or for equipment not included in the Rental Rate Blue Book.
- 11.5.4** For Subcontractors, CONTRACTOR will receive the approved actual invoice cost plus 5% as compensation for CONTRACTOR's total overhead and profit.
- 11.5.5** CONTRACTOR will receive an additional 1% of the total of 11.5.1, 11.5.2, 11.5.3, and 11.5.4 as compensation for increased bond costs.
- 11.5.6** The compensation, as herein provided for, shall be received by CONTRACTOR and any affected Subcontractor as payment in full for work done by Change Directive and will include use of small tools, and total overhead expense and profit. CONTRACTOR and Owner's Representative shall compare records of work done by Change Directive at the end of each day. Copies of these records will be made upon forms provided for this purpose by OWNER and signed by both Owner's Representative and CONTRACTOR, with one copy being retained by OWNER and one by CONTRACTOR. Refusal by CONTRACTOR to sign these records within two (2) working days of presentation does not invalidate the accuracy of the record.

11.6 Unit Price Work:

- 11.6.1** Where the Contract Documents provide that all or part of the Work is to be unit price Work, initially the Contract Amount will be deemed to include for all unit price work an amount equal to the sum of the established unit price for each separately

identified item of unit price work times the estimated quantity of each item as indicated in the Bid. The estimated quantities of items of unit price work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Amount. Determinations of the actual quantities and classifications of unit price work performed by CONTRACTOR will be made by Owner's Representative. Owner's Representative will review with CONTRACTOR the preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise).

- 11.6.2** When "plan quantity" is indicated for a Bid item, CONTRACTOR shall be paid amount specified in the Contract Documents without any measurements.
- 11.6.3** Each unit price will be deemed to include an amount considered by CONTRACTOR to be adequate to cover CONTRACTOR's overhead and profit for each separately identified item.
- 11.6.4** A Major Item is any individual Bid item in the Bid that has a total cost equal to or greater than five percent (5%) of the original Contract Amount or \$50,000, whichever is greater, computed on the basis of Bid quantities and Contract unit prices.
- 11.6.5** OWNER or CONTRACTOR may make a Claim for an adjustment in the Contract Amount in accordance with Article 11 if:
 - .1** the actual quantity of any Major Item should become as much as twenty percent (20%) more than or twenty percent (20%) less than that in the Bid; or
 - .2** CONTRACTOR presents documentation contesting accuracy of "plan quantity" and Owner's Representative verifies quantity and determines original value is in error by five percent (5%) or more;

Provided, however, in the event a Major Item is reduced by twenty percent (20%) or more of the amount in the Bid, no additional Article 11 profit or overhead will be added, if, due to other additions in the Work, the net value of the Contract Amount is not reduced.

ARTICLE 12 - CHANGE OF CONTRACT TIMES

12.1 Working Day and Calendar Day Contracts:

- 12.1.1** The Contract Times (or Milestones) may only be changed by Change Order or Time Extension Request duly executed by both CONTRACTOR and Owner's Representative. Any claim for an adjustment of the Contract Times (or Milestones) shall be made by Written Notice delivered by the party making the Claim to the other party promptly (but in no event later than thirty (30) calendar days after the start of the occurrence or event giving rise to the delay) and stating the general nature of the delay. Notice of the extent of the delay with supporting data shall be delivered within thirty (30) calendar days after Written Notice of Claim is delivered by claimant, and shall represent that the adjustment claimed is the entire adjustment to which claimant is entitled as a result of said occurrence or event. If OWNER and CONTRACTOR cannot otherwise agree, all Claims for adjustment in the Contract Times (or Milestones) shall be determined as set out in Article 16. No Claim for an adjustment in the Contract Times (or Milestones) will be valid if not submitted in accordance with the requirements of this paragraph.

- 12.1.2** When CONTRACTOR is at fault and OWNER stops the Work, so that corrections in the Work can be made by CONTRACTOR, no extension in time will be allowed.
- 12.1.3** When CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of both OWNER and CONTRACTOR, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be CONTRACTOR's sole and exclusive remedy for such delay. If performance by the CONTRACTOR or OWNER is interrupted by any occurrence not occasioned by its own conduct, whether such occurrence be an act of god or the result of war, riot, civil commotion, sovereign conduct, or the conduct of a third party, then such performance will be excused for a period of time necessary to remedy its effects, provided, however, in such an event, a conference will be held within three (3) business days to establish a proposed new Progress Schedule for the Project.
- 12.1.4** OWNER will consider time extension requests and may grant CONTRACTOR an extension of time because of:
- .1** Changes ordered in the work which justify additional time.
 - .2** Failure of materials or products being at the Project site due to delays in transportation or failures of Suppliers, which are not the result of CONTRACTOR's, Subcontractor's or Supplier's negligence. The request for an extension of time shall be supported by a citation of acts demonstrating that the delays are beyond CONTRACTOR's control, including, but not limited to, CONTRACTOR's efforts to overcome such delays documented as follows:
 - a)** Copy of purchase order for delayed item(s) indicating date ordered by CONTRACTOR/ Subcontractor and date purchase order received by Supplier.
 - b)** If item(s) require Shop Drawings or other submittal information in accordance with the Contract Documents, provide record of date submittal(s) forwarded to Owner's Representative, date submittal(s) returned to CONTRACTOR, and date submittal(s) forwarded to Supplier.
 - c)** Copy of document(s) from Supplier, on Supplier's letterhead, indicating date(s) item(s) would be ready for shipment and/or actual shipment date(s).
 - d)** Copies of all correspondence between CONTRACTOR / Subcontractor and Supplier indicating CONTRACTOR / Subcontractor's efforts to expedite item(s).
 - e)** If item(s) are being purchased by a Subcontractor, provide correspondence, meeting notes, etc., that reflect CONTRACTOR's efforts with the Subcontractor to expedite delivery of the item(s).
 - .3** When acts of OWNER, E/A, utility owners or other contractors employed by OWNER delay progress of work through no fault of CONTRACTOR. The CONTRACTOR will only be entitled to an extension of time for delays that affect the Critical Path of the Work and that are not caused by the CONTRACTOR.
 - .4** When CONTRACTOR is delayed by strikes, lockouts, fires, losses from natural causes, or other unavoidable cause or causes beyond CONTRACTOR's control.

12.2 Calendar Day Contracts:

12.2.1 Under a Calendar Day Contract, CONTRACTOR may be granted an extension of time because of unusual inclement weather, including but not limited to unusual rainfall events, which are beyond the normal rainfall recorded and expected for Austin, Texas. However, the CONTRACTOR will not be granted an extension of time for "normal rainfall", as described below.

12.2.2 "Unusual Inclement Weather" is defined as a rain event or other weather related event which occurs at the site and is of sufficient magnitude to prevent CONTRACTOR from performing units of Work critical to maintaining the Progress Schedule.

12.2.3 Baseline Rain Day Determination. "Normal rainfall" compiled by the State climatologist, based on U.S. Weather Bureau Records for Austin, Texas, is considered a part of the Calendar Day Contract, and is not a justification for an extension of time. Listed below are the number of days in each month for which no compensatory days for rainfall events ("Rain Days") in such months may be claimed:

January.....	8 days
February.....	8 days
March.....	7 days
April.....	7 days
May.....	9 days
June.....	6 days
July.....	5 days
August.....	5 days
September.....	7 days
October.....	7 days
November.....	7 days
December.....	7 days

Rain Days in addition to the baseline Rain Day determination described above will be measured with the Owner's Representative's approval at the nearest operational public weather data collection facility to the site, including but not limited to the OWNER's early warning flood gauge system.

12.2.4 CONTRACTOR may receive credit in any month for Unusual Inclement Weather, and specifically for any Rain Days in that month which exceed the number of Rain Days allocated to that month, if a Claim is made in accordance with paragraph 12.1.1 and the weather event meets the definition for "Unusual Inclement Weather", and as applicable, "Rain Day" and such claimed day is a day on which Work critical to maintaining the Progress Schedule is scheduled to be performed and is otherwise capable of being performed.

ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.1 Notice of Defects: Prompt notice of all defective Work of which OWNER or E/A has actual knowledge will be given to CONTRACTOR. All defective Work may be rejected, corrected or accepted as provided in Article 13. CONTRACTOR must give OWNER and E/A prompt notice of any defective Work of which CONTRACTOR has actual knowledge.

13.2 Access to Work: OWNER, E/A, E/A's Consultants, other representatives and personnel of OWNER, independent testing laboratories and governmental agencies having jurisdiction will have access to the Work at reasonable times for observing, inspecting and testing. CONTRACTOR shall provide them proper and safe conditions for such access, and advise them of CONTRACTOR's site safety procedures and programs so that they may comply therewith as applicable.

13.3 Tests and Inspections:

13.3.1 CONTRACTOR shall give timely notice of readiness of the Work for all required inspections, tests or approvals, and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

13.3.2 OWNER shall employ and pay for services of an independent testing laboratory to perform all inspections, tests or approvals required by the Contract Documents except:

- .1 for inspections, tests or approvals covered by paragraphs 13.3.3 and 13.3.4 below;
- .2 that costs incurred for tests or inspections conducted pursuant to paragraph 13.4.3 shall be paid as provided in paragraph 13.4.3;
- .3 for reinspecting or retesting defective Work, including any associated costs incurred by the testing laboratory for cancelled tests or standby time; and
- .4 as otherwise specifically provided in the Contract Documents.

13.3.3 If laws or regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested or approved by an employee or other representative of such public body, CONTRACTOR shall assume full responsibility for arranging and obtaining such inspections, tests or approvals, pay all costs in connection therewith and furnish Owner's Representative the required certificates of inspection or approval.

13.3.4 CONTRACTOR shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests or approvals required for OWNER's and E/A's review of submittals covering materials, equipment, and mix designs to be incorporated in the Work.

13.3.5 All testing laboratories shall meet the requirements of ASTM E-329.

13.4 Uncovering Work:

13.4.1 If any Work (or the work of others) that is to be inspected, tested or approved is covered by CONTRACTOR without written concurrence of Owner's Representative, or if any Work is covered contrary to the written request of Owner's Representative, it must, if requested by Owner's Representative, be uncovered and recovered at CONTRACTOR's expense.

13.4.2 Uncovering Work as provided in paragraph 13.4.1 shall be at CONTRACTOR's expense unless CONTRACTOR has given Owner's Representative timely notice of CONTRACTOR's intention to cover the same and Owner's Representative has not acted within five (5) working days to such notice.

13.4.3 If Owner's Representative considers it necessary or advisable that covered Work be observed, inspected or tested, CONTRACTOR shall uncover, expose or otherwise make available for observation, inspection or testing that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, CONTRACTOR shall pay all claims, costs, losses and damages caused by, arising out of or resulting from such uncovering, exposure, observation, inspection and testing and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and OWNER shall be entitled to an appropriate decrease in the Contract Amount, and may make a Claim therefor as provided in Article 11. If, however, such Work is not found to be defective, CONTRACTOR shall be allowed an increase in the Contract Amount or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement and reconstruction; and CONTRACTOR may make a Claim therefor as provided in Articles 11 and 12.

13.5 OWNER May Stop the Work:

13.5.1 If the Work is defective, or CONTRACTOR fails to supply sufficient skilled workers, suitable materials, and/or equipment; or fails to furnish or perform the Work in such a way that the Work in progress or the completed Work will conform to the Contract Documents, OWNER may order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of OWNER to stop the Work shall not give rise to any duty on the part of OWNER to exercise this right for the benefit of CONTRACTOR or any surety or other party.

13.5.2 If CONTRACTOR fails to correct defective Work or submit a satisfactory plan to take corrective action, with procedure and time schedule, OWNER may order CONTRACTOR to stop the Work, or any portion thereof, until cause for such order has been eliminated, or take any other action permitted by this Contract. A notice to stop the Work, based on defects, shall not stop calendar or working days charged to the Project.

13.6 Correction or Removal of Defective Work: If required by OWNER, CONTRACTOR shall promptly, as directed, either correct all defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by Owner's Representative, remove it from the site and replace it with Work that is not defective. CONTRACTOR shall correct or remove and replace defective Work, or submit a plan of action detailing how the deficiency will be corrected, within the time frame identified in the notice of defective Work. CONTRACTOR shall pay all claims, costs, losses and damages caused by or resulting from such correction or removal (including but not limited to all costs of repair or replacement of work of others).

13.7 Warranty period:

13.7.1 If within one year after the date of Substantial Completion or such longer period of time as may be prescribed by laws or regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents (e.g. paragraph 14.11.2), any Work, including work performed after the Substantial Completion date, is found to be defective,

CONTRACTOR shall promptly, without cost to OWNER and in accordance with OWNER's written instructions:

- (i) correct such defective Work, or, if it has been rejected by OWNER, remove it from the site and replace it with Work that is not defective, and
- (ii) satisfactorily correct or remove and replace any damage to other Work or the work of others resulting therefrom.

If CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, OWNER may have the defective Work corrected or the rejected Work removed and replaced, and all claims, costs, losses and damages caused by or resulting from such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by CONTRACTOR. The warranty period will be deemed to be renewed and recommenced in connection with the completed items of Work requiring correction.

13.7.2 In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the warranty period for that item may start to run from an earlier date if so provided in the Contract Documents.

13.7.3 If correction of defective Work will affect the function or use of the facility CONTRACTOR shall not proceed with correction of defective Work without prior coordination and approval of OWNER.

13.7.4 The obligations of the CONTRACTOR to perform warranty work will survive the acceptance of the Work and any termination of the Contract.

13.8 Acceptance of Defective Work: If, instead of requiring correction or removal and replacement of defective Work, OWNER decides to accept it, OWNER may do so. CONTRACTOR shall pay all claims, costs, losses and damages attributable to OWNER's evaluation of and determination to accept such defective Work. If any such acceptance occurs prior to recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents and compensating OWNER for the diminished value of the defective Work. If the acceptance occurs after such recommendation, an appropriate amount will be paid by CONTRACTOR to OWNER after a calculation by OWNER of the diminution in value of the defective Work.

13.9 OWNER May Correct Defective Work: If CONTRACTOR fails within a reasonable time after Written Notice of OWNER to correct defective Work, or to remove and replace rejected Work, or if CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if CONTRACTOR fails to comply with any other provision of the Contract Documents, OWNER may, after seven (7) calendar days' Written Notice to CONTRACTOR, correct and remedy any such deficiency. If, in the opinion of the Owner's Representative, significant progress has not been made during this seven (7) calendar day period to correct the deficiency, the OWNER may exercise any actions necessary to remedy the deficiency. In exercising the rights and remedies under this paragraph, OWNER shall proceed expeditiously. In connection with such corrective and remedial action, OWNER may exclude CONTRACTOR from all or part of the site, take possession of all or part of the Work, and suspend CONTRACTOR's services related thereto, and incorporate in the Work all materials and equipment stored at the site or for which OWNER has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR shall allow OWNER, its agents and employees, OWNER's other contractors, E/A and E/A's consultants access to the site to enable OWNER to exercise the rights and remedies under this paragraph. All claims, costs, losses and damages incurred or sustained by OWNER in exercising such rights and remedies will be charged

against CONTRACTOR and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work. Such claims, costs, losses and damages will include but not be limited to all costs of repair or replacement of work of others destroyed or damaged by correction, removal or replacement of CONTRACTOR's defective Work. CONTRACTOR shall not be allowed an extension of the Contract Times (or Milestones), or claims of damage because of any delay in the performance of the Work attributable to the exercise by OWNER of OWNER's rights and remedies hereunder.

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

14.1 Application for Progress Payment:

- 14.1.1** Within 45 days from when the work was performed by the Contractor and Subcontractors, but not more often than once a month, CONTRACTOR shall submit to Owner's Representative for review an Application for Payment, in a form acceptable to OWNER, filled out and signed by CONTRACTOR covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.
- 14.1.2** Such applications shall not include requests for payment on account of changes in the Work which have been properly authorized by Change Directives but not yet included in Change Orders.
- 14.1.3** Such applications shall not include requests for payment of amounts the CONTRACTOR does not intend to pay to a Subcontractor or Supplier because of a dispute or other reason.
- 14.1.4** If payment is requested on the basis of materials or equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing, the Application for Payment shall be accompanied by such bills of sale, data and other procedures satisfactory to OWNER substantiating OWNER's title to such materials or equipment or otherwise protecting OWNER's interest. Payment on account of such materials or equipment will not include any amount for CONTRACTOR's overhead or profit or relieve CONTRACTOR of its obligation to protect and install such materials or equipment in accordance with the requirements of the Contract and to restore damaged or defective Work. If materials or equipment are stored at another location, at the direction of the OWNER they shall be stored in a bonded and insured facility, accessible to E/A and OWNER, and shall be clearly marked as property of OWNER. Title to materials delivered to the site of the Work or a staging area will pass to OWNER upon payment by OWNER without the necessity for further documentation. Risk of loss will not pass to OWNER until acceptance.
- 14.1.5** Where the original Contract Amount is less than \$400,000, OWNER will pay CONTRACTOR total amount of approved Application for Payment, less ten percent (10%) of amount thereof, which ten percent (10%) will be retained until final payment, less all previous payments and less all other sums that may be retained by OWNER under the terms of this Agreement. Where the original Contract Amount is \$400,000 or more, OWNER will pay CONTRACTOR total amount of approved Application for Payment, less five percent (5%) of amount thereof, which five percent (5%) will be retained until final payment, less all previous payments and less all other sums that may be retained by OWNER under the terms of this Agreement. In either case, if the Work is near completion and delay occurs due to no fault or neglect of CONTRACTOR, OWNER may pay a portion of the retained

amount to CONTRACTOR. CONTRACTOR, at OWNER's option, may be relieved of the obligation to complete the Work and, thereupon, CONTRACTOR shall receive payment of the balance due under the Contract subject to the conditions stated under paragraph 15.2. A Subcontractor may submit a written request to the CONTRACTOR and Project Manager requesting release of retainage for work by the Subcontractor that has been completed and approved. The Project Manager will evaluate the request and if it is approved, the Project Manager will request the CONTRACTOR to include the request for release of an appropriate amount of retainage in the next Pay Application.

14.1.6 Applications for Payment shall include the following documentation:

- .1 updated Progress Schedule;
- .2 monthly subcontractor report;
- .3 any other documentation required under the Supplemental General Conditions.

14.2 CONTRACTOR's Warranty of Title: CONTRACTOR warrants and guarantees that title to all Work, materials and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to OWNER free and clear of all Liens no later than the time of payment to CONTRACTOR.

14.3 Review of Applications for Progress Payment:

14.3.1 Owner's Representative will, within seven (7) calendar days after receipt of each Application for Payment, either indicate a recommendation for payment and forward the Application for processing by OWNER, or return the Application to CONTRACTOR indicating Owner's Representative's reasons for refusing to recommend payment. In the latter case, CONTRACTOR shall make the necessary corrections and resubmit the Application.

14.3.2 Owner's Representative's recommendation of any payment requested in an Application for Payment will constitute a representation by Owner's Representative, based upon Owner's Representative's on-site observations of the executed Work and on Owner's Representative's review of the Application for Payment and the accompanying data and schedules, that to the best of Owner's Representative's knowledge, information and belief:

- .1 the Work has progressed to the point indicated; and
- .2 the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for unit price Work, and to any other qualifications stated in the recommendation).

14.3.3 By recommending any such payment, Owner's Representative will not thereby be deemed to have represented that:

- .1 exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work;
- .2 examination has been made to ascertain how or for what purpose CONTRACTOR has used money previously paid on account of the Contract Amount;
- .3 CONTRACTOR's construction means, methods, techniques, sequences or procedures have been reviewed; or

- .4 that there may not be other matters or issues between the parties that might entitle CONTRACTOR to be paid additionally by OWNER or entitle OWNER to withhold payment to CONTRACTOR.

14.4 Decisions to Withhold Payment:

14.4.1 OWNER may withhold or nullify the whole or part of any payment to such extent as may be necessary on account of:

- .1 defective Work not remedied;
- .2 third party Claims filed or reasonable evidence indicating probable filing of such Claims;
- .3 failure of CONTRACTOR to make payments properly to Subcontractors for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Amount;
- .5 damage to OWNER or another contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 failure of CONTRACTOR to submit a schedule of values in accordance with the Contract Documents;
- .8 failure of CONTRACTOR to submit a submittal schedule in accordance with the Contract Documents;
- .9 failure of CONTRACTOR to submit and update a construction Progress Schedule in accordance with the Contract Documents;
- .10 failure of CONTRACTOR to maintain a record of changes on drawings and documents;
- .11 failure of CONTRACTOR to maintain weekly payroll reports and, as applicable, provide copies of reports in a timely manner upon request of OWNER;
- .12 failure of CONTRACTOR to submit monthly subcontractor reports;
- .13 CONTRACTOR's neglect or unsatisfactory prosecution of the Work, including failure to clean up;
- .14 failure of CONTRACTOR to comply with the Austin City Code, Chapter 2-9-A, as amended, "Minority-Owned and Women-Owned Business Enterprise Procurement Program;" or
- .15 failure of CONTRACTOR to comply with any provision of the Contract Documents.

14.4.2 When the above reasons for withholding payment are removed, CONTRACTOR shall resubmit a statement for the value of Work performed. Payment will be made within thirty (30) calendar days of receipt of approved Application for Payment.

14.4.3 Subcontractors may request Partial Payment when the OWNER withholds payment of an invoice to the CONTRACTOR for any reason listed in Section 14.4.1. If payment is withheld by the OWNER, the CONTRACTOR shall notify all affected Subcontractors within two (2) working days of notice that payment is being withheld. Upon notification, Subcontractors may submit a formal written request

for Partial Payment to the CONTRACTOR and OWNER. If directed by the OWNER, the CONTRACTOR shall within three (3) working days resubmit to the OWNER an invoice for the same period that includes only the work performed by the requesting Subcontractors during this period. The OWNER will review this resubmitted invoice in accordance with Section 14.3.1. Upon receipt of payment for the resubmitted invoice, CONTRACTOR shall pay the subcontractor within ten (10) Calendar Days in accordance with Section 6.4.7.

14.5 Delayed Payments: Should OWNER fail to make payment to CONTRACTOR of sum named in any Application for Payment within thirty (30) calendar days after the day on which OWNER received the mutually acceptable Application for Payment, then OWNER will pay to CONTRACTOR, in addition to sum shown as due by such Application for Payment, interest thereon at the rate specified in Government Code, Section 2251.025(b) from date due until fully paid, which shall fully liquidate any injury to CONTRACTOR growing out of such delay in payment.

14.6 Arrears: No money shall be paid by OWNER upon any claim, debt, demand or account whatsoever, to any person, firm or corporation who is in arrears to City for taxes; and City shall be entitled to counterclaim and automatically offset against any such debt, claim, demand or account in the amount of taxes so in arrears and no assignment or transfer of such debt, claim, demand or account after said taxes are due, shall affect the right of OWNER to so offset said taxes, and associated penalties and interest if applicable, against the same.

14.7 Substantial Completion:

14.7.1 When the CONTRACTOR considers that the Work, or a portion thereof which the OWNER agrees to accept separately, is substantially complete, the CONTRACTOR shall notify Owner's Representative and request a determination as to whether the Work or designated portion thereof is substantially complete. If Owner's Representative does not consider the Work substantially complete, Owner's Representative will notify CONTRACTOR giving reasons therefor. After performing any required Work, CONTRACTOR shall then submit another request for Owner's Representative to determine Substantial Completion. If Owner's Representative considers the Work substantially complete, Owner's Representative will prepare and deliver a certificate of Substantial Completion which shall establish the date of Substantial Completion, shall include a punch list of items to be completed or corrected before final payment, shall establish the time within which CONTRACTOR shall finish the punch list, and shall establish responsibilities of the OWNER and CONTRACTOR for security, maintenance, heat, utilities, damage to the Work, warranty and insurance. Failure to include an item on the punch list does not alter the responsibility of CONTRACTOR to complete all Work in accordance with the Contract Documents. If a Certificate of Occupancy is required by public authorities having jurisdiction over the Work, said certificate shall be issued before the Work or any portion thereof is considered substantially complete. The certificate of Substantial Completion shall be signed by OWNER and CONTRACTOR to evidence acceptance of the responsibilities assigned to them in such certificate.

14.7.2 OWNER shall have the right to exclude CONTRACTOR from the Work after the date of Substantial Completion, but OWNER will allow CONTRACTOR reasonable access to complete or correct items on the punch list and complete warranty work.

14.8 Partial Utilization: Use by OWNER, at OWNER's option, of any substantially completed part of the Work which: (i) has specifically been identified in the Contract Documents, or (ii) OWNER and CONTRACTOR agree constitutes a separately functioning and usable part of the Work that can be used by OWNER for its intended purpose without significant interference

with CONTRACTOR's performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work in accordance with the following:

14.8.1 OWNER at any time may request CONTRACTOR to permit OWNER to use any such part of the Work which OWNER believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees that such part of the Work is substantially complete, CONTRACTOR shall certify to Owner's Representative that such part of the Work is substantially complete and request Owner's Representative to issue a certificate of substantial Completion for that part of the Work. CONTRACTOR at any time may notify Owner's Representative that CONTRACTOR considers any such part of the Work ready for its intended use and substantially complete and request Owner's Representative to issue a certificate of Substantial Completion for that part of the Work. The provisions of paragraphs 14.7.1 and 14.7.2 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

14.8.2 Such partial utilization is authorized by public authorities having jurisdiction over the Work.

14.9 Final Inspection: Upon Written Notice from CONTRACTOR that the entire Work or an agreed portion thereof is complete, Owner's Representative will make a final inspection with CONTRACTOR and provide Written Notice of all particulars in which this inspection reveals that the Work is incomplete or defective. CONTRACTOR shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.10 Final Application for Payment: CONTRACTOR may make application for final payment following the procedure for progress payments after CONTRACTOR has completed all such corrections to the satisfaction of Owner's Representative and delivered the following documents:

14.10.1 Affidavit by CONTRACTOR certifying the payment of all debts and claims;

14.10.2 Three (3) complete operating and maintenance manuals, each containing maintenance and operating instructions, schedules, guarantees, and other documentation required by the Contract Documents;

14.10.3 Record documents (as provided in paragraph 6.10);

14.10.4 Consent of surety, if any, to final payment. If surety is not provided, complete and legally effective releases or waivers (satisfactory to OWNER) of all claims arising out of or filed in connection with the Work;

14.10.5 Certificate evidencing that insurance required by the Supplemental General Conditions will remain in force after final payment and through the warranty period;

14.10.6 Non-Use of Asbestos Affidavit (After Construction);

14.10.7 Subcontractor report and all other documentation necessary for evaluation of CONTRACTOR's fulfillment of the Contract MBE/WBE or DBE goals;

14.10.8 Documentation of notice to claimants, to the extent applicable and subject to subparagraph 14.11.4;

14.10.9 Proof of performance Bond extension through warranty period, if a performance Bond was required; and

14.10.10 Any other documentation called for in the Contract Documents.

14.11 Final Payment and Acceptance:

- 14.11.1** If, on the basis of observation of the Work during construction, final inspection, and review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Owner's Representative is satisfied that the Work has been completed and CONTRACTOR's other obligations under the Contract Documents have been fulfilled and there are no outstanding claims, Owner's Representative will recommend the final Application for Payment and thereby notify the OWNER, who will pay to CONTRACTOR the balance due CONTRACTOR under the terms of the Contract. If the sole remaining unfinished item to complete the Work is the reestablishment of vegetation, CONTRACTOR may execute a revegetation letter with fiscal posted (letter of credit) to ensure completion of this item. This Work must be accomplished within one hundred twenty (120) Calendar Days of the date of Final Completion of the Work. When the permanent erosion control has been established, OWNER will initiate an inspection for final acceptance of the erosion controls. If the revegetation is not completed within the one hundred twenty (120) Calendar Days, OWNER, at its option, may complete the Work using the posted fiscal.
- 14.11.2** If the Contract measures Contract Time to Final Completion, rather than Substantial Completion, Owner's Representative will issue a letter of final acceptance to CONTRACTOR which establishes the Final Completion date and initiates the one-year warranty period. If the sole remaining unfinished item to complete the Work is the reestablishment of vegetation and CONTRACTOR has executed a revegetation letter with fiscal posted (letter of credit) to ensure completion of this item, the Owner's Representative will issue a letter of conditional acceptance to CONTRACTOR which established the Final Completion date and initiates the one-year warranty period.
- 14.11.3** Final payment is considered to have taken place when CONTRACTOR or any of its representatives negotiates OWNER's final payment check, whether labeled final or not, for cash or deposits check in any financial institution for its monetary return.
- 14.11.4** The OWNER will withhold funds sufficient to cover the amount of any unresolved contract claims from final payment for six months under the following limited conditions:
- .1** CONTRACTOR must provide written notice to the claimant (via certified mail or hand delivery) that (i) OWNER will hold funds in the amount of the disputed claim for six (6) months from the date of the receipt of the notice and (ii) CONTRACTOR and the claimant have certain alternative dispute resolution rights; and
 - .2** CONTRACTOR must provide OWNER with a copy of the receipted notice.

Provided the claimant has received notice under this section, OWNER will release the withheld funds, if the CONTRACTOR provides a bond in substantial compliance with the provisions of Section 52.231 of the Texas Property Code; when the OWNER receives a settlement or release of the claim with accompanying instructions regarding payment; upon resolution of the claim in litigation, if suit is filed within such six (6) month period and the OWNER receives written notice of such filing; or when such six (6) month period has passed, if no such bond, settlement, release, or notice of filing of suit have been received. The above provisions notwithstanding, if efforts to timely resolve a disputed claim are not being made to OWNER'S reasonable satisfaction, OWNER may, in its complete discretion, file an interpleader action and deposit the withheld funds in the registry

of a court of competent jurisdiction. In addition, CONTRACTOR must include a provision in each of its subcontracts that the prevailing party in any litigation arising thereunder will be entitled to recover its costs of court and reasonable attorney's fees.

14.12 Waiver of Claims: The making and acceptance of final payment will constitute:

- 14.12.1** a waiver of claims by OWNER against CONTRACTOR, except claims arising from unsettled claims, from defective Work appearing after final inspection, from failure to comply with the Contract Documents or the terms of any warranty specified therein, or from CONTRACTOR's continuing obligations under the Contract Documents; and
- 14.12.2** a waiver of all claims by CONTRACTOR against OWNER other than those previously made in writing and still unsettled.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

15.1 OWNER May Suspend Work Without Cause: At any time and without cause, OWNER may suspend the Work or any portion thereof for a period of not more than ninety (90) calendar days by Written Notice to CONTRACTOR which will fix the date on which the Work will be resumed. CONTRACTOR shall resume the Work on the date so fixed. CONTRACTOR shall be allowed an adjustment in the Contract Amount or an extension of the Contract Times, or both, directly attributable to any such suspension if CONTRACTOR makes an approved Claim therefor as provided in Articles 11 and 12.

15.2 OWNER May Terminate Without Cause: Upon seven (7) calendar days' Written Notice to CONTRACTOR, OWNER may, without cause and without prejudice to any right or remedy of OWNER, elect to terminate the Agreement. In such case, CONTRACTOR shall be paid (without duplication of any items):

- 15.2.1** for completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination;
- 15.2.2** for reasonable demobilization costs; and
- 15.2.3** for anticipated profits on completed and accepted Work not previously paid and not included in separate pay items calculated to date of termination but not for anticipated profit on the entire Contract not previously paid, unabsorbed overhead, or lost opportunity.

15.3 OWNER May Terminate With Cause:

- 15.3.1** Upon the occurrence of any one or more of the following events:
 - .1** if CONTRACTOR persistently fails to perform the Work in accordance with the Contract Documents;
 - .2** if CONTRACTOR disregards laws or regulations of any public body having jurisdiction;
 - .3** if CONTRACTOR disregards the authority of Owner's Representative;
 - .4** if CONTRACTOR makes fraudulent statements;
 - .5** if CONTRACTOR fails to maintain a work force adequate to accomplish the Work within the Contract Time;

- .6 if CONTRACTOR fails to make adequate progress and endangers successful completion of the Contract; or
- .7 if CONTRACTOR otherwise violates in any substantial way any provisions of the Contract Documents;

OWNER may, after giving CONTRACTOR (and the surety, if any) seven (7) calendar days Written Notice terminate the services of CONTRACTOR. OWNER, at its option, may proceed with negotiation with surety for completion of the Work. Alternatively, OWNER may under these circumstances exclude CONTRACTOR from the site and take possession of the Work (without liability to CONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the site or for which OWNER has paid CONTRACTOR but which are stored elsewhere, and finish the Work as OWNER may deem expedient. In such case CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Amount exceeds all claims, costs, losses and damages sustained by OWNER arising out of or resulting from completing the Work, such excess will be paid to CONTRACTOR. If such claims, costs, losses and damage exceed such unpaid balance, CONTRACTOR or surety shall pay the difference to OWNER. In the event that a termination for cause is found to be wrongful, the termination shall be converted to a termination without cause as set forth in Section 15.2 and CONTRACTOR'S remedy for wrongful termination is limited to the recovery of the payments permitted for termination without cause as set forth in Section 15.2.

- 15.3.2** Where CONTRACTOR's services have been so terminated by OWNER, the termination will not affect any rights or remedies of OWNER against CONTRACTOR and surety then existing or which may thereafter accrue. Any retention or payment of moneys due CONTRACTOR by OWNER will not release CONTRACTOR from liability. In the event OWNER terminates Contract with cause, OWNER may reject any and all Bids submitted by CONTRACTOR for up to three (3) years after the date of such termination. These sanctions will be administered in accordance with the City of Austin Purchasing Office Probation, Suspension, and Debarment Procedures for Vendors, which include notice and an opportunity for a hearing.

- 15.4 CONTRACTOR May Stop Work or Terminate:** If through no act or fault of CONTRACTOR, the Work is suspended for a period of more than ninety (90) calendar days by OWNER or under an order of court or other public authority, or (except during disputes) Owner's Representative fails to forward for processing any mutually acceptable Application for Payment within thirty (30) calendar days after it is submitted, or (except during disputes) OWNER fails for sixty (60) calendar days after it is submitted to pay CONTRACTOR any sum finally determined by OWNER to be due, then CONTRACTOR may, upon seven (7) calendar days' Written Notice to OWNER, and provided OWNER does not remedy such suspension or failure within that time, terminate the Agreement and recover from OWNER payment on the same terms as provided in paragraph 15.2. In lieu of terminating the Agreement and without prejudice to any other right or remedy, if (except during disputes) Owner's Representative has failed to forward for processing any mutually acceptable Application for Payment within thirty (30) calendar days after it is submitted, or (except during disputes) OWNER has failed for sixty (60) calendar days after it is submitted to pay CONTRACTOR any sum finally determined by OWNER to be due, CONTRACTOR may upon seven (7) calendar days' Written Notice to OWNER stop the Work until payment of all such amounts due CONTRACTOR, including interest thereon. The provisions of this paragraph 15.4 are not intended to preclude CONTRACTOR from making a Claim under Articles 11 and 12 for an increase in Contract Amount or Contract Times or otherwise for expenses or damage directly attributable to CONTRACTOR's stopping Work as permitted by this paragraph.

- 15.5 Discretionary Notice to Cure:** In its complete discretion, OWNER may, but is not required to, provide a Notice to Cure to CONTRACTOR and its surety to cure an event of default described above and/or an anticipatory breach of contract and, if required by OWNER, to attend a meeting with OWNER, regarding the Notice to Cure, the event of default, and/or the anticipatory breach of contract. The Notice to Cure will set forth the time limit in which the cure is to be completed or commenced and diligently prosecuted. Upon receipt of any Notice to Cure, CONTRACTOR shall prepare a report describing its program and measures to affect the cure of the event of default and/or anticipatory breach of contract within the time required by the Notice to Cure. The CONTRACTOR'S report must be delivered to OWNER at least three (3) days prior to any requested meeting with the OWNER and surety.
- 15.6 Bankruptcy:** If CONTRACTOR declares bankruptcy or is adjudged bankrupt or makes an assignment for the benefit of creditors or if a receiver is appointed for the benefit of creditors or if a receiver is appointed by reason of CONTRACTOR'S insolvency, CONTRACTOR may be unable to perform this Contract in accordance with the Contract requirements. In such an event, OWNER may demand CONTRACTOR or its successor in interest provide OWNER with adequate assurance of CONTRACTOR'S future performance in accordance with the terms and conditions of the Contract. If CONTRACTOR fails to provide adequate assurance of future performance to OWNER'S reasonable satisfaction within ten (10) days of such a request, OWNER may terminate the CONTRACTOR'S services for cause or without cause, as set forth above. If CONTRACTOR fails to provide timely adequate assurance of its performance and actual performance, OWNER may prosecute the Work with its own forces or with other contractors on a time and material or other appropriate basis and the cost of which will be charged against the Contract balance.
- 15.7 Duty to Mitigate:** In the event of any termination or suspension under this Contract, the CONTRACTOR agrees to and shall take all reasonable actions to mitigate its damages and any and all claims which may be asserted against the OWNER.
- 15.8 Responsibility during Demobilization:** While demobilizing, the CONTRACTOR will take all necessary and reasonable actions to preserve and protect the Work, the site and other property of the OWNER or others at the site.

ARTICLE 16 - DISPUTE RESOLUTION

16.1 Filing of Claims:

- 16.1.1** Claims arising from the circumstances identified in paragraphs 3.2, 4.1, 4.2.2, 4.2.4, 6.4.2, 6.11.5.2, 6.17, 7.5, 8.6, 9.5, 10.4.2, 13.4.3, 13.8, 13.9, 15.1, 15.2, 15.3, or 15.4, or other occurrences or events, shall be made by Written Notice delivered by the party making the Claim to the other party within thirty (30) calendar days after the start of the occurrence or event giving rise to the Claim and stating the general nature of the Claim. Notice of the amount of the Claim with supporting data shall be delivered in writing within thirty (30) calendar days after Written Notice of Claim is delivered by claimant and shall represent that the adjustment claimed covers all known amounts and/or extensions of time to which claimant is entitled.
- 16.1.2** Within thirty (30) calendar days of receipt of notice of the amount of the Claim with supporting data, Owner's Representative and CONTRACTOR shall meet to discuss the Claim, after which an offer of settlement or notification of no settlement offer will be made to claimant. If claimant is not satisfied with the proposal presented, claimant shall have thirty (30) calendar days in which to: (i)

submit additional supporting data requested by the other party; (ii) modify the initial Claim; or (iii) request Alternative Dispute Resolution.

16.2 Alternative Dispute Resolution:

16.2.1 If a dispute exists concerning a Claim, the parties agree to use the following procedure prior to pursuing any other available remedies. OWNER reserves the right to include the E/A as a party.

16.2.2 Negotiating with Previously Uninvolved Personnel: Either party may make a written request for a meeting to be held between representatives of each party within fourteen (14) Calendar Days of the request or such later period that the parties may agree to. Each party shall endeavor to include, at a minimum, one (1) previously uninvolved senior level decision maker (an owner, officer, or employee of each organization) empowered to negotiate on behalf of their organization. If a previously uninvolved senior level decision maker is unavailable due to the size of the CONTRACTOR'S organization or any other reason, the CONTRACTOR shall nonetheless provide an appropriate senior level decision maker for the meeting. The purpose of this and any subsequent meetings will be good faith negotiations of the matters constituting the dispute. Negotiations shall be concluded within thirty (30) Calendar Days of the first meeting, unless mutually agreed otherwise. This step may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

16.2.3 Mediation:

.1 If the procedure described in 16.2.2 proves unsuccessful or is waived pursuant to its terms, the parties shall initiate the mediation process. OWNER and CONTRACTOR agree to select within thirty (30) calendar days a mediator trained in mediation skills, to assist with resolution of the dispute. OWNER and CONTRACTOR agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in this agreement prevents the parties from relying on the skills of a person who also is trained in the subject matter of the dispute and/or a contract interpretation expert. Should the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the parties agree to ask the Travis County Dispute Resolution Center to select a qualified individual, which selection shall be binding on the parties.

.2 Mediation is a forum in which an impartial person, the mediator, facilitates communication between parties to promote reconciliation, settlement, or understanding among them. The parties hereby agree that mediation, at a minimum, shall provide for (i) conducting an on-site investigation, if appropriate, by the mediator for fact gathering purposes, (ii) a meeting of all parties for the exchange of points of view and (iii) separate meetings between the mediator and each party to the dispute for the formulation of resolution alternatives. The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session, unless mutually agreed otherwise. Should the parties fail to reach a resolution of the dispute through mediation, then each party is released to pursue other remedies available to them.

16.3 Resolution of Disputes between Contractor and Subcontractor or Supplier: If a dispute exists concerning a claim between a CONTRACTOR and a Subcontractor or Supplier, the CONTRACTOR agrees to participate with such Subcontractor and/or Supplier in a

process substantially paralleling the steps set out in paragraphs 16.1 and 16.2 above, including the delivery of written notices, submission of supporting data, negotiation with previously uninvolved personnel, and, if such alternative dispute resolution process is unsuccessful, mediation between the parties to the claim. If the CONTRACTOR and Subcontractor or Supplier agreement provides an alternative dispute resolution process, which provides substantially equivalent rights to those set forth herein, it may be followed, unless the CONTRACTOR and affected Subcontractor or Supplier agree to follow the process outlined above. The OWNER is not a party to the alternative dispute resolution process between the CONTRACTOR and Subcontractor or Supplier and will not pay any costs incurred in the process. Each party will be responsible for its own expenses incurred in the process, which will include an equal share of the mediation expenses, unless otherwise determined by the mediator. NOTICE: THE PROCESS SET FORTH HEREIN IS NOT A SUBSTITUTE FOR THE STATUTORY PAYMENT BOND CLAIM PROCESS.

16.4 Claim Calculation:

16.4.1 Delay Claims: The intent of paying for delay damages is to reimburse the CONTRACTOR for actual expense arising out of a compensable delay. No profit or force account markups, other than labor burden, will be allowed for delay claims by the CONTRACTOR seeking reimbursement for expenses arising out of an alleged event of delay. No consequential damages will be allowed to the CONTRACTOR in connection with any claimed delays. If the CONTRACTOR requests compensation for delay damages and the delay is determined to be compensable, then standby equipment costs and project overhead compensation will be based on the duration of the compensable delay and the following:

- .1 Standby equipment costs will not be allowed during periods when the equipment would have otherwise been idle. Standby equipment time will not exceed more than eight (8) hours per twenty-four (24) hour day, forty (40) hours per week, and one hundred seventy-six (176) hours per month. Standby equipment costs will be paid at 50 percent (50%) of the applicable Rental Rate Blue Book rates and calculated by dividing the monthly rate by one hundred seventy-six (176), multiplying the result by the number of standby hours and multiplying that number by the regional adjustment factor and the rate adjustment factor contained in the Blue Book. Operating costs will not be allowed.
- .2 Project overhead will be determined from actual costs that the CONTRACTOR will be required to document. Project overhead is defined as the administrative and supervisory expenses incurred at the work site and will not include home office overhead.

16.4.2 General: Except as limited with respect to delay claims, as set forth above, the criteria set forth in Section 11.4.1 may be used as a basis to calculate an adjustment in the Contract Amount in the resolution of a claim, provided that there will be no compensation for home office overhead.

16.5 MBE/WBE Program Progressive Sanctions: CONTRACTOR is subject to progressive sanctions for failure of CONTRACTOR to comply with Austin City Code, Chapter 2-9A, as amended: "Minority-owned and Women-owned Business Enterprise Procurement Program." Available sanctions for Program violations are set forth in Program rules adopted by the Small and Minority Business Resources Department (SMBR), as amended, and may include the following progressive sanctions for Program violations within a rolling 24-month period: (i) a period of probation for up to six (6) months for the first violation (ii) a period of suspension from bidding for up to 24 months for the second violation, and (iii) a period of debarment for up to five (5) years for the third violation. If the CONTRACTOR engages in

more than one of the violations listed below at any given time, OWNER has the discretion to determine whether such actions should be counted as multiple violations of the MBE/WBE Ordinance. Program violations include:

- .1 providing false or misleading information to the OWNER in connection with the submission of a Bid, responses to request for qualifications or Proposals, Good Faith Efforts documentation, post award compliance or other Program operations;
- .2 substituting M/WBE Subcontractors without first receiving approval for such substitutions;
- .3 failure to comply with the approved Compliance Plan without an approved request for a change, an approved Change Order or other approved change to the Contract;
- .4 violation of any other provision of the "Minority-owned and Women-owned Business Enterprise Procurement Program";
- .5 providing false or misleading information to the OWNER in connection with an application for or challenge to certification, recertification or decertification as a MBE/WBE; and
- .6 bid shopping.

The Progressive Sanctions will be administered in accordance with the City of Austin Purchasing Office Probation, Suspension, and Debarment Procedures for Vendors, which includes notice and an opportunity for a hearing.

ARTICLE 17 – MISCELLANEOUS

- 17.1 Venue:** In the event of any suit at law or in equity involving the Contract, venue shall be exclusively in Travis County, Texas and the laws of the State of Texas shall apply to the interpretation and enforcement of the Contract.
- 17.2 Extent of Agreement:** This Contract represents the entire and integrated agreement between the OWNER and CONTRACTOR with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral.
- 17.3 Cumulative Remedies:** The rights and remedies available to the parties are not to be construed in any way as a limitation of any rights and remedies available to any or all of them which are otherwise imposed or available by laws or regulations, by special warranty or guarantees or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply. Specifically, the OWNER is not required to only assess liquidated damages, and OWNER may elect to pursue its actual damages resulting from the failure of the CONTRACTOR to complete the Work in accordance with the requirements of the Contract Documents.
- 17.4 Severability:** If any word, phrase, clause, sentence or provision of the Contract, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, invalid or unenforceable, that finding shall only effect such word, phrase, clause, sentence or provision, and such finding shall not affect the remaining portions of this

Contract; this being the intent of the parties in entering into the Contract; and all provisions of the Contract are declared to be severable for this purpose.

- 17.5 Independent Contractor:** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. CONTRACTOR is an independent contractor and CONTRACTOR's services shall be those of an independent contractor. CONTRACTOR agrees and understands that the Contract does not grant any rights or privileges established for employees of OWNER.
- 17.6 Prohibition of Gratuities:** OWNER may, by Written Notice to CONTRACTOR, terminate the Contract without liability if it is determined by OWNER that gratuities were offered or given by CONTRACTOR or any agent or representative of CONTRACTOR to any officer or employee of OWNER with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such Contract. In the event the Contract is terminated by OWNER pursuant to this provision, OWNER shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by CONTRACTOR in providing such gratuities.
- 17.7 Prohibition Against Personal Interest in Contracts:** No officer, employee, independent consultant, or elected official of OWNER who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any violation of this provision, with the knowledge, expressed or implied, of CONTRACTOR shall render the Contract voidable by OWNER.
- 17.8 OWNER'S Right to Audit:**
- 17.8.1** Records means all records generated by or on behalf of CONTRACTOR and each Subcontractor and Supplier of CONTRACTOR, whether paper, electronic, or other media, which are in any way related to performance of or compliance with this Contract, including, without limitation:
- .1 accounting records;
 - .2 written policies and procedures;
 - .3 subcontract files (including proposals of successful and unsuccessful Bidders, Bid recaps, etc.);
 - .4 original estimates and estimating work sheets;
 - .5 correspondence;
 - .6 Change Order files (including documentation covering negotiated settlements);
 - .7 back charge logs and supporting documentation;
 - .8 general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends;
 - .9 lump sum agreements between CONTRACTOR and any Subcontractor or Supplier;
 - .10 records necessary to evaluate: Contract compliance, Change Order pricing, and any Claim submitted by CONTRACTOR or any of its payees; and
 - .11 any other CONTRACTOR record that may substantiate any charge related to this Contract.

- 17.8.2** CONTRACTOR shall allow OWNER'S agent or its authorized representative to inspect, audit, and/or reproduce, or all three, all Records generated by or on behalf of CONTRACTOR and each Subcontractor and Supplier, upon OWNER'S written request. Further, CONTRACTOR shall allow OWNER'S agent or authorized representative to interview any of CONTRACTOR'S employees, all Subcontractors and all Suppliers, and all their respective employees.
- 17.8.3** CONTRACTOR shall retain all its Records, and require all its Subcontractors and Suppliers to retain their respective Records, during this Contract and for three (3) years after final payment, until all audit and litigation matters that OWNER has brought to the attention of CONTRACTOR are resolved, or as otherwise required by law, whichever is longer. OWNER'S right to inspect, audit, or reproduce Records, or interview employees of CONTRACTOR or its respective Subcontractors or Suppliers exists during this Contract, and for three (3) years after final payment, until all audit and litigation matters that OWNER has brought to CONTRACTOR'S attention are resolved, or as otherwise required by law, whichever is longer, and at no cost to OWNER, either from CONTRACTOR or any of its Subcontractors or Suppliers that may furnish Records or make employees available for interviewing.
- 17.8.4** CONTRACTOR must provide sufficient and accessible facilities during its normal business hours for OWNER to inspect, audit, or reproduce Records, or all three, and to interview any person about the Records.
- 17.8.5** CONTRACTOR shall insert these requirements in each written contract between CONTRACTOR and any Subcontractor or Supplier and require each Subcontractor and Supplier to comply with these provisions.
- 17.9 Survival:** The terms and conditions of this Contract, which contemplate a period of time beyond completion or termination will survive such completion or termination and not be merged therein or otherwise terminated.
- 17.10 No Waiver:** The waiver of any provision of this Contract will not be deemed to be a waiver of any other provision of this Contract. No waiver of any provision of this Contract will be deemed to constitute a continuing waiver unless expressly provided in writing, nor will a waiver of any default be deemed a waiver of any subsequent defaults of the same type. The failure at any time to enforce this Contract, whether the default is known or not, shall not constitute a waiver or estoppel of the right to do so.
- 17.11 Conditions Precedent to Right to Sue:** Notwithstanding anything herein to the contrary, the CONTRACTOR will have at least 90 days to give notice of a claim for damages as a condition precedent to the right to sue on the Contract, subject to the contractual claim and alternative dispute resolution processes set forth herein.
- 17.12 Waiver of Trial by Jury:** OWNER and CONTRACTOR agree that they have knowingly waived the right to trial by jury and have instead agreed that, in the event of any litigation arising out of or connected to this Contract, to proceed with a trial before the court, unless both parties subsequently agree otherwise in writing.
- 17.13 Contractor Evaluation:** The Owner will review and evaluate the Contractor's Work and performance on the Project and provide the Contractor with a written Contractor Evaluation Report in accordance with City of Austin Administrative Rule R161-13.37. Rule R161-13.37 provides an appeal process.

<http://www.austintexas.gov/department/contract-management>

End

The Supplemental General Conditions contained herein amend or supplement the General Conditions, Section 00700.

ARTICLE 1 – DEFINITIONS

Substitute following definitions:

1.2 Agreement - Prescribed form, Section 00500JOC.

1.12 Contract Amount - Refers to the Contract Amount equal to the aggregate of all executed Work Assignments not to exceed the amount authorized by Austin City Council.

1.14 Contract Documents - Agreement, Drawings, and Change Orders

1.20 Engineer/Architect (E/A) - The OWNER's design professional identified as such in the Contract. The titles of "Architect/Engineer," "Architect," "Engineer," and "Consultant" used in the Contract Documents shall read the same as Engineer/Architect (E/A). The E/A may be either a third-party entity hired by the OWNER or an in-house member of the OWNER's staff who is a registered and licensed design professional. Nothing contained in the Contract Documents shall create any contractual or agency relationship between E/A and CONTRACTOR.

Add to the following definition:

1.16 CONTRACTOR - Refers to the general or prime Contractor who is awarded this Contract and is responsible for the Work.

Add the following definitions:

1.51 Alteration - Work that involves changing a structure in terms of lay-out or function.

1.52 Business Day – See definition 1.48 Working Day.

1.53 Coefficient - A numerical adjustment factor that represents costs not considered as included in any line item associated to the Unit Price Book, including but not limited to general and administrative and other overhead costs, insurance costs, equipment rental, protective gear and clothing, contingencies such as changes in wage rates and inflation, contractor's profit, and indirect costs. Separate coefficients will be used for standard working hours, non-standard working hours, and non-pre-priced items (see Section 00300JOC). A coefficient is a standalone modifier that cannot be applied against a line item in combination with another coefficient.

1.54 Consultant - See definition 1.20 Engineer/Architect (E/A).

1.55 Facility - A building, the design and construction of which is governed by accepted building codes or a structure or land whether improved or unimproved, that is associated with a building.

1.56 Job Order Assignment (JOA) - The individual assignment and the project level agreement for specific work to be performed under this procurement. Each individual JOA

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becomes, in effect, a unit price contract, with a not-to-exceed amount established, and is administered accordingly. May also be referred to as a Job Order Agreement.

1.57 Job Order Contracting - A highly responsive contracting method that allows for services for the maintenance, repair, alteration, renovation, remediation, or minor construction of a Facility where the work is for indefinite time and indefinite quantities and where Job Order Assignments (JOAs) are awarded substantially on the basis of pre-described and pre-priced tasks. JOAs will be issued at various times during the initial two (2) year Contract term and will be performed as identified and specified by the City. The City may extend the contract time for three additional one (1) year terms.

1.58 Left Hand R.S. Means - Refers to the method of using the Total Bare Costs (bare material, labor, and equipment) column (the left hand column) of the R.S. Means Master Composite Cost Data. Method to be used for estimating work to be performed by the Prime Contractor.

1.59 Maintenance - Work necessary to maintain the functionality of a facility.

1.60 Minor Construction - Work that may include the demolition and/or construction of workspace within an existing Facility typically valued at \$300,000.00 or less.

1.61 Non-Pre-Priced Items - Incidental and necessary items of Work necessary to provide an entire and finished Job Order Assignment that does not have pricing included in the UPB and which must be competitively procured.

1.62 Non-Standard Working Hours - 6:00pm-7:00am Monday-Friday, Weekends, and Holidays.

1.63 Offeror - A person, firm, or entity that submits a Proposal in response to a Competitive Sealed Proposal Solicitation. Any Offeror may be represented by an agent after demonstrating the agent's authority. The agent cannot certify as to its own agency status.

1.64 Pre-Priced Items - Work necessary to provide an entire and finished Job Order Assignment that has pricing included in the UPB.

1.65 Proposal - A complete, properly signed response to a Request for Competitive Sealed Proposal that, if accepted, would bind the Offeror to perform the resultant Contract.

1.66 Remediation - Work necessary to correct or remedy non-complying site conditions.

1.67 Renovation - Work that involves the restoration of an office, floor, system or component of a system.

1.68 Repair - Work that involves the repair of a broken system, component, or sub-component of a building such as doors, electrical outlets, plumbing, flooring, sheetrock, and/or air conditioning systems, etc.

1.69 Right Hand R.S. Means - Refers to the method of using the Total Including Overhead & Profit (bare material, labor, and equipment plus overhead and profit) column (the right hand column) of the R.S. Means Master Composite Cost Data. Method to be used for estimating work to be performed by Subcontractors.

1.70 Standard Working Hours - 7:00am-6:00pm Monday-Friday.

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1.71 Unit Price Book (UPB) - A published comprehensive list of construction line items with pre-determined prices that will be paid per unit of each line item. For this procurement the latest R.S. Means Master Composite Cost Data will be used as the UPB, with certain exceptions and clarifications that are listed in Section 00300JOC, Attachment A-1. The Austin, Texas City Cost Index weighted averages will be applied to the R.S. Means prices on each Job Order. Contract wage rates are specified in Section 00830JOC and include the City of Austin Minimum Wage.

ARTICLE 2 - PRELIMINARY MATTERS

2.2 Copies of Documents: *Delete 2.2 and replace with the following:*

OWNER shall furnish to CONTRACTOR one (1) set of Drawings and one (1) copy of the Contract Documents in .pdf format. Additional copies will be furnished, upon request

2.4 Before Starting Construction:

Delete 2.4.2.1 and replace with the following:

.1 A proposed Baseline Schedule developed using Microsoft Project software, unless otherwise approved by Owner's Representative ("Baseline Schedule") to confirm that all Work will be completed within the Contract time. The Baseline Schedule must (i) indicate the times (number of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents, (ii) identify the Critical Path for completing the Work, (iii) identify when all Subcontractors will be utilized, and (iv) take into consideration any limitations on Working Hours, including baseline Rain Days on Calendar Day Contracts. This Baseline Schedule, a copy of which shall be made available at the job site(s), must contain sufficient detail to indicate that the CONTRACTOR has properly identified required Work elements and tasks, has provided for a sufficient and proper workforce and integration of Subcontractors, has provided sufficient resources and has considered the proper sequencing of the Work required to result in a successful Project that can be completed within the Contract time;

Delete entire section of 2.4.2.2.

Delete entire section of 2.4.2.3.

Delete entire section of 2.4.2.4.

Delete 2.4.2.6 and replace with the following (changes to the original text are identified by underlining):

.6 A preliminary schedule of values for all of the Work. This schedule of values shall be organized by Subcontractor, with each item of Work to be performed by that Subcontractor broken out under the Subcontractor's name, and shall be subdivided in sufficient detail to serve as the basis for progress payments during construction. At a minimum, each trade shall be split between materials and labor. Prices will include an appropriate amount of overhead and profit applicable to each item of Work.

Delete 2.4.2.7 and replace with the following:

.7 A letter designating CONTRACTOR'S Superintendent and project manager.

Delete entire section of 2.4.2.14.

2.5 Preconstruction Conference: Delete 2.5 and replace with the following:

Prior to commencement of Work at the site, CONTRACTOR must attend a preconstruction conference with Owner's Representative and others. Additionally, prior to commencement of work, the CONTRACTOR shall host a preconstruction conference for the Subcontractors identified on the originally approved compliance plan, Owner's Representative and others. The CONTRACTOR shall notify all Subcontractors five (5) working days prior to the preconstruction conference. If the CONTRACTOR has included Subcontractors in the initial preconstruction conference, the additional Subcontractor preconstruction conference will not be required.

2.6 Initially Acceptable Schedules: Delete 2.6 and replace with the following:

2.6.1 Unless otherwise provided in the Contract Documents, CONTRACTOR shall obtain approval of Owner's Representative of the Baseline Schedule for each Job Order Assignment in accordance with paragraph 2.4.2.1 before the first progress payment will be made to CONTRACTOR for a Job Order Assignment. The Baseline Schedule must provide for an orderly progression of the designated portion of the Work to completion within any specified Milestones and Contract Times. Acceptance of the schedule by Owner's Representative will neither impose on Owner or Owner's Representative responsibility or liability for the sequencing, scheduling or progress of the Work on the Job Order Assignment nor interfere with or relieve CONTRACTOR from CONTRACTOR'S full responsibility for such Work. CONTRACTOR'S schedule of Shop Drawings and sample submissions must provide an acceptable basis for reviewing and processing the required submittals.

2.6.2 Schedule of Values. CONTRACTOR'S schedule of values must conform to the trade summary requirements set forth in the Unit Price Book.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.1 Intent:

Delete 3.1.1 and replace with the following:

.1 The intent of the Contract Documents is to include all information necessary for the proper execution and timely completion of the Work by CONTRACTOR. The CONTRACTOR will execute the Work described in and reasonably inferable from the Contract Documents as necessary to produce the results indicated by the Contract Documents. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. In cases of disagreement, the following order of precedence shall generally govern (top item receiving priority of interpretation):

- Signed Agreement
- Addendum to the Contract Documents, including approved changes, the Owner's Job Order Assignment Requests for Proposal, and the Contractor's responses to Job Order Assignment Requests for Proposal
- Supplemental General Conditions
- General Conditions
- Contract Forms
- Special Provisions to the Standard Technical Specifications Special Specifications
- Standard Technical Specifications
- Drawings (figured dimensions shall govern over scaled dimensions)
- Project Safety Manual (if applicable),

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with the understanding that a common sense approach will be utilized as necessary so that the Contract Documents produce the intended response.

Add the following:

3.1.3 "Bid" means Proposal/Offer, "Bidder" means Proposer/Offeror, and "Invitation for Bid" means Competitive Sealed Proposal (CSP).

ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS

4.1 Availability of Lands: *Delete 4.1 and replace with the following:*

4.1.1 The OWNER will provide access to all land and interests in land required for the Work and will notify CONTRACTOR of any restrictions in such access. CONTRACTOR may make a claim if OWNER fails to provide timely access to the Work. CONTRACTOR must obtain any additional temporary construction facilities, stockpiling or storage sites not otherwise provided. CONTRACTOR shall contact OWNER's Transportation Department to obtain a Temporary Use of Right-of-Way Permit prior to beginning construction on any sidewalk/driveway or occupying any parking area/meters within the public right-of-ways.

4.1.2 Field Notes and Special Provisions to Easements, where applicable, will be attached to the provided surveys. All Work associated with Special Provisions to Easements shall be subsidiary to the Work defined in the entire Proposal, unless otherwise specified. Should the actions of the CONTRACTOR, or its Subcontractors, Vendors, or Suppliers, cause the Work to be delayed to the point that the ending date of an easement has been exceeded, the CONTRACTOR shall be responsible to reimburse the OWNER for any additional costs required to extend the period of rights to the easement in order to complete the Work. This delay shall be considered to be any period of time required by the CONTRACTOR to fully and satisfactorily execute the Work that is in addition to the original Contract duration, as modified by any executed Contract change orders.

4.4 Hazardous Materials:

Delete entire section of 4.4.4.

ARTICLE 5 - BONDS AND INSURANCE

5.3 Other Bond and Insurance Requirements:

5.3.1 CONTRACTOR Provided Insurance

5.3.1.1 General Requirements.

.1 CONTRACTOR shall carry insurance in the types and amounts indicated below for the duration of the Contract, which shall include items owned by OWNER in the care, custody and control of CONTRACTOR prior to and during construction and warranty period.

.2 CONTRACTOR must complete and forward the Certificate of Insurance, Section 00650, to OWNER before the Contract is executed as verification of coverage required below. CONTRACTOR shall not commence Work until the required insurance is obtained and until such insurance has been reviewed by OWNER. Approval of insurance by OWNER shall not relieve or decrease the liability of CONTRACTOR hereunder and shall not be construed to

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be a limitation of liability on the part of CONTRACTOR. CONTRACTOR must also complete and forward the Certificate of Insurance, Section 00650, to OWNER whenever a previously identified policy period has expired as verification of continuing coverage.

.3 CONTRACTOR's insurance coverage is to be written by companies authorized to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better, except for hazardous material insurance which shall be written by companies with A.M. Best ratings of A- or better.

.4 All endorsements naming the OWNER as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall indicate: City of Austin, Capital Contracting Office, P.O. Box 1088, Austin, Texas 78767.

.5 The "other" insurance clause shall not apply to the OWNER where the OWNER is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both OWNER and CONTRACTOR, shall be considered primary coverage as applicable.

.6 If insurance policies are not written for amounts specified below, CONTRACTOR shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

.7 OWNER shall be entitled, upon request and without expense, to receive certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

.8 OWNER reserves the right to review the insurance requirements set forth during the effective period of this Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by OWNER based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as CONTRACTOR.

.9 CONTRACTOR shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.

.10 CONTRACTOR shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

.11 CONTRACTOR shall provide OWNER thirty (30) days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.

.12 If OWNER owned property is being transported or stored off-site by CONTRACTOR, then the appropriate property policy will be endorsed for transit and storage in an amount sufficient to protect OWNER's property.

.13 The insurance coverages required under this contract are required minimums and are not intended to limit the responsibility or liability of CONTRACTOR.

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5.3.1.2 Business Automobile Liability Insurance. Provide coverage for all owned, non-owned and hired vehicles. The policy shall contain the following endorsements in favor of OWNER:

- a) Waiver of Subrogation endorsement CA 0444;
- b) 30 day Notice of Cancellation endorsement CA 0244; and
- c) Additional Insured endorsement CA 2048.

Provide coverage in the following types and amounts:

.1 A minimum combined single limit of \$1,000,000 minimum per occurrence for bodily injury and property damage.

5.3.1.3 Workers' Compensation And Employers' Liability Insurance. Coverage shall be consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Section 401). CONTRACTOR shall assure compliance with this Statute by submitting two (2) copies of a standard certificate of coverage (e.g. ACCORD form) to Owner's Representative for every person providing services on the Project as acceptable proof of coverage. The Certificate of Insurance, Section 00650, must be presented as evidence of coverage for CONTRACTOR. CONTRACTOR's policy shall apply to the State of Texas and include these endorsements in favor of OWNER:

- a) Waiver of Subrogation, form WC 420304; and
- b) 30 day Notice of Cancellation, form WC 420601.

The minimum policy limits for Employers' Liability Insurance coverage shall be as follows:

.1 \$100,000 bodily injury per accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee.

5.3.1.4 Commercial General Liability Insurance. The Policy shall contain the following provisions:

- a) Contractual liability coverage for liability assumed under the Contract and all contracts relative to this Project.
- b) Completed Operations/Products Liability for the duration of the warranty period.
- c) Explosion, Collapse and Underground (X, C & U) coverage.
- d) Independent Contractors coverage (Contractors/ Subcontractors work).
- e) Aggregate limits of insurance per project, endorsement CG 2503.
- f) OWNER listed as an additional insured, endorsements CG 2010 and CG 2037 or equivalent.
- g) 30 day notice of cancellation in favor of OWNER, endorsement CG 0205.
- h) Waiver of Transfer of Recovery Against Others in favor of OWNER, endorsement CG 2404.

Provide coverages A&B with minimum limits as follows:

.1 A combined bodily injury and property damage limit of \$1,000,000 minimum per occurrence.

5.3.1.5 Builders' Risk Insurance. CONTRACTOR shall maintain Builders' Risk Insurance or Installation Insurance on an all risk physical loss form in the Contract Amount. Coverage shall continue until the Work is accepted by OWNER. OWNER shall be a loss payee on the

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policy. If off-site storage is permitted, coverage shall include transit and storage in an amount sufficient to protect property being transported or stored. (Required upon issuance of Job Order Assignment as applicable for major construction/renovation work.)

5.3.1.6 Hazardous Materials Insurance.

For Job Order Assignments which involve lead and/or asbestos or any hazardous materials or pollution defined as lead and/or asbestos, CONTRACTOR or Subcontractor responsible for the Work shall comply with the following insurance requirements in addition to those specified above:

.1 Provide a lead and/or asbestos abatement endorsement to the Commercial General Liability policy with minimum bodily injury and property damage limits of \$1,000,000 per occurrence for coverages A&B and products/completed operations coverage with a separate aggregate of \$1,000,000. This policy shall not exclude lead and/or asbestos or any hazardous materials or pollution defined as lead and/or asbestos, and shall provide "occurrence" coverage without a sunset clause. The policy shall provide 30 day Notice of Cancellation and Waiver of Subrogation endorsements in favor of OWNER.

.2 CONTRACTOR or Subcontractor responsible for transporting lead and/or asbestos or any hazardous materials defined as lead and/or asbestos shall provide pollution coverage. Federal law requires interstate or intrastate transporters of lead and/or asbestos to provide an MCS 90 endorsement with a \$5,000,000 limit when transporting lead and/or asbestos in bulk in conveyances of gross vehicle weight rating of 10,000 pounds or more. Interstate transporters of lead and/or asbestos in non-bulk in conveyances of gross vehicle weight rating of 10,000 pounds or more must provide an MCS 90 endorsement with a \$1,000,000 limit. The terms "conveyance" and "bulk" are defined by Title 49 CFR 171.8. All other transporters of lead and/or asbestos shall provide either an MCS 90 endorsement with minimum limits of \$1,000,000 or an endorsement to their Commercial General Liability Insurance policy which provides coverage for bodily injury and property damage arising out of the transportation of lead and/or asbestos. The endorsement shall, at a minimum, provide a \$1,000,000 limit of liability and cover events caused by the hazardous properties of airborne lead and/or asbestos arising from fire, wind, hail, lightning, overturn of conveyance, collision with other vehicles or objects, and loading and unloading of conveyances.

.3 CONTRACTOR shall submit complete copies of the policy providing pollution liability coverage to OWNER.

5.3.1.7 Professional Liability Insurance. For Work which requires professional engineering or professional survey services to meet the requirements of the Contract, including but not limited to excavation safety systems, traffic control plans, and construction surveying, the CONTRACTOR or Subcontractors, responsible for performing the professional services shall provide Professional Liability Insurance with a minimum limit of \$500,000 per claim and in the aggregate to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission committed with respect to all professional services provided in due course of the Work of this Contract. CONTRACTOR's policy shall include the following endorsement in favor of the OWNER:

- a) 30 day Notice of Cancellation endorsement CA 0244

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

6.2.4 Substitutes and "Approved Equal" Items:

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Delete 6.2.4.1.2 and replace with the following:

.1.2 Substitute Items: If in E/A's sole discretion an item of material or equipment proposed by CONTRACTOR does not qualify as an "approved equal" item under subparagraph 6.2.4.1.1, it will be considered a proposed substitute item. CONTRACTOR shall submit sufficient information to allow E/A to determine that the item of material or equipment proposed is essentially equivalent to that named and a substitute therefor.

Delete 6.2.4.2 and replace with the following:

.2 Substitute Construction Methods and Procedures: If a specific means, method, technique, sequence or procedure of construction is shown or indicated in and expressly required by the Contract Documents, CONTRACTOR may, at CONTRACTOR'S sole risk, including disruptions to the Critical Path of the Progress Schedule, with prior approval of E/A furnish or utilize a substitute means, method, technique, sequence, or procedure of construction. CONTRACTOR shall submit sufficient information to Owner's Representative to allow E/A, in E/A's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The procedure for review by E/A will be same as that provided for substitute items.

6.3 Progress Schedule: Delete 6.3 and replace with the following:

CONTRACTOR shall adhere to the Baseline Schedule established in accordance with paragraph 2.6 as it may be adjusted from time to time as provided below:

Delete 6.3.1 and replace with the following:

.1 CONTRACTOR shall submit to Owner's Representative for review and approval any proposed adjustments in the Progress Schedule that will not change the Contract Times or Milestones on a monthly basis. Any such proposed adjustments must be substantiated with documentation of any changes to the underlying logic of the Progress Schedule. CONTRACTOR's Progress Schedule must show how the CONTRACTOR will consistently advance the progress of the Work in accordance with the Critical Path of the Work and the Contract Time or Milestones. Such adjustments will conform generally to the Progress Schedule then in effect.

6.4 Concerning Subcontractors, Suppliers and Others:

Delete 6.4.7 and replace with the following:

6.4.7 CONTRACTOR shall pay each Subcontractor and Supplier their appropriate share of payments made to CONTRACTOR not later than ten (10) Calendar Days of CONTRACTOR's receipt of payment from OWNER. Upon request from Owner, the CONTRACTOR has two (2) Working Days to provide documentation verifying Payment to Subcontractor(s). The CONTRACTOR is required to notify the Subcontractor(s) in writing of rejection of Application for Payment within two (2) Working Days following notification by Owner. Failure of CONTRACTOR to make payments to Subcontractors or for labor, materials or equipment in accordance to this contract, may be cause to reject future Bids by the CONTRACTOR and may be cause to reject payment in accordance with 00700 14.4.1.3.

6.6 Permits, Fees: Add the following:

OWNER will obtain and pay for the following permits, licenses and/or fees:

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6.6.1 Site development permit, site plan exemption, and/or general permit.

6.6.2 Building Permit(s). OWNER's responsibility for obtaining and paying for the Building Permit(s) shall be limited to the following where applicable: the required Electrical Service (Aid of Construction) Fee, Water and Wastewater Tap Fees, Water and Wastewater Capital Recovery Fees, and Septic Permit Fee. The OWNER's responsibility for obtaining and paying for the Building Permit(s) **excludes securing and paying for the following** where applicable: Driveway Permit (Concrete) Fee, Electrical Permit, Mechanical Permit, Plumbing Permit, Water Engineering Inspection Fee, Temporary Use of Right-of Way Permit, the gas company's Gas Yard Line Contribution Fee, and any other permits/fees not listed above.

6.6.3 Texas Department of Transportation permit for Work in State rights-of-way.

6.6.4 Railroad Utility License Agreement.

6.11 Safety and Protection:

Delete 6.11.3 and replace with the following:

6.11.3 Safety Representative: CONTRACTOR shall designate in writing a qualified and experienced safety representative (the "Safety Representative") at the site whose duties and responsibilities shall include safety training; identifying and mitigating hazardous conditions and unsafe work practices; and developing, maintaining and supervising the implementation of safe work practices and safety programs as deemed necessary and appropriate for the Project. The term "Safety Representative" includes any designated Safety Supervisor, Superintendent or Safety Manager. The CONTRACTOR'S site or project superintendent can dually serve as the Safety Representative. The Safety Representative shall exercise due diligence in the execution of all Project related safety duties. Upon request of OWNER, CONTRACTOR shall provide certifications or other acceptable documentation of the Safety Representative's qualifications. The following requirements will be effective as of September 1, 2010:

.1 Safety Representative and Superintendent: The Safety Representative and Superintendent shall present certification of completion of the OSHA 30-hour Construction Industry Training Outreach Program described at: http://www.osha.gov/dte/outreach/construction_generalindustry/construction.html. Any additional assignment specific certifications required will be noted in the individual Job Order Assignment requests.

.2 OSHA 10-hour Certified Workers: The Safety Representative shall perform Good Faith Effort to receive and have available for inspection by the OWNER a certificate of training completion from construction workers (defined as persons covered by a prevailing wage determination) on the job site, whether employed by the CONTRACTOR or subcontractors, who have completed the OSHA 10-hour Construction Industry Training Outreach Program described at: http://www.osha.gov/dte/outreach/construction_generalindustry/construction.html.

.3 Non-OSHA 10-hour Certified Workers: The Safety Representative and Superintendent must ensure that any non-OSHA 10-hour certified construction workers (defined as persons covered by a prevailing wage determination) on the job site, whether employed by the CONTRACTOR or subcontractors, are only performing work on the jobsite while:

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.1 a member of a work crew that contains, at a minimum, one (1) OSHA 10-hour certified worker for each non-OSHA 10-hour certified worker; or

.2 under the direct oversight of an onsite OSHA 30-hour certified representative when not part of a work crew containing OSHA 10-hour certified workers.

.4 The Safety Representative shall ensure that workers, including designated competent persons, have completed all applicable OSHA specific or other training needed to perform their job assignments. Training topics applicable to the scope of the current Project may include, but are not limited to, scaffolds, fall protection, cranes, excavations, electrical safety, tools, concrete and masonry construction, steel erection, operation of motor vehicles and mechanized equipment.

.5 The Safety Representative shall post notice on the site of the Work stating that all workers shall have completed OSHA Construction Industry Training. The Owner may require, and the Safety Representative should consider providing a means of readily identifying workers who have completed the required training to monitor compliance with these requirements.

.6 The Safety Representative shall ensure that all required OSHA and Workers Compensation notices to workers are posted in English and Spanish at one or more conspicuous locations on the work site.

ARTICLE 8 - OWNER'S RESPONSIBILITIES

Add the following:

8.7 OWNER shall, throughout the performance of the Work, cooperate with CONTRACTOR and perform its responsibilities, obligations and services in a timely manner so as to facilitate CONTRACTOR's timely and efficient performance of the Work and so as not to delay or interfere with CONTRACTOR's performance of its obligations under the Contract Documents.

8.8 Furnishing of Services and Information

8.8.1 Unless expressly stated to the contrary in the Contract Documents, OWNER shall provide, at its own cost and expense, for CONTRACTOR's information and use the following, all of which CONTRACTOR is entitled to reasonably rely upon in performing the Work:

.1 To the extent available, any surveys describing the Work site property and its boundaries, topography and reference points for use during construction, including existing service and utility lines;

.2 To the extent available, geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;

.3 Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable CONTRACTOR to perform the Work;

.4 A legal description of the Site;

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.5 To the extent available, as-built and record drawings of any existing structures at the Site; and

.6 To the extent available, any environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site.

ARTICLE 9 - ENGINEER/ARCHITECT'S STATUS DURING CONSTRUCTION

9.7 Shop Drawings: *Delete entire section of 9.7.*

ARTICLE 10 – CHANGES IN THE WORK

10.3 Change Directives:

Delete 10.3.1 and replace with the following:

10.3.1 Without invalidating the Contract, OWNER may, by written Change Directive, using the Force Account method, order changes in the Work on any Job Order Assignment within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Amount and Contract Time being adjusted as necessary. "Force Account" means a basis of payment for the direct performance of Work based on the actual cost of the labor, equipment and materials furnished and consideration for overhead and profit as set forth in Section 00500JOC and the Unit Price Book and the Coefficients. A Change Directive shall be used in the absence of complete and prompt agreement on the terms of a Change Order. Where practicable, any items of Work that may be agreed upon, prior to the performance of the Work under this Section, will be included in a separate Change Order. For example, the cost of the installation of additional asphalt may be agreed upon based on the unit prices in the Unit Price Book.

Delete 10.3.2 and replace with the following:

10.3.2 If the Change Directive provides for an adjustment to the Job Order Assignment Amount, the adjustment shall be based on the method provided in Section 00500JOC, the Unit Price Book and the Coefficients.

ARTICLE 11 - CHANGE OF CONTRACT AMOUNT

11.4 Determination of Value of Work: *Delete all sections of 11.4 and replace with the following:*

The Parties mutually agree that only the line items in the Unit Price Book and the Coefficients will be used to determine the Value of Work, unless the Parties subsequently agree that another method allows a better means of determining the value of the Work.

11.5 Cost of Work: *Delete entire section of 11.5.*

11.6 Unit Price Work: *Delete entire section of 11.6.*

ARTICLE 12 – CHANGE OF CONTRACT TIMES

12.2 Calendar Day Contracts: *Delete entire section of 12.2.*

ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.7 Warranty Period: *Add the following:*

13.7.5 OWNER will utilize a "Warranty Item Form" (attached at the end of this Section) for the purpose of providing Written Notice of warranty defects to CONTRACTOR. CONTRACTOR shall date, sign, complete and return the form to OWNER when the defect is corrected, including such information on or attached to the form to describe the nature of the repairs or corrections that were made. If the defect cannot be corrected in seven (7) Calendar Days, CONTRACTOR shall provide a written explanation to the Owner's Representative describing the repairs needed and the time required to complete the repairs.

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

14.1 Application for Progress Payment:

Delete entire section of 14.1.5.

14.1.5 Retainage will not be withheld on federally funded projects.

ARTICLE 16 - DISPUTE RESOLUTION

16.4 Claim Calculation:

Delete 16.4.1.2 and replace with the following:

.1.2 Project overhead will be based on the Contractor's Coefficient.

ARTICLE 17 - MISCELLANEOUS

Add the following:

17.14 Special Provision for Job Order Contracting:

17.14.1 Project and Scope Description: The overall project is for the performance of various JOAs. The project will require a wide variety of construction, repair, and maintenance tasks with pre-determined unit prices. Various trades will consist of, but not limited to, electrical, mechanical, plumbing, painting, carpentry, drywall, roofing, masonry, concrete, paving, site drainage, and fixed kitchen and industrial equipment. Work locations include any and all City-owned or leased facilities (e.g. Austin Bergstrom International Airport, various city office buildings and facilities, Austin parks and recreation buildings, and other facilities, etc.). It is expected that the Contractor reside in facilities that will allow a response time of 2 hours from time of notification to being at the site during normal business hours.

17.14.2 Performance Period: The performance period will be for an initial two (2) year period with the OWNER having the option to extend the contract term for three (3) additional one (1) year terms. The City reserves the right to review the coefficient pricing and negotiate an adjustment for any extension of the base contract. However, the City will in no way be obligated to extend the contract past the base year and any future decision to do so is entirely at the discretion of the City.

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17.14.3 Warranty Period: The warranty period for each JOA will commence on the date of Final Completion of the JOA and continue for one (1) calendar year thereafter. For JOAs in the amount of \$100,000 or more, the performance bond will remain in place for the applicable warranty period.

17.14.4 Contract Value: The Estimated Program Budget is \$48,000,000.00 total for the base year and any subsequent option years. The total funding authority for this project will be distributed among the selected firms and portioned to the respective performance periods. The City is not obligated to issue the estimated prorated amount, nor shall the Contractor be entitled to recalculate the work item prices in the UPB or the coefficients because of the amount of the work obtained under the contract is at or near the estimated amount reference above.

17.14.5 JOA Values: The anticipated minimum JOA is \$5,000.00 and the anticipated maximum JOA is \$300,000.00. City Council approval is required for any instance where a JOA exceeds \$500,000. The City anticipates that each firm will be given assignments that cumulatively equal the program budget amount. There is no minimum guarantee of number or value of JOAs per annum that will be issued under the contract. Job Orders Assignments less or greater than the anticipated amounts may be issued in a single JOA for more than one facility and more than one JOA may apply to a single facility.

17.14.6 JOA Withdrawal/Cancellation: The City reserves that right to unilaterally withdraw or cancel a JOA request from the contractor for any reason prior to the execution of JOA agreement. When a JOA is withdrawn/cancelled, the contractor shall be reimbursed five-hundred & 00/100 dollars (\$500.00) as retribution for time and effort required to develop a SOW and one-thousand & 00/100 dollars (\$1,000.00) to develop a Proposal. The contractor will not be entitled to reimbursement when the contractor rescinds their JOA acceptance after SOW or proposal development has occurred, or when the City withdraws/cancels the JOA due to contractor non-responsiveness.

17.14.7 Overview of Contractor Responsibilities: During the contract period, the City will identify individual construction, repair and maintenance requirements and issue JOA requests for the Contractor to meet those requirements. At no cost to the City, the Contractor will be required to attend a site visit, comply with SMBR Procurement Program requirements, develop a proposal and submit it to the City for approval, create a line-item cost estimate using the UPB via computerized cost estimating system. Once a JOA proposal is approved and notice to proceed is issued by the City, the Contractor will provide all materials, labor, tools, equipment, supervision, project management, and quality control to successfully complete the JOA in the required time frame.

17.14.8 Unit Price Book: The unit price book for the contract will be the latest R.S. Means Master Composite Cost Data ©, with certain exceptions and clarifications that are listed in Section 00300JOC, Attachment A-1. The Austin, Texas City Costs Index "total weighted average" will be applied to the R.S. Means prices prior to usage of the coefficients.

17.14.9 Quality Control: The Contractor will be responsible for quality control and must perform all work in accordance with drawings, applicable codes, and construction documents. The Offeror shall submit a quality control plan with their Proposal for each Job Order Assignment. The City will periodically observe work, prepare punch lists when required, and participate in a Substantial Completion and Final Completion inspection prior to acceptance and approval for final payment.

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17.14.10 Daily Reports: The Contractor shall be required to fill out daily progress reports on each active JOA and submit them electronically or in paper form to the City at the end of each week. OWNER will provide the form to be used for the daily reports.

17.14.11 Cost Estimating Software: The Contractor must use the latest version of e4Clicks Project Estimator © and submit all cost proposals electronically using this software.

17.14.12 JOA Schedule: Contractor shall properly develop and deliver a proposed schedule for the work covered by a JOA (using a critical path methodology) within one week of the issuance of that Job Order Request, including identification of the days and times the Contractor anticipates being at each facility, in order that the City is able to determine if the schedule meets the program request for the facility. In emergency or unusual situations, the City may require that the JOA be completed on an expedited basis. Expedited orders are to be completed within the timelines and for the compensation to be agreed to by the City and Contractor.

17.14.13 Site Supervision: The Superintendent and/or Project Manager are allowed to roam between jobsites while work is progress on a job order assignment unless otherwise requested by the City for a specific assignment.

17.14.14 Permitting: Permits and inspections as outlined under City of Austin Development Codes and Ordinances may be required based on the scope of work and trades associated with each Job Order Assignment.

17.14.15 MBE/WBE Compliance:

.1 MBE/WBE compliance plans and goals will be developed for each individual Job Order Assignment.

.2 An MBE/WBE Procurement program Availability List for the suggested trades with available certified firms will be provided for each individual Job Order Assignment.

.3 The City does not require the contractor to limit themselves to the list of certified firms. However, for the contractor to count the participation of a MBE/WBE firm towards the goals, they must be certified by the City prior to being used on the contract.

.4 The contract requires firms being used to meet the goals established in the MBE/WBE procurement program be certified with the City. If firms are used that are not certified, their participation cannot be counted towards meeting the goals. All firms must be registered with the City prior to beginning work regardless of the certification status.

.5 If the contractor enters into an agreement with a subcontractor who is not on this list, the contractor must contact SMBR and request an updated availability list of certified subcontractors within the trade or scope.

.6 For any work being performed that the contractor has listed a firm in the compliance plan, that listed firm is expected to perform the work or the contractor must perform Good Faith Efforts (GFE).

.7 If a dually certified MBE/WBE firm is selected, the contractor must decide which designation, MBE or WBE, is applied to the firm on the compliance plan. This

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designation carries across all applicable trades associated with the firm. The designation may not be changed for the duration of the contract.

.8 If the Prime contractor is a certified firm, any self-performed work would count as participation toward the goal that they are certified for.

.9 MBE/WBE goals will be established for each individual Job Order Assignment under the MBE/WBE Procurement Program and will be evaluated on the amount of work awarded to the contractor for each individual Job Order Assignment. The sub-goals and the minimum participation values will be for the individual Job Order Assignments.

17.14.16 MBE/WBE Subcontractor Outreach:

.1 The contractor shall provide reports bi-annually or upon request to the City documenting ongoing MBE/WBE subcontractor outreach including but not limited to partnering and mentoring activities performed to assist the subcontractors in improving: their business practices; written proposals; cost estimating; financial records keeping; etc.

.2 The reports should identify specific subcontractors assisted or details on events held for the subcontractor community.

.3 The reports should attempt to quantify documented improvements and provide documented methodology for determining the value of the improvements.

.4 Subcontractor outreach efforts will be evaluated at end of each contract term during the renewal review process.

.5 The template and format for the MWBE Outreach Report will be provided to the contract awardees upon execution.

17.14.17 Wage Rates: Prevailing wage rates (as specified in Sections 00830BC and/or 00830HH) shall be applied for the rates current at the time of execution of the Section 00500JOC Assignment Agreement for each Job Order Assignment.

17.14.18 Job Order Assignment Process: Individual Job Order Assignments will be awarded on a rotational basis; they will not be competed amongst the Contractor pool. The following outlines the general process that a contractor participating in the JOC program will experience over the course of a typical Job Order Assignment.

.1 The City will send an assignment notification which includes the name, location, and description of the project to one of the participating contractors via email.

.2 The contractor will have two (2) business days to accept an assignment. If a prompt acceptance of an assignment is not communicated to the City by the contractor, the assignment is considered rejected.

.3 The City will coordinate with the contractor to establish a mandatory Pre-Proposal Meeting at the project site to discuss and develop the scope of work within five (5) business days. Meeting participants shall include: the contractor; a representative from the customer department; a Capital Contracting Office representative; the city project manager; and city consultant (if applicable).

.4 The contractor shall draft meeting minutes and distribute them to the attendees within two (2) business days of the meeting.

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.5 The contractor shall develop and submit a scope of work to the City for review and approval within ten (10) business days of the meeting.

.6 The City will review and approve or request revisions to the Scope of Work within five (5) business days.

.7 If the scope of work requires revisions, the City will notify the contractor and the contractor will have three (3) business days from notification to submit a revised scope of work.

.8 Upon approval of the scope of work, the City will have four (4) business days to develop and provide the contractor the assignment MBE/WBE compliance plan and goals, including a subcontractor availability list.

.9 The contractor will have fifteen (15) business days from receipt of the MBE/WBE compliance plan and goals to submit a preliminary proposal to the City for review and approval. The proposal shall include: proposal summary letter; detailed line item estimate; project schedule. During this period, the contractor must allow for a minimum of seven (7) business days to solicit subcontractors and perform good faith effort toward meeting the MBE/WBE compliance plan.

.10 The City will review and approve or request revisions to the preliminary proposal within ten (10) business days.

.10.1 If the preliminary proposal requires revisions, the City will notify the contractor and the contractor will have three (3) business days from notification to submit a revised proposal.

.10.2 If more than a simple proposal revision is necessary, the City will coordinate negotiations (via in-person meeting, video/phone conference, or email). Negotiation participants may include: the contractor; subcontractors; a representative from the customer department; a Capital Contracting Office representative; the city project manager; and city consultant (if applicable). Items that may be considered during negotiation may include but are not limited to: Scope of Work adjustments; assumptions and conditions; proposal line items (adjustment of quantities); schedule adjustments; etc. Proposal negotiations should be resolved within ten (10) business days.

.11 Upon approval of the proposal, the City will notify the contractor and the contractor will have five (5) business days from notification to submit the following: final proposal; bonds (as required by the value of the project); a Certificate of Insurance; a Subcontractor Utilization Form (SUF); the MBE/WBE compliance plan and Good Faith Effort documentation; a Non-Use of Asbestos Affidavit. Electronic copies of any applicable bonds can be submitted via email while hard-copies are being processed and delivered to the Capital Contracting Office.

.12 The City will review the MBE/WBE compliance plan and good faith effort documentation and provide any necessary further guidance to the contractor within seven (7) business days.

.13 Upon review and approval, the City will submit for signature a Job Order Agreement packet to the contractor's representative with signature authority via DocuSign within three (3) business days. The Job Order Agreement packet will contain the following documents: Informed Consent and Agreement; Exhibit A – 00500JOC Assignment

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Agreement; Exhibit B – Proposal Summary Letter, Detailed Line Item Estimate, and Project Schedule; Exhibit C – SUF and Approved MBE/WBE Compliance Plan; Exhibit D – Performance Bond (as applicable); Exhibit E – Payment Bond (as applicable); Exhibit F – Non-Use of Asbestos Form; Exhibit G – Wage Rates and Payroll Reporting. The contractor will have three (3) business days to return the signed Job Order Agreement packet.

.14 Upon receipt of the signed Job Order Agreement packet, the City will execute the Job Order Agreement within seven (7) business days and provide notice to the contractor via email including the fully executed Job Order Agreement.

.15 The City will establish a pre-construction meeting (if necessary) within seven (7) business days to coordinate final details to set the stage for construction.

.16 The City will issue a Notice to Proceed (NTP) letter to the contractor to initiate construction activities. The contractor must initiate construction activities within seven (7) calendar days of the date specified in the NTP.

.17 The contractor engages in construction activities to complete the contract scope of work for the Job Order Assignment.

.18 The Contractor submits pay applications (including SubK form) to the city project manager for review and payment. Pay applications shall be submitted no more than once per month per Job Order Assignment.

.19 Change orders should be limited to unforeseen circumstances or requests from the City for minor changes to the scope of work on the Job Order Assignment. The Contractor will submit change order proposal and negotiate with the city project manager. If denied, the change order work will not be completed. If approved, the City will modify the agreement to include the additional scope and agreed upon cost. No change order work shall occur until an executed modification to the agreement is provided to the Contractor.

.20 The Contractor shall reach Substantial Completion by the date specified in the assignment NTP (inclusive of any modifications) or be subject to Liquidated Damages.

.20.1 The Contractor notifies city project manager that the assignment has reached Substantial Completion. The City and Contractor conduct an inspection to identify Punch List Items. If determined to be substantially complete, the City issues a Certificate of Substantial Completion. Contractor will have thirty (30) days from Substantial Completion to correct punch list items or be subject to Liquidated Damages.

.20.2 Contractor notifies the city project manager that assignment has reached Final Completion. City and contractor conduct final inspection. If determined to be finally complete, the Contractor will submit assignment close-out documentation.

.20.3 The required close-out documents will include: Final Pay Application (must be labeled "FINAL"); Certificate of Substantial Completion (if applicable); Completed/Signed Punch List (if applicable); Warranties (Contractor and Manufacturer); Contractor Affidavit of Bills Paid; Consent of Surety for Final Payment; Final SubK Report; MBE/WBE Contract Compliance Close-Out Report; Locks/Keys (as applicable); "As-Built" Documents (as applicable); Operation & Maintenance Manuals (as applicable); Modification Log (as applicable); Non-Use of Asbestos Affidavit.

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WARRANTY ITEM NO. _____ (PROJECT NAME) The General Conditions of the Contract require that Warranty Defects be corrected within 7 days after written notice is received.

TO: _____
contractor name address / telephone / fax / email

ATTENTION OF: _____

FROM: _____
project manager name / address / telephone / fax / email

PROJECT: _____
name / location / CIP ID number

END OF ONE YEAR WARRANTY: _____

SUBJECT: _____

If checked, the damage requires immediate attention. The Contractor has been called.
 If checked, the Consultant has been asked to consult with the Contractor on the problem.

PLEASE CORRECT OR REPAIR THE FOLLOWING ITEM(S):

DATE OF REQUEST _____ **SIGNATURE** _____

Project Manager

xc:

<input type="checkbox"/>	_____	Phone No.	_____
<input type="checkbox"/>	_____	Phone No.	_____
<input type="checkbox"/>	_____	Phone No.	_____
<input type="checkbox"/>	_____	Phone No.	_____

RESPONSE FROM CONTRACTOR: DATE CORRECTION WAS MADE: _____
--

The Contractor must endeavor to correct the defect within 7 calendar days after written notice is given. If the defect cannot be corrected in that time, Contractor shall provide a written explanation to the Owner's Representative describing the repairs needed and the time required to complete the repairs.

Description of corrections made:

DATE OF REPLY _____ **SIGNATURE** _____

When the repair is complete, the contractor should return a copy to each of the following:

<input type="checkbox"/>	_____	Phone No.	_____
<input type="checkbox"/>	_____	Phone No.	_____
<input type="checkbox"/>	_____	Phone No.	_____
<input type="checkbox"/>	_____	Phone No.	_____

END

WAGE RATES AND PAYROLL REPORTING

Section 00830

1. PAYMENT

1.1 Classification Definitions, Building and Heavy and Highway

1.1.1 Definitions for Building Construction and Heavy and Highway classifications shall conform to the current "Occupational Information Network (O*NET)" as approved by the U.S. Department of Labor. For interpretive guidance, the Core Task list in O*NET will be used to make prevailing wage determinations. Final classification of workers will be made by the OWNER.

1.2 Minimum Wages

1.2.1 Workers on Project shall be paid not less than wage rates, including fringe benefits, as published by the Department of Labor (DOL) or the \$15.00 minimum wage required by City of Austin Ordinance No. 20160324-015, whichever is higher. The Total Minimum Wage required can be met using any combination of cash and non-cash qualified fringe benefits provided the cash component meets or exceeds the \$15.00 minimum wage required.

1.2.2 Such wage rates shall be used throughout the Contract. If a classification is to be used, which is not listed in the attached wage rates, CONTRACTOR shall submit to OWNER rates and classification proposed for use, for approval, prior to performance of the Work.

1.2.3 All laborers and mechanics working upon the Work for this Project shall be paid unconditionally and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by Secretary of Labor under the Copeland Act, Title 29 CFR, Part 3) full wages accrued and when due, computed at rates not less than wage rates bound herein pertaining to type of Work being performed. When Work is of such a nature that both Building and Heavy and Highway wage scales are incorporated into contract, CONTRACTOR shall pay wage rates to mechanics or laborers performing Work in more than one classification at the rate indicated for each classification for time actually worked as determined by area practice applicable to type (Site Construction Crafts or Building Construction Crafts) of Work being performed without regards to skill. Salaried specialists (project superintendent and administrative personnel only) in the permanent employment of CONTRACTOR do not fall under any Wage Classification. A supervisor/foreman who is not exempt under 29 CFR Part 541 and who spends more than a substantial amount of time (20 percent) in a given workweek as a laborer or mechanic must be paid the applicable Wage Rate for the classification of work performed for all hours engaged in such work as a laborer or mechanic.

1.2.4 Wage rates shall be posted by CONTRACTOR at site(s) of Work in prominent, easily accessible places where they can be seen by all workers. The following shall also be posted by the CONTRACTOR: City of Austin wage contact posters (English and Spanish), City of Austin Equal Employment Opportunity posters (English and Spanish), Workers' Compensation Notice (English and Spanish), Texas Payday Law (English and Spanish), City Rest Break Ordinance

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(English and Spanish), City of Austin Non-Discrimination Statement (related to Title VI of the Civil Rights Act), and Federal Notices, as appropriate.

1.3 Overtime Requirements

1.3.1 No CONTRACTOR, Subcontractor, or Sub-subcontractor contracting for any part of contract Work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which he is employed on such Work, to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times their basic rate of pay for all hours in excess of forty hours in such workweek.

1.3.2 Overtime wages must be calculated using the Adjusted Wage Rate specified in the Wage Rate Determination or the actual basic rate of pay, whichever is higher.

2. APPRENTICES

2.1 Locally and Federally Funded Projects

2.1.1 The terms journeyman and apprentice apply to both union and independent workers, and are not intended to imply that these positions are union workers only.

2.1.2 Apprentices and Trainees will be permitted to work as such only when they are registered, individually, under a bonafide Apprenticeship or Trainee program registered with the Bureau of Apprenticeship and Training, United States Department of Labor. The allowable ratio of Apprentices or Trainees to journeymen in any craft classification shall not be greater than the ratio permitted to CONTRACTOR as stated in the registered apprenticeship program standards. Any employee listed on a payroll at an Apprentice or Trainee wage rate, who is not registered as above, shall be paid the wage rate provided in Contract for Work employee actually performed. CONTRACTOR, Subcontractor, or Subsubcontractor shall furnish to OWNER written evidence of registration of his program for Apprentices and Trainees as well as of the appropriate ratios and wage rates, for the area of construction prior to using any Apprentices or Trainees on this Contract.

3. WITHHOLDING PAYMENTS

3.1 OWNER may withhold or cause to be withheld from CONTRACTOR as much of the accrued payments as necessary to pay laborers and mechanics employed by CONTRACTOR, Subcontractors, or Sub-subcontractors the amount of wages required to comply with the Contract. In the event of nonpayment of wages to laborers or mechanics working on the site of the Work of this Contract, OWNER may, after Written Notice to CONTRACTOR, take such action as may be necessary to cause suspension of any further payments or advance of funds to CONTRACTOR until such violations have ceased and until restitution has been made. Payments may also be withheld if CONTRACTOR fails to maintain weekly payroll reports or fails to provide copies in a timely manner upon request of Owner.

4. PAYROLLS

4.1 CONTRACTOR shall keep records showing:

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4.1.1 The name, address and occupation of each worker employed by the CONTRACTOR or subcontractor(s) in the construction of the public work.

4.1.2 The actual per diem wages paid to each worker

4.1.3 Employee Certification. CONTRACTOR, all levels of Subcontractors shall identify in writing, the classification agreed to by all laborers and mechanics employed by them in the execution of the Contract, and pay not less than rates specified in the attached Wage Rate Determination(s). Contractor shall prepare a completed form for the signature of Employee and a witness shall sign the form in the presence of Employee. If work performed by worker is different than the trade classification agreed upon, the worker shall be paid for that work no less than the minimum prevailing wage for that specified trade.

4.1.4 Payroll Deduction Authorization Form. CONTRACTOR, Subcontractor, and Sub subcontractor shall prepare for employee signature a payroll deduction authorization form to identify all payroll deductions excluding those required by statute, such as federal income taxes, Medicare and social security.

4.2 The record shall be open at all reasonable hours to inspection by the officers and agents of the Owner as requested. CONTRACTOR will be responsible to provide copies of records as requested by the Owner within two (2) working days. Payrolls relating to this Work shall be maintained during term of Contract and preserved for a period of three (3) years thereafter by CONTRACTOR for all laborers and mechanics working on the Work.

4.3 A Statement of Compliance, a letter signed and dated by party responsible for supervising the payment of persons employed by CONTRACTOR or subcontractor shall accompany payrolls required by Owner. The Statement of Compliance letter shall identify but is not limited to:

4.3.1 Name of signatory party and title

4.3.2 Name of project, payroll period and

4.3.3 Name of CONTRACTOR or Subcontractor

4.4 The signed letter attests that the payroll complies with 29CFR issued by the Secretary of Labor.

4.5 Federal Funding. In the event that federal funding is used:

4.5.1 Contractor and all levels of Subcontractors shall submit weekly certified payroll reports and signed wage compliance statements to the Owner's designated office no later than seven (7) calendar days after the scheduled payday.

4.5.2 Contractors and all levels of Subcontractors shall pay all "mechanics and laborers" not less often than once per week, for work performed the previous week.

4.5.3 Submit to the Owner's designated office Standard Form 1413, Statement and Acknowledgement, from each subcontractor prior to the subcontractor performing work on the project.

5. NONCOMPLIANCE

5.1 According to Chapter 2258 Texas Government Code Title 10A, a CONTRACTOR or subcontractor(s) who violates this section shall pay to the political subdivision on whose behalf the contract is made, \$60 for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the contract. A public body shall use any money collected under this section to offset the costs incurred in the administration of this chapter.

5.2 Confirmed Disciplinary action taken by CONTRACTOR against employees who provide information during an interview or investigation by the Owner on wages received, may result in suspension or debarment from consideration of award of City contracts.

6. AREA PRACTICE

6.1 Heavy and Highway Construction Rates shall be used on this Project, unless the Project consists primarily of Building Construction and Building Construction Rates are to be used.

6.1.1 Building Construction consists generally of all aspects of construction of buildings, which are sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment or supplies, including without limitation the installation of utilities and equipment, both above and below grade level, as well as incidental demolition, grading, utilities, paving and other site work. Buildings need not be "habitable" to be classified as Building Construction and the installation of heavy machinery and/or equipment will not generally change a Building Construction project's classification.

6.1.2 The determination of Building Construction Wage Rates includes all construction trades and work necessary to complete a building, regardless of the number of contracts involved, so long as all such contracts are closely related in purpose, time and place.

6.2 For projects that involve both Building Construction and Heavy and Highway trades, the following classifications shall be used:

6.2.1 A multiple classification shall be used if Building Construction items are more than 20% of the Heavy and Highway project cost.

6.2.2 A multiple classification shall be used if Heavy and Highway Construction items are more than 20% of the Building Construction Project cost.

6.3 Split classifications/multiple wage rate schedules: When construction work requires that an employee perform work under multiple classifications or multiple wage scales, the employer must pay that worker (at least) the highest prevailing wage or the employer payroll records must accurately set forth the times spent performing the work of each classification and under each scale. For those projects that involve both Building Construction and Heavy and Highway trades, the Heavy and Highway wage rates may only be applied to workers when engaged in site work at least five (5) feet beyond the building.

7. TEXAS OPEN RECORDS ACT

Bidding Requirements, Contract Forms and Conditions of the Contract

7.1 Unless covered by an exception to mandatory disclosure under the Texas Public Information Act, Chapter 552, Texas Government Code, any and all documents submitted to the City of Austin become Public Records and are, therefore, subject to public disclosure.

Wage Rates for This Project Are Attached

END

CONSTRUCTION TRAINING PROGRAM REQUIREMENTS

Section 00840JOC

The **City of Austin Construction Training Program (the “Program”)** is intended to train workers on City of Austin’s construction projects in order to develop a pool of qualified, ready-to-work skilled and semi-skilled construction workers. This training commitment is not intended and shall not be used to discriminate against any applicant.

Training Requirement. Establishment of the Construction Training Requirement for each Job Order Assignment will be based on project scope, dollar amount, and opportunities available to achieve the training requirements. The requirements will be established either prior to solicitation, or during contract negotiations, using the criteria in Charts A and B. Program requirements will be subject to availability of Trainees and Graduates.

Chart A - Evaluation Criteria
1. Material cost vs labor cost
2. Scope of work
3. Schedule of values (a comprehensive list of work for a particular project)
4. Project duration and schedule
5. Unique aspects of the project
6. Available training programs for the specific training plan
7. Workforce determined by the number of workers that will be on the project enough days to establish a training program.

Chart B – Construction Training Requirements	
Estimated Construction Cost	Apprentice/ On-the-Job Training (OJT) /Construction Ready (CR) Trainee Requirements
\$500K to \$2.5M	2 Construction Ready Trainees*
Over \$2.5M to \$5M	4 - Construction Ready Trainees*
Over \$5M to \$10M	6 - Construction Ready Trainees*
Over \$10M (Significant Budget)	OJT/Apprentice/Graduate/Trainee Minimum 15%

*These requirements may also be satisfied by workers enrolled in or graduated from DOL registered/approved training programs.

<p>1. DEFINITIONS</p> <p>1.1 <i>Capital Contracting Office (CCO)</i> – The City of Austin’s Office responsible for administering the Construction Training Program</p> <p>1.2 <i>City’s Approved Minimum Wage Rate</i> – a minimum wage rate established by the City of Austin for workers performing construction activities on City of Austin contracts</p> <p>1.3 <i>Construction-Ready Trainee</i> - a graduate or current trainee of a Pipeline training program, enrollee or graduate of a DOL-registered Apprenticeship Program, enrollee or graduate of a DOL-approved Training Program, and/or an enrollee or graduate of a DOL-certified Bilingual Training Program.</p> <p>1.4 <i>Pipeline</i> - group of organizations that provide pre-employment, pre-apprentice, or apprentice readiness training related to construction</p>

CONSTRUCTION TRAINING PROGRAM REQUIREMENTS

Section 00840JOC

1.5 *Training Plan*: a plan identifying how a contractor intends to meet its training requirement, subject to OWNER's review and approval

1.6 *Construction Training Program Reporting Form* – a form provided by the OWNER which documents the contractor's training activities and/or hours worked for each trainee

2. **TRAINING REQUIREMENT**

2.1 The Construction Ready Trainee requirement will only be applicable to individual Job Order Assignments with a value over \$500k and will be **two (2) trainees per Job Order Assignment**.

3. **CONTRACTOR'S RESPONSIBILITIES**

3.1 Prior to the execution of the contract, the CONTRACTOR shall provide a Training Plan for OWNER's approval, specifying how the CONTRACTOR intends to satisfy the contract requirement. The CONTRACTOR will have fulfilled its responsibilities under Section 00840 of the contract by having complied with the CONTRACTOR's Training Plan approved by the OWNER.

3.2 In the event that a CONTRACTOR subcontracts a portion of the contract work, CONTRACTOR shall determine if the requirements of the program will be assumed by the subcontractor(s). The CONTRACTOR should ensure that this training provision is made applicable to such subcontract; however, the CONTRACTOR shall retain the responsibility for meeting the training requirements imposed by this provision.

3.3 Trainee must be paid at least the City's Approved Minimum Wage Rate.

3.4 OWNER will provide a list of available Pipeline organizations. The CONTRACTOR shall contact those Pipeline organizations as needed in order to recruit workers for the program.

3.5 The CONTRACTOR shall submit a Construction Training Program Reporting Form to CCO for each trainee. This shall indicate the number of hours worked for the previous month. If a trainee is terminated or resigns, the CONTRACTOR is required to make a reasonable effort to replace the trainee within 30 calendar days.

3.6 Prior to a worker performing work on the project, the CONTRACTOR must submit to CCO a completed Employee Certification Form for each Trainee.

3.7 **CONTRACTOR's Reasonable Efforts to Comply**. The CONTRACTOR will be responsible for demonstrating the steps taken to meet the trainee requirement. If CONTRACTOR has fewer trainees employed on the project than specified in the Training Plan, the CONTRACTOR must submit evidence of recruitment efforts, including:

3.7.1 contacts made to OWNER for a current list of approved training providers

3.7.2 log of applicants contacted

3.7.3 log of training organizations contacted

3.7.4 documented outreach efforts made to all available training organizations (per current OWNER list) to satisfy the requirement

3.7.5 documentation of CONTRACTOR's recruitment efforts performed until program requirements are met or project is complete as part of the Construction Training Program Reporting Form

4. **NON-COMPLIANCE**

4.1 Lack of demonstrated reasonable effort to comply with the Construction Training Program may be considered a breach of contract.



Solicitation ATTACHMENT 1

Solicitation No.
CLMB333

ATTACHMENT 1. Submitting Offers online using eResponse.

- 1. Create a Response.** Find the Solicitation you wish to respond to in Austin Finance Online (AFO), located at: <https://www.austintexas.gov/financeonline/finance/>. If the Solicitation includes the “eResponse” function, it will have a “My Response” section in the Solicitation’s Detail page. Click on “Create Response” to start a Response (Fig. 1).

SOLICITATION DETAILS

SOLICITATION DETAILS [Subscribe](#) [Print PDF](#) [x](#)

Type: Invitation For Bids (IFB)
Status: Open
Solicitation Number: IFB 7400 TEST9884
Description: TEST SOLICITATION 15/16
Summary: This solicitation is for testing purposes only.

My Response

To begin creating a Response to this Solicitation, click the "Create Response" button below.

See the Solicitation documents in the Attachments section below for further instructions on developing and submitting your Response.

[Create Response](#)

(Fig.1)

- Offerors must be logged into AFO in order to create, edit or submit a Response.
- If you click on “Create Response” but you have not yet logged into AFO, the system will redirect you to a login screen (Fig. 2). Once you have logged into AFO, the system will take you back to the Solicitation.

AUSTIN FINANCE ONLINE

FINANCIAL DOCUMENTS STRATEGIC PLAN CHECKBOOK UNCLAIMED PROPERTY PROCUREMENT

ACCOUNT LOGIN

Username

Password

[Login](#)

Don't remember your username? [Retrieve your username](#)

Forgot your password? [Reset your password](#)

Don't have an account yet? [Create an account](#)

(Fig. 2)



Solicitation ATTACHMENT 1

Solicitation No.
CLMB333

- c. Once you click “Create Response”, you will now see a Response ID, Vendor Name, the date that you Created your Response, the date and time you Last Revised your Response and the Status of your Response, which should be “DRAFT” initially (Fig. 3).

SOLICITATION DETAILS

SOLICITATION DETAILS [Subscribe](#) [Print PDF](#) [x](#)

Type:	Invitation For Bids (IFB)
Status:	Open
Solicitation Number:	IFB 7400 TEST9902
Description:	TEST SOLICITATION 1/1
Summary:	

My Response

Price Offer document is required.

Response ID	Vendor	Created	Last Revised	Status
353	TEST VENDOR 10 - JG	12/06/2019, 09:32 AM	12/06/2019, 09:32 AM	DRAFT

+ Add Files

Filename	Type
----------	------

Submit Response Delete

(Fig. 3)

2. **Adding Files to Your Response.** To upload files to your Response click on the blue “+ Add Files” button (Fig. 4).

My Response

Price Offer document is required.

Response ID	Vendor	Created	Last Revised	Status
353	TEST VENDOR 10 - JG	12/06/2019, 09:32 AM	12/06/2019, 09:32 AM	DRAFT

+ Add Files

Filename	Type
----------	------

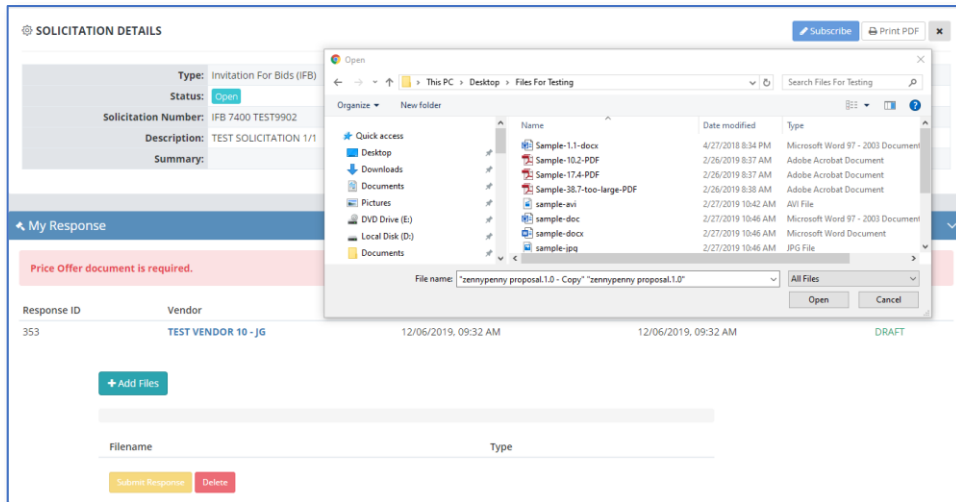
Submit Response Delete

(Fig. 4)



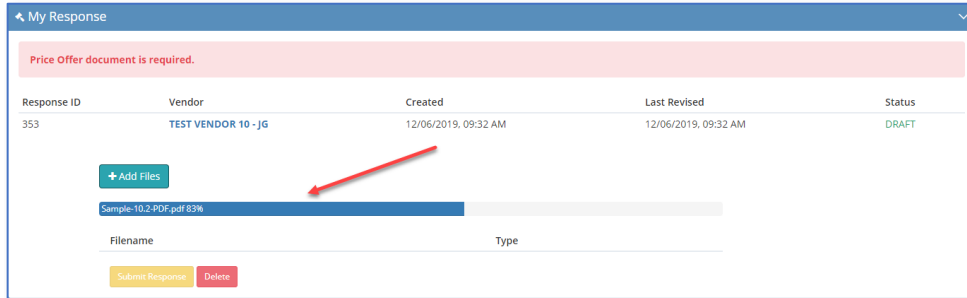
Solicitation ATTACHMENT 1

Solicitation No.
CLMB333



(Fig. 5)

- After clicking the “+ Add Files” button, a pop-up window will open displaying files on your computer (Fig. 5).
- Navigate on your computer to where your files are located. Select the file you wish to upload and click “Open”. The blue indicator bar moving from left to right will show your file being uploaded (Fig. 6)



(Fig. 6)

- Repeat this step to add additional files to your Response.



Solicitation ATTACHMENT 1

Solicitation No.
CLMB333

3. **File Types Accepted.** The eResponse functionality in AFO supports (accepts) the following electronic file types (Fig. 7).

.PDF	.XLS	.GIF
.DOC	.XLSX	.PNG
.DOCX	.PPT	
.TXT	.PPTX	
.ZIP	.JPG	

(Fig. 7)

4. **Number and Size of Files Allowable.** The eResponse functionality in AFO supports (accepts) no more than ten (10) files in a Response. eResponse will not accept a single file greater than 20 MB.

5. **Identify Your Files.** As you add files, you will see a dropdown menu to the right of the Filename, under “Type”. Use this dropdown menu to select the appropriate file types (Fig. 8).

a. **For Job Order Contract Competitive Sealed Proposals, the following files must be included:**

- i. Select the “Offer and Certifications” type for the file which contains a copy of your **Proposal Responses to Section 00101JOC Evaluation Criteria Items 2-12**. You can only identify one (1) file as your “Offer and Certifications.”
- ii. Select “Price Offer” type to identify the file that includes your **Coefficient Form** submission. You can only identify one (1) file as your “Price Offer.”
Note: This submission becomes publicly available once solicitations have been opened.
- iii. Select “Compliance Plan” type to identify the file that includes your **MBE/WBE Procurement Program Statement of Responsibility (Evaluation Criteria Item 1)**.
- iv. “Technical Offer” does not apply to this solicitation.
- v. You will not be able to submit your Response if you have not identified at least one file as “Offer and Certification” and another as “Price Offer”. Once you do, the red warning bar across the top of the My Response box will disappear.



Solicitation ATTACHMENT 1

Solicitation No.
CLMB333

Response ID	Vendor	Created	Last Revised	Status
456	TEST VENDOR 10 - JG	03/14/2020, 12:06 PM	03/14/2020, 12:14 PM	DRAFT

+ Add Files

Filename	Type
Sample-10.2-PDF.pdf	Price Offer
Sample-1.1-docx.doc	Offer and Certifications
sample-doc.doc	Technical Offer
sample-docx.docx	Other

Submit Response Delete

(Fig. 8)

6. **Submitting your response.** Once you have uploaded and identified the types of all the files you need to for your Response, click the “Submit Response” button (Fig. 9).

Response ID	Vendor	Created	Last Revised	Status
456	TEST VENDOR 10 - JG	03/14/2020, 12:06 PM	03/14/2020, 12:14 PM	DRAFT

+ Add Files

Filename	Type
Sample-10.2-PDF.pdf	Price Offer
Sample-1.1-docx.doc	Offer and Certifications
sample-doc.doc	Technical Offer
sample-docx.docx	Other

Submit Response Delete

(Fig. 9)



Solicitation ATTACHMENT 1

Solicitation No.
CLMB333

- a. After you click the “Submit” button, you will be redirected to the Response History Page of your User Dashboard (Fig. 10). You will be automatically Subscribed to the solicitation when you submit your Response.

RESPONSE HISTORY					
TES8304597					
TES8304597					
Account					
Home					
Contact/Password					
Vendor Information					
Business					
Response History (5)					
Addresses					
NAICS Codes					
Commodities					
Vendor Summary					
Online Responses					
Response ID	Solicitation Number	Solicitation Description	Created	Close Date	
353	IFB 7400 TEST9902	TEST SOLICITATION 1/1	12/06/2019 09:32	01/03/2020	
334	IFB 7400 TEST9900	TEST SOLICITATION 1/1	10/24/2019 01:01	10/28/2019	
313	IFB 7400 TEST9895	TEST SOLICITATION 1/1 - SEPTEMBER	10/03/2019 10:06	10/04/2019	
238	IFB 7400 TEST9893	TEST SOLICITATION 1/1 - AUGUST	09/05/2019 03:23	09/13/2019	
207	IFB 7400 TEST9891	TEST SOLICITATION 1/1	06/06/2019 01:38	06/12/2019	
173	IFB 7400 TEST9889	TEST SOLICITATION 1/2	04/15/2019 10:37	04/15/2019	
113	IFB 7400 TEST9887	TEST SOLICITATION 2/3	04/05/2019 09:40	04/05/2019	
112	IFB 7400 TEST9886	TEST SOLICITATION 1/3	03/29/2019 10:31	03/29/2019	
105	IFB 7400 TEST9885	TEST SOLICITATION 16/16	03/10/2019 12:29	03/10/2019	
85	IFB 7400 TEST9881	TEST SOLICITATION 12/16	03/09/2019 01:23	03/09/2019	
84	IFB 7400 TEST9880	TEST SOLICITATION 11/16	03/09/2019 12:18	03/09/2019	
57	IFB 7400 TEST9875	TEST SOLICITATION 6/16	03/08/2019 12:44	03/08/2019	
27	IFB 7400 TEST9873	TEST SOLICITATION 4/16	03/07/2019 01:04	03/07/2019	
22	IFB 7400 TEST9872	TEST SOLICITATION 3/16	03/07/2019 12:46	03/07/2019	
20	IFB 7400 TEST9871	TEST SOLICITATION 2/16	03/07/2019 11:48	03/07/2019	

(Fig. 10)

- b. You can return to the Solicitation or your Response through the Response History page, or by navigating directly to the Solicitation in AFO. When you return to the Solicitation, you will notice that your Status (upper right corner of the My Response section) will state “SUBMITTED”. Your Last Revised date and time will update to the date and time you clicked on the “Submit” button.
- c. If you start a response and don’t click “Submit Response”, your response will stay in “DRAFT” status. Before the Solicitation’s Due Date and Time, you can navigate back to your draft Response and complete it.
- d. Responses that are still in “DRAFT” status by the Solicitation’s Due Date and Time will not be received by the City.

7. Withdrawing or Changing A Response After it has been Submitted. Prior to the Solicitation’s Due Date and Time, you may withdraw or modify your Response. You can delete the entire Response or individual files. To Withdraw or Change your Response, navigate back to the Solicitation. You will see your Response and files in the “My Response” section.

- a. To delete the entire Response, click the red “Delete” button at the bottom of the “My Response” section. You will receive an “Are You Sure” message to confirm your intent to delete your Response including all files within it. Click on Yes, to proceed with the deletion.
- b. To delete individual files within a Response, click the red circle with the white “X” to the left of the file you wish to delete.

COEFFICIENT FORM

Solicitation No.:	CLMB333
Project:	2020 Job Order Contract for City Facility Improvements
Contractor Name:	

A. Pre-Priced Items (Unit Price Book)	
1. Standard Working Hours Coefficient	_____ . _____ _____ _____
2. Non-Standard Working Hours Coefficient	_____ . _____ _____ _____
B. Non-Pre-Priced Items	
1. Non-Pre-Priced Item Coefficient	_____ . _____ _____ _____
(Coefficients must be extended to three decimal places.)	

Notes:

1. This form will be displayed publicly in Austin Finance Online after the solicitation closes.
2. In the case of discrepancies between this form and Section 00300JOC, Section 00300JOC takes precedence.

STATEMENT OF RESPONSIBILITY



**STATEMENT OF RESPONSIBILITY
Minority-owned Business Enterprise and Women-owned Business Enterprise
Procurement Program**

City Code Chapters 2-9A, as amended, establish a Minority-owned Business Enterprise and Women-owned Business Enterprise (MBE/WBE) Procurement Program in Construction. The aim of this program is to promote MBE and WBE participation in City procurement, through its prime contract awards and subcontracts, and to afford MBEs and WBEs an opportunity to compete for City contracts. In particular, this program encourages contractors to provide opportunities to certified MBEs and WBEs for subcontracts or related contracts. A "Subcontractor" is defined by the Ordinance and for the purposes of this form as any person or Business Enterprise providing goods, labor, or services to a contractor if such goods, labor, or services are procured or used in fulfillment of the contractor's obligations arising from a contract with the City. In accordance with City Code Chapter 2-9A, as amended, goals for MBE and WBE participation differ from contract to contract, based on the type of contract, the availability of MBEs and WBEs to perform the functions of the contract, and other factors.

For the 2020 Job Order Contract (JOC), the City will not establish MBE/WBE goals at the solicitation phase but has determined that subcontracting opportunities and subsequent MBE/WBE goals will be established at the specific assignment phase.

At the specific assignment phase, the Small & Minority Business Resources Department (SMBR) will establish appropriate MBE/WBE goals and an availability list of MBEs and WBEs for each individual Job Order Assignment made throughout the duration of this contract. The MBE/WBE goals will be based on the scopes of work identified and the availability of MBEs and WBEs within those scopes of work. The selected JOC Contractor will be responsible for submitting a completed MBE/WBE Compliance Plan meeting the goals or providing Good Faith Effort Documentation for each JOC assignment.

This Statement of Responsibility must be completed, signed and returned with the response to this Competitive Sealed Proposal.

I understand that I am responding to a solicitation for the JOC Program. If chosen to participate in this program, the City of Austin will require me to comply with the City's MBE/WBE Procurement Program, and this signed Statement of Responsibility is my commitment to the MBE/WBE Procurement Program standards and principles which are a part of my contract with the City of Austin.

Name and Title of Authorized Representative (Print or Type)

Signature

Date



City of Austin

Founded by Congress, Republic of Texas, 1839

Capital Contracting Office, PO Box 1088, Austin, Texas 78767 Telephone 512/974-7181 Fax 512/974-7297

DATE: **June 8, 2020**
SOLICITATION: **2020 Job Order Contract (JOC)**
CSP: **CLMB333**
SUBJECT: **Answers to Proposers' Questions as of the date of this letter, per 00020-CSP Article 2 INVITATION FOR PROPOSALS and 00100-CSP Article 1.9 Further Information.**

The following are clarifications to Proposers' Questions on the above-names solicitation. These answers do not modify the solicitation. Any modifications to the solicitation would be through an addendum.

Q1: Is the cost associated with payment and performance bonds added to each work assignment, as applicable, and paid by the City to the Contractor at actual cost plus the non-pre-priced coefficient?

A1: Bonds, when required, are 1% of the assignment value for the Payment Bond and 1% of the assignment value for the Performance Bond. Bonds are paid to the Contract by the City at actual cost; no coefficient is applied against the bond cost.

Q2: On the Evaluation Criteria/00101JOC, Page 3 of 7, Item 6: Prime Contractor's Comparable Experience, is comparable defined as experience as a Prime JOC Contractor for program services?

A2: Not necessarily. Comparable experience may also be comparable in terms of cost, scope, and complexity.

Q3: On the Evaluation Criteria/00101JOC, Page 4 of 7, Item 8: Key Personnel Comparable Experience, will the City allocate points for each key personnel title listed? As an example, Project Manager is allocated seven points and Estimator is allocated six points and the contractor designates the same individual for both titles, will that individual be allocated thirteen points?

A3: Yes, it is possible for two separate key personnel roles to be performed by the same individual without impacting the maximum points that can be received for this Item. If an individual is being utilized to fill more than one key personnel position, the Contractor must submit requirements separately for each role with a clear delineation of their experience and responsibilities related to each position's requirements. In this example, Attachment D, a resume, and letter of commitment should be submitted for the individual demonstrating experience in the Project Manager role, and a separate Attachment D, resume, and letter of commitment should be submitted for the same individual demonstrating experience in the Estimator role.

Q4: Will the City accept MBE/WBE certifications from other governmental entities in lieu of the City of Austin certification?

A4: No.



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Q5: Will the prices shown in the RS Means bare cost column be used for pricing the work to be performed?

A5: Please refer to the Unit Price Book, Line Item Usage Clarifications and non Pre-Priced Usage Clarifications in Attachment A-1 in Section 00300JOC. Left hand RS Means (based on the bare material, labor, and equipment costs column) will be used for pricing pre-priced line item work performed by the Prime Contractor. Right hand RS Means (based on the total bare material, labor, and equipment costs including overhead and profit column) will be used for pricing pre-priced line item work performed by the subcontractors. Non pre-priced item work shall be priced based off competitively procured materials or services and must be supported by quotations from at least three sources.

Q6: The solicitation states that self-performed work will be priced using the bare cost column and subcontracted work will be priced using the Overhead and Profit (O&P) column, therefore does the City expect proposers to apply one coefficient to bare costs and apply a separate coefficient to the O&P column?

A6: The City acknowledges that the dual pricing model can have an impact on the coefficient. The intent is to have a single set of three (3) coefficients (pre-priced line item standard working hours, pre-priced line item non-standard working hours, and non pre-priced item) that are sufficient to cover all coefficient requirements in either scenario.

Q7: How will the City evaluate and assign scores to each proposer's coefficient?

A7: Each respondent's coefficient will be evaluated at face value against those submitted by the other respondent's coefficient regardless of methodology used to calculate their coefficient values.

Q8: On the Cost Proposal Form/00300 JOC, Page 12 of 12, it states that "Owner salvaged material will not cost any more than a demolition item", therefore how and why can this be true?

A8: Salvaged items shall be priced as stated in the Unit Price Book, Line Item Usage Clarifications and non Pre-Priced Usage Clarifications in Attachment A-1 in Section 00300JOC. If additional related line item work is required as part of an item's demolition, that cost should be captured as a line item, where applicable, using the demolition pricing method. If specific demolition items are not included in the Unit Price Book, an existing line item can be modified to become a demolition item by removing the material and equipment costs and applying only the labor costs (a factor to account for additional labor may be applied to the modified line item with proper justification and approval).

Q9: Will the City accept the use of "close enough" line items in lieu of non pre-priced if the "close enough" item matches the intent of the task to be performed?

A9: The use of existing pre-priced line items in lieu of non pre-priced items is allowed as long as the overall intent and scope of work required by the non pre-priced item can be assembled



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through a combination of pre-priced line items. Pre-priced line items may only be modified to match existing conditions and each package of pre-priced line items being utilized in lieu of a single non pre-priced item shall be provided in an easily identifiable manner, either through clear detailed notes in the line item description or as a separate estimate.

Q10: Which instructions of the Supplemental Conditions should we use for the schedule of values as shown in 2.4.6 and 2.6.2?

A10: Section 00810JOC Item 2.4.6 is in reference to the schedule of values for determining subcontractor utilization as necessary for MBE/WBE compliance recording in the compliance plan and/or Subcontractor Utilization Form. Section 00810JOC Item 2.6.2 is in reference to the schedule of values for determining the lump sum proposal value through the RS Means line item estimate, which should be based on the Unit Price Book trade summary.

Q11: How will the different percentages of retainage described in General Conditions/00700, Page 42 of 56, Item 14.1.5 be applied?

A11: As stated in Section 00700, Item 14.1.5, a 10% retainage will apply to assignments under \$400,000. Should an assignment over \$400,000 be approved, a 5% retainage will apply.

Q12: Will the City accept a retainage bond in lieu of withholding retainage?

A12: No. A retainage bond will not be accepted in lieu of withholding retainage as specified in Section 00700 Item 14.1.

Q13: Should the twelve questions on the bottom half of Attachment C – Experience of Offeror be answered for every project given some questions may not apply to every project and is “Not Applicable” an acceptable response for an item that is not applicable to the reference project?

A13: Yes. Not Applicable, NA, or N/A can be used where an item is not applicable to the reference project.

Q14: Should the questions on Attachment C – Experience of Offeror be answered in a separate narrative regarding the proposer’s overall experience?

A14: The questions should be answered for each project. A separate narrative about respondents’ overall experience will not be evaluated in lieu of Section 00400JOC Attachment C.

Q15: Will the City allow the use of overall JOC programs for Attachment C?

A15: Offeror may submit work performed on either a project or contract.

Q16: How can we stay within the page limits when there is an issue or discrepancy with the form itself?



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- A16: Please see revise Attachment C and D included in Addendum #1.**
- Q17: Can the eight questions on Attachment D – Experience of Key Personnel be answered using a narrative on Attachment C?**
- A17: Please provide the requested information included in the revised Attachment C and D Forms included in Addendum #1. Reformatting the forms is acceptable but please provide all requested information referenced in Attachments C and D.**
- Q18: Is the Statement of Bidder’s Safety Experience (Section 00410) to be submitted with the original proposal or post-Council award?**
- A18: The Section 00410 Form is to be submitted with the original proposal submission as indicated in Section 00101JOC.**
- Q19: Are Contractors required to use 4Clicks?**
- A19: The City is not requiring you to use 4Clicks. You may use similar software, if available. You must price your proposal using RS Means data.**
- Q20: Are trainees to be hired as interns based on a predetermined length of time?**
- A20: Graduates/trainees from the preconstruction training organizations can be hired in whatever capacity needed, usually in a permanent capacity for the duration of the project/assignment over \$500,000.**
- Q21: Is cost of trainee to be built into proposal or at sole responsibility of Contractor?**
- A21: Any costs associated with trainees are the responsibility of the Contractor.**
- Q22: Is wage rate by classification? Who determines classification?**
- A22: Wage rates and classifications will be in accordance with Section 00830 and the applicable wage rate determination in place when an assignment is issued.**
- Q23: Are there minimum hour per week requirements?**
- A23: There are no minimum hours per week for trainees/graduates hired by the contractor.**
- Q24: Is there a limit to the number and size of files that can be submitted using the eResponse portal?**
- A24: The file submission limit has been increased from 10 files at 20MB each to 15 files at 40MB each.**

ADDENDUM NO. 1

Date: **June 9, 2020**

Solicitation Name: **2020 Job Order Contracting for City Facility Improvements**

Solicitation ID: **CLMB333**

This Addendum forms a part of the Contract and corrects or modifies original Bid Documents, dated April 20, 2020. **Acknowledge receipt of this addendum in space provided on bid form.** Failure to do so may subject bidder to disqualification.

A. Cover Page

- **Delete the following language:**
 - SEALED PROPOSALS DUE: June 11, 2020
 - Suite 1045-C
- **Replace with the following language:**
 - SEALED PROPOSALS DUE: June 25, 2020
 - Suite 1045-B

B. JOC Table of Contents

- **Delete the following:**
JOC Table of Contents (04/14/2020)
- **Replace with the following:**
JOC Table of Contents (06/09/2020)

C. INVITATION FOR PROPOSALS Section 00020JOC

- **Delete the following:**
INVITATION FOR PROPOSALS Section 00020JOC (04/17/2020)
- **Replace with the following:**
INVITATION FOR PROPOSALS Section 00020JOC (06/09/2020)

D. EVALUATION CRITERIA Section 00101JOC

- **Delete the following:**
EVALUATION CRITERIA Section 00101JOC (04/17/2020)
- **Replace with the following:**
EVALUATION CRITERIA Section 00101JOC (06/09/2020)

E. STATEMENT OF EXPERIENCE Section 00400JOC

- **Delete the following:**
STATEMENT OF EXPERIENCE Section 00400JOC – Attachment C (04/14/2020)
- **Replace with the following:**
STATEMENT OF EXPERIENCE Section 00400JOC – Attachment C (06/09/2020)

- **Delete the following:**
STATEMENT OF EXPERIENCE Section 00400JOC – Attachment D (04/14/2020)
- **Replace with the following:**
STATEMENT OF EXPERIENCE Section 00400JOC – Attachment D (06/09/2020)

F. ADD the following Solicitation Documents:

- **PROHIBITED ACTIVITIES – Section 00440 (10/22/19)**
- **NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATE – Section 00630 (10/22/19)**
- **TITLE VI ASSURANCES APPENDIX A – Section 00631 (03/30/2018)**
- **TITLE VI ASSURANCES APPENDIX E – Section 00632 (03/30/2018)**

G. Solicitation ATTACHMENT 1. Submitting Offers online using eResponse

- **Delete the following:**
Solicitation ATTACHMENT 1. Submitting Offers online using eResponse
- **Replace with the following:**
Solicitation ATTACHMENT 1. Submitting Offers online using eResponse

H. COEFFICIENT FORM

- **Delete the following:**
COEFFICIENT FORM (04/03/2020)
- **Replace with the following:**
COEFFICIENT FORM (06/09/2020)

This addendum consists of 35 pages.

Approved by OWNER

END

**COMPETITIVE SEALED PROPOSAL
FOR THE JOB ORDER CONTRACTING PROGRAM
JOC Table of Contents**

**00020JOC: REQUEST FOR PROPOSALS
(06/09/2020)**

1. Overview and Project Information
2. Solicitation Documents
3. Submission of Proposal
4. Vendor Registration and Non-Discrimination
5. MBE/WBE Procurement Program
6. Anticipated Selection Schedule
8. Bonds and Insurance
9. Wage Compliance
10. Contract Time
11. Owner's Rights
12. Pre-Proposal Meeting
13. Service Disabled Veteran Business Enterprise (SDVBE) Program
14. Anti-Lobbying and Procurement
15. Authorized Contact Persons

**00100JOC: INSTRUCTIONS TO OFFERORS
(04/14/2020)**

1. Preparation of Proposals
2. Minimum Wages
3. Performance and Payment Bonds
4. Opening of Proposals
5. Withdrawal of Proposals
6. Rejection of Proposals
7. Submission of Post Proposal Information
8. Release of Information
9. Award and Execution of Contract
10. Protest Procedures
11. Signature Requirements
12. Texas Ethics Commission Interested Parties Disclosure From
13. Partnering

END

**00101JOC: EVALUATION CRITERIA – STANDARD
(04/17/2020)**

00220JOC: GEOTECHNICAL DATA (04/14/2020)

PROPOSAL FORM & SUPPLEMENTS TO PROPOSAL

- 00300JOC: Cost Proposal (04/14/2020)
 00400JOC: Statement of Experience
 Attachment A (04/14/2020)
 Attachment B (04/14/2020)
 Attachment C (06/09/2020)
 Attachment D (06/09/2020)
 00405: Certificate of Non-Suspension or Debarment (03/30/2018)
 00410: Statement of Safety Experience (09/17/2018)
 00440: Prohibited Activities (10/22/19)
 00461: Local Business Presence ID Form (04/14/2020)
 00475: Nonresident Bidder Provisions (08/12/2019)
 00480JOC: Service Disabled Veteran Business Enterprise Acknowledgement (04/14/2020)

AGREEMENT

- 00500JOC: Agreement (04/14/2020)

CERTIFICATES

- 00630: Non-Discrimination and Non-Retaliation Certificate (10/22/19)
 00631: Title VI Assurances Appendix A (03/30/2018)
 00632: Title VI Assurances Appendix E (03/30/2018)

GENERAL CONDITIONS & SUPPLEMENTARY CONDITIONS

- 00700: General Conditions (02/04/2020)
 00810JOC: Supplemental General Conditions (04/14/2020)
 00830: Wage Rates & Payroll Reporting (02/04/2020)
 00840JOC Construction-Ready Training Program Requirements (04/14/2020)
 Appendix 1: Solicitation ATTACHMENT 1. Submitting Offers online using eResponse
 Appendix 2: COEFFICIENT FORM (06/08/2020)
 Appendix 3: MBE/WBE Procurement Program STATEMENT OF RESPONSIBILITY (02/07/2020)

INVITATION FOR PROPOSALS
Section 00020JOC

1. OVERVIEW AND PROJECT INFORMATION

The City of Austin (City), hereafter referred to as Owner, desires to select approximately eight (8) General Contractors on the basis of Competitive Sealed Proposals (CSP) for a Job Order Contracting Program. This solicitation complies with applicable City Policy and state of Texas law, including Texas Government Code Title 10, Subtitle D, Chapter 2269. Owner will select the successful Offerors that offer the best value to the City based on the published Evaluation Criteria and on its final ranking.

The Job Order Contracting Program will consist of base contracts with qualified contractors for the purpose of performing Job Order Assignments on a recurring basis. The Contract will be for an Initial Term of 24 months, with option of 3 possible 12-month terms.

Most Job Order Assignments will be for Contract Amounts up to \$300,000.00. Any Job Order Assignment over \$500,000.00 must be approved by the Austin City Council. The maximum aggregate contract price is \$48,000,000.00 and will be the amount allocated to the overall City of Austin Job Order Contracting Program. While it is anticipated that this amount will be allocated on a roughly proportionate basis between the selected Contractors, there is no guarantee of the number of Job Order Assignments or the dollar value of the assignments. Individual Job Order Assignments will be awarded on a rotational basis; they will not be competed amongst the JOC Contractors.

Below is a summary of information related to this Solicitation. Offerors are cautioned to refer to all other sections of the Solicitation Documents, Clarifications and/or Addenda for further details. Evaluation Criteria are specified in Section 00101JOC.

Owner is requesting Proposals for furnishing all labor, materials, equipment, supervision, incidentals and performing all Work required for the following Project:

Project:	2020 Job Order Contract for City Facility Improvements
Located at:	Various City of Austin Facilities
Solicitation No.:	CLMB333

The Work consists of performing maintenance, repair, alteration, renovation, remediation and/or minor construction of City of Austin facilities. Various trades will consist of, but not limited to building envelope, mechanical systems, electrical systems, plumbing systems, carpentry, masonry, finishes, fixed kitchen or industrial equipment, communications cabling, paving, site drainage, etc. Work locations may include any building, facility, or installation in the City of Austin's real property inventory.

Contractor(s) shall be responsible for providing all labor, materials, tools, instruments, supplies, equipment, transportation, mobilization, insurance, subcontracts, bonds, supervision, management, reports, incidentals, and quality control necessary to perform construction management and construction work for the minor construction, repair, rehabilitation and/or alteration of City facilities. Contractor(s) shall maintain a team capable of carrying a workload of up to ten (10) concurrent assignments actively in the construction phase.

The Job Order Assignments will define the Work by applicable Statements of Scope, Drawings and Specifications, and other details and the Contract Amounts will be determined by applying a Contractor Coefficient to the unit prices contained in the standardized Unit

Proposal Requirements, Contract Forms and Conditions of the Contract

Price Book (UPB) and other criteria described in the Contract Documents. Any individual Job Order Assignments may require the coordination of and performance by multiple trades and disciplines.

The Job Order Assignment Proposal Request will identify individual assignment requirements. The Contractor will attend a project site visit, develop a proposal with a line-item cost estimate, using the UPB via computerized cost estimating system, and submit it to the City for approval. Upon approval of a Job Order Assignment, the City will issue a notice to proceed and the Contractor will provide all materials, labor, tools, equipment, supervision, project management, safety, and quality control to successfully and timely complete the assignment.

The current Job Order Contract, in place since August 2017, has been heavily utilized. Sixty-eight (68) assignments have been executed with \$16,256,504.95 encumbered through February 3, 2020. Additional assignments are being developed, bringing the anticipated number of assignments to ninety-seven (97) with a projected amount of \$21,970,156.26 encumbered by the end of fiscal year 2020. Assignments have covered a large range of project types including: EV charging stations (25); accessibility, safety & code upgrades (13); plumbing & piping (9); pre-fab buildings (7); paving & drainage (7); renovations (6); enclosures & structures (5); fixed equipment (4); HVAC improvements (4); security upgrades (3); landscaping (3); flooring & ceilings (3); window & door upgrades (2); district cooling heat exchangers (2); electrical & lighting (1); demolition & remediation (1); foundation repair (1).

2. **SOLICITATION DOCUMENTS**

Solicitation Documents are obtained through the City's Vendor Connection website, log on www.austintexas.gov/financeonline/vendor_connection/index.cfm.

All addenda and answers to Proposers' questions will also be posted in the attachments section for each solicitation on the City's Vendor Connection website.

3. **SUBMISSION OF PROPOSAL**

The Offeror must either submit one (1) digital/electronic version of the proposal on CD or Flash Drive in a sealed container, or proposals may be submitted electronically via Austin Finance Online (see Appendix 1, Solicitation Attachment No. 1 – Submitting JOC Proposals in Austin Finance Online).

Proposals must be received at the following location or electronically via Austin Finance Online prior to the date and time set forth below:

**ALL PROPOSALS ARE DUE PRIOR TO (Austin time) 3:00 PM on June 25, 2020.
PROPOSALS WILL BE OPENED AT (Austin time) 4:00 PM June 25, 2020.**

Proposal may be mailed or delivered (in person or by Federal Express, Express Mail or other delivery service) using the appropriate address below:

Address for US Mail (If mailed to the physical address, the proposal will be returned unopened)	Address for Hand Delivery, FedEx, UPS or Courier
City of Austin	City of Austin, One Texas Center
Capital Contracting Office	Capital Contracting Office
P. O. Box 1088	505 Barton Springs Road, Suite 1045-B
Austin, Texas 78767-8845	Austin, Texas 78704

NOTE: Proposals must either be received and time stamped in the Capital Contracting Office prior to the Due Date and Time or submitted electronically via Austin Finance Online. It is the responsibility of the Offeror to ensure that their Proposal arrives at the reception desk in the Capital Contracting Office prior to the time and date indicated. Arrival at the City's mailroom, mail terminal, or post office box will not constitute the Proposal arriving on time.

Each proposal must be completed and signed by persons(s) authorized to bind individual, partnership, firm, corporation, or any other legal entity submitting the proposal and shall include the following:

- One copy of Cost Proposal form (Section 00300JOC)
- Acknowledgement of receipt of Addenda issued in spaces provided in Cost Proposal form
- Required information as indicated in the solicitation documents
- One copy of Coefficient Form (Appendix 2) only for responses submitted electronically in Austin Finance Online

Due to the unprecedented event of COVID-19 and to help prevent the further spread, Capital Contracting Office will NOT be conducting an in-person proposal opening. Offerors must either submit their proposals no earlier than 11:00 AM and prior to 3:00 PM on the day proposals are due to the Capital Contracting Office physical location, or must submit proposals electronically via Austin Finance Online prior to 3:00 PM on the day proposals are due.

Offerors may watch the proposal opening online at 4:00 PM the day proposals are due using the following Web link: CCO Web Bid Opening [Click Here](#).

ALL PROPOSALS NOT RECEIVED PRIOR TO THE DATE AND TIME SET FORTH ABOVE WILL NOT BE ACCEPTED FOR CONSIDERATION. The time stamp clock in SUITE 1045B is the time of record and is verified with www.time.gov, the official U.S. time. For proposals submitted electronically via Austin Finance Online, the time of record is the time received in Austin Finance Online.

4. VENDOR REGISTRATION AND NON-DISCRIMINATION

Prime Contractors must be registered with the OWNER prior to submitting a proposal electronically via Austin Finance Online. All Subcontractors must be registered with the OWNER prior to execution of a contract. Prime Contractors are responsible for ensuring that their Subcontractors are registered as vendors with the City of Austin. Registration can be done through the OWNER's on-line Vendor Registration system. Log onto and follow directions: <https://www.ci.austin.tx.us/vss/Advantage>.

The City of Austin, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all Proposers that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit Proposals in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

5. MBE/WBE PROCUREMENT PROGRAM

All City procurements are subject to the City's Minority-Owned and Women-Owned Business Enterprise Procurement Program found at Chapter 2-9-A of the City Code, as amended. The Program provides Minority-Owned and Women-Owned Business Enterprises (MBEs/WBEs) or

Proposal Requirements, Contract Forms and Conditions of the Contract

Disadvantaged Business Enterprises (DBEs) full opportunity to participate in all City contracts. No subcontracting goals have been established for this solicitation. Goals for MBE/WBE or DBE participation will be established for each individual Job Order Assignment. Information on achieving the goals or documenting good faith efforts to achieve the goals will be contained in the MBE/WBE Procurement Program Package or DBE Procurement Program Package attached to each individual Job Order Assignment. When goals are established, Proposers are required to complete and return the MBE/WBE or DBE Compliance Plan with their Job Order Assignment Proposals.

6. ANTICIPATED SELECTION SCHEDULE

The evaluation, ranking, and negotiations for selection of the prime contractor for this project is anticipated to be completed and submitted to the Austin City Council for action by August 27, 2020.

If Owner is unable to negotiate a satisfactory contract with a top-ranked firm within **45** calendar days, Owner will formally end negotiations with that firm in writing and may proceed to the next offeror in the order of the selection ranking, until a contract is reached or all negotiations end. The Owner, in its complete discretion, may elect to extend the time for negotiations with any firm for an additional period of time.

7. BONDS AND INSURANCE

Performance and payment bonds when required shall be executed on forms furnished by OWNER. Performance bonds will be required for Job Order Assignments of \$100,000 or greater. Payment bonds will be required for Job Order Assignments of \$50,000 or greater. No bonds will be required on Job Order Assignments under \$50,000. Each bond shall be issued in an amount of one hundred percent (100%) of the Job Order Assignment by a solvent corporate surety company authorized to do business in the State of Texas, and shall meet any other requirements established by law or by OWNER pursuant to applicable law.

Minimum insurance requirements are specified in Section 00810JOC, Supplemental General Conditions. If any Job Order Assignment has insurance requirements over the minimum stated in Section 00810JOC, the additional premium shall be reimbursed at cost for the time spent on the specific assignment.

8. WAGE COMPLIANCE

Minimum wage rates have been established and are specified in Section 00830, Wage Rates and Payroll Reporting. Prevailing wage rates (as specified in Sections 00830BC and 00830HH) shall be applied for the rates current at the time of execution of the Section 00500JOC Agreement for each Job Order Assignment.

9. CONTRACT TIME

The Contract will be for an Initial Term of 24 months, with option of 3 possible 12-month terms. Extension of the Contract will be at the mutual agreement of both the OWNER and the CONTRACTOR. If the CONTRACTOR chooses not to renew, a hold over extension of the Contract term for up to 120 calendar days may be implemented by the OWNER to allow time for re-soliciting. The OWNER reserves the right not to offer an extension. Job Order Assignments may be issued at any time during the term of the Contract. Job Order Assignments not completed by the expiration date of the Contract are subject to the terms and conditions of the Contract which will continue in full force and effect.

Proposal Requirements, Contract Forms and Conditions of the Contract

Contract Time is of the essence and all Work on each Job Order Assignment shall be substantially completed by the date specified by the OWNER in the Notice to Proceed letter for each specific assignment.

Final completion shall be achieved within thirty (30) Calendar Days after substantial completion.

Liquidated damages for failure to substantially complete the work and failure to achieve final completion within thirty (30) Calendar Days after substantial completion will be assessed on each Job Order Assignment and will be established in the 00500 Assignment Agreement as applicable.

10. OWNER'S RIGHTS

OWNER reserves the right to reject any or all Proposals and to waive any minor informality in any Proposal or solicitation procedure (a minor informality is one that does not affect the competitiveness of the Proposal).

11. PRE-PROPOSAL MEETING

Due to the unprecedented event of COVID-19 and to help prevent the further spread, Capital Contracting Office will be conducting a Pre-Proposal webinar. This **non-mandatory** Pre-Proposal Conference will be held on May 6, 2020, 9:00AM (Austin time). Proposers can participate in the webinar and teleconference by following this link: <https://teams.microsoft.com/l/meetup-join/19%3ameeting_N2Y3YjFiN2ItNGYzNy00ODRILWFmMjktNjQ4ZTCxZmZhMGU4%40thread.v2/0?context=%7b%22id%22%3a%225c5e19f6-a6ab-4b45-b1d0-be4608a9a67f%22%2c%22oid%22%3a%22a99d762b-6ce8-454c-a9e5-029b0b08ac42%22%7d> or by calling +1 512-831-7858 United States, Austin (Toll), Conference ID: 609 324 143#.

Attendance is not mandatory unless otherwise stated. Proposers must attend any mandatory Pre-Proposal Conference and are encouraged to attend any non-mandatory Pre-Proposal Conference to ensure their understanding of OWNER'S Proposal and contracting requirements, particularly MBE/WBE or DBE Procurement Program requirements. If the Pre-Proposal Conference is mandatory the Proposer must arrive and sign-in within fifteen (15) minutes of the scheduled start time of the meeting, otherwise the Proposer will not be allowed to submit a Proposal for the project.

A 2020 Job Order Contracting Event was held on February 12, 2020 and the presented materials are available on the internet at <http://www.austintexas.gov/department/outreach-and-events>. Topics presented include: Job Order Contracting Overview; Wage Compliance Program for Job Order Contracts; Setting a Coefficient for Job Order Contracting; Small & Minority Business Resource Department 2020 Job Order Contracting Program Requirements. The direct link to the presentation slides is: http://www.austintexas.gov/sites/default/files/files/2020_JOC_Event_Presentation.pdf. The direct link to the event recording is: <http://austintx.swagit.com/play/02132020-1466>.

12. SERVICE DISABLED VETERAN BUSINESS ENTERPRISE (SDVBE) PROGRAM

This Contract is subject to the provisions of the City's Interim Service-Disabled Veteran Owned Business Enterprise (SDVBE) Program as established by City Council Resolution No. 20160303-016. **See the Service-Disabled Veteran Owned Business Enterprise Contractor Certification Form 00480 included in the Solicitation.** If a respondent is a SDVBE, and wants to participate in the Program, the City requires a certification

Proposal Requirements, Contract Forms and Conditions of the Contract

with their Offer certifying that they are State Historically Underutilized Business (HUB) Service-Disabled Veteran Owned Business.

13. ANTI-LOBBYING AND PROCUREMENT

On June 14, 2018, the Austin City Council adopted Ordinance No. 20180614-056 replacing Chapter 2.7, Article 6 of the City Code relating to Anti-Lobbying and Procurement. The policy defined in this Code applies to Solicitations for goods and/or services requiring City Council approval under City Charter Article VII, Section 15 (Purchase Procedures). The City requires Offerors submitting Offers on this Solicitation to certify that the Offeror has not in any way directly or indirectly had communication restricted in the ordinance section 2-7-104 during the No-Lobbying Period as defined in the Ordinance. The text of the City Ordinance is posted on the Internet at:

https://assets.austintexas.gov/purchase/downloads/New_ALO_Ordinance_No_20180614-056.pdf

14. AUTHORIZED CONTACT PERSONS

The persons listed below may be contacted for information regarding the Invitation for Proposal.

CAPITAL CONTRACTING OFFICE CONTACT: Kevin Benson phone 512-974-6203, email kevin.benson@austintexas.gov

SMALL & MINORITY BUSINESS RESOURCES DEPARTMENT CONTACT: Jessica Oberembt, phone 512-974-7256, email jessica.oberembt@austintexas.gov

END

EVALUATION CRITERIA

Section 00101JOC

Overview: This procurement is being issued in compliance with applicable City of Austin Policy for selecting and awarding facility (building) projects by a Request for Competitive Sealed Proposal method set forth in Texas Government Code 2269. **The City anticipates selecting approximately eight (8) Offerors that offer the "best value" to the City based on the evaluation of the following criteria.**

Criteria Item #	Title	Max Points
1	MBE/ WBE Procurement Program Statement of Responsibility	Y/N
2	Offeror's Financial Capability	Y/N
3	Safety Record	Y/N
4	Acceptable Documentation	Y/N
		Max Points
5	Price	20
6	Prime Firm's Comparable Experience	20
7	Past Performance on City of Austin Issues	10
8	Key Personnel Comparable Experience	20
9	Organizational Structure and Business Practices	15
10	Quality of Goods and Services by Sustainability	10
11	Sample Project	20
	SUBTOTAL	115
12	Service Disabled Veteran Business Enterprise (SDVBE)	3.45

Item 1: MBE/WBE Procurement Program Statement of Responsibility Yes or No

There are no goals established for the solicitation. MBE/WBE participation goals will be set for each individual Job Order Assignment. For the solicitation, the Offeror must complete a MBE/WBE Procurement Program Statement of Responsibility (Appendix 3) acknowledging their intent to comply with the City's MBE/WBE participation requirements or to make GFE to meet the goals established for each Job Order Assignment.

Offeror must submit:

MBE/WBE Procurement Program Statement of Responsibility

The Offeror must either submit one (1) digital/electronic version on CD or Flash Drive in a sealed container, or electronically via Austin Finance Online. The Offeror is cautioned to refer to all other sections of the Solicitation Documents, Clarifications and/or Addenda for further details.

Item 2: Offeror's Financial Capability Yes or No

The Offeror must provide evidence of financial capability and stability. Offeror's financial capability must be appropriate to the size and scope of this Project.

Offeror must submit:

Letter from Offeror's Surety stating Offeror's ability to acquire bonding in the full amount of the project and the maximum limits to be applied if applicable.

Item 3: Safety Record **Yes or No**

Offeror must submit safety experience information. The following factors may be considered, but are not limited to: Experience Modifier Rate, Lost Time Incident Rate, Total Recordable Case Rate, Safety Program, and OSHA Citations.

If based on the entirety of the Offeror's safety record, industry standards, and the risks associated with the current Project, the Offeror is found to have an unacceptable safety record the Offeror's response may be considered non-responsive and may not be considered for award.

Offeror must submit:

- Section 00410 – Statement of Offeror's Safety Experience

Item 4: Acceptable Documentation **Yes or No**

Submit the following documents, which are in addition to documents required in the other Evaluation Items.

- STATEMENT OF EXPERIENCE Section 00400JOC, Attachment A – OFFEROR'S INFORMATION (04/14/2020)
- STATEMENT OF EXPERIENCE Section 00400JOC, Attachment B – AUTHENTICATION OF SUBMITTAL (04/14/2020)
- CERTIFICATE OF NON-SUSPENSION OR DEBARMENT Section 00405 (03/30/18)
- PROHIBITED ACTIVITIES Section 00440 (10/22/19)
- NON-DISCRIMINATION AND NON-RETALITATION CERTIFICATE – Section 00630 (10/22/19)
- TITLE VI APPENDIX A – Section 00631 (03/30/18)
- TITLE VI APPENDIX E – Section 00632 (03/30/18)

Item 5: Price **20 points max**

Offeror must submit:

- Section 00300JOC, Proposal form
- Supporting calculations for each of the Coefficients

Offeror must submit Coefficients to cover overhead, profit, and any other costs that are not included in the Unit Price Book (UPB), which for the purposes of this contract is the R.S. Means Master Composite Cost Data, including all updates. The Offeror's Coefficients are numerical values, to three (3) decimal places, that the Offeror proposes as a multiplier to the UPB, after the Austin, Texas City Cost Index Adjustment.

For example, if the labor unit price for painting 1 square foot of gypsum board from the R.S. Means bare labor cost, after city cost adjustment, is \$15.00 and the coefficient is 0.85, the unit labor price for the item would be \$12.75 ($\$15.00 \times 0.85 = \12.75). The coefficient shall be the net decrease from or

increase to the UPB "Bare Total" column.

Offerors are required to submit Coefficients Standard Working Hours (7:00am-6:00pm Monday-Friday), Non-Standard Working Hours (6:00pm-7:00am Monday-Friday, Weekends, and Holidays), and Non-Priced Items as required in the Cost Proposal Form, Section 00300JOC.

Pre-Priced Items (Unit Price Book):

Standard Working Hours Coefficient (10 Points) - The lowest coefficient for Standard Working Hours receives 10 points, with others receiving a pro rata percentage of 10 points based on a percentage comparison with the lowest coefficient proposed for Standard Working Hours.

Non-Standard Working Hours Coefficient (5 Points) - The lowest coefficient for Non-Standard Working Hours receives 5 points, with others receiving a pro rata percentage of 5 points based on a percentage comparison with the lowest coefficient proposed for Non-Standard Working Hours.

Non-Pre-Priced Items:

Non-Pre-Priced Item Coefficient (5 Points) - The lowest coefficient for Non-Priced Items receives 5 points, with others receiving a pro rata percentage of 5 points based on a percentage comparison with the lowest coefficient proposed for Non-Priced Items.

The lowest Standard Working Hours Coefficient receives ten (10) points, with others receiving a percentage of points based on a percentage comparison with the lowest coefficient. For illustrative purposes, if the lowest Standard Working Hours Coefficient is 0.850, that price is weighted "1.000" ($0.850/0.850 = 1.000$) and receives 10.00 points ($1.000 \times 10 = 10.00$).

A coefficient of 1.000 for the same proposal would be weighted "0.850" ($0.850/1.000 = 0.850$) and receive 8.5 points ($0.850 \times 10 = 8.5$).

Likewise, a coefficient of 1.200 would be weighted at "0.708" ($0.850/1.200 = 0.708$) and receive 7.08 points ($0.708 \times 10 = 7.08$).

Item 6: Prime Contractor's Comparable Experience 20 points max

List and describe prime contractor's construction experience for five (5) successfully completed projects within the past ten (10) years of comparable size, scope and complexity to the Work described in the Contract Documents as requested below.

TECHNICAL CONSTRUCTION/EXPERIENCE REQUIRED

- Oversight and management of multiple subcontractors.
- Oversight and management of at least ten (10) concurrent projects actively in the construction phase while maintaining a critical path schedule on all projects.
- Oversight and management of: plumbing, masonry, carpentry, concrete, landscaping, HVAC, electrical, demolition, remediation, historical preservation, site/civil, paving and drainage, roofing/building envelope, interior finishes, prefabricated buildings.
- Experience working in an environment that operates 24 hours a day/7 days a week with personnel living and working in the facility.

- Experience in adapting to changing site conditions and projects.

Offeror must submit:

- Section 00400JOC, Attachment C, Experience of Offeror (one page per project)

Item 7: Past Performance on City of Austin Projects 10 points max

Offerors who have had Contractor Performance Evaluations completed for previous projects with the City of Austin, and have had **no issues**, will receive an average of their five year scores. Offerors who have had **no previous projects** with the City of Austin will receive an average of all the contractor's performance evaluation five year scores.

Item 8: Key Personnel Comparable Experience 20 points max

List and describe a minimum of five (5) successfully completed projects within the past ten (10) years of comparable size, scope and complexity to the Work described in the Contract Documents for each Key Personnel of the Prime Contractor.

Key personnel to be evaluated are:

- Project Manager (7 points)
- Project Superintendent (7 points)
- Project Estimator (6 points)

Offeror must submit:

- Section 00400JOC, Attachment D – One (1) page per project per key personnel.
- Resumes of Key Personnel – One (1) page per individual.
- Letters of commitment that the named individuals will be those working on the project and the expected percentage of the project onsite. – One (1) page per individual.

Item 9: Organizational Structure and Business Practices 15 points max

Offeror must submit:

- Organizational Chart (2 points)** - Provide a detailed explanation and organizational chart which **specifies project leadership** and reporting responsibilities of key personnel within your team including communications with the Project Architect/Engineer and the Owner's project manager. (Organizational Chart may be provided on legal or ledger-size paper.) One (1) page limit for organizational chart and one (1) page limit for explanation.
- Assignment Capacity (4 points)** – Describe your team's capacity to effectively maintain at least ten (10) concurrent assignments actively in the construction phase without negative impact to the delivery schedules. Describe the strategies that will be used to maintain that capacity throughout the duration of the contract. Two (2) page limit.
- Schedule Strategies (2 points)** - Provide potential strategies that can be used in the proposal to minimize delays, maximize value of project, avoid unknowns, include additional MBE/WBE firms, and areas for possible time

savings. One (1) page limit.

- Work Experience with Austin-Area Issues (2 points)** - Describe your team's experience with requirements of the City of Austin code requirements, LEED and energy efficiency initiatives, transportation management include R.O.W closure and coordination/permits. One (1) page limit.
- Outreach Practices (5 points)** - Describe your company's business practices and internal policies on providing opportunities for MBE/WBEs, DBEs, HUBs, and other historically underutilized businesses. Explain all efforts to build a sound and stable partnership with multiple MBE/WBEs in each trade to improve capacity and participation. Explain all partnering or mentoring activities performed to assist the subcontractors in improving their business. This could include areas such as improving written proposals, better cost estimating, and improving the financial records. Please include the methodology on how the determination of improvement is made. Two (2) page limit.

Item 10: Quality of Goods and Services by Sustainability 10 points max

- Sustainable Practices (5 points maximum)** - Describe your company's business practices and internal policies on use of recycled, reclaimed, or refurbished construction materials, and for water and energy conservation, reducing greenhouse gas emissions, and purchasing environmentally preferable products. Two (2) page limit.
- Local Business Presence (5 points maximum)** - The City seeks opportunities for businesses with a Local Business Presence in the Austin Corporate City Limits to participate on City contracts thereby providing a minimal environmental footprint through reduced transportation time and costs associated with Project delivery. A firm is considered to have a Local Business Presence if the firm is headquartered in the Austin Corporate City Limits, or has a branch office located in the Austin Corporate City Limits in operation for the last five (5) years. The City defines headquarters as the administrative center where most of the important functions and full responsibility for managing and coordinating the business activities of the firm are located. The City defines branch office as a smaller, remotely located office that is separate from a firm's headquarters that offers the services requested and required under this solicitation.

Offeror must submit:

- Section 00461CCO, Local Business Presence ID Form

Item 11: Sample Project 20 points max

The sample project consists of two fictional offices, which require renovation. There will be no site visit of these offices, and no drawings or specifications exist beyond what is stated below. The Offeror is expected to prepare a line item estimate using the unit price book, and present it with in a preliminary proposal, which will consist of: a preliminary proposal cover letter, line item estimate, and a sample schedule of construction. Due to no site visit, the Offeror is expected to use assumptions, clarifications, exceptions and exclusions within their preliminary proposal cover letter in order in assist with the narrative of the scope of work as it was priced using the unit price book. Line items for Prime Contractor work will use "Left Hand RSMeans" method (from the bare cost column) of the unit price book and line items for

Subcontractor work will use "Right Hand RSMeans" method (from the total including O&P column of the unit price book), modified by the 2019 City Cost Index for Austin Texas (82.50%), and the Offerors coefficient of 1.100 for both price and non-priced line items. Line items in the estimate must have notations for which pricing methodology is utilized and whether they are for Prime Contractor or Subcontractor work. Division 1 line items are prohibited and no bonds are required.

This is the information provided for the Sample Project:

Project Title: Remodel Offices, 1045A and 1045B

Project Number: CLMBJOC2020 – 1111

Project Manager: Rick Selin

Location: One Texas Center, Suite 1045, 505 Barton Springs Road, Austin, Texas

General Conditions

- The contractor shall provide all labor, equipment, testing, transportation, and supervision to accomplish the following in accordance with requirements contained in the original contract specifications.
- The contractor shall submit all materials prior to using and provide all required red-line drawings, training, O&M manuals, and/or documentation to the project manager prior to final inspection.
- Only items incorporated into this document from the accepted proposal shall be considered part of this statement of work.
- The point of contact for this project is Rick Selin.
- Work will be performed during normal standard working hours.
- Room will be empty for contractor to work in; modular furniture will be removed and reinstalled by others.
- Material submittals will be required for flooring, ceiling grid and tiles and paint.
- There is no lead, asbestos or hazardous materials on this project site.

Scope of Work

Room 1045A. Room measurements are 50' x 50' with 12' high ceilings.

- **Demolition:** Dumpster will be placed 94' outside of the building on southeast end parking lot. Remove existing 32-ounce nylon carpet, 4" vinyl wall base and corners, and 2' x 4' ceiling grid and tiles. Remove 15 each duplex receptacle and 2 single pole light switch plates. Assume 20% of flooring will require scarifying. [Subcontractor]
- **Remove and Reinstall:** Remove and reinstall twelve 2' x 4' light fixtures and six 2' x 2' T bar diffusers [Subcontractor]; two audio speakers [Prime Contractor].
- **Finishes:** Assume 20% of flooring will require patching and leveling. Furnish and install 32-ounce nylon carpet with stain fiber additive and bold concept border and pattern, 4" vinyl wall base and corners and 2' x 2' ceiling grid with tegular tiles. Paint walls, doors, door frame, trim and windows with two coats zero VOC latex. [Prime Contractor]
- **Electrical:** Furnish and install 15 each stainless-steel duplex receptacle and 2 single pole light switch plates. [Prime Contractor]

Room 1045B. Room measurements are 50' x 25' with 12' high ceilings.

- **Demolition:** Dumpster will be placed 94' outside of the building on southeast end parking lot. Remove existing 32-ounce nylon carpet, 4" vinyl wall base and corners, and 2' x 4' ceiling grid and tiles. Remove 15 each

duplex receptacle and 2 single pole light switch plates. Assume 20% of flooring will require scarifying. [Subcontractor]

- Remove and Reinstall: Remove and reinstall ten 2' x 4' light fixtures and four 2' x 2' T bar diffusers [Subcontractor]; one audio speaker [Prime Contractor].
- Finishes: Assume 20% of flooring will require patching and leveling. Furnish and install 32-ounce nylon carpet with stain fiber additive and bold concept border and pattern, 4" vinyl wall base and corners and 2' x 2' ceiling grid with tegular tiles. Paint walls, doors, door frame, trim and windows with two coats zero VOC latex. Provide and install 10 each custom-special order ½" stainless steel widgets on the interior walls. [Prime Contractor]
- Electrical: Furnish and install 15 each stainless-steel duplex receptacle and 2 single pole light switch plates. [Prime Contractor]

Offeror must submit:

- Proposal Letter
- R.S. Means Line Item Estimate
- Proposed Construction Schedule

Item 12: Service Disabled Veteran Business Enterprise (SDVBE) 3.45 points max

This Contract is subject to the provisions of the City's Interim Service-Disabled Veteran Owned Business Enterprise (SDVBE) Program as established by City Council Resolution No. 20160303-016. If a respondent is a SDVBE, the City requires a certification with their Offer certifying that they are State Historically Underutilized Business (HUB) Service-Disabled Veteran Owned Businesses.

The City seeks opportunities for SDVBE certified firms to participate on City contracts. A firm (Prime Contractor) is considered an SDVBE if the firm is certified by the State of Texas, Historically Underutilized Business (HUB) Program with the State Comptroller's Office. Firms that meet this qualification shall receive a 3% preference of the total possible evaluation points toward their formal proposal, excluding interview points. (See Section 00101JOC, Evaluation Criteria – Overview for "Total Possible Points") The SDVBE preference only applies to Prime Contractors responding to Request for Proposals (RFP), not any subcontractors utilized.

NOTE: The maximum SDVBE additional points of 3% of the total evaluated points, for certified firms will only pertain to the solicitation Evaluation Criteria used to determine the "best-value" or most-qualified respondent, as associated only to "Step One" that includes initial review, evaluation and ranking of proposals. The SDVBE 3% will not be added to any additional scores or evaluations resulting from Interviews or other subsequent evaluation processes.

Offeror must submit:

- Section 00480JOC, Service-Disabled Veteran Owned Business Enterprise (SDVBE) Program Acknowledgement form
- Copy of Certification from U. S. Department of Veteran Affairs, stating Service-Disabled Veteran status

END

STATEMENT OF EXPERIENCE
Section 00400JOC

Attachment C

(Criteria Item 6)

EXPERIENCE OF OFFEROR

DUPLICATE FORM AS NECESSARY - ONE PAGE PER PROJECT

PROJECT OWNER/CLIENT		POC	
PHONE		EMAIL	
ADDRESS			

PROJECT NAME/LOCATION:			
DESCRIBE SCOPE OF WORK:			
EXPLAIN COMPARABLE SIZE, SCOPE AND COMPLEXITY TO THE WORK DESCRIBED IN SECTION 00020, INVITATION FOR PROPOSALS, OVERVIEW AND PROJECT INFORMATION:			
EXPLAIN ROLE OF PRIME FIRM IN THE PROJECT:			
DESCRIBE MBE/WBE, HUB, AND SMALL BUSINESS REQUIREMENTS AND YOUR PARTICIPATION:			
INITIAL CONTRACT AMOUNT:	\$	FINAL CONTRACT AMOUNT:	\$
SUBSTANTIAL COMPLETION DATE:		ACTUAL COMPLETION DATE:	

STATEMENT OF EXPERIENCE
Section 00400JOC

Attachment D
(Criteria Item 8)
EXPERIENCE OF KEY PERSONNEL

(Project Manager, Project Superintendent, Project Estimator)

DUPLICATE FORM AS NECESSARY - ONE PAGE PER PROJECT, PER INDIVIDUAL

NAME OF KEY PERSONNEL		TITLE	
COMPANY / EMPLOYER		PHONE	

PROJECT OWNER/CLIENT		POC	
PHONE		EMAIL	
ADDRESS			

PROJECT NAME/LOCATION:			
DESCRIBE SCOPE OF WORK:			
EXPLAIN COMPARABLE SIZE, SCOPE AND COMPLEXITY TO THE WORK DESCRIBED IN SECTION 00020, INVITATION FOR PROPOSALS, OVERVIEW AND PROJECT INFORMATION:			
EXPLAIN WORK PERFORMED BY INDIVIDUAL:			
INITIAL CONTRACT AMOUNT:	\$	FINAL CONTRACT AMOUNT:	\$
SUBSTANTIAL COMPLETION DATE:		ACTUAL COMPLETION DATE:	

**NON-COLLUSION, NON-CONFLICT OF INTEREST
AND ANTI-LOBBYING**

State of Texas

County of Travis

The term "**Bidder**", as used herein, includes the individual or business entity submitting the bid includes the directors, officers, partners, managers, members, principals, owners, agents, representatives, employees, other parties in interest of the Bidder, and anyone or any entity acting for or on behalf of the Bidder, including a subcontractor in connection with this bid.

The terms "**City**" and "**Owner**" are synonymous.

1. **Anti-Collusion Statement.** The Bidder has not and will not in any way directly or indirectly:
 - a. colluded, conspired, or agreed with any other person, firm, corporation, bidder or potential bidder to the amount of this bid or the terms or conditions of this bid.
 - b. paid or agreed to pay any other person, firm, corporation bidder or potential bidder any money or anything of value in return for assistance in procuring or attempting to procure a contract or in return for establishing the prices in the attached bid or the bid of any other bidder.
2. **Preparation of Invitation for Bid and Contract Documents.** The Bidder has not received any compensation or a promise of compensation for participating in the preparation or development of the underlying bid or contract documents., In addition, the Bidder has not otherwise participated in the preparation or development of the underlying bid or contract documents, except to the extent of any comments or questions and responses in the bidding process, which are available to all bidders, so as to have an unfair advantage over other bidders, provided that the Bidder may have provided relevant product or process information to a consultant in the normal course of its business.
3. **Participation in Decision Making Process.** The Bidder has not participated in the evaluation of bids or proposals or other decision making process for this solicitation, and, if Bidder is awarded a contract hereunder, no individual, agent, representative, consultant or sub contractor or consultant associated with Bidder, who may have been involved in the evaluation or other decision making process for this solicitation, will have any direct or indirect financial interest in the Contract, provided that the Bidder may have provided relevant product or process information to a consultant in the normal course of its business.
4. **Present Knowledge.** Bidder is not presently aware of any potential or actual conflicts of interest regarding this solicitation, which either enabled Bidder to obtain an advantage over other bidders or would prevent Bidder from advancing the best interests of OWNER in the course of the performance of the Contract.

Bidding Requirements, Contract Forms and Conditions of the Contract

5. **City Code.** As provided in Sections 2-7-61 through 2-7-65 of the City Code, no individual with a substantial interest in Bidder is a City official or employee or is related to any City official or employee within the first or second degree of consanguinity or affinity.
6. **Chapter 176 Conflict of Interest Disclosure.** In accordance with Chapter 176 of the Texas Local Government Code, the Bidder:
 - a. does not have an employment or other business relationship with any local government officer of OWNER or a family member of that officer that results in the officer or family member receiving taxable income;
 - b. has not given a local government officer of OWNER one or more gifts, other than gifts of food lodging transportation or entertainment accepted as a guest, that have an aggregate value of more than \$100 in the twelve-month period preceding the date the officer becomes aware of the execution of the Contract or that OWNER is considering doing business with the Bidder; and
 - c. does not have a family relationship with a local government officer of OWNER in the third degree of consanguinity or the second degree of affinity.

As required by Chapter 176, Bidder must file the Conflicts of Interest Questionnaire with the Purchasing Department no later than the seventh business day after the commencement of contract discussions or negotiations with the City or the submission of a Bid, response to a request for proposals, or other writing related to a potential contract with OWNER. The questionnaire must be updated not later than the seventh day after the date of an event that would make a statement in the questionnaire inaccurate or incomplete. There are statutory penalties for failure to comply with Chapter 176.

7. **Anti-Lobbying Ordinance.** On June 14, 2018, the Austin City Council adopted Ordinance No. 20180614-056 replacing Chapter 2.7, Article 6 of the City Code relating to Anti-Lobbying and Procurement. The policy defined in this Code applies to Solicitations for goods and/or services requiring City Council approval under City Charter Article VII, Section 15 (Purchase Procedures). The City requires Offerors submitting Offers on this Solicitation to certify that the Offeror has not in any way directly or indirectly had communication restricted in the ordinance section 2-7-104 during the No-Lobbying Period as defined in the Ordinance. The text of the City Ordinance is included in Section 00100 of this solicitation and is also posted on the Internet at:

https://assets.austintexas.gov/purchase/downloads/New_ALO_Ordinance_No_20180614-056.pdf

8. **Texas Government Code Chapter 2270.** The City is prohibited from contracting with any "company", for goods and services unless the following verification is included in this contract.

If CONTRACTOR qualifies as a "company", then CONTRACTOR verifies that it: (a) does not "boycott Israel"; and (b) will not "boycott Israel" during the term of this contract. For the purposes of this Section only, the terms "company" and "boycott Israel" have the meaning assigned by Texas Government Code Section 2270.001. CONTRACTOR's obligations under this Section, if any exist, will automatically cease or be reduced to the extent that the requirements of Texas Government Code Chapter 2270 are subsequently repealed, reduced, or declared unenforceable or invalid in whole or in part by any court or tribunal of competent jurisdiction or by the Texas Attorney General, without any further impact on the validity or continuity of this contract.

Bidding Requirements, Contract Forms and Conditions of the Contract

NOTE: THE ABOVE STATE LAW HAS RECENTLY BEEN TEMPORARILY ENJOINED. HOWEVER, IF THIS INJUNCTION IS LIFTED OR STAYED BY A COURT OR OTHER ENTITY OF COMPETENT JURISDICTION, THIS SECTION WILL BE AN ENFORCEABLE AND REQUIRED TERM OF YOUR CONTRACT WITH THE CITY. IF YOU DISAGREE WITH THE ABOVE PROVISION OF THE CONTRACT, PLEASE STRIKE THROUGH IT OR INDICATE YOUR OBJECTION ON THIS PAGE. YOUR BID WILL NOT BE AFFECTED BY STRIKING THROUGH THIS PROVISION AT THIS TIME. STRIKING THROUGH THE PROVISION OR STATING YOUR OBJECTION TO IT WILL NOT CAUSE THE CITY TO REJECT YOUR BID.

If the Bidder cannot affirmatively swear and subscribe to the forgoing statements, the Bidder shall provide a detailed written explanation on separate pages to be included with Bid.

END

NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATE

Section 00630

**City of Austin, Texas
Equal Employment/Fair Housing Office**

To: City of Austin, Texas, ("OWNER")

Our firm conforms to the Code of the City of Austin Section 5-4-2 as reiterated below:

Chapter 5-4. Discrimination in Employment by City Contractors.

Sec. 4-2 Discriminatory Employment Practices Prohibited. (B) As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations and agrees:

- (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter. Such affirmative action shall include, but not be limited to: all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising; selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by OWNER setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, veteran status, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with OWNER's Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of said Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require compliance with provisions of this chapter by all subcontractors having fifteen or more employees who hold any subcontract providing for expenditure of \$2,000.00 or more in connection with any contract with OWNER subject to the terms of this chapter.

Bidding Requirements, Contract Forms and Conditions of the Contract

For the purposes of this Bid and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Nondiscrimination and Non-Retaliation Policy as set forth below.

City of Austin

Minimum Standard Non-Discrimination and Non-Retaliation in Employment Policy

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination and non-retaliation employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code as set forth above and the City's Non-Retaliation Policy, as the Contractor's Non-Discrimination and Non-Retaliation Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

*UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE A COPY TO THE CITY OF THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICY ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICY, AS SET FORTH HEREIN, **OR** THIS NON-DISCRIMINATION AND NON-RETALIATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES (THE FORM OF WHICH HAS BEEN APPROVED BY THE CITY'S EQUAL EMPLOYMENT/FAIR HOUSING OFFICE), WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.*

(<http://austintexas.gov/page/bid-docs>).

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4.

Bidding Requirements, Contract Forms and Conditions of the Contract

Term:

The Contractor agrees that this Section 00630 Non-Discrimination and Non-Retaliation Certificate or the Contractor's separate conforming policy, which the Contractor has executed and filed with the Owner, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payments, the Contractor's Non-Discrimination Policy will automatically renew from year-to-year for the term of the underlying Contract.

END

Solicitation Number: _____ (to be filled in by Contractor)

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

1. Compliance with Regulations: The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, the Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. Nondiscrimination: The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate either directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 C.F.R. part 21.
3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by the contract for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.
4. Information and Reports: The contractor shall provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its book, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor will so certify to the Recipient, or the Federal Highway Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of the contractor's noncompliance with the Nondiscrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
 - (a) withholding of payments to the contractor under the contract until the contractor complies, and or
 - (b) cancelling, terminating or suspending a contract, in whole or in part.
6. Incorporation of Provisions: The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, that if a

Bidding Requirements, Contract Forms and Conditions of the Contract

contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

(Source: DOT 1050.2A, Updated DOT Standard Title VI Assurances and Non-Discrimination Provisions 10/22/2013. Must be inserted into every contract/agreement regardless of funding sources.)

Contractor's full name and entity status:

(Name/Signature of Authorized Official)

Title

Date

END

TITLE VI ASSURANCES APPENDIX E

Section 00632

Solicitation Number: _____ (to be filled in by Contractor)

During the performance of this contract, the contractor (hereinafter includes consultants), for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

Pertinent Nondiscrimination Authorities:

1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 C.F.R. Part 21.
2. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
3. Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
4. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 C.F.R. Part 27;
5. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
6. Airport and Airway Improvement Act of 1982, (49 U.S.C. § 4 71, Section 4 7123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
7. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not);
8. Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
9. The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
10. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

Bidding Requirements, Contract Forms and Conditions of the Contract

11. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP).
12. To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
13. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

(Source: DOT 1050.2A, Updated DOT Standard Title VI Assurances and Non-Discrimination Provisions 10/22/2013. Must be inserted into every contract/agreement regardless of funding sources.)

Contractor's full name and entity status:

(Name/Signature of Authorized Official)

Title

Date

END



Solicitation ATTACHMENT 1

Solicitation No.

ATTACHMENT 1. Submitting Offers online using eResponse.

1. **Create a Response.** Find the Solicitation you wish to respond to in Austin Finance Online (AFO), located at: <https://www.austintexas.gov/financeonline/finance/>. If the Solicitation includes the “eResponse” function, it will have a “My Response” section in the Solicitation’s Detail page. Click on “Create Response” to start a Response (Fig. 1).

SOLICITATION DETAILS

SOLICITATION DETAILS [Subscribe](#) [Print PDF](#) [x](#)

Type: Invitation For Bids (IFB)
Status: Open
Solicitation Number: IFB 7400 TEST9884
Description: TEST SOLICITATION 15/16
Summary: This solicitation is for testing purposes only.

My Response

To begin creating a Response to this Solicitation, click the "Create Response" button below.

See the Solicitation documents in the Attachments section below for further instructions on developing and submitting your Response.

[Create Response](#)

(Fig.1)

- a. Offerors must be logged into AFO in order to create, edit or submit a Response.
- b. If you click on “Create Response” but you have not yet logged into AFO, the system will redirect you to a login screen (Fig. 2). Once you have logged into AFO, the system will take you back to the Solicitation.

AUSTIN FINANCE ONLINE

FINANCIAL DOCUMENTS STRATEGIC PLAN CHECKBOOK UNCLAIMED PROPERTY PROCUREMENT

ACCOUNT LOGIN

Username

Password

[Login](#)

Don't remember your username? [Retrieve your username](#)

Forgot your password? [Reset your password](#)

Don't have an account yet? [Create an account](#)

(Fig. 2)



Solicitation ATTACHMENT 1

Solicitation No.

- c. Once you click “Create Response”, you will now see a Response ID, Vendor Name, the date that you Created your Response, the date and time you Last Revised your Response and the Status of your Response, which should be “DRAFT” initially (Fig. 3).

SOLICITATION DETAILS

SOLICITATION DETAILS [Subscribe](#) [Print PDF](#) [x](#)

Type:	Invitation For Bids (IFB)
Status:	Open
Solicitation Number:	IFB 7400 TEST9902
Description:	TEST SOLICITATION 1/1
Summary:	

My Response

Price Offer document is required.

Response ID	Vendor	Created	Last Revised	Status
353	TEST VENDOR 10 - JG	12/06/2019, 09:32 AM	12/06/2019, 09:32 AM	DRAFT

+ Add Files

Filename	Type
----------	------

[Submit Response](#) [Delete](#)

(Fig. 3)

2. **Adding Files to Your Response.** To upload files to your Response click on the blue “+ Add Files” button (Fig. 4).

My Response

Price Offer document is required.

Response ID	Vendor	Created	Last Revised	Status
353	TEST VENDOR 10 - JG	12/06/2019, 09:32 AM	12/06/2019, 09:32 AM	DRAFT

+ Add Files

Filename	Type
----------	------

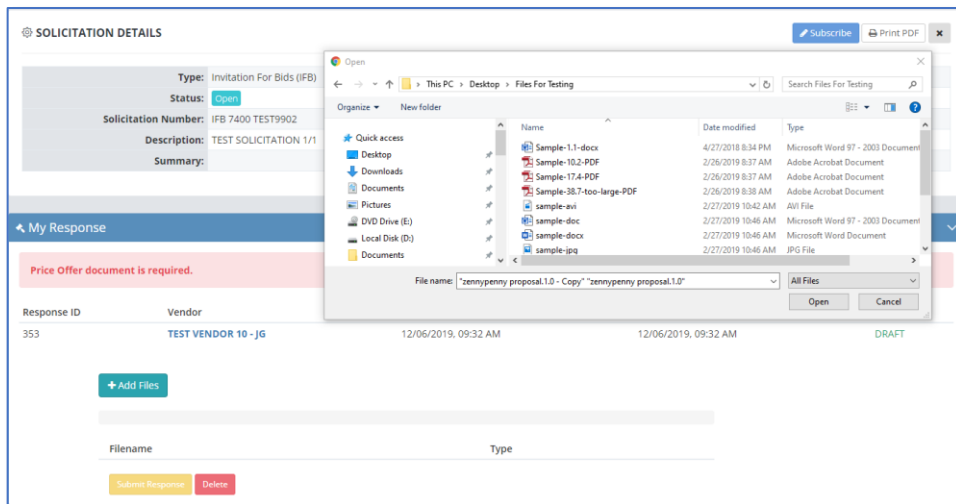
[Submit Response](#) [Delete](#)

(Fig. 4)



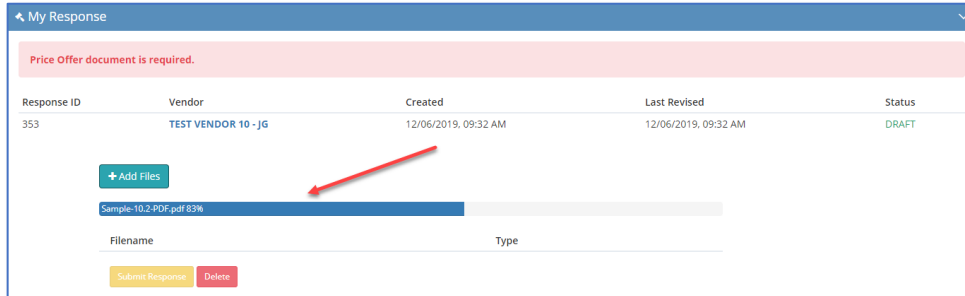
Solicitation ATTACHMENT 1

Solicitation No.



(Fig. 5)

- After clicking the “+ Add Files” button, a pop-up window will open displaying files on your computer (Fig. 5).
- Navigate on your computer to where your files are located. Select the file you wish to upload and click “Open”. The blue indicator bar moving from left to right will show your file being uploaded (Fig. 6)



(Fig. 6)

- Repeat this step to add additional files to your Response.



Solicitation ATTACHMENT 1

Solicitation No.

3. **File Types Accepted.** The eResponse functionality in AFO supports (accepts) the following electronic file types (Fig. 7).

.PDF	.XLS	.GIF
.DOC	.XLSX	.PNG
.DOCX	.PPT	
.TXT	.PPTX	
.ZIP	.JPG	

(Fig. 7)

4. **Number and Size of Files Allowable.** The eResponse functionality in AFO supports (accepts) no more than ten (10) files in a Response. eResponse will not accept a single file greater than 20 MB.

5. **Identify Your Files.** As you add files, you will see a dropdown menu to the right of the Filename, under “Type”. Use this dropdown menu to select the appropriate file types (Fig. 8).

a. **For Job Order Contract Competitive Sealed Proposals, the following files must be included:**

- i. Select the “Offer and Certifications” type for the file which contains a copy of your **Proposal Responses to Section 00101JOC Evaluation Criteria Items 2-12.** You can only identify one (1) file as your “Offer and Certifications.”
- ii. Select “Price Offer” type to identify the file that includes your **Coefficient Form** submission. You can only identify one (1) file as your “Price Offer.” **Please only submit the Coefficient Form with your “Price Offer” and do not submit any other documents for this category. Everything submitted in this category will be displayed on eResponse and will be accessible to the public after the solicitation due date and time.**
- iii. Select “Compliance Plan” type to identify the file that includes your **MBE/WBE Procurement Program Statement of Responsibility (Evaluation Criteria Item 1).**
- iv. “Technical Offer” does not apply to this solicitation.
- v. You will not be able to submit your Response if you have not identified at least one file as “Offer and Certification” and another as “Price Offer”. Once you do, the red warning bar across the top of the My Response box will disappear.



Solicitation ATTACHMENT 1

Solicitation No.

Response ID	Vendor	Created	Last Revised	Status
456	TEST VENDOR 10 - JG	03/14/2020, 12:06 PM	03/14/2020, 12:14 PM	DRAFT

+ Add Files

Filename	Type
Sample-10.2-PDF.pdf	Price Offer
Sample-1.1-docx.doc	Offer and Certifications
sample-doc.doc	Technical Offer
sample-docx.docx	Other

Submit Response Delete

(Fig. 8)

6. **Submitting your response.** Once you have uploaded and identified the types of all the files you need to for your Response, click the “Submit Response” button (Fig. 9).

Response ID	Vendor	Created	Last Revised	Status
456	TEST VENDOR 10 - JG	03/14/2020, 12:06 PM	03/14/2020, 12:14 PM	DRAFT

+ Add Files

Filename	Type
Sample-10.2-PDF.pdf	Price Offer
Sample-1.1-docx.doc	Offer and Certifications
sample-doc.doc	Technical Offer
sample-docx.docx	Other

Submit Response Delete

(Fig. 9)



Solicitation ATTACHMENT 1

Solicitation No.

- a. After you click the “Submit” button, you will be redirected to the Response History Page of your User Dashboard (Fig. 10). You will be automatically Subscribed to the solicitation when you submit your Response.

RESPONSE HISTORY		Online Responses				
Response ID	Solicitation Number	Solicitation Description	Created	Close Date		
353	IFB 7400 TEST9902	TEST SOLICITATION 1/1	12/06/2019 09:32	01/03/2020		
334	IFB 7400 TEST9900	TEST SOLICITATION 1/1	10/24/2019 01:01	10/28/2019		
313	IFB 7400 TEST9895	TEST SOLICITATION 1/1 - SEPTEMBER	10/03/2019 10:06	10/04/2019		
238	IFB 7400 TEST9893	TEST SOLICITATION 1/1 - AUGUST	09/05/2019 03:23	09/13/2019		
207	IFB 7400 TEST9891	TEST SOLICITATION 1/1	06/06/2019 01:38	06/12/2019		
173	IFB 7400 TEST9889	TEST SOLICITATION 1/2	04/15/2019 10:37	04/15/2019		
113	IFB 7400 TEST9887	TEST SOLICITATION 2/3	04/05/2019 09:40	04/05/2019		
112	IFB 7400 TEST9886	TEST SOLICITATION 1/3	03/29/2019 10:31	03/29/2019		
105	IFB 7400 TEST9885	TEST SOLICITATION 16/16	03/10/2019 12:29	03/10/2019		
85	IFB 7400 TEST9881	TEST SOLICITATION 12/16	03/09/2019 01:23	03/09/2019		
84	IFB 7400 TEST9880	TEST SOLICITATION 11/16	03/09/2019 12:18	03/09/2019		
57	IFB 7400 TEST9875	TEST SOLICITATION 6/16	03/08/2019 12:44	03/08/2019		
27	IFB 7400 TEST9873	TEST SOLICITATION 4/16	03/07/2019 01:04	03/07/2019		
22	IFB 7400 TEST9872	TEST SOLICITATION 3/16	03/07/2019 12:46	03/07/2019		
20	IFB 7400 TEST9871	TEST SOLICITATION 2/16	03/07/2019 11:48	03/07/2019		

(Fig. 10)

- b. You can return to the Solicitation or your Response through the Response History page, or by navigating directly to the Solicitation in AFO. When you return to the Solicitation, you will notice that your Status (upper right corner of the My Response section) will state “SUBMITTED”. Your Last Revised date and time will update to the date and time you clicked on the “Submit” button.
- c. If you start a response and don’t click “Submit Response”, your response will stay in “DRAFT” status. Before the Solicitation’s Due Date and Time, you can navigate back to your draft Response and complete it.
- d. Your “DRAFT” response must be changed to “SUBMITTED” in the eResponse system prior to the date and time stated in the solicitation documents. Do not wait until the last few minutes to submit your Response as it takes time for the “DRAFT” to go through and be accepted as “SUBMITTED” by the system. Responses that are still in “DRAFT” status by the Solicitation’s Due Date and Time will not be received by the City.

7. Withdrawing or Changing A Response After it has been Submitted. Prior to the Solicitation’s Due Date and Time, you may withdraw or modify your Response. You can delete the entire Response or individual files. To Withdraw or Change your Response, navigate back to the Solicitation. You will see your Response and files in the “My Response” section.

- a. To delete the entire Response, click the red “Delete” button at the bottom of the “My Response” section. You will receive an “Are You Sure” message to confirm your intent to delete your Response including all files within it. Click on Yes, to proceed with the deletion.
- b. To delete individual files within a Response, click the red circle with the white “X” to the left of the file you wish to delete.

COEFFICIENT FORM

Solicitation ID:	CLMB333
Solicitation Name:	2020 Job Order Contract for City Facility Improvements
Contractor Name:	

A. Pre-Priced Items (Unit Price Book)	
1. Standard Working Hours Coefficient	____ . ____ ____ ____
2. Non-Standard Working Hours Coefficient	____ . ____ ____ ____
B. Non Pre-Priced Items	
1. Non Pre-Priced Item Coefficient	____ . ____ ____ ____
(Coefficients must be extended to three decimal places.)	

Notes:

1. *This form will be displayed publicly in Austin Finance Online one hour after the solicitation closes.*
2. *In the case of discrepancies between this form and Section 00300JOC, Section 00300JOC takes precedence.*