

CITY OF LEWISVILLE, TEXAS

**CONSTRUCTION MANAGER AT RISK FOR
PRAIRIE CREEK WWTP PLANT II AERATION BASIN EXPANSION**

**CONSTRUCTION MANAGER AT RISK
PRECONSTRUCTION SERVICES**

CONTRACT NO. 24-12-C

RECITALS.....	5
AGREEMENT	5
ARTICLE 1 – TERMS AND DEFINITIONS	5
ARTICLE 2 – BASIC PRECONSTRUCTION PHASE SERVICES	8
2.1 GENERAL	8
2.2 CONSTRUCTION MANAGEMENT PLAN	8
2.3 PROJECT SCHEDULE	8
2.4 DESIGN DOCUMENT REVIEWS.....	9
2.5 COST ESTIMATES	10
2.6 GUARANTEED MAXIMUM PRICE (GMP) PROPOSALS.....	11
2.7 MAJOR SUBCONTRACTOR AND MAJOR SUPPLIER SELECTIONS	12
ARTICLE 3 – PERIOD OF SERVICES	13
ARTICLE 4 – CONTRACT AMOUNT AND PAYMENTS.....	13
4.1 CONTRACT AMOUNT.....	13
4.2 PAYMENTS	13
ARTICLE 5 - CITY'S RESPONSIBILITIES.....	14
ARTICLE 6 – CONTRACT CONDITIONS.....	14
6.1 PROJECT DOCUMENTS AND COPYRIGHTS.....	14
6.2 COMPLETENESS AND ACCURACY OF CM AT RISK'S WORK.....	15
6.3 ALTERATION IN CHARACTER OF WORK	15
6.4 DATA CONFIDENTIALITY & DISCLOSURE	15
6.5 PROJECT STAFFING	16
6.6 INDEPENDENT CONTRACTOR	16
6.7 SUBCONSULTANTS	16
6.8 TERMINATION	16

6.9	DISPUTES.....	16
6.10	WITHHOLDING PAYMENT.....	16
6.11	RECORDS/AUDIT	16
6.12	INDEMNIFICATION	17
6.13	NOTICES	17
6.14	EQUAL OPPORTUNITY/AFFIRMATIVE ACTION	17
6.15	COMPLIANCE WITH FEDERAL LAWS	18
6.16	CONFLICT OF INTEREST.....	18
6.17	CONTRACTOR'S LICENSE.....	18
6.18	SUCCESSORS AND ASSIGNS	18
6.19	FORCE MAJEURE	18
6.20	COVENANT AGAINST CONTINGENT FEES	18
6.21	NON-WAIVER PROVISION	19
6.22	JURISDICTION.....	19
6.23	SURVIVAL.....	19
6.24	MODIFICATION	19
6.25	SEVERABILITY	19
6.26	INTEGRATION.....	19
6.27	TIME IS OF THE ESSENCE	19
6.28	THIRD PARTY BENEFICIARY	19
6.29	COOPERATION AND FURTHER DOCUMENTATION	19
6.30	CONFLICT IN LANGUAGE	19
	ARTICLE 7 – INSURANCE REQUIREMENTS	19
7.1	MINIMUM SCOPE AND LIMITS OF INSURANCE.....	20
7.2	ADDITIONAL INSURANCE REQUIREMENTS	20
7.3	SUBCONSULTANT INSURANCE	20
7.4	NOTICE OF CANCELLATION.....	20

7.5 ACCEPTABILITY OF INSURERS 21

7.6 VERIFICATION OF COVERAGE 21

7.7 APPROVAL 21

EXHIBIT A – PROJECT DESCRIPTION 23

EXHIBIT B – Construction Services Agreement 24

EXHIBIT C - SUBMITTAL REQUIREMENTS FOR THE GMP 25

EXHIBIT D - HOURLY RATE SCHEDULE 27

**CONSTRUCTION MANAGER AT RISK FOR PRAIRIE CREEK WWTP PLANT II AERATION
BASIN EXPANSION
CONSTRUCTION MANAGER AT RISK PRECONSTRUCTION PHASE SERVICES
CONTRACT NO. 24-12-C**

THIS CONTRACT, made and entered into this by and between City of Lewisville, Texas, hereinafter designated the "CITY" and Archer Western Construction, hereinafter designated the "Construction Manager at Risk" or "CM at Risk ."

RECITALS

- A. The City Manager of the City of Lewisville, Texas, or their designee, is authorized and empowered by provisions of the City Charter to execute contracts for professional services and construction services.
- B. The City has entered into a separate contract with the Design Professional to design for construction the Prairie Creek WWTP Plant II Aeration Basin Expansion as described in Exhibit A (*Design Summary*) attached, hereinafter referred to as the "Project".
- C. The City has procured construction services utilizing a Construction Manager at Risk method pursuant to chapter 2269 of the Texas Government Code.
- D. In response to the City's RFP, [Construction Manager at-Risk] (Archer Western Construction) has agreed to provide preconstruction and construction services to the City as a Construction Manager at Risk for the Project.
- E. The contract structure for this Project includes this Preconstruction Services Agreement and the Construction Services Agreement which is attached hereto as Exhibit B.

AGREEMENT

NOW THEREFORE, for and in consideration of the mutual covenants and considerations hereinafter contained, it is agreed by and between the City and the CM at Risk as follows:

ARTICLE 1 – TERMS AND DEFINITIONS

Addenda - Written or graphic instruments issued prior to the submittal of the GMP Proposal(s), which clarify, correct or change the GMP Proposal(s) requirements.

Preconstruction Agreement – This written document signed by the City and CM at Risk for preconstruction services during the preconstruction phase of the Project.

Alternate Systems Evaluations – Alternatives for design, means and methods or other scope considerations that are evaluated using value engineering principles and have the potential to reduce construction costs while still delivering a quality and functional Project that meets City requirements.

Change Order (Amendment) - A written instrument issued after execution of the Contract Documents signed by the City and CM at Risk, stating their agreement upon all of the following: the addition, deletion or revision in the scope of services or the Work; the amount of the adjustment to the Contract Amount; the extent of the adjustment to the Contract Time; or modifications of other contract terms.

Owner - The City of Lewisville, Texas.

City's Designated Project Manager – The City of Lewisville representative who is designated as project manager for the Project.

Construction Contract Time(s) - The number of days or the dates related to the construction phase that as stated in Construction Documents applies to achievement of Substantial Completion of the Work.

Construction Documents – The drawings and specifications prepared by the Design Professional.

Construction Fee – The CM at Risk's administrative costs, home office overhead, and profit, whether at the CM at Risk's principal or branch offices, as more specifically outlined in section 2.6.3.3.

Construction Manager at Risk (CM at Risk) - The entity with whom the City has entered into the Preconstruction Agreement.

Construction Management Plan – Formal documentation prepared and maintained by the CM at Risk describing the sequence and duration of the activities to accomplish the Work within the Contract Time including but not limited to those items set forth in Section 2.2.

Contingency, CM at Risk's - A fund to cover cost growth during the Project used at the discretion of the CM at Risk usually for costs that result from Project circumstances. The amount of the CM at Risk's Contingency will be negotiated as a separate line item

in each GMP package. Use and management of the CM at Risk's Contingency is described in Section 2.6.

Contingency, Owner's – A fund to cover cost growth during the Project used at the discretion of the City usually for costs that result from City directed changes or unforeseen site conditions. The amount of the Owner's Contingency will be set by the City and will be in addition to the project costs included in the CM at Risk's GMP packages. Use and management of the Owner's Contingency is described in Section 2.6.

Contract Amount - The cost for services for this Contract as identified in Article 4.

Contract Documents - means the following items and documents in descending order of precedence: (i) all written modifications, amendments and Change Orders; (ii) this Preconstruction Contract, including all exhibits and attachments; (iii) Construction Documents; (iv) Guaranteed Maximum Price Amendment(s), maintenance bond and performance and payment bonds.

Contract Time(s) - The number of days or the dates stated in this Agreement to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.

Cost of the Work - The direct costs or stipulated rates necessarily incurred by the CM at Risk in the proper performance of the Work. The Cost of the Work shall include direct labor costs, subcontract costs, costs of materials and equipment incorporated in the completed construction, costs of other materials and equipment, temporary facilities, building permit fees (if not paid for by City), materials testing, and related items. The Cost of the Work shall not include: the CM at Risk's Construction Fee; General Conditions costs; the cost of subcontractor payment and performance bonds, if any; costs associated with any subcontractor default insurance program (sometimes referred to as SUBGUARD) provided required by the CM at Risk.

Critical Path - means the longest sequence of construction activities which establishes the minimum overall Project duration.

Day - Calendar day unless otherwise specifically noted in the Contract Documents.

Deliverables – The work products prepared by the CM at Risk in performing the scope of work described in this Preconstruction Contract.

Design Professional - The licensed engineering or architecture firm who furnishes design and/or construction administration services required for the Project.

Drawings (Plans) – Documents, which visually represent the scope, extent and character of the Work to be furnished and performed by the CM at Risk during the construction phase and which have been prepared, signed, and sealed by the Design Professional. Includes Drawings that have reached a sufficient stage of completion and released by the Design Professional solely for the purposes of review and/or use in performing constructability or bidability reviews and in preparing cost estimates (e.g. conceptual design Drawings, preliminary design Drawings, detailed design Drawings at 30%, 60%, 90% or 100% or schematic, design development, construction documents), but *“not for construction”*. Shop Drawings are not Drawings as so defined.

Engineer —The licensed person, firm or corporation who furnishes engineering services required for the Project.

Float - The number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Substantial Completion date.

General Conditions Costs – includes, but is not limited to, the following types of costs for the CM at Risk during the construction phase: (i) payroll costs for project manager or CM at Risk for work conducted at the site, (ii) payroll costs for the superintendent and full-time general foremen at the site, (iii) payroll costs for other management personnel resident and working at the site, (iv) workers not included as direct labor costs engaged in support (e.g. loading/unloading, clean-up, etc.), (v) costs of offices and temporary facilities including office materials, office supplies, office equipment, and minor expenses, (vi) cost of utilities, fuel, sanitary facilities, telephone and data services at the site, (vii) costs of liability insurance premiums not included in labor burdens for direct labor costs, (viii) costs of bond premiums, and (ix) costs of consultants not in the direct employ of the CM at Risk or Subcontractors.

Guaranteed Maximum Price (GMP) – The maximum total amount of money that the City agrees to pay the CM at Risk for construction phase services.

GMP Plans and Specifications – The plans and specifications provided pursuant to section 2.6 upon which the Guaranteed Maximum Price Proposal is based.

Guaranteed Maximum Price (GMP) Proposal - The offer or proposal of the CM at Risk submitted on the prescribed form setting forth the GMP prices for the entire Work or portions of the Work to be performed during the construction phase. The GMP Proposal(s) are to be developed pursuant to Article 2 of this Contract.

Laws and Regulations - Any and all applicable laws, rules, regulations, ordinances, codes and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.

Milestones - A principal event in the performance of the Work that the Contract requires CM at Risk to achieve by an intermediate completion date, or by a time prior to Substantial Completion of all the Work.

Notice of Intent to Award—The written notice by City to a respondent to the City's solicitation of the Project of City's intent to accept a certain respondent's proposal.

Notice to Proceed (NTP) Letter - A written notice given by City to the CM at Risk fixing the date on which the CM at Risk will start to perform the CM at Risk's obligations under this Contract.

Payment Request - The form that is accepted by the City and used by the CM at Risk in requesting progress payments or final payment and which will include such supporting documentation as is required by the Contract Documents and or the City.

Project - The works to be completed in the execution of this Contract as described in the Recitals above and Exhibit A (*Design Summary*) attached.

Project Budget - The amount budgeted by the City for the Project and the Work.

Project Schedule - A schedule, prepared and maintained by CM at Risk, describing the sequence and duration of the activities comprising the CM at Risk's plan to accomplish the Work within the Contract Times.

Project Team - Preconstruction phase services team consisting of the Design Professional, CM at Risk, City's Designated Project Manager, and other stakeholders who are responsible for making decisions regarding the Project.

Schedule of Values (SOV) - Document specified in the Construction Services Agreement, which divides the Contract Price into pay items, such that the sum of all pay items equals the Contract Price for the construction phase Work, or for any portion of the Work having a separate specified Contract Price. The SOV may or may not be output from the Project Schedule depending on if the Project Schedule is cost-loaded or not.

Shop Drawings - All drawings, diagrams, schedules, and other data specifically prepared for the Work by the CM at Risk or a Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

Site - The land or premises on which the Project is located.

Specifications - The part(s) of the Construction Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

Subconsultant - A person, firm or corporation having a contract with the CM at Risk at any tier to furnish services required as its independent professional associate or consultant with respect to the Project.

Subcontractor - An individual or firm having a direct contract with the CM at Risk or any other individual or firm having a contract with the aforesaid contractors at any tier, who undertakes to perform a part of the preconstruction phase services or construction phase Work at the site for which the CM at Risk is responsible. Subcontractors will be selected through the Subcontractor bid process described in paragraph 2.7 of this Contract.

Substantial Completion - When the Work, or an agreed upon portion of the Work, is sufficiently complete so that City can occupy and use the Project or a portion thereof for its intended purposes. The conditions required to achieve Substantial Completion and agreed upon date of Substantial Completion will be documented in the Construction Agreement NTP Letter.

Supplier - A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with CM at Risk or with any Subcontractor to furnish materials or equipment to be incorporated in the construction phase Work by CM at Risk or any Subcontractor.

Work - The entire completed construction required to be furnished during the construction phase as shown in the Construction Documents.

ARTICLE 2 – BASIC PRECONSTRUCTION PHASE SERVICES

2.1 GENERAL

- 2.1.1 The CM at Risk, to further the interests of the City, will perform the services required by, and in accordance with this Contract, to the satisfaction of the City's Designated Project Manager, exercising the degree of care, skill and judgment a professional construction manager performing similar services in Lewisville, Texas would exercise at such time, under similar conditions. The CM at Risk will, at all times, perform the required services consistent with sound and generally accepted construction management and construction contracting practice.
- 2.1.2 Program Evaluation: As a participating member of the Project Team, the CM at Risk will provide to the City and Design Professional a written evaluation of the Project and Project Budget, with recommendations as to the appropriateness of each.
- 2.1.3 Project Meetings: The CM at Risk will attend Project Team meetings which may include, but are not limited to, regular Project management meetings, Project workshops, special Project meetings, construction document rolling reviews and partnering sessions.
- 2.1.4 The CM at Risk will provide preconstruction phase services described herein, in a proactive manner and consistent with the intent of the most current Drawings and Specifications. The CM at Risk will promptly notify the City in writing whenever the CM at Risk determines that any Drawings or Specifications are inappropriate for the Project and/or cause changes in the scope of Work requiring an adjustment in the cost estimate, Project Schedule, GMP Proposals and/or in the Contract Time for the Work, to the extent such are established.
- 2.1.5 The CM at Risk, when requested by the City, will attend, make presentations, and participate as may be appropriate in city council and or community meetings, germane to the Project. The CM at Risk will provide drawings, schedule diagrams, budget charts and other materials describing the Project, when their use is required or apropos in any such public agency meetings.

2.2 CONSTRUCTION MANAGEMENT PLAN

- 2.2.1 The CM at Risk will prepare a Construction Management Plan (CMP), which shall include the CM at Risk's opinions concerning: (a) Project Milestone dates and the Project Schedule, including the broad sequencing of the design and construction of the Project, (b) investigations, if any, to be undertaken to ascertain subsurface conditions and physical conditions of existing surface and subsurface facilities and underground utilities, (c) alternate strategies for fast-tracking and/or phasing the construction, (d) the number of separate subcontracts to be awarded to Subcontractors and Suppliers for the Project construction, (e) permitting strategy, (f) safety and training programs, (g) construction quality control, (h) a commissioning program, (i) the cost estimate and basis of the model, and (j) a matrix summarizing each Project Team member's responsibilities and roles.
- 2.2.2 The CM at Risk may add detail to its previous version of the CMP to keep it current throughout the preconstruction phase, so that the CMP is ready for implementation at the start of the construction phase. The update/revisions may take into account (a) revisions in Drawings and Specifications; (b) the results of any additional investigatory reports of subsurface conditions, drawings of physical conditions of existing surface and subsurface facilities and documents depicting underground utilities placement and physical condition, whether obtained by the City, Design Professional, or the CM at Risk, (c) unresolved permitting issues, and significant issues, if any, pertaining to the acquisition of land and right of way, (d) the fast-tracking if any of the construction, or other chosen construction delivery methods, (e) the requisite number of separate bidding documents to be advertised, (f) the status of the procurement of long-lead time equipment (if any) and/or materials, and (g) funding issues identified by the City.

2.3 PROJECT SCHEDULE

- 2.3.1 The CM at Risk will develop and maintain the Project Schedule on behalf of and to be used by the Project Team based on input from the other Project Team members. The Project Schedule will be consistent with the most recent revised/updated CMP. The Project Schedule will use the Critical Path Method (CPM) technique. The CM at Risk will use Primavera P6 scheduling software, or City-approved alternative, to develop the Project Schedule that is acceptable to the City. The Project Schedule shall be presented in graphical and tabular reports as agreed upon by the Project Team. If Project phasing as described below is required, the Project Schedule will indicate milestone dates for the phases once determined.
- 2.3.2 The Project Schedule shall include a Critical Path Method (CPM) diagram schedule that shall show the sequence of activities, the interdependence of each activity and indicate the Critical Path.
- 2.3.2.1 The CPM diagram schedule shall be in Days and indicate duration, earliest and latest start and finish dates for all activities, and total Float times for all activities except critical activities. The CPM diagram shall be presented in a time scaled graphical format for the Project as a whole.
- 2.3.2.2 The CPM diagram schedule shall indicate all relationships between activities.

- 2.3.2.3 The activities making up the schedule shall be sufficient detail to assure that adequate planning has been done for proper execution of the Work and such that it provides an appropriate basis for monitoring and evaluating the progress of the Work.
- 2.3.2.4 The CPM diagram schedule shall be based upon activities, which would coincide with the schedule of values but the Project Schedule is not required to be cost-loaded.
- 2.3.2.5 The CPM diagram schedule shall show all submittals associated with each work activity and the review time for each submittal.
- 2.3.2.6 The schedule shall show Milestones, including Milestones for City-furnished information, and shall include activities for City-furnished equipment and furniture when those activities are interrelated with the CM at Risk activities.
- 2.3.2.7 The schedule shall include a critical path activity that reflects anticipated rain delay during the performance of the contract. The duration shall reflect the average climatic range and usual industrial conditions prevailing in the locality of the site. Weather data shall be based on information provided by the National Weather Services or other approved source. Anticipated rain delay days will be included in Specifications.
- 2.3.3 The Project Schedule shall consider the City's occupancy requirements showing portions of the Project having occupancy priority, and Contract Time. Additionally, the Project Schedule shall consider the plant's continuous operation requirements. Any necessary temporary shut-downs, system switches, or other activities impacting treatment plant operations will be included in the Project Schedule.
- 2.3.4 Float time shall be as prescribed below:
 - 2.3.4.1 The total Float within the overall schedule, is not for the exclusive use of either the City or the CM at Risk, but is jointly owned by both and is a resource available to and shared by both parties as needed to meet contract milestones and the Project completion date.
 - 2.3.4.2 The CM at Risk shall not sequester shared Float through such strategies as extending activity duration estimates to consume available Float, using preferential logic, or using extensive crew/resource sequencing, etc. Since Float time within the schedule is jointly owned, no time extensions will be granted nor delay damages paid until a delay occurs which extends the Work beyond the Substantial Completion date.
 - 2.3.4.3 Since Float time within the schedule is jointly owned, it is acknowledged that City-caused delays on the Project may be offset by City-caused time savings (i.e., critical path submittals returned in less time than allowed by the contract, approval of substitution requests and credit changes which result in savings of time to the CM at Risk, etc.). In such an event, the CM at Risk shall not be entitled to receive a time extension or delay damages until all City-caused time savings are exceeded, and the Substantial Completion date is also exceeded.
- 2.3.5 The Project Schedule will be updated and maintained by the CM at Risk throughout the preconstruction phase such that it will not require major changes at the start of the construction phase to incorporate the CM at Risk's plan for the performance of the construction phase Work. The CM at Risk will provide updates and/or revisions to the Project Schedule for use by the Project Team, whenever required, but no less often than at the monthly Project Team meetings. The CM at Risk will include with such submittals a narrative describing its analysis of the progress achieved to-date vs. that planned, any concerns regarding delays or potential delays, and any recommendations regarding mitigating actions.
- 2.3.6 Project Phasing: If phased construction is deemed appropriate and the City and Design Professional approve, the CM at Risk will review the design and make recommendations regarding the phased issuance of Construction Documents to facilitate phased construction of the Work, with the objective of reducing the Project Schedule and/or Cost of the Work. The CM at Risk will take into consideration such factors as natural and practical lines of work severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, labor and materials availability, and any other factors pertinent to saving time and cost.

2.4 DESIGN DOCUMENT REVIEWS

- 2.4.1 The CM at Risk will evaluate periodically the availability of labor, materials/equipment, building systems, cost-sensitive aspects of the design; and other factors that may impact the cost estimate, GMP Proposals and/or the Project Schedule.
- 2.4.2 The CM at Risk will recommend, in conjunction with the Project Team, those additional surface and subsurface investigations that may be recommended to provide the necessary information for the CM at Risk to construct the Project. Before initiating construction operations, the CM at Risk may request additional investigations in their GMP Proposal to improve the adequacy and completeness of the site condition information and data made available with the Construction Documents.
- 2.4.3 The CM at Risk will meet with the Project Team as required to review designs during their development. The CM at Risk will familiarize itself with the evolving documents through the various preconstruction phases. The CM at Risk will proactively advise the Project Team and make recommendations on factors related to construction costs, and concerns pertaining to the feasibility and practicality of any proposed means and methods, selected materials, equipment and building systems,

and, labor and material availability. The CM at Risk will furthermore maintain a project decision and trend log as design develops and advise the Project Team on proposed site improvements, excavation and foundation considerations, as well as concerns that exist with respect to coordination of the Drawings and Specifications. The CM at Risk will recommend cost-effective alternatives.

- 2.4.4 The CM at Risk will routinely conduct constructability and bidability reviews of the Drawings and Specifications as necessary to satisfy the needs of the Project Team. The reviews will attempt to identify all discrepancies and inconsistencies in the Construction Documents especially those related to clarity, consistency, and coordination of Work of Subcontractors and Suppliers.
- 2.4.4.1 Constructability Reviews: The CM at Risk will evaluate whether (a) the Drawings and Specifications are configured to enable efficient construction, (b) design elements are standardized, (c) construction efficiency is properly considered in the Drawings and Specifications, (d) module/preassembly design are prepared to facilitate fabrication, transport and installation, (e) the design promotes accessibility of personnel, material and equipment and facilitates construction under adverse weather conditions, (f) sequences of Work required by or inferable from the Drawings and Specifications are practicable, and (g) the design has taken into consideration efficiency issues concerning access and entrance to the site, laydown, and storage of materials, staging of site facilities, construction parking, and other similar pertinent issues.
- 2.4.4.2 Bidability Reviews: The CM at Risk will check cross-references and complementary Drawings and sections within the Specifications, and in general evaluate whether (a) the Drawings and Specifications are sufficiently clear and detailed to minimize ambiguity and to reduce scope interpretation discrepancies, (b) named materials and equipment are commercially available and are performing well or otherwise, in similar installations, (c) Specifications include alternatives in the event a requirement cannot be met in the field, and (d) in its professional opinion, the Project is likely to be subject to differing site conditions.
- 2.4.4.3 The results of the reviews will be provided to the City in formal, written reports clearly identifying all discovered discrepancies and inconsistencies in the Drawings and Specifications with notations and recommendations made on the Drawings, Specifications, and other documents. If requested by the City, the CM at Risk will meet with the City and Design Professional to discuss any findings and review reports.
- 2.4.4.4 The CM at Risk's reviews will be from a contractor's perspective, and though it will serve to reduce the number of Requests for Information (RFIs) and changes during the construction phase, responsibility for the Drawings and Specifications will remain with the Design Professional and not the CM at Risk.
- 2.4.5 Notification of Variance or Deficiency: It is the CM at Risk's responsibility to assist the Design Professional in ascertaining that, in the CM at Risk's professional opinion, the Construction Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. If the CM at Risk recognizes that portions of the Construction Documents are at variance with applicable laws, statutes, ordinances, building codes, rules and regulations, it will promptly notify the Design Professional and City in writing, describing the apparent variance or deficiency. However, the Design Professional is ultimately responsible for the compliance with those laws, statutes, ordinances, building codes, rules and regulations.
- 2.4.6 Alternate Systems Evaluations: The Project Team will routinely identify and evaluate using value engineering principles any alternate systems, approaches, design changes that have the potential to reduce Project costs while still delivering a quality and functional product. If the Project Team agrees, the CM at Risk in cooperation with the Design Professional will perform a cost/benefit analysis of the alternatives and submit such in writing to the Project Team. The Project Team will decide which alternatives will be incorporated into the Project. The Design Professional will have full responsibility for the incorporation of the alternatives into the Drawings and Specifications. The CM at Risk will include the cost of the alternatives into the cost estimate and any GMP Proposals.

2.5 COST ESTIMATES

- 2.5.1 Unless otherwise agreed by both parties, within 28 Days after receipt of the documents for the various phases of design, the CM at Risk shall provide a complete and detailed cost estimate and a written review of the documents. The cost estimate should include all cost categories except Owner's Contingency included in the GMP Proposal identified in **Exhibit C**, included herein. The Design Professional and CM at Risk shall reconcile any disagreements on the estimate to arrive at an agreed cost. If no consensus is reached, the City will make the final determination.
- 2.5.2 If any estimate submitted to the City exceeds previously accepted estimates or the City's Project Budget, the CM at Risk shall make appropriate recommendations on methods and materials to the City and Design Professional to reduce the cost estimate.
- 2.5.3 In between these Milestone estimates, the CM at Risk shall periodically provide a tracking report which identifies the upward or downward movements of costs due to design development, value engineering or scope changes. It shall be the responsibility of the CM at Risk to keep the City and Design Professional informed as to the major trend changes in costs relative to the City's budget.
- 2.5.4 If requested by the City, the CM at Risk shall prepare a preliminary "cash flow" projection based upon historical records of similar type projects to assist the City in the financing process.

2.6 GUARANTEED MAXIMUM PRICE (GMP) PROPOSALS

- 2.6.1 The proposed GMP for the entire Work (or portions thereof) will be presented in a format acceptable to the City (see Exhibit C herein). CM at Risk must verify with the City the current Exhibit C requirements and procedures when entering into these services.
- 2.6.2 The City may request a GMP Proposal for all or any portion of the Project and at any time during the preconstruction phase. Any GMP Proposals submitted by the CM at Risk will be based on and consistent with the current update/revised cost estimate at the time of the request, the associated estimates for construction costs and include any clarifications or assumptions upon which the GMP Proposal(s) are based.
- 2.6.3 Guaranteed Maximum Price is comprised of the following not-to-exceed cost reimbursable or lump sum amounts defined below.
- 2.6.3.1 The Cost of the Work is actual costs and is a not-to-exceed, reimbursable amount.
- 2.6.3.2 The General Conditions Costs are a firm fixed lump sum amount and will include bonds and insurance premiums based on the full contract price for construction.
- 2.6.3.3 The Construction Fee is 9.5 % of the Cost of the Work. The Construction Fee shall be calculated as 9.5% of the Cost of the Work until final acceptance of GMP, at which time the Construction Fee will be converted to a firm fixed lump sum amount. The Construction Fee includes, but is not limited to: Salaries of Construction Manager's officers, project manager(s), estimators, schedulers, and all other employees not stationed at the Project site and performing services directly related to the Project; All overhead, labor or general expenses of any kind unless specifically allowed under General Conditions; subcontractor default insurance program (sometimes referred to as SUBGUARD) and all associated administration costs.
- 2.6.3.4 CM at Risk's Contingency is an amount the CM at Risk may use under the following conditions: (1) at its discretion for increases in the Cost of the Work, subject to approval by the City, or (2) with written approval of the City for increases in General Condition Costs. CM at Risk's Contingency is assumed to be a direct project cost so will receive all markups at the time of GMP submission. CM at Risk's Contingency is separate and unique from Owner's Contingency.
- 2.6.3.5 Taxes are deemed to include all sales, use, consumer, and other taxes which are legally enacted when negotiations of the GMP were concluded, whether or not yet effective or merely scheduled to go into effect. Taxes are actual costs and are included as a Cost of the Work. The City enjoys limited tax exemption status. CM at Risk will include tax savings in its cost estimates and GMP. All Subcontractors and Suppliers shall be provided proof of the City's tax exemption and shall pass all tax saving through the CM at Risk and the City.
- 2.6.4 Owner's Contingency are funds to be used at the discretion of the Owner to cover any increases in Project costs that result from Owner directed changes or unforeseen site conditions. Owner's Contingency will be added to the GMP amount provided by the CM at Risk, the sum of which will be the full contract price for construction. Markups for Construction Fee and taxes will be applied by the CM at Risk at the time that Owner's Contingency is used.
- 2.6.5 GMPs are cumulative including CM at Risk Contingency. The amount of CM at Risk Contingency for each GMP amendment will be negotiated separately and shall reflect the CM at Risk's risk from that point in the project forward.
- 2.6.6 The CM at Risk will prepare its GMP in accordance with the City's request for GMP Proposal requirements based on the most current completed plans and specifications at that time. The CM at Risk shall provide a list of drawings and specifications upon which its proposed GMP is based. These documents will be identified as the GMP Plans and Specifications.
- 2.6.7 An updated/revised Project Schedule will be included with any GMP Proposal(s) that reflects the GMP Plans and Specifications. Any such Project Schedule updates/revisions will continue to comply with the requirements of paragraph 2.3.
- 2.6.8 GMP savings resulting from a lower actual project cost than anticipated by the CM at Risk remaining at the end of the project will revert to City.
- 2.6.8.1 GMP Proposal(s) Review and Approval
- 2.6.8.2 The CM at Risk will meet with the City and Design Professional to review the GMP Proposal(s) and the written statement of its basis. As part of the statement of basis, the CM at Risk shall identify and justify any costs that are significantly different than the latest cost estimate provided by the CM at Risk. In the event the City or Design Professional discovers inconsistencies or inaccuracies in the information presented, the CM at Risk will make adjustments as necessary to the GMP Proposal, its basis or both.
- 2.6.8.3 The City upon receipt of any GMP proposal from the CM at Risk, may submit the GMP Plans and Specifications to an independent third party or to the Design Professional for review and verification. The third party or Design Professional will develop an independent estimate of the Cost of the Work and review the Project Schedule for the associated scope of the

GMP Proposals.

- 2.6.8.4 If the CM at Risk GMP Proposal is greater than the independent third party or Design Professional's estimate, the City may require the CM at Risk to reconfirm its GMP Proposal. The CM at Risk will accept the independent third party's or Design Professional's estimate for the Cost of Work as part of the GMP or present a report within seven days of a written request to the City identifying, explaining, and substantiating the differences. The CM at Risk may be requested to, or at its own discretion, submit a revised GMP Proposal for consideration by the City. At that time, the City may do one of the following.
- (a) Accept the CM at Risk original or revised GMP Proposal, if within the City's budget, without comment.
 - (b) Accept the CM at Risk original or revised GMP Proposal that exceeds the City's budget and indicate in writing to the CM at Risk that the Project Budget has been increased to fund the differences.
 - (c) Reject the CM at Risk's original or revised GMP Proposal because it exceeds the City's budget, the independent third parties or Design Professional's estimate, in which event, the City may terminate this Contract and/or elect to not enter into a separate contract with the CM at Risk for the construction phase associated with the scope of Work reflected in the GMP Proposal.
- 2.6.8.5 If during the review and negotiation of GMP Proposals design changes are required, the City will authorize and cause the Design Professional to revise the Construction Documents to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the final approved GMP Proposal. Such revised Construction Documents will be furnished to the CM at Risk. The CM at Risk will promptly notify the Design Professional and City in writing if any such revised Construction Documents are inconsistent with the agreed-upon assumptions and clarifications.

2.7 MAJOR SUBCONTRACTOR AND MAJOR SUPPLIER SELECTIONS

- 2.7.1 The selection of major Subcontractors and major Suppliers may occur prior to submission of a GMP Proposal. However, all selections for Subcontractors and Suppliers must comply with bidding and procurement obligations pursuant to chapter 2269 of the Texas Government Code. Major Subcontractors may be selected based on qualifications or a combination of qualifications and price. Subcontractors shall not be selected based on price alone. Except as noted below, the selection of major Subcontractors/Suppliers is the responsibility of the CM at Risk. In any case, the CM at Risk is solely responsible for the performance of the selected Subcontractors/Suppliers.
- 2.7.1.1 The CM at Risk will prepare a Subcontractor/Supplier selection plan and submit the plan to the City for approval. This subcontractor selection plan shall identify those subcontractor trades anticipated to be pre-qualified by qualifications and competitive bid in accordance with Section 2.7.2 and subcontractor trades will not be pre-qualified through a formalized qualifications-based selection process (competitively bid only). This plan shall include the involvement of City's Designated Representative in the Subcontractor bid evaluation process. The subcontractor selection plan must be consistent with the selection requirements included in this Contract and the provisions of Chapter 2269 of the Texas Government Code.
- 2.7.2 Selection by qualifications and competitive bid - The CM at Risk shall apply the Subcontractor selection plan in the evaluation of the qualifications of a Subcontractor(s) or Supplier(s) and provide the City with its process to prequalify prospective subcontractors and suppliers. All Work for major Subconsultants and major Suppliers shall then be competitively bid to the prequalified Subcontractors. Competitive bids may occur prior to or after the GMP Proposal(s).
- 2.7.2.1 The CM at Risk will develop Subcontractor and Supplier interest and solicit bids for the various Work categories in accordance with a delivery method permitted by chapter 2269 and approved by the City. CM at Risk will take reasonable steps to maximize Subcontractor and Supplier participation in any solicitation process.
- 2.7.2.2 If the City objects to any nominated Subcontractor/Supplier or to any recommended self-performed Work bidding opportunities for good reason, the CM at Risk will nominate a substitute Subcontractor/Supplier that is acceptable to the City.
- 2.7.2.3 The CM at Risk will distribute Drawings and Specifications, and conduct a prebid conference with prospective Subcontractors and Suppliers.
- 2.7.2.4 If the CM at Risk desires to self-perform certain portions of the Work, it shall coordinate with the City's Representative to oversee the opening of bids or proposals to ensure the CM at Risk does not obtain unfair advantage over other bidders or offerors.
- 2.7.2.5 The CM at Risk shall request the pre-qualified subcontractors to provide a detailed bid for the services requested. The subcontractor bid, provided on the subcontractors' letterhead, shall contain sufficient information (i.e. unit costs/amounts) to allow an evaluation of the reasonableness of bid costs. With City Representative present to witness, the CM at Risk shall receive, open, record and evaluate the bids. The apparent low bidders will be interviewed to determine the responsiveness of their proposals. In evaluating the responsiveness of bid proposals the CM at Risk, in addition to bid price, may consider the following factors: past performance on similar projects, qualifications and experience of personnel assigned, quality management plan, approach or understanding of the Work to be performed, and performance schedule

to complete the Work. The final evaluation of Subcontractor/Supplier bids will be done with the City Representative in attendance to observe and witness the process. The CM at Risk will resolve any Subcontractor/Supplier bid withdrawal, protest or disqualification in connection with the award at no increase in the Cost of the Work.

- 2.7.3 The CM at Risk will be required to prepare two different reports on the subcontracting process.
- 2.7.3.1 Within fifteen Days after each major Subcontractor/Supplier bid opening process, the CM at Risk will prepare a report for the City's review and approval identifying the recommended Subcontractors/Supplier for each category of Work. The report will provide (a) the name of the recommended Subcontractor/Supplier and the amount of the Subcontractor/Supplier bid for each subcontract, (b) the sum of all recommended Subcontractor/Supplier bids received, (c) a copy of the bids received from each Subcontractor, and (d) trade work and its cost that the CM at Risk intends to self-perform, if any.
- 2.7.3.2 Upon completion of the Subcontractor/Supplier bidding process, the CM at Risk shall submit a summary report to the City of the entire Subcontractor/Supplier selection process. The report will indicate, by bid process, all Subcontractors/Suppliers contacted to determine interest, the Subcontractors/Suppliers solicited, the bids received, and costs negotiated, and the recommended Subcontractors/Suppliers for each category of Work.
- 2.7.4 The approved Subcontractors/Suppliers will provide a Schedule of Values that reflects their final accepted bid proposal, which will be used to create the overall Project Schedule of Values.
- 2.7.5 If after receipt of sub-bids or after award of Subcontractors and Suppliers, the City objects to any nominated Subcontractor/Supplier or to any self-performed Work for good reason, the CM at Risk will nominate a substitute Subcontractor or Supplier, preferably, if such option is still available, from those who submitted Subcontractor bids for the Work affected. Once such substitute Subcontractors and Suppliers are consented to by the City, the CM at Risk's proposed GMP for the Work or portion thereof will be correspondingly adjusted to reflect any higher or lower costs from any such substitution.
- 2.7.6 Promptly after receipt of the Notice of Intent to Award, the City will conduct a pre-award conference with the CM at Risk and other Project Team members. At the pre-award conference, the CM at Risk will (a) review the nominated slate of Subcontractors and Suppliers and discuss any concerns with or objections that the City has to any nominated Subcontractor or Supplier; (b) discuss City concerns relating to any proposed self-performed Work; (c) review the CM at Risk's proposed Contract Price for the Work during the construction phase; (d) discuss the conditions, if any, under which the City will agree to leave any portion of the remaining CM at Risk Contingency within the Contract Price for the construction phase Work; (e) resolve possible time frames for the Date of commencement of the Contract Time for the construction phase Work; (f) schedule the pre-construction conference; and (g) discuss other matters of importance.

ARTICLE 3 – PERIOD OF SERVICES

- 3.1 The preconstruction phase services described in this Contract will be performed by CM at Risk in accordance with the most current update/revised Project Schedule. Failure on the part of the CM at Risk to adhere to the Project Schedule requirements for activities for which it is responsible will be an event of default.
- 3.1.1 Upon failure to adhere to the approved schedule, City may provide written notice to CM at Risk that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within three days of CM at Risk's receipt of such notice.
- 3.2 If the date of performance of any obligation or the last day of any time period provided for herein should fall on a Saturday, Sunday, or holiday for the City, then said obligation will be due and owing, and said time period will expire, on the first day thereafter which is not a Saturday, Sunday or legal City holiday. Except as may otherwise be set forth herein, any performance provided for herein will be timely made if completed no later than 5:00 p.m. (Lewisville time) on the day of performance.

ARTICLE 4 – CONTRACT AMOUNT AND PAYMENTS

4.1 CONTRACT AMOUNT

- 4.1.1 Based on the preconstruction phase services fee proposal submitted by the CM at Risk and accepted by the City (which by reference is made a part of this Contract); the City will pay the CM at Risk a lump sum fee in the amount of \$449,816.00.

Total Contract Amount, not to exceed,

\$449,816.00

4.2 PAYMENTS

- 4.2.1 Requests for monthly payments by the CM at Risk for preconstruction phase services will be submitted in a form acceptable to the City and will be accompanied by a progress report, detailed invoices and receipts, if applicable. Any requests for payment will include, as a minimum, a narrative description of the tasks accomplished during the billing period,

a listing of any Deliverables submitted, and copies of any Subconsultants' requests for payment, plus similar narrative and listings of Deliverables associated with their Work. Payment for services negotiated as a lump sum shall be made in accordance with the percentage of work completed during the preceding month. Services negotiated as a not-to-exceed fee will be paid in accordance with the work effort expended on that service during the preceding month.

- 4.2.2 The fees for additional preconstruction phase services provided by the CM at Risk and any Subcontractors or Subconsultants will be based upon the hourly rate schedule included as Exhibit D, attached.
- 4.2.3 The CM at Risk will pay all sums due Subconsultants for services and reimbursable expenses within 14 calendar days after the CM at Risk has received payment for those services from the City. In no event will the City pay more than 95 percent of the Contract Amount until final acceptance of all preconstruction phase services, and award of the approved GMP for the entire Project by City Council.
- 4.2.4 THE CM AT RISK AGREES THAT NO CHARGES OR CLAIMS FOR COSTS OR DAMAGES OF ANY TYPE WILL BE MADE BY IT FOR ANY DELAYS OR HINDRANCES BEYOND THE REASONABLE CONTROL OF THE CITY DURING THE PROGRESS OF ANY PORTION OF THE SERVICES SPECIFIED IN THIS CONTRACT. SUCH DELAYS OR HINDRANCES, IF ANY, WILL BE SOLELY COMPENSATED FOR BY AN EXTENSION OF TIME FOR SUCH REASONABLE PERIOD AS MAY BE MUTUALLY AGREED BETWEEN THE PARTIES. IT IS UNDERSTOOD AND AGREED, HOWEVER, THAT PERMITTING THE CM AT RISK TO PROCEED TO COMPLETE ANY SERVICES, IN WHOLE OR IN PART AFTER THE DATE TO WHICH THE TIME OF COMPLETION MAY HAVE BEEN EXTENDED, WILL IN NO WAY ACT AS A WAIVER ON THE PART OF THE CITY OF ANY OF ITS LEGAL RIGHTS HEREIN.**
- 4.2.5 If any service(s) executed by the CM at Risk is abandoned or suspended in whole or in part, for a period of more than 180 days through no fault of the CM at Risk, the CM at Risk is to be paid for the services performed prior to the abandonment or suspension.

ARTICLE 5 - CITY'S RESPONSIBILITIES

- 5.1 The City will furnish the following information:
 - 5.1.1 One copy of data the City determines pertinent to the work. However, the CM at Risk will be responsible for requesting information it deems reasonably required for the Project.
 - 5.1.2 All available data and information pertaining to relevant policies, standards, criteria, studies, etc.
 - 5.1.3 The name of the City employee or City's representative who will serve as the City's Designated Project Manager during the term of this Contract. The City's Designated Project Manager has the authority to administer this Contract and will monitor the CM at Risk's compliance with all terms and conditions stated herein. All requests for information from or decisions by the City on any aspect of the work or Deliverables will be directed to the City's Designated Project Manager.
- 5.2 The City additionally will:
 - 5.2.1 Contract separately with one or more design professionals to provide architectural and/or engineering design services for the Project. The scope of services for the Design Professional will be provided to the CM at Risk for its information.
 - 5.2.2 Supply, without charge, all necessary copies of programs, reports, drawings, and specifications reasonably required by the CM at Risk except for those copies whose cost has been reimbursed by the City.
 - 5.2.3 Provide the CM at Risk with adequate information in its possession or control regarding the City's requirements for the Project.
 - 5.2.4 Give prompt written notice to the CM at Risk when the City becomes aware of any default or defect in the Project or non-conformance with the Drawings and Specifications, or any of the services required hereunder. Upon notice of failure to perform, the City may provide written notice to CM at Risk that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within three days of CM at Risk's receipt of such notice.
 - 5.2.5 Notify the CM at Risk of changes affecting the budget allocations or schedule.
- 5.3 The City's Designated Project Manager will have authority to approve the Project Budget and Project Schedule, and render decisions and furnish information the City's Designated Project Manager deems appropriate to the CM at Risk.

ARTICLE 6 – CONTRACT CONDITIONS

6.1 PROJECT DOCUMENTS AND COPYRIGHTS

- 6.1.1 City Ownership of Project Documents: All Deliverables (electronically or manually generated) including but not limited to: cost estimates, studies, design analyses, Computer Aided Drafting and Design (CADD) digital files, and other related documents which are prepared specifically in the performance of this Contract are to be and remain the property of the City

and are to be delivered to the City's Designated Project Manager before final payment is made to the CM at Risk. Nonetheless, in the event these Deliverables are altered, modified or adapted without the written consent of the CM at Risk, which consent the CM at Risk will not unreasonably withhold, the City agrees to hold the CM at Risk harmless to the extent permitted by law, from the legal liability arising out of and or resulting from the City's alteration, modification or adaptation of the Deliverables.

- 6.1.2 CM at Risk to Retain Copyrights: The copyrights, patents, trade secrets or other intellectual property rights associated with the ideas, concepts, techniques, inventions, processes or works of authorship developed or created by the CM at Risk, its Subconsultants or personnel, during the course of performing this Contract or arising out of the Project will belong to the CM at Risk, but will remain available for use by the City for this Project under the terms of this Contract.
- 6.1.3 License to City for Reasonable Use: The CM at Risk hereby grants, and will require its Subconsultants to grant, an irrevocable license to the City, its agents, employees, and representatives to reasonably use, make copies, and distribute as appropriate the Deliverables developed or created for the Project and this Contract. This license will also include the making of derivative works. In the event that the derivative works require the City to alter or modify the Deliverables, then paragraph 6.1.1 applies.

6.2 COMPLETENESS AND ACCURACY OF CM AT RISK'S WORK

- 6.2.1 The CM at Risk will be responsible for the completeness and accuracy of its reviews, reports, supporting data, and other preconstruction phase Deliverables prepared or compiled pursuant to its obligations under this Contract and will at its sole own expense correct its work or Deliverables.

6.3 ALTERATION IN CHARACTER OF WORK

- 6.3.1 In the event an alteration or modification in the character of Work results in a substantial change in this Contract, a Change Order or amendment will be approved and executed by the City and the CM at Risk. Such Change Order or amendment will not be effective until approved by the City.
- 6.3.2 Additions to, modifications, or deletions from the Project provided herein may be made, and the compensation to be paid to the CM at Risk may accordingly be adjusted by mutual agreement of the contracting parties.
- 6.3.3 Work or material(s) furnished by the CM at Risk without such prior written authorization will be the CM at Risk's sole jeopardy, cost, and expense, and the CM at Risk hereby agrees that no claim for compensation for such work or materials furnished will be made.

6.4 DATA CONFIDENTIALITY & DISCLOSURE

- 6.4.1 As used in the Contract, data means all information, whether written or verbal, including plans, photographs, studies, investigations, audits, analyses, samples, reports, calculations, internal memos, meeting minutes, data field notes, work product, proposals, correspondence, and any other similar documents or information prepared by or obtained by the CM at Risk in the performance of this Contract.
- 6.4.2 The parties agree that all data, including originals, images, and reproductions, prepared by, obtained by, or transmitted to the CM at Risk in connection with the CM at Risk's performance of this Contract is subject to disclosure as may be required by the Texas Public Information Act.
- 6.4.3 Except as may be required by law, the CM at Risk will not divulge data to any third party without prior written consent of the City. The CM at Risk will not use the data for any purposes except to perform the services required under this Contract. The prohibition in this section 6.4.3 will not apply to the following data:
 - 6.4.3.1 Data which was known to the CM at Risk prior to its performance under this Contract unless such data was acquired in connection with work performed for the City.
 - 6.4.3.2 Data which was acquired by the CM at Risk in its performance under this Contract and which was disclosed to the CM at Risk by a third party, who to the best of the CM at Risk's knowledge and belief, had the legal right to make such disclosure and the CM at Risk is not otherwise required to hold such data in confidence; or
- 6.4.4 In the event the CM at Risk is required or requested to disclose data to a third party, or any other information to which the CM at Risk became privy as a result of any other contract with the City, the CM at Risk will first notify the City as set forth in this Article of the request or demand for the data. The CM at Risk will timely give the City sufficient facts, such that the City can have a meaningful opportunity to either first give its consent or take such action that the City may deem appropriate to protect such data or other information from disclosure.
- 6.4.5 The CM at Risk, unless prohibited by law, within ten calendar days after completion of services for a third party on real or personal property owned or leased by the City, will promptly deliver, as set forth in this section, a copy of all data to the City. All data will continue to be subject to the confidentiality agreements of this Contract.
- 6.4.6 The CM at Risk assumes all liability for maintaining the confidentiality of the data in its possession and agrees to

compensate the City if any of the provisions of this section are violated by the CM at Risk, its employees, agents or Subconsultants. Solely for the purposes of seeking injunctive relief, it is agreed that a breach of this section will be deemed to cause irreparable harm that justifies injunctive relief in court.

6.5 PROJECT STAFFING

- 6.5.1 Prior to the start of any work or Deliverable under this Contract, the CM at Risk will submit to the City an organization chart for the CM at Risk staff and Subconsultants and detailed resumes of key personnel listed in its response to the City's Request for Qualifications or subsequent fee proposals (or revisions thereto) that will be involved in performing the services prescribed in the Contract. Unless otherwise informed the City hereby acknowledges its acceptance of such personnel to perform such services under this Contract. In the event the CM at Risk desires to change such key personnel from performing such services under this Contract, the CM at Risk will submit the qualifications of the proposed substituted personnel to the City for prior approval. Key personnel will include, but are not limited to, principal-in-charge, project manager, superintendent, project director or those persons specifically identified to perform services of cost estimating, scheduling, value engineering, and procurement planning.
- 6.5.2 The CM at Risk will maintain an adequate number of competent and qualified persons, as determined by the City, to ensure acceptable and timely completion of the scope of services described in this Contract throughout the period of those services. If the City objects, with reasonable cause, to any of the CM at Risk's staff, the CM at Risk will take prompt corrective action acceptable to the City and, if required, remove such personnel from the Project and replace with new personnel acceptable to the City.

6.6 INDEPENDENT CONTRACTOR

- 6.6.1 The CM at Risk is and will be an independent contractor and whatever measure of control the City exercises over the work or Deliverable pursuant to the Contract will be as to the results of the work only. No provision in this Contract will give or be construed to give the City the right to direct the CM at Risk as to the details of accomplishing the work or Deliverable. These results will comply with all applicable laws and ordinances.

6.7 SUBCONSULTANTS

- 6.7.1 Prior to beginning the Work or Deliverable, the CM at Risk will furnish the City for approval, the names of all Subconsultants, if any, to be used on this Project. Subsequent changes are subject to the approval of the City.

6.8 TERMINATION

- 6.8.1 The City and the CM at Risk hereby agree to the full performance of the covenants contained herein, except that the City reserves the right, at its discretion and without cause, to terminate or remove from the CM at Risk's scope of work any or all services provided for in this Contract.
- 6.8.2 In the event the City terminates or descopes any or all of the services or any part of the services as herein provided, the City will so notify the CM at Risk in writing, and the CM at Risk will immediately after receiving such notice is to discontinue advancing the Work specified under this Contract and mitigate the expenditure, if any, of costs resulting from such abandonment or termination.
- 6.8.3 The CM at Risk, upon such termination or reduction in scope, will promptly deliver to the City all reports, estimates and other work or Deliverable entirely or partially completed, together with all unused materials supplied by the City.
- 6.8.4 The CM at Risk will receive compensation in full for services satisfactorily performed to the date of such termination and the reasonable costs and expenses attributable to such termination. The fee will be paid in accordance with Article 4 of this Contract and will be an amount mutually agreed upon by the CM at Risk and the City. If there is no mutual agreement, the final determination will be made in accordance with paragraph 6.9, "Disputes". However, in no event will the fee exceed that set forth in Article 4 or as amended in accordance with paragraph 6.3, "Alteration in Character of Work". The City will make the final payment within sixty Days after the CM at Risk has delivered the last of the partially or otherwise completed work items and the final fee has been agreed upon.

6.9 DISPUTES

- 6.9.1 In any unresolved dispute arising out of an interpretation of this Contract or the duties required therein, the final determination at the administrative level will be made by the City Manager or its designee.

6.10 WITHHOLDING PAYMENT

- 6.10.1 The City reserves the right to withhold funds from the progress payments up to the amount equal to the claims the City may have against the CM at Risk, until such time that a settlement on those claims has been reached.

6.11 RECORDS/AUDIT

- 6.11.1 Records of the CM at Risk's direct personnel payroll, reimbursable expenses pertaining to this Project, and records of accounts between the City and CM at Risk will be kept on a generally recognized accounting basis and shall be available for up to three years following final completion of the Project. The City reserves the right to audit the CM at Risk's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate this Contract and any Change Orders. The City reserves the right to decrease Contract Amount and/or payments made on this Contract if, upon audit of the CM at Risk's records, the audit discloses the CM at Risk has provided false, misleading, or inaccurate cost and pricing data.
- 6.11.2 The CM at Risk will include a provision similar to paragraph 6.11.1 in all of its agreements with Subconsultants, Subcontractors, and Suppliers providing services under this Contract to ensure the City has access to the Subconsultants', Subcontractors', and Suppliers' records to verify the accuracy of cost and pricing data.

6.12 INDEMNIFICATION

- 6.12.1 The CM at Risk agrees to defend, indemnify and hold harmless the City of Lewisville, its officers, agents and employees, and any jurisdiction or agency issuing permits for any work included in the Project, their officers, agents and employees, hereinafter individually and collectively referred to as "indemnitee", from all suits and claims, including attorney's fees and cost of litigation, actions, losses, damage, expenses, costs or claims of any character or any nature arising out of the Work or Deliverables done in fulfilling the terms of this Contract, or on account of any act, claim or amount arising out of or recovered under Workers' Compensation Law, or arising out of the failure of the CM at Risk to conform to any statutes, ordinances, regulation, law or court decree. It is agreed that the CM at Risk will be responsible for primary loss investigation, defense, and judgment costs where this Contract of indemnity applies. In consideration of the award of this contract, the CM at Risk agrees to waive all rights of subrogation against the City, its officers, officials, agents and employees for losses arising from the work performed by the CM at Risk for the City.**

6.13 NOTICES

- 6.13.1 Unless otherwise provided, any notice, request, instruction, or other document to be given under this Agreement by any party to any other party shall be in writing and shall be delivered in person or by courier or facsimile transmission or mailed by certified mail, postage prepaid, return receipt requested and shall be deemed given upon (a) confirmation of receipt of a facsimile transmission, (b) confirmed delivery by hand or standard overnight mail, or (c) upon the expiration of three (3) business days after the day mailed by certified mail, as follows:

To City:	City of Lewisville Public Services 1100 N. Kealy, Suite D Lewisville, TX ZIP 75057
To CM at Risk	Archer Western Construction 1411 Greenway Drive Irving, TX 75038
Copy to: Design Professional (if applicable)	---(name)--- HDR Engineering, Inc. Attn: Joel Cantwell, PE 17111 Preston Road, Suite 300 Dallas, Texas 75248

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

6.14 EQUAL OPPORTUNITY/AFFIRMATIVE ACTION

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

by the CM at Risk.

6.15 COMPLIANCE WITH FEDERAL LAWS

- 6.15.1 The CM at Risk understands and acknowledges the applicability of the Americans With Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989 to it. The CM at Risk agrees to comply with these and all laws in performing this Contract and to permit the City to verify such compliance.

6.16 CONFLICT OF INTEREST

- 6.16.1 To evaluate and avoid potential conflicts of interest, the CM at Risk will provide written notice to the City, as set forth in this section, of any work or services performed by the CM at Risk for third parties that may involve or be associated with any real property or personal property owned or leased by the City. Such notice will be given seven business days prior to commencement of the Project by the CM at Risk for a third party, or seven business days prior to an adverse action as defined below. Written notice and disclosure will be sent to:

City of Lewisville
Attn: Purchasing Manager
ADDRESS
Lewisville, TX ZIP

- 6.16.2 Actions considered to be adverse to the City under this Contract include but are not limited to:

- (a) Using data as defined in the Contract, acquired in connection with this Contract to assist a third party in pursuing administrative or judicial action against the City.
- (b) Testifying or providing evidence on behalf of any person in connection with an administrative or judicial action against the City; and
- (c) Using data to produce income for the CM at Risk or its employees independently of performing the services under this Contract, without the prior written consent of the City.

- 6.16.3 The CM at Risk represents that except for those persons, entities and projects previously identified in writing to the City, the services to be performed by the CM at Risk under this Contract are not expected to create an interest with any person, entity, or third party project that is or may be adverse to the interests of the City.

- 6.16.4 The CM at Risk's failure to provide a written notice and disclosure of the information as set forth in this section will constitute a material breach of this Contract.

6.17 CONTRACTOR'S LICENSE

- 6.17.1 Prior to award of the Contract, the CM at Risk must provide to the City's Designated Project Manager, its Contractor's License Classification and number, if any, and its Federal Tax I.D. number.

6.18 SUCCESSORS AND ASSIGNS

- 6.18.1 The City and the CM at Risk will each bind itself, and their partners, successors, assigns, and legal representatives to the other party to this Contract and to the partners, successors, assigns, and legal representatives of such other party in respect to all covenants of this Contract. Neither the City nor the CM at Risk will assign, sublet, or transfer its interest in this Contract without the written consent of the other. In no event will any contractual relation be created or be construed to be created as between any third party and the City.

6.19 FORCE MAJEURE

- 6.19 The CM at Risk shall be entitled to an extension of the Contract Time, following transmittal of a contractually compliant notice to the City, should an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of the CM at Risk, or any Subcontractors and Suppliers result in delay to the critical path of the Project. The CM at Risk and any Subcontractors shall immediately notify the City of Lewisville Project Manager by telephone (to be confirmed in writing within five (5) calendar days of the inception of such occurrence) and describe at a reasonable level of detail the circumstances causing the non-performance or delay in performance.

6.20 COVENANT AGAINST CONTINGENT FEES

- 6.20.1 The CM at Risk warrants that no person has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, and that no member of the City Council, or any employee of the City of Lewisville has any interest, financially, or otherwise, in the firm. The City of Lewisville will in the event of the breach or violation of this warranty, have the right to annul this Contract without liability, or at its discretion to deduct from the Contract Amount or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

6.21 NON-WAIVER PROVISION

6.21.1 The failure of either party to enforce any of the provisions of this Contract or to require performance by the other party of any of the provisions hereof will not be construed to be a waiver of such provisions, nor will it affect the validity of this Contract or any part thereof, or the right of either party to thereafter enforce each and every provision.

6.22 JURISDICTION

6.22.1 This Contract will be deemed to be made under and will be construed in accordance with and governed by the laws of the State of Texas, without regard to the conflicts or choice of law provisions thereof. Under the provisions of Chapter 271 of the Texas Local Government Code, the City has waived its immunity by entering into this Contract. However, the City's governmental immunity is waived only to the extent set forth by statute. An action to enforce any provision of this Contract or to obtain any remedy with respect hereto will be brought and tried in the State District Courts located in Denton County, Texas, and for this purpose, each party hereby expressly and irrevocably consents to the sole and exclusive jurisdiction and venue of such Court.

6.23 SURVIVAL

6.23.1 All warranties, representations, and indemnifications by the CM at Risk will survive the completion or termination of this Contract.

6.24 MODIFICATION

6.24.1 No supplement, modification, or amendment of any term of this Contract will be deemed binding or effective unless in writing and signed by the parties hereto and in conformation with provisions of this Contract, except as expressly provided herein to the contrary.

6.25 SEVERABILITY

6.25.1 If any provision of this Contract or the application thereof to any person or circumstance will be invalid, illegal or unenforceable to any extent, the remainder of this Contract and the application thereof will not be affected and will be enforceable to the fullest extent permitted by law.

6.26 INTEGRATION

6.26.1 This Contract contains the full agreement of the parties hereto. Any prior or contemporaneous written or oral agreement between the parties regarding the subject matter hereof is merged and superseded hereby.

6.27 TIME IS OF THE ESSENCE

6.27.1 Time of each of the terms, covenants, and conditions of this Contract is hereby expressly made of the essence.

6.28 THIRD PARTY BENEFICIARY

6.28.1 This Contract will not be construed to give any rights or benefits in the Contract to anyone other than the City and the CM at Risk. All duties and responsibilities undertaken pursuant to this Contract will be for the sole and exclusive benefit of the City and the CM at Risk and not for the benefit of any other party.

6.29 COOPERATION AND FURTHER DOCUMENTATION

6.29.1 The CM at Risk agrees to provide the City such other duly executed documents as may be reasonably requested by the City to implement the intent of this Contract.

6.30 CONFLICT IN LANGUAGE

6.30.1 All work or Deliverables performed will conform to all applicable City of Lewisville codes, ordinances and requirements as outlined in this Contract. If there is a conflict in interpretation between provisions in this Contract and any Exhibits, the provisions in this Contract will prevail.

ARTICLE 7 – INSURANCE REQUIREMENTS

The CM at Risk. Subcontractors and Subconsultants shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the CM at Risk, its agents, representatives, employees, or Subconsultants.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants

contained in this Contract.

The City in no way warrants that the minimum limits contained herein are sufficient to protect the CM at Risk from liabilities that might arise out of the performance of the work under this Contract by the CM at Risk, his agents, representative, employees, or Subconsultants. CM at Risk is free to purchase such additional insurance as may be determined necessary.

7.1 MINIMUM SCOPE AND LIMITS OF INSURANCE

7.1.1 CM at Risk will provide coverage at least as broad and with limits of liability not less than those stated below.

7.1.1.1 Commercial General Liability-Occurrence Form

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

General Aggregate	\$6,000,000
Products-Completed Operations Aggregate	\$3,000,000
Personal & Advertising Injury	\$3,000,000
Each Occurrence	\$3,000,000

(a) The policy shall be endorsed to include the following additional insured language: "The City of Lewisville shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the CM at Risk". Policy shall contain waiver of subrogation against the City of Lewisville.

7.1.1.2 Automobile Liability

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

Combined Single Limit (CSL)	\$3,000,000
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(a) The policy shall be endorsed to include the following additional insured language: "The City of Lewisville shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the CM at Risk", including automobiles owned, leased or hired or borrowed by the CM at Risk".

7.1.1.3 Workers Compensation and Employers Liability

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

(a) Policy shall contain waiver of subrogation against the City of Lewisville.

7.2 ADDITIONAL INSURANCE REQUIREMENTS

7.2.1 The policies shall include, or be endorsed to include, the following provisions.

7.2.2 On insurance policies where the City of Lewisville is named as additional insured, the City of Lewisville shall be an additional insured to the full limits of liability purchased by the CM at Risk even if those limits of liability are in excess of those required by this Contract.

7.2.3 The CM at Risk's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

7.2.4 Coverage provided by the CM at Risk shall not be limited to the liability assumed under the indemnification provisions of this Contract.

7.3 SUBCONSULTANT INSURANCE

7.3.1 CM at Risk's certificate(s) shall include all subcontractors as additional insureds under its policies or subconsultants shall maintain separate insurance as determined by the CM at Risk, however, subconsultants limits of liability shall not be less than \$1,000,000 per occurrence / \$2,000,000 aggregate

7.4 NOTICE OF CANCELLATION

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

the City's Purchasing Manager at:

City of Lewisville
Attn: Earl Whitaker
151 W. Church St.
Lewisville, TX 75057

7.5 ACCEPTABILITY OF INSURERS

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

7.6 VERIFICATION OF COVERAGE

7.6.1 The CM at Risk will furnish the City, Certificates of Insurance (ACORD form or equivalent approved by the City) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

7.6.2 All certificates and endorsements are to be received and approved by the City before work commences. Each insurance policy required by this Contract must be in effect at or prior to the earlier of commencement of work under this Contract and remain in effect for the duration of the Project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

7.6.3 All certificates required by this Contract will be sent directly to the Engineering and Architectural Services Department Contracts Administration Section contracts officer for this Project. The City project/contract number and project description shall be noted on the certificates of insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Contract, at any time. DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY'S RISK MANAGEMENT DIVISION.

7.7 APPROVAL

7.7.1 Any modification or variation from the insurance requirements in this Contract must be approved by the Law Department, whose decision will be final. Such action will not require a formal contract amendment but may be made by administrative action.

This Contract will be in full force and effect only when it has been approved and executed by the duly authorized City officials.

IN WITNESS WHEREOF, the parties hereto have executed this Contract on _____.

CITY OF LEWISVILLE, TEXAS

CM at Risk
Archer Western Construction, LLC

BY:

BY:



Printed Name

Jeffrey J. Polak

Printed Name

Title

BGL/Vice President

Title

ATTEST:
THOMAS HARRIS III, CITY SECRETARY

Signature

APPROVED AS TO FORM:
LIZBETH PLASTER, CITY ATTORNEY

Signature _____

EXHIBIT A – PROJECT DESCRIPTION

Following is a brief description of the Project for which the preconstruction phase service services specified in this Contract are to be performed:

BACKGROUND

The City of Lewisville (City) owns and operates the Prairie Creek Wastewater Treatment Plant (PCWWTP), which is currently permitted to treat an annual average daily flow (AADF) of 12 million gallons per day (mgd) and a peak two-hour (P2H) flow of 30 mgd. The current AADF (9.1 mgd) is at 75 percent of the plant design capacity and triggers the need for a capacity expansion study as required by Texas Commission on Environmental Quality (TCEQ) regulations. It is anticipated that the next permit cycle in 2026 may include ammonia discharge limits along with higher flow capacities. The recent 2018 Wastewater Collection System Master Plan determined a future build-out AADF of 19.6 mgd.

The PCWWTP has a permitted design capacity of 12 mgd annual average daily flow (AADF). The existing wastewater process includes influent screening and grit removal, three different forms of secondary treatment in parallel, tertiary filtration, disinfection, and solids storage, handling, and disposal. The three secondary processes (Plants I, II, and III) are not designed to meet the upcoming ammonia limits. Thus, the purpose of the project is to upgrade the secondary treatment process to treat future buildout flows (20 mgd AADF) and meet ammonia and future phosphorus limits.

OBJECTIVES & PURPOSE

The purpose of this project is to construct an expansion of the Plant II aeration basins at the City of Lewisville's Prairie Creek Wastewater Treatment Plant PCWWTP. This project was recommended in the capital improvements plan developed by HDR as part of the 2020 Prairie Creek Wastewater Treatment Plant Master Plan (Master Plan). The project is urgently needed to increase the capacity to treat higher wastewater flows due to population growth. The secondary treatment process also needs to be upgraded to meet upcoming ammonia discharge limits and prepare for potential phosphorus discharge limits in the future.

The primary objective of the Prairie Creek Wastewater Treatment Plant (PCWWTP) Plant II Aeration Basin Expansion Project is to increase the capacity of the Plant II aeration basins to 20 mgd AADF to allow the aging Plants I and III to be decommissioned. The project will also include improvements for the secondary treatment system to meet more stringent discharge limits, including an upcoming ammonia limit and future phosphorus limit.

PRELIMINARY DESIGN

Two aeration basin configuration alternatives to meet the project objectives were developed and evaluated in consultation with City staff. After a detailed evaluation involving both cost and non-cost factors, Alternative 2 was selected for the project. The selected configuration, in addition to having a lower construction cost, allows the plant to more easily maintain treatment and meet discharge permit requirements during construction and be expanded in the future if growth exceeds projections.

The following facilities will be constructed as part of this project:

- Aeration Basin Distribution Structure to control the flow split to eight aeration basins
- Modifications to the existing Aeration Basins No. 1-4 to add anoxic zones and treat 1.5 mgd per basin (6 mgd total)
- Aeration Basins No. 5-8 with a deeper side water depth to treat 3.5 mgd per basin (14 mgd total)
- Secondary Clarifier Distribution Structure to control the flow split of effluent from all aeration basins to the four existing Secondary Clarifiers
- Blower Building No. 2 to house eight new turbo blowers to supply aeration air to all eight aeration basins at a higher efficiency than existing blowers
- Modifications to the existing RAS/WAS Pump Station to increase pumping capacity to meet the higher treatment capacity, including replacement of all RAS pumps and automation of the WAS control
- Yard piping, drainage, and paving improvements to support the new facilities
- Demolition of the existing Plant III facilities that are near the end of their service life to create space for the new improvements and improve site safety and aesthetics

EXHIBIT B – Construction Services Agreement

Exhibit B

CITY OF LEWISVILLE, TEXAS

PRAIRIE CREEK WWTP PLANT II AERATION BASIN EXPANSION

**CONSTRUCTION MANAGER AT RISK
CONSTRUCTION PHASE SERVICES**

CONTRACT NO. XXXX

TABLE OF CONTENTS

Recitals	1
Article 1 - Definitions	2
Article 2 - CM at Risk's Services and Responsibilities	6
Article 3 - City's Services and Responsibilities	15
Article 4 - Contract Time	17
Article 5- Contract Price	21
Article 6 - Changes to the Contract Price and Time	22
Article 7- Procedure for Payment	25
Article 8- Claims and Disputes	29
Article 9 – Suspension and Termination	31
Article 10 - Insurance and Bonds	33
Article 11 - Indemnification	36
Article 12 – General Provisions	37
EXHIBIT A - PROJECT DESCRIPTION	45
EXHIBIT B – APPROVED GMP PROPOSAL	46
EXHIBIT C – TECHNICAL SPECIFICATIONS	47
EXHIBIT D – CONSTRUCTION DRAWINGS	48

CITY OF LEWISVILLE

PRAIRIE CREEK WWTP PLANT II AERATION BASIN EXPANSION

CONSTRUCTION MANAGER AT RISK

CONSTRUCTION SERVICES

GMP No. **X**

Project No. Contract No. **XXXX**

THIS AGREEMENT, made and entered by and between City of Lewisville, hereinafter designated the "City" and _____, hereinafter designated the "Construction Manager at Risk" or "CM at Risk"

Recitals

- A. **The City Manager** of the City of Lewisville, Texas, or their designee, is authorized and empowered by provisions of the City Charter to execute contracts for construction services.
- B. The City has entered into a separate contract with the Design Professional to design for construction the **Prairie Creek WWTP Plant II Aeration Basin Expansion** as described in **Exhibit A (Design Summary)** attached, hereinafter referred to as the "Project".
- C. The City has previously entered into the Preconstruction Agreement with the Construction Manager at Risk for the performance of preconstruction services for the Project. Preconstruction services may continue during the performance of construction phase services as needed.
- D. This Construction Agreement extends the Construction Manager at Risk's obligations beyond preconstruction services into the construction of the Project.

NOW THEREFORE, for and in consideration of the mutual covenants and considerations hereinafter contained, it is agreed by and between the City and the CM at Risk as follows:

Article 1 - Definitions

"Construction Agreement" ("Contract") means this written document signed by the City and CM at Risk covering the construction phase of the Project, and including other documents itemized and referenced in or attached to and made part of this Contract. The terms Agreement and Contract shall be used interchangeably throughout unless specifically stated otherwise.

"Change Directive" means a written order prepared and signed by City, directing a change in the Work prior to agreement on an adjustment in the Contract Price and the Contract Time.

"Certificate of Substantial Completion" has the meaning given such term in Subsection 4.1.5.

"Change Order" – A written instrument issued after execution of the Contract Documents signed by the City and CM at Risk, stating their agreement upon all of the following: the addition, deletion or revision in the scope of services or the Work; the amount of the adjustment to the Contract Amount; the extent of the adjustment to the Contract Time; or modifications of other contract terms.

"Owner" means the City of Lewisville.

"City's Representative" means the person designated in Subsection 8.3.1.2.

"City's Senior Representative" means the person designated in Subsection 8.3.1.1.

"CM at Risk" means the firm selected by the City to provide construction services as detailed in this Agreement.

"CM at Risk's Contingency" means a fund to cover cost growth during the project used at the discretion of the CM at Risk usually for costs that result from project circumstances. The amount of the CM at Risk's Contingency will be negotiated as a separate line item in each GMP package. Use and management of the CM at Risk's Contingency is described in Subsection 5.1.2.3.

"CM at Risk's Representative" means the person designated in Subsection 8.3.2.2.

"CM at Risk's Senior Representative" means the person designated in Subsection 8.3.2.1.

"Construction Documents" The drawings and specifications prepared, signed and sealed by the Design Professional and issued for construction.

"Construction Fee" means the lump sum amount for CM at Risk's administrative costs, home office overhead, and profit, whether at the CM at Risk's principal or branch offices.

"Contract Documents" means the following items and documents in descending order of precedence: (i) all written modifications, amendments and Change Orders; (ii) the Preconstruction Contract, including all exhibits and attachments; (iii) Construction Documents; (iv) Guaranteed Maximum Price Amendment(s), performance and payment bonds.

"Contract Price" means the amount or amounts set forth in Article 5.

"Contract Time" means the period of time set forth in Article 4, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Project.

"Cost of the Work" means the direct costs necessarily incurred by the CM at Risk in the proper performance of the Work. The Cost of the Work shall include direct labor costs, subcontract costs, costs of materials and equipment incorporated in the completed construction, costs of other materials and equipment, temporary

facilities, permit and license fees, materials testing, and related items. The Cost of the Work shall not include the CM at Risk's Construction Fee, General Conditions Costs, and taxes.

"Critical Path" means the longest sequence of construction activities which establishes the minimum overall project duration.

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

"Design Professional" means the licensed engineering or architectural firm who furnishes design and/or construction administration services required for the Project.

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

"Engineer" means the licensed person, firm or corporation who furnishes engineering services required for the Project.

"Final Acceptance" means the completion of the Work as prescribed in Section 4.2.

"Float" means the number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Substantial Completion date.

"General Conditions Costs" includes, but is not limited to, the following types of costs for the CM at Risk during the construction phase: (i) payroll costs for project manager or CM at Risk for work conducted at the site, (ii) payroll costs for the superintendent and full-time general foremen at the site, (iii) payroll costs for other management personnel resident and working at the site, (iv) workers not included as direct labor costs engaged in support (e.g. loading/unloading, clean-up, etc.), (v) costs of offices and temporary facilities including office materials, office supplies, office equipment, and minor expenses, (vi) cost of utilities, fuel, sanitary facilities, telephone and data services at the site, (vii) costs of liability insurance premiums not included in labor burdens for direct labor costs, (viii) costs of bond premiums, and (ix) costs of consultants not in the direct employ of the CM at Risk or Subcontractors.

"Guaranteed Maximum Price" or "GMP"

The maximum total amount of money that the City agrees to pay the CM at Risk for construction phase services.

"GMP Amendment" means an amendment, executed in writing and signed by both parties, to the GMP.

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

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

Milestones - A principal event in the performance of the Work that the Contract requires CM at Risk to achieve by an intermediate completion date, or by a time prior to Substantial Completion of all the Work.

"Notice to Proceed" or "NTP" means the directive issued by the City, authorizing the CM at Risk to start Work. Such notice shall be provided to the CM at Risk at least seven days prior to the commencement date stipulated herein and shall be provided no later than 30 days after the GMP Proposal is approved by the City and all the required documentation is received by the City.

"Owner's Contingency" means a fund to cover cost growth during the Project used at the discretion of the Owner usually for costs that result from Owner directed changes or unforeseen site conditions. The amount

of the Owner's Contingency will be set solely by the Owner and will be in addition to the Project costs included in the CM at Risk's GMP packages. Use and management of the Owner's Contingency is described in Subsection 5.1.3.

"Payment Request" means the City form used by the CM at Risk to request progress payments for Work in accordance with Article 7.

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

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

"Project" means the Work to be completed in the execution of this Agreement as amended and as described in the Recitals above and in Exhibit A attached.

"Project Schedule" means a schedule, prepared and maintained by CM at Risk, describing the sequence and duration of the activities comprising the CM at Risk's plan to accomplish the Work within the Contract Times.

"Project Record Documents" means the documents created pursuant to Section 2.10.

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

"Schedule of Values" means a document which divides the Contract Price into pay items, such that the sum of all pay items equals the Contract Price for the construction phase Work, or for any portion of the Work having a separate specified Contract Price. The SOV may or may not be output from the Project Schedule depending on if the Project Schedule is cost-loaded or not.

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

"Site" means the land or premises on which the Project is located generally described as Prairie Creek Wastewater Treatment Plant.

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

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

"Subconsultant" - A person, firm or corporation having a contract with the CM at Risk to furnish services required as its independent professional associate or consultant with respect to the Project.

"Sub-subcontractor or -consultant" – An individual or firm having a direct contract with any Subcontractor or any other individual firm having a contract with aforesaid contractors at any tier, who undertakes to perform a part of the design phase services or construction phase Work at the site for which the CM at Risk is responsible or furnishes services required as its independent profession associate or consultant with respect to the Project, as applicable.

“Substantial Completion” means when the Work, or an agreed upon portion of the Work, is sufficiently complete so that City can occupy and use the Project or a portion thereof for its intended purposes.

“Supplier” means a manufacturer, fabricator, supplier, distributor, material man, or vendor having a direct contract with CM at Risk or any Subcontractor to furnish materials or equipment to be incorporated in the construction phase Work by CM at Risk or any Subcontractor.

“Work” means the entire completed construction or the various separately identifiable parts thereof as required by the Construction Documents.

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Article 2 - CM at Risk's Services and Responsibilities

- 2.0** The CM at Risk shall furnish all labor, materials, equipment, transportation, utilities, services, and facilities required to perform all Work required by the Contract Documents, and to completely and totally construct the same and install the material therein for the City. All Work will be performed in a good and workmanlike manner and in strict compliance with the Contract Documents.
- 2.1. Software and Technology Services**
- 2.1.1.** CM at Risk's Representative shall be reasonably available to City and shall have the necessary expertise and experience required to supervise the Work. CM at Risk's Representative shall communicate regularly with City but not less than once a week and shall be vested with the authority to act on behalf of CM at Risk. CM at Risk's Representative may be replaced only with the written consent of City.
- 2.1.2** Approved Alternate Information System
- 2.1.2.1** CM at Risk may utilize, with City approval, any industry standard web-based project management information system that has capabilities and access equal to the City's system.
- 2.1.2.2** The CM at Risk shall provide training for City staff and City-designated supporting personnel as needed.
- 2.1.3** Hardware provided by the CM at Risk shall be capable of network printing up to and including C- size paper, color printing, and faxing. The CM at Risk will be required to establish broadband connectivity to the web-based ASP, PROMIS or approved alternate information system, and maintain this connectivity for the duration of the Project construction phase.
- 2.1.4** The CM at Risk shall furnish this computerized office platform with fully licensed software. Software shall be compatible with City software standards and should include but not be limited to word processing, scheduling, budgeting, e-mailing, AutoCad2000®, Imaging software from Adobe®, and an internet browser.
- 2.1.5** Software shall include capability and function to store, backup, and maintain the electronic documents generated.
- 2.1.6** The CM at Risk will endeavor to maintain and utilize electronic mail for correspondence and maintain correspondence records in this electronic PROMIS or approved alternate information system.
- 2.2 Government Approvals and Permits**
- 2.3.1** Unless otherwise provided, CM at Risk shall obtain or assist the City to obtain all necessary permits, approvals, and licenses required for the prosecution of the Work from any government or quasi-government entity having jurisdiction over the Project.
- 2.3.2** Copies of permits and notices must be provided to the City's Representative prior to starting the permitted activity.
- 2.3.3** Costs for permit(s) fees for building and demolition, grading and drainage, water, sewer right-of-way, and landscaping, as well as utility design fees for permanent services, shall be paid by the City.

2.3.4 CM at Risk shall be responsible for all other permits and review fees not specifically listed in Subsection 2.3.3 above. CM at Risk is responsible for the cost of water meter(s), water and sewer taps, fire lines and taps, and all water bills on the project meters until Substantial Completion of the Project. Arrangements for construction water are the CM at Risk's responsibility.

2.4 Preconstruction Conference

2.4.1 Prior to the commencement of any Work, the City's Representative will schedule a pre-construction conference.

2.4.2 The purpose of this conference is to establish a working relationship between the CM at Risk, utility firms, and various City agencies. The agenda will include critical elements of the work schedule, submittal schedule, cost breakdown of major lump sum items, Payment Requests and processing, coordination with the involved utility firms, the level of Project Record Documents required, and emergency telephone numbers for all representatives involved in the course of construction.

2.4.3 The Notice to Proceed will be issued confirming the construction start date, Performance Period, and, the Substantial Completion date, and the conditions required to achieve Substantial Completion.

2.4.4 The CM at Risk shall provide a Schedule of Values based on the categories used in the buyout of the Work but not greater than the approved GMP and identifying the CM at Risk's Contingency.

2.4.5 CM at Risk's minimum attendance obligation at the preconstruction conference shall be the CM at Risk's Representative, the job superintendent, and the CM at Risk's safety officer.

2.5 Control of the Work

2.5.1 CM at Risk shall provide all necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities, and other temporary facilities to permit CM at Risk to complete the Work in accordance with the Contract Documents.

2.5.2 CM at Risk shall perform all construction activities efficiently and with the requisite expertise, skill, and competence to satisfy the requirements of the Contract Documents. CM at Risk shall at all times exercise complete and exclusive control over the means, methods, sequences, and techniques of construction. Sequencing of construction is subject to coordination with requirement for the facility to remain operational throughout construction.

2.5.3 The CM at Risk's Representative or other authorized representative shall be present at the Site at all times that construction activities are taking place.

2.5.3.1 All elements of the Work shall be under the direct supervision of a foreman or his designated representative on the Site who shall have the authority to take actions required to properly carry out that particular element of the Work.

- 2.5.4** Where the Contract Documents require that a particular product be installed and/or applied by an applicator approved by the manufacturer, it is the CM at Risk's responsibility to ensure the CM at Risk personnel and/or Subcontractor employed for such Work is approved by the manufacturer.
- 2.5.5** Prior to commencement of the Work or any portion thereof, the CM at Risk shall verify measurements at the Site and shall be responsible for the correctness of such measurements. No increase to the approved GMP will be allowed because of differences between actual dimensions and the dimensions indicated in the Contract Documents; differences, which may be found, shall be submitted to the City for resolution before proceeding with the Work.
- 2.5.6** The CM at Risk shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the CM at Risk with the Contract Documents before commencing activities. Errors, inconsistencies, or omissions discovered shall be reported to the City at once.
- 2.5.7** The CM at Risk shall establish and maintain all primary building and construction grades, lines, levels, and benchmarks, and shall be responsible for accuracy and protection of same. This Work shall be performed or supervised by a licensed civil engineer or surveyor in the State of Texas.
- 2.5.8** Any person employed by the CM at Risk or any Subcontractor who, in the opinion of the City, does not perform his work in a proper, skillful, and safe manner or is intemperate or disorderly shall, at the written request of the City, be removed from the Work by CM at Risk or Subcontractor employing such person, and shall not be employed again in any portion of Work without the written approval of the City. The CM at Risk or Subcontractor shall keep the City harmless from damages or claims which may occur in the enforcement of this Section.
- 2.5.9** CM at Risk assumes responsibility to City for the proper performance of the work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between City and any Subcontractor or Sub-subcontractor, including but not limited to any third-party beneficiary rights.
- 2.5.10** CM at Risk shall coordinate the activities of all Subcontractors. If City performs other work on the Project or at the Site with separate contractors under City's control, CM at Risk agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.
- 2.5.11** In the event of noncompliance with this Section, the City may require the CM at Risk to stop or suspend the Work in whole or in part, until such time as the CM at Risk cures the noncompliance or said noncompliance is resolved by the City with all costs, expenses, and damages arising therefrom to be reimbursed by the CM at Risk.
- 2.6 Control of the Work Site**
- 2.6.1** Throughout all phases of construction CM at Risk shall keep the Site reasonably free from debris, trash, and construction wastes to permit CM at Risk to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, CM at Risk shall remove any remaining debris, trash, construction wastes, materials, equipment, machinery, and tools arising from the Work or applicable portions thereof to permit City to occupy the Project or a portion of the Project for its intended use.
- 2.6.2** CM at Risk shall take all reasonable steps, procedures, or means to prevent any dust nuisance due to construction operations. The dust control measures shall be maintained at all times to the satisfaction of the City and in accordance with the local requirements. CM at Risk shall

adhere to any additional, specific dust and debris containment requirements as defined in Contract Documents.

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2.6.3 CM at Risk shall maintain ADA and ANSI accessibility requirements during construction activities in an occupied building or facility. ADA and ANSI accessibility requirements shall include, but not be limited to, parking, building access, entrances, exits, restrooms, areas of refuge, and emergency exit paths of travel. CM at Risk shall be responsible for the coordination of all work to minimize disruption to building occupants and facilities.

2.6.4 Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the Site by the CM at Risk. When equipment is no longer required for the Work, it shall be removed promptly from the Site. Protection of construction materials and equipment stored at the Site from weather, theft, damage, and all other adversity is solely the responsibility of the CM at Risk.

2.7 Shop Drawings, Product Data and Samples

2.7.1 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the CM at Risk proposes to conform to the information given and the design concept expressed in the Contract Documents.

2.7.2 The CM at Risk shall review, approve, verify, and submit to the City five copies of each Shop Drawing, Product Data, Sample, and similar submittal required by the Contract Documents so as to cause no delay in the Work or in the activities of the City or of separate contractors. Submittals made by the CM at Risk, which are not required by the Contract Documents, may be returned without action.

2.7.3 The CM at Risk shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples, or similar submittals until the respective submittal has been approved by the City. Such Work shall be in accordance with approved submittals.

2.7.4 By approving, verifying, and submitting Shop Drawings, Product Data, Samples, and similar submittals, the CM at Risk represents that the CM at Risk has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

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

2.7.6 The CM at Risk shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the City on previous submittals.

2.7.7 Informational submittals upon which the City is not expected to take responsive action may be so identified in the Contract Documents.

2.7.8 When professional certification of performance criteria of materials, systems, or equipment is required by the Contract Documents, the City shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

2.8 Quality Control, Testing and Inspection

2.8.1 All materials used in the Work shall be new and unused, unless otherwise noted, and shall meet all quality requirements of the Contract Documents.

- 2.8.2** All construction materials to be used on the Work or incorporated into the Work, equipment, plant, tools, appliances, or methods to be used in the Work may be subject to the inspection and approval or rejection by the City. Any material rejected by the City shall be removed immediately and replaced in an acceptable manner.
- 2.8.3** The City will select and pay for the services of an independent testing laboratory utilizing procedures and methods for sampling and testing to be determined by the City and the testing laboratory.
- 2.8.4** Where the Contract Documents require material testing, the CM at Risk shall notify the City's Representative, the Engineer, and the testing laboratory of the readiness of the Work for such testing.
- 2.8.4.1** Should any tests indicate noncompliance with the Contract Documents, the cost associated with that noncompliance will be paid for by the CM at Risk. CM at Risk's Contingency cannot be utilized for the cost of re-testing.
- 2.8.4.2** When the any tests indicate noncompliance with the Contract Documents, all retesting shall be performed by the same testing agency. City may waive this requirement, in writing, at its sole discretion.
- 2.8.5** The CM at Risk will cooperate with the selected testing laboratory and all others responsible for testing and inspecting the work and shall provide them access to the Work at all times.
- 2.8.6** At the option of the City, materials may be approved at the source of supply before delivery is started.
- 2.8.7** Code compliance testing and inspections required by codes or ordinances, or by a plan approval authority, and which are made by a legally constituted authority, shall be the responsibility of and shall be paid by the CM at Risk as a Cost of the Work, unless otherwise provided in the Contract Documents.
- 2.8.8** CM at Risk's convenience and quality control testing and inspections shall be the sole responsibility of the CM at Risk and paid by the CM at Risk. The use of a testing laboratory does not relieve nor eliminate the CM at Risk
- 2.9 Trade Names and Substitutions.**
- 2.9.1** Construction Document references to equipment, materials, or patented processes by manufacturer, trade name, make or catalog number, unless indicated that no substitutions are permitted, substitute, or alternate items may be permitted, subject to the following:
- 2.9.2** The substitution shall be submitted by CM at Risk in writing to the City.
- 2.9.3** The CM at Risk shall certify that the substitution will perform the functions and achieve the results called for by the general design, be similar and of equal substance, and be suited to the same use as that specified.
- 2.9.4** The submittal shall state any required changes in the Contract Documents to adapt the design to the proposed substitution.
- 2.9.5** The submittal shall contain an itemized estimate of all costs and credits that will result directly and indirectly from the acceptance of such substitution, including cost of design, license fees, royalties, and testing. Also, the submittal shall include any adjustment in the Contract Time created by the substitution.

2.9.6 The CM at Risk if requested by the City shall submit Samples or any additional information that may be necessary to evaluate the acceptability of the substitution.

2.9.7 The City will make the final decision and will notify the CM at Risk in writing as to whether the substitution has been accepted or rejected. If the City does not respond in a timely manner, the CM at Risk shall continue to perform the Work in accordance with the Contract Documents and the substitution will be considered rejected.

2.10 Project Record Documents

2.10.1 During the construction period, the CM at Risk shall maintain at the jobsite a set of blueline or blackline prints of the Construction Document drawings and Shop Drawings for Project Record Document purposes.

2.10.1.1 The CM at Risk shall mark these drawings to indicate the actual installation where the installation varies appreciably from the original Construction Documents, giving particular attention to information on concealed elements, which would be difficult to identify or measure and record later. Items required to be marked include but are not limited to:

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

2.10.1.2 Mark completely and accurately Project Record Document prints of Construction Documents or Shop Drawings, whichever is the most capable of indicating the actual physical condition. Where Shop Drawings are marked, show cross-reference on the Construction Documents location.

2.10.1.3 Mark Project Record Documents sets with red erasable colored pencil.

2.10.1.4 Note RFI Numbers, ASI Numbers and Change Order numbers, etc., as required to identify the source of the change to the Construction Documents.

2.10.1.5 The CM at Risk shall as a condition of Substantial Completion, submit Project Record Documents and Shop Drawings prints to the City or its representative for review and comment.

2.10.2. Upon receipt of the reviewed Project Record Documents from the City, the CM at Risk shall correct any deficiencies and/or omissions to the drawings and prepare the following for submission to the City within 14 Days:

2.10.2.1 A complete set of electronic Project Record Documents prepared in AutoCAD format compatible with City of Lewisville technology. The Design Professional will provide files of the original Construction Documents to the CM at Risk for the use of preparing these final Project Record Documents or the CM at Risk may contract with the Design Professional to revise and update the electronic drawing files. Each drawing shall be clearly marked with "As-Built Document."

2.10.2.2 The original copy of the Project Record Documents (redline mark-ups).

2.11 Project Safety

2.11.2. CM at Risk shall perform the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto.

2.11.3. CM at Risk assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work.

2.11.4. CM at Risk shall, prior to commencing construction, designate a safety representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, CM at Risk's safety representative shall be an individual stationed at the Site who may have other responsibilities on the Project in addition to safety.

2.11.5. The safety representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with CM at Risk's personnel, Subcontractors, and others as applicable.

2.11.6. CM at Risk and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any City-specific safety requirements set forth in the Contract Documents, provided that such City-specific requirements do not violate any applicable Legal Requirement.

2.11.7. CM at Risk will immediately report in writing any safety-related injury, loss, damage, or accident arising from the Work to City's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

2.11.8. CM at Risk's responsibility for safety under this Section is not intended in any way to relieve Subcontractors and Sub-subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the Work.

2.12 Warranty

2.12.2. CM at Risk warrants to City that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship.

2.12.3. CM at Risk's warranty obligation excludes defects caused by abuse, alterations, or wear and tear to the Work by persons other than CM at Risk or anyone for whose acts CM at Risk may be liable.

2.12.4. CM at Risk's warranty obligation shall be for two years from the date of Substantial Completion of the entire Work.

Nothing in this warranty is intended to limit any manufacturer's warranty which provides City with greater warranty rights than set forth in this Section or the Contract Documents. CM at Risk will provide City with all manufacturers' warranties upon Substantial Completion.

2.13 Correction of Defective Work

- 2.13.1.** CM at Risk agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.12 above, within a period of one year from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by the Contract Documents. A progress payment, or partial or entire use or occupancy of the Project by the City, shall not constitute acceptance of Work not in accordance with the Contract Documents.
- 2.13.2.** CM at Risk shall take meaningful steps to commence correction of nonconforming Work within seven Days of receipt of written notice from City. This includes the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If CM at Risk fails to commence the necessary steps within such seven Day period, City, in addition to any other remedies provided under the Contract Documents, may provide CM at Risk with written notice that City may commence correction of such nonconforming Work with its own forces or by separate contractor.
- 2.13.3.** CM at Risk shall be responsible for all Costs and expenses incurred by City arising from CM at Risk's failure to correct nonconforming work in accordance with this section.
- 2.13.4.** If the nonconforming Work creates an emergency requiring an immediate response, the CM at Risk will respond and initiate corrections within twenty-four hours.
- 2.13.5.** The one-year period referenced in Subsection 2.12.1 above applies only to CM at Risk's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies City may have regarding CM at Risk's other obligations under the Contract Documents.

2.14. Dust Control & Prevention

CM at Risk shall submit the following documentation to the City's Representative at the preconstruction meeting prior to conducting any earth moving or dust generating activities under the Contract.

- a. Copy of the Dust Control Plan applicable to the work or services under the Contract.
- b. Documentation that all of Contractor's on-site project managers have received at least one hour of dust control training.

For construction sites where 5-acres or more are disturbed, or where more than 10,000 cubic yards of materials will be removed from the site, CM at Risk shall designate, and identify to the City, an individual who has completed the dust control training set forth in Section b above as the site dust manager. The dust manager shall be present on-site at least four hours each day that earth moving or dust generating activities are occurring until all ground surfaces at the site have been stabilized.

CM at Risk agrees to indemnify and reimburse the City for any fine, penalty, fee or monetary sanction imposed on the City arising out of or caused by the performance of work or services under the Contract. Contractor shall remit payment of the reimbursable sum to the City within thirty (30) days of being presented with a demand for payment from the City.

2.15. Leadership in Energy & Environmental Design

The CM at Risk shall provide an easily accessible area to serve the construction site and is dedicated to the separation, collection, and storage of materials for recycling including (at a minimum) paper, glass, plastics, metals, and designate an area specifically for construction and demolition waste recycling. The CM at Risk must provide documentation that the materials have been taken to an approved recycling facility.

Article 3 - City's Services and Responsibilities

3.1 Duty to Cooperate.

- 3.1.1 City shall, throughout the performance of the Work, cooperate with CM at Risk and perform its responsibilities, obligations, and services in a timely manner to facilitate CM at Risk's timely and efficient performance of the Work and so as not to delay or interfere with CM at Risk's performance of its obligations under the Contract Documents.
- 3.1.2 City shall furnish at the CM at Risk's request, at no cost to the CM at Risk, a CADD file of the Construction Documents in AutoCAD format compatible with City of Lewisville CADD technology.
- 3.1.3 The City will provide training in the use and operation of the PROMIS system.

3.2 City's Representative

- 3.2.1 City's Representative shall be responsible for providing City-supplied information and approvals in a timely manner to permit CM at Risk to fulfill its obligations under the Contract Documents.
- 3.2.2 City's Representative shall also provide CM at Risk with prompt notice if it observes any failure on the part of CM at Risk to fulfill its contractual obligations, including any default or defect in the Project or non-conformance with the Contract Documents.
- 3.2.3 The City may utilize field inspectors to assist the City's Representative during construction in observing performance of the CM at Risk. The inspector is for the purpose of assisting the City's Representative and should not be confused with an inspector with a City regulatory agency or with an inspector from a City laboratory pursuant to Subsection 2.8.4.
 - 3.2.3.1 Through onsite observation of the Work in progress and field checks of materials and equipment, the inspector shall endeavor to provide protection against defects and deficiencies in the Work.
 - 3.2.3.2 The inspector will be authorized to inspect all Work and materials furnished. Such inspection may extend to all or part of the Work and to the preparation, fabrication or manufacture of the materials to be used.
 - 3.2.3.3 The inspector will not be authorized to issue instructions contrary to the Construction Documents or to act as a foreman for the CM at Risk.
 - 3.2.3.4 The inspector shall have the authority to reject work or materials until any questions at issue can be decided by the City's Representative.
 - 3.2.3.5 The furnishing of such services for the City shall not make the City responsible for or give the City control over construction means, methods, techniques, sequence or procedures, or for safety precautions or programs or responsibility for the CM at Risk's failure to perform the work in accordance with Contract Documents.

3.3 Design Professional Services

- 3.3.1 The City may contract separately with one or more Design Professionals to provide construction administration of the project. The Design Professional's contract as well as other firms hired by the City shall be furnished to the CM at Risk. The CM at Risk shall not have any right however, to limit or restrict any contract modifications that are mutually acceptable to the City and Design Professional.

- 3.3.2** The City may contract with the Design Professional to provide some or all of the following services during the performance of the Work.
- 3.3.2.1** Provide oversight of the Work. The City and CM at Risk shall endeavor to communicate through the Design Professional. Communications by and with the Design Professional's consultants shall be through the Design Professional.
- 3.3.2.2** Site visits at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed Work and work in progress and to determine in general if the Work is being performed in accordance with the Contract Documents. The Design Professional will keep the City informed of progress of the Work and will endeavor to guard the City against defects and deficiencies in the Work. The Design Professional may have authority to reject construction which does not conform to the Construction Documents and to require additional inspection or testing of the construction in accordance with Section 2.8.
- 3.3.2.3** Review and recommend approval of Payment Requests.
- 3.3.2.4** Review and approve or take other appropriate action upon the CM at Risk's submittals such as Shop Drawings, Product Data and Samples in accordance with Section 2.7.
- 3.3.2.5** Interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of either the City or CM at Risk. The Design Professional's response to such requests will be made with reasonable promptness and within any time limits agreed upon.
- 3.3.2.6** Prepare Change Orders and may authorize minor changes in the Work as permitted through a Change Directive.
- 3.3.2.7** Conduct inspections to determine Substantial Completion and Final Acceptance.
- 3.3.2.8** Receive and forward to the City for the City's review and records written warranties and related documents required by the Contract Documents and assembled by the CM at Risk.
- 3.4** **City's Separate Contractors.** City is responsible for all work performed on the Project or at the Site by separate contractors under City's control. City shall contractually require its separate contractors to cooperate with and coordinate their activities so as not to interfere with, CM at Risk in order to enable CM at Risk to timely complete the Work consistent with the Contract Documents. CM at Risk agrees to provide reasonable accommodation to any separate contractors and shall not interfere or otherwise impede or damage the work of separate contractors.
- 3.5** **Permit Review and Inspections.**
- 3.5.1** If requested by the CM at Risk, the City's Representative will provide assistance and guidance in obtaining necessary reviews, permits and inspections.
- 3.5.2** Regulating agencies of the City, such as Development Services, Fire and Planning Departments, enforce Legal Requirements. These enforcement activities are not subject to the responsibilities of the City under this Agreement.

Article 4 - Contract Time

4.1. Contract Time.

- 4.1.1. Contract Time shall begin with the commencement date established in the Notice to Proceed and end at Substantial Completion of the entire Work.
- 4.1.2. Each GMP will establish a separate commencement date and a date of Substantial Completion and a Performance Period. The Performance Periods may not be sequential and may run concurrently.
- 4.1.3. CM at Risk agrees that it will commence performance of the Work and achieve the Performance Periods and Contract Time.
- 4.1.4. All of the times set forth in this Article 4 shall be subject to adjustment in accordance with Article 6.

4.2. Substantial Completion

- 4.2.1. Substantial Completion shall be for the entire Project unless a partial Substantial Completion is identified in the approved GMP schedule and stated in the Notice to Proceed letter. Substantial Completion shall be in accordance with its definition in Article 1.
- 4.2.2. Prior to notifying the City in accordance to Subsection 4.1.3 below, the CM at Risk shall inspect the Work and prepare and submit to the City a comprehensive punch list of items to be completed or corrected. The CM at Risk shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the CM at Risk to complete all Work in accordance with the Contract Documents.
- 4.2.3. CM at Risk shall notify City when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is Substantially Complete.
- 4.2.4. Within five (5) days of City's receipt of CM at Risk's notice, City and CM at Risk will jointly inspect such Work to verify that it is Substantially Complete in accordance with the requirements of the Contract Documents.
- 4.2.5. If such Work is Substantially Complete, City shall prepare and issue a Certificate of Substantial Completion that will set forth (i) the date of Substantial Completion of the Work or portion thereof, (ii) the remaining items of Work that have to be completed within thirty (30) calendar days before Final Acceptance, (iii) provisions (to the extent not already provided in the Contract Documents) establishing City's and CM at Risk's responsibility for the Project's security, maintenance, utilities, and insurance pending Final Acceptance, and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.
- 4.2.6. City, at its option, may use a portion of the Work which has been determined to be substantially complete, provided, however, that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in Subsection 4.1.5 above, (ii) CM at Risk and City have obtained consent of surety, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project, and (iii) City and CM at Risk agree that City's use or occupancy will not interfere with CM at Risk's completion of the remaining Work.

4.3. Final Acceptance. Upon receipt of written notice that the Work or identified portions of the Work is ready for final inspection and acceptance, City and CM at Risk will jointly inspect to verify that the remaining items of Work have been completed as set forth in Subsection 4.1.5. The City will issue a Final Acceptance Letter and payment pursuant to Section 7.5.

4.4. Liquidated Damages.

4.4.1. CM at Risk recognizes that *time is of the essence* for the CM at Risk to achieve Substantial Completion and City will suffer financial loss if the Work is not completed within the Contract Time. The CM at Risk acknowledges that the damages the City will suffer as a result of delay are and will be difficult to ascertain due to the nature of such damages and also recognizes the delay, expense and difficulties involved in proving, in a legal proceeding, the actual loss suffered by the City if the Work is not completed on time. Accordingly, instead of requiring any such proof, CM at Risk agrees that as liquidated damages for delay (but not as a penalty), Contractor shall pay City in accordance with the Liquid Damages Cost Table for each day that expires after the Contract Time, as adjusted in accordance with this Contract, until Substantial Completion of the entire Work.

4.4.1.1. Liquidated Damages Cost Table

Days Late	Liquidated Damages Per Day
Days 1-7	\$2,500
Days 8-14	\$3,000
Days 15-30	\$3,500
All Days After 30	\$5,000

4.4.2. The City may at its sole discretion deduct from any monies due, or which may become due, to the CM at Risk, a sum as specified herein, for each and every calendar day that the Work shall remain incomplete. This sum shall be considered, not as penalty, but as the cost(s) for substantial losses suffered by the public and the City. Liquidated damages are intended to compensate the City for the CM at Risk's failure to meet the deadlines set forth herein, and shall not excuse the CM at Risk from liability from any other breach of requirements of the Contract Documents, including any failure of the Work to conform to applicable requirements. The CM at Risk agrees that the sums in Section 4.3.1 are reasonable in light of the anticipated or actual harm caused by the delay and breach, the difficulties of the proof of loss, and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy.

4.4.3. City's allowance or requirement of the CM at Risk to continue performance of the Work despite the imposition and/or incurrance of Liquidated Damages shall in no way operate as a waiver on the part of the City of any of its rights under the Contract Documents.

4.5. Project Schedule

4.5.1. The Project Schedule approved as part of a GMP shall be updated and maintained throughout the Work.

4.5.2. The Project Schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve CM at Risk of its obligations to complete the Work within the Contract Time, as such dates may be adjusted in accordance with the Contract Documents.

4.5.3. Updated Project Schedules shall be submitted monthly to the City as part of the Payment Request.

4.5.3.1. CM at Risk shall provide City with a monthly status report with each Project Schedule detailing

the progress of the Work, including: (i) if the Work is proceeding according to Project Schedule, (ii) any discrepancies, conflicts, or ambiguities found to exist in the Contract Documents that require resolution, and (iii) other items that require resolution so as not to jeopardize ability to complete the Work as presented in the GMP Proposal and within the Contract Time.

4.5.3.2. With each Project Schedule submittal the CM at Risk shall include a transmittal letter including the following:

- Description of problem tasks referenced to field instructions, requests for information (RFI's), as appropriate.
- Current and anticipated delays including:
 - Cause of the delay
 - Corrective action and schedule adjustments to correct the delay
 - Known or potential impact of the delay on other activities, Milestones, and the date of Substantial Completion.
- Changes in construction sequence
- Pending items and status thereof including but not limited to:
 - Contract Time extension requests
 - Other items
- Substantial Completion date status:
 - If ahead of schedule, the number of calendar Days ahead.
 - If behind schedule, the number of calendar Days behind.
- Other project or scheduling concerns

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- 4.5.4.** City's review of and response to the Project Schedule is only for general conformance with the scheduling requirements of the Contract Documents. The review shall not relieve the CM at Risk from compliance with the requirements of the Contract Documents or be construed as relieving the CM at Risk of its complete and exclusive control over the means, methods, sequences, and techniques for executing the Work.
- 4.5.5.** The Project Schedule shall include a Critical Path Method (CPM) diagram schedule that shall show the sequence of activities, the interdependence of each activity and indicate the Critical Path.
- 4.5.5.1.** The CPM diagram schedule shall be in Days and indicate duration, earliest and latest start and finish dates for all activities, and total Float times for all activities except critical activities. The CPM diagram shall be presented in a time scaled graphical format for the Project as a whole.
- 4.5.5.2.** The CPM diagram schedule shall indicate all relationships between activities.
- 4.5.5.3.** The activities making up the schedule shall be sufficient detail to assure that adequate planning has been done for proper execution of the Work and such that it provides an appropriate basis for monitoring and evaluating the progress of the Work.
- 4.5.5.4.** The CPM diagram schedule shall be based upon activities, which would coincide with the schedule of values.
- 4.5.5.5.** The CPM diagram schedule shall show all critical submittals associated with each work activity and the review time for each submittal.
- 4.5.5.6.** The Project Schedule shall show Milestones, including Milestones for Owner-furnished information, and shall include activities for Owner-furnished equipment and furniture when those activities are interrelated with the CM at Risk activities.
- 4.5.5.7.** The Project Schedule shall include a Critical Path activity that reflects anticipated rain delay during the performance of the Contract. The duration shall reflect the average climatic range and usual industrial conditions prevailing in the locality of the site. Weather data shall be based on information provided by the National Weather Services or other approved source.
- 4.5.6.** The Project Schedule shall consider the City's occupancy requirements showing portions of the Project having occupancy priority, and Contract Time.
- 4.5.7.** Float time shall be as prescribed below.
- 4.5.7.1.** The total Float within the overall Project Schedule, is not for the exclusive use of either the City or the CM at Risk but is jointly owned by both and is a resource available to and shared by both parties as needed to meet contract Milestones and the Project Contract Time.
- 4.5.7.2.** The CM at Risk shall not sequester shared Float through such strategies as extending activity duration estimates to consume available Float, using preferential logic, or using extensive crew/resource sequencing, etc. Since Float time within the Project Schedule is jointly owned, no time extensions will be granted nor delay damages paid until a delay occurs which extends the Work beyond the Substantial Completion date.

Since Float time within the Project Schedule is jointly owned, it is acknowledged that City-caused delays on the Project may be offset by City-caused time savings (i.e., critical path submittals returned in less time than allowed by the Contract, approval of substitution requests and credit changes which result in savings of time to the CM at Risk, etc.). In such an event, the CM at Risk shall not be entitled to receive a time extension or delay damages until all City-caused time savings are exceeded, and the Substantial Completion date is also exceeded.

Article 5- Contract Price

- 5.0.** The CM at Risk agrees at his own proper cost and expense, to do all Work as aforesaid for the construction of said improvements and to completely construct the same and install the material therein, as called for by this Agreement free and clear of all claims, liens, and charges whatsoever, in the manner and under the conditions specified within the time, or times, stated in the approved GMP Proposal.
- 5.1. Contract Price.**
- 5.1.1.** The Contract Price will be as approved in the Guaranteed Maximum Price proposal attached as Exhibit B and an amount of \$ _____ for Owner's Contingency.
- 5.1.2.** Guaranteed Maximum Price is composed of the following not-to-exceed cost reimbursable or lump sum amounts defined below. The CM at Risk shall be solely responsible for any additional Project costs that exceed the GMP. If the GMP exceeds the actual Cost of the Work savings shall revert to the City.
- 5.1.2.1** The Cost of the Work is actual costs and is a not-to-exceed reimbursable amount.
- 5.1.2.2** The General Conditions Costs and the Construction Fee are firm fixed lump sums, but subject to adjustments as permitted in the Contract Documents.
- 5.1.2.3** CM at Risk's Contingency is an amount the CM at Risk may be used under the following conditions: (1) upon request by the CM at Risk for increases in the Cost of the Work, subject to written approval by the City, or (2) with written approval of the City for increases in General Condition Costs. CM at Risk's Contingency is assumed to be a direct project cost so has received all markups at the time of GMP submission.
- 5.1.2.3.1** When the CM at Risk utilizes CM at Risk's Contingency funds, the CM at Risk shall make the appropriate changes to the schedule of values with the next regular progress payment request. The CM at Risk shall deduct the amount of CM at Risk's Contingency funds used from the CM at Risk's Contingency line item and adding the same amount to the line item on the schedule of values where the funds were used. If the CM at Risk's Contingency funds are used for a new line item that was not given with the original schedule of values, that will be so indicated.
- 5.1.2.4** As a City public procurement project this Project is tax exempt. Appropriate tax exemption forms shall be provided to the CM at Risk.
- 5.1.3** Owner's Contingency are funds to be used at the discretion of the Owner to cover any increases in Project costs that result from Owner directed changes or unforeseen site conditions. Owner's Contingency will be added to the GMP amount provided by the CM at Risk, the sum of which will be the total contract price for construction. Markups for Construction Fee and taxes will be applied by the CM at Risk at the time that Owner's Contingency is used.
- 5.1.4** The GMP is subject to adjustments made in accordance with Article 6 and by GMP amendments to this Agreement.
- 5.1.4.1** GMP Amendments are cumulative except for contingency. The amount of contingency for each GMP Amendment will be negotiated separately.
- 5.1.4.2** If the GMP requires an adjustment due to changes in the Work or other causes as allowed in the Contract Documents, the cost of such changes is determined subject to Article 6. The markups that shall be allowed on such changes shall be no greater than the markups delineated in the approved GMP Proposal.

Article 6 - Changes to the Contract Price and Time

6.1. Delays to the Work

- 6.1.1.** If CM at Risk is delayed in the performance of the Work that will cause a change in the date of Substantial Completion due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom CM at Risk is responsible, the Contract Times for performance shall be reasonably extended by Change Order.
- 6.1.2.** The CM at Risk shall request an increase in the Contract Time by written notice including an estimate of probable effect of delay on progress of the Work. Such notice shall not be later than fourteen (14) Days after such condition or event has been encountered. In the case of a continuing delay, the CM at Risk shall provide additional notice of the realized delay and request for Change Order within 14 days of the completion of the event of delay.
- 6.1.3.** By way of example, events that will entitle CM at Risk to an extension of the Contract Time include acts or omissions of City or anyone under City's control (including separate contractors), changes in the Work, Differing Site Conditions, hazardous conditions, delays by regulating agencies, wars, floods, labor disputes, unusual delay in transportation, epidemics, pandemics, earthquakes, adverse weather conditions not reasonably anticipated, and other acts of God.
- 6.1.4.** If adverse weather conditions are the basis for a request for additional Contract Time, such requests shall be documented by data substantiating that weather conditions were abnormal for the period of time and that weather conditions had an adverse effect on the scheduled Substantial Completion.
- 6.1.5.** It is understood, however, that permitting the CM at Risk to proceed to complete any Work, or any part of the Work, after the date to which the time of completion may have been extended, shall in no way act as a waiver on the part of the City of any of its legal rights herein.
- 6.1.6.** In addition to CM at Risk's right to a time extension for those events set forth in this Section, CM at Risk shall also be entitled to an appropriate adjustment of the Contract Price provided, however, that the Contract Price shall not be adjusted for those events set forth in this Section that are beyond the control of both CM at Risk and City, including the events of war, floods, labor disputes, earthquakes, epidemics, pandemics, adverse weather conditions not reasonably anticipated, and other acts of God. In the event of an occurrence under this Section, the CM at Risk shall immediately notify the City and describe at a reasonable level of detail the circumstances causing the non-performance or delay in performance.

6.2 Differing Site Conditions

- 6.2.1** If CM at Risk encounters a Differing Site Condition, CM at Risk will be entitled to an adjustment in the Contract Price and/or Contract Times to the extent CM at Risk's cost and/or time of performance are adversely impacted by the Differing Site Condition.
- 6.2.2** Upon encountering a Differing Site Condition, CM at Risk shall provide prompt written notice to City of such condition, which notice shall not be later than seven (7) days after such condition has been encountered. CM at Risk shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

6.3 Errors, Discrepancies and Omissions.

- 6.3.1** If the CM at Risk observes errors, discrepancies, or omissions in the Contract Documents, they shall promptly notify the Design Professional and request clarification.

6.3.2 If the CM at Risk proceeds with the Work affected by such known errors, discrepancies, or omissions, without receiving such clarifications, it does so at its own risk. Adjustments involving such circumstances made by the CM at Risk prior to clarification by the Design Professional shall be at the CM at Risk's risk.

6.4 City Requested Change in Work.

6.4.1 The City reserves the right to make, at any time during the progress of the Work, such alterations as may be found necessary or in the City's best interest.

6.4.2 Such alterations and changes shall not invalidate this Agreement nor release the surety and the CM at Risk agrees to perform the Work as altered, the same as if it has been a part of the original Contract Documents.

6.4.3 The City will request a proposal for a change in Work from CM at Risk, and an equitable adjustment in the Contract Price and/or Contract Times shall be made based on a mutual agreement and memorialized in a Change Order.

6.5. Legal Requirements.

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

6.6. Change Directives and Change Orders.

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

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

6.7. Minor Changes in the Work

6.7.1. The City has authority to order minor changes in Work that do not materially and adversely affect the Work, including the design, quality, performance, and workmanship required by the Contract Documents. Such changes shall be affected by written order and shall be binding on the City and CM at Risk. The CM at Risk shall carry out such written orders promptly.

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

6.7.3. Minor changes in Work will not involve an adjustment in the Contract Price and/or Contract Times.

6.8. Contract Price Adjustments

6.8.1. The increase or decrease in Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:

6.8.1.1. Unit prices set forth in the Agreement or as subsequently agreed to between the parties;

6.8.1.2. A mutually accepted, lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by City; or

- 6.8.2. Estimated cost of the Work, General Conditions Costs, if applicable, Construction Fee and tax. The markups that shall be allowed on such changes shall be no greater than the markups delineated in the approved GMP Proposal as shown on **Exhibit B**.
- 6.8.3. If an increase or decrease cannot be agreed to as set forth in Subsections 6.8.1.1. through 6.8.1.2 above and City issues a Change Directive, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit, as may be set forth in the Agreement. CM at Risk shall maintain a documented, itemized accounting evidencing the expenses and savings associated with such changes.
- 6.8.4. If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to City or CM at Risk because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.
- 6.8.5. If City and CM at Risk disagree upon whether CM at Risk is entitled to be paid for any services required by City, or if there are any other disagreements over the scope of Work or proposed changes to the Work, City and CM at Risk shall resolve the disagreement pursuant to Article 8 hereof.
- 6.8.5.1.** As part of the negotiation process, CM at Risk shall furnish City with a good faith estimate of the costs to perform the disputed services in accordance with City's interpretations.
- 6.8.5.2.** If the parties are unable to agree and City expects the CM at Risk to perform the services in accordance with City's interpretations, CM at Risk shall proceed to perform the disputed services, conditioned upon City issuing a written order to CM at Risk (i) directing CM at Risk to proceed and (ii) specifying City's interpretation of the services that are to be performed.
- 6.8.6. **Emergencies.** In any emergency affecting the safety of persons and/or property, CM at Risk shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time resulting from emergency work under this Section shall be determined as provided in this Article.

Article 7- Procedure for Payment

7.0. For and in consideration of the faithful performance of the Work herein embraced as set forth in the Contract Documents, which are a part hereof and in accordance with the directions of the City and to its satisfaction, the City agrees to pay the CM at Risk the actual Cost of the Work and any applicable General Conditions Costs including insurance and bonding and taxes, if any, and the CM at Risk's Construction Fee, but no more than the GMP as adjusted by any Change Orders. Payment for the specific work under this Agreement will be made in accordance with payment provisions detailed below.

7.1. GMP Payment Request

7.1.1. At the pre-construction conference prescribed in Section 2.4, CM at Risk shall submit for City's review and approval a Schedule of Values and baseline Project Schedule. The schedule of values and Project Schedule will serve as the basis for monthly progress payments made to CM at Risk throughout the Work.

7.1.2. Preliminary Payment Request: At least ten (10) working days prior to the date established for a Payment Request, the CM at Risk shall submit a preliminary Payment Request and meet with the City's Representative to review the progress of the Work as it will be reflected on the Payment Request. Preliminary Payment Request submissions shall include:

7.1.2.1. CM at Risk's estimate of the amount of Work performed, labor furnished, and materials incorporated into the Work based on the Schedule of Values.

7.1.2.2. Updated Project Schedule including the executive summary and all required schedule reports.

7.1.2.3. Any additional documentation the City may require as noted in the General Conditions or other component of the Contract Documents.

7.1.3. Payment Request: As soon as practical, but no later than seven days after receipt of the preliminary Payment Request, the City Representative and other designated project team member(s) will meet with the CM at Risk to review the preliminary Payment Request and observe the progress of Work. Based on this review, the City may require revision to the Payment Request prior to formal submittal and will promptly notify CM at Risk of all required revisions. As soon as practical, CM at Risk will submit Payment Requests reflective of all required revisions.

7.1.3.1. Payment Request submissions shall also include a signed affidavit affirming that all payrolls, bills for labor, materials, equipment, subcontracted work and other indebtedness connected with the CM at Risk's Payment Request are paid or will be paid within the specified timeline provided in Section 7.6.

7.1.3.2. Within five days of receipt of CM at Risk's formal Payment Request, the City will review the Payment Request and certify that the Payment Request is complete and payable or incomplete and identify what modifications are required. If the submitted request is incomplete, the CM at Risk shall make the required modifications and resubmit Payment Request for processing.

7.1.4. The Payment Request shall constitute CM at Risk's representation that the Work has been performed consistent with the Contract Documents, has progressed to the point indicated in the Payment Request, and that all Work will pass to City free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project and payment, therefore.

7.1.5. The Payment Request may request payment for stored equipment and materials if construction

progress is in reasonable conformance with the approved Project Schedule.

- 7.1.5.1. For equipment and materials suitably stored at the Site, the equipment and materials shall be protected by suitable insurance and City shall receive the equipment and materials free and clear of all liens and encumbrances upon payment, therefore.
- 7.1.5.2. For materials and equipment stored off the Site and included in Payment Request, the City must approve the storage. The material and equipment must be stored within Denton County and be accessible for City's inspection. The CM at Risk must protect the City's interest and shall include applicable insurance, bonding, storage, and transportation to the Site.
- 7.1.5.3. All bonds and insurance required for stored materials shall name the City as the loss payee to the extent of its interest in the stored materials.
- 7.1.6. CM at Risk shall submit Payment Requests to the City on the monthly anniversary of the construction Notice to Proceed beginning with the first month after the construction Notice To Proceed, Payment Request.
- 7.1.7. With every Payment Request for the Work, CM at Risk will submit an affidavit stating that the CM at Risk has complied with the requirements of Chapter 2258, Texas Government Code. The parties hereto agree that any electronic copy of such affidavit shall be treated as an original for all intents and purposes.

7.2. **Payment of GMP**

- 7.2.1. City shall make payment in accordance with the provisions of this Contract and Chapter 2251 of the Texas Government Code. Payment will be made no later than thirty-one (31) Days after the Payment Request is received by the City, but in each case less the total of payments previously made, and less amounts properly retained under Section 7.3 below.
- 7.2.2. City shall pay CM at Risk all amounts properly due. If City determines that there is an error in the Payment Request and the CM at Risk is not entitled to all or part of a Payment Request, it will notify CM at Risk in writing within twenty-one (21) Days after the date Payment Request is received by the City. The notice shall indicate the specific amounts City intends to withhold, the reasons and contractual basis for the withholding, and the specific measures CM at Risk must take to rectify City's concerns. CM at Risk and City will attempt to resolve City's concerns. If the parties cannot resolve such concerns, CM at Risk may pursue its rights under the Contract Documents, including those under Article 8 hereof.

7.3. **Retention on GMP**

- 7.3.1. City will retain five percent (5%) of each Payment Request amount provided, however, that when fifty percent (50%) of the Work has been completed by CM at Risk, upon request of the CM at Risk, City may reduce the amount retained to two and a half percent (2.5%) from CM at Risk's subsequent Payment Requests if the CM at Risk's performance of Work has been satisfactory.

- 7.4. **Substantial Completion.** Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, City shall release to CM at Risk all retained amounts relating, as applicable, to the entire Work or substantially completed portion of the Work, less an amount of the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.

7.5. **Final Payment**

- 7.5.1. After receipt of a final Payment Request, City shall make final payment 60 days after the receipt by the City, provided that CM at Risk has completed all of the Work in conformance with the Contract Documents and a Final Acceptance Letter has been issued by the City.

- 7.5.2.** At the time of submission of its final Payment Request, CM at Risk shall provide the following information:
- 7.5.2.1.** An affidavit that there are no claims, obligations, or liens outstanding or unsatisfied for labor, services, material, equipment, taxes, or other items performed, furnished or incurred for or in connection with the Work which will in any way affect City's interests;
 - 7.5.2.2.** A general release executed by CM at Risk waiving, upon receipt of final payment by CM at Risk, all claims, except those claims previously made in writing to City and remaining unsettled at the time of final payment; and
 - 7.5.2.3.** Consent of CM at Risk's surety to final payment.
 - 7.5.2.4.** Record Drawings and any documentation required by the Construction Documents, including but not limited to all O&M Manuals, warranties, and record drawings.
 - 7.5.2.5.** The provision of the items required by this section 7.5 shall be an express condition precedent to final payment.
 - 7.5.2.6.** Acceptance of final payment by CM at Risk expressly waives all claims and causes of action the CM at Risk may have against City.

7.6. Payments to Subcontractors or Suppliers

- 7.6.1.** CM at Risk shall pay its Subcontractors or Suppliers within ten (10) Days of receipt of each progress payment from the City. The CM at Risk shall pay for the amount of Work performed or materials supplied by each Subcontractor or Supplier as accepted and approved by the City with each progress payment. In addition, any reduction of retention by the City to the CM at Risk shall result in a corresponding reduction to Subcontractors or Suppliers who have performed satisfactory work. CM at Risk shall pay Subcontractors or Suppliers the reduced retention within ten (10) Days of the payment of the reduction of the retention to the CM at Risk. No contract between CM at Risk and its Subcontractors and Suppliers may materially alter the rights of any Subcontractor or Supplier to receive prompt payment and retention reduction as provided herein.
- 7.6.2.** If the CM at Risk fails to make payments in accordance with these provisions, the City may take any one or more of the following actions and CM at Risk agrees that the City may take such actions:
- 7.6.2.1.** To hold the CM at Risk in default under this Agreement;
 - 7.6.2.2.** Withhold future payments including retention until proper payment has been made to Subcontractors or Suppliers in accordance with these provisions;
 - 7.6.2.3.** Reject all future offers to perform work for the City from the CM at Risk for a period not to exceed one year from Substantial Completion date of this Project; or
 - 7.6.2.4.** Terminate this Agreement.
- 7.6.3.** All funds paid to the CM at Risk are paid in trust and shall be used for payment of the Subcontractors and Suppliers who have performed work on the Project before the CM at Risk may use any of the funds for any other purpose. Nothing in this provision shall prohibit the CM at Risk from withholding any funds in dispute or back charges or offsets under the provisions of the Subcontract. The CM at Risk shall include a trust fund provision in each subcontract requiring the Subcontractor to hold any payment its receives in trust and to use them for payment of its subcontractors and suppliers who have performed work on the Project before Subcontractor may use the funds for any other purpose.

7.6.4. Should the City fail or delay in exercising or enforcing any right, power, privilege, or remedy under this Section, such failure or delay shall not be deemed a waiver, release, or modification of the requirements of this Section or of any of the terms or provisions thereof.

7.6.5. CM at Risk shall include these prompt payment provisions in every subcontract, including procurement of materials and leases of equipment for this Agreement.

7.7. Record Keeping and Finance Controls

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

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

7.7.3. The City reserves the right to decrease Contract Price and/or payments made on this Agreement if, upon audit of the CM at Risk's records, the audit discloses the CM at Risk has provided false, misleading, or inaccurate cost and pricing data.

7.7.4. The CM at Risk shall include a similar provision in all of its agreements with Subconsultants and Subcontractors providing services under the Contract Documents to ensure the City, its authorized representative, and/or the appropriate federal agency, has access to the Subconsultants' and Subcontractors' records to verify the accuracy of cost and pricing data.

7.7.5. The City reserves the right to decrease Contract Price and/or payments made on this Agreement if the above provision is not included in Subconsultants' and Subcontractors' contracts, and one or more Subconsultants and/or Subcontractors do not allow the City to audit their records to verify the accuracy and appropriateness of pricing data.

Article 8- Claims and Disputes

8.0. Requests for Contract Adjustments and Relief.

- 8.0.1. If either CM at Risk or City believes that it is entitled to relief against the other for any event arising out of or related to the Contract, such party shall provide written notice to the other party of the basis for its claim for relief.
- 8.0.2. Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of the Agreement.
- 8.0.3. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed fourteen (14) Days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later.
- 8.0.4. Such notice shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

8.1. Dispute Avoidance and Resolution

- 8.1.1. The parties are fully committed to working with each other throughout the Project and agree to always communicate regularly with each other so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, CM at Risk and City each commit to resolving such disputes or disagreements in an amicable, professional, and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.
- 8.1.2. CM at Risk and City will first attempt to resolve disputes or disagreements at the field level through discussions between CM at Risk's Representative and City's Representative.
- 8.1.3. If a dispute or disagreement cannot be resolved per 8.1.2, CM at Risk's Senior Representative and City's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement. Should this effort be unsuccessful then the parties may proceed to take appropriate action to enforce any rights or obligations pursuant to the provisions of the Contract.

- 8.2. **Duty to Continue Performance** Unless provided to the contrary in the Contract Documents or as provided by statute, CM at Risk shall continue to perform the Work and City shall continue to satisfy its payment obligations to CM at Risk, pending the final resolution of any dispute or disagreement between CM at Risk and City.

8.3. Representatives of the Parties

8.3.1. City's Representatives

- 8.3.1.1. City designates the individual listed below or his designee as its Senior Representative ("City's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Subsection 8.1.3:

XXX

8.3.1.2. City designates the individual listed below as its City's Representative, which individual has the authority and responsibility set forth in Subsection 8.1.2 and as otherwise provided herein:

XXXX

8.3.2. CM at Risk's Representatives

8.3.2.1. CM at Risk designates the individual listed below as its Senior Representative ("CM at Risk's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Subsection 8.1.3:

-----, Title

Address

City, State Zip Phone Number

8.3.2.2. CM at Risk designates the individual listed below as its CM at Risk's Representative, which individual has the authority and responsibility set forth in Subsection 8.1.2 and as otherwise provided herein:

-----, Title

Address

City, State Zip Phone Number

DRAFT

Article 9 – Suspension and Termination

9.0. City's Right to Stop Work

- 9.0.1. City may, at its discretion and without cause, order CM at Risk in writing to stop and suspend the Work. Such suspension shall not exceed one hundred and eighty (180) consecutive Days.
- 9.0.2. CM at Risk may seek an adjustment of the Contract Price and/or Contract Time if its cost or time to perform the Work has been adversely impacted by any suspension or stoppage of Work by City. The CM at Risk acknowledges its obligation to mitigate exposure to costs due to a suspension and, upon notice of an extended suspension, shall meet with City to determine and implement available cost mitigation efforts as well as protection for the Project as may be necessary.

9.1. Termination for Convenience

- 9.1.1. Upon receipt of written notice to CM at Risk, City may, at its discretion and without cause, elect to terminate this Agreement. In such event, City shall pay CM at Risk only the direct value of its completed Work and materials supplied as of the date of termination and the reasonable costs and expenses attributable to such termination. CM at Risk shall be entitled to profit and overhead on completed Work only but shall not be entitled to profit or overhead on unperformed Work.
- 9.1.2. If the City suspends the Work for 181 consecutive Days or more, such suspension shall be deemed a termination for convenience.
- 9.1.3. Upon such termination, the CM at Risk shall proceed with the following obligations.
 - 9.1.3.1. Stop Work as specified in the notice.
 - 9.1.3.2. Place no further subcontracts or orders.
 - 9.1.3.3. Terminate all subcontracts to the extent they relate to the Work terminated.
 - 9.1.3.4. Take any action that may be necessary for the protection and preservation of the property related to the Contract that is in the possession of the CM at Risk and which the City has or may acquire an interest.
- 9.1.4. The CM at Risk shall submit complete termination inventory schedules no later than 120 Days from the date of the notice of termination.
- 9.1.5. The City shall pay CM at Risk the following:
 - 9.1.5.1. The direct value of its completed Work and materials supplied as of the date of termination.
 - 9.1.5.2. The reasonable costs and expenses attributable to such termination.
 - 9.1.5.3. CM at Risk shall be entitled to profit and overhead on completed Work only but shall not be entitled to profit or overhead on unperformed Work.
- 9.1.6. The CM at Risk shall maintain all records and documents for three years after final settlement. These shall be maintained and subject to auditing as prescribed in Section 7.7.

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

- 9.2.1.** If the City provides the CM at Risk with a written order to provide adequate maintenance of traffic, adequate cleanup, adequate dust control or to correct deficiencies or damage resulting from abnormal weather conditions, and the CM at Risk fails to comply in a time frame specified, the City may have a portion of the Work included in the written order accomplished by other sources.
- 9.2.2.** If CM at Risk persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Subconsultants, Subcontractors, or Suppliers, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed within the Contract Times, as such times may be adjusted, or (vi) perform material obligations under the Contract Documents, then City, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Subsections 9.2.3 and 9.2.4 below.
- 9.2.3.** Upon the occurrence of an event set forth in Subsection 9.2.2 above, City may provide written notice to CM at Risk that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) Days of CM at Risk's receipt of such notice.
- 9.2.3.1.** If CM at Risk, within such second seven (7) Day period, fails to cure, or reasonably commence to cure, such problem, then City may declare the Agreement terminated for default by providing written notice to CM at Risk of such declaration.
- 9.2.4.** Upon declaring the Agreement terminated pursuant to Subsection 9.2.3.1 above, City may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which CM at Risk hereby transfers, assigns and sets over to City for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items.
- 9.2.5.** In the event of such termination, CM at Risk shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, the CM at Risk will only be entitled to be paid for Work performed and accepted by the City prior to its default, but only to the extent that sums remain within the GMP, less any remaining contingencies, following offset of all costs, expenses, and damages sustained or incurred by City as a result of such termination.
- 9.2.6.** If City's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then CM at Risk shall be obligated to pay the difference to City. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by City in connection with the procurement and defense of claims arising from CM at Risk's default.
- 9.2.7.** If City wrongfully terminates the Agreement for cause, the termination for cause shall be converted to a termination for convenience in accordance with the provisions of Section 9.1.

Article 10 - Insurance and Bonds

10.0. Insurance Requirements

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

10.0.2 The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement.

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

10.1 Minimum Scope and Limits of Insurance. CM at Risk shall provide coverage with limits of liability not less than those stated below:

10.1.1 Commercial General Liability – Occurrence Form
Policy shall include bodily injury, property damage, broad form contractual liability and XCU coverage.

• General Aggregate/for this Project	\$6,000,000/\$3,000,000
• Products – Completed Operations Aggregate	\$3,000,000
• Personal and Advertising Injury	\$3,000,000
• Each Occurrence	\$3,000,000

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

10.1.2 Automobile Liability - Bodily injury and property damage for any owned, hired, and non-owned vehicles used in the performance of this Agreement.
Combined Single Limit (CSL) \$3,000,000

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

10.1.3 Worker's Compensation and Employers' Liability

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

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

10.1.4 Builders' Risk Insurance or Installation Floater

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

- 10.1.4.1 The City of Lewisville, the CM at Risk, and Subcontractors, shall be **Named Insureds** on the policy.
- 10.1.4.2 Coverage shall be written on an all risk, replacement cost basis and **shall include coverage for flood and earth movement.**
- 10.1.4.3 Policy shall be maintained until whichever of the following shall first occur: (i) final payment has been made; or, (ii) until no person or entity, other than the City of Lewisville, has an insurable interest in the property required to be covered.
- 10.1.4.4 Policy shall be endorsed such that the insurance shall not be canceled or lapse because of any partial use or occupancy by the City.
- 10.1.4.5 Policy must provide coverage from the time any covered property becomes the responsibility of the CM at Risk, and continue without interruption during construction, renovation, or installation, including any time during which the covered property is being transported to the construction installation site, or awaiting installation, whether on or off site.
- 10.1.4.6 Policy shall contain a **waiver of subrogation** against the City of Lewisville.
- 10.1.4.7 CM at Risk is responsible for the payment of all policy deductibles.
- 10.2 **Additional Insurance Requirements.** The policies shall include, or be endorsed to include the following provisions:
- 10.2.1 On insurance policies where the City of Lewisville is named as an additional insured, the City of Lewisville shall be an additional insured to the full limits of liability purchased by the CM at Risk even if those limits of liability are in excess of those required by this Agreement.
- 10.2.2 The CM at Risk's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.
- 10.2.3 Coverage provided by the CM at Risk shall not be limited to the liability assumed under the indemnification provisions of this Agreement.
- 10.3 **Notice of Cancellation.** Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided, canceled, reduced in coverage, or endorsed to lower limits except after thirty (30) Days prior written notice has been given to the City. Such notice shall be sent directly to the City Senior Representative and shall be sent by certified mail, return receipt requested.
- 10.4 **Acceptability of Insurers.** Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the state of Texas and with an "A.M. Best" rating of not less than B+ VI. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect the CM at Risk from potential insurer insolvency.
- 10.5 **Verification of Coverage**
- 10.5.1 CM at Risk shall furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Agreement. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.
- 10.5.2 All certificates and endorsements are to be received and approved by the City before Work commences. Each insurance policy required by this Agreement must be in effect at or prior to commencement of Work under this Agreement and remain in effect for the duration of the Project. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of

renewal is a material breach of the contract.

- 10.5.3** All certificates required by this Agreement shall be sent directly to City's Senior Representative. The City project/contract number and project description shall be noted on the certificate of insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Agreement at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY'S RISK MANAGEMENT DIVISION.**
- 10.5.4** **If the Certificate of Insurance reflecting policy coverage and cancellation notice does not conform to the City's requirements, the CM at Risk must:**
- **Submit a current insurance certificate (dated within 15 Days of the Payment Request submittal) with each Payment Request form. The Payment Request will be rejected if the insurance certificate is not submitted with the Payment Request.**
- 10.6** **Subcontractors.** CM at Risk's certificate(s) shall include all Subcontractors as additional insureds under its policies **or** CM at Risk shall furnish to the City separate certificates and endorsements for each Subcontractor. All coverages for Subcontractors shall be subject to the minimum requirements identified above.
- 10.7** **Approval.** Any modification or variation from the insurance requirements in this Contract shall be made by the Law Department, whose decision shall be final. Such action will not require a formal Contract amendment but may be made by administrative action.
- 10.8** **Bonds and Other Performance Security.**
- 10.8.1** Prior to execution of this Agreement, the CM at Risk must provide a performance bond and a payment bond, each in an amount equal to the total contract price of the GMP set forth in this Agreement. In addition to any criteria set forth in this provision, the performance and payment bonds must comply with all requirements of Chapter 2253 of the Texas Government Code.
- 10.8.2** Each such bond shall be executed by a surety company or companies holding a Certificate of Authority to transact surety business in the state of Texas, issued by the Director of the Texas Department of Insurance. A copy of the Certificate of Authority shall accompany the bonds. The Certificate shall have been issued, updated, or certified within two years prior to the execution of this Agreement.
- 10.8.3** The bonds shall be written on forms acceptable to the City of Lewisville and shall name the City as Obligee.
- 10.8.4** The bonds shall be written or countersigned by an authorized representative of the surety who is either a resident of the state of Texas or whose principal office is maintained in this state, as by law required, and the bonds shall have attached thereto a certified copy of Power of Attorney of the signing official.
- 10.8.5** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract Documents, the CM at Risk shall promptly furnish a copy of the bonds or shall permit a copy to be made.
- 10.8.6** All bonds submitted for this project shall be provided by a company which has been rated AM Best rating of "A- or better for the prior four quarters" by the A.M. Best Company.

Article 11 - Indemnification

11.1 CM at Risk's General Indemnification.

11.1.1 CM at Risk agrees to indemnify and save harmless the City of Lewisville, its officers, agents and employees, and any jurisdiction or agency issuing permits for any work included in the Project, their officers, agents and employees, hereinafter referred to as indemnitee, from all suits and claims, including attorney's fees and cost of litigation, actions, loss, damage, expense, cost or claims of any character or any nature arising out of the Work or on account of any act, claim or amount arising or recovered under worker's compensation law or arising out of the failure of the CM at Risk to conform to any statutes, ordinances, regulation, law or court decree. It is agreed that the CM at Risk will be responsible for primary loss investigation, defense, and judgment costs where this contract of indemnity applies. In consideration of the award of this Contract, the CM at Risk agrees to waive all rights of subrogation against the City, its officers, officials, agents and employees for losses arising from the work performed by the Contractor for the City.

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Article 12 – General Provisions

12.1 Contract Documents

- 12.1.1 Contract Documents are as defined in Article 1. This Agreement, Plans, Standard Specifications and Details, Special Provisions, Addenda (if any) Dated [REDACTED] and used as the basis for the Guaranteed Maximum Price Proposal; GMP, as accepted by the Mayor and Council per Council Minutes of the [REDACTED] day of [REDACTED], 20 [REDACTED], Performance Bond, Payment Bond, Certificates of Insurance, Construction Documents and Change Orders (if any) are by this reference made a part of this Agreement to the same extent as if set forth herein in full.
- 12.1.2 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Times for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards.
- 12.1.3 In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence in the order in which they are listed in the definition of Contract Documents in Article 1.
- 12.1.3.1 On the drawings, given dimensions shall take precedence over scaled measurements, and large-scale drawings over small-scale drawings.
- 12.1.3.2 Specifications take precedence over Plans.
- 12.1.3.3 In the event of any inconsistency, conflict, or ambiguity between this Contract and the Preconstruction Agreement, this Contract take precedence.
- 12.1.4 The headings used in this Agreement, or any other Contract Documents, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.
- 12.1.5 The Contract Documents form the entire agreement between City and CM at Risk and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.
- 12.2 **Amendments.** The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.
- 12.3 **Time is of the Essence.** City and CM at Risk mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.
- 12.4 **Mutual Obligations.** City and CM at Risk commit at all times to cooperate fully with each other and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.
- 12.5 **Cooperation and Further Documentation.** The CM at Risk agrees to provide the City such other duly executed documents as shall be reasonably requested by the City to implement the intent of the Contract Documents.
- 12.6 **Assignment.** Neither CM at Risk nor City shall, without the written consent of the other assign, transfer or sublet any portion of this Agreement or part of the Work or the obligations required by the Contract Documents.

- 12.7 Successorship.** CM at Risk and City intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.
- 12.8 Third Party Beneficiary.** Nothing under the Contract Documents shall be construed to give any rights or benefits in the Contract Documents to anyone other than the City and the CM at Risk, and all duties and responsibilities undertaken pursuant to the Contract Documents will be for the sole and exclusive benefit of City and the CM at Risk and not for the benefit of any other party.
- 12.9 Governing Law.** The Agreement and all Contract Documents shall be deemed to be made under and shall be construed in accordance with and governed by the laws of the State of Texas without regard to the conflicts or choice of law provisions thereof. Any action to enforce any provision of this Contract or to obtain any remedy with respect hereto shall be brought and tried in the district courts of Denton County, Texas, and for this purpose, each party hereby expressly and irrevocably consents to the sole and exclusive jurisdiction and venue of such Court with the City consenting only to the extent allowed by statute and otherwise reserving all rights and defenses.
- 12.10 Severability.** If any provision of the Contract Documents or the application thereof to any person or circumstance shall be invalid, illegal, or unenforceable to any extent, the remainder of the Contract Documents and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.
- 12.11 Compliance with Federal Laws.** CM at Risk understands and acknowledges the applicability of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989 to it. The CM at Risk agrees to comply with these laws, as well as any other federal laws that may apply, in performing the Contract Documents and to permit the City to verify such compliance.
- 12.12 Legal Requirements.** CM at Risk shall perform all Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements. It is not the CM at Risk's responsibility to ascertain that the Construction Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if the CM at Risk recognizes that portions of the Construction Documents are at variance therewith, the CM at Risk shall promptly notify the Design Professional and City in writing, describing the apparent variance or deficiency.
- 12.13 Fair Treatment of Workers.** The CM at Risk shall keep fully informed of all Federal and State laws, County and City ordinances, regulations, codes and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any way affect the conduct of the work. They shall at all times observe and comply with all such laws, ordinances, regulations, codes, orders and decrees; this includes, but is not limited to laws and regulations ensuring fair and equal treatment for all employees and against unfair employment practices, including OSHA and the Fair Labor Standards Act (FLSA). The CM at Risk shall protect and indemnify the City and its representatives against any claim or liability arising from or based on the violation of such, whether by himself or his employees.
- 12.14 Independent Contractor.** The CM at Risk is and shall be an independent contractor. Any provisions in the Contract Documents that may appear to give the City the right to direct the CM at Risk as to the details of accomplishing the Work or to exercise a measure of control over the Work means that the CM at Risk shall follow the wishes of the City as to the results of the Work only. These results shall comply with all applicable laws and ordinances.
- 12.15 Survival.** All warranties, representations, and indemnifications by the CM at Risk shall survive the completion or termination of this Agreement.

12.16 Covenant Against Contingent Fees. The CM at Risk warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for

a commission, percentage, brokerage, or contingent fee, and that no member of the City Council, or any employee of the City of Lewisville has any interest, financially, or otherwise, in the firm. For breach or violation of this warrant, the City of Lewisville shall have the right to annul this Agreement without liability, or at its discretion to deduct from the Contract Price or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

12.17 No Waiver. The failure of either party to enforce any of the provisions of the Contract Documents or to require performance of the other party of any of the provisions hereof shall not be construed to be a waiver of such provisions, nor shall it affect the validity of the Contract Documents or any part thereof, or the right of either party to thereafter enforce each and every provision.

12.18 Notice.

12.18.1 Unless otherwise provided, any notice, request, instruction, or other document to be given under this Agreement by any party to any other party shall be in writing and shall be delivered in person or by courier or facsimile transmission or mailed by certified mail, postage prepaid, return receipt requested or by e-mail; provided however, that e-mail shall not be a permissible method of delivery for any notice, request, instruction or other document that requires execution by both parties, and shall be deemed given upon (a) confirmation of receipt of a facsimile or e-mail transmission, (b) confirmed delivery by hand or standard overnight mail, or (c) upon the expiration of three (3) business days after the day mailed by certified mail, as follows:

to CM at Risk: <INSERT>

to City:

XXXX

With a Copies to:

XXXXXX

Design Professional: <INSERT>

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

12.18.2 Notices Related to Payment, Securities-in-lieu, Bonds. Any notice, request, instruction, or other document to be given under this Agreement by any party to any other party related to payment, securities-in-lieu, bonds, or other instrument securing the performance of this Agreement, including

but not limited to, bid bonds, performance bonds, payment bonds or letters of credit, shall be in writing and shall be delivered in person or by courier or facsimile transmission or mailed by certified mail, postage prepaid, return receipt requested and shall be deemed given upon (a) confirmation of receipt of a facsimile transmission, (b) confirmed delivery by hand or standard overnight mail or (c) upon the expiration of three (3) business days after the day mailed by certified mail, as follows:

to Contractor: <INSERT>

to City:

XXXX

With a copy to:

XXXX

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

12.19 Equal Opportunity/Affirmative Action

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

services in connection with this Agreement. The CM at Risk further agrees that this clause will be incorporated in all subcontracts, job-consultant contracts of this Contract entered into by the CM at Risk.

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

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

may perform any such labor or services in connection with this contract.

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

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

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

- 12.20 CM at Risk and Subcontractor Employee Security Inquiries.** The parties acknowledge that security measures required in this Section are necessary in order to preserve and protect the public health, safety and welfare. In addition to the specific measures set forth below, CM AT RISK shall take such other measures as it deems reasonable and necessary to further preserve and protect the public health, safety and welfare.
- 12.20.1 Security Inquiries.** CM at Risk acknowledges that all of the employees that it provides pursuant to this Agreement shall be subject to background and security checks and screening ("Security Inquiries"). CM at Risk shall perform all such security inquiries and shall make the results available to City for all employees considered for performing work (including supervision and oversight) under this Agreement. City may make further security inquiries. Whether or not further security inquiries are made by City, City may, at its sole, absolute, and unfettered discretion, accept or reject any or all of the employees proposed by CM at Risk for performing work under this Agreement. Employees rejected by City for performing services under this Agreement may still be engaged by CM at Risk for other work not involving the City of Lewisville. An employee rejected for work under this Agreement shall not be proposed to perform work under other City contracts or engagements without City 's prior approval.
- 12.20.2 Criteria for Evaluating Security Inquiries.** Once formally adopted by City, criteria for excluding an individual from performing work under this Agreement shall be communicated by City to CM at Risk and used by CM at Risk as a factor in making its decision. Prior to such adoption, CM at Risk shall use its best judgment in making its decision using, among other criteria, applicable law, administrative regulations of federal, state, and local agencies concerned with work performed under this Agreement, specific local concerns that deal with the specific work and work location(s) of the project, and standards used by City in evaluating its own personnel.
- 12.20.3 Additional City Rights Regarding Security Inquiries.** In addition to the foregoing, City reserves the right to: (1) have an employee/prospective employee of CM at Risk be required to provide fingerprints and execute such other documentation as may be necessary to obtain criminal justice information; (2) act on newly acquired information whether or not such information should have been previously discovered; (3) unilaterally change its standards and criteria relative to the acceptability of CM at Risk 's employees and/or prospective employees; and, (4) object, at any time and for any reason, to an employee of CM at Risk performing work (including supervision and oversight) under this Agreement.
- 12.20.4 Terms of This Provision Applicable to all of CM at Risk Contracts and Subcontracts.** CM at Risk shall include the terms of this provision for employee background and security checks and screening in all contracts and subcontracts for work performed under this Agreement, including supervision and oversight.

12.20.5 Materiality of Security Inquiry Provisions. The Security Inquiry provisions of this Agreement, as set forth above, are material to City 's entry into this Agreement and any breach thereof by CM at Risk may, at City's option, sole and unfettered discretion, be considered to be a breach of contract of sufficient magnitude to terminate this Agreement. Such termination shall subject CM at Risk to liability for its breach of contract.

12.21 Hazardous Materials

12.21.1 Unless included in the Work, if the CM at Risk encounters onsite material which they reasonably believe to contain asbestos, polychlorinated biphenyl (PCB), or other hazardous substances or materials regulated by Public Health Laws, they shall immediately stop work and report the condition to the City.

12.21.2 If the material is found to contain asbestos, PCB or other hazardous substances or materials regulated by Public Health Laws, the CM at Risk shall not resume work in the affected area until the material has been abated or rendered harmless. The CM at Risk and the City may agree, in writing, to continue work in non-affected areas onsite.

12.21.3 An extension of Contract Time may be granted in accordance with Article 6.

12.21.4 The CM at Risk will comply with all applicable laws/ordinances and regulations and take all appropriate health and safety precautions upon discovery.

12.22 Computer Systems CM at Risk shall warrant fault free performance in the processing of date and date-related data including, but not limited to calculating, comparing, and sequencing by all equipment and software products, individually and in combination, from the commencement of the Work. Fault free-performance shall include the manipulation of data when dates are in the 20th or 21st centuries and shall be transparent to the user. Failure to comply with "Year 2000" requirements shall be considered a breach of contract.

12.23 Traffic Control. CM at Risk will comply with all provisions of the City of Lewisville Traffic Barricade Manual and any other traffic control provisions as may be provided in the technical specifications.

CITY OF LEWISVILLE

(INSERT PROJECT NAME)

GMP No. **X**

Project No. **XXXXX**, Contract No. **XXXX**

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

The CM at Risk agrees that this Agreement, as awarded, is for the stated work and understands that payment for the total work will be made on the basis of the indicated amount(s), per the terms and conditions of the Agreement.

GMP No. \$ _____

Owner's Contingency _____

Total Contract Price for GMP No. \$ _____

**(Name),
(Legal Entity)**

CITY OF LEWISVILLE

By: _____

By: _____

Title: _____

Date: _____

(Corporate Seal)

Recommended:

By: _____
(Department)

ATTEST: (Signature and Title)

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

Attachments: EXHIBIT A – PROJECT DESCRIPTION
EXHIBIT B – APPROVED GMP PROPOSAL
EXHIBIT C – TECHNICAL SPECIFICATIONS
EXHIBIT D – CONSTRUCTION DRAWINGS

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EXHIBIT A - PROJECT DESCRIPTION

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EXHIBIT B – APPROVED GMP PROPOSAL

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EXHIBIT C – TECHNICAL SPECIFICATIONS

Technical Specifications as specified in EXHIBIT B – APPROVED GMP PROPOSAL are set forth herein in full OR made part of this agreement by reference OR made part of this agreement as a separate attachment.

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EXHIBIT D – CONSTRUCTION DRAWINGS

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

- Design Professional
- City of Lewisville Project Manager
- CM at Risk Contractor

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EXHIBIT C - SUBMITTAL REQUIREMENTS FOR THE GMP

GMP submittal, one copy for review.

One printed, signed original copy and a digital copy in searchable PDF format will be requested by the City of Lewisville prior to contract execution.

Table of Contents:

1. Scope of Work
2. Summary of the GMP
3. Schedule of Values – summary spreadsheet and backup documents
4. List of Plans and Specifications used for GMP Proposal
5. List of clarification and assumptions
6. Project Schedule

1. Scope of work will consist of a brief description of the work to be performed by CM at Risk and major points that the CM at Risk and the City must be aware of pertaining to the scope. (normally one paragraph is sufficient.)
2. A summary of the GMP with a total for each of the components of the GMP as listed in its definition in Article 1 as shown in the table below:

All costs should be listed individually for future use.

PROJECT #: DATE:
PROJECT NAME:

GMP Summary			AMOUNT
A.	Cost of the Work (Labor, Materials, Equipment, Warranty)		\$
B.	CM at Risk's Contingency		\$
B.1	TOTAL Cost of Work + CM at Risk Contingency:		
INDIRECT COSTS			
C.	Construction Fee		% \$
D.	General Conditions		% \$
	D1	Payment and Performance Bond	\$ %
	D1.1	2-Year Maintenance Bond	\$ %
	D2	Insurance	\$ %
E.	Sales Taxes		% \$
F. TOTAL GMP			\$
G. Owner's Contingency			\$
H. Contract Amount			\$

Formulas:

Total Cost of Work: A+B

Construction Fee: Cost of the Work x Construction Fee % (Converts to Fixed Sum)

General Conditions: The General Conditions Costs are a firm fixed lump sum amount and will include bonds and insurance premiums based on the full contract price for construction. The General Conditions Costs is expressed as a percentage by dividing the General Conditions Costs by the Total Cost of the Work. General Conditions Costs is defined in Article 1. Percentages for General Conditions Costs are calculated by dividing each amount by the Total Cost of the Work (B.1), such as B/B.1, C/B.1., D1/B.1, and D2/B.1 **(Do not acquire bond or insurance until notified by the City of Lewisville Project Manager.)**

Total GMP: A+B+C+D+E = F

Note: Role and utilization of Owner's Contingency is outlined in Pre-Construction Contract Article 1 and Article 2.6.4

Note: The scope of the 2-Year Maintenance Bond is to cover 100% of the Cost of Work

3. Schedule of Values - spread sheet with the estimated bid or cost organized by subcontract categories, allowances, bid contingency, general conditions costs, taxes, bonds, insurances, and the CM at Risk's construction phase fee. The supporting document for the spreadsheet must be provided in an organized manner that correlates with the schedule of values. The backup information shall consist of the request for bids, bids received, and clarification assumptions used for the particular bid item listed on the schedule of values, if applicable.
4. A list of the Plans and Specifications with latest issuance date including all addenda used in preparation of the GMP proposal. The plans used for the GMP must be date stamped and signed by CM at Risk, Design Consultant, and Project Manager using the format below.

Plans Used For Preparation of GMP No.	
CM at Risk	Date
Design Consultant	Date
Project Manager	Date

5. A list of the clarifications and assumptions made by the CM at Risk in the preparation of the GMP proposal, to supplement the information contained in the documents.
6. A Critical Path Method (CPM) diagram construction schedule.

NOTE: The submittal package must be kept as simple as possible all on 8 ½ x 11 sheets. Color or shading must be kept to a minimum. If used, make sure the color or shading will not affect the reproduction of the submittal in black and white.

Final GMP submittal will consist of the following:

1. One printed copy of the GMP and one digital copy in searchable PDF format.
2. One copy of the plans and technical specifications used to arrive at the GMP (signed by Design Professional, CM at Risk and City's Designated Project Manager).

For questions regarding the submittal requirements, please contact City's Designated Project Manager.

