

**PROFESSIONAL SERVICES AGREEMENT**  
**for**  
**CONSTRUCTION MANAGEMENT SERVICES FOR CITY OF**  
**LEWISVILLE MULTIGENERATIONAL RECREATION CENTER**

The City of Lewisville, Texas (the "City"), hereby engages Ramel Company, LLC (the "Consultant"), to perform professional services in connection with construction management services with regards to the construction of the City's Multigenerational Recreation Center (the "Project").

**I. PROJECT. The Project is described as follows:**

**A. Construction Phase:**

1. On-site observance of work performance to assure work is proceeding in compliance with construction documents and perform independent assessments for rejection or replacement of non-conforming work or design deviations;
2. Attendance of meetings between the architect and contractor;
3. Reviewing all material and product dates to assure contract compliance;
4. Overseeing the coordination for the needs of the testing laboratory service related to soils, concrete, welds, soil densities and other tests as appropriate;
5. Coordination of franchise utilities;
6. Reviewing and commenting on the appropriateness of monthly pay requests and make recommendations to the City as to the approval of requested amounts and quantities of work listed with each request; and
7. Reporting of all incidents negatively impacting quality of work performed.

**B. Closeout Phase:**

1. Coordination of punch out list with contractor and City;
2. Collection of all warranty papers;
3. Collection of all OEM manuals;
4. Collection of all as-built construction documents;
5. Coordinate training sessions with the City and contractors for operations of various systems;
6. Review of all certifications of release of lien; and
7. Review of final payment and release of retainage.

**II. SCOPE OF SERVICES AND CITY'S RESPONSIBILITIES.**

The Consultant shall perform services as outlined in the Consultant's Proposal, attached hereto as **Attachment A** ("Services").

The City shall provide the Consultant with access to reasonable facilities, timely data, information, and personnel of the City for the purposes of the performance by Consultant of the Services.

### III. TERM.

This Agreement shall commence on \_ \_ \_ \_ \_ , 2018 (the "Effective Date")

and shall continue for a term of twenty (20) continuous months, terminating on

- - - - - 2020. Upon the written agreement of both parties, this Agreement may be extended at the same monthly rate outlined in Section IV, below.

### IV. COMPENSATION.

The total compensation for the Services shall equal \$256,000.00, to be invoiced monthly in the amount of \$12,800.00 per month, beginning on the Effective Date.

Invoices shall be submitted by cover letter from the Consultant on a monthly basis. The letter shall certify that the invoice properly represents work actually done. The City reserves the right to request additional justification prior to payment of any invoice. The City agrees to make prompt payments for all approved invoices and agrees to pay interest at the rate approved by law for approved invoices not paid within 30 days from the date of approval.

IV. **INSURANCE.** The Consultant agrees to maintain insurance throughout the term of the contract, in accordance with the City's Insurance Requirements, attached hereto as **Attachment B**. All Certificates of Insurance shall be kept current and shall be forwarded to the Purchasing Division of the City by cover letter from the Consultant. Insurance certificate must be received and approved prior to commencement of work. The Consultant shall also review and forward certificates covering sub-consultants.

V. **REUSE OF DOCUMENTS.** All documents, including drawings and specifications prepared by the Consultant pursuant to this Agreement, are instruments of service in respect of the Project. They are not intended or represented to be suitable for reuse by the City or others on extensions of the Project or on any other project. Any reuse without written verification or adaptation by the Consultant for the specific purpose intended will be at City's sole risk and without liability or legal exposure to the Consultant from all claims, damages, losses and expenses including attorney's fees arising out of or resulting therefrom. Any such verification or adaptation will entitle the Consultant to further compensation at rates to be agreed upon by the City and the Consultant.

VI. **OWNERSHIP OF DOCUMENTS.** Original documents, plans, designs, reports and survey notes developed in connection with services performed hereunder belong to, and remain the property of the City, in consideration of which it is mutually agreed that the City will use them solely in connection with the Project, save with the express consent of the Consultant.

Consultant shall always guarantee access by the City, or any of the City's authorized representatives, to any additional books, documents, paper and records of the Consultant

which are directly pertinent to this Agreement for making audits, examination, excerpts and transcriptions.

The Consultant shall retain reproducible copies or electronic files of all such documents for at least five (5) years and shall furnish copies to the City for reimbursable costs, if so requested.

- VII. **CONSULTANT'S REPRESENTATIONS AND WARRANTIES.** Consultant represents and warrants to the City that Consultant is subject to no restriction of obligation, contractual, or otherwise, the compliance with which is inconsistent with the execution of this Agreement, the performance of Consultant's obligations hereunder of the rights of the City hereunder; and that Consultant has all necessary knowledge, skills, experience to implement all aspects of the work and access to know-how and information necessary to perform its obligations under this Agreement.

Consultant warrants that during the term of this Agreement, the Services performed by Consultant will be performed in accordance with the highest degree of professional standards, in compliance with all applicable laws, regulations, procedures, criteria and requirements; to include all applicable Federal, State, and local laws and regulations.

- VIII. **THE CONSULTANT AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY CONSULTANT'S BREACH OF ANY OF THESE TERMS AND CONDITIONS OR BY ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY CONSULTANT, ITS OFFICERS, AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THIS AGREEMENT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THE PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF THE CITY, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRING NEGLIGENCE OR FAULT OF THE CONSULTANT AND THE CITY, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW AND THE CITY'S REASONABLE ATTORNEY'S FEES SHALL BE REIMBURSED IN PROPORTION TO THE CONSULTANT'S LIABILITY. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR**

**GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.**

- IX. **TERMINATION.** This Agreement may be terminated with cause by either party, upon thirty (30) days written notice to the other party's address of record. Termination shall release each party from all obligations of this Agreement, except those outlined in Paragraphs V, VI, VII, and VIII above. Upon notice of termination, the Consultant shall prepare and submit to City a final invoice within 15 days.
- X. **CONFIDENTIAL INFORMATION.** To the extent allowed by law, the City will safeguard and keep from release any documents marked "proprietary" or information not generally available to the public. However, the City will, if required, comply with all requirements of the Texas Public Information Act with regard to any documents in its possession at the time of a request made under that Act.
- XI. **GOVERNING LAW AND VENUE.** This Agreement is governed by the laws of the State of Texas. Exclusive venue for any dispute arising out of this Agreement is in Denton County, Texas.
- XII. **ARBITRATION.** In the event of a dispute which may arise under this Agreement, the City does not agree to arbitration.
- XIII. **AMENDMENTS.** This Agreement may be amended or modified only by a written instrument duly executed by the parties hereto.
- XIV. **PROTECTION OF RESIDENT WORKERS.** The City of Lewisville actively supports the Immigration and Nationality Act (INA) which includes provisions addressing employment eligibility, employment verification, and nondiscrimination. Under the INA, employers may hire only persons who may legally work in the United States (i.e., citizens and nationals of the U.S.) and aliens authorized to work in the U.S. The employer must verify the identity and employment eligibility of anyone to be hired, which includes completing the Employment Eligibility Verification Form (I-9). The Consultant shall establish appropriate procedures and controls so no services under the Contract Documents will be performed by any worker who is not legally eligible to perform such services or employment. The City reserves the right to audit consultant's employment records to verify the existence of a completed Employment Eligibility Verification Form (I-9) for every worker performing services under the Contract Documents. The audit will be at the City's expense.
- XV. **IMMIGRATION REFORM AND CONTROL ACT (8 U.S.C. §1324a).** The City of Lewisville supports the immigration Reform and Control Act (IRCA) which is a comprehensive scheme prohibiting the employment of unauthorized aliens in the United States. The Consultant shall submit a declaration signed under penalty of perjury of the laws of the State of Texas stating that it has not been found in violation of IRCA by the United States Attorney General or Secretary of Homeland Security in the preceding five (5) years.

The Consultant shall ensure that its Subcontractors submit a declaration signed under penalty of perjury of the laws of the State of Texas stating that they have not been found in violation of IRCA by the United States Attorney General or Secretary of Homeland Security in the preceding five (5) years. The Consultant and its Subcontractors shall at all times during the term of the contract with the City comply with the requirements of IRCA and shall notify the City within fifteen (15) working days of receiving notice of a violation of IRCA. The City may terminate a contract with the Consultant if the City determines that (a) the Consultant or its Subcontractors have been untruthful regarding IRCA violations in the preceding five (5) years; (b) if the Consultant fails to ensure that its Subcontractors submit the aforementioned declaration; or (c) the Consultant or its Subcontractors fail to timely notify the City of an IRCA violation.

XVI. **ADA COMPLIANCE.** All goods and services provided to the City must be compliant with the Americans with Disabilities Act ("ADA") and all regulations promulgated pursuant to the ADA. Consultant will be required to certify compliance, if applicable.

XVII. **SUCCESSORS AND ASSIGNS.** The City and Consultant each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Agreement and to partners, successors, executors, administrators and assigns of each other in party in respect to all covenants of this Agreement. Neither the City nor the Consultant shall assign, sublet or transfer its interest in this Agreement without the written consent of the other. Nothing herein shall be construed as giving any right or benefits hereunder to anyone other than the City and the Consultant.

XVIII. **DISCLOSURE.** Pursuant to Chapter 176 of the Texas Local Government Code, a person or agent of a person who contracts or seeks to contract with the City of Lewisville must complete a conflict of interest questionnaire if the person or agent has an affiliation or business relationship that might cause a conflict of interest with the City. The conflict of interest questionnaire, which is available online at [ethics.state.tx.us](http://ethics.state.tx.us), must be filed with the City Secretary of the City of Lewisville no later than the seventh business day after the person or agent begins contract discussions or negotiations with the City of Lewisville or submits to the City of Lewisville an application, response to a request for proposal or bid, correspondence, or another writing related to a potential agreement with the City of Lewisville. An updated conflict of interest questionnaire must be filed in accordance with Chapter 176 of the Local Government Code.

Said person should consult with legal counsel if they have questions regarding its compliance with the requirements of Chapter 176. It is the responsibility of each person or agent who is contracting or seeking to contract with the City of Lewisville to comply with the filing requirements of Chapter 176.

XIX. **TEXAS GOVERNMENT CODE CHAPTER 2270.** Pursuant to Texas Government Code Chapter 2270, Contractor affirms that execution of this Agreement serves as written verification that Contractor: (1) does not boycott Israel, as defined by Texas Government Code Section 808.001; and (2) will not boycott Israel during the term of the Agreement.

XX. **TEXAS GOVERNMENT CODE CHAPTER 2252.** Pursuant to Texas Government Code Chapter 2252, Subchapter F, Contractor affirms, by entering into this Agreement, that it is not identified on a list created by the Texas Comptroller of Public Accounts as a company known to have contracts with or provide supplies or services to Iran, Sudan, or a foreign terrorist organization.

XXI. **CLOSURE.** By signature below, the parties to this Agreement hereby bind themselves to the terms stated herein, including all attachments referred to herein.

**CITY OF LEWISVILLE, TEXAS**  
**Approved by the Lewisville City**  
**Council** \_\_\_\_\_

By: \_\_\_\_\_  
Donna Barron, City Manager

Date: \_\_\_\_\_

Attest: \_\_\_\_\_  
Julie Worster

By:  \_\_\_\_\_  
Ramon Guajardo, Jr.

Date: 08/24/2018 \_\_\_\_\_

Attest:  \_\_\_\_\_  
Brian Rickard

**CITY OF LEWISVILLE**  
151 West Church Street  
Lewisville, Texas 75057

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Lizbeth Plaster, City Attorney



July 18, 2018

## **Proposal for Construction Management Services RFQ Number: 18-11-7**

Mr. White;

Ramel Company, LLC is pleased to submit this proposal for the Construction Management Services (the Services) for the City of Lewisville's (the Client) Multigenerational Recreation Center (the Project). The proposed services detailed within are in accordance with RFQ No.: 18-11-7 and include the detailed expectations discussed in the follow-up interview meeting.

### **Objective**

Work in the best interest of the City of Lewisville, the Project, and along with the project Team to evaluate, identify, communicate, advise, and implement actions in order to provide the Client with a quality development in a timely manner.

### **Proposal**

In achieving the objective, the following measures will be accomplished under this proposal.

1. Communicate, coordinate, and involve Ms. Boen and other Team members throughout the construction, closeout, and delivery phases of the Project;
2. Provide on-site inspections and oversight of in-progress installations to assure work is proceeding in compliance with the approved construction documents (plans and specifications);
3. Work on behalf and with the City of Lewisville in reviewing and accepting of right-of-way scopes of work to ensure Byrne Construction provides what was approved and that it is compliant with the ADA codes;
4. Review subcontractor installations to the extent of ensuring product materials and equipment are installed in accordance of local codes, installed in accordance with manufacture requirements, installed in the intended location, and installed to the Client's expectation;
5. Coordinate the extension and termination of franchise utilities and other major City provided utilizes to the property and in-to the building;
6. Ensure products selected are installed. Assistance with the creation and constant review of Byrne Construction's Expediting Log, review of submitted product data, review of shop drawings, review of samples, and sitting-in on key pre-construction meetings with Byrne Construction and their subcontractors;



7. Review and evaluate testing reports to ensure measured installations are being delivered to the quality that is specified. Head-up coordination with design team if corrective action is required;
8. Create and provide the Team with site observation reports and with open items reports;
9. Evaluate and communicate with the Client's departments, through Ms. Boen, if concerns are observed or arise. Upon evaluation and communication, Ramel will also assist in reviewing and advising on solutions with the Team;
10. Coordinate with necessary departments, through Ms. Boen, to schedule multiple mid-construction walks and reviews so staff can establish a familiarity with the facility and its systems. Comments to be noted and communicated to Byrne Construction and the Design Team if needed;
11. Coordination of facility's staff to tour, utilize, and test the facilities systems for acceptance;
12. Coordinate the installation of the Client's FF&E with Byrne Construction. From delivery, to staging, to assembly areas, to trash haul-off, to final placement or installation of equipment;
13. Coordinate the acceptance, delivery, and ultimately the occupancy of the facility by the Client;
14. Coordination of equipment and systems staff training. Ensuring video recording is performed for the Client's future use;
15. Coordinate and lead the efforts to create a punch list and lead the efforts to document acceptance of corrected punch list items;
16. Coordination with Peak Program Value to ensure accurate billing for work performed;
17. Obtain, review, consolidate, and deliver all close-out documents including product data, attic stock, detailed as-built drawings (creation of as-built drawings will start in the preliminary phases of project schedule and will continue until turn-over), final lien waivers, bonding documents, final change order, and final payment application;
18. Perform 10 or 11-month warranty walk and coordinate any corrections or replacements that are observed and noted. Included is the review and approval of corrective measures;
19. Attend construction meetings on behalf of the Client and provide the Client with a report of discussions or outcomes;
20. Present progress reports to city departments, City Council, and the Citizens of Lewisville as requested;
21. Be a vital Team Member in the successful construction and delivery of the City of Lewisville's Multigenerational Recreation Center;
22. Perform a 20-month maintenance bond walk with the City of Lewisville Staff.

### **Pricing and Term of Services**

The delivery of the above proposed objective and services will be delivered in exchange for the reimbursement amount of \$268,800 (Two-Hundred and Sixty-Eight Thousand Eight Hundred Dollars). The term to deliver these services will be for 21 months of construction and ½ a month for the warranty walks.

### **RAMEL Company, LLC**

2205 W. Broadway; Fort Worth, Texas 76102  
817-737-8388

*Rev. 3*





### **Clarifications and Qualifications**

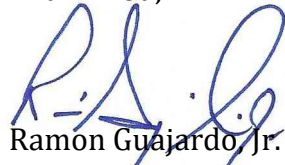
1. No permit, impact, or construction fees or construction scope of work is included in this proposal;
2. No design or engineering responsibilities is included in this proposal;
3. No marketing or public relations work is included in this proposal, but Ramel Company can price to provide these services if requested;
4. All insurances specified in the RFQ is included in this proposal;
5. All miscellaneous internal printing for Ramel is included in this proposal. All printing necessary to deliver client reports, letters, acknowledgments, advise, and other standard communications is included. Larger poster or banner printing is not included and will be priced if requested to provide;
6. All parking, fuel, vehicle, and transportation maintenance expenses are included in this proposal. Transportation is expected to include commuting to project location, client offices, Byrne Construction's offices, and other local offices related to the project;
7. No extended travel expenses outside of the above-mentioned travel expectations is included in this proposal;
8. All taxes and allowances associated with Ramel Company employees is included in this proposal;
9. All cost associated with program licenses, IT hardware, and IT software is included in this proposal;
10. All data and phone services and hardware costs are included in this proposal;
11. All overhead expenses, i.e. rents, office operational expenses, and company support expenses are included in this proposal;
12. No retainage or other withholds is to be accessed to Ramel Company's monthly payments;
13. The City of Lewisville or its design consultant(s) is to provide Ramel Company with a complete electronic set of plans, specifications, agreements, and other important documents related to the project in order to provide the most completed service;
14. Review and oversight of corrective measures that emerge from the 20-month walk is not included. Providing such services will be negotiated at time of need.

### **Terms for Payment**

Upon the execution of this agreement, The City of Lewisville agrees to fund Ramel Company, LLC for the above-mentioned amount across 21 consecutive months. Monthly invoices will be submitted electronically and are to be funded within 30 days of receipt.

Thank you for the opportunity to submit this proposal for the Construction Management Services. If you have any questions, please feel free to contact Ramon Guajardo, Jr. on his cell phone at 817-800-5791 or via email at [ramonjr@ramelcompany.com](mailto:ramonjr@ramelcompany.com).

Thank You,



Ramon Guajardo, Jr.  
Vice President

Ramel Company, LLC

### **RAMEL Company, LLC**

2205 W. Broadway; Fort Worth, Texas 76102  
817-737-8388

Rev. 3

**ATTACHMENT B**  
**INSURANCE REQUIREMENTS**  
**PROFESSIONAL SERVICES PROJECTS/CONSULTANTS**

Services for non-construction projects. Consultants or other professionals including: Accountants, Attorneys, Veterinarians, and Medical Doctors.

Vendor shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work hereunder by the vendor, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the Vendor's bid.

**A. MINIMUM SCOPE OF INSURANCE**

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage "occurrence" form CG 00 01 (10 01). **"Claims Made" form is unacceptable except for professional liability.**
2. Workers' Compensation insurance as required by the Labor Code of the State of Texas, including Employers' Liability Insurance.
3. Automobile Liability- as required by the State of Texas, covering all owned, hired, or non-owned vehicles. Automobile Liability is only required if vehicle(s) will be used under this contract. Coverage not required for delivery services.
4. Professional Liability Insurer, and/ or Errors and Omissions.

**B. MINIMUM LIMITS OF INSURANCE**

Vendor shall maintain throughout contract limits not less than:

1. Commercial General Liability: \$500,000 per occurrence/\$1,000,000 aggregate for bodily injury, personal injury and property damage. Policy will include coverage for:
  - a. Premises - Operations
  - b. Broad Form Contractual Liability
  - c. Products and Completed Operations
  - d. Personal Injury
  - e. Broad Form Property Damage
  - f. If applicable, Explosion Collapse and Underground (XCU) Coverage, Fire Damage, and Medical Expense.

***NOTE: The aggregate loss limit applies to each project.***

2. Workers' Compensation and Employer's Liability: Workers' Compensation Statutory limits as required by the Labor Code of the State of Texas and Employer's Liability minimum limits of \$500,000 per injury, \$500,000 per occurrence, and \$500,000 per occupational disease.
3. Automobile Liability- \$500,000 Combined Single Limit. Limits can only be reduced if approved by the HR Director or designee.
4. Professional Liability and /or Errors and Omissions - \$500,000 per occurrence. \$1,000,000 Aggregate.

**C. DEDUCTIBLES AND SELF-INSURED RETENTIONS**

Any deductible or self-insured retentions must be declared to and approved by the City.

**D. OTHER INSURANCE PROVISIONS**

The policies are to contain, or be endorsed to contain the following provisions:

1. General Liability and Automobile Liability Coverages
  - a. The City, its officers, officials, employees, boards/commissions and volunteers are to be added as "Additional Insured" as respects liability arising out of activities performed by or on behalf of the vendor, products and completed operations of the vendor, premises owned, occupied or used by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers. It is understood that the business auto policy under "Who is an Insured" automatically provides liability coverage in favor of the City. The coverage shall include defense of claims against the City as additional insured.
  - b. The vendor's insurance coverage shall be primary and non-contributory insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the vendor's insurance and shall not contribute with it.
  - c. Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the City, its officers, officials, employees, Boards and Commissions or volunteers.
  - d. The vendor's insurance shall apply separately to each insured against whose claim is made or suit is brought, except to the limits of the insured's liability.
2. Waiver of Subrogation - All coverages except Professional Liability  
Each insurance policy required by this exhibit shall waive all rights of subrogation against the City, its officers, officials, employees, and volunteers for losses arising from work performed by the vendor for the City.
3. Notice of Cancellation - All Coverages  
Each insurance policy required by this exhibit shall be endorsed to state that coverage shall not be suspended, voided, canceled or non-renewed by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given the City, or ten (10) days prior written notice for non-payment of premium.

**4. Professional Liability and / or Errors and Omissions**

"Claims made" policy is acceptable coverage which must be maintained during the course of the project and up to two (2) years after completion and acceptance of the project by the City.

**E. ACCEPTABILITY OF INSURERS**

The City prefers that Insurance be placed with insurers with an A.M. Best's rating of no less than **A-:VI, or, A or better** by Standard and Poors. Professional Liability carriers will need to be approved by the HR Director or designee.

**F. VERIFICATION OF COVERAGE**

Contractor shall furnish the City with certificates of insurance affecting coverage required. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Certificates of Insurance must be provided on forms approved by the Texas Department of Insurance. City will not accept Memorandums of Insurance or Binders as proof of insurance. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

**G. HOLD HARMLESS AND INDEMNIFICATION**

THE CONSULTANT/CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY CONSULTANT'S/CONTRACTOR'S BREACH OF ANY OF THESE TERMS AND CONDITIONS OR BY ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION OR INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY, CONSULTANT/CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRING NEGLIGENCE OR FAULT OF THE CONSULTANT/CONTRACTOR AND THE CITY, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW AND THE CITY'S REASONABLE ATTORNEY'S FEES SHALL BE REIMBURSED IN PROPORTION TO THE CONSULTANT'S LIABILITY. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.