General Conditions
Table of Contents

SECTION I	CONSULTANT'S RESPONSIBILITIES	2
SECTION II	OWNER'S RESPONSIBILITIES	8
SECTION III	FIXED CONSTRUCTION BUDGET	9
SECTION IV	SUBSEQUENT WRITTEN AUTHORIZATIONS AND RESOURCE ALLOCATION PLANS (RAP)	10
SECTION V	COMPENSATION	14
SECTION VI	INSURANCE REQUIREMENTS	18
SECTION VII	TERMINATION OF AGREEMENT	21
SECTION VIII	OWNER REMEDIES	23
SECTION IX	CONSULTANT REMEDIES	25
SECTION X	DISPUTE RESOLUTION	25
SECTION XI	MISCELLANEOUS PROVISIONS	27

I. CONSULTANT'S RESPONSIBILITIES

A. General

This is a Rotation List Agreement. A Proposal Request as described in Section IV of this Agreement will be issued to the Consultant for each specific project assignment. For each assignment the Consultant will perform the basic services in relation to the Scope of Services described in Exhibit A. Each assignment is referred to herein as a Subproject. The Consultant will serve as the Owner's professional consultant in those phases of an assigned Subproject as stated in the Supplemental Terms and Conditions of this Agreement, and will consult and advise the Owner during the performance of the Consultant's services. The Owner agrees to compensate the Consultant for those services in accordance with Section V. Consultant shall report to Owner's designated Project Manager.

B. Performance of Services

The Consultant will perform services under this Agreement with the degree of skill and care ordinarily provided by competent professional engineers, architects, or consultants practicing in the same or similar locality and under the same or similar circumstances and professional license and as expeditiously as is prudent, considering the ordinary professional skill and care of a competent engineer, architect, or other consultant.

The City is agreeing to contract with the Consultant on the basis of its qualifications and proposal, including its proposed Key Personnel, who are the employees of the Consultant responsible for performing major aspects of the services to be provided under this Agreement, and it’s designated Subconsultants, the other professional service providers, who will provide specialized services under this Agreement.

1. The Consultant's Key Personnel, including its Project Manager, and the Consultant's associated Subconsultants to be employed in the performance of the Project professional services shall not be changed except with the Owner's prior written approval, which will not be unreasonably withheld.

2. The Consultant's and Subconsultant’s Key Personnel are identified in Attachment 1, which may be subsequently modified in an approved Request for Changes in Key Personnel. Changes to Key Personnel require that the individual being added must be comparably as qualified as the individual being replaced. Request for changes to Key Personnel must be in writing using Attachment 2, Request for Changes in Key Personnel. Approved Requests for Changes to Key Personnel are made a part of this Agreement by reference**.**

3. The Consultant's Subconsultants are listed in the Minority-Owned Business Enterprise (MBE)/Women-Owned Business Enterprise (WBE) Compliance Plan, which Consultant

submitted with its Statement of Qualifications and was approved by the Owner (Exhibit F). The Compliance Plan may be subsequently modified in approved Request for Changes, in accordance with Subsection I.B.8, and are made a part of this Agreement by reference.

4. The Consultant must disclose any potential conflict of interest relating to the Consultant, the Consultant's employees, a Subconsultant or supplier. Failure to disclose any such conflicts may be grounds for termination under Subsection VII.E.of this Agreement.

5. The Key Personnel identified in Attachment 1 must be employed by the Consultant or respective Subconsultant.

6. The Consultant is registered to do business with the Owner and is responsible for ensuring that all Subconsultants are registered as vendors with the Owner. All Subconsultants have been registered with the Owner prior to execution of this Agreement.

7. The Consultant agrees not to modify any Subconsultant's design after Subconsultant's seal has been affixed, except with the written consent of the Subconsultant. The Consultant is fully responsible for the Subconsultants' performance and obligations under this Agreement.

8. The Consultant shall obtain Owner's written approval prior to terminating, adding or substituting Subconsultants. In the event that the Consultant proposes to add, substitute, or terminate an identified "Minority-Owned Business Enterprise" (MBE) or a "Women-Owned Business Enterprise" (WBE) certified Subconsultant firm from its employ on this Project, the Consultant shall comply with the City of Austin MBE/WBE Procurement Program: Professional Services, Chapter 2-9B, Austin City Code and the goals established in the Project solicitation. If the Consultant is unable to substitute a Subconsultant firm in compliance with the Austin City Code, the Consultant shall provide Owner with written documentation of their good faith efforts to acquire the services of a MBE/WBE replacement firm. All requests to change the Consultant's MBE/WBE Compliance Plan must include documentation to support the request.

9. If the Owner notifies the Consultant that a member of the Consultant's team, including Subconsultants, is incompetent, disorderly, abusive, or disobedient, or has knowingly or repeatedly violated any federal, state, or local law, the Consultant shall immediately remove any such person from performing work on the Subproject. The Owner's prior written consent must be obtained before any such person may be reinstated. Replacement of any Subconsultant removed from the Project must be in accordance with Subsection I.B.8. The Owner may report any breaches of professional codes of ethics to the appropriate licensing board.

10. The Consultant will attend and draft complete minutes of each Subproject design and construction meeting between Consultant, Owner and Construction Contractor and/or Consultant and other agencies, and submit them to Owner for approval within seven (7) calendar days after each Subproject conference.

11. The Consultant shall prepare and submit all appropriate permit applications and supporting drawings, specifications and other documents in the name of the City of Austin to utility companies and providers and governmental authorities having jurisdiction over the Subproject and shall obtain all approvals and all permits necessary to complete the Subproject in accordance with the Subproject Resource Allocation Plan (RAP) described in Subsection IV.B, or as otherwise specified by Owner. Development and permitting fees may be paid for in one of the following methods as mutually agreed:

a. Paid by Consultant and billed to Owner as a reimbursable, or

b. Payment coordinated through the Owner using an internal payment transfer document.

12. The Consultant agrees to attend and make presentations, as specified in Attachment 3 – Request for Proposal/Notice to Proceed**,** as Basic Services, including (i) Board and Commission meetings, (ii) public meetings, and (iii) internal City of Austin meetings. Any other presentations required by Owner will be considered Additional Services in accordance with Subsection I.F and paid for in accordance with Subsection V.A.3.

13. The Scope of Services generally consists of all elements of work, material and equipment required for the professional development of the Subproject satisfactory to the Owner and in compliance with all applicable laws, rules, regulations, and ordinances and in accordance with the requirements, policies, and general practices of the Owner.

14. The Consultant shall not knowingly specify, request or approve for use any asbestos containing materials or lead-based paint without the Owner's prior written approval. For materials specified on the basis of performance criteria, the Consultant shall include a requirement in the specifications effectively stating that "Asbestos containing materials or lead-based paint are prohibited from being used in the Subproject." When a specific product is specified, the Consultant shall make best efforts to verify that the product does not include asbestos containing material. The Consultant agrees to execute a Statement of Non-Inclusion of Asbestos Containing Material, on a form provided by Owner, both prior to design and upon completion of the Construction Documents Phase.

15. If directed by Owner, Consultant shall update Owner provided record documents. If the Owner provided record documents to be updated have been sealed by another Engineer, the Consultant shall notify the Engineer of record of the agreement to update said documents. All updates and revisions to existing sealed documents shall be made as directed by Owner and in accordance with the Texas Board of Professional Engineers rules.

16. The Consultant agrees that record documents provided by the Owner are to be used only for the intended purpose and to meet this contract's obligations. Use of these record documents for any other purpose not explicitly authorized by the Owner is strictly prohibited.

17. The Consultant shall prohibit discrimination in employment based upon race, creed, color, religion, national origin, sexual orientation, gender identity, disability, veteran status, sex or age, in compliance with Chapter 5-4-2, Austin City Code. The Consultant has executed the Non-Discrimination and Non-Retaliation Certification and the Appendix A - Title VI Assurances, which are attached hereto as Exhibit B**.**

18. Confidentiality: In order to provide the Deliverables to the Owner, Consultant may require access to certain of the Owner's and/or it licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the Owner or its licensors consider confidential) (collectively, "Confidential Information"). Consultant acknowledges and agrees that the Confidential Information is the valuable property of the Owner and/or its licensor's and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the Owner and/or its licensors. The Consultant (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the Owner or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Consultant promptly notifies the Owner before disclosing such information so as to permit the Owner reasonable time to seek an appropriate protective order. The Consultant agrees to use protective measures no less stringent than the Consultant uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

19. Estimating Services

If a specific assignment does not have a Fixed Construction Budget, as described in Sections II.A and III, the Owner may direct the Consultant to develop an estimate of project costs for the Owner's review and approval. The Owner may accept an approved project estimate as the Fixed Construction Budget. Each estimate of project costs must be prepared in accordance with:

a. the Construction Specification Institute's MasterFormat of 2004 (6-digit, 50 division system).

b. the technical specifications and drawings for a specific assignment.

c. construction market pricing which considers the actual solicitation period for construction performance.

d. cost escalation factors (which may be an optional independent line item) substantiated by a construction industry standard reviewed and approved by the Owner.

C. Laboratory Services

If laboratory services are provided for a Subproject by the Consultant or its Subconsultant(s) through this Agreement, those services must be performed by a properly accredited laboratory. The Consultant will provide evidence to the Owner of such accreditation on an annual basis for the duration of this Agreement.

D. Quality Control Plan (QCP)

1. The Consultant agrees to perform quality assurance-quality control/ constructability reviews in accordance with the Consultant's Quality Control Plan (QCP) to be developed in the format described in Attachment 4. The approved QCP will be incorporated by reference and will include any subsequent revisions approved by Owner. A QCP is to be submitted to the Owner for approval within fourteen (14) calendar days after the Owner's PSA is executed. In addition for every new assignment, a project specific QCP is to be submitted to the Owner for approval within (14) calendar days after the Owner’s issuance of a Notice to Proceed to the Consultant. In addition to providing the reports required by the QCP, the Consultant agrees to address any QCP comments from the Owner and provide resolution to the Owner's satisfaction. In the event the Owner retains a separate consultant to perform additional QCP services for the Owner, the Consultant will provide all necessary information to the Owner, address any comments from the Owner's consultant, and provide resolution to the Owner's satisfaction. The Consultant shall include this language in all its Subconsultant contracts to ensure Subconsultants understand their responsibility for complying with the Owner's or Owner's consultant's QCP requirements.

2. The QCP reviews will be performed by a staff member of the Consultant not involved in day-to-day Subproject tasks. If the Consultant does not have the internal staff capacity to provide for this independent review, the Consultant must include a QCP Subconsultant on the Subproject team. The person performing the QCP reviews shall certify, seal and attest that the final construction bid documents have been drafted in full compliance with the QCP.

3. The Consultant will perform QCP reviews at intervals during the design phase, specified in the QCP, to ensure plans, specifications, and drawings satisfy accepted quality standards and meet the requirements of the Subproject scope. Based on the findings of the QCP reviews, the Consultant must reconcile the Subproject scope and budget as needed. Documentation will be included that verifies interdisciplinary coordination has occurred.

4. The Consultant will perform constructability reviews, using persons with construction experience, at appropriate intervals, during the design phase, specified in the QCP to

ensure that the Subproject is buildable, as well as cost-effective, biddable, and maintainable. Based on the findings of the constructability reviews, the Consultant shall redesign the Subproject, as required, to conform to the Fixed Construction Budget as described in Section III. The Consultant will provide interim construction estimates to verify that the Subproject is within the Fixed Construction Budget as further described in the phase descriptions in the Supplemental Terms and Conditions of this Agreement.

5. Acceptance and/or approval of the Consultant's QCP documentation by the Owner do not constitute a release of the responsibilities and liability of the Consultant for the accuracy and competency of its QCP reviews and final construction documents.

E. Basic Services

The Consultant will perform the basic Scope of Services described in Subsections I.E.1 et seq of the Supplemental Terms and Conditions of this Agreement. This Scope of Services shall be performed only as authorized by the Owner.

F. Additional Services

1. Unless otherwise stated in this Agreement, the Services listed in Subsections (a) through (e) below are Additional Services. Additional Services authorized in writing by the Owner will be paid for by the Owner as provided in this Agreement, in addition to the compensation for Basic Services. Additional Services authorized by the Owner in writing will be incorporated in the RAP, and all applicable articles of the Agreement will apply to the Additional Services. If Consultant identifies a need for Additional Services, the Consultant will submit a proposal for those services to the Owner within fourteen (14) calendar days of identifying the need.

a. Making revisions in Drawings, Specifications or other documents in connection with Change Orders, unless such Change Orders are caused by errors, omissions or other factors within the Consultant's control.

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

c. Providing design services of subconsultants not included in original scope of the Subproject.

d. Providing any other services not otherwise included in this Agreement.

e. Legal proceedings, unless the Consultant is a party to the proceedings.

2. For all Additional Services, the Consultant shall follow the approved schedule and meet all milestone requirements specified in the RAP.

3. The following are **not** Additional Services:

a. Any revisions required for failure to adhere to the Fixed Construction Budget

b. Minor requests for information by the Owner that clearly do not require extensive work by the Consultant.

c. Revising Drawings, Specifications or other documents when such revisions are inconsistent with, or contradict, prior approvals or instructions given to the Consultant by the Owner.

II. OWNER'S RESPONSIBILITIES

A. The Owner will:

1. Provide its requirements for the Subproject.

2. Designate the Owner's Subproject Manager.

3. Provide a "Fixed Construction Budget for the Subproject" as defined in Section III.A. prior to negotiation of this Agreement.

4. Assist Consultant by providing access to readily available (i) reports; (ii) property, boundary, easement, right-of-way, topographic and utility surveys; (iii) zoning and deed restrictions; and (iv) other data relevant to the development of the Subproject.

5. Assist Consultant in gaining entry to public property and private property, only when reasonably necessary, as may be required by the Consultant in the performance of their services under this Agreement.

6. Review and provide written comments on documents and questions presented by the Consultant and render decisions pertaining thereto within seven (7) calendar days. The Owner will review and provide written comments on periodic plan and specifications submittals within fourteen (14) calendar days. Owner shall immediately notify Consultant if additional time is needed.

7. Give prompt written notice to the Consultant whenever the Owner observes or otherwise becomes aware of any defect in the Consultant's work product or services.

8. Direct Consultant, through a Supplemental Amendment to this Agreement, to provide any necessary Additional Services beyond those authorized in the approved Scope of

Services and Subproject RAP or as stipulated in the Supplemental Terms and Conditions of this Agreement.

III. FIXED CONSTRUCTION BUDGET

A. The "Fixed Construction Budget" means the amount allocated by Owner for the Subproject construction contract, which can only be adjusted by Owner's prior written approval.

B. Fixed Construction Budget does not include the compensation of the Consultant and the Consultant's Subconsultants, the cost of the land, rights-of-way, or other costs which are the responsibility of the Owner.

C. Responsibility for Fixed Construction Budget

1. Consultant is responsible for designing the Subproject to be constructible within the Fixed Construction Budget. The Consultant will determine what materials, equipment, component systems and types of construction to include in the Contract Documents, make reasonable adjustments in the scope of the Subproject with the Owner's consent, and, with the Owner's approval, develop bid alternates.

2. If the Fixed Construction Budget is exceeded by the lowest responsible bid, the Owner shall either:

a. give written approval of an increase in the Fixed Construction Budget;

b. authorize rebidding of the Subproject within a reasonable time;

c. abandon the Subproject; or

d. cooperate in revising the Subproject scope and quality as required to reduce the construction cost.

In the case of 2.b and/or 2.d, above, the Consultant, without additional compensation, shall perform those services to produce the Drawings and Specifications as necessary to comply with the Fixed Construction Budget provided that the bidding or rebidding processes occur within six (6) months of the date that the Consultant delivered the final bid documents to Owner. If the bidding or rebidding processes occur after that six (6) month period, the Consultant is entitled to additional compensation.

3. Bid Alternates

a. If, under the Owner's direction, the Consultant prepares the bid documents to include bid alternates as a means to keep the Subproject cost within the Fixed Construction Budget, the Consultant's compensation will remain the established fee amount irrespective of the outcome of bids. In the event the base bid is not within the Fixed Construction

Budget, Subsection III.C.2 of this Agreement governs. The Owner's acceptance of the base bid or bid alternates will not change the Consultant's fee amount.

b. If, under the Owner's direction, the Consultant prepares bid documents that include bid alternates, and Owner has advised Consultant that such alternates may not be within the Fixed Construction Budget, the Consultant must track the cost of any such alternates. Compensation for the requested bid alternates will be as follows:

(i) If the bid for the alternates requested by Owner is within the Fixed Construction Budget, there is no change in the fee.

(ii) Otherwise, the work to reconfigure the Bid Documents to include the requested bid alternates will be considered Additional Services with compensation to be determined in accordance with Subsection V.A.3 of this Agreement.

IV. SUBSEQUENT WRITTEN AUTHORIZATIONS AND RESOURCE ALLOCATION PLANS (RAP)

A. The procedure for establishing each Subproject assignment by negotiating subsequent written authorizations is as follows:

1. Proposal Request: Upon identifying a specific Subproject assignment, the Owner will issue a written Proposal Request, as shown in Attachment 3, Request for Proposal/ Notice to Proceed, to the Consultant describing the Subproject, services required, proposed schedule, and method of compensation selected by Owner.

2. Consultant Proposal: After being contacted by the Owner, the Consultant shall arrange a meeting with the Owner to review the Proposal Request and provide a Proposal for the Owner's review within fourteen (14) calendar days of the Owner's contact. The Consultant's Proposal must include a completed RAP, as described in Section IV.B, for the Subproject and a completed Subcontractor Utilization Form which is Attachment 4 of this Agreement. The Owner shall notify the Consultant within seven (7) calendar days if the Proposal is acceptable or if revisions are needed. The approved Consultant's proposal will be attached to the Owner's Proposal Request and may include a clarification of the scope of services. The Attachment 3, Owner’s Request for Proposal/Notice to Proceed, with the Consultant's signature indicating acceptance of the Subproject assignment and compensation, will be returned to the Owner within seven (7) calendar days of Owner approval.

3. Notice to Proceed: When the Owner receives the accepted Attachment 3 signed by the Consultant, the Owner will sign the Notice to Proceed section, as shown in Attachment 3, and provide a copy to the Consultant within three (3) calendar days of the Owner's receipt. This Notice to Proceed will formally authorize the Consultant to proceed with the initial phase of the Subproject services in accordance with the approved Subproject RAP included in the Consultant's Proposal. The Consultant agrees to begin work within seven (7) calendar days from the date of the Owner's signature on the Notice to Proceed. The
Consultant will provide a Subproject QCP plan, as described in Subsection I.D, within fourteen (14) calendar days of the Owner's issuance of the Subproject Notice to Proceed.

4. Execution of an Attachment 3, Request for Proposal/Notice to Proceed, constitutes a Work Authorization as described in Subsection IV.F. For the purpose of administration of the Subprojects, for resolving technical matters, and for the execution of subsequent Proposal Requests, the Owner shall mean the Project Manager designated in the respective Attachment 3.

B. The Consultant agrees to complete the phases of services in accordance with the applicable standard of professional care, the approved proposal(s), and the Subproject's RAP, which is Attachment 5 of this Agreement. The RAP describes the major tasks to be performed and work products to be delivered by the Consultant, the estimated time to complete the tasks and work products, the amount of compensation allocated for the respective tasks and work products and an estimated allowance for reimbursable expenses. A specific time period will be set for the completion of each phase in the accepted proposal for the applicable services.

C. Reimbursable Expenses

Reimbursable Expenses are part of Basic Services and include actual expenditures made by the Consultant and the Consultant's employees and Subconsultants in performing services for the Subproject for the expenses listed in the following Subsections. Consultant must submit invoices or other similar documentation for Reimbursable Expenses as part of a payment request. The Owner is a tax exempt entity and will not reimburse the Consultant for any tax expenses. The Owner will consider exceptions on a case-by-case basis. Reimbursable Expenses are limited to these specific items:

1. By prior written approval of the Owner, reasonable transportation and living expenses in connection with out-of-town travel.

a. All travel and lodging expenses in connection with the Agreement for which reimbursement may be claimed will be reviewed against the City's Travel Policy and the current (at the time the travel occurs) the General Services Administration (GSA) Domestic Per Diem Rates (the "GSA Rates") at http://www.gsa.gov/portal/category/26429 Amounts in excess

of the Travel Policy or GSA Rates will not be paid. All invoices must be accompanied by copies of itemized receipts (e.g. hotel bills, airline tickets).

b. Reimbursement will be made only for expenses actually incurred. Airline fares in excess of coach or economy will not be reimbursed.

c. Mileage charges for rental cars in connection with out-of-town travel may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulations. Mileage costs for travel within the Austin metropolitan area are to be included in Consultant's overhead rate and not billed separately as a reimbursable expense.

2. Fees paid for securing approval of authorities having jurisdiction over the Subproject.

3. Reproduction expenses for drawings, specifications and all other documents required for bidding, Owner submittals, and for file copies of Consultant, Contractor, and Owner, and other parties approved by the Owner.

4. Expense of renderings, models and mock-ups requested by the Owner.

5. Expense of reproducing record drawings for the Owner on sepia, mylars or plastic film.

6. Reproduction expense for drawings, specifications and any other documentation to be submitted to utility Owners and governmental authorities having jurisdiction over the Subproject. Interim review plots or drawings for Consultant and Subconsultants are not reimbursable.

D. As the basis for establishing the Consultant’s compensation under the approved Scope of Services and RAP, the Consultant will use the Owner’s standard job titles and the Consultant’s then current Owner approved loaded hourly rates for each job title. The Consultant’s loaded hourly rate sheet will be attached to each approved fee proposal.

1. Loaded Hourly Rates: Loaded hourly rates for Consultants and Subconsultants will be approved by the Owner on an annual basis. Future rate revisions will only apply to new proposals or assignments and will not impact previously negotiated fee proposals.

2. Principals may only bill at the hourly rate of Principals when acting in that capacity. Principals acting in the capacity of staff must bill at staff rates. The Consultant shall provide documentation with each payment request that clearly indicates how that individual's time is allocated and the justification for that allocation.

E. Period of Service

1. This Agreement will remain in force for that period required to complete the Subprojects (including required extensions thereto) unless discontinued by any of the several provisions contained elsewhere in this Agreement.

2. Consultant's failure to meet the approved Subproject RAP(s) may result in the assessment of remedies as described in Section VIII of this Agreement.

F. Additional Work Authorization

1. Before additional work may be performed or additional costs incurred beyond what is specified in the approved Scope of Services and Subproject RAP, both parties must execute a written Attachment 3 as described in Subsection IV.A.1. The Owner is not responsible for actions by the Consultant or any costs incurred by the Consultant relating to additional work prior to the execution of the Attachment 3. Any additional work must be performed within the time period established in the Subproject RAP.

a. More Time Needed. If the Consultant determines or reasonably anticipates that the Subproject cannot be completed before the specified completion date, the Consultant shall submit a RAP revision request to the Owner for approval. The Owner may, at its sole discretion, extend the authorized Subproject period.

b. Changes in Scope. Changes that would modify the scope of work authorized for the Subproject must be established by an Attachment 3. If the change in scope affects the schedule or Consultant's fee for the Subproject, the Consultant shall prepare a revised Subproject budget and RAP for the Owner's approval using the Consultant’s then current approved loaded hourly rate sheet.

2. The Owner may ask the Consultant to submit a proposal for additional work that is within the defined scope of work under this Agreement. The amount to be paid for the proposed additional work will be a lump sum for each proposal. The Consultant may, without penalty, elect not to submit a proposal. If both parties agree to the proposal for additional work, the parties must execute an Attachment 3 as described in Subsection IV.A above.

G. If the Owner sustains actual damages as a result of willful or negligent failure of the Consultant to furnish services in compliance with the approved Scope of Services and Subproject RAP described in this Section IV and subsequent approved work authorizations in accordance with Subsection IV.F, the Consultant agrees to compensate the Owner for the cost of such damages in accordance with Section VIII, itemized costs of which will be provided to the Consultant by the Owner. The Owner agrees to provide the Consultant written notification of such damages as the cost is being incurred.

H. The Consultant is not liable or responsible for Owner delays or suspensions of services. If the Consultant is delayed through no fault of its own, written time extension requests

may be submitted to the Owner for approval. These requests will be reviewed only if submitted to Owner within (14) calendar days of the occurrence unless force majeure conditions exist.

I. If the Consultant fails to meet the approved Subproject RAP schedule, including subsequently approved amendments, Owner may elect to invoke remedies outlined in Section VIII of this Agreement.

J. Time required by the Owner to review and return documents to the Consultant following their submittal during and after each phase will be included in the approved Subproject RAP.

V. COMPENSATION

A. Basis of Compensation

1. General. The Owner will compensate the Consultant for the Scope of Services described in the approved Subproject RAP, as it may be subsequently amended, in accordance with Subsection V.C, Payments to the Consultant, and the other Terms and Conditions of this Agreement, as follows:

a. No advance payment will be paid to the Consultant prior to rendering services.

b. Payments for Basic Services will be made monthly in proportion to services performed within each phase of services, as shown in the Subproject RAP.

c. Basic Services for Subconsultants may be billed a Consultant a multiple of up to one and five hundredth (1.05) times the amount billed to the Consultant for such services.

2. Total Compensation. The total amount of compensation to be paid the Consultant will not exceed the amount stated in Subsection V.A.1.b(i) of the Supplemental Terms and Conditions of this Agreement without amendment to this Agreement.

3. Compensation for Additional Services

a. For Subproject representation beyond Basic Services as described in Subsection I.F. of this Agreement, compensation will be made for Additional Services in accordance with the basis for compensation established in the Subproject RAP.

b. Compensation for Additional Services will be determined either on a Standard Hourly Rate with a Not-to-Exceed-Maximum-Amount (Standard Hourly Rate) fee basis or as a Stipulated Sum fee basis, as shown in Subsections V.A.2 et seq of the Supplemental Terms and Agreements of this Agreement.

c. For Additional Services of Subconsultants a multiple of one and five hundredth (1.05) times the amounts billed to the Consultant for such services will be paid.

4. Principals may only bill at the hourly rate of Principals when acting in that capacity. Principals acting in the capacity of staff must bill at staff rates. The Consultant shall provide documentation with each payment request that clearly indicates how that individual's time is allocated and the justification for that allocation.

5. Compensation for Reimbursable Expenses

a. Reimbursable Expenses, as described in Subsection IV.C, may be billed at a multiple of one and five hundredths (1.05) times the amounts expended by the Consultant, the Consultant's employees and Subconsultants in the interest of the Subproject.

b. The Owner is a tax-exempt organization as defined by Chapter 11 of the Property Tax Code of Texas. Owner will furnish Consultant with a Sales Tax Exemption Certification to be issued to suppliers in lieu of tax. If payment of the sales tax is unavoidable in a specific case, the Consultant will be reimbursed by the Owner for any such costs incurred.

6. Owner and the Consultant agree in accordance with the Terms and Conditions of this Agreement that:

a. If Owner determines the scope of the Subproject or Consultant's Services are changed materially, compensation will be equitably adjusted through negotiation.

b. If Owner determines the Services covered by this Agreement have not been completed within the time specified in the Subproject RAP, through no fault of the Consultant, the amounts of compensation, rates and multiples set forth herein may be adjusted through negotiation.

B. Payments to the Consultant

1. Payments for Basic Services

Payments for Basic Services, including Reimbursable Expenses, will be made monthly in accordance with the approved Subproject RAP on the basis set forth in Subsection V.A. Consultant shall submit the application for payment using the forms supplied by Owner.

2. Payments for Additional Services

Payments for the Consultant's Additional Services as defined in Subsection I.F may be made no more often than monthly upon presentation by Consultant of an acceptable statement of Additional Services rendered and/or expenses incurred. Each statement must include

the form supplied by the Owner, copies of supporting invoices, time sheets, and any other evidence of expense as required by the Owner.

3. Payments Withheld

The Owner may withhold, amend, or nullify any request for payment by the Consultant under those conditions described below.

a. Failure of the Consultant to follow the approved schedule and meet all phase and milestone requirements specified in the Subproject RAP.

b. Owner's receipt of notice that, despite payment to Consultant for services rendered by Subconsultants, Consultant has not paid Subconsultants for services invoiced to and paid by Owner within ten (10) calendar days of Consultant's receipt of payment from Owner.

c. Payments for Subconsultants' costs when those Subconsultants are not included in the approved MBE/WBE compliance plan.

d. Failure of the Consultant to submit timely and complete records of Subproject conference proceedings as specified in Subsection I.B.10.

e. Failure of the Consultant to submit timely and complete weekly reports of its job site observations containing detailed information as specified in Subsection I.E.4.e of the Supplemental Terms and Conditions of this Agreement.

f. Failure of the Consultant to provide updated record drawings and Contractor's record contract documents to the Owner within thirty (30) calendar days after Contractor's record contract documents have been provided to the Consultant by the Contractor upon substantial or final completion of the Subproject.

g. Failure to make timely payment to the City of Austin for taxes.

4. Prompt Payments

a. The Owner shall make payment to Consultant of the sum named in a payment application within thirty (30) calendar days after the day on which the Owner received the mutually acceptable payment application. If the Owner fails to make such prompt payment, then Owner will pay Consultant, in addition to the amount owed for the payment application, interest thereon at the rate specified in Government Code, Section 2251.025(b) from date due until fully paid, which shall fully liquidate any injury to Consultant growing out of such delay in payment.

b. The Owner cannot make a partial payment on an invoice in dispute. The Consultant may resubmit an invoice for the undisputed amount or wait for payment until the

dispute has been resolved. The thirty (30) calendar days restarts after the Owner receives a corrected payment application.

5. Payment for Subproject Suspension or Termination

If the Subproject is suspended or abandoned in whole or in part for more than three months, the Consultant will be compensated for all services performed prior to receipt of written notice from the Owner of such suspension or abandonment, together with Reimbursable Expenses then due. If the Subproject is resumed after being suspended for more than three months, the Consultant's compensation may be equitably adjusted through negotiation. If the parties cannot agree on an adjustment, Owner may terminate the Agreement in accordance with Subsection VII.F.

C. Payment Applications

1. Payment applications must be submitted on a monthly basis.

2. For Subprojects that are compensated on a Standard Hourly Rate basis, the Consultant’s statement of services must show the name of all employees and subconsultants charging time to the Subproject, the amount of time billed, the hourly rates, and the activities performed by each person listed. If requested by Owner, payroll time sheets shall be provided.

3. For Subprojects that are to be compensated on a Stipulated Sum basis, the Consultant’s statement of services must include a brief summary of the progress and completion of tasks to substantiate the percentage of completion of services by Phase during the time period covered by the payment application.

4. Each payment application from the Consultant will be reviewed to ensure the following information is included and/or is correct. Without this information, the Owner will not approve the payment. Consultant will be notified, within fourteen (14) calendar days after Owner's receipt of the payment application, if the payment application is inaccurate and/ or incomplete. An "accurate and complete payment application" means:

a. That the critical figures included on the payment application have been accurately calculated.

b. That the labor rates, reimbursables, fixed fee, subconsultant's rates, overhead and fringe benefits listed on the payment application are consistent with the terms of the Agreement or the most recent Supplemental Amendment.

c. That the charges included on the payment application reflect activity for which the Consultant has actually performed work.

d. That the charges included on the payment application are for work included in the Agreement or an amendment, and the charges are tied directly to tasks outlined in the Agreement.

e. That the Consultant's principals are billing at staff rates when acting in that capacity.

f. That for subconsultant activity, the subconsultant is recognized as an approved subconsultant in the approved MBE/WBE compliance plan for the Agreement or amendment.

g. That for subconsultant activity, the subconsultant approved for a specific discipline is being used/ paid when the work in that discipline is performed.

h. That for subconsultant or subcontractor activity on federally funded Subprojects is being reimbursed at invoice cost.

i. That any reimbursable expenses claimed are permitted by the terms of the Agreement.

j. That for any allowed reimbursable expense, supporting documentation is attached to the invoice.

k. That the Consultant is billing the City for all work performed by both the Consultant and subconsultants within 45 calendar days of when the work was performed.

5. The Owner shall review the first payment application in detail with the Consultant to explain Owner's payment requirements and to ensure payment application is accurate and complete.

6. Any costs in excess of approved maximum not-to-exceed contract amount(s) incurred prior to Owner's written consent will be at Consultant's risk and Owner will not pay such costs unless such costs were incurred at the Owner's direction. The Owner is not required to increase the approved maximum not-to-exceed contract amount(s) established under this Agreement.

VI. INSURANCE REQUIREMENTS

A. The Consultant shall carry insurance in the types and amounts indicated below for the duration of the Agreement:

1. Workers' Compensation and Employers' Liability Insurance Coverage with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Section 401) and (1) minimum policy limits for Employers Liability Insurance of $100,000 bodily injury each accident, $500,000 bodily injury by disease policy limit and $100,000 bodily injury by disease each employee; or (2) as otherwise required in the Supplemental Terms and Conditions of this Agreement. The Consultant's policy must be issued by an insurer licensed or approved to do business in the State of Texas and include these endorsements in favor of the Owner:

a. Waiver of Subrogation, form WC 420304, or equivalent.

b. 30 day Notice of Cancellation, form WC 420601, or equivalent.

2. Commercial General Liability Insurance with a minimum combined bodily injury and property damage per occurrence limit of $500,000 for coverages A & B unless otherwise stated in the Supplemental Terms and Conditions of this Agreement. The policy must contain the following provisions:

a. Blanket contractual liability coverage for liability assumed under this Agreement and all contracts relative to this Project.

b. Independent Contractors coverage.

c. Owner listed as an additional insured, endorsement CG 2010, or equivalent.

d. 30 day Notice of Cancellation in favor of the Owner, endorsement CG 0205, or equivalent.

e. Waiver of Transfer Right of Recovery Against Others in favor of the Owner, endorsement CG 2404, or equivalent.

f. Aggregate limits of insurance per Project, endorsement CG 2503, or equivalent.

3. Business Automobile Liability Insurance for all owned, non-owned and hired vehicles (1) with a minimum combined single limit of $500,000 per accident for bodily injury and property damage; or (2) $250,000 bodily injury per person, $500,000 bodily injury per occurrence and at least $100,000 property damage liability; or (3) as otherwise required in the Supplemental Terms and Conditions of this Agreement. The policy shall contain the following endorsements in favor of the Owner:

a. Waiver of Subrogation endorsement CA 0444, or equivalent.

b. 30 day Notice of Cancellation endorsement CA 0244, or equivalent.

c. Additional Insured endorsement CA 2048, or equivalent.

4. Consultant's Professional Liability Insurance to pay on behalf of the assured all sums which the assured becomes legally obligated to pay as damages by reason of any negligent act, error, or omission committed or alleged to have been committed with respect to plans, maps,

drawings, analyses, reports, surveys, change orders, designs or specifications prepared or alleged to have been prepared by the assured. The policy must provide for 30 day notice of cancellation in favor of the Owner. The minimum limit is specified in Subsection VI.A.4.a of the Supplemental Terms and Conditions of this Agreement.

B. General Insurance Requirements

1. The Consultant must complete and forward the Owner's standard certificate of insurance to the Owner before the Agreement is executed, as verification of coverage required in Subsections VI.A.1 through VI.A.4 above. The Consultant shall not commence services until the required insurance has been obtained and until such insurance has been reviewed by the Owner's Capital Contracting Office. Approval of insurance by the Owner does not relieve or decrease the liability of the Consultant hereunder and must not be construed to be a limitation of liability on the part of the Consultant

2. Applicable to all insurance policies: If coverage is underwritten on a claims-made basis, the retroactive date must be coincident with or prior to the date of this Agreement and the certificate of insurance must state that the coverage is claims made and the retroactive date. The Consultant shall maintain continuous coverage for the duration of this Agreement and for not less than twenty-four (24) months following substantial completion of the Project. Coverage, including any renewals, must have the same retroactive date as the original policy applicable to the Project. The Consultant shall, on at least an annual basis, provide the Owner with a certificate of insurance as evidence of such insurance.

3. The Consultant's insurance coverage must be written by companies licensed or approved to do business in the State of Texas at the time the policies are issued and must be written by companies with A.M. Best ratings of B+VII or better unless otherwise required in the Supplemental Terms and Conditions of this Agreement.

4. All endorsements naming the Owner as additional insured, waivers, and notices of cancellation endorsements as well as the certificate of insurance will indicate: City of Austin, Capital Contracting Office, P. O. Box 1088, Austin, Texas 78767.

5. The "other" insurance clause will not apply to the Owner where the Owner is an additional insured shown on any policy. It is intended that policies required in the Agreement, covering both the Owner and the Consultant, be considered primary coverage as applicable. In addition, any limitation in Subsection XI.F below, notwithstanding, when the Consultant names the City as an additional insured party under its general liability policy, the Consultant will require that the policy provides any defense provided by the policy. In addition, any limitation in Subsection VI.B.6 below, notwithstanding, when the Consultant names the City as an additional insured party under its general liability policy, the Consultant will require that the policy provides any defense provided by the policy.

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

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

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

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

10. The Consultant shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the certificate of insurance.

11. The Consultant shall provide Owner thirty (30) days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Agreement.

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

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

C. Consultant shall determine appropriate types and levels of insurance coverage to be provided by Subconsultants and advise the Subconsultants of the documentation to be provided to Consultant to verify coverage.

VII. TERMINATION OF AGREEMENT

A. The rights to terminate this Agreement provided in this Section are in addition to and cumulative of all other rights and remedies available to the parties at law or in equity.

B. This Agreement may be terminated by the Consultant upon at least seven (7) calendar days written notice should the Owner substantially fail to perform in accordance with the Owner's responsibilities through no fault of the Consultant.

C. Notice to Cure.

Owner will provide a Notice to Cure to the Consultant to cure an event of default described in this Section and/or an anticipatory breach of contract. The Consultant must attend a meeting with the Owner regarding the Notice to Cure, the event of default, and/or the anticipatory breach of contract. The Notice to Cure will set forth the time limit in which the cure is to be completed or commenced and diligently prosecuted. Upon receipt of any Notice to Cure, the Consultant must prepare a report describing its program and measures to affect the cure of the event of default and/or anticipatory breach of contract within the time required by the Notice to Cure. The Consultant's report must be delivered to the Owner at least three (3) business days prior to the required Notice to Cure meeting with the Owner.

D. This Agreement may be terminated by the Owner upon at least seven (7) calendar day’s written notice to the Consultant in the event that the Subproject is abandoned or indefinitely postponed.

E. This Agreement may be terminated by the Owner for cause upon seven (7) calendar day’s written notice. In the event Owner terminates the Agreement for cause, the Owner may reject any and all proposals submitted by Consultant for up to three (3) years. In the event that a termination for cause is found to be wrongful, the termination shall be converted to a termination without cause ("termination for convenience") as set forth in Subsection VII.F and Consultant's sole remedy for such termination will be limited to the recovery of payments permitted under Subsection VII.F. The Owner may terminate for cause due to the occurrence of any one of the following:

1. If Consultant persistently fails to perform the work in accordance with the Agreement, in particular approved Subproject RAP(s);

2. If Consultant disregards laws or regulations of any public body having jurisdiction;

3. If Consultant makes fraudulent statements;

4. If Consultant fails to make adequate progress and endangers timely and successful completion of the Agreement, which failure includes failure of Subconsultants to meet contractual obligations;

5. Consultant's failure under this Section includes failure of Subconsultants to meet contractual obligations; or

6. If Consultant otherwise violates in any substantial way any provisions of the Agreement.

F. This Agreement may be terminated at the Owner's convenience upon seven (7) calendar days written notice; in which event, the Consultant will be compensated for all services performed to termination date, together with Reimbursable Expenses then due, in accordance with Subsection VII.G, and the Owner retains the right to continue the Subproject consistent with Subsection XI.B.4.

G. In the event of termination not the fault of the Consultant, the Consultant will be compensated for all services performed to termination date, together with Reimbursable Expenses then due without the right to compensation for anticipated profits on services not completed. Consultant will submit to the Owner, within the timeframe set in the termination notice, all work and documents prepared to that point. Fixed-fee payment to the Consultant, if applicable, shall be proportional to services performed to the date of termination.

VIII. OWNER'S REMEDIES

A. The Owner and Consultant agree that in the event of a delay in completion or other cause for which the Owner suffers actual damages, the Owner may elect to pursue its actual damages and any other remedy allowed by law. Conditions under which the Owner may seek other damages include, but are not limited to:

1. Failure of the Consultant to make adequate progress in accordance with Subsection VII.E.4 above.

2. Failure of the Consultant to design in compliance with the laws of City, State and federal governments as specified in Subsection I.E.2 of the Supplemental Terms and Conditions of this Agreement, such that subsequent compliance costs exceed expenditures which would have been involved had services been properly executed by the Consultant. The Consultant will financially participate in the Owner's financial losses for those non-value added compliance costs.

3. Losses are incurred, despite the Quality Control Plan (QCP), because of defects, errors and omissions in the design, working drawings, specifications or other documents prepared by the Consultant to the extent that the financial losses are greater than the Owner would have originally paid had there not been defects, errors and omissions in the documents. The Consultant will financially participate in the Owner's financial losses for those non-value added work costs.

B. Pursuant to Subsection VI.A.4, the Owner may assert a claim against the Consultant's professional liability insurance as appropriate when other remedies are not available or offered for design deficiencies discovered during and after Subproject construction. When the

Owner incurs non-value added work costs for change orders due to design errors or omissions, the Owner will send the Consultant a certified cost recovery claim letter that includes:

1. summary of facts with supporting documentation;

2. instruction for Consultant to revise design documents, if appropriate, at Consultant's expense;

3. calculation of non-value added work costs incurred by the Owner; and

4. deadline for Consultant's response.

The Consultant will provide a preliminary response to Owner's cost recovery claim letter within seven (7) calendar days of receipt of the claim letter. The Consultant must submit a formal documented response to the claim letter to the Owner within fourteen (14) calendar days of the date of the preliminary response. The Consultant will provide the payment requested by Owner within thirty (30) calendar days of Owner's acceptance of the Consultant's formal response or the Consultant will request alternative dispute resolution, as described in Subsection X.B of this Agreement, within fourteen (14) calendar days of Owner's rejection of the Consultant's formal response.

C. The Consultant may be required to revise bid documents and re-advertise the Subproject at the Consultant's sole cost (including printing) if, in the Owner's judgment, the Consultant generates excessive addenda, either in terms of the nature of the revisions or the actual number of changes due to the Consultant's errors or omissions.

D. If the Consultant materially fails to furnish services in compliance with the approved Subproject RAP schedule or any subsequently approved amendments to the schedule or the Consultant’s services, or deliverables are unusable for their intended purpose and these failures are a material breach of this Agreement, then Owner, in its reasonable discretion may contract with another consultant to complete the services or work product, and Consultant shall pay the Owner for the difference between the balance under Consultant’s Agreement with Owner had Consultant completed its services and the amount charged by the replacing consultant to complete Consultant’s scope of work. Owner will provide Consultant with the itemized costs as they are being incurred. Prior to contracting with another consultant, the Owner shall provide Consultant with a Notice to Cure, as described in Subsection VII.C.

E. Decisions to Withhold Payment

Owner may withhold or nullify the whole or part of any payment to such extent as may be necessary because of conditions outlined in Subsection V.B.3 "Payments Withheld".

IX. CONSULTANT'S REMEDIES

A. If the Consultant is prevented from completing any part of the Subproject within the time established in the RAP due to delays beyond the reasonable control of either the Owner or the Consultant, an extension of the Subproject schedule in an amount equal to the time lost due to such delay shall be the Consultant's sole and exclusive remedy. Performance interrupted by an act of god or the result of war, riot, civil commotion, sovereign conduct, or the conduct of a third party, will be excused for the period of time necessary to remedy the effect of the precipitating occurrence. In such cases, a conference will be held within three (3) working days of the end of the occurrence to establish a revised schedule in the RAP.

B. Consultant's requests for remedies arising from the terms of this Agreement for conditions other than those specified in Subsection IX.A must be done in accordance with the following:

1. Within thirty (30) calendar days after the Consultant could be reasonably expected to know of the occurrence prompting the request for an extension of time, the Consultant must deliver a preliminary written notice to the Owner describing the general nature of the request. Within thirty (30) calendar days after the preliminary notice, the Consultant must provide the Owner written supporting documentation stating all known time extensions to which the Consultant is entitled.

2. Within thirty (30) calendar days of receipt of notice of the amount of the requested remedy with supporting data, Owner and Consultant will meet to discuss the request, after which an offer of settlement or notification of no settlement offer will be made to Consultant. If Consultant is not satisfied with the proposal presented, Consultant will have thirty (30) calendar days in which to

a. submit additional supporting data requested by the Owner;

b. modify the initial request for remedy; or

c. request Alternative Dispute Resolution.

X. DISPUTE RESOLUTION

A. Filing of Claims

1. Claims arising from the circumstances identified in this Agreement, or other occurrences or events, shall be made by written notice delivered by the party making the Claim to the other party within thirty (30) calendar days after the start of the occurrence or event giving rise to the Claim and stating the general nature of the Claim. Notice of the amount of the Claim with supporting data shall be delivered in writing within thirty (30) calendar days after written notice of Claim is delivered by claimant and shall represent that the adjustment claim covers all known amounts and/or extension of time to which claimant is entitled.

2. Within thirty (30) calendar days of receipt of notice of the amount of the Claim with supporting data, the Owner and Consultant shall meet to discuss the Claim, after which an offer of settlement or notification of no settlement offer will be made to claimant. If claimant is not satisfied with the proposal presented, claimant shall have thirty (30) calendar days in which to: (i) submit additional supporting data requested by the other party; (ii) modify the initial Claim; or (iii) request Alternative Dispute Resolution.

B. Alternative Dispute Resolution

1. If a dispute exists concerning a Consultant or Owner, the parties agree to use the following procedure prior to pursuing any other available remedies.

2. Negotiating with Previously Uninvolved Personnel

Either party may make a written request for a meeting to be held between representatives of each party within fourteen (14) calendar days of the request or such later period that the parties may agree to. Each party shall endeavor to include, at a minimum, one (1) previously uninvolved senior level decision maker (an Owner, officer, or employee of each organization) empowered to negotiate on behalf of their organization. If a previously uninvolved senior level decision maker is unavailable due to the size of the Consultant's organization or any other reason, the Consultant shall nonetheless provide an appropriate senior level decision maker for the meeting. The purpose of this and any subsequent meetings will be good faith negotiations of the matters constituting the dispute. Negotiations will be concluded within thirty (30) calendar days of the first meeting, unless mutually agreed otherwise.

C. Mediation

1. If the procedure described in X.B.2 proves unsuccessful or is waived pursuant to its terms, the parties shall initiate the mediation process. Owner and Consultant agree to select within thirty (30) calendar days a mediator trained in mediation skills and knowledgeable of the Consultant's professional discipline, to assist with resolution of the dispute. Owner and Consultant agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in this Agreement prevents the parties from relying on the skills of a person who also is trained in the subject matter of the dispute and/or a contract interpretation expert. Should the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the parties agree to ask the Travis County Dispute Resolution Center to select a qualified individual, which selection is binding on the parties.

2. Mediation is a forum in which an impartial person, the mediator, facilitates communication between parties to promote reconciliation, settlement, or understanding among them. The parties hereby agree that mediation, at a minimum, shall provide for:

a. conducting an on-site investigation, if appropriate, by the mediator for fact gathering purposes;

b. a meeting of all parties for the exchange of points of view; and

c. separate meetings between the mediator and each party to the dispute for the formulation of resolution alternatives.

The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session, unless mutually agreed otherwise. Should the parties fail to reach a resolution of the dispute through mediation, then each party is released to pursue other remedies available to them.

D. Resolution of Disputes between Consultant and Subconsultant:

The Consultant agrees to follow the procedures paralleling those outlined in Subsections X.A, X.B, and X.C in the event of a dispute with a Subconsultant. The Owner is not a party to the dispute resolution process between the Consultant and Subconsultants. However, if the Owner is notified of a Subconsultant claim, the Owner will withhold payments to the Consultant in accordance with Subsection V.B.3.b until receiving notification that the claim has been resolved.

XI. MISCELLANEOUS PROVISIONS

A. Owner's Right to Audit

1. "Records" means all records generated by or on behalf of Consultant and each Subconsultant, whether paper, electronic, or other media, which are in any way related to performance of or compliance with this Agreement, including, without limitation:

a. accounting records;

b. written policies and procedures;

c. subcontract files;

d. correspondence;

e. supplemental amendments to this Agreement (as appropriate);

f. agreements between Consultant and any Subconsultant;

g. records necessary to evaluate contract compliance and any claim submitted by Consultant or any of its Subconsultants;

h. any other Consultant record that may substantiate any charge related to this Agreement; and

i. technical work products in accordance with the approved Subproject RAP.

2. Consultant shall allow Owner's agent or its authorized representative to inspect, audit, and/or reproduce all Records generated by or on behalf of Consultant and each Subconsultant, upon Owner's written request. Further, Consultant shall allow Owner's agent or authorized representative to interview any of Consultant's employees, all Subconsultants, and all their respective employees.

3. Consultant shall retain all its Records, and require all its Subconsultants to retain their respective Records, during this Agreement and for the longest of these specified periods: (i) three (3) years after final payment, (ii) until all audit and litigation matters that Owner has brought to the attention of Consultant are resolved, or (iii) longer if required by law. Owner's right to inspect, audit, or reproduce Records (at no cost to Owner), or interview employees of Consultant or its respective Subconsultants exists for the same period described in the preceding sentence.

4. Consultant must provide sufficient and accessible facilities during its normal business hours for Owner to inspect, audit, and/or reproduce Records, and to interview any person about the Records.

5. Consultant shall insert these requirements in each written Agreement between Consultant and any Subconsultant and require each Subconsultant to comply with these provisions.

B. Ownership and Use of Documents

1. All Subproject Drawings and Specifications produced by the Consultant under this Agreement are the property of the Owner. The Consultant shall also provide the Owner high quality mylar and digital computer copies on CD or other Owner-approved media of updated drawings and reproducible copies of specifications as specified in Subsection I.E.2 of the Supplemental Terms and Conditions of this Agreement. The cost of such copies will be paid as specified in Section V of this Agreement. The Consultant may not provide copies of or otherwise use the work products covered by this Subsection XI.B without the express prior written approval of the Owner.

2. The Consultant agrees that items such as plans, drawings, photos, designs, studies, specifications, computer programs, schedules, technical reports, or other work products which is/are specified to be delivered under this Agreement, and which is/are to be paid for by the Owner, is/are subject to the rights of the Owner in effect on the date of this Agreement. These rights include the right to use, duplicate and disclose such items in whole or in part, in any manner and for whatever purpose, and to have others do so. The Consultant shall not copyright or otherwise claim Ownership of the work products covered by this Subsection XI.B. The Consultant shall include in its Subconsultant contracts appropriate provisions to achieve the purpose of this Subsection XI.B.

3. All such items furnished by the Consultant pursuant to this Agreement are considered instruments of its services in respect to the Subproject. It is understood that the Consultant does not represent such items to be suitable for reuse on any other Project or for any other purpose(s). If the Owner reuses such items without the Consultant's specific written verification or adaptation, such reuse will be at the risk of the Owner, without liability to the Consultant.

4. Should the Consultant be terminated under this Agreement, the Owner may continue the Subproject and receive copies of the Drawings, Specifications, or other documents within fourteen (14) calendar days of the termination notice. Copies will be in the format designated by the Owner, as specified in Subsections I.E.2 or I.E.5 of the Supplemental Terms and Conditions of this Agreement (depending on the Subproject's status at time of termination). The Owner may have these documents completed, corrected, revised or added to by another design professional in accordance with Title 22, Chapter 137.33(i) of the Texas Administrative Code.

5. Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Subproject is not to be construed as publication in derogation of the Consultant's rights.

C. Venue

In the event of any suit at law or in equity involving the Agreement, venue will be exclusively in Travis County, Texas and the laws of the State of Texas shall apply to the interpretation and enforcement of this Agreement.

D. Definitions

The terms in this Agreement will have the same meaning as those in the standard purchasing and construction documents for the City of Austin, Texas. The applicable definitions may be viewed at http://www.ci.austin.tx.us/purchase/downloads/ifb0100.pdf and http://www.austintexas.gov/sites/default/files/files/00100__01-15-16_.pdf, respectively.

E. Severability

If any word, phrase, clause, sentence or provisions of this instrument, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, invalid or unenforceable, that finding only effects such word, phrase, clause, sentence or provision, and such finding does not affect the remaining portions of this instrument; this being the intent of the parties in entering into this instrument; and all provisions of this instrument are declared to be severable for this purpose.

F. INDEMNIFICATION

To the extent allowed by Section 271.904 of the Texas Local Government Code, the Consultant shall indemnify, protect, and save harmless the City and its officials, agents, and employees from and against all claims, demands, suits, causes of action, loss, damage, attorney's fees, costs, expenses, and liability of every kind and nature whatsoever, for personal injury or death or property damage to the extent that such injury, death or damage is caused by, results from, or arises in whole or in part from any negligent act, error or omission of the Consultant or any of its Subconsultants or any other party for whom Consultant is responsible in connection with the performance of its services or failure to perform its services in conformance with the terms and conditions of this Agreement; provided, however, Consultant shall not be responsible for the negligence of any other parties.

THIS INDEMNITY SHALL BE BROADLY CONSTRUED TO APPLY TO ALL LIABILITY ATTRIBUTED TO THE CONCURRENT AND SOLE NEGLIGENCE OF CONSULTANT, INCLUDING GROSS NEGLIGENCE, WILFULL MISCONDUCT, AND STRICT LIAIBLITY, AND SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

G. Notices

1. Any and all notices under this Agreement must be in writing and shall be delivered to the party entitled to receive the same by hand or U.S. Certified Mail, return receipt requested, addressed as specified in Subsection XI.G.1.a of the Supplemental Terms and Conditions of this Agreement.

2. Mailed notice will be deemed effective three (3) business days after such notice is mailed by Certified Mail with return receipt requested. Hand delivered notice will be effective when received and acknowledged by signed receipt.

H. Successors and Assigns

The Owner and the Consultant bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement with respect to all covenants of this Agreement. Neither the Consultant nor the Owner may assign, sublet or transfer any interest in this Agreement without the prior written consent of the other party.

I Extent of Agreement

This Agreement represents the entire and integrated Agreement between the Owner and the Consultant and supersedes all prior negotiations, representations or Agreements, either

written or oral. This Agreement may be amended only by written instrument signed by authorized representatives of both Owner and Consultant.

END