

# **City of Albuquerque**

## **Request for Proposals**

**Solicitation Number: RFP 7580.91**

**Rail Yards Blacksmith Shop Interim Use Design-Build Services**



**Due Date: November 9, 2012: NLT 3:00 p.m. (Local Time)**  
**The time and date proposals are due shall be strictly observed.**

**Mandatory Pre-proposal Conference: October 30, 2012, 10:00 a.m.**

**City of Albuquerque  
Department of Municipal Development  
Administrative Division  
(Revised 10/16/2012)**

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## **INTRODUCTION**

In accordance with 5-5-11 of the City of Albuquerque Purchasing Ordinance and Section 3.5 of The Regulation Governing the award and rejection of Bids/Offer and Debarment of Contractors for the Public Works Projects of the City of Albuquerque (Regulation), the City is requesting proposals for the combined design and construction of the improvements to the Blacksmith shop at the Albuquerque Rail Yards.

Improvements to the Blacksmith shop are sought to make it suitable for interim uses such as, but not necessarily limited to, farmer's markets, theater productions, concerts, parties, and weddings. These improvements and interim uses are allowed by the City's applicable agreement with Samitaur Smith Constructs, who was selected as the long term developer of the larger Rail Yards site.

**PART 1**  
**INSTRUCTIONS TO OFFERORS**  
**Rail Yards Blacksmith Shop Interim Use Design/Build Services**

**1.1 RFP Number and Title: RFP 7580.91**

**1.2 Proposal Due Date: November 9, 2012 - NLT 3:00 PM (Local Time)**

**THE TIME AND DATE PROPOSALS ARE DUE SHALL BE STRICTLY ENFORCED.**

**1.2.2 Mandatory Pre-Proposal Conference and site walk:** This is a mandatory pre-proposal conference and site walk. The site walk will take place immediately following pre-proposal meeting. Failure to attend by an authorized representative of the Offeror will result in the rejection of any subsequent offer submitted. In the case of a joint venture, the attendance by any authorized representative of any of the parties to the joint venture will satisfy this requirement.

**1.2.3 Questions:** The City shall have in attendance key personnel to answer questions or discuss issues that may arise. Questions should be prepared prior to the conference and both hard and soft copy of all such questions submitted to the City's contact for this RFP on the day of the conference.

**1.3 DMD Administration Division:** This RFP is issued on behalf of the City of Albuquerque by the DMD Administration Division, which is the sole point of contact during the entire procurement process.

**1.4 Authority:** Chapter 5, Article 5 of the Revised Ordinances of the City of Albuquerque, 1994, Section 5-5-11 and the regulations thereunder. The City Council, pursuant to Article 1 of the Charter of the City of Albuquerque and Article X, Section 6 of the Constitution of New Mexico, has enacted this ordinance as authorized by such provisions and for the purpose of providing maximum local self-government. To that end, it is intended that this ordinance shall govern all purchasing transactions of the City and shall serve to exempt the City from all provisions of the New Mexico Procurement Code, as provided in Section 13-1-98K, NMSA 1978.

**1.5 Award:** Award is contingent upon Offeror's certification and agreement by submittal of its offer, to comply and act in accordance with all provisions of the following:

**1.5.1 City Ordinance:** Section 5-5-11, Chapter 5, Article 5 of the Revised Ordinances of the City of Albuquerque, 1994.

**1.5.2 City Rules and Regulations:** City of Albuquerque Regulation Governing the Award/Debarment and Rejection of Bids/Offer and Debarment of Contractors for Public Works Projects of the City of Albuquerque.

**1.5.3 Civil Rights Compliance:** Award is contingent upon the Offeror's certification and agreement by submittal of its offer, to comply and act in accordance with all provisions of the Albuquerque Human Rights Ordinance, the New Mexico Human Rights Act, Title VII of the U.S. Civil Rights Act of 1964, as amended, and all federal statutes and executive orders, New Mexico statutes and City of Albuquerque ordinances and resolutions relating to the enforcement of civil rights and affirmative action. Questions regarding civil rights or affirmative action compliance requirements should be directed to the City of Albuquerque Human Resources Department.

**1.5.4 Americans with Disabilities Act Compliance:** Offeror certifies and agrees, by submittal of its offer, to comply and act in accordance with all applicable provisions of the Americans with Disabilities Act of 1990 and federal regulations promulgated thereunder.

**1.5.5 Insurance and Bonding Compliance:** Acceptance of offer is contingent upon Offeror's ability to comply with the insurance requirements as stated herein. Please include certification of an executed proposal and original bonds as required. Failure to do so may be grounds for deeming a proposal non-responsive.

**1.5.6 Ethics:**

**1.5.6.1 Fair Dealing:** The Offeror warrants that its proposal is submitted and entered into without collusion on the part of the Offeror with any person or firm, without fraud and in good faith. Offeror also warrants that no gratuities, in the form of entertainment, gifts, or otherwise, were, or will be offered or given by the Offeror, or by any agent or representative of the Offeror to any officer or employee of the City with a view toward securing a recommendation of award or subsequent contract or for securing more favorable treatment with respect to making a recommendation of award.

**1.5.6.2 Conflict of Interest:** The Offeror warrants that it presently has no interest and further warrants that it shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of services required under the contract resulting from this RFP. The Offeror also warrants that, to the best of its knowledge, no officer, agent or employee of the City who shall participate in any decision relating to this RFP and the resulting contract, currently has, or will have in the future, a personal or pecuniary interest in the Offeror's business.

**1.5.7 Participation/Offeror Preparation:** Offeror may not use the consultation or assistance of any person, firm company who has participated in whole or in part in the writing of any specifications or other portion of the Scope of Services, for the preparation of its offer or in the management of its business if awarded the contract resulting from this RFP.

**1.5.8 Debarment or Ineligibility Compliance:** By submitting its offer in response to this RFP, the Offeror certifies that: (i) it has not (within the last five years) been debarred or otherwise found ineligible to receive funds by any agency of the federal government, the State of New Mexico, any local public body of the State, or any state of the United States; and (ii) should any notice of debarment, suspension, ineligibility or exclusion be received by the Offeror, the Offeror will notify the City in writing immediately.

**1.5.9 Goods Produced Under Decent Working Conditions:** It is the policy of the City not to purchase, lease, or rent goods for use or for resale at City-owned enterprises that were produced under sweatshop conditions. The Offeror certifies, by submittal of its offer in response to this solicitation, that the goods offered to the City were produced under decent working conditions. The City defines "under decent working conditions" as production in a factory in which child labor and forced labor are not employed; in which adequate wages and benefits are paid to workers; in which workers are not required to work more than 48 hours per week (or less if a shorter workweek applies); in which employees are free from physical, sexual or verbal harassment; and in which employees can speak freely about working conditions and can participate in and form unions. *[Council Bill No. M-8, Enactment No. 9-1998]*

**1.5.10 Graffiti Free:** At the City's request, the Offeror will be required to furnish equipment, facilities, or other items required to complete these services, that are graffiti-free. Failure of Offeror to comply with this requirement may result in cancellation of the contract resulting from this RFP.

**1.6 City Contact:** The sole point of contact for this Request for Proposals is the Department of Municipal Development Administration Division. Contact the following individual(s) regarding this RFP:

Wilfred Gallegos, P.E., Deputy Director, Municipal Development  
Phone: (505) 768-3830 or E-Mail: wgallegos@cabq.gov  
Post Office Box 1293, Albuquerque, New Mexico 87103

**1.7 Contract Management:** The contract resulting from this RFP will be managed by the Department of Municipal Development, Administrative Division.

**1.8 Clarification:** Any explanation desired by an Offeror regarding the meaning or interpretation of this Request For Proposals must be requested in writing not less than ten (10) working days prior to the hour and date specified for the receipt of offers to allow sufficient time for a reply to reach Offerors before the submission of their offers. All inquiries must be directed to the Department contact as stated herein. Oral explanations or instructions given are not binding and cannot be relied upon. Any information given to a prospective Offeror concerning this Request For Proposals will be furnished to all prospective Offerors as an amendment to this Request for Proposals, if

such information is necessary to Offerors in submitting offers on this Request For Proposals or if the lack of such information would be prejudicial to uninformed Offerors.

**1.9 Submission of Offers:** The Offeror's sealed proposal must be in the format outlined in Part 2 of this Request for Proposals and must be delivered pursuant to the following requirements:

**1.9.1 Envelope preparation:** Offers and modifications thereof shall be enclosed in sealed envelopes and have the following identifying information on the outside:

- Name and address of Offeror
- Closing Date and Time
- Request for Proposals Number
- RFP Title

**1.9.2 Ship, Deliver or Hand Carry Sealed Offers to:** The Office of the City Clerk, Plaza del Sol Building, 7<sup>th</sup> Floor, Room 720, 600 Second Street N.W., Albuquerque, New Mexico 87102. Mark all packages as stated above.

**1.9.3 Mail Sealed Responses to:** Office of the City Clerk, Post Office Box 1293, Albuquerque, New Mexico 87103. (Certified Mail is recommended). The City shall not be responsible for the failure of mailed offers to actually be received by the Office of the City Clerk by 3:00 of the day of closing.

**Note:** The City picks up mail at the post office **ONLY ONCE** per day usually at 7:00 AM (Local Time). **Note:** **ALL SEALED PROPOSALS MUST BE RECEIVED BY THE OFFICE OF THE CITY CLERK NO LATER THAN 3:00 PM, LOCAL TIME AS RECORDED IN THE CITY CLERK'S OFFICE.**

**1.9.4 No other methods of delivery:** Neither telephone, facsimile, electronic, nor telegraphic offers shall be accepted.

**1.9.5 Submit Hard and Soft Copies of the Proposal as follows:**

- **Hard Copy** – Submit 1 original (please mark as the original) and 5 copies of your Technical Proposal. Submit 1 original (please mark as the original) and 1 copy of your Cost Proposal.
- **Soft Copy** - Submit 1 Technical Proposal and 1 Cost Proposal on a CD.

**1.9.6 Modification or Withdrawal of Offer:** Offers may be modified by submittal of a substitute or supplemental proposal to the City Clerk's Office following the submission requirements set out above. Offers may be withdrawn by written request provided to the City Clerk. In either case, such action must occur prior to the hour and date specified for receipt of offers.

**1.10 Receipt of Proposals:** The only acceptable evidence to establish the time of receipt of proposals at the City Clerk's Office is the time-date stamp of such office on the proposal wrapper.

**1.11 Acknowledgment of Amendments to the Request For Proposals:** Receipt of an amendment to the Request For Proposals by an Offeror must be acknowledged by signing and returning the amendment acknowledgement included in the RFP. Failure to submit a signed acknowledgement of amendment may result in the Offeror's proposals being deemed non-responsive.

**1.12 Modifications to Scope of Services:** In the event that sufficient funds do not become available to complete each task in the Scope of Services or in the event that the City, in its sole discretion determines it is in its best interests, the Scope of Services may be amended, and the resulting contract will be based upon the cost breakdown required in the Cost Proposal.

**1.13 Agreement:** By submitting a response to this solicitation, offeror agrees to and accepts all terms and conditions included in and incorporated into this Request for Proposals, without exception. Please include the signed certification of your acceptance with your proposal. Failure to do so may be grounds for deeming a proposal non-responsive.

**1.14 Evaluation period:** The City reserves the right to analyze, examine and interpret any offer for a period of **ninety (90) days** after the hour and date specified for the receipt of offers.

**1.15 Evaluation Assistance:** The City of Albuquerque, in evaluating proposals, reserves the right to use any assistance deemed advisable, including City contractors and/or consultants.

**1.16 Rejection and Waiver:** The City reserves the right to reject any or all offers and to waive informalities and irregularities it deems minor in offers received.

**1.17 Debarment of Offeror:** Any proposal received from an Offeror that is, at the time of submitting its proposal or prior to receipt of award of a contract, debarred by or otherwise ineligible to receive funds from any agency of the State of New Mexico, any local public body of the State, or any state of the United States, shall be rejected.

**1.18 Award:**

**1.18.1 When Award Occurs:** Award of selection occurs when the Ad Hoc Committee approves a Recommendation of Award. Selection does not constitute a contract.

**1.18.2 Contract:** If a contract is awarded, it shall be awarded to a responsive



and responsible Offeror whose offer conforms to the Request for Proposal, with whom the City agrees upon contract terms.

**1.18.3 Contract Term:** It is expected that all work will be completed in six (6) months, therefore, the contract term shall be for a period of one (1) year from the effective date of the contract and/or final execution by the City.

**1.18.4 Type of Contract:** This contract is a Guaranteed Maximum Price contract. The anticipated GMP for baseline proposal purposes is \$750,000.00. For proposal purposes, Offerors are encouraged to submit additional alternates to their baseline proposals for work over \$750,000.00

**1.18.5 Debarment/Cancellation of Contract:** Upon receipt of notice of debarment of an Offeror awarded a contract as a result of this RFP (the "Contractor"), or other ineligibility of the Contractor to receive funds from any agency of the federal government, the State of New Mexico, any local public body of the State, or any state of the United States, the City shall have the right to cancel the contract with the Contractor resulting from this RFP for cause as provided in accordance with the terms of said contract.

**1.20 Cancellation:** This Request for Proposals may be canceled and any and all proposals may be rejected in whole or in part at City's sole discretion.

**1.21 Negotiations:** Negotiations may be conducted with the Offeror(s) recommended for award of contract, once a Recommendation of Award is signed by the Mayor or the Mayor's designee.

**1.22 City-Furnished Property:** No material, labor, or facilities will be furnished by the City unless otherwise provided for in the Request for Proposals.

**1.23 Proprietary Data:** The file relating to this RFP, including the proposals submitted by Offerors, shall be open to public inspection after the resulting contract has been executed by the Mayor, or his designee. An Offeror may designate trade secrets or other proprietary data to be confidential by separating that material from the Offeror's main proposal, placing it in a sealed envelope and marking it as "Confidential". **Pricing and makes and models or catalog numbers of the items offered, deliveries, and terms of payment should not be so designated.** The City of Albuquerque will endeavor to restrict distribution of material separated, placed in a sealed envelope and designated as "Confidential" to only those individuals involved in the review and analysis of the proposals. If a request for inspection of records under the New Mexico Inspection of Public Records Act (Sections 14-2-1 et seq, NMSA 1978) is received, however, which request encompasses such materials, they will be disclosed. The City assumes no responsibility to maintain the confidentiality of any materials submitted in response to this RFP.

**1.24 Preferences:** Preferences for local, small and resident businesses may be

available for this procurement. See Part 5 of this Request for Proposals for additional information.

## **1.25 Request for Proposals (RFP) Protest Process**

**1.25.1 When:** If the protest concerns the specifications for a competitive solicitation or other matters pertaining to the solicitation documents, it must be received by the Deputy Director no later than ten calendar days prior to the deadline for the receipt of offers.

**1.25.2 Recommendation of Award:** If the protest concerns other matters relating to this solicitation, the protest must be filed within ten calendar days after the notice of the Recommendation of Award is sent to respondents.

**1.25.3 Timely Protests:** Protests must be received by the DMD Deputy Director prior to the appropriate deadline as set out herein, or they will be considered invalid. The Deputy Director may waive the deadline for good cause, including a delay caused by the fault of the City. Late delivery by the U.S. Postal Service or other carrier shall not be considered good cause.

**1.25.4 How to File:** Any Offeror who is aggrieved in connection with a competitive solicitation or recommendation of award may protest to the DMD Deputy Director. The protest shall be addressed to DMD Deputy Director, must be submitted in written form and must be legible. Protests may be hand-delivered or mailed. Facsimile, telephonic, telegraphic or electronic protests will not be accepted

**1.25.5 Protest Procedures:** It is the policy of the City to award contracts to the lowest responsive responsible bidder. In the event that a bidder believes that it should be the lowest responsive responsible bidder and the bidder is not the apparent low bidder, such bidder may raise any concerns regarding the procurement to the City through the architect/engineer for the project, the City Clerk or the Contract Services Division Manager (Department of Municipal Development. Any such written communication will receive a written response prior to award of the contract. Any aggrieved party will then be afforded the opportunity to bring an action in Bernalillo County District Court seeking to enjoin the City from any proposed award.

## **1.26 INSURANCE**

**1.26.1 General Conditions:** The City will require the successful Offeror, referred to as the Contractor, to procure and maintain at its expense during the term of the contract resulting from the RFP, insurance in the kinds and amounts hereinafter provided with insurance companies authorized to do business in the

State of New Mexico, covering all operations of the Contractor under the contract. Upon execution of the contract and on the renewal of all coverages, the Contractor shall furnish to the City a certificate or certificates in form satisfactory to the City showing that it has complied with these insurance requirements. All certificates of insurance shall provide that thirty (30) days written notice be given to the Risk Manager, Department of Finance and Administrative Services, City of Albuquerque, P.O. Box 470, Albuquerque, New Mexico, 87103, before a policy is canceled, materially changed, or not renewed. Various types of required insurance may be written in one or more policies. With respect to all coverages required other than professional liability or workers' compensation, the City shall be named an additional insured. All coverages afforded shall be primary with respect to operations provided.

**1.26.2 Approval of Insurance:** Even though the Contractor may have been given notice to proceed, it shall not begin any work under the contract resulting from this RFP until the required insurance has been obtained and the certificates (or policies) in a form acceptable to the City are delivered to it. Neither approval nor failure to disapprove the insurance certificates, or insurance policies by the City shall relieve the Contractor of full responsibility to maintain the required insurance in full force and effect. If part of the contract is sublet, the Contractor shall include any or all subcontractors in its insurance policies, or require the subcontractor to secure insurance to protect itself against all hazards enumerated herein, which are not covered by the Contractor's insurance policies.

**1.26.3 Coverage Required:** The kinds and amounts of insurance required are as follows:

**1.26.3.1 Commercial General Liability Insurance.** A commercial general liability insurance policy with combined limits of liability for bodily injury or property damage as follows:

|             |   |
|-------------|---|
| \$1,000,000 | Umbrella Coverage                       |
| \$1,000,000 | Per Occurrence                          |
| \$1,000,000 | Policy Aggregate                        |
| \$1,000,000 | Products Liability/Completed Operations |
| \$1,000,000 | Personal and Advertising Injury         |
| \$ 50,000   | Fire Legal                              |
| \$ 5,000    | Medical Payments                        |

Said policy of insurance must include coverage for all operations performed for the City by the Contractor and contractual liability coverage shall specifically insure the hold harmless provisions of the contract resulting from this RFP.

**1.26.3.2 Automobile Liability Insurance:** A comprehensive automobile liability insurance policy with liability limits in amounts not less than

\$1,000,000 combined single limit of liability for bodily injury, including death, and property damage in any one occurrence. The policy must include coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment both on and off work.

**1.26.3.3 Workers' Compensation Insurance:** Workers' compensation insurance policy for the Contractor's employees, in accordance with the provisions of the Workers' Compensation Act of the State of New Mexico, (the "Act"). If the Contractor employs fewer than three employees and has determined that it is not subject to the Act, it will certify, in a signed statement, that it is not subject to the Act. The Contractor will notify the City and comply with the Act should it employ three or more persons during the term of the contract resulting from this RFP.

**1.26.3.4 Builder's Risk:** The Contractor(s) shall provide Builder's Risk Insurance in the amount of any work classified as New or Rehabilitation Electrical Services Project, on a form approved by the City.

**1.26.5: Professional Liability:** The DBT shall provide professional liability for this project in the amount of no less than \$2 million dollars.

**1.26.4 Increased Limits:** During the life of the contract the City may require the Contractor to increase the maximum limits of any insurance required herein. In the event that the Contractor is so required to increase the limits of such insurance, an appropriate adjustment in the contract amount will be made.

**1.26.5 Bond Requirements:** The Offeror shall furnish separate Proposal Bond, Performance Bond and Labor and Material Payments Bond on the forms provided in Appendix C, as follows:

**1.26.5.1 Proposal Bond:** Each offer MUST be accompanied by a proposal bond issued by a surety, duly authorized to conduct business in the State of New Mexico and acceptable to the City, in the amount of five percent (5%) of the total amount of its offered Cost Proposal. The Proposal Bond is submitted as a guaranty that the Offeror, if awarded the contract, will promptly execute such contract in accordance with this Request for Proposals, will furnish good and sufficient bonds for the faithful performance of the contract and for the payment of all labor and materials. The Offeror must be named as principal on the bond. NO THIRD PARTY PROPOSAL BONDS WILL BE ACCEPTED.

**1.26.5.2 Performance Bond & Labor and Material Payments Bond:** The Contractor will be required to furnish separate surety bonds each in the amount of one hundred percent (100%) of the total contract amount, offered as security for the faithful performance of the contract and for the payment of all labor and materials. These bonds must be written on the forms provided in this RFP and furnished prior to or at the time of the issuance of a written

notice of award of a contract resulting from this RFP. The Contractor must be named as principal on the bonds. NO THIRD PARTY PROPOSAL BONDS WILL BE ACCEPTED. The sureties on such bonds shall be duly authorized to conduct business in the State of New Mexico, and acceptable to the City.

**CASHIER'S CHECKS, CERTIFIED CHECKS, PERSONAL CHECKS, LETTERS OF CREDIT, CASH OR OTHER SUBSTITUTES WILL NOT BE ACCEPTED IN LIEU OF THESE BONDS.**

## **PART 2 PROPOSAL FORMAT**

### **2.1 Technical Proposal Format**

The following information must be furnished in the Technical Proposal portion of the RFP. Failure to include any of the items listed below may disqualify your firm's response. Technical criteria are listed in order of importance. Proposers should describe in detail and provide evidence supporting the qualifications requested below. All proposers are to compile their Technical Proposals in the order listed.

#### **2.1.1. DESIGN/BUILD TEAM QUALIFICATIONS AND ORGANIZATION;**

##### *DBT Organizational Chart or Matrix*

Provide a thorough description of the Design-Build Team that identifies: (i) all members of the DBT including all design consultants; (ii) the rationale for each individual's selection to the DBT; (iii) previous or current working relationships among the firms for Offerors who are proposing as a multi-firm team; and, (iv) a summary of the services to be provided by each member.

##### *Key Personnel:*

Key personnel are individuals who the City expects to deal with directly on the design and construction of this project, and who the City will see at design and construction meetings. The City prefers Key Personnel be direct employees of a team member. Examples of some key team roles are listed below. The list of examples is not inclusive and Offerors are encouraged to propose efficient structures for their DBTs.

**Design/Build Project Executive:** Person from the Design-Build Team who will provide executive oversight for the DBT and who has the authority to address any issues that require high level attention or decisions such as resources.

**Design/Build Project Manager:** Team member who will be involved on a continual basis 100% of the time from commencement of the design until construction completion; this person will be located on site once construction commences. This person will be responsible for the overall management of the design/build team and the completion of the project.

**Design/Build Field Superintendent:** Team member who will be on site 100% once construction commences and will be responsible for the direct supervision of the trade contractors, daily coordination of the work on-site to maintain the schedule, as well as all other on-site construction-related management such as, but not necessarily limited to, material deliveries, outages, and trade coordination.

**A/E Principal-in-charge:** Person from the prime A/E firm who will provide

executive oversight of the design consultants and address any issues with the design consultants that require high level attention.

**A/E Project Manager\***: Person from the prime A/E firm who will be involved on a continual basis from commencement of the design through construction administration. This person will be responsible for the overall management of the design professionals and/or design consultants.

**Project Architect\***: Professional, licensed architect from the A/E firm who is a member of the Design/Build team and who will be directly responsible for doing the architectural design of the project; this is the person who the City would see at the Design Progress meetings.

**NOTE**: The A/E Project Manager and Project Architect roles may be combined in the interest of efficiency.

**Landscape Architect**: Professional person who is directly responsible for the landscape design of the project; this is the person whom the City would see at the Design Progress meetings.

**Mechanical Engineer**: Professional consultant who will be directly responsible for the mechanical design portion of the project; this is the person whom the City would see at the Design Progress meetings.

**Fire Protection Engineer**: Professional consultant who will be directly responsible for the fire protection design portion of the project; this is the person whom the City will see at the Design Progress meetings.

**Electrical Engineer**: Professional consultant who will be directly responsible for the design of the electrical portion of the project.

**\*For (1) DBT Project Executive, (2) DBT Project Manager (100% on the project and on site once construction commences), (3) DBT Field Superintendent (100% on site supervisor), (4) A/E Principal-in-charge, (5) A/E Project Manager, (6) A/E Project Architect, (7) Landscape Architect, (8) Mechanical Design Engineer, and (9) Fire Protection Design Engineer, (10) Electrical Design Engineer to be assigned to this project, please provide the following:**

- Educational background;**
- Work experience with the proposing firm** inclusive of duration (by dates) of employment and position(s) held;
- Work experience with all other prior employers**, durations (by dates) of employment and position(s) held.

- **Specific project experience on projects of similar size, scope and budget to the Blacksmith shop as well a description of the role this person played on the referenced project as well as duration of involvement in each project included.**

- Specify **percentage of time to be committed and estimated number of hours** for design and/or construction to this project during both the pre-construction and the construction phases. (Note: If 50% time commitment is noted, this is understood to mean 20 hours per week for the duration of the phase or phases noted.)

- **Specify other projects to which this person will be assigned during the schedule of CITY's project with the percent time commitment and duration of assignment by dates;**

**Key Personnel References: Provide three (3) project\*** references for **each** of the nine (9) proposed key people (DBT Project Executive, DBT Project Manager, DBT Field Superintendent, A/E Principal-in-charge, A/E Project Manager, A/E Project Architect, Landscape Architect, Mechanical Engineer, and Fire Protection Engineer), inclusive of contact person, phone number and name of applicable project.

\*Project reference is defined to be contact person from the owner to provide a reference on a person associated with a particular project on which the person worked.

Such references are to be from different projects; that is, only one reference per project is allowed. In addition, the City reserves the right to check other sources available. Please ensure that the information is accurate and that the reference named can speak to the **individual's performance in the role to be assigned on this project.**

**Personnel Commitment:** By submitting the names for consideration under this Key Personnel Section, the Proposer and applicable A/E firm(s) are committing these people to CITY for this project's duration if awarded the project. No personnel changes will be permitted without written authorization from the City via a contract amendment issued by CITY's Department of Municipal Development.

**2.1.2 RELEVANT DESIGN/BUILD TEAM EXPERIENCE:** Each Offeror is encouraged to submit information on a total of three (3) similar or relevant projects. If the Offeror is a **joint venture**, the proposal must list relevant project experience for each firm individually as well as a description of the experience the firms have working jointly on previous projects. Higher consideration may be given to proposals from joint ventures who can show previous experience working successfully with other team members.

A majority of the projects identified in the relevant experience portion of a proposal must have been done using the Design/Build delivery method. Projects submitted under the Firm Experience category are to be similar in size and type), utilizing the design/build or CMAR contract method, for a governmental client. All proposers are to base their responses on their three (3) most recently completed projects that reflect the size,



complexity, and D/B services required under this RFP in accordance with required criteria.

**Note:** With each of these three (3) projects, provide **project photograph(s)** (color is desirable) with the description on the same or opposing page.

### **2.1.3 PROJECT APPROACH:**

Based on the program provided, provide in response to this RFP, for evaluation purposes only, **a detailed summary of your Design Build Team's recommendations regarding the design and layout** of the CITY project. This narrative summary should demonstrate the team's understanding of the project scope inclusive of the site limitations, the total square footage, overall building layout and floor plan.

**Executive Summary:** Provide a summary of the proposal specifying how the proposal addresses the sites issues and how it maximizes the potential Interim uses. The summary cannot exceed 2 pages. Summaries in excess of two pages may be deemed nonresponsive.

Offerors are encouraged to submit alternative design/build proposals so long as the conditions identified in the Scope set out in Part 3 of this RFP are accounted for and so long as the resulting interim use is broader, in the City's judgment, than that set out in the Scope set out in Part 3 of this RFP.

In addition, provide a **preliminary project schedule** based on the schedule provided in the Scope of Services set out in Part 3 of this RFP. The schedule must include and clearly delineate the required milestones for this project and other information associated with the schedule, such as the planning review time frames.

**NOTE:** The Offeror's project approach and schedule is submitted for evaluation purposes only in response to the RFP. It is not to be construed as the City's unconditional acceptance of the design, layout, schedule approach/sequencing, materials proposed, etc.

**Project Specific and/or Special/Unique Qualifications:** Provide information on project specific background and/or special/unique qualifications that your team brings to this project. This category can include information about the firm and/or the team members from the Design/Build Contractor (excluding such information that has already been provided under other categories such as Key Personnel or Firm Experience.)

**Design Team:** Provide information on project specific background and/or special/unique qualifications that the prime AE firm and any of the other design consultants bring to this project. This category can include information about a design firm and/or the team members from a design firm (excluding such information that has already been provided under other categories such as Key Personnel or Firm

Experience.)

**Design/Build Team Current Workload:** List current projects on which your team is committed, the dollar volume of each, the bonding requirement for each, the time frame for each, and the name of the Project Manager and Field Superintendent on each. In addition, please describe your firm's ability to accomplish the proposed services on this project within specified time frames in the space provided on this form.

If the Offeror is a joint venture, provide history of joint venture experience for all parties and specifically history of this joint venture relationship inclusive of the reasoning for the establishment of the joint venture on this project and a listing of all joint venture parties and each party's percentage of the joint venture firm. Note: If the selected proposer is a joint venture firm, a copy of the signed, joint venture agreement must be provided to the City for its review and approval prior to issuance of the Notice to Proceed. In addition, no changes can be made to the joint venture agreement without the written approval of the City.

**PART 3**  
**SCOPE OF SERVICES**

## Background and Description of Interim Use

The Albuquerque Rail Yards is an area of great historic significance to Albuquerque. It is one of the most important factors in Albuquerque's transformation from a farming village to the state's primary commercial and industrial center during the late nineteenth and early twentieth centuries. Now, after years of vacancy and neglect, the City of Albuquerque is interested in improving a portion of the rail yards, known as the "Blacksmith Shop".

The Blacksmith Shop is an 80 x 306 foot rectangular shaped structure with an interior space of 23,150 +/- square feet. The shop was constructed in 1916 and is located at the northeast corner of the rail yards property, east of 1st St. and Hazeldine SW (see Figure 1). The structural system of the building is steel trusses on steel columns with brick infill on either side of the columns. A predominant feature of the building is its large window openings with small paned frames that provide light and ventilation. The floor is exposed concrete.

The purpose of the project is to improve the Rail Yards Blacksmith Shop to meet applicable building and safety codes to allow for temporary use for public events. Types of events may include farmer's markets, art exhibits, small concerts, or other similar types of uses. Events will be held primarily during daylight hours. Offerors are encouraged to propose designs that would allow for maximum occupancies while remaining within the stated cost parameters and meeting code requirements. The project budget, including design and construction, has been established as \$750,000, not including New Mexico Gross Receipts Tax (NMGRT).

Site improvements will include the northern portion of the rail yards property in order to provide parking, ADA accessibility to the shop, public toilets, staging area, trash collection, and required fire truck access and pathways to fire "safe dispersal" areas.

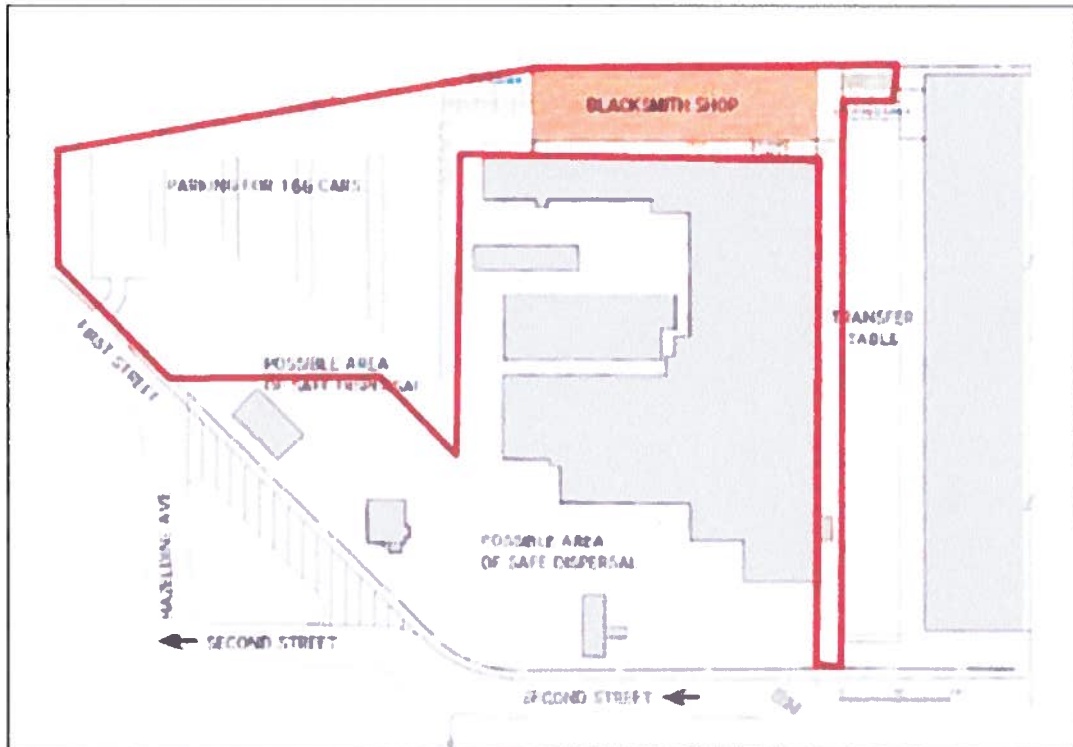
The interim project is a temporary use. The area is part of a larger, long-term development project being undertaken by Samitaur Smith Constructs. The City's arrangement with Samitaur Smith Constructs allows for interim use of the site and Samitaur Smith is aware of the City's plans for use of the Blacksmith Shop.

## Anticipated Schedule

The following is the proposed schedule for completion of the project.

|                               |   |
|-------------------------------|---|
| October 10 - October 17, 2012 | RFP Advertisement                                 |
| October 19, 2012              | Mandatory Pre-proposal Meeting                    |
| November 9, 2012              | RFP Deadline                                      |
| November 16, 2012             | Ad Hoc Committee Evaluation                       |
| January 21, 2013              | Council Approval of Selection and Interim Project |
| January 22, 2013              | Award Contract/NTP                                |
| January 22 - March 1, 2013    | Assessment/Design Prepared                        |
| March 1, 2013                 | Proposed Design Submitted to City                 |
| March 1 – March 8, 2013       | City Review of Proposed Design                    |
| March 11, 2013                | Construction Starts                               |
| June 1, 2013                  | Project Completion                                |

**Figure 1**



*\*Proposed project area within red border*

### **Previously Identified Required Improvements**

The following is a summary of the currently identified required improvements to meet building and safety codes and protect historic features of the Blacksmith Shop. This information is based on a feasibility study conducted by Cherry See Reames LLP.

#### **Architectural**

- Demolition and removal of miscellaneous mechanical and electrical items that are not in use
- Replace broken glass panes on north & south walls
- Repair existing roofing
- Replace parapet caps on north façade
- Add new building mounted sign on north parapet
- Remove graffiti from all areas and clean and repaint brick as necessary
- Install dry-pipe fire suppression system
- Protect and preserve existing rails as a focal point from the parking area to the Blacksmith Shop and to Machine Shop while meeting ADA pathway requirements
- Forge and interior office will remain. Provide plan to clean and incorporate these features into the use of facility while protecting their historic integrity.
- Provide interpretive signs and photographs explaining the history and purpose

of the building

- Repair roof horizontal bracing in three locations
- Brace parapets
- Provide new PNM extension
- Provide new electric service:
- Provide new electric fixtures and lamps
- Provide signage
- Provide fire alarm detection system
- Provide viewing areas into the Flue Shop and the Main Building (Machine Shop)

### **Structural**

- Replacement of deteriorated wood roof components (planks and beams).
- Replacement of deteriorated brick, re-pointing of mortar and replacement of parapet caps.
- Power washing of exposed steel components.
- Re-galvanizing of rusted/corroded areas.
- Leveling of slab-on-grade at railroad tracks.
- Repair of roof horizontal bracing at three locations. See Sheet S-101 in Appendix C, Cherry See Reames Feasibility Study.
- Steel framing for mechanical openings for new roof top units or new wall openings for on-ground mechanical units.
- Parapet bracing, north and south walls.

### **Site and Parking Improvements**

- Parking Area (minimum of 166 spaces) - Installation of 6 inch thick layer of engineered gravel compacted to 95% of its maximum density.
- Handicap parking (minimum of 8 spaces) including landing with pathway to building entrance to meet ADA requirements and be surfaced with 2 inches of asphaltic pavement.
- A minimum of 8-15 bicycle parking spaces
- 5 motorcycle spaces
- Installation of parking bumpers for minimum of 166 spaces
- Identification and grading of area for location of temporary portable toilets
- Installation of parking lighting
- Fire truck access approved by Fire Marshall
- Installation of water line from 2<sup>nd</sup> Street and fire hydrant installation on north side of Blacksmith Shop for fire suppression system
- Grading and Drainage Plan conforming to Planning Department requirements
- Install iconic aesthetic site identification sign (1 each, north and south)
- Provide second fire exit and pathway from south Blacksmith Shop exit to 1<sup>st</sup> St. – coordinate pathway design with Fire Marshall.
- Provide safety barrier/fencing adjacent to fire exit pathway on south side of Blacksmith Shop to prevent public from entering maintenance pit and other rail yard areas.

### **Other Requirements**

Proposals for this project must demonstrate experience with and consideration of the site's special character and challenges. The Blacksmith Shop has environmental considerations and historic requirements that must be addressed in the proposal to be considered responsive.

### **Environmental Considerations**

The following is a list of areas of environmental concern that are anticipated to require action by the design/build team. The list is not exhaustive and cannot be relied upon as such. An environmental certification is likely to be required.

**Monitoring wells** - It is anticipated that the 3 monitoring wells located north of the Blacksmith Shop can be capped at grade level, similar to other wells on the site, so as not to interfere with the parking layout. Well caps should be accessible and not limit future monitoring.

**Soil contamination** – INTERA report (2012) states that limited soil contamination is present at the proposed parking area from the ground surface to a depth of 10 feet below ground surface. The report recommends a passive soil gas (PSG) survey may be needed to assess potential vapor migration.

**Lead-based Paint** – INTERA report (2012) – states that lead-paint within the structure should be remediated to reduce or eliminate the potential for lead dust within the Blacksmith Shop.

**Window putty asbestos** – A report by Kells+Craig (2005) states that the glazing putty in the windows contains asbestos and will need abatement.

### **Historic Preservation Requirements**

Though the Blacksmith Shop is not listed in the State Register of Historic Place or the National Register of Historic Places it is of historic importance to the City and would be eligible for these designations. At this time the Fire House, an Official City of Albuquerque Landmark is the only registered historic property on the rail yards property. This structure will not be affected by this interim project.

Consultation with the State Historic Preservation Officer (SHPO) is a requirement of the interim project under Section 5, of the State of New Mexico Cultural Properties Protection Act, [18-6A-1 through 6, NMSA 1978]. Once detailed plans for the improvements are complete the City of Albuquerque Planning Department, Historic Preservation staff will lead consultation with the SHPO.

### **City of Albuquerque Approvals**

**City Council – R-12-37** requires a detailed scope and funding source be approved by

City Council prior to submitting for a building permit. It is anticipated that this approval will be requested in conjunction with the design/build team selection approval.

**Planning Approvals** – The Planning Department has determined that the interim project does not require Environmental Planning Commission (EPC) approval. It will be the responsibility of the design/build team to verify the development requirements for the project. A meeting should be held with Planning Department staff, the City Project Manager, and the design/build team to discuss requirements immediately upon issuance of the Notice to Proceed.

**Zoning Code** – The Planning Department has determined that variances are not required for parking lot paving and landscaping due to the required City Council action.

**Building Code** – The Planning Department has indicated that a code variance will be needed on the requirements for toilets and drinking fountains. It will be the responsibility of the design/build team to verify code requirements with the Planning Department.

**Fire Code** – The design/build team shall consult with the City of Albuquerque Fire Marshall to determine required fire code requirements for the interim use.

## **References**

Other key information is provided in the references listed below. These items are available for download and review online at:

<http://www.cabq.gov/municipaldevelopment/architects-engineers-and-developers>. All Offerors must certify that they have received and reviewed the “Feasibility Study for the Rail Yard’s Blacksmith Shop (Cherry See Reames LLP, 2012). Failure to do so may be grounds for disqualification.

## **Architectural and Engineering**

Cherry See Reames LLP, 2012, “Feasibility Study for the Rail Yard’s Blacksmith Shop”, prepared for the Metropolitan Redevelopment Agency, Planning Department, City of Albuquerque.

Harris Surveying Inc., 2007, ALTA Survey, Tract A, AT&SF Railway Company Machine Shop

## **Environmental Studies**

ACME Environmental, March 27, 2012, Environmental Sampling, Railyard Area/Blacksmith Shop.

INTERA, September 2012, Environmental Issues Summary Letter, Prepared for the City of Albuquerque, Department of Family and Community Services.

Kells & Craig Architects/Historic Preservation Consultants, May 2005, “Historic Preservation Treatments”





## **PART 4 EVALUATION OF OFFERS**

**4.1 Selection Process.** The Mayor of Albuquerque shall name, for the purpose of evaluating the proposals, an Ad Hoc Advisory Committee. On the basis of the evaluation criteria established in this RFP, the committee shall submit to the Mayor a list of qualified firms in the order in which they are recommended. Proposal documentation requirements set forth in this RFP are designed to provide guidance to the Offeror concerning the type of documentation that will be used by the Ad Hoc Advisory Committee. Offerors should be prepared to respond to requests by the Department of Municipal Development on behalf of the Ad Hoc Advisory Committee for oral presentations, facility surveys, demonstrations or other areas deemed necessary to assist in the detailed evaluation process. Offerors are advised that the City, at its option, may award this request on the basis of the initial offers.

**4.2 Evaluation Criteria.** The following general criteria, not listed in order or significance, will be used by the Ad Hoc Advisory Committee in conducting its subjective evaluation of the proposals and in recommending contract award to the Mayor. The proposal factors will be rated on a scale of **0-1000** with weight relationships as stated below.

### **Evaluation Factors**

**300 DESIGN/BUILD TEAM QUALIFICATIONS:**

The Offeror's response to RFP Section 2.1.

**200 RELEVANT DESIGN/BUILD TEAM EXPERIENCE:**

The Offeror's response to RFP Section 2.1.2

**400 PROJECT APPROACH:**

The Offeror's response to RFP Section 2.1.3

**100 Cost Proposal:** Submit one original and one copy of your Cost Proposal, in a **separate** binder or folder distinctly marked as Cost Proposal. Offerors must submit a matrix including the total hours it anticipates it will have on-site staff during the construction phase of the project with the hourly rate for each position and the extension thereof.

Cost Proposals must also include a detailed, but concise, overall description as to how the award of this contract will benefit the economy of the City of Albuquerque if your firm is the successful DBT. Such items include but are not limited to, (i) contract dollars to be recycled into the City's local economy in support of this contract, through the use of local subcontractors, suppliers, and joint venture partners; (ii) the number and type of jobs for Albuquerque residents resulting from the contract; and (iii) tax revenues to be generated for Albuquerque.

Cost proposals must identify, thoroughly describe and assign a dollar cost/value to all Allowances and Value Engineering items, or categories, or "proposals". Failure to do so may result in a cost proposal being deemed unresponsive.

*All Costs: The Offeror should understand that that liability for required items not included remains with the Offeror.*

**4.3 Preferences:** Preferences for local, small and resident (state) businesses may be available for this procurement. See Part 5 of this Request for Proposals for additional information. For those Offerors qualifying for a preference, a 1.05 or 1.10 multiplier, whichever applies, will be applied to the total raw score assigned to its proposal by the ad hoc evaluation committee.

**PART 5**  
**PREFERENCE FORMS AND INSTRUCTIONS**

## **Instructions for PREFERENCE CERTIFICATION FORM For Local, Small or Resident Business Preferences**

- 1. ALL INFORMATION MUST BE PROVIDED.** A 5% small business preference and a 5% small and local preference business preference are available for this procurement. To qualify, an Offeror **MUST** complete and submit this Form **WITH ITS OFFER**. If an offer is received without the Form attached, completed, signed and certified, or if the Form is received without the required information, the preference will not be applied. **THE FORM OR A CORRECTED FORM WILL NOT BE ACCEPTED AFTER THE DEADLINE FOR RECEIPT OF BIDS OR PROPOSALS.**
- 2. PHYSICAL LOCATION MUST BE STATED.** To qualify for the small business or local preference, a business must have its principal office and place of business in the Greater Albuquerque Metropolitan Area. The business location inserted on the Form must be a physical location, street address or such. **DO NOT** use a post office box or other postal address.
- 3. FORM MUST BE COMPLETED BY PRINCIPAL OFFEROR.** This Form must be completed for the Principal Offeror, or one of the Principal Offerors if the Offeror is a joint venture or partnership, by an individual authorized to sign for the Offeror. Subcontractors of the Offeror may not qualify an offer for a preference and should not complete or submit the Form.
- 4. APPLICATION OF PREFERENCES.** The small business preference will be applied to all offers submitted by eligible small businesses. The local preference only will be applied to all offers submitted by qualifying local businesses that are also qualifying small businesses. If there are no offers submitted in response to a solicitation that are eligible for the local preference, then the Resident Business Preference will be applied to any offers submitted which have provided a valid, State of New Mexico-issued, Resident Business or Resident Manufacturer Certification Number.
- 5. DEFINITIONS.** The following definitions apply:

  - The Greater Albuquerque Metropolitan Area includes all locations within the City of Albuquerque and Bernalillo County.
  - A local business is a business with its principal office and place of business in the Greater Albuquerque Metropolitan Area.
  - A small business is a local business which employs an average of fewer than 50 full-time employees in a calendar year. The calendar year immediately prior to the request for the preference should be used.
  - A principal office is the main or home office of the business as identified in tax returns, business licenses and other official business documents.
  - A place of business is a location where the business conducts its daily operations, for the general public, if applicable.
  - A full-time employee is an employee of the business who is hired to work at least forty (40) hours per week, whether in a permanent, temporary or seasonal status. If all full-time employees of the business are hired to work a shorter work week, the City's Deputy Director may reduce this requirement, upon receipt of adequate documentation.
- 6. ADDITIONAL DOCUMENTATION.** A business must provide documentation to substantiate the information provided on the Form with its proposal. If it does not, the City may deem its proposal unresponsive. The City's DMD Deputy Director shall determine the sufficiency of such documentation.

**PREFERENCE CERTIFICATION FORM**  
**For Local, Small or Resident Business Preferences**

**RFP/RFB NO: 7580.91**

**Business Name:** \_\_\_\_\_

**Principal Office:**

\_\_\_\_\_  
Street Address City State Zipcode

**Place of Business:**

\_\_\_\_\_  
Street Address City State Zip code



*If your Principal Office and Place of Business are in the Greater Albuquerque Metropolitan Area (see definitions in Instructions attached), please provide the following information:*

**Average Number of Full-time Employees over the Prior Calendar Year: SELECT ONE**

- ☐ 0 – 49 employees.
- ☐ 50 employees or more.



*If applicable, insert State of New Mexico Resident Business or Resident Manufacturer Certification Number: \_\_\_\_\_*

**CERTIFICATION**

I hereby certify that the business set out above is the principal Offeror submitting this offer or is one of the principal Offerors jointly submitting this offer (e.g. as a partnership, joint venture). I hereby certify that the information which I have provided on this Form is true and correct; that I am authorized to sign on behalf of the business set out above and, if requested by the City, will provide, within 3 working days of receipt of notice, the necessary documents to substantiate the information provided on this Form.

**Signature of Authorized Individual:** \_\_\_\_\_

**Printed Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**YOU MUST RETURN THIS FORM WITH YOUR OFFER  
OR IT MAY BE DEEMED UNRESPONSIVE**

**Instructions for  
PREFERENCE CERTIFICATION FORM  
(Construction Only)**

- 1. ALL INFORMATION MUST BE PROVIDED.** The State of New Mexico Resident Contractor Preference is available for this procurement. To qualify, an Offeror **MUST** complete and submit this Form **WITH ITS OFFER**. If an offer is received without the Form attached, completed, signed and certified, or if the Form is received without the required information, the preference will not be applied. **THE FORM OR A CORRECTED FORM WILL NOT BE ACCEPTED AFTER THE DEADLINE FOR RECEIPT OF BIDS OR PROPOSALS.**
- 2. FORM MUST BE COMPLETED BY PRINCIPAL OFFEROR.** This form must be completed for the Principal Offeror, or one of the Principal Offerors if the Offeror is a joint venture or partnership, by an individual authorized to sign for the Offeror. Subcontractors of the Offeror may not qualify an offer for a preference and should not complete or submit the form.
- 3. APPLICATION OF PREFERENCE.** The Resident Contractor Preference will be applied to any offers submitted which have provided a valid, State of New Mexico-issued, Resident Contractor Certification Number.
- 4. ADDITIONAL DOCUMENTATION.** Offerors must be required to provide documentation to substantiate the information provided on the Form WITH its proposal. Failure to do so may result in its offer being deemed unresponsive. The City's DMD Deputy Director shall determine the sufficiency of such documentation.

**PREFERENCE CERTIFICATION FORM**  
**For Resident Contractor Preference**  
**(Construction)**

**RFP/RFB NO: 7580.91**

**Business Name:** \_\_\_\_\_

**Resident Contractor Certification Number:**

\_\_\_\_\_

**CERTIFICATION**

I hereby certify that the business set out above is the principal Offeror submitting this offer or is one of the principal Offerors jointly submitting this offer (e.g. as a partnership, joint venture). I hereby certify that the information which I have provided on this form is true and correct, that I am authorized to sign on behalf of the business set out above and that the necessary documents to substantiate the information provided on this form are included with the offer submitted.

**Signature of Authorized Individual:** \_\_\_\_\_

**Printed Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**YOU MUST RETURN THIS FORM WITH YOUR OFFER**  
**OR IT MAY BE DEEMED UNRESPONSIVE**



## **NOTICE OF NO PREFERENCES**

**RFP/RFB NO: 7580.91**

### **NO PREFERENCES ARE AVAILABLE FOR THIS PROCUREMENT BECAUSE:**

- ☐ IT IS EXPECTED THAT THE PURCHASE OR CONCESSION CONTRACT RESULTING FROM THIS PROCUREMENT WILL BE IN EXCESS OF \$5,000,000.
  
- ☐ THIS PROCUREMENT IS FOR A FEDERAL AID CONSTRUCTION PROJECT, OR INVOLVES THE EXPENDITURE OF FEDERAL FUNDS.

**PART 6**  
**AGREEMENT**

## TABLE OF ARTICLES

1. AGREEMENT
2. GENERAL PROVISIONS
3. DESIGN-BUILDER'S RESPONSIBILITIES
4. CITY'S RESPONSIBILITIES
5. SUBCONTRACTS
6. TIME
7. COMPENSATION
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12. SUSPENSION, NOTICE TO CURE, AND TERMINATION
13. DISPUTE MITIGATION AND RESOLUTION
14. MISCELLANEOUS
15. CONTRACT DOCUMENTS  
AMENDMENT 1

### ARTICLE 1 AGREEMENT

Job Number: [ ]

Account Code: [ ]

This Agreement is made this [ ] day of [ ] in the year [ ], by

and between the CITY [ ]

and the DESIGN-BUILDER [ ]

Tax identification number (TIN) [ ]

Contractor Licensing No., if applicable [ ]

Design Professional Licensing No. in the state of the Project [ ]

for services in connection with the following

PROJECT: [ ]

Notice to the Parties shall be given at the above addresses.

### ARTICLE 2 GENERAL PROVISIONS

**2.1 TEAM RELATIONSHIP** The Parties each agree to proceed with the Project on the basis of trust, good faith and fair dealing and shall take all actions reasonably necessary to perform this Agreement in an economical and timely manner, including consideration of design modifications and alternative materials or equipment that will permit the Work to be constructed within the Guaranteed Maximum Price (GMP) and by the Dates of Substantial Completion and Final Completion if they are established by Amendment

1. The Design-Builder agrees to procure or furnish, as permitted by the Law, the design phase services and construction phase services as set forth below.



2.1.1 The Design-Builder represents that it is an independent contractor and that it is familiar with the type of work it is undertaking.

2.1.2 Neither the Design-Builder nor any of its agents or employees shall act on behalf of or in the name of the City unless authorized in writing by the City's Representative.

2.1.3 The Parties shall perform their obligations with integrity, ensuring at a minimum that each: (a) avoid conflicts of interest and discloses promptly any to the other Party, and (b) warrant that it has not and shall not pay or receive any contingent fees or gratuities to or from the other Party, including its agents, officers and employees, Subcontractors or others for whom they may be liable, to secure preferential treatment.

2.2 DESIGN-PROFESSIONAL Architectural and engineering services shall be procured from licensed, independent design professionals retained by the Design-Builder or furnished by licensed employees of the Design-Builder, as permitted by the Law. The person or entity providing architectural and engineering services shall be referred to as the Design-Professional. If the Design-Professional is an independent design professional, the architectural and engineering services shall be procured pursuant to a separate agreement between the Design-Builder and the Design-Professional. The Design-Professional for the Project is [REDACTED].

## 2.3 DEFINITIONS

2.3.1 "Agreement" means this Rail Yards Blacksmith Shop Interim Use Design-Build Agreement ), as modified, amendments, exhibits, addenda, and attachments made part of this agreement upon its execution.

2.3.2 The following exhibits are a part of this Agreement:

Exhibit A: Agreement establishing Fast-Track Approach and Schedule of the Work, [REDACTED] pages.

Exhibit B: Basis of Design/City Program

Exhibit C: Labor Relations

2.3.3 "Business Day" means all Days, except weekends and official federal or state holidays where the Project is located.

2.3.4 A "Change Order" is a written order signed by the City and the Design-Builder after execution of this Agreement, indicating changes in the scope of the Work, Cost of the Work or Contract Time, including substitutions proposed by the Design-Builder and accepted by the City.

2.3.5 The "Contract Documents" consist of those documents identified in section 15.1.

2.3.6 The "Contract Time" is the period between the Date of Commencement and Final Completion.

2.3.7 "Cost of the Work" means the costs and discounts specified in ARTICLE 8.

2.3.8 "Day" means calendar day.

2.3.9 "Date of Commencement" is as provided for in section 6.1

2.3.10 "Design-Builder's Fee" means the compensation paid to the Design-Builder for salaries and other mandatory or customary compensation of the Design-Builder's employees at its principal and branch offices except employees listed in subsection 8.2.2, general and administrative expenses of the Design-Builder's principal and branch offices other than the field office, and the Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work, and profit.

2.3.11 "Defective Work" is any portion of the Work not in conformance to the requirements of the Contract Documents.

2.3.12 "Final Completion" occurs on the date when the Design-Builder's obligations under this Agreement are complete and accepted by the City and final payment becomes due and payable.

2.3.13 "Laws" mean federal, state and local laws, ordinances, codes, rules, and regulations applicable to the Work with which the Design-Builder must comply that are enacted as of the Agreement date.

2.3.14 "Material Supplier" is a person or entity retained by the Design-Builder to provide material and equipment for the Work.

2.3.15 "Others" means other contractors and all persons at the Worksite who are not employed by Design-Builder, its Subcontractors or Material Suppliers and not including the Design Professional.

2.3.16 "Overhead" shall mean (a) payroll costs and other compensation of Design-Builder employees in the Design-Builder's principal and branch offices; (b) general and administrative expenses of the Design-Builder's principal and branch offices including charges against the Design-Builder for delinquent payments; and (c) the Design-Builder's capital expenses, including interest on capital used for the Work.

2.3.17 The "City" is the person or entity identified in ARTICLE 1, and includes the City's Representative.

2.3.18 The "City's Program" is an initial description of the City's objectives that may include budget and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

2.3.19 The "Parties" are collectively the City and the Design-Builder.

2.3.20 The "Project," as identified in ARTICLE 1, is the building, facility or other improvements for which the Design-Builder is to perform the Work under this Agreement. It may also include improvements to be undertaken by the City or Others.

2.3.21 A "Subcontractor" is a person or entity retained by the Design-Builder as an independent contractor to provide the labor, materials, equipment or services necessary to complete a specific portion of the Work. The term Subcontractor does not include the Design-Professional or any separate contractor employed by the City or any separate contractor's subcontractors.

2.3.22 "Substantial Completion" of the Work, or of a designated portion, occurs on the date when the Design-Builder's obligations are sufficiently complete in accordance with the Contract Documents so that the City may occupy or utilize the Project, or a designated portion, for the

use for which it is intended, without unscheduled disruption. The issuance of a certificate of occupancy is not a prerequisite for Substantial Completion if the certificate of occupancy cannot be obtained due to factors beyond the Design-Builder's control. The City must agree that a factor or factors are beyond the Design-Builder's control. This date shall be confirmed by a certificate of Substantial Completion signed by the City and the Design-Builder. The certificate shall state the respective responsibilities of the City and the Design-Builder for security, maintenance, heat, utilities, or damage to the Work, and insurance. The certificate shall also list the items to be completed or corrected, and establish the time for their completion and correction, within the timeframe, if any, established in Amendment 1 for the date of Final Completion.

2.3.23 "Subsubcontractor" is a party or entity who has an agreement with a Subcontractor or another Subsubcontractor to perform any portion of the Subcontractor's work.

2.3.24 "Terrorism" means a violent act, or an act that is dangerous to human life, property or infrastructure, that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by coercion. Terrorism includes, but is not limited to, any act certified by the United States Secretary of Treasury as an act of terrorism pursuant to the Terrorism Risk Insurance Act, as amended.

2.3.25 The "Work" is the Design Phase services procured or furnished in accordance with section 3.1, the GMP Proposal provided in accordance with section 3.2, the Construction Phase services provided in accordance with section 3.3, Additional services that may be provided in section 3.9, and other services which are necessary to complete the Project in accordance with and reasonably inferable from the Contract Documents.

2.3.26 Worksite" means the geographical area of the Project location mentioned in ARTICLE 1 where the Work is to be performed.

### ARTICLE 3 DESIGN-BUILDER'S RESPONSIBILITIES

The Design-Builder shall be responsible for procuring or furnishing the design and for the construction of the Work consistent with the City's Program, as such Program may be modified by the City during the course of the Work. The Design-Builder shall exercise reasonable skill and judgment in the performance of its services consistent with the team relationship described in section 2.1, but does not warrant nor guarantee schedules and estimates other than those that are part of the GMP proposal.

The Design-Builder and the City may establish a fast-track approach to the design and construction services necessary to complete the Project. Such agreement establishing a fast-track approach and the Schedule of the Work shall be included as an exhibit to this Agreement. In the absence of such agreement, the Parties shall proceed in accordance with sections 3.1 and 3.3 below.

**NOTE: THIS PROJECT IS A FAST TRACK PROJECT. A FORM OF EXHIBIT A THAT TRACKS THE TIMELINE SET OUT IN THE ANTICIPATED SCHEDULE WILL BE PROVIDED AFTER SELECTION.**

#### 3.1 DESIGN PHASE SERVICES

3.1.1 PRELIMINARY SCHEDULE The Design-Builder shall prepare a preliminary schedule of the Work. The City shall provide written approval of milestone dates established in the preliminary schedule of the Work. The schedule shall show the activities of the City, the Design-Professional and the Design-Builder necessary to meet the City's completion requirements.



The schedule shall be updated periodically with the level of detail for each schedule update reflecting the information then available. If an update indicates that a previously approved schedule will not be met, the Design-Builder shall recommend corrective action to the City in writing.

**3.1.2 PRELIMINARY ESTIMATE** When sufficient Project information has been identified, the Design-Builder shall prepare for the City's acceptance a preliminary estimate utilizing area, volume or similar conceptual estimating techniques. The estimate shall be updated periodically with the level of detail for each estimate update reflecting the information then available. If the preliminary estimate or any update exceeds the City's budget, the Design-Builder shall make recommendations to the City.

**3.1.3 SCHEMATIC DESIGN DOCUMENTS** The Design-Builder shall submit for the City's written approval Schematic Design Documents, based on the accepted Preliminary Evaluation. Schematic Design Documents shall include drawings, outline specifications and other conceptual documents illustrating the Projects basic elements, scale, and their relationship to the Worksite. One set of these documents shall be furnished to the City. When the Design-Builder submits the Schematic Design Documents the Design-Builder shall identify in writing all material changes and deviations that have taken place from the Design-Builder's Preliminary Evaluation, schedule and estimate. The Design-Builder shall update the preliminary schedule and estimate based on the Schematic Design Documents.

**3.1.4 PLANNING PERMITS** The Design-Builder shall obtain and the City shall pay for all planning permits necessary for the construction of the Project. Notwithstanding the previous sentence, the building permit to allow for an interim use at the Blacksmith shop shall be subject to City Council approval. The City shall submit the required information to the the City Council based on the information provided by the Design-Builder.

**3.1.5 DESIGN DEVELOPMENT DOCUMENTS** The Design-Builder shall submit for the City's written approval Design Development Documents based on the approved Schematic Design Documents. The Design Development Documents shall further define the Project including drawings and outline specifications fixing and describing the Project size and character as to site utilization, and other appropriate elements incorporating the structural, architectural, mechanical and electrical systems. One set of these final documents, that is documents not in preliminary or schematic form, shall be furnished to the City. When the Design-Builder submits the Design Development Documents, the Design-Builder shall identify in writing all material changes and deviations that have taken place from the Schematic Design Documents. The Design-Builder shall update the schedule and estimate based on the Design Development Documents.

**3.1.6 CONSTRUCTION DOCUMENTS** The Design-Builder shall submit for the City's written approval Construction Documents based on the approved Design Development Documents. The Construction Documents shall set forth in detail the requirements for construction of the Work, and shall consist of drawings and specifications based upon Laws enacted at the time of their preparation. When the Design-Builder submits the Construction Documents, the Design-Builder shall identify in writing all material changes and deviations that have taken place from the Design Development Documents. Construction shall be in accordance with these approved Construction Documents. One set of the City-approved documents shall be furnished to the City prior to commencement of construction. If a GMP has not been established, the Design-Builder shall prepare a further update of the schedule and estimate based on the Construction Documents.

### **3.1.7 OWNERSHIP OF DOCUMENTS**



**3.1.7.1 OWNERSHIP OF TANGIBLE DOCUMENTS** The City shall receive ownership of the property rights, except for copyrights, of all documents, drawings, specifications, electronic data and information (hereinafter "Documents") prepared, provided or procured by the Design-Builder, its Design-Professional, Subcontractors or consultants and distributed to the City for this Project, upon the making of final payment to the Design-Builder or, in the event of termination under ARTICLE 12, upon payment for all sums due to Design-Builder pursuant to ARTICLE 12.

**3.1.7.2 COPYRIGHT** The Parties agree that the City shall obtain ownership of the copyright of all Documents. The City's acquisition of the copyright for all Documents shall be subject to the making of payments as required by the subsection above and the payment of the fee reflecting the agreed value of the copyright set forth below:

**3.1.7.3 USE OF DOCUMENTS IN EVENT OF TERMINATION** In the event of a termination of this Agreement pursuant to ARTICLE 12, the City shall have the right to use, to reproduce, and to make derivative works of the Documents to complete the Project, regardless of whether there has been a transfer of copyright under this section, provided payment has been made pursuant to subsection 3.1.7.1.

**3.1.7.4 CITY'S USE OF DOCUMENTS AFTER COMPLETION OF PROJECT** After completion of the Project, the City may reuse, reproduce or make derivative works from the Documents solely for the purposes of maintaining, renovating, remodeling, demolishing or expanding the Project at the Worksite. The City's use of the Documents without the Design-Builder's involvement or on other projects is at the City's sole risk, except for the Design-Builder's indemnification obligations, and the City shall indemnify and hold harmless the Design-Builder, its Design-Professional, Subcontractors and consultants, and the agents, officers, directors and employees of each of them, from and against any and all claims, damages, losses, costs and expenses, excluding reasonable attorneys' fees and costs, arising out of or resulting from such any prohibited use.

**3.1.7.5 DESIGN-BUILDER'S USE OF DOCUMENTS** Where the Design-Builder has transferred its copyright interest in the Documents under subsection 3.1.7.1, the Design-Builder may reuse Documents prepared by it pursuant to this Agreement in its practice, but only in their separate constituent parts and not as a whole.

**3.1.7.6** The Design-Builder shall obtain from its Design-Professional, Subcontractors and consultants rights and rights of use that correspond to the rights given by the Design-Builder to the City in this Agreement, and the Design-Builder shall provide evidence that such rights have been secured.

## **3.2 GUARANTEED MAXIMUM PRICE (GMP)**

**3.2.1 GMP PROPOSAL** At such time as the City and the Design-Builder jointly agree, the Design-Builder shall submit a GMP Proposal in a format acceptable to the City. Unless the Parties mutually agree otherwise, the GMP shall be the sum of the estimated Cost of the Work as defined in ARTICLE 8 and the Design-Builder's Fee as defined in ARTICLE 7. The GMP is subject to modification as provided in ARTICLE 9. The Design-Builder does not guarantee any specific line item provided as part of the GMP, but agrees that it will be responsible for paying all costs of





completing the Work which exceed the GMP, as adjusted in accordance with this Agreement.

3.2.1.1 If the Design-Build Documents are not complete at the time the GMP Proposal is submitted to the City, the Design-Builder shall provide in the GMP for further development of the Design-Build Documents consistent with the City's Program. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which if required, shall be incorporated by Change Order.

**3.2.2 BASIS OF GUARANTEED MAXIMUM PRICE** The Design-Builder shall include with the GMP Proposal a written statement of its basis, which shall include:

3.2.2.1 a list of the drawings and specifications, including all addenda, which were used in preparation of the GMP Proposal;

3.2.2.2 a list of allowances and a statement of their basis;

3.2.2.3 a list of the assumptions and clarifications made by the Design-Builder in the preparation of the GMP Proposal to supplement the information contained in the drawings and specifications;

3.2.2.4 the Date of Substantial Completion and the Date of Final Completion upon which the proposed GMP is based, and the Schedule of Work upon which the Date of Substantial Completion and the Date of Final Completion is based;

3.2.2.5 a schedule of applicable alternate prices;

3.2.2.6 a schedule of applicable unit prices;

3.2.2.7 a statement of Additional services included, if any;

3.2.2.8 the time limit for acceptance of the GMP proposal;

3.2.2.9 the Design-Builder's contingency as provided in subsection 3.2.7;

3.2.2.10 a statement of any work to be self-performed by the Design-Builder; and

3.2.2.11 a statement identifying all patented or copyrighted materials, methods or systems selected by the Design-Builder and incorporated in the Work that are likely to require the payment of royalties or license fees.

**3.2.3 REVIEW AND ADJUSTMENT TO GMP PROPOSAL** The Design-Builder shall meet with the City to review the GMP Proposal. If the City has any comments relative to the GMP Proposal, or finds any inconsistencies or inaccuracies in the information presented, it shall give prompt written notice of such comments or findings to the Design-Builder, who shall make appropriate adjustments to the GMP, its basis or both.

**3.2.4 ACCEPTANCE OF GMP PROPOSAL** Upon acceptance by the City of the GMP Proposal, the GMP and its basis shall be set forth in Amendment 1.



**3.2.5 FAILURE TO ACCEPT THE GMP PROPOSAL** Unless the City accepts the GMP Proposal in writing on or before the date specified in the GMP Proposal for such acceptance and so notifies the Design-Builder, the GMP Proposal shall not be effective. If the City fails to accept the GMP Proposal, or rejects the GMP Proposal, the City shall have the right to:

3.2.5.1 suggest modifications to the GMP Proposal. If such modifications are accepted in writing by Design-Builder, the GMP Proposal shall be deemed accepted in accordance with subsection 3.2.4;

3.2.5.2 direct the Design-Builder to proceed on the basis of reimbursement as provided in ARTICLE 7 and ARTICLE 8 without a GMP, in which case all references in this Agreement to the GMP shall not be applicable; or

3.2.5.3 terminate the Agreement for convenience. In the absence of a GMP the Parties may establish a Date of Substantial Completion and a Date of Final Completion.

**3.2.6 PRE-GMP WORK** Prior to the City's acceptance of the GMP Proposal, the Design-Builder shall not incur any cost to be reimbursed as part of the Cost of the Work, except as provided in this Agreement or as the City may specifically authorize in writing.

**3.2.7 DESIGN-BUILDER'S CONTINGENCY** The GMP Proposal will contain, as part of the estimated Cost of the Work, the Design-Builder's Contingency, a sum mutually agreed upon and monitored by the Design-Builder and the City to cover costs which are properly reimbursable as a Cost of the Work but are not the basis for a Change Order. The Design-Builder's Contingency shall not be used for changes in scope or for any item that would be the basis for an increase in the GMP. The Design-Builder shall provide the City with a contemporaneous accounting of charges against the Design-Builder's Contingency, if applicable, with each application for payment.

**3.2.8 COST REPORTING** The Design-Builder shall keep such full and detailed accounts as are necessary for proper financial management under this Agreement. The Design-Builder shall maintain a complete set of all books and records prepared or used by the Design-Builder with respect to the Project. The Design-Builder's records supporting its performance and billings under this Agreement shall be current, complete and accurate and maintained according to Generally Accepted Accounting Principles. The City shall be afforded reasonable access during normal business hours to all the Design-Builder's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to this Agreement. The Design-Builder shall preserve all such records for a period of six years after the contract closeout or longer where required by law.

3.2.8.1 The Design-Builder agrees to use reasonable skill and judgment in the preparation of cost estimates and Schedule of the Work, but does not warrant or guarantee them.

### 3.3 CONSTRUCTION PHASE SERVICES

3.3.1 The Construction Phase will commence upon the issuance by the City of a written notice to proceed with construction. If construction commences prior to execution of Amendment No. 1, the Design-Builder shall prepare for the City's written approval a list of the documents that are applicable to the part of the Work which the City has authorized, which list shall be included in the City's written notice to proceed.



3.3.2 In order to complete the Work, the Design-BUILDER shall provide all necessary construction supervision, inspection, construction equipment, labor, materials, tools, and subcontracted items.

3.3.3 COMPLIANCE WITH LAWS The Design-BUILDER shall give all notices and comply with all Laws at its own costs. The Design-BUILDER shall be liable to the City for all loss, cost and expense, attributable to any acts or omissions by the Design-BUILDER, its employees, subcontractors, and agents resulting from the failure to comply with Laws, including, fines, penalties or corrective measures. However, liability under this subsection shall not apply if notice to the City was given, and advance approval by appropriate authorities, including the City, is received.

3.3.3.1 CHANGES IN LAW In the event any changes in Laws, including taxes, which were not reasonably anticipated and then enacted after either the date of this Agreement or the date a GMP Proposal is accepted by the City and set forth in Amendment No. 1 to this Agreement, whichever occurs later, the GMP, estimated Cost of the Work, the Design-BUILDER's Fee, the Date of Substantial Completion or the Date of Final Completion, and if appropriate the compensation for Design Phase services, shall be equitably adjusted by Change Order.

3.3.4 The Design-BUILDER shall obtain and the City shall pay for the building permits necessary for the construction of the Project.

3.3.5 The Design-BUILDER shall provide periodic written reports to the City on the progress of the Work in such detail as is required by the City and as agreed to by the City and the Design-BUILDER.

3.3.6 The Design-BUILDER shall develop a system of cost reporting for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes in the Work. The reports shall be presented to the City at mutually agreeable intervals.

3.3.7 The Design-BUILDER shall regularly remove debris and waste materials at the Worksite resulting from the Work. Prior to discontinuing Work in an area, the Design-BUILDER shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste and surplus materials. The Design-BUILDER shall minimize and confine dust and debris resulting from construction activities. At the completion of the Work, the Design-BUILDER shall remove from the Worksite all construction equipment, tools, surplus materials, waste materials and debris.

3.3.8 The Design-BUILDER shall prepare and submit to the City either:

- ☐ final marked-up as-built drawings, or record drawings or
- ☐ updated electronic data

that generally document how the various elements of the Work including changes were actually constructed or installed, or as defined by the Parties by attachment to this Agreement.

3.4 SCHEDULE OF THE WORK The Design-BUILDER shall prepare and submit a schedule of work for the City's acceptance and written approval as to milestone dates. This schedule shall indicate the commencement and completion dates of the various stages of the Work, including the dates when information and approvals are required from the City. The schedule shall be revised as required by the conditions of the Work.



### 3.5 SAFETY OF PERSONS AND PROPERTY

**3.5.1 SAFETY PRECAUTIONS AND PROGRAMS** The Design-Builder shall have overall responsibility for safety precautions and programs in the performance of the Work. However, such obligation does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with the provisions of Laws.

**3.5.2** The Design-Builder shall seek to avoid injury, loss or damage to persons or property by taking reasonable steps to protect:

3.5.2.1 its employees and other persons at the Worksite;

3.5.2.2 materials, supplies and equipment stored at the Worksite for use in performance of the Work; and

3.5.2.3 the Project and all property located at the Worksite and adjacent to work areas, whether or not said property or structures are part of the Project or involved in the Work.

**3.5.3 DESIGN-BUILDER'S SAFETY REPRESENTATIVE** The Design-Builder shall designate an individual at the Worksite in the employ of the Design-Builder who shall act as the Design-Builder's designated safety representative with a duty to prevent accidents. Unless otherwise identified by the Design-Builder in writing to the City, the designated safety representative shall be the Design-Builder's project superintendent. The Design-Builder will report promptly in writing all recordable accidents and injuries occurring at the Worksite to the City. When the Design-Builder is required to file an accident report with a public authority, the Design-Builder shall furnish a copy of the report to the City.

**3.5.4** The Design-Builder shall provide the City with copies of all notices required of the Design-Builder by Law. The Design-Builder's safety program shall comply with the requirements of governmental and quasi-governmental authorities having jurisdiction over the Work.

**3.5.5** Damage or loss not insured under property insurance that arises from the performance of the Work, to the extent of the negligence attributed to such acts or omissions of the Design-Builder, or anyone for whose acts the Design-Builder may be liable, shall be promptly remedied by the Design-Builder. Builder's Risk insurance is required for all other damage or loss.

**3.5.6** If the City deems any part of the Work or Worksite unsafe, the City, without assuming responsibility for the Design-Builder's safety program, may require the Design-Builder to stop performance of the Work or take corrective measures satisfactory to the City, or both. If the Design-Builder does not adopt corrective measures, the City may perform them and reduce by the costs of the corrective measures the amount of the GMP, or in the absence of a GMP, the Cost of the Work as provided in ARTICLE 8. The Design-Builder agrees to make no claim for damages, for an increase in the GMP, compensation for Design Phase services, the Design-Builder's Fee or the Date of Substantial Completion or the Date of Final Completion based on the Design-Builder's compliance with the City's reasonable request.

**3.6 EMERGENCIES** In any emergency affecting the safety of persons or property, the Design-Builder shall act in a reasonable manner to prevent threatened damage, injury or loss. Any change in the GMP,



estimated Cost of the Work, the Design-Builder's Fee, the Date of Substantial Completion or the Date of Final Completion, and if appropriate the compensation for Design Phase services, on account of emergency work shall be determined as provided for in ARTICLE 9.

### 3.7 HAZARDOUS MATERIALS

3.7.1 A Hazardous Material is any substance or material identified now or in the future as hazardous under any Laws or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirements governing handling, disposal or clean-up. The Design-Builder shall not be obligated to commence or continue work until any Hazardous Material discovered at the Worksite has been removed, rendered or determined to be harmless by the City as certified by an independent testing laboratory and approved by the appropriate governmental agency.

3.7.2 After commencing the Work, if Hazardous Material is discovered at the Project, the Design-Builder shall be entitled to immediately stop Work in the affected area. The Design-Builder shall promptly report the condition to the City and, if required, the governmental agency with jurisdiction.

3.7.3 The Design-Builder shall not be required to perform any Work relating to or in the area of Hazardous Material without written mutual agreement.

3.7.4 The City shall be responsible for retaining an independent testing laboratory to determine the nature of the material encountered and whether it is a Hazardous Material requiring corrective measures or remedial action. Such measures shall be the sole responsibility of the City, and shall be performed in a manner minimizing any adverse effect upon the Work of the Design-Builder. The Design-Builder shall resume Work in the area affected by any Hazardous Material only upon written agreement between the Parties after the Hazardous Material has been removed or rendered harmless and only after approval, if necessary, of the governmental agency or agencies with jurisdiction.

3.7.5 If the Design-Builder incurs additional costs or is delayed due to the presence or remediation of Hazardous Material of which the Design-Builder did not know and could not have reasonably anticipated at the time the Request for Proposals for Design-Build Services for an Interim Use at the Rail Yards' Blacksmith Shop, the execution, the Design-Builder shall be entitled to an equitable adjustment in the GMP, compensation for Design Phase services, the Design-Builder's Fee or the Date of Substantial Completion or the Date of Final Completion.

3.7.6 Material Safety Data (MSD) sheets as required by law and pertaining to materials or substances used or consumed in the performance of the Work, whether obtained by the Design-Builder, Subcontractors, the City or Others, shall be maintained at the Project by the Design-Builder and made available to the City and Subcontractors.

3.7.7 During the Design-Builder's performance of the Work, the Design-Builder shall be responsible for the proper handling of all materials brought to the Worksite by the Design-Builder. Upon the issuance of the Date of Final Completion, the City shall be responsible under this section for materials and substances brought to the site by the Design-Builder if such materials or substances are required by the Contract Documents.

3.7.8 Section 7 shall survive the completion of the Work under this Agreement or any termination of this Agreement.



### 3.8 WARRANTY

3.8.1 The Design-Builder warrants that all materials and equipment furnished under the Construction Phase of this Agreement will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. Warranties shall commence on the Date of Substantial Completion of the Work or of a designated portion.

3.8.2 To the extent products, equipment, systems or materials incorporated in the Work are specified and purchased by the City, they shall be covered exclusively by the warranty of the manufacturer. There are no warranties which extend beyond the description on the face of any such warranty. To the extent products, equipment, systems or materials incorporated in the Work are specified by the City but purchased by the Design-Builder and are inconsistent with selection criteria that otherwise would have been followed by the Design-Builder, the Design-Builder shall assist the City in pursuing warranty claims. ALL OTHER WARRANTIES EXPRESSED OR IMPLIED INCLUDING THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED.

3.8.3 The Design-Builder shall secure required certificates of inspection, testing or approval and deliver them to the City.

3.8.4 The Design-Builder shall collect all written warranties and equipment manuals and deliver them to the City in a format directed by the City.

3.8.5 With the assistance of the City's maintenance personnel, the Design-Builder shall direct the checkout of utilities and start-up operations, and adjusting and balancing of systems and equipment for readiness.

### 3.9 CORRECTION OF WORK WITHIN ONE YEAR

3.9.1 If, prior to Substantial Completion and within one year after the date of Substantial Completion of the Work or for such longer periods of time as may be set forth with respect to specific warranties required by the Contract Documents, any Defective Work is found, the City shall promptly notify the Design-Builder in writing. Unless the City provides written acceptance of the condition, the Design-Builder shall promptly correct the Defective Work at its own cost and time and bear the expense of additional services required for correction of any Defective Work for which it is responsible. If within the one-year correction period the City discovers and does not promptly notify the Design-Builder or give the Design-Builder an opportunity to test or correct Defective Work as reasonably requested by the Design-Builder, the City waives the Design-Builder's obligation to correct that Defective Work as well as the City's right to claim a breach of the warranty with respect to that Defective Work.

3.9.2 With respect to any portion of Work first performed after Substantial Completion, the one-year correction period shall be extended by the period of time between Substantial Completion and the actual performance of the later Work. Correction periods shall be extended by corrective work performed by the Design-Builder.

3.9.3 If the Design-Builder fails to correct Defective Work within a reasonable time after receipt of written notice from the City prior to final payment, the City may correct it in accordance with the City's right to carry out the Work. In such case, an appropriate Change Order shall be issued deducting the cost of correcting the Defective Work from payments then or thereafter due



the Design-Builder. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the City.

3.9.4 The Design-Builder's obligations and liability, if any, with respect to any Defective Work discovered after the one-year correction period shall be determined by the Law. If, after the one-year correction period but before the applicable limitation period has expired, the City discovers any Work which the City considers Defective Work, the City shall, unless the Defective Work requires emergency correction, promptly notify the Design-Builder and allow the Design-Builder an opportunity to correct the Work if the Design-Builder elects to do so. If the Design-Builder elects to correct the Work, it shall provide written notice of such intent within fourteen (14) Days of its receipt of notice from the City and shall complete the correction of Work within a mutually agreed timeframe. If the Design-Builder does not elect to correct the Work, the City may have the Work corrected by itself or Others, and, if the City intends to seek recovery of those costs from the Design-Builder, the City shall promptly provide the Design-Builder with an accounting of correction costs it incurs.

3.9.5 If the Design-Builder's correction or removal of Defective Work causes damage to or destroys other completed or partially completed Work or existing buildings, the Design-Builder shall be responsible for the cost of correcting the destroyed or damaged property.

3.9.6 The one-year period for correction of Defective Work does not constitute a limitation period with respect to the enforcement of the Design-Builder's other obligations under the Contract Documents.

3.9.7 Prior to final payment, at the City's option and with the Design-Builder's agreement, the City may elect to accept Defective Work rather than require its removal and correction. In such case the Contract Price shall be equitably adjusted for any diminution in the value of the Project caused by such Defective Work.

3.10 CONFIDENTIALITY Design-Builder and City acknowledge that all documents produced pursuant to this contract will, upon completion of the contract, be public records unless otherwise excepted by New Law. The Design-Builder shall specify those items to be treated as confidential and shall mark them as "Confidential." In the event of a legal compulsion or other order seeking disclosure of any Confidential Information, the Design-Builder or City, as the case may be, shall promptly notify the other party to permit that party's legal objection, if necessary.

3.11 ADDITIONAL SERVICES The Design-Builder shall provide or procure the following Additional services upon the request of the City. A written agreement between the City and the Design-Builder shall define the extent of such Additional services before they are performed by the Design-Builder. If a GMP has been established for the Work or any portion of the Work, such Additional services shall be considered a Change in the Work, unless they are specifically included in the statement of the basis of the GMP as set forth in Amendment 1.

3.11.1 Development of the City's Program, establishing the Project budget, investigating sources of financing, general business planning and other information and documentation as may be required to establish the feasibility of the Project.

3.11.2 Consultations, negotiations, and documentation supporting the procurement of Project financing.

3.11.3 Surveys, site evaluations, legal descriptions and aerial photographs.



3.11.4 Appraisals of existing equipment, existing properties, new equipment and developed properties.

3.11.5 Soils, subsurface and environmental studies, reports and investigations required for submission to governmental authorities or others having jurisdiction over the Project.

3.11.6 Consultations and representations before governmental authorities or others having jurisdiction over the Project other than normal assistance in securing building permits.

3.11.7 Investigation or making measured drawings of existing conditions or the reasonably required verification of the City-provided drawings and information.

3.11.8 Artistic renderings, models and mockups of the Project or any part of the Project or the Work.

3.11.9 Inventories of existing furniture, fixtures, furnishings and equipment which might be under consideration for incorporation into the Work.

3.11.10 Interior design and related services, including procurement and placement of furniture, furnishings, artwork and decorations.

3.11.11 Making revisions to the Schematic Design, Design Development, Construction Documents or documents forming the basis of the GMP after they have been approved by the City, and which are due to causes beyond the control of the Design-Builder. Causes beyond the control of the Design-Builder do not include acts or omissions on the part of Subcontractors, Material Suppliers, Subsubcontractors or the Design-Professional.

3.11.12 Design, coordination, management, expediting and other services supporting the procurement of materials to be obtained, or work to be performed, by the City, including but not limited to telephone systems, computer wiring networks, sound systems, alarms, security systems and other specialty systems which are not a part of the Work.

3.11.13 The premium portion of overtime work ordered by the City, including productivity impact costs, other than that required by the Design-Builder to maintain the Schedule of Work.

3.11.14 Out-of-town travel by the Design-Professional in connection with the Work, except between the Design-Professional's office, the Design-Builder's office, the City's office and the Worksite.

3.11.15 Obtaining service contractors and training maintenance personnel, assisting and consulting in the use of systems and equipment after the initial start-up.

3.11.16 Services for tenant or rental spaces not a part of this Agreement.

3.11.17 Services requested by the City or required by the Work which are not specified in the Contract Documents and which are not normally part of generally accepted design and construction practice.

3.11.18 Serving or preparing to serve as an expert witness in connection with any proceeding, legal or otherwise, regarding the Project except pertaining to performance of Design Build Team member or Design Professional .





3.11.19 Document reproduction exceeding the limits provided for in this Agreement.

3.11.20 Providing services relating to Hazardous Material discovered at the Worksite after this Agreement is executed.

3.11.21 Other services as agreed to by the Parties and identified in an attached exhibit.

3.12 DESIGN-BUILDER'S REPRESENTATIVE The Design-Builder shall designate a person who shall be the Design-Builder's representative. The Design-Builder's Representative is [ ].

#### **ARTICLE 4 CITY'S RESPONSIBILITIES**

4.1 INFORMATION AND SERVICES PROVIDED BY CITY City's responsibilities under this article shall be fulfilled with reasonable detail and in a timely manner.

4.2 FINANCIAL INFORMATION Prior to commencement of the Work and thereafter at the written request of the Design-Builder, the City shall provide the Design-Builder evidence of Project financing. Evidence of such financing shall be a condition precedent to the Design-Builder's commencing or continuing the Work. The Design-Builder shall be notified prior to any material change in Project financing.

4.3 WORKSITE INFORMATION To the extent the City has obtained, or is required elsewhere in the Contract Documents to obtain, the following Worksite information, the City shall provide at the City's expense and with reasonable promptness:

4.3.1 information describing the physical characteristics of the site, including surveys, Worksite evaluations, legal descriptions, data or drawings depicting existing conditions, subsurface conditions and environmental studies, reports and investigations; Legal descriptions shall include easements, title restrictions, boundaries, and zoning restrictions. Worksite descriptions shall include existing buildings and other construction and all other pertinent site conditions. Adjacent property descriptions shall include structures, streets, sidewalks, alleys, and other features relevant to the Work. Utility details shall include available services, lines at the Worksite and adjacent thereto and connection points. The information shall include public information, subsurface information, grades, contours, and elevations, drainage data, exact locations and dimensions, and benchmarks that can be used by the Design-Builder in laying out the Work.

4.3.2 tests, inspections and other reports dealing with environmental matters, Hazardous Material and other existing conditions, including structural, mechanical and chemical tests, required by the Contract Documents or by Law; and

4.3.3 any other information or services requested in writing by the Design-Builder which are required for the Design-Builder's performance of the Work and under the City's control.

#### **4.4 RESPONSIBILITIES DURING DESIGN PHASE**

4.4.1 The City shall provide the City's Program at the inception of the Design Phase and shall review and timely approve in writing schedules, estimates, Preliminary Estimate, Schematic Design Documents, Design Development Documents and Construction Documents furnished during the Design Phase, and the GMP Proposal.

#### **4.5 RESPONSIBILITIES DURING CONSTRUCTION PHASE**



4.5.1 The City shall review the Schedule of the Work as and timely approve the milestone dates set forth.

4.5.2 If the City becomes aware of any error, omission or failure to meet the requirements of the Contract Documents or any fault or defect in the Work, the City shall give prompt written notice to the Design-Builder. The failure of the City to give such notice shall not relieve the Design-Builder of its obligations to fulfill the requirements of the Contract Documents.

4.5.3 The City shall have no contractual obligations to Subcontractors, suppliers, or the Design-Professional.

4.5.4 The City shall only provide property insurance for the Project as provided in ARTICLE 11.

4.6 CITY'S REPRESENTATIVE The City's Representative is [REDACTED]. The City's representative shall: (a) be fully acquainted with the Project; (b) agree to furnish the information and services required of the City in a timely manner; and (c) have the authority to bind the City in all matters requiring the City's approval, authorization or written notice. If the City changes its representative or the representative's authority as listed above, the City shall notify the Design-Builder in writing in advance.

4.7 ELECTRONIC DOCUMENTS If the City requires that the City and Design-Builder exchange documents and data in electronic or digital form, prior to any such exchange, the City and the Design-Builder shall agree on a written protocol governing all exchanges in ConsensusDocs 200.2 or a separate addenda, which, at a minimum, shall specify: (a) the definition of documents and data to be accepted in electronic or digital form or to be transmitted electronically or digitally; (b) management and coordination responsibilities; (c) necessary equipment, software and services; (d) acceptable formats, transmission methods and verification procedures; (e) methods for maintaining version control; (f) privacy and security requirements; and (g) storage and retrieval requirements. The Parties shall each bear their own costs for the requirements identified in the protocol. In the absence of a written protocol, use of documents and data in electronic or digital form shall be at the sole risk of the recipient.

## ARTICLE 5 SUBCONTRACTS

Work not performed by the Design-Builder with its own forces shall be performed by Subcontractors or the Design-Professional.

5.1 RETAINING SUBCONTRACTORS The Design-Builder shall not retain any Subcontractor to whom the City has a reasonable and timely objection, provided that the City agrees to compensate the Design-Builder for any additional costs incurred by the Design-Builder as a result of such objection. The City may propose subcontractors to be considered by the Design-Builder. The Design-Builder shall not be required to retain any subcontractor to whom the Design-Builder has a reasonable objection.

5.2 MANAGEMENT OF SUBCONTRACTORS The Design-Builder shall be responsible for the management of the Subcontractors in the performance of their work.

### 5.3 CONTINGENT ASSIGNMENT OF SUBCONTRACT

5.3.1 If this Agreement is terminated, each subcontract agreement shall be assigned by the Design-Builder to the City, subject to the prior rights of any surety, provided that:



5.3.1.1 this Agreement is terminated by the City pursuant to sections 12.2 or 12.3; and

5.3.1.2 the City accepts such assignment, after termination by notifying the Subcontractor and the Design-Builder in writing, and assumes all rights and obligations of the Design-Builder pursuant to each subcontract agreement.

5.3.2 If the City accepts such an assignment, and the Work has been suspended for more than thirty (30) consecutive Days, following termination, if appropriate, the Subcontractor's compensation shall be equitably adjusted as a result of the suspension.

5.4 BINDING OF SUBCONTRACTORS AND MATERIAL SUPPLIERS The Design-Builder agrees to bind every Subcontractor and Material Supplier (and require every Subcontractor to so bind its Subsubcontractors and Material Suppliers) to all the provisions of this Agreement and the Contract Documents as they apply to the Subcontractors or Material Suppliers portions of the Work.

## ARTICLE 6 TIME

6.1 DATE OF COMMENCEMENT The Date of Commencement is the Agreement date in ARTICLE 1 unless otherwise set forth below: [\_\_\_\_]. The Work shall proceed in general accordance with the approved schedule of Work as such schedule may be amended from time to time, subject, however, to other provisions of this Agreement.

6.2 SUBSTANTIAL/FINAL COMPLETION Unless the Parties agree otherwise, the Date of Substantial Completion or the Date of Final Completion shall be established in Amendment 1 to this Agreement subject to adjustments as provided for in the Contract Documents. The City and the Design-Builder may agree not to establish such dates, or in the alternative, to establish one but not the other of the two dates. If such dates are not established upon the execution of this Agreement, at such time as a GMP is accepted a Date of Substantial Completion or Date of Final Completion of the Work shall be established in Amendment 1. If a GMP is not established and the Parties desire to establish a Date of Substantial Completion or Date of Final Completion, it shall be set forth in Amendment 1.

6.2.1 The deadlines for Substantial and Final Completion are subject to adjustments as provided for in the Contract Documents.

6.2.2 Time is of the essence for this Agreement and the Contract Documents.

6.2.3 Unless instructed by the City in writing, the Design-Builder shall not knowingly commence the Work before the effective date of insurance to be provided by the Design-Builder or the City as required by the Contract Documents.

## 6.3 DELAYS AND EXTENSIONS OF TIME

6.3.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by any cause beyond the control of the Design-Builder, the Design-Builder shall be entitled to an equitable extension of the Date of Substantial Completion or the Date of Final Completion. Examples of causes beyond the control of the Design-Builder include, but are not limited to, the following: (a) acts or omissions of the City or Others; (b) changes in the Work or the sequencing of the Work ordered by the City, or arising from decisions of the City that impact the time of performance of the Work; (c) encountering Hazardous Materials unanticipated by the Design-Builder, or concealed or unknown conditions; (d) delay authorized by the City pending dispute

resolution or suspension by the City under section 12.1; (e) transportation delays not reasonably foreseeable; (f) labor disputes not involving the Design-Builder; (g) general labor disputes impacting the Project but not specifically related to the Worksite; (h) fire; (i) Terrorism; (j) epidemics, (k) adverse governmental actions, (l) unavoidable accidents or circumstances; (m) adverse weather conditions not reasonably anticipated. The Design-Builder shall process any requests for equitable extensions of the Date of Substantial Completion or the Date of Final Completion in accordance with the provisions of ARTICLE 9.

6.3.2 In addition, if the Design-Builder incurs additional costs as a result of a delay that is caused by items (a) through (d) immediately above, the Design-Builder shall be entitled to an equitable adjustment in the GMP subject to section 6.5.

6.3.3 If delays to the Project are encountered for any reason, the Parties agree to take reasonable steps to mitigate the effect of such delays.

## 6.4 LIQUIDATED DAMAGES

6.4.1 SUBSTANTIAL COMPLETION The City and the Design-Builder agree that this Agreement shall provide for the imposition of liquidated damages based on the Date of Substantial Completion.

6.4.1.1 The Design-Builder understands that if the Date of Substantial Completion established by Amendment 1, as may be amended by subsequent Change Order, is not attained, the City will suffer damages which are difficult to determine and accurately specify. The Design-Builder agrees that if the Date of Substantial Completion is not attained, the Design-Builder shall pay the City one thousand five hundred dollars (\$1,500.00) as liquidated damages and not as a penalty for each Day that Substantial Completion extends beyond the Date of Substantial Completion. The liquidated damages provided herein shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages of whatsoever nature incurred by the City which are occasioned by any delay in achieving the Date of Substantial Completion.

6.4.2 FINAL COMPLETION The City and the Design-Builder agree that this Agreement shall provide for the imposition of liquidated damages based on the Date of Final Completion.

6.4.3 The Design-Builder understands that if the Date of Final Completion established by this Amendment 1 is not attained, the City will suffer damages which are difficult to determine and accurately specify. The Design-Builder agrees that if the Date of Final Completion is not attained, the Design-Builder shall pay the City two thousand dollars (\$2,000.00) as liquidated damages for each Day that Final Completion extends beyond the Date of Final Completion. The liquidated damages provided herein shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages of whatsoever nature incurred by the City which are occasioned by any delay in achieving the Date of Final Completion.

6.4.4 OTHER LIQUIDATED DAMAGES The City and the Design-Builder may agree upon the imposition of liquidated damages based on other project milestones or performance requirements. Such agreement shall be included as an exhibit to this Agreement.

6.5 LIMITED MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES Except for damages mutually agreed upon by the Parties as liquidated damages in section 6.4 and excluding losses covered by insurance required by the Contract Documents, the City and the Design-Builder agree to waive

all claims against each other for any consequential damages that may arise out of or relate to this Agreement, except for those specific items of damages excluded from this waiver as mutually agreed upon by the Parties and identified below. The City agrees to waive damages including but not limited to the City's loss of use of the Project, any rental expenses incurred, loss of income, profit or financing related to the Project, as well as the loss of business, loss of financing, principal office overhead and expenses, loss of profits not related to this Project, loss of reputation, or insolvency. The Design-Builder agrees to waive damages including but not limited to loss of business, loss of financing, loss of profits not related to this Project, loss of bonding capacity, loss of reputation, or insolvency. The provisions of this section shall also apply to the termination of this Agreement and shall survive such termination. The following items of damages are excluded from this mutual waiver:

6.5.1 The City and the Design-Builder shall require similar waivers in contracts with Subcontractors and Others retained for the Project.

## ARTICLE 7 COMPENSATION

### 7.1 DESIGN PHASE COMPENSATION

7.1.1 To the extent required by Laws, the cost of services performed directly by the Design-Professional is computed separately and is independent from the Design-Builder's compensation for work or services performed directly by the Design-Builder; these costs shall be shown as separate items on applications for payment. If any Design-Professional is retained by the Design-Builder, the payments to the Design-Professional shall be as detailed in a separate agreement between the Design-Builder and the Design-Professional.

7.1.2 The City shall compensate the Design-Builder for services performed during the Design Phase, including preparation of a GMP Proposal, if applicable, as follows: NONE

7.1.3 Compensation for Design Phase services, as part of the Work, shall include the Design-Builder's Fee, paid in proportion to the services performed, subject to adjustment.

7.1.4 Compensation for Design Phase services shall be equitably adjusted if such services extend beyond  from the date of this Agreement for reasons beyond the reasonable control of the Design-Builder or as provided in section 9.1. For changes in Design Phase services, compensation shall be adjusted as follows:

7.1.5 Within fifteen (15) Days after receipt of each monthly application for payment, the City shall give written notice to the Design-Builder of the City's acceptance or rejection, in whole or in part, of such application for payment. Within twenty-eight (28) Days after accepting such application, the City shall pay directly to the Design-Builder the appropriate amount for which application for payment is made, less amounts previously paid by the City. If such application is rejected in whole or in part, the City shall indicate the reasons for its rejection. If the City and the Design-Builder cannot agree on a revised amount then, within fifteen (15) Days after its initial rejection in part of such application, the City shall pay directly to the Design-Builder the appropriate amount for those items not rejected by the City for which application for payment is made, less amounts previously paid by the City. Those items rejected by the City shall be due and payable when the reasons for the rejection have been removed.

7.1.6 If the City fails to pay the Design-Builder at the time payment of any amount becomes due, then the Design-Builder may, at any time thereafter, upon serving written notice that the

Work will be stopped within seven (7) Days after receipt of the notice by the City, and after such seven (7) Day period, stop the Work until payment of the amount owing has been received.

7.1.7 Undisputed payments due pursuant to subsection 7.1.5, may bear interest from the date payment is due at the \_\_\_\_\_ rate.

## 7.2 CONSTRUCTION PHASE COMPENSATION

7.2.1 The City shall compensate the Design-Builder for Work performed following the commencement of the Construction Phase on the following basis:

7.2.1.1 the Cost of the Work as allowed in ARTICLE 8; and

7.2.1.2 the Design-Builder's Fee paid in proportion to the services performed subject to adjustment.

7.2.2 The compensation to be paid under this section shall be limited to the GMP established in Amendment 1, which may be adjusted under ARTICLE 9.

7.2.3 Payment for Construction Phase services shall be as set forth in ARTICLE 10. If Design Phase services continue to be provided after construction has commenced, the Design-Builder shall continue to be compensated as provided in section 7.1, or as mutually agreed.

7.3 DESIGN-BUILDER'S FEE The Design-Builder's Fee shall be as follows, subject to adjustment as provided in section 7.4:

7.4 ADJUSTMENT IN THE DESIGN-BUILDER'S FEE Adjustment in the Design-Builder's Fee shall be made as follows:

7.4.1 for changes in the Work as provided in ARTICLE 9, the Design-Builder's Fee shall be adjusted as follows:

7.4.2 for delays in the Work not caused by the Design-Builder, except as provided in subsection 6.3.2, there will be an equitable adjustment in the Design-Builder's Fee to compensate the Design-Builder for increased expenses.

## ARTICLE 8 COST OF THE WORK

The City agrees to pay the Design-Builder for the Cost of the Work as defined in this article. This payment shall be in addition to the Design-Builder's Fee stipulated in section 7.3.

### 8.1 COST ITEMS FOR DESIGN PHASE SERVICES

8.1.1 Compensation for Design Phase services as provided in section 7.1.

8.2 COST ITEMS FOR CONSTRUCTION PHASE SERVICES The Cost of the Work shall include the following costs reasonably incurred to perform a change in the Work:



8.2.1 Wages paid for labor in the direct employ of the Design-Builder in the performance of the Work. Wage Rates are likely to apply.

8.2.2 Salaries of the Design-Builder's employees when stationed at the field office, in whatever capacity employed, employees engaged on the road expediting the production or transportation of material and equipment, and supervisory employees from the principal or branch office performing the functions listed below:

8.2.3 Cost of all employee benefits and taxes including but not limited to workers' compensation, unemployment compensation, social security, health, welfare, retirement and other fringe benefits as required by law, labor agreements, or paid under the Design-Builder's standard personnel policy, insofar as such costs are paid to employees of the Design-Builder who are included in the Cost of the Work under subsections 8.2.1 and 8.2.2.

8.2.4 Reasonable transportation, travel, hotel and moving expenses of the Design-Builder's personnel incurred in connection with the Work.

8.2.5 Cost of all materials, supplies and equipment incorporated in the Work, including costs of inspection and testing if not provided by the City, transportation, storage and handling.

8.2.6 Payments made by the Design-Builder to Subcontractors for work performed under this Agreement.

8.2.7 Fees and expenses for design services procured or furnished by the Design-Builder except as provided by the Design-Professional and compensated in section 7.1.

8.2.8 Cost, including transportation and maintenance of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workers that are used or consumed in the performance of the Work, less salvage value or residual value; and cost less salvage value on such items used, but not consumed that remain the property of the Design-Builder.

8.2.9 Cost of the premiums for all insurance and surety bonds which the Design-Builder is required to procure or deems necessary, and approved by the City, including any additional premium incurred as a result of any increase in the GMP.

8.2.10 Sales, use, gross receipts or other taxes, tariffs or duties related to the Work for which the Design-Builder is liable.

8.2.11 Permits, fees, licenses, tests, and royalties.

8.2.12 Losses, expenses or damages to the extent not compensated by insurance or otherwise, and the cost of corrective work or redesign during the Construction Phase and for a one-year period following the Date of Substantial Completion, provided that such corrective work or redesign did not arise from the Design-Builder's negligence.

8.2.13 All costs associated with establishing, equipping, operating, maintaining and demobilizing the field office.

8.2.14 Reproduction costs, photographs, facsimile transmissions, long-distance telephone calls, data processing services, postage, express delivery charges, data transmission,



telephone service, and computer-related costs at the Worksite, to the extent such items are used and consumed in the performance of the Work or are not capable of use after completion of the Work.

8.2.15 All water, power and fuel costs necessary for the Work.

8.2.16 Cost of removal of all non-hazardous substances, debris and waste materials.

8.2.17 Costs incurred due to an emergency affecting the safety of persons or property.

8.2.18 All costs directly incurred in the performance of the Work or in connection with the Project, and not included in the Design-Builder's Fee as set forth in ARTICLE 7, which are reasonably inferable from the Contract Documents.

8.3 DISCOUNTS All discounts for prompt payment shall accrue to the City to the extent such payments are made directly by the City. To the extent payments are made with funds of the Design-Builder, all cash discounts shall accrue to the Design-Builder. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Cost of the Work.

## ARTICLE 9 CHANGES IN THE WORK

Changes in the Work which are within the general scope of this Agreement may be accomplished, without invalidating this Agreement, by Change Order, Interim Directed Change, or a minor change in the work, subject to the limitations stated in the Contract Documents.

### 9.1 CHANGE ORDER

9.1.1 The Design-Builder may request or the City, without invalidating this Agreement, may order changes in the Work within the general scope of the Contract Documents consisting of additions, deletions or other revisions to the GMP or the estimated cost of the work, compensation for Design Phase services, the Design-Builder's Fee or the Date of Substantial Completion or the Date of Final Completion being adjusted accordingly. All such changes in the Work shall be authorized by applicable Change Order, and processed in accordance with this article.

9.1.2 Each adjustment in the GMP or estimated Cost of the Work resulting from a Change Order shall clearly separate the amount attributable to compensation for Design Phase services, other Cost of the Work and the Design-Builder's Fee, with the Design-Builder's Fee not to exceed [ ] percent ([ ]%).

9.1.3 The City and the Design-Builder shall negotiate an appropriate adjustment to the GMP or the estimated Cost of the Work, compensation for Design Phase services, the Design-Builder's Fee or the Date of Substantial Completion or the Date of Final Completion in good faith and conclude negotiations as expeditiously as possible. Acceptance of the Change Order and any adjustment in the GMP, the estimated Cost of the Work, compensation for Design Phase services, the Design-Builder's Fee or the Date of Substantial Completion or the Date of Final Completion shall not be unreasonably withheld.

9.1.4 NO OBLIGATION TO PERFORM The Design-Builder shall not be obligated to perform changes in the Work that impacts the GMP or the estimated Cost of the Work, compensation for Design Phase services, the Design-Builder's Fee or the Date of Substantial Completion or





the Date of Final Completion until a Change Order has been executed or written Interim Directed Change has been issued.

## 9.2 INTERIM DIRECTED CHANGE

9.2.1 The City may issue a written Interim Directed Change directing a change in the Work prior to reaching agreement with the Design-Builder on the adjustment, if any, in the GMP, estimated Cost of the Work, the Design-Builder's Fee, the Date of Substantial Completion or the Date of Final Completion, and if appropriate, the compensation for Design Phase services.

9.2.2 The City and the Design-Builder shall negotiate expeditiously and in good faith for appropriate adjustments, as applicable, to the GMP, estimated Cost of the Work, the Design-Builder's Fee, the Date of Substantial Completion or the Date of Final Completion, and if appropriate the compensation for Design Phase services, arising out of Interim Directed Change. As the changed Work is completed, the Design-Builder shall submit its costs for such Work with its application for payment beginning with the next application for payment within thirty (30) Days of the issuance of the Interim Directed Change. Pending final determination of cost to the City, amounts not in dispute may be included in applications for payment and shall be paid by City.

9.2.3 When the City and the Design-Builder agree upon the adjustments in the GMP, estimated Cost of the Work, the Design-Builder's Fee, the Date of Substantial Completion or the Date of Final Completion, and if appropriate the compensation for Design Phase services, for a change in the Work directed by an Interim Directed Change, such agreement shall be the subject of an appropriate Change Order. The Change Order shall include all outstanding Interim Directed Changes on which the City and Construction Manager have reached agreement on the GMP or the Date of Substantial Completion or Date of Final Completion issued since the last Change Order.

## 9.3 MINOR CHANGES IN THE WORK

9.3.1 The Design-Builder may make minor changes in the design and construction of the Project consistent with the intent of the Contract Documents which do not involve an adjustment in the GMP, estimated Cost of the Work, the Design-Builder's Fee, the Date of Substantial Completion or the Date of Final Completion, and do not materially and adversely affect the design of the Project, the quality of any of the materials or equipment specified in the Contract Documents, the performance of any materials, equipment or systems specified in the Contract Documents, or the quality of workmanship required by the Contract Documents.

9.3.2 The Design-Builder shall promptly inform the City in writing of any such changes and shall record such changes on the Design-Build Documents maintained by the Design-Builder.

9.4 CONCEALED OR UNKNOWN SITE CONDITIONS If the conditions encountered at the Worksite are (a) subsurface or other physical conditions materially different from those indicated in the Contract Documents, or (b) unusual and unknown physical conditions materially different from conditions ordinarily encountered and generally recognized as inherent in Work provided for in the Contract Documents, the Constructor shall stop affected Work after the condition is first observed and give prompt written notice of the condition to the City and the Design Professional. The Constructor shall not be required to perform any Work relating to the unknown condition without the written mutual agreement of the Parties. Any change in the Contract Price or the Contract Time as a result of the unknown condition shall be determined as provided in this article.



## 9.5 DETERMINATION OF COST

9.5.1 An increase or decrease in the GMP or estimated Cost of the Work resulting from a change in the Work shall be determined by one or more of the following methods:

9.5.1.1 unit prices set forth in this Agreement or as subsequently agreed;

9.5.1.2 a mutually accepted, itemized lump sum;

9.5.1.3 costs determined as defined in section 7.2 and ARTICLE 8 and a mutually acceptable Design-Builder's Fee as determined in subsection 7.4.1; or

9.5.2 If an increase or decrease in Contract Price or Contract Time cannot be agreed to as set forth in sections 9.5.1 above, and the City issues an Interim Directed Change, the cost of the change in the Work shall be determined by the reasonable actual expense incurred and savings realized in the performance of the Work resulting from the change. If there is a net increase in the GMP, the Design-Builder's Fee shall be adjusted as set forth in subsection \_\_\_\_\_. In case of a net decrease in the GMP, the Design-Builder's Fee shall not be adjusted unless ten percent (10%) or more of the Project is deleted. The Design-Builder shall maintain a documented, itemized accounting evidencing the expenses and savings.

9.5.3 If unit prices are indicated in the Contract Documents or are subsequently agreed to by the Parties, but the character or quantity of such unit items as originally contemplated is so different in a proposed Change Order that the original unit prices will cause substantial inequity to the City or the Design-Builder, such unit prices shall be equitably adjusted.

9.5.4 If the City and the Design-Builder disagree as to whether work required by the City is within the scope of the Work, the Design-Builder shall furnish the City with an estimate of the costs to perform the disputed work in accordance with the City's interpretations. If the City issues a written order for the Design-Builder to proceed, the Design-Builder shall perform the disputed work and the City shall pay the Design-Builder fifty percent (50%) of its actual, direct cost to perform the work. In such event, both Parties reserve their rights as to whether the work was within the scope of the Work. The City's payment does not prejudice its right to be reimbursed should it be determined that the disputed work was within the scope of Work. The Design-Builder's receipt of payment for the disputed work does not prejudice its right to receive full payment for the disputed work should it be determined that the disputed work is not within the scope of the Work.

9.6 CLAIMS FOR ADDITIONAL COST OR TIME For any claim for an increase in the GMP, estimated Cost of the Work, the Design-Builder's Fee and the Date of Substantial Completion or the Date of Final Completion, and if appropriate the compensation for Design Phase services, the Design-Builder shall give the City written notice of the claim within twenty-one (21) Days after the occurrence giving rise to the claim or within twenty-one (21) Days after the Design-Builder first recognizes the condition giving rise to the claim, whichever is later. Except in an emergency, notice shall be given before proceeding with the Work. Claims for design and estimating costs incurred in connection with possible changes requested by the City, but which do not proceed, shall be made within twenty-one (21) Days after the decision is made not to proceed. Thereafter, the Design-Builder shall submit written documentation of its claim, including appropriate supporting documentation, within twenty-one (21) Days after giving notice, unless the Parties mutually agree upon a longer period of time. The City shall respond in writing denying or approving the Design-Builder's claim no later than fourteen (14) Days after receipt of the Design-Builder's documentation of claim. City's failure to so respond shall be deemed a denial of the Design-



Builder's claim. Any change in the GMP, estimated Cost of the Work, the Design-Builder's Fee, the Date of Substantial Completion or the Date of Final Completion, and if appropriate the compensation for Design Phase services, resulting from such claim shall be authorized by Change Order.

**9.7 INCIDENTAL CHANGES** The City may direct the Design-Builder to perform incidental changes in the Work upon concurrence with the Design-Builder that such changes do not involve adjustments in the Cost of the Work or Contract Time. Incidental changes shall be consistent with the scope and intent of the Contract Documents. The City shall initiate an incidental change in the Work by issuing a written order to the Design-Builder. Such written notice shall be carried out promptly and is binding on the Parties.

## **ARTICLE 10 PAYMENT FOR CONSTRUCTION PHASE SERVICES**

### **10.1 PROGRESS PAYMENTS**

10.1.1 On the [ ] Day of each month after the Construction Phase has commenced, the Design-Builder shall submit to the City an application for payment consisting of the Cost of the Work performed up to the [ ] Day of the month, along with a proportionate share of the Design-Builder's Fee. Prior to submission of the next application for payment, the Design-Builder shall furnish to the City a statement accounting for the disbursement of funds received under the previous application. The extent of such statement shall be as agreed upon between the City and the Design-Builder.

10.1.2 Within seven (7) Days after receipt of each monthly application for payment, the City shall give written notice to the Design-Builder of the City's acceptance or rejection, in whole or in part, of such application for payment. Within twenty-eight (28) Days after accepting such application, the City shall pay directly to the Design-Builder the appropriate amount for which application for payment is made, less amounts previously paid by the City. If such application is rejected in whole or in part, the City shall indicate the reasons for its rejection. If the City and the Design-Builder cannot agree on a revised amount then, within twenty-eight (28) Days after its initial rejection in part of such application, the City shall pay directly to the Design-Builder the appropriate amount for those items not rejected by the City for which application for payment is made, less amounts previously paid by the City. Those items rejected by the City shall be due and payable when the reasons for the rejection have been removed.

10.1.3 If the City fails to pay the Design-Builder at the time payment of any amount becomes due, then the Design-Builder may, at any time thereafter, upon serving written notice that the Work will be stopped within seven (7) Days after receipt of the notice by the City, and after such seven (7) Day period, stop the Work until payment of the amount owing has been received.

10.1.4 The Design-Builder warrants and guarantees that title to all Work, materials and equipment covered by an application for payment, whether incorporated in the Project or not, will pass to the City upon receipt of such payment by the Design-Builder, free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to as liens.

10.1.5 The City's progress payment, occupancy or use of the Project, whether in whole or in part, shall not be deemed an acceptance of any Work not conforming to the requirements of the Contract Documents.

10.1.6 Upon Substantial Completion of the Work, the City shall pay the Design-Builder the unpaid balance of the Cost of the Work, compensation for Design Phase services and the

Design-Builder's Fee, less one-hundred-fifty percent (150%) of the cost of completing any unfinished items as agreed to between the City and the Design-Builder as to extent and time for completion. The City thereafter shall pay the Design-Builder monthly the amount retained for unfinished items as each item is completed.

**10.1.7 STORED MATERIALS AND EQUIPMENT** Unless otherwise provided in the Contract Documents, applications for payment may include materials and equipment not yet incorporated into the Work but delivered to and suitably stored onsite or offsite, including applicable insurance, storage and costs incurred transporting the materials to an offsite storage facility. Approval of payment applications for stored materials and equipment stored offsite shall be conditioned on submission by the Design-Builder of bills of sale and proof of required insurance, or such other procedures satisfactory to the City to establish the proper valuation of the stored materials and equipment, the City's title to such materials and equipment, and to otherwise protect the City's interests therein, including transportation to the worksite.

**10.2 ADJUSTMENT OF DESIGN-BUILDER'S APPLICATION FOR PAYMENT** The City may adjust or reject an application for payment or nullify a previously approved Design-Builder application for payment, in whole or in part, as may reasonably be necessary to protect the City from loss or damage based upon the following, to the extent that the Design-Builder is responsible under this Agreement:

10.2.1 the Design-Builder's repeated failure to perform the Work as required by the Contract Documents;

10.2.2 except as accepted by the insurer providing Builders Risk or other property insurance covering the project, loss or damage arising out of or relating to this Agreement and caused by the Design-Builder to the City or Others to whom the City may be liable;

10.2.3 the Design-Builder's failure to properly pay the Design-Professional, Subcontractors or Material Suppliers for labor, materials, equipment or supplies furnished in connection with the Work, provided that the City is making payments to the Design-Builder in accordance with the terms of this Agreement;

10.2.4 Defective Work not corrected in a timely fashion;

10.2.5 reasonable evidence of delay in performance of the Work such that the Work will not be completed by the Date of Substantial Completion or the Date of Final Completion, and that the unpaid balance of the GMP is not sufficient to offset any direct damages that may be sustained by the City as a result of the anticipated delay caused by the Design-Builder;

10.2.6 reasonable evidence demonstrating that the unpaid balance of the GMP is insufficient to fund the cost to complete the Work; and

10.2.7 uninsured third-party claims involving the Design-Builder or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until the Design-Builder furnishes the City with adequate security in the form of a surety bond, letter of credit or other collateral or commitment sufficient to discharge such claims if established.

No later than seven (7) Days after receipt of an application for payment, the City shall give written notice to the Design-Builder, at the time of disapproving or nullifying all or part of an application for payment, stating its specific reasons for such disapproval or nullification, and the remedial



actions to be taken by the Design-Builder in order to receive payment. When the above reasons for disapproving or nullifying an application for payment are removed, payment will be promptly made for the amount previously withheld.

### 10.3 CITY OCCUPANCY OR USE OF COMPLETED OR PARTIALLY COMPLETED WORK

10.3.1 Portions of the Work that are completed or partially completed may be used or occupied by the City when (a) the portion of the Work is designated in a Certificate of Substantial Completion, (b) appropriate insurer(s) or sureties consent to the occupancy or use, and (c) appropriate public authorities authorize the occupancy or use. Such partial occupancy or use shall constitute Substantial Completion of that portion of the Work. The Design-Builder shall not unreasonably withhold consent to partial occupancy or use. The City shall not unreasonably refuse to accept partial occupancy or use, provided such partial occupancy or use is of value to the City.

### 10.4 FINAL PAYMENT

10.4.1 Final Payment, consisting of the unpaid balance of the Cost of the Work, compensation for Design Phase services and the Design-Builder's Fee, shall be due and payable when the work is fully completed. Before issuance of final payment, the City may request satisfactory evidence that all payrolls, material bills and other indebtedness connected with the Work have been paid or otherwise satisfied.

10.4.2 In making final payment the City waives all claims except for:

10.4.2.1 outstanding liens;

10.4.2.2 improper workmanship or defective materials;

10.4.2.3 work not in conformance with the Contract Documents; and

10.4.2.4 terms of any special warranties required by the Contract Documents.

10.4.3 In accepting final payment, the Design-Builder waives all claims except those previously made in writing and which remain unsettled.

## ARTICLE 11 INDEMNITY, INSURANCE, AND BONDS

### 11.1 INDEMNITY

11.1.1 To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the City, City's officers, directors, members, consultants, agents and employees (the Indemnitees) from all claims for bodily injury and property damage other than to the Work itself and other property required to be insured, including reasonable attorneys' fees, costs and expenses, that may arise from the performance of the Work, but only to the extent caused by the negligent acts or omissions of the Design-Builder, Subcontractors or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. The Design-Builder shall not be required to indemnify or hold harmless the Indemnitees for any negligent acts or omissions of the Indemnitees. The Design-Builder shall be entitled to reimbursement of any defense costs paid above Design-Builder's percentage of liability for the underlying claim to the extent provided for by the subsection below.



11.1.2 NO LIMITATION ON LIABILITY In any and all claims against the Indemnitees by any employee of the Design-Builder, anyone directly or indirectly employed by the Design-Builder or anyone for whose acts the Design-Builder may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Design-Builder under workers' compensation acts, disability benefit acts or other employee benefit acts.

## 11.2 DESIGN-BUILDER'S LIABILITY INSURANCE

11.2.1 Before commencing the Work and as a condition precedent to payment, the Design-Builder shall procure and maintain in force Workers' Compensation Insurance, Employers' Liability Insurance, Business Automobile Liability Insurance, and Commercial General Liability Insurance (CGL). The CGL policy shall include coverage for liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, contractual liability, and broad form property damage. The Design-Builder shall maintain completed operations liability insurance for one year after Substantial Completion, or as required by the Contract Documents, whichever is longer. The Design-Builder's Employers' Liability, Business Automobile Liability, and CGL policies shall be written with at least the following limits of liability:

### 11.2.1.1 Employers' Liability Insurance

- (a) \$1 Million bodily injury by accident per accident
- (b) \$[ ] bodily injury by disease policy limit
- (c) \$[ ] bodily injury by disease per employee

### 11.2.1.2 Business Automobile Liability Insurance per accident \$1 Million.

### 11.2.1.3 Commercial General Liability Insurance

- (a) Per occurrence \$1 Million
- (b) General aggregate \$1 Million
- (c) Products/completed operations aggregate \$1 Million
- (d) Personal and advertising injury limit \$1 Million

11.2.2 Employers' Liability, Business Automobile Liability and CGL coverage required under subsection 11.2.1 may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by Excess or Umbrella Liability policies.

11.2.3 The Design-Builder shall maintain in effect all insurance coverage required under subsection 11.2.1 with insurance companies lawfully authorized to do business in the jurisdiction in which the Project is located. If the Design-Builder fails to obtain or maintain any insurance coverage required under this Agreement, the City may purchase such coverage and charge the expense to the Design-Builder, or terminate this Agreement.

11.2.4 To the extent commercially available to the Design-Builder from its current insurance company, insurance policies required under subsection 11.2.1 shall contain a provision that the insurance company or its designee must give the City written notice transmitted in paper or electronic format: (a) 30 days before coverage is nonrenewed by the insurance company



and (b) within 10 business days after cancelation of coverage by the insurance company. Prior to commencing the Work and upon renewal or replacement of the insurance policies, the Design-Builder shall furnish the City with certificates of insurance until one year after Substantial Completion or longer if required by the Contract Documents. In addition, if any insurance policy required under subsection 11.2.1 is not to be immediately replaced without lapse in coverage when it expires, exhausts its limits, or is to be cancelled, the Design-Builder shall give City prompt written notice upon actual or constructive knowledge of such condition.

### 11.3 PROPERTY INSURANCE

11.3.1 Before commencing the Work, the Design-Builder shall obtain and maintain a Builder's Risk Policy upon the entire Project for the full cost of replacement at the time of loss. This insurance shall also name the Design-Builder, Subcontractors, Subsubcontractors, Material Suppliers and Design-Professional as named insureds. This insurance shall be written as a Builder's Risk Policy or equivalent form to cover all risks of physical loss except those specifically excluded by the policy, and shall insure (a) at least against the perils of fire, lightning, explosion, windstorm, hail, smoke, aircraft (except aircraft, including helicopter, operated by or on behalf of Design-Builder) and vehicles, riot and civil commotion, theft, vandalism, malicious mischief, debris removal, flood, earthquake, earth movement, water damage, wind damage, testing if applicable, collapse however caused, and (b) damage resulting from defective design, workmanship or material and material or equipment stored offsite, onsite or in transit. The City shall be solely responsible for any deductible amounts or coinsurance penalties. This policy shall provide for a waiver of subrogation in favor of the Design-Builder, Subcontractors, Subsubcontractors, Material Suppliers and Design-Professional. This insurance shall remain in effect until final payment has been made or until no person or entity other than the City has an insurable interest in the property to be covered by this insurance, whichever is sooner. Partial occupancy or use of the Work shall not commence until the City has secured the consent of the insurance company or companies providing the coverage required in this subsection. Before commencing the Work, the City shall provide a copy of the property policy or policies obtained in compliance with this subsection.

11.3.2 City and Design-Builder waive all rights against each other and their respective employees, agents, contractors, subcontractors and subsubcontractors, and design professionals for damages caused by risks covered by the property insurance except such rights as they may have to the proceeds of the insurance..

11.3.3 To the extent of the limits of Design-Builder's CGL specified in subsection 11.2.1 or [ ] dollars (\$5 Million Dollars), whichever is more, the Design-Builder shall indemnify and hold harmless the City against any and all liability, claims, demands, damages, losses and expenses, including attorneys' fees, in connection with or arising out of any damage or alleged damage to any of City's existing adjacent property that may arise from the performance of the Work, to the extent of the negligent acts or omissions of the Design-Builder, Subcontractor or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable.

11.3.4 RISK OF LOSS Except to the extent a loss is covered by applicable insurance, risk of loss or damage to the Work shall be upon the Design-Builder until the Date of Substantial Completion, unless otherwise agreed to by the Parties.

### 11.4 CITY'S INSURANCE



11.4.1 BUSINESS INCOME INSURANCE The City may procure and maintain insurance against loss of use of the City's property caused by fire or other casualty loss.

11.4.2 CITY'S LIABILITY INSURANCE The City shall either self-insure or obtain and maintain its own liability insurance for protection against claims arising out of the performance of this Agreement, including without limitation, loss of use and claims, losses and expenses arising out of the City's acts or omissions. The City will have Property Insurance for the site but not Builder's Risk. Builder's Risk insurance is the responsibility of the Design-Builder.

## 11.5 ADDITIONAL LIABILITY COVERAGE

11.5.1 The City ☐ shall/ ☐ shall not require Design-Builder to purchase and maintain additional liability coverage, primary to City's coverage under subsection 11.4.2.

11.5.2 If required by the above subsection, the additional liability coverage required of the Design-Builder shall be

1. ☒ Additional Insured. The City shall be named as an additional insured on the Design-Builder's CGL specified, for operations and completed operations, but only with respect to liability for bodily injury, property damage or personal and advertising injury to the extent caused by the negligent acts or omissions of Design-Builder, or those acting on Design-Builder's behalf, in the performance of the Design-Builder's Work for the City at the Worksite.

2. ☒ OCP. The Design-Builder shall provide an Citys' and Contractors' Protective Liability Insurance ("OCP") policy with limits equal to the limits on CGL specified, or limits as otherwise required by the City.

Any documented additional cost in the form of a surcharge associated with procuring the additional general liability coverage in accordance with this subsection shall be paid by the City directly or the costs may be reimbursed by City to Design-Builder by increasing the contract price to correspond to the actual cost required to purchase and maintain the coverage. Prior to commencement of the Work, Design-Builder shall provide either a copy of the OCP policy, or a certificate and endorsement evidencing that the City has been named as an additional insured, as applicable,

11.6 ROYALTIES, PATENTS AND COPYRIGHTS The Design-Builder shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods or systems selected by the Design-Builder and incorporated in the Work. The Design-Builder shall defend, indemnify and hold the City harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection. The City agrees to defend, indemnify and hold the Design-Builder harmless from any suits or claims of infringement of any patent rights or copyrights arising out of any patented or copyrighted materials, methods or systems specified by the City.

11.7 PROFESSIONAL LIABILITY INSURANCE The Design-Builder shall obtain, either itself or through the Design Professional, professional liability insurance for claims arising from the negligent performance of professional services under this Agreement, which shall be:

☒ Practice Policy or ☒ Project Specific Coverage





written for not less than \$250,000.00 dollars (\$[ ]) per claim and in the aggregate with a deductible not to exceed [ ] dollars (\$[ ]). The Professional Liability Insurance shall include prior acts coverage sufficient to cover all services rendered by the Design-Professional. This coverage shall be continued in effect for [ ] year(s) after the Date of Substantial Completion.

## 11.8 BONDING

### 11.8.1 Performance and Payment Bonds

☒ are  
☐ are not

required of the Design-Builder. Such bonds shall be issued by a surety admitted in the state in which the Project is located and must be acceptable to the City. Such a surety must be Treasury listed City's acceptance shall not be withheld without reasonable cause.

11.8.2 Such Performance Bond shall be issued in the penal sum equal to one-hundred percent (100%) of the:

☐ GMP (If there is no GMP, then the agreed estimated cost of the Project, including design and construction)

☐ Agreed estimated construction cost of the Project.

Such Performance Bond shall cover the cost to complete the Work, but shall not cover any damages of the type specified to be covered by the insurance pursuant to sections 11.2 and 11.3, whether or not such insurance is provided or is in an amount sufficient to cover such damages.

11.8.3 The penal sum of the Payment Bond shall equal the penal sum of the Performance Bond. The Design-Builder's Payment Bond for the Project, if any, shall be made available by the City or the Design-Builder upon the Subcontractor's written request.

11.8.4 Any increase in the GMP Price that exceeds ten percent [10%] in the aggregate shall require a rider to the Bonds increasing penal sums accordingly. Up to such ten percent [10%] amount, the penal sum of the bond shall remain equal to one-hundred percent [100%] of the GMP or as otherwise provided in subsection 11.8.2. The Design-Builder shall endeavor to keep its surety advised of changes within the scope of the initial Agreement potentially impacting the GMP or the Dates of Substantial Completion or Final Completion, though the Design-Builder shall require that its surety waives any requirement to be notified of any alteration or extension of time. A copy of the Design-Builder's Payment Bond for the Project, if any, shall be furnished by the City or the Design-Builder upon the Subcontractor's written request.

## ARTICLE 12 SUSPENSION, NOTICE TO CURE, AND TERMINATION

### 12.1 SUSPENSION BY THE CITY FOR CONVENIENCE

12.1.1 The City may order the Design-Builder in writing to suspend, delay or interrupt all or any part of the Work without cause for its convenience.



12.1.2 Adjustments caused by suspension, delay or interruption shall be made for increases in the GMP, compensation for Design Phase services, the Design-Builder's Fee or the Date of Substantial Completion or the Date of Final Completion. No adjustment shall be made if the Design-Builder is or otherwise would have been responsible for the suspension, delay or interruption of the Work, or if another provision of this Agreement is applied to render an equitable adjustment.

## 12.2 TERMINATION BY THE CITY FOR CAUSE

12.2.1 If the Design-Builder persistently fails to supply enough qualified workers, proper materials, or equipment, to maintain the approved Schedule of the Work, or fails to make prompt payment to its workers, Subcontractors or Material Suppliers, disregards Laws or orders of any public authority having jurisdiction, or is otherwise guilty of a material breach of a provision of this Agreement, the Design-Builder may be deemed in default. If the Design-Builder fails within seven (7) Days after receipt of written notice to commence and continue satisfactory correction of such default, then the City shall give the Design-Builder and, if applicable, the surety, a second notice to correct the default within a three (3) Day period.

12.2.2 If the Design-Builder fails to promptly commence and continue satisfactory correction of the default following receipt of such second notice, the City without prejudice to any other rights or remedies may: (a) take possession of the Worksite; (b) complete the Work utilizing any reasonable means; (c) withhold payment due to the Design-Builder; and (d) as the City deems necessary, supply workers and materials, equipment and other facilities for the satisfactory correction of the default, and charge the Design-Builder the costs and expenses, including reasonable Overhead, profit and attorneys' fees.

12.2.3 In the event of an emergency affecting the safety of persons or property, the City may immediately commence and continue satisfactory correction of a default without first giving written notice to the Design-Builder, but shall give prompt written notice of such action to the Design-Builder following commencement of the action.

12.2.4 If the Design-Builder files a petition under the bankruptcy code, this Agreement shall terminate if the Design-Builder or the Design-Builder's trustee rejects the Agreement, or if there has been a default and the Design-Builder is unable to give adequate assurance that the Design-Builder will perform as required by this Agreement or otherwise is unable to comply with the requirements for assuming this Agreement under the applicable provisions of the bankruptcy code.

12.2.5 If the City exercises its rights under subsection 12.2.1 or 12.2.2, upon the request of the Design-Builder the City shall provide a detailed accounting of the costs incurred by the City.

12.2.6 If the City terminates this Agreement for default, and it is later determined that the Design-Builder was not in default, or that the default was excusable under the terms of the Contract Documents, then, in such event, the termination shall be deemed a termination for convenience, and the rights of the Parties shall be as set forth in section 12.3.

12.3 TERMINATION BY CITY FOR CONVENIENCE If the City terminates this Agreement other than as set forth in section 12.2, the City shall pay the Design-Builder for all Work executed and for all proven loss, cost or expense in connection with the Work, plus all demobilization costs. In addition, the Design-Builder shall be paid an amount calculated set forth below:



12.3.1 If the City terminates this Agreement before commencing the Construction Phase, the Design-Builder shall be paid for the Design-Builder's Design Phase services provided to date as set forth in subsections 7.1.2 and 7.1.3, and a premium set forth below: [ ]

12.3.2 If the City terminates this Agreement after commencement of the Construction Phase, the Design-Builder shall be paid for the Construction Phase services provided to date pursuant to subsection 7.2.1 and a premium set forth below: [ ]

12.3.3 The City shall also pay to the Design-Builder fair compensation, either by purchase or rental at the election of the City, for all equipment retained. The City shall assume and become liable for obligations, commitments and unsettled claims that the Design-Builder has previously undertaken or incurred in good faith in connection with the Work or as a result of the termination of this Agreement. As a condition of receiving the payments provided under this article, the Design-Builder shall cooperate with the City by taking all steps necessary to accomplish the legal assignment of the Design-Builder's rights and benefits to the City, including the execution and delivery of required papers.

## 12.4 TERMINATION BY THE DESIGN-BUILDER

12.4.1 Upon seven (7) Days' written notice to the City, the Design-Builder may terminate this Agreement for any of the following reasons:

12.4.1.1 if the Work has been stopped for a thirty (30) Day period

- a. under court order or order of other governmental authorities having jurisdiction; or
- b. as a result of the declaration of a national emergency or other governmental act during which, through no act or fault of the Design-Builder, materials are not available;

12.4.1.2 if the Work is suspended by the City for thirty (30) consecutive Days;

12.4.1.3 if the City fails to furnish reasonable evidence that sufficient funds are available and committed for the entire cost of the Project in accordance with subsection 4.2 of this Agreement.

12.4.2 If the City has for thirty (30) Days failed to pay the Design-Builder pursuant to subsection 10.1.2, the Design-Builder may give written notice of its intent to terminate this Agreement. If the Design-Builder does not receive payment within seven (7) Days of giving written notice to the City, then upon seven (7) Days' additional written notice to the City, the Design-Builder may terminate this Agreement.

12.4.3 Upon termination by the Design-Builder in accordance with this section, the Design-Builder shall be entitled to recover from the City payment for all Work executed and for all proven loss, cost or expense in connection with the Work, plus all demobilization costs and reasonable damages. In addition, the Design-Builder shall be paid an amount calculated as set forth either in subsection 12.3.1 or 12.3.2, depending on when the termination occurs, and subsection 12.3.3.

## ARTICLE 13 DISPUTE MITIGATION AND RESOLUTION



**13.1 WORK CONTINUANCE AND PAYMENT** Unless otherwise agreed in writing, the Design-Builder shall continue the Work and maintain the approved schedules during any dispute mitigation or resolution proceedings. If the Design-Builder continues to perform, the City shall continue to make payments in accordance with the Agreement.

**13.2 DIRECT DISCUSSIONS** If the Parties cannot reach resolution on a matter relating to or arising out of this Agreement, the Parties shall endeavor to reach resolution through good faith direct discussions between the Parties' representatives, who shall possess the necessary authority to resolve such matter and who will record the date of first discussions. If the Parties' representatives are not able to resolve such matter within five (5) Business Days from the date of first discussion, the Parties' representatives shall immediately inform senior executives of the Parties in writing that resolution was not affected. Upon receipt of such notice, the senior executives of the Parties shall meet within five (5) Business Days to endeavor to reach resolution. If the dispute remains unresolved after fifteen (15) Days from the date of first discussion, the Parties shall submit such matter to the dispute mitigation and dispute resolution procedures selected herein.

**13.3 MITIGATION** If the Parties select one of the dispute mitigation procedures below, disputes remaining unresolved after direct discussions shall be directed to the selected mitigation procedure. The dispute mitigation procedure shall result in a nonbinding finding on the matter, which may be introduced as evidence at a subsequent binding adjudication of the matter, as designated in section 13.5. The Parties agree that the dispute mitigation procedure shall be:

☒ Project Neutral or  
☐ Dispute Review Board.

**13.3.1 MITIGATION PROCEDURES** The Project Neutral/Dispute Review Board (Neutral/Board) shall be mutually selected and appointed by the Parties and shall execute a retainer agreement with the Parties establishing the scope of the Neutral's/Board's responsibilities. The costs and expenses of the Neutral/Board shall be shared equally by the Parties. The Neutral/Board shall be available to either Party, upon request, throughout the course of the Project, and shall make regular visits to the Project so as to maintain an up-to-date understanding of the Project progress and issues and to enable the Neutral/Board to address matters in dispute between the Parties promptly and knowledgeably. The Neutral/Board is to issue nonbinding findings within five (5) Business Days of referral of the matter to the Neutral/Board, unless good cause is shown.

**13.3.2** If the matter remains unresolved following the issuance of the nonbinding finding by the mitigation procedure or if the Neutral/Board fails to issue nonbinding findings within five (5) Business Days of the referral, the Parties shall submit the matter to the binding dispute resolution procedure designated in section 13.5.

**13.4 MEDIATION** If direct discussions pursuant to section 13.2 do not result in resolution of the matter and no dispute mitigation procedure is selected under section 13.3, the Parties shall endeavor to resolve the matter by mediation through the current Construction Industry Mediation Rules of the American Arbitration Association (AAA), or the Parties may mutually agree to select another set of mediation rules. The administration of the mediation shall be as mutually agreed by the Parties. The mediation shall be convened within thirty (30) Business Days of the matter first being discussed and shall conclude within forty-five (45) Business Days of the matter first being discussed. Either Party may terminate the mediation at any time after the first session by written notice to the non-terminating Party and mediator. The costs of the mediation shall be shared equally by the Parties.



**13.5 BINDING DISPUTE RESOLUTION** If the matter remains unresolved after submission of the matter to a mitigation procedure or to mediation, the Parties shall submit the matter to the binding dispute resolution procedure selected below:

☒ [ X ] Arbitration using the current Construction Industry Arbitration Rules of the AAA or the Parties may mutually agree to select another set of arbitration rules. The administration of the arbitration shall be as mutually agreed by the Parties.

☐ [ ] Litigation in either the state or federal court having jurisdiction of the matter in the location of the Project.

**13.5.1 COSTS** The costs of any binding dispute resolution procedure and reasonable attorneys' fees shall be borne by the non-prevailing Party, as determined by the adjudicator of the dispute.

**13.5.2 VENUE** The venue of any binding dispute resolution procedure shall be the location of the Project unless the Parties agree on a mutually convenient location.

**13.6 MULTIPARTY PROCEEDING** All Parties necessary to resolve a matter agree to be parties to the same dispute resolution proceeding. Appropriate provisions shall be included in all other contracts relating to the Work to provide for the joinder or consolidation of such dispute resolution proceedings.

## **ARTICLE 14 MISCELLANEOUS**

**14.1 EXTENT OF AGREEMENT** Except as expressly provided, this Agreement is for the exclusive benefit of the Parties, and not for the benefit of any third party. This Agreement represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement and each and every provision is for the exclusive benefit of the City and Design-Builder and not for the benefit of any third- party.

**14.2 ASSIGNMENT** Except as to the assignment of proceeds, neither Party shall not assign its interest in this Agreement without the written consent of the other Party. The terms and conditions of this Agreement shall be binding upon both Parties, their partners, successors, assigns and legal representatives. Neither Party shall assign the Agreement as a whole without written consent of the other except that the City may assign the Agreement to a wholly-owned subsidiary of the City when the City has fully indemnified the Design-Builder or to an institutional lender providing construction financing for the Project as long as the assignment is no less favorable to the Design-Builder than this Agreement. In the event of such assignment, the Design-Builder shall execute any consent reasonably required. In such event, the wholly-owned subsidiary or lender shall assume the City's rights and obligations under the Contract Documents. If either Party attempts to make such an assignment, that Party shall nevertheless remain legally responsible for all obligations under the Agreement, unless otherwise agreed by the other Party.

**14.3 GOVERNING LAW** This Agreement shall be governed by the law in effect at the location of the Project.

**14.4 SEVERABILITY** The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

**14.5 NO WAIVER OF PERFORMANCE** The failure of either Party to insist, in any one or more instances, on the performance of any of the terms, covenants, or conditions of this Agreement,

or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right with respect to further performance.

14.6 TITLES The titles given to the articles and sections are for ease of reference only and shall not be relied upon or cited for any other purpose.

14.7 JOINT DRAFTING The Parties expressly agree that this Agreement was jointly drafted, and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

14.8 RIGHTS AND REMEDIES The Parties' rights, liabilities, responsibilities and remedies with respect to this Agreement, whether in contract, tort, negligence or otherwise, shall be exclusively those expressly set forth in this Agreement.

## ARTICLE 15 CONTRACT DOCUMENTS

15.1 CONTRACT DOCUMENTS The Contract Documents are as follows:

- (a) This Agreement.
- (b) Basis of Design/City's Program.
- (c) City provided information pursuant to section 3.7.4 and other City information identified as intended to be a contract document.
- (d) The Schematic Design Documents upon City approval pursuant to section 3.1.3.
- (e) The Design Development Documents upon City approval pursuant to section 3.1.5.
- (f) The Construction Documents upon City approval under section 3.1.6.
- (g) Other: .

15.2 ORDER OF PRECEDENCE In case of any inconsistency, conflict or ambiguity among the Contract Documents, the documents shall govern in the following order: (a) Change Orders and written amendments to this Agreement, including Amendment 1; (b) this Agreement; (c) design documents approved by the City pursuant to sections 3.1.3 - 3.1.6 in order of the most recently approved; (d) information furnished by the City pursuant to 3.7.4 or designated as a contract document in section 15.1; (e) other documents listed in this Agreement. Except as otherwise provided, among categories of documents having the same order of precedence, the term or provision that includes the latest date shall control. Information identified in one Contract Document and not identified in another shall not be considered a conflict or inconsistency.

CITY:

BY: \_\_\_\_\_ NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_

WITNESS: \_\_\_\_\_ NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_

DESIGN-BUILDER:

BY: \_\_\_\_\_ NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_



WITNESS: \_\_\_\_\_ NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_

END OF DOCUMENT.

DRAFT



**STANDARD SPECIFICATIONS  
INCORPORATION OF CITY OF ALBUQUERQUE STANDARD SPECIFICATIONS**

**ADDITIONAL PROVISIONS**

**The following additional provisions are also hereby made a part of the Contract Documents:**

**SECTION 4  
AFFIRMATIVE ACTION, EQUAL EMPLOYMENT  
OPPORTUNITY & NONDISCRIMINATION**

During the performance of this Contract, the DBT agrees as follows:

**4.1** The **DBT** will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, age, national origin or ancestry, or disability. The **DBT** will take affirmative action to ensure that applicants for employment are employed, and that during employment employees are treated without regard to their race, color, religion, sex, age, national origin or ancestry, or disability. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, recruitment advertising, layoff, termination, disciplinary actions and grievances, rates of pay or other forms of compensation, other terms and conditions of employment and selection for training, including apprenticeship. The **DBT** agrees to post, in conspicuous places available to employees and applicants for employment, notices to be provided by the City of Albuquerque Human Rights Office, setting forth the provisions of this nondiscrimination clause.

**4.2** The **DBT** will make reasonable accommodation to the known disability of an otherwise qualified employee or applicant for employment as required by law, under the New Mexico Human Rights Act, Sections 28-1-1 et seq., NMSA 1978.

**4.3** The **DBT** will in all solicitations or advertisements for employees placed by or on behalf of the **DBT**, state that all qualified applicants will receive consideration of employment without regard to race, color, religion, sex, sexual orientation, age, national origin or ancestry, or disability.

**4.4** The **DBT** will send to each labor union, organization, or representative of workers, with which it has a collective bargaining agreement or other contract or understanding, and training programs, a notice advising the labor union, organization or workers' representatives and training programs of its Equal Employment Opportunity (EEO) policy and request their cooperation in meeting its EEO obligations. The **DBT** shall post copies of the notice in conspicuous places available to employees, applicants for employment, and the general public.

**4.5** The **DBT** will comply with all provisions of the City of Albuquerque Human Rights Ordinance, Sections 11-3-1 et seq. ROA 1994; the New Mexico Human Rights Act, as



amended, Sections 28-1-1 et seq., NMSA 1978; and Title VII of the US Civil Rights Act of 1964, as amended. DBT's required by Section 5 of these Special Provisions to take affirmative action steps and/or to submit a written Affirmative Action Plan will follow the guidelines found in Executive Order 11246, as amended; Revised Order No. 4 (41 CFR part 60-2 or 60-4 as appropriate); 41 CFR Part 60-250 and 41 CFR Part 60-741 in the preparation of its Affirmative Action Plan and in the performance of its Affirmative Action/Equal Employment Opportunity duties under this Contract.

**4.6** The **DBT** will furnish to the City of Albuquerque Human Rights Office all information and reports required by the City of Albuquerque Human Rights Ordinance, Sections 11-3-1 et seq. ROA 1994; the New Mexico Human Rights Act, as amended, Sections 28-1-1 et seq., NMSA 1978; and Title VII of the US Civil Rights Act of 1964 as amended, and Executive Order 11246 as amended, and will permit access to its books, records, and accounts by the **City** and the City of Albuquerque Human Rights Office for purposes of review or investigation to ascertain compliance with such laws, rules, orders and regulations.

**4.7** The **DBT** will post in conspicuous places available to employees, applicants for employment and the general public, nondiscrimination notices issued by the City of Albuquerque Human Rights Office, and notices required to be posted by state and federal agencies.

**4.8** In the event of **DBT's** noncompliance with the nondiscrimination clauses of this Contract or with any other applicable laws, rules or orders pertaining to Affirmative Action/Equal Employment Opportunity and Nondiscrimination, this Contract may be cancelled, terminated or suspended in whole or in part, the **DBT** may be declared ineligible for further City contracts in accordance with procedures established by the City of Albuquerque, and such other sanctions as may be imposed and remedies invoked as otherwise provided by law.

**4.9** The **DBT** will include the provisions of Paragraphs 4.1 through 4.8 above in every subcontract or purchase order so that such provisions shall be binding upon every Subcontractor. The **DBT** shall take such action, with respect to any subcontract, as necessary to enforce such provisions, including sanctions provided for noncompliance.

**4.10** When the **DBT** delivers the executed Agreements to **City**, the **DBT** shall also submit to the City of Albuquerque Human Rights Office, a copy of the executed **AHRO Form CC-1**, DBT's List of Subcontractors/Suppliers, located on page **CLS-1** (goldenrod).

**4.11** In the event that a state or federal agency is providing funding for this Contract and has specific Affirmative Action/Equal Employment Opportunity and Nondiscrimination requirements, which are in conflict with these requirements, the specific state or federal requirements will govern.

**SECTION 5**  
**NOTICE TO DBT'S - ADDITIONAL AFFIRMATIVE ACTION**  
**AND EEO EMPLOYMENT DATA REQUIREMENTS**

In addition to the Affirmative Action/Equal Employment Opportunity and Nondiscrimination Requirements specified in Section 4, the requirements for specific affirmative actions, submitting affirmative action plans and for EEO employment data reporting for construction and non-construction contractors are as follows:

**5.1 Construction and Non-construction DBT's Affirmative Action/Equal Employment Opportunity Requirements**

**5.1.1** The **City** requires that each DBT shall submit with the DBT's Bid Proposal **AHRO Form CC-2**, Certification of Contractor Regarding Affirmative Action/Equal Employment Opportunity and Nondiscrimination, , and submit a copy of the Certification to:

City of Albuquerque Human Rights Office, Room 701  
Human Resources Department  
City County Building, One Civic Plaza NW  
P.O. Box 1293  
Albuquerque, New Mexico 87103  
Telephone: (505) 924-3387

**5.1.2** The City requires that DBT's and Subcontractors holding contracts or subcontracts of \$10,000 or more shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the DBT compliance with these requirements shall be based upon its effort to achieve maximum results from its actions. The DBT shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

**a)** Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the DBT employees are assigned to work. The DBT shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the DBT obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites in such facilities.

**b)** Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the DBT or its union have employment opportunities available, and maintain a record of the organization's responses.

**c)** Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or

female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the DBT by the union or, if referred, not employed by the DBT, this shall be documented in the file with the reason therefor, along with whatever additional actions the DBT may have taken.

**d)** Provide immediate written notification to the City of Albuquerque Human Rights Office when the union or unions with which the DBT has a collective bargaining agreement has not referred to the DBT a minority person or woman sent by the DBT, or when the DBT has other information that the union referral process has impeded the DBT efforts to meet its obligations.

**e)** Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the DBT employment needs. The DBT shall provide notice of these programs to the sources compiled under paragraph b above.

**f)** Disseminate the DBT EEO policy by providing notice of the policy to the unions and training programs and requesting their cooperation in assisting the DBT in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

**g)** Review, at least annually, the company's EEO policy and affirmative action obligations under these requirements with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

**h)** Disseminate the DBT EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the DBT EEO policy with other contractors and subcontractors with whom the DBT does or anticipates doing business.

**i)** Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the DBT recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or

other training by any recruitment source, the DBT shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of the DBT workforce.

k) Validate all tests and other selection requirements where there is an obligation to do so under 29 CFR Part 1607.

l) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for such opportunities, through appropriate training, etc.

m) Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the DBT's obligations under these requirements are being carried out.

**5.1.3** The City requires that Contractors and Subcontractors holding contracts or subcontracts of \$50,000 or more and having at least 50 employees shall submit to the City of Albuquerque Human Rights Office a written Affirmative Action Plan.

**5.2 Construction DBTs' EEO Employment Data Requirements.** The City requires that Construction Contractors and Subcontractors holding contracts, not including material suppliers, of \$10,000 or more, shall submit employment data as required in the City of Albuquerque Human Rights Office's **Form AHRO-EEO-1** (located immediately following this Section ) for every month during which work is performed. This data will be taken from the payroll week reflecting the highest employment for the company or firm for that month. This data is to be submitted to the City of Albuquerque Human Rights Office at the address set forth in Paragraph 5.1.1 above.

**5.3 Non-construction DBT's and Material Suppliers' EEO Employment Data Requirements.** The City requires that non-construction contractors and subcontractors (vendors, suppliers, professional services, security, lessee, etc.) holding contracts of \$10,000 or more, and material suppliers with purchase orders of \$10,000 or more, shall submit employment data as required in the City of Albuquerque Human Rights Office's **Form AHRO-EEO-2** (located immediately following this Section for every month during which work is performed. This data will be taken from the payroll week reflecting the highest employment for that month. This data is to be submitted to the City of Albuquerque Human Rights Office at the address set forth in Paragraph 5.1.1 above.

**5.4 DBT's Needing Assistance with the Affirmative Action/Equal Employment Opportunity and Nondiscrimination Requirements.** Contact the City of Albuquerque Human Rights Office at the address set forth in Paragraph 5.1.1 above.

## **APPENDIX A**

### **Certifications**

## CERTIFICATION OF AGREEMENT AND INSURANCE

We have reviewed the General Conditions, and all of the Request for Proposal documents, including, but not limited to, the included agreement and additional provisions which are required for RFP 7580.91 and hereby certify that we will, if selected for the project, enter into the standard agreement for this project and to be bound by all of the incorporated terms and conditions listed or incorporated therein. Offeror further acknowledges that the City may request further negotiation or clarification of a Proposal prior to entering into an agreement.

**Offeror** agrees that the attached Proposal Security is to become the property of the **Owner**, in the event the Agreement and bonds are not executed within the time specified in this Agreement, entered into as a result of this RFP, as liquidated damages for the delay and additional expenses caused the **Owner**.

In addition, Offeror agrees to complete or correct all punch list items attached to the Certificate of Substantial Completion within **the agreed upon number of** consecutive calendar days following the date of Substantial Completion.

As provided above, Offeror further agrees to pay as liquidated damages the amount of \$\_\_\_\_\_ for each consecutive calendar day beyond the agreed time that Substantial Completion is not achieved and \$\_\_\_\_\_ for each consecutive calendar day beyond the agreed time that all punch list items are not completed or corrected.

The undersigned, as **Offeror** hereby declares that the only persons or firms interested in the Proposal as principal or principals is or are named herein and that no other persons or firms than herein mentioned have any interest in this Proposal or in the Contract to be entered into; that this Proposal is made without collusion with any person, company, or parties making a bid or proposal; and that it is in all respects fair and in good faith without collusion or fraud.

**Affirmative Action/Equal Employment Opportunity and Nondiscrimination:** The **Bidder** hereby agrees if awarded the Contract, to comply with the Affirmative Action/Equal Employment Opportunity and Nondiscrimination requirements of the Special Provisions and to submit all information and reports required therein.

If requested, by the City, the Offeror agrees to furnish to the City all information and data necessary for the City to determine the ability of the City to perform the Work.

This Certification is intended for the use of the City of Albuquerque only, in conjunction

with the award of the Rail Yards Blacksmith Shop Interim Use Design-Build. Request for Proposals  
RFP # 7580.91:

\_\_\_\_\_  
Company Name of Offeror

\_\_\_\_\_  
NM Contractor's License No.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
License Classification(s)

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
NM Resident Contractor Number (attach copy of Certificate on back of this page)

\_\_\_\_\_  
Title

\_\_\_\_\_  
NM Dept. of Workforce Solutions  
Registration Number

Address:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
FAX Number

\_\_\_\_\_  
E-Mail Address

STATE OF NEW MEXICO       )  
  ) ss.  
COUNTY OF BERNALILLO    )

The above Certification was subscribed before me, the undersigned authority, by \_\_\_\_\_, who swore upon oath that this Certification was signed of free act and deed, on this \_\_\_\_\_ day of \_\_\_\_\_, (Year).



My Commission Expires:

---

Notary Public

**Addenda:**

The **Bidder** acknowledges receipt and incorporation of the following Addenda:

Addendum No. \_\_\_\_\_ Dated \_\_\_\_\_ Addendum No. \_\_\_\_\_ Dated \_\_\_\_\_

Addendum No. \_\_\_\_\_ Dated \_\_\_\_\_ Addendum No. \_\_\_\_\_ Dated \_\_\_\_\_

\_\_\_\_\_  
Company Name of Offeror

\_\_\_\_\_  
NM Contractor's License No.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
License Classification(s)

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
NM Resident Contractor Number (attach  
copy of Certificate on back of this page)

\_\_\_\_\_  
Title

STATE OF NEW MEXICO       )  
  ) ss.  
COUNTY OF BERNALILLO    )

The above Certification was subscribed before me, the undersigned authority, by \_\_\_\_\_, who swore upon oath that this Certification was signed of free act and deed, on this \_\_\_\_\_ day of \_\_\_\_\_, (Year).

\_\_\_\_\_  
Notary Public

My Commission Expires:

## **APPENDIX B**

### **WAGE DECISION**

**APPENDIX C**  
**BOND FORMS**

**PROPOSAL BOND FORM**  
**PERFORMANCE BOND FORM**  
**LABOR AND MATERIAL PAYMENT BOND FORM**

**Proposal Bond**

KNOW ALL MEN BY THESE PRESENTS:

THAT

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ as Principal, hereinafter called the Principal, and  
\_\_\_\_\_

\_\_\_\_\_, a corporation duly organized and existing under and by virtue of the laws of the State of \_\_\_\_\_ and authorized to do business in the State of New Mexico, as Surety, hereinafter called the Surety, are held and firmly bound unto the City of Albuquerque, New Mexico, as Obligee, hereinafter called the City, in the sum of \_\_\_\_\_

\_\_\_\_\_ Dollars (\$\_\_\_\_\_) for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted the accompanying Proposal dated \_\_\_\_\_, 19\_\_\_\_, for \_\_\_\_\_, which Proposal is by reference made a part hereof and is hereinafter referred to as the Proposal.

NOW, THEREFORE, the condition of this obligation is such that, if the City shall accept the Proposal of the Principal and the Principal shall enter into a Contract with the City in accordance with the terms of such Proposal, and give such bond or bonds as may be specified in the Request for Proposals with good and sufficient surety for the faithful performance of such contract and for the prompt payment of labor and material furnished in the prosecution thereof or in the event of this failure of the Principal to enter into such contract and give such bond or bonds, if the Principal shall pay to the City the difference not to exceed the penalty hereof between the amount specified in said Proposal and such larger amount for which the City may in good faith contract with another party to perform the work covered by said Proposal, then this obligation shall be null and void, otherwise to remain in full force and effect.

SIGNED AND SEALED this \_\_\_\_\_ day of \_\_\_\_\_,  
19\_\_\_\_.

ATTEST:

\_\_\_\_\_  
Principal

By: \_\_\_\_\_

\_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

\_\_\_\_\_  
Surety

By: \_\_\_\_\_

Title: \_\_\_\_\_