



**CONSTRUCTION MANAGER-AT-RISK (CMR)
SERVICES FOR SOUTH PADRE ISLAND
CONVENTION CENTER EXPANSION PROJECT
RFP # CMR-2024-03**

Proposals must be received before:

July 30, 2024

2:00 PM CST

City of South Padre Island

ATTN: City Secretary

4601 Padre Blvd.

South Padre Island, TX 78597

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GENERAL

The City of South Padre Island seeks to enter into an agreement with a qualified Individual, Firm, or Corporation (Proposer) with substantial and relevant experience and expertise to provide Construction Manager-At-Risk (CMAR) Services for the South Padre Island Convention Center Expansion Project.

DEFINITIONS

The following definitions shall be used to identify terms throughout this Request for Proposal:

A. AGREEMENT/CONTRACT

A mutually binding legal document obligating the Firm to furnish the goods or services specified within this solicitation and obligating the City to pay for the goods as specified.

B. RESPONSE/OFFER

A complete, properly signed response to this solicitation that, if accepted, would bind the Respondent to perform the resulting contract.

C. RESPONDENT/OFFERER

The Individual, Firm or Corporation (Proposer) that considers themselves qualified to provide the products specified herein, and are interested in making an offer to provide the goods to the City.

D. CITY

The City of South Padre Island, located in Cameron County, Texas.

E. CITY COUNCIL

The elected officials of the City of South Padre Island, Texas, given the authority to exercise such powers and jurisdiction of all City business as conferred by the City Charter and State Constitution and Laws.

F. FIRM

The successful Proposer of this request for proposal.

G. PIGGYBACK CONTRACT

A contract or agreement that has been competitively solicited in accordance with State of Texas statutes, rules, policies and procedures and has been extended for the use of state and local agencies that have entered (or will) into an Interlocal Agreement with the City.

H. PURCHASE ORDER

A purchase order records the financial obligation of the City to pay for goods or services properly received; therefore, a purchase order is also required for all contracts with an expenditure of funds entered into by the City Manager or City Council.

I. REQUEST FOR PROPOSAL (RFP)

This Solicitation document issued by the City containing terms, conditions and specifications for the products to be procured.

J. VENDOR/CONTRACTOR

Person or business enterprise providing goods or services to the City as fulfillment of obligations arising from an agreement pursuant to this request for proposal.

NOTICE TO PROPOSERS

A. NOTICE

Sealed proposals are due at **2:00 p.m. on July 30, 2024**, after which time all qualified responses will be opened and acknowledged at 4601 Padre Blvd, South Padre Island, Texas 78597. Proposals received after the specified deadline will be returned unopened.

Sealed proposals shall be clearly marked with the RFP number and title and addressed to the City of South Padre Island – City Secretary. Proposals shall be delivered using one of the following:

Hand-deliver to:	Mail to:	Ship to (FedEx, UPS, DHL):
4601 Padre Blvd	4601 Padre Blvd.	4601 Padre Blvd.
South Padre Island, TX 78597	South Padre Island, TX 78597	South Padre Island, TX 78597

Potential Respondents may receive notice of solicitations from the City of South Padre Island from a variety of channels. Approved methods of dissemination include: City of South Padre Island website or the City of South Padre Island City Secretary. The receipt of solicitations through any other means may result in the receipt of incomplete specifications or addenda which could ultimately render your proposal non-compliant. City of South Padre Island accepts no responsibility for the receipt or notification of solicitations through any other source.

B. QUESTIONS and INQUIRIES

Questions and inquiries about this Solicitation shall be submitted in writing to the following individual:

Blake Henry
Executive Director
Blake@sopadre.com

The deadline for written questions is July 19, 2024, **at @ 2:00 PM CST**. This deadline has been established in order to provide adequate time for City staff to prepare responses to questions from Proposers to the best of their ability.

Proposers shall not attempt to contact City Council members, City staff, or Management directly during the pre-proposal or post-proposal period. The City intends to respond to all appropriate questions or concerns; however, the City reserves the right to decline to respond to any question or concern. All material modifications, clarifications, or interpretations will be incorporated into an addendum, which will be publicly posted. All addenda issued prior to the due date and time for responses are incorporated into the RFP and must be acknowledged in the Proposal response. Only written information provided shall be binding. Oral or other interpretations shall not be binding and are held without legal effect.

C. SCHEDULE OF IMPORTANT DATES

The City will generally comply with the following schedule for the selection process, subject to changes necessary to ensure fairness and to accommodate unanticipated events:

Release RFP		July 1, 2024
Deadline for Questions and Inquiries	2:00 PM CST	July 19, 2024
Proposals Closing Date and Time	2:00 PM CST	July 30, 2024
City's Review of Proposals		August 2, 2024
Date for Finalist Interviews or Presentations (if any)		Aug 2024-If needed
Earliest Award by City		August/September 2024

D. FINALIST INTERVIEWS and/or PRESENTATIONS

Proposers reasonably subject to being selected based on the criteria set forth in this RFP may be given an opportunity to make a presentation and/or interview with the Selection Committee. **Finalists selected for interviews and/or presentations must be available during regular business hours on August 2024.** Following any presentation and/or interviews, proposals will be ranked in order of preference and contract negotiations will begin with the top ranked Firm. Should negotiations with the highest ranked Firm fail to yield a contract, or if the Firm is unable to execute the City's contract, negotiations will be formally ended and then commence with the second highest ranked Firm, etc. However, the City, may, in its sole discretion, negotiate and award a contract without presentations or interviews, based solely on information supplied in the proposal responses.

E. CERTIFICATION

This Solicitation includes a certification page. Respondent must:

1. Furnish complete name, mailing address, telephone number and email of the individual duly authorized to execute contractual documents on behalf of the Respondent.
2. Furnish name of individual(s), along with respective telephone numbers and email addresses, who will be responsible for answering all questions.
3. Certify that they have not conspired with any other potential Respondents in any manner to attempt to control competitive pricing.
4. Certify that they are duly qualified, capable and otherwise bondable business entity not in receivership or contemplating same, and has not filed bankruptcy.

F. EXCEPTIONS

Any deviations from terms, conditions or specifications contained herein must be clearly indicated in the Response to this Solicitation in writing at or before the due date and time. Any deviations or exceptions are subject to review by the City and may deem the Response disqualified or non-responsive. If no exceptions are stated, it will be understood that all general terms and conditions and specific requirements will be complied with, without exception.

G. DISCLOSURE OF INTERESTED PARTIES

Contracting hereunder may require compliance with §2252.908 Texas Government Code/Disclosure of Interested Parties for contracts that (1) require an action or vote by the City Council before the contract may be signed; or (2) has a value of at least \$1 million. The law provides that a governmental entity may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties to the governmental entity at the time the business entity submits the signed contract to the governmental entity or state agency.

The process as implemented by the Texas Ethics Commission ("TEC") is as follows:

1. The disclosure of interested parties must be performed using the [Texas Ethics Commission's electronic electronic filing application](#) listing each interested party of which the business entity is aware on Form 1295, obtaining a certification of filing number for this form from the TEC, and printing a copy of it to submit to the City.
2. The copy of Form 1295 submitted to the City must contain the unique certification number from the TEC. The form must be filed with the City pursuant to §2252.908 Texas Government Code, "at the time the business entity submits the signed contract" to the City.

The City, in turn, will submit a copy of the disclosure form to the TEC not later than the 30th day after the date the City receives the disclosure of interested parties from the business entity.

STANDARD TERMS and CONDITIONS

A. ADDENDA

If it becomes necessary to revise any part of this proposal, prior to the due date and time, a written addendum will be provided to all known interested Respondents. The City is not bound by any oral representations, clarifications, or changes made in the written specification by the City's employees, unless such clarification of change is provided to Respondents in written addendum form from the City.

Addenda will be transmitted to all that are known to have received a copy of the request for proposal and specifications. However, it shall be the sole responsibility of the Respondent to verify issuance of any addenda and to check all avenues of document availability prior to the opening date and time. Respondent shall provide written acknowledgment of all addenda.

B. ADVERTISING and PUBLICITY

Firm shall not advertise or otherwise publicize, without the City's prior written consent, the fact that the City has entered into the Agreement, except to the extent required by applicable law.

C. ASSIGNMENTS

The Agreement shall be binding upon and inure to the benefit of the City and the Firm, and their respective successors and assignees, provided however, that no right or interest in the Agreement shall be assigned and no obligation shall be delegated by the Firm without the prior written consent of the City. Any attempted assignment or delegation by the Firm shall be void unless made in conformity with this Paragraph. The Agreement is not intended to confer any rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there is no third party beneficiaries to the Agreement.

D. BUSINESS PRACTICES

Minority business enterprises and/or historically underutilized businesses will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, creed, sex, or national origin in consideration for an award.

E. CANCELLATION or TERMINATION

1. Termination For Cause:

In the event of default by the Firm, the City shall have the right to terminate the Agreement for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Firm, within such ten (10) day period cures such default, or provides evidence sufficient to prove to the City's satisfaction that such default does not, in fact, exist. In addition to any other remedies

available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses incurred by the City as a result of the Firm's default, including without limitation, cost of cover, reasonable attorneys' fees, court costs and prejudgment and post-judgment interest at the maximum lawful rate. Additionally, in the event of default by the Firm, the City may remove the Firm from the City's Vendor List and any Offer submitted by the Firm may be disqualified for up to three (3) years. All rights and remedies under the Agreement are cumulative and not exclusive of any other right or remedy provided by law.

2. Termination Without Cause:

The City shall have the right to terminate the Agreement, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Firm shall promptly cease all further work pursuant to the Agreement, with such exceptions, if any, specified in the notice of termination. The City shall pay the Firm, to the extent of funds appropriated or otherwise legally available for such purposes, for all products actually delivered and obligations incurred prior to the date of termination in accordance with the terms hereof.

3. Non-Appropriation:

The resulting Agreement is a commitment of the City's current revenues only. It is understood and agreed that the City shall have the right to terminate the Agreement if, for any reason, funds are not appropriated to continue this Agreement.

4. Cancellation:

The City reserves the right to cancel the Agreement for default for all or any part of the delivered portion of the deliverables if the Firm breaches any term hereof including warranties, or becomes insolvent or commits acts of bankruptcy. Such right of cancellation is in addition to and not in lieu of any remedies which the City may have in law or in equity.

F. CLAIMS

If a claim, demand, suit or other action is asserted against the Firm which arises under or concerns the Agreement, or which could have a material adverse effect on the Firm's ability to perform thereunder, the Firm shall give written notice to the City within ten (10) calendar days after receipt of notice by the Firm. Such notice to the City shall state the date of notification of any such claim, demand, suit or other action; the names and address of the claimant(s); the basis thereof; and the name of each person against whom such claim is asserted. Such notice shall be delivered to the City Manager, 4601 Padre Blvd, South Padre Island, TX 78597.

G. CODES, PERMITS, LICENSES

Firm shall comply with all federal, state and local standards, codes and ordinances, as well as other authorities that have jurisdiction pertaining to the products delivered and their application. None of the terms or provisions of the specification shall be construed as waiving any rules, regulations or requirements of these authorities. Firm shall be responsible for obtaining all necessary permits, certificates and/or licenses to fulfill contractual obligations to the City.

H. COLLUSION

Advanced disclosures of any information to any particular Respondent which gives that particular Respondent any advantage over any other interested Respondent in advance of the opening of bids, whether in response to advertising or an informal request for proposals, made or permitted by a member of the governing body or an employee or representative thereof, will cause to void all responses to that particular solicitation or request.

I. COMMUNICATION

To insure the proper and fair evaluation of this Proposal, the City prohibits ex parte communication (e.g., unsolicited) initiated by the Respondent to the City Official or Employee evaluating or considering the Responses prior to the time an award has been made. Communication between Respondents and the City will be initiated by the appropriate City Official or Employee in order to obtain information or clarification needed to develop a proper and accurate evaluation of the Proposal(s). Ex parte communication may be grounds for disqualifying the offending Respondent from consideration or award, or any future Solicitation.

Unless otherwise specified, all requests for clarification or questions regarding a Solicitation must be directed as provided herein.

J. CONFIDENTIALITY

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

K. DEFAULT

Firm shall be in default under the Agreement if the Firm (a) fails to fully, timely and faithfully perform any of its material obligations under the Agreement, (b) fails to fully, timely and faithfully perform any of its material obligations under any agreement Firm has with the City, (c) fails to timely pay any fees or taxes owed to the City, (d) becomes insolvent or seeks relief under the bankruptcy laws of the United States, or (e) makes a material misrepresentation in Respondent's Proposal, or in any report or deliverable required to be submitted by Firm to the City.

A Firm who abandons or defaults the work on the Agreement and causes the City to purchase the products elsewhere may be charged the difference in cost of products, if any, and may not be considered in the re-advertisement of the service and may be rejected as an irresponsible bidder and not considered in future Solicitations for the same type of commodity unless the scope of work is significantly modified.

L. DELAYS

The City may delay scheduled deliveries or other due dates by written notice to the Firm if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Agreement, the City and the Firm shall negotiate an equitable adjustment for costs incurred by the Firm in the Agreement price and execute an amendment to the Agreement. The Firm must assert its right to an adjustment within ten (10) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be

handled under the Dispute Resolution Process specified herein. However, nothing in this provision shall excuse the Firm from delaying the deliveries as notified.

M. DISCLOSURE

At the due date and time there will be no disclosure of contents of any Proposal to competing Proposers, and all Proposals will be kept confidential during the negotiation process. Except for trade secrets and confidential information which the Firm identifies as proprietary, all Proposals will be open for public inspection after the contract award.

N. DISCLOSURE OF PENDING LITIGATION:

Each Respondent shall include in its proposal a complete disclosure of any material civil or criminal litigation or pending investigation which involves the Respondent or in which the Respondent has been judged guilty.

O. DISPUTE RESOLUTION

If either the Firm or the City has a claim, dispute or other matter in question for breach of duty, obligations, services rendered or any warranty that arises under this Agreement, the parties shall first attempt to resolve the matter through this dispute resolution process. The disputing party shall notify the other party in writing as soon as practicable after discovering the claim, dispute or breach. The notice shall state the nature of the dispute and list the party's specific reasons for such dispute. Within ten (10) business days of receipt of the notice, both parties shall make a good faith effort, in person or through generally accepted means, to resolve any claim, dispute, breach or other matter in question that may arise out of, or in connection with, this Agreement. If the parties fail to resolve the dispute within sixty (60) days of the date of receipt of the notice of the dispute, then the parties may submit the matter to non-binding mediation upon written consent of authorized representatives of both parties in accordance with the Arbitration Rules of the American Arbitration Association or other applicable rules governing mediation then in effect. If the parties cannot resolve the dispute through mediation, then either party shall have the right to exercise any and all remedies available under law regarding the dispute.

P. FORCE MAJEURE

Neither party shall be liable for any default or delay in the performance of its obligations under this Agreement if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond reasonable control. In the event of default or delay in performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

Q. FRAUD

Fraudulent statements by the Respondent in the Proposal or in any report or deliverable required to be submitted by the Firm to the City shall be grounds for termination of the Agreement for cause by the City and may result in legal action.

R. GRATUITIES

The City may, by written notice to the Firm, cancel the Agreement without liability if it is determined by the City that gratuities were offered or given by the Firm or any agent or representative of the Firm to any officer or employee of the City with the intent of securing the Agreement or securing favorable treatment with respect to awarding or amending or the making of any determinations with respect to performance of the Agreement. In

the event the Agreement is cancelled by the City pursuant to this Section, the City shall be entitled, in addition to any other rights and remedies, to recover the benefits or payments to the Firm, as a result of the gratuities.

S. INDEPENDENT CONTRACTOR

Nothing in this Request for Proposal is intended to be construed as creating an employer/employee relationship, a partnership or joint venture. The Firm's services shall be those of an independent contractor. The Firm agrees and understands that the Agreement does not grant any rights or privileges established for employees of the City. Firm shall not be within protection or coverage of the City's Worker Compensation Insurance, Health Insurance, Liability Insurance or any other insurance that the City, from time to time, may have in force.

T. INDEMNITY

FIRM SHALL INDEMNIFY, HOLD HARMLESS, AND DEFEND THE CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF EVERY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY THE CONTRACTOR UNDER THIS CONTRACT. SUCH INDEMNITY SHALL APPLY REGARDLESS OF WHETHER THE CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, OR LIABILITY ARISE IN WHOLE OR IN PART FROM THE NEGLIGENCE OF THE CITY, ANY OTHER PARTY INDEMNIFIED HEREUNDER, THE CONTRACTOR, OR ANY THIRD PARTY.

U. INFRINGEMENT

Firm represents and warrants to the City that: (a) Firm shall provide the City good and indefeasible title to the deliverables and (b) the deliverables supplied by the Firm in accordance with the specifications of the Agreement shall not infringe, directly or contributory, any patent, trademark, copyright, trade secret or any other intellectual property right of any kind of any third party; that no claims have been made by a person or entity with respect to the ownership or operation of the deliverables and the Firm does not know of any basis for any such claims. Firm shall, at its sole expense, defend, indemnify and hold the City harmless from and against all liability, damages and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (a) any claim that the City exercises anywhere in the world of the rights associated with the City's ownership, and if applicable, license rights, and its use of the deliverable infringes the intellectual property rights of any third party; or (b) Firm's breach of any of the Firm's representations or warranties stated in this Agreement. In the event of any such claim, the City shall have the right to monitor such claim or, at its option, engage its own separate counsel to act as co-counsel on the City's behalf. Further, Firm agrees that the City's specifications regarding the deliverables shall in no way diminish Firm's warranties or obligations under this Paragraph, and the City makes no warranty that the products, development or delivery of such deliverables will not impact such warranties of Firm.

V. INSURANCE REQUIREMENTS

Upon request, Firm shall provide a copy of its insurance policies to the City.

W. INTERLOCAL AGREEMENT

Other governmental entities may be extended the opportunity to purchase from Solicitations awarded by the City, with the consent and agreement of the successful Firm(s) and the City. Such consent and agreement shall be conclusively inferred from lack of exception to this clause in Firm's Response. However, all parties indicate their understanding and all parties hereby expressly agree that the City is not an agent of, partner to or

representative of those outside agencies or entities and that the City is not obligated or liable for any action or debts that arise out of such independently negotiated piggyback procurements.

X. INTERPRETATION

The Agreement is intended by both parties as the final, complete and exclusive statement of the terms of their Agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Agreement. Although the Agreement may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner fair to both parties, reading no provision more strictly against one party of the other. Whenever a term defined by the Uniform Commercial Code (the "UCC"), as enacted by the State of Texas, is used in the Agreement, the UCC definition shall control unless otherwise defined in the Agreement.

Y. INVALIDITY

The invalidity, illegality or unenforceability of any provision of the Agreement shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace the stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent the entire Agreement from being void should a provision which is the essence of the Agreement be determined to be void.

Z. LIABILITY

Any person, firm or corporation party to the Agreement shall be liable for all damages incurred while in the performance of the Agreement. Firm assumes full responsibility for the terms contained herein and hereby releases, relinquishes, and discharges the City, its officers, agents and employees from all claims, demands and causes of action of any nature including the cost of defense thereof, for any injury to, including death of, any person whether that person be a third party, supplier or an employee of either of the parties hereto, and any loss of or damage to property, whether the same be that of either of the parties, caused by or alleged to have been caused by, arising out of or in connection with the issuance of the Agreement to the Firm and the negligence of the Firm, whether or not said claims, demands and causes of action in whole or in part are covered by insurance. Certificates of insurance may be required for, but not limited to, Commercial General Liability, Business Auto Liability, Workers Compensation and Professional Liability Insurance.

AA. LIENS

Firm shall defend, indemnify and hold the City harmless from and against any and all liens and encumbrances for all products delivered under this Agreement. At the City's request, the Firm or its subcontractors shall provide a proper release of all liens or satisfactory evidence of freedom from liens shall be delivered to the City.

BB. MANAGEMENT

Should there be a change in ownership or management, the Agreement may be canceled unless a mutual Agreement is reached with the new owner to continue the Agreement with its present terms, conditions and pricing. The Agreement is nontransferable by either party.

CC. NOTICES

Unless otherwise specified, all notices, requests or other communications required or appropriate to be given under the Agreement shall be in writing and deemed delivered three (3) business days after postmarked if sent by US Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means

shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, fax, or other commercially accepted means. Notices to the Firm shall be sent to the address specified in the Firm's proposal or at such other address as a party may notify the other in writing. Notices to the City shall be addressed to: City of South Padre Island, 4601 Padre Blvd., South Padre Island, TX 78597 and marked to the attention of the City Manager.

DD. OVERCHARGES

Firm hereby assigns to the City any and all claims for overcharges associated with this Agreement which arise under the antitrust laws of the United States, 15 USCA Section 1 et seq., and/or which arise under the antitrust laws of the State of Texas, *Business and Commerce Code Ann.*, Section 15.01, et seq.

EE. PAYMENT TERMS

1. Tax Exempt Status:

The City is exempt from all federal excise, state and local taxes unless otherwise stated in this document. The City claims exemption from all sales and/or use taxes under Texas Tax Code §151.309, as amended. Texas Limited Sales Tax Exemption Certificates are furnished upon request. Firm will not charge for such taxes. If billed, the City will not remit payment until a corrected invoice is received.

2. Invoicing Requirements:

Unless otherwise specified, all invoices shall be submitted to City of South Padre Island, Accounts Payable, 4601 Padre Island, South Padre Island, TX 78597, and issued as required by the Purchase Order or Agreement. ***Each invoice must reference the unique Purchase Order number, and include the Firm's complete name and remit to address.*** If applicable, transportation and delivery charges must be itemized on the each invoice.

3. Payment Terms:

All payments will be processed in accordance with Texas Prompt Payment Act, *Texas Government Code*, Subtitle F, Chapter 2251. The City will pay Firm within thirty days after acceptance of goods or services delivered, or the day of receipt of a correct invoice, whichever is later. The Firm may charge a late fee (fee shall not be greater than that permitted under the Texas Prompt Payment Act) for payments not made in accordance with this prompt payment policy; however, the policy does not apply to payments made by the City in the event: (a) there is a bona fide dispute between the City and Firm concerning the goods or services delivered, that causes the payment to be late; (b) the terms of a federal agreement, grant, regulation or statute prevents the City from making a timely payment with Federal funds; (c) there is a bona fide dispute between the Firm and a subcontractor and its suppliers concerning deliveries made, which caused the payment to be late; or (d) the invoice is not mailed to the City in strict accordance with instructions on the Purchase Order or Agreement, or other such contractual agreement.

4. Right To Audit:

The Firm agrees that the representatives of the City shall have access to, and the rights to audit, examine, or reproduce, any and all records of the Firm related to the performance under this Agreement. The Firm shall retain all such records for a period of four (4) years after final payment on this Agreement or until all audit and litigation matters that the City has brought to the attention of the Firm are resolved, whichever is longer. The Firm agrees to refund to the City any overpayments disclosed by any such audit.

5. Firm Pricing:

The price shall remain firm for the duration of the Agreement, or any extension period, unless expressly approved in writing. No separate line item charges shall be permitted for any extraneous charges. Firm further certifies that the cost proposal has been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other Respondent or with any competitor.

6. Price Warranty:

The Firm warrants the prices quoted are not materially higher than the Firm's current prices on orders by others for like deliverables under similar terms of purchase. In addition to any other remedy available, the City may deduct from any amounts owed to the Firm, or otherwise recover, any amounts paid for items materially in excess of the Firm's current prices on orders by others for like deliverables under similar terms of purchase.

7. Travel Expenses:

All travel, lodging and/or per diem expenses associated with providing the products specified must be included in the original Proposal. All travel expenses are subject to review by the City and documentation of actual itemized expenses may be requested. No reimbursement will be made without prior authorization, or for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed.

FF. PERSONAL INTEREST

No employee or City Council Member of the City may have any financial interest, directly or indirectly, in any proposed or existing agreement, purchase, work, sale or service to, for, with or by the City.

GG. PRIORITY OF DOCUMENTS

In the event there are inconsistencies between the general provisions and special (or other) terms and conditions contained herein, the latter will take precedence.

HH. PROHIBITED FIRMS

The City of South Padre Island prohibits conducting business with Firms under the following conditions:

1. Respondents who have failed to comply with their state contracts and have been debarred from doing business with the State of Texas.
2. Respondent who boycott Israel. By signing and submitting this bid, Respondent certifies that:
 - a. Respondent does not boycott Israel; and
 - b. Respondent will not boycott Israel during the term of the agreement.

II. PUBLIC INFORMATION

All Responses are subject to release as public information unless the Response or specific parts of the Response can be shown to be exempt from the Texas Public Information Act. Respondents are advised to consult with their legal counsel regarding disclosure issues and take the appropriate precautions to safeguard trade secrets or any other proprietary information. The City assumes no obligation or responsibility for asserting legal arguments on behalf of potential Respondents.

If a Respondent believes that a Response or parts of a Response are confidential, then the Respondent shall so specify. The Respondent shall stamp in bold red letters the term "**CONFIDENTIAL**" on that part of the Response, which the Respondent believes to be confidential. Vague and general claims as to confidentiality shall not be accepted. All Responses and parts of Responses that are not marked as confidential will be automatically considered public information.

JJ. REIMBURSEMENTS

There is no expressed or implied obligation for the City of South Padre Island to reimburse responding firms for any expenses incurred in preparing proposals in response to this Request for Proposal and the City will not reimburse responding firms for these expenses, nor will the City pay any subsequent costs associated with the provision of additional information or presentation, or to procure a contract for these goods or services.

A. REPRESENTATIONS and RESPONSIBILITIES

By submitting a proposal in response to this RFP, Proposer represents that it has carefully read and understands all elements of this RFP; has familiarized itself with all federal, state, and local laws, ordinances, and rules and regulations that in any manner may affect the cost, progress, or performance of the work; and has full knowledge of the scope, nature, quality and quantity of services to be performed.

By submitting a proposal in response to this RFP, the Proposer represents that it has not relied exclusively upon any technical details in place or under consideration for implementation by the City, but has supplemented this information through due diligence research and that the Proposer sufficiently understands the issues relative to the indicated requirements.

The failure or omission of Proposer to receive or examine any form, instrument, addendum, or other documents or to acquaint itself with existing conditions or other details shall in no way relieve any Proposer from any obligations with respect to its proposal or to the contract.

KK. RESERVATIONS

The City reserves the right to request clarification or additional information specific to any response after all Responses have been received and the solicitation due date has passed. Additionally, the City reserves the right to accept or reject all or part of any Response, waive any formalities or technical inconsistencies, delete any portion of the Scope of Work, or terminate the Solicitation when deemed to be in City's best interest.

LL. RESPONSES BECOME PROPERTY OF THE CITY

Submissions received in response to this Request for Proposal become the sole property of the City.

MM. RIGHT TO ASSURANCES

In the event the City, in good faith, has reason to question the intent of the Firm to perform, the City may demand written assurances of the intent to perform. In the event no written assurance is given within the time specified, the City may treat this failure as an anticipatory repudiation of the Agreement.

NN. SEVERABILITY

The invalidity or unenforceability of any provision herein shall not affect the validity or enforceability of any other provision.

OO. SURVIVABILITY OF OBLIGATIONS

All provisions of the Agreement that impose continuing obligations on the parties, including but not limited to the warranty, indemnity and confidentiality obligations of the parties, shall survive the expiration or termination of the Agreement.

PP. FIRM'S OBLIGATION

Firm shall fully and timely provide all deliverables described in this Solicitation, Firm's response must be in strict accordance with the terms, covenants and conditions of the Agreement and all applicable federal, state and local laws, rules and regulations.

QQ. VENUE

This Agreement is made under and shall be governed by the laws of the State of Texas, including when applicable, the UCC as adopted in Texas, VTCA, *Business & Commerce Code*, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. This Agreement is fully performable in South Padre Island, Texas, and the venue for any action related to this Agreement shall be South Padre Island, Texas. All issues arising from this Agreement shall be resolved in the courts of Cameron

County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or the ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein and does not waive the City's defense of sovereign immunity.

RR. WAIVER

No claim or right arising out of a breach of the Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Firm or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Agreement, or an express or implied acceptance of any other existing or future default(s), whether of similar or different character.

SS. WITHDRAWAL

Respondents may request withdrawal of a sealed Proposal prior to the scheduled opening time, provided the request for withdrawal is submitted to the City in writing.

BACKGROUND and CURRENT CIRCUMSTANCES

A. CITY of SOUTH PADRE ISLAND

The City of South Padre Island is a unique, friendly seaside resort community that values its residents and tourists, preserves and protects the natural environment, and provides for quality sustainable growth and development that is highly diverse and responsive to changing economic conditions. The City is located on a 34-mile-long sub-tropical Island in Cameron County, on the Gulf Coast of Texas, 25 miles north of the Mexican Border. The island is a half-mile wide at its widest point, and only its southernmost 5 miles are developed. The City was incorporated in 1973 and is linked to the Texas mainland by Texas' longest bridge. The 2.5-mile long, four-lane divided, toll-free Queen Isabella Causeway was completed in 1974. The City operates as a home rule law municipality under the laws of the State of Texas.

Tourism is the principal industry in the City, with an estimated 7 million visitors coming to the island annually. Water resources have been the dominant factor in the development of the City. The Gulf provides approximately 23 miles of beachfront in Cameron County, approximately 5 miles of which is situated in the City. As noted, the island has become popular for vacationers and retirees. The Gulf also provides a means for shipping cargo, fishing interests (both commercial and sporting), and boating. The body of water between South Padre Island and the mainland is the Laguna Madre, providing bay-front property for development. The US Army Corps of Engineers maintains the intercoastal waterway in the Laguna Madre as a water route for shipping.

B. CURRENT CIRCUMSTANCES

The City of South Padre Island wishes to increase the size of its current convention center facility, built in 1992 to accommodate larger groups and functions. They also wish to renovate the facility and conduct repairs and interior updates. Details of the proposed expansion are as follows:

- New 27,500 sq ft Exhibition Hall
- New 10,000 sq ft Ballroom

- 6,400 sq ft of additional meeting room space
- New 300 seat Black Box Theater
- Refurbished administration offices



SCOPE OF WORK

The proposed CMR firm will be required to provide the following services in support of the South Padre Island Convention Center Expansion Project.

- **Specs and Budgetary Information**
- The project shall be completed by Fall 2026 and has a construction budget of \$100 million

1.1 PRE-CONSTRUCTION SERVICES:

- 1.1.1 Establish the overall project budget
- 1.1.2 Develop an overall Management Plan and Critical Path Method (CPM) Management of critical design and construction dates in order to accomplish the state objective

1.2 SCHEMATIC DESIGN:

- 1.2.1 Prepare conceptual estimates
- 1.2.2 Obtain special surveys and soil readings as needed
- 1.2.3 Hold technical review sessions with Owner and Architect
- 1.2.4 Monitor evolving design and make suggestions with regard to equipment, material, and systems selections

- 1.2.5 Analyze the potential for use of systems components
- 1.2.6 Consult with the Owner and Architect on means and methods of construction
- 1.2.7 Review schematic design documents
- 1.2.8 Submit to the Owner and the Architect special inputs relative to time and cost control
- 1.2.9 Identify certain areas of phased construction
- 1.2.10 Prepare “trade-off” studies relative to value engineering
- 1.2.11 Revise a critical data schedule
- 1.2.12 Prepare a professional construction Critical Path Method (CPM) network for the issuance of bid packages

1.3 DESIGN DEVELOPMENT:

- 1.3.1 Prepare a detailed estimate based on available design drawings in a Construction Specific Institute (CSI) or subcontractor bid format.
- 1.3.2 Review the design development documents with the Owner and the Architect
- 1.3.3 Revise and update the critical data schedule
- 1.3.4 Prepare a market analysis regarding local suppliers and material
- 1.3.5 Develop and arrange pre-bid packages
- 1.3.6 Establish I-GMP

1.4 CONSTRUCTION DOCUMENTS:

- 1.4.1 Prepare and update estimates in the Construction Specific Institute (CSI) format at the 50%, 75%, and 100% working drawings stage
- 1.4.2 Review the drawings and specifications relative to bid packages
- 1.4.3 Develop bid package requirements
- 1.4.4 Schedule and conduct pre-bid conferences
- 1.4.5 Review and analyze bids
- 1.4.6 Update project budget and schedule consistent with actual bids
- 1.4.7 Develop a detailed CPM network schedule
- 1.4.8 Provide a Guaranteed Maximum Price for the project

1.5 CONSTRUCTION PHASE SERVICES:

- 1.5.1 Manage the GMP documentation, including:
 - Detailed quantity surveys, pricing
 - Procurement strategy and implementation

1.6 ESTABLISH THE BUDGET BY BID PACKAGE:

- 1.6.1 Prepare a detailed schedule derived from detailed quantities for each bid package to satisfy milestones

1.7 SITE UTILIZATION STUDY:

- 1.7.1 Coordinate mobilization and plan logistical requirements
- 1.7.2 Project office and material staging locations
- 1.7.3 Ingress, egress
- 1.7.4 Security requirements of owner

1.8 PREPARE SUBCONTRACTOR BID PACKAGES, INCLUDING:

- 1.8.1 Project Manual, outlining the requirements of the construction
- 1.8.2 Schedule (by bid package interface)
- 1.8.3 Detailed scope of work
- 1.8.4 Detailed document listing
- 1.8.5 Proposal forms for each bid package
- 1.8.6 Form of contract and purchase order forms
- 1.8.7 Insurance requirements
- 1.8.8 Bonding requirements
- 1.8.9 Prequalification of bidders
- 1.8.10 Other special requirements

1.9 CONDUCT PRE-BID MEETING FOR BID PACKAGE, ADDRESSING:

- 1.9.1 Project requirements
- 1.9.2 Document review for specific questions
- 1.9.3 Sequence/schedule review
- 1.9.4 Site restrictions
- 1.9.5 Other questions raised during discussions

1.10 RECEIVE BID:

- 1.10.1 Advertise or solicit for bids
- 1.10.2 Conduct bid opening
- 1.10.3 Prepare bid tabulation for bid package
- 1.10.4 Review proposals for compliance with contract documents
- 1.10.5 Review apparent low bidders' qualifications, past experience and liquidity

1.11 CONDUCT PROPER AWARD OF CONTRACTS/PURCHASE ORDERS:

- 1.11.1 Conduct pre-award meetings
- 1.11.2 Review schedule of values
- 1.11.3 Review subcontractors' general conditions
- 1.11.4 Review scope of work
- 1.11.5 Identify shop drawing requirements
- 1.11.6 Perform document review and specifications review

1.12 REVIEW CONTRACTORS' PERSONNEL:

- 1.12.1 Project Managers, Superintendents, and Foremen
- 1.12.2 Implement Partnering Program if owner elects to do so
- 1.12.3 Establish quality requirements and standards
- 1.12.4 Review sequence and Schedule
- 1.12.5 Identify accounting requirements
- 1.12.6 Review insurance requirements
- 1.12.7 Review safety and security requirements
- 1.12.8 Recommend award of contract

1.13 PREPARE AND ISSUE AS CONSTRUCTION MANAGER (or for the Owner):

- 1.13.1 Contracts
- 1.13.2 Purchase orders
- 1.13.3 Rental agreements
- 1.13.4 Budget adjustments for all transactions
- 1.13.5 Computerized accounting for tracking and projections

1.14 PROVIDE COORDINATION AND MANAGEMENT OF SUBCONTRACTORS:

- 1.14.1 Establish site organization, including work and storage areas
- 1.14.2 Establish jobsite management organization and jobsite procedures
- 1.14.3 Maintain daily log for jobsite record
- 1.14.4 Provide general conditions work to meet project requirements
- 1.14.5 Prepare and issue change orders and contracts
- 1.14.6 Prepare subcontractor change orders and contracts
- 1.14.7 Monitor construction cost and projections
- 1.14.8 Prepare and maintain cash flow projection for Owner
- 1.14.9 Monitor and maintain quality control
- 1.14.10 Shop drawing control
- 1.14.11 Equipment and material control
- 1.14.12 Provide and monitor overall progress and short interval scheduling
- 1.14.13 Prepare billings and progress payments
- 1.14.14 Conduct subcontractor coordination meetings
- 1.14.15 Prepare and receive requests for information
- 1.14.16 Prepare agendas and conduct weekly safety and progress meeting
- 1.14.17 Prepare and distribute weekly safety and progress meeting minutes
- 1.14.18 Establish subcontractor progress payment procedure for processing and payment
- 1.14.19 Monitor subcontractor pay applications

1.15 MONTHLY REPORT:

- 1.15.1 Summarize project financial status
- 1.15.2 Review and summarize past month's construction performance
- 1.15.3 Project the coming month's construction activities
- 1.15.4 Present status report on change orders - delays and time extensions
- 1.15.5 Identify problems that threaten construction quality, cost and schedule

1.16 PROVIDE CHANGE ORDER CONTROL:

- 1.16.1 Implement system for change orders
- 1.16.2 Allocate change order responsibilities
- 1.16.3 Review change order requests from subcontractors
- 1.16.4 Negotiate change orders with subcontractors
- 1.16.5 Submit recommendations to Owner

1.17 ESTABLISH A QUALITY MANAGEMENT PROGRAM:

- 1.17.1 All members of the team participate in the quality control effort
- 1.17.2 Project Scope Review:
 - Intended purpose

- Are the project needs met
 - Existing conditions reviewed
 - Future needs
- 1.17.3 Incorporate of Restrictive Conditions in documentation to include:
- Social environment, influence of neighbors, environmental impact
 - Natural conditions, grounds and peripherals
 - Research on legal requirements
 - Research on existing structures, facilities
- 1.17.4 Review of Design Development for:
- Complete construction documents in the order they are to be purchased and constructed
 - Complete documents for pre-purchased equipment
 - Design compatibility with future operation and maintenance
 - Constructability
- 1.17.5 Recommend selection, monitor, and assist outside testing and inspection agencies:
- Underground piping
 - Soils
 - Concrete
 - Rebar
 - Miscellaneous steel
 - Structural steel
 - Mechanical systems
 - Electrical
 - Life safety systems
 - Energy management systems
 - Others as required
- 1.17.6 Work with area superintendents of subcontractors:
- Prepare operations to minimize quality control problems
 - Require formalized quality management program from subcontractors
 - Ensure conformance to project's quality standards previously established
 - Follow-up to assure correction of deficiencies on test reports

1.18 ACCOUNTING:

- 1.18.1 Insurance requirements
- 1.18.2 Schedule of values review
- 1.18.3 Labor cost reports
- 1.18.4 Material cost reports
- 1.18.5 Unit cost reports
- 1.18.6 Monthly detail cost sheet
- 1.18.7 Monthly job costs
- 1.18.8 Accounts payable
- 1.18.9 Monthly project billing
- 2.18.10

1.19 JOB SAFETY:

- 1.19.1 Conduct weekly safety meeting:
 - Implement project safety requirements

- Review subcontractor safety programs
- 1.19.2 Subcontractor conformance, initiate knowledge of OSHA requirements:
- Subcontractor responsible for costs and damages
 - Submission of accident and injury reports
 - Subcontractor safety programs
 - Require subcontractor safety representative
 - Require forty-eight hour reports
 - Require weekly tool box safety meeting
 - Maintain safety meeting minutes
 - Inform subcontractors of procedures
 - Enforce alcohol and drug programs by subcontractors
 - Implement and maintain clean-up

1.20 JOBSITE SECURITY:

- 1.20.1 Monitor and control employee vendor and public access to the jobsite
- 1.20.2 Monitor and control material and equipment deliveries to the jobsite
- 1.20.3 Monitor and control material and equipment being removed from jobsite - material release form
- 1.20.4 Monitor and control site traffic
- 1.20.5 Monitor and perform periodic checks for alcohol and drugs
- 1.20.6 Monitor and control tools
- 1.20.7 Monitor material storage
- 1.20.8 Monitor trailers and all equipment within
- 1.20.9 Maintain proficiency first-aid and CPR programs

1.21 HUMAN RESOURCES:

- 1.21.1 As construction managers we provide assistance and policies on Equal Employment Opportunity, minority and women-owned business enterprises, sexual harassment or discrimination, drug abuse program, labor relations, employment transfers or reassignments and assuring proper personnel for project requirements

1.22 PROJECT POST CONSTRUCTION SERVICES:

- 1.22.1 Provide operating and maintenance manuals
- 1.22.2 Secure and assemble warranties or guarantees
- 1.22.3 Provide check-out of equipment
- 1.22.4 Instruct operating personnel in equipment operating and maintenance procedures
- 1.22.5 Assist in actual start-up of equipment
- 1.22.6 Implement close-out procedures and ensure requirements are met:
 - Subcontractors' and vendors' final payment
 - Resolution of claims
 - Final change orders
 - Lien releases
 - Final lien waivers
 - Consent of sureties
 - Assist Owner in enforcement of warranties or guaranties

1.22.7 Conduct walk-through with Owner and Contractor after 1 year

SUBMISSION REQUIREMENTS

The City will not accept oral proposals, or proposals received by telephone or FAX machine. Proposals must be prepared simply and economically, providing a straightforward, concise description of Proposer's ability to meet all requirements and specifications of this RFP. Emphasis should be focused on completeness, clarity of content and responsiveness to all requirements and specifications of this RFP.

The proposal must be submitted in hard copy. Proposer shall submit 1 original and 3 copies of the entire proposal, plus 1 digital copy (on CD, DVD or thumb drive).

The City of South Padre Island requires comprehensive responses to every section within this RFP. To facilitate the review of the responses, Respondents shall follow the described format. The intent of the proposal format is to expedite review and evaluation. It is not the intent to constrain Proposers with regard to content, but to assure that the specific requirements set forth in this RFP are addressed in a uniform manner amenable to review.

TAB A FIRM BACKGROUND

1. Briefly introduce your Firm including the number of years in business
2. Provide a summary of the administration, organization and staffing of your Firm, including multiple offices, if applicable
3. Include the same for any associate firm or sub-consultant

TAB B PROJECT EXPERIENCE and QUALIFICATIONS

1. Describe at least three (3) projects that are complementary in nature to this project. References for each project should be included (preferably other City, town or local governments in Texas that the proposer has provided services to).
2. Describe the experience of the Firm in the last thirty-six (36) months in performing services of similar scope and size.
3. Identify the Project Manager and each individual who will work as part of this engagement. Include resumes for each person to be assigned. Include any professional designations and affiliations, certifications and licenses, etc.
4. Provide an organizational chart indicating positions and name of the core management team that will undertake this engagement.

TAB C METHODOLOGY and TECHNICAL APPROACH

1. Provide a narrative description of the Firms' plan to accomplish the work and services to be provided to the City.
2. Clearly acknowledge your understanding of the scope of work, including a detailed approach to completing this project in a phase by phase fashion, including the time frame expected to complete each phase and staff assignments for each phase of the project.
3. Provide suggestions and ideas for completing this project in an efficient, effective and innovative manner.
4. Clearly identify materials and knowledge resources that the Firm will need from the City to complete this project.
5. Identify progress reports that will be made available during the process and key decision points.

6. Clearly distinguish the Firms' duties and responsibilities and those of the City. Absence of this distinction shall mean the Firm is assuming full responsibility for all tasks.

TAB D COST PROPOSAL

1. Provide a detailed cost proposal broken down by task or phase. The City may elect to complete any combination of tasks or phases. Indicate any cost savings available by completing one or more or any combination of tasks or phases.
2. Travel and other reimbursable fees must be estimated and submitted separately from professional fees.
3. The actual contract amount will be negotiated after the Firm has been selected and the scope of work finalized.

TAB E COMMENTS/CHANGE REQUESTS to STANDARD FORM of AGREEMENT

A copy of the City's Standard Form of Agreement (SFA) is attached to the RFP. Please provide any comments or change requests to the Agreement with the proposal submittal. Failure to submit requested changes will affirm that the Firm willing to execute the Agreement without modification.

TAB F CERTIFICATION and ACKNOWLEDGEMENT PAGE

EVALUATION and SELECTION PROCESS

The City has attempted to provide a comprehensive statement of requirements through this RFP for the work contemplated. Written proposals must present Proposer's qualifications and understanding of the work to be performed. Proposers are asked to address each evaluation criteria and to be specific in presenting their qualifications. Proposals must be as thorough and detailed as possible so that the City may properly evaluate capabilities to provide the requested goods or services.

Selection may be made of one or more Proposers deemed to be fully qualified and best suited among those submitting proposals. Presentations and/or interviews may be conducted by one or more Proposers selected. The City reserves the right to award based on the responses received or to negotiate with any or all of the Proposers selected. Price shall be considered, but shall not be the sole determining factor. The City shall select the Proposer which, in the City's opinion, has made the Proposal most beneficial to the City for award. Should the City determine in writing and in its sole discretion that only one Proposer is fully qualified or that one Proposer is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that Proposer. The executed Agreement will incorporate all the requirements, terms and conditions of the solicitation and the Proposer's proposal as negotiated.

The City has established specific, weighted criteria for selection. This section presents the evaluation criteria, description, and relative weight assigned to each (100 points maximum). The City will evaluate each Proposer's responses to the requirements contained in this RFP.

Firms must provide comprehensive responses to every section within this RFP in the described format. It is not the intent of the City to constrain Firms with regard to content, but to assure that the specific requirements set forth in this RFP are addressed in a uniform manner amenable to review and evaluation. Failure to do so may result in your Proposal being disqualified from further review and consideration.

By submission of a proposal, Proposer acknowledges acceptance of the evaluation process, the evaluation criteria, scope of work, approach and methodology, and all other terms and conditions set forth in this RFP. Further, Firms acknowledge that subjective judgements must be made by the City during this process.

The City makes no guarantees or representations that any award will be made and reserves the right to cancel this solicitation for any reason, including:

- Reject any and all proposals received as a result of this RFP.
- Waive or decline to waive any informality and any irregularities in any proposal or responses received.
- Negotiate changes in the Scope of Work or services to be provided.
- Withhold the award of contract(s).
- Select Proposer(s) it deems to be most qualified to fulfill the needs of the City. Proposer(s) with the lowest priced proposal(s) will not necessarily be selected, since a number of criteria other than price are important in the determination of the most acceptable proposal(s).
- Terminate the RFP process.

NOTE: If partnering up with another firm on this project, you must complete sections 2.1 thru 2.2.3 for both firms

2.1 General Information:

- 2.1.1 Provide a summary of the history, present status, and future vision of your firm.
- 2.1.2 How many years has your firm been in business providing CMR services?
- 2.1.3 Describe your firm's organizational structure
 - 2.1.3.1 How many full-time employees?
 - 2.1.3.2 How many registered professionals by category?
 - 2.1.3.3 All office locations
 - 2.1.3.4 Describe the specific organizational structure that will directly support this project
- 2.1.4 Describe the complete range of services and capabilities your firm offers.
- 2.1.5 What types of CMR services require a consultant outside the capabilities of your firm?

2.2 Financial Information/ Claims and/or Litigations/ Bonding:

- 2.2.1 Provide a letter of financial solvency from your bank.
- 2.2.2 Identify any bankruptcy filings by the firm (or any former name under which the firm operated) since 2000. The selected firm will be required to provide the firm's most recent financial statements or 10-K report (if a public corporation).
- 2.2.3 List all claims and/or litigations against or involving the firm or its agents or employees in regard to professional service activities with respect to any work performed within the past twenty (20) years.
- 2.2.4 Provide a letter from your surety company indicating your company is able to acquire bonding for an \$100 million project.

2.3 Firm Experience and References: (30 Pts.)

- 2.3.1 Provide a list in descending order of value of **ALL** completed or ongoing construction projects of similar type and complexity where your firm was responsible for providing CMR services as a procurement method. **Do not omit any projects.** Ongoing projects less than 75% completed will not qualify to receive points. Provide an appendix of supplemental information for each project. **(30 Pts.)**

Customer & Owner Name Address City, State, Zip	Contact Name/Phone Number/Email	Detailed Description of Project	Total Construction Cost	Date of completion or ongoing %	Is this a Repeat Client? Yes or No	Prototype Design Yes or No	LEED Certified Project	Architect of record
Firm 123 Street City, State, Zip	Mr. Smith 956-555-0000 MrSmith@firm.com	XYZ Service Center 10,000 sq ft	\$3,000,000	07/11/2009	Yes	No	Yes	XYZ Architects & Associates

Scoring: Points will be assessed as follows:

NOTE: Size, type and complexity is defined as 12,000 SF and above for the building size and/or \$10 million and above for the estimated construction budget and other information found in the scope of work.

- Offerors with 5 or more Construction projects of at least similar size, type and complexity to this project will receive maximum points.
- Offerors with 4 Construction projects of at least similar size, type and complexity to this project will receive 80% of the maximum points.
- Offerors with 3 Construction projects of at least similar size, type and complexity to this project will receive 60% of the maximum points.
- Offerors with 2 Construction projects of at least similar size, type and complexity to this project will receive 40% of the maximum points.
- Offerors with 1 Construction project of at least similar size, type and complexity to this project will receive 20% of the maximum points.
- Offerors with 0 Construction projects of at least similar size, type, and complexity to this project will receive 0% of the maximum points.

2.3.2 The City of South Padre Island will contract references listed in section 2.3.1.

2.3.3 Change Order

2.3.3.1 Identify the original contract amount and provide a list of all change orders for each project listed in section 5.3.1 using the following format.

Project Name:
Original Contract amount:

Change Order #	Change Order Description	Change Order Amount
1		
2		

2.3.4 Major Subcontractors

For each project in section 5.3.1., using the sample format below provide the name(s) of the major subcontractors used for each of the following categories.

- Mechanical
- Electrical
- Plumbing
- Masonry

- Concrete Foundation
- Roofing

Project Title: South Padre Island Convention Center Expansion Project	
Category Name	Name of the Subcontractor
Mechanical	ABC Mechanical Co.
Electrical	XYZ Electrical Co.
Plumbing	123 Plumbing Co.

2.4 Proposed Project Manager Experience: (15 Pts.)

2.4.1 Provide the name and qualifications of the proposed project manager that will work directly with the CITY OF SOUTH PADRE ISLAND. Using the headings and sample format below, provide a list in descending order of value of completed or ongoing Construction projects of similar type, and complexity where the identified individual served as the project manager. Ongoing projects less than 75% completed will not qualify to receive points. **(15 Pts.)**

Customer & Owner Name Address City, State, Zip	Contact Name/Phone Number/Email	Detailed Description of Project	Total Construction Cost	Date of completion or ongoing %	Is this a Repeat Client? Yes or No	Prototype Design Yes or No	LEED Certified Project	Architect of record
Firm 123 Street City, State, Zip	Mr. Smith 956-555-0000 MrSmith@firm.com	XYZ Service Center 10,000 sq ft	\$3,000,000	07/11/2009	Yes	No	Yes	XYZ Architects & Associates

Scoring: Points will be assessed as follows:

NOTE: Size, type and complexity is defined as 12,000 SF and above for the building size and/or \$10 million and above for the estimated construction budget and other information found in the scope of work.

- Offerors with 5 or more Construction projects of at least similar size, type and complexity to this project will receive maximum points.
- Offerors with 4 Construction projects of at least similar size, type and complexity to this project will receive 80% of the maximum points.
- Offerors with 3 Construction projects of at least similar size, type and complexity to this project will receive 60% of the maximum points.
- Offerors with 2 Construction projects of at least similar size, type and complexity to this project will receive 40% of the maximum points.
- Offerors with 1 Construction project of at least similar size, type and complexity to this project will receive 20% of the maximum points.
- Offerors with 0 Construction projects of at least similar size, type, and complexity to this project will receive 0% of the maximum points.

2.5 Proposed Project Superintendent: (25 Pts.)

2.5.1 Provide the name and qualifications of the project superintendent that will work directly with the CITY OF SOUTH PADRE ISLAND. Using the headings and sample format below, provide a list in descending order

of value of completed or ongoing Construction projects of similar type, and complexity where the identified individual served as the project superintendent. Ongoing projects less than 75% completed will not qualify to receive points. **(25 Pts.)**

Customer & Owner Name Address City, State, Zip	Contact Name/Phone Number/Email	Detailed Description of Project	Total Construction Cost	Date of completion or ongoing %	Is this a Repeat Client? Yes or No	Prototype Design Yes or No	LEED Certified Project	Architect of record
Firm 123 Street City, State, Zip	Mr. Smith 956-555-0000 MrSmith@firm.com	XYZ Service Center 10,000 sq ft	\$3,000,000	07/11/2009	Yes	No	Yes	XYZ Architects & Associates

Scoring: Points will be assessed as follows:

NOTE: Size, type and complexity is defined as 12,000 SF and above for the building size and/or \$10 million and above for the estimated construction budget and other information found in the scope of work.

- Offerors with 5 or more Construction projects of at least similar size, type and complexity to this project will receive maximum points.
- Offerors with 4 Construction projects of at least similar size, type and complexity to this project will receive 80% of the maximum points.
- Offerors with 3 Construction projects of at least similar size, type and complexity to this project will receive 60% of the maximum points.
- Offerors with 2 Construction projects of at least similar size, type and complexity to this project will receive 40% of the maximum points.
- Offerors with 1 Construction project of at least similar size, type and complexity to this project will receive 20% of the maximum points.
- Offerors with 0 Construction projects of at least similar size, type, and complexity to this project will receive 0% of the maximum points.

2.6 Offeror’s past performance with the Education Service Centers/District and/or other public entity: (5 Points)

2.6.1 Provide a list of all projects performed with Education Service Centers/Districts and/or other public entities. Include project name, date completed, and total value of project.

Scoring: Point will be assessed as follows:

- Points will be assessed on a scale of 0 through 5 with 5 being superior performance that was beyond expectations.

2.7 Proposal Fee: (5 Points)

2.7.1 PRE-CONSTRUCTION SERVICES FEE:

Provide a list identifying all pre-construction services offered. State the proposed pre-construction phase fee as a Lump Sum.

\$ _____

2.7.2 GENERAL CONDITIONS:

Provide your General Conditions cost for the following items but not limited to:

- Supervision
- Project Manager/Superintendent
- Purchasing Agent
- Any Per Diems or Travel/Living costs
- Job Site Mobilization
- Job Site Offices
- Job Storage
- Temporary Toilets
- Temporary Utilities
- Temporary Fencing
- Job Site Signs
- Office Supplies
- Plan Reproduction/Printing Fees
- Postage
- Internet/Phone/Fax/Printing/Cell Phones
- Security/Safety
- Insurance
- Bonding
- Survey and Layouts
- Misc. Tools and Equipment
- Vehicles
- Fuel and Maintenance
- Equipment Rentals
- General Cleanup
- Waste Handling
- Labor Burden
- Any other fees not listed above

Provide a lump sum for General Conditions for the CMR's Construction Phase of the project.
\$ _____

The evaluation of the proposed price will be evaluated as follows:

Lowest responsive and responsible offer will receive maximum points. Each offeror's price proposal over 1% of the lowest responsive and responsible proposed price will receive a deduction of **0.1** point up to a maximum of 50% over the lowest price. Proposed Prices over 50% of the lowest evaluated price will receive 0 points.

EXAMPLE:

Use 50% on price

Use a straight pro-rated formula

Example: The low bidder gets 5 points	=	5.0
1% above low bidder gets	=	4.9
2% above low bidder gets	=	4.8
3% above low bidder gets	=	4.7

4% above low bidder gets	=	4.6
5% above low bidder gets	=	4.5

2.8 Interview: (20 Points)

2.8.1 The evaluation committee will interview the target top five or less respondents by asking a series of set questions and evaluating the answers.

Scoring: Scores will be assessed on a scale of 1-5 using the following:

- 1 - Unsatisfactory
- 2 - Below Expectations
- 3 - Meets Expectations
- 4 - Exceeded Expectations
- 5 - Clearly Outstanding

Points will be awarded by taking the assessed score divided by five (5) multiplied by 20.



CERTIFICATION and ACKNOWLEDGMENT

The undersigned affirms that they are duly authorized to submit this Proposal, that this Proposal has not been prepared in collusion with any other Respondent, and that the contents of this Proposal have not been communicated to any other Respondent prior to the official opening. To the extent this Contract is considered a Contract for goods or services subject to § 2270.002 Texas Government Code, Respondent certifies that it: i) does not boycott Israel; and ii) will not boycott Israel during the term of the Agreement.

Signed By: _____ Title: _____

Typed Name: _____ Company Name: _____

Phone No.: _____ Fax No.: _____

Email: _____

Bid Address: _____
P.O. Box or Street City State Zip

Order Address: _____
P.O. Box or Street City State Zip

Remit Address: _____
P.O. Box or Street City State Zip

Federal Tax ID No.: _____

DUNS No.: _____

Date: _____

EXHIBIT A
STANDARD FORM OF AGREEMENT

PROFESSIONAL SERVICES CONTRACT
(Construction Manager at Risk)

This Contract is between the **City of South Padre Island**, a Texas home-rule municipal corporation, (the “City”) and _____, a Texas corporation (the “Consultant”), whereby the Consultant agrees to provide the City with certain professional services as described herein and the City agrees to pay the Consultant for those services.

ARTICLE I
Scope of Services

1.01 In consideration of the compensation stated in paragraph 2.01 hereinbelow, the Consultant agrees to provide the City with the professional services as described in **Exhibit “A”**, the Scope of Services, which is incorporated herein by reference for all purposes, and which services may be more generally described as follows: Project programming, preparing schematics, design development, preparing construction documents and construction administration for _____ located at _____ in South Padre Island, Texas (the “Project”).

ARTICLE II
Payment

2.01 In consideration of the Consultant’s provision of the professional services in compliance with all terms and conditions of this Contract, the City shall pay the Consultant according to the terms set forth in **Exhibit “B”**. Except in the event of a duly authorized change order, approved by the City as provided in this Contract, the total cost of all professional services provided under this Contract may not exceed _____ and ____/100 Dollars (\$_____).

ARTICLE III
Time of Performance and Construction Cost

3.01 The Consultant shall complete the professional services within the times set forth below. The Consultant shall exercise a degree of care and diligence in the performance of all services under this Consultant in accordance with the professional standards prevailing among Consultants in the location in which Consultant practices or South Padre Island, Texas, whichever is the higher standard, skilled in design for projects of similar scope, and all of the Consultant services shall be performed as expeditiously as is consistent with said standards and the orderly progress of the Work.

Conceptual Design: **calendar days** after the authorization to commence planning

Preliminary Design: **calendar days** after authorization to commence development

Final Design: **calendar days** after authorization to commence final design

3.02 All design work and other professional services provided under this Contract must be completed by the following date: _____.

3. **Time is of the essence of this Contract.** The Consultant shall be prepared to provide the professional services in the most expedient and efficient manner possible in order to complete the work by the times specified. Promptly after the execution of this Contract, the Consultant shall prepare and submit for the City to approve in writing, a detailed schedule for the performance of the Consultant's services to meet the City's project milestone dates which are included in this Contract. The Consultant's schedule shall include allowances for periods of time required for the City's review and for approval of submissions by authorities having jurisdiction over the Project. The time limits established by this schedule over which Consultant has control shall not be exceeded without written approval from the City.
4. The Consultant's services consist of all of the services required to be performed by Consultant, Consultant's employees and Consultant's subconsultants under the terms of this Contract. Such services include normal civil, structural, mechanical and electrical engineering services, plumbing, food service, acoustical and landscape services, and any other design services that are normally or customarily furnished and reasonably necessary for the Project. The Consultant shall contract and employ at his expense consultants necessary for the design of the Project, and such consultants shall be licensed as required by the State of Texas and approved in writing by the City.
5. The Consultant shall designate a principal of the firm reasonably satisfactory to the City who shall, so long as employed by Consultant and acceptable to the City, remain in charge of professional services through completion and be available for general consultation throughout the Project. Any replacement of that principal shall be approved in writing (which shall not be unreasonably withheld) by the City, prior to replacement.
6. Consultant shall be responsible for the coordination of all drawings and design documents relating to Consultant's design and used on the Project, regardless of whether such drawings and documents are prepared by Consultant. Consultant shall be responsible for the completeness and accuracy of all drawings and specifications submitted by or through Consultant and for their compliance with all applicable codes, ordinances, regulations, laws and statutes.
7. Consultant's evaluations of the City's project budget and the preliminary estimates of construction cost and detailed estimates of construction cost, represent the Consultant's best judgment as a design professional familiar with the construction industry.
8. The construction budget for this Project, which is established as a condition of this Contract is \$_____. This construction budget shall not be exceeded unless the amount is changed in writing by the City.

ARTICLE IV
Conceptual Design

- 4.01 Upon the Consultant's receipt from the City of a letter of authorization to commence planning, the Consultant shall meet with the City for the purpose of determining the nature of the Project. The Consultant shall inquire in writing as to the information he believes the City may have in its possession that is necessary for the Consultant's performance. The City shall provide the information within its possession that it can make available to the Consultant. The City shall designate a representative to act as the contact person on behalf of the City.
- 4.02 The Consultant shall determine the City's needs with regard to the Project, including, but not limited to, tests, analyses, reports, site evaluations, needs surveys, comparisons with other municipal Projects, review of budgetary constraints and other preliminary investigations necessary for the Project. Consultant shall verify the observable existing conditions of the Project and verify any existing as-built drawings. Consultant shall confirm that the Project can be designed and constructed within the time limits outlined in this Contract. Consultant shall prepare a detailed design phase schedule which includes all review and approval periods during the schematic design, design development and construction document phases. Consultant shall confirm that the Project can be designed and constructed for the dollar amount of the project budget, if applicable.
- 4.03 The Consultant shall prepare a conceptual design that shall include schematic layouts, surveys, sketches and exhibits demonstrating the considerations involved in the Project. The conceptual design shall contemplate compliance with all applicable laws, statutes, ordinances, codes and regulations. Upon the City's request, the Consultant shall meet with City staff and the City Council to make a presentation of his report.

ARTICLE V
Preliminary Design

- 5.01 The City shall direct the Consultant to commence work on the Project design by sending to the Consultant a "letter of authorization" to begin work on the preliminary Project design pursuant to this Contract. Upon receipt of the Letter of Authorization to commence preliminary Project design, the Consultant shall meet with the City for the purpose of determining the extent of any revisions to the Conceptual Design.
- 5.02 The Consultant shall prepare the preliminary design of the Project, including, but not limited to, the preliminary drawings and specifications and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate. The Consultant shall submit to the City a detailed estimate of the construction costs of the Project, based on current area, volume, or other unit costs. This estimate shall also indicate both the cost of each category of work involved in constructing the Project and the time required for construction of the Project from commencement to final completion.
- 5.03 Upon completion of the preliminary design of the Project, the Consultant shall so notify the City. Upon request the Consultant shall meet with the City staff and City Council to make a presentation of his preliminary design of the Project. The Consultant shall provide an explanation of the preliminary design and cost estimate and shall verify that, to the best of Consultant's belief, the Project requirements and construction can be completed within the project budget and schedule.

ARTICLE VI

Final Design

- 6.01 The City shall direct the Consultant to commence work on the final design of the Project by sending to the Consultant a “letter of authorization” to begin work on the final design phase of the Project. Upon receipt of the Letter of Authorization to proceed with final design of the Project, the Consultant shall immediately prepare the final design, including, but not limited to, the contract documents, drawings, and specifications, to fix and describe the size and character of the Project as to structural, mechanical, and electrical systems, materials, and such other elements as may be appropriate. The final design of the Project shall comply with all applicable laws, statutes, ordinances, codes and regulations.
- 6.02 Notwithstanding the City’s approval of the final design, the Consultant warrants that the final design will be sufficient and adequate to fulfill the purposes of the Project.
- 6.03 **The Consultant shall prepare and separately seal the special provisions, the technical specifications, and bid proposal form(s) in conformance with the City’s current pre-approved, “Standard Form of Agreement Between City and Construction Manager” for the construction contract between the City and the Construction Manager. The Consultant hereby agrees that no changes, modifications, supplementations, alterations, or deletions will be made to the City’s standard form without the prior written approval of the City.**
- 6.04 The Consultant shall provide the City with complete contract documents sufficient to be advertised for bids by the City. The contract documents shall include the design and specifications and other changes that are required to fulfill the purpose of the Project. Upon completion of the final design of the Project, with the submission of the complete contract documents, and upon request of the City, the Consultant shall meet with City Staff and the City Council to present the final design of the Project. The Consultant shall provide an explanation of the final design and cost estimate.

ARTICLE VII

Bid Preparations & Evaluation for Subconsultants

- 7.01 The Consultant shall assist the Construction Manager in advertising for and obtaining bids or negotiating proposals for the construction of the Project. Upon request, the Consultant shall meet with City Staff and the City Council to present, and make recommendations on, the bids submitted for the construction of the Project.
- 7.02 The Consultant shall review the Construction Manager’s bids, including subcontractors, suppliers, and other persons required for completion of the Project. The Consultant shall evaluate each bid and provide these evaluations to the City along with a recommendation on each bid.
- 7.03 Where substitutions are requested by a Construction Manager, the Consultant shall review the substitution requested and approve or disapprove such substitutions.

ARTICLE VIII

Construction

- 8.01 The Consultant shall be a representative of, and shall advise and consult with, the City (1) during construction, and (2) at the City's direction from time to time during the correction, or warranty, period described in the construction contract. The Consultant shall have authority to act on behalf of the City only to the extent provided in this Agreement unless modified by written instrument.

- 8.02 The Consultant shall make visits to the site, with a frequency appropriate to the scope of the Project, to inspect the progress and quality of the executed work of the Construction Manager and his subcontractors and to determine if such work is proceeding in accordance with the contract documents. Consultant shall periodically review the as-built drawings for accuracy and completeness, and shall report his findings to the City.
- 8.03 The Consultant shall keep the City informed of the progress and quality of the work. The Consultant shall exercise the utmost care and diligence in discovering and promptly reporting to the City any defects or deficiencies in such work and shall disapprove or reject any work failing to conform with the contract documents.
- 8.04 The Consultant shall review and approve shop drawings and samples, the results of tests and inspections, and other data that the Construction Manager or subconsultant is required to provide. The Consultant's review and approval shall include a determination of whether the work complies with all applicable laws, statutes, ordinances and codes and a determination of whether the work, when completed, will be in compliance with the requirements of the contract documents.
- 8.05 The Consultant shall determine the acceptability of substitute materials and equipment that may be proposed by the Construction Manager or subcontractors. The Consultant shall also receive and review maintenance and operating instruction manuals, schedules, guarantees, and certificates of inspection, which are to be assembled by the Construction Manager in accordance with the contract documents.
- 8.06 The Consultant shall issue all instructions of the City to the Construction Manager as well as interpretations and clarifications of the contract documents pertaining to the performance of the work. Consultant shall interpret the contract documents and judge the performance thereunder by the Contractor constructing the Project, and Consultant shall, within a reasonable time, but not later than twenty (20) calendar days after a written request, render such interpretations and clarifications in writing as it may deem necessary for the proper execution and progress of the Work. Consultant shall receive no additional compensation for providing clarification of the Drawings and Specifications.
- 8.07 The Consultant shall review the amounts owing to the Construction Manager and recommend to the City, in writing, payments to the Construction Manager of such amounts. The Consultant's recommendation of payment, being based upon the Consultant's on-site inspections and his experience and qualifications as a design professional, shall constitute a recommendation by the Consultant to the City that the quality of such work is in accordance with the contract documents and that the work has progressed to the point reflected in Consultant's recommendation for payment.
- 8.08 Upon notification from the Construction Manager that the Project is substantially complete, the Consultant shall conduct an inspection of the site to determine if the Project is substantially complete. The Consultant shall prepare a checklist of items that shall be completed prior to final acceptance. Upon notification by the Construction Manager that the checklist items designated by the Consultant for completion have been completed, the Consultant shall inspect the Project to verify final completion.
- 8.09 The Consultant shall not be responsible for the work of the Construction Manager or any of his subcontractors, except that the Consultant shall be responsible for the Construction Manager's schedules or failure to carry out the work in accordance with the contract documents if such failures result from the Consultant's negligent acts or omissions. This provision shall not alter the Consultant's duties to the City arising from the performance of the Consultant's obligations under this Contract.

8.10 The Consultant shall conduct at least one on-site inspection during the warranty period and shall report to the City as to the continued acceptability of the work.

0. The Consultant shall not execute change orders on behalf of the City or otherwise alter the financial scope of the Project without an advance, written authorization from the City.

0. The Consultant shall perform all of its duties under this Article VIII so as to not cause any delay in the progress of construction of the Project.

0. The Consultant shall assist the Construction Manager and City in obtaining an Occupancy Permit by accompanying governing officials during inspections of the Project if requested to do so by the City.

0. The Standard Form of Agreement Between City and Construction Manager is attached hereto as **Exhibit "E"** and incorporated herein by reference. The Consultant shall comply with all terms and conditions pertaining to the Architect as set out in said Agreement. In the event of an inconsistency between a term or condition in this Agreement and the Standard Form of Agreement Between City and Construction Manager, the Standard Form of Agreement Between City and Construction Manager shall control.

ARTICLE IX Change Orders & Documents & Materials

9.01 No changes shall be made, nor will invoices for changes, alterations, modifications, deviations, or extra work or services be recognized or paid except upon the prior written order from authorized personnel of the City. The Consultant shall not execute change orders on behalf of the City or otherwise alter the financial scope of the Project.

9.02 a. When the original Contract amount plus all change orders is less than \$50,000, the City Manager or his designee may approve the written change order provided the change order does not increase the total amount set forth in the Contract to more than \$50,000. For such contracts, when a change order results in a total contract amount that exceeds \$50,000, the City Council of the City must approve such change order prior to commencement of the services or work; and

b. When the original contract amount plus all change orders is equal to or greater than \$50,000, the City Manager or his designee may approve the written change order provided the change order does not exceed \$50,000, and provided the sum of all change orders does not exceed 25% of the original contract amount. For such contracts, when a change order exceeds \$50,000 or when the sum of all change orders exceeds 25% of the original contract amount, the City Council of the City must approve such change order prior to commencement of the services or work; and

c. Any request by the Consultant for an increase in the Scope of Services and an increase in the amount listed in paragraph two of this Contract shall be made and approved by the City prior to the Consultant providing such services or the right to payment for such additional services shall be waived. If there is a

dispute between the Consultant and the City respecting any service provided or to be provided hereunder by the Consultant, including a dispute as to whether such service is additional to the Scope of Services included in this Contract, the Consultant agrees to continue providing on a timely basis all services to be provided by the Consultant hereunder, including any service as to which there is a dispute.

- 9.03 The Consultant shall furnish the City one (1) set of plans and specifications. It is hereby agreed that additional copies shall be provided to the City at the City's expense. The Consultant shall provide the City one (1) set of reproducible, mylar-record drawings that clearly show all the changes made during the construction process, based upon the marked-up prints, drawings, and other data furnished by the Construction Manager to the Consultant. The Consultant shall provide copies of documents, computer files if available, surveys, notes, and tracings used or prepared by the Consultant. The foregoing documentation, the Consultant's work product, and other information in the Consultant's possession concerning the Project shall be the property of the City from the time of preparation. The Consultant shall also furnish one set of digital files representing the final as-built mylars.

ARTICLE X
Warranty, Indemnification & Release

- 10.01 As an experienced and qualified design professional, the Consultant warrants that the information provided by the Consultant reflects high professional and industry standards, procedures, and performances. The Consultant warrants the design preparation of drawings, the designation or selection of materials and equipment, the selection and supervision of personnel, and the performance of other services under this Contract, pursuant to a high standard of performance in the profession. The Consultant warrants that the Consultant will exercise diligence and due care and perform in a good and workmanlike manner all of the services pursuant to this Contract. Approval of the City shall not constitute, or be deemed, a release of the responsibility and liability of the Consultant, its employees, agents, or associates for the exercise of skill and diligence to promote the accuracy and competency of their designs, information, plans, specifications or any other document, nor shall the City's approval be deemed to be the assumption of responsibility by the City for any defect or error in the aforesaid documents prepared by the Consultant, its employees, associates, agents, or subconsultants.
- 10.02 The Consultant shall promptly correct any defective designs or specifications furnished by the Consultant at no cost to the City. The City's approval, acceptance, use of, or payment for, all or any part of the Consultant's services hereunder or of the Project itself shall in no way alter the Consultant's obligations or the City's rights hereunder.
- 10.03 In all activities or services performed hereunder, the Consultant is an independent Consultant and not an agent or employee of the City. The Consultant and its employees are not the agents, servants, or employees of the City. As an independent Consultant, the Consultant shall be responsible for the professional services and the final work product contemplated under this Contract. Except for materials furnished by the City, the Consultant shall supply all materials, equipment, and labor required for the professional services to be provided under this Contract. The Consultant shall have ultimate control over the execution of the professional services. The Consultant shall have the sole obligation to employ, direct, control, supervise, manage, discharge, and compensate all of its employees or subconsultants, and the City shall have no control of or supervision over the employees of the Consultant or any of the Consultant's subconsultants.
- 10.04 The Consultant must at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of its officers, employees, agents, subconsultants, licensees, and other persons, as well as their personal property, while in the vicinity of the Project or any of the work being done on or for the Project. It is expressly

understood and agreed that the City shall not be liable or responsible for the negligence of the Consultant, its officers, employees, agents, subconsultants, invitees, licensees, and other persons.

- 10.05 Indemnity. To the fullest extent permitted by law, the Consultant agrees to indemnify, defend, and hold harmless the City, Consultant agrees to indemnify and hold harmless the City, its Council members, officers, agents, employees and volunteers (separately and collectively referred to in this paragraph as "Indemnitee") from and against all claims, damages, losses and expenses including but not limited to attorneys' fees arising out of or resulting from any negligent act, error, omission, intentional tort or willful misconduct, intellectual property infringement or including failure to pay a subconsultant, subcontractor, or supplier pursuant to the agreement by Consultant, its employees, subcontractors, subconsultants, or others for whom Consultant may be legally liable ("Consultant Parties"), but only to the extent caused in whole or in part by the Consultant Parties. IF THE CLAIMS, ETC. ARE CAUSE IN PART BY CONSULTANT PARTIES, AND ALSO IN PART BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY OR ALL OF THE INDEMNITEES OR ANY OTHER THIRD PARTY, THEN CONSULTANT SHALL ONLY INDEMNIFY ON A COMPARITIVE BASES, AND ONLY FOR THE AMOUNT FOR WHICH THE CONSULTANT PARTIES ARE FOUND LIABLE AND NOT FOR ANY AMOUNT FOR WHICH ANY OR ALL INDEMNITEES OR OTHER THIRD PARTIES ARE LIABLE.**
- 10.06 Release. The Consultant releases, relinquishes, and discharges the City, its Council members, officials, officers, agents, employees and volunteers from all claims, demands, and causes of action of every kind and character, including the cost of defense thereof, for any injury to, sickness or death of the Consultant or its employees and any loss of or damage to any property of the Consultant or its employees that is caused by or alleged to be caused by, arises out of, or is in connection with the Consultant's work to be performed hereunder. Both the City and the Consultant expressly intend that this release shall apply regardless of whether said claims, demands, and causes of action are covered, in whole or in part, by insurance and in the event of injury, sickness, death, loss, or damage suffered by the Consultant or its employees, but not otherwise, this release shall apply regardless of whether such loss, damage, injury, or death was caused in whole or in part by the City, any other party released hereunder, the Consultant, or any third party.**
- 10.07 It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligation under Paragraph 10.05 and Paragraph 10.06, such legal limitations are made a part of the indemnification obligation and shall operate to amend the indemnification obligation to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligation shall continue in full force and effect.

ARTICLE XI Insurance

- 11.01 The Consultant shall procure and maintain at its sole cost and expense for the duration of this Agreement insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, volunteers, employees or subconsultants. The policies, limits and endorsements required are as set forth on **Exhibit "C."****

ARTICLE XII Use of Drawings, Specifications and Other Documents

1. The Drawings, Specifications and other documents prepared by the Consultant and Consultant's subconsultants for this Project shall become the property of the City whether the Project is completed or not. The City shall be furnished and permitted to retain reproducible copies and electronic versions of Consultant's Drawings, Specifications and other documents.
2. The documents prepared by Consultant may be used as a prototype for other facilities by the City. The City may elect to use the Consultant to perform the site adaptation and other architectural services involved in reuse of the prototype. If so, the Consultant is obligated to perform the work for an additional compensation that will fairly compensate the Consultant and its consultants only for the additional work involved. It is reasonable to expect that the fair additional compensation will be significantly less than the fee provided for under this Contract. If the City elects to employ a different architect to perform the site adaptation and other architectural services involved in reuse of the prototype, that architect will be entitled to use Consultant's subconsultants on the same basis that Consultant would have been entitled to use them for the work on the reuse of the prototype, and such architect will be entitled, to the extent allowed by law, to duplicate the design and review and refer to the construction documents, approved shop drawings and calculations, and change order drawings in performing its work. The Consultant will not be responsible for errors and omissions of a subsequent architect. The Consultant shall commit its consultants to the terms of this subparagraph.
3. In the event of termination of this Agreement for any reason, the City shall receive all original documents prepared to the date of termination and shall have the right to use those documents and any reproductions in any way necessary to complete the Project.
4. Only the details of the drawings relating to this Project may be used by the Consultant on other projects, but they shall not be used as a whole without written authorization by the City. The City furnished forms, conditions, and other written documents shall not be used on other projects by the Consultant.

ARTICLE XIII **Termination**

- 13.01 The City may terminate this Contract at any time upon **thirty (30)** calendar days written notice. Upon the Consultant's receipt of such notice, the Consultant shall cease work immediately. The Consultant shall be compensated for the services satisfactorily performed prior to the termination date.
- 13.02 If, through any cause, the Consultant fails to fulfill its obligations under this Contract, or if the Consultant violates any of the agreements of this Contract, the City has the right to terminate this Contract by giving the Consultant **five (5)** calendar days written notice to the Consultant. The Consultant will be compensated for the services satisfactorily performed before the termination date.
- 13.03 No term or provision of this Contract shall be construed to relieve the Consultant of liability to the City for damages sustained by the City because of any breach of contract and/or negligence by the Consultant. The City may withhold payments to the Consultant for the purpose of setoff until the exact amount of damages due the City from the Consultant is determined and paid.

**ARTICLE XIV
Miscellaneous Terms**

14.01 This Contract has been made under and shall be governed by the laws of the State of Texas. The parties agree that performance and all matters related thereto shall be in Cameron County, Texas.

14.02 Notices shall be mailed to the addresses designated herein or as may be designated in writing by the parties from time to time and shall be deemed received when sent postage prepaid U.S. Mail to the following addresses:

City of South Padre Island
Attn: City Manager
4601 Padre Blvd.
South Padre Island, Texas 78597

Consultant:

Attn: _____
_____, Texas {zip}

14.03 No waiver by either party hereto of any term or condition of this Contract shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.

14.04 This Contract represents the entire and integrated agreement between the City and the Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. This Contract may only be amended by written instrument approved and executed by the parties.

14.05 This Contract and all rights and obligations contained herein may not be assigned by the Consultant without the prior written approval of the City.

14.06 If any provision of this Contract shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court of competent jurisdiction finds that any provision of this Contract is invalid or unenforceable, but that by limiting such provision it may become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

14.07 The Consultant, its agents, employees, and subconsultants must comply with all applicable federal and state laws, the charter and ordinances of the City of South Padre Island, and with all applicable rules and regulations promulgated by local, state, and national boards, bureaus, and agencies. The Consultant must obtain all necessary permits and licenses required in completing the work and providing the services required by this Contract.

14.08 The parties acknowledge that they have read, understood, and intend to be bound by the terms and conditions of this Contract.

14.09 This Contract will be effective when signed by the last party whose signing makes the Contract fully executed.

14.10 **Notice of Indemnification. City and Consultant hereby acknowledge and agree that this Contract contains certain indemnification obligations and covenants.**

(NAME OF CONSULTANT)

CITY OF SOUTH PADRE ISLAND

By: _____
Printed Name: _____ Mayor
Title: _____
Date: _____

By: _____
Date: _____

APPROVED:

City Manager
Date: _____

City Attorney
Date: _____

EXHIBIT A

SCOPE OF SERVICES

EXHIBIT B

PAYMENT TERMS

Payment is a fixed fee in the amount listed in paragraph 2.01 of this Contract. This amount shall be payable by the City pursuant to the schedule listed below and upon completion of the services and written acceptance by the City.

Schedule of Payment:

Basic services			
Phase	Percent of work		fee
Conceptual Design			
Preliminary Design			
Final Design			
Bidding			
Construction Administration			
	100%	Total	\$

EXHIBIT C

INSURANCE REQUIREMENTS

During the term of this Agreement all of Consultant's insurance shall meet the following requirements:

1. Standard Insurance Policies Required:
 - (a) Commercial General Liability
 - (b) Business Automobile Liability
 - (c) Workers' Compensation
 - (d) Professional Liability

2. For each of these policies, the Consultant's insurance coverage shall be primary insurance with respect to the City, its officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers, shall be considered in excess of the Consultant's insurance and shall not contribute to it. Certificates of insurance and endorsements shall be furnished to and approved by the City's Risk Manager before any letter of authorization to commence planning will issue or any work on the Project commences. No term or provision of the indemnification provided by the Consultant to the City pursuant to this Contract shall be construed or interpreted as limiting or otherwise affecting the terms of the insurance coverage. All Certificates of Insurance and endorsements shall be furnished to the City's Representative at the time of execution of this Agreement, attached hereto as **Exhibit "D"**, and approved by the City before work commences.

3. The Consultant shall include all subconsultants as additional insureds under its policies or shall furnish separate certificates and endorsements for each subconsultant. All coverages for subConsultants shall be subject to all of the requirements stated herein.

4. General Requirements Applicable to All Policies
 - (a) Only insurance carriers licensed and admitted to do business in the State of Texas will be accepted.
 - (b) Deductibles shall be listed on the Certificate of Insurance and are acceptable only on a "per occurrence" basis for property damage only.
 - (c) "Claims made" policies will not be accepted, except for Professional Liability insurance.
 - (d) Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) calendar days prior written notice has been given to the City of South Padre Island by certified mail, return receipt requested.
 - (e) Upon request, certified copies of all insurance policies shall be furnished to the City.
 - (f) The Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent. Each certificate shall contain the following provisions and warranties: (a) that the insurance company is licensed and admitted to do business in the State of Texas; (b) that the insurance policy is underwritten on forms provided by the Texas State Board of Insurance or ISO; (c) all endorsements and coverages according to the requirements of this Contract; (d) the form of notice of cancellation, termination, or change in coverage provisions; and (e) original endorsements affecting coverage required by this Contract.
 - (g) The City of South Padre Island, its officials, employees, and volunteers are to be named as "Additional Insureds" to the Commercial General Liability and Business Automobile Liability Policies. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, and volunteers.

5. Commercial (General) Liability requirements:

- (a) Coverage shall be written by a carrier with an " A:VIII " or better rating in accordance with the current Best Key Rating Guide.
- (b) Minimum Limit of \$1,000,000 per occurrence for bodily injury and property damage with a \$2,000,000 annual aggregate.
- (c) Coverage shall be at least as broad as Insurance Service's Office Number CG 00 01.
- (d) No coverage shall be deleted from the standard policy without notification of individual exclusions being attached for review and acceptance.
- (e) The coverage shall include but not be limited to: premises/operations; independent contracts, products/completed operations, contractual liability (insuring the indemnity provided herein), and where exposures exist, "Explosion Collapse and Underground" coverage.
- (f) The City shall be named as an additional insured and the policy shall be endorsed to waive subrogation and to be primary and non contributory.

6. Business Automobile Liability requirements:

- (a) Coverage shall be written by a carrier with an " A:VIII " or better rating in accordance with the current Best Key Rating Guide.
- (b) Minimum Combined Single Limit of \$1,000,000 per occurrence for bodily injury and property damage.
- (c) The Business Auto Policy must show Symbol 1 in the Covered Autos portion of the liability section in Item 2 of the declarations page.
- (d) The coverage shall include owned, leased or rented autos, non-owned autos, any autos and hired autos.

7. Workers' Compensation Insurance requirements:

- (a) Pursuant to the requirements set forth in Title 28, Section 110.110 of the Texas Administrative Code, all employees of the Consultant, the Consultant, all employees of any and all subConsultants, and all other persons providing services on the Project must be covered by a workers' compensation insurance policy: either directly through their employer's policy (the Consultant's, or subConsultant's policy) or through an executed coverage agreement on an approved Texas Department of Insurance Division of Workers Compensation (DWC) form. Accordingly, if a subConsultant does not have his or her own policy and a coverage agreement is used, Consultants and subConsultants must use that portion of the form whereby the hiring Consultant agrees to provide coverage to the employees of the subConsultant. The portion of the form that would otherwise allow them not to provide coverage for the employees of an independent Consultant may not be used.

- (b) The worker's compensation insurance shall include the following terms:

- (i) Employer's Liability limits of \$1,000,000 for each accident is required.
- (ii) "Texas Waiver of Our Right to Recover From Others Endorsement, WC 42 03 04" shall be included in this policy.
- (iii) Texas must appear in Item 3A of the Worker's Compensation coverage or Item 3C must contain the following: All States except those listed in Item 3A and the States of NV, ND, OH, WA, WV, and WY.

- (c) Pursuant to the explicit terms of Title 28, Section 110.110(c)(7) of the Texas Administrative Code, this Agreement, the bid specifications, this Agreement, and all subcontracts on this Project must include the terms and conditions set forth below, without any additional words or changes, except those required to accommodate the specific document in which they are contained or to impose stricter standards of documentation:

A. Definitions:

Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Division of Workers Compensation, or a coverage agreement (DWC-81, DWC-83, or DWC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the Contractor's/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractors" in § 406.096 [of the Texas Labor Code]) - includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent Contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

- B. *The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the project, for the duration of the project.*
- C. *The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.*
- D. *If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.*
- E. *The Contractor shall obtain from each person providing services on a project, and provide to the governmental entity:*
 - (1) *a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and*
 - (2) *no later than seven calendar days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.*

- F. *The Contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.*
- G. *The Contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 calendar days after the Contractor knew or should have known, or any change that materially affects the provision of coverage of any person providing services on the project.*
- H. *The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Division of Workers Compensation, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.*
- I. *The Contractor shall contractually require each person with whom it contracts to provide services on a project, to:*
 - (1) *provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;*
 - (2) *provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;*
 - (3) *provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;*
 - (4) *obtain from each other person with whom it contracts, and provide to the Contractor:*
 - (a) *a certificate of coverage, prior to the other person beginning work on the project; and*
 - (b) *a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;*
 - (5) *retain all required certificates of coverage on file for the duration of the project and for one year thereafter;*
 - (6) *notify the governmental entity in writing by certified mail or personal delivery, within 10 calendar days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and*

(7) contractually require each person with whom it contracts, to perform as required by paragraphs (a) - (g), with the certificates of coverage to be provided to the person for whom they are providing services.

J. By signing this contract, or providing, or causing to be provided a certificate of coverage, the Contractor is representing to the governmental entity that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

K. The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor that entitles the governmental entity to declare the contract void if the Contractor does not remedy the breach within ten calendar days after receipt of notice of breach from the governmental entity.

8. Professional Liability requirements:

- (a) Coverage shall be written by a carrier with a " A:VIII " or better rating in accordance with the current Best Key Rating Guide.
- (b) Minimum of \$1,000,000 per occurrence and \$2,000,000 aggregate, with a maximum deductible of \$100,000.00.
- (c) For "claims made" policies, a two-year extended reporting period will be required following termination of this contract or policy expiration.

ADDITIONAL DOCUMENTS

CERTIFICATE OF AUTHORITY AND INCUMBENCY

I, _____, the undersigned, hereby certify that:

- 1. I am the duly elected and currently acting Secretary of _____, a Texas corporation (hereafter called "Corporation").
- 2. I keep and maintain custody of the minutes and other records of the Corporation.
- 3. The Corporation is currently existing and in good standing with the State of Texas on the date of this Certificate.

4. The Board of Directors of the Corporation has duly and properly authorized _____, who is currently the President of Corporation to enter into and to execute on behalf of the Corporation that certain Construction Contract between the City of South Padre Island, as Owner, dated _____, 2024, relating to the construction of the _____, in accord with the Drawings, Specifications and other contract documents prepared for the Owner by _____, and to execute, furnish and deliver to Owner on behalf of the Corporation, the required Performance Bond and Payment Bond and any documentation which may be necessary or required to effect the provisions of such Construction Contract.

Executed on this the _____ day of _____, 2024.

Printed Name

Secretary of the Corporation

SUBSCRIBED AND SWORN TO before me by _____, on _____, 2024.

Notary Public State of Texas

PERFORMANCE BOND

THE STATE OF TEXAS §

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF CAMERON §

That we, _____, Contractor, as Principal, and _____, as Surety, are hereby held and firmly bound unto the City of South Padre Island (hereafter called "Owner") in the full and just sum of _____ Dollars (\$ _____) for the payment of which the said Principal and

Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

The conditions of this obligation are such that: WHEREAS the Principal entered into a certain Contract, which Contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein, with the Owner acting by and through its City Council, dated _____, _____, for the construction of the South Padre Island Convention Center Expansion in accord with the Drawings, Specifications and other Contract Documents pertaining thereto, prepared by _____ Architect/Engineer;

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform the Contract in accord with the Drawings, Specifications, and other Contract Documents pertaining thereto, as well as any changes, extensions, deletions or modifications thereof which may be made by Owner, with or without notice to the Surety, and shall fully indemnify and save harmless the Owner from all costs and damage which Owner may suffer by reason of Principal's default or failure so to do, shall fully reimburse and repay Owner all outlay and expense which Owner may incur in making good any such default, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

PROVIDED that any additions, deletions, alterations or changes which may be made in the terms of the Contract or in the Drawings, Specifications or other Contract Documents, or in the work to be done there under, or the making by the Owner of any payment or pre-payment under the Contract, or the giving by the Owner of any extension of time for the performance of the Contract, or the granting of any other forbearance on the part of either the Owner or the Principal to the other shall not in any way release the Principal or the Surety, or either of them, their heirs, executors, administrators, successors or assigns, from their liability or the liability of any of them hereunder, notice to the Surety of any such addition, deletion, alteration, change, payment, pre-payment, extension or forbearance being hereby expressly waived.

PROVIDED FURTHER, that this bond is made and entered into solely for the protection of the Owner pursuant to the provisions of Chapter 2253, Government Code, as amended, and all liabilities on this bond are to be determined in accord with the provisions thereof.

Executed on _____, _____.

PRINCIPAL

SURETY

Contractor

(Corporate Name)

By _____

Name: _____

Attorney-in-Fact

Title: _____

Name: _____

ATTEST:

Name: _____

Title: _____

Address of Contractor:

Address of Surety:

Typed or clearly printed

PAYMENT BOND

THE STATE OF TEXAS §

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF CAMERON §

That we, _____, Contractor, as Principal, and _____, as Surety, are hereby held and firmly bound unto the City of South Padre Island (hereafter called "Owner") in the full and just sum of _____ Dollars (\$ _____) for the payment of which said Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

The conditions of this obligation are such that: WHEREAS the Principal entered into a certain Contract, which Contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein, with the Owner acting by and through its City Council, dated _____, _____, for the construction of the South Padre Island Convention Center Expansion in accord with the Specifications and other Contract Documents pertaining thereto, prepared by _____, Architect/Engineer;

NOW, THEREFORE, if the Principal shall promptly make payment to all claimants as defined in Chapter 2253, Government Code, as amended, supplying labor and materials in the prosecution of the work provided for in said Contract, as well as any changes, extensions, deletions or modifications thereof which may be made by Owner, with or without notice to Surety, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

PROVIDED that any additions, deletions, alterations or changes which may be made in the terms of the Contract or in the Drawings, Specifications or other Contract Documents, or in the work to be done there under, or the making by the Owner of any payment or pre-payment under the Contract, or the giving by the Owner of any extension of time for the performance of the Contract, or the granting of any other forbearance on the part of either the Owner or the Principal to the other shall not in any way release the Principal or the Surety, or either of them, their heirs, executors, administrators, successors or assigns, from their liability or the liability of any of them hereunder, notice to the Surety of any such addition, deletion, alteration, change, payment, pre-payment, extension or forbearance being hereby expressly waived.

PROVIDED FURTHER, that this bond is made and entered into solely for the protection of all claimants as defined in Chapter 2253, Government Code, as amended, supplying labor and material in the prosecution of the work provided for in said Contract, and each such claimant shall have a direct right of action under the bond as provided in such Chapter 2253, Government Code, as amended.

Executed on _____, _____.

PRINCIPAL

SURETY

Contractor

(Corporate Name)

By _____

Name: _____

Title: _____

Attorney-in-Fact

Name: _____

ATTEST:

Name: _____

Title: _____

Address of Contractor:

Address of Surety:

Typed or clearly printed

SUPPLEMENTAL GENERAL CONDITIONS

Article 1. Construing the Contract Documents:

In the event of ambiguity or conflict in the Contract Documents: Supplemental General Conditions take precedence over General Conditions; Specifications take precedence over Drawings; figures take precedence over scale dimensions; and descriptive notes take precedence over general notes or code indications, unless the contrary intention is apparent.

Except as provided above, changes in Contract Documents made with the consent of all parties in ink control those printed or typed and typewritten provisions control over printed, multilithed, or photocopied provisions.

In the event errors, conflicts, omissions or discrepancies are noted in the Contract Documents or in the work done by others affecting his work, Contractor shall notify Architect at once and Architect will issue instructions to correct such errors, conflicts or discrepancies. This includes typographical errors in the Specifications and notational errors on the Drawings, where doubtful of interpretation. If, any such errors, conflicts omissions or discrepancies have been noted, Contractor proceeds with the work so affected without instructions from the Architect, he shall make good any resulting damage or defect.

Article 2. Drawings and Specifications:

There are certain intricacies of construction, which are impracticable to specify in detail or to fully cover on the Drawings, but all such details are to be worked out along the lines of good practice, and in compliance with the ordinances covering such work.

Contractor, upon completion of the Project, shall furnish Architect with record drawings showing actual location in line and elevation of all new exterior utility lines within the limits of the site and of any relocation from that shown on the Drawings of concealed piping, wiring, cable or conduit within the lines of the building.

Article 3. Laying out Building:

Contractor shall employ an experienced and competent licensed surveyor or civil engineer to establish a permanent benchmark to which easy access may be had during the progress of the Work, determine all lines and grades, and verify same from time to time during the progress of the Work.

Article 4. Materials:

Unless otherwise indicated in the Contract Documents, all materials shall be new, in strict compliance with the Specifications and the best of their respective kinds.

Before ordering any materials or doing any work, Contractor shall verify all measurements at the site and shall be responsible for the correctness of same. No extra charge or compensation will be allowed on account of any difference between actual dimensions and the measurements indicated on the Drawings. Any differences, which

may be found, shall be submitted to Architect for his consideration and instructions before ordering material or proceeding with the work.

Materials shall be furnished at such times and in such quantities as to insure the uninterrupted progress of the work according to schedule. Materials stored shall be properly protected for weather or damage.

Upon receipt of notice from Architect that any material placed in the Project or on the site is not of the quality specified or has been improperly placed, Contractor shall remove same from the site or have same replaced, as the case may be, within seventy-two (72) hours after receipt of such notice.

Article 5. Testing of Materials:

All testing of materials and equipment used in the construction of the Project shall be conducted at the discretion of Owner and at Owner's expense, unless otherwise specifically provided in the Contract Documents. Any retesting of material or equipment that fails to meet the requirements of the specifications will be at Contractor's expense.

Article 6. Handling Materials:

Contractor shall be responsible for the proper care and protection of all materials, tools and equipment delivered to the site for his use.

When any room of the Project is used as a shop, storeroom, or otherwise, the Contractor will be held responsible for any repairs, patching or cleaning arising from such use.

Contractor shall protect and be responsible for any damage to his work or material, from the date of the Contract until the date of acceptance, and shall make good without cost to Owner, any damage or loss that may occur during this period.

Cement, lime, gypsum and other materials affected by the weather shall be covered and protected to keep them free from damage at all times.

Contractor shall store all materials as directed, in a manner that will allow the Architect or Owner's representative to inspect them. Should any material be found defective or in any way not in accordance with the Contract, such material, without regard to the state of completion, may be rejected by Architect and, if so rejected, shall be removed at once from the premises by Contractor installing same.

Article 7. Substitute Materials, Products, Methods or Services:

In certain instances specific materials, products, methods and services have been specified by brand or trade name partly for the purpose of establishing the effect or standard of quality desired. Upon the prior written approval of Architect, substitutions for such specifically named materials, products, methods or services may be made provided the materials, products, methods or services desired to be substituted have been proven to Architect to provide the effect or standard of quality desired. The decision of the Architect is absolute and final.

Article 8. Salvaged Materials:

Used materials belonging to Owner or obtained from demolition or excavation operations at the site of the Project and reconditioned for incorporation into the Project are hereafter termed "salvaged materials". Similar

materials, owned by parties other than Owner and purchased, or to be purchased, for incorporation into the Project, are termed “second hand material”.

Salvaged materials may be incorporated into the Project only if allowed in the Contract Documents.

Article 9. Excess Excavated Material & Construction Debris:

Excess excavated material and construction debris, unless specifically stated otherwise, is the property of the contractor and will be removed from the site on a weekly basis or sooner if directed by owners’ representative so as to maintain a safe site.

Article 10. Temporary Facilities:

Contractor shall make temporary connections for all utilities necessary during construction and shall remove them after completion of the Project.

Contractor shall provide, at a location on the Project site approved by Architect, a suitable weather-tight field office with raised floors available for use by Contractor and Architect at all times. Contractor shall furnish such field office with electric lights, telephone and ample desk space for use by Contractor and Architect. Contractor shall have such office kept clean at all times.

Contractor shall provide a weather-tight shed with raised floors for storage of cement, lime and other materials requiring protection from the weather.

Contractor shall provide and maintain sanitary facilities for workmen at the job in accordance with the laws of Texas and the code and ordinances of the City of Corpus Christi. Contractor shall completely remove such facilities when the Project is completed.

All or a portion of the work necessary to complete the Project may be done on or near buildings which presently are in use as schools, or will be so used before the completion of such Project, and the Contractor must take all precautions necessary to the protection of the students, employees and the public during the term of such Construction Contract.

In conjunction with, but not in lieu of the requirements of Article 10.2.3 of the General Conditions, the contractor shall provide a six-foot, commercial grade chain link fencing around the entire construction area for the duration of the project as a minimum safety separation. This fence shall be equipped with vehicular and pedestrian gates with locks.

The Contractor shall maintain the construction fences and gates in a state of good repair at all times for the duration of the project. Gates shall be kept locked at all times when the Contractor’s or his sub-contractor’s personnel are not on the site. Any condition of the construction fence and/or gates which the Architect or Owner deems hazardous will be corrected immediately. If such conditions are not corrected immediately upon verbal or written notice, the Owner will correct the hazardous conditions and the cost of the corrective action will be deducted from the Contractor’s payment.

In conjunction with, but not in lieu of the requirements of Article 10.2.3 of the General Conditions, the contractor shall provide a six-foot, commercial grade chain link fencing around the entire construction area for the

duration of the project as a minimum safety separation. This fence shall be equipped with vehicular and pedestrian gates with locks.

The Contractor shall maintain the construction fences and gates in a state of good repair at all times for the duration of the project. Gates shall be kept locked at all times when the Contractor's or his sub-contractor's personnel are not on the site. Any condition of the construction fence and/or gates which the Architect or Owner deems hazardous will be corrected immediately. If such conditions are not corrected immediately upon verbal or written notice, the Owner will correct the hazardous conditions and the cost of the corrective action will be deducted from the Contractor's payment.

Article 11. Cooperation with Owner and City Building Officials:

When required, Contractor shall notify the proper official of the City of Corpus Christi in advance of all stopping and starting of construction. Contractor shall cooperate with City officials at all times. If any authorized City official, or authorized representative of Owner, should deem an inspection necessary, Contractor shall provide the proper facilities to insure that such official, or representative, can conveniently examine and inspect the work. The Contractor shall document all City inspections by recording the date and time of the inspection and the name of the inspector. This information shall be submitted by the Contractor to the Architect on a monthly basis along with Contractor's request for payment.

The Contractor shall submit copies of all City permits, interim inspections, and final inspections, including a Certificate of Occupancy where required, for the project showing compliance with code requirements of the entities with jurisdiction with the Record Documents for the Project.

Article 12. Insurance:

Commercial General Liability

Limits of Liability:

General Aggregate Limit	\$2,000,000
Products/Completed	\$2,000,000
Operations Aggregate	
Each Occurrence Limit	\$1,000,000
Umbrella	\$5,000,000

Automobile Liability covering owned, non owned

Combined Single Limit	\$1,000,000
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All insurance must be written by insurance companies, which are rated in the A.M. Best Key Rating Guide-Property and Casualty with a policyholder's rating of "A: and a financial size category of Class VII. The City of South Padre Island is to be named as additional insured in the policy and a waiver of subrogation shall be provided to the CITY OF SOUTH PADRE ISLAND. Contractor shall provide notification of cancellation, in writing, thirty (30) days prior to termination date. Copies of all endorsements for additional insured and waiver of subrogation shall accompany the certificate of insurance.

Builder's Risk Coverage

Builders' Risk Coverage written on an Inland Marine Broad Form for the full contract amount, to include the perils of hail, windstorm, lightning, fire, theft, vandalism, malicious mischief, flood, debris removal, pollution

cleanup, and extended coverage on which the work of the Contract is to be performed to the extent thereof, includes items of labor and material connected therewith, whether in or adjacent to the structure insured, on the job site, in transit to the job site or at a temporary storage location pending delivery to the job site; materials in place or to be used as a part of the permanent construction, and temporary structures, miscellaneous materials and supplies incident to work.

Installation Floater Coverage

Installation Floater Coverage written on an Inland Marine Broad Form for the contract value to include the perils of hail, windstorm, lightning, fire, theft, vandalism, malicious mischief, flood, debris removal, pollution cleanup, and extended coverage; on which the work of the Contract is to be performed to the extent thereof, includes components of the building, labor and material connected therewith, installation, improvement, alteration or repair made to machinery and equipment to be installed, all while in storage location, transit to the place of installation; and during the period of installation and testing.

Workers’ Compensation Insurance

Each Accident	\$1,000,000
Disease-Each Employee	\$1,000,000
Disease-Policy Limit	\$1,000,000

Certificate of coverage (“certificate”). A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Texas Department of Insurance, Division of Worker’s Compensation, or a coverage agreement (DWC-81, DWC-82, DWC-83, or DWC-84), showing workers’ compensation insurance coverage for the person’s or entity’s employees providing services on a project, for the duration of the project.

Duration of the project – includes the time from the beginning of the work on the project until the Contractor’s/person’s work on the Project has been completed and accepted by the Owner.

Persons providing services on the Project (“subcontractor” in §406.0096, Texas Labor Code) – includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the Project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the Project. “Services” include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. “Services” does not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

1. The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011 (44) for all employees of the Contractor providing services on the Project, for the duration of the Project.
2. The Contractor must provide a certificate of coverage to the Owner prior to being awarded the contract.

3. If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the Project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the Owner showing that coverage has been extended.

4. The Contractor shall obtain from each person providing services on the Project, and provide to the Owner.

(a) a certificate of coverage, prior to that person beginning work on the Project, so the Owner will have on file certificates of coverage showing coverage for all persons providing services on the Project; and

(b) no later than seven days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.

5. The Contractor shall retain all required certificates of coverage for the duration of the Project and for one year thereafter.

6. The Contractor shall notify the Owner in writing by certified mail or personal delivery, within 10 days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.

7. The Contractor shall post on the Project site a notice, in the text, form and manner prescribed by the Texas Worker's Compensation Commission, informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

8. The Contractor shall contractually require each person with whom it contracts to provide services on the Project, to:

(a) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees' providing services on the Project, for the duration of the Project;

(b) provide to the Contractor, prior to that person beginning work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project, for the duration of the Project;

(c) provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;

(d) obtain from each other person with whom it contracts, and provide to the Contractor:

(1) a certificate of coverage, prior to the other person beginning work on the Project; and

(2) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;

(e) retain all required certificates of coverage on file for the duration of the Project and for one year thereafter;

(f) notify the Owner in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and

(g) contractually require each person with whom it contracts, to perform as required by paragraphs a-f, with the certificates of coverage to be provided to the person for whom they are providing services.

9. By signing the Construction Contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the Owner that all employees of the Contractor who will provide services on the Project will be covered by workers' compensation coverage for the duration of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

10. The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the Owner to declare the contract void if the Contractor does not remedy the breach within ten (10) days after receipt of notice of breach from the Owner.

11. The coverage requirement recited above does not apply to sole proprietors, partners, and corporate officers who are excluded for coverage in an insurance policy or certificate of authority to self-insure that is delivered, issued for delivery, or renewed on or after January 1, 1996. 28 TAC 110.110(i).

12. All insurance must be written by insurance companies which are rated in the A.M. Best Key Rating Guide-Property & Casualty with a policyholder's rating of "A" and a financial size category of Class VII. A Designated Project or Premises Endorsement which applies the general aggregate to the project must be provided. No policy shall contain any exclusion for explosion, collapse, or underground coverage.

13. The CITY OF SOUTH PADRE ISLAND shall be named as additional insured in the policy and a waiver of subrogation shall be provided to the CITY OF SOUTH PADRE ISLAND.

14. Endorsements shall accompany the certificate of insurance.

Article 13. Damages:

If the Project is not completed in accord with the Contract Documents within the Contract Time then Owner shall be entitled to recover from Contractor, at Owner's sole election: (a) all loss or damage incurred or sustained by Owner of every kind and nature whatsoever; or (b) liquidated damages in the amount of Five Hundred Dollars (\$500.00) per day for each calendar day thereafter until the Project is completed.

SUSPENSION OR DEBARMENT CERTIFICATE

Non-Federal entities are prohibited from contracting with or making sub-awards under covered transaction to parties that are suspended or debarred or whose principals are suspended or debarred. Covered transactions include procurement for goods or services equal to or in excess of \$100,000. Contractors receiving individual awards for \$100,000 or more and all sub-recipients must certify that the organization and its principals are not suspended or debarred.

By submitting this offer and signing this certificate, this offeror:

- Certifies that no suspension or debarment is in place, which would preclude receiving a federally funded contract under the Federal OMB, A-102, Common Rule (§ .36)

NON-COLLUSION DISCLOSURE

I am the manager, secretary or other agent or officer of the principal of the Offeror in the matter of the proposals to which this affidavit is attached, and I have full knowledge of the relations of the Offeror with the other firms in this same line of business, and the offeror is not a member of any trust, pool, or combination to control the price of supplies, materials and/or services Proposal on, or to influence any person to Proposal or not to Proposal thereon.

I further affirm that the Offeror has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted proposal.

Vendor Name: _____

Vendor Address: _____

Vendor Telephone: _____

Authorized Company's Official's Name: _____
(Printed)

Signature of Company Official: _____

CONFLICT OF INTEREST QUESTIONNAIRE
For vendor doing business with local governmental entity

FORM CIQ

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

OFFICE USE ONLY

Date Received

1 Name of vendor who has a business relationship with local governmental entity.

2 Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information is being disclosed.

Name of Officer

4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

Yes No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

Yes No

5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.

6 Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

7

Signature of vendor doing business with the governmental entity

Date

CONFLICT OF INTEREST QUESTIONNAIRE
For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

(a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed;

or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

CONTRACT ADDENDUM
PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL

Effective September 1, 2017, Texas Legislature House Bill 89 was signed into law May 2, 2017 requiring all contracts between a governmental entity and a company for goods and services to include a signed verification by the company of the following:

A governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it:

- (1) does not boycott Israel; and
- (2) will not boycott Israel during the term of the contract.

“Boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

“Company” means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

“Governmental Entity” means a state agency or political subdivision of this state. “Political subdivision” means:

- (A) a county;
- (B) a municipality;
- (C) a public school district; or
- (D) a special-purpose district or authority

Signed and Verified By:
(Name of Company)

_____ Date: _____
(Name & Title)

CONTRACT ADDENDUM PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING CERTAIN ENERGY COMPANIES

Effective September 1, 2021, Texas Legislature Senate Bill 13 was signed into law May 28, 2021 requiring all contracts between a governmental entity and a company for goods and services to include a signed verification by the company of the following:

A governmental entity may not enter into a contract, valued at \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity, with a company that has 10 or more full-time employees, for goods or services unless the contract contains a written verification from the company that it:

- (1) does not boycott energy companies; and
- (2) will not boycott energy companies during the term of the contract.

"Boycott Energy Company" means without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company:

- (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or
- (B) does business with a company described by Paragraph (A).

"Company" means (except that the term does not include a sole proprietorship) a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

"Governmental Entity" means a state agency or political subdivision of this state. "Political subdivision" means:

- (A) a county;
- (B) a municipality;
- (C) a public school district; or
- (D) a special-purpose district or authority.

Signed and Verified By:
(Name of Company)

_____ Date: _____
(Name & Title)

CONTRACT ADDENDUM
PROHIBITION ON CONTRACTS WITH COMPANIES THAT DISCRIMINATE AGAINST FIREARM AND AMMUNITION INDUSTRIES

Effective September 1, 2021, Texas Legislature Senate Bill 19 was signed into law May 28, 2021 requiring all contracts between a governmental entity and a company for goods and services to include a signed verification by the company of the following:

A governmental entity¹ may not enter into a contract, valued at \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity, with a company that has 10 or more full-time employees, for goods or services unless the contract contains a written verification from the company that it:

- (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and
- (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association.

"Firearm Entity" means:

- (A) a firearm, firearm accessory, or ammunition manufacturer, distributor, wholesaler, supplier, or retailer; and
- (B) a sport shooting range

"Firearm Trade Association" means any person, corporation, unincorporated association, federation, business league, or business organization that:

- (A) is not organized or operated for profit and for which none of its net earnings inures to the benefit of any private shareholder or individual;
- (B) has two or more firearm entities as members; and
- (C) is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c) of that code.

"Discriminate against a Firearm Entity or Firearm Trade Association" means:

- (A) with respect to the entity or association, to:
 - (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association;
 - (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or
 - (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; and

(B) does not include:

¹ Does not apply to a governmental entity that:

- (1) contracts with a sole-source provider; or
- (2) does not receive any bids from a company that is able to provide the written verification required by that subsection.

(i) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories; and

(ii) a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship:

(aa) to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency; or

(bb) for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association.

"Company" means (except that the term does not include a sole proprietorship) a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

"Governmental Entity" means a state agency or political subdivision of this state.

"Political subdivision" means:

- (A) a county;
- (B) a municipality;
- (C) a public school district; or
- (D) a special-purpose district or authority.

Signed and Verified By:

(Name of Company)

(Name, Title, Date)