

**DESIGN-BUILD AGREEMENT**

**By and Between**

**CITY OF CARSON**

**and**

**TRANE U.S. INC.**

**AGREEMENT FOR CONTRACT SERVICES  
BETWEEN THE CITY OF CARSON AND**

---

THIS AGREEMENT FOR CONTRACT SERVICES (herein “Agreement”) is made and entered into this [REDACTED] day of [REDACTED], 2020 by and between the City of Carson, a California municipal corporation (“City”) and TRANE U.S. INC., a Delaware corporation (“Design-Builder”). City and Design-Builder are sometimes hereinafter individually referred to as “Party” and hereinafter collectively referred to as the “Parties.”

**RECITALS**

A. City has sought under the emergency procurement procedures of Sections 22035 and 22050 of the Public Contract Code, the performance of the services defined and described particularly in Article 1 of this Agreement.

B. Design-Builder, following submission of a proposal or bid for the performance of the services defined and described particularly in Article 1 of this Agreement, was selected by the City to perform those services.

C. Pursuant to the City of Carson Municipal Code and applicable statutes, City has authority to enter into and execute this Agreement.

D. The Parties desire to formalize the selection of Design-Builder for performance of those services defined and described particularly in Article 1 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

E. This Agreement incorporates the entirety of the scope of work, including design work, performed by Design-Builder in that certain Memorandum of Understanding between the Parties dated August 4, 2020 (“MOU”), and shall fully and completely supersede such MOU. The cost associated with the MOU has been incorporated into this Agreement and made part of the Contract Sum.

**OPERATIVE PROVISIONS**

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the Parties agree as follows:

**ARTICLE 1. WORK OF DESIGN-BUILDER**

**1.1 Scope of Work.**

In compliance with all terms and conditions of this Agreement, the Design-Builder shall provide those services specified in the “Scope of Work” attached hereto as Exhibit “A” and incorporated herein by this reference, which may be referred to herein as the “services” or “work” hereunder. Such Scope of Work will be for design, construction and maintenance services, with each phase having distinct time periods during which services must be rendered.

As a material inducement to the City entering into this Agreement, Design-Builder represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the work required under this Agreement in a thorough, competent, and professional manner, and is experienced in performing the work and services contemplated herein. Design-Builder shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. Design-Builder covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be both of good quality as well as fit for the purpose intended. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

#### 1.2 Compliance with Law.

Design-Builder shall keep itself informed concerning, and shall render all services hereunder in accordance with, all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental entity having jurisdiction in effect at the time service is rendered.

#### 1.3 Licenses, Permits, Fees and Assessments.

Design-Builder shall obtain at its sole cost and expense such licenses, permits, registrations, and approvals as may be required by law for the performance of the services required by this Agreement. Design-Builder shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Design-Builder's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes, penalties or interest levied, assessed or imposed against City hereunder.

#### 1.4 Familiarity with Work.

(a) By executing this Agreement, Design-Builder warrants that Design-Builder (i) has thoroughly investigated and considered the scope of work to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Design-Builder warrants that Design-Builder has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder.

(b) Design-Builder shall promptly, and, to the extent known to Design-Builder without the obligation to specifically test, before the following conditions are disturbed, notify the City, in writing, of any: (i) material Design-Builder believes may be hazardous waste as defined in Section 25117 of the Health & Safety Code required to be removed to a Class I, II, or III disposal site in accordance with existing law; (ii) subsurface, unknown or latent conditions,

materially different from those indicated; or (iii) unknown physical conditions at the site of any unusual nature, different from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement, and will materially affect the performance of the services hereunder.

(c) City shall promptly investigate the conditions, and if it finds that the conditions do materially differ, or do involve hazardous waste, and cause a decrease or increase in Design-Builder's cost of, or the time required for, performance of any part of the work, shall issue a change order per Section 1.10 of this Agreement.

(d) In the event that a dispute arises between City and Design-Builder whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in Design-Builder's cost of, or time required for, performance of any part of the work, Design-Builder shall proceed with all work to be performed under the Agreement. Design-Builder shall retain any and all rights provided either by contract or by law, which pertain to the resolution of disputes and protests between the contracting Parties.

#### 1.5 Protection and Care of Work and Materials.

The Design-Builder shall adopt reasonable methods, including providing and maintaining storage facilities, during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as caused by City's own negligence. Stored materials shall be reasonably accessible for inspection. Design-Builder shall not, without City's consent, assign, sell, mortgage, hypothecate, or remove equipment or materials which have been installed or delivered and which may be necessary for the completion of the work.

#### 1.6 Warranty; Substantial Completion; Limitation of Liability.

(a) Warranty. Design-Builder warrants all Work under the Agreement (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the Work) to be of good quality and free from any defective or faulty material and workmanship for a period of one (1) year (or the period of time specified elsewhere in the Agreement or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the Work, whichever is later) after the date of final acceptance of the Project (the "Warranty Period"). The warranty with respect to components of the Work not manufactured by Design-Builder shall be the warranties provided with respect to such components by their respective manufacturers. Design-Builder reserves the right to commence the Warranty Period for major components of the Work comprising of equipment installed hereunder as of the date of substantial completion for such components (which shall be limited to City Hall Central Plant, Community Center Central Plant, City Hall Air Handlers, Community Center Air Handler #1). Design-

Builder shall, during the Warranty Period, within ten (10) days after being notified in writing by the City of any defect in the Work or non-conformance of the Work to the Agreement, commence and prosecute with due diligence all Work necessary to fulfill the terms of the warranty at its sole cost and expense. Design-Builder shall act as soon as requested by the City in response to an emergency. In addition, Design-Builder shall, at its sole cost and expense, repair, remove or replace (at its option) any portions of the Work (or work of other contractors) damaged by its defective Work or which becomes damaged in the course of repairing or replacing defective Work. For any Work so corrected, Design-Builder's obligation hereunder to correct defective Work so corrected shall be for a one year period, commencing with the date of acceptance of such corrected Work. Design-Builder shall perform such tests as the City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Agreement. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstitution of equipment and materials necessary to gain access, shall be the sole responsibility of the Design-Builder. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the Work, whether express or implied, are deemed to be obtained by Design-Builder for the benefit of the City, regardless of whether or not such warranties and guarantees have been transferred or assigned to the City by separate agreement and Design-Builder agrees to use its commercially reasonable efforts to enforce such warranties and guarantees, if necessary, on behalf of the City. In the event that Design-Builder fails to perform its obligations under this Section, or under any other warranty or guaranty under this Agreement, to the reasonable satisfaction of the City, after the requisite notice and cure period under Section 7.3 of this Agreement has passed without Design-Builder curing the default, the City shall have the right to correct and replace any defective or non-conforming Work and any work damaged by such work or the replacement or correction thereof at Design-Builder's sole expense. Design-Builder shall be obligated to fully reimburse the City for any expenses incurred hereunder upon demand. Design-Builder's warranties expressly exclude any remedy for damage or defect caused by corrosion, erosion, or deterioration arising from normal wear and tear under normal usage, abuse, modifications or repairs not performed by Design-Builder, or improper operation. Design-Builder shall not be obligated to pay for the cost of lost refrigerant.

(b) Substantial Completion. "Substantial completion" shall mean the state in the progress of the Project where the City is able to utilize the Project (or a component thereof per Section 1.6) as intended under the construction drawings prepared by Design-Builder as part of Phase 1 (as hereinafter defined). There shall be four (4) separate Certificates of Substantial Completion for the entire Project, two (2) each for the City Hall location and the Community Center location. Substantial completion shall be determined in accordance with the following procedures: once Design-Builder completes each of the portions of the Project associated with City Hall and the Community Center, Design-Builder shall provide City written notification advising of same ("Completion Notice"). As soon as practicable thereafter, City shall either issue a Certificate of Substantial Completion or, absent City's ability to issue such certificate due to the work not being complete, provide Design-Builder with a corrective list of items that still need to be addressed and completed prior to issuance of a Certificate of Substantial Completion ("Corrective List"). If City determines a Corrective List must be provided to Design-Builder,

Design-Builder must address such Corrective List items, and only after those items are completed will City issue a Certificate of Substantial Completion. The City's issuance of a Certificate of Substantial Completion shall not be unreasonably withheld, conditioned or delayed.

(c) Limitation of Liability.

**SUBJECT TO THE LIQUIDATED DAMAGES PROVISIONS OF THIS AGREEMENT AND AS OTHERWISE PROVIDED IN THIS AGREEMENT, THE WARRANTY, LIABILITY AND REMEDIES SET FORTH IN THIS SECTION ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, LIABILITIES, OR REMEDIES, WHETHER IN CONTRACT OR IN NEGLIGENCE, EXPRESS OR IMPLIED, IN LAW OR IN FACT, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL DESIGN-BUILDER OR CITY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL (INCLUDING WITHOUT LIMITATION LOST PROFITS), OR PUNITIVE DAMAGES. NO REPRESENTATION OR WARRANTY OF ANY KIND, INCLUDING WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE, IS MADE REGARDING PREVENTING, ELIMINATING, REDUCING OR INHIBITING ANY MOLD, FUNGUS, BACTERIA, VIRUS, MICROBIAL GROWTH, OR ANY OTHER CONTAMINANTS (INCLUDING COVID-19 OR ANY SIMILAR VIRUS) (COLLECTIVELY, "CONTAMINANTS"), WHETHER INVOLVING OR IN CONNECTION WITH EQUIPMENT, ANY COMPONENT THEREOF, SERVICES OR OTHERWISE. IN NO EVENT SHALL DESIGN-BUILDER HAVE ANY LIABILITY FOR THE PREVENTION, ELIMINATION, REDUCTION OR INHIBITION OF THE GROWTH OR SPREAD OF SUCH CONTAMINANTS INVOLVING OR IN CONNECTION WITH ANY EQUIPMENT, ANY COMPONENT THEREOF, SERVICES OR OTHERWISE AND CITY HEREBY SPECIFICALLY ACKNOWLEDGES AND AGREES THERETO.**

1.7 Prevailing Wages.

(a) Public Work. The Parties acknowledge that the work to be performed under this Agreement for Phase 2 is a "public work" as defined in Labor Code Section 1720 and that this Agreement is therefore subject to the requirements of Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code relating to public works contracts and the rules and regulations established by the Department of Industrial Relations ("DIR") implementing such statutes. The work performed under this Agreement is subject to compliance monitoring and enforcement by the DIR. Design-Builder shall post job site notices, as prescribed by regulation.

(b) Registration with DIR. Pursuant to Labor Code section 1771.1, Design-Builder and all subcontractors must be registered with, and pay an annual fee to, the DIR prior to and during the performance of any work under this Agreement.

(c) Prevailing Wages. Design-Builder shall pay prevailing wages to the extent required by Labor Code Section 1771. Pursuant to Labor Code Section 1773.2, copies of the prevailing rate of per diem wages are on file at City Hall and will be made available to any interested party on request. By initiating any work under this Agreement, Design-Builder acknowledges receipt of a copy of the DIR determination of the prevailing rate of per diem wages, and Design-Builder shall post a copy of the same at each job site where work is performed under this Agreement. If this Agreement is subject to the payment of federal prevailing wages under the Davis-Bacon Act (40 U.S.C. § 3141 *et seq.*), then Design-Builder shall pay the higher of either the state or federal prevailing wage applicable to each laborer.

(d) Penalty for Failure to Pay Prevailing Wages. Design-Builder shall comply with and be bound by the provisions of Labor Code Sections 1774 and 1775 concerning the payment of prevailing rates of wages to workers and the penalties for failure to pay prevailing wages. The Design-Builder shall, as a penalty to the City, forfeit two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the DIR for the work or craft in which the worker is employed for any public work done pursuant to this Agreement by Design-Builder or by any subcontractor; provided, however, that any such penalty shall be limited, in the aggregate for all Work performed under this Agreement, to not more than \$10,000.00.

(e) Payroll Records. Design-Builder shall comply with and be bound by the provisions of Labor Code Section 1776, which requires Design-Builder and each subcontractor to: keep accurate payroll records and verify such records in writing under penalty of perjury, as specified in Section 1776; certify and make such payroll records available for inspection as provided by Section 1776; and inform the City of the location of the records.

(f) Apprentices. Design-Builder shall comply with and be bound by the provisions of Labor Code Sections 1777.5, 1777.6, and 1777.7 and California Code of Regulations Title 8, Section 200 *et seq.* concerning the employment of apprentices on public works projects. Design-Builder shall be responsible for compliance with these aforementioned Sections for all apprenticeable occupations. Prior to commencing work under this Agreement, Design-Builder shall provide City with a copy of the information submitted to any applicable apprenticeship program. Within sixty (60) days after concluding work pursuant to this Agreement, Design-Builder and each of its subcontractors shall submit to the City a verified statement of the journeyman and apprentice hours performed under this Agreement.

(g) Eight-Hour Work Day. Design-Builder acknowledges that eight (8) hours labor constitutes a legal day's work. Design-Builder shall comply with and be bound by Labor Code Section 1810.

(h) Penalties for Excess Hours. Design-Builder shall comply with and be bound by the provisions of Labor Code Section 1813 concerning penalties for workers who work excess hours.

(i) Workers' Compensation. California Labor Code Sections 1860 and 3700 provide that every employer will be required to secure the payment of compensation to its employees if it has employees. In accordance with the provisions of California Labor Code Section 1861, Design-Builder certifies as follows:

“I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.”

(j) Design-Builder's Responsibility for Subcontractors. For every subcontractor who will perform work under this Agreement, Design-Builder shall be responsible for such subcontractor's compliance with Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code, and shall make such compliance a requirement in any contract with any subcontractor for work under this Agreement. Design-Builder shall be required to take all actions necessary to enforce such contractual provisions and ensure subcontractor's compliance, including without limitation, conducting a review of the certified payroll records of the subcontractor on a periodic basis or upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages. Design-Builder shall diligently take corrective action to halt or rectify any such failure by any subcontractor.

#### 1.8 Further Responsibilities of Parties.

Both Parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both Parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither Party shall be responsible for the service of the other.

#### 1.9 Additional Work and Change Orders.

(a) City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Work or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written change order is first given by the Contract Officer to the Design-Builder, incorporating therein any adjustment in (i) the Contract Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Design-Builder (“Change Order”). All Change Orders must be signed by the Design-Builder and Contract Officer prior to commencing the extra work thereunder.

(b) Provided Design-Builder is in compliance with this Agreement and is not at fault for nor has contributed to any delays, Design-Builder shall be entitled to an equitable adjustment to the Work, the Contract Sum and/or the



project schedule (in each case, to the extent affected) upon occurrence of any of the following events:

- (i) the Work is delayed, suspended or accelerated by any the City or any of its employees, representatives, agents or contractors;
- (ii) failure by the City to timely perform its obligations hereunder;
- (iii) A change in applicable law or a change in permitting requirements or other governmental approvals occurs after the date of this Agreement;
- (iv) The occurrence of an Event of Force Majeure affecting the Work;
- (v) Any change to the Services is requested or directed by the City; or
- (vi) Design-Builder encounters hazardous waste as defined in Section 1.4 or a concealed or unknown condition.

(c) Any increase in compensation of up to ten percent (10%) of the Contract Sum or any increase in the time to perform of up to one hundred eighty (180) days and which are not detrimental to the Work or to the interest of the City, may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively, must be approved by the City Council.

(d) Any adjustment in the Contract Sum for a Change Order must be in accordance with the rates set forth in the Schedule of Compensation in Exhibit "C." If the rates in the Schedule of Compensation do not cover the type of work in the Change Order, the cost of such work shall not exceed an amount agreed upon in writing and signed by Design-Builder and Contract Officer. If the cost of the Change Order cannot be agreed upon, the City will pay for actual work of the Change Order completed, to the satisfaction of the City, as follows:

(i) Labor: the cost of labor shall be the cost charged by Design-Builder or its subcontractors in the ordinary course of business for the specific labor or function performed in compliance with all applicable law

(ii) Materials and Equipment: the cost of materials and equipment shall be at cost to Design-Builder. Equipment or materials manufactured by Design-Builder shall be priced at the then current Design-Builder's price, subject to any discount multipliers applicable to the City.

(iii) Any general conditions (including bonding, insurance, warranty costs, contingencies or other similar costs), or other reasonable costs incurred by Design-Builder in the performance of the Work.

(iv) Design-Builder shall be entitled to markup: 15% for labor and 10% for equipment, materials and general conditions.

(v) If the cost of the extra work cannot be agreed upon, the Design-Builder must provide a daily report that includes invoices for labor, materials and equipment costs for the work under the Change Order. The daily report must include: list of names of workers, classifications, and hours worked; description and list of quantities of materials used; type of equipment, size, identification number, and hours of operation, including loading and transportation, if applicable; description of other City authorized services and expenditures in such detail as the City may require.

(vi)

(e) It is expressly understood by Design-Builder that the provisions of this Section 1.9 shall not apply to services specifically set forth in the Scope of Work. Design-Builder hereby acknowledges that, subject to Design-Builder's right to an equitable adjustment in accordance with Section 1.9(b) above, it accepts the risk that the services to be provided pursuant to the Scope of Work may be more costly or time consuming than Design-Builder anticipates and that Design-Builder shall not be entitled to additional compensation therefor. City may in its sole and absolute discretion have similar work done by other contractors.

(f) No claim for an increase in the Contract Sum or time for performance shall be valid unless the procedures established in this Section are followed.

#### 1.10 Special Requirements.

Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as Exhibit "B" and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit "B" and any other provisions of this Agreement, the provisions of Exhibit "B" shall govern.

#### 1.12 Compliance with Project Labor Agreement and Enhanced Electrical Safety Policy.

If and to the extent that the work to be performed under this Agreement is within the scope of the City's Project Labor Agreement, which was fully executed as of March 4, 2020, by and between the City and the Los Angeles/Orange Counties Building and Construction Trades Council and the Signatory Craft Councils and Unions (the "Project Labor Agreement"), City and Design-Builder acknowledge and agree that Design-Builder is required to comply with the provisions of the Project Labor Agreement, and that in the event of a conflict between the provisions of this Agreement and the Project Labor Agreement, the Project Labor Agreement shall supersede and take precedence over the conflicting provision(s) of this Agreement.

Design-Builder shall comply with City's Enhanced Electrical Safety Policy approved by the City Council via Resolution No. 11-015 on February 1, 2011 ("Enhanced Electrical Safety Policy").

## **ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT.**

### **2.1 Contract Sum; Project.**

Subject to any limitations set forth in this Agreement, City agrees to pay Design-Builder the amounts specified in the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed Five Million Eight Hundred Twenty Two Thousand Nine Hundred Twenty Five Dollars (\$5,822,925.00) (the "Contract Sum"), unless additional compensation is approved pursuant to Section 1.9. As set out in Exhibit "C," compensation for provision of the design services ("Phase 1") shall not exceed Two Hundred Sixty Five Thousand Five Hundred Dollars (\$265,500.00) ("Phase 1 Contract Sum"), and compensation for the construction component ("Phase 2" or the "Project") shall not exceed Five Million Five Hundred Fifty Seven Thousand Four Hundred Twenty Five Dollars (\$5,557,425.00) ("Phase 2 Contract Sum"). The Project will be located in two different locations: City Hall and the Community Center.

### **2.2 Invoices.**

Each month Contractor shall furnish to City an original invoice for all work performed during the preceding month in a form approved by City's Director of Finance. By submitting an invoice for payment under this Agreement, Contractor is certifying compliance with all provisions of the Agreement.

All invoices for Phase 2 work completed shall include a copy of Contractor's Certified Payroll and proof that Certified Payroll has been submitted to the DIR. Contractor shall also submit a list of the prevailing wage rates (including federal prevailing wage rates, if applicable) for all employees and subcontractors providing services under this Agreement, as applicable, with Contractor's first invoice. If these rates change at any time during the term of the Agreement, Contractor shall submit a new list of rates to the City with its first invoice following the effective date of the rate change.

### **2.3 Payment.**

City shall independently review each invoice submitted by the Contractor to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Contractor which are disputed by City, City will cause Contractor to be paid within thirty (30) days of receipt of Contractor's correct and undisputed invoice; however, Contractor acknowledges and agrees that due to City warrant run procedures, the City cannot guarantee that payment will occur within this time period. In the event that City does not cause Contractor to be paid within thirty (30) days of receipt of an undisputed and properly submitted invoice for Phase 2 work completed, Contractor shall be entitled to the payment of interest to the extent allowed under Public Contract Code Section 20104.50. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Contractor, not later than seven (7) days after receipt by the City, for correction and resubmission. Returned invoices shall be

accompanied by a document setting forth in writing the reasons why the payment request was rejected.

From time to time at City's discretion and when requested by City, Design-Builder shall provide conditional waivers and releases for labor and services provided and equipment and materials delivered for or in connection with the Project, in accordance with California Civil Code Section 8120 *et seq.*, prior to City remitting payment to Design-Builder.

#### 2.4 Retention.

City will withhold five percent (5%) from each Phase 1 payment as a contract retention to be paid as part of the final payment upon satisfactory completion of all Phase 1 services. Pursuant to Section 9203 of the Public Contract Code, City will deduct a five percent (5%) retention from all progress payments for Phase 2 work completed, which shall be released to Design-Builder no later than sixty (60) days from completion of the work in accordance with Section 7107 of the Public Contract Code. In the event of a dispute between City and Design-Builder, City may withhold from the final payment an amount not to exceed one hundred fifty percent (150%) of the disputed amount.

#### 2.5 Waiver.

Payment to Design-Builder for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Design-Builder.

### **ARTICLE 3. PERFORMANCE SCHEDULE**

#### 3.1 Time of Essence.

Time is of the essence in the performance of this Agreement.

#### 3.2 Schedule of Performance.

Design-Builder shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "D" and incorporated herein by this reference. When requested by the Design-Builder, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding one hundred eighty (180) days cumulatively. Design-Builder shall be entitled to extensions to the time periods as may be required in accordance with Section 1.9.

#### 3.3 Force Majeure.

The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Design-Builder, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the City, if the

Design-Builder shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Parties agree that delays resulting from the Covid-19 pandemic or Design-Builder's compliance with any safety process or directive associated therewith shall be deemed Force Majeure hereunder.

### 3.4 Inspection and Final Acceptance.

(a) With respect to Phase 1, City may inspect and accept or reject any of Design-Builder's work under this Agreement, either during performance or when completed. City shall reject or finally accept Design-Builder's work within twenty (20) business days after submission to City. City shall accept work by a timely written acceptance, which acceptance shall not be unreasonably withheld, conditioned or delayed. City's acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as to amount to fraud. Acceptance of any work by City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, Articles 1 and 5, pertaining to warranty and indemnification and insurance, respectively.

(b) With respect to Phase 2, acceptance of the Project shall only be by action of the City Council. Neither the acceptance nor any prior inspections or failure to inspect shall constitute a waiver by City of any defects in the work. From and after acceptance, the Project shall be owned and operated by City. As a condition to acceptance, Design-Builder shall certify to City in writing that all of the work has been performed in strict conformity with the Agreement and associated plans and drawings, and there are no liens or claims on the Project for work performed or materials or equipment provided.

### 3.5 Term.

Unless earlier terminated in accordance with Article 7 of this Agreement, this Agreement shall continue in full force and effect until completion of the services but not exceeding two (2) years from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit "D").

### 3.6 Specific Reports.

- Without limiting the generality of Section 6.2 of this Agreement, Design-Builder shall submit to City a daily work report that includes name of workers, classification and hours worked, description of the work and equipment used, and description of the weather conditions. With each invoice submitted, Design-Builder shall also produce detailed reports that will allow City to confirm Design-Builder's compliance with the Project Labor Agreement and Enhanced Electrical Safety Policy.

## **ARTICLE 4. COORDINATION OF WORK**

### **4.1 Representatives and Personnel of Design-Builder.**

The following principals of Design-Builder (“Principals”) are hereby designated as being the principals and representatives of Design-Builder authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

Patrick Wilkinson, Operations Leader

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing Principals were a substantial inducement for City to enter into this Agreement. Therefore, the Principals shall be responsible during the term of this Agreement for directing all activities of Design-Builder and devoting sufficient time to personally supervise the services hereunder. All personnel of Design-Builder, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the Principals may not be replaced nor may their responsibilities be substantially reduced by Design-Builder without the express written approval of City. Additionally, Design-Builder shall make every reasonable effort to maintain the stability and continuity of Design-Builder’s staff and subcontractors, if any, assigned to perform the services required under this Agreement. Design-Builder shall notify City of any changes in Design-Builder’s staff and subcontractors, if any, assigned to perform the services required under this Agreement, prior to and during any such performance.

### **4.2 Status of Design-Builder.**

Design-Builder shall have no authority to bind City in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City. Design-Builder shall not at any time or in any manner represent that Design-Builder or any of Design-Builder’s officers, employees, or agents are in any manner officials, officers, employees or agents of City. Neither Design-Builder, nor any of Design-Builder’s officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City’s employees. Design-Builder expressly waives any claim Design-Builder may have to any such rights.

### **4.3 Contract Officer.**

The Contract Officer shall be Reata Kulcsar, Sustainability Administrator – Utilities, or such person as may be designated by the City Manager. It shall be the Design-Builder’s responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Design-Builder shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority, if specified in writing by the City Manager, to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

#### 4.4 Independent Design-Builder.

Neither the City nor any of its employees shall have any control over the manner, mode or means by which Design-Builder, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Design-Builder's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Design-Builder shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. Design-Builder shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Design-Builder in its business or otherwise or a joint venturer or a member of any joint enterprise with Design-Builder.

#### 4.5 Prohibition Against Subcontracting or Assignment.

The experience, knowledge, capability and reputation of Design-Builder, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Design-Builder shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the City. Moreover, Design-Builder shall provide City the name and location of the place of business of each subcontractor who will perform work or labor or render service to Design-Builder in an amount in excess of one-half (1/2) of one percent (1%) of the total Contract Sum. All subcontractors shall obtain, at its or Design-Builder's expense, such licenses, permits, registrations and approvals (including from the City) as may be required by law for the performance of any services or work under this Agreement. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Design-Builder, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Design-Builder or any surety of Design-Builder of any liability hereunder without the express consent of City.

### **ARTICLE 5. INSURANCE, INDEMNIFICATION AND BONDS**

#### 5.1 Insurance Coverages.

Without limiting Design-Builder's indemnification of City, and prior to commencement of any services under this Agreement, Design-Builder shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City.

(a) General liability insurance. Design-Builder shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$2,000,000 per occurrence, \$4,000,000 general aggregate, for

bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO “insured contract” language will not be accepted.

(b) Automobile liability insurance. Design-Builder shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Design-Builder arising out of or in connection with Services to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

(c) Workers’ compensation insurance. Design-Builder shall maintain Workers’ Compensation Insurance (Statutory Limits) and Employer’s Liability Insurance (with limits of at least \$1,000,000).

(d) Professional Liability. Professional liability insurance appropriate to the Design-Builder’s profession. This coverage may be written on a “claims made” basis, and must include coverage for contractual liability. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of or related to services performed under this Agreement. The insurance must be maintained for at least 3 consecutive years following the completion of Design-Builder’s services or the termination of this Agreement. During this additional 3-year period, Design-Builder shall annually and upon request of the City submit written evidence of this continuous coverage.

(e) Installation Floater Insurance.

Design-Builder shall maintain Property Installation Floater insurance that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Installation Floater shall provide property damage coverage for any of Design-Builder’s machinery or equipment damaged, impaired, broken, or destroyed during the performance of the work, including during transit, installation, and testing at the Project site.

(f) Title and Risk of Loss. Title to the materials and equipment comprising the Work shall pass to the City in the course of construction upon the later of (i) incorporation of such materials or equipment into the work site, or (ii) payment by the City for Work corresponding to such materials or equipment. Notwithstanding the foregoing, risk of loss for the Work shall pass to City in the course of construction upon incorporation into the work site.

(g) Pollution Liability Insurance. Design-Builder shall maintain Environmental Impairment Liability insurance, written on a Design-Builder’s Pollution Liability form or other form acceptable to City providing coverage for liability arising out of sudden, accidental, and gradual pollution and remediation. The policy limit shall be no less than \$1,000,000 per claim and in the aggregate. All activities contemplated in this Agreement shall be specifically scheduled on the policy as “covered operations.” The policy shall provide coverage for the hauling of waste from the project site to the final disposal location, including non-owned disposal sites.



Products/completed operations coverage shall extend a minimum of three (3) years after project completion. Coverage shall be included on behalf of the insured for covered claims arising out of the actions of independent contractors. If the insured is using subcontractors, the policy must include work performed “by or on behalf” of the insured. Policy shall contain no language that would invalidate or remove the insurer’s duty to defend or indemnify for claims or suits expressly excluded from coverage. Policy shall specifically provide for a duty to defend on the part of the insurer.

If Design-Builder maintains broader coverage and/or higher limits than the minimums shown above, City requires and shall be entitled to the broader coverage and/or the higher limits maintained by Design-Builder. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

## 5.2 General Insurance Requirements.

(a) Subcontractors. Design-Builder shall include all subcontractors as insureds under its policies or alternatively, Design-Builder agrees to ensure that its subconsultants, subcontractors, and any other party involved with the project who is brought onto or involved in the project by Design-Builder, provide the same minimum insurance coverage and endorsements required of Design-Builder. Design-Builder agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Design-Builder agrees that upon request, all agreements with consultants, subcontractors, and others engaged in the project will be submitted to City for review.

(b) Proof of Insurance. Design-Builder shall provide certificates of insurance and endorsements to City as evidence of the insurance coverages required herein, along with a waiver of subrogation endorsement for workers’ compensation. Insurance certificates and endorsements must be approved by City’s Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

(c) Duration of Coverage. Design-Builder shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Services hereunder by Design-Builder, its agents, representatives, employees or subcontractors.

(d) Primary/noncontributing. Coverage provided by Design-Builder shall be primary and any insurance or self-insurance procured or maintained by City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for

the benefit of City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

(e) City's Rights of Enforcement. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Design-Builder or City will withhold amounts sufficient to pay premium from Design-Builder payments. In the alternative, City may cancel this Agreement.

(f) Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers, but solely to the extent of Design Builder's fault.

(g) Enforcement of Contract Provisions (non-estoppel). Design-Builder acknowledges and agrees that any actual or alleged failure on the part of the City to inform Design-Builder of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.

(h) Requirements Not Limiting. Requirements of specific coverage features or limits contained in this section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Design-Builder maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Design-Builder. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

(i) Notice of Cancellation. Design-Builder agrees to oblige its insurance agent or broker and insurers to provide to City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

(j) Additional Insured Status. General and auto liability policies shall provide or be endorsed to provide that City and its officers, officials, employees, and agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess/umbrella liability policies.

(k) Prohibition of Undisclosed Coverage Limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

(l) Separation of Insureds. A severability of interests provision must apply for all additional insureds ensuring that Design-Builder's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

(m) Agency's Right to Revise Specifications. The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Design-Builder ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Design-Builder, the City and Design-Builder may renegotiate Design-Builder's compensation.

(n) Self-Insured Retentions. Any self-insured retentions must be declared to and approved by City.

(o) Timely Notice of Claims. Design-Builder shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Design-Builder's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

(p) Additional Insurance. Design-Builder shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.

### 5.3 Indemnification; Limitation on Liability.

(a) To the full extent permitted by law, Design-Builder agrees to indemnify, defend and hold harmless the City, its officers and employees ("Indemnified Parties") against, any and all third party actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened (herein "claims or liabilities") that may be asserted or claimed to the extent arising out of or in connection with the negligence, reckless or willful misconduct in the course of performance of the work, operations or activities provided herein of Design-Builder, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Design-Builder is legally liable ("indemnitors"), it being understood that the requirements herein pertaining to work performed on or associated with Phase 1 is pursuant to Section 2782.8 of the California Civil Code; provided that Design-Builder shall not be required to indemnify the City against actions, costs, expenses, damages and liabilities to the extent attributable to the acts or omissions of the City, its officers, employees, agents, separate contractors or invitees. If the parties are both at fault hereunder, then any obligation to indemnify shall be proportional to their relative fault. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement.

(b) In addition, Design-Builder agrees to indemnify, defend and hold harmless the Indemnified Parties from, any and all claims and liabilities for any infringement of United States patent rights, copyrights or trademark on any person or persons in consequence of the use by the Indemnified Parties of articles to be supplied by Design-Builder under this Agreement, and of which the Design-Builder is not the patentee or assignee or has not the lawful right to sell the same.

(c) Design-Builder shall incorporate similar indemnity agreements with its subcontractors and if it fails to do so Design-Builder shall be fully responsible to indemnify City hereunder therefore, and failure of City to monitor compliance with these provisions shall not be a waiver hereof.

(d) Limitation of Liability.

NOTWITHSTANDING ANY PROVISION TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL (INCLUDING WITHOUT LIMITATION LOST REVENUE AND LOST PROFITS) OR PUNITIVE DAMAGES REGARDLESS OF WHETHER SUCH LIABILITY ARISES FROM BREACH OF CONTRACT, TORT OR ANY OTHER THEORY, EXCEPT AS MAY BE OTHERWISE SET FORTH ELSEWHERE IN THIS AGREEMENT.

(e) COVID-19 LIMITATION ON LIABILITY

Design-Builder has represented to City that completion of the Project will result in substantial reduction of viruses, mold, bacteria, odors, and other particulates as well as possible reduction of COVID-19 transmission per ASHRAE HVAC-related recommendations to Dilute, Exhaust, Contain, and Clean the Air. The transmission of COVID-19 may occur in a variety of ways and circumstances, many of the aspects of which are currently not known. HVAC systems, products, services and other offerings have not been tested for their effectiveness in reducing the spread of COVID-19, including through the air in closed environments. IN NO EVENT WILL DESIGN-BUILDER BE LIABLE UNDER THIS AGREEMENT OR OTHERWISE FOR ANY ACTION OR CLAIM, WHETHER BASED ON WARRANTY, CONTRACT, TORT OR OTHERWISE, FOR ANY BODILY INJURY (INCLUDING DEATH) OR ANY OTHER LIABILITIES, DAMAGES OR COSTS RELATED TO COVID-19 (INCLUDING THE SPREAD, TRANSMISSION OR CONTAMINATION THEREOF) (COLLECTIVELY, "COVID-19 LIABILITIES") AND CITY HEREBY EXPRESSLY RELEASES DESIGN-BUILDER FROM ANY SUCH COVID-19 LIABILITIES.

#### 5.4 Performance, Payment and Warranty Bonds.

(a) Concurrently with execution of this Agreement, Design-Builder shall deliver to the City a performance bond securing the faithful performance of the work described in Phase 2 of the Scope of Work, in an amount not less than the Phase 2 Contract Sum. The

performance bond shall include coverage for warranties provided hereunder for a period not to exceed twelve (12) months following City's acceptance of the Project.

(b) Concurrently with execution of this Agreement, Design-Builder shall deliver to the City a payment bond, securing the payment of all persons furnishing labor and/or materials in connection with the work performed for Phase 2 described in the Scope of Work, in an amount not less than the Phase 2 Contract Sum.

All bonds shall be on applicable forms provided to and approved by the City Attorney in advance of execution of this Agreement. The bonds shall each contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his/her power of attorney. The bonds shall be unconditional and remain in force until released.

#### 5.5 Sufficiency of Insurer or Surety.

Insurance and bonds required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A-" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Risk Manager of the City ("Risk Manager") due to unique circumstances. If this Agreement continues for more than 3 years duration, the Design-Builder agrees that the minimum limits of the insurance policies and the performance bond and warranty bond required by Section 5.4 may be changed accordingly upon receipt of written notice from the Risk Manager.

#### 5.6 Substitution of Securities.

Pursuant to Public Contract Code Section 22300, substitution of eligible equivalent securities for any funds withheld to ensure performance under this Agreement may be permitted at the request and sole expense of the Design-Builder. Alternatively, the Design-Builder may, pursuant to an escrow agreement in a form prescribed by Public Contract Code Section 22300, request payment of retentions funds earned directly to the escrow agent at the sole expense of the Design-Builder.

#### 5.7 Release of Securities.

City shall release the performance bond and payment bond when the following have occurred:

- (a) for the performance bond, Design-Builder has made a written request for release and provided evidence of satisfaction of all other requirements under Article 5 of this Agreement; and

twelve (12) months have passed following acceptance of the Project.

(b) for the payment bond, after passage of the time within which lien claims are required to be made pursuant to applicable laws; if lien claims have been timely filed, City

shall hold the payment bond until such claims have been resolved, Design-Builder has provided statutory bond, or otherwise as required by applicable law.

## **ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION**

### **6.1 Records.**

Design-Builder shall keep, and require subcontractors to keep, such ledgers, books of accounts, invoices, vouchers, canceled checks, reports, studies, certified and accurate copies of payroll records in compliance with all applicable laws, or other documents relating to the disbursements charged to City and services performed hereunder (the “books and records”), as shall be necessary to perform the services required by this Agreement. Any and all such documents shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. Such records shall be maintained for a period of 3 years following completion of the services hereunder, and the City shall have access to such records in the event any audit is required by law. In the event of dissolution of Design-Builder’s business, custody of the books and records may be given to City, and access shall be provided by Design-Builder’s successor in interest. Notwithstanding the above, the Design-Builder shall fully cooperate with the City in providing access to the books and records if a public records request is made and disclosure is required by law including but not limited to the California Public Records Act. Design-Builder shall be allowed to contest or challenge any disclosure of records pursuant to such request and the City shall reasonably cooperate with Design-Builder in any such contest or challenge.

### **6.2 General Reports.**

Design-Builder shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require. Design-Builder hereby acknowledges that the City is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Design-Builder agrees that if Design-Builder becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Design-Builder is providing design services, the cost of the project being designed, Design-Builder shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Design-Builder is providing design services, the estimated increased or decreased cost estimate for the project being designed.

### **6.3 Ownership of Documents.**

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the “documents and materials”) prepared by Design-Builder, its employees, subcontractors and agents in the performance of this Agreement shall be deemed “instruments of service” of the Design-Builder hereunder and shall remain property of Design-Builder. Design-Builder hereby grants the City a perpetual, royalty free license to use the documents and materials as may be required for the purpose of the ownership, maintenance, operation and repair of the Project. Any use or reuse of such completed

documents for other projects and/or use of uncompleted documents without specific written authorization by the Design-Builder will be at the City's sole risk and without liability to Design-Builder, and Design-Builder's guarantee and warranties shall not extend to such use or reuse.

#### 6.4 Confidentiality and Release of Information.

(a) All information gained or work product produced by Design-Builder in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Design-Builder. Neither Party shall release or disclose any such information or work product to persons or entities without prior written authorization from the other Party, it being understood that such restrictions are subject to the Public Records Act.

(b) Neither Party nor its officers, employees, agents or subcontractors, shall, without prior written authorization from the other Party, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement, it being understood that such restrictions are subject to the Public Records Act. Response to a subpoena or court order shall not be considered "voluntary" provided Design-Builder gives City notice of such court order or subpoena.

(c) Design-Builder shall promptly notify City and City shall endeavor to promptly notify Design-Builder should either such Party, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under. Each Party retains the right, but has no obligation, to be present at any deposition, hearing or similar proceeding. Each Party agrees to cooperate fully with the other Party and to provide such Party with the opportunity to review any response to discovery requests. However, this right to review any such response does not imply or mean the right by such Party to control, direct, or rewrite said response.

### **ARTICLE 7. ENFORCEMENT OF AGREEMENT AND TERMINATION**

#### 7.1 California Law.

This Agreement shall be interpreted, construed and governed both as to validity and to performance of the Parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Los Angeles, State of California, or any other appropriate court in such county, and Design-Builder covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in the County of Los Angeles, State of California.

## 7.2 Dispute Resolution Process.

Section 20104 *et seq.* of the California Public Contract Code prescribes a process utilizing informal conferences, non-binding judicial-supervised mediation, and judicial arbitration to resolve disputes on construction claims of \$375,000 or less. Section 9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on construction claims. The intent of this Section is to implement Sections 20104 *et seq.* and Section 9204 of the California Public Contract Code. This Section shall be construed to be consistent with said statutes.

For purposes of these procedures, “claim” means a separate demand by the Design-Builder, after the City has denied Design-Builder’s timely and duly made request for payment for extra work and/or a time extension, for (A) a time extension, (B) payment of money or damages arising from work done by or on behalf of the Design-Builder pursuant to the Agreement and payment of which is not otherwise expressly provided for or the Design-Builder is not otherwise entitled to, or (C) an amount the payment of which is disputed by the City.

The following requirements apply to all claims to which this section applies:

(c) Claim Submittal. The claim shall be in writing and include the documents necessary to substantiate the claim. Claims governed by this procedure must be filed on or before the date of final payment. Nothing in this section is intended to extend the time limit or supersede notice requirements otherwise provided in the Agreement for the filing of claims, including all requirements pertaining to compensation or payment for extra work, disputed work, and/or changed conditions. Failure to follow such contractual requirements shall bar any claims or subsequent lawsuits for compensation or payment thereon.

(f) Supporting Documentation. The Design-Builder shall submit all claims in the following format:

(i) Summary of the claim, including references to the specific Contract Document provisions upon which the claim is based.

(ii) List of documents relating to claim: (a) Specifications, (b) Drawings, (c) Clarifications (Requests for Information), (d) Schedules, and (e) Other.

(iii) Chronology of events and correspondence related to the claim.

(iv) Statement of grounds for the claim.

(v) Analysis of the claim’s cost, if any.

(vi) Analysis of the claim’s time/schedule impact, if any.

(g) City’s Response. Upon receipt of a claim pursuant to this section, City shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the Design-Builder a written statement identifying what portion of the claim is disputed



and what portion is undisputed. Any payment due on an undisputed portion of the claim will be processed and made within 60 days after the City issues its written statement.

(i) If the City needs approval from the City Council to provide the Design-Builder a written statement identifying the disputed portion and the undisputed portion of the claim, and the City Council does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the City shall have up to three days following the next duly publicly noticed meeting of the City Council after the 45-day period, or extension, expires to provide the Design-Builder a written statement identifying the disputed portion and the undisputed portion.

(ii) Within 30 days of receipt of a claim, the City may request in writing additional documentation supporting the claim or relating to defenses or claims the City may have against the Design-Builder. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of City and the Design-Builder.

(iii) The City's written response to the claim, as further documented, shall be submitted to the Design-Builder within 30 days (if the claim is less than \$50,000, within 15 days) after receipt of the further documentation, or within a period of time no greater than that taken by the Design-Builder in producing the additional information or requested documentation, whichever is greater.

(h) Meet and Confer. If the Design-Builder disputes the City's written response, or the City fails to respond within the time prescribed, the Design-Builder may so notify the City, in writing, either within 15 days of receipt of the City's response or within 15 days of the City's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand, the City shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(i) Mediation. Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the City shall provide the Design-Builder a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the City issues its written statement. Any disputed portion of the claim, as identified by the Design-Builder in writing, shall be submitted to nonbinding mediation, with the City and the Design-Builder sharing the associated costs equally. The City and Design-Builder shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing, unless the parties agree to select a mediator at a later time.

(i) If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.

(ii) For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

(iii) Unless otherwise agreed to by the City and the Design-Builder in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Public Contract Code Section 20104.4 to mediate after litigation has been commenced.

(iv) All unresolved claims shall be considered jointly in a single mediation, unless a new unrelated claim arises after mediation is completed.

(j) Government Code Claims. If following the mediation, the claim or any portion remains in dispute, the Design-Builder must comply with the claim procedures set forth in Government Code Section 900 *et seq.* prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, construction claims, and/or changed conditions, including any required mediation, have been followed by Design-Builder. If no such Government Code claim is submitted, or if the prerequisite contractual requirements are not satisfied, no action against the City may be filed. A Government Code claim must be filed no earlier than the date that Design-Builder completes all contractual prerequisites to filing a Government Code claim, including any required mediation. A Government Code claim shall be inclusive of all unresolved claims unless a new unrelated claim arises after the Government Code claim is submitted. For purposes of Government Code Section 900 *et seq.*, the running of the period of time within which a claim must be filed shall be tolled from the time the Design-Builder submits his or her written claim to the City until the time the claim is denied, including any period of time utilized by the meet and confer conference or mediation that does not result in a complete resolutions of all claims.

(k) Civil Actions for Claims of \$375,000 or Less. The following procedures are established for all civil actions filed to resolve claims totaling \$375,000 or less:

(i) Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties or unless mediation was held prior to commencement of the action in accordance with Public Contract Code section 9204 and the procedures in this Section. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, either party may petition the court to appoint the mediator.

(ii) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part

3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act (Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

(iii) Upon stipulation of the parties, arbitrators appointed for these purposes shall be experienced in construction law, and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division.

(iv) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorney's fees of the other party arising out of the trial de novo.

### 7.3 Default.

In the event that Design-Builder is in default under the terms of this Agreement, the City shall give notice to Design-Builder of the default and the reasons for the default. The notice shall include the timeframe in which Design-Builder may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. Design-Builder shall be deemed in default only in the event that Design-Builder fails to cure a valid default prior to the expiration of the cure period set forth above. During the period of time that Design-Builder is in default, the City shall hold all invoices which are in dispute and shall proceed with payment on the disputed invoices only when the default is cured. If Design-Builder does not cure the default, the City may take necessary steps to terminate this Agreement under this Article. Any failure on the part of the City to give notice of the Design-Builder's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising out of any provision of this Agreement.

If a Design-Builder Default has occurred and is continuing, City may terminate this Agreement by written notice to Design-Builder. In the event City terminates this Agreement for a Design-Builder Default, City may, but is not required to take possession of the Project together with all materials thereon, and move to complete the Work itself expediently. In completing the Work, City shall use its commercially reasonable efforts to minimize its damages and to utilize (and pay for) any materials or equipment or any specially manufactured or fabricated equipment delivered by Design-Builder to the work site or which are in the process of being manufactured, fabricated and/or delivered (provided that Design-Builder shall not be obligated to ship any such equipment unless City provides Design-Builder adequate assurance of payment therefor). If the unpaid balance of the Contract Sum exceeds the expense of finishing the Work, the excess, but solely to the extent sums have been withheld by the City for Work performed by Design-Builder prior to the termination of the Agreement, shall be paid to Design-Builder, but if the expense exceeds the unpaid balance, Design-Builder shall pay the difference to City.

#### 7.4 Retention of Funds.

Design-Builder hereby authorizes City to deduct from any amount payable to Design-Builder (whether or not arising out of this Agreement) (i) any amounts the payment of which may be in good faith dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of Design-Builder's acts or omissions in performing or failing to perform Design-Builder's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Design-Builder, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Design-Builder to insure, indemnify, and protect City as elsewhere provided herein.

#### 7.5 Waiver.

Waiver by any Party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any Party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Design-Builder shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting Party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either Party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

#### 7.6 Rights and Remedies are Cumulative.

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

#### 7.7 Legal Action.

In addition to any other rights or remedies, either Party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement. Notwithstanding any contrary provision herein, Design-Builder shall file a claim pursuant to Government Code Sections 905 et seq. and 910 et. seq., in order to pursue a legal action under this Agreement.

#### 7.8 Liquidated Damages.

Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of

this Agreement, the Design-Builder and its sureties shall be liable for and shall pay to the City the sum of One Thousand Dollars (\$1,000.00) as liquidated damages for each working day of delay in the performance of any service required hereunder for Phase 2, as specified in the Schedule of Performance (Exhibit "D"). The Parties agree that the deadlines set forth in the Schedule of Performance are subject to modification, in accordance with any applicable change orders and Section 1.9 of this Agreement. The City may withhold from any monies payable on account of services performed by the Design-Builder any accrued liquidated damages. Notwithstanding anything else herein, in no event shall Design-Builder be liable for liquidated damages after issuance of the Certificate of Substantial Completion (as determined according to Section 1.6 of this Agreement), it being understood that four (4) Certificates of Substantial Completion will be issued, two (2) each for City Hall and the Community Center. Each Project location will be subject to liquidated damages independent of the other; that is, it is possible for liquidated damages to be assessed only for the City Hall location or only for the Community Center location, or both. If Design-Builder becomes liable for liquidated damages for failure to meet deadlines in the Schedule of Performance, all such liability will cease upon issuance of the Certificate(s) of Substantial Completion. Notwithstanding the foregoing, the aggregate liability for liquidated damages hereunder per working day of delay, even if both buildings are subject to liquidated damages for delays hereunder, shall not exceed One Thousand Dollars (\$1,000.00). The liquidated damages set forth above shall be the sole remedy of the City in the event of a delay in performance hereunder and shall be limited to an aggregate. Additionally, in no event shall Design-Builder be assessed liquidated damages during the period between the date it issues City a Completion Notice or the date it completes the Corrective List items and provides notice thereof to the City until the date City provides a Corrective List (or a subsequent Corrective List, if applicable), inclusive of such dates.

#### 7.9 Termination Prior to Expiration of Term.

This Section shall govern any termination of this Agreement except as specifically provided in the following Section for City's termination for cause. The City reserves the right to terminate this Agreement at any time, with or without cause, upon thirty (30) days' written notice to Design-Builder. In addition, the Design-Builder reserves the right to terminate this Agreement at any time, with or without cause, upon sixty (60) days' written notice to City, except that where termination is due to the fault of the City, the period of notice may be such shorter time as the Design-Builder may determine. Upon receipt of any notice of termination, Design-Builder shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Design-Builder has initiated termination, the Design-Builder shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, together with any damages sustained by Design-Builder as a result of such termination, including the cost of terminating orders or subcontracts for labor or material and price of any specially manufactured items, whether in production or delivered, except as provided in Section 7.4. In the event the Design-Builder has initiated termination for cause, the Design-Builder shall be entitled to compensation for all services rendered hereunder in accordance with the Schedule of Compensation together with any damages sustained by Design-

Builder as a result of such termination, including the cost of terminating orders or subcontracts for labor or material and price of any specially manufactured items, whether in production or delivered. In the event of termination without cause pursuant to this Section, the terminating Party need not provide the non-terminating Party with the opportunity to cure pursuant to Section 7.3.

7.10 Termination for Default of Design-Builder.

If termination is due to the failure of the Design-Builder to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.3, and in addition to what is permitted under Section 7.3, withhold any payments to the Design-Builder for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

7.11 Attorneys' Fees.

If either Party to this Agreement is required to initiate or defend or made a Party to any action or proceeding in any way connected with this Agreement, the prevailing Party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and in addition a Party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

7.12 Unfair Business Practices Claims.

In entering into this Agreement, Design-Builder offers and agrees to assign to the City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2, (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials related to this Agreement. This assignment shall be made and become effective at the time the City renders final payment to the Design-Builder without further acknowledgment of the Parties.

**ARTICLE 8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION**

8.1 Non-liability of City Officers and Employees.

No officer or employee of the City shall be personally liable to the Design-Builder, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Design-Builder or to its successor, or for breach of any obligation of the terms of this Agreement.

## 8.2 Conflict of Interest.

Design-Builder covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Design-Builder's performance of services under this Agreement. Design-Builder further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the Contract Officer. Design-Builder agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which effects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any State statute or regulation. The Design-Builder warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

## 8.3 Covenant Against Discrimination.

Design-Builder covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry, or other protected class in the performance of this Agreement. Design-Builder shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry, or other protected class.

## 8.4 Unauthorized Aliens.

Design-Builder hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, *et seq.*, as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Design-Builder so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any liability or sanctions be imposed against City for such use of unauthorized aliens, Design-Builder hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

# ARTICLE 9. MISCELLANEOUS PROVISIONS

## 9.1 Notices.

Any notice, demand, request, document, consent, approval, or communication either Party desires or is required to give to the other Party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager and to the attention of the Contract Officer (with her/his name and City title), City of

Carson, 701 East Carson, Carson, California 93203 and in the case of the Design-Builder, to the person at the address designated on the execution page of this Agreement. Either Party may change its address by notifying the other Party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section. All correspondence relating to this Agreement shall be serialized consecutively.

#### 9.2 Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either Party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

#### 9.3 Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

#### 9.4 Integration; Amendment.

This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the Parties. It is understood that there are no oral agreements between the Parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the Parties, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Design-Builder and by the City Council. The Parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

#### 9.5 Severability.

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the Parties hereunder unless the invalid provision is so material that its invalidity deprives either Party of the basic benefit of their bargain or renders this Agreement meaningless.

#### 9.6 Warranty & Representation of Non-Collusion.

No official, officer, or employee of City has any financial interest, direct or indirect, in this Agreement, nor shall any official, officer, or employee of City participate in any decision relating to this Agreement which may affect his/her financial interest or the financial interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any State or municipal statute or regulation. The determination of "financial interest" shall be consistent with State law and shall not include interests found to be



“remote” or “noninterests” pursuant to Government Code Sections 1091 or 1091.5. Design-Builder warrants and represents that it has not paid or given, and will not pay or give, to any third party including, but not limited to, any City official, officer, or employee, any money, consideration, or other thing of value as a result or consequence of obtaining or being awarded any agreement. Design-Builder further warrants and represents that (s)he/it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any City official, officer, or employee, as a result of consequence of obtaining or being awarded any agreement. Design-Builder is aware of and understands that any such act(s), omission(s) or other conduct resulting in such payment of money, consideration, or other thing of value will render this Agreement void and of no force or effect.

Design-Builder's Authorized Initials \_\_\_\_\_

### 9.7 Corporate Authority.

The persons executing this Agreement on behalf of the Parties hereto warrant that (i) such Party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said Party, (iii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said Party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the Parties.

**[SIGNATURES ON FOLLOWING PAGE]**

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement on the date and year first-above written.

**CITY:**

CITY OF CARSON, a municipal corporation

\_\_\_\_\_  
Albert Robles, Mayor

**ATTEST:**

\_\_\_\_\_  
Donesia L. Gause, City Clerk

APPROVED AS TO FORM:  
ALESHIRE & WYNDER, LLP

\_\_\_\_\_  
Sunny K. Soltani, City Attorney  
[rjl]

**DESIGN-BUILDER:**

TRANE U.S. INC., a Delaware corporation

By:\_\_\_\_\_  
Name:  
Title:

By:\_\_\_\_\_  
Name:  
Title:  
Address: 3253 E. Imperial Highway  
Brea, CA 92821

**Two corporate officer signatures required when Design-Builder is a corporation, with one signature required from each of the following groups: 1) Chairman of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. DESIGN-BUILDER'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO DESIGN-BUILDER'S BUSINESS ENTITY.**

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On \_\_\_\_\_, 2020 before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_

### OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

#### CAPACITY CLAIMED BY SIGNER

☐ INDIVIDUAL  
☐ CORPORATE OFFICER  
\_\_\_\_\_  
TITLE(S)

☐ PARTNER(S) ☐ LIMITED  
☐ GENERAL

☐ ATTORNEY-IN-FACT  
☐ TRUSTEE(S)

☐ GUARDIAN/CONSERVATOR

☐ OTHER \_\_\_\_\_  
\_\_\_\_\_

#### DESCRIPTION OF ATTACHED DOCUMENT

\_\_\_\_\_  
TITLE OR TYPE OF DOCUMENT

\_\_\_\_\_  
NUMBER OF PAGES

\_\_\_\_\_  
DATE OF DOCUMENT

#### SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))

\_\_\_\_\_  
SIGNER(S) OTHER THAN NAMED ABOVE

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On \_\_\_\_\_, 2020 before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_

### OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

#### CAPACITY CLAIMED BY SIGNER

☐ INDIVIDUAL  
☐ CORPORATE OFFICER  
\_\_\_\_\_  
TITLE(S)

☐ PARTNER(S) ☐ LIMITED  
☐ GENERAL

☐ ATTORNEY-IN-FACT  
☐ TRUSTEE(S)

☐ GUARDIAN/CONSERVATOR  
☐ OTHER \_\_\_\_\_

#### DESCRIPTION OF ATTACHED DOCUMENT

\_\_\_\_\_  
TITLE OR TYPE OF DOCUMENT

\_\_\_\_\_  
NUMBER OF PAGES

\_\_\_\_\_  
DATE OF DOCUMENT

#### SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))

\_\_\_\_\_  
SIGNER(S) OTHER THAN NAMED ABOVE

**EXHIBIT “A”**  
**SCOPE OF WORK**

**I. Scope of Work Summary**

**City Hall**

Replace Two Chillers, Three Pumps, and Install New VFD's in the Central Plant  
Replace Five Air Handlers with New Advanced Air Cleaning Technology  
Install Bi-Polar Ionization on Air Handlers  
Install a New Trane DDC Controls System for the entire HVAC System  
Replace Eighteen Exhaust Fans and Three Split Systems  
Replace the Roof with new PVC Membrane Material

**Community Center**

Replace Two Chillers, Four Pumps, and Install New VFD's in the Central Plant  
Replace Two Boilers  
Replace Air Handler #1, including New Advanced Air Cleaning Technology  
Install Bi-Polar Ionization on Air Handlers  
Install One New Exhaust Fan  
Install a New Trane DDC Controls System for the Central Plant  
Provide a new Centralized Server-based enterprise controls system for Both Buildings

**Phase 1 Scope of Work**

- Provide for mechanical, electrical, and structural engineering for the HVAC scope of Work to be completed at City Hall and the Community Center
  - Shall include title page and site plan (no architectural included), and if required energy code compliance forms
- Submit plans to the proper plan check / permit authority for approval
  - The cost of permit and plan check fees are not included, the actual cost of permits will be a direct reimbursable expense to Trane.
- Complete controls engineering and submit to the City staff for approval
  - Submit controls engineering to plan check authority only if required
- Complete equipment and material submittals and submit to the City staff for approval

**Phase 2 Scope of Work**

**HVAC Scope of Work**

**City Hall**

**New HVAC Equipment to be provided and installed:**

- 2 New Trane RTWD Chillers, 100 tons each
- 3 New Pumps

- 3 New Pump VFD's **with bypass**
- 5 New Custom Trane Air Handlers with Trane Catalytic Air Cleaning System
- 3 New Mitsubishi Split Systems
- 18 New Exhaust Fans
- New Trane controls system
- New Trane Refrigerant Monitor

#### Installation Scope of Work

- Demolish existing HVAC equipment to include 2 chillers, 3 pumps, 3 pump VFD's, 5 air handlers, 3 split systems, and 18 exhaust fans
- Dispose of existing demolished equipment, Trane to retain salvage rights
- Install 2 new Trane RTWD chillers on exiting chiller pads
  - 1 chiller will be installed a time, to keep 1 chiller online at all times
  - New gauges, sensors, thermometers, check valves, control valves, and isolation valves will be installed
  - Required chilled water shut downs will happen at night, on Friday's or on weekends to minimize disturbance to City Hall
  - Install new air separator and new expansion tank
- Provide and install new Refrigerant Monitor with associated ASHRAE 15 accessories
  - Break glass, horns, strobes, etc.
- Install 3 new pumps, 1 for chilled water, 1 for condenser water, and 1 for redundancy
  - Pumps will be installed on existing inertia pads
  - Install new strainers, check valves, triple-duty valves, flexible connections and flow measuring devices on the pumps
- Install 3 new VFD's for the new pumps
- Install 3 new Split Systems
  - 1 split system for the computer room in the basement, 1 split system for the telephone room in the basement, and 1 new split system for the radio room on the second floor
- Install 18 new exhaust fans in place of existing exhaust fans
  - Exhaust ductwork to remain in place, no modification included
- Install 5 new custom air handlers to replace AHU1, AHU2, AHU3, AHU4 and AHU5
  - For air handlers 1 and 5, ductwork connections will be made to the nearest location that is feasible for a proper and clean installation
  - For air handlers 2, 3 and 4, all ductwork above the roofline will be replaced as possible
  - New gauges, sensors, thermometers, check valves, control valves, and isolation valves will be installed
- Provide for pre air balancing readings at 5 existing air handlers prior to demolition
- Once project is completed, air balance
  - Qty. 5 new air handlers

- Qty. 41 existing zones with hot deck / cold deck mixing boxes with new DDC controls
- Water balancing once project is complete of 5 new air handlers, HW and CHW, 2 chillers, and 3 pumps

### **Asbestos Abatement at City Hall**

In the course of performing preliminary analyses of the Scope of Work under the MOU, Trane identified areas where Work may be performed that may contain Asbestos or other Hazardous Materials and performed asbestos testing in such specific project related areas. In performing such tests, Trane identified asbestos containing materials in the sealant used in the installation of Air Handler #2 that is on the East Roof of City Hall. The sealant used in the installation of this air handler will be abated (the "Identified ACM"). As part of the Scope of Work, Trane shall perform the abatement of the Identified ACM in accordance with the scope outlined below. Except with respect to the Identified ACM, Trane has no responsibility or liability with respect to any Hazardous Materials existing on the Project Site or the identification, abatement, remediation, cleanup, removal, transport, treatment, storage or disposal thereof.

Identified ACM Abatement Scope of Work: All Identified ACM abatement scope of work shall be limited to the following:

The scope of the work includes labor, materials and equipment for the removal and disposal of the following

- Set up containment
- Set decon chambers and HEPA vacuums & portable hand tools
- Surface clean all pre-abated areas per report and recommendations and abate sealant ducting per drawing report 980 sq. ft.
- Abate and dispose of ducting from main HVAC unit within the east side of the roof area
- HEPA vacuum and encapsulated upon completion
- Wet wipe and wrap all asbestos ducting in 6mil poly and place in hazardous waste dumpster, waste will be brought down using an electric scissor
- All waste generated will be non-friable hazardous waste
- 40 yard Dumpster to be place in a secure and safe location

\*Our abatement scope is limited to the above. No other areas of abatement are included.

### **Plasma Air (Bi-Polar Ionization)**

- Provide and install bi-polar ionization / Plasma air product in all air handlers for City Hall

- Install in existing air handlers once contract is approved, as soon as possible
- Before 5 air handlers are replaced, once new air handlers arrive and plan check / permits are in hand and before demolition occurs, remove Plasma Air product from qty. 5 air handlers to be replaced
- Once 5 new air handlers are installed, install plasma air product back into 5 new air handlers
- Plasma Air BAR product counts for each air handler
  - City Hall
    - AH-1 (qty: 1)
    - AH-2 (qty: 3)
    - AH-3 (qty: 3)
    - AH-4 (qty: 2)
    - AH-5 (qty: 1)

## Community Center

### New HVAC Equipment to be provided and installed:

- 2 New Trane RTWD Chillers, 130 tons each
- 2 New Raypak Boilers, 1500 MBH input each
- 4 New Pumps
- 4 New Pump VFD's **with bypass**
- 1 New Custom Trane Air Handler with Trane Catalytic Air Cleaning System
- 1 New Exhaust Fan
- New Trane controls system for the Central Plant only
- New Trane Refrigerant Monitor

### Installation Scope of Work

- Demolish existing HVAC equipment to include 2 chillers, 2 boilers, 4 pumps, 4 pump VFD's, and 1 air handler
- Dispose of existing demolished equipment, Trane to retain salvage rights
- Install 2 new Trane RTWD chillers on exiting chiller pads
  - 1 chiller will be installed a time, to keep 1 chiller online at all times
  - New gauges, sensors, thermometers, check valves, control valves, and isolation valves will be installed
  - Required chilled water shut downs will happen at night or on weekends to minimize disturbance to Community Center
- Install two new boilers in place of existing boilers
  - New gauges, sensors, thermometers, check valves, control valves, and isolation valves will be installed
- Provide and install new Refrigerant Monitor with associated ASHRAE 15 accessories
  - Break glass, horns, strobes, etc.
- Install 4 new pumps, 1 for chilled water, 1 for condenser water, 1 for hot water, and 1 for redundancy (condenser / chilled water)
  - Pumps will be installed on existing inertia pads



- Install new strainers, check valves, triple-duty valves, flexible connections and flow measuring devices on the pumps
- Install 4 new VFD's for the new pumps
- Install 1 new exhaust fan for the chiller room
- Install 1 new custom air handler to replace AHU1
  - The exterior ductwork appears to be in good shape, Trane will give an option add to replace this ductwork
  - Ductwork connection will be made to the nearest location that is feasible for a proper and clean installation, point of connection on the supply side will be at the existing reheat coils, reheat coils to remain in place
  - New gauges, sensors, thermometers, check valves, control valves, and isolation valves will be installed
- Provide for pre air balancing readings at 1 existing air handler prior to demolition
- Once project is completed, air balance
  - Qty. 1 new air handlers
- Water balancing once project is complete of 1 air handler, HW and CHW, 2 chillers, 2 boilers and 4 pumps

#### Plasma Air (Bi-Polar Ionization)

- Provide and install bi-polar ionization / Plasma air product in all air handlers for Community Center
  - Install in existing air handlers once contract is approved, as soon as possible
  - Before 1 air handler is replaced, once new air handler arrives and plan check / permits are in hand and before demolition occurs, remove Plasma Air product from qty. 1 air handler to be replaced
  - Once 1 new air handler is installed, install plasma air product back into new air handler
- Plasma Air BAR product counts for each air handler
  - Community Center
    - AH-1 (QTY: 2)
    - AH-2 (QTY: 1)
    - AH-3 (QTY: 3)
    - AH-4 (QTY: 1)
    - AH-5 (QTY: 1)
    - AH-6 (QTY: 5)

### **Building Electrical Repair Work**

#### **MCC Feeder at Community Center & IR Report**

- Trane has been notified that an existing MCC feeder at the Community Center needs to be replaced. The existing feeder consists of (3) #350 KCMIL + (1) #1/0 AWG wire and is assumed to be 550' in length.
- Labor to pull out the existing feeder and replace with new feeder cables is included. Once the existing cables have been removed, Trane can confirm the

total feeder length provided is accurate. Additional length may incur added unforeseen costs.

- There is only (1) feeder cable set that is to be replaced. If the MCC is a parallel feeder from its power source, this pricing and scope is only relative to the single feeder set being replaced.
- Due to the amount of years the existing feeder has been in place, complications could arise in removing the existing feeder cables. This bid assumes that the cables will be easily removed without further complications to the described scope above. Additional unforeseen costs may be incurred if such an event were to occur.
- Trane was provided an Infrared Investigative Report identifying items to be addressed. Trane will provide (2) hours of investigative labor for each of the (10) items identified for a total of (20) labor hours. If additional time is needed Trane will coordinate with the City by discussing discoveries and suggestions of additional tasks to be tracked on a time and materials basis.
- Replacement of (6) 200A, 600V fuses is included per recommendations given in the report.

## HVAC Controls Scope of Work

### City Hall

- [1] Tracer SC+ to be installed in Second Floor Audio Room
  - Demo Existing Siemens Panel by Roof Hatch
  - Mount SC+ in Factory Enclosure
  - WCI Coordinator to be wired to and mounted in plenum (2 per floor and one on roof, 5 total)
  - Run and wire Ethernet Cable to Ethernet Switch within Same Room
- [1] AHU-1 Multi-Zone Air Handler with **Factory** mounted controls
  - Demo QTY 2 Siemens Panels in B-6 Main Electrical Room
  - Demo Existing Pneumatic Control Panel
  - Demo Existing Siemens ETP Panel
  - Demo Existing Visible Pneumatic Lines and End Devices
  - Factory UC600 Controller pre wired with all End devices
  - BACnet MS/TP Communication
  - Chilled Water Valve Modulating Output (2" 3-Way Valve with Actuator)
  - Hot Water Valve Modulating Output (1" 3-Way Valve with Actuator)
  - Zone Damper actuators (**QTY 5**)
  - Install Wireless Space Temperature sensors (**QTY 5**)
- [1] AHU-2 VAV Air Handler with **Factory** mounted controls
  - Demo Existing Pneumatic Control Panel
  - Demo Existing Visible Pneumatic Lines and End Devices
  - Factory UC600 Controller pre wired with all End devices
  - Outdoor Wireless Communications Interface (WCI)

- Chilled Water Valve Modulating Output (3" 3-Way Valve with Actuator)
  - Hot Water Valve Modulating Output (1.5" 3-Way Valve with Actuator)
- [1] AHU-3 VAV Air Handler with **Factory** mounted controls
  - Demo Existing Pneumatic Control Panel
  - Demo Existing Visible Pneumatic Lines and End Devices
  - Factory UC600 Controller pre wired with all End devices
  - Outdoor Wireless Communications Interface (WCI)
  - Chilled Water Valve Modulating Output (3" 3-Way Valve with Actuator)
  - Hot Water Valve Modulating Output (1.5" 3-Way Valve with Actuator)
- [1] AHU-4 VAV Air Handler with **Factory** mounted controls
  - Demo Existing Pneumatic Control Panel
  - Demo Existing Visible Pneumatic Lines and End Devices
  - Factory UC600 Controller pre wired with all End devices
  - Outdoor Wireless Communications Interface (WCI)
  - Chilled Water Valve Modulating Output (2.5" 3-Way Valve with Actuator)
  - Hot Water Valve Modulating Output (1.25" 3-Way Valve with Actuator)
- [1] AHU-5 Multi-Zone Air Handler with **Factory** mounted controls
  - Demo Existing Pneumatic Control Panel
  - Demo Existing Siemens ETP Panel
  - Demo Pneumatic Zone Damper Actuators in Duct Work External to AHU
  - Demo Existing Visible Pneumatic Lines and End Devices
  - Factory UC600 Controller pre wired with all End devices
  - BACnet MS/TP Communication
  - Chilled Water Valve Modulating Output (2" 3-Way Valve with Actuator)
  - Hot Water Valve Modulating Output (1" 3-Way Valve with Actuator)
  - Zone Damper actuators (**QTY 7**)
  - Install Wireless Space Temperature sensors (**QTY 7**)
- [3] New Ductless Split System Units
  - Run Control Wire to Outdoor Unit
  - Install Manufacturer Thermostat
  - Mount Wireless Space Temperature Sensor for Monitoring Only
- [41] Dual Duct Mixing Box Terminals (Existing Zone Terminals To Remain)
  - Demo Existing Pneumatic Controllers on Hot and Cold Deck
  - Demo Existing Visible Pneumatic Lines and End Devices
  - **Field Install Trane UC400 controller**
  - Mount Wireless Communications Interface (WCI)
  - Hot Deck Damper Actuator
  - Cold Deck Damper Actuator
  - Hot and Cold Deck Flow transducers tubing connection
  - 24VAC Voltage Bus Power Wiring from Transformer Panel
  - Mount and Wire Discharge Air Temp Sensor

- Mount Wireless Space Temperature Sensor
  - Wireless Space Temperature Sensor
- [4] Transformer Panels (2 per Floor):
  - Mount Factory Assembled Transformer Panel above T-Bar Ceiling
- Exhaust Fans
  - Exhaust Fans will be wired to the nearest UC210 Controller above the T-bar Ceiling
  - (18) Exhaust Fan Start/Stop Relays
  - (18) Exhaust Fan Status CTs
- Existing Constant Flow Hot Water System
  - Demo Air Compressor
  - Demo Air Compressor control Panel
  - Demo Existing Pneumatic Control Panel
  - Demo Existing Siemens ETP Panel
  - Demo Existing Visible Pneumatic Lines and End Devices
  - Trane UC600 Controller in field assembled NEMA 3R Enclosure
  - BACnet MS/TP Communication Wiring
  - Existing Hot Water Boiler – Enable, Status, Alarm
  - Existing Hot Water Pump – Start/Stop, Status
  - Hot Water System Differential pressure (Use existing DP Sensor copper line high and low ports)
  - Hot Water Bypass Valve with DDC Actuator (2.5” 2-Way Valve with Actuator)
  - Mount and wire Hot Water Supply Temperature in Existing Thermowell
  - Mount and wire Hot Water Return Temperature in Existing Thermowell
- Chilled Water System w/ Variable Flow
  - Demo Existing Pneumatic Control Panel
  - Demo Existing Siemens ETP Panel
  - Demo Existing Visible Pneumatic Lines and End Devices
  - Trane UC600 controller in field assembled NEMA 3R Enclosure
  - BACnet MS/TP Communication Wiring
  - Existing Cooling Tower Fan w/ VFD – Start/Stop, Status, Speed
  - New Chiller #1 Hard Wired Enable / Disable, Status, Alarm, BACnet MS/TP
  - New Chiller #2 Hard Wired Enable / Disable, Status, Alarm, BACnet MS/TP
  - Chilled Water Pump w/ VFD – Start/Stop, Status, Speed
  - Condenser Water Pump w/ VFD – Start/Stop, Status, Speed
  - Redundant Pump w/ VFD – Start/Stop, Status, Speed
  - Chilled Water System Differential pressure

- QTY (4) Chiller Isolation Valves Open/Close and end switch feedback (6" Butterfly Valve with Actuator)
  - QTY (4) Immersion temperature sensors & wells
  - Chiller Room Space Temperature Sensor
- TruSense Refrigerant Monitor
  - Mount Refrigerant Alarm Panel in Chiller Room
  - BACnet MS/TP Wired Communication
  - Install & wire refrigerant monitoring system
  - EF-4 Start/Stop and Status
  - (1) Exhaust Fan Emergency Button
  - (2) Emergency Stop Push Buttons with break Glass
  - (2) Strobe/Horns
  - Shutdown to all VFD's for pumps & Tower and Chillers

## Community Center

- [1] Tracer SC+ to be installed in Chiller Room
  - Mount SC+ in Factory Enclosure
  - Run and wire Ethernet Cable to nearest Ethernet Switch (100' or less)
- Constant Flow Hot Water System
  - Demo Existing Pneumatic Control Panel
  - Demo Existing Visible Pneumatic Lines and End Devices
  - Trane UC600 Controller in field assembled NEMA 3R Enclosure
  - BACnet MS/TP Communication Wiring
  - New Hot Water Boiler #1 – Enable, Status, BACnet MS/TP to factory Comm Card
  - New Hot Water Boiler #2 – Enable, Status, BACnet MS/TP to factory Comm Card
  - Existing Hot Water Pump – Start/Stop, Status
  - Hot Water System Differential pressure (Use existing DP Sensor copper line high and low ports)
  - Hot Water Bypass Valve with DDC Actuator (2.5" 2-Way Valve with Actuator)
  - Mount and wire Hot Water Supply Temperature in Existing Thermowell
  - Mount and wire Hot Water Return Temperature in Existing Thermowell
- Chilled Water System w/ Variable Flow
  - Demo Existing Pneumatic Control Panel
  - Demo Existing Siemens ETP Panel
  - Demo Existing Visible Pneumatic Lines and End Devices
  - Trane UC600 controller in field assembled NEMA 3R Enclosure
  - BACnet MS/TP Communication Wiring
  - Existing Cooling Tower Fan w/ VFD – Start/Stop, Status, Speed

- New Chiller #1 Hard Wired Enable / Disable, Status, Alarm, BACnet MS/TP
  - New Chiller #2 Hard Wired Enable / Disable, Status, Alarm, BACnet MS/TP
  - Chilled Water Pump w/ VFD – Start/Stop, Status, Speed
  - Condenser Water Pump w/ VFD – Start/Stop, Status, Speed
  - Redundant Pump w/ VFD – Start/Stop, Status, Speed
  - Chilled Water System Differential pressure
  - QTY (2) Chiller Isolation Valves Open/Close and end switch feedback (6" Butterfly Valve with Actuator)
  - QTY (2) Chiller Isolation Valves Open/Close and end switch feedback (5" Butterfly Valve with Actuator)
  - QTY (4) Immersion temperature sensors & wells
  - Chiller Room Space Temperature Sensor
- TruSense Refrigerant Monitor
  - Mount Refrigerant Alarm Panel in Chiller Room
  - BACnet MS/TP Wired Communication
  - Install & wire refrigerant monitoring system
  - EF-1 Start/Stop and Status
  - (1) Exhaust Fan Emergency Button
  - (2) Emergency Stop Push Buttons with break Glass
  - (2) Strobe/Horns
  - Shutdown to all VFD's for pumps & Tower and Chillers

### **Single Front-End Integration**

- Provide for integration of existing Siemens DDC controls for the Community Center Airside System into Trane hosted-server enterprise controls platform, Trane Tracer Ensemble
- Provide for 1 year of software licenses and hosted server costs
  - Licenses and hosted server costs after year 1 included in optional Trane service agreement
- Tracer Ensemble will be a seamless, single front end with a single login for the complete HVAC system at City Hall and the Community Center.

### **General Controls Inclusions**

- Project management, and technical labor to commission the system is included.
- Computer generated graphics will be provided for the scope above. Graphics shall include custom floor plans, equipment and central plant graphics.
- Wiring diagrams with termination information for all connected equipment.
- Parking lot lighting systems can be integrated, if technically possible, at the City's discretion

### **Controls Clarifications**

- Open-run Plenum-rated cable (no conduit) will be installed in concealed and accessible areas (above ceilings etc.). Any required indoor conduit shall be EMT (Not Rigid).

## **Controls Exclusions**

- Furnish any items not explicitly called out above
- Pressure Independent Valves.
- Furnish any labor related to LEED certification or TAB testing.
- Furnish any labor related to 3<sup>rd</sup> Party Commissioning.
- Integration to lighting systems, metering devices or any other systems not listed above.
- BTU metering, KW metering, sub metering provisions or installation.
- Replacement of existing VAV terminals.
- Operator workstation or laptop computer.
- Trenching or backfilling, or any underground conduit.

## **Roofing Scope of Work**

### **City Hall**

#### **Flat Roof Section**

- Remove existing roof system to the structural deck. Replace any damaged decking. Include 5% deck replacement in the base bid. Trane to provide a unit price for deck replacement (labor to install + material). If the amount of deck replacement exceeds 5%, Trane is to receive a change order based on the unit price.
- Install 1/4" DensdeckPrime insulation board taped at the joints.
- Torch apply SBS-modified torch base sheet, 120 mil – HPR Torch Base Sheet
- Torch apply SBS-modified torch cap sheet, 135 mil – Stressply IV UV Mineral.
- Torch apply SBS-modified flashing base ply in all flashing areas -- HPR Torch Base Sheet --extending 6" onto the roof field. Torch apply SBS-modified flashing cap ply in all flashing areas --Stressply IV UV Mineral -- extending 9" onto the roof field.
- No pitch pockets on roof. Lead flash all penetrations. Trane to supply and install all lead flashings. Lead flashing to have an umbrella cover.
- Sheet Metal:
  - All sheet metal to be ANSI SPRI ES-1 compliant.
  - Edge Metal: Where currently existing, remove the exiting edge metal. Install new, 22 gauge, kynar edge metal with a 4" vertical face.
  - Counterflashing: Install 22 gauge, galvanized skirt metal to the existing counterflashing metal. Terminate materials with termination bar set in butyl tape fastened every 6" o.c..Caulk above the termination bar.

- Coping Cap: Where currently existing, remove the existing coping cap metal. Install wood nailer if needed. Wrap the walls with flashing plies extending 2" over the wall. Install 22 gauge, kynar coated coping cap metal.
- Place all conduit on rubber blocks.
- Skylights: Flash materials under the existing counteflashing metal. Set with a termination bar in butyl tape. Fasten every 6" o.c. Install 22 gauge, galvanized skirt metal to the existing counterflashing metal. Caulk any cracks in the skylight metal. Caulk the skylight frame, tighten all fasteners, and caulk all fasteners. Seal skylights with urethane coating.
- Replace 3 roof hatches.
- Replace one ladder.
- \$10,000 allowance included to remove antennas and replace
- Install lead flashings for all penetrations. All lead flashings to receive a storm collar cover.
- All scuppers to be sealed and waterproofed with liquid flashing material.
- Install new drain rings – where existing -- at all internal drains. Sump drain as needed. All porcelain drains to be replaced.
- Ensure positive drainage.
- Ponding Water: Any areas with ponding water are to receive White Knight Plus WC coating application at 4 gal per sq with embedded 200 lbs per sq of Title 24 white gravel.

## **Concrete Tile Section**

- Remove the existing concrete tile and dispose. Remove the existing roof system to the structural deck. Replace any damaged decking. Include 5% deck replacement in the base bid. Trane to provide a unit price for deck replacement (labor to install + material). If the amount of deck replacement exceeds 5%, the contractor is to receive a change order based on the unit price.
- Apply self-adhering, ice and water underlayment – HPR Aquashield to the exposed wood. Roll to ensure strong bond.
- Install new 22 gauge, kynar edge metal with 4" vertical face.
- Re-use the existing gutters.
- Install new concrete tile matching previous attachment method.

## **Replace Concrete Tiles at City Hall Roof**

### **Replace Existing Concrete Tiles on Roof of City Hall**

- Offload existing tile
- Haul away and dispose of existing tile
- Supply and install new Eagle Tile Roofing System
- Pricing based on Standard Weight Tile



## Roofing Materials Provided

Product	Amount	Unit Size
HPR Torch Base Sheet	240	Roll (1 sq.)
Stressply IV UV Mineral	315	Roll (.75 sq.)
HPR Aquashield	67	Roll (2 sq.)
KEE-Lock Mastic	8	5 gal.
Tuff Stuff Caulking	40	Tube
Garla Prime VOC	2	5 gal

Sufficient amount of materials shall be provided to complete the above scope.

## Accepted Option Add – Replace Decorative Wood

At City Hall, Remove and install new decorative wood beams to match existing at west and south side of building.

## General Project Inclusions

- Project management included for a turnkey installation by Trane
- Labor has been quoted with the schedule and phasing of this project in mind.
  - Mechanical installation has been proposed as straight time, with many of the disturbance events at City Hall proposed to happen on Friday's.
  - Electrical power work has been quoted as straight time.
  - Controls and low voltage electrical will happen as a mix, with work in the office spaces happening after hours, and all other work being proposed as straight time.
  - Roofing is quoted as straight time labor, with some allowance for afterhours work as needed.
- Antennas on the roof of City Hall will need to be relocated for construction. Trane has included an allowance of \$10,000 to perform this. Any work above this cost shall be extra.
- Five days of owner training included
- Startup and commissioning of all new equipment and controls (no third party commissioning included, aside from 3<sup>rd</sup> party air and water balancing)
- 30 year manufacturer pass through roofing warranty
- Trane has included an allowance for a 1 month rental of up to 25 1.5 ton Move N Cools including delivery, installation, and removal.
- New piping installed by Trane shall have new insulation to match existing
- Hot water and chilled water piping will be replaced as needed when replacing chillers, boilers, and air handlers. Steel piping or copper as applicable will be used to match existing and industry standard
- Existing mixing boxes at the City Hall will remain as they appear in good condition, however new controls will be installed on mixing boxes.
- Walking path on new roof of City Hall can be provided at no extra cost if requested by the City

- Inoperable IT air handler adjacent to Air Handler #5 at City Hall shall be demolished
- Trane has included any building modifications to remove and replace equipment.
- If crane placement for City Hall is on lawn area, damaged turf shall be replaced.

#### **Accepted Option Add - 2nd – 5th Year Parts and Labor Warranty**

Provide for factory 2<sup>nd</sup> – 5<sup>th</sup> year parts and labor warranty for 4 Chillers and 6 Air Handlers Only

#### **Project Assumptions / Exclusions**

- Temporary cooling has been allowed for only per the scope of work.
- Structural engineering is included to assure proper support for new equipment
  - Structural upgrades and seismic upgrades to the buildings are excluded.
- Electrical service upgrades and electrical panel upgrades are excluded.
- All work dealing with fire life safety systems, fire sprinkler systems, and smoke evacuation systems is excluded.
  - Smoke detectors for the new air handlers are included.
- Construction fencing, temporary offices, security is excluded.
- Third Party review, testing, special inspection fees, deputy inspector fees, or commissioning of new systems is not included other than third party air balancing.
- Breaker coordination studies are excluded.
- Asbestos or Hazardous Material Abatement excluded, except as specifically listed in the Scope of Work with respect to the Identified ACM.
- Replacement of upgrade of any existing non-code compliant systems is excluded
- ADA requirements excluded
- Customer to coordinate all electrical shutdowns with Trane's schedule
- Building permit fees, Plan check fees, Assessments, Taxes applicable to the development of property, Utility connection fees and Usage fees, AQMD permitting and/or Fees, SDGE fees and Excess cable charges are excluded.
- Builders Risk (including flood and seismic insurance and Deductible) is excluded
- We assume crane location, if applicable, will not be restricted by underground utilities, etc. Trane is not responsible for damage to underground utilities / other equipment in the crane area
- Any items not specifically listed as scope of work is not included
- We assume there will be no other work going on that will affect the timing or sequence of our installation
- Demurrage or Storage Charges not included.
- Customer to provide Trane with the necessary CAT5 cable and installation, IP addresses, port configuration and network accessibility for the new DDC Central Plant Controls system
- Trane to retain salvage rights of all removed equipment and materials
- Temporary power or Trane provided utilities are excluded. We assume use of customer electrical, gas, and water for construction

- New gas meters are excluded
- Flow meters are excluded.
- Backup generators or tie in to emergency power is excluded other than reconnecting existing emergency power.
- Equipment view screens are excluded.
- Architectural drawings and line of sight drawings are excluded.

**II. In addition to the requirements of Sections 3.6 and 6.2, during performance of the work, Design-Builder will keep the City apprised of the status of performance by delivering the following status reports:**

Reports related to prevailing wage compliance.

**III. All Work is subject to review and acceptance by the City, and must be revised by the Design-Builder without additional charge to the City until found satisfactory and accepted by City.**

**IV. Design-Builder will utilize the following personnel to accomplish the Work:**

**V. The Design-Builder is solely responsive for the performance of this Agreement, regardless of references to subcontractors, subconsultants (including, but not limited to, designers and architects).**

**EXHIBIT “B”**

**SPECIAL REQUIREMENTS  
(Superseding Contract Boilerplate)**

## EXHIBIT "C"

### SCHEDULE OF COMPENSATION

**I. The following shall be the schedule of values for the Work performed under this Agreement:**

A	B	C	D	E	F	G	H	I	J	K	L
Activity Number	Description of Work	Scheduled Value	Work Completed		Materials Presently Stored (Not in D or E)	Total Completed and Stored to Date (D + E + F)	Percent Complete (G / C)	Balance To Finish (C - G)	Retention This Application (E X 5%)	Total Retention To Date (G X 5%)	Total Billing This Application (E - J)
			From Previous Application	This Period							
	<b>Phase 1</b>										
	Design Engineering	\$ 175,500.00		0.00	0.00	0.00	0.00%	\$ 175,500.00	\$0.00	\$0.00	\$0.00
	Project Development and Energy Engineering	\$ 90,000.00		0.00	0.00	0.00	0.00%	\$ 90,000.00	\$0.00	\$0.00	\$0.00
	<b>Subtotal for Phase 1</b>	<b>\$ 265,500.00</b>									
	<b>Phase 2</b>										
	Mobilization*	\$ 538,600.00		0.00	0.00	0.00	0.00%	\$ 538,600.00	\$0.00	\$0.00	\$0.00
	Install Plasma Air	\$ 175,500.00		0.00	0.00	0.00	0.00%	\$ 175,500.00	\$0.00	\$0.00	\$0.00
	City Hall Roof	\$ 819,000.00		0.00	0.00	0.00	0.00%	\$ 819,000.00	\$0.00	\$0.00	\$0.00
	City Hall Chiller Replacement	\$ 450,000.00		0.00	0.00	0.00	0.00%	\$ 450,000.00	\$0.00	\$0.00	\$0.00
	Install New Pumps and VFD's	\$ 225,000.00		0.00	0.00	0.00	0.00%	\$ 225,000.00	\$0.00	\$0.00	\$0.00
	Community Center Chiller Replacement	\$ 472,500.00		0.00	0.00	0.00	0.00%	\$ 472,500.00	\$0.00	\$0.00	\$0.00
	Community Center Boiler Replacement	\$ 117,000.00		0.00	0.00	0.00	0.00%	\$ 117,000.00	\$0.00	\$0.00	\$0.00
	City Hall Air Handler Replacements	\$ 1,170,000.00		0.00	0.00	0.00	0.00%	\$1,170,000.00	\$0.00	\$0.00	\$0.00
	Community Center Air Handler Replacement	\$ 247,500.00		0.00	0.00	0.00	0.00%	\$ 247,500.00	\$0.00	\$0.00	\$0.00
	Move 'N Cool Rentals	\$ 30,000.00		0.00	0.00	0.00	0.00%	\$ 30,000.00	\$0.00	\$0.00	\$0.00
	Remove and Replace Antennas	\$ 10,000.00		0.00	0.00	0.00	0.00%	\$ 10,000.00	\$0.00	\$0.00	\$0.00
	City Hall Split Systems	\$ 49,500.00		0.00	0.00	0.00	0.00%	\$ 49,500.00	\$0.00	\$0.00	\$0.00
	City Hall Exhaust Fans	\$ 99,000.00		0.00	0.00	0.00	0.00%	\$ 99,000.00	\$0.00	\$0.00	\$0.00
	Controls Integration / Tracer Ensemble	\$ 121,500.00		0.00	0.00	0.00	0.00%	\$ 121,500.00	\$0.00	\$0.00	\$0.00
	Community Center Controls	\$ 103,500.00		0.00	0.00	0.00	0.00%	\$ 103,500.00	\$0.00	\$0.00	\$0.00
	City Hall Controls	\$ 464,000.00		0.00	0.00	0.00	0.00%	\$ 464,000.00	\$0.00	\$0.00	\$0.00
	Air and Water Balance	\$ 59,400.00		0.00	0.00	0.00	0.00%	\$ 59,400.00	\$0.00	\$0.00	\$0.00
	Building Electrical Repair Work	\$ 44,270.00									
	Accepted Alternate - 2-5 Year HVAC Equipment	\$ 81,155.00		0.00	0.00	0.00	0.00%	\$ 81,155.00	\$0.00	\$0.00	\$0.00
	Accepted Alternate - Replace Decorative Wood	\$ 280,000.00		0.00	0.00	0.00	0.00%	\$ 280,000.00	\$0.00	\$0.00	\$0.00
	<b>Subtotal for Phase 2</b>	<b>\$ 5,557,425.00</b>									
	<b>TOTAL</b>	<b>\$ 5,822,925.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0%</b>	<b>\$5,778,655.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>

\*Mobilization shall not be charged to City prior to commencement of work for Phase 2 unless otherwise permitted in writing by City's Contract Officer

- II. A retention of five percent (5%) shall be held from each payment for Phase 1 and Phase 2 as a contract retention to be paid as part of the final payment upon satisfactory completion of services.**
- III. Within the budgeted amounts for each Task, and with the prior written approval of the Contract Officer, funds may be shifted from one Task subbudget to another so long as the Contract Sum is not exceeded per Section 2.1, unless Additional Work is approved per Section 1.9.**
- IV. The City will compensate Design-Builder for the services performed upon submission of a valid invoice. Each invoice is to include:**

- A. Line items for work performed as described in the Scope of Work, and in accordance with the progression of the Schedule of Performance.
  - B. Line items for all materials and equipment properly charged to the Work.
  - C. Line items for all other approved reimbursable expenses claimed, with supporting documentation.
  - D. Line items for all approved subcontractor labor, supplies, equipment, materials, and travel properly charged to the Work.
- V. **The total compensation for the services shall not exceed the Contract Sum as provided in Section 2.1 of this Agreement.**

## **EXHIBIT “D”**

### **SCHEDULE OF PERFORMANCE**

- I. Design-Builder shall perform all work timely in accordance with the following schedule:**

#### **Estimated Performance Deadline**

#### **PHASE 1 - DESIGN**

**Eighty Four (84) calendar days after City issues the Notice to Proceed.**

#### **PHASE 2 - CONSTRUCTION**

1. Substantial Completion of construction, as defined in Section 1.6(b) of the Agreement.

**Two Hundred Forty Six (246) calendar days after completion of Phase 1, approval of all construction drawings by the City and receipt of all applicable permits, whichever is later.**

2. Final Completion, which is the completion of all punch list items, the City’s inspection to confirm that the Project is complete, and the City Council’s formal acceptance of the Project.

**Three (3) months after Substantial Completion.**

- II. Design-Builder shall deliver the following tangible work products to the City by the following dates.**

**A. [TO BE LATER INSERTED]**

**B. Prior to the City Council’s acceptance of the Work, the Design-Builder shall deliver to the City equipment and materials manuals, specifications, and warranties**

- III. The Contract Officer may approve extensions for performance of the services in accordance with Section 1.9.**