



City of Keller: Phase 2-5

OWNER/CLIENT: City of Keller	CONSTRUCTOR: Marseal Group, LLC
ARCHITECT/ENGINEER: N/A	DATE CREATED: 5/23/2022
PROJECTED START: 08/01/2022	CREATED BY: Brock Reaves
PROJECTED DURATION: 60 Days	PROJECT ADDRESS: N/A

PRIME CONTRACT

ARTICLE 1 AGREEMENT

1. This Agreement is made between OWNER/CLIENT and CONSTRUCTOR, Marseal Group LLC, (Tax identification number (TIN) 82-3186398). Owner and Constructor are collectively the "Parties."

ARTICLE 2 THE WORK

2. Constructor shall use its diligent efforts to perform the "Work," as described in the Scope of Work, in an expeditious manner consistent with the Contract Documents. Constructor shall provide all labor, materials, equipment, and services necessary to complete the Work in full accord with and reasonably inferable from the Contract Documents.

ARTICLE 3 PRICE

3. As full compensation for performance by Constructor of the Work, Owner shall pay Constructor the lump sum price referenced in the Scope of Work and detailed terms outlined in the Schedule of Values. The lump sum price, "Price," is subject to adjustment as provided in this Agreement.

ARTICLE 4 EXHIBITS

4. The following exhibits and/or documents are made part of this Agreement:
 - a. Schedule of Values
 - b. Specifications
 - c. Plans
 - i. Town Hall
 - ii. Keller Pointe
 - iii. Police Department
 - iv. Public Library
 - d. Scope of Work
 - i. Town Hall
 - ii. Keller Pointe
 - iii. Police Department
 - iv. Public Library
 - v. Clarifications
 - e. Subcontractor Bids & Insurance Estimate
 - i. Town Hall
 - ii. Keller Pointe
 - iii. Police Department
 - iv. Public Library
 - v. Insurance Estimate
 - f. Signed change orders, if applicable

ARTICLE 5 ETHICS

5. Each Party shall perform their obligations with integrity. Each shall: (a) avoid conflicts of interest; (b) promptly disclose to the other Party any conflicts that arise; and (c) warrant that it has not and shall not pay nor receive any contingent fees or gratuities to or from the other Party, including its agents, officers, and employees, subcontractors, suppliers, or others to secure preferential treatment.



ARTICLE 6 CONSTRUCTOR'S RESPONSIBILITIES

6. Constructor shall be responsible for supervision and coordination of the Work, including the construction means, methods, techniques, sequences, and procedures utilized, unless the Contract Documents give other specific instructions.
 - 6.1. Constructor shall pay all applicable taxes for the Work provided by Constructor.
 - 6.2. Owner may elect to perform work at the Worksite directly or by others retained by Owner. The Parties shall coordinate the activities of all forces at the Worksite and shall agree upon fair and reasonable schedules and operational procedures for Worksite activities. Owner shall require each separate contractor to cooperate with Constructor and to assist with the coordination of activities and the review of construction schedules and operations. Contract Price and Contract Time may be equitably adjusted in accordance with this Agreement for changes made necessary by the coordination of construction activities, and the construction schedule shall be revised accordingly.
 - 6.3. Before commencing the Work, Constructor shall examine and compare the drawings and specifications with information furnished in the Contract Documents; relevant field measurements made by Constructor; and any visible conditions at the Worksite affecting the Work.
 - 6.4. COMPLIANCE WITH LAWS Constructor shall comply with all laws at its own costs. Constructor shall be liable to Owner for all loss, cost, or expense, attributable to any acts or omissions by Constructor, its employees, subcontractors, suppliers, and agents for failure to comply with laws, including fines, penalties, or corrective measures.
 - 6.5. WARRANTY
 - 6.5.1. Constructor warrants that all materials and equipment shall be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. Constructor further warrants that the Work will be free from material defects not intrinsic in the design or materials required in the Contract Documents. Constructor's warranty does not include remedies for defects or damages caused by normal wear and tear during normal usage, use for a purpose for which the Project was not intended, improper or insufficient maintenance, modifications performed by Owner or others retained by Owner, or abuse.
 - 6.5.2. If, after the Date of Substantial Completion and within the workmanship warranty term, any portion of the Work is found to be not in conformance with the Contract Documents ("Defective Work"), Owner shall promptly notify Constructor in writing. Unless Owner provides written acceptance of the condition, Constructor shall promptly correct the Defective Work at its own cost and time and bear the expense of additional services required for correction of any Defective Work for which it is responsible.
 - 6.6. SAFETY Constructor shall have overall responsibility for safety precautions and programs in the performance of the Work, except that Constructor's subcontractors shall also be responsible for the safety of persons or property in the performance of their work, and for compliance with the provisions of laws. Constructor shall prevent against injury, loss, or damage to persons or property by taking reasonable steps to protect its employees and other persons at the Worksite; materials and equipment stored at on-site or off-site locations for use in the Work; and property located at the Worksite and adjacent to Work areas, whether or not the property is part of the Work.
 - 6.7. HAZARDOUS MATERIALS A Hazardous Material is any substance or material identified now or in the future as hazardous under any federal, state, or local law or regulation, or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirement governing handling, disposal, or clean-up. Constructor shall not be obligated to commence or continue work until any Hazardous Material discovered at the Worksite has been removed, or rendered or determined to be harmless by Owner as certified by an independent testing laboratory and approved by the appropriate government agency. If Constructor incurs additional costs or is delayed due to the presence or remediation of Hazardous Material, Constructor shall be entitled to an equitable adjustment in the Contract Price or the Contract Time.
 - 6.8. MATERIALS BROUGHT TO THE WORKSITE Constructor shall be responsible for the proper delivery, handling, application, storage, removal, and disposal of all materials and substances brought to the Worksite by Constructor unless otherwise indicated in the Clarifications and in accordance with the Contract Documents and used or consumed in the performance of the Work.
 - 6.9. SUBMITTALS Constructor shall submit to Owner and Design Professional for review and approval all shop drawings, samples, product data, and similar submittals required by the Contract Documents. Submittals may be submitted in electronic form. Constructor shall be responsible to Owner for the accuracy and conformity of its submittals to the Contract Documents. Constructor shall prepare and deliver its submittals to Owner and Design Professional in a manner consistent with the Schedule of the Work and in such time and sequence so as not to delay the performance of the Work or the work of Owner and others retained by Owner. Constructor submittals shall identify in writing for each submittal all changes, deviations, or substitutions from the requirements of the Contract Documents. The approval of any Constructor submittal shall not be deemed to authorize deviations, substitutions, or changes in the requirements of the Contract Documents unless a Change Order or Interim Directive specifically authorizes such deviation, substitution, or change. To the extent a change, deviation, or substitution causes an impact to the Contract Price or Contract Time, such approval shall be memorialized in a Change Order no later than seven (7) Days following approval by Owner. Neither Owner nor Design Professional shall make any change, deviation, or substitution through the submittal process without specifically identifying and authorizing such deviation to Constructor. Owner shall be responsible for review and approval of submittals with reasonable promptness to avoid causing delay. Constructor shall perform all Work strictly in accordance with approved submittals. Owner's approval does not relieve Constructor from responsibility for Defective Work resulting from errors or omissions of any kind on the approved shop drawings.
 - 6.10. CONCEALED OR UNKNOWN SITE CONDITIONS If a condition encountered at the Worksite is (a) a subsurface or other physical condition which is materially different from those indicated in the Contract Documents, or (b) an unusual and unknown physical condition which is materially different from conditions ordinarily encountered and generally recognized as inherent in the Work provided for in the Contract Documents, Constructor shall stop Work and give prompt written notice of the condition to Owner and Design Professional. Owner shall investigate and then issue an Interim Directive specifying the extent to which Owner agrees that a concealed or unknown condition exists and directing how Constructor is to proceed. Constructor shall not be required to perform any Work relating to the condition without the written mutual agreement of the Parties. Any change in the Contract Price or Contract Time as a result of the unknown condition shall be made by Change Order.
 - 6.11. CUTTING, FITTING, AND PATCHING Constructor shall perform cutting, fitting, and patching necessary to coordinate the various parts of the Work and to prepare its Work for the work of Owner or others retained by Owner.
 - 6.12. CLEANING UP Constructor shall regularly remove debris and waste materials at the Worksite resulting from the Work. Prior to discontinuing Work in an area, Constructor shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste, and surplus materials. Constructor shall minimize and confine dust and debris resulting from construction activities. At the completion of the Work, Constructor shall remove from the Worksite all construction equipment, tools, surplus materials, waste materials, and debris.

ARTICLE 7 OWNER'S RESPONSIBILITIES

7. Any information or services to be provided by Owner shall be provided in a timely manner.
 - 7.1. FINANCIAL INFORMATION Before commencing the Work and thereafter at the written request of Constructor, Owner shall provide Constructor with evidence of Project financing if requested. Evidence of such financing shall be a condition precedent to Constructor's commencing or continuing the Work. Constructor shall be notified prior to any material change in Project financing.
 - 7.2. WORKSITE INFORMATION To the extent Owner has obtained, or is required to obtain the following Worksite information, then Owner shall provide Constructor the following:
 - 7.2.1. information describing the physical characteristics of the Worksite, including surveys, Worksite evaluations, legal descriptions, data, or drawings depicting existing conditions, subsurface, and environmental studies, reports, and investigations;
 - 7.2.2. tests, inspections, and other reports dealing with environmental matters, hazardous material, and other existing conditions, including structural, mechanical, and chemical tests required by the Contract Documents or by law;



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- 7.2.3. the limits of Pollution Liability Insurance covering the Worksite held by Owner; and any other information or services requested in writing by Constructor which are required for Constructor's performance of the Work and under Owner's control.
- 7.3. MECHANICS AND CONSTRUCTION LIEN INFORMATION Within seven (7) Days after receiving Constructor's written request, Owner shall provide Constructor with the information necessary to give notice of or enforce mechanics lien rights and, where applicable, stop notices. This information shall include Owner's interest in the real property on which the Project is located and the record legal title.
- 7.4. BUILDING PERMIT, FEES, AND APPROVALS Except for those explicitly stated in the Scope of Work, Owner shall secure and pay for all other permits, approvals, easements, assessments, and fees required for the development, construction, use, or occupancy of permanent structures or for permanent changes in existing facilities, including the building permit.
- 7.5. DOCUMENTS IN ELECTRONIC FORM Owner, Design Professional, and Constructor shall clearly communicate the process by which to exchange documents and data in electronic or digital form, if agreed upon by parties.

ARTICLE 8 SUBCONTRACTS

8. Constructor agrees to bind every subcontractor and supplier (and require every subcontractor to so bind its subcontractors and suppliers) to all the provisions of this Agreement and the Contract Documents as they apply to the subcontractor's and supplier's portions of the Work.

ARTICLE 9 CONTRACT TIME

9. Substantial Completion of the Work shall be achieved as fast as reasonably possible in working with Owner schedule or as seen in the Scope of Work. Time is of the essence for obligations of the Contract Documents.

ARTICLE 10 SCHEDULE OF THE WORK

10. Before submitting its first application for payment, Constructor shall submit to Owner, and if directed, to Design Professional, a Schedule of Values which will show the milestones in which Constructor plans to begin and to complete various parts of the Work, including milestone target dates on which information and approvals are required from Owner.
- 10.1. Owner may determine the sequence in which the Work shall be performed, provided it does not unreasonably interfere with the Schedule of the Work. Owner may require Constructor to make reasonable changes in the sequence at any time during the performance of the Work in order to facilitate the performance of work by Owner or others. If Constructor subsequently incurs costs or is delayed, Constructor may seek equitable adjustment in the Contract Price and Contract Time under this Agreement.

ARTICLE 11 DELAYS AND EXTENSIONS OF TIME

11. If Constructor is delayed at any time in the commencement or progress of the Work by any cause beyond the control of Constructor, Constructor shall be entitled to an equitable extension of the Contract Time. Examples of causes beyond the control of Constructor include, but are not limited to, the following: (a) acts or omissions of Owner, Design Professional, or others; (b) changes in the Work or the sequencing of the Work ordered by Owner or arising from an Owner decision that impacts Contract Time; (c) encountering Hazardous Materials, or concealed and unknown conditions; (d) delay authorized by Owner pending dispute resolution or suspension by Owner; (e) transportation delays not reasonably foreseeable; (f) labor disputes not involving Constructor; (g) general labor disputes impacting the Project but not specifically related to the Worksite; (h) fire; (i) terrorism, (j) epidemics, (k) adverse governmental actions, (l) unavoidable accidents or circumstances; (m) adverse weather conditions not reasonably anticipated. Constructor shall process any requests for equitable extensions of Contract Time in accordance with the provisions of ARTICLE 13.
- 11.1. In addition, if Constructor incurs additional costs as a result of a delay that is caused by items (a) through (d) in §11 above, Constructor may be entitled to an equitable adjustment in the Contract Price subject to ARTICLE 13.
- 11.2. In the event delays to the Work are encountered for any reason, Constructor shall provide prompt written notice to Owner of the cause of such delays after Constructor first recognizes the delay. The Parties each agree to undertake reasonable steps to mitigate the effect of such delays.
- 11.3. NOTICE OF DELAY CLAIMS If Constructor requests an equitable extension of the Contract Time or an equitable adjustment in the Contract Price as a result of a delay, Constructor shall give Owner written notice of the claim. If Constructor causes delay in the completion of the Work, Owner shall be entitled to recover its additional costs, subject to ARTICLE 18.

ARTICLE 12 ALLOWANCES

12. All allowances stated in the Contract Documents shall be included in the Price unless otherwise stated in Clarifications. While Owner may direct the amounts of, and particular suppliers or subcontractors for, specific allowance items, if Constructor reasonably objects to a supplier or subcontractor, it shall not be required to contract with them. Owner shall select allowance items in a timely manner so as not to delay the Work. Allowances shall include the costs of materials and equipment delivered to the Worksite less applicable trade discounts and including requisite taxes, unloading and handling at the Worksite, and labor and installation, unless specifically stated otherwise. The Contract Price shall be adjusted by Change Order to reflect the actual costs when they are greater than or less than the allowances.

ARTICLE 13 CHANGES

13. Constructor may request or Owner may order changes in the Work or the timing or sequencing of performance of the Work that impacts the Contract Price or the Contract Time. All such changes in the Work that affect the Contract Time or Contract Price shall be formalized in a Change Order.
- 13.1. The Parties shall negotiate in good faith an appropriate adjustment to the Contract Price or the Contract Time and shall conclude these negotiations as expeditiously as possible. Acceptance of the Change Order and any adjustment in the Contract Price or Contract Time shall not be unreasonably withheld. Constructor shall not be obligated to perform changes in the Work without a Change Order or Interim Directive.
- 13.2. INTERIM DIRECTIVES
- 13.2.1. Owner may issue a written Interim Directive directing a change in the Work before agreeing on an adjustment to the Contract Price or the Contract Time, or directing Constructor to perform Work that Owner believes is not a change.
- 13.2.2. The Parties shall negotiate expeditiously and in good faith for appropriate adjustments, as applicable, to the Contract Price or the Contract Time arising out of an Interim Directive. As the directed work is performed, Constructor shall submit its costs for such work with its application for payment. If there is a dispute as to the cost of the Work, Owner shall pay Constructor fifty percent (50%) of its actual (incurred or committed) cost to perform the work. In such event, the Parties reserve their rights as to the disputed amount, subject to the requirements of ARTICLE 19.
- 13.2.3. When Owner and Constructor agree upon the adjustment in the Contract Price or the Contract Time, for a change in the Work directed by an Interim Directed Change, such agreement shall be the subject of a Change Order.
- 13.3. COST OR CREDIT DETERMINATION
- 13.3.1. An increase or decrease in the Contract Price or the Contract Time resulting from a change in the Work may result in a \$250 change fee and shall be determined by one or more of the following methods:



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- a. unit prices set forth in this Agreement or as subsequently agreed;
 - b. a mutually accepted, itemized lump sum; or
 - c. costs calculated on a basis agreed upon by Owner and Constructor plus 10% overhead and 10% profit.
- 13.3.2. If a cost or credit determination cannot be agreed to above, the cost of the change in the Work shall be determined by the reasonable actual expense incurred or savings realized in the performance of the Work resulting from the change. If there is a net increase in the Contract Price, Constructor's overhead and profit shall be adjusted accordingly. In case of a net decrease in the Contract Price, Constructor's overhead and profit shall not be adjusted unless ten percent (10%) or more of the Project is deleted. Constructor shall maintain a documented itemized accounting evidencing the expenses and savings.
- 13.4. UNIT PRICES If unit prices are included in the Contract Documents or are subsequently agreed to by the Parties, but the character or quantity of such unit price items as originally contemplated is so different in a proposed Change Order that the original unit prices will cause substantial inequity to Owner or Constructor, such unit prices shall be equitably adjusted.

ARTICLE 14 PAYMENT

14. Payments will be invoiced according to this contract, the Schedule of Values, Scope of Work, Work Authorizations, Change Orders, or other agreements signed by both parties.
- 14.1. SCHEDULE OF VALUES In the Exhibit B and/or Scope of Work of this Agreement, Constructor shall prepare and submit to Owner and, if directed, Design Professional, a schedule of values apportioned to the various divisions or phases of the Work.
- 14.2. PROGRESS PAYMENTS Constructor shall submit to Owner and, if directed, Design Professional an application for payment upon completion of a phase. Constructor's applications for payment shall be itemized and supported by Constructor's schedule of values based on a percentage of completion and shall include any other substantiating data as required by this Agreement. Payment applications shall include payment requests on account of properly authorized Change Orders or Interim Directives. Owner shall pay the amount due on any payment application, less any amounts as set forth below, no later than ten (10) Business Days after Constructor has submitted a complete and accurate payment application. Owner may deduct, from any progress payment, such amounts as may be retained pursuant to §14.3.
- 14.3. RETAINAGE Retainage will be calculated as a standard 5%, or the amount determined by the Schedule of Values in Exhibit B and/or the Scope of Work. Owner shall withhold no additional retainage and shall pay Constructor the full amount due upon completion of each phase. Constructor may invoice for retainage upon final completion of a designated portion or phase of the work.
- 14.4. ADJUSTMENT OF CONSTRUCTOR'S PAYMENT APPLICATION Owner may adjust or reject a payment application or nullify a previously approved payment application, in whole or in part, as may reasonably be necessary to protect Owner from loss or damage based upon the following, to the extent that Constructor is responsible for such under this Agreement:
- 14.4.1. Constructor's repeated failure to perform the Work as required by the Contract Documents;
 - 14.4.2. loss or damage arising out of or relating to this Agreement and caused by Constructor to Owner or to others retained by Owner to whom Owner may be liable;
 - 14.4.3. Constructor's failure to properly pay either Subcontractors or Suppliers following receipt of payment from Owner for that portion of the work or for supplies, provided that Owner is making payments to Constructor in accordance with the terms of this Agreement;
 - 14.4.4. rejected or Defective Work not corrected in a timely fashion;
 - 14.4.5. reasonable evidence of delay in performance of the Work such that the Work will not be completed within the Contract Time;
 - 14.4.6. reasonable evidence demonstrating that the unpaid balance of the Contract Price is insufficient to fund the cost to complete the Work; and
 - 14.4.7. uninsured third-party claims involving Constructor or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until Constructor furnishes Owner with adequate security in the form of a surety bond, letter of credit, or other collateral or commitment which are sufficient to discharge such claims if established.
- 14.4.8. No later than seven (7) Days after receipt of an application for payment, Owner shall give written notice to Constructor disapproving or nullifying it or a portion of it, specifying the reasons for the disapproval or nullification. When the above reasons for disapproving or nullifying an application for payment are removed, payment shall be made for the amounts previously withheld.
- 14.5. PAYMENT DELAY If for any reason not the fault of Constructor, Constructor does not receive a progress payment from Owner within seven (7) Days after the time such payment is due, Constructor, upon giving seven (7) Days' written notice to Owner, and without prejudice to and in addition to any other legal remedies, may stop Work until payment of the full amount owing to Constructor has been received. If Constructor incurs costs or is delayed resulting from shutdown, delay, and start-up, Constructor may seek an equitable adjustment in the Contract Price or Contract Time.
- 14.6. SUBSTANTIAL COMPLETION Substantial Completion is defined as 100% progress billing invoiced date, minus retainage and punch list. When Substantial Completion of the Work or a designated portion or phase thereof is achieved, Constructor shall prepare an invoice. Unless otherwise provided in the Invoice, warranties required by the Contract Documents shall commence on the date of the Invoice for the Work or a designated portion.
- 14.6.1. Upon acceptance by Owner of the Invoice, Owner shall pay to Constructor the remaining retainage held by Owner for the work described and completed in the Invoice.
- 14.7. FINAL COMPLETION When final completion has been achieved, Constructor shall prepare for Owner's acceptance a final application for payment stating that to the best of Constructor's knowledge, and based on Owner's inspections, the Work has reached final completion in accordance with the Contract Documents.
- 14.7.1. Final payment of the balance of the Contract Price, including any remaining retainage plus any supplements and/or change orders, shall be made to Constructor within ten (10) Business Days after Constructor has submitted to Owner a complete and accurate application for final payment and the following submissions:
 - a. an affidavit declaring any indebtedness connected with the Work to have been paid, satisfied, or to be paid with the proceeds of final payment, so as not to encumber Owner's property;
 - b. as-built drawings, manuals, copies of warranties, and all other close-out documents required by the Contract Documents;
 - c. release of any liens, conditioned on final payment being received;
 - d. consent of any surety, if applicable; and
 - e. any outstanding known and unreported accidents or injuries experienced by Constructor or its subcontractors at the Worksite.
- 14.8. Claims not reserved by Owner in writing with the making of final payment shall be waived except for claims relating to liens or similar encumbrances, warranties, Defective Work, and latent defects. Unless Constructor provides written identification of unsettled claims known to Constructor at the time of making application for final payment, acceptance of final payment constitutes a waiver of such claims.
- 14.9. LATE PAYMENT Payments due but unpaid shall bear interest from the date payment is due at a rate of ten percent per week overdue.

ARTICLE 15 INDEMNITY

- 15.1. To the fullest extent permitted by law, Constructor shall indemnify and hold harmless Owner, Owner's officers, directors, members, consultants, agents, and employees and Design Professional (the "Indemnitees") from all claims for bodily injury and property damage, other than to the Work itself and other property insured under ARTICLE 16, including reasonable attorneys' fees, costs, and expenses, that may arise from the performance of the Work but only to the extent caused by the negligent or intentionally wrongful acts or omissions of Constructor, subcontractors, suppliers, or anyone



- employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. Constructor shall be entitled to reimbursement of any defense costs paid above Constructor's percentage of liability for the underlying claim to the extent provided in the section immediately below.
- 15.2. To the fullest extent permitted by law, Owner shall indemnify and hold harmless Constructor, its officers, directors, or members, subcontractors, suppliers, or anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable from all claims for bodily injury and property damage, other than property insured under ARTICLE 16, including reasonable attorneys' fees, costs, and expenses, that may arise from the performance of work by Owner, Design Professional, or others retained by Owner, but only to the extent caused by the negligent or intentionally wrongful acts or omissions of Owner, Design Professional, or others retained by Owner. Owner shall be entitled to reimbursement of any defense costs paid above Owner's percentage of liability for the underlying claim to the extent provided in the section immediately above.
- 15.3. NO LIMITATION ON LIABILITY In any and all claims against the Indemnitees by any employee of Constructor, anyone directly or indirectly employed by Constructor or anyone for whose acts Constructor may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Constructor under Workers' Compensation acts, disability benefit acts, or other employment benefit acts.

ARTICLE 16 INSURANCE

16. Before commencing the Work and as a condition precedent to payment, Constructor shall procure and maintain in force Workers' Compensation Insurance, Business Automobile Liability Insurance, and Commercial General Liability Insurance (CGL). Constructor shall maintain insurance for one year after Substantial Completion, or as required by the Contract Documents. If requested, Constructor shall provide Owner with certificates of the insurance coverage required. Business Automobile Liability, and CGL policies, as required in this article, shall be written with at least the following limits of liability:
- 16.1. Business Automobile Liability Insurance \$1,000,000 per accident.
- 16.2. CGL Insurance:
- \$1,000,000 per occurrence;
 - \$2,000,000 general aggregate;
 - \$2,000,000 products/completed operations aggregate;
 - \$1,000,000 personal and advertising injury limit.
- 16.3. Business Automobile Liability, and CGL coverage required in the subsection above may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or umbrella liability policies. Constructor shall maintain in effect all insurance coverage required in the section immediately above with insurance companies lawfully authorized to do business in the jurisdiction in which the Project is located.

ARTICLE 17 BONDS

17. Performance and Payment Bonds are not required of Constructor unless otherwise indicated. If required, such bonds shall be issued by a surety admitted in the state in which the Project is located and must be acceptable to Owner. Owner's acceptance shall not be withheld without reasonable cause. The penal sum of the Payment Bond shall equal the penal sum of the Performance Bond.

ARTICLE 18 LIMITED MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES

18. Except for (a) losses covered by insurance required by the Contract Documents, or (b) specific items of damages excluded from this waiver as mutually agreed upon by the Parties and identified below, the Parties agree to waive all claims against each other for any consequential damages that may arise out of or relate to this Agreement. This article shall also apply to the termination of this Agreement and shall survive such termination. The Parties shall require similar waivers in contracts with subcontractors and others retained for the project.

ARTICLE 19 NOTICE TO CURE AND TERMINATION

- 19.1. NOTICE TO CURE A DEFAULT If Constructor persistently fails to supply enough qualified workers, proper materials, or equipment to maintain the approved Schedule of the Work or fails to make prompt payment to its workers, Subcontractors, or Suppliers, disregards law or orders of any public authority having jurisdiction, or is otherwise guilty of a material breach of a provision of this Agreement, Constructor may be deemed in default. If Constructor fails to commence and to continue satisfactory correction of such default with diligence and promptness within fourteen (14) days after written notification, then Owner shall give Constructor a second written notice to correct the default within a seven (7) business Day period.
- 19.2. TERMINATION BY OWNER If Constructor fails to promptly commence and continue satisfactory correction of the default following receipt and expiration of second notice to default, Owner may terminate this Agreement by written notice. If Owner's costs arising out of Constructor's failure to cure, including the costs of completing the Work and reasonable attorneys' fees, exceed the unpaid Contract Price, Constructor shall be liable to Owner for such excess costs. If Owner's costs are less than the unpaid Contract Price, Owner shall pay the difference to Constructor. If Owner exercises its rights under this section, upon the request of Constructor, Owner shall furnish to Constructor a detailed accounting of the costs incurred by Owner.
- 19.2.1. Owner shall make reasonable efforts to mitigate damages arising from Constructor default and shall promptly invoice Constructor for all amounts due.
- 19.3. TERMINATION BY CONSTRUCTOR Seven (7) Days after Owner's receipt of written notice from Constructor, Constructor may terminate this Agreement if the Work has been stopped for a fourteen (14) day period through no fault of Constructor for any of the following reasons: (a) under court order or order of other governmental authorities having jurisdiction; (b) as a result of the declaration of a national emergency or other governmental act during which, through no act or fault of Constructor, materials are not available.
- 19.3.1. See §14.5
- 19.3.2. In addition, upon seven (7) Days' written notice to Owner, and an opportunity to cure within seven (7) Days, Constructor may terminate the Agreement if Owner does any of the following: (a) fails to furnish reasonable evidence that sufficient funds are available and committed for the entire cost of the Project in accordance with §7.1; (b) assigns this Agreement over Constructor's reasonable objection; (c) fails to pay Constructor in accordance with this Agreement and Constructor has stopped work in compliance with applicable notice provisions; or (d) otherwise materially breaches this Agreement.
- 19.3.3. Upon termination by Constructor pursuant to this Agreement, Constructor shall be entitled to recover from Owner payment for all Work executed and for any proven loss, cost, or expense in connection with the Work, including all demobilization costs plus reasonable overhead and profit.
- 19.4. OBLIGATIONS ARISING BEFORE TERMINATION Even after termination the provisions of this Agreement still apply to any Work performed, payments made, events occurring, costs charged or incurred, or obligations arising before the termination date.

ARTICLE 20 DISPUTE MITIGATION AND RESOLUTION

- 20.1. CLAIMS FOR ADDITIONAL COST OR TIME Except as provided in ARTICLE 11 for any claim for an increase in the Contract Price or the Contract Time, Constructor shall give Owner written notice of the claim within fourteen (14) Days after the occurrence giving rise to the claim or within fourteen



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- (14) Days after Constructor first recognizes the condition giving rise to the claim, whichever is later. Except in an emergency, notice shall be given before beginning the Work. Any change in the Contract Price or the Contract Time resulting from such claim shall be authorized by Change Order.
- 20.2. **WORK CONTINUANCE AND PAYMENT** Constructor shall continue the Work and maintain the Schedule of the Work during any dispute resolution proceedings. If Constructor continues to perform, Owner shall continue to make payments in accordance with the Agreement.
- 20.3. **DIRECT SETTLEMENT DISCUSSIONS** If a dispute arises out of or relates to this Agreement or its breach, the Parties shall endeavor to settle the dispute through direct discussions. Within five (5) Business Days, the Parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions shall conduct direct discussions and make a good faith effort to resolve such dispute.
- 20.4. **MEDIATION** Disputes between Owner and Constructor not resolved by direct discussion shall be submitted to mediation. The Parties shall select the mediator within fifteen (15) Days of the request for mediation. Engaging in mediation is a condition precedent to litigation.
- 20.5. (not used)

ARTICLE 21 MISCELLANEOUS

- 21.1. **EXTENT OF AGREEMENT** Except as expressly provided, this Agreement is for the exclusive benefit of the Parties and not for the benefit of any third party. This Agreement represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations, or agreements, either written or oral.
- 21.2. **ASSIGNMENT** Except as to the assignment of proceeds, neither Party shall assign its interest in this Agreement, in whole or in part, without the written consent of the other Party. The terms and conditions of this Agreement shall be binding upon both Parties, their partners, successors, assigns, and legal representatives.
- 21.3. **GOVERNING LAW** The law in effect at the location of the Project shall govern unless sent to Litigation in which the Governing Law will be Tarrant County, TX.
- 21.4. **NOTICE** Unless changed in writing, a Party's address indicated below shall be used when delivering notice to a physical address. Except for Agreement termination and as otherwise specified in the Contract Documents, notice is effective upon transmission by any effective means, including U.S. postal service and overnight delivery service.
- 21.5. **JOINT DRAFTING** The Parties expressly agree that this Agreement was jointly drafted, and that they both had opportunity to negotiate terms and to obtain assistance of counsel in reviewing terms before execution. This Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

I acknowledge that I have read and understand the above Prime Contract, as well as the attached scope of work, exhibits, and schedule of values. I understand this estimate is valid for 14 days, after which, pricing and scheduling will need to be re-evaluated. By signing below, I am acknowledging that I have the authority to sign on behalf of my organization and authorize work to commence.

IN WITNESS WHEREOF, THIS AGREEMENT AND EXHIBITS IS EXECUTED BY:

Constructor

**Marseal Group, LLC
208 N HWY 377
Roanoke, TX 76262
833-627-7325**

Owner

**City of Keller
1100 Bear Creek Pkwy
Keller, TX 76248
817-743-4000**

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____



INITIALS _____

CONTRACT