

Fm 91057

10-13-09
22

STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

AGREEMENT FOR DESIGN/BUILD SERVICES
EMS MEDIC 1 FACILITY

THIS AGREEMENT is made and entered into by and between Fort Bend County, a body corporate and politic under the laws of the State of Texas, by and through the Fort Bend County Commissioners Court, hereinafter referred to as the "County," and Bass Construction Company, Inc., hereinafter referred to as "DESIGN-BUILDER," authorized to conduct business in the State of Texas.

WITNESSETH:

WHEREAS, County intends to have designed and constructed the Fort Bend County EMS Medic 1 Facility located in Rosenberg, Fort Bend County, Texas, hereinafter called the "Work;"

WHEREAS, County desires that DESIGN-BUILDER perform design and build services in connection with the Work; and

WHEREAS, DESIGN-BUILDER represents that it is qualified and desires to perform such services.

NOW, THEREFORE, County and DESIGN-BUILDER, in consideration of the mutual covenants and agreements herein contained, do mutually agree as follows:

SECTION I
SCOPE OF AGREEMENT

DESIGN-BUILDER agrees to perform professional design and build services in connection with the Work as stated herein and more particularly described in Exhibit "A," DESIGN-BUILDER'S Proposal dated April 16, 2009, attached hereto and incorporated herein, and for having rendered such services, the County agrees to pay to DESIGN-BUILDER compensation as stated herein. In addition, the General Terms attached hereto as Exhibit "B" are incorporated herein by reference as if set forth verbatim.

SECTION II
CHARACTER AND EXTENT OF SERVICES

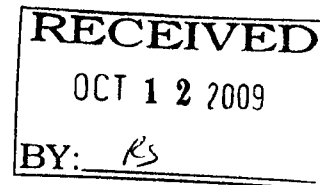
2.01 Upon receipt of the County's Purchase Order and this Agreement, DESIGN-BUILDER shall render the following "Basic Services" in connection with the Work:

- A. Develop the plans and specification for the Work that shall be dated and initialed by Design-Builder and, after approval, County ("Plans").



10/20/09

3 originals returned to Laura at Facilities



- B. Build the Work according to the Plans only after receipt of notice to proceed is given by County.
- C. In performing these services, DESIGN-BUILDER will protect County against defects and deficiencies in the Work.
- D. DESIGN-BUILDER accepts responsibility for the means, methods and workers' safety related to the Work.
- E. DESIGN-BUILDER will consult with and advise County during construction.
- F. DESIGN-BUILDER will prepare, sign and issue routine changes in contract for County's approval.
- G. DESIGN-BUILDER will review shop, laboratory and mill tests of material and equipment and promptly advise County of any deficiencies noted.
- H. DESIGN-BUILDER will review submittals and shop drawings requested for compliance with design concepts and specifications and with information given in the contract documents.
- I. DESIGN-BUILDER will prepare meeting notes and distribute copies to all attendees at all meetings related to the Work.
- J. DESIGN-BUILDER will conduct inspections to determine the date or dates of Substantial Completion and the date of Final Completion; receive and forward to County for County's review and records, written warranties and related documents required by the contract documents and assembled by DESIGN-BUILDER and issue a final Certificate for Payment upon compliance with the requirements of the contract documents.

2.01 Upon completion of the Work, DESIGN-BUILDER shall provide to County an electronic set in AutoCad (.dfx.) format, reports and specifications concerning the Work after all of the construction changes have been made ("as built") based upon information concerning field changes maintained and provided by DESIGN-BUILDER.

SECTION III ADDITIONAL SERVICES AND CHARGES

3.01 It is expressly understood and agreed that DESIGN-BUILDER shall not furnish any additional services without prior written authorization of the County Facilities Management & Planning Director.

3.02 County shall have no obligation to pay for such additional services that have been rendered without the prior written authorization of the County Facilities Management & Planning Director.

SECTION IV PERFORMANCE/PAYMENT BOND

4.01 Upon receipt of notification to proceed with the construction phase of the Work, DESIGN-BUILDER must provide County with a Performance Bond and Payment Bond, each in the amount of 100% of the total contract sum within ten (10) calendar days. Such bonds shall be executed by a corporate surety duly authorized and admitted to do business in the State of Texas and licensed in the State of Texas to issue surety bonds with a Best Rating of "A" or better.

County reserves the right to accept or reject any surety company proposed by DESIGN-BUILDER. In the event County rejects the proposed surety company, DESIGN-BUILDER will be afforded five (5) additional days to submit the required bonds issued by a surety company acceptable to County. Upon County's acceptance of Bonds, DESIGN-BUILDER will proceed with the performance of the Work called for in the Construction Phase of this Agreement and shall complete such Work within 240 calendar days after such approval by the County.

4.02 The foregoing time limits may for good cause be extended by the County Facilities Management & Planning Director as the Work proceeds. Any such extension must be approved in writing by County.

SECTION V COMPENSATION

5.01 For and in consideration of the services rendered by DESIGN-BUILDER, and subject to the limit of appropriation, County shall pay to DESIGN-BUILDER an amount not to exceed \$153,000.00 as the Design Fee.

5.02 DESIGN-BUILDER shall complete the design services called for in this Agreement within 90 calendar days from the date of this Agreement.

5.03 Payments for services rendered for the Work shall be paid monthly in proportion to the percentage of the completion of the Work as evidenced by DESIGN-BUILDER's monthly estimates for payments, less the retainage specified in Section 36.2 of Exhibit B.

5.04 On or about the last day of each calendar month during the performance of the Work to be provided under this Agreement, DESIGN-BUILDER shall submit a sworn statement to the County Facilities Management & Planning Director, in a form acceptable to the Fort Bend County Auditor, setting forth the percentage of the Work provided and which was completed during such calendar month and the compensation which is due plus the amounts payable for any approved additional services which have not been previously billed or paid.

5.05 In the event the statement includes charges based upon direct labor cost of services or any other rates based upon the amount of time worked by an individual or individuals in performing services, whether the charges are being billed directly to County or whether they are the basis of invoices from subcontractors for which DESIGN-BUILDER seeks reimbursement from County, the charges shall be accompanied by an affidavit signed by an officer or principal of DESIGN-BUILDER certifying that the Work was performed, it was authorized in writing by County Facilities Management & Planning Director and that all information contained in the invoice being true and correct.

5.06 Furthermore, DESIGN-BUILDER agrees to maintain, for a period of seven years, detailed records that identify each individual performing the services, the date or dates the services were performed, the applicable hourly rates, the total amount billed for each individual, and provide such other details as may be requested by the County Auditor for verification purposes.

5.07 The County Facilities Management & Planning Director shall review the statements within ten (10) days of receipt and approve them in writing with such modifications, if any, as deemed appropriate. County shall pay each statement within thirty (30) days after the County

Facilities Management & Planning Director's written approval, provided however, that the approval or payment of any statement shall not be considered evidence of performance by DESIGN-BUILDER to the point indicated by such statement or of receipt or acceptance by County of the services covered by such statement.

5.08 In the event County does not authorize DESIGN-BUILDER to proceed with construction of the Work, the Design Fee detailed in Section 5.01 is the maximum amount County is liable to DESIGN-BUILDER and all design services, including but not limited to schematic design, detailed design and construction documents, cost estimating services, scheduling services, value engineering, and constructability review shall be the sole property of County and shall be suitable for reuse by County for the Work with no further liability to DESIGN-BUILDER.

SECTION VI TERMINATION

6.01 County may terminate this Agreement at any time by providing thirty (30) days written notice to DESIGN-BUILDER. Upon receipt of such notice, DESIGN-BUILDER shall discontinue all services in connection with the performance of this Agreement and shall proceed to cancel promptly all existing orders and contracts insofar as such orders or contracts are chargeable to this Agreement.

6.02 Within thirty (30) days after receipt of notice of termination, DESIGN-BUILDER shall submit a statement, showing in detail the services performed under this Agreement to the date of termination.

6.03 County shall then pay DESIGN-BUILDER that proportion of the prescribed charges which the services actually performed under this Agreement bear to the total services called for under this Agreement, less such payments on account of charges as have been previously made.

6.04 Copies of all completed or partially completed designs, drawings, electronic data files and specifications prepared under this Agreement shall be delivered to the County when and if this Agreement is terminated in the manner and for the purposes provided in this Agreement.

SECTION VII NOTICE

7.01 Any notice required to be given under the provisions of this Agreement shall be in writing and shall be duly served when it shall have been deposited, enclosed in a wrapper with the proper postage prepaid thereon, and duly registered or certified, return receipt requested, in a United States Post Office, addressed to County or DESIGN-BUILDER at the addresses set forth below.

7.02 If mailed, any notice or communication shall be deemed received three days after date of deposit in the United States Mail. Unless otherwise provided in this Agreement, all notices shall be delivered to the following addresses:

- A. If to Design/Builder: Bass Construction Company, Inc.
1124 Damon Street
Rosenberg, Texas 77471
Attn: Bob W. Bass, President
- B. If to County, notice must:
be sent to both County Robert E. Hebert
Judge and County Facilities Fort Bend County Judge
Management & Planning Director 301 Jackson, Suite 719
Richmond, Texas 77469
- Don Brady
Facilities Management & Planning Director
301 Jackson
Richmond, Texas 77469
- with copy to: Gilbert Jalomo
Fort Bend County Purchasing Agent
4520 Reading Road
Rosenberg, Texas 77471

7.03 Any party may designate a different address by giving the other party ten (10) days written notice.

SECTION VIII LIMIT OF APPROPRIATION

8.01 Prior to the execution of this Agreement, DESIGN-BUILDER was advised by County, and DESIGN-BUILDER clearly understands and agrees, such understanding and agreement being of the absolute essence to this contract, that County shall have available the total maximum sum of \$153,000.00 specifically allocated to fully discharge any and all liabilities associated with the design services which may be incurred by County under this Agreement.

8.02 DESIGN-BUILDER does further understand and agree, said understanding and agreement also being of the absolute essence of this contract, that the total maximum compensation that DESIGN-BUILDER may become entitled to hereunder for design services and the total maximum sum that County shall become liable to pay DESIGN-BUILDER hereunder for design services shall not under any conditions, circumstances or interpretations thereof exceed the sum of \$153,000.00, unless modified by further amendment.

SECTION IX. SUCCESSORS AND ASSIGNS

9.01 County and DESIGN-BUILDER bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement.

9.02 Neither County nor DESIGN-BUILDER shall assign, sublet or transfer its or his interest in this Agreement without the prior written consent of the other.

9.03 Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public and/or governmental body that may be a party hereto.

SECTION X PUBLIC CONTACT

Contact with the news media, citizens of Fort Bend County or governmental agencies shall be the sole responsibility of County. Under no circumstances, whatsoever, shall DESIGN-BUILDER release any material or information developed in the performance of its services hereunder without the express written permission of the County, except where required to do so by law.

SECTION XI COMPLIANCE AND STANDARDS

DESIGN-BUILDER shall provide the Work hereunder in accordance with highest standards for design and construction contractors practicing in Houston/Harris County and Fort Bend County, Texas, applicable thereto and shall use that highest degree of care and skill commensurate for buildings similar to the Work to comply with all applicable state, federal and local laws, ordinances, rules and regulations relating to the Work to be rendered hereunder. DESIGN-BUILDER shall provide County with all MSDS sheets related to the Work and a certification that the material used in the Work is free of asbestos.

SECTION XII OWNERSHIP OF DOCUMENTS

12.01 County shall be the absolute and unqualified owner of all drawings, preliminary layouts, record drawings, sketches and other documents prepared pursuant to this Agreement by DESIGN-BUILDER and its consultants (deliverables).

12.02 No reuse fees or royalty payments will be paid to DESIGN-BUILDER in connection with future reuse or adaptation of designs derived under this Agreement.

12.03 Copies of all complete or partially completed mylar reproducible, preliminary layouts, record drawings, digital files, sketches and other documents prepared pursuant to this Agreement shall be delivered to County when and if this Agreement is terminated or upon completion of this Agreement, whichever occurs first, as provided in this Agreement.

12.04 DESIGN-BUILDER is expressly prohibited from selling, licensing or otherwise marketing or donating such documents, or using such documents in the preparation of other work for any other client, or from duplicating the appearance of the Work depicted in the deliverables for any without the prior express written permission of County.

12.05 The documents referenced in this Section are not intended or presented by DESIGN-BUILDER to be suitable for reuse by County or others on extensions of this Work or on other unrelated projects.

12.06 Any adaptation or use by County of such documents on extension of this Work or other unrelated projects shall be at County's sole risk.

SECTION XIII INDEMNIFICATION

13.01 DESIGN-BUILDER AGREES TO INDEMNIFY, DEFEND AND HOLD COUNTY HARMLESS FROM EACH AND EVERY CLAIM, DEMAND, SUIT, ACTION, PROCEEDING, LIEN OR JUDGMENT CAUSED BY OR ARISING OUT OF, DIRECTLY OR INDIRECTLY, OR IN CONNECTION WITH THE ACTS AND OMISSIONS OF DESIGN-BUILDER PURSUANT TO THIS AGREEMENT.

13.02 DESIGN-BUILDER shall timely report all such matters to County and shall, upon the receipt of any such claim, demand, suit, action, proceeding, lien or judgment, not later than the fifteenth day of each month, provide County with a written report on each such matter covered by this paragraph and by Section 13.03 below, setting forth the status of each matter, the schedule or planned proceedings with respect to each matter and the cooperation or assistance, if any, of County required by DESIGN-BUILDER in the defense of each matter.

13.03 County shall timely forward to DESIGN-BUILDER copies of any and all claims, demands, suits, actions, proceedings or judgments which it may receive and which it may contend is covered by this section. Thereafter, County shall fully cooperate with DESIGN-BUILDER in its defense of each such matter.

13.04 DESIGN-BUILDER'S DUTY TO DEFEND INDEMNIFY AND HOLD COUNTY HARMLESS SHALL BE ABSOLUTE. IT SHALL NOT ABATE OR END BY REASON OF THE EXPIRATION OR TERMINATION OF THIS AGREEMENT UNLESS OTHERWISE AGREED BY THE COUNTY IN WRITING. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE TERMINATION OF THE AGREEMENT AND SHALL REMAIN IN FULL FORCE AND EFFECT WITH RESPECT TO ALL SUCH MATTERS NO MATTER WHEN THEY ARISE.

13.05 In the event of any dispute between the parties as to whether a claim, demand, suit, action, proceeding, lien or judgment appears to have been caused by or appears to have arisen out of or in connection with acts or omissions of DESIGN-BUILDER, DESIGN-BUILDER shall never-the-less fully defend such claim, demand, suit, action, proceeding, lien or judgment until and unless there is a determination by a court of competent jurisdiction that the acts and omissions of DESIGN-BUILDER are not at issue in the matter. In such event, County shall promptly reimburse DESIGN-BUILDER for its costs of defense.

13.06 In the event that any such matter being so defended by DESIGN-BUILDER also involves any claim of negligence or wrongful action by County, County shall have the obligation to participate in the defense of the matter through separate counsel.

13.07 DESIGN-BUILDER shall have full authority to resolve all matters being defended by it providing such settlement(s) shall not involve any findings adverse to County or and shall not involve or require any payments or contributions by County.

13.08 In the event of any final judicial determination or award of any matter covered by this section, County shall be responsible to third parties, pro rata, for any negligence determined to have been caused by the County.

13.09 DESIGN-BUILDER's indemnification shall cover, and DESIGN-BUILDER agrees to indemnify County, in the manner provided for and to the extent described above, in the event County is found to have been negligent for having selected DESIGN-BUILDER to perform the work described in this Agreement.

13.10 The provision by DESIGN-BUILDER of insurance shall not limit the liability of DESIGN-BUILDER under this Agreement.

13.11 DESIGN-BUILDER shall cause all trade contractors and any other contractor who may have a contract to perform construction or installation work in the area where work will be performed under this Agreement, to agree to indemnify County and to hold it harmless from all claims for bodily injury and property damage that may arise from said contractor's operations. Such provisions shall be in form satisfactory to County.

13.12 Loss Deduction Clause: County shall be exempt from, and in no way liable, for, any sums of money which may represent a deductible in any insurance policy. The payment of deductibles shall be the sole responsibility of DESIGN-BUILDER and/or trade contractor providing such insurance.

SECTION XIV
FORT BEND COUNTY
INSURANCE REQUIREMENTS

14.01 DESIGN-BUILDER will provide a certificate of insurance indicating coverage in the amounts stated below.

14.02 DESIGN-BUILDER shall obtain at its sole expense, and shall submit to the Office of the County Purchasing Agent, certificates of insurance satisfactory to County, naming County, the DESIGN-BUILDER and its employees as insured:

- a. Workers Compensation
- b. Employer's Liability: \$500,000
- c. General liability including:
 - (1). Premises/Operations
 - (2). Products/Completed Operation
 - (3). Contractual
 - (4). Owner's Protective
 - (5). Personal Injury/Advertising Liability

(6). Mobile Equipment

General liability limits shall be equal to or greater than:

- (1). \$100,000 Bodily Injury per person. 300,000 Bodily Injury per occurrence. \$100,000 Property Damage per occurrence; or,
- (2). \$500,000 Bodily Injury and Property Damage combined, single limit.

Specify annual aggregate, if any. The minimum available annual aggregate for the purposes of this Agreement shall be \$1,000,000. Claims - made policies shall not be acceptable. All policies shall be occurrence basis.

d. Automobile Liability:

All owned, non-owned or hired vehicles must be covered. Liability limits shall be greater than or equal to:

- (1). \$100,000 Bodily Injury per person. \$300,000 Bodily Injury per occurrence. \$100,000 Property Damage per occurrence; or,
- (2). \$500,000 Bodily Injury and Property Damage combined, single limit.

e. Excess Liability Coverage shall be greater than or equal to \$1,000,000 combined, single limit. Specify aggregate, if any.

14.03 DESIGN-BUILDER shall not commence any portion of the work under this Agreement until it has obtained the insurance required herein and certificates of such insurance have been filed with and approved by the County.

14.04 No cancellation of or changes to the certificates, or the policies, may be made without sixty (60) days prior, written notification to the County.

14.05 Approval of the insurance by the County shall not relieve or decrease the liability of the DESIGN-BUILDER.

14.06 Workers' Compensation Insurance Coverage:

A. Definitions:

1. Certificate of coverage ("certificate")- A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on the Work, for the duration of the Work.

2. Duration of the Work - includes the time from the beginning of services on the Work until the services on the Work has been completed and accepted by the County.

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

14.07 DESIGN-BUILDER shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of TEXAS LABOR CODE, Section 401.011(44) for all employees of DESIGN-BUILDER providing services on the Work, for the duration of the Work.

14.08 DESIGN-BUILDER must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

14.09 If the coverage period shown on DESIGN-BUILDER' current certificate of coverage ends during the duration of the Work, DESIGN-BUILDER must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

14.10 DESIGN-BUILDER shall obtain from each person providing services on the Work, and provide to the governmental entity:

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

(B) no later than seven days after receipt by DESIGN-BUILDER, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Work.

14.11 DESIGN-BUILDER shall retain all required certificates of coverage for the duration of the Work and for one year thereafter.

14.12 DESIGN-BUILDER shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after DESIGN-BUILDER knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Work.

14.13 DESIGN-BUILDER shall post on each Work site a notice, in the text, form and manner

prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the Work that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

14.14 DESIGN-BUILDER shall contractually require each person with whom it contracts to provide services on the Work to:

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

(B) provide DESIGN-BUILDER, prior to that person beginning work on the Work, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Work, for the duration of the Work;

(C) provide DESIGN-BUILDER, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Work;

(D) obtain from each other person with whom it contracts, and provide to DESIGN-BUILDER:

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

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

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

(F) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing service on the Work; and

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

14.15 By signing this contract or providing or causing to be provided a certificate of coverage, DESIGN-BUILDER is representing to the County that all employees of DESIGN-BUILDER who will provide services on the Work will be covered by workers' compensation coverage for the duration of the Work, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-

Insurance Regulation. Providing false or misleading information may subject DESIGN-BUILDER to administrative penalties, criminal penalties, civil penalties, or other civil actions.

14.16 DESIGN-BUILDER'S failure to comply with any of these provisions is a breach of contract by DESIGN-BUILDER which entitles the governmental entity to declare the contract void if DESIGN-BUILDER does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

SECTION XV MODIFICATIONS

This instrument contains the entire Agreement between the parties relating to the rights herein granted and obligations herein assumed. Any oral or written representations or modifications concerning this instrument shall be of no force and effect excepting a subsequent written modification signed by both parties hereto.

SECTION XVI AUTHORITY OF COUNTY FACILITIES MANAGEMENT & PLANNING DIRECTOR

16.01 The County Facilities Management & Planning Director, at his sole discretion, shall decide and determine any and all questions that may arise as to the interpretation of this Agreement and any and all questions as to the acceptable fulfillment of this Agreement by DESIGN-BUILDER. His decision shall be final.

16.02 It is mutually agreed by both parties that the County Facilities Management & Planning Director shall act as referee in all questions arising under the terms of this Agreement between the parties hereto and that the decisions of the County Facilities Management & Planning Director in such shall be final and binding alike on both parties hereto.

16.03 Nothing contained in this Article shall be construed to authorize the County Facilities Management & Planning Director to alter, vary or amend any of the terms or provisions of this Agreement.

SECTION XVII MISCELLANEOUS

17.01 The Parties agree that this Agreement contains all of the terms and conditions of the understanding of the parties relating to the subject matter hereof.

17.02 All prior negotiations, discussions, correspondence and preliminary understandings between the parties and others relating hereto are superseded by this Agreement.

17.03 By entering into this Agreement, the parties do not intend to create any obligations, express or implied, other than those specifically set out in this Agreement.

17.04 This Agreement shall be construed under and in accord with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Fort Bend County,

Texas, and that venue for any litigation arising out of or related to this Agreement shall lie solely in the court of appropriate jurisdiction located in Fort Bend County, Texas.

17.05 Nothing in this Agreement shall create any rights or obligations in any party who is not a signatory to this Agreement.

17.06 DESIGN-BUILDER agrees and understands that, by law, the Fort Bend County Attorney's Office may only advise or approve contracts or legal documents on behalf of its clients. The Fort Bend County Attorney's Office may not advise or approve a contract or other legal document on behalf of any other party not its client. The Fort Bend County Attorney's Office has reviewed this document solely from the legal perspective of its client. DESIGN-BUILDER and other parties should not rely on this approval and should seek review and approval by their own respective legal counsel.

17.07 If there is a conflict between this Agreement and Exhibit A or B, the provisions of this Agreement shall prevail.

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SECTION XVIII
EXECUTION

County executes this Agreement by and through the County Judge acting pursuant to Order of the Commissioners' Court of Fort Bend County, Texas.

This Agreement shall become effective upon execution by County.

FORT BEND COUNTY:



Robert E. Hebert, County Judge


10-13-09
Date

Attest:



Dianne Wilson, County Clerk

APPROVED:



By: Don Brady, County Facilities
Management & Planning Director

Date: 10-13-09

BASS CONSTRUCTION COMPANY, INC. "DESIGN-BUILDER"



Bob W. Bass, President

Date: 10-12-09

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$153,000.00 to pay the obligation of Fort Bend County under this Agreement.

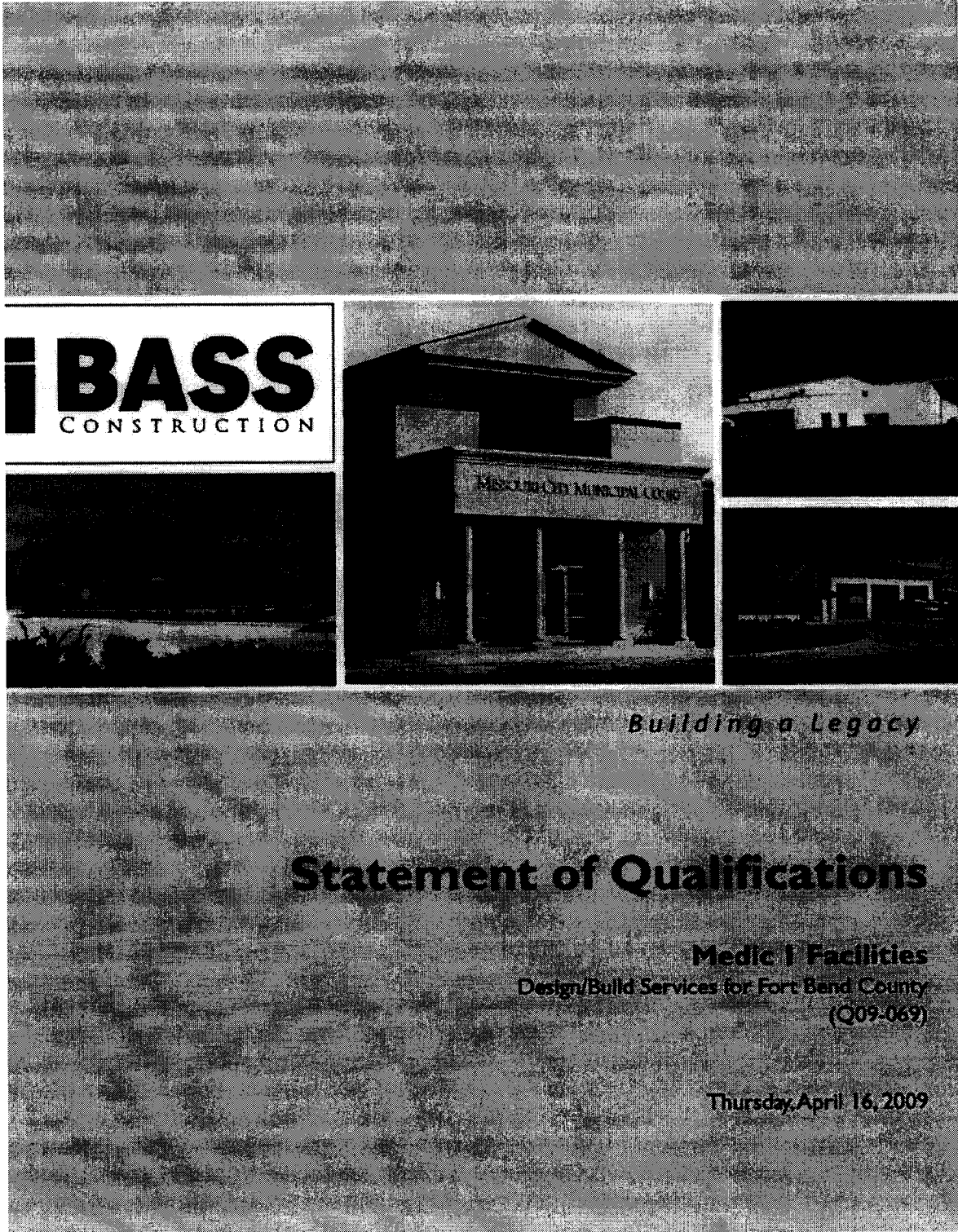


Ed Sturdivant, County Auditor

Exhibit A: Design-Builder's Proposal dated April 16, 2009

Exhibit B: County General Terms

EXHIBIT A





February 11, 2009

Fort Bend County
Purchasing Department
Rosenberg, TX 77471

Dear Sirs,

In order to successfully complete this Design/Build project requiring high standards of quality yet maintaining a strict budget and fast-track schedule, you need a Design/Builder who has performed similar demanding projects that can dedicate the resources necessary to accomplish your goals, and is experienced in working with the county. **Bass Construction is that builder.**

Over the last 50 years, we've completed many design-build projects in the southwest Houston area. In that time we have developed lasting relationships with consultants, subcontractors, and suppliers that are committed to the **Bass standard of quality, safety, and on time delivery.** What's more, this team will provide the most cost effective solutions for your project.

The team we have put together ranges from structural and MEP engineers to concrete and steel subcontractors that are some of the best in the industry at these types of projects. These include **Kaluza & Associates, SCA Consulting Engineers, Henderson Engineering, and Hall Barnum Lucchesi Architects.**

Bass Construction led by **Bob Bass** (President/Owner), **Tim Willert** (Design/Build Manager), and **Russell McCown** (Project Manager) are the best blend of construction experience in the area. We have successfully completed several design/build projects for Fort Bend County and are very familiar with the requirements and expertise needed for such work. Again, we feel that the consultant and construction team we are proposing led by **Bass Construction** will make your project a success.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bob W. Bass', written in a cursive style.

Bob W. Bass

President—Bass Construction Co., Inc.

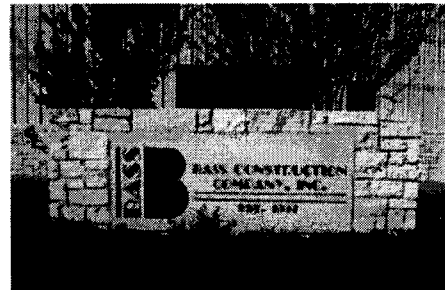


Building a Legacy

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Building a Legacy

Firm Information



Bass History A Tradition of Excellence

Honesty. Integrity. Precision. These guiding principles laid a solid foundation upon which Bass Construction was built. And, they are qualities on which the company still thrives. This time-honored tradition was started by a man known for his attention to detail and fairness with everyone—from clients to employees to subcontractors and suppliers.

Little did Nelson Bass know in those early years that his son Bob, and his two grandsons would continue the legacy he started all those years ago.

Nelson I. Bass, Jr. got his start in construction in the residential market, drawing house plans and building homes. In 1957 he founded Bass Construction, the legacy had begun. For over 45 years he played a vital role in both residential and commercial projects in the area.

Prior Planning Prevents Poor Performance.

We still live by this simple yet powerful philosophy today.

Little did he know in those early years that his son Bob, and his two grandsons and extended family of staff would continue the legacy he started all of those years ago. Those who knew Nelson Bass well can still hear his voice recite the mantra that summed up his standards for excellence—**Prior Planning Prevents Poor Performance.**

Medic I Facility
Design/Build Proposal
Page 1

Bass Construction Co., Inc.
Legal Name of Contracting Firm

(281) 342-2022
Telephone Number

(281) 341-5071
Facsimile Number

1124 Damon Street
Mailing Address

Rosenberg, TX 77471
City, State and Zip Code

74-1444527
Federal ID Number (Corporate)

December 1961
Date of Incorporation

Bob W. Bass—President / Owner
Authorized Representative and Title

bobass@bassconco.com
Authorized Representative's E-mail Address


Signature of Authorized Representative

■ ■ ■ ■
Building a Legacy

Understanding of Scope of Work

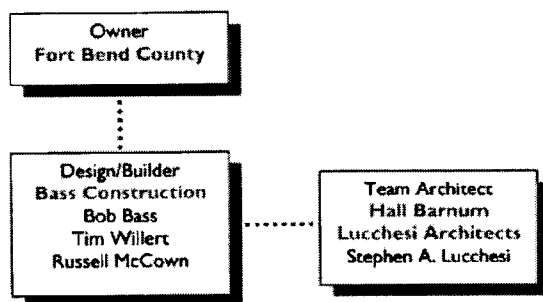
Over the last 50 years, Bass Construction has been part of shaping the communities with which we work. In that time, we've seen these areas literally come to life through the structures we've built.

Today, we provide a wide range of construction services – including general contracting, construction management and design/build – for industrial, commercial and community markets. We self perform our own concrete and site work. And, the relationships we've developed over the years with architects, engineers and subcontractors ensure that our clients have the best possible team for the job.

At Bass Construction, we're known for quality construction, timely delivery and budgetary accuracy, as well as our integrity, cooperation and responsiveness. To us, construction isn't about hammers and nails; it's about making vision a reality, creating a sense of community and leaving a legacy for future generations to come.

Introduction of the Team

In response to Fort Bend County's need for Design/Build services for the Bates Allen Park Restroom Building, Bass Construction has assembled a Design/Build Team to fast-track the project to completion. Through our partnership with HBL Architects, we can provide complete architectural, engineering and construction services to the County for this program.



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Design/Build Proposal
Page 2



Firm History

Nelson I. Bass, Jr. founded Bass Construction in 1957. The company was established to serve Richmond/Rosenberg and other surrounding areas. We are a second-generation, privately owned and operated company.

The Bass Construction Team includes:

Bob W. Bass: President/Owner – providing project oversight.

Tim Willert: Design/Build Manager – the County's day-to-day contact.

Stephen A. Lucchesi: Architect – the team's design architect.

Dave Oliver: Project Estimator – providing construction cost estimating.

Russell McCown: Project Manager – responsible for project coordination.



Building a Legacy

Project Team



Bob Bass
President/Owner

Bob Bass has lived and worked in the construction industry for most of his life. His father started Bass Construction in 1957 when Bob was very young. Bob worked on weekends and during summers, learning the skills and philosophies on which the company was founded.

After graduating from Texas A&M University, Bob became an "official" employee of Bass Construction, and he worked alongside Nelson Bass for 30 years. It's no wonder some of those positive traits rubbed off! Bob is often described as honest, dedicated and accommodating.

Today, Bob is responsible for managing the office and overseeing projects. Although his daily duties now include more leadership roles, he's not afraid to roll up his sleeves and get his hands dirty. In fact, one of his favorite parts of the project is value engineering because he likes for his clients to get the most for their money.

PROFESSIONAL/COMMUNITY INVOLVEMENT

- Associated Builders and Contractors of Greater Houston
- Jack Miller Network
- Butler Manufacturing Co. Butler Builder Advisory Council
- Rosenberg-Richmond Area Chamber of Commerce
- American Red Cross
- Lamar Educational Award Foundation supporter

EDUCATION

Bachelor of Science in Building Construction, Texas A&M University
Graduated with Honors, 1972

AT A GLANCE

- Second generation owner. Worked alongside his father and company founder, Nelson I. Bass, Jr. for 30 years.
- Responsible for overall office and project leadership, including pre-construction services, estimating and planning.
- Hobbies include sports, fishing and hunting.
- How Bob describes his approach to his work: "It's a marathon, not a sprint!"

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Page 3



NOTEWORTHY PROJECTS

South Texas Nuclear Plant

Civil project involving stringent security measures, which included casting 1,960 5x10x4 concrete blocks on site, setting them in place at the perimeter of the secured area within a 60-day timeframe.

Dub Miller Ford

Four-building design-build project totaling 80,000 square feet. Including five acres of paving. Completed in 2002.

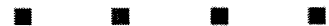
Lamar CISD – George Jr. High/Terry High School Renovations

Complete renovation of George Jr. High was accomplished in only 75 days. A partial renovation of Terry High School, including new mechanical and sprinkler systems, was completed in this same timeframe.

Lamar CISD – Jane Long/Special Needs

2008 Project on two campuses involving a 30,000 square foot classroom and gymnasium addition at the elementary school and renovating the Special Needs Building

"I have the utmost respect for Bob and we work great together. I don't feel like I ever have to search what they're doing. They understand the market, know the people and have worked with them for years." — Sandy Lewis, Gilbane Building Company (Program Manager for Lamar CISD)



Building a Legacy

Project Team



Tim Willert
Design/Build Manager

Tim Willert has more than 30 years experience. Like many of his co-workers, he grew up in the industry, working in his father's construction company. While the company mostly erected metal buildings for the industrial market, Tim always applied his creativity to these projects.

After spending a portion of his career managing his own company, Tim joined Bass Construction in 2004. What was it that attracted him to Bass? If you ask him, he'll tell you that Bass Construction fosters a family atmosphere and shares the same values he lives by every day.

Tim focuses on Bass' design-build projects, from the initial negotiations to final completion. He manages both the design and construction. His forte meeting the client's needs through the use of pre-engineered steel buildings. He prides himself on making ordinary metal buildings look extraordinary.

It's easy for Tim to sell the benefits of design-build to potential customers, as he himself is a believer in the design-build process. Not only does it allow Tim to express his creativity, it also gives the owner and contractor more control over the entire process.

Outside the office, Tim is a sports fan, loves spending quality time with his family and is actively involved in his church.

EDUCATION

Course work from Sam Houston State University

AT A GLANCE

- Over 30 years of experience, including serving as Vice President and President of an industrial and commercial construction firm.
- Specialized experience in design-build.
- Husband of 34 years, with two children.
- Tim enjoys sports, especially college football. He also follows all of the professional Houston teams.

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NOTEWORTHY PROJECTS

Affordabletours.com

This 8,100-square-foot office building was completed in 2005. The owner had a definite architectural look they wanted to achieve. Bass Construction designed and built the facility and was able to successfully achieve the goals the owner set forth.

Fed Ex Ground

Renovations of an existing office and shipping facility.

Flanders Air Seal

50,000-square-foot office and manufacturing facility, including design. Bass provided a five-ton and 10-ton crane for materials handling.

Elge, Inc.

Major renovations for a pharmaceutical manufacturing facility, including the laboratory and mixing rooms.



Building a Legacy

Project Team



Stephen A. Lucchesi, AIA
Architect

Steve has 15 years experience with Hall Barnum Lucchesi Architects. He has served as principal-in-charge, project manager and project architect for numerous fire stations and public safety projects and a wide variety of municipal building programs. His experience includes site evaluation and selection, programming, master planning, feasibility studies, design, documentation, specifications, and construction administration for fire stations, EMS facilities, police stations, emergency operations centers and other public safety and public service projects for numerous municipal clients.

EDUCATION

Bachelor of Science Environmental Design, 1987, Texas A&M University

REGISTRATION

Registered Architect, Texas Registration No. 15171, 1995

PROFESSIONAL/COMMUNITY

Steve is a member of the Houston Chapter, American Institute of Architects. He served as co-chair of the Associates Liaison Committee of the Houston Chapter AIA and as a member of the TSA Young Professionals Outreach Committee. He is a member of St. Laurence Catholic Church, Sugar Land, Texas

NOTEWORTHY PROJECTS

Missouri City Public Safety Headquarters Building
Additions / Renovations/ Adaptive Re-use of Existing Commercial Building

Missouri City Fire Stations #3 & #4
New Facilities

Alvin EMS Building
Additions and Renovations

New Public Safety Building for the City of Friendswood
Master Plan

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Noteworthy Projects (Cont.)

The Woodlands Public Safety
Building
Renovations

South Montgomery County
Administration Building
New Facility

Friendswood Public Library
Renovations/Adaptive Re-use of an Office
Building

University of St. Thomas Science
Building
New Facility

Junior Forum Community House
Pre-School
Master Plan, Additions and Renovations

Memorial Drive Presbyterian Church
Master Plan, Additions and Renovations

Grace Presbyterian Church
Master Plan, New Fellowship Hall Building,
Additions and Alterations to Existing
Church and School Facilities

Love Elementary School
Additions and Renovations

The Thompson Building, The Strand
Renovation/Adaptive Re-use of an Historic
Building



Building a Legacy

Project Team



Dave Oliver
Estimator

Dave Oliver joined Bass Construction in July 2006 and he brings with him over 30 years of experience. He has served as estimator and/or project manager on a wide variety of project types, including educational, retail and public facilities.

In his current position as Estimator and Project Manager, Dave is able to apply both his financial and technical talents to ensure that all bids are complete, accurate and competitive. He also focuses on keeping the entire team in close communication so that everyone understands the full scope of work.

Dave is a team player and believes in building long-term relationships with subcontractors and vendors as well as owners and architects. He considers himself patient, fair and professional.

EDUCATION

Master of Business Administration – Finance/Accounting,
University of Houston, 1983.

Bachelor of Science in Industrial – Construction Management,
Colorado State University, 1975.
Graduated with Honors

AT A GLANCE

- Over 30 years experience in commercial and public markets, including school, day care and athletic facilities; fire stations; and retail centers.
- Dave believes that fostering long-term relationships with subcontractors and vendors is the key to building a successful construction company.
- One of Dave's work philosophies: "If it's too good to be true, it probably is!"
- Outside the office, Dave enjoys singing in his church choir, doing home improvement projects and traveling. His hobbies include playing the guitar, photography and learning new computer programs.
- Dave's been married to his college sweetheart for 32 years and they have a son who is currently attending Texas A&M University.

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Bid to Capture Ratio

2006 (Partial Year)

10 Projects Bid : 40% Awarded

\$34m Bid : 20% Awarded

2007

42 Projects Bid : 19% Awarded

\$86m Bid : 20% Awarded

2008

41 Projects Bid : 22% Awarded

\$106m Bid : 25% Awarded



Building a Legacy

Project Team



Russell McCown
Project Manager

Russell McCown was attracted to the construction industry at a very young age by his uncle, who owned his own construction business and told Russell that there would always be someone in need of a building. As it turns out, this was sound advice and has served him well throughout his 21 year career.

With a wide range of experience in commercial, retail, educational and industrial project types, Russell leaves no detail unnoticed in his role as project manager. He enjoys seeing a project through from start to finish, and likes the challenges that comes with each new project. In addition to estimating, scheduling and overseeing the daily operations of the project, Russell's strength is coordinating all those on the building team, from the owner to the architect to the subcontractors.

Russell approaches his work with enthusiasm and is often described as fair, reasonable and easy to deal with. His management style is complemented by his natural interpersonal skills and strong computer abilities. All of these talents make him a valuable asset to the Bass Construction team.

EDUCATION

Bachelor of Science in Building Construction, Texas A&M University

AT A GLANCE

- A total of 21 years experience in construction, focusing in the public, educational and private sectors.
- Russell enjoys interacting with all the members of the team, especially the architects and engineers.
- Hobbies include sports, snow skiing and fishing.
- On the weekends, Russell enjoys spending time with his wife and three children at their family lake.
- One of Russell's favorite destinations is Las Vegas because "there's something new to do and see every time you go."

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NOTEWORTHY PROJECTS

Fort Bend Co. Precinct One

A new 29,000 s.f., 2-story building. Consists of structural steel with a brick veneer. This office building houses Precinct 1 County Court, Constables and Commissioner's Offices.

Fort Bend Co. Service Center

8 building facility in Needville, Texas for Fort Bend County. These pre-engineered buildings house office space, service areas, equipment storage, and an EMS facility. It also has fuel tanks and a fueling island.

Fort Bend Co. Tax Office

New 29,000 s.f. 2-story building on the same campus as Precinct One, houses the Fort Bend County Tax Assessor/Collector. Building is constructed of Structural steel with brick veneer.

Alvin ISD

A 20,000-square-foot Safety and Technical Center that houses the school Police and IT Departments. Multiple renovations to sports facilities, plus a new tennis court.

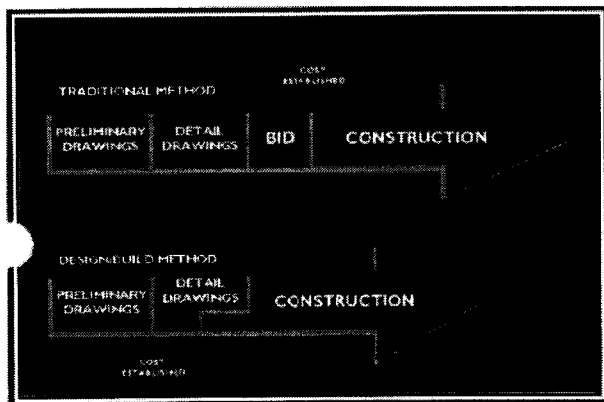


Building a Legacy

Experience with Projects of Similar Size and Complexity

Bass Construction's knowledge, expertise and past experience perfectly complement the size and scope of the Medic 1 Project.

Furthermore, our team believes that this project is well-suited for the Design/Build delivery method. Not only does Design/Build give the County a single point of contact for the design and construction of these facilities it is also the fastest, most efficient and cost-effective building process available.



Overview of Team Experience

Bass Construction has completed nearly 50 projects for Fort Bend County since the 1980's. We are confident that no other Design/Builder has the depth of experience in public facilities or the long-standing relationship with the community as our team. We know the area inside and out and can successfully coordinate with the necessary City and County officials to fast-track the project.

We've partnered with Hall Barnum Lucchesi Architects because of their extensive knowledge of public facilities, specifically law enforcement, fire and EMS facilities.

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Benefits of Utilizing Design/Build

- Single-source responsibility
- Project cost established sooner
- Less time
- More innovative solutions
- Greater control
- Team approach
- More experience
- Unequaled quality
- Fewer changes
- Improved risk management



Building a Legacy

Experience



Design/Build Projects

Katy Municipal Court		
Contact	Bill Drohan	281.391.4800
Contract Amount	\$1,500,000	
Square Footage	7,780	
Completion Date	Fall 2009	
Fort Bend County - Precinct One		
Contact	Don Brady	281.633.7018
Contract Amount	\$3,377,289	
Square Footage	28,000	
Completion Date	July 2007	
Fort Bend County - Tax Office		
Contact	Don Brady	281.633.7018
Contract Amount	\$3,488,940	
Square Footage	28,500	
Completion Date	April 2009	
Fort Bend County - Gus George Training Academy		
Contact	Don Brady	281.633.7018
Contract Amount	\$5,941,061	
Square Footage	44,000	
Completion Date	September 2009	
Affordable Tours		
Contact	Jaime Fernandez	281.269.2600
Contract Amount	\$900,000	
Square Footage	8,100	
Completion Date	2005	
Elks Lodge #151		
Contact	Don Clarke	713.721.1152
Contract Amount	\$1,200,000	
Square Footage	12,400	
Completion Date	2005	
Dub Miller Ford		
Contact	Bob Miller	281.342.5611
Contract Amount	\$5,500,000	
Square Footage	50,000	
Completion Date	2002	



FBC Precinct One Facility



Affordable Tours



Dub Miller Ford

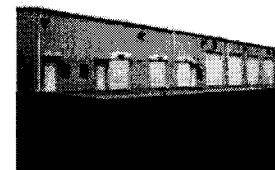


Experience



Fort Bend County Projects

Needville Service Center	
Contact	Don Brady
Phone	281.633.7018
Contract Amount	\$3,319,192
Square Footage	48,320
Completion Date	March 2009
Maintenance Facility	
Contact	Don Brady
Phone	281.633.7018
Contract Amount	\$780,000
Square Footage	10,000
Completion Date	December 2008
5th Street Community Center	
Contact	Gilbert Jalomo
Phone	281.341.8640
Contract Amount	\$1,170,000
Square Footage	10,000
Completion Date	November 2008
JP Court - Needville, Texas	
Contact	Gilbert Jalomo
Phone	281.341.8640
Contract Amount	\$700,000
Square Footage	6,000
Completion Date	January 2004
Fort Bend County Fairgrounds	
Contact	Gilbert Jalomo
Phone	281.341.8640
Contract Amount	\$1,000,000
Square Footage	(Arena)
Completion Date	January 2004
MUD #25	
Contact	Dan Whitcher
Phone	281.277.0129
Contract Amount	\$1,600,000
Square Footage	9,000
Juvenile Detention Center	
Contact	Gilbert Jalomo
Phone	281.341.8640
Contract Amount	\$1,000,000
Square Footage	6,000



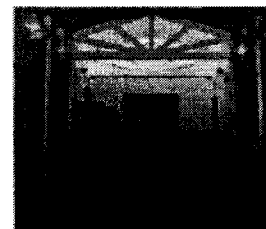
Needville Service Center



FBC Maintenance Facility



5th Street Headstart



Needville JP Office

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Building a Legacy

Experience

Other Public Facilities

Missouri City Municipal Court	Contact	Valerie Ruda
	Phone	281.403.8578
	Contract Amount	\$4,890,000
	Square Footage	19,400
	Completion Date	April 2008
Rosenberg Civic Center	Contact	Joe Gurecky
	Phone	281.342.5926
	Contract Amount	\$2,000,000
	Square Footage	20,000
	Completion Date	2001
Lamar CISD - George JH/Terry HS Renovations	Contact	Kevin McKeever
	Phone	281.341.8640
	Contract Amount	\$8,065,000
	Square Footage	Renovation
	Completion Date	December 2005
TX DOT Sign & Signal Shop	Contact	Lenert Kurtz
	Phone	713.802.5281
	Contract Amount	\$1,550,000
	Square Footage	21,800
	Completion Date	October 2003
Richmond Police Station	Contact	Glen Gilmore
	Phone	281.342.5456
	Contract Amount	\$2,832,000
	Square Footage	20,000
	Completion Date	December 2008
Rosenberg Fire Station	Contact	Greg Mensik
	Phone	832.595.3400
	Contract Amount	\$1,250,000
	Square Footage	10,000
	Completion Date	October 2001
Oaks at Rio Bend	Contact	Margaret Gow
	Phone	281.341.6257
	Contract Amount	\$1,000,000
	Square Footage	13,500
	Completion Date	December 2005

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Design/Build Proposal
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Rosenberg Fire Station



Richmond Police Station



Missouri City Municipal Court/Emergency Operations Center



Rosenberg Civic Center



Building a Legacy

Familiarity with Project Work Area and Prevailing Conditions



Because the majority of our previous work experience has been in the Fort Bend County area, the Bass Construction team will be ready to hit the ground running upon award of the contract. We've lived and worked in this area for 50 years and have developed strong relationships with the County as well as the City of Richmond. We are extremely familiar with code and permitting requirements and can expedite that process to the fullest.

Our approach to the County's building program is explained below.

Design Services

The Bass Construction team – in conjunction with Hall Barnum Lucchesi Architects – will provide turnkey design services working directly with the County or County Representatives to develop a project that adheres to the desired scope of work and estimated budget. In doing so, the Design Team will collect and coordinate all information and requirements provided by the County and monitor compliance with local standards and codes.

We will lead review meetings to develop and evaluate project documents through all stages of the program while assuring strict conformance to policies and procedures as required by the County. Bass will maintain the budget by performing any necessary value engineering and assessing cost reduction alternatives.

Pre-Construction Services

The Bass team will coordinate with County Representatives to fast track the project through to the construction phase by coordinating and monitoring submittal to and approval by all regulatory agencies. We will supply a CPM schedule establishing and evaluating long lead items and schedule issues and suggest any alternate solutions. As the plans are solidified, Bass will establish project cost estimates and review and validate them as the drawings are finalized. Prior to issuing out for bids and proposals, Bass will also review documents to confirm the County's intent and that General & Special Conditions are incorporated.

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■ ■ ■ ■
Building a Legacy

Familiarity with Project Work Area and Prevailing Conditions



Construction Services

Bass Construction will provide all management and coordination necessary to complete the projects through all phases of the construction process. We will provide a project manager and superintendent to monitor the progress of jobsite activities, maintain our safety program and ensure quality construction in accordance with the construction documents. We will utilize preferred subcontractors with whom we've worked for numerous years who also are familiar with the Fort Bend County area.

The Bass team will conduct regular jobsite progress meetings as well as monitor and maintain detailed project records, including Meeting Minutes, Submittal, RFIs and Change Orders. As the project nears completion, Bass will work with the County to prepare a final punch list of deficient or unfinished work and monitor completion of items.

Post-Construction Services

Bass will provide all necessary post-construction services to assist the County with an easy transfer into their new buildings. We will coordinate the occupancy permit, utility initiation activities and schedule all final start-up activities and training with County personnel. Bass will assist in coordinating County-furnished equipment and other separately held contracts. We will provide all final redlined As-Built drawings in printed and electronic form as well as supply an Owner's Operation & Maintenance Manuals including all close-out records.

If any concerns arise after building occupancy, Bass Construction is easily accessible and will respond to the County's request immediately.

Financial Stability

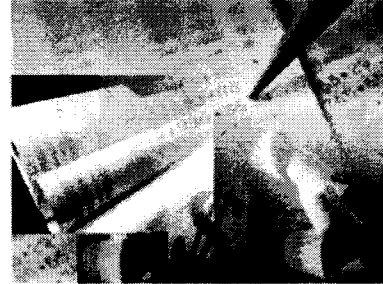
Along with our 50-year history comes the peace of mind that we have the financial resources to successfully complete multiple projects. In addition, we've developed strong relationships with our subcontractors and vendors over the years; and, our bonding capacity exceeds what is needed for this project.

Claims, Suites & Resolutions

- a. Bass Construction Co., Inc. has never failed to complete any work awarded to the company.
- b. There are no judgments, claims, arbitration proceedings or suits pending or outstanding against Bass Construction Co., Inc. or its officers.
- c. Bass Construction Co., Inc. has not filed any lawsuits or requested arbitration with regard to any construction contracts in the last five years.

The following documents are also included in this section:

- Bonding capacity
- Insurance certificate





Larry L. Rhodes, CIC, CPA
Vice President

HUB International RIGG

www.hubinternational.com

February 9, 2009

To Whom It May Concern:

This is to advise you regarding the bonding capability of Bass Construction Company, Inc., Rosenberg, Texas. We handle all of this firm's bonding requirements. To date we have provided bonds on single contracts in an amount in excess of \$11,000,000. All of their obligations under the contracts we have bonded have been fulfilled in an exemplary manner. We consider Bass Construction Company, Inc. to be one of our premier construction clients.

Should you have any questions, or wish to discuss any bonding matter, please do not hesitate to call me.

Sincerely,

HUB International RIGG

Larry Rhodes, CIC, CPIA

10777 Westheimer, Suite 300
Houston, Texas 77042-3454
Office 713-425-6631
Fax 713-366-3704
e-mail: rhodes@wrigg.com

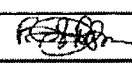
ACORD <small>TM</small> CERTIFICATE OF LIABILITY INSURANCE		DATE (MMDDYYYY) 2/5/2009
PRODUCER Hub International Riggs - Houston 10777 Westheimer, Suite 300 Houston TX 77042-3454 (713) 9-6668		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.
INSURED Bass Construction Co., Inc. 1124 Damon Street Rosenberg TX 77471		INSURERS AFFORDING COVERAGE
		NAIC # INSURER A: Valley Forge Insurance Co. 20508 INSURER B: Continental Insurance Co. 35289 INSURER C: Continental Casualty Company 20443 INSURER D: Travelers Lloyds Insurance Co. INSURER E:

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ACCT LTR	INSR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MMDDYY)	POLICY EXPIRATION DATE (MMDDYY)	LIMITS
A		GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-ECGT <input type="checkbox"/> LOC	2092484721	2/5/2009	2/5/2010	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADW INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 Pollution Waiver/Lite 1,000,000
B		AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	2092484704	2/5/2009	2/5/2010	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				
C		EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$ 10,000	2092484718	2/5/2009	2/5/2010	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$ \$ \$
A		WORKERS COMPENSATION AND EMPLOYERS LIABILITY ANY CO-OPERATOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	2092484735	2/5/2009	2/5/2010	<input checked="" type="checkbox"/> WC STATUS/TORSY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A		OTHER Equipment	2092484721	2/5/2009	2/5/2010	\$200,000 Leased/Rented
D		Builder's Risk	076600601C547	2/5/2009	2/5/2010	\$10,000,000 Per Location Limit

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
 Blanket Additional Insured: CL/AUTO/UMB as required by written contract.
 Blanket Waiver of Subrogation: CL/AUTO/UMB/WC as required by written contract.

CERTIFICATE HOLDER	CANCELLATION
FOR F PURPOSES ONLY	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVE.
	AUTHORIZED REPRESENTATIVE 

Management Systems



Management Methodology & Plan

Management methodology of this project will start at the top with Bob Bass providing overall project oversight. The design build manager will control all aspects of the project from start to finish and will be the City's single point of contact for all communication. D-B manager's responsibilities include coordinating all activities between the entire design team and keeping all team members aware of any outstanding issues or potential changes as well as incorporating the City's requirements into the project.

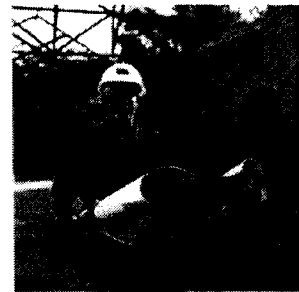
Software Management

Bass Construction is well equipped to provide the City with any reports that it deems necessary for the project. We will first issue a master project schedule showing all major milestones in order to finish within the City's required time frame. This schedule will be updated on a regular basis and before construction begins, Bass will show a cost loaded schedule in order for the City to plan ahead for payments.

We also use a Sage Software Timberline program for all estimating, accounting and project management needs. Our detailed estimates are easy to read showing the group, phase and detail items for all divisions and can be revised in almost any way the City would like. The accounting version will track all costs of the project which can be shown in many different reports as well as processing the pay applications. Project Management tracks all other paperwork including Transmittals, Submittals, RFI's, Meeting Minutes, Change Proposals, Etc.

Cost Control

Bass' project manager will help out the D-B manager with the day to day operations and assist with maintaining all project reporting. He will oversee the superintendent and confirm that all materials as well as means and methods meet the strict project requirements.





COUNTY TAX ASSESSOR / COLLECTOR

Fort Bend County, Texas

Patsy Schultz, RTA
County Tax Assessor/Collector
500 Liberty Street, Suite 101
Richmond, TX 77469

(281) 341-3710
Fax (281) 341-9267
Email: schulpat@co.fort-bend.tx.us
www.fortbendcountytax.com

April 13, 2009

Bass Construction
Mr. Bob Bass

RE: New Fort Bend County Tax Office

Dear Mr. Bass

The new Tax Office is absolutely beautiful, completely functional and meets all expectations.

As we started on this venture of building a new Tax Office I wondered how in the world someone with my limited construction experience would accomplish such an enormous task. I quickly realized I had the best possible partner, Bass Construction. This endeavor was absolutely painless.

Allow me to commend you on the quality of your staff. They were always available when needed, prepared to answer my questions and concerns and offered professional resolutions to unforeseeable issues. Please extend my personal appreciation to Russell and Nick for their patience and understanding. We must have walked one-hundred miles through the building during different phases of construction. I will always be grateful for their professional guidance.

Each phase of the building, from roofing, plumbing, electrical, sheetrock, flooring etc., was evident of excellent workmanship. I am proud to tell the taxpayers of Fort Bend County that they are getting the best product available for their tax dollars.

I gladly recommend Bass Construction to anyone wanting the highest quality and the "most bang for their buck".

Sincerely,

A handwritten signature in cursive script that reads "Patsy Schultz".

Patsy Schultz
Fort Bend County Tax Assessor Collector

FORT BEND COUNTY DOES NOT DISCRIMINATE ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN,
SEX, RELIGION, AGE OR DISABILITY IN EMPLOYMENT OR THE PROVISION OF SERVICES.

FORT BEND COUNTY, TEXAS
FACILITIES MANAGEMENT & PLANNING DEPARTMENT



Donald G. Brady
Director

(281) 633-7018
Fax (281) 633-7022

July 8, 2008

TO WHOM IT MAY CONCERN:

Bass Construction Company is currently nearing completion of a Design-Build project Fort Bend County: the construction of a new, 28,000 square feet Precinct One Office Building that includes a Justice of the Peace Courtroom and administrative areas, and the Precinct One Constable's offices. They have just completed an expansion to the Boys & Girls Club in Stafford, and are underway with two Road & Bridge expansion projects in Needville and Richmond. Based on Fort bend County's experience with Bass Construction on these projects and previous projects, Bass has also been awarded a Design-Build contract for the construction of the County's new, 26,000 square feet Tax Assessor/Collector Building. Commissioners Court has also approved negotiations of nother contract with Bass for the design and construction of the Gus George Police Academy Facility.

There are several benefits to be derived from contracting with Bass Construction, one of the most prominent is the level of service and personal commitment the County receives from their staff, from top to bottom of their organization. While they are excellent at responding to inquiries and provide extremely well organized support for project parameters, they also show initiative in informing the County of developing issues that allow us to resolve solutions well in advance of impacting the schedule. We highly regard and appreciate their personal approach and their expertise in knowing what to look for.

Our projects demand absolute compliance with the covenants we have with the voters of Fort Bend County. When we represent to them that we will provide services at a certain cost, then it is absolutely essential that we deliver them. Bass Construction enables us to do that, with schedule reliability and without concern for indefensible cost numbers. Without the slightest hesitation, I highly recommend Bass Construction Company to anyone interested in obtaining the services of the best contractor I've had the pleasure of working with in this area.

Sincerely,

A handwritten signature in black ink, appearing to read "Don Brady", written over a white background.

Don Brady

1402 Band Road, Suite 100 • Rosenberg, Texas 77471



Public Works

1522 Texas Parkway
Missouri City, Texas 77489

Phone: 281.403.8500
www.ci.mocity.tx.us

July 9, 2008

Jay & Buck Bass
Bass Construction
1124 Damon Street
Rosenberg, TX 77471

Dear Jay and Buck,

On behalf of the City of Missouri City and its residents, please accept our sincere thanks for your contribution to our new Municipal Court/Emergency Operations Center and Fire Station No.2. Both of you have provided the personal attention that high-profile public projects such as these demand, and have helped make them a success. The recent opening of both public safety facilities has had a positive impact on our citizens as well as city staff.

Each of the buildings posed different challenges for you due to their design. Fire Station No.2 required an extensive amount of coordination with staff and multiple utility companies as the previously existing fire station had to be demolished and the fire fighters temporarily relocated during construction. The Municipal Court/EOC was specifically designed to withstand hurricane force winds and house multiple departments, thus requiring great attention to detail and meeting a variety of needs for the differing departments.

As we started both projects simultaneously in a year receiving a record amount of rain, you kept each project moving, keeping your sights not only on the critical path, but also on the details. You both took a proactive approach, carefully watching for any inconsistencies, problems or errors in the design or construction, and provided efficient and effective solutions in a timely manner. Your responsiveness to questions and concerns demonstrated your reliability for addressing issues while coordinating with the design engineers and related city staff.

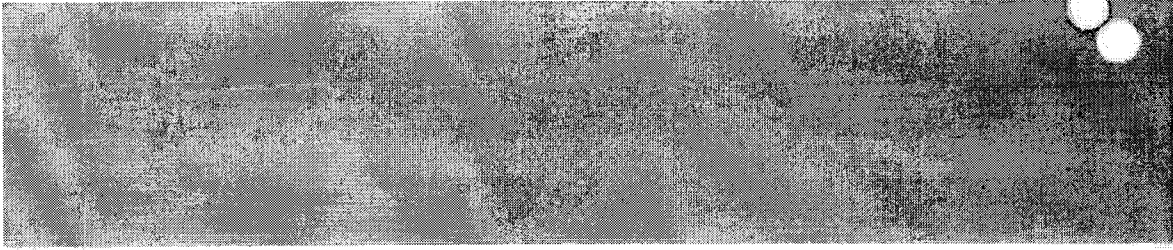
Considering delays due to a record-setting wet year, Fire Station No.2 reached substantial completion only two months after its expected completion date. In addition to weather delays, the complexity of the Municipal Court/EOC design contributed to its substantial completion being reached four months after its expected completion date. On both projects you helped deter excessive and unnecessary additional costs, and by the end of construction, Fire Station No.2's construction cost increased by 1.1 percent and the Municipal Court/EOC construction cost increased by 1.3 percent.

Both of these facilities bring the City closer to its goal of providing the best service to its citizens, and you have been an integral part of making them become reality. It has been a pleasure to work with each of you and your staff on these projects and we look forward to working with either of you on future projects.

Sincerely,

Valerie Ruda, MPL
Project Manager

CITY OF MISSOURI CITY



Bass Construction Co., Inc.
1124 Damon St.
Rosenberg, Texas 77471
281.342.2022 (O)
281.341.5071 (F)
www.bassconco.com

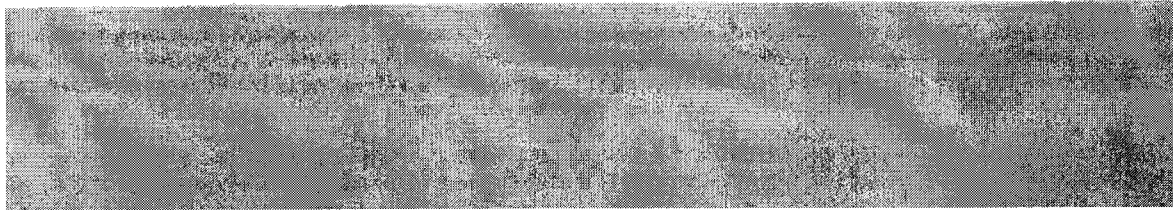


EXHIBIT B

GENERAL TERMS FOR CONTRACTS

WORK QUALITY STANDARDS

1.0 GUARANTEES

1.1 Contractor guarantees Owner that the Work shall comply strictly with the provisions of this Contract and all specifications and drawings referred to in this Contract or thereafter furnished by Owner, and that the Work shall be first-class in every particular and free from defects in materials and workmanship and in any design or engineering furnished by Contractor. Contractor further guarantees Owner that all materials, equipment and supplies furnished by Contractor for the Work shall be new, merchantable, of the most suitable grade and fit for their intended purposes. Without limitation of any other rights or remedies of Owner, if any defect in the Work in violation of the foregoing guarantees arises within the period set forth below, Contractor shall upon receipt of written notice of such defect promptly furnish, at no cost to Owner, design and engineering, labor, equipment and materials necessary to correct such defect and cause the Work to comply fully with the foregoing guarantees.

1.2 Contractor's guarantees set forth in Section 1.1 shall extend for twelve (12) months after the start of regular operation or use of the Work by Owner. Any period wherein the Work is not available for use due to defects in materials, workmanship or engineering furnished by Contractor shall extend the guarantee period by an equal period of time. **NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES.**

1.3 Design and engineering, labor, equipment and materials furnished by Contractor pursuant to Section 1.1 to correct defects shall be guaranteed by Contractor in accordance with the guarantees set forth in Section 1.1 for a period of twelve (12) months from the date of completion of the correction, or for the remainder of the guarantee period set forth in Section 1.2 above, whichever is longer.

1.4 In the event Contractor shall have been notified of any defects in the Work in violation of Contractor's foregoing guarantees and shall fail to promptly and adequately correct such defects, Owner shall have the right to correct or to have such defects corrected for the account of Contractor, and Contractor shall promptly pay Owner the costs incurred in correcting such defects.

2.0 INSPECTION, TESTING AND QUALITY CONTROL

2.1 Contractor shall inspect all materials, supplies and equipment which are to be incorporated in the Work. In addition, Contractor shall conduct a continuous program of construction quality control for all Work. Contractor's quality control program and inspection procedures for the foregoing shall be submitted in writing to Owner for review and approval, in

sufficient detail to delineate those items to be inspected and the manner in which they are to be inspected, and shall adequately describe all construction quality control activities contemplated, including provision for adequate documentation of Contractor's performance of such quality control and inspection.

2.2 Contractor shall, during the course of performance of the Work hereunder, without additional compensation, make or cause to be made all tests required by this Contract. Owner may require additional inspections and tests. Contractor shall furnish Owner with satisfactory documentation of the results of all inspections and tests. Owner shall be given not less than five (5) working days notice of any tests to be made by Contractor or Contractor's suppliers in order that Owner and/or Owner may witness any such tests.

2.3 Owner and their representatives, and others as may be required by applicable laws, ordinances and regulations, shall have the right at all reasonable times to inspect the Work and all material, supplies and equipment for the Work at the jobsite and at Contractor's and its supplier's or subcontractor's shops for conformance with the Contract. Contractor shall provide, or cause to be provided access and sufficient, safe and proper facilities for such inspections. Neither the failure to make such inspection nor to discover defective workmanship, materials or equipment, nor approval of or payment to Contractor for such Work, materials or equipment shall prejudice the rights of Owner.

2.4 If Contractor covers any portion of the Work prior to any inspection or test provided for in the specifications, inspection schedule, or as previously requested by Owner, the cost of uncovering and covering the Work to allow for such inspection or test shall be borne by the Contractor. Owner may order reexamination of any Work. In the event of such reexamination, if any material, equipment or any part of the Work is determined by Owner to be defective, Contractor shall not be reimbursed for uncovering, repair or corrective and restoration costs. If such Work is found to be in accordance with the Contract requirements upon such reexamination, Owner shall pay Contractor the cost of uncovering and restoration.

2.5 Rejection by Owner of any or all parts of defective Work for failure to conform to this Contract shall be final and binding. Such rejected Work shall be promptly corrected or replaced by Contractor at Contractor's expense. If Contractor fails to commence and diligently continue correction or replacement of such rejected Work immediately after receipt of written notice from Owner to correct or replace the rejected Work, Owner may at their option remove and replace the rejected Work, and Contractor shall promptly reimburse Owner for the costs of such removal and replacement of defective Work.

2.6 Manufacturer's Field Services

A. When specified in respective Specification sections, Contractor shall require supplier or manufacturer to provide qualified personnel to observe field conditions, conditions of surfaces and installation, quality of workmanship, testing, and to make appropriate recommendations.

B. Manufacturer's representative shall submit written report to the Owner listing observations and recommendations.

3.0 CONDITIONS AND RISKS OF WORK

Contractor represents that Contractor has carefully examined the drawings and specifications for the Work and has fully acquainted itself with all conditions apparent under normal circumstances, relevant to the Work, and its surroundings. Information on the site of the Work and local conditions at such site furnished by Owner in specifications, drawings or otherwise is not guaranteed by Owner and is furnished only for the convenience of Contractor.

4.0 APPROVED FOR CONSTRUCTION DRAWINGS AND SPECIFICATIONS

4.1 The Work shall be performed using only drawings and specifications marked "Approved for Construction" or equivalent by Owner. Such approval shall not relieve Contractor of any obligations under this Contract, nor constitute Owner's assumption of responsibility for the accuracy or adequacy of any of Contractor's information or Work incorporated in such documents.

4.2 Contractor shall perform all Work outside of the areas marked "HOLD" on "Approved for Construction" specifications and drawings to maintain the schedule of Work, but shall not perform any Work in the areas or sections marked "HOLD" on "Approved for Construction" specifications and drawings until revised "Approved for Construction" specifications and drawings are received with the "HOLD" markings deleted.

4.3 If Contractor's schedule will be delayed by "HOLD" markings on specifications and drawings, Contractor shall report such delay to Owner in writing not less than five (5) working days prior to the start of the delay.

4.4 Contractor shall maintain at the work site a complete and current set of "Approved for Construction" drawings and specifications.

5.0 INTENT OF SPECIFICATIONS AND DRAWINGS

5.1 The specifications and drawings may not be complete in every detail. Contractor shall comply with their manifest intent and general purpose, taken as a whole, and shall not make use of any errors or omissions therein to the detriment of the Work. Should any conflict, error, omission, or discrepancy appear in the drawings, specifications, instructions, in work done by others, or in site conditions, Contractor shall notify Owner in writing at once, and Owner will issue written instructions to be followed. If Contractor proceeds with any of the Work in question prior to receiving such instructions, then required corrections shall be at Contractor's expense.

5.2 Contractor shall not deviate from the specifications and drawings without prior written approval from Owner. Anything shown in the specifications referred to in this Contract or thereafter furnished by Owner and not shown in the drawings referred to in this Contract or thereafter furnished by Owner, or shown in such drawings and not shown in such specifications, shall be of like effect as if shown or mentioned in both and shall not be considered to be a conflict.

5.3 Materials shall not be substituted for those specified, nor shall "or equal" items be furnished pursuant to the specifications without Owner prior written approval.

6.0 SAFETY

6.1 Contractor shall take necessary safety and other precautions to protect property and persons from damage, injury or illness arising out of the performance of the Work. Contractor shall comply strictly with local, municipal, provincial, state and national laws, orders, and regulations pertaining to health or safety which are applicable to Contractor or to the Work, including without limitation the Occupational Safety and Health Act of 1970 (84 U.S. Statutes 1590), as amended and any state plans approved thereunder, and regulations thereunder, to the extent applicable, and Contractor warrants the materials, equipment and facilities, whether temporary or permanent, furnished by Contractor in connection with the performance of the Work shall comply therewith. At all times while any of Contractor's employees, agents or subcontractors are on Owner's premises, Contractor shall be solely responsible for providing them with a safe place of employment, and Contractor shall inspect the places where its employees, agents or subcontractors are or may be present on Owner's premises and shall promptly take action to correct conditions which are or may become an unsafe place of employment for them. Contractor shall indemnify and save harmless Owner, and their officers, employees and agents, from and against any and all claims, loss or liability in any manner arising out of Contractor's failure to comply with this Article.

6.2 Accidents, injuries and illnesses requiring medical attention other than first aid, damage to property of Owner, Owner and Contractor, and fires shall be orally reported to Owner at the time of the incident. Written reports, satisfactory in form and content to Owner, shall be submitted by Contractor promptly after each incident.

6.3 Contractor shall maintain in form and content approved by Owner, jobsite accident, injury and illness statistics which shall be available for inspection by, and submitted to, Owner upon its written request.

7.0 CLEANUP

7.1 Contractor shall at all times keep its work area in a neat, clean and safe condition and remove from the Owner's premises and the vicinity thereof and property dispose of all debris and rubbish caused by Contractor's operations. Upon completion of the Work, Contractor shall promptly return unused materials furnished by Owner and remove from Owner's premises all of Contractor's equipment, material, scaffolding and like items, leaving Owner's premises and the vicinity clean, safe and ready for use.

7.2 In the event Contractor shall fail to maintain its work area as described above and in a manner satisfactory to Owner, or to effect such cleanup or removal immediately after receipt of written notice to do so, Owner shall have the right without further notice to Contractor to perform such cleanup and remove such items on behalf of, at the risk of and at the expense of Contractor. Owner may store items removed at a place of its choosing on behalf of Contractor

and at Contractor's risk and expense. Owner shall promptly notify Contractor of such place of storage.

8.0 SUBCONTRACTS AND PURCHASE ORDERS

8.1 Contractor shall not subcontract performance of all or any portion of the Work under this Contract without first notifying Owner of the intended subcontracting and obtaining Owner Notice of Non-Objection in writing of the subcontracting and the subcontractor. If requested by Owner, Contractor shall furnish Owner a copy of the proposed subcontract (with price deleted if the subcontracted work is part of fixed price Work of Contractor under this Contract) for Owner review of the terms and conditions thereof and shall not execute such subcontract until Owner has given notice of Non-Objection to such terms. Failure of Contractor to comply with this Section may be deemed by Owner to be a material breach of this Contract.

8.2 Contractor guarantees that its subcontractors will comply fully with the terms of this Contract applicable to the portion of the Work performed by them. If any portion of the Work which has been subcontracted by Contractor is not prosecuted in accordance with this Contract, on request of Owner the subcontractor shall be replaced at no additional cost to Owner and shall not be employed again on the Work.

8.3 Owner shall have the right from time to time to contact Contractor's subcontractors to discuss their progress.

8.4 As used in this Article, the term "subcontract" shall include purchase orders of the general types designated from time to time by Owner in advance for materials or equipment for the Work, and the term "subcontractor" shall include vendors of such material or equipment.

9.0 TERMINATION FOR DEFAULT

9.1 In the event that Contractor shall default in the performance of any express obligation to be performed by Contractor under this Contract and shall fail to begin correction of such default within five (5) working days following written notice thereof from Owner, or if the Contractor does not exercise due diligence to complete the correction in an expeditious manner, Owner may, without prejudice to any other rights or remedies Owner may have, hold in abeyance further payments to Contractor and/or terminate Contractor's right to continue performance of this Contract by written notice to Contractor specifying the date of termination. In the event of such termination, Owner may take possession of the Work at the jobsite and any or all materials and plant equipment (whether delivered to the jobsite or on order therefor by Contractor), tools and construction equipment that has been paid for by owner at jobsite and finish the Work by whatever method Owner may deem expedient.

9.2 In the event of termination by Owner under Section 9.1, Contractor shall, upon request by Owner, promptly advise it of all outstanding subcontracts, rental agreements and purchase orders which Contractor has with others pertaining to performance of the Work and furnish Owner with complete copies thereof. Upon request by Owner, Contractor shall assign to Owner, in form and content satisfactory to Owner, Contractor's title to materials and plant equipment that has been paid for by Owner for the Work and those subcontracts.

9.3 In the event of termination by Owner under Section 9.1, Contractor shall not be entitled to receive any further payment until the Work is completed. Upon completion and final acceptance of the Work, Owner will determine the total cost incurred in completing the Work including, without limitation, additional overhead, legal and other costs incurred by Owner to effect such termination and to complete the Work, plus a markup for profit in the amount of 10 percent of the total cost of the Work performed by Owner force. If the total costs noted above exceed the balance of the Contract price unpaid at the time of the termination, Contractor shall, promptly after a receipt of an invoice, pay to Owner the amount of such excess. Owner shall have the right and are authorized to setoff against and deduct from any excess payable to Contractor any other damages suffered by Owner due to said default or event giving rise to the termination or due to other defaults of Contractor in complying with the terms of this Contract. Contractor shall continue to be fully liable for all such other damages to Owner. A waiver by Owner of one default by Contractor shall not be considered to be a waiver of any subsequent default by Contractor, nor be deemed to amend or modify the terms of this Contract. Contractor expressly waives any formal notice by Owner of Contractor's failure to perform, or passive breach of, Contractor's express obligations under this Contract.

9.4 Upon commencement of a case by or against Contractor under applicable bankruptcy law, or any general assignment by Contractor for the benefit of its creditors, or the appointment of a receiver to take charge of Contractor's assets, and provided the same renders Contractor unable to perform its obligations, Owner may treat Contractor as in default under Section 9.1 and may exercise any of the remedies of this Article.

9.5 In the event Contractor is unable to fully perform its obligations due to labor disputes, labor or material shortages, fire, forces of nature, or other circumstances which by the exercise of reasonable diligence Contractor is unable to prevent or provide against, Contractor shall be relieved of its obligation only to the extent it is unable to perform, provided that Contractor shall give written notice to the Owner within three (3) days after the occurrence of such event. The notice shall include an estimate of the impact on the required performance hereunder. If the Contractor is unable to cure this Force Majeure within thirty (30) days then Owner shall have the right, but not the obligation, to terminate this Contract.

10.0 STOP WORK ORDERS

Upon failure of Contractor or its subcontractor(s) to comply with any of the requirements of this Contract, Owner shall have the authority to stop any operations of Contractor or its subcontractors affected by such failure until such failure is remedied or to terminate this Contract in accordance with Article 9.0. No part of the time lost due to any such stop orders shall be made the subject of a claim for extension of time or for increased costs or damages by Contractor.

TIMING OF WORK

11.0 SCHEDULING, REPORTING AND COORDINATION

11.1 Contractor agrees to adhere to the schedule approved by Owner and attend and participate in scheduled progress and coordination meetings called by Owner.

11.2 Contractor recognizes that Owner, Owner, other contractors and subcontractors may be working concurrently at the jobsite. Contractor agrees to cooperate with Owner, Owner and other contractors so that the project as a whole will progress with a minimum of delays. Owner reserves the right to direct Contractor to schedule the order of performance of its Work in such manner as not to interfere with the performance of others.

12.0 OVERTIME

Unless expressly stated elsewhere in this Contract, Work at the jobsite shall be compatible with Owner starting and quitting times, or other times approved by Owner.

Scheduled overtime work by Contractor must be approved in advance and in writing by Owner. Overtime work, whether scheduled or incidental, shall be to Contractor's account unless the compensation therefore is specifically authorized in writing by Owner. In the event Owner approves compensation of Contractor's overtime in advance, such compensations separately authorized shall be limited to the actual cost to Contractor of the premium portion only of all applicable wages, craft fringe benefits, and payroll burdens imposed by any governmental authority and measured by the compensation payable to employees. To establish the amount of payment, Contractor shall submit supporting documents satisfactory in form and content to Owner for its verification and approval.

13.0 DELAYS

In the event Contractor or Owner is delayed in performing any of their respective obligations in this Subcontract and such delay is caused by acts of God, war, riots, civil insurrection, acts of the public enemy, accidents, acts of civil or military authority, fires, floods, or earthquakes, beyond the reasonable control of the party delayed, such delay shall be excused and the period of such delay shall be added to the time for performance of the obligation delayed, unless the date, schedule or time period for performance of the obligations expressly stated in the Contract to be guaranteed. In the event any such delay due to the foregoing causes or events occurs or is anticipated, the party delayed or anticipating delay shall promptly notify the other party in writing of such delay or expected delay and the cause and estimated duration of such delay. In the event of a delay due to the foregoing causes or events, whether such delay is excused or not, the party delayed shall, at no cost to the other party, exercise due diligence to shorten and avoid the delay and shall keep the other party advised as to the continuance of the delay and steps taken to shorten or terminate the delay. Contractor shall, within five (5) working days of the commencement of any such delay, give to Owner written notice thereof and of the anticipated results thereof. Within two (2) working days of the termination of any such delay, Contractor shall file a written notice with Owner specifying the actual duration of the delay. If Owner determines that the delay was beyond the control and without the fault or negligence of

Contractor and not foreseeable by Contractor at the effective date of this Contract, Owner shall determine the duration of the delay and shall extend the time of performance of this Contract thereby.

14.0 POSSESSION PRIOR TO COMPLETION

Owner shall have the right to move into Contractor's working and storage areas and the right to take possession of or use any completed or partially completed part of Contractor's Work as Owner deem necessary for their operations. In the event Owner desire to exercise the foregoing right, Owner will so notify Contractor in writing. Such possession or use shall not constitute acceptance of Contractor's Work.

15.0 NOTICE OF COMPLETION AND FINAL ACCEPTANCE

15.1 When Contractor deems the Work fully completed, including satisfactory completion of such inspections, tests and documentation as are specified in this Contract, Contractor shall, within ten (10) working days thereafter, give a written Notice of Completion and the date it was completed. Within thirty (30) calendar days after receipt of said Notice of Completion, Owner may inspect the Work and shall either reject the Notice of Acceptance of the Work either for the purpose of final payment only, or for the purposes of final payment and final acceptance.

15.2 In the event Owner rejects the Notice of Completion and specifies defective or uncompleted portions of the Work, Contractor shall within five (5) working days, provide for Owner review and approval, a schedule detailing when all defects will be corrected and/or the work will be completed and shall proceed to remedy such defective and uncompleted portions of the Work. Thereafter, Contractor shall again give Owner a written Notice of Completion of the Work, specifying a new date for the completion of the Work based upon the date such defective and uncompleted portions of the Work. Thereafter, Contractor shall again give Owner a written Notice of Completion of the Work, specifying a new date for the completion of the Work based upon the date such defective or uncompleted portions of the Work were corrected. The foregoing procedure shall apply again and successively there after until Owner has given Contractor written Notice of Acceptance for purposes of final payment and final acceptance.

15.3 Any failure by Owner to inspect or to reject the Work or to reject Contractor's Notice of Completion as set forth above, shall not be deemed to be acceptance of the Work for any purpose by Owner nor imply acceptance of, or agreement with, said Notice of Completion.

WORK CHANGES

16.0 CHANGES

16.1 The Scope of Work shall be subject to change by additions, deletions or revisions thereto by Owner. Contractor will be notified of such changes by receipt of additional and/or revised drawings, specifications, exhibits or written orders.

16.2 Contractor shall submit to Owner within ten (10) working days after receipt of notice of a change, a detailed takeoff with supporting calculations and pricing for the change together with

any adjustments in the schedule required for the performance of Work as changed. The pricing shall be itemized as required by Owner and shall be in sufficient detail to permit an analysis of all labor, material and equipment and shall cover all work involved in the change, whether such work was deleted, added or modified. Amounts related to subcontracts shall be supported in similar detail. In addition, if the proposal includes a time extension, a justification therefore shall also be furnished.

16.3 Contractor shall not perform changes in the Work in accordance with Sections 16.1 and 16.2 until Owner have approved in writing the pricing for the change and any adjustment in the schedule for performance of the Work, except as set forth in Section 16.4. Upon receiving such written approval from Owner, Contractor shall diligently perform the change in strict accordance with this Contract.

16.4 Notwithstanding Section 16.3 Owner may expressly authorize Contractor in writing to perform the change prior to such approval by Owner. Contractor shall not suspend performance of this Contract during the review and negotiation of any change.

16.5 Contractor shall not comply with oral changes in the Work. If Contractor believes that any oral notice or instruction received from Owner will involve a change in the cost, time to perform or integrity of the work, it shall require that the notice or instruction be given in writing and shall comply with the provisions of Sections 16.2, 16.3, and 16.4. Any costs incurred by Contractor to perform oral changes shall be for Contractor's account, and Contractor waives any and all rights to claim for such costs or additional time to perform the Work as a result of compliance by Contractor with such oral changes.

17.0 TERMINATION AT OWNER'S OPTION

17.1 Owner shall have the right at any time, with or without cause, to terminate further performance of all or part of the Work by written or telegraphic notice to Contractor specifying the date of termination. On the date of such termination stated in said notice, Contractor shall discontinue performance of the Work and shall preserve and protect tools, construction equipment and facilities on jobsite, materials and plant equipment purchased for or committed to the Work (whether delivered to the jobsite or on order), Work in progress and completed Work (whether at jobsite or other locations) pending Owner's instructions and, if requested by it, shall turn over the same to Owner that has been paid for by Owner, including title to said materials and plant equipment, or dispose of same in accordance with Owner's instructions.

17.2 Upon receipt of said notice, Contractor shall advise Owner of its outstanding orders and subcontracts pertaining to performance of the terminated work and, upon request, furnish Owner with complete copies. Contractor shall place no further orders or subcontracts for materials, equipment, services, or facilities, except as may be necessary for completion of such portion of the Work as is not terminated; Contractor shall promptly make every reasonable effort to procure cancellation, upon terms satisfactory to Owner, of all orders and subcontracts to the extent they relate to the performance of Work terminated; or, as directed by Owner, shall assign to it or Owner in form satisfactory to Owner such of its subcontracts and orders as are designated by Owner, or shall take such other action relative to such subcontracts or orders as may be directed by Owner.

17.3 If Contractor has fully and completely performed all obligations under this Contract up to the date of termination, Contractor shall recover from Owner as complete and full settlement for such termination for Work to be performed under this Contract, the actual costs of all such Work satisfactorily executed to the date of termination, plus an allowance for reasonable overhead and profit on such costs (but not to exceed a pro rata portion of such Contract Price for such Work based on the percentage of Work property completed to the date of termination), together with reasonable costs occasioned by such termination and not previously paid for, less such sums as Contractor has already received on account of the Work performed. In no event shall total payment to Contractor exceed the Contract Price.

17.4 All requests for compensation under any of the foregoing provisions of Section 17.3 shall be submitted to Owner in accordance with the provisions of Article 16.0, CHANGES. In no event shall Contractor be entitled to any prospective profits or any damages.

17.5 The provisions of this Contract, which by their nature survive final acceptance of the Work, shall remain in full force and effect after such termination.

MATERIALS AND EQUIPMENT

18.0 PROTECTION OF MATERIALS, EQUIPMENT, AND WORK

18.1 Contractor shall at all times in accordance with the best practices and at no additional cost to Owner, preserve and protect material and equipment used by Contractor in the execution of the work from damage or loss due to weather, fire, theft, unexplained disappearance or other similar casualty.

18.2 Contractor shall at all times in accordance with the best practices and at no additional cost to Owner, protect from damage due to Contractor's operations, equipment and materials (whether stored or installed), paving, structures, and any and all other items on jobsite belonging to Owner, Owner or others.

18.3 Neither Owner nor Owner shall be responsible for any loss suffered by Contractor, or damage to the Work, or to materials, tools and equipment of Contractor or of any other contractor, and Contractor assumes responsibility for any such loss or damage and for any cost of repairing, making good, or replacing any such loss or damage unless caused by Owner.

19.0 CARE, CUSTODY, CONTROL, AND TITLE TO MATERIALS AND EQUIPMENT

19.1 Good and clear title to all materials and equipment furnished by Contractor under this Contract for the Work shall, except as expressly provided otherwise, elsewhere in this Contract, pass to Owner upon incorporation into the permanent plant. Contractor shall ensure that vendors and suppliers from whom Contractor obtains materials and equipment do not retain, encumber or reserve title to such items.

19.2 Notwithstanding the provisions of Section 19.1, the care, custody and control of Contractor's Work incorporated into the permanent plant shall remain with Contractor until such

Work has been accepted in writing by Owner and shall thereupon pass to Owner unless Owner notify Contractor in writing that such care, custody, and control is assumed by Owner at an earlier date. The taking of possession of such Work pursuant to Article 14.0, POSSESSION PRIOR TO COMPLETION, shall not constitute the assumption of care, custody and control of such Work until such time as such Work has either been accepted in writing by Owner, Owner or Contractor has been notified as set forth herein.

LABOR AND WORK RULES

20.0 CONTRACTOR'S PERSONNEL

20.1 Contractor shall provide an adequate number of qualified and competent supervisory staff, craftpersons and other personnel to perform the Work. At all times during the course of the Work, Contractor shall provide at the jobsite a qualified, competent and responsible supervisor who shall be satisfactory to Owner. The supervisor shall have authority to represent Contractor and directions given to him shall be binding on Contractor. Upon Owner written request, Contractor shall give the supervisor, in writing, complete authority to act on behalf of, and to bind Contractor is all matters pertaining to the Work and this Contract. Contractor shall furnish Owner a copy of the authorization. Contractor shall not transfer or remove any of its supervisory or key personnel from performance of Work without the prior written approval of Owner.

20.2 Any employee of Contractor deemed by Owner, in their sole judgment, to be objectionable shall be removed from the jobsite immediately upon Owner request and shall be promptly replaced by Contractor at no extra expense to Owner.

20.3 If requested by Owner, Contractor shall furnish it with the names and addresses of Contractor's subcontractors, field employees of Contractor and its subcontractors, and others who have performed or are performing the Work hereunder.

21.0 EMPLOYMENT CERTIFICATIONS AND PRACTICES

21.1 Contractor certifies that it has an affirmative action policy ensuring equal employment opportunity without regard to race, color, national origin, sex, religion or handicap, that it maintains no employee facilities segregated on the basis of race, color, religion or national origin and that it is not debarred or suspended from being awarded Federal or Federally assisted contracts.

21.2 If applicable to this Contract, the following laws, orders and regulations, as amended, are hereby incorporated by reference: Executive Order - 11246 (Equal Employment Opportunity); Vietnam Era Veterans Readjustment Act; Rehabilitation Act of 1973; Veterans Compensation, Education and Employment Act; 41 CFR 601.7 (EEO1 Reports); 41 CFR 601.40 (Affirmative Action Plans); 41 CFR 61650 (Veterans Employment Reports).

21.3 Upon request of Owner, Contractor will furnish it with a certificate satisfactory in form to Owner that goods furnished by Contractor in performance of this Contract were produced in full compliance with the requirements of Sections 6, 7, and 12 of the Fair Labor Standards Act of

1938, as amended, and the regulations and orders of the U.S. Department of Labor issued under Section 14 thereof.

22.0 WORK RULES

Contractor shall comply strictly with Owner's rules governing the conduct of Contractor and Contractor's employees, agents and subcontractors at and about the jobsite. Contractor agrees that it shall ensure that its supervisory personnel, employees, agents and subcontractors at the jobsite comply strictly with such rules. Owner reserve the right to, from time to time, revise any such rules, and Contractor shall comply fully with such rules as revised in accordance with the foregoing provisions.

23.0 USE OF PREMISES

23.1 The Contractor shall confine his apparatus the storage of materials, and the operations of his employees to limits indicated by law, ordinances, permits, and the direction of Owner and shall not unreasonably encumber the premises with his materials. The Contractor shall not load or permit any part of the structure to be loaded with a weight that will endanger its safety. The Contractor shall enforce Owner's instructions regarding fires and smoking.

23.2 The premises shall be maintained free from Contractor's signboards of every kind, except for one sign which must be approved by Owner. Contractor shall see that no unauthorized sign or other advertising is exposed on any part of the premises over which he has jurisdiction.

23.3 Storage of construction material and equipment required for this contract shall not block any entrances, driveways or railroad siding to or on the property and shall be in an area designated by Owner.

23.4 Contractor shall, prior to start of construction, consult with Owner in reference to operations and required plant shutdowns.

23.5 Contractor shall give Owner at least 48 hours notice of a required plant shutdown. No shutdown shall be made without permission of Owner.

24.0 PROTECTION OF WORK AND PROPERTY

24.1 The Contractor shall continuously maintain adequate protection from damage for all work and shall protect Owner and the Owner's property from injury or damage arising in connection with this contract. Immediately, upon execution of the contract, the Contractor, as required by applicable law, ordinance, or regulation, shall send written notice to all owners of property in the vicinity of the proposed building operation, whose property may in any way be affected by the work of demolition, excavation or construction, notifying such property owners as to the extent of the proposed work, and the manner in which it may affect their property. Copies of such notices, with a detailed description of the nature of the adjoining premises, shall be simultaneously forwarded to Owner.

24.2 The Contractor shall take all necessary precautions to protect all adjacent property from any and all damage which may be caused to such property by reason of any of the work of

demolition, excavation or construction about or upon the Owner's premises and shall, at his own cost and expense, repair and restore to its original conditions, any property of any adjacent property owner which has been damaged by reason of said demolition, excavation or construction work.

24.3 Contractor shall construct and maintain substantial fences and/or barricades around all potentially hazardous operations and situations during the time of construction, not only on public property, but also on the building site, and provide warning lights and take other safety precautions as required by ordinances and safety regulations or commonly accepted safety practices, or as required by Owner.

INDEMNIFICATION AND INSURANCE

25.0 INDEMNITY

Contractor agrees to release, indemnify, hold harmless and defend Owner, and Owner, the affiliated companies of each, and all of their directors, officers, employees, agents and representatives, from and against:

25.1 Any liability, loss and expense arising by reason of claims by any party, but not limited to government authorities including Contractor's subcontractors and the employees of Contractor, said subcontractors, Owner, Owner or others of any actual or asserted failure of Contractor to comply with this Contract or with any law, ordinance, regulation, rule, or order of any governmental or quasi-governmental body, having jurisdiction over this Contract (including but not limited to actual or asserted failure of Contractor to pay taxes).

25.2 Any claim, liability, loss or expense arising from actual or asserted infringement or improper appropriation or use by Owner, Owner or Contractor of trade secrets, proprietary information, know-how, copyright rights (both statutory and nonstatutory) or patented or unpatented inventions, or for actual or alleged unauthorized limitations of the work of others, arising out of the use or sale of materials, equipment, methods, processes, designs, information, or other things (including construction methods, construction equipment, and temporary construction facilities) furnished by Contractor or its subcontractors, or suppliers in or for performance of the Work.

25.3 Any claim, demand, cause of action, loss, expense, or liability on account of injury to or death of persons (including the employees of Owner, Owner, Contractor and Contractor's subcontractors and suppliers) or damage to or loss of property (including the property of Owner) arising directly or indirectly out of this Contract, including those arising from the Work and/or the acts or omissions to act of Contractor or its subcontractors, suppliers, or agents or the employees of any thereof, in the performance of the Work, including without limitation such claims, loss, or liability arising under non-delegable duties of Owner or arising from the use or operation by Contractor of construction equipment, tools, scaffolding, or facilities furnished to Contractor by Owner to perform the Work; and

25.4 Any claim, demand, cause of action, loss, expense or liability on account of actual or alleged contamination, pollution, or public or private nuisance, arising directly or indirectly out

of the Work, including the acts or omissions to act of Contractor or its subcontractors or suppliers in the performance of the Work.

25.5 Contractor's indemnification obligations under this Article 25.0 shall apply when the Contractor is solely negligent. When both the Contractor and Owner are concurrently negligent, whether actively or passively, both parties will share liability based on contribution of negligence. But excepting where the injury of death of persons or damage to or loss of property was caused solely by the negligence or willful misconduct of or defects in design furnished by the party to be indemnified and shall include any expenses and attorney's fees incurred by Owner for legal action to enforce Contractor's indemnification obligations under this Article 25.0.

25.6 Contractor acknowledges specific payment of \$10.00 incorporated into the Contract Price as legal consideration of Contractor's indemnity under this Article 25.0 and all other indemnities, as may be provided in the Contract.

26.0 INSURANCE

26.1 Before any Work is performed under this Contract, Contractor shall, at its sole cost, obtain and maintain in force the following insurance coverages:

26.1.1 Worker's Compensation insurance, including occupational illness or disease coverage, or other similar social insurance in accordance with the laws of the nation, state, territory or province exercising jurisdiction over the employee and Employer's Liability insurance with a minimum limit of \$500,000 per occurrence.

26.1.2 Comprehensive General Liability insurance, including Contractual Liability, Products a Completed Operations Liability, and Broad Form Property Damage Liability coverages with a minimum combined single limit of \$2,000,000 per occurrence. Such insurance shall protect against losses arising out of explosion, collapse or underground hazards. The policy shall be endorsed to name Owner, its affiliates and Owner as additional insureds.

26.1.3 Automobile Liability Insurance covering use of all owned, non-owned and hired automobiles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage liability. This policy shall be endorsed to name Owner, its affiliates and Owner as additional insureds.

26.1.4 Tools and Equipment insurance covering physical damage to or loss of all major tools and equipment, office furniture and equipment, and vehicles for which Contractor is responsible throughout the course of the Work.

26.2 The foregoing insurance coverages shall be primary and non-contributing with respect to any other insurance or self-insurance that may be maintained by Owner. Contractor's Comprehensive General Liability and Automobile Liability Insurance policies shall contain a Cross-Liability or Severability of interest clause. Contractor shall obtain from each of its insurers a waiver of subrogation in favor of Owner, its affiliates and Owner. Contractor shall cause its insurance underwriters to issue certificates of insurance satisfactory in form to Owner (ACCORD form or equivalent) evidencing that the coverages, coverage extensions, policy endorsements and waivers of subrogation required under this Contract are maintained in force and that not less than 30 days written notice will be given to Owner prior to any material

modification or cancellation of the policies. At Owner's request, Contractor shall provide Owner and/or Owner certified copies of each policy, pursuant to the terms of this Contract, affording insurance to Contractor, Owner.

26.3 Builder's Risk insurance covering loss or damage to materials and equipment furnished by Owner or Owner that is to be incorporated into the completed facility shall be provided by Owner. Contractor shall be responsible for the payment of the applicable deductible (which will not exceed \$5,000 per occurrence) for each loss to such materials or equipment which are in the care, custody and control of Contractor.

27.0 BONDS

See Agreement for provisions.

WORK CONDITIONS

28.0 CONTRACTUAL RELATIONSHIP

Contractor represents that it is fully experienced and properly qualified to perform the class of Work provided for herein, and that it is properly equipped, organized and financed to perform such Work. Contractor represents that at the time of submission of its quotation for performance of the Work, it was properly licensed and qualified to do business in all governmental jurisdictions in which the Work is to be performed. Upon written request by Owner, Contractor shall furnish to it such evidence as Owner may require relating to the Contractor's ability to fully perform this Contract. Nothing contained in this Contract or any subcontract awarded by Contractor shall create any contractual relationship between any subcontractor and Owner. Contractor agrees that Contractor is an independent contractor and an employer subject to all applicable unemployment compensation, occupational safety and health, or similar statutes so as to relieve Owner of any responsibility or liability for treating Contractor's employees as employees of Owner for the purpose of their safety or of keeping records, making reports or paying any payroll taxes or contribution; and Contractor agrees to indemnify and hold Owner harmless and reimburse them for any expense or liability incurred under said statutes in connection with employees of Contractor, including a sum equal to any unemployment benefits paid to those who were Contractor's employees, where such benefit payments are charge to Owner under any merit plan or to Owner of Owner's reserve account pursuant to any statute. The Contractor further agrees, as regards the items set forth below and for Work under this Contract, that it will keep and have available all necessary records and make all payments, reports, collections, and deductions and otherwise do any and all things so as to fully comply with all federal, state and local laws, ordinances and regulations as they affect performance of this Contract, so as to fully relieve and protect Owner from any and all responsibility or liability therefore or in regard thereto: (1) the production, purchase and sale, furnishing and delivering, pricing, and use or consumption of materials, supplies and equipment; (2) the hire, tenure or conditions of employment of employees and their hours of work and rates of the payment of their work, and (3) the keeping of records, making of reports, and the payment, collection and/or deduction of federal, state, commonwealth and local taxes, contributions, pension funds, welfare funds, or similar assessments.

29.0 PERMITS AND LICENSES

Contractor shall promptly apply for and procure without additional compensation all permits (except for such permits as may be specifically set forth as Owner's responsibility elsewhere in the Contract), certificates and licenses required by governmental authorities having jurisdiction over the Work, Contractor or the location of the Work.

30.0 INDEPENDENT CONTRACTOR

Nothing in this Contract shall be deemed to represent that Contractor, or any of Contractor's employees or agents, are the agents, representatives or employees of Owner. Contractor shall be an independent contractor and shall have responsibility for and control over the details and means for performing the Work, provided that Contractor is in compliance with the terms of this Contract. Anything in this Contract which may appear to give Owner the right to direct Contractor as to the details of the performance of the Work or to exercise a measure of control over Contractor, shall mean that Contractor shall follow the desires of Owner only as to the intended results of the Work.

31.0 CONFIDENTIAL INFORMATION

Drawings, specifications, and other information obtained by Contractor from Owner in connection with the Work shall be held in confidence by Contractor and shall not be used by Contractor for any purpose other than for the performance of Work or as authorized in writing by Owner and/or Owner. All such documents furnished by Owner to Contractor shall remain their property, and upon completion of the Work Contractor shall, as requested by Owner and/or Owner, either destroy or return such documents including any copies thereof.

32.0 PUBLICITY

Contractor shall not make news releases, publicize or issue advertising pertaining to the Work or this Contract without first obtaining the written approval of Owner.

33.0 OWNERSHIP AND USE OF DRAWINGS

Drawings, technical documents and data prepared or developed by Contractor and furnished to Owner in performance of the Work shall be the property of Owner and may be used by Owner without restriction. The Owner shall have no right to own or further use any internal shop drawings prepared by Contractor.

34.0 ASSIGNMENTS

Contractor shall not assign this Contract wholly or in part, voluntarily, by operation of law, or otherwise without first obtaining the written consent of Owner. Any assignment of this Contract in violation of the foregoing shall be, at the option of Owner, void. Subject to the foregoing, the provisions of this Contract shall extend to the benefit of and be binding upon the successors and assigns of the parties hereto.

35.0 LAWS AND REGULATIONS

35.1 Contractor shall comply strictly with local, municipal, state, federal and governmental laws, orders, codes and regulations applicable to Contractor's operations in the performance of the Work hereunder.

35.2 Contractor shall not, under any circumstances apply to or enter into negotiations with any governmental authority or agency for acceptance of variations from or revisions to safety or health, or air, water or noise pollution laws or regulations relating to this Contract or to the performance thereof, without Owner's prior written approval.

35.3 Contractor shall not, under any circumstances, cause or permit, in connection with the Work to be performed hereunder, the discharge, emission or release of any hazardous substance and/or waste, pollutant, contaminant or other substance in violation of any applicable laws, rules or regulations which are now or hereafter promulgated by any governmental authorities having jurisdiction over the Work. Contractor shall comply with all legal regulatory requirements applicable to the Work performed under this Contract and shall be responsible for compliance with all hazardous waste, health and safety, notice, training, and environmental protection laws, rules, regulations and requirements, including, but not limited to, the Resource Conservation and Recovery Act. "Hazardous waste" includes all substances which are or may be identified as such in 40 C.F.R. Part 261 or other applicable laws or regulations. Contractor shall submit material safety data sheets, OSHA Form 20, as required. As an inducement to award of this Contract, Contractor warrants full compliance and that it will adhere to all applicable project hazardous waste procedures and if necessary, obtain or arrange for at its expense all identification numbers, permits, applications, and other things required in connection with the activities under this Contract. Contractor agrees that it will not store any hazardous wastes at the jobsite for periods in excess of ninety (90) days or in violation of the applicable site storage limitations imposed by law, the Owner or Owner, which shall be more restrictive. Contractor further agrees that it will not permit any accumulation in excess of the small quantity generator exclusion of 40 C.F.R. Part 261 or other applicable law, as amended. Contractor agrees to take, at its expense all actions necessary to protect third parties, including without limitation, employees and agents of Owner and Owner from any exposure to, or hazards of hazardous and/or toxic wastes or substances generated or utilized in Contractor's operations. Contractor agrees to report to the appropriate governmental agencies all discharges, releases and spills of hazardous substances and/or toxic wastes required to be reported by law and to immediately notify Owner and Owner of same.

35.4 This Contract shall be subject to the law and jurisdiction of the State of Michigan, unless expressly designated otherwise within this Contract.

PAYMENT TERMS

36.0 INVOICING AND PAYMENT

36.1 Except to the extent expressly stated otherwise elsewhere in this Contract, the Contract Price shall be payable by Owner in monthly progress payments, payable thirty (30) calendar days

after receipt and approval by Owner of a proper invoice. Each progress payment shall be for ninety percent (90%) of the value of Work completed by Contractor, as determined by Contractor in accordance with the terms of this Contract and approved by Owner, as of the working day nearest the mutually agreed cutoff date.

36.2 Contractor shall submit separate invoices to Owner monthly within five (5) calendar days after the cutoff date as follows:

36.2.1 Progress invoices, for progress payments for Work (including additional Work authorized by Owner and added by a formal change to this Contract) completed by Contractor during each progress billing period. Cutoff date for Contractor's progress invoice shall be consistent from month to month as mutually agreed. Payment shall not be construed to be an acceptance of Work. Such invoices are subject to ten percent (10%) retention.

36.2.2 Additional Work invoices as separate invoices, to cover additional Work authorized by Owner and completed by Contractor, but not added to this Contract by a formal change at the time of invoicing.

36.2.3 The Final and/or Retention invoice shall be submitted for final payment after completion and acceptance of Work by Owner and compliance by Contractor with all terms of this Contract. This invoice shall contain complete itemized listing of Progress and Additional Work invoices by number, date, gross amount, retention amount, and the total amount of sums retained and due. It shall also contain, or be supported by a written acceptance of the Work signed by Owner and a certification and release in accordance with Article 40.0, FINAL PAYMENT CERTIFICATION AND RELEASE. Unless otherwise required by applicable law, final payment shall be made after completion and acceptance of all Work and in any event, shall not be sooner than 30 calendar days after receipt of a proper invoice and supporting documents satisfactory to Owner. Final payment shall not relieve Contractor of any obligation under Contract guarantees.

36.3 Contractor shall prepare all invoices in a form satisfactory to and approved by Owner. In the event an invoice is submitted, in accordance with Contract terms, for Work accomplished on a reimbursable or unit price/unit rate basis, it shall be accompanied by documentation supporting each element of measurement and/or cost. Any invoice submitted, which fails to comply with the terms of this Contract, including the requirements of form and documentation, may be returned to Contractor. Any costs associated with the resubmission of a proper invoice shall be to Contractor's account.

36.4 At Owner's request, Contractor shall furnish evidence, satisfactory to Owner, that all labor and materials furnished and equipment used during the period covered by any Progress invoice or Additional Work invoice have been paid for in full and that the Work is not subject to liens or claims on account thereof. Owner may withhold approval of payment of invoices until Contractor furnishes such evidence.

36.5 Contractor shall furnish to Owner "partial waivers of lien" to cover payments on account during the progress of the Work.

37.0 TAXES, DUTIES, AND FEES

Contractor shall pay when due, and the compensation set forth in this Contract shall be inclusive of, all taxes, duties, fees and other assessments of whatever nature imposed by governmental authorities and applicable to the performance of the Work and this Contract.

38.0 DOCUMENTATION AND RIGHT OF AUDIT

38.1 Where Contractor's invoice includes compensation for Work performed at a unit price, Contractor shall submit its determination of units of Work performed, determined in accordance with the provisions of this Contract, and substantiated by documents satisfactory in form and content to Owner. Upon verification by Owner of said documents, Owner will advise Contractor in writing of either acceptance of Contractor's determination of units or of Owner determination of such units.

38.2 Where Contractor's invoice includes compensation for Work performed for a reimbursable Contract Price, all costs, expenses and other amounts so invoiced shall be substantiated and supported by equipment time slips, paid invoices, time sheets, receipts and other documents satisfactory to and verified by Owner.

38.3 Contractor shall maintain for a period of three (3) years after final payment under this Contract, all records and accounts pertaining to Work performed by Contractor under this Contract for a unit price, a reimbursable price, or otherwise authorized in writing by Owner for performance on a reimbursable basis. Owner and/or Owner shall have the right to audit, copy and inspect said records and accounts at all reasonable times during the course of such Work and for the above three (3) year period for the purpose of verifying units furnished and/or costs incurred, as applicable.

39.0 LIENS

39.1 To the full extent permitted by applicable law, Contractor here by waives and releases any and all rights of mechanic's lien and similar rights for payment for services, labor, equipment, or materials furnished by Contractor in performance of the Work and granted by law to persons supplying materials, equipment, services and other things of value to approve or modify land or structures hereon, which Contractor may have against Owner's premises, property belonging to Owner, or to either of them, or funds payable by Owner to Owner.

39.2 Contractor shall at all times promptly pay for all services, materials, equipment and labor used or furnished by Contractor in the performance of the Work under this contract and shall at its expense keep Owner's premises and all property belonging to Owner, or to either of them, free and clear of any and all of the above mentioned liens and rights of lien arising out of services, labor, equipment or materials furnished by Contractor or its employees, materialmen or subcontractors in the performance of the Work. If Contractor fails to release and discharge any such claim of lien against Owner's premises or the property of Owner, or of either of them, arising out of performance of the Work within five (5) working days after receipt of written notice from Owner to remove such claim of lien, Owner may, at their option, discharge or release the claim of lien or otherwise deal with the lien claimant, and Contractor shall pay Owner

any and all costs and expenses of Owner in so doing, including reasonable attorneys' fees incurred by Owner.

40.0 FINAL PAYMENT CERTIFICATION AND RELEASE

Owner shall not be obligated to make final payment to Contractor until Contractor has delivered to Owner a certificate and release satisfactory to Owner that Contractor has fully performed under this Contract and that all claims of Contractor for the Work are satisfied upon the making of such final payment, that no property of Owner or property used in connection with the Work is subject to any unsatisfied lien or claim as a result of the performance of the Work, that all rights of lien against Owner's property in connection with the Work are released (including without limitation, if Owner requests, releases of lien satisfactory in form to Owner executed by all persons who by reason of furnishing material, labor or other services to Contractor for the Work or potential lienors against Owner's property), and that Contractor has paid in full all outstanding obligations against the Work.

GENERAL

41.0 MEDIATION OPTION

In the event of a dispute related to this Agreement that cannot be settled through negotiation, Owner and Contractor agree to submit the dispute to mediation. In the event Owner and Contractor desire to mediate any dispute, that party shall notify the other party in writing of the dispute desired to be mediated. If the parties are unable to resolve their differences within 10 days of the receipt of such notice, such dispute shall be submitted for mediation. All parties shall be responsible for their costs associated with any mediation, in addition to one-half (1/2) of the cost of the mediator. The requirement to seek mediation shall be a condition required before filing an action at law or in equity.

42.0 INTERPRETATION OF PLANS AND SPECIFICATIONS

In case of misunderstanding of disagreement arising between any of the interested parties as to the intent or meaning of the plans, drawings, or specifications covering the Work, or should a question arise as to whether or not the Work is being or has been performed in accordance with the plans, drawings, and specifications, the decision of Owner shall be final and binding.

43.0 VALIDITY OF PROVISIONS

In the event any section, or any part or portion of any section of this Contract shall be held to be invalid, void or otherwise unenforceable, such holding shall not affect the remaining part or portions of that section, or any other section hereof.

44.0 WAIVER

Owner's failure to insist on performance of any term, condition, or instruction, or to exercise any right of privilege included in this Contract, or its waiver of any breach, shall not thereafter waive any such term, condition, instruction, and/or any right or privilege.

45.0 NOTICES

Any and all notices to be provided herein or provided by law shall be sufficient and in full compliance with the contract if deposited in the United States Post Office, by registered mail, postage prepaid and delivered to the address as contained in the attached Agreement.

All notices to Contractor shall be sent to the address appearing on Design Build Agreement, attached to this document. Such addresses may be changed at any time by the giving of notice as above provided.

46.0 PROJECT RECORD DOCUMENTS

Contractor will document as-built drawings, specifications, addenda, field work orders, change orders, written clarification and interpretations, shop drawings and samples, and operation and maintenance manuals. Project record documents will be transferred to Owner on request prior to final payment.

47.0 PRODUCT SUBSTITUTIONS

47.1 Summary

A. Section Includes:

1. This Section specifies administrative and procedural requirements for handling requests for substitutions made after award of the Contract.

47.2 Definitions

A. Definitions used in this Article are not intended to change or modify the meaning of other terms in the Contract Documents.

B. Substitutions: Requests for changes in products, materials, equipment, and methods of construction required by Contract Documents proposed by the Contractor after award of the Contract are considered requests for "substitutions". The following are not considered substitutions:

1. Revisions to Contract Documents requested by the Owner or Engineer.
2. Specified options of products and construction methods included in Contract Documents.

3. The Contractor's determination of and compliance with governing regulations and orders issued by governing authorities.

47.3 Submittals

- A. Substitution Request Submittal: Requests for substitution will be considered if received within 30 days after commencement of the Work. Requests received more than 30 days after commencement of the Work may be considered or rejected at the discretion of the Engineer.
 1. Submit 3 copies of each request for substitution for consideration. Submit requests in the form and in accordance with procedures required for Change Order proposals.
 2. Identify the product, or the fabrication or installation method to be replaced in each request. Include related Specification Section and Drawing numbers. Provide complete documentation showing compliance with the requirements for substitutions, and the following information, as appropriate:
 - a. Product Data, including Drawings and descriptions of products, fabrication and installation procedures.
 - b. Samples, where applicable or requested.
 - c. A detailed comparison of significant qualities of the proposed substitution with those of the Work specified. Significant qualities may include elements such as size, weight, durability, performance and visual effect.
 - d. Coordinate information, including a list of changes or modifications needed to other parts of the Work and to construction performed by the Owner and separate Contractors, that will become necessary to accommodate the proposed substitution.
 - e. A statement indicating the substitution's effect on the Contractor's Construction Schedule compared to the schedule without approval of the substitution. Indicate the effect of the proposed substitution on overall Contract Time.
 - f. Cost information, including a proposal of the net change, if any, in the Contract Sum.
 - g. Certification by the Contractor that the substitution proposed is equal to or better in every significant respect to that required by the Contract Documents, and that it will perform adequately in the application indicated. Include the Contractor's waiver of rights to additional payment or time, that may subsequently become necessary because of the failure of the substitution to perform adequately.
 3. Owner's Action: Within one week of receipt of the request for substitution, the Owner will request additional information or documentation necessary for evaluation of the request. Within 2 weeks of

receipt of the request, or one week of receipt of the additional information or documentation, whichever is later, the Owner will notify the Contractor of acceptance or rejection of the proposed substitution. If a decision on use of a proposed substitute cannot be made or obtained within the time allocated, use the product specified by name. Acceptance will be in the form of a Change Order.

47.4 Products

Substitutions:

- A. Conditions: The Contractor's substitution request will be received and considered by the Engineer when one or more of the following conditions are satisfied, as determined by the Engineer; otherwise requests will be returned without action except to record noncompliance with these requirements.
1. Proposed changes are in keeping with the general intent of Contract Documents.
 2. The specified product or method of construction cannot be provided within the Contract Time. The request will not be considered if the product or method cannot be provided as a result of failure to pursue the Work promptly or coordinate activities properly.
 3. The specified product or method of construction cannot receive necessary approval by a governing authority, and the requested substitution can be approved.
 4. The specified product or method of construction cannot be provided in a manner that is compatible with other materials, and where the Contractor certifies that the substitution will overcome the incompatibility.
 5. The specified product or method of construction cannot be coordinated with other materials, and where the Contractor certifies that the proposed substitution can be coordinated.
 6. The specified product or method of construction cannot provide a warranty required by the Contract Documents and where the Contractor certifies that the proposed substitution provides the required warranty.
 7. Substitution is certified by the Contractor as a Value Engineering item.
 8. The Contractor's submittal and Architect's acceptance of Shop Drawings, Product Data or Samples that relate to construction activities not complying with the Contract Documents does not constitute an acceptable or valid request for substitution, nor does it constitute approval.

48.0 OPERATING AND MAINTENANCE DATA

48.1 Summary

This section applies to all products and equipment supplied by the Contractor under this agreement and as specified in the corresponding specification section.

A. Section Includes:

1. Compilation of product data and related information.
2. Preparation of operating and maintenance data.
3. Instruction and demonstration.

48.2 Quality Assurance

A. Preparation of operating and maintenance data shall be done by personnel with the following qualifications:

1. Trained and experienced in maintenance and operation of the described products.
2. Completely familiar with requirements of this section.
3. Skilled as a technical writer to the extent required to communicate essential data.
4. Skilled as a draftsman competent to prepare required drawings.

48.3 Submittals

A. Prepare data in the form of an instructional manual for use by the Owner's Engineering personnel. Three copies are required.

B. Format:

1. Size: 8-1/2" x 11".
2. Paper: 20 lb. minimum, white, for typed pages.
3. Text: Manufacturer's printed data or neatly typewritten.
4. Drawings:
 - a. Provide reinforced punched binder tab.
 - b. Bind in with text.

- c. Fold larger drawings to the size of the text pages.
5. Provide fly-leaf for each separate product or for each piece of operating equipment.
6. Cover: Identify each volume with typed or printed title "OPERATING AND MAINTENANCE INSTRUCTIONS" List.
- a. Title of project and date of completion (month and year).
 - b. Identity of separate system as applicable.
 - c. Identity of general subject matter covered in the manual.

C. Binders:

- 1. Commercial quality, three-ring binders with durable and cleanable plastic covers shall be provided.
- 2. When multiple binders are used, correlate the data into related consistent groupings.

48.4 Content of Manual

A. A neatly typewritten table of contents shall be provided for each volume, arranged in a systematic order with figures and tables listed. Include the following:

- 1. Name of responsible installing principal Contractor, address, and telephone number.
- 2. A list of each product required to be included, indexed to the content of the volume.
- 3. List with each product, the name, address, and telephone number of:
 - a. Maintenance contractor, subcontractor or supplier as appropriate.
 - b. Identify the area of responsibility of each.
 - c. Local source of supply for parts and replacement.
- 4. Identify each product by product name and other identifying symbols.

B. Product Data:

- 1. Include only those sheets that are pertinent to the specific product.
- 2. Annotate each sheet to:

- a. Clearly identify the specific product or part installed.
- b. Clearly identify the data applicable to the installation.
- c. Delete references to inapplicable information.

C. Drawings:

1. Supplement product data with drawings as necessary to clearly illustrate:
 - a. Relations of component parts of equipment and systems.
 - b. Control and flow diagrams.
2. Coordinate drawings with information in project record drawings to ensure correct illustration of completed installation.
3. Do not use project record drawings as maintenance drawings.

D. Provide typewritten text, as required, to supplement product data for the particular installation:

1. Organize in a consistent format under separate headings for different procedures.
2. Provide a logical sequence of instructions for each procedure.

E. Provide a copy of each warranty, bond, and service contract issued. Provide information sheet for the project's personnel and give:

1. Proper procedures in the event of failure.
2. Instances that might affect the validity of warranties or bonds.

48.5 Manual for Equipment and Systems

- A. Submit three copies of complete manual in final form.
- B. Content for each unit of equipment and system, as appropriate shall contain:
 1. Description of unit and component parts.
 - a. Function, normal operating characteristics, and limiting conditions.
 - b. Performance curves, engineering data, and tests.
 - c. Complete nomenclature and Commercial number of all replaceable parts.
 2. Operating Procedures:
 - a. Start-up, break-in, routine, and normal operating instructions.

- b. Regulation, control, stopping, shutdown, and emergency instructions.
 - c. Summer and winter operating instructions.
 - d. Special operating instructions.
 - 3. Maintenance Procedures:
 - a. Routine operations.
 - b. Guide to troubleshooting.
 - c. Disassembly, repair and reassemble.
 - d. Alignment, adjustment, and checking.
 - 4. Servicing and Lubrication Schedule, including a list of lubricants required.
 - 5. Manufacturer's printed operating and maintenance instructions.
 - 6. Description of sequence of operation by control manufacturer.
 - 7. Original manufacturer's parts list, illustrations, assembly drawings, and diagrams required for maintenance.
 - 8. List of original manufacturer's spare parts, manufacturer's current prices, and recommended quantities to be maintained in storage.
- C. Content for each electric and electronic system, as appropriate, shall contain:
- 1. Description of system and component parts:
 - a. Function, normal operating characteristics, and limiting conditions.
 - b. Performance curves, engineering data, and tests.
 - c. Complete nomenclature and Commercial number of all replaceable parts.
 - 2. Operating Procedures:
 - a. Routine and normal operating instructions.
 - b. Sequences required.
 - c. Special operating instructions.
 - 3. Maintenance Procedures:
 - a. Routine operations.
 - b. Guide to troubleshooting.
 - c. Disassembly, repair, and reassemble.
 - d. Adjustment and checking.
 - 4. Manufacturer's printed operating and maintenance instructions.

5. List of original manufacturer's spare parts, manufacturer's current prices, and recommended quantities to be maintained in storage.

48.6 Submittal Schedule

- A. Submit two copies of preliminary draft of proposed formats and outlines of contents prior to start to work. The Owner and Engineer will review draft and return one copy with comments.
- B. Submit one copy of complete O&M data in final form two weeks prior to start-up of any system, final inspection, or acceptance, whichever comes first.
- C. Submit specified number of copies of approved data in final form prior to acceptance.

48.7 Instruction of Owner's Personnel When Specified

- A. Prior to final inspection or acceptance, fully instruct the Owner's designated operating and maintenance personnel in the operation, adjustment, and maintenance of all products, equipment, and systems.
- B. Operating and maintenance manual shall constitute the basis of instruction.
- C. Review contents of manual with the Owner's personnel in full detail to explain all aspects of operations and maintenance.

48.8 Framed Operating and Maintenance Instructions Where Specified

- A. All mechanically and electrically operated equipment and controls shall be provided with legible and complete wiring diagrams, schematics, operating instructions, and pertinent preventive maintenance instructions in a sturdy frame with clear glass or plastic cover. Utilize non-fading, permanent media.
- B. Frames shall be located in the same room or service enclosure as the equipment, or in the nearest mechanical or electrical room.
- C. Submit proposed instructions for review and acceptance prior to installation.