

**CONSTRUCTION AGREEMENT
BETWEEN
FORT BEND COUNTY, TEXAS, as Owner
AND
EE REED CONSTRUCTION, L.P., as Contractor**

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AGREEMENT FOR CONSTRUCTION SERVICES

THIS AGREEMENT, entered into on this day by and between Fort Bend County, Texas, by and through its Commissioners Court, hereinafter referred to as ("Owner") and EE REED CONSTRUCTION, L.P., hereinafter referred to as the ("Contractor") and effective on the date executed by the Owner.

W I T N E S S E T H:

In consideration of the mutual covenants set forth herein, the parties hereto agree as follows:

ARTICLE I. AGREEMENT DOCUMENTS

This Agreement consists of this Agreement and Exhibits A through J which are attached hereto and which are made a part hereof as though set forth in full herein.

The above-referenced Exhibits are as follows:

- Exhibit A – General Description of Work
- Exhibit B – General Terms and Conditions
- Exhibit C - OMITTED
- Exhibit D – Compensation
- Exhibit E – Warranty, Insurance and Indemnity
- Exhibit F – Insurance Requirements, Performance and Payment Bonds
- Exhibit G – Payment Application
- Exhibit H – Contractor Affidavit, Lien Waiver and Release (Full and Partial)
- Exhibit I – Ground Lease Agreement between FBC and UHS
- Exhibit J – Contractor's Derivation of Contract Price

ARTICLE II. DEFINITIONS

All terms defined in any part of this Agreement shall have the same meaning when used in any other part of this Agreement. When used in this Agreement, the following terms shall have the meanings set forth opposite such terms, respectively:

“Act of Defaults” - As defined in Exhibits B.9

“Permits” - As defined in Exhibit B.7.3.

“Agreement” - This Agreement and Exhibits A through I attached hereto.

“Applications for Payment” - As defined in Exhibit D.2.1.

“Architect” - The entity engaged by the Owner for design the Project. The term “Architect” includes engineers, surveyors, designers and the other consultants retained by Owner. The Architect is not an employee of Owner, but is engaged or retained for the purpose of performing design services for the Project..

“Cash Flow Schedule” - The forecasted progress payments of the Contract Lump Sum, including the portions of the Contract Lump Sum listed in the Schedule of Values, attached as Schedule 1 to Exhibit D.

“Change Orders” - As defined in Exhibit B.8

“Change Order Notices” - As defined in Exhibit B.8

“Contract Documents” - The Contract Documents for the Project shall consist of this Agreement, Owner’s RFP #10-102, Contractor’s Response to RFP #10-102, Construction Documents, Construction Document Change Orders, and any other Change Order thereto that together form the entire integrated Agreement between Owner and Contractor. Owner’s instructions to proposers, the Contractor’s proposal, project manual, general requirements, general conditions, and supplementary conditions, addenda, the specifications, the drawings, and the notice of acceptance of the said proposal together with this Agreement form the Agreement, and they are as fully a part of the Agreement as if hereto attached or herein repeated.

“Construction Documents” - The final stage of the detailed architectural and engineering documents setting forth the design for the Project prepared by Architect on behalf of Owner as the Architect or Engineer of Record. Construction Documents consist of working drawings and specifications setting forth and describing: (1) the construction work to be done; (2) the materials, workmanship, finishes, and equipment required for the architectural, civil, electrical, structural, mechanical, plumbing and all other systems and their components, and (3) the necessary proposal information and the Agreement, Supplementary Conditions, and Special Conditions, if any, of the contract.

“Construction Work” - As defined in Exhibit A.2.

“Contract Lump Sum” - \$6,227,369.00 as defined in Exhibit J or as such may be adjusted from time to time pursuant to Exhibit B.8.

“Critical Milestone” - The milestones set forth in the Critical Path Schedule.

“Critical Path Schedule” - The document which shall be prepared by Contractor using a critical path method scheduling system setting forth a weekly three (3) week look-ahead schedule with respect to the Work and each major segment of the Work the time schedule for causing the tasks involved to be performed including the estimated dates for commencement and completion. Upon Owner's approval, from time to time the Critical Path Schedule may be amended. Contractor shall submit an updated Critical Path Schedule with each monthly pay application.

“Contractor” – The entity engaged by the Owner for construction of the Project. Contractor shall, in accordance with this Agreement, complete the Project and control scheduling of the construction of the Project, including components thereof.

“Contractor’s Project Manager” – Contractor shall, in accordance with this Agreement, include as a part of its business organization or in its employ or under contract a project manager with the competency, skills and all required licenses in the State of Texas to manage the Project in accordance with the Contract Documents. Contractor’s Project Manager shall be the primary point-of-contact for the Contractor. Owner, Owner’s Representative, Program Manager, and Owner’s Construction Inspector may rely upon written consents and approvals signed by Contractor’s Project Manager, as the consent and approval of Contractor.

“Days” – Calendar days unless otherwise stated herein.

“Defect” – A fault in the Work or a failure of the Work or any part thereof to be in compliance with the Drawings and Specifications (as refined and modified in compliance with Exhibit B.8, B.3.4.4 and A.1.2).

“Defect Period(s)” - That period commencing on the effective date of this Agreement and ending on the first anniversary of the Final Completion Date.

“Drawings and Specifications” - The Preliminary Drawings and Specifications, as amended and refined from time to time pursuant to Exhibit B.8 and Exhibits A.1.2 and B.3.4.4.

“Final Completion Date” - The date certified by the Owner Representative and Contractor in a final completion certificate as being the date upon which, to the best of Owner Representative’s and Contractor’s knowledge and belief, the Work is complete in accordance with the Contract Documents and that all the Punchlist Items have been finished. Warranties required by the Contract Documents shall commence on the date of issuance of Certificate of Occupancy. If the Certificate of Occupancy is withheld due to Owner furnished services, then warranties will commence on the date of Substantial Completion.

“Governmental Authority” - Any and all jurisdictions, entities, courts, boards, agencies, commissions, offices, divisions, subdivisions, departments, bodies or authorities of any nature

whatsoever of any governmental unit (federal, state, county, district, municipality, city or otherwise) whether now or hereafter in existence, with authority over the Work.

"Indemnified Parties" - Owner and The University of Houston System, and all officers, directors, agents, employees, representatives, successors and assigns of such parties, their respective affiliates, parent corporations and subsidiary corporations.

"Laws and Regulations" - The laws, rules, regulations, and orders (both civil and military) of the United States of America and any other Governmental Authority having jurisdiction over the Work or any part thereof, any site where any part of the Work is performed, or any transportation routes or methods between such sites, whether such now exist or hereafter come into effect.

"Notice to Proceed" - A written document issued by Owner instructing Contractor to begin performance of the Work as specified in such document and in compliance with this Agreement.

"Owner" - Fort Bend County, Texas, the address of which for notices (unless changed by written notice to Contractor) is County Judge, 301 Jackson, 7th Floor, Richmond, Texas 77469, with a copy to Donald G. Brady, Director, Facilities Management and Planning, 301 Jackson Street, Richmond, Texas 77469.

"Owner Representative" - Donald G. Brady, Director, Facilities Management and Planning, 301 Jackson Street, Richmond, Texas 77469, or such other person as selected by the Owner and written notice of such selection is given by Owner to Contractor.

"Owner's Contingency" - The Contract Lump Sum shall include as a separately identified item, an Owner's Contingency sum in an amount of \$200,000 subject solely to the Owner's discretion. Contractor shall submit a Change Proposal Request ("CPR") for any costs that derive from an Architect's Supplemental Instruction ("ASI") to a Contractor's Request for Information ("RFI"). The Owner's Representative shall review and may approve any CPRs that do not cumulatively exceed the Owner's Contingency. Any Change Orders that modify the Contract Lump Sum shall be subject to the provisions of Exhibit B.8.

"Preconstruction Work" - As defined in Exhibit A.1.

"Preliminary Schedule of Values" - The preliminary schedule of values prepared by Contractor and submitted to the Owner Representative.

"Program Manager" - If applicable, the Program Manager is retained by the Owner in accordance with a contract executed between the Program Manager and the Owner for the purposes of (i) peer review of the design documents provided by the Contractor for the Project, and (ii) review of elements of architectural or engineering administration of the Work (including change orders) under the Contract Documents. The term "Program Manager" includes engineers, surveyors, designers and the other consultants retained by the Program Manager. The Program Manager may not be an employee of the Owner, but may be engaged or retained by it for the purpose of performing design and construction administration services for the Project.

"Project" - The construction of the facility to be constructed under this Agreement as described in Bid also known as the Fort Bend County University Branch Library.

“Project Construction Program” - As defined in Exhibit A.1.1.

“Proposed Change Order” - As defined in Exhibit B.8.

“Punchlist Items” - Details of construction, mechanical adjustment or incidental repairs and decoration for the Project, the noncompletion of which does not materially interfere with Owner's access to or use of the Project as determined solely by the Owner.

“Records” - As defined in Exhibit B.4.3.

“Schedule of Values” - A schedule listing of the amount of value (expressed in terms of dollars) agreed upon by Contractor and the Owner Representative to be attributable to the portions of the Construction Work. This Schedule of Values shall be agreed upon and identified by Contractor and the Owner Representative pursuant to Exhibit B.1.2.

“Scheduled Substantial Completion Date” – As included in the Critical Path Schedule.

“Substantial Completion Date” – The date certified by Owner Representative and Contractor as being the date Work has been completed such that all systems are operational as designed and the Project has received a Certificate of Occupancy for its intended use with the only remaining Work to be completed being Punchlist Items. If the Final Certificate of Occupancy is withheld due to Owner furnished services, then the Certificate of Substantial Completion will be issued, provided all other requirements of Substantial Completion are completed.

“The University of Houston System” - Lessor of real property the subject of this Agreement, also referred to as “UHS.”

“Transfer Date” - As defined in Exhibit B.12.2.

“Work” – The Construction Work together with all other obligations of Contractor under this Agreement.

“Work Commencement Conditions” - As defined in Exhibit B.1.1.

ARTICLE III.
WORK

Except as otherwise provided for in this Agreement, Contractor shall perform the Work, and in connection therewith shall furnish (or cause to be furnished) all personnel, materials, supplies, equipment, tools, labor, supervision, utilities, transportation, and other materials, facilities, and services as and when required to perform the Work and all matters incidental thereto. The Work shall be completed as specified in the Critical Path Schedule and shall be completed within as specified in Bid.

ARTICLE IV.
COMPLETION OF WORK

Subject to delays caused by a failure of the Work Commencement Conditions or other delays beyond the control of the Contractor, Contractor shall commence, perform and complete the Work in accordance with the Contract Documents.

ARTICLE V.
COMPENSATION

As consideration for the performance of the Work, Owner shall pay to Contractor the compensation provided for in Exhibit D. Subject to the terms of Article III hereof and of Exhibit B.8, the compensation provided for in Exhibit D covers and includes all the compensation, payment and remuneration whatsoever that Owner is obligated to pay Contractor in connection with or growing out of this Agreement or the performance by Contractor of its obligations under this Agreement.

ARTICLE VI
DEFAULT BY CONTRACTOR

If Contractor, including any part of its business organization or its employ or under contract pursuant to this Agreement shall default or shall fail or neglect to carry out the Work in accordance with the Contract Documents or the Construction Documents or shall fail to otherwise fully comply with its obligations under this Agreement, the Contractor agrees that the Owner may, after giving the Contractor seven (7) days written notice, during which period the Contractor fails to commence and diligently pursue the cure of such default or failure, without prejudice to any other remedy, make good such deficiencies and may deduct the cost thereof from payment due the Contractor or at Owner's option and without invalidating the performance bond, Owner may terminate this Agreement and take possession of the site and of all materials, equipment, tools and construction equipment and machinery thereon owned by the Contractor and finish the Work by whatever method Owner shall deem expedient. If the expense incurred by Owner in finishing the Work exceeds the unpaid balance of the Contract Lump Sum, Contractor shall be liable for such deficiency and Contractor shall, immediately upon demand, pay such amount to Owner. If the expense incurred by Owner in finishing the Work does not exceed the unpaid balance of the Contract Lump Sum, the remaining unpaid balance of the Contract Lump Sum shall be paid to Contractor.

ARTICLE VII
AUDITOR'S CERTIFICATION

This Article VII shall prevail over any other provision of this Agreement which might be interpreted to the contrary. Owner shall not be required by this Agreement to expend sums in excess of the amounts certified by the Fort Bend County Auditor as available for paying the obligations of Owner under this Agreement. Obligations of Owner under this Agreement are limited to the sum certified as available in the Auditor's Certificate attached hereto below plus such other sums as may be specifically certified by the Fort Bend County Auditor as available to pay obligations hereunder , and no Change Order requiring the Owner to expend funds in excess of funds previously certified as available by the County Auditor shall be effective unless and until, in addition to any other requirements for the effectiveness of such Change Order, the County Auditor has certified the availability of funds to pay the Owner's obligations thereunder.

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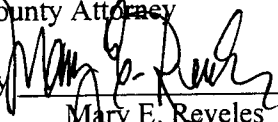
ARTICLE VIII
EXECUTION

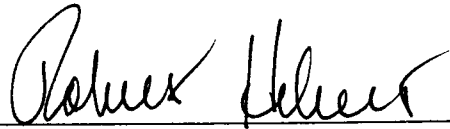
This Agreement shall become effective on the date executed by Owner.

APPROVED AS TO FORM

FORT BEND COUNTY, TEXAS ("Owner")

ROY L. CORDES, Jr.
County Attorney

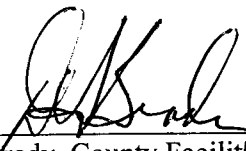
By: 
Mary E. Reveles
First Assistant

By: 
ROBERT E. HEBERT,
County Judge

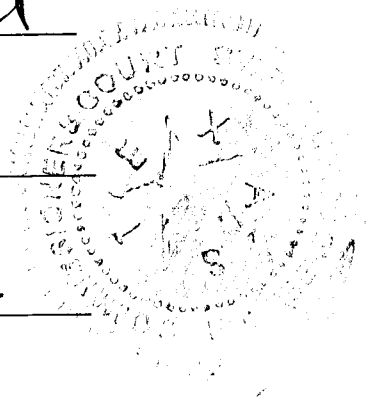
Date: 9-14-10

ATTEST:

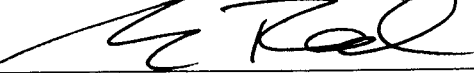
APPROVED:

By: 
Don Brady, County Facilities
Management & Planning Director


Dianne Wilson, County Clerk

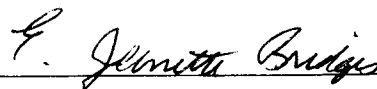


E.E. REED CONSTRUCTION, L.P. ("Contractor")

By: 

Date: 9/14/2010

ATTEST:



AUDITOR'S CERTIFICATE

I hereby certify that funds in the amount of \$6,227,369.00 is available to pay the obligations of Fort Bend County under the foregoing Agreement.

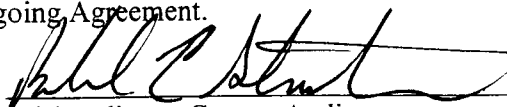

Ed Sturdivant, County Auditor

EXHIBIT A

GENERAL DESCRIPTION OF WORK

A.1. **PRECONSTRUCTION WORK.** Contractor shall do the following as “Preconstruction Work:”

A.1.1. Prepare, and amend from time to time, a broad scale program for the implementation and completion of the Work (the “Project Construction Program”). The Project Construction Program shall be in such detail and shall cover such matters as may be required by Owner, and (without limiting the generality of the foregoing) shall be comprised of the following: (a) the Critical Path Schedule, (b) the Critical Milestones, and the other segments of the Work for which Contractor will be entitled to receive progressive payments of the Contract Lump Sum pursuant to the Cash Flow Schedule attached to Exhibit D, and (c) construction programs indicating the expected dates of commencement and expected duration and expected completion for each major element of the Work. Contractor shall be paid as provided in D.2.1.

A.1.2. Within ten (10) business days of receipt of a Notice to Proceed from Owner, Contractor shall provide a project schedule for Owner’s approval. The project schedule shall utilize the critical path method (CPM) with activities broken down to be no more than two (2) weeks in duration including critical milestones necessary to complete the Project on time. The Project Schedule shall include, but not be limited to the following (a) Owner furnished item requirements; (b) long lead item and significant procurement milestones; and (c) commissioning and closeout activities. A continually updated schedule will be provided with the bi-weekly report required in B.5.2.2.

A.1.3. On an as needed basis as determined by Owner Representative, cause Contractor's personnel and Contractor’s Project Manager to meet with Owner Representative and Program Manager, and the representatives of the Architect to discuss the status of the Work.

A.1.4. Carefully and diligently study and compare all drawings, specifications, and instructions and shall at once report to the Architect and Owner any error, inconsistency, or omission which Contractor may discover. It is understood that Contractor’s review of drawings and specifications is for the purpose of executing the Work.

A.1.5. Complete the process of obtaining the Owner’s permits pursuant to Exhibit B.7.

A.2. **CONSTRUCTION WORK.** Contractor shall do the following as “Construction Work”:

A.2.1. Perform all preparatory work at the Construction Site required for compliance with all laws and regulations as to actions to be taken by contractors before construction begins.

A.2.2. Construct and install the Project on the Construction Site in accordance with the Contract Documents.

A.2.3. Furnish all materials, supplies, equipment, tools, labor, supervision, utilities, transportation and other materials and services as and when required to perform the portion of the Construction Work described in Exhibit A.2.

A.2.4. Continue the progress meetings described in Exhibit A.1.3.

A.2.5. Schedule and comply with Owner's contracted Materials Testing requirements necessary for the Construction Work as approved by the Owner Representative and this Agreement; the frequency of testing shall be approved by the Owner Representative.

EXHIBIT B

GENERAL TERMS AND CONDITIONS

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EXHIBIT B

GENERAL TERMS AND CONDITIONS

B.1. COMMENCEMENT AND COMPLETION OF WORK; SITE ACCESS.

B.1.1. Commencement of Construction Work. Contractor shall not be obligated to commence performance of the Construction Work and the commencement of the time period for determining the Scheduled Substantial Completion Date shall not commence until the issuance of a Notice to Proceed from Owner, which shall not be issued until at least the following conditions are satisfied:

(a) Written approval by Owner of the Project Construction Program as defined in Exhibit A.1.1 and approval by the Owner of the Preliminary Schedule of Values; and

(b) Required building permits are available to Contractor.

B.1.2. Schedule of Values. On or before the expiration of 15 days after the effective date of this Agreement, Contractor shall prepare or cause to be prepared and Contractor shall deliver the Preliminary Schedule of Values to the Owner Representative. Owner and Contractor shall review and refine the Preliminary Schedule of Values and when the parties have refined such schedule and upon approval of the Owner Representative, it shall become the Schedule of Values.

B.1.3. Completion of Work. Subject to adjustments to the Scheduled Substantial Completion Date due to delays beyond the control of Contractor or delays caused by Owner, Contractor shall pay the sum of \$500 for each day after the date required for Substantial Completion that Substantial Completion is not achieved. Owner and Contractor recognize the difficulty, inconvenience and uncertainty of ascertaining the actual damages that could be sustained by Owner as a consequence of delays in the occurrence of the Substantial Completion Date, and the parties agree that the monetary damages owed by Contractor as a consequence of any such delay in the Substantial Completion Date shall be limited to the liquidated damages described in the preceding sentence; while these liquidated damages shall be Contractor's sole and complete liability to Owner for any and all damage claims based on or arising from delays in the Substantial Completion Date, the foregoing limitation shall not be construed to prevent Owner from exercising its remedies under Exhibit B.9.2. or from obtaining injunctive relief or other equitable relief or remedies.

B.1.4. Site Access. Prior to the Transfer Date, Owner and Contractor shall have uninterrupted access to the Construction Site. Subsequent to the Transfer Date, Owner will permit Contractor and Architect and their representatives and subcontractors to enter upon the Project at times reasonably necessary to complete the Punchlist Items.

B.1.5 Ground Lease Agreement with The University of Houston System ("UHS"). Contractor acknowledges receipt of Exhibit I: "Ground Lease Agreement between FBC and UHS" and shall comply with its terms as they relate to the Project Construction Program. Contractor is prohibited from deviating from the terms of Exhibit I and shall not commence construction on any site plan not specifically identified in Exhibit I. In the event the terms of the "Ground Lease Agreement" as contained in Exhibit I are amended, Owner shall provide written notice to Contractor of the amended Ground Lease Agreement which shall allow Contractor to proceed with the Project on the site plan identified and terms of the amended Ground Lease Agreement.

B.1.5.1 Contractor shall conduct the Work in accordance with the Schematic Drawings attached hereto as Exhibit I.

B.1.5.2 Any substantial change in the approved plans which will materially alter: (a) UHS's use of the Project; the procedures identified in Exhibit D.2, or the exterior of the Project shall be subject to UHS's review and prior written approval.

B.1.5.3. Contractor shall conduct the work in accordance with the Construction Standards as defined in Section 1(e) of Exhibit I.

B.2. RELATIONSHIP OF PARTIES.

B.2.1. Independent Contractor and Fiduciary Role. Contractor shall be an independent contractor and any provisions of this Agreement that may appear to give Owner or the Owner Representative the right to direct Contractor as to the details of the manner of doing the Work shall be deemed to mean that Contractor shall follow the desires of Owner or the Owner Representative in the results of the Work only and not in the means whereby the Work is to be accomplished. Contractor shall be responsible as to the details of doing the Work. Neither the agents, representatives, nor employees of Contractor and its subcontractors shall be deemed to be the agents, representatives, or employees of Owner. Contractor further represents that it accepts a fiduciary role and responsibility with respect to Owner and shall, to its best abilities, act in the best interests of Owner and the timely completion of the Work. Contractor agrees and understands that neither it nor any of its agents or employees may act in the name of Owner except and unless specifically authorized in writing by Owner to do so. Contractor shall furnish construction administration and management services and use Contractor's best efforts to perform the Project in an expeditious and economical manner consistent with the interests of Owner.

B.2.2. Contractor's Project Manager. Owner recognizes and agrees that Contractor will perform the Work under the direction of Contractor's Project Manager.

B.2.3 Familiarity with Project. Contractor represents and accepts that it has: (a) visited the property, (b) taken such other steps as may be necessary to ascertain the nature and location of the Project and the visible general and local conditions which affect the Project or the cost thereof, (c) investigated the labor situation in regards to the Project, (d) examined the property, the obstacles which may be encountered and all other visually observable conditions having a bearing upon the performance of the Project, the superintendence of the Project, the time of completion and all other relevant matters, and (e) reported to Owner the results of all of the foregoing.

B.3. OBLIGATIONS OF OWNER.

B.3.1. Title to Construction Site. Owner is the owner in fee simple of the Construction Site.

B.3.1.1. Owner shall be responsible for providing surveys to Contractor upon execution of the Agreement. The surveys and legal information shall include grades and lines of streets, alleys, pavements, and adjoining property and structures; adjacent drainage; right-of-ways, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade. All of the information in the survey shall be referenced to a Project benchmark. Owner shall provide the results and reports of prior tests, inspections or investigations conducted, if any, for the Project involving chemical, air and

water pollution, hazardous materials or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site. Owner shall furnish the services of geotechnical engineers for subsoil and water conditions. Such services may include test borings, test pits, determinations of soil bearing values, percolation tests, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations. Owner shall promptly obtain easements, zoning variances, and legal authorizations regarding site utilization where essential to the execution of the Owner's program. Contractor shall be entitled to rely upon the accuracy and completeness of the services, information, surveys and reports required to be provided by the Owner.

B.3.2. Owner Representative. The Owner Representative is authorized to act on behalf of Owner under this Agreement in the administration of the Work, the granting of all consents and approvals of Owner under this Agreement (including, without limitation, the approval of changes in the Work and Proposed Change Orders pursuant to Exhibit B.8), and the processing and approval of the Applications for Payment of the Contract Lump Sum pursuant to Exhibit D. The Owner Representative's review or approval of or agreement to the performance of Work or any portion thereof shall, subject to the terms of this Agreement, in no way relieve Contractor of full responsibility for the performance of the Work. All matters requiring approval or consent by Owner under this Agreement (including, without limitation, Proposed Change Orders) shall be considered to be submitted to Owner when the same are received by the Owner Representative. Copies of this Agreement shall be furnished by Owner to the Owner Representative. The Owner Representative shall have free access to any portion of the Construction Site where any portion of the Work is being performed. Contractor acknowledges that any change orders and/or any budgetary matters require approval from the Fort Bend County Commissioners Court.

B.3.3. Project Completion Coordination. Owner shall cause the Owner Representative and other members of the staff of the Owner Representative, and/or Program Manager to be available to coordinate with all agencies and departments of Owner and all other governmental authorities required in the prosecution of the Work and required for the compliance of the Work and the completed Project with all applicable laws and regulations. Owner shall also cause the Owner Representative and the authorized employees and staff members of the Owner Representative to (a) promptly review all elements of the Project Construction Program in order to promptly advise Contractor of those elements that are acceptable or objectionable to Owner, (b) attend the progress meetings described in Exhibits A.1.3 and A.2.4, (c) review any Proposed Change Orders and (if required) the final working drawings and specifications pursuant to Exhibit B.3.4.4, (d) review the Applications for Payment submitted to Owner for progress payments of the Contract Lump Sum pursuant to Exhibit D, (e) review the progress of the Work to the extent necessary to determine the Substantial Completion Date for the Project and (f) review any aspects of the Project requiring review and approval by Owner prior to the final payment of the Contract Lump Sum pursuant to Exhibit D.2.3.

B.3.4. Standards for Owner's Review and Approval.

B.3.4.1. Owner acknowledges that in order to meet the deadlines established by the Project Construction Program for the performance of the Work, and in order to accomplish the efficient performance of the Work, Contractor may submit matters to Owner in stages for approval or consent. Upon receipt of any matter submitted by Contractor for review and approval, whether a Proposed Change Order described in Exhibit B.8, a change to the final Drawings and Specifications as described in Exhibit B.3.4.4 or otherwise, Owner shall review the same and shall diligently and promptly within 14 calendar days for any such matter other than a Proposed Change Order, and within 28 calendar days for a Proposed Change

Order, give Contractor notice of Owner's approval or disapproval, setting forth in detail reasons for any disapproval. Owner's right to disapprove any such matter submitted (other than a Proposed Change Order) shall be limited to the elements thereof (a) which do not conform substantially to matters previously approved, (b) which are new elements not previously presented and approved and Contractor is unable to demonstrate that such new element is reasonably necessary for performance of the Work, or (c) which depict matters that are violations of this Agreement or applicable laws and regulations.

B.3.4.2. If Owner disapproves of a particular matter or Proposed Change Order, Contractor shall have the right to resubmit such matter or Proposed Change Order to Owner, altered to satisfy Owner's basis for disapproval. Any resubmission shall be subject to review and approval by Owner in accordance with the procedures described in Exhibit B.3.4.1.

B.3.4.3. Owner and Contractor shall attempt in good faith to resolve any disputes concerning the approval of any aspect of the Work expeditiously, so as not to delay the performance of the Work in accordance with this Agreement.

B.3.5. Expedited Approvals. Owner recognizes the importance of expeditious action upon all matters submitted to Owner (or Owner's Representative) for review and approval and of expeditious response to those aspects of the Work requiring approval by governmental authorities having jurisdiction thereover. Owner agrees to exercise its rights of review and approval hereunder with due diligence, reasonableness, and good faith. Owner shall use its reasonable efforts to expedite any required review of the Project or other matters by any Governmental Authority.

B.4. OBLIGATIONS OF CONTRACTOR.

B.4.1. Laws and Regulations. Contractor shall in its performance of the Work comply with all applicable laws and regulations. Any delays in the prosecution of the Work caused by any changes in the laws and regulations may entitle Contractor to an extension of time if such delay affected the Critical Path Schedule.

B.4.2. Project Construction Program. Contractor shall deliver to Owner periodically, but at least once each month, a schedule showing the status of the Work with reference to the Project Construction Program, as amended, and showing the then expected schedule for completion of the Work and showing any delays in the Work and the party responsible for such delays. Contractor shall promptly inform Owner by means of a Proposed Change Order (as provided for in Exhibit B.8.2) of any anticipated or actual delays or accelerations that may cause the Work to be completed before or after the Scheduled Substantial Completion Date.

B.4.3. Records. Contractor agrees to maintain and preserve for a period of at least four (4) years after the earlier of the expiration of the Defect Period(s) or termination of this Agreement, accurate and complete records relating to the performance of the Work. Contractor agrees to, upon request, provide Owner with such records.

B.4.4. Record Drawings and Specifications. Within thirty (30) days after from the Substantial Completion Date, Contractor shall furnish Owner with a full set of As-Built marked-up Drawings and Specifications for the Project as actually constructed. On the Final Completion Date, Contractor shall furnish Owner with copies of all subcontractors' and suppliers' warranties and all operating manuals. Such Drawings and Specifications shall be marked to show all approved changes and modifications that have been incorporated into the Work as performed.

B.4.5. Record Copy of Contract Documents. Contractor shall maintain at the site one (1) up-to-date record copy of all contracts, drawings, specifications, addenda, Change Orders or other modifications, in good order and marked currently to record all changes and selections made during construction, and in addition, approved Shop Drawings, product data, samples and similar required submittals, and requests for information ("RFIs"). These items shall be available to Owner, Architect and Contractor, and will be delivered to Owner upon completion of the Project.

B.4.6. Staffing Plan and Prevailing Wage Rates. Contractor shall develop a proposed supervisory staffing plan for approval by Owner. In accordance with Chapter 2258 of the TEXAS LOCAL GOVERNMENT CODE, all persons employed by the Contractor shall be compensated at not less than the rates shown in Schedule 1 to Exhibit B. Contractor shall keep detailed records of each of its workers and said records shall be made available to Owner for inspection at all reasonable times in accordance with Section 2258.024 of the TEXAS GOVERNMENT CODE.

B.5. CONDUCT OF THE WORK.

B.5.1. Familiarity; Rights and Obligations. Contractor represents that it is familiar with all phases of the Work and the matters that may affect the Work or its prosecution under this Agreement. Neither any oral representation by or oral agreement with any officer, agent, or employee of Owner or Contractor, either before or after the execution of this Agreement, nor any written representation by or written agreement with any officer, agent, or employee of Owner or Contractor before execution of this Agreement shall affect or modify any of parties' rights or obligations hereunder.

B.5.2. Standard of Performance. Contractor shall prosecute the Work in accordance with the best efforts for the construction and development of projects similar to the Project in the State of Texas, using qualified, careful, and efficient contractors and workers and in conformity with the provisions of this Agreement. If the law imposes an obligation upon Contractor to perform the Work in a "good and workmanlike manner," the parties agree that such term shall be synonymous with the standard of care specified in this Exhibit B.5.2 and Exhibit B.2.1.

B.5.2.1. Warranty of Contractor. Contractor warrants to Owner that: (i) the Contractor possesses the skill and knowledge ordinarily possessed by well-informed members of its trade or profession and Contractor will use its best efforts to ensure that the services provided under this Agreement will be performed, delivered, and conducted in accordance with the best professional standards and in accordance with industry standards, and (ii) Contractor 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, and (iii) following the date of acceptance of this Agreement, the services provided by Contractor to Owner will conform to the representations contained in this Agreement, including all attachments, schedules and exhibits. All warranties provided by Contractor in this Agreement shall be cumulative, shall be deemed consistent and not in conflict, are intended to be given full force and effect and to be interpreted expansively to give the broadest warranty protection to Owner.

B.5.2.2. Contractor shall provide, during construction, continuous on-site construction observation, to familiarize itself with the progress and quality of the completed work, and to determine if the work is proceeding in such a way as when it is complete it will be in accordance with the Contract Documents. Field Reports shall be prepared daily by Contractor, then summarized and submitted to Owner Representative least bi-weekly. Contractor shall submit a report, which shall constitute a representation

by Contractor to Owner, based on observations at the site that to the best of Contractor's knowledge, information and belief, the quality of the completed work is in accordance with the Contract Documents.

B.5.2.3. Contractor shall use all best efforts and measures to implement its responsibilities under this Agreement to safeguard Owner against defects and deficiencies in the completed work of the Trade Contractors. Contractor shall be responsible for the construction means, methods, techniques, sequences of procedures, and for the safety precautions and programs employed in connection with the work. However, Contractor will promptly inform the Owner's Representative in writing whenever defects and deficiencies in the completed Work are observed and whenever any defects or discrepancies are observed within the Contract Documents, or when any observed actions or omissions are undertaken by the Trade Contractors that are not in the best interest of Owner and the Project.

B.5.3. Document Delivery. During the progress of the Work, Contractor shall provide Owner with both hard copy (one original and two copies) and electronic format any design, engineering, procurement and construction documents produced by Contractor.

B.5.4. Ownership of Documents. Drawings, specifications, and other documents, including those in electronic form, prepared by the Architect and furnished to Contractor are Instruments of Service. All design and instruments of service under this Agreement, including, but not limited to, tracings, drawings, estimates, specifications, studies and other documents, completed or partially completed, shall be the property of Owner. Contractor specifically waives and releases any proprietary rights or ownership claims therein. Contractor may retain a reproducible copy of all Instruments of Service; however, Owner reserves the right, so long as such instruments of service exist, to obtain copies, reproducible or otherwise, from Contractor at Owner's expense, but without any additional fee or charge by Contractor.

B.5.4.1. Contractor shall be liable to Owner for any loss or damage to any such documents while they are in the possession of, or while being worked upon, by the Contractor or anyone connected with Contractor, including agents, employees, consultants or subcontractors. All documents damaged shall be replaced or restored by Contractor without cost to the Owner.

B.5.5. Contractor's Personnel. Contractor shall employ only competent, skilled personnel for the Work. Prior to the Final Completion Date, Contractor shall maintain a "Project Manager" who shall be authorized to act on behalf of Contractor and with whom Owner may consult at all reasonable times. Contractor's Project Manager shall not be transferred from the Work without Owner's consent (which shall not be unreasonably withheld or delayed); provided, however, Contractor's Project Manager shall not be assigned solely to the Work and shall be entitled to spend reasonable time working on matters unrelated to the Work or the Project so long as such work on other matters does not render Contractor's Project Manager unavailable to the Work or unavailable to Owner's Representative. However, such obligation to furnish Contractor's Project Manager and such staff personnel shall not be construed (a) to preclude the promotion within Contractor's organization of any person assigned to the Work or (b) to give rise to any liability of Contractor if any person assigned to the Work (including, without limitation, Contractor's Project Manager) leaves Contractor's employment. If Contractor's Project Manager is transferred from the Work, Owner shall have the right to approve any replacement (which approval will not be unreasonably withheld or delayed). Contractor and Contractor's subcontractors shall comply with all applicable health, safety, and loss prevention rules of applicable Governmental Authorities. Contractor shall, at its own expense, remove from the Work any person who fails to comply with such rules and instructions. Contractor shall at all times enforce strict discipline and good order among its employees and shall not employ on the Work any unfit person or anyone not skilled in the work assigned to him. Owner may, upon written notice to the Contractor, require Contractor to remove an individual

immediately from providing services for the following reasons: violation of the terms and conditions of this Agreement; violation of the Owner's or Contractor's work rules and regulations; criminal activity; or violation of state, federal, or municipal statutes. Owner may, upon thirty (30) days written notice to Contractor, require the removal of any individual from providing services without cause.

B.5.6. Inspection. The Work and all parts thereof shall be subject to inspection from time to time by inspectors designated by the Owner Representative and Architect. No such inspections shall relieve Contractor of any of its obligations hereunder. Neither failure to inspect nor failure to discover or reject any of the Work as not in accordance with the Drawings and Specifications or any provision of this Agreement shall be construed to imply an acceptance of such Work or to relieve Contractor of any of its obligations hereunder. Owner agrees that its right of inspection shall be used reasonably and in a timely manner so as not to delay orderly completion of the Work.

B.5.7. Protection Against Risks. Contractor shall take all precautions which are necessary and adequate, against conditions created during the progress of the Work which involve a risk of bodily harm to persons or a risk of damage or loss to any property. Contractor shall regularly inspect all Work, materials and equipment for the purpose of discovering and determining any such conditions and shall be responsible for correction of any such conditions. Contractor shall comply with all federal, state and local occupational hazard and safety standards, codes and regulations applicable in the jurisdiction where the Work is being performed. Contractor shall include the substance of this clause in its entirety in all subcontracts for any work to be performed at the Construction Site.

B.5.8. Claims. Claims made by any party must be submitted in writing within twenty-one (21) days after occurrence of the event giving rise to such claim or within twenty-one (21) days after the claimant first recognized the condition giving rise to the claim, whichever is later. If adverse weather conditions are the basis for a Claim, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse affect on the Schedule's critical path.

B.5.9. Correlation and Intent of the Contract Documents. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

B.5.9.1. The most recently issued document takes precedence over previously issued forms of the same document. Figures given on drawings govern scale measurement, and large scale details govern smaller scale drawings. If an item is shown one place in the drawings, but not on another, or called for in a schedule or the specifications but not shown on the drawings, it is to be included. Existing conditions take precedence over Drawings and Specifications for dimensions and shall be verified by Contractor. The order of precedence is as follows with the highest authority listed first:

- A. The Agreement
- B. Addendum
- C. Supplemental Conditions
- D. General Conditions
- E. Specifications and
- F. Drawings

B.5.9.2. In the event of discovered inconsistencies, if any, within or between parts of the Contract Documents Contractor shall (1) provide the better quality or greater quantity of Work or (2) comply with the more stringent requirement, either or both in accordance with Architect's interpretation. The terms and conditions of this section, however, shall not relieve Contractor of any other obligations of this Agreement.

B.6. EQUIPMENT AND MATERIALS.

B.6.1. Equipment. Except as expressly provided herein to the contrary, Contractor shall furnish all construction, transportation, installation, tools, and other equipment and facilities required for the performance of the Work within the times specified herein. Such equipment and facilities shall be serviceable and kept fit for the uses intended. Defective items shall be removed from the Construction Site promptly and at Contractor's cost. Contractor shall schedule (or cause to be scheduled) its other operations so as to not interfere with its duty to timely furnish the necessary equipment and facilities and personnel to operate the same at the times necessary for the orderly completion of the Work within the times allotted in the Project Construction Program.

B.6.2. Materials. Except as may be specifically provided otherwise in the Agreement or approved in advance by Owner, Contractor shall provide the Owner Representative with copies of material testing reports and to cause all materials, equipment, and fabricated items incorporated in the Project to be new and of a suitable grade of their respective kinds for their intended use.

B.6.3. Procurement Procedures. Procurement requisition, purchase order, inspection and expediting reports shall follow Contractor's standard reporting format whenever such standard reporting format exists, and if no such format exists, Contractor shall devise a format with the Owner's Representative and/or Program Manager.

B.7. PERMITS.

B.7.1. Contractor Permits. Contractor shall obtain all permits, licenses, governmental consents and approvals which may be necessary for the lawful performance of the Work on or before the date when such permits, licenses, Texas Department of Licensing and Regulation requirements, governmental consents or approvals are required by law or are necessary for the lawful performance of the Work. Owner shall provide any required easements.

B.7.2. Permits Generally. Each party shall cooperate with the other in obtaining all permits required to be obtained as provided in this Agreement.

B.8. CHANGES.

B.8.1. General. The Owner may order changes in the Work without invalidating the Agreement. If the Contractor receives any drawings, specifications, interpretations or instructions from the Owner or Architect which are inconsistent with the Contract Documents, or encounters unanticipated conditions, which may result in a change in cost, scope or estimated date of Substantial Completion, the Contractor shall promptly notify Owner in writing and shall not proceed with the affected work until further written instructions are received from the Owner. Cost proposals for Changes shall be itemized to show material and labor quantity takeoff, unit prices, overhead and fee. Schedule change proposals shall include a CPM schedule to document changes to the critical path. Proposed Contractor's fee shall not exceed 5% which shall include all home office overhead costs. Proposed general conditions shall be itemized as required by

Owner. Owner may make changes in the Work by altering, adding to, or deducting from the Work. All changes in the Work which (a) require an adjustment in the Contract Lump Sum or an adjustment in the Scheduled Substantial Completion Date or (b) involve a material change in the overall scope or function of the Project shall be requested and authorized before commencing such changes by use of written Change Order Notices, Proposed Change Orders and Change Orders, as described in Exhibit B.8.2, which Change Order procedure shall be the exclusive means to effect such changes in the Work. There shall be a presumption against the need for Change Orders that increase the Contract Lump Sum.

B.8.1.1 Change Pricing. In the event of a disagreement on the price of a change, it is agreed that the latest addition of R.S. Means Construction Cost Data will be the basis for the change pricing. The cost will be no more than the highest applicable assembly pricing with the Houston City Cost Index.

B.8.2. Change Order Procedure.

B.8.2.1. Owner Initiated Change Orders: If at any time Owner desires to make any change in the Work requiring the issuance of a Change Order pursuant to Exhibit B.8.1, Owner shall so advise Contractor in writing by delivery to Contractor of a written notice (the "Change Order Notice"), describing the change. Upon receipt of a Change Order Notice initiated by Owner, Contractor shall within a reasonable period of time advise Owner of Contractor's proposal for the adjustments, if any, in the Contract Lump Sum, the Project Construction Program, the Schedule of Values and the Scheduled Substantial Completion Date attributable to such change by delivering a written notice thereof (the "Proposed Change Order") to Owner. Such Proposed Change Order shall contain a description of the proposed change and shall set forth Contractor's estimate of the increase or decrease, if any, in the Contract Lump Sum and the change, if any, in the Project Construction Program, the Schedule of Values and the Scheduled Substantial Completion Date attributable to such change.

B.8.2.2. Contractor Initiated Change Orders: If Contractor desires to make a change in the Work requiring the issuance of a Change Order or if Contractor receives any drawings, specifications, interpretations or instructions from Owner or Architect which are inconsistent with the Contract Documents, or encounters unanticipated conditions which may result in a change in cost, scope or Substantial Completion Date, Contractor shall deliver to Owner a Proposed Change Order and shall not proceed with the affected work until further written instructions are received from Owner. Upon execution by the Owner Representative on behalf of Owner (and the approval of Fort Bend County Commissioner's Court), a Proposed Change Order shall constitute (and be defined herein as) a "Change Order" for purposes of this Agreement. Contractor shall forthwith perform the Work as changed in accordance with such Change Order. All Work performed pursuant to a Change Order shall be performed in accordance with the terms of this Agreement. All Proposed Change Orders shall be submitted for approval by Owner (through the Owner Representative) in compliance with Exhibit B.3.4. No action, acquiescence or inaction by Owner or any representative of the Owner shall be construed to be a waiver of requirements set forth in this Agreement in regard to Change Orders or ratification of a violation of such requirements, and all acts in violation of this provision shall be considered void.

B.8.3. Change Order Authorization. Each Change Order shall be signed by the Owner Representative and an authorized representative of Contractor.

B.8.4. Contract Lump Sum Adjustments. The Contract Lump Sum and the Schedule of Values shall be adjusted only as a result of a Change Order requiring such adjustment. Any extra work performed without a proper Change Order shall be considered voluntary and not subject to additional compensation. Contractor shall not be entitled to an adjustment in the Contract Lump Sum (or a Change Order permitting

such adjustment) or to damages as a result of any delays in the Work caused by the acts or omissions of Owner, provided that such delays do not delay the Critical Path nor fall outside of any time limits established under this Agreement. This sentence is not applicable to delays that constitute more than 90 days in any 365-day period or cause the Work to be interrupted for a continuous period of 90 days through no fault of Contractor.

B.8.4.1. When Owner and Contractor agree upon the adjustments in the Contract Lump Sum, the Project Construction Program, the Schedule of Values and the Scheduled Substantial Completion Date attributable to such adjustment, such agreement will be documented by preparation and if approved by the Fort Bend County Commissioners Court, execution of an appropriate Change Order and effective thereafter in accordance with Section B.8.2 above.

B.8.5. Weather Delays. The Scheduled Substantial Completion Date shall include five (5) calendar days to accommodate inclement weather. If the Critical Path Schedule is effected by the more than five (5) calendar days of inclement weather, Contractor may make a written application to Owner and receive an extension. Only delays impacting the Critical Path of the Work shall be considered when determining if Contractor is entitled to receive additional time.

B.9. DEFAULT AND TERMINATION

B.9.1. Default by Owner.

B.9.1.1. Each of the following shall be an "Act of Default" by Owner and a material breach of this Agreement:

- (a) Owner's failure to disburse installments of the Contract Lump Sum to Contractor as required under this Agreement;
- (b) If Owner materially defaults under this Agreement (other than a default described in clause (a) of this Exhibit B.9.1.1) and Owner fails to remedy such default within 30 days after written notice from Contractor or, if such default is of a nature that it cannot be remedied within 30 days, if Owner fails to initiate action within 30 days after such notice and thereafter to proceed diligently and continuously to remedy same; or
- (c) If repeated suspensions, delays or interruptions of the Work by Owner constitute in the aggregate more than 90 days in any 365-day period or cause the Work to be interrupted for a continuous period of 45 days, both through no act or fault of Contractor.

B.9.1.2. If any Act of Default by Owner shall occur, Contractor shall have the right to deliver a written notice at any time prior to the curing of such Act of Default which terminates Contractor's duty to complete the Work, and upon any such termination, Owner shall pay to Contractor the portion of the Contract Lump Sum owed to Contractor for Work completed as of the date of termination by Contractor in accordance with the approved Schedule of Values, and additional compensation for demobilization and other costs and expenses incurred by Contractor as a consequence of the termination, including reasonable overhead, profit and damages.

B.9.2. Default by Contractor.

B.9.2.1. Each of the following shall be an "Act of Default" by Contractor and a material breach of this Agreement:

(a) If Contractor materially defaults under this Agreement and Contractor fails to remedy such default within 15 days after written notice from Owner or, if such default is of a nature that it cannot be remedied within 15 days, if Contractor fails to initiate action within 15 days after such notice and thereafter to proceed diligently and continuously to remedy same; or

(b) If Contractor shall (i) file or consent to any petition for bankruptcy or insolvency or similar remedy; (ii) fail to cause any bankruptcy, insolvency, or similar proceeding to be stayed or dismissed within 90 days after the filing thereof; (iii) be adjudged a bankrupt or make a general assignment for the benefit of creditors; or (iv) seek, consent to or acquiesce in the appointment of a trustee, conservator, custodian, liquidator or receiver of a significant portion of Contractor's assets.

B.9.2.2. If any Act of Default by Contractor shall occur, Owner shall have the right to deliver written notice at any time prior to the curing of such Act of Default which terminates Contractor's right to proceed with the Work and Owner shall have no obligation to make any further payments to Contractor except for the portion of the unpaid Contract Lump Sum, if any, that exceeds Owner's cost of completion and other damages recoverable hereunder and such unpaid Contract Lump Sum shall become due once all remaining expenses associated with the Work have been incurred and paid. In the event of such termination, Owner may finish the Work by whatever means it may deem expedient, including (without limitation) the hiring of any Contractor or Contractors under such form of contract as Owner may deem desirable, and Owner shall have the right but not the obligation, for the purposes of completing the Work, to take over and assume the rights and obligations of the Contractor under any or all subcontracts and purchase orders. Contractor and Contractor's performance bond surety shall be responsible for all damages recoverable under this Agreement arising from Contractor's breach.

B.9.3. Officers and Employees. None of the officers, directors, constituent partners, members, employees, elected officials, agents or affiliates of Owner or Contractor shall ever be personally liable for, or obligated to pay, or to satisfy any judgment for, any damages or any other monetary obligation whatsoever under any theory of action or recovery, on account of an Act of Default by Owner or Contractor under this Agreement or otherwise.

B.10. PAYMENT OF BILLS AND LIENS.

B.10.1. Payment of Bills. Contractor shall promptly pay when due all amounts owed by Contractor to all subcontractors performing portions of the Work pursuant to a direct contract with Contractor (but expressly excluding any subcontractors not directly contracting with Contractor). Contractor shall indemnify and hold Owner harmless from and against all liens, costs, claims, suits, actions, debts and damages (including, without limitation, reasonable attorneys' fees) arising as a consequence of Contractor's failure to comply with this Exhibit B.10.1 so long as Owner makes payment to Contractor as required by this Agreement.

B.10.2. Liens. Contractor shall indemnify and hold harmless the Indemnified Parties from all liens and other encumbrances against the portions of the Work and any claims or actions on account of debts or claims with respect to the Work alleged to be performed by Contractor or its subcontractors or suppliers to any person, and will defend any claim or litigation in connection therewith.

B.11. TAXES.

B.11.1. Unemployment Taxes. Contractor shall, and shall require its subcontractors to, pay any and all taxes and contributions for sickness and unemployment insurance, retirement benefits, life pensions, annuities, and similar benefits which may now or hereafter be imposed by law or agreement with respect to persons employed by Contractor or any of its subcontractors for performance of the Work. Contractor shall comply with all Laws and Regulations applicable to the compensation paid to its employees.

B.11.2. Corporate and Income Taxes. Notwithstanding anything else herein to the contrary, it is not intended that Owner be liable to Contractor for the reimbursement of any corporate franchise taxes or any taxes levied directly or indirectly on or measured by income or chargeable gains.

B.11.3. Sales and Use Taxes. Contractor shall pay any and all sales or use taxes imposed by the State of Texas or any municipality or other entity incorporated thereunder or created thereby; provided, however, Owner agrees to reasonably assist in obtaining the appropriate certificates from the appropriate Governmental Authorities reflecting the exemption of the Project from all sales and use taxes.

B.12. COMPLETION, TRANSFER AND ACCEPTANCE.

B.12.1. Substantial Completion. Upon the occurrence of the Substantial Completion Date, the Punchlist Items shall be promptly commenced and thereafter completed within thirty (30) days after Substantial Completion by Contractor.

B.12.2. Transfer and Acceptance. Upon the occurrence of Substantial Completion, care, custody and control of the Project shall pass to Owner. As referenced herein, the "Transfer Date" shall mean the date on which the care, custody and control of the Project passes to the Owner pursuant to this Exhibit B.12.2. Subsequent to the Transfer Date all risk of loss with respect to the Project shall be by Owner and Contractor shall not be thereafter obligated to cover the Project with the Builder's Risk Insurance described in the Exhibit F.

B.12.3. Partial Occupancy. Owner may obtain beneficial use and occupancy of any completed or partially completed portion of the Work at any stage, provided such use and occupancy is authorized by public authorities having jurisdiction over the Work.

B.12.3.1. Inspection. Immediately prior to such partial use and occupancy, Owner and Contractor shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

B.12.3.2 Effect. Partial use and occupancy of a portion or portions of the Work shall not constitute acceptance of Work not complying with requirements of the Contract Documents.

B.13. GUARANTEES, WARRANTIES AND INSURANCE.

B.13.1. General. Generally, all guarantees, warranties and insurance coverage to be provided by Contractor to Owner are set forth in Exhibit E & F.

B.13.2. Supervision of Warranty Work. Contractor shall, without any compensation in addition to the Contract Lump Sum, coordinate and supervise the completion of the corrective Work in the manner

required for the original Work as a result of a Defect in the Work or the failure of the Work or the Project to meet the standards designated in Exhibit E & F.

B.14. SUBCONTRACTS, ASSIGNMENTS AND OTHER AGREEMENTS.

B.14.1. Subcontracts. When used in this Agreement, the terms “subcontract” and “subcontractor” shall mean and include both subcontracts and purchase orders and both subcontractors and purchase order vendors, respectively. Contractor shall be entitled to enter into subcontracts with subcontractors as required by Contractor to perform the Work. Except as expressly provided herein to the contrary, Contractor shall remain responsible for performance of all Work subcontracted by Contractor. Contractor shall be responsible for inspecting subcontractors' work, for measuring progress and maintaining schedules, and for notifying Owner of subcontract awards and status. Contractor shall manage, schedule and coordinate the work of its subcontractors at whatever tier so as to meet the Scheduled Substantial Completion Date. Contractor shall include in each subcontract provisions (a) recognizing that the subcontract does not bind Owner, and (b) permitting Owner, Owner's Representatives and their designees to conduct the inspections permitted herein.

B.14.2. Assignment. Contractor may not assign this Agreement or any portion hereof except with the prior written consent of Owner; provided, however, this Exhibit B.14.2 shall not be construed to prohibit Contractor from entering into subcontracts in order to perform the Work.

B.15. INDEMNIFICATION.

B.15.1. Bodily Injury and Property Damage Liability. As set forth in Exhibit F, Contractor is obligated to defend, indemnify and hold harmless the Indemnified Parties from any and all claims, damages, liabilities and expenses (including, without limitation attorneys' fees) for injury to or death of any person or for damage to or destruction of any property resulting directly or indirectly from any and all acts or omissions of Contractor, its officers, agents and employees, any of Contractor's subcontractors' subcontractors, their officers, agents and employees or anyone employed by any of them or anyone for whose acts any of them may be liable.

B.15.2. Protection of Work. As set forth in Exhibit F, Contractor shall be responsible for all risk of loss to all materials delivered to the Construction Site and all materials and equipment incorporated into the Work prior to the Transfer Date unless the loss occurs after Substantial Completion and is solely caused by Owner or its separate contractors. Contractor shall, prior to the Transfer Date, provide continuous and adequate protection of the Work performed and of Owner's and Contractor's property located at the Construction Site. Contractor shall be obligated to replace or repair any materials, equipment or supplies which are (or are to become) a permanent part of the Work or any temporary or existing facilities at the site.

B.15.3. Limitations. Contractor shall have no obligation to Owner or any other party with respect to any damage or loss to the Work or property on the Construction Site (including loss of use) caused by the perils of war, insurrection, revolution, or nuclear reaction.

B.16. FORCE MAJEURE.

B.16.1. Force Majeure as applicable to Contractor. If Contractor shall be unable to perform or shall be delayed in the performance of any of the terms and provisions of this Agreement as a result of (i) governmental preemption of materials in connection with a national emergency declared by the President

of the United States; (ii) riot, insurrection, or other civil disorder affecting performance of the Work; (iii) power or other utility failure preventing the performance of the Work or substantial portions of same; (iv) fire or other unavoidable casualty; or (v) unusual and extreme weather conditions, then, and in any such event, such inability or delay shall be excused, and the time for completing the affected portions of the Project (and the entire Project, if applicable) shall be extended for such reasonable period of time as the delay has affected the performance of the Work hereunder. Contractor shall take all reasonable actions to minimize the delay caused by any of the above factors, and shall notify Owner in writing of any event allowing for excuse or delay not later than seven (7) days after the event Contractor first becomes aware of the event; or may have become aware, of the event; otherwise Contractor will be deemed to have waived the excuse or delay.

B.16.2. Force Majeure as applicable to Owner. If Owner shall be unable to comply or shall be delayed in the compliance of any of the terms and provisions of this Agreement as a result of (i) governmental preemption of materials in connection with a national emergency declared by the President of the United States; (ii) riot, insurrection, or other civil disorder; (iii) power or other utility failure; (iv) fire or other unavoidable casualty; or (v) unusual and extreme weather conditions, then, and in any such event, such inability or delay shall be excused, and the time for compliance with the Agreement shall be extended for a reasonable period of time. Owner shall take all reasonable actions to minimize the delay caused by any of the above factors, and shall notify Contractor in writing of any event allowing for excuse or delay not later than seven (7) days after the event Owner first becomes aware of the event; or may have become aware, of the event; otherwise Owner will be deemed to have waived the excuse or delay.

B.16.3. Excluded Events. Contractor understands that delays occasioned by the events and occurrences set forth below are not included in Exhibit B.16.1, do not constitute reason for extending the date for Substantial Completion and that it is Contractor's responsibility to make adequate provision in scheduling the Work for the following:

B.16.3.1. Normal Weather Conditions. Weather conditions other than those that substantially vary from the normal climatology conditions that prevail in the region.

B.16.3.2. Late Deliveries. Late deliveries of materials and/or equipment for any cause other than those specified in Exhibit B.16.1. No claim will be approved if materials and equipment are delayed due to Contractor's tardy procurement or expediting.

B.16.4. Additional Grounds. The provisions of this Exhibit B.16.1 are in addition to other grounds for extension of time as set forth in the Contract Documents.

B.17. APPLICABLE LAW. This Agreement shall be construed and enforced in accordance with the laws of the State of Texas. Venue for all actions regarding this Agreement shall be in Fort Bend County, Texas.

B.18. CERTAIN THIRD PARTIES BENEFITED. This Agreement shall be for the sole benefit of Owner and Contractor and not for any other third party.

B. 19. NOTICES.

All notices, requests, directions, or other communications permitted or required hereunder (collectively "notices"), other than routine Work related communications, shall be in writing and shall be delivered in person or by certified mail, return receipt requested to the appropriate party at the address specified below, with copies to such other parties as specified below, unless a different address for notice or copy

thereof is changed by notice. Notice sent by personal delivery to the authorized representative designated by a party shall be effective on the date the authorized representative actually receives such delivery. Notice sent by properly addressed mail, certified or registered with return receipt requested, and postage prepaid shall be effective three days after being deposited in the mail. Notice sent by telegraph, telex, telecopy, or cable, charges prepaid and confirmed by copy thereof sent by registered or certified mail shall be effective upon the date of such telegraph, telex, telecopy, or cable. Notice sent in any other manner shall be effective only if and when received by the parties.

To Owner: Fort Bend County Commissioners Court
301 Jackson St., Suite 719
Richmond, Texas 77469
Attn: County Judge

Copy to: Facilities Management and Planning Department
Don Brady, Director
301 Jackson Street
Richmond, Texas 77469

To Contractor: E.E. Reed Construction, L.P.
Mark Reed, Vice President
333 Commerce Green Boulevard
Sugar Land, Texas 77478

To Architect: Bailey Architects
Mark Boone, Associate Principal
55 Waugh Drive, Suite 450
Houston, Texas 77007

B.20. CONSENTS. Without limiting the generality of Exhibits B.3.4 and B.3.5, in each and every instance where Owner or Contractor is required in this Agreement to obtain, or Owner or Contractor has elected to obtain, the consent or approval of the other party to any act or circumstance, such consent or approval shall not be unreasonably withheld, delayed or conditioned, unless otherwise expressly permitted in this Agreement.

B.21. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the parties hereto with respect to the matters covered hereby. All prior negotiations, representations, and agreements with respect thereto and unincorporated herein are hereby cancelled. Except as otherwise provided in this Agreement, this Agreement may be modified or amended only by a document duly executed on behalf of the parties hereto.

B.22. NON-WAIVER. No waiver or waivers by either party hereto of any breach or default of any provision hereunder shall be deemed a waiver of any other provision hereof or a waiver of any subsequent breach or default. No payment made under this Agreement (a) shall be, or be construed to be, final acceptance or approval of that part of the Work to which such payment relates or any other part of the Work, (b) shall relieve Contractor of any of its obligations hereunder with respect thereto, or (c) shall constitute a waiver of or otherwise affect the covenants and warranties of Contractor.

B.23. CAPTIONS. The captions used in this Agreement are for convenience only and shall in no way define, limit, or describe the scope or intent of this Agreement or any part thereof.

B.24. SEVERABILITY. If any provision of this Agreement or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, but the extent of the invalidity or unenforceability does not destroy or render ineffective the basis of the bargain between the parties hereto, the remainder of this Agreement and the application of the provision to the other persons or circumstances shall not be affected thereby but rather shall be enforced to the greatest extent permitted by law.

B.25. CLAIMS FOR CONSEQUENTIAL DAMAGES. Contractor and Owner waive claims against each other for consequential damages arising out of or relating to this Agreement. This mutual waiver includes:

(a) damages incurred by Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

(b) damages incurred by Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

B.21.1 This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with the terms of this Agreement. Nothing contained in this Exhibit B.24 shall be deemed to preclude an award of liquidated damages pursuant to Exhibit B.1.3 hereof.

B.26. CLAIMS FOR CONCEALED OR UNKNOWN CONDITIONS. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or reports furnished by Owner to Contractor or (2) unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then the observing party shall give notice to the other party promptly before conditions are disturbed and in no event later than ten (10) days after first observance of the conditions. Owner shall promptly investigate such conditions and, if they differ materially and cause an increase or decrease in Contractor's cost of, or time required for, performance of any part of the Work, shall negotiate with Contractor an equitable adjustment in the Contract Lump Sum or Substantial Completion Date, or both. If Owner determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of this Agreement is justified, Owner shall so notify Contractor in writing, stating the reasons. Claims by Contractor in opposition to such determination must be made within five (5) days after Owner has given notice of the decision.

**SCHEDULE 1 TO EXHIBIT B
STAFF PREVAILING WAGE RATES**

The following prevailing wage rates shall be utilized by Contractor's staffing of the Project during the course of the Work. Contractor shall be responsible for payment of not less than the wages detailed below for the duration of the Project.

This project is subject to the prevailing wage rate requirements of Chapter 2258 of the Government Code. The Contractor shall pay Fort Bend County sixty dollars (\$60.00) for each worker employed by the Contractor for the provision of services described herein for each calendar day or part of the day that the worker is paid less than the below stated rates. Contractors may also visit www.wdol.gov/dba.aspx.

General Decision Number: TX100115 04/02/2010 TX115

Superseded General Decision Number: TX20080115

State: Texas

Construction Type: Building

County: Fort Bend County in Texas.

BUILDING CONSTRUCTION PROJECTS (does not include residential construction consisting of single family homes and apartments up to and including 4 stories)

Modification Number	Publication Date
0	03/12/2010
1	04/02/2010

	Rates	Fringes
ASBE0022-002 06/01/2009 ASBESTOS WORKER/INSULATOR		
(Including application of all insulating materials, protective coverings, coatings and finishing to all type of mechanical systems)	\$ 20.63	8.30
BOIL0074-002 08/08/2009 BOILMAKER	\$ 24.70	16.88
CARP0551-003 04/01/2008 Carpenter (Acoustical Ceiling Work Only)	\$ 21.00	6.43
ELEC0716-004 09/01/2008 ELECTRICIAN (Including Pulling Wire, and Low Voltage Wiring and Installation of Fire Alarms, Security Systems, Telephones, and Computers)	\$ 24.85	7.61
ELEV0031-001 01/01/2010 ELEVATOR MECHANIC	\$ 34.955	20.235

FOOTNOTES: a.- Employer contributes 8% of basic hourly rate for over 5 years' service and 6% of basic hourly rate for 6 months to 5 years' service as Vacation Pay Credit. Paid
Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Friday after Thanksgiving Day; Christmas Day

	Rates	Fringes
PLAS0681-002 04/01/2005 PLASTERER Galveston County	\$ 20.15	3.20
PLUM0068-005 10/01/2009 Plumbers (Excluding HVAC Pipe)	\$ 28.54	8.78
PLUM0211-007 04/01/2010 Pipefitters (Excluding HVAC Pipe)	\$ 28.07	9.97
SFTX0669-001 01/01/2010 SPRINKLER FITTER (Fire Sprinklers)	\$ 25.90	15.35
SHEE0054-005 07/01/2009 Sheet Metal Worker (Includes HVAC System Installation And Excludes HVAC Duct)	\$ 25.74	10.17
SUTX2005-014 04/28/2005 ASBESTOS ABATEMENT WORKER (CEILINGS, FLOORS & WALLS)	\$ 14.00	0.00
BRICKLAYER	\$ 18.00	0.00
CARPENTER (EXCLUDING ACCOUSTICAL CEILING WORK)	\$ 15.94	0.00
CEMENT MASON/CONCRETE FINISHER	\$ 12.75	0.00
DRYWALL FINISHER/TAPER	\$ 12.21	0.92
DRYWALL HANGER (INCLUDING METAL STUD INSTALL)	\$ 12.49	1.38
FORMBUILDER/FORMSETTER	\$ 11.03	0.00
GLAZIER	\$ 14.01	2.72
INSULATOR -BATT AND FOAM	\$ 11.00	0.00
IRONWORKER, REINFORCING	\$ 12.01	0.00

IRONWORKER, STRUCTURAL	\$ 16.15	0.00
LABORERS:		
COMMON	\$ 9.60	0.00
MASON TENDER (BRICK)	\$ 10.27	0.00
MASON TENDER (CEMENT)	\$ 9.88	0.00
PIPELAYER	\$ 12.34	0.00
PLASTER TENDER	\$ 12.90	2.51
LATHER	\$ 16.90	3.61
PAINTER-BRUSHY, ROLLER & SPRAY	\$ 11.14	0.00
PIPEFITTER (HVAC PIPE ONLY)	\$ 18.11	4.65
POWER EQUIPMENT OPERATOR:		
ASPHALT PAVER	\$ 13.50	0.25
BACKHOE	\$ 12.48	0.00
CRANE	\$ 18.75	3.07
FORKLIFT	\$ 14.53	0.00
SLAB & WALL SAW	\$ 15.54	3.83
ROOFER	\$ 11.38	0.00
SHEETMETAL WORKER (HVAC DUCT ONLY)	\$ 15.68	1.73
TILE FINISHER	\$ 11.86	0.53
TILE SETTER	\$ 15.71	1.01
TRUCK DRIVER	\$ 10.75	1.47

WELDERS - Receive rate prescribed for craft performing Operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter

* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

EXHIBIT D
COMPENSATION

D.1. CONTRACT LUMP SUM.

D.1.1. Total Compensation. As full and complete compensation for Contractor's performance of the Work in accordance with the terms and conditions of this Agreement, Owner shall pay to Contractor the Contract Lump Sum. The Contract Lump Sum constitutes the entire compensation due Contractor for all of the Work and all of Contractor's obligations under this Agreement regardless of difficulty, hours worked, or materials or equipment required and includes, but is not limited to, compensation for all applicable taxes (excluding sales and use taxes, as set forth in Exhibit B.11.3), fees, overhead, profit, mobilization and demobilization costs, overtime premiums and payments, and all other direct and indirect costs and expenses incurred or to be incurred by Contractor under this Agreement. The Contract Lump Sum shall be increased or decreased only in accordance with Change Orders issued pursuant to Exhibit B.8.

D.1.1.2. The Contract Lump Sum for this Agreement is \$6,227,369.00, plus the amount included as the Owner's Contingency.

D.1.2. Current Payments. Contractor hereby warrants to and covenants with Owner that neither Contractor nor any of its subcontractors and suppliers have performed any of the Work at the Construction Site or delivered any material or supplies to the Construction Site or ordered any specially fabricated materials prior to the effective date of this Agreement, and that all of Contractor's rights hereunder are subject and subordinate to all liens, mortgages, assignments, and security interests granted by Owner in and to the Construction Site, all improvements, fixtures, equipment and personal property (including removables) now or hereafter constructed thereon or therein, securing any indebtedness or obligation of Owner now or hereafter existing, and all renewals, extensions and rearrangements thereof.

D.1.3. Cash Flow Schedule. The portions of the Contract Lump Sum will be broken down into amounts to be paid upon the achievement by Contractor of each Critical Milestone, or a portion thereof, as set forth in the Cash Flow Schedule for the Project to be agreed upon between the parties and to be attached as Schedule 1 to this Exhibit D once agreed. The Critical Milestones (or portions thereof) described in the Cash Flow Schedule will be further described in the Project Construction Program. If, in the process of the completion of the Work, the Critical Milestones are accomplished at a time before or after the dates contemplated under the Cash Flow Schedule, Contractor and Owner shall adjust the Cash Flow Schedule (by written agreement executed by Contractor and the Owner Representative) to account for the acceleration or delay in the accomplishment of the Critical Milestones. The Cash Flow Schedule includes Contractor's current estimated payments for the portions of the Contract Lump Sum attributable to the Schedule of Values.

D.1.4. Schedule of Values. The Contract Lump Sum listed in the Schedule of Values will be paid for the Construction Work on a percentage of completion basis based upon the amounts set forth in the Schedule of Values as approved by Owner. The breakdown of the Schedule of Values is for the purpose of invoicing and progressive payment only. Owner shall be obligated to make progress payments of such amount invoiced by Contractor in accordance with Exhibit D.2.2; provided, however, in no event will Owner be obligated to pay to Contractor the amounts allocated to any line item of the Schedule of Values that exceeds the total of such Value.

D.2. METHOD OF PAYMENT.

D.2.1. Applications for Payment. Contractor shall submit all “Applications for Payment” (as herein defined) for installments of the Contract Lump Sum for approval and processing to Owner on a monthly basis in accordance with the Schedule of Values on or before the tenth (10th) day of each calendar month during the progress of the Work. Each Application for Payment shall be in a form acceptable to the Fort Bend County Auditor and shall reflect any amount representing the proportionate part of the Work performed during the previous month. As support for each Application for Payment, Contractor shall submit the following in a form acceptable to the County Auditor:

- (a) A statement in the form attached as Exhibit G executed by Contractor certifying that (i) the proportionate part of the Work described in such Application for Payment has been performed, (ii) Contractor's amount included in the Application for Payment attributable to the Schedule of Values is due and owing, (iii) there are no known mechanics' or materialmen's liens outstanding as of the date of the Application for Payment or if such liens are known, such have been adequately bonded, (iv) all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current Application for Payment, and (v) except for such bills not paid but so included, there is no known basis for the filing of any mechanics' or materialmen's liens on the Work.
- (b) A partial lien waiver and release in the form attached as Exhibit H effective through the date of Contractor's preceding Application for Payment, executed by Contractor with a statement certifying those matters set forth in clauses (i) through (v) of subparagraph (a) of this Exhibit D.2.1., certifying that waivers from all subcontractors and materialmen have been obtained in such form so as to constitute an effective waiver of liens under the laws of the State of Texas.
- (c) An affidavit executed by Contractor that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which Owner or might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, including unconditional waivers and releases upon final payment from all trade contractors, suppliers, material men, or other third parties that provided labor, services, equipment, or material to the Project, satisfying the requirements for such releases set forth the TEXAS PROPERTY CODE §53.085.
- (d) A fully updated Critical Path Schedule.

D.2.2. Progress Payments and Retainage. Within 30 days after receipt of each uncontested Application for Payment together with the supporting materials specified in Exhibit D.2.1., Owner shall advance to Contractor the uncontested amount requested in such uncontested Application for Payment except five percent (5%) of the amount requested in each Application for Payment shall be held by Owner.

D.2.2.1. The retainage withheld shall be released upon Final Completion of the entire Project upon the request for its release by Contractor, and certification by Architect that said Work is finally complete and

satisfactory, unless grounds exist for withholding payment on account of other defaults by Contractor, including Work performed by its Trade Contractors.

D.2.3. Final Payment to Contractor. Payment, constituting the entire unpaid balance of the Contract Lump Sum, less 50 percent of the retainage then held by Owner and such amount as the Owner Representative determines is reasonably necessary for all incomplete Work (including, without limitation, the Punchlist Items) and for all unsettled claims, as provided in this Agreement, shall be advanced by Owner to Contractor upon the Substantial Completion Date. Owner shall pay all outstanding and withheld portions of the Contract Lump Sum to Contractor upon the later to occur of (i) 30 days after the Final Completion Date or (ii) the date that Contractor causes all mechanics' and materialmen's liens filed against the Project to be removed. Owner shall have received from Contractor a lien waiver or an affidavit to the effect that it and all its Trade Contractors and suppliers of labor and materials have been paid in full (which lien waiver or affidavit must be in form and substance sufficient as a matter of law to dissolve all liens or claims of lien for labor or service performed or rendered and materials supplied or furnished, in connection with the construction and installation of the Project), and with respect to this Agreement, Contractor shall have provided to Owner the Final Certificate of Occupancy for the building.

D.2.3.1. Upon payment of the entire balance of the Contract Lump Sum and all other amounts withheld by Owner pursuant to this Exhibit D.2.3, Contractor shall execute and deliver to Owner a release discharging Owner from all liabilities, obligations and claims to pay the Contract Lump Sum pursuant to this Agreement.

D.2.4. Owner shall retain the sum of \$10,000 from the Final Payment to Contractor as a warranty retainage. Any unused warranty retainage shall be paid to Contractor on the first (1st) anniversary of the effective date of the warranty period.

Schedule 1 to Exhibit D

Cash Flow Schedule
(to be agreed upon after execution of Agreement)

EXHIBIT E
WARRANTY, INSURANCE AND INDEMNITY

E.1 MATERIALS AND EQUIPMENT.

E.1.1. Contractor shall, for the protection of Owner, obtain from all vendors and subcontractors guarantees with respect to the machinery, equipment, and materials, used and installed as a part of the Work, which guarantees shall be in form and content consistent with those prevailing in the applicable industry and which shall be made available to Owner to the full extent of the terms thereof. Contractor shall use its best efforts to obtain guarantees which extend to the expiration of the Defects Period or for such longer period of time as may be obtainable from such vendors and subcontractors and shall specify that same shall be enforceable by and for the benefit of Owner.

E.1.2. All materials and equipment are subject to inspection by Owner at all times. No inspection or other action by Owner shall release any vendor or subcontractor from its duty to conform to final specifications nor shall any inspection or other action or lack thereof release any vendor or subcontractor from any warranty or guarantee. The failure of Owner to inspect shall not constitute a waiver of the right to reject the material or equipment for defective workmanship or material.

E.2. WORKMANSHIP. Subject to the provisions of Exhibit E.6. herein below, Contractor guarantees that the Work will be free from any Defect in the workmanship of Contractor or any subcontractor or other party engaged by Contractor in connection with the Work. Provided Owner notifies Contractor of such a Defect prior to the end of the Defects Period, Contractor will promptly correct at no cost to Owner, any Defect in or damage to the Work or any part thereof arising or resulting, directly or indirectly, from any Defect in the workmanship of Contractor (or its subcontractors or suppliers) and Contractor shall itself correct or, as deemed feasible by Owner, have another correct any such Defect where such is attributable to any subcontractor or other party engaged by Contractor in connection with the Work.

E.3. POST CONSTRUCTION WORK; TRAINING. From and after the Transfer Date, Contractor shall provide or cause to be provided to Owner multiple copies of all training manuals for all equipment, systems and machinery installed by Contractor (or its subcontractors or suppliers) in the Project, and training services with respect to the operation and maintenance of the equipment, systems and machinery within the Project, to the extent the same has been installed by Contractor (or its subcontractors or suppliers) pursuant to the Agreement. Such services shall include, but not be limited to, training of maintenance personnel of Owner with respect to proper maintenance procedures for the initial startup and continued operation of the equipment, systems and machinery within the Project, training of operation personnel of Owner with respect to proper use, operation and maintenance of the equipment, machinery and systems within the Project and such other services as may be mutually agreed upon between Owner and Contractor after the date hereof.

E.4. EXCEPTIONS TO GUARANTEES. Contractor shall not be obligated to provide corrective or remedial services and shall have no other obligation for Defects in the Work which occur as a result of (a) improper maintenance or operation by Owner or (b) normal wear, tear, erosion, and corrosion after the Transfer Date.

E.5. INSURANCE COVERAGES. Contractor shall obtain and keep (or cause to be obtained and kept) in full force and effect until the expiration of the Defects Period (except for the Builder's Risk Insurance, which shall be kept in effect only until the Transfer Date) the insurance coverages specified in Exhibit F.

E.6. DEFECTS AND REMEDIAL ACTION.

E.6.1. If, at any time during the prosecution of the Work, Contractor determines that there is an error, omission or defect in the Drawings and Specifications, Contractor shall notify Architect and Owner of such error, omission or defect and Contractor shall suspend the portion of the Work that is based on the portion of the Drawings and Specifications containing such error, omission or defect. Contractor shall meet with Architect within three (3) days of such notice to discuss remedial action. When Owner, Contractor, and Architect have agreed upon the appropriate remedial action, Architect has corrected the error, omission or defect in the Drawings and Specifications, and Contractor has approved such curative action, Contractor shall proceed with the affected Work and any delay occasioned thereby may be subject to any additional compensation to Contractor, as approved by Owner.

E.6.2. With respect to replacement equipment and materials supplied and services reperformed in accordance with the provisions of this Agreement, the Defects Period shall automatically be extended to apply to the replacement equipment or material or the reperformed service for a period of twelve calendar months from the later of (i) the Transfer Date or (ii) the date Contractor notifies Owner of the completion of the installation of the replacement equipment or material or the reperformance of service.

E.6.3. Remedial Action.

E.6.3.1. Subject to the terms of Exhibit E.4, if, during the Defects Period, Owner determines that there is a Defect in a portion of the Work, Owner shall notify Contractor and Contractor shall take remedial action acceptable to Owner without delay.s

E.6.3.2. If Contractor's remedial action is not commenced without delay or having so commenced is not prosecuted with all due dispatch to completion, Owner, after giving notice to Contractor, may proceed with another Contractor or contractors to perform such remedial action, in which case Contractor shall reimburse Owner upon demand for all costs incurred in performing such remedial action.

E.7. PERFORMANCE OF SUPPLIER'S OBLIGATIONS.

E.7.1. In the case of Defects in materials, machinery or equipment which arise from the failure of a supplier to Contractor of materials for the Project, or defects in services provided in a specialty or sole source subcontract with a subcontractor of Contractor (in this subparagraph any such subcontract of supply or service is herein called "subcontract" and the party providing such service is called "subcontractor"):

E.7.2. Contractor shall secure full performance of the supplier's or subcontractor's obligations under Agreements of supply or under subcontracts by repair, replacement or otherwise to the satisfaction of the Owner. Contractor, upon the request of the Owner, shall assign any of its rights under subcontracts or purchase agreements for machinery, equipment or material or under such Agreements of supply to the Owner and shall at such time be automatically relieved of the obligations relative to the matters covered by such contracts.

E.7.3. Contractor shall undertake such other or additional action as the Owner may require to achieve prompt correction of, or to overcome or offset, or to remedy or repair, the Defect.

E.8 PATENTS.

E.8.1. Contractor hereby indemnifies each of the Indemnified Parties against, and agrees to hold each of the Indemnified Parties harmless from, all claims, demands, liabilities, damages, losses, costs, and judgments arising from assertions by third parties that Contractor or any subcontractor (except any subcontractor selected by Owner to which Contractor objects) or all or any of the Indemnified Parties are infringing upon any patent, copyright, trademark, or service mark or are misappropriating any proprietary information. If any action or proceeding relating to any such assertion is brought against any one or more of the Indemnified Parties, then, unless Owner directs otherwise, Contractor shall conduct in due diligence and in good faith, the defense of such action or proceeding, whether or not Contractor is joined therein; provided, however, Contractor shall not admit the validity or infringement of any patent, copyright, trademark, or service mark without the express written consent of Owner. In connection with Contractor's defense of any such action or proceeding, the Indemnified Parties shall render such assistance as Contractor may require in such defense. Without relieving Contractor of any of its obligations hereunder, any one or more of the Indemnified Parties, at its election, may participate in the defense of any such action or proceeding at its sole cost. Contractor shall pay all liabilities, damages, losses, fees (including but not limited to attorneys' fees), costs, settlement sums, judgments, and other expenses incurred by the Indemnified Parties in connection with any such assertions, actions, or proceedings. Contractor hereby warrants and represents to the Indemnified Parties that Contractor has no actual knowledge of any patent, copyright, trademark, service mark, or proprietary information that is or will be alleged to be infringed upon or misappropriated by the proposed activities under this Agreement or the maintenance, repair, use, or sale of the Project.

E.8.2. Contractor shall use its diligent, good faith efforts to obtain from all suppliers a patent indemnity in the form set forth in Exhibit E.8.1. If any prospective supplier refuses to grant such patent indemnity, Contractor shall promptly notify Owner and, unless authorized by Owner in writing, shall select an alternate supplier.

E.9. INDEMNIFICATION

E.9.1. CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE INDEMNIFIED PARTIES FROM ANY AND ALL CLAIMS, DAMAGES, LIABILITIES AND EXPENSES (INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES) FOR INJURY TO OR DEATH OF ANY PERSON OR FOR DAMAGE TO OR DESTRUCTION OF ANY PROPERTY RESULTING DIRECTLY OR INDIRECTLY FROM ANY AND ALL NEGLIGENT ACTS OR OMISSIONS OF CONTRACTOR, ITS OFFICERS, AGENTS AND EMPLOYEES, ANY OF CONTRACTOR'S SUBCONTRACTORS, ITS OFFICERS, AGENTS AND EMPLOYEES OR ANYONE DIRECTLY EMPLOYED BY ANY OF THEM. NOTWITHSTANDING THE FOREGOING PROVISIONS OF THIS EXHIBIT E.9.1, IF ANY SUCH CLAIM OR LIABILITY ARISES IN WHOLE OR IN PART FROM THE NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNIFIED PARTY, THE LIABILITY OF CONTRACTOR UNDER THE FOREGOING INDEMNITY SHALL BE REDUCED ON A PRO RATA BASIS SUCH THAT IT WILL NOT INCLUDE THE PORTION OF HARM PROVEN TO ARISE FROM OR OTHERWISE ATTRIBUTABLE TO THE NEGLIGENCE OR WILLFUL MISCONDUCT OF SUCH INDEMNIFIED PARTY.

E.9.2. Contractor shall be responsible for all risk of loss to all materials delivered to the Construction Site

and all materials and equipment incorporated into the Work prior to the Transfer Date. Contractor shall, prior to the Transfer Date, provide continuous and adequate protection of the Work, the property and adjacent property of Owner or Contractor constituting the Construction Site. Contractor shall be obligated to replace or repair any (a) materials, equipment or supplies which are, or are to become, a permanent part of the Work or temporary or existing facilities whether Contractor owned or leased or furnished by Contractor or Owner or (b) construction supplies and materials which are lost from the Construction Site, damaged or destroyed on the Construction Site prior to the Transfer Date, however such loss or damage may occur unless the same results from the negligence or willful misconduct of Owner or its officers, directors, employees or agents.

EXHIBIT F

INSURANCE REQUIREMENTS, PERFORMANCE AND PAYMENT BONDS

A. INSURANCE COVERAGE. Contractor shall obtain and keep in full force and effect until Completion of the Work the insurance coverages hereinafter specified in this Exhibit; such coverages shall be in primary form as to the liabilities assumed hereunder or excess form with limits not less than those set out below.

1. Commercial General Liability Insurance. Commercial general liability insurance or a comparable policy form, naming Contractor as the named insured and Owner and UHS as additional insured with the following coverages and limits:

A. General Aggregate	\$2,000,000
B. Products Completed Operation – Aggregate	\$2,000,000
C. Personal Advertising Injury Limit	\$1,000,000
D. Each Occurrence Limit	\$1,000,000
E. Fire Damage Limit (any one fire)	\$50,000
F. Medical Expense Limit (any one person)	\$5,000

2. Such insurance shall contain blanket contractual coverage, shall be written on Insurance Services Offices approved occurrence form and shall also provide the following protection:

- A. premises/operations coverage;
- B. broad form property damage liability coverage
- C. completed operations coverage for a period of 2 years following the date of substantial completion of the Work;
- D. XCU coverage;
- E. independent contractors and employees as additional insureds;
- F. contractual liability coverage.

3. Business Automobile Liability Insurance. Automobile liability and property damage insurance covering all owned, non-owned and hired vehicles used in connection with the Work, with Contractor as the named insured and Owner as additional insured, insuring against liability for bodily injury and death and for property damage in an amount not less than \$1,000,000 per occurrence.

4. Worker's Compensation Insurance. Worker's compensation insurance providing statutory Texas coverage for all persons or entities employed by Contractor and all subcontractors in connection with the Work, with Employer's Liability insurance of not less than \$1,000,000 per occurrence and in the aggregate and a waiver of subrogation in favor of Owner.

5. Umbrella Liability Insurance. Umbrella liability insurance naming Contractor as the named insured and Owner as additional insured, in an amount not less than \$5,000,000 per occurrence and in the aggregate.

6. Worker's Compensation Special Requirements. In regard to Worker's Compensation Insurance the following special requirements shall apply. All parties working on the Project shall maintain Worker's Compensation as required by Texas law.

(a) 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 a project, for the duration of the project.

(b) Duration of the project - includes the time from the beginning of the Work on the project until the Contractor's work on the project has been completed and accepted by the Owner.

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

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

(e) Contractor must provide a certificate of coverage to Owner prior to the commencement of the Work.

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

(g) Contractor shall obtain from each person providing services on a project, and provide to Owner:

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

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

(h) Contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

(i) Contractor shall notify Owner in writing by certified mail or personal delivery, within 10 days after Contractor knows or should know, of any change that materially affect the provision of coverage of any person providing services on the project.

(j) Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage. (This notice must be printed with a title in at least 30 point bold type and text in at least 19 point normal type, and shall be in both English and Spanish and any other language common to the worker population.):

REQUIRED WORKER'S COMPENSATION COVERAGE

"The law requires that each person working on this site or providing services related to this construction project must be covered by workers' compensation insurance. This includes persons providing, hauling, or delivering equipment or materials, or providing labor or transportation or other service related to the project, regardless of the identity of their employer or status as an employee."

"Call the Texas Worker's Compensation Commission at 512-440-3789 to receive information on the legal requirement for coverage, to verify whether your employer has provided the required coverage, or to report an employer's failure to provide coverage."

(k) Contractor shall contractually require each person with whom it Agreements to provide services on a project, to:

(i) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of TEXAS LABOR CODE, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;

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

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

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

1. a certificate of coverage, prior to the other person beginning work on the project; and

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

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

(vi) notify Owner in writing by certified mail or personal delivery, within 10 days after the person knows or should know, of any change that materially affects the provision of coverage of any person providing services on the project; and

(vii) contractually require each person with whom it contracts, to perform as required by Section 6(a) through 6(j) hereof, with the certificates of coverage to be provided to the person for whom they are providing services.

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

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

B. POLICIES. Every policy referred to in this Exhibit shall (i) provide that no material change, cancellation or termination shall be effective until at least 30 days after written notice thereof has been received by Contractor and Owner; (ii) provide that such insurance shall not be invalidated by any act or negligence of Contractor or Owner, or any subcontractors or any person or entity having an interest in the Project, nor by any foreclosure or other proceedings or notices thereof relating to the Project, nor by any change in title to or ownership of the Project; and (iii) include a waiver of all rights of subrogation in favor of Contractor and Owner.

C. BUILDERS RISK INSURANCE. Contractor shall obtain and keep in full force and effect until the Transfer Date, Builders Risk Insurance, subject to policy terms and conditions, of direct physical loss or damage to property, materials, equipment and supplies which are to become an integral part of the Project, whether owned by Contractor, or subcontractors of every tier, and in which one or more of same has an insurable interest, while in transit, while at the Construction Site awaiting construction, during construction, and until the Transfer Date. Such insurance shall be maintained to cover, as nearly as practicable, the insurable value of such property, materials, equipment and supplies at risk, and shall contain a waiver of subrogation in favor of Contractor, Architect, subcontractors of any tier and Owner for loss or damage occurring during the Work and shall name Contractor as the named insured and Owner as additional insureds. All Builder's Risk Insurance proceeds shall be paid directly to the Contractor.

D. RESPONSIBLE COMPANIES. All insurance required by any provision of this Exhibit shall be in such form and shall be issued by such responsible companies licensed and authorized to do business in the State of Texas as are acceptable to Contractor. Any insurance company rated at least "A" as to management and at least "Class XII" as to financial strength in the latest addition of Best's Insurance Guide, published by Alfred M. Best Co., Inc., 75 Fulton Street, New York, New York (or any successor publication of comparable standing) shall be deemed a responsible company and acceptable to Contractor.

E. COPIES. Prior to commencement of the Work, Contractor shall furnish insurance certificates evidencing the coverages required under this Exhibit to Owner, which shall clearly indicate that the insurance required to be obtained hereunder has been obtained in the type, amount and classification as herein required. Owner shall have the right, upon prior notice and during business hours, to review certified true copies of the insurance policies maintained pursuant to this Exhibit.

F. PERFORMANCE BOND AND PAYMENT BOND. Contractor shall furnish a payment bond with good and sufficient surety or sureties payable to Owner and intended for the use and protection of all Trade Contractors and all persons supplying labor, materials, machinery, and equipment in the prosecution of the Construction Work. Contractor shall also provide a performance bond with good and sufficient surety or sureties for the faithful performance of the Agreement and indemnification of Owner for damages occasioned by a failure to perform the Construction Work or for failure to perform the Construction Work within the prescribed time. Such bond shall be payable to, in favor of, and for the protection of Owner.

1. The surety must be one that is licensed to do business in the State of Texas, and must be acceptable to Owner. Each bond shall be in an amount equal to 100% of the Contract Lump Sum.

2. Bond Requirements. The performance bond and payment bond shall identify the Principal (Contractor) and Surety with Owner. The Principal and Surety shall be identified by their full legal names, addresses, full telephone numbers, and legal status of the parties (i.e., sole proprietorship, general partnership, joint venture, unincorporated association, limited partnership, corporation (general or professional), etc.). The identification of Owner will be for informational purposes only. The Principal and the Surety must separately sign the bond. The parties executing the bond should indicate their companies, print their names and titles, and impress the corporate seals, if any. The bonds must be payable to Owner, and shall be delivered to the Owner's Representative within thirty (30) calendar days after execution of this Agreement. The performance bond must clearly and prominently display on the bond or on an attachment to the bond the name, mailing address, physical address, and telephone number, including the area code, of the surety company to which any notice of claim should be sent, or the toll-free telephone number maintained by the Texas Department of Insurance under §§521.051 - 521.056 of the TEXAS INSURANCE CODE, and a statement that the address of the surety company to which any notice of claim should be sent may be obtained from the Texas Department of Insurance by calling the toll-free telephone number.

3. Surety Companies. Any performance bond obtained hereunder must be executed by a duly authorized Surety company satisfactory to Owner, which in any event, must be a surety company listed in "Circular 570 Surety Companies Acceptable on Federal Bonds published in the Federal Register, U.S. Department of the Treasury" and authorized to do business in the State of Texas in accordance with Chapter 3503 of the TEXAS INSURANCE CODE. No surety will be accepted by Owner who is now in default or delinquent on any bonds or who is interested in any litigation against Owner. Each Surety shall designate an agent resident in the State of Texas to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of such suretyship.

EXHIBIT G

APPLICATION AND CERTIFICATE FOR PAYMENT				AIA DOCUMENT G702																																	
TO (OWNER): Fort Bend County 301 Jackson Richmond, TX. 77469 Attn: Don Brady		PROJECT: ARCHITECT:		APPLICATION NO: PERIOD FROM: 01/01/10 PERIOD TO: 01/31/10 DISTRIBUTION TO: <input checked="" type="checkbox"/> OWNER <input checked="" type="checkbox"/> ARCHITECT <input checked="" type="checkbox"/> CONTRACTOR <input type="checkbox"/> <input type="checkbox"/>																																	
FROM: CONTRACT FOR:		TURNER PROJECT NO: 1367800																																			
CONTRACTOR'S APPLICATION FOR PAYMENT																																					
Application is made for Payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703, is attached.																																					
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="4" style="text-align: center;">CHANGE ORDER SUMMARY</th> </tr> <tr> <th style="width: 40%;">CHANGE ORDERS FROM PREVIOUS MONTHS</th> <th style="width: 20%;">ADDITIONS</th> <th style="width: 20%;">DEDUCTIONS</th> <th style="width: 20%;"></th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">TOTAL</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Approved this Month</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Number</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Date</td> <td></td> <td></td> <td></td> </tr> <tr> <td colspan="2" style="text-align: right;">TOTALS</td> <td style="text-align: center;">0.00</td> <td style="text-align: center;">0.00</td> </tr> <tr> <td colspan="2" style="text-align: right;">NET CHANGE</td> <td style="text-align: center;">0.00</td> <td style="text-align: center;">0.00</td> </tr> </tbody> </table>						CHANGE ORDER SUMMARY				CHANGE ORDERS FROM PREVIOUS MONTHS	ADDITIONS	DEDUCTIONS		TOTAL				Approved this Month				Number				Date				TOTALS		0.00	0.00	NET CHANGE		0.00	0.00
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Number																																					
Date																																					
TOTALS		0.00	0.00																																		
NET CHANGE		0.00	0.00																																		
1. ORIGINAL CONTRACT SUM..... \$ 0.00 2. Net change by Change Orders..... \$ 0.00 3. CONTRACT SUM TO DATE (LINE 1 + 2)..... \$ 0.00 4. TOTAL COMPLETED & STORED TO DATE..... \$ 0.00 (Column G on G703) 5. RETAINAGE: <table style="width: 100%;"> <tr> <td style="width: 50%;">a. 10 % of Completed Work (Column D + E on G703)</td> <td style="width: 50%; text-align: right;">0.00</td> </tr> <tr> <td>b. 0% of Stored Material Total Retainage (Line 5a + 5b or Total in Column I of G703).....</td> <td style="text-align: right;">\$ 0.00</td> </tr> </table>						a. 10 % of Completed Work (Column D + E on G703)	0.00	b. 0% of Stored Material Total Retainage (Line 5a + 5b or Total in Column I of G703).....	\$ 0.00																												
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b. 0% of Stored Material Total Retainage (Line 5a + 5b or Total in Column I of G703).....	\$ 0.00																																				
6. TOTAL EARNED LESS RETAINAGE..... \$ 0.00 (Line 4 less Line 5 Total) 7. LESS PREVIOUS CERTIFICATES FOR PAYMENT..... \$ 0.00 (Line 6 from Previous Certificate) 8. CURRENT PAYMENT DUE..... \$ 0.00 9. BALANCE TO FINISH, PLUS RETAINAGE..... \$ 0.00 (Line 3 less Line 6)																																					
The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.																																					
CONTRACTOR: TURNER CONSTRUCTION COMPANY By: _____ Date: _____																																					
ARCHITECT'S CERTIFICATE FOR PAYMENT In accordance with the Contract Documents, based on on-site observations and the data comprising the above application, the Architect certifies to the Owner that to the																																					
AMOUNT CERTIFIED..... \$ (Attach explanation if amount certified differs from the amount applied for.) ARCHITECT: _____ By: _____ Date: _____																																					

AIA DOCUMENT G702

PROJECT:

APPLICATION NO: _____ DISTRIBUTION TO: _____

PERIOD FROM: 01/01/10
PERIOD TO: 01/31/10

☒ OWNER☒ ARCHITECT

FROM:

ARCHITECT:

☒ CONTRACTOR

111

TURNER PROJECT NO: 1367800

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for Payment, as shown below, in connection with the Contract.
Continuation Sheet, AIA Document G703, is attached.

[illegible]

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

a. 10 % of Completed Work
(Column D+E on G703)

0.00

b. 0% of Stored Material

Total Retainage (Line 5a + 5b or

Total in Column I of G703) \$

5. TOTAL EARNED LESS RETAINAGE..... \$ 0.00

(Line 4 less Line 5 Total)

7. LESS PREVIOUS CERTIFICATES FOR PAYMENT \$ 0.00

(Line 6 from Previous Certificate)

8. CURRENT PAYMENT DUE..... \$ 0.00

9 BALANCE TO FINISH PIUS RETAINAGE..... \$

(9) $\text{val} \in \text{val} \text{ } \{ \text{val} \}$

STATE OF TEXAS

CITY OF: DALLAS

CONTRACTOR: TURNER CONSTRUCTION COMPANY

Subscribed and sworn before me on this _____ day of _____ 2009

By:

Date:

ARCHITECT'S CERTIFICATE FOR PAYMENT

AMOUNT CERTIFIED..... \$

(Attach explanation if amount certified differs from the amount applied for.)

ARCHITECT:

By: _____ Date: _____

Date:

This certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

EXHIBIT H

**CONTRACTOR & SUBCONTRACTOR AFFIDAVIT, LIEN WAIVER AND
RELEASE (PARTIAL)**

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF FORT BEND §

Contractor/Subcontractor:
Owner: Fort Bend County, Texas
Owner Representative: Fort Bend County Director
 of Facilities Management & Planning

Architect: _____
Contractor: _____
Project: _____
Construction Agreement: Construction Agreement dated _____,
 _____, between Owner and Contractor

Property: _____

BEFORE ME, the undersigned Notary Public, on this day appeared Contractor/Subcontractor, acting by and through , its duly authorized officer, personally known to me to be the person whose name is subscribed hereto, and who, after being by me first duly sworn according to law upon his/her oath did depose and state as follows:

1. Subcontractor has heretofore submitted to Contractor its Application for labor and services performed and materials supplied to the Project pursuant to the Agreement through and including _____, 201_ (the "Application Date"). Subcontractor represents and certifies to Contractor and Owner that Subcontractor has received the amount stated to be due in the Application for Payment (exclusive of required retainage pursuant to Exhibit D.2.2 to the Agreement or such lesser amount as may have been approved by the Owner Representative in accordance with the terms of the Agreement). Subcontractor hereby forever waives and releases any and all liens and rights or claims of liens of every kind against the Property and the Project, including but not limited to all statutory or constitutional mechanic's liens or bond claims and all contractual or tort claims that Subcontractor may be entitled to and releases Contractor and Owner and their successors and assigns from any claim, liability, or debt by reason of labor and services performed and equipment and materials furnished by Subcontractor to or for the Project through the Application Date, but not otherwise. Notwithstanding the foregoing, this document shall not operate to discharge or release Subcontractor's right to receive payment of required retainage held pursuant to Exhibit D.2.2 to the Agreement.

2. Subcontractor further represents and warrants that is has not assigned any interest in any claims to any other person or entity, that is has paid all debts related to its work at the Property such that there exists no other claim by, through or under Subcontractor, and

that it is entitled to no other claims against the Owner or Contractor and Property through the date of noted above.

3. For and in consideration of _____ Dollars (\$_____) and the payment of the sums due to Subcontractor as set forth above, Subcontractor hereby agrees to indemnify and hold harmless Contractor and Owner, their successors and assigns, from and against any and all losses, costs, liabilities, judgments, damages and expenses (including, without limitation, attorneys' fees) incurred as a result of any claim, demand, suit, action, proceeding or cause of action brought by or instituted on account of any party for sums due to such party on account of furnishing labor, services, equipment, rentals or materials to or for the Project and by, through or under Subcontractor through the Application Date, but not otherwise.

IN WITNESS WHEREOF, the Subcontractor has by its duly authorized representative set his hand and seal thereto this _____ day of _____, 201__.

By: _____
Name: _____
Title: _____

THE STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

This instrument was acknowledged before me on the _____ day of _____, 201__, by _____, _____ of _____, a _____ corporation, on behalf of such corporation.

[Stamp or Seal]

Notary Public in and for the State of Texas

**CONTRACTOR & SUBCONTRACTOR AFFIDAVIT, LIEN WAIVER AND
RELEASE (FULL)**

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF FORT BEND §

Contractor/Subcontractor:
Owner: Fort Bend County, Texas
Owner Representative: Fort Bend County Director
 of Facilities Management & Planning

Architect: _____
Contractor: _____
Project: _____
Construction Agreement: Construction Agreement dated _____,
 _____, between Owner and Contractor

Property: _____

BEFORE ME, the undersigned Notary Public, on this day appeared Contractor/Subcontractor, acting by and through , its duly authorized officer, personally known to me to be the person whose name is subscribed hereto, and who, after being by me first duly sworn according to law upon his/her oath did depose and state as follows:

1. Subcontractor has heretofore submitted to Contractor its Application for for labor and services performed and materials supplied to the Project pursuant to the Agreement through and including _____, 201_ (the "Application Date"). Subcontractor represents and certifies to Contractor and Owner that Subcontractor has received the amount stated to be due in the Application for Payment (or such lesser amount as may have been approved by the Owner Representative in accordance with the terms of the Agreement). Subcontractor hereby forever waives and releases any and all liens and rights or claims of liens of every kind against the Property and the Project, including but not limited to all statutory or constitutional mechanic's liens or bond claims and all contractual or tort claims that Subcontractor may be entitled to and releases Contractor and Owner and their successors and assigns from any claim, liability, or debt by reason of labor and services performed and equipment and materials furnished by Subcontractor to or for the Project through the Application Date, but not otherwise. Notwithstanding the foregoing, this document shall not operate to discharge or release Subcontractor's right to receive payment of required retainage held pursuant to Exhibit D.2.2 to the Agreement.
2. Subcontractor further represents and warrants that is has not assigned any interest in any claims to any other person or entity, that is has paid all debts related to its work at the Property such that there exists no other claim by, through or under Subcontractor, and that it is entitled to no other claims against the Owner or Contractor and Property through the date of noted above.

3. For and in consideration of _____ Dollars (\$_____) and the payment of the sums due to Subcontractor as set forth above, Subcontractor hereby agrees to indemnify and hold harmless Contractor and Owner, their successors and assigns, from and against any and all losses, costs, liabilities, judgments, damages and expenses (including, without limitation, attorneys' fees) incurred as a result of any claim, demand, suit, action, proceeding or cause of action brought by or instituted on account of any party for sums due to such party on account of furnishing labor, services, equipment, rentals or materials to or for the Project and by, through or under Subcontractor through the Application Date, but not otherwise.

IN WITNESS WHEREOF, the Subcontractor has by its duly authorized representative set his hand and seal thereto this _____ day of _____, 201__.

By: _____
Name: _____
Title: _____

THE STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

This instrument was acknowledged before me on the _____ day of _____, 201__, by _____, _____ of _____, a _____ corporation, on behalf of such corporation.

[Stamp or Seal]

Notary Public in and for the State of Texas

Exhibit I

GROUND LEASE AGREEMENT BETWEEN FORT BEND COUNTY AND THE UNIVERSITY OF HOUSTON SYSTEM

This Ground Lease Agreement (this "Ground Lease"), fully executed as of Oct 2, 2009, by and between the UNIVERSITY OF HOUSTON SYSTEM, a system of public institutions of higher education and agency for the State of Texas under Chapter 111.20 of the Texas Education Code ("Lessor" or "UHS") and FORT BEND COUNTY, TEXAS, a governmental subdivision of the State of Texas ("Lessee")(collectively, the "Parties").

RECITALS

WHEREAS, the Parties have discussed mutual goals regarding the construction and operation of a 40,000 square foot library located at the University of Houston System-Sugar Land campus (the "Library"); and

WHEREAS, the Parties desire to construct and operate the Library on the University of Houston System-Sugar Land campus ("UHSSL"); and

WHEREAS, Lessor has agreed to enter into this Ground Lease whereby Lessor will lease to Lessee a tract of approximately 3.39 acres of land on the UHSSL, and Lessee will develop, construct, operate, and use improvements on such land for use by students, faculty and staff of UHS for higher educational purposes and the residents of Fort Bend County, and such other persons as the Parties may agree, subject to the terms stated below and in the Operations Agreement to be negotiated by the Parties; and

WHEREAS, the Board of Regents of Lessor and the Commissioners Court of Lessee have approved execution of this Ground Lease; and

WHEREAS, the Parties believe that the interest of Fort Bend County residents and the Lessor's educational purpose can be best served by the joint construction and Lessee's operation of the Library; and

WHEREAS, Lessor hereby recognizes and finds that (1) the rent to be paid by Lessee; (2) the value derived from Lessee's payment of its share of the construction costs, its payment for the operation and maintenance of the Library, and (3) the residual value of the Library at the conclusion of the initial term or any extension term of the Ground Lease accruing to Lessor constitute fair and equitable consideration for the conveyance of the leasehold interests set forth in this Ground Lease;

NOW, THEREFORE, in consideration of the mutual covenants, conditions and agreements which follow, the Parties hereby agree as follows:

1. **Definitions.** The following terms as used in this Ground Lease, shall have the following meanings, unless the context indicates otherwise:

a. ***"Applicable Laws"*** means all federal and state statutes, acts, ordinances, rules, regulations, permits, licenses in effect during the initial term or any extension term of this Ground Lease that may be applicable to the Library or any aspect of the Library, including the planning, design, engineering, construction, development, maintenance, operations, management and use of the Library. Applicable Laws also means all other laws referenced throughout this Ground Lease.

b. ***"Approved Plans"*** means the plans, site plans, construction drawings and specifications approved by the Parties.

c. ***"Commencement Date"*** means the date this Ground Lease has been fully executed by the Parties or upon receipt of written notification from the Texas Higher Education Coordinating Board ("THECB") of approval of this transaction, whichever date is later. A copy of the THECB's approval shall be annexed to this Ground Lease as Exhibit A. In the event the THECB fails to approve this transaction by the close of business on October 30, 2009, Lessee may terminate this Ground Lease upon written notice to Lessor.

d. ***"Commencement of Construction"*** means the date on which excavation or foundation work is begun for the Library.

e. ***"Construction Standard"*** shall mean performance of all planning, design, and construction activities in a diligent and careful manner with the quality of services at least equal to the quality of services performed and practiced by Fort Bend County, as of the date of this Ground Lease, in the planning, design and construction of its library system.

f. ***"Contracts"*** shall mean any and all contracts and agreements entered into or to be executed by Lessee in connection with the performance of any of its obligations under this Ground Lease and the Operations Agreement relating to the planning, design, engineering, construction, equipping, furnishing, fixtures, management, operation, maintenance, and use of the Library.

g. ***"Conveyance Act"*** means the Act of the 75th Texas Legislature, R.S., Chapter 1243, 1997 Tex. Gen. Laws 1243 authorizing the conveyance of the University Tract from the State of Texas to the Lessor.

h. ***"Date of Opening"*** means the date the Library is opened for occupancy or use.

i. ***"Facility Equipment"*** means all moveable furniture, furnishings, equipment, machinery, telecommunications and computer equipment, books and other personal property owned by Lessee and used in connection with the Library.

j. *Intentionally Deleted.*

k. ***"Improvements"*** means all buildings, structures, appurtenant facilities or utilities located on the Premises during the initial lease term and any extension term of the Ground Lease, including the Library.

l. **"Lease Term"** means the initial term and/or any extension term of this Ground Lease.

m. **"Library"** means the facility and directly associated Infrastructure, as defined in Paragraph 11(b) of this Ground Lease, or any substitute facility approved in writing by designated authorized representatives of both parties, to be constructed on the Premises pursuant to this Ground Lease and in accordance with applicable law and University policy.

n. *Intentionally Deleted*

o. **"Maintenance"** means all actions required to keep the Premises in a usable condition and/or in good appearance, or to prevent deterioration. **"Maintenance"** includes, but is not limited to, major repairs to and/or replacement of the roof, electrical, plumbing, mechanical, heating, air conditioning, and other systems, repair and replacement of any fixed equipment or structural feature, or other structural items, alterations or modifications required to comply with any governmentally imposed laws and/or regulations and/or as required for health and safety.

p. **"Operations Agreement"** means the agreement between the Parties relating to the use, operations, and management of the Library to be negotiated between the Parties.

q. **"Permitted Encumbrances"** means, as of any particular time, (i) liens for *ad valorem* taxes, special assessments, and other charges not then delinquent or for taxes, assessments, and other charges being contested in accordance with the terms of this Ground Lease, (ii) currently existing utility, access, and other easements and rights of way, restrictions, and exceptions, (iii) inchoate mechanics' and materialmen's liens that arise by operation of law, but that have not been perfected by the required filing of record, for work done or materials delivered after the date of recording this Ground Lease, (iv) the State Conditions, and (v) any additional exceptions or encumbrances created or consented to by Lessor.

r. **"Premises"** means the approximate 3.39 acres located in Fort Bend County, Texas and leased pursuant to this Ground Lease as more particularly described and depicted in the attached Exhibit B (to be attached following execution with both parties' approval).

s. **"Project Costs"** shall mean, except as otherwise set forth in this Ground Lease or other Contracts between the Parties, all costs of every nature necessary to acquire and perform the Work and to otherwise plan, design, construct, and initially equip, fixture and furnish the Library in compliance in all material respects with the Approved Plans, Applicable Laws, this Ground Lease, the Operating Agreement, and the other Contracts, including the costs of all permits, licenses, etc. relating to the design, construction, and initial equipping of the Library. Project Costs may also include the demolition, design and construction of parking, landscaping, driveways and access areas located on the Site, and to the extent set out in the Approved Plans, on easements benefitting the Library. Lessor's share of Project Costs shall in all instances be subject to a cap of \$1.5 million.

t. **"State Deed"** means the deed conveying the University Tract from the State of Texas to the Lessor pursuant to the Conveyance Act.

u. **"State Conditions"** means the requirements imposed in the Conveyance Act and the State Deed that the University Tract (including the Premises) be used for higher educational purposes.

v. **"Substantial Change"** shall mean: any change in the Approved Plans which will materially alter: (1) Lessor's use of the Library; (2) the protocol and procedures established in accordance with Paragraph 12.h of this Ground Lease; and/or (3) the exterior of any Improvements.

w. **"Work"** shall mean the total construction and related services required to be provided by a contractor for the construction and completion of the Library or component thereof in accordance with the Contract Documents. The term "Work" includes all labor, materials, and services necessary to produce the construction and completion of the Library, and the performance of any other professional services in accordance with agreements relating to the planning, design, engineering, construction, equipping and furnishing of the Library.

2. **Leased Premises; Term.** (a) **Initial Term.** In consideration of the rents, covenants, agreements, and conditions set forth between the Parties in this Ground Lease, Lessor does hereby lease to Lessee the approximately 3.39 acre Premises, more particularly described and depicted in Exhibit B. The term of the Ground Lease shall commence on the Commencement Date and the initial term shall expire at 12:00 midnight on the 50th anniversary date of the Commencement Date (the "Initial Term").

(b) **Renewal and Extension of Ground Lease.** Provided Lessee is not in default beyond the expiration of any applicable cure period expressly granted to Lessee in this Ground Lease, the Ground Lease will be renewable for up to five (5) additional ten (10) year periods upon mutual written agreement of the Parties. The Parties' mutual written agreement shall be executed by the appropriate individuals with authority to so bind each of the Parties at least one hundred eighty (180) days prior to the expiration of the Lease Term. Any renewal of this Ground Lease shall be upon terms and conditions as agreed to and appropriate, including but not limited to, lease rates and other costs and expenses for which Lessee is obligated. Nothing in this Paragraph shall prevent either Lessor or Lessee from deciding to not extend the Ground Lease beyond the initial lease term or any extension term.

(c) **Reversion of Library.** Except as may be provided in the Operations Agreement, and subject to Paragraph 29 of this Ground Lease or any further agreement of the Parties executed by their respective legally designated representatives, the title to all Improvements and Facility Equipment shall be vested in Lessee until the termination of this Ground Lease as provided in this Ground Lease, at which time all title to and ownership of the Library shall automatically and immediately vest (without the necessity of any further action being taken by Lessee or Lessor or any instrument being executed and delivered by Lessee to Lessor) in Lessor. The Premises, excluding the Facility Equipment, shall thereafter constitute and belong to and be the absolute property of Lessor or Lessor's successors and assigns, without further act or conveyance, and without liability to make such compensation to Lessee or to anyone whomsoever, and free and discharged from all and every lien, encumbrance, claim and charge of any character created or attempted to be created by Lessee at any time.

(d) Unless the Library is demolished in accordance with Paragraph 15, Lessee shall, at the expiration or termination of the Lease Term, quit and surrender the Premises in good order and condition, ordinary wear and tear and casualty excepted. Lessee shall surrender to the Lessor all keys used in connection with the Premises.

3. **Rent.** (a) *Initial Term Rent.* Lessee shall pay Lessor rental payments of \$1.00 (one dollar and xx cents) per year throughout the Initial Term of the Ground Lease, beginning upon the Effective Date of this Ground Lease. The rental of Fifty Dollars (\$50.00) shall be payable in advance on the first day of the Lease Term without notice or demand and without setoff.

(b) Lessee shall pay all rents and other charges owed to Lessor under the Ground Lease to the Lessor at the address set forth in Paragraph 43 of this Ground Lease or to such other individual and at such other place as may be designated by a legally authorized representative of Lessor.

(c) *Extension Term Rent.* Within 365 days of any Extension Term, the Parties shall determine any additional rent due to Lessor from Lessee during any Extension Term, the timing of rental payments, and any late charges associated with delayed payment, and other terms relating to rent, which shall be set forth in a writing signed by authorized representatives of the Parties.

4. **Other Costs and Expenses – Pro Rata Share**

(a) The Parties agree that the Library shall be designed to be an approximately 40,193 square foot building. The standard square footage of a Fort Bend County Public Library is 35,000 square feet. Therefore, approximately 5,193 square feet of the Library is to be associated for Lessor's use. A conceptual drawing of the Library is attached as Exhibit C.

(b) Except as specifically stated elsewhere in this Ground Lease or in the Operations Agreement, the Parties intend to share the Project Costs on a *pro rata* basis, as follows: Lessee's share of such costs will be a percentage determined by dividing the 35,000 square feet County standard by 40,193. Lessor shall be responsible for Project Costs associated with 5,193 square feet of space over the County standard for County Branch libraries. Therefore, Lessee would be responsible for 87.1% of the Project Costs and Lessor would be responsible for 12.9% of the Project Costs, plus the design revision costs of \$62,000, **subject to a cap of \$1.5 million.** As used in this Ground Lease, and except as provided in Paragraph 11(a), the term "Pro Rata Share" shall be determined after the final design of the Library is approved by the Parties and the exact square footage is determined based on the approved final design. The Parties may modify their respective Pro Rata Shares in writing, signed by the legally authorized representatives of each party.

(c) Lessor shall reimburse Lessee for the design revision costs of \$62,000.00 (sixty two thousand dollars) within 30 days of the effective date of this Ground Lease. Lessee shall pay the Project Costs as submitted and approved according to the Contracts and Lessee's standard practice with other Lessee libraries. Not later than the 15th day of the month following the month in which Project Cost payments are made, Lessee shall provide Lessor a schedule with documentation that reflects all Project Cost payments made by Lessee during such month.

Lessor shall pay to Lessee within 30 days of receiving such schedule Lessor's Pro Rata share of the Project Costs paid by Lessee.

5. **Permitted Use.** (a) Purpose of Ground Lease. Lessee shall be allowed to construct, install, operate, maintain and repair the Library and shall not be allowed to use the Premises or this Ground Lease for any other purpose other than for library purposes and to provide parking for those utilizing the Library.

(b) The Parties agree to cooperate at all times to ensure that the use of the Premises complies with the terms of the Conveyance Act and the State Deed.

6. **Acceptance and Condition of Premises.** (a) Lessee's Inspection. Lessee has had full opportunity to inspect and examine the Premises. Except for the express representations and warranties of Lessor set forth in this Ground Lease, Lessee's execution of this Ground Lease shall be conclusive evidence of Lessee's acceptance of the Premises on an "AS IS" condition.

(b) No Representations. Lessee agrees that no representations about the condition of the Premises and no promises to alter or improve the Premises have been made by Lessor or its agents to Lessee unless specifically set forth in this Ground Lease.

(c) Lessor makes no representation as to the accuracy or completeness of any information it has provided or may provide regarding the constructability or physical condition of the Premises and is not responsible for any interpretations or conclusions reached by Lessee and its contractors with respect to any such information. Lessor expressly disclaims any warranty, express or implied, under statutory or common law, or otherwise, with respect to the Premises, including its constructability, suitability, and/or physical condition.

(d) Lessor makes no implied warranties of merchantability, of fitness for a particular purpose, or of any other kind arising out of or that extend beyond this Ground Lease.

7. **Taxes and Assessments.** The Parties hereby acknowledge that given the public purposes served by the Library, *ad valorem* property taxes do not apply. Notwithstanding the foregoing, to the extent the interest or estate of Lessee created by this Ground Lease is or becomes subject to *ad valorem* property taxes, Lessee shall be responsible for and pay such taxes accordingly. Lessee further shall reimburse and hold Lessor harmless from the payment of, any and all municipal, county or state taxes assessed, if any, during the Lease Term against any leasehold interest, Facility Equipment, or personal property of any kind, owned by, or placed in or on the Premises by Lessee, and all taxes, assessments, license fees, excises, imposts, fees, and charges of every sort, nature and kind (singularly and collectively, "Taxes"), which during the Lease Term are or might be levied, assessed, charged, or imposed upon or against the Premises or the interest or estate of Lessee or Lessor in and to the Premises.

8. **Compliance with Laws.** (a) Except as set forth in Paragraph 8(d) below, Lessee shall, at the sole cost and expense of Lessee, observe and comply with all Applicable Laws, requirements, rules, regulations, orders, ordinances, codes or other requirements of the city, county, state and federal governments, or of any department, commission, or board thereof, now or hereafter in force and effect and applicable to Lessee's occupancy of the Premises (including

without limitation any and all environmental or public safety laws, statutes, codes or ordinances or any applicable requirements of the Americans with Disabilities Act), regarding the proper construction, use, maintenance, operation and occupancy of the Premises by Lessee. Lessee shall immediately notify Lessor of any violation of such laws, statutes, codes or ordinances. Lessee shall be solely responsible for payment of any fines or other penalties relating to violations of applicable state, federal or local laws, statutes, codes or ordinances. However, Lessor shall be responsible for payment of any fines or other penalties relating to violations of applicable state or federal laws that result solely from any acts or omissions of Lessor.

(b) Lessee acknowledges that Lessor has its own institutional rules and policies as well as the bylaws and policies of the UHS Board of Regents, which may be enforced and applied to any person with respect to conduct or activity(ies) outside the Library; provided, however, that such rules and policies do not unreasonably restrict access of Fort Bend County residents to the Library during the hours of operation of the Library. Lessor may authorize Lessor's officers and commissioned peace officers to enforce such rules and policies, subject to the jurisdictional limitations provided by law.

(c) Neither Lessor nor Lessee shall do, or knowingly permit anything to be done, in the Library on the Premises, which will, in any way, conflict with the Applicable Laws.

(d) Lessee shall obtain, at its expense, any required licenses, permits, insurance, and governmental approvals necessary to the performance of its obligations under this Ground Lease; provided, however, that the Parties shall pay their Pro Rata Share to the extent any such licenses, permits, insurance, and governmental approvals are related to the Project Costs of the Library. The Parties shall cooperate in the obtaining of all such required licenses, permits, and governmental approvals.

9. **Insurance.** (a) Lessee shall maintain insurance with respect to the Premises against all liabilities, casualties, risks and contingencies as is and would be customary and standard for such Premises owned and operated by a County or other political subdivision of the State of Texas. All coverages for such insurance shall be in amounts consistent with the amount of insurance maintained by Lessee for its facilities outside of the Premises and shall, at a minimum, insure against the statutory maximum liability established for Counties in the State of Texas. All such insurance policies for the Premises shall name Lessor as an additional insured. Notwithstanding the foregoing, at all times during the term of this Ground Lease, Lessee, at its sole cost and expense, shall provide and keep in full force and effect a policy of commercial general liability insurance, naming Lessor as additional insured with respect to the Premises pursuant to which the minimum limits of liability set forth under Texas state law as applicable to institutions of higher education shall apply. All such insurance shall be issued by (i) the same insurer that provides insurance for the Lessee generally or for other similar facilities owned by Lessee or (ii) an alternate insurer approved by Lessor. The Parties acknowledge that the Operating Agreement may provide different insurance requirements for the operation of the Library or use of the Premises, and in such case, the requirements of the Operating Agreement shall control over the provisions of this Paragraph. Such insurance policy shall contain a clause that the insurer will not cancel or change the insurance without first giving Lessor thirty (30) days prior-written notice. Written proof of insurance in the form of a certificate and copy of the applicable

insurance policy(ies) shall be delivered to Lessor on the Commencement Date of this Ground Lease, upon renewal of each such insurance policy, and upon renewal of the Ground Lease.

(b) In the event Lessee makes or contracts for any alterations, additions, replacements, or improvements, Lessee shall require any third party vendor or contractor performing work on the Premises to carry and maintain at no expense to Lessor the insurance coverages described below in Paragraph 13(d). Lessor and Lessee are to be named as additional insureds on all such coverages. Prior to commencement of such alterations, additions, replacements, or improvements, Lessee shall provide Lessor with a Certificate of Insurance and the endorsements to the applicable policies demonstrating that the Parties are named as additional insureds.

(c) If at any time Lessee does not comply with the provisions of this Paragraph, Lessor may, at its option and without prejudice to any other remedy it might have, cause insurance as described above to be issued, and in such event, Lessee shall pay the premium for such insurance as Additional Rent promptly upon Lessor's demand for such payment.

(d) All policies covering real or personal property which either Lessor or Lessee obtains affecting the Premises or the Library shall include a clause or endorsement, if obtainable, denying the insurer any rights of subrogation against the other party.

(e) Lessee agrees to maintain, at its expense an appropriate fire, extended coverage and malicious mischief insurance policy on the Library and Premises at full replacement value.

(f) Lessee shall, at its expense insure Lessee's furniture, furnishings, equipment, improvements, fixtures, or other Facility Equipment located in or on the Premises under a standard fire and extended coverage insurance policy providing adequate coverage to replace such property. Lessee acknowledges that Lessor shall not be responsible for carrying insurance of any kind on Lessee's furniture and furnishings or its equipment, improvements, fixtures or other Facility Equipment and that Lessor shall not be obligated to repair or replace the same in the event of a fire or other casualty affecting the Premises.

10. Costs for Preliminary Planning, Programming, and Construction of Roads. Lessee will be solely responsible for costs associated with: (a) preliminary planning and programming; (b) to the extent applicable, construction of any roads for use by the contractor; and (c) preliminary dirt work to raise site elevation of the Library as necessary.

11. Architectural Design of the Library. (a) Lessee has engaged Bailey Architects, an architectural firm (the "Architect") to proceed with the design of the Library. The Associate Vice Chancellor of UHSSL, or his delegate, and Lessee's Director of Facilities, Management and Planning, or his delegate, shall attend any meetings with the Architect to discuss the design of the Library. A copy of the final design, and any subsequent design change to the exterior of the Library, or any Substantial Change shall be presented to each of the Parties for approval. If the final design results in a smaller Library, then the Pro Rata Share to be paid by Lessor for design

shall not be less than 12.9% subject to a cap of \$1.5 million. If the final design results in a larger library, then the Pro Rata Share to be paid by Lessor for design shall be determined in accordance with the formula described in Paragraph 4 of this Ground Lease, subject to a cap of \$1.5 million. Lessor acknowledges its responsibility to pay Lessee an architectural redesign cost of \$62,000.00, which is currently due and owing.

(b) Infrastructure issues involving the Premises shall be included as part of the design process. "**Infrastructure**" means, collectively, access to UHSSL and the Premises, and private utilities and public utilities, such as electricity, gas, telecommunications, water, wastewater and drainage. Lessee agrees and acknowledges that Infrastructure supporting the Premises shall be designed and incorporated to maintain the aesthetics of UHSSL.

(c) After the design of the Library has been developed, and prior to approval by the Parties, Lessee shall, at Lessor's request, formally present the design to Lessor's senior administrators with floor plans, elevations, renderings, and material and finish boards.

(d) Upon written approval of the final design by both Parties, Lessee shall proceed to construct the Project based on the approved design, with the costs of architectural design and construction shared according to the Pro Rata Share (as specified in Paragraphs 4 and 11).

12. Construction of the Library. (a) Within thirty business days after the written approval by the Parties of the final design of the Library, Lessee shall initiate the bid process for the construction of the Library. Lessee will select the method of awarding the construction contract for the Library and shall negotiate and enter into the agreement with the contractor. Lessee shall keep Lessor informed during this process and will provide to Lessor a copy of the executed agreement between Lessee and Contractor prior to commencement of construction.

(b) Lessee shall not construct or cause to be constructed any Improvements on the Premises, other than the Library, without Lessor's prior written consent.

(c) Lessor will provide Lessee with easements and access rights necessary to provide the Library with necessary utilities, including electrical service, sanitary and storm drainage, water, data and telephone services.

(d) As Project Costs, Lessee shall furnish all supervision, tools, implements, machinery, labor, materials and accessories such as are necessary and proper for the construction of the Library, shall pay all permit and license fees and shall construct, build, and complete the Library in a good, substantial and workmanlike manner, in accordance with the Construction Standard, and as required by this Ground Lease, the Approved Plans, all design and construction plans and specifications, and all documents executed pursuant to this Ground Lease, any Contracts, or by written agreement between the Parties.

(e) Prior to Construction, within ten (10) business days after receipt of the bid tab or cost estimate from the contractor, Lessee shall send Lessor a detailed summary of the estimated cost to construct the Library. Such summary shall include all known and estimated construction-related costs including but not limited to estimated construction amount, fees for professional services (as defined in the Texas Government Code), testing, and utility or tap connection fees.

The summary shall also specify the estimated Pro Rata Share of each of the Parties in both dollar amounts and percentages.

(f) Within ten (10) business days after Lessor receives the cost summary as provided above, Lessor shall submit any comments on the cost summary to Lessee. Lessee shall use good faith efforts to incorporate Lessor's comments into the final cost estimate. Within twenty (20) business days from receipt of Lessor's comments, Lessee shall prepare the final cost estimate and furnish a copy to Lessor.

(g) Prior to the issuance of the notice to proceed with Construction, a conference will be convened for attendance by Lessor, Lessee, the Contractor, Architect/Engineer and appropriate Subcontractors to set forth protocol and procedures relating to the operational conditions at the Premises and UHSSL, acceptable locations for laydown sites, vehicular and pedestrian access to the Premises, and other procedures so as not to interfere with, disrupt, or adversely affect Lessor's operations or those of Lessor's other licensees or invitees. Lessor shall review and approve any such protocol and procedures or modifications to such rules and procedures. The Associate Vice Chancellor of UHSSL, or his delegate, is designated as Lessor's representative for the purpose of determining and authorizing Lessor's protocol and procedures for construction and pre-construction logistics.

(h) Lessee shall execute the Construction Contract for the Library and shall issue a notice to proceed. Lessee shall provide Lessor with a copy of any pay application and related reports received under the terms of the Construction Agreement for the construction of the Library within 3 business days of receipt by Lessee. Lessee may within its discretion approve any individual change order that does not exceed \$50,000 and which does not involve a Substantial Change as defined in Paragraph 1(v). Any change order in excess of \$50,000 which will be shared pro rata between the Parties in accordance with Paragraph 4(b) of this Ground Lease, or any change order which involves a Substantial Change as defined in Paragraph 1(v) must be submitted to Lessor for written approval or other response within 5 business days of receipt. Any change order that relates exclusively to Lessor's use of the Library and which will have no material effect upon Lessee shall be at the sole cost of Lessor and subject to approval by Lessor. Any change order that relates exclusively to Lessee's use of the Library and which will have no material effect upon Lessor shall be at the sole cost of Lessee.

(i) Construction documents shall be provided to Lessor at the 50% and 90% completion stage for review and comment by Lessor. A final set of construction documents shall be provided after construction is completed.

(j) Upon completion of the construction, Lessee, upon the written request of Lessor, shall have an independent audit performed, at Lessor's cost, of the funds expended for construction of the Library. Based on said audit, Lessee shall return any pro rata cost savings to Lessor within thirty days of the submission of the audit and/or receipt of funds. If due to change orders, the costs of construction exceed the amount allocated by the Parties, Lessee shall provide Lessor with a summary of such costs and Lessor shall pay such additional amounts within thirty calendar days after receiving such summary of costs. In no event shall Lessor's payments exceed its \$1.5 million cap.

(k) Lessor shall be provided copies of payment and performance bonds in an amount equal to the contract price set forth in the Construction Contract or in accordance with Texas law.

(l) Lessee shall provide reports in writing as to the actual progress of the construction of the Library. Access to the Construction shall be provided to Lessor at reasonable times.

(m) Any agreement between Lessee and the Contractors responsible for the construction of the Library shall require the Contractors to indemnify, defend and save Lessor and Lessee harmless from any liability, loss, cost, penalty, damage or expense including attorneys' fees, which Lessor may incur as a result of any claim, damage, injury, course of action, proceeding, citations, or work stoppage arising out of or in any way connected with any alleged violation by the Contractors of any Applicable Laws, or standard, including but not limited to the Construction Standard. The Contractors shall at their own cost and expense protect their employees and other persons from risk of death, injury or bodily harm arising out of or in any way connected with their Work.

(n) The Parties acknowledge and agree that the drawings, specifications, and construction shall be provided to Lessor's State of Texas fire marshal for inspection, review and/or comment, approval, and enforcement. During construction, the fire marshal shall have the opportunity to be present during hydrotesting and other processes pertinent for the State fire marshal's purposes.

(o) In connection with the Construction Agreement and this Ground Lease, Lessee shall be responsible for implementing and monitoring the review processes utilized by Lessee in the construction of its library system to monitor construction costs and expenses. Upon reasonable notice, all accounts and records relating to the Project Costs and Lessee's construction of the Library will be open to inspections by Lessor or its designee.

(p) Lessee shall provide Lessor with a copy of as-built plans for the Library within 14 days of Lessee's receipt of the as-built plans.

13. Lessee's Construction Agreement. (a) The Construction Agreement shall provide that the Library will be planned, designed, and constructed in accordance with Schematic Drawings, attached hereto as Exhibit D.

(b) The Construction Agreement shall provide that any Substantial Change, as defined in Paragraph 1(v), is subject to Lessor's review and requires prior written approval of Lessor.

(c) The Construction Agreement shall provide that any Contractor shall perform its duties, responsibilities and obligations as to the design and construction of the Library prudently and in accordance with the Construction Standard and the applicable provisions of this Ground Lease. This Ground Lease shall be attached to the Construction Agreement.

(d) The Construction Agreement shall contain provisions requiring the General Contractor, its agents, contractors and subcontractors to (1) to indemnify and hold Lessor, its component institutions, and any of their agents, employees, officers, administrators, successors and assigns against any action for bodily injury, death or property damage sustained by the General Contractor, its agents, contractors and subcontractors, and/or any of their respective agents, employees, officers, administrators, successors and assigns, and/or any of Lessee's invitees and licensees; and (2) to maintain not less than One Million dollars (\$1,000,000) per occurrence and at least Two Million dollars (\$2,000,000) aggregate coverage in commercial general liability insurance, naming Lessor and Lessee as Additional Insureds, as well as commercially reasonable limits in other customary insurance coverages required under the State of Texas' Uniform General Conditions and those reasonably requested by Lessee. This will include Workers Compensation insurance coverage with statutory limits for the State of Texas, \$1,000,000 Employers Liability, automobile liability of \$1,000,000 per occurrence, and Umbrella Insurance with \$5,000,000 per occurrence/aggregate limit. Lessee shall provide Lessor Certificates of Insurance evidencing such coverage.

14. **Remodeling or Renovation.** (a) After completion of the Library, at least 120 days prior to undertaking any material structural alteration, renovation, remodel, or Improvement of the Library during the Lease Term, such that the alteration, renovation, remodel, or Improvement constitutes a Substantial Change, alters the exterior of the Library, or of any space that now or may hereafter be allocated specifically for Lessor's use, Lessee shall submit plans for such structural alteration, renovation, remodel, or Improvement to Lessor for Lessor's prior written approval, which shall not be unreasonably withheld.

(b) All alterations, renovations, additions, remodels, replacements, or Improvements will be accomplished using best professional practices as used in Lessee's library system, in conformity with all Applicable Laws and the Construction Standard. Lessee agrees that it will make all improvements to any portion of the Premises at its sole cost and expense unless such improvements are requested solely by Lessor for Lessor's exclusive use. Lessee agrees that should it make any alterations, renovations, additions, remodels, replacements or Improvements to any portion of the Premises, it will not be acting as agent, representative, or servant of Lessor and shall pay when due all claims for labor and material. Lessor may elect to post notices of non-responsibility on the Premises. Lessee shall in good faith consider Lessor's academic schedule when scheduling any such alterations, renovations, additions, remodels, replacements, or Improvements.

15. **Demolition.** After the initial term and at least one extended term of this Ground Lease, Lessor shall have the option to require Lessee to demolish the Improvements and clear the Premises of all rubble and debris at Lessee's sole cost and expense upon the expiration or termination of this Ground Lease. To the extent possible, at least 365 days, but no fewer than 150 days, before the termination of this Ground Lease, Lessor shall provide notice to Lessee of this requirement. Should Lessor exercise this option, Lessee shall have 150 days to comply after the termination of this Ground Lease. This provision shall survive the termination of this Ground Lease.

16. **Non-Exclusive Easement.** Lessor hereby grants to Lessee and its successors, assigns, successors-in-title, invitees, employees, and sublessees, a non-exclusive easement on, over, across, and through UHSSL for all forms of pedestrian and vehicular ingress, egress, and access between the Premises and the public streets and roadways abutting UHSSL. The non-exclusive easement granted herein shall expire automatically when this Ground Lease terminates.

17. **Services and Utilities.** (a) Lessee shall be responsible for all Basic Operating Costs, including, but not limited to, janitorial and custodial services, building maintenance, and security services within the Library, and its Pro Rata Share of the Levee Improvement Assessment imposed by the Fort Bend County Levee Improvement District No. 17. Basic Operating Costs shall include all operating and normal maintenance expenses of the Library, which shall consist of all expenditures of every kind and nature and which shall be paid by Lessee unless otherwise agreed to by the Parties in the Operating Agreement.

(b) Lessee shall be responsible for all utility bills and expenses, including, but not limited to, electricity, natural gas, and telecommunications. The connection fees for water, heat, gas, electricity, sewers and any and all other utilities used on the Premises throughout the Lease Term shall be included in the Project Costs.

(c) Lessor shall be responsible for and pay for costs associated with water, waste and trash collection excluding connection fees directly related to the Library.

18. **Responsibility for Maintenance and Repair.** (a) Except as provided in Paragraph 18b, Lessee shall be responsible for all maintenance, repair, cleaning, upkeep, and other such costs of the Library and Improvements on the Premises, including, without limitation, interior walls, floors, ceilings, heating and air conditioning, electrical and plumbing, custodial services and other mechanical operations of the Library and/or the Improvements. Lessee shall maintain the Library and Improvements in good, safe, usable, and insurable condition and repair, and not permit, commit or suffer any waste or abandonment of any of the Library. Lessee at Lessee's sole cost and expense at all times agrees to keep and maintain the Library and the Improvements in a good state of appearance and repair, with normal wear and tear. Lessee shall make all repairs, at its own cost, to the Library or any portion of the Premises for damages or injuries caused by Lessee, its agents, employees, invitees, visitors, or licensees. Lessee shall have a reasonable time to make any such repairs. Lessee's failure to maintain and repair the Library and Improvements shall constitute an event of Default.

(b) Lessor shall be responsible for maintenance, repair, cleaning, upkeep, and other such costs for the landscaping and parking lot on the Premises. Lessor shall have no other duty to repair or maintain the Premises or any other Improvements on the Premises, unless any damage necessitating any repair is caused exclusively by the negligence or misconduct of Lessor or its faculty, staff or students. To the extent the repairs are solely Lessor's responsibility, Lessee shall make such repairs, which shall be billed to and paid for, within a reasonable time, by Lessor.

19. **Use And Operation of Library and Premises.** (a) The Parties agree to negotiate the terms of any Operation Agreement or amendment to such Operations Agreement in good faith. The Operations Agreement shall set forth the Parties' agreement regarding the operation and use of the Library.

(b) The Operations Agreement shall provide at a minimum that Lessor's faculty, students, and staff will have the same access to the Library on the same terms and conditions that apply to the citizens of Fort Bend County. The Operations Agreement shall also entitle Lessor's educational partners, such as community colleges and school districts, to use the Library for academic purposes. To the extent that Lessor finances specific areas of the Library to be developed in the future, upon written agreement of the Parties, Lessor shall be entitled to control the use of those portions of the Library financed by Lessor.

(c) Subject to the terms of the Operations Agreement, Lessee shall provide staff and operate the Library in accordance with the standard rules and procedures that Lessee uses for other county libraries, including hours of operation, circulation policies and procedures and rules and regulations regarding use of meeting space. Such policies and procedures shall be made available to Lessor on a regular basis. Lessor may request, and Lessee shall in good faith agree to such request, that the Library be kept open beyond its regular hours of operation for higher educational purposes, except on official County library holidays; provided, however, that Lessor shall reimburse Lessee for the cost for the operation of the Library during those extended hour periods. Lessor shall not be responsible for any costs for staff or the operation of the Library except those associated with the extended hour periods referenced above.

(d) Lessee shall provide safety and security measures in the Library at a level not less than safety and security measures provided at other Fort Bend County libraries and in accordance with the Operations Agreement.

(e) Lessee shall be responsible for the selection of, repairs to, and the replacement of all furniture, fixtures and equipment ("FF&E") necessary for the effective operation of the Library. The Library will be designed for wireless access to the internet. Except as otherwise agreed in writing by the Parties, the initial cost of all audio-visual equipment, video-conferencing equipment, satellite access equipment, and wiring for wireless and telecommunications will be included in the FF&E as Project Costs.

(f) Collections; Circulation & Catalogs; Electronic Resources. Except as the Parties may otherwise agree in writing, Lessee shall be responsible for selecting and paying for all materials and designating quantities that will make up Lessee's Library "Opening Day Collection." Lessee shall be responsible for the acquisition (ordering) of the Library collections, including academic books, materials, prints, catalogs, periodicals and audio/visual materials, and those items generally considered as required to operate a public library (collectively, the "Collection Materials"). All Collection Materials shall be the property of Lessee and will be catalogued and classified according to Lessee's catalogue and classification system. Lessor's catalog system will be available by internet to any member of the public and may be accessed through Lessee's library website.

20. Parking. (a) Lessor shall be responsible for the operating and maintenance costs of the landscaping and parking lot on the Premises. The parking lot shall contain approximately 185 parking spaces.

(b) Unless otherwise agreed upon by the Parties, Lessee's staff and residents shall have sufficient parking to access the Library at no cost.

(c) Lessor shall have the right from time to time to establish and modify reasonable rules and regulations relating to the use of the parking areas not in conflict with Paragraph 20(b), and Lessee, its employees, agents, representatives, invitees, visitors, and licensees shall abide by such rules and regulations. Lessor shall not be assumed to be or held liable for any injury or damage resulting from violation of any parking agreement, rule, regulation or law by any other individual or entity.

21. **Signage.** Lessee may only install outside signage consistent with other outside signage utilized by Lessor and with Lessor's written approval.

22. **Use of Lessor Name and Trademarks.** Lessee shall not use the name, logo, informal seal, or other symbols and marks of Lessor, any of its universities or component programs, or any part of said names, without the written consent of the UHS Chancellor or his/her designee. Lessee shall not delegate or assign the authority to use Lessor's name or symbols to any person or entity without such prior written approval.

23. **Liens.** Notice is hereby given that Lessor shall not be liable for any labor or materials furnished to Lessee upon credit, and that no mechanic's, materialmen's, or other liens for any such labor or materials shall attach to or affect Lessor's interest in and to the Premises and/or the Library. Nothing in this Ground Lease or the Construction Agreement shall be deemed or construed in any way as constituting the consent or request of Lessor, express or implied, by inference or otherwise, to the filing of any Lien against the Premises by any contractor, subcontractor, laborer, materialman, architect, engineer, or other person for the performance of any labor or the furnishing of any materials or services for or in connection with the Premises or any part thereof. Lessee shall not create or permit to be created and shall discharge at its own cost any such lien, encumbrance, or charge caused by Lessee's acts or omissions or those of any agent or representative of Lessee that might affect Lessor's interest in the Premises.

24. **Assignment of Ground Lease.** Lessee, and its successors and assigns, shall not have the right to assign, sublease or transfer this Ground Lease or any interest in the Ground Lease or any right or privilege appurtenant to this Ground Lease or to sublease the Premises or any portion thereof, without the express written consent of Lessor signed by Lessor's legally designated representatives. Any assignment or transfer for which consent is required but which is nevertheless made without such written consent shall be void *ab initio*. Any assignment or subletting by Lessee pursuant to this Paragraph shall not release Lessee from its obligations under this Ground Lease unless Lessor, by written agreement: (i) accepts such assignment or sublease; and (ii) expressly releases Lessee from such obligations.

25. **Condemnation/Eminent Domain.** (a) *General.* The term "condemnation" as used in this Ground Lease means the taking or appropriation of property, or any interest therein, in exercise of the power or right of eminent domain or such taking for public or quasi-public use or any state of facts relating to the taking or appropriation of property which, without an actual taking or appropriation, shall result in direct or consequential damages to any portion of the Premises or the leasehold interest conveyed pursuant to this Ground Lease. The term

“condemnation” also includes, to the extent not otherwise defined in this Paragraph, a temporary taking of the Premises or any part thereof or the Improvements for a period of one year or more, and the taking of the leasehold interest created in this Ground Lease.

(b) *Total Condemnation.* If all of the Premises (or such substantial portion thereof as shall make it economically unfeasible to continue to operate the remaining portion for library purposes) is so condemned, this Ground Lease shall terminate on the date title to the Premises vests in the condemnor; provided, however, that such termination shall be without prejudice to the rights of either party to recover just and adequate compensation from any such condemnor. The termination of the Ground Lease under this Paragraph shall not vest title to the Library to Lessor as provided in Paragraph 2(c) of this Ground Lease and the Lessee will not have any demolition obligation under Paragraph 14. Any award for the land of which the Premises are a part, or any negotiated payment by private sale of the land in lieu of such award, shall constitute Lessor's property, and Lessee hereby assigns to Lessor all its right, title and interest in and to any such award or payment. Each of the Parties shall be entitled to receive and retain such separate awards and portions of lump sum awards as may be allocated to their existing respective interests in any condemnation proceedings. The termination of this Ground Lease shall not affect the rights of the respective parties to such awards.

(c) *Partial Condemnation.* In the event of a taking of less than a total taking as provided in subsection (b) above, this Ground Lease shall terminate as to the condemned portion of the Premises on the date title to the condemned portion of the Premises vests in the condemnor; provided, however, that such termination shall be without prejudice to the rights of Lessor and Lessee to recover just and adequate compensation from any such condemnor. The provisions of this Ground Lease shall remain in full force and effect as to the portion of the Premises not affected by the condemnation. If the Premises is partially condemned as provided in this subsection, the condemnation proceeds shall be paid as provided in subsection (b).

26. Estoppel Certificates. (a) Lessor and/or Lessee will execute, acknowledge and deliver to the other promptly upon request, a certificate certifying as to the following:

(i) *Validity of Lease:* that this Ground Lease is unmodified and in full force and effect (or, if there have been modifications, that this Ground Lease is in full force and effect, as modified, and stating the modifications);

(ii) *Defaults by Lessee:* that no notice has been given by Lessor to Lessee of any failure to comply under this Ground Lease that has not been cured and to the best of its knowledge and belief no Event of Default exists (or, if there has been any notice given or an Event of Default exists, describing the same).

(b) Certificates from Lessor and Lessee pertaining to the same matters may be relied upon by any prospective Leasehold Deed of Trust Trustee or by any prospective assignee of an interest under this Ground Lease or by any prospective sublessee as to all or any portion of the Premises.

27. Access to Premises. Lessor, its authorized representatives, agents, employees, and attorneys may, but shall be under no duty to, enter the Premises at reasonable times and hours to

inspect the Premises in order to determine whether Lessee is complying with its undertakings, duties, and obligations under this Ground Lease.

28. Submission of Matters to Lessor for Approval. Except as otherwise set forth in this Ground Lease, any matter which must be submitted to, consented to and/or approved in writing by Lessor or any matter which must be submitted to Lessor which may become effective if not denied by Lessor, as required under this Ground Lease, shall be submitted to Lessor by hand or mailed by United States certified or registered mail return receipt requested, to the address of Lessor designated for the giving of notice to Lessor under Paragraph 43 of this Ground Lease and shall either be approved or rejected by Lessor within 15 business days after receipt unless a shorter period of time is expressly stated elsewhere in this Ground Lease. If Lessor should fail so to approve or reject within such period, Lessor's approval shall be assumed to have been unconditionally granted and Lessee shall have the right to proceed on such matter so submitted. Lessor shall inform Lessee in writing of its rejection or approval of such submitted matter by United States certified or registered mail, return receipt requested, to the address of Lessee designated for the giving of notice to Lessee in Paragraph 43 of this Ground Lease. Any review by Lessor of any matter submitted to Lessor is for Lessor's own convenience and purpose only. By undertaking such review, Lessor does not obtain or have any liability to Lessee or any other person, including, without limitation, the insurers and lenders of Lessee.

29. Termination of Lease. (a) This Ground Lease and the tenancy created under the Ground Lease shall cease and terminate at the end of the initial Lease Term, or any renewal term, with at least 180 days written notice from either Lessor or Lessee. Any continued occupancy of the Premises by Lessee after the expiration of the Lease Term shall not operate to renew the Ground Lease.

(b) Whenever (i) a material breach of the terms and conditions of this Ground Lease has occurred; and (ii) Lessee has failed to cure such breach as further set forth in the default provisions of Paragraph 35 of this Ground Lease, Lessor may not terminate this Ground Lease until thirty (30) years have elapsed from the effective date of this Ground Lease. Prior to Lessor's ability to terminate under the circumstances described in this subsection, Lessor will be entitled to any right or remedy available to Lessor under this Ground Lease and/or now or hereafter available to Lessor at law and equity, including but not limited to specific performance and injunction and any other actual damages incurred by Lessor as a result of the material breach and/or Lessee's failure to cure such breach.

(c) After thirty (30) years from the effective date of this Ground Lease have elapsed, whenever (i) a material breach of the terms and conditions of this Ground Lease has occurred; and (ii) Lessee has failed to cure such breach as further set forth in the default provisions of Paragraph 35 of this Ground Lease, Lessor may terminate this Ground Lease in accordance with this clause, in whole, or from time to time in part, with one hundred twenty (120) days written notice to the Lessee. In such an event, Lessee will pay the rent through the entire period of actual tenancy, and Lessor also will be entitled to exercise any right or remedy available to Lessor under this Ground Lease and/or now or hereafter available to Lessor at law and equity, including but not limited to specific performance and injunction and any other actual damages incurred by Lessor as a result

of the material breach and/or an Event of Default by Lessee. However, neither Lessee nor Lessor shall be reimbursed for any anticipatory rentals, expense, or profits which have not been earned up to the date of termination.

(d) This Ground Lease may be terminated upon mutual written agreement by the Parties, executed by the appropriate individuals with authority to bind Lessor and Lessee respectively.

(e) After the expiration of the initial Lease Term and at least one Extension Term, this Ground Lease may be terminated by Lessor or Lessee at their discretion should either of them determine that the Ground Lease no longer serves a public purpose or upon a finding that the Ground Lease no longer serves Lessor's purposes or goals or meets Lessor's needs.

30. Holding Over by Lessee. Lessee shall not use or remain in possession of the Premises after the termination of this Ground Lease. Any holding over, or continued use or occupancy by Lessee after the termination of this Ground Lease, without the written consent of Lessor, shall not constitute a tenant-at-will interest in behalf of Lessee, but Lessee shall become a tenant-at-sufferance and all other expenses, obligations and payments in effect for the immediately preceding year of this Ground Lease shall be paid immediately by Lessee. There shall be no renewal whatsoever of this Ground Lease by operation of law. Nothing contained in this Ground Lease shall be construed as consent by Lessor to the occupancy or possession of the Premises by Lessee after termination of this Ground Lease. Upon the termination of this Ground Lease, Lessor shall be entitled to the benefit of all Applicable Laws, that may now or hereafter be in force, relating to the speedy recovery of the Premises held over by Lessee.

31. Lessee's Assumption of Risk: All property of Lessee kept or stored in or on the Premises shall be kept or stored at the sole risk of Lessee. Lessee hereby expressly agrees that Lessor shall not be liable or responsible in any manner for any damage or injury to the person or property of Lessee (including, but not limited to, the Premises) or the person or property of any other person or entity unless such damage or injury is a direct result of the action or inaction of Lessor.

32. Safety. (a) Neither Lessor nor Lessee shall do or permit anything to be done in any portion of the Library, or bring or keep anything therein which will, in any way, increase the rate of fire or any other insurance, casualty or otherwise, in the Library, or invalidate or conflict with the fire or other insurance policies, casualty or otherwise, in the Library.

(b) Lessor shall have the right to cause its security or police officers to patrol and police the Premises; provided, however, such right shall not be exclusive of Lessee's right to have its police officers patrol and police the Library.

33. Notice of Loss, Damage and Injury. Lessee agrees to notify Lessor immediately of any fire, accident, damage or injury occurring in any portion of the Library.

34. Total or Substantial Destruction by Fire or Other Casualty. (a) If the Library, during the Lease Term, is damaged by fire, other casualty, or any other cause whatsoever (except

condemnation), regardless of the extent of such damage or destruction, within commercially reasonable promptness following the date of such damage or destruction, Lessee shall commence repair, reconstruction or replacement of the damaged or destroyed building or improvement and prosecute the same with reasonable diligence to completion, so that the Library shall, at Lessee's sole expense, be restored to substantially the same size, function and value as existing prior to the damage; provided, however, that if any available insurance proceeds (after payment of all or any portion of such insurance proceeds) are insufficient, in Lessee's reasonable judgment, to permit restoration in accordance with the terms of this Ground Lease, or if payment of the insurance proceeds is contested or not settled promptly for any reason, the Lessor shall grant an appropriate extension of time to commence repairs to allow Lessee to obtain reasonable replacement financing or to obtain the insurance proceeds. If the fire or other casualty is a direct result of the action or inaction of Lessor then Lessor shall assist with the cost of such repair, reconstruction or replacement to the extent agreed upon in a writing signed by authorized representatives of the Parties.

(b) If the damage does not render the Library uneconomical and/or unusable and/or it is determined that the Library can be restored to substantially the same size, function and value as existing prior to the damage, Lessee shall repair the damage and restore the Library to substantially the same size, function and value as existing prior to the damage with reasonable promptness. This Ground Lease shall not be affected except that the rent payable during the period of such damage, repair, and/or restoration shall be reduced according to the degree to which and/or time period during which Lessee's use of the Library is impaired. Lessee shall not be entitled to any other compensation, reduction, or reimbursement from Lessor as a result of any damage, destruction, repair, or restoration of or to the Library unless such damage or destruction is caused solely by the negligence or inaction of Lessor. This subsection does not relieve Lessee of any liabilities, obligations, or duties specified elsewhere in this Ground Lease.

(c) In the event the damage or destruction shall be so extensive to the Library as to render it uneconomical, and/or unusable in Lessee's reasonable opinion, to restore the Library for Lessee's use as specified in this Ground Lease, or if Lessee shall in good faith be unable to obtain reasonable replacement financing to restore the Library to substantially the same size, function, and value that existed prior to the damage or obtain the insurance proceeds, Lessee may, at its option, terminate this Ground Lease upon written notice to Lessor. The terms of this Ground Lease shall then expire by lapse of time upon the tenth day after such notice is mailed, and Lessee shall thereupon vacate and surrender the Premises to Lessor. No such termination shall release Lessee from any liability to Lessor arising from such damage or from any of the obligations or duties Lessee has under this Ground Lease prior to such termination. Moreover, if such damage is due to the negligent or willful act of Lessee, or Lessee's agents, representatives, employees, invitees, visitors, or licensees, then Lessee shall be liable for the cost of all repairs and there shall be no apportionment or abatement of rent. This provision shall survive the termination of this Ground Lease.

35. **Events of Default and Remedies.** (a) **Events of Default Defined.** An "Event of Default" has occurred if Lessee shall fail to perform or cause to be performed any other term, covenant, condition, or provision hereof, and to correct such failure within thirty (30) days after written notice specifying such is given to Lessee by Lessor. In the case of any such failure that

cannot with due diligence be corrected within such thirty (30) day period, it shall not constitute an Event of Default if corrective action is instituted by Lessee within the applicable period and diligently pursued until the failure is corrected.

(b) No act or thing done by Lessor shall be deemed to be an acceptance of a surrender of the Premises or shall relieve Lessee of any of its liabilities and obligations under this Ground Lease, unless Lessor, through an authorized representative, shall execute a written release of Lessee. Lessee's liability under this Ground Lease shall not be terminated by the execution of a new lease of the Premises by Lessor. This provision shall survive the termination of this Ground Lease.

(c) Remedies. Upon the occurrence of an Event of Default, Lessor may, terminate this lease as provided in Paragraph 29 and shall have the remedies set forth below and, without limitation, all rights or remedies now or hereafter available to Lessor under the laws of the State of Texas, including, but not limited to, recovery of rent, repossession of the Premises (after thirty years from the effective date of this Ground Lease have elapsed), and damages occasioned by Lessee's default.

i. No re-entry or taking possession of the Premises by the Lessor or any other action taken by the Lessor, as a result of any default of Lessee, shall relieve Lessee of any of its liabilities and obligations under this Ground Lease whether or not the Premises are relet.

ii. In the event that Lessee materially defaults in any obligation on its part to be performed under this Ground Lease, Lessor will attempt to mitigate any damage or loss caused by Lessee's breach by using commercially reasonable means. If Lessee is in default, Lessee will be liable for the following:

- a) Any lost rent;
- b) Repairs to the Premises for use beyond normal wear and tear;
- c) All Lessor's reasonable costs associated with eviction of Lessee;
- d) All Lessor's reasonable costs associated with collection of rent such as collection fees, late charges, and returned check charges;
- e) removing any of Lessee's equipment or fixtures left on the Premises or in any Improvement;
- f) Cost to remove any trash, debris, personal property, hazardous materials, or hazardous materials left by Lessee or Lessee's agents, employees, representatives, contractors, invitees, or licensees in the Premises or Building; and/or

g) Cost to replace any unreturned keys or access devices to the Premises and/or any Improvement.

36. **Force Majeure.** If Lessor or Lessee cannot perform any of its obligations due to events beyond the control of either Lessor or Lessee, the time provided for performing such obligations shall be extended by a period of time equal to the duration of such events. Such events control include, but are not limited to, acts of God, war, civil commotion, terrorism, labor disputes, strikes, fire, flood or other casualty, shortages of labor or material, government regulation or restriction and weather conditions.

37. **Hazardous Materials.** Lessor and Lessee shall not knowingly cause or permit the escape, disposal or release of any biologically or chemically active or other hazardous substances or materials within or in the vicinity of the Premises. Neither Lessor nor Lessee shall allow the storage or use of such substances or materials in any manner within or in the vicinity of the Premises unless such storage or use is sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such substances or materials in such locations. Nor shall Lessor or Lessee allow any such materials or substances to be brought onto any portion of the Premises except to use in the ordinary course of Lessor's or Lessee's business, and then only after written notice is given to the other party of the identity of such substances or materials. Without limitation, hazardous substances and materials shall include those described in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 *et seq.*, the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 *et seq.*, any other applicable federal, state or local laws in existence during the term of this Ground Lease, and the regulations adopted under any applicable federal, state, or local laws, and/or acts. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous substances or materials with respect to the Premises, then the party responsible for any such release of hazardous substances or materials shall bear the costs of such tests and, to the extent permitted under applicable law, any damage, penalty, or liability resulting from such release.

38. **Attornment.** In the event of the exercise of any power of sale under the provisions of any mortgage or deed of trust now or hereafter encumbering the Premises, the Lessee agrees that it shall attorn to the purchaser at such sale and that it shall recognize such purchaser as the Lessor under the terms of this Ground Lease and shall continue this Ground Lease in full force and effect regardless of whether such mortgage or deed of trust was superior or subordinate to this Ground Lease.

39. **Written Approval or Agreement.** Unless other provided in this Ground Lease, in any provision of this Ground Lease requiring written notice or a statement, modification, agreement, approval or consent in writing, such writing shall be executed by authorized representatives of Lessor or Lessee and sent in accordance with Paragraphs 28 and 43 of this Ground Lease.

40. **Non-Discrimination.** Lessee agrees: (a) not to discriminate in any manner against any employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or physical or mental handicap unrelated in nature and extent so as reasonably to preclude the performance of such employment; (b) to include a provision similar

to that contained in subsection (a), above, in any subcontract it enters into except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places, available to employees and applicants for employment, notices setting forth the substance of such provision contained in subsection (a) above.

41. **Brokerage Fees.** Both parties represent that no broker was involved with or is entitled to any commission in connection with the Premises or the negotiation of this Ground Lease.

42. **Miscellaneous.**

(a) **Provisions are Binding Upon Assigns and are Real Covenants.** The Parties mutually covenant, understand and agree that each of the provisions of this Ground Lease shall apply to, extend to, be binding upon and inure to the benefit or detriment of not only the Parties, but also the legal representatives, successors and assigns of the Parties, and shall be deemed and treated as real covenants running with the Premises during the Term. Whenever a reference to the Parties is made, such reference shall be deemed to include the legal representatives, successors and assigns of such party, the same as if in each case expressed.

(b) **Applicable Law and Court Proceedings.** This Ground Lease shall be governed, construed, performed and enforced in accordance with the laws of the State of Texas (excluding principles of conflict of law). Any suit, action or proceeding against any party arising out of or relating to this Ground Lease, any transaction contemplated thereby, or any judgment entered by any court in respect of any thereof may be brought in State District Court located in Fort Bend County, Texas or Harris County, Texas.

(c) **Invalidity of Provision or Part Thereof.** In the event any provision, or any portion of any provision of this Ground Lease is held invalid, the other provisions of this Ground Lease and the remaining portion of said provision, shall not be affected thereby and shall continue in full force and effect.

(d) **Time is of the Essence.** All time limits stated in this Ground Lease are of the essence of this Ground Lease.

(e) **No Partnership or Agency.** Nothing in this Ground Lease is intended, or shall in any way be construed, so as to create any form of partnership or agency relationship between the Parties. The Parties hereby expressly disclaim any intention of any kind to create any partnership or agency relationship between themselves. Nothing in this Ground Lease shall be construed to make either party liable for any of the indebtedness of the other, except as specifically provided herein.

(f) **Recordation of Memorandum of Lease.** Lessor and Lessee will execute, seal, acknowledge and deliver simultaneously with the execution of this Ground Lease, in recordable form, a memorandum of lease setting forth the basic terms hereof and the said memorandum of lease will be recorded in the appropriate records of Fort Bend County, Texas.

(g) Counterparts. This Ground Lease may be executed simultaneously in two or more counterparts, each of which shall be deemed original and all of which, when taken together, shall constitute one in the same document. The signature of any party to any counterpart shall be deemed a signature too, and may be appended to, any other counterpart.

(h) Waiver. No waiver by Lessor of any provision of this Ground Lease shall be deemed to have been made unless expressed in writing and signed by an authorized representative of Lessor. Lessor's failure to insist, in any one or more instances, upon a strict performance of any of the covenants, terms and conditions of this Ground Lease, or to exercise any right or option contained in this Ground Lease, shall not be construed as a waiver and shall not prevent Lessor from enforcing that provision or any other provision of this Ground Lease in the future. Lessor's receipt of rent, with knowledge of the breach of any covenant, term or condition of this Ground Lease, shall not be deemed a waiver of such breach.

(i) Interpretation. The captions or headings of the sections of this Ground Lease are to assist the parties in reading this Ground Lease and are not a part of the terms or provisions of this Ground Lease. In any provision relating to the conduct, acts or omissions of Lessee, the term "Lessee" shall include Lessee's agents, employees, officers, representatives, contractors, invitees, successors, licensees, or others using the Library or Premises with Lessee's expressed or implied permission.

(j) Entire Agreement. This Ground Lease, together with all agreements between the Parties referenced in this Ground Lease, embodies the entire understanding between the Parties with respect to the Library, and there are no prior effective representations, warranties or agreements between the Parties with respect to the Library. This Agreement shall supersede and replace all previous agreements pertaining to the Library between any of the Parties. Except as stated elsewhere in this Ground Lease, this Agreement contains the entire agreement between the Parties relating to the Premises and supersedes all negotiations, understandings and agreements, written or oral, between the Parties. This Ground Lease shall not be amended or modified, and no waiver of any provision hereof shall be effective, unless set forth in a written instrument signed by authorized representatives of each of the Parties.

(k) Representations. Lessee and Lessor each represents that it has the legal authority to enter into and execute the terms of this Ground Lease and that it has funds available to provide for the construction and operation of the Library.

43. Notices. (a) Notices required or permitted to be given by any party to the other under this Ground Lease, including bills, shall be deemed to have been received by the party or entity to whom they are sent, within three (3) days after their deposit in the United States Mail, properly stamped and addressed. The Parties shall have the right from time to time to change their respective address and each shall have the right to specify as its address any other address by at least seven (7) days written notice to the other party. Notices shall be in writing and shall be mailed to the Parties at the following address:

If to Lessee, to:

Fort Bend County
Attention: County Judge
301 Jackson
Richmond, Texas 77469

Facilities Management and Planning
Don Brady, Director
1517 Eugene Heimann Circle - Suite 500
Richmond, TX 77469

With a copy to:

Fort Bend County Commissioner Precinct 4
12919 Dairy Ashford Rd, Suite 200
Sugar Land, TX 77478

If to Lessor, to:

Richard D. Phillips
Associate Vice Chancellor
University of Houston System Sugar Land
14000 University Drive
Sugar Land, Texas 77479

With a copy to:

Dona H. Cornell
VC/CP for Legal Affairs and General Counsel
University of Houston System
311 E Cullen Building
Houston, Texas 77204-2162

(b) Notwithstanding anything contained in this Ground Lease to the contrary, any notice required to be given by Lessor or Lessee shall be deemed to have been given and shall be effective as of the date such notice is received or refused, as reflected on said notice. All notices, certificates, demands, requests, or other communications made by either party to the other which are required or permitted by the provisions of this Ground Lease shall be in writing.

SIGNATURE PAGES FOLLOW

IN WITNESS WHEREOF, the Parties hereto have executed this Contract in duplicate originals, each of equal dignity, as of the date and year of the second party to sign.

Executed as of the 2nd day of October, 2009.

LESSOR:

UNIVERSITY OF HOUSTON SYSTEM

By: Renu Khator *dhc*
Name Renu Khator
Title Chancellor
Date

ATTEST:

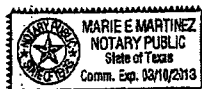
Theresa Singletary

STATE OF TEXAS §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the 2nd day of OCT, 2009 by RENU KHATOR and _____ of the University of Houston System.

Marie E. Martinez
Notary Public in and for the State of Texas

(NOTARY SEAL)



APPROVED AS TO FORM BY:

Rita She
OFFICE OF THE GENERAL COUNSEL
UNIVERSITY OF HOUSTON SYSTEMS

LESSEE:

FORT BEND COUNTY, TEXAS

Robert E. Hebert
Robert E. Hebert
County Judge

Attest:

Dianne Wilson
Dianne Wilson, County Clerk



STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

This instrument was acknowledged before me on the 8 th day of September 2009
by Robert Hebert and _____, _____ of the Fort Bend County, Texas.
County Judge

D'Neal Krusch
Notary Public in and for the State of Texas



(NOTARY SEAL)

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in an amount not to exceed \$1,500,000 to accomplish
and pay the obligation of Fort Bend County in the foregoing matter.

Robert Ed Sturdivant
Robert Ed Sturdivant, County Auditor

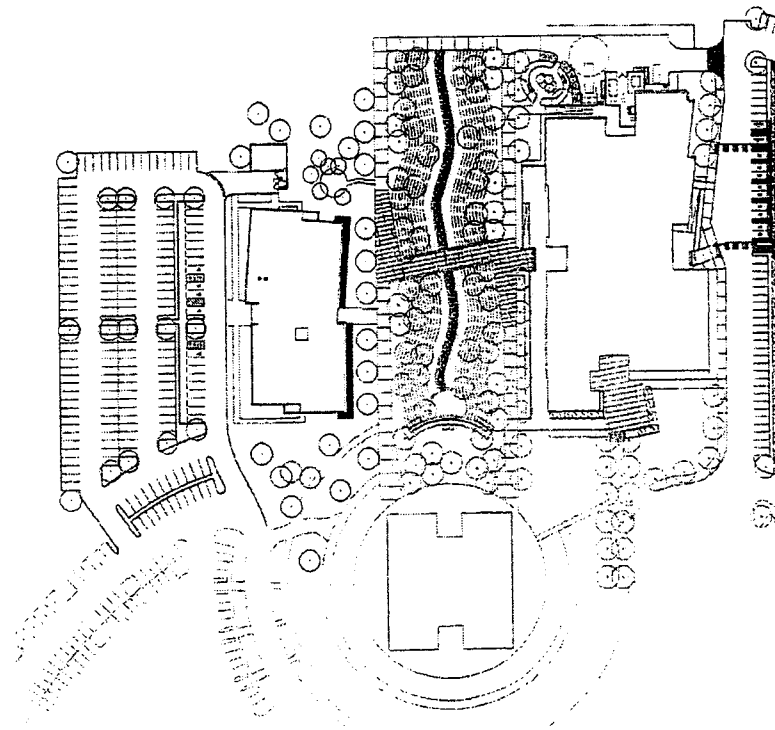
Approved As To Legal Form:

Kay Cordes 9/8/2009
Asst. County Atty. Date

Exhibit A

A copy of the THECB's approval shall be annexed to this Ground Lease as Exhibit A.

Exhibit B



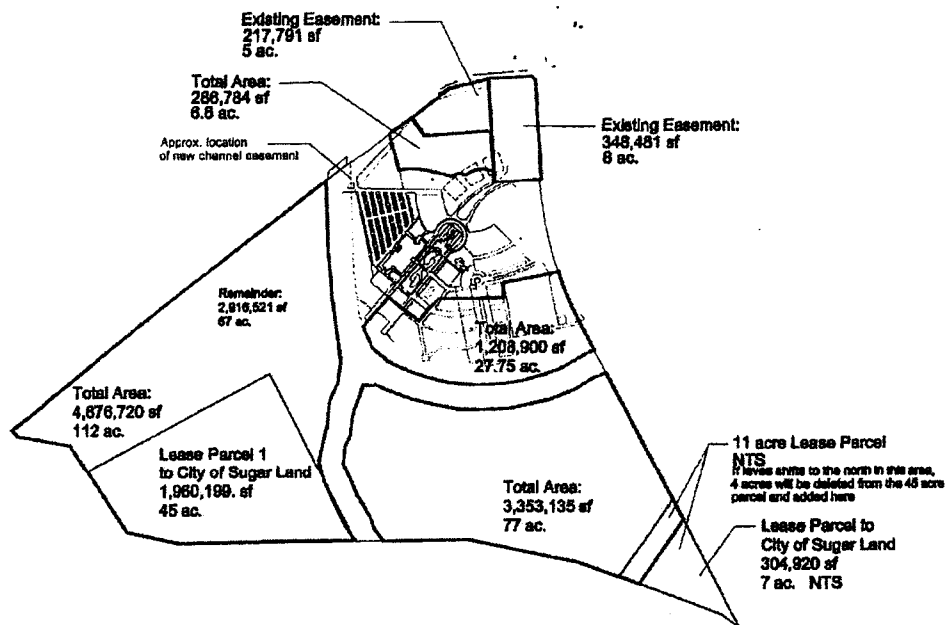
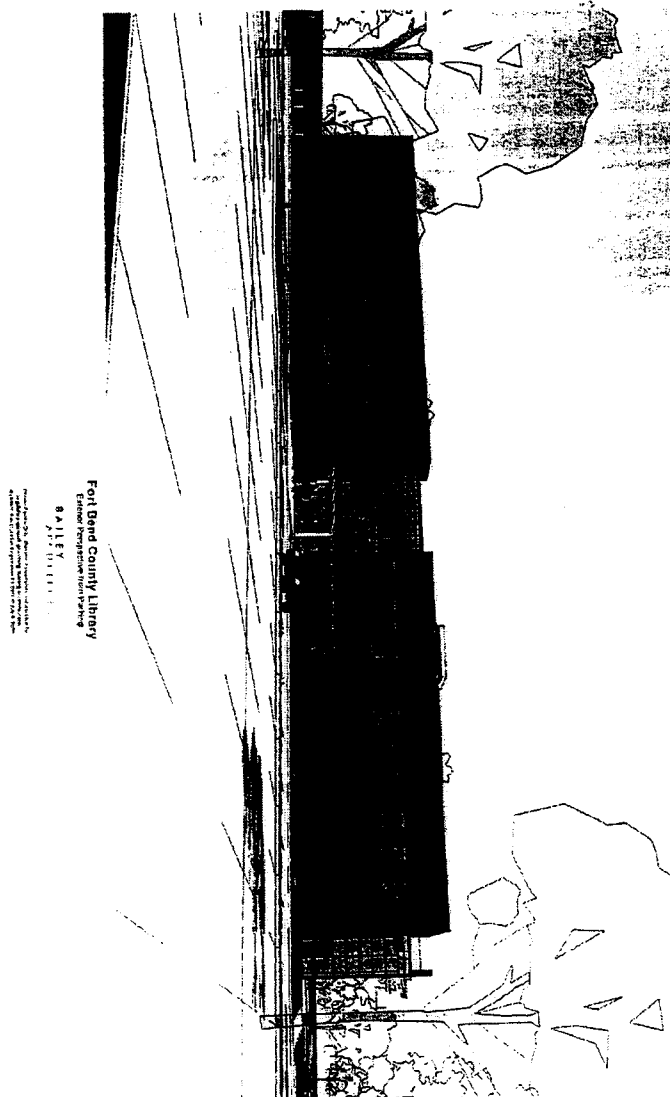


Exhibit C



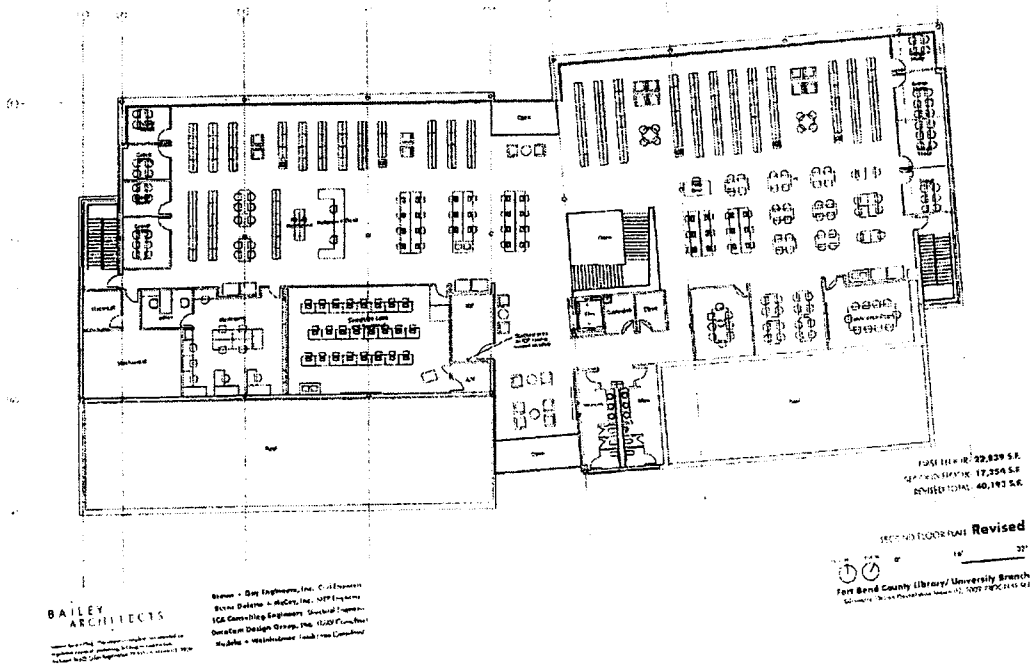
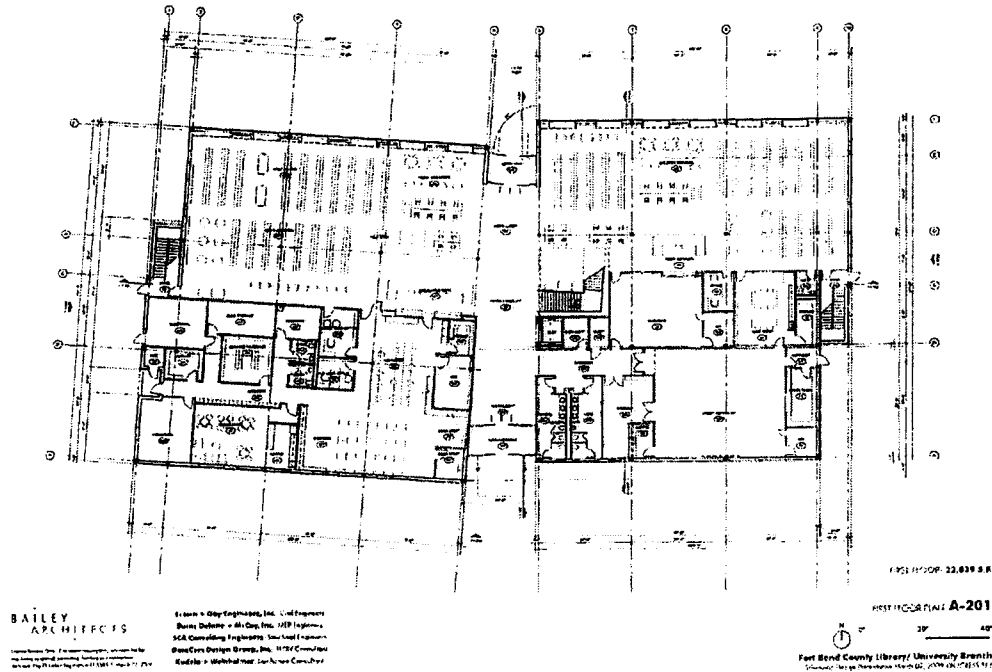
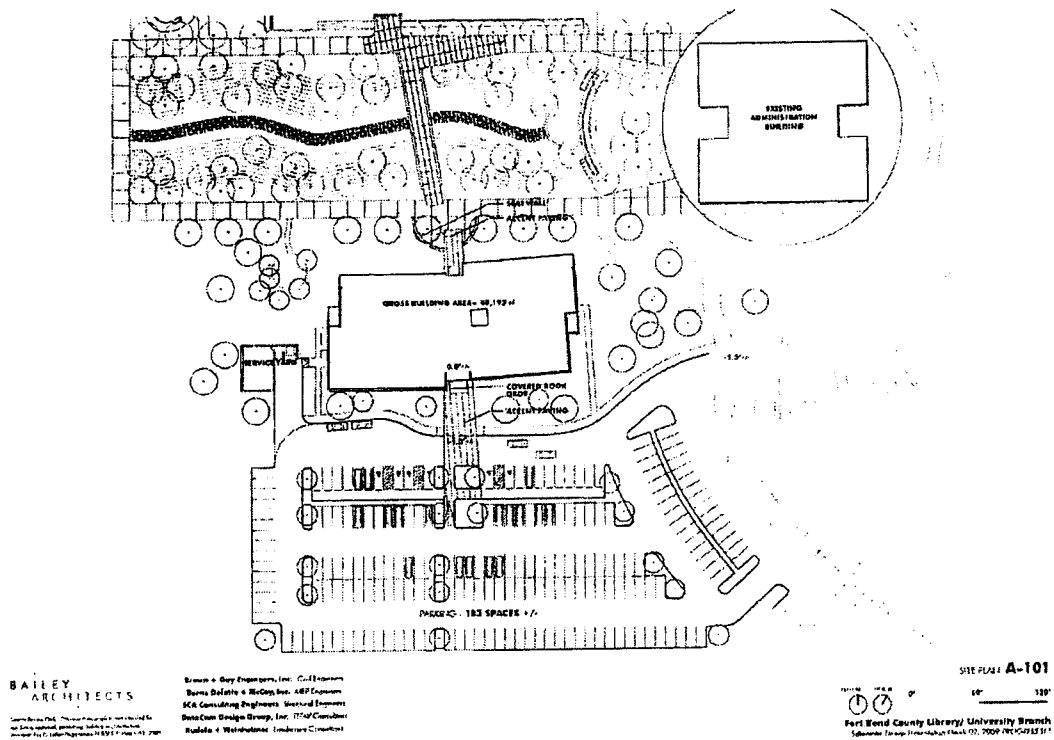
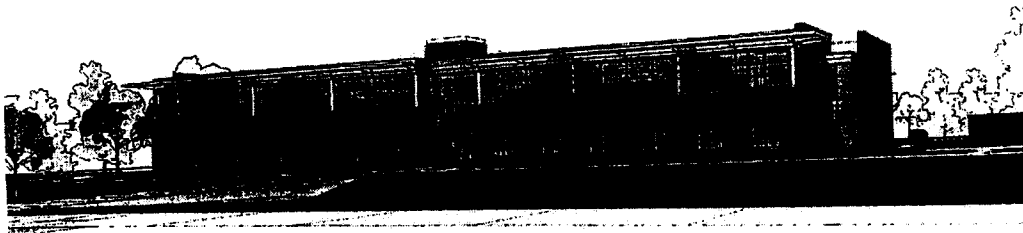


Exhibit D





UNIVERSITY OF HOUSTON SYSTEM
UNIVERSITY OF HOUSTON

Office of the General Counsel

Ruth E. Shapiro
Assistant General Counsel
Office of the General Counsel
Telephone: 713-743-9143
Fax: 713-743-9179
E-mail: rs Shapiro@uh.edu

October 5, 2009

Via First Class Mail

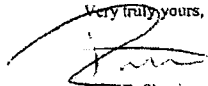
Roy L. Cordes, Jr.
County Attorney
301 Jackson Street, Suite 728
Richmond, Texas 77469-3108

Re: Fort Bend County Library Ground Lease

Dear Roy:

I enclose a fully executed original of the Ground Lease for your files. Please do not hesitate to contact me with any questions.

Very truly yours,



Ruth E. Shapiro

Enclosure

Cc: Dick Phillips (w/ enclosure)

OCT - 7 2009

Learning. Leading.

311 E. Calien Building • Houston, TX 77204-2028 • (713) 743-0949 Fax (713) 743-9179

Exhibit J
Contractor's Derivation of Contract Price



Fort Bend County Library University Branch- RFP 10-102
14000 University Blvd
Sugar Land, Texas 77479

Derivation of Contract Price

1 Base Bid	\$ 5,895,000.00
2 Eliminate stringers at raised floor	\$ (750.00)
3 Change elevator finishes from specified to TKAP plastic laminate panels	\$ (3,750.00)
4 Provide standard 430 series stainless steel ilo 300 series for elevator stainless	\$ (699.00)
5 Change Bussman elevator control module to shunt trip circuit breaker	\$ (1,000.00)
6 Delete lighting protection ground loop and install individual ground rods	\$ (8,500.00)
7 Utilize aluminum wire for feeders and wire sizes larger than #1/0	\$ (9,500.00)
8 Utilize MC cables in walls devices, however homeruns to remain in conduit	\$ (4,500.00)
9 Change minimum conduit size to 1/2" ilo of 3/4" were applicable for electrical only.	\$ (5,720.00)
10 Utilize alternate drinking electric drinking fountain in lieu of specified	\$ (1,000.00)
11 Utilize alternate Sloan Regal flush valve in lieu of Sloan Royal	\$ (500.00)
12 Delete Compressor blankets on Chillers	\$ (4,000.00)
13 Additional paving for 101 parking spots	\$ 163,749.00
14 Changes made as per City of Sugar Land comments	\$ 4,519.00
15 Owners contingency	\$ 200,000.00
16 Bond cost for owners contingency	\$ 2,020.00
TOTAL CONTRACT PRICE	\$ 6,227,369.00

EEREED

CONSTRUCTION, L.P.

New Cost

CHANGE PROPOSAL PRICING SHEET

CP#: Budget Paving
 DESCRIPTION: Additional Parking Budget
 PROJECT NAME: Fort Bend Country Library
 PROJECT NUMBER: _____
 DATE: 8/8/2010-REVISED 8/31/10

NO.	DESCRIPTION	QUANTITY		LABOR		MATERIAL		SUBCONTRACT		TOTAL
				UN.	AMOUNT	UN.	AMOUNT	UN.	AMOUNT	
	REVISED PARKING LOT COST							0.93	31855	\$31,855
	EARTHWORK	34253	SF					120.00	17040	\$17,040
	UTILITIES	142	LF					2.95	101046	\$101,046
	CONCRETE	34253	SF					25.00	2525	\$2,525
	PAVEMENT MARKINGS	101	EA					3500.00	3500	\$3,500
	ADDITIONAL LIGHTING ALLOWANCE	1	LS							

SUBTOTAL								155967	\$155,967
SALES TAX	8.25%								
WORKMENS COMP.	42%								
UMBRELLA & ADDTL. LIABILITY	0.75%								\$1,170
BUILDERS RISK	0.20%								\$314
BUILDING PERMIT									
SUBTOTAL									\$157,451
FEE	4.00%								\$6,298
TOTAL									\$163,749

333 COMMERCE GREEN BLVD PO BOX 108 SUGAR LAND, TX 77487-0108
 PHONE: (281) 933-4000 FAX: (281) 933-4882

CONSTRUCTION, L.P.

CHANGE PROPOSAL PRICING SHEET

CP#: 3

DESCRIPTION:	City of Sugar Land Comments

PROJECT NAME: FtBend County Library University Branch

PROJECT NUMBER:

DATE: August 31, 2010

[illegible]

SUBTOTAL							4307	\$4,307
SALES TAX	8.25%							
WORKMENS COMP.	42%							
UMBRELLA & ADDTL. LIABILITY	0.75%							\$32
BUILDERS RISK	0.14%							\$6
BUILDING PERMIT								

SUBTOTAL									\$4,345
FEE	4.00%								\$174

TOTAL								\$4,519
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333 COMMERCE GREEN BLVD PO BOX 108 SUGAR LAND, TX 77487-0108
PHONE: (281) 933-4000 FAX: (281) 933-4852



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

9/3/2010

PRODUCER John L. Wortham & Son, L.P. P. O. Box 1388 Houston, TX 77251-1388 713-526-3366 713-521-1951	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.	
	INSURERS AFFORDING COVERAGE	NAIC #
INSURED E. E. Reed Construction, L.P. & Affiliates Attn: Mr. Mike Den Herder P. O. Box 108 SugarLand TX 77487	INSURER A:	
	INSURER B: Commerce & Industry Insurance Company	19410
	INSURER C: Travelers Property Casualty Co of America	25674
	INSURER D: Travelers Indemnity Company	25658
	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 ADD'L LTR INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS	
C	GENERAL LIABILITY	C05254C325	6/30/2010	6/30/2011	EACH OCCURRENCE	\$ 2,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 300,000
	<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person)	\$ 5,000
	PERSONAL & ADV INJURY				\$ 2,000,000	
	GEN'L AGGREGATE LIMIT APPLIES PER:				GENERAL AGGREGATE	\$ 4,000,000
	<input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC				PRODUCTS - COMP/OP AGG	\$ 4,000,000
C	AUTOMOBILE LIABILITY	CAP5450B316	6/30/2010	6/30/2011	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
	<input checked="" type="checkbox"/> ANY AUTO				BODILY INJURY (Per person)	\$
	<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident)	\$
	<input type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident)	\$
	<input type="checkbox"/> HIRED AUTOS					
	<input type="checkbox"/> NON-OWNED AUTOS					
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	\$
	<input type="checkbox"/> ANY AUTO				OTHER THAN EA ACC	\$
					AUTO ONLY: AGG	\$
B	EXCESS / UMBRELLA LIABILITY	BE4891233	6/30/2010	6/30/2011	EACH OCCURRENCE	\$ 5,000,000
	<input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE	\$ 5,000,000
	<input type="checkbox"/> DEDUCTIBLE					\$
	<input checked="" type="checkbox"/> RETENTION \$ 10,000					\$
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	VTC2KUB5450B84A	6/30/2010	6/30/2011	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)				E.L. EACH ACCIDENT	\$ 1,000,000
	If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
					E.L. DISEASE - POLICY LIMIT	\$ 1,000,000
	OTHER					

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Re: Fort Bend County Library, 1400 University Blvd., Sugar Land, TX 77479
Fort Bend County, Texas and University of Houston Systems are included as Additional Insured on all policies except worker's compensation when required by written contract as respects liability arising out of the named insureds work for the Additional Insured. Waiver of subrogation is provided on all policies when required by written contract.

CERTIFICATE HOLDER

Fort Bend County, Texas
County Judge
301 Jackson, 7th Floor
Richmond TX 77469

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 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 REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

John L. Wortham & Son, L

IMPORTANT

If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing Insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend, or alter the coverage afforded by the policies listed thereon.

CANCELLATION NOTICE

The **CANCELLATION NOTICE** on the **CERTIFICATE OF INSURANCE** is amended to include the following wording: The Insurance Companies may cancel the described policy(ies) by mailing or delivering ten (10) days written notice of cancellation to the Named Insured for: (1) Non Payment of premium of (2) any other circumstance permitted by state law or policy conditions.

ADDITIONAL INSURED DISCLAIMER

Coverage for Additional Insureds can vary significantly from policy to policy and thus Additional Insured status does not guarantee protection for all losses. Coverage is subject to actual policy terms and conditions.

ACORD™ CERTIFICATE OF PROPERTY INSURANCE		DATE 9/3/2010
PRODUCER John L. Wortham & Son, L.P. P. O. Box 1388 Houston, TX 77251-1388 <div style="text-align: right;">713-526-3366 713-521-1951</div>	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.	
COMPANIES AFFORDING COVERAGE		
COMPANY A Hanover Insurance Company		
COMPANY B		
COMPANY C		
COMPANY D		
INSURED E. E. Reed Construction, L.P. Attn: Mr. Mike Den Herder P.O. Box 108 Sugar Land TX 77487		

COVERAGES

THIS IS TO CERTIFY THAT 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. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	COVERED PROPERTY	LIMITS
	PROPERTY				BUILDING	\$
	CAUSES OF LOSS				PERSONAL PROPERTY	\$
	<input type="checkbox"/> BASIC				BUSINESS INCOME	\$
	<input type="checkbox"/> BROAD				EXTRA EXPENSE	\$
	<input type="checkbox"/> SPECIAL				BLANKET BUILDING	\$
	<input type="checkbox"/> EARTHQUAKE				BLANKET PERS PROP	\$
	<input type="checkbox"/> FLOOD				BLANKET BLDG & PP	\$
						\$
						\$
A	<input checked="" type="checkbox"/> INLAND MARINE				<input checked="" type="checkbox"/> Per Project	\$ 25,000,000
	TYPE OF POLICY				<input checked="" type="checkbox"/> Per Frame Pro	\$ 2,500,000
	Builder's Risk	IHD8346257-04	6/30/2010	6/30/2011	<input checked="" type="checkbox"/> Per JM Project	\$ 2,500,000
	CAUSES OF LOSS				<input checked="" type="checkbox"/> Per Occurrence	\$ 50,000,000
	<input type="checkbox"/> NAMED PERILS				<input checked="" type="checkbox"/> Soft Costs	\$ 100,000
	<input checked="" type="checkbox"/> OTHER *see below*					\$
	CRIME					\$
	TYPE OF POLICY					\$
						\$
	BOILER & MACHINERY					\$
						\$
	OTHER					\$
						\$
						\$

LOCATION OF PREMISES/DESCRIPTION OF PROPERTY

Fort Bend County Library
 1400 University Blvd
 Sugar Land, Texas 77479

SPECIAL CONDITIONS/OTHER COVERAGES

Please see brief outline of policy overleaf.
 *Against direct physical loss unless specifically excluded by the policy.

CERTIFICATE HOLDER

☐ Mortgagee ☐ Loss Payee ☐

Fort Bend County, Texas
 County Judge
 301 Jackson, 7th Floor
 Richmond TX 77469

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 45 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

John L. Wortham & Son, L.P. *John L. Wortham & Son, L.P.*

CERTIFICATE ADDENDUM

DATE ISSUED

9/3/2010

NAMED INSURED:

E. E. Reed Construction, L.P.
Attn: Mr. Mike Den Herder
P.O. Box 108
Sugar Land TX 77487

CERTIFICATE HOLDER:

Fort Bend County, Texas
County Judge
301 Jackson, 7th Floor
Richmond TX 77469

Named Insured:

Named Insured To Include All Owners and Lenders.

Loss Payee:

Holders of Certificates of Insurance issued against this policy that are shown as loss payee are added to the policy as their interest may appear.

Subrogation:

If The Company Pays For A Loss, The Company May Require The Insured To Assign The Insured's Rights Of Recovery Against Others. The Insured Must Do All That Is Necessary To Secure The Company's Rights. The Company Will Not Pay For A Loss If The Insured Impairs This Right To Recover. The Insured May Waive Their Right To Recover From Others In Writing Before A Loss Occurs. At No Point Can The Insured Waive Their Right To Recover From Architects Or Engineers.

When Coverage Ceases:

Coverage Will End When One Of The Following First Occurs:

- (1) This Policy Expires Or Is Canceled;
 - (2) A Covered Building Or Structure Is Accepted By The Purchaser;
 - (3) The Lead Named/Principal Insured's Insurable Interest In The Covered Property Ceases;
 - (4) The Lead Named/Principal Insured Abandons Construction With No Intent To Complete It;
- Or
- (5) A Covered Building Or Structure Has Been Completed For More Than 90 Days.

Sublimits:

The Company Shall Not Be Liable For More Than The Following Sublimit(S) Of Liability In Any One Occurrence:

- (1) \$ 500,000 Property In Transit;
- (2) \$ 500,000 Property In Temporary Offsite Storage;
- (3) \$ 10,000 Trees, Plants, Shrubs And Lawns;
- (4) 25% Of Loss Amount Debris Removal;
- (5) Included Ordinance Or Law (UNDAMAGED PARTS OF A BUILDING);
- (6) \$ 50,000 Ordinance Or Law (INCREASED COST TO REPAIR AND COST TO DEMOLISH/CLEAR SITE);
- (7) \$ 15,000 Limited Fungus Coverage
- (8) \$25,000,000 Testing (Per Project)

Soft Costs:

To include Architectural and Engineering Fees.

Annual Aggregate Sublimits:

The Maximum Amount The Company Will Pay For Loss Or Damage Caused Directly Or Indirectly By The Following Perils For Any One Occurrence, And/or In The Aggregate Annually For Loss Or Damage From All Occurrences, Shall Not Exceed The Following Amounts:

- (1) Flood/Sewer Backup
\$3,000,000 (CONFINED TO LOCATIONS WITHIN FLOOD ZONES C OR X AS DEFINED BY FEMA)

- (2) Earthquake
\$3,000,000 (EXCLUDING LOCATIONS WITHIN 200 MILES OF THE CITY OF NEW MADRID, MISSOURI OR STATES OF CALIFORNIA, OREGON, UTAH AND THE STATE OF WASHINGTON).

CERTIFICATE ADDENDUM

DATE ISSUED

9/3/2010

NAMED INSURED:

E. E. Reed Construction, L.P.
Attn: Mr. Mike Den Herder
P.O. Box 108
Sugar Land TX 77487

CERTIFICATE HOLDER:

Fort Bend County, Texas
County Judge
301 Jackson, 7th Floor
Richmond TX 77469

Deductibles (PER PROJECT):

All Other Perils - \$5,000 Per Occurrence
Earthquake - \$50,000 Per Occurrence
Flood - \$50,000 Per Occurrence
Windstorm - \$50,000 Per Occurrence
Soft Costs - 3 day waiting period

Windstorm:

Windstorm Is Excluded Within Texas First Tier Counties Including Harris County (EAST OF HWY 146) And Any Site Located Within 10 Miles Of The Atlantic Ocean Or 2 Miles Of The Chesapeake River/bay/inlets In The States Of Delaware, Maryland, And Virginia.

Valuation:

Replacement Cost - The Value Of Covered Property Will Be Based On The Replacement Cost Without Any Deduction For Depreciation. Replacement Cost Includes Labor, Reasonable Overhead And Profit, And Delivery Charges.

A. Replacement Cost Limitations - Replacement Cost Is Limited To The Cost To Repair Or Replace With Similar Material On The Same Site And Used For The Same Purpose.

B. Payment Limitation - The Payment Will Not Exceed The Amount The Insured Spends To Repair Or Replace Damaged Or Destroyed Property.

Insurer's Rating:

Hanover Insurance Company - As of June 30, 2010, AM Best rating is A; Financial Size Category: XIV.

Cancellation:

The Cancellation Notice On The Certificate Of Insurance Is Amended To Include The Following Additional Wording: The Insurance Company May Cancel The Described Policy(IES) By Mailing Or Delivering Ten (10) Day Written Notice Of Cancellation To The Certificate Holder For: (1) Non Payment Of Premium Or (2) Any Other Circumstance Permitted By State Law Or Policy Conditions.

CERTIFICATE ADDENDUM