

STATE OF TEXAS §
 §
 COUNTY OF FORT BEND §

AGREEMENT FOR DESIGN/BUILD SERVICES
 ANIMAL SERVICES EXPANSION
 SOQ 11-017

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

WITNESSETH:

WHEREAS, County intends to have designed and constructed an expansion to the existing Animal Services Facility in Rosenberg, Fort Bend County, Texas, to double its capacity, hereinafter called the "Work;"

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

WHEREAS, DESIGN-BUILDER represents that it is qualified and desires to perform such services pursuant to DESIGN-BUILDER's response to SOQ 11-017.

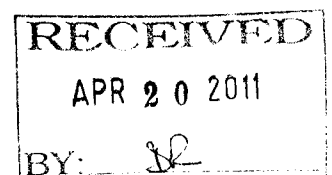
NOW, THEREFORE, County and DESIGN-BUILDER, in consideration of the mutual covenants and agreements herein contained, do mutually agree as follows:

SECTION I
 SCOPE OF AGREEMENT

1.01 DESIGN-BUILDER agrees to perform professional design and build services in two (2) phases in connection with the Work at 1210 Blume Road, Rosenberg, Fort Bend County, Texas, as stated herein and more particularly described in Exhibit A – DESIGN-BUILDER'S Response to SOQ 11-017, and Exhibit B – SOQ 11-017, attached hereto and incorporated by reference herein as if set forth verbatim for all purposes, and for having rendered such services, the County agrees to pay to DESIGN-BUILDER compensation as stated herein. In addition, the General Terms attached hereto as Exhibit "C" are incorporated herein as if set forth verbatim for all purposes. Any and all obligations in Exhibit C directed at Contractor shall apply to DESIGN-BUILDER.

1.02 The design and build services rendered by DESIGN-BUILDER, shall be completed in two (2) phases as described further herein:

- A. Phase I – Design
- B. Phase II – Construction



1.03 DESIGN-BUILDER shall not advance from any phase without prior written authorization from County.

SECTION II CHARACTER AND EXTENT OF SERVICES

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

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

2.02 Upon completion of the Work, DESIGN-BUILDER shall provide an electronic set of all reports and specifications concerning the Work in an Adobe Portable Document Format (PDF), after all of the construction changes have been made ("as-built") based upon information concerning field changes maintained and provided by DESIGN-BUILDER.

SECTION III ADDITIONAL SERVICES AND CHARGES

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

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

SECTION IV PERFORMANCE/PAYMENT BOND

4.01 Upon receipt of notification to proceed with the Construction Phase of the Work, DESIGN-BUILDER must provide Fort Bend County with a Performance Bond and Payment Bond, each in the amount of 100% of the total contract sum within ten (10) calendar days. Such bonds shall be executed by a corporate surety duly authorized and admitted to do business in the State of Texas and licensed in the State of Texas to issue surety bonds with a Best Rating of "A" or better. Fort Bend County reserves the right to accept or reject any surety company proposed by DESIGN-BUILDER. In the event Fort Bend County rejects the proposed surety company, DESIGN-BUILDER will be afforded five (5) additional days to submit the required bonds issued by a surety company acceptable to Fort Bend County. Upon County's acceptance of Bonds, DESIGN-BUILDER will proceed with the performance of the Work called for in the Construction Phase of this Agreement and shall complete such Work within forty-five (45) calendar days after such approval by the County.

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

SECTION V COMPENSATION

5.01 For and in consideration of the services rendered by DESIGN-BUILDER, and subject to the limit of appropriation, the County shall pay to DESIGN-BUILDER an amount not to exceed \$616,336.00 for all Work provided by DESIGN-BUILDER. The fee shall be allocated as follows:

A.	Design:	\$53,535.00
B.	Build:	\$546,345.00
C.	Options:	\$16,456.00

5.02 Payments for services rendered for the Work shall be paid monthly in proportion to the percentage of the completion of the Work as evidenced by DESIGN-BUILDER's monthly estimates for payments, less the retainage specified in Exhibit C, Section 36.

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

5.04 In the event the statement includes charges based upon direct labor cost of services or any other rates based upon the amount of time worked by an individual or individuals in performing services, whether the charges are being billed directly to the County or whether they are the basis

of invoices from subcontractors for which DESIGN-BUILDER seeks reimbursement from the County, the charges shall be accompanied by an affidavit signed by an officer or principal of DESIGN-BUILDER certifying that the work was performed, it was authorized in writing by the County Facilities Management & Planning Director and that all information contained in the invoice being true and correct.

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

5.06 The County Facilities Management & Planning Director shall review the statements within ten (10) days of receipt and approve them in writing with such modifications, if any, as he deems appropriate. The County shall pay each statement within thirty (30) days after the County Facilities Management & Planning Director's written approval, provided however, that the approval or payment of any statement shall not be considered evidence of performance by DESIGN-BUILDER to the point indicated by such statement or of receipt or acceptance by the County of the services covered by such statement.

SECTION VI TERMINATION

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

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

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

SECTION VII NOTICE

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

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

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

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

SECTION VIII LIMIT OF APPROPRIATION

8.01 Prior to the execution of this Agreement, DESIGN-BUILDER was advised by County, and DESIGN-BUILDER clearly understands and agrees, such understanding and agreement being of the absolute essence to this contract, County shall have available the total maximum sum of \$616,336.00 specifically allocated to fully discharge any and all liabilities, including construction costs, which may be incurred by County in bringing this Work to an absolute conclusion, and that the total of any and all basic construction costs, costs of providing the required furnishing and equipment, all fees and compensation of any sort to DESIGN-BUILDER, and any and all costs for any and all things or purposes enuring under or out of this Agreement, irrespective of the nature thereof, shall not exceed said specifically allocated sum, notwithstanding any word, statement or thing contained in or inferred from the preceding provision of this Agreement which might in any light by any person be interpreted to the contrary.

8.02 DESIGN-BUILDER does further understand and agree, said understanding and agreement also being of the absolute essence of this contract, that the total maximum compensation that DESIGN-BUILDER may become entitled to hereunder and the total maximum sum that County shall become liable to pay DESIGN-BUILDER hereunder shall not under any conditions, circumstances or interpretations thereof exceed the sum of \$616,336.00.

SECTION IX.
SUCCESSORS AND ASSIGNS

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

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

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

SECTION X
PUBLIC CONTACT

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

SECTION XI
COMPLIANCE AND STANDARDS

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

SECTION XII
OWNERSHIP OF DOCUMENTS

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

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

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

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

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

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

SECTION XIII INDEMNIFICATION

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

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

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

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

13.05 In the event of any dispute between the parties as to whether a claim, demand, suit, action, proceeding, lien or judgment appears to have been caused by or appears to have arisen out of or in connection with acts or omissions of DESIGN-BUILDER, DESIGN-BUILDER shall never-the-less fully defend such claim, demand, suit, action, proceeding, lien or judgment until and unless there is a determination by a court of competent jurisdiction that the acts and

omissions of DESIGN-BUILDER are not at issue in the matter. In such event, the County shall promptly reimburse DESIGN-BUILDER for its costs of defense.

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

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

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

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

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

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

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

SECTION XIV FORT BEND COUNTY INSURANCE REQUIREMENTS

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

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

- a. Workers Compensation
- b. Employer's Liability: \$500,000
- c. General liability including:

- (1). Premises/Operations
- (2). Products/Completed Operation
- (3). Contractual
- (4). Owner's Protective
- (5). Personal Injury/Advertising Liability
- (6). Mobile Equipment

General liability limits shall be equal to or greater than:

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

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

d. Automobile Liability:

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

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

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

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

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

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

14.06 Workers' Compensation Insurance Coverage:

A. Definitions:

1. Certificate of coverage ("certificate")- A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement

(TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on the Work, for the duration of the Work.

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

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

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

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

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

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

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

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

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

14.12 DESIGN-BUILDER shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after DESIGN-BUILDER knew or should have known, of any

change that materially affects the provision of coverage of any person providing services on the Work.

14.13 DESIGN-BUILDER shall post on each Work site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the Work that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

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

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

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

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

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

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

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

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

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

(G) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.

14.15 By signing this contract or providing or causing to be provided a certificate of coverage, DESIGN-BUILDER is representing to the County that all employees of DESIGN-BUILDER who will provide services on the Work will be covered by workers' compensation coverage for

the duration of the Work, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject DESIGN-BUILDER to administrative penalties, criminal penalties, civil penalties, or other civil actions.

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

SECTION XV MODIFICATIONS

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

SECTION XVI AUTHORITY OF COUNTY FACILITIES MANAGEMENT & PLANNING DIRECTOR

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

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

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

SECTION XVII MISCELLANEOUS

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

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

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

17.04 This Agreement shall be construed under and in accord with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Fort Bend County, Texas, and that venue for any litigation arising out of or related to this Agreement shall lie solely in the court of appropriate jurisdiction located in Fort Bend County, Texas.

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

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

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

17.08 DESIGN-BUILDER shall perform services for County as identified in County's SOQ 11-017 and the proposal submitted by DESIGN-BUILDER in response to County's SOQ 11-017, including any amendments submitted by DESIGN-BUILDER, if any, are incorporated by reference into this Agreement as if set forth herein verbatim for all purposes. County's SOQ 11-017 identifies the scope and requirements of the services to be provided and performed for County by DESIGN-BUILDER under this Agreement.

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SECTION XVIII
EXECUTION

The County executes this Agreement by and through the County Judge.

This Agreement shall not become effective until executed by all parties hereto.

FORT BEND COUNTY:


By: 
Robert E. Hebert, County Judge

Date: April 26, 2011

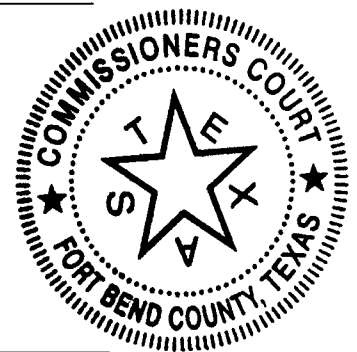
ATTEST:


Dianne Wilson, County Clerk

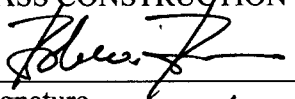
REVIEWED:

By: 
Don Brady, County Facilities
Management & Planning Director

Date: 4/20/11



BASS CONSTRUCTION


Signature
Bob W. Bass, Pres.
Printed Name/Title

Date: 4.19.11

MER:DB Agreement.Bass Construction.Animal Services Expansion.3953

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$616,336.00 to pay the obligation of Fort Bend County under this Agreement.

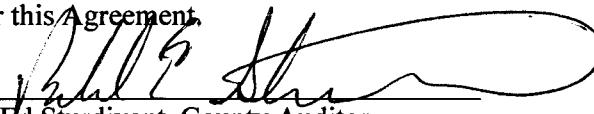

Ed Sturdivant, County Auditor

Exhibit A: Design-Builder Proposal/Response to SOQ 11-017
Exhibit C: SOQ 11-017
Exhibit B: County General Terms

Exhibit A



March 22, 2011

Fort Bend County
Mr. Don Brady
1517 Eugene Heimann Road
Rosenberg, TX 77469

RE: Proposal for the Fort Bend County
Animal Services Center
- Firm price to do the Design work
- Cost Estimate for Construction

Dear Mr. Brady:

DESIGN WORK

All labor and material required to complete all civil, structural, architectural, mechanical, electrical, and plumbing design work. Design time is anticipated to take approximately 10 weeks.

Total Design Cost = \$53,535

CONSTRUCTION SCOPE

- Gen Conds** All labor, material, equipment to support a full time, on-site superintendent, a part-time project manager in the home office, jobsite trailer, temporary toilets / water / electricity, building permit / plan check allowance, insurance, performance and payment bond, and "as built" documents. Our general conditions on a 7 month construction schedule (from receipt of building permit).
- Sitework** All labor, material, and equipment for building pad, SWPPP, sanitary sewer and domestic water tie ins to existing systems, concrete sidewalks, parking lot stripes and accessories, fencing modifications, and a landscape allowance. Fort Bend County to grub site, relocate the drainage swale west of the fence flowing south to the existing swale flowing east to Blume Road. Fort Bend County to provide parking subgrade, lime stabilization and asphalt.
- Concrete** All labor, material, and equipment for a 5,000 sf building slab including trench drains. NOTE: Trench drains to be open as in the original building.

Masonry	All labor, material, and equipment to install CMU at the kennel section of the building. All perimeter CMU walls of the kennel area to have core fill insulation. Masonry screen wall between existing and new buildings. Note: CMU walls between each kennel and around the perimeter to be 3'6" high; the perimeter walls to have metal studs and insulated hardi board to the roof and between the kennels to have 3'6" high chain link fence to 7'. The west end wall to have 3'6" CMU with a metal liner panel above to 7'.
Carpentry	All labor, material, and equipment to install all necessary wall blocking, and FRP. Upper cabinets, lower cabinets and plastic laminate countertops will be included in the Food Storage and Laundry rooms.
Thermal & Moisture	All labor, material, and equipment to install 3" fiberglass insulation with white vinyl facing in the roof and walls. Site sealants for sidewalk.
Doors and Windows	All labor, material, and equipment to install doors, frames and associated hardware as shown on attached drawing. Interior and exterior aluminum windows and toilet room mirror.
Finishes	All labor, material, and equipment to install metal studs / drywall, tape / float / finish, and paint. Flooring is based on 3,500 sf of Non Slip clear concrete floor sealer and VCT in the Adoption / Dog Adoption rooms. Acoustical Ceiling is located in the Adoption / Dog Adoption, Restroom, Food storage, Cat viewing and cage, and the Exam room. All doors, frames, and interior CMU walls to be painted.
Specialties	All labor, material, and equipment to install toilet accessories, signage, fire extinguishers. A stainless steel exam table / cabinet system is included as an allowance. A guillotine kennel door system is included as an allowance.
Metal Bldg	All labor, material, and equipment to install a pre-engineered metal building measuring 50' wide x 100' long x 12' eave height with a 1:12 roof pitch. Design is based on IBC 2006, 110 mph wind load, exposure B. Primary steel is hot dip galvanized. Secondary steel is pre-galvanized. There are 12 translucent roof panels, 3 ridge vents, and a canopy on the side wall. Roof to be 26 gauge R panel with a Galvalume finish. Walls to be 26 gauge R panel with standard Siliconized polyester color finish.
Mechanical	All labor, material, and equipment to install plumbing, and HVAC system.
Electrical	All labor, material, and equipment to install the electrical and fire alarm systems. Security system is included as an allowance.

Allowances	- Landscaping	None
	- Stainless Steel Exam Table	None
	- Cabinets	\$ 2,800
	- Guillotine Kennel Door System	\$ 5,640
	- Security System	\$ 2,000
	- Center Point Charges	\$ 5,500

Total Construction Budget	\$ 546,345	\$109.26 / sf
Total Design Cost	<u>\$ 53,535</u>	<u>\$ 10.71 / sf</u>
Total Design Cost and Construction Budget	\$ 599,880	\$119.96 / sf

Exclusions

- 1) Asphalt Approaches
- 2) General site cut / fill,
- 3) Storm sewer system,
- 4) Asphalt approaches,
- 5) Appliances
- 6) Modular Cat Kennels

Options

- 1) Add to include the following items: \$ 16,456
 - Gas Heaters in the Kennel Area
 - Electrical for heaters
 - A&E
 - Gas Line
 - Mechanical Changes to reduce odor going into office area

Disclaimers - Our design price can be held for 30 days.

We look forward to working with you on this project. Please let us know if you have any questions or need additional information.

Thanks,



Tim Willert
Bass Construction

Exhibit B

Fort Bend County Specification Download Acknowledgment



Statement of Qualifications

***Design/Build Animal Services Expansion
for Fort Bend County
Q11-017***

VENDORS MUST IMMEDIATELY RETURN THIS FORM BY FAX TO 281-341-8645

Vendor Responsibilities:

- Vendors are responsible to download and complete any addendums.
(Addendums will be posted on the Fort Bend County Website no later than 48 hours prior to Opening)
- Vendors will submit responses in accordance with requirements stated on cover of document.
- Vendors may not submit responses via email or fax.

Legal Name of Contracting Company

Contact Person

Complete Mailing Address

Telephone Number

Facsimile Number

Email Address

Signature

Date

1.0 Objective:

Fort Bend County, herein requests statements of qualifications for Design/Build services from contractors necessary to carry out design and construction of an expansion to the existing Animal Services Facility in Rosenberg to double its capacity. The Design/Build firm, herein referred to as "Respondent", shall serve in the capacity of an Architect/Engineer and General Contractor.

2.0 General:

- 2.1 The selected party will be requested to submit a proposal for a Design/Build contract under the provisions of the §271.119 of the Texas Local Government Code.
- 2.2 Respondents should carefully read the information contained herein and submit a complete response to all requirements and questions as directed.
- 2.3 Submittals and any other Respondent information in response to this SOQ shall become the property of Fort Bend County.
- 2.4 Fort Bend County will not provide compensation to Respondents for any expenses incurred by the Respondent(s) for submittal preparation or for any demonstrations that may be made, unless otherwise expressly stated or required by law. Respondents submit qualifications at their own risk.
- 2.5 Each submittal should be prepared simply and economically, providing a straightforward, concise description of your firm's ability to meet the requirements, and an understanding of the County's needs.
- 2.6 Fort Bend County makes no guarantee that an award will be made as a result of this SOQ. Fort Bend County reserves the right to accept or reject any or all submittals, with or without cause, waive any formalities or minor technical inconsistencies, or delete any item/requirement from this SOQ or contract when deemed to be in the County's best interest. Representations made within the qualifications submittal and any subsequent proposal will be binding on responding firms. Fort Bend County will not be bound to act by any previous communication or submittal by the firms other than those responding to this SOQ.
- 2.7 In the event the total accepted price exceeds \$25,000 the successful vendor must provide to the Office of the County Purchasing Agent, a performance bond and a payment bond, each in the amount of 100% of the total contract sum within ten (10) calendar days after receipt of notification of award. Such bonds shall be executed by a corporate surety duly authorized and admitted to do business in the State of Texas and licensed in the State of Texas to issue surety bonds with a Best Rating of "A" or better. Fort Bend County reserves the right to accept or reject any surety company proposed by the respondent. In the event Fort Bend County rejects the proposed surety company, the respondent will be afforded five (5)

additional days to submit the required bonds issued by a surety company acceptable to Fort Bend County.

3.0 Insurance:

- 3.1 All respondents must submit, with SOQ, a certificate of insurance indicating coverage in the amounts stated below. In lieu of submitting a certificate of insurance, respondents may submit, with bid, a notarized statement from an Insurance company, authorized to conduct business in the State of Texas, and acceptable to Fort Bend County, guaranteeing the issuance of an insurance policy, with the coverage stated below, to the Respondent named therein, if successful, upon award of this Contract. Failure to provide insurance certificate or notarized statement may result in disqualification of bid.
- 3.2 Commercial General Liability Insurance. Commercial general liability insurance or a comparable policy form, naming Respondent as the named insured and Fort Bend County as additional insured with the following coverages and limits:
- | | | |
|-------|---|-------------|
| 3.2.1 | General Aggregate | \$2,000,000 |
| 3.2.2 | Products Completed Operation – Aggregate | \$2,000,000 |
| 3.2.3 | Personal Advertising Injury Limit | \$1,000,000 |
| 3.2.4 | Each Occurrence Limit | \$1,000,000 |
| 3.2.5 | Fire Damage Limit
(any one fire) | \$50,000 |
| 3.2.6 | Medical Expense Limit
(any one person) | \$5,000 |
- 3.3. Such insurance shall contain blanket contractual coverage and shall also provide the following protection:
- 3.3.1 premises/operations coverage;
 - 3.3.2 broad form property damage liability coverage
 - 3.3.3 completed operations coverage for a period of 2 years following the date of substantial completion of the Work;
 - 3.3.4 XCU coverage;
 - 3.3.5 independent contractors and employees as additional insureds;
 - 3.3.6 contractual liability coverage.
- 3.4 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 Respondent as the named insured and Fort Bend County 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.
- 3.5 Worker's Compensation Insurance. Worker's compensation insurance providing statutory Texas coverage for all persons or entities employed by Respondent and

all subcontractors in connection with the Project, 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 Fort Bend County.

- 3.6 **Umbrella Liability Insurance.** Umbrella liability insurance naming Respondent as the named insured and Fort Bend County as additional insured, in an amount not less than \$5,000,000 per occurrence and in the aggregate.
- 3.7 **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.**
- 3.8 **Builders Risk Insurance.** Respondent shall obtain and keep in full force and effect until the final completion, 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 Respondent, 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 final completion 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 Respondent, **architect, subcontractors of any tier** and Fort Bend County for loss or damage occurring during the Work and shall name Respondent as the named insured and Fort Bend County as additional insureds. All Builder's Risk Insurance proceeds shall be paid directly to the Respondent.
- 3.9 Before commencing work, the Respondent shall be required, at its own expense, to furnish the Fort Bend County Purchasing Agent with certified copies of all insurance certificate(s) indicating the coverage to remain in force throughout the term of any agreement. Respondent shall obtain and keep in full force and effect until throughout the Project the insurance coverages hereinafter specified; such coverages shall be in primary form as to the liabilities assumed hereunder or excess form with limits not less than those stated above.

4.0 Indemnification:

RESPONDENT SHALL SAVE HARMLESS COUNTY FROM AND AGAINST ALL CLAIMS, LIABILITY, AND EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, ARISING FROM ACTIVITIES OF RESPONDENT, ITS AGENTS, SERVANTS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENCE, ACT, ERROR, OR OMISSION OF RESPONDENT OR ANY OF RESPONDENT'S AGENTS, SERVANTS OR EMPLOYEES.

- 4.1 Respondent shall timely report all such matters to Fort Bend County and shall, upon the receipt of any such claim, demand, suit, action, proceeding, lien or judgment, not later than the fifteenth day of each month; provide Fort Bend County with a written report on each such matter, setting forth the status of each matter, the schedule or planned proceedings with respect to each matter and the cooperation or assistance, if any, of Fort Bend County required by Respondent in the defense of each matter.
- 4.2 Respondent's duty to defend, indemnify and hold Fort Bend County harmless shall be absolute. It shall not abate or end by reason of the expiration or termination of any contract unless otherwise agreed by Fort Bend County in writing. The provisions of this section shall survive the termination of the contract and shall remain in full force and effect with respect to all such matters no matter when they arise.
- 4.3 In the event of any dispute between the parties as to whether a claim, demand, suit, action, proceeding, lien or judgment appears to have been caused by or appears to have arisen out of or in connection with acts or omissions of Respondent, Respondent shall never-the-less fully defend such claim, demand, suit, action, proceeding, lien or judgment until and unless there is a determination by a court of competent jurisdiction that the acts and omissions of Respondent are not at issue in the matter.
- 4.4 Respondent's indemnification shall cover, and Respondent agrees to indemnify Fort Bend County, in the event Fort Bend County is found to have been negligent for having selected Respondent to perform the work described in this request.
- 4.5 The provision by Respondent of insurance shall not limit the liability of Respondent under an agreement.
- 4.6 Respondent shall cause all trade contractors and any other contractor who may have a contract to perform construction or installation work in the area where work will be performed under this request, to agree to indemnify Fort Bend County and to hold it harmless from all claims for bodily injury and property damage that arise may from said Respondent's operations. Such provisions shall be in form satisfactory to Fort Bend County.
- 4.7 Loss Deduction Clause - Fort Bend County shall be exempt from, and in no way liable for, any sums of money which may represent a deductible in any insurance policy. The payment of deductibles shall be the sole responsibility of Respondent and/or trade contractor providing such insurance.

5.0 Scope of Work

- 5.1 Design Build contractor to develop design, specifications, and cost estimate within the budget for all scope items.

- 5.2 Approximately 4,480 square facility; pre-engineered structure with metal panel walls and roof.
- 5.3 Twenty five indoor / outdoor dog kennels consisting of 6" CMU and galvanized chain-link fencing.
- 5.4 Other programmed spaces include Reception Area, Exam / Procedure Room, Cat Viewing Area, Dog Adoption Room, Restroom, and Food / Supply Storage.
- 5.5 Extension of asphalt paving to increase visitor parking and connect vehicular service access to building.
- 5.6 Utilize existing on-site water and sewer service connections.
- 5.7 Concept Site Plan / Floor Plan PDF file attached.
- 5.8 Project must be complete by June 2011.

6.0 PRE-SOQ CONFERENCE:

A Pre-SOQ conference with site visit will be conducted on **Wednesday, November 10, 2010 at 9:00AM (CST)**. The conference will be held at the Fort Bend County Animal Services 1210 Blume in Rosenberg, Texas. All vendors are encouraged to attend.

7.0 Qualifications and Evaluation Factors:

The following criteria will be used in selecting the Design/Build firm:

- 30% Understanding of Scope of Work: Parties demonstrate their ability to meet the required qualifications listed. In addition, describe how the services requested in this instrument will be provided and how they will be supported. Describe the approach your firm will take to the required collaboration, scheduling and coordination required for this project.
- 30% Firm Experience with Projects of Similar Size and Complexity: Such experience must be in the form of providing general contracting services and design/build services for municipal/county government facilities. List only projects completed within the last 5 years; provide the name and location of each project, the client, and a contact person and phone number.
- 15% Staff Experience with Projects of Similar Size and Complexity: Such experience must be in the form of providing design, project management and construction services for municipal/county government facilities. List only projects completed within the last 5 years; provide the name and location of each project, the client, and a contact person and phone number.

10% Financial Stability: Complete and accurate responses to the following questions:

- a. Has your Company ever failed to complete any work awarded to it?
- b. Are there any judgments, claims, arbitration proceedings or suits pending or outstanding against your Company or its officers?
- c. Has your Company filed any lawsuits or requested arbitration with regard to construction contracts within the last five years? If yes, please provide details.
- d. Does your company have the ability to obtain payment and performance bonds required for this project?

15% Firm's Management System, Software and Cost Control. Describe how the design and construction management services will be provided and how they will be supported.

8.0 Format of Response:

To facilitate evaluation of submittals, one (1) original, four (4) paper copies and one (1) electronic response on CD is required.. CD must contain only one (1) file in PDF format and must match written response identically. Failure to provide proper CD is cause for disqualification. Statement of Qualifications must take the form of a bound 8-1/2-inch by 11-inch report with a Table of Contents and all pages numbered in sequence (**maximum 30 pages**). Binding must allow reports to lay flat when open and may be either wire or GBC. Format of the report may be either "portrait" or "landscape" format with binding on either long or short side. Responses may be double sided. 30 page limitation to include cover page, insurance certificate and W9 form as well as all other required information. Responses are to be in the following order and must detail requirement as outlined above:

- 8.1 Cover letter
- 8.2 Table of Contents
- 8.3 Detailed statement assuring firm fully understands scope of work.
- 8.4 Detailed qualifications of the firm and consultants.
- 8.5 Detailed qualifications of staff.
- 8.6 Financial stability.
- 8.7 Firm's management system, software and cost control.
- 8.8 Insurance certificate.

EXHIBIT C

GENERAL TERMS FOR CONTRACTS WORK QUALITY STANDARDS

1.0 GUARANTEES

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

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

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

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

2.0 INSPECTION, TESTING AND QUALITY CONTROL

2.1 Contractor shall inspect all materials, supplies and equipment which are to be incorporated in the Work. In addition, Contractor shall conduct a continuous program of construction quality control for all Work. Contractor's quality control program and inspection procedures for the foregoing shall be submitted in writing to Owner for review and approval, in sufficient detail to delineate those items to be inspected and the manner in which they are to be inspected, and shall adequately describe all construction quality control activities contemplated, including provision for adequate documentation of Contractor's performance of such quality control and inspection.

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

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

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

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

2.6 Manufacturer's Field Services

- A. When specified in respective Specification sections, Contractor shall require supplier or manufacturer to provide qualified personnel to observe field conditions, conditions of surfaces and installation, quality of workmanship, testing, and to make appropriate recommendations.
- B. Manufacturer's representative shall submit written report to the Owner listing observations and recommendations

3.0 CONDITIONS AND RISKS OF WORK

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

4.0 APPROVED FOR CONSTRUCTION DRAWINGS AND SPECIFICATIONS

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

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

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

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

5.0 INTENT OF SPECIFICATIONS AND DRAWINGS

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

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

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

6.0 SAFETY

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

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

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

7.0 CLEAN-UP

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

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

8.0 SUBCONTRACTS AND PURCHASE ORDERS

8.1 Contractor shall not subcontract performance of all or any portion of the Work under this Contract without first notifying Owner of the intended subcontracting and obtaining Owner Notice of Non-Objection in writing of the subcontracting and the subcontractor. If requested by Owner, Contractor shall furnish Owner a copy of the proposed subcontract (with price deleted if

the subcontracted work is part of fixed price Work of Contractor under this Contract) for Owner review of the terms and conditions thereof and shall not execute such subcontract until Owner has given notice of Non-Objection to such terms. Failure of Contractor to comply with this Section may be deemed by Owner to be a material breach of this Contract.

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

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

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

9.0 TERMINATION FOR DEFAULT

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

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

9.3 In the event of termination by Owner under Section 9.1, Contractor shall not be entitled to receive any further payment until the Work is completed. Upon completion and final acceptance of the Work, Owner will determine the total cost incurred in completing the Work including, without limitation, additional overhead, legal and other costs incurred by Owner to effect such termination and to complete the Work, plus a markup for profit in the amount of 10 percent of the total cost of the Work performed by Owner force. If the total costs noted above exceed the balance of the Contract price unpaid at the time of the termination, Contractor shall, promptly after a receipt of an invoice, pay to Owner the amount of such excess. Owner shall have the right and are authorized to setoff against and deduct from any excess payable to Contractor any other damages suffered by Owner due to said default or event giving rise to the

termination or due to other defaults of Contractor in complying with the terms of this Contract. Contractor shall continue to be fully liable for all such other damages to Owner. A waiver by Owner of one default by Contractor shall not be considered to be a waiver of any subsequent default by Contractor, nor be deemed to amend or modify the terms of this Contract. Contractor expressly waives any formal notice by Owner of Contractor's failure to perform, or passive breach of, Contractor's express obligations under this Contract.

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

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

10.0 STOP WORK ORDERS

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

TIMING OF WORK

11.0 SCHEDULING, REPORTING AND COORDINATION

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

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

12.0 OVERTIME

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

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

13.0 DELAYS

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

14.0 POSSESSION PRIOR TO COMPLETION

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

15.0 NOTICE OF COMPLETION AND FINAL ACCEPTANCE

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

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

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

WORK CHANGES

16.0 CHANGES

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

16.2 Contractor shall submit to Owner within ten (10) working days after receipt of notice of a change, a detailed takeoff with supporting calculations and pricing for the change together with any adjustments in the schedule required for the performance of Work as changed. The pricing shall be itemized as required by Owner and shall be in sufficient detail to permit an analysis of all labor, material and equipment and shall cover all work involved in the change, whether such work was deleted, added or modified. Amounts related to subcontracts shall be supported in similar detail. In addition, if the proposal includes a time extension, a justification therefore shall also be furnished.

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

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

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

and all rights to claim for such costs or additional time to perform the Work as a result of compliance by Contractor with such oral changes.

17.0 TERMINATION AT OWNER'S OPTION

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

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

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

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

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

MATERIALS AND EQUIPMENT

18.0 PROTECTION OF MATERIALS, EQUIPMENT, AND WORK 18.1 Contractor shall at all times in accordance with the best practices and at no additional cost to Owner, preserve and protect material and equipment used by Contractor in the execution of the work

from damage or loss due to weather, fire, theft, unexplained disappearance or other similar casualty.

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

18.3 Owner shall not be responsible for any loss suffered by Contractor, or damage to the Work, or to materials, tools and equipment of Contractor or of any other contractor, and Contractor assumes responsibility for any such loss or damage and for any cost of repairing, making good, or replacing any such loss or damage unless caused by Owner.

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

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

19.2 Notwithstanding the provisions of Section 19.1, the care, custody and control of Contractor's Work incorporated into the permanent plant shall remain with Contractor until such Work has been accepted in writing by Owner and shall thereupon pass to Owner unless Owner notify Contractor in writing that such care, custody, and control is assumed by Owner at an earlier date. The taking of possession of such Work pursuant to Article 14.0, POSSESSION PRIOR TO COMPLETION, shall not constitute the assumption of care, custody and control of such Work until such time as such Work has either been accepted in writing by Owner, Owner or Contractor has been notified as set forth herein.

LABOR AND WORK RULES

20.0 CONTRACTOR'S PERSONNEL

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

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

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

21.0 EMPLOYMENT CERTIFICATIONS AND PRACTICES

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

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

21.3 Upon request of Owner, Contractor will furnish it with a certificate satisfactory in form to Owner that goods furnished by Contractor in performance of this Contract were produced in full compliance with the requirements of Sections 6, 7, and 12 of the Fair Labor Standards Act of 1938, as amended, and the regulations and orders of the U.S. Department of Labor issued under Section 14 thereof.

22.0 WORK RULES

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

23.0 USE OF PREMISES

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

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

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

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

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

24.0 PROTECTION OF WORK AND PROPERTY

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

24.2 The Contractor shall take all necessary precautions to protect all adjacent property from any and all damage which may be caused to such property by reason of any of the work of demolition, excavation or construction about or upon the Owner's premises and shall, at his own cost and expense, repair and restore to its original conditions, any property of any adjacent property owner which has been damaged by reason of said demolition, excavation or construction work.

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

INDEMNIFICATION AND INSURANCE

25.0 INDEMNITY

Deleted – see Design-Build Agreement

26.0 INSURANCE

Deleted – see Design-Build Agreement

27.0 BONDS

Deleted – see Design-Build Agreement

WORK CONDITIONS

28.0 CONTRACTUAL RELATIONSHIP

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

29.0 PERMITS AND LICENSES

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

30.0 INDEPENDENT CONTRACTOR

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

31.0 CONFIDENTIAL INFORMATION

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

32.0 PUBLICITY

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

33.0 OWNERSHIP AND USE OF DRAWINGS

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

34.0 ASSIGNMENTS

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

35.0 LAWS AND REGULATIONS

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

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

35.3 Contractor shall not, under any circumstances, cause or permit, in connection with the Work to be performed hereunder, the discharge, emission or release of any hazardous substance and/or waste, pollutant, contaminant or other substance in violation of any applicable laws, rules or regulations which are now or hereafter promulgated by any governmental authorities having jurisdiction over the Work. Contractor shall comply with all legal regulatory requirements applicable to the Work performed under this Contract and shall be responsible for compliance with all hazardous waste, health and safety, notice, training, and environmental protection laws, rules, regulations and requirements, including, but not limited to, the Resource Conservation and Recovery Act. "Hazardous waste" includes all substances which are or may be identified as such in 40 C.F.R. Part 261 or other applicable laws or regulations. Contractor shall submit material safety data sheets, OSHA Form 20, as required. As an inducement to award of this Contract, Contractor warrants full compliance and that it will adhere to all applicable project hazardous waste procedures and if necessary, obtain or arrange for at its expense all identification numbers,

permits, applications, and other things required in connection with the activities under this Contract. Contractor agrees that it will not store any hazardous wastes at the jobsite for periods in excess of ninety (90) days or in violation of the applicable site storage limitations imposed by law, the Owner or Owner, which shall be more restrictive. Contractor further agrees that it will not permit any accumulation in excess of the small quantity generator exclusion of 40 C.F.R. Part 261 or other applicable law, as amended. Contractor agrees to take, at its expense all actions necessary to protect third parties, including without limitation, employees and agents of Owner and Owner from any exposure to, or hazards of hazardous and/or toxic wastes or substances generated or utilized in Contractor's operations. Contractor agrees to report to the appropriate governmental agencies all discharges, releases and spills of hazardous substances and/or toxic wastes required to be reported by law and to immediately notify Owner and Owner of same.

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

PAYMENT TERMS

36.0 INVOICING AND PAYMENT

36.1 Except to the extent expressly stated otherwise elsewhere in this Contract, the Contract Price shall be payable by Owner in monthly progress payments, payable thirty (30) calendar days after receipt and approval by Owner of a proper invoice. Each progress payment shall be for ninety percent (90%) of the value of Work completed by Contractor, as determined by Contractor in accordance with the terms of this Contract and approved by Owner, as of the working day nearest the mutually agreed cutoff date.

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

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

36.2.2 Additional Work invoices as separate invoices, to cover additional Work authorized by Owner and completed by Contractor, but not added to this Contract by a formal change at the time of invoicing. Such invoices are subject to ten percent (10%) retention.

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

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

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

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

37.0 TAXES, DUTIES, AND FEES

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

38.0 DOCUMENTATION AND RIGHT OF AUDIT

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

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

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

39.0 LIENS

39.1 To the full extent permitted by applicable law, Contractor hereby waives and releases any and all rights of mechanic's lien and similar rights for payment for services, labor, equipment, or materials furnished by Contractor in performance of the Work and granted by law to persons

supplying materials, equipment, services and other things of value to approve or modify land or structures hereon, which Contractor may have against Owner's premises, property belonging to Owner, or to either of them, or funds payable by Owner to Owner.

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

40.0 FINAL PAYMENT CERTIFICATION AND RELEASE

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

GENERAL

41.0 INTERPRETATION OF PLANS AND SPECIFICATIONS

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

42.0 VALIDITY OF PROVISIONS

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

43.0 WAIVER

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

44.0 NOTICES

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

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

45.0 PROJECT RECORD DOCUMENTS

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