

CONSTRUCTION MANAGEMENT AGREEMENT

BETWEEN CONSTRUCTION MANAGER AND OWNER

COVER SHEET

INCLUDES:	Executive Summary of Contents	pp 2
	Table of Contents	pp 3-17
	General Requirements	pp 18-104
	Form of Agreement	pp 105
	Construction Management Agreement (execution page and Auditor's Certificate)	pp 106-108
	Agreement Forms	pp 109-121
	Exhibit A – Contract Particulars	pp 123-124
	Exhibit B – Architectural Agreements	pp 125-154
	Exhibits C – L	pp 155-201

8/15/12 3 originals returned to Cheryl at Purchasing

COUNTY JUDGE
RECEIVED
AUG 03 2012

EXECUTIVE SUMMARY OF CONTENTS

SECTION 1	GENERAL
PART 1	GENERAL
PART 2	CONSTRUCTION MANAGER'S GENERAL SERVICES AND RESPONSIBILITIES.
PART 3	OWNER'S RESPONSIBILITIES
PART 4	TIME
PART 5	COST OF THE WORK
PART 6	CONSTRUCTION DOCUMENTS
PART 7	CONTRACT ADJUSTMENTS, DISPUTES AND TERMINATION
PART 8	INDEMNITY, INSURANCE, BONDS AND WAIVER OF SUBROGATION
PART 9	MISCELLANEOUS PROVISIONS

SECTION 2	PRECONSTRUCTION PHASE
PART 1	PRECONSTRUCTION PHASE SERVICES

SECTION 3	CONSTRUCTION PHASE
PART 1	SCOPE OF SERVICES
PART 2	COMPONENT CHANGE ORDERS
PART 3	CHANGES TO THE WORK
PART 4	GMP CHANGE ORDER
PART 5	HAZARDOUS CONDITIONS AND MATERIALS
PART 6	CORRECTING OF WORK; COVERING AND UNCOVERING WORK
PART 7	TRADE CONTRACTORS; SELF PERFORMANCE
PART 9	PROTECTION OF PERSONS AND PROPERTY
PART 10	FINAL PAYMENT

SECTION 4	COMPENSATION
PART 1	GENERAL
PART 2	PAYMENT FOR PRECONSTRUCTION PHASE SERVICES.
PART 3	PAYMENT FOR CONSTRUCTION PHASE SERVICES

SECTION 5 AGREEMENT FORMS

Agreement Form
Performance Bond
Payment Bond
Minimum Safety Criteria
Non-Influence Affidavit
Statutory Affidavit
Two Year Bond on Roofs and Walls
Specimen Certificate of Manufacturer

EXHIBITS

Exhibit A	Contract Particulars
Exhibit B	Architectural Agreement
Exhibit C	Budget Format
Exhibit D	Monthly Report Format
Exhibit E	Construction Manager's Proposal
Exhibit F	Approved Development Schedule
Exhibit G	Specimen Component Change Order
Exhibit H	Specimen GMP Change Order
Exhibit I	Specimen Change Order
Exhibit J	Wage Rates and Labor Cost
Exhibit K	Application for Payment
Exhibit L	Construction Manager's Project Team

**CONSTRUCTION MANAGEMENT GENERAL REQUIREMENTS
TABLE OF CONTENTS**

SECTION 1 - GENERAL

PART 1 - GENERAL

1.1.1 General Provisions.

1.1.1.1 Written Agreement.

1.1.1.2 Basic Statement of Owner Objectives.

1.1.1.3 Project Team.

1.1.1.3.1 Relationship Of Parties.

1.1.1.3.2 Architect.

1.1.1.3.3 Owner's Representative.

1.1.1.3.4 User.

1.1.1.3.5 Construction Manager.

1.1.1.3.6 Representatives.

1.1.1.3.7 Contractor(s)

1.1.1.4 Project Team Cooperation.

1.1.1.5 Familiarity with Program.

1.1.1.6 Conference.

1.1.1.7 Title to Project Site.

1.1.1.8 Authority of Construction Manager.

1.1.1.9 Defined Terms.

1.1.1.10 Meaning of Words And Phrases.

1.1.1.11 Cross-Reference and Citations of Articles and Paragraphs of the Agreement.

1.1.1.12 Article Not Plenary.

1.1.2 Basic Definitions.

1.1.2.1 *Affiliate*

1.1.2.2 *Architectural Agreement*

1.1.2.3 *Architect*

1.1.2.4 *Agreement*

1.1.2.5 *Application for Payment*

1.1.2.6 *Approved Development Schedule*

1.1.2.7 *Business Day*

1.1.2.8 *Certificate of Occupancy*

1.1.2.9 *Change Order*

1.1.2.10 *Claim*

1.1.2.11 *Component Change Order*

1.1.2.12 *Component Construction Document*

1.1.2.13 *Construction Documents*

1.1.2.14 *Contract Documents*

1.1.2.15 *Contract Time*

1.1.2.16 *Contractor*

1.1.2.17 *Cost of the Work*

1.1.2.18 *Project Schedule*

1.1.2.19 *Day*

1.1.2.20 *Defective Work*

1.1.2.21 *Design Development*

1.1.2.22 *Effective Date of the Agreement*

1.1.2.23 *Eligible contractor*

1.1.2.24 *Final Certificate*

1.1.2.25 *Final Completion*

1.1.2.26 *Final Notice of Non-Conforming Work*

1.1.2.27 *Guaranteed Maximum Price (GMP)*

1.1.2.28 *Install, Deliver, Furnish, Supply, Provide and other such words*

1.1.2.29 *Substantially Complete or Substantial Completion*

1.1.2.30 *Milestone*

1.1.2.31 *Notice*

1.1.2.32 *Notice of Non-Conforming Work*

1.1.2.33 *Owner*

1.1.2.34 *Parties*

1.1.2.35 *Payment Bond*

1.1.2.36 *Performance Bond*

1.1.2.37 *Preliminary Plans and Specifications*

1.1.2.38 *Project*

- 1.1.2.39 *Reasonable Termination Expenses*
- 1.1.2.40 *Samples*
- 1.1.2.41 *Schematic Design*
- 1.1.2.42 *Schematic Design Documents*
- 1.1.2.43 *Shop Drawings*
- 1.1.2.44 *Site(s)*
- 1.1.2.45 *Trade Contractor*
- 1.1.2.46 *Trade Supplier*
- 1.1.2.47 *Underground Facilities*
- 1.1.2.48 *Unavoidable Delays*
- 1.1.2.49 *Underground Facilities*
- 1.1.2.50 *Work*

1.1.3 Other Definitions.

1.1.4 Identification, Execution, Correlation, and Intent of Documents

- 1.1.4.1 Identification.
- 1.1.4.2 Correlation and Intent.

PART 2 - CONSTRUCTION MANAGER'S GENERAL SERVICES AND RESPONSIBILITIES.

1.2.1 General Duties and Basic Services.

1.2.1.1 Representations Of Construction Manager.

- 1.2.1.1.1 Independent Contractor; Fiduciary Role.
- 1.2.1.1.2 Familiarity with Project.
- 1.2.1.1.3 Representation of Construction Manager
- 1.2.1.1.4 Warranty of Construction Manager

1.2.1.2 Responsibility to Coordinate.

1.2.1.3 Definition of Project Criteria.

1.2.1.4 Construction Manager's Review.

1.2.1.5 Project Delivery.

1.2.1.6 Construction Manager's Consultation.

1.2.2 General Responsibilities.

- 1.2.2.1 Supervision and Direction.
- 1.2.2.2 Enforce Discipline.
- 1.2.2.3 Maintain Records.
- 1.2.2.4 Answer Questions.
- 1.2.2.5 Acts and Omissions.
- 1.2.2.6 Replacement Project Manager.
- 1.2.2.7 Promptly Commence.

1.2.3 General Consultation Services.

1.2.3.1 Project Schedule Meetings.

1.2.3.2 Advice Concerning Revisions

1.2.3.3 Project Schedule.

1.2.3.3.1 Schematic/Design Drawings.

1.2.3.3.2 Identification.

1.2.3.3.3 Construction Documents.

1.2.3.3.4 Commence and Completion of Construction.

1.2.3.3.5 Architect's Response Times.

1.2.3.3.6 Punchlists and Reviews

1.2.3.3.7 Design and Review Activities

1.2.3.4 Procedure for Submission of Design Documents.

1.2.3.5 Review Documents.

1.2.3.6 Recommendations for Division of Work.

1.2.3.7 Proposed Staffing Plan.

1.2.4 Obligation for Payment.

1.2.5 Construction Budget and Estimates.

1.2.6 Obligations and Duties.

1.2.7 Compliance with Laws.

1.2.8 Utilities.

1.2.9 Project Coordination and Documentation.

1.2.10 Cost Control and Reporting.

1.2.11 Architect.

1.2.11.1 Total Project Budget.

1.2.11.2 Market Conditions.

1.2.11.3 Names of Trade Contractors.

1.2.11.4 Names of Vendors.

- 1.2.11.5 Periodic Progress Reports.
- 1.2.11.6 Filing Claims.
- 1.2.11.7 Tests, Studies, etc.
- 1.2.12 **Easements, etc.**
- 1.2.13 **Sufficiency of Documents.**
- 1.2.14 **Royalties and Patent Fees.**
- 1.2.15 **Assignment.**
 - 1.2.15.1 No Contractual Relationship.
 - 1.2.15.2 Conditional Assignment.
 - 1.2.15.3 Assignment Provisions.
 - 1.2.15.4 Assignment of Warranties.
- 1.2.16 **Audit.**
- 1.2.17 **Other Actions.**
- 1.2.18 **Limitation of Scope.**
- 1.2.19 **Construction Documents.**
- 1.2.20 **Duty to Give Notice to Owner.**

PART 3 - OWNER'S RESPONSIBILITIES.

- 1.3.1 **Owner's Representative.**
 - 1.3.1.1 Written Designation.
 - 1.3.1.2 Accessibility.
 - 1.3.1.3 Independent Review and Inspection.
 - 1.3.1.4 Schedules and Meetings.
- 1.3.2 **Architect.**
 - 1.3.2.1 Architect Design Work.
 - 1.3.2.2 Architect Provide Drawings.
- 1.3.3 **Permits, Licenses, and Inspections.**
- 1.3.4 **Fire Marshal Inspections.**
 - 1.3.4.1 General.
 - 1.3.4.2 Certificate of Occupancy.
- 1.3.5 **Testing.**
- 1.3.6 **Partial Occupancy.**
- 1.3.7 **Owner's Right to do Work.**
- 1.3.8 **Disqualification of Potential Contracts.**
- 1.3.9 **Existing Documents.**

PART 4 - TIME.

- 1.4.1 **Commencement of Work.**
- 1.4.2 **Time is of the Essence.**
- 1.4.3 **Project Progress Schedule.**
 - 1.4.3.1 Submittal, Approval and Updates.
 - 1.4.3.2 Added to Agreement.
- 1.4.4 **Completion Date.**
- 1.4.5 **Unavoidable Delays.**
- 1.4.6 **Extension of Time and Certain General Conditions Sole Remedy.**
- 1.4.7 **Competent Management of Time.**
- 1.4.8 **Contract Time Fair and Reasonable.**
- 1.4.9 **Extensions of Time for Owner Requested Changes.**
- 1.4.10 **Modification of Time.**
 - 1.4.10.1 Delay of Drawings.
 - 1.4.10.2 Delay of Shop Drawings Review.
- 1.4.11 **Claims to Extend Date of Final Completion.**
 - 1.4.11.1 Time.
 - 1.4.11.2 Change in Final Completion Date.
 - 1.4.11.2.1 Claim for Delay of Drawings.
 - 1.4.11.2.2 Claim for Delay of Shop Drawings Review.
 - 1.4.11.2.3 Claim Must Be In Writing.
- 1.4.12 **Recovery of Schedule Delays.**

PART 5 - COST OF THE WORK.

- 1.5.1 **Definition.**
- 1.5.2 **Preconstruction Phase Services.**
 - 1.5.2.1 Labor Costs.

- 1.5.2.2 Preconstruction Overhead Costs.
- 1.5.3 Construction Phase Services.**
 - 1.5.3.1 Wages.
 - 1.5.3.2 Salaries.
 - 1.5.3.2.1 Reasonable Salaries.
 - 1.5.3.2.2 No Changes.
 - 1.5.3.3 Employee Taxes.
 - 1.5.3.4 Cost of Materials, etc.
 - 1.5.3.5 Sales Taxes.
 - 1.5.3.6 Trade Contractors.
 - 1.5.3.7 Royalties.
 - 1.5.3.8 Rental Charges.
 - 1.5.3.9 Insurance Premiums.
 - 1.5.3.10 Permits, Fees, etc.
 - 1.5.3.11 Field Office Costs.
 - 1.5.3.12 Utility Costs.
 - 1.5.3.13 Demolition Costs.
 - 1.5.3.14 Testing.
 - 1.5.3.15 Reproduction Costs.
 - 1.5.3.16 Telephones, etc.
 - 1.5.3.17 Safety Plan.
 - 1.5.3.18 Deposits.
 - 1.5.3.19 Reexamination Costs.
 - 1.5.3.20 Transportation.
 - 1.5.3.21 Final Clean-up.
 - 1.5.3.22 Emergency Costs.
 - 1.5.3.23 Other.
- 1.5.4 Limitations on the Cost of the Work.**
 - 1.5.4.1 Rental Rates.
 - 1.5.4.2 Salaries.
 - 1.5.4.3 Employment Taxes.
 - 1.5.4.4 Office Expenses.
 - 1.5.4.5 Overhead Expenses.
 - 1.5.4.6 Capital Expenses.
 - 1.5.4.7 Transportation.
 - 1.5.4.8 Relocation Expenses.
 - 1.5.4.9 Profit Sharing.
 - 1.5.4.10 Fines, Penalties, etc.
 - 1.5.4.11 Lost or Stolen Equipment.
 - 1.5.4.12 Undocumented Costs.
 - 1.5.4.13 Negligent Costs.
 - 1.5.4.14 Legal Fees.
 - 1.5.4.15 Contingency Costs.
 - 1.5.4.16 Other Costs.
 - 1.5.4.17 Costs in Excess of GMP.
 - 1.5.4.18 Taxes.
- 1.5.5 Construction Contingency Costs.**
 - 1.5.5.1 Unanticipated Events.
 - 1.5.5.2 Proposer Defaults.
 - 1.5.5.3 Omissions.
 - 1.5.5.4 Legal Fees.
- 1.5.6 Adjustments to Construction Contingency.**
 - 1.5.6.1 Basis of Adjustments.
 - 1.5.6.2 Limitations on Adjustments.
- 1.5.7 Release of Construction Contingency.**
 - 1.5.7.1 Periodic Review.
 - 1.5.7.2 Confirmation of Balance.
 - 1.5.7.3 No Relief of Obligations.
 - 1.5.7.4 Gross Negligence.
- 1.5.8 Final Disposition of Construction Contingency.**
- 1.5.9 Owner Option.**
- 1.5.10 Discounts, Rebates, Etc.**
- 1.5.11 Design Contingency Cost.**
 - 1.5.11.1 Unanticipated Events.

- 1.5.11.2 Omissions.
- 1.5.11.3 Scope Changes.
- 1.5.12 **Adjustments to Design Contingency.**
 - 1.5.12.1 Limitations on Adjustments.
- 1.5.13 **Release of Design Contingency.**
 - 1.5.13.1 Periodic Review.
 - 1.5.13.2 Confirmation of Balance
- 1.5.14 **Final Disposition of Design Contingency.**

PART 6 – CONSTRUCTION DOCUMENTS

- 1.6.1 **Preparation of Construction Documents Following Acceptance of the GMP Change Order.**
 - 1.6.1.1 Construction Documents.
 - 1.6.1.2 Construction Document Change Order.
 - 1.6.1.3 Construction Manager's Review.
 - 1.6.1.4 Best Practices Standard.
 - 1.6.1.5 Post GMP Drawings and Specifications.
 - 1.6.1.6 Rejection of Construction Drawings. 1.6.1.7 Redesign of Construction Documents.
 - 1.6.1.8 Failure to Reject within Time Limits.
- 1.6.2 **Ownership and Use of Documents.**

PART 7 – CONTRACT ADJUSTMENTS, DISPUTES AND TERMINATION

- 1.7.1 **Contract Adjustments and Disputes.**
 - 1.7.1.1 No Arbitration.
 - 1.7.1.2 Continuation of the Work.
 - 1.7.1.3 Claims of the Construction Manager.
 - 1.7.1.4 Statement of Claim: Time of Submission.
 - 1.7.1.5 Claims Distinguished.
 - 1.7.1.6 Consequential Damage
- 1.7.2 **Suspension and Termination of Agreement and Owner's Right to Perform Construction Manager's Responsibilities.**
 - 1.7.2.1 Termination Without Cause.
 - 1.7.2.1.1 Owner's Right to Terminate.
 - 1.7.2.1.2 Items for Which Payment Shall Be Made.
 - 1.7.2.1.3 Assignment.
 - 1.7.2.1.4 Termination After GMP Change Order.
 - 1.7.2.1.5 Condition Precedent to Payment.
 - 1.7.2.1.6 Cessation of Entitlement.
- 1.7.3 **Termination for Cause.**
 - 1.7.3.1 Owner's Right to Terminate.
 - 1.7.3.2 Termination Prior to GMP.
 - 1.7.3.3 Termination after GMP.
- 1.7.4 **Suspension of Work.**
- 1.7.5 **Construction Manager Rights.**
 - 1.7.5.1 Construction Manager's Right to Terminate.
 - 1.7.5.2 Limitation on Fee.
- 1.7.6 **Termination for Abandonment by Construction Manager.**
- 1.7.7 **Termination for Nonpayment.**
- 1.7.8 **Notice of Termination.**
- 1.7.9 **Default of Construction Manager.**

PART 8 - INDEMNITY, INSURANCE, BONDS AND WAIVER OF SUBROGATION

- 1.8.1 **Responsibility.**
- 1.8.2 **Suits or Claims for Infringement.**
- 1.8.3 **Indemnification and Hold Harmless Agreement**
- 1.8.4 **Construction Manager's Insurance Requirement**
- 1.8.5 **Waivers of Subrogation**
- 1.8.6 **Termination of Obligation to Insure**
- 1.8.7 **Failure of Insurers.**
- 1.8.8 **Partial Occupancy.**
- 1.8.9 **Performance Bond and Payment Bonds.**

PART 9 - MISCELLANEOUS PROVISIONS.

- 1.9.1 **Captions.**
- 1.9.2 **Gender.**

- 1.9.3 Severability.
- 1.9.4 Cumulative Remedies.
- 1.9.5 No Waiver.
- 1.9.6 Applicable Law, Laws and Regulations, Laws or Regulations.
- 1.9.7 Legal Compliance.
- 1.9.8 Employment of Texas Citizens and Use of Texas Products.
- 1.9.9 Compliance with the Owner's Policies.
- 1.9.10 Specification Arrangement.
- 1.9.11 Effect of Addenda, Amendments, Bulletins, Deletions, Omissions, and Change Orders.
- 1.9.12 Conflicts.
 - 1.9.12.1 Governing Principals.
 - 1.9.12.2 Taken as a Whole.
- 1.9.13 Drawings and Specifications at the Site.
- 1.9.14. Complete, Definite, and Clear Instructions and Schedules of Drawings.
- 1.9.15 Commencement, Prosecution and Completion.
- 1.9.16 Samples.
- 1.9.17 Manufacturer's Recommendations.
- 1.9.18 Office for Resident Engineer Inspector.
- 1.9.19 Keys.
- 1.9.20 Geological and Archeological Specimens.
- 1.9.21 Surveys, Permits and Regulations.
 - 1.9.21.1 General.
 - 1.9.21.2 Codes.
- 1.9.22 Utilities.
- 1.9.23 Materials, Appliances, Employees.
 - 1.9.23.1 Payment for.
 - 1.9.23.2 Quality of Materials and Workmanship.
 - 1.9.23.3 Quality and Discipline of Employees.
- 1.9.24 Measurements and Dimensions.
- 1.9.25 Space Conditions.
- 1.9.26 Cutting, Patching, and Fitting.
- 1.9.27 Use of Premises.
- 1.9.28 Cash Allowances.
- 1.9.29 Forms and Specimens.
- 1.9.30 Owner's Right to Perform Work.
- 1.9.31 Observation of Materially Differing Conditions.
- 1.9.32 Separate Contracts.
- 1.9.33 Third Party Beneficiary.
 - 1.9.33.1 Owner as Third Party Beneficiary.
 - 1.9.33.2 User and County of Fort Bend, Texas.
- 1.9.34 Joint Drafting.
- 1.9.35 Counterparts.
- 1.9.36 Entire Agreement.

SECTION 2 – PRECONSTRUCTION PHASE

PART 1 - Preconstruction Phase Services

2.1.1 General.

2.1.1.1 Meetings.

2.1.1.2 Advise.

2.1.1.3 Project Schedule.

2.1.1.3.1 Schematic Design Drawings.

2.1.1.3.2 Early Components.

2.1.1.3.3 Construction Drawings.

2.1.1.3.4 Commencement and Completion.

2.1.1.3.5 Response Times.

2.1.1.3.6 Design and Review Activities Related to Permit and Regulatory Approvals

2.1.1.4 Cost Estimates and Constructability Reviews.

2.1.1.4.1 Construction Cost Estimates.

2.1.1.4.2 Reconciled Construction Cost Estimates.

2.1.1.5 Design Document Submission Procedures.

2.1.1.6 Program and Document Review.

2.1.1.7 Recommendations on Phasing.

2.1.1.8 Staffing Plan.

2.1.2 Limitation of Scope.

2.1.3 Local Conditions.

2.1.4 Laws and Regulations.

2.1.5 Periodic Meetings.

2.1.6 Construction Manager's Schedule.

2.1.6.1 Submittals.

2.1.6.2 Early Start and Finish Dates.

2.1.6.3 Approvals.

2.1.7 Information for Architect.

2.1.8 Consultation.

2.1.9 Phased Construction.

2.1.10 Preliminary Construction Cost Estimates.

2.1.10.1 Estimates Required.

2.1.10.2 Preliminary Design.

2.1.10.3 Design Development.

2.1.10.4 Cost Exceed Previous Estimate.

2.1.11 Long-lead Items.

SECTION 3 – CONSTRUCTION PHASE

PART 1 - SCOPE OF SERVICES

3.1.1 General.

- 3.1.1.1 Supervision.
- 3.1.1.2 Competent Full Time Staff.
- 3.1.1.3 Field Office.
- 3.1.1.4 Organization And Lines Of Authority.
- 3.1.1.5 Coordination.

3.1.2 Project Progress Schedules and Meetings.

- 3.1.2.1 Meetings.
- 3.1.2.2 Project Progress Schedules.
 - 3.1.2.2.1 Major Elements and Components.
 - 3.1.2.2.2 Analysis.
 - 3.1.2.2.3 Separate Phases.
 - 3.1.2.2.4 Financial Requirements.
 - 3.1.2.2.5 Status.
- 3.1.2.3 Jointly Develop.
 - 3.1.2.3.1 Routing.
 - 3.1.2.3.2 Progress Reports.
 - 3.1.2.3.3 Cost Control.
 - 3.1.2.3.4 Lines of Authority.
 - 3.1.2.3.5 Field Construction Procedures.
 - 3.1.2.3.6 Inventory Control.
 - 3.1.2.3.7 Accounting.
 - 3.1.2.3.8 Other.
- 3.1.2.4 Monitoring.
- 3.1.2.5 Record Progress.
- 3.1.2.6 Determine Adequacy.
- 3.1.2.7 Provide and Pay For.

3.1.3 Construction Budget.

- 3.1.3.1 Provide Budget.
- 3.1.3.2 Cost Control System.
- 3.1.3.3 Cost Accounting Records.
- 3.1.3.4 Payment Procedures.

3.1.4 Procedures for Change Orders.

3.1.5 Coordination.

3.1.6 Quality Control.

3.1.7 Security Program.

3.1.8 Copies of Documents.

3.1.9 Construction Means and Methods.

3.1.10 Safety.

3.1.11 Work Force.

- 3.1.11.1 Qualified Workforce.
- 3.1.11.2 Sufficient Staff.

3.1.12. Conformity to Contract Documents.

- 3.1.12.1 No Deviations.
- 3.1.12.2 Prior Approval Required.
- 3.1.12.3 Proposed Changes.

3.1.13 Cleaning.

- 3.1.13.1 During Construction.
- 3.1.13.2 Prior to Final Completion.

3.1.14 Security.

3.1.15 Mobilization.

3.1.16 Trade Contracts.

- 3.1.16.1 No Obligation of Owner.
- 3.1.16.2 No Conditional Sales Agreements.
- 3.1.16.3 Separate, Distinct and Independent Covenants.

3.1.17 Effect of Change Order.

3.1.18 Force Majeure.

- 3.1.18.1 Defined.
- 3.1.18.2 Excluded Events.
 - 3.1.18.2.1 Normal Weather Conditions.
 - 3.1.18.2.2 Late Deliveries.
- 3.1.18.3 Additional Grounds.

- 3.1.19 Inspection of Work.**
 - 3.1.19.1 Access to Work.
 - 3.1.19.2 Notice to Architect from Construction Manager Prior to Covering Work.
 - 3.1.19.3 Re-examination or Re-testing of Work Covered pursuant to Consent of Architect.
 - 3.1.19.4 Inspection Does Not Relieve Construction Manager.
 - 3.1.19.5 False Start.
- 3.1.20 Superintendence and Supervision by Construction Manager.**
 - 3.1.20.1 Superintendent of Construction Manager.
 - 3.1.20.2 Supervision by Construction Manager.
- 3.1.21 Architect's Decisions.**
 - 3.1.21.1 Promptness.
 - 3.1.21.2 On Artistic Effect.
 - 3.1.21.3 Claims for Alleged Procrastination.
- 3.1.22 Correction of Work after Final Payment.**
- 3.1.23 Sales and Use Taxes.**
- 3.1.24 Notice of Commencement.**
- 3.1.25 Liens.**
- 3.1.26 Owner/Architect/Construction Manager Meetings.**
- 3.1.27 Shop Drawings.**
 - 3.1.27.1 Architect Review.
 - 3.1.27.2 Submission and Approval.
 - 3.1.27.3 Schedule.
- 3.1.28 No Changes without Owner Approval.**
- 3.1.29 Professional Services.**
- 3.1.30 Material Completion.**
 - 3.1.30.1 Construction Manager's Inspection.
 - 3.1.30.2 Initial and Supplemental Punch Lists.
 - 3.1.30.3 Final Notice of Non-Conforming Work.
- 3.1.31 Determination of Final Completion.**
 - 3.1.31.1 Notice from Construction Manager.
 - 3.1.31.2 Owner and Architect Inspection.
 - 3.1.31.3 Final Completion of the Project.
- 3.1.32 Certificates of Occupancy.**
- 3.1.33 Operating and Maintenance Manuals and Instructions.**
 - 3.1.33.1 Obtain Manuals.
 - 3.1.33.2 Instructions to User.
- 3.1.34 Record Documents.**
- 3.1.35 Written Reports.**
- 3.1.36 Cost Control.**
- 3.1.37 Scheduling Information and Notice Requirements.**
- 3.1.38 Failure to Comply with Notice Requirements.**
- 3.1.39 Owner Default.**

PART 2 – COMPONENT CHANGE ORDERS

- 3.2.1 Scope of Part.**
- 3.2.2 Bid.**
- 3.2.3 Component Change Order Sum.**
 - 3.2.3.1 Change Order Sum.
 - 3.2.3.1.1 Trade Contractors and Trade Suppliers.
 - 3.2.3.1.2 Construction Manager's Estimated Costs.
 - 3.2.3.1.3 Construction Contingency.
 - 3.2.3.1.4 Construction Manager's Fee.
 - 3.2.3.2 Lump Sum Amount.
 - 3.2.3.3 Mobilization Costs.
 - 3.2.3.3.1 Staff.
 - 3.2.3.3.2 Temporary Structures.
- 3.2.4 Unacceptable Bids.**
- 3.2.5 Time for Review.**
- 3.2.6 Rejection.**
- 3.2.7 Acceptance; Contract Date.**
- 3.2.8 Duty to Proceed.**
- 3.2.9 Owner's Liability.**
 - 3.2.9.1 Maximum Liability.
 - 3.2.9.2 Maximum Sum Calculated.

- 3.2.10 Final Completion.
- 3.2.11 Effect of GMP Change Order.
- 3.2.12 Cumulative Effect of Component Change Orders.
- 3.2.13 Pre-Commencement Obligations.
 - 3.2.13.1 Payment and Performance Bonds.
 - 3.2.13.1.1 Component Change Order.
 - 3.2.13.1.2 GMP Change Order.
 - 3.2.13.2 Certificates of Insurance.
 - 3.2.13.3 Project Schedule.
 - 3.2.13.4 Construction Budget.
 - 3.2.13.5 Rental Rates.
- 3.2.14 Order to Proceed.
- 3.2.15 Duty to Commence.
 - 3.2.15.1 Time for Commencement.
 - 3.2.15.2 No Direct Performance.
 - 3.2.15.3 Responsibility for Proper Performance.
 - 3.2.15.4 Acts and Omissions.
 - 3.2.15.5 Responsibility for Completion.

PART 3 - CHANGES TO THE WORK

- 3.3.1 Changes in Scope of the Project.
- 3.3.2 Owner's Right to Make Changes.
- 3.3.3 Change Order Further Defined.
- 3.3.4 The Change Order Form.
- 3.3.5 Changes in Guaranteed Maximum Price (GMP) and Contract Time.
- 3.3.6 Cost to Owner for Changes.
 - 3.3.6.1 Case (A).
 - 3.3.6.2 Case (B).
 - 3.3.6.3 Case (C).
- 3.3.7 Changes Forbidden without Consent of Owner.
- 3.3.8 Notice of Demand of Construction Manager for Extraordinary Remuneration or for Damages.
- 3.3.9 Subsurface Conditions.
- 3.3.10 Rock.
 - 3.3.10.1 Mass Rock.
 - 3.3.10.2 Rippable Rock.
 - 3.3.10.3 Trench Rock.
- 3.3.11 Existing Conditions.
- 3.3.12 Allowable Costs for Change Orders.
- 3.3.13 Execution of Changes Pursuant to Order.
- 3.3.14 Stipulated Maximum Sum.
- 3.3.15 Breakdown of Expenditures, Cases (a) and (c).
- 3.3.16 Payment on Account.
- 3.3.17 Form and Execution of Change Orders.
 - 3.3.17.1 Architect's Certification.
 - 3.3.17.2 Required Language.
- 3.3.18 Conditions Different from Those Indicated in Contract Documents.
- 3.3.19 Unit Prices.
- 3.3.20 Proceed Promptly with Changes.
- 3.3.21 Reimbursement for Cost of Estimating Unexecuted Change Proposals.
- 3.3.22 Execution of Change Order.

PART 4 – GMP Change Order

- 3.4.1 Guaranteed Maximum Price
 - 3.4.1.1 Guaranteed Maximum Price Proposal.
 - 3.4.1.2 Submission of Guaranteed Maximum Price Proposal.
- 3.4.2 Submittal of GMP Change Order.
 - 3.4.2.1 Format for Submittal.
 - 3.4.2.2 GMP Proposal Review Meeting.
- 3.4.3 Acceptance or Rejection of GMP Change Order; Contract Date.
 - 3.4.3.1 Time for Acceptance or Rejection.
 - 3.4.3.2 Written Notice of Acceptance.
 - 3.4.3.3 Rejection of GMP Proposal.
- 3.4.4 Acceptance of GMP Proposal.
- 3.4.5 Duty to Proceed.

3.4.6 Modification of GMP.

PART 5 - Hazardous Conditions and Materials

- 3.5.1 Hazardous Material.**
- 3.5.2 Material Safety Data Sheets.**
- 3.5.3 Environmental Protection and Hazardous Substances**

PART 6 - CORRECTING OF WORK; COVERING AND UNCOVERING WORK

- 3.6.1 Promptly Correct Work.**
 - 3.6.1.1 Full and Complete Charge.
 - 3.6.1.2 Make Good Losses.
- 3.6.2 No Delay.**
- 3.6.3 Correction After Completion.**
- 3.6.4 No Limitation.**
- 3.6.5 Failure to Correct.**
- 3.6.6 Construction Manager Default.**
- 3.6.7 Owner May Require Uncovering of Work.**
- 3.6.8 Owner May Pay for Uncovering Work.**
- 3.6.9 Correction of Work before Final Payment.**
 - 3.6.9.1 Notices of Non-Conforming Work
 - 3.6.9.2 Remedy of the Owner for Breach of Notice of Non-Conforming Work .
 - 3.6.9.2.1 Remove Work.
 - 3.6.9.2.2 Supply Work.
 - 3.6.9.3 Additional Remedies.
 - 3.6.9.4 Notice of Correction from Construction Manager.
- 3.6.10 Effect of Condemnation.**
- 3.6.11 Deductions for Uncorrected Work.**

PART 7 - TRADE CONTRACTORS; SELF PERFORMANCE

- 3.7.1 Parties.**
- 3.7.2 Selection.**
 - 3.7.2.1 Selection Process.
 - 3.7.2.2 Information for Proposed Firms.
 - 3.7.2.3 Alternative Prices.
 - 3.7.2.4 Timing of Bids.
- 3.7.3 Bidders Lists.**
- 3.7.4 Information to Bidders.**
- 3.7.5 Construction Manager Bid Review.**
- 3.7.6 Responsible Bidders.**
 - 3.7.6.1 Qualified.
 - 3.7.6.2 Bonding.
 - 3.7.6.3 Insurance.
- 3.7.7 Owner Rights.**
- 3.7.8 Construction Manager Award.**
- 3.7.9 No Owner Approval.**
- 3.7.10 Assignment.**
- OMITTED3.7.12 Lump Sum Award.**
- 3.7.13 Governing Documents.**
- 3.7.14 Duty to Continue Work.**
- 3.7.15 Alternative Price Terms.**
- 3.7.16 Rental/Purchase of Equipment.**
- 3.7.17 Construction Manager Supplied Equipment or Supplies.**
- 3.7.18 No Conflict of Interests.**
- 3.7.19 Selection of Trade Contractors.**
- 3.7.20 No Approval of Trade Contractors.**
- 3.7.21 Warranty of Construction Manager.**
- 3.7.22 Construction Manager Responsible for Acts and Omissions of Trade Contractors, Material men, Suppliers, and Employees.**
- 3.7.23 No Contract Between Owner and Any Trade Contractor, Materialman, Supplier, or Employee.**
- 3.7.24 Relationship of Construction Manager and Trade Contractors.**
 - 3.7.24.1 Trade Contractor Agreement.
 - 3.7.24.1.1 Bound.
 - 3.7.24.1.2 Payments.

- 3.7.24.1.3 Claims.
- 3.7.24.2 Construction Manager Agreement.
 - 3.7.24.2.1 Bound.
 - 3.7.24.2.2 Payments.
 - 3.7.24.2.3 No Demand for Damages.
 - 3.7.24.2.4 No Claim Without Written Notice
 - 3.7.24.2.5 Disputes.
- 3.7.25 **Owner Not Obligated to any Trade Contractor.**
- 3.7.26 **Incorporation of Terms in Trade Contracts.**
- 3.7.27 **No Obligation Under Trade Contract.**

PART 8 – BONDS AND WARRANTIES

- 3.8.1 **Construction Manager Warranties.**
 - 3.8.1.1 Work Free from Defects.
 - 3.8.1.2 Additional Security
 - 3.8.1.3 No Limitation.
 - 3.8.1.4 Complaint Items.
 - 3.8.1.5 Notification of User of Site Visits.
- 3.8.2 **Commencement Date.**
- 3.8.3 **Enforcement.**
- 3.8.4 **Notice.**
- 3.8.5 **Trade Contracts.**
- 3.8.6 **No Limitation.**
- 3.8.7 **Duty to Correct.**
- 3.8.8 **Bonds on Roofs and Walls.**
- 3.8.9 **Certificates of Manufacturers for Major Components.**
 - 3.8.9.1 Requirement.
 - 3.8.9.2 Retainage Withheld.

PART 9 - PROTECTION OF PERSONS AND PROPERTY

- 3.9.1 **Reasonable Precautions.**
- 3.9.2 **Duty to Protect Property.**
- 3.9.3 **Safety Precautions.**
- 3.9.4 **Emergencies.**
- 3.9.5 **Blasting.**
- 3.9.6 **Rain Water, Surface Water, and Back-up.**
- 3.9.8 **Fire Protection.**
- 3.9.9 **Dust Control.**
- 3.9.10 **Occupational Safety and Health Act.**
- 3.9.11 **Emergency Planning and Community Right-to-Know Act.**
- 3.9.12 **Notices and Comply with Laws.**
- 3.9.13 **Remedy Damages.**
- 3.9.14 **Written Safety Program.**

PART 10– FINAL PAYMENT

- 3.10.1 **Incomplete Work.**
- 3.10.2 **Final Completion of Components.**
- 3.10.3 **Partial Occupancy.**
 - 3.10.3.1 Written Agreement Required.
 - 3.10.3.2 Inspection.
 - 3.10.3.3 Effect.
- 3.10.4 **No Substantial Completion.**
- 3.10.5 **Final Completion of the Entire Project and Final Payment.**
 - 3.10.5.1 Notice Required.
 - 3.10.5.2 Form of Notice.
 - 3.10.5.3 No Inspection Without Prior Notice.
 - 3.10.5.4 Final Accounting.
 - 3.10.5.4.1 Documentation.
 - 3.10.5.4.2 Certificates.
 - 3.10.5.4.3 Waivers.
 - 3.10.5.4.4 Full Accounting.
 - 3.10.5.4.5 Drawings and Specifications.
 - 3.10.5.4.6 Affidavits.
 - 3.10.5.5 Certificate of Final Completion.

- 3.10.5.6 Payment.
- 3.10.5.7 Conditional Certificate.
- 3.10.6 Prerequisites to Payment.**
 - 3.10.6.1 Statutory Affidavit.
 - 3.10.6.2 Non-Influence Affidavit.
 - 3.10.6.3 Consent of Surety.
 - 3.10.6.4 Other.
- 3.10.7 Disbursement of Retainage.**
 - 3.10.7.1 Satisfactory Performance.
 - 3.10.7.2 Lien Waivers.
- 3.10.8 Failure to Provide Release or Waiver.**
- 3.10.9 Final Application for Payment.**
- 3.10.10 Waiver of Claims.**
 - 3.10.10.1 Liens.
 - 3.10.10.2 Defective Work.
 - 3.10.10.3 Special Warranties.
 - 3.10.10.4 Indemnification of the Owner
- 3.10.11 Acceptance of Final Payment by Construction Manager.**
- 3.10.12 Certification of Construction Manager Before Final Payment.**
 - 3.10.12.2 Work Completed.
 - 3.10.12.3 Necessary Facilities Complete.
 - 3.10.12.4 Work Paid For.
- 3.10.13 Continued Right to Audit.**
- 3.10.14 Records; Access; Audits.**
 - 3.10.14.1 Construction Manager Oversight.
 - 3.10.14.2 Access.
 - 3.10.14.3 Audit.
- 3.10.15 Payments Withheld.**

SECTION 4 - COMPENSATION

PART 1 - GENERAL.

- 4.1.1 General.**
 - 4.1.1.1 Pre-Construction Consultant Services Fee
 - 4.1.1.2 Construction Overhead Costs.
 - 4.1.1.3 Construction Manager's Fee.
 - 4.1.1.4 Stated Cost Limitation.
 - 4.1.1.5 Basis of Compensation.
 - 4.1.1.6 Method of Compensation.
 - 4.1.1.7 Payment Schedule.
 - 4.1.1.8 Effect of GMP Change Order.
- 4.1.2 Construction Manager's Fee**
 - 4.1.2.1 Basis of Fee.
 - 4.1.2.2 Adjustments in the Construction Manager's Fees.
- 4.1.3 Effect of Delays.**
 - 4.1.3.1 Delay of Drawings
 - 4.1.3.2 Delay of Shop Drawings Review
 - 4.1.3.3 Change in Tax Rates.
- 4.1.4 Time for Monetary Claims.**
 - 4.1.4.1 Time.
 - 4.1.4.2 Method of Filing Claim.
 - 4.1.4.3 Claims for Delay.
 - 4.1.4.4 Claims for Tax Increase.
 - 4.1.4.5 Claims Must Be In Writing.
- 4.1.5 Limitation.**
- 4.1.6 Owner Duty to Pay.**
 - 4.1.6.1 GMP Components.
 - 4.1.6.1.1 Construction Manager's Actual Cost.
 - 4.1.6.1.2 Lump Sum Amounts.
 - 4.1.6.1.3 Construction Contingency.
 - 4.1.6.1.4 Construction Manager's Fee.
- 4.1.7 Limitation of Owner Liability.**
- 4.1.8 Payments.**
- 4.1.9 Provision for Further Development of the Drawings and Specifications.**
- 4.1.10 Inclusion of Contingency.**
 - 4.1.10.1 Part of the Cost of the Work.
 - 4.1.10.2 Agreement to Monitor.
- 4.1.11 Construction Manager's Compensation Prior to Acceptance of GMP.**
- 4.1.12 Modifications of Drawings and Specifications as a Result of Acceptance of GMP Proposal. .**
- 4.1.13 Taxes.**
- 4.1.14 Abandonment Prior to Acceptance of GMP Proposal.**
- 4.1.15 Effect of Acceptance of the GMP Proposal.**

PART 2 - PAYMENT FOR PRECONSTRUCTION PHASE SERVICES.

- 4.2.1 Basis of Compensation.**
- 4.2.2 Payment Schedule.**
- 4.2.3 Payment Due.**
- 4.2.4 Construction Manager's Fee.**
- 4.2.5 Effect of GMP Change Order.**

PART 3 - PAYMENT FOR CONSTRUCTION PHASE SERVICES

- 4.3.1 Schedule of Values.**
- 4.3.2 Applications for Payment.**
- 4.3.3 Timing of Payments.**
- 4.3.4 Retainage.**
 - 4.3.4.1 First Half of Project.
- 4.3.5 Representations of Construction Manager.**
- 4.3.6 Payment Not Acceptance.**
- 4.3.7 Construction Manager's Warranty.**
 - 4.3.7.1 Title to Work.
 - 4.3.7.2 No Liens.
 - 4.3.7.3 No Encumbrance.
- 4.3.8 Payments to Construction Manager under a Component or GMP Change Order.**
 - 4.3.8.1 Applications for Payment.

- 4.3.8.2 Time for Approval or Rejection.
- 4.3.8.3 Omitted.
- 4.3.8.4 Payment of Fee.
 - 4.3.8.4.1 Prior to GMP.
 - 4.3.8.4.2 After GMP.
- 4.3.8.5 Payment Withheld.
- 4.3.8.6 Retention.
 - 4.3.8.6.1 Trade Contractors.
 - 4.3.8.6.2 Construction Manager's Work.
 - 4.3.8.6.3 Force Account Work.
 - 4.3.8.6.4 Reinstate Retainage.
 - 4.3.8.6.5 Retainage Release.
 - 4.3.8.6.6 Retainage on Fee.
 - 4.3.8.6.7 Reinstate Retainage on Fee.
 - 4.3.8.6.8 Release Retainage on Fee.
 - 4.3.8.6.9 Retainage on Contingency Cost.
 - 4.3.8.6.10 Owner May Elect Not to Withhold Retainage.
 - 4.3.8.6.11 Affidavits.
 - 4.3.8.6.12 Reimbursables, etc.
 - 4.3.8.6.13 Schedule of Payments.
 - 4.3.8.6.14 Warranty Retainage

SECTION 5 AGREEMENT FORMS

Agreement Form
Performance Bond
Payment Bond
Minimum Safety Criteria
Non-Influence Affidavit
Statutory Affidavit
Two Year Bond on Roofs and Walls
Specimen Certificate of Manufacturer

EXHIBITS

Exhibit A Contract Particulars
Exhibit B Architectural Agreement
Exhibit C Budget Format
Exhibit D Monthly Report Format
Exhibit E Construction Manager's Proposal
Exhibit F Preliminary Outline Schedule
Exhibit G Specimen Component Change Order
Exhibit H Specimen GMP Change Order
Exhibit I Specimen Change Order
Exhibit J Wage Rates and Labor Cost
Exhibit K Application for Payment
Exhibit L Construction Manager's Project Team

SECTION 1 - GENERAL

PART 1 - GENERAL

1.1.1 General Provisions.

1.1.1.1 Written Agreement. The agreements between the Construction Manager and the persons or entities identified in this Agreement, and any subsequent modifications, must be in writing, dated, and executed by the parties. These agreements, including financial arrangements with respect to this Project, must be promptly and fully disclosed to the Owner upon execution. The Agreement shall be executed in substantial conformance with the specimen shown in Section 5.

1.1.1.2 Basic Statement of Owner Objectives. The Owner's basic objectives are to develop Construction Documents based on the Documents listed in Exhibit A incorporated herein by reference so as to permit construction of the Project within the limits of the funds available to Owner for construction of the Project ("*Project Budget*"), as established by the Owner, but in no event in excess of the sum stated in Exhibit A and to construct the Project in accordance with the approved Construction Documents.

1.1.1.3 Project Team. To accomplish Owner's objectives, Owner intends to employ a team concept in connection with the development of Construction Documents and construction of the Project. The basic roles and general responsibilities of team members are set forth in general terms below and in the Agreement for Architectural Services, hereinafter referred to as "Architectural Agreement," with respect to the Architect, and in this Agreement with respect to the Construction Manager.

1.1.1.3.1 Relationship Of Parties. The Owner and the Construction Manager agree to proceed with the Project on the basis of trust, good faith, and fair dealing, to cooperate fully with each other and shall do all things necessary to perform this Agreement in an economical and timely manner, including without limitation, consideration of design modifications and alternative materials or equipment, if considered necessary or convenient by the Owner. The Construction Manager agrees to procure or furnish, as permitted by the laws of Texas, all preconstruction phase services and construction phase services as set forth herein. The Owner shall endeavor to promote harmony and cooperation among the Owner, Architect, Construction Manager and other persons or entities employed by the Owner for the Project.

1.1.1.3.2 Architect. The Architect is retained in accordance with the Architectural Agreement (i) for the design and preparation of Construction Documents which are necessary to implement the Program governing the construction of the Project or Components thereof, and the design and preparation of any necessary Schematic Design Documents, or other documents antecedent to preparation of such Construction Documents, or (ii) for supervision or architectural administration of the Work under Contract Documents, or (iii) for both. The term "*Architect*" includes engineers, surveyors, designers and the other consultants retained by the Architect.

1.1.1.3.2.1 The basis of the Owner's engagement of the Architect is the agreement shown in the Exhibit B and identified as the "Architectural Agreement". The Construction Manager acknowledges that both the Owner and the Architect have on file, at their respective places of business, copies of that executed agreement, and that both the Owner and the Architect will make available for review by Construction Manager those copies at the Construction Manager's request. The Architect is not the agent of the Owner, except to the extent so specified in writing, but is employed as a consultant to the Owner to assist the Owner in determining if the conditions of the contract have been met. All decisions of the Architect, with Owner's consent, on matters of aesthetics are final, conclusive and binding.

1.1.1.3.2.2 The Construction Manager shall promptly review a copy of the Architectural Agreement when provided by Owner to Construction Manager and shall become familiar with the respective services, authorities, obligations and responsibilities of the parties therein. Construction Manager agrees to coordinate, assist and develop a working relationship with the Architect to effectuate the purposes of the Project in accordance with the terms of this Agreement and the Architectural Agreement.

1.1.1.3.2.3 The Construction Manager also acknowledges that the Architect will consult with and assist the Owner in developing and implementing the Owner's objectives, including budgeting and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements. Furthermore, the Construction Manager acknowledges that the Owner and the Architect are proceeding with the Project under a contractual relationship and on the basis of trust, good faith and fair dealing, and they will take all actions necessary to ensure the Project proceeds to completion within the Owner's time and budgeting constraints. The Construction Manager also acknowledges that the Architect is to perform certain tasks and services required by the Architectural Agreement. The Construction Manager further acknowledges that in order for the Architect to perform its obligations, the Architect requires certain materials, information or other submittals as per the Contract

Documents, from the Construction Manager. The Construction Manager agrees to provide the Architect with certain materials, information, or other submittals required to be delivered to the Owner. The Construction Manager further agrees to cooperate with the Architect to ensure timely completion of all obligations under this Agreement and the entire Project.

1.1.1.3.2.4 Construction Manager agrees that the services provided by the Architect under the Architectural Agreement are intended to coordinate and complement, but not to diminish, alter or substitute for any of the services, authority, obligations or responsibilities of the Construction Manager under this Agreement. Construction Manager further agrees that the performance of services by the Architect in connection with the Project shall in no way relieve Construction Manager from any of its services, authority, obligations or responsibilities under this Agreement, and shall not alter or diminish those services, authority, obligations or responsibilities in any way whatsoever.

1.1.1.3.2.5 The Owner shall pay for all costs associated with services provided by the Architect, except for those costs associated with any additional review required of the Architect after the first re-submittal of documents for review. The cost of such additional reviews shall be the sole, total and complete responsibility of the Construction Manager.

1.1.1.3.3 Owner's Representative. Owner shall from time to time in writing designate one individual as Owner's Representative under this Agreement. Owner's Representative so designated in writing shall serve as Owner's Representative under this Agreement unless and until Owner gives notice in writing of the appointment of his successor. Owner or Owner's Representative may designate in writing assistants to serve as Owner's Representative with respect to the Project governed by this Agreement or in different phases or in specific areas of responsibility with respect to the Project. All requests for consents and approvals required of Owner in connection with the Project, whether by Architect, Construction Manager, or Contractor, shall be submitted to Owner's Representative, or if the matter is within the written designation of authority of his assistant, to his designated assistant. Architect, Construction Manager and Contractor may rely upon written consents and approvals signed by the Owner's Representative, or his designated assistant acting within the scope of his written designation, as the consent and approval of Owner.

1.1.1.3.4 User. The Project is intended for the benefit of the User, the Fort Bend County Judge and Fort Bend County Attorney and their respective offices. A copy of certain matters submitted to Owner may also be submitted from time to time to User for User's information at Owner's request. The User may designate one or more representatives to participate with Owner in Owner's activities under this Agreement. Neither the User nor any representative of User shall have any authority to act for or in the name of the Owner. Participation in the Project by User or its representatives shall be solely advisory to the Owner. Neither Architect, Construction Manager, or any Contractor may act or rely solely upon any directive, interpretation, decision or act or omission of User.

1.1.1.3.5 Construction Manager. The Construction Manager shall in accordance with this Agreement provide guidance based on its experience in the process of design of the Project set forth in the Program and scheduling of such design Work and of construction of the Project, including Components thereof, and construction of the Components of the Project under Component Change Orders and of the entire Project under a GMP Change Order. Nothing herein shall be deemed to impose upon the Construction Manager any responsibilities to provide any services constituting the practice of architecture, engineering or any related design profession. The Construction Manager shall use its best efforts to perform all its professional services agreed hereunder in a manner satisfactory and acceptable to the Owner, in keeping with the professional standard of care provided by construction managers in similar projects in Texas.

1.1.1.3.6 Representatives. Construction Manager and the Owner shall from time to time each designate in writing not less than one (1) representative who shall have full authority to act (other than for the receipt of notices which must be given as specified in Paragraph 1.1.5 and for change orders and/or any budgetary matter, which require approval from the Fort Bend County Commissioners Court) in matters relating to this Agreement until notice is given that such authority has been revoked. Construction Manager and the Owner may each rely upon the written certification of the other as to the appointment of a designated representative or the revocation of his authority. The Construction Manager shall designate, in writing, a representative authorized to act on the Construction Manager's behalf with respect to the Project. Construction Manager shall employ a Project Manager and necessary assistants who shall be in attendance at the Project site(s) during the progress of the Project work. The Project Manager shall represent Construction Manager and all communications given to the Project Manager shall be binding upon Construction Manager. Upon written request in each case, Owner shall confirm important communications in writing. The Construction Manager's authorized representative shall be Dale Sellers, President Phoenix I/Senior Project Manager. The Construction Manager shall identify the Project Team, by name, in Exhibit L, including the role, duties and authority of each member. Prior to the replacement of

any member of the Project Team, the Construction Manager shall provide to Owner the proposed replacement's resume for review and approval.

1.1.1.3.7 Contractor(s). Unless the performance of Work is governed by a Component Change Order or a GMP Change Order to this Agreement, Owner may select one or more Contractors to perform Work with respect to the Project or Components thereof. The Construction Manager shall afford the Owner's separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Construction Manager's construction and operations with theirs as required by the Contract Documents. The Owner's separate contractors shall adhere to the Construction Manager's work rules and safety requirements as provided by the Construction Manager to the Owner pursuant to Section 3.9.13.

1.1.1.4 Project Team Cooperation. It is the Owner's requirement that the Architect, Owner, User, Construction Manager and any Contractor other than Construction Manager, shall Work as a team to affect the design of the Project set forth in the Program, to effect commencement of and completion of construction in accordance with the Project Schedule, and to achieve completion of the Project. Each team member shall communicate with all other team members to assure overall coordination, cooperation and efficiency. Each team member shall cooperate fully with and coordinate fully with each other team member in order to achieve completion of the Project in an expeditious and economical manner.

1.1.1.5 Familiarity with Program. Construction Manager represents that it has reviewed and become familiar with the Program.

1.1.1.6 Conference. Promptly after the execution of this Agreement, Construction Manager shall confer with the Architect, Owner and User to identify personnel and relevant organizational charts of each team member, and to establish Working relationships with each team member.

1.1.1.7 Title to Project Site. Title to the site is vested in the County of Fort Bend, Texas.

1.1.1.8 Authority of Construction Manager. Construction Manager is, and shall at all times during the term of this Agreement be, an independent contractor in the performance of its duties and obligations under this Agreement. Construction Manager shall have no authority to bind or otherwise obligate Owner, orally, in writing, or by any acts, unless specifically authorized by Owner in writing. Nothing contained in this Agreement shall constitute or be deemed or construed to create a partnership or joint venture, or any agency relationship, between Owner and Construction Manager. Construction Manager, however, owes Owner the duty of a fiduciary in the performance of Construction Manager's responsibilities.

1.1.1.9 Defined Terms. Wherever used in the Contract Documents and printed with initial capital letters, the terms listed in this Article will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents may include references to identified articles and paragraphs, and the titles of other documents or forms.

1.1.1.10 Meaning of Words And Phrases. Unless the context or the Contract Documents taken as a whole indicate to the contrary, words used in the Contract Documents that have usual and common meanings shall be given their usual and common meanings and words having technical or trade meanings shall be given their customary meaning in the subject business, trade or profession. Materials or work described in words that so applied have a well-known technical or trade meaning shall be held to refer to such recognized meanings. In the event the Architect shall have used such phrases anywhere in the Contract Documents as: "Work indicated on the drawings and herein specified", "work shown and specified", "in accordance with drawings and specifications", "indicated on the drawings and specifications", "in accordance with specifications and applicable drawings", "these specifications and the accompanying drawings", "as indicated on the drawings and as specified herein", or similar expressions, they shall not be deemed to be and are not a defeasance of the provisions under the present article of the Agreement, and they are not to be construed as requiring work to be called for both in the specifications and in the drawings in order to be a requirement under the Agreement.

1.1.1.11 Cross-Reference and Citations of Articles and Paragraphs of the Agreement. Cross-references and citations of articles and paragraphs of the Agreement, if any, are for the convenience of the Construction Manager and the Owner and are not intended to be plenary or exhaustive nor are they to be considered in interpreting the Contract Documents or any part of the Contract Documents.

1.1.1.12 Article Not Plenary. This Article is not entire, plenary, or exhaustive of all terms used in the Agreement that require definition. There may be definitions of other terms under articles to which the terms are related.

1.1.2 Basic Definitions.

1.1.2.1 Affiliate. With respect to Construction Manager, any firm, partnership, corporation or other legal entity which is owned by, under common ownership or control with, or having a common principal or shareholder with Construction

Manager, whether such relationship is direct or indirect. In addition, unless the consequences of such relationship for the purposes of this Agreement are expressly waived in writing by the Owner after full disclosure by the Construction Manager, the term "Affiliate" also includes any entity currently affiliated with Construction Manager as a partner or joint venture with respect to any commercial venture, whether or not such venture includes the Project.

1.1.2.2 *Architectural Agreement.* The agreements between the Owner and an Architect, attached hereto as Exhibit B.

1.1.2.3 *Architect.* The architect or engineer or architectural or engineering firm selected by Owner (i) for the design and preparation of Contract Documents governing the construction of a Project, and the design and preparation of Schematic Design Documents, or other documents antecedent to preparation of Contract Documents, or (ii) for supervision or architectural administration of Work under Contract Documents, or (iii) for both, and engineers, surveyors, designers, or the consultants retained by the Architect, all such services and the scope thereof to be set forth in an Architect Agreement. The Architect is not an employee of the Owner, but is engaged or retained by it for the purpose of performing design and construction administration services for the project

1.1.2.4 *Agreement.* The Construction Management Agreement, these Construction Manager General Requirements, the Contract Documents (defined in 1.1.2.14), the Construction Manager's response to SOQ 12-050, and Owner's SOQ 12-050. and all written amendments or modifications to it that have been executed by both parties. The Agreement is also the entire and integrated written contract between the Owner and Construction Manager concerning the Work. The Agreement supersedes prior negotiations, representations, or agreements, whether written or oral. See also Contract Documents.

1.1.2.5 *Application for Payment.* The form acceptable to Owner which is to be used by Construction Manager during the course of the Work in requesting periodic progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

1.1.2.6 *Approved Development Schedule.* The schedule of all activities related to the design and construction of the Project.

1.1.2.7 *Business Day.* A business day is each calendar day other than Saturday, Sunday, and any holiday observed by Owner.

1.1.2.8 *Certificate of Occupancy.* The Notice from Owner to the Construction Manager and the User that the User is authorized to take possession of the Project. All warranties, guaranties, etc., begin effective with the date of the Certificate of Occupancy.

1.1.2.9 *Change Order.* A document prepared by the Architect and recommended by the Architect which is signed by the Construction Manager and the Owner and authorizes an alteration, addition, or deduction from the original scope of work as defined by the Contract Documents to address changes or unforeseen conditions necessary for Project completion, or an adjustment in the Guaranteed Maximum Price (GMP) or the Contract Time, issued on or after the Effective Date of the Agreement. There shall be a presumption against the need for Change Orders that increase the GMP.

1.1.2.10 *Claim.* A demand or assertion by the Owner or the Construction Manager seeking an adjustment of the GMP or Contract Times, or both, or other relief with respect to the terms of the Agreement. The term "Claim" also includes other disputes and matters in question between the Owner and the Construction Manager arising out of or relating to the Agreement. The responsibility to substantiate a Claim shall rest with the party making the Claim. A demand for money or services by a third party is not a Claim.

1.1.2.11 *Component Change Order.* An element of a Project for which the Architect agrees to prepare or segregate Construction Documents as a discrete package to permit procurement of the described items or the commencement of the construction of the described element of the Project.

1.1.2.12 *Component Construction Document.* The Construction Documents issued by the Architect with respect to a Component.

1.1.2.13 *Construction Documents.* The final stage of the detailed architectural and engineering documents setting forth the design for the Project prepared by the Architect or Engineer of Record ("Architect"). Construction Documents consist of working drawings and specifications setting forth and describing: (1) the construction work to be done; and (2) the materials, workmanship, finishes, and equipment required for the architectural, civil, electrical, structural, mechanical, plumbing and all other systems and their components.

1.1.2.14 *Contract Documents.* The Contract Documents for the Project shall consist of the Agreement (as defined in 1.1.2.4), the Program, the Construction Manager's GMP Change Order, Construction Documents, Construction

Document Change Orders, and any other Change Order thereto that together form the entire integrated agreement between the Owner and the Construction Manager.

1.1.2.15 *Contract Time*. The period of time established for completion of the Project as established by the GMP Project Schedule. Contract Time commences upon the Owner's issuance of a Notice to Proceed (a written document issued by the Owner instructing the recipient to begin performance as specified in such document and in compliance with this Agreement).

1.1.2.16 *Contractor*. Any person or entity other than Construction Manager, except as may be provided herein, which enters into an agreement with Owner to perform the construction of all or any portion of the construction on a Project.

1.1.2.17 *Cost of the Work*. The sum of all allowable costs necessarily incurred and paid by Construction Manager in the proper performance of the Work as required by the Contract Documents.

1.1.2.18 *Project Schedule*. The critical path method schedule in the form of precedents, networks and time sequences prepared by the Construction Manager using either Microsoft Project software or another software approved for use by the Owner.

1.1.2.19 *Day*. Unless otherwise stated, reference to the terms "day," "days," "month," or "months" mean calendar day, calendar days, calendar month, and calendar months, respectively.

1.1.2.20 *Defective Work*. Work that, for any reason in the opinion of the Owner and/or the Architect, is not in conformance with the requirements of the Contract Documents.

1.1.2.21 *Design Development*. An interim step in the design process. Design Development documents consist of plans, elevations, and other drawings and outline specifications. These documents will fix and illustrate the size and character of the entire project in its essentials as to kinds of materials, type of structure, grade elevations, sidewalks, utilities, roads, parking areas, mechanical and electrical systems, and such other work as may be required.

1.1.2.22 *Effective Date of the Agreement*. The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

1.1.2.23 *Eligible contractor*. Includes the Construction Manager and all Trade Contractors of any tier providing direct labor on the project site. Temporary labor services and labor leasing companies are to be treated as a Trade Contractor.

1.1.2.24 *Final Certificate*. The Certificate issued by the Architect stating that all work, other than work that is incomplete through no fault of the Construction Manager, has been completed in accordance with the terms of the Contract Documents. The Final Certificate must be issued prior to the release of the Construction Manager's retainage. The appropriate definition for completion is Final Completion.

1.1.2.25 *Final Completion*. The full and final completion of all Work in accordance with the Contract Documents.

1.1.2.26 *Final Notice of Non-Conforming Work*. The Final Notice of Non-Conforming Work is issued as a result of the Pre-final Inspection when the Work is Substantially Complete. Upon the completion of Initial and Supplemental Punch Lists, and correction of this Punch List work, the Architect, with the approval of the Owner, will issue the Final Certificate. Costs associated with the repair or replacement of nonconforming Work will be at the Construction Manager's sole expense, and shall not be deducted from the contingency funds of either the Construction Manager or the Owner.

1.1.2.27 *Guaranteed Maximum Price (GMP)*. The maximum amount which Owner is obligated to pay Construction Manager for construction of the Project under a GMP Change Order for all costs or fees of Construction Manager in connection with such Work.

1.1.2.28 *Install, Deliver, Furnish, Supply, Provide and other such words*. The work in question shall be put in place by the Construction Manager ready for use unless expressly provided to the contrary.

1.1.2.29 *Substantially Complete or Substantial Completion*. The point in the construction of the Project when the Construction Manager has performed a sufficient portion of the work so that, in his opinion and with the agreement of the Owner's Representative, and when a Certificate of Occupancy has issued from the building official, there is only a minimal amount of work to be completed and that any incomplete or non-conforming work can be completed or corrected in thirty (30) days or less.

1.1.2.30 *Milestone*. A principal event specified in the Contract Documents or the CPM Schedule relating to an intermediate completion date or time prior to the date of the Final Certificate.

1.1.2.31 *Notice.* Any notice, election, demand, request, consent, approval or other communication required or permitted to be given under this Agreement shall be in writing signed by an officer or duly authorized representative of the party making same and shall be delivered personally or shall be sent by certified or registered mail, postage prepaid, return receipt requested, shall be effective as of the date on which it is received or would have been received but for the refusal of the addressee to accept delivery, and shall be addressed as shown below. The persons and addresses to which notices should be given may be changed by notice given in accordance with Exhibit A.

1.1.2.32 *Notice of Non-Conforming Work.* A Notice of Non-Conforming Work shall be in writing, shall be dated, shall be signed by the Architect, shall be addressed to the Construction Manager with a copy to the Owner, and shall contain three elements as follows:

FIRST ELEMENT: Description of work . . .

- (1) Which has been omitted or
- (2) Which is unexecuted as of the date of the Notice of Non-Conforming Work, the time for its incorporation into the work under the Project Progress Schedule having expired, or
- (3) Which has not been executed in accordance with the methods and materials designated in the Contract Documents.

SECOND ELEMENT: Citation of the provision or provisions of the Contract Documents which has or have been violated.

THIRD ELEMENT: Fixing of a reasonable space of time within which the Construction Manager shall have made good the deficiency which said space of time shall not be deemed to be an extension of Contract Time for filing the Notice of Readiness for Final Inspection pursuant to Article 3.10.5 nor shall it be deemed to be authorization for amendment to the Project Progress Schedule.

A Notice of Non-Conforming Work may be issued for failure of the Construction Manager to supply enough workmen or enough materials or proper materials. The Notice of Non-Conforming Work in such event may be based on Article 1.9.15, and upon the definition of Work as set forth under Paragraph 1.1.2.48.

1.1.2.33 *Owner.* Fort Bend County, Texas, acting by and through its governing body, the Fort Bend County Commissioners Court.

1.1.2.34 *Parties.* The Owner, the Construction Manager and the Architect. They are treated throughout the Contract Documents as if each were of the singular number and masculine gender. Express third party beneficiaries are the User and the County of Fort Bend, Texas.

1.1.2.35 *Payment Bond.* A bond with good and sufficient surety or sureties payable to the Owner and intended for the use and protection of all Trade Contractors and all persons supplying labor, materials, machinery, and equipment in the prosecution of the work provided for in the public works construction contract.

1.1.2.36 *Performance Bond.* A bond with good and sufficient surety or sureties for the faithful performance of the Agreement and to indemnify the Owner for damages occasioned by a failure to perform the work or for failure to perform the work within the prescribed time. Such bond shall be payable to, in favor of, and for the protection of the Owner.

1.1.2.37 *Preliminary Plans and Specifications.* Preliminary Plans and Specifications fix and describe the size and character of the Project or a component thereof.

1.1.2.38 *Project.* The construction of the facility to be constructed under this Agreement and designated on the face of this Agreement.

1.1.2.39 *Reasonable Termination Expenses.* The (i) salary cost for Construction Manager's staff during a period not exceeding two weeks from the date of termination; (ii) the cost to Construction Manager to terminate any lease of equipment (other than motor vehicles) required specifically for the purposes of providing services under this Agreement provided that prior notice of such acquisition was given to Owner. See also Paragraph 1.7.2.1.3, Record Documents.

1.1.2.40 *Samples.* Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

1.1.2.41 *Schematic Design.* The beginning of the design process, sometimes commonly known as Preliminary Design.

1.1.2.42 *Schematic Design Documents.* The Schematic Design Documents are the schematic design plans and elevations showing the scale and relationship of Project or its Components. Schematic Design documents consist of written and graphic (drawings, sketches, etc.) presentations that will enable the Owner to determine if the intent of the

project, as set forth in the Program provided by the Owner, is being addressed, and shall consist of at least the following: (a) Schematic Site Plan; (b) Floor Plans; and (c) Elevations.

1.1.2.43 *Shop Drawings.* Drawings, schedules, data, catalogue cuts, manufacturers' published recommendations, charts, bulletins, brochures, illustrations, circulars, roughing drawings or formulae, etc., which are specifically prepared, distributed, or assembled by or for Construction Manager or by Trade Contractors, manufacturers, material-men, or suppliers and submitted by Construction Manager to illustrate some portion of the Work or for use in installing work.

1.1.2.44 *Site(s).* Lands or areas indicated in the Contract Documents as being furnished by the Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by the Owner which are designated for the use of the Construction Manager.

1.1.2.45 *Trade Contractor.* A Trade Contractor to Construction Manager performing any part of the Work Construction Manager has undertaken to perform under a Component Change Order or GMP Change Order.

1.1.2.46 *Trade Supplier.* A material-man or supplier of goods or equipment to Construction Manager in connection with the Work undertaken to be performed by Construction Manager under a Component Change Order or a GMP Change Order.

1.1.2.47 *Unavoidable Delays.* As defined in Section 1.4.5.

1.1.2.48 *Underground Facilities.* All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including without limitation those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

1.1.2.49 *Work.* The total construction and related services required to be provided by a Contractor for the construction and completion of the Project or Component thereof in accordance with the Contract Documents. The term "Work" means all labor, materials, and services necessary to produce the construction and completion of the Project, and the performance of any other Construction Manager obligation in accordance with the Contract Documents.

1.1.3 **Other Definitions.** As used in this agreement, terms identified in the Owner's Agreement with the Architect shall have the meaning set forth in that document.

1.1.4 **Identification, Execution, Correlation, and Intent of Documents.**

1.1.4.1 Identification. The Architect and the Program Manager shall, regardless of any identification to the contrary, identify the Construction Documents.

1.1.4.2 Correlation and Intent. It is the intent of the Owner and Construction Manager that the Contract Documents include all items necessary for proper execution and full and final completion of the Work. The Contract Documents are complementary, and what is required by one is as binding as if required by all. The Construction Manager shall comply with its manifest intent and general purpose of the Project, taken as a whole, and shall not make use of any errors or omissions therein to the detriment of the Work. The intention of the documents is to include all labor and materials, equipment, and transportation necessary for the proper execution of the work.

PART 2 - CONSTRUCTION MANAGER'S GENERAL SERVICES AND RESPONSIBILITIES.

1.2.1 **General Duties and Basic Services.**

1.2.1.1 Representations Of Construction Manager.

1.2.1.1.1 Independent Contractor. Fiduciary Role. The Construction Manager represents that it is an independent contractor, competent, knowledgeable and familiar with the type of work contemplated by this Agreement. The Construction Manager further represents that it accepts a fiduciary role and responsibility with respect to the Owner and will, to its best abilities, act in the best interests of the Owner and the timely completion of the Work. The Construction Manager agrees and understands that neither it nor any of its agents or employees may act in the name of the Owner except and unless specifically authorized in writing by the Owner to do so. The Construction Manager shall furnish construction administration and management services and use the Construction Manager's best efforts to perform the Project in an expeditious and economical manner consistent with the interests of the Owner.

1.2.1.1.2 Familiarity with Project. The Construction Manager represents and accepts that it has: (a) visited the Property(ies), (b) taken such other steps as may be necessary to ascertain the nature and location of the Project work and the general and local conditions which affect the Project work or the cost thereof, (c) investigated the labor situation as regards to the Project, (d) examined the Property(ies), the obstacles which

may be encountered and all other observable conditions having a bearing upon the performance of the Project work, the superintendence of the Project work, the time of completion and all other relevant matters, and (e) reported to Owner the results of all of the foregoing.

1.2.1.1.3 Representation of Construction Manager. The Construction Manager represents and warrants to the Owner that: (i) the Construction Manager is a limited partnership, duly organized, validly existing and in good standing under the laws of the State of Texas, is qualified to transact business in the State of Texas, and has the full and complete right, power and authority to enter into this Agreement and perform the Construction Manager's duties and obligations under this Agreement in accordance with the terms and conditions of this Agreement; and (ii) the Construction Manager has obtained or will obtain all necessary licenses and permits which are required for the Construction Manager to perform the Construction Manager's services pursuant to this Agreement.

1.2.1.1.4 Warranty of Construction Manager. The Construction Manager warrants to the Owner that: (i) the Construction Manager possesses the skill and knowledge ordinarily possessed by well-informed members of its trade or profession and the Construction Manager will use its best efforts to ensure that the services provided under this Agreement will be performed, delivered, and conducted in accordance with the best professional standards and in accordance with industry standards, and (ii) the Construction Manager is fully experienced and properly qualified to perform the class of Work provided for herein, and that it is properly equipped, organized and financed to perform such Work, and (iii) following the date of acceptance of this Agreement, the services provided by the Construction Manager to the Owner will conform to the representations contained in this Agreement, including all attachments, schedules and exhibits. All warranties provided by the Construction Manager in this Agreement, including the provisions of Section 3.8.1, shall be cumulative, shall be deemed consistent and not in conflict, are intended to be given full force and effect and to be interpreted expansively to give the broadest warranty protection to the Owner.

1.2.1.2 Responsibility to Coordinate. In addition to other responsibilities as stated herein, the Construction Manager acknowledges its responsibility to coordinate and manage the Project work with that of separate contractors to be selected for the installation of other work within the Project, or in the proximity of the Project. Construction Manager expressly agrees to schedule and coordinate the Project work with such separate contractors so as to assist them and permit each phase of the Project to be completed on schedule.

1.2.1.3 Definition of Project Criteria. Owner shall be responsible for defining Project criteria as to expectations for program design, cost and construction schedule. Construction Manager shall be responsible for delivering all construction services necessary to complete improvements that satisfy the Project criteria promulgated by Owner. Additionally, Construction Manager shall be responsible for providing timely feedback to Owner relating to Project design, budget and schedule to allow Owner to make value-based judgments throughout the development and construction process.

1.2.1.4 Construction Manager's Review. The Construction Manager shall review the Contract Documents, including without limitation, the Owner's program to determine the requirements of the Project. The Construction Manager shall commence the Work to be performed under this Agreement upon receipt of a Notice to Proceed issued by the Owner. The Construction Manager shall diligently perform all of the Work required by the Contract Documents, and reasonably inferable from industry standards and code requirements.

1.2.1.5 Project Delivery. Construction Manager shall construct the Project in accordance with the Contract Documents, and Construction Manager shall deliver the Project completed in accordance with the Contract Documents, substantially free from defects, and within the Contract Time.

1.2.1.6 Construction Manager's Consultation. The Construction Manager shall provide consultation concerning replacement of Work damaged by fire or other cause during construction, and furnish services required in connection with the replacement of such Work. Such consultation will be considered an additional service and will be provided pursuant to a Change Order unless the fire or other damage was caused as a result of the negligence of the Construction Manager. If the cost of the replacement or repair of the damage is reimbursable under the terms of any insurance policy, the full amount of any such insurance recovery shall be applied to the Owner.

1.2.2 General Responsibilities. In addition to obligations created herein, the Construction Manager accepts the relationship of trust and confidence established between it and the Owner by this Agreement. The Construction Manager agrees that the Work will comply strictly with the provisions of this Agreement. The Construction Manager agrees to furnish all services that are necessary or appropriate to fully complete all required Basic Services as defined in this Agreement. The Construction Manager also agrees to furnish efficient business administration and superintendence to fully complete all required Basic Services.

1.2.2.1 Supervision and Direction. Construction Manager shall supervise and direct the Project work using diligent skill and attention. Construction Manager shall be responsible for and shall coordinate all construction means, methods, techniques, sequences and procedures.

1.2.2.2 Enforce Discipline. Construction Manager shall at all times enforce strict discipline and good order among its employees, Trade Contractors, and other persons performing the Project work, and shall not employ or permit the employment of unfit persons or persons not skilled in the task assigned to them. Where utility work is required within a secured environment, work shall be supervised by personnel that have cleared a security screening for prior criminal offenses.

1.2.2.3 Maintain Records. Construction Manager shall keep Owner and Architect informed of the progress of the Project work. Construction Manager shall maintain records of the cost for the Project work pursuant to generally accepted accounting principles and such other methods as Owner may require, including complete backup documentation.

1.2.2.4 Answer Questions. Construction Manager, with reasonable promptness and in accordance with time limits set by Owner, shall answer Owner and Architect's questions and provide Owner and Architect with requested Project information.

1.2.2.5 Acts and Omissions. Employees of or Trade Contractors to the Construction Manager shall perform all Basic Services required by this Agreement. The Construction Manager is responsible to the Owner for acts and omissions of the Construction Manager's employees, Trade Contractors and their agents and employees, and other persons.

1.2.2.6 Replacement Project Manager. If the Construction Manager terminates the Project Manager or, if the Construction Manager, for any reason, engages a Project Manager different from the one identified in this Agreement, Construction Manager must ensure that the replacement Project Manager has similar qualifications and experience as the originally identified Project Manager. Furthermore, the Construction Manager must obtain the Owner's prior written approval before engaging a replacement Project Manager.

1.2.2.7 Promptly Commence. Upon receipt of a Notice to Proceed from the Owner, the Construction Manager shall promptly commence and diligently pursue the performance of the Basic Services described in this Agreement.

1.2.3 General Consultation Services. Construction Manager shall provide the following consultation services to Owner:

1.2.3.1 Project Schedule Meetings. Develop, in consultation with Owner and Architect, a project schedule for and attend scheduled meetings with the Architect, Owner and User conducted by the Construction Manager, during the development of the project in accordance with the Program and within time limits stated in this Agreement.

1.2.3.2 Advise Concerning Revisions. Advise the Owner, Architect and User regarding revisions in connection with Site use and improvements, selection of materials, building systems and equipment, construction feasibility, availability of materials and labor, time requirements for installation and construction, other factors related to costs (including costs of alternative designs or materials, preliminary budgets and possible economies), and scheduling of design and construction services and perform and provide life-cycle costs and value engineering analyses and other studies for such purposes.

1.2.3.3 Project Schedule. With the Architect, develop and periodically revise a Project Schedule for review by the Owner, which coordinates and integrates the Architect's design efforts with Construction Manager's actual or anticipated construction schedules. The Project Schedule shall include:

1.2.3.3.1 Schematic/Design Drawings. A schedule for completion of any necessary Schematic/Design Drawings incident to the Program;

1.2.3.3.2 Identification. Identification of:

1.2.3.3.2.1 the Components of the Project (a) for which portions will be separated for incorporation into a Component Change Order or (b) for the description of specific components of the Work by a Construction Document Change Order issued after the GMP Change Order, so as to permit the immediate commencement of construction services or to facilitate the sequence of construction to further and without affecting the Owner's basic objectives,

1.2.3.3.2.2 the sequence in which such Component Construction Documents will be prepared or separated, and

1.2.3.3.2.3 a schedule for completion of such Component Construction Documents;

1.2.3.3.3 Construction Documents. A schedule for completion of all Construction Documents necessary for the entire Project;

1.2.3.3.4 Commence and Completion of Construction. A schedule for the anticipated commencement and completion of construction and procurement activities under a Component Change Order for each Component for which separate Component Construction Documents are to be prepared or separated;

1.2.3.3.5 Architect's Response Times. A schedule for Architect response times for shop drawings and other submittals required to be made by Construction Manager in connection with the Work under a Component Change Order or GMP Change Order;

1.2.3.3.6 Punchlist and Reviews. A schedule for development and completion of the punchlist and reviews.

1.2.3.3.7 Design and Review Activities related to permit and regulatory approvals

1.2.3.4 Procedure for Submission of Design Documents. With the Architect and Program Manager, develop a procedure for the regular submission by the Architect of design documents prepared by the Architect.

1.2.3.5 Review Documents. Review the design documents as they are being prepared and are made available by the Architect for the purpose of recommending alternative solutions whenever such matters affect cost, construction feasibility or schedules without, however, assuming any of the Architect's responsibilities for design and perform and provide life-cycle costs and value engineering analyses and other studies for such purposes.

1.2.3.6 Recommendations for Division of Work. Make recommendations to the Owner and to the Architect regarding the division of the Work in the design documents and revisions to facilitate the phasing of the Work related to the Project, the selection and awarding of Trade Contracts, taking into consideration such factors as time of performance, the availability of labor, local participation, overlapping trade jurisdictions, provisions for temporary facilities, and the reduction of areas of conflict and overlapping in the Work to be performed by Construction Manager or by Trade Contractors.

1.2.3.7 Proposed Staffing Plan. Develop a proposed staffing plan, and a wage and salary schedule for approval by Owner.

1.2.4 Obligation for Payment. Unless otherwise provided in the Contract Documents, the Construction Manager shall provide and shall pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for proper execution and completion of the Project, whether temporary or permanent and whether or not incorporated or to be incorporated in the Project.

1.2.5 Construction Budget and Estimates. Construction Manager shall prepare for the Project a Construction Budget (the "Construction Budget") setting forth a preliminary estimate of all Project costs utilizing the format set forth on Exhibit C. Construction Manager shall submit to Owner, for Owner's approval, the Construction Budget for the Project. The Construction Manager shall prepare budget estimates of the Cost of the Work at regular intervals during the design and construction phases of the Project and shall, by efficient management and supervision, ensure that the Cost of the Work will not exceed the Guaranteed Maximum Price, as adjusted by Change Orders approved by both parties. Estimates shall set forth in detail Construction Manager's estimate of construction costs, including all Actual Costs and Construction Manager Contingency and Fees, for the construction of the Project and each Component thereof. Such Construction Cost Estimates shall be prepared and updated continuously as construction documents are developed and shall be formally submitted to Owner, to Program Manager, to User and to Architect when each Component Change Order is issued or at such more frequent intervals as Owner may reasonably request.

1.2.6 Obligations and Duties. The Construction Manager shall perform, as Basic Services, all those obligations and duties identified in this Agreement.

1.2.7 Compliance with Laws. Construction Manager shall assist Owner with the necessary governmental approvals and permits and perform such acts as shall be necessary to effect the compliance with all laws, rules, ordinances, statutes, and regulations of any governmental authority applicable to the completion of the development and construction of the Project..

1.2.8 Utilities. Construction Manager shall assist the Owner with the preparation of all applications for water, sewer, electrical, gas, telephone, and other utility services necessary for the completion and operation of the Project, provided all such applications shall be executed by Owner.

1.2.9 Project Coordination and Documentation. Construction Manager shall: (i) schedule regular weekly (unless requested more frequently by Owner) design and construction coordination meetings with all appropriate parties, including Owner; (ii) promptly issue reports and minutes of all such meetings in a format acceptable to Owner; (iii) review and produce for approval by Owner all necessary documentation including monthly reports of Project status utilizing the format set forth in Exhibit D, except for legal documents, required throughout the Project; and (iv) advise and consult with Owner with respect to the granting by Owner of any consent or approval required for the development of the Project.

1.2.10 Cost Control and Reporting. Construction Manager shall: (i) prepare a Project control budget, consistent with the Construction Budget, showing all estimated Project costs by individual line item; (ii) provide continual management of

such control budget throughout the Project duration, identifying potential cost problems and potential solutions for Owner's approval; (iii) provide monthly reports (unless requested more frequently by Owner) with regard to the status of the total Construction Budget. Each of the budgets and schedules described above, together with any and all modifications and amendments thereto, shall be subject to the approval of Owner through the Fort Bend County Commissioners Court.

1.2.11 Architect.

1.2.11.1 Total Project Budget. The Construction Manager acknowledges that the Owner has appropriated a fixed amount of money for the Project. The Construction Manager also acknowledges that the Architect, as the Owners' design and management consultants, will manage the Total Project Budget. The Construction Manager agrees to notify the Architect of any change requests that may have an impact on the budget as soon as the Construction Manager becomes aware of the need for such a change request.

1.2.11.2 Market Conditions. The Construction Manager shall consult with the Architect as to construction market conditions and scheduling factors.

1.2.11.3 Names of Trade Contractors. The Construction Manager, as soon as practicable after the commencement of this Agreement, shall furnish to the Architect and the Owner the written names of the persons or entities the Construction Manager proposes to engage as Trade Contractors for the Project subject to such persons or entities being approved or deemed approved in accordance with provisions of the Contract Documents.

1.2.11.4 Names of Vendors. The Construction Manager shall provide the Architect, and the Owner a list of contractors, and vendors whose services may be required in the purchasing of materials and services for the construction of the Project.

1.2.11.5 Periodic Progress Reports. Construction Manager shall submit to the Architect information to allow the Architect to prepare its periodic progress reports to the Owner. Such information must include key events, changes, and performance relative to schedule and budget.

1.2.11.6 Filing Claims. Before filing any claim, the Construction Manager shall notify the Architect and the Owner of any claims it intends to file.

1.2.11.7 Tests, Studies, etc. The Construction Manager shall notify the Architect and the Owner of any tests, analyses, studies, or reports that may be required.

1.2.12 Easements, etc. If the Construction Manager knows or learns of the need to obtain easements, zoning variances, or legal authorizations regarding site utilization, the Construction Manager shall promptly notify the Owner.

1.2.13 Sufficiency of Documents. The Construction Manager acknowledges and represents that all documents and materials submitted by the Owner or the Architect on the Owner's behalf, to the Construction Manager in connection therewith are complete and sufficient to have enabled the Construction Manager to determine the scope of the Work in order to enter into this Agreement. The Construction Manager confirms that it has examined the site(s) and all physical and other conditions affecting the Work and is fully familiar with the site(s) and with such conditions. The Construction Manager specifically represents to the Owner that it has examined (a) the nature, location, and character of the Project and the site(s), including, without limitation, the surface conditions of the site(s) and all structures and obstructions thereon, both natural and man-made, and all surface conditions of the site(s), including but not limited to any wetlands existing on or adjacent to the site(s) shown on the Contract Documents; (b) the nature, location, and character of the general area in and the site(s) on which the Project is located, including without limitation, its climatic conditions, its location within the flood plain, as well as available labor supply and labor costs, and available equipment supply and equipment costs; and (c) the quality and quantity of all materials, supplies, tools, equipment, labor, and services necessary to complete the Work in the manner and within the cost and time required by the Contract Documents. In connection with the foregoing, and having carefully examined all Contract Documents, and having examined the site(s), the Construction Manager acknowledges and declares that it has no knowledge of any discrepancies, omissions, ambiguities or conflicts in the Contract Documents and agrees that if it becomes aware of any such discrepancies, omissions, ambiguities or conflicts, it shall promptly notify the Owner thereof.

1.2.14 Royalties and Patent Fees. The Construction Manager shall pay royalties and license fees for patented designs, processes or products. The Construction Manager shall defend suits or claims for infringement of patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer is required by the Owner. If the Construction Manager, however, knows or has reason to know that the use of a required design, process or product is an infringement of a patent, the Construction Manager shall be responsible for such loss unless such information is promptly furnished in writing to the Owner and the Architect, ten (10) days before its use in the Project and the Owner, through the Architect, reconfirms its use to the Construction Manager.

1.2.15 Assignment.

1.2.15.1 No Contractual Relationship. Nothing contained in this Agreement creates a contractual relationship between the Owner and any person or entity other than the Construction Manager. But the Owner and Construction Manager agree that the Owner is an intended and express third-party beneficiary of all contracts for construction services and all subcontracts, purchase orders, and other agreements between the Construction Manager and third parties in connection with the Project or the Work.

1.2.15.2 Conditional Assignment. The Construction Manager hereby conditionally assigns to the Owner all of its interest in any subcontracts (including, without limitation, purchase orders) entered into by the Construction Manager for performance of any part of the Work. Such conditional assignment shall become effective only upon the termination of this Agreement, whereupon the Owner shall succeed to the rights and obligations of the Construction Manager under such subcontract. The Construction Manager shall incorporate, into its respective subcontracts, supply agreements, purchase orders, and other agreements in connection with the Project or the Work, language that expressly names the Owner as an intended third-party beneficiary of such agreements.

1.2.15.3 Assignment Provisions. Construction Manager shall also ensure that its subcontracts, supply agreements, purchase orders, and other agreements contain a provision that assigns to the Owner the Construction Manager's interest in the respective agreement to the Owner immediately upon Trade Contractor's or supplier's receipt of Owner's notice given pursuant to Subparagraph 1.7.2.1.4 or Subparagraph 1.7.3.3. Furthermore, Construction Manager shall ensure that its subcontracts, supply agreements, purchase orders, and other agreements contain a provision that allows the Owner to terminate that agreement solely for the Owner's convenience in accordance with the provisions set forth in this Agreement. Owner further agrees to pay reasonable costs of cancellation charges or re-stocking costs for the Owner's termination for convenience of subcontracts, supply agreements, purchase orders and other agreements.

1.2.15.4 Assignment of Warranties. Without limiting Construction Manager's post-construction obligations pursuant to this Agreement, Construction Manager shall assign to Owner all post-construction warranties resulting from Construction Manager's agreements with third parties, subject to Construction Manager's reservation of rights under such warranties to the extent necessary to enable Construction Manager to fulfill its obligations to Owner hereunder. Moreover, Construction Manager shall protect Owner's interest in all such warranties and shall take no action, nor commit an act or omission, which renders such warranties void or able to be voided.

1.2.16 **Audit.** At the request of the Owner, the Construction Manager shall allow the Owner the opportunity to examine and inspect the Project and the Construction Manager's books, records, and any and all accounts and similar data related to the Project. Subject to the following sentence, the Owner shall bear the cost of such audit. If, as the result of an audit performed it is found that (i) the Construction Manager has overcharged the Owner under the terms of the Agreement, then the Construction Manager will promptly refund to the Owner the amount of such overcharge, and be responsible for the cost of the audit, or (ii) the Owner has been undercharged under the terms of the Agreement, then the Owner will promptly pay to the Construction Manager the remaining amounts due. Notwithstanding such agreement, Construction Manager understands and agrees that all project records are subject to the Texas Public Information Act.

1.2.17 **Other Actions.** Construction Manager shall perform all other actions required in the supervision of the completion of the construction of the Project. Owner and Construction Manager acknowledge that, in anticipation of the execution and delivery of this Agreement, Construction Manager has to date performed the services and functions which fall within the duties and obligations of Construction Manager pursuant to this Agreement. Construction Manager acknowledges and agrees that all such services and functions shall be deemed to have been performed pursuant to the terms and provisions of this Agreement, and shall be subject to all duties and obligations of Construction Manager to Owner under this Agreement, and subject to the standard of care owing by Construction Manager to Owner pursuant to this Agreement.

1.2.18 **Limitation of Scope.** Nothing herein shall be deemed to permit the Construction Manager to require of the Architect any services which the Owner is not authorized to require under the terms of the Architectural Agreement between the Owner and the Architect. Nothing herein shall be deemed to impose upon the Construction Manager and Construction Manager does not under any Article of this Agreement assume any responsibilities to provide any services constituting the practice of architecture, engineering or any related design profession. Construction Manager shall exercise skill and judgment in the performance of its construction management services, but does not warrant or guarantee the advice or recommendations furnished with respect to design and does not control, warrant or guarantee any design services performed or furnished by the Architect.

1.2.19 **Construction Documents.** The Architect will prepare Construction Documents based on the Program and revisions suggested by the Construction Manager and agreed to by the Owner and User. A Construction Document Change Order will be executed by Construction Manager and Owner to incorporate the Work into the Project. Notwithstanding such Construction Document Change Order, Construction Manager does not undertake to perform Work described in such Construction Document Change Order, and Owner does not retain Construction Manager to perform

such Work, unless and until either a Component Change Order or the GMP Change Order is issued concerning such Work.

1.2.20 Duty to Give Notice to Owner. If the Owner, the Architect, or any other person with whom the Owner or Architect respectively has a direct contractual relationship, including the Program Manager, shall, in the judgment of the Construction Manager, act or fail to act in such a manner as to (i) delay the progress of the construction of the Project or (ii) increase the cost of the Project, Construction Manager shall give prompt notice to Owner so as to permit Owner to take corrective action.

PART 3 - OWNER’S RESPONSIBILITIES.

1.3.1 Owner’s Representative.

1.3.1.1 Written Designation. The Owner hereby designates the party identified in Exhibit A as its initial authorized representative and reserves the right to designate additional or replacement representatives by written notice to the Construction Manager, except such matters that require approval of the Fort Bend County Commissioners Court.

1.3.1.2 Accessibility. The Owner’s Representative shall be readily accessible (either on site or by computer, phone or fax or otherwise) and shall be fully acquainted with the Project, and shall have authority to render decisions, approve Construction Documents, Budgets, Schedules and recommend Change Orders and to furnish information required of or to be provided by the Owner hereunder.

1.3.1.3 Independent Review and Inspection. The Owner may obtain independent review of the Contract Documents by a separate architect, engineer, contractor, or cost estimator under contract to or employed by the Owner. Such independent review shall be undertaken at the Owner’s expense in a timely manner and shall not delay the orderly progress of the Work. The Owner may undertake independent inspection of the installation of the construction. Such independent inspector shall operate as the agent of the Owner and shall have the authority to stop the work in order to protect the best interests of the Project or the Owner.

1.3.1.4 Schedules and Meetings. The Owner’s Representative shall be responsible for approving schedules for meetings for the overall project and for each site(s). The Construction Manager shall be responsible for keeping and distributing the meeting minutes.

1.3.2 Architect.

1.3.2.1 Architect Design Work. Owner shall retain the Architect to design and to prepare Construction Documents. The Architect’s services, duties and responsibilities are described in the Agreement between the Owner and the Architect, a copy of which shall be furnished to the Construction Manager, and that Agreement shall not be modified in any material fashion affecting Construction Manager’s performance hereunder without Construction Manager’s prior written approval. The Owner shall require the Architect to designate a full time and readily accessible (either on Site or by computer, phone or fax or otherwise) representative who shall have authority promptly to render decisions and to furnish information required of the Architect.

1.3.2.2 Architect Provide Drawings. The Owner, at no cost to Construction Manager, shall cause Architect to furnish Construction Manager reproducible plans and drawings and copies of other Work product of the Architect as they become available and which are required or reasonably requested by Construction Manager for the performance of Work or services under all Articles of this Agreement and which are furnished to the Owner by the Architect. The number of copies furnished by Architect with respect to each submission shall not exceed the number of copies which the Architect is required to provide under the Architectural Agreement.

1.3.3 Permits, Licenses, and Inspections. The Owner shall cooperate with the Construction Manager in securing building and other permits, licenses and inspections.

1.3.4 Fire Marshal Inspections.

1.3.4.1 General. The Fire Marshal may make inspections at any time. It shall be the responsibility of the Construction Manager to request an inspection at 80% completion and at 100% inspection, or as may otherwise be required by law, and to give notice when all items on the 100% inspection report have been completed. Requests shall be in writing with a copy to the Owner and the Architect. The basic definitions for 80% and 100% inspections are as follows:

80% Inspection: The structural components are in place and open for review of the fire safety components. NOTE: Structural components include the following: fire walls, vertical shafts, stairways, smoke stops, hazardous area separation, roof and ceiling assemblies, corridor and door width, and HVAC system.

100% Inspection: The Construction Manager has completed all of the items on the 80% inspection report.

1.3.4.2 Certificate of Occupancy. The Construction Manager’s obligation under the Agreement is to install the work in accordance with the plans and specifications, obtain the written Certificate of Occupancy, and forward it to the Architect as a part of the final close out procedures. The Architect’s obligation is to design the work to comply with the applicable codes and to qualify for a Certificate of Occupancy.

1.3.5 Testing. The Owner shall provide and pay for initial construction testing as required by the Contract Documents and subsequent construction testing. Laboratories for testing services shall be selected by, engaged by, and responsible to the Owner and the Architect, provided: that, in the case of tests (a) prescribed in the Contract Documents or any part

thereof, or (b) requested by the Architect, the Construction Manager shall give notice to the testing agency stating the date and the hour when he will be ready for the test to be made and in the event the test fails or the Construction Manager is not ready for the test, the expense of the services of the testing laboratory shall be applied against the contract fees by a credit adjustment to the Owner effected by the furnishing of notice to the Construction Manager by the Owner accompanied by a copy of the statement for the testing services of the test which failed or for which the Construction Manager was not ready.

1.3.6 Partial Occupancy. Should the Construction Manager fail to achieve Final Completion of the Project, or any portion thereof, at the scheduled date or dates, the Owner may occupy any portion of the Project. In such an event, the Construction Manager shall not be entitled to any extra compensation on account of such occupancy by the Owner or by the Owner’s normal full use of the Project. Further, the Construction Manager shall not be relieved of any responsibilities of the Agreement including the required times of completion. Such occupancy by the Owner would not, in itself, constitute Final Completion.

1.3.7 Owner’s Right to do Work. The Owner reserves the right to perform construction or operations related to the Project with the Owner’s own forces and the right to award separate contracts in connection with other portions of the Project or other construction or operations on the Project site under conditions of insurance and waiver of subrogation identical to the provisions of this Agreement. If the Construction Manager claims that delay or additional cost is involved because of such action by the Owner, the Construction Manager shall assert such claims as provided elsewhere in the Agreement.

1.3.8 Disqualification of Potential Contracts. The Owner may disqualify any of the Construction Manager’s selected contracts identified in this Agreement for just cause.

1.3.9 Existing Documents. Construction Manager recognizes the existence of existing Contract Documents, if any, prepared on behalf of the Owner and identified in Exhibit A. The Construction Manager has carefully reviewed these documents, if any, and has determined them to be complete and sufficient for the construction of the portion of the project for which they were produced. The Construction Manager has made any correction or adjustments necessary to their use prior to entering into this Agreement.

PART 4 - TIME.

1.4.1 Commencement of Work. The Work to be performed under this Agreement shall commence upon issuance of a Notice to Proceed by the Owner.

1.4.2 Time is of the Essence. Time is of the essence of this Agreement and all obligations hereunder. The Construction Manager shall diligently prosecute the Work and must achieve Final Completion of the Project on or before the date established in the Executed Agreement (the "Required Final Completion Date"). If necessary, the Required Final Completion Date may be extended pursuant to the terms of this Agreement.

1.4.3 Project Process Schedule.

1.4.3.1 Submittal, Approval and Updates. Not more than seven (7) days after the receipt of the Notice to Proceed, the Construction Manager must submit a Project Process Schedule using an electronic scheduling software program compatible with the Owner's files and approved by the Owner, indicating each major category or unit of general work to be performed at the Project site, properly sequenced and intermeshed and showing completion of the Work. The Construction Manager must provide the Architect and the Owner with monthly updates of the progress schedule indicating completed activities and any changes in sequencing or activity durations.

1.4.3.2 Added to Agreement. Upon approval by Owner of the Project Schedule, the Project Schedule shall be added to this Agreement by a Change Order signed by Owner and Construction Manager and the Project Schedule so incorporated into this Agreement shall govern the schedule of activities of the Construction Manager under this Agreement. In addition, upon approval by Owner of the Project Schedule, the Project Schedule shall be added to the Architectural Agreement by Amendment.

1.4.4 Completion Date. The Work under this Agreement shall be completed by midnight of the date shown in the Approved Project Schedule unless extended by approved requests for extension on account of Unavoidable Delays as are more fully described below.

1.4.5 Unavoidable Delays. If the Construction Manager is delayed at any time in the progress of the Work by an act or neglect of the Owner, Owner's employees, or separate contractors employed by the Owner, or by changes ordered in the Work, or by labor disputes, unavoidable casualties or other causes beyond the Construction Manager's control which the Owner determines may justify delay, then the Contract Time and the date on which damages commence will be reasonably extended by change order for such reasonable time as the Architect and the Owner may determine; provided, however, that (i) such delays are on the Project Schedule critical path; (ii) the Construction Manager has taken all reasonable actions to mitigate the effects of the delay on the Work; (iii) the fault or negligence of the Construction Manager, the Construction Manager's agents or employees did not materially contribute to such causes; and (iv) the Construction Manager shall have notified Owner of the cause or causes of such delay within fourteen (14) days from the date on which the Construction Manager first becomes aware of such delay.

1.4.6 Extension of Time and Certain General Conditions Sole Remedy. Extension of the time and General Conditions costs are the Construction Manager's sole remedy for any Unavoidable Delays, unless the same shall have been caused by acts constituting intentional interference by the Owner with the Construction Manager's performance of the Work where such acts continue after the Construction Manager's written notice to the Owner of such interference, or for certain claims as set forth in Article 1.7.1. Owner shall have a five day grace period before being responsible to the Construction Manager for such extended General Conditions costs.

1.4.7 Competent Management of Time. The Construction Manager has represented to the Owner, in order to be awarded this Agreement, that the Construction Manager is experienced in managing construction to be in accordance with Agreement requirements and in a timely manner and that the Construction Manager has included in his proposal sufficient sums to carefully and competently manage this project for completion within the stipulated Contract Time.

1.4.8 Contract Time Fair and Reasonable. The Construction Manager has carefully examined and analyzed the site, the Contract Documents, and all known factors related to his ability to complete this project within the Contract Time stipulated. By submitting his proposal for this project, the Construction Manager agrees that the stipulated Contract Time is fair and reasonable.

1.4.9 Extensions of Time for Owner Requested Changes. If the Owner requests changes in the Contract Documents that would materially affect the completion of the Basic Services, the Owner and the Construction Manager will negotiate a mutually agreed upon extension of time to the Final Completion Date.

1.4.10 Modification of Time. The Final Completion of the Project as stated in the GMP Change Order shall be subject to extension or acceleration as follows:

1.4.10.1 Delay of Drawings. If the Architect shall fail to prepare Construction Documents necessary to satisfy the assumptions stated in the GMP Change Order pursuant to this Agreement in accordance with the Construction Documents Schedule as set forth in the GMP Change Order, Construction Manager shall give notice of same to the Architect and Owner, and if within seven (7) business days of the issuance of the notice, the subject Construction Documents are not furnished to Construction Manager, then and in that event the Date for Final Completion as stated in the GMP Change Order shall be extended for such reasonable additional time as the Construction Manager may be delayed on account of the Architect's failure to perform.

1.4.10.2 Delay of Shop Drawings Review. If the Architect shall fail to respond to Shop Drawings submitted by Construction Manager in accordance with the Shop Drawings Approval Schedule as set forth in the GMP Change Order, Construction Manager shall give notice of same to the Architect and the Owner, and if within seven (7) business days of the issuance of the notice, the Architect does not respond to the Shop Drawings submitted by Construction Manager, then and in that event, the Date for Final Completion as stated in the GMP Change Order shall be extended for such reasonable additional time as Construction Manager may be delayed on account of the Architect's failure to perform.

1.4.11 Claims to Extend Date of Final Completion.

1.4.11.1 Time. Except as specified below, any claim by Construction Manager for a change in the Date of Final Completion shall be made within fourteen (14) days of the day on which the Construction Manager becomes aware of the event on which the claim is based or, if the Contract Documents specify a shorter or longer period with respect to such event, within the period specified by the Contract Documents.

1.4.11.2 Change in Final Completion Date.

1.4.11.2.1 Claim for Delay of Drawings. Any claim by Construction Manager for a change in the Date of Final Completion under Paragraph 1.4.10.1 may be made, provided that the notice required by those Paragraphs has been given, at any time while the failure of the Architect or the Owner to act or perform continues or within seven (7) days after such failure to act or perform has been cured.

1.4.11.2.2 Claim for Delay of Shop Drawings Review. Any claim by Construction Manager for a change in the Date of Final Completion under Paragraph 1.4.10.2 shall be made, provided that the notice required by those Paragraphs has been given, at any time while the failure of the Architect or the Owner to act or perform continues or within seven (7) days after such failure to act or perform has been cured.

1.4.11.2.3 Claim Must Be In Writing. Any claim not made in writing to Owner within said time periods shall be deemed waived and shall not thereafter be valid. In the case of a continuing delay as a result of a single event, only one claim is necessary.

1.4.12 Recovery of Schedule Delays. Anytime after the first sixty (60) days of the Contract Time, if it is found by the Architect that the Project is two (2) weeks or more behind schedule, the Architect shall notify the Construction Manager in writing. Within seven (7) days of the date of the Architect notice, the Construction Manager shall, at no cost to the Owner, deliver to the Architect a written proposal explaining how the Construction Manager intends to bring the Project back on schedule. The Construction Manager's proposal must provide sufficient detail to allow the Architect to determine the proposal's feasibility. Further, at any time during the last sixty (60) days of the Contract Time that the Architect finds that the Construction Manager is one (1) week or more behind schedule per the Contract Time, the Architect shall notify the Construction Manager in writing. Within seven (7) days of the date of the Architect notice, the Construction Manager shall, at no cost to the Owner, prepare and deliver to the Architect a written proposal explaining how the Construction Manager intends to bring the Project back on schedule. The Construction Manager's proposal must provide the Architect with sufficient detail to allow the Architect to determine the proposal's feasibility.

PART 5 - COST OF THE WORK.

1.5.1 Definition. As used in this Agreement, the term "Cost of the Work" shall mean costs necessarily incurred by Construction Manager in the proper performance of the Work as provided in the Contract Documents. Such costs shall include or be limited by the items set forth below.

1.5.2 Preconstruction Phase Services.

1.5.2.1 Labor Costs. Reasonable salaries and wages of workers directly employed by Construction Manager to perform work directly associated with the Project performed off-site including Pre-construction personnel and Administrative assistance. All pre-construction salaried workers employed by Construction Manager shall be reimbursed at the rates shown in Exhibit J, as included in the Construction Manager's response to SOQ 12-050.

1.5.2.2 Preconstruction Overhead Costs. Construction Manager shall be reimbursed for all reasonable Preconstruction Overhead costs and expenses incurred in the performance of Construction Manager's preconstruction services under this Agreement, including, without limitation, (i) toll telephone calls, facsimile charges, postage and use of courier services; (ii) photocopying and reproduction expenses, including reproduction of Construction Documents, if necessary; (iv) and direct salary expenses as included in the Construction Manager's Fee Proposal submitted for the Project.

1.5.3 Construction Phase Services. "Actual Cost" as used in this Agreement shall consist of all costs, except those costs excluded by Article 1.5.4, necessarily incurred by the Construction Manager in the proper performance of the Work or services described in the Contract Documents (including this Agreement) for which records required by the Contract Documents are established contemporaneously with the incurring of such cost, and maintained and which are not otherwise reimbursed or recovered by Construction Manager. Such Actual Costs shall be at rates not higher than the standard paid in the locality of the performance required by the Contract Documents except upon the prior written consent of the Owner. The Owner will pay the Construction Manager for the following Actual Costs incurred during the Construction Phase of the Project, consistent with the approved GMP:

1.5.3.1 Wages. Wages paid for labor under applicable collective bargaining agreements, or under a salary or wage schedule agreed upon by the Owner and Construction Manager and including such welfare or other benefits, if any, as may be payable with respect thereto.

1.5.3.2 Salaries.

1.5.3.2.1 Reasonable Salaries. When approved in advance by Owner, reasonable salaries paid by Construction Manager to Construction Manager's employees when stationed at the Site Field Office for that portion of the time spent in performing the Work in whatever capacity employed, and Construction Manager's employees in its main or branch offices for that portion of their time spent in performing estimating, scheduling, procuring, accounting and administrative functions essential for the proper performance of the Work, including project management functions performed at Construction Manager's main offices prior to the establishment of the Field Office, to the extent such costs are consistent with the staffing plan and wage and salary schedule approved by Owner in advance.

1.5.3.2.2 No Changes. No change in such wage and salary schedules shall be made by Construction Manager without prior approval by Owner in advance. Employees of Construction Manager who are engaged at shops or on the road in expediting the production or transportation of materials or equipment in connection with the performance of the Work shall be considered stationed at the Field Office and their salaries paid for that portion of their time spent on such performance. The Owner shall be furnished with a list of employees whom the Construction Manager assigns to the performance of Work or services under this Agreement with an indication of the salary of each employee. The aforesaid employees shall be paid on the basis of time cards to which the Owner shall have ready access.

1.5.3.3 Employee Taxes. Cost of contributions, assessments or taxes for such items as unemployment compensation and social security, insofar as such cost is based on wages, salaries, or other remuneration paid to employees of the Construction Manager and included in the Actual Cost under Paragraphs 1.5.3.1 and 1.5.3.2.

1.5.3.4 Cost of Materials, etc. The cost of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workers that are used or consumed in the performance of the Work, less the salvage or residual value on such items used, but not consumed on the Work that remain the property of the Construction Manager, including without limitation the costs of inspection and testing not furnished by the Owner, storage and handling;

1.5.3.5 Sales Taxes. Sales, use or similar taxes for which Construction Manager is liable and imposed by any governmental authority due to or in connection with the performance of the Work or services required hereunder.

1.5.3.6 Trade Contractors. The cost of all work performed by Trade Contractors or Trade Suppliers for Work performed or materials procured pursuant to Trade Contracts entered into in accordance with this Agreement and subject to the limitations stated in the Contract Documents.

1.5.3.7 Royalties. Royalties and license fees payable under any patents and the cost of defending any claim of infringement of any patent, and any liability under such claim, unless such claim arises out of Construction Manager's failure to pay royalty and license fees as defined by Paragraph 1.2.14.

1.5.3.8 Rental Charges. When approved by Owner in advance, (a) rental charges of all necessary equipment used at the Site of the Project, exclusive of hand tools owned by workers or included in Paragraph 1.5.3.4 above, whether rented from the Construction Manager or others, including loading and unloading, installation, repairs and replacements, dismantling, removal, costs of lubrication, transportation, insurance and delivery costs thereof, at rental charges consistent with those prevailing in the area, during their use on the Work and (b) wages of operating engineers for the operation of such equipment, subject in each case [item (a) and (b)] to the limitations stated in Contract Documents. Rental rates for rental of heavy equipment and hourly rates of operating engineers provided directly by the Construction Manager or by any Trade Contractor or Trade Supplier shall not exceed the rates approved by Owner in accordance with Article 3.2.13.5.

1.5.3.9 Insurance Premiums. The costs of premiums for all bonds, the cost of insurance (including Workers' compensation insurance) covering risks related solely to the Project, and the *prorata* cost of insurance (including Workers' compensation insurance) covering such Project risks and other risks, which bonds and insurance the Construction Manager is required by the Contract Documents to purchase and maintain.

1.5.3.10 Permits, Fees, etc. Permits, fees, licenses, tests, royalties, sales, use, or any other such taxes, tariffs or duties related to the Work for which the Construction Manager is responsible, but not including any fines or interest due to Construction Manager's failure to meet legal requirements associated with such items. Fees and assessments for the building permit and impact fees (as included in approved Guaranteed Maximum Price Proposal) and for other permits, licenses and inspections for which Construction Manager is required by the Contract Documents to pay.

1.5.3.11 Field Office Costs. All costs associated with establishing, equipping, operating, maintaining and demobilizing the field office.

1.5.3.12 Utility Costs. The cost of utilities, such as water, power, fuel, sewer, etc., (unless provided by Owner) required for Construction Manager's operations at the Project Site and fuel consumed in the generation of electrical power or in the operation of equipment required in the Construction Manager's operation at the Project Site, except to the extent such costs are included in the rental rates for such equipment in accordance with this Agreement.

1.5.3.13 Demolition Costs. Cost of demolition, if any, and removal of non-hazardous materials, debris and waste materials;

1.5.3.14 Testing. Fees of testing laboratories for tests required by the Contract Documents not paid for by the Owner.

1.5.3.15 Reproduction Costs. Costs of reproduction of plans, specifications, and other documents required for the construction of the Project.

1.5.3.16 Telephones, etc. The cost of telephone service (including toll charges), office equipment, and office furnishings, and similar items incurred in the operation of the Project Field Office.

1.5.3.17 Safety Plan. Cost incurred in the implementation of Project Site safety and security plans.

1.5.3.18 Deposits. Deposits lost for causes other than the Construction Manager's negligence.

1.5.3.19 Reexamination Costs. Costs for uncovering, reexamining, retesting and replacing any Work which the Architect demands be uncovered for its observation and which the Architect did not inspect within 72 hours of Construction Manager's issuance of a notice of readiness for inspection under Contract Documents, subject however to the requirement that such Work, when uncovered, be found to be in accordance with the Contract Documents.

1.5.3.20 Transportation. The cost of transportation, meals, and lodging incurred in travel by Construction Manager's employees, if approved in advance by the Owner and subject to Owner's travel policies, but only if such travel is to or from a point outside the Houston Standard Metropolitan Statistical Area. It is agreed that all such costs are already included in Section 4., Construction Manager's Compensation.

1.5.3.21 Final Clean-up. Costs of final clean-up of the Project.

1.5.3.22 Emergency Costs. Any and all costs incurred due to an emergency affecting the safety of persons or property and related to the performance of the Work.

1.5.3.23 Other. Other costs approved in advance by the Owner.

1.5.4 Limitations on the Cost of the Work. All costs not identified in Articles 1.5.2 and 1.5.3, above, shall be considered a part of the Construction Manager's Fee. Without limiting the effect of the foregoing, the following items are specifically excluded from the Cost of the Work:

1.5.4.1 Rental Rates. Rental costs of machinery and equipment, except as specifically provided in Articles 1.5.2 and 1.5.3, above, and as limited herein. The Owner will in no event consider a rental rate in excess of 80% of the rate set forth in the latest edition of the "Compilation of Nationally Averaged Rental Rates for Construction Equipment" of the Associated Equipment Distributors unless the rates proposed in excess of 80% are supported by proof satisfactory to the Owner that the excess rates are reasonable, the decision of the Owner to be final, binding and conclusive on all parties. Rental rates shall be payable only for the actual time the equipment is required on the site in the reasonable opinion of the Architect whose decision in this respect shall be final, binding and conclusive on all parties.

1.5.4.2 Salaries. Wages and salaries paid by Construction Manager for officers, directors, and partners of Construction Manager, whether or not stationed at the site Field Office, or for officers, directors, partners or employees of Construction Manager performing Work in the main or branch offices in any capacity whatsoever except as provided in Paragraph 1.5.3.2. Salaries and other compensation of Construction Manager's personnel stationed at Construction Manager's principal office or offices other than the site unless agreed to by Owner [except as noted in Paragraph 1.5.3.2 above].

1.5.4.3 Employment Taxes. Costs of contributions, assessments, or taxes for such items as unemployment compensation and social security paid by Construction Manager, insofar as such costs are based on wages, salaries, or other remuneration paid to officers, directors, partners, or employees of the Construction Manager under Paragraph 1.5.4.2.

1.5.4.4 Office Expenses. Construction Manager's main office costs and offices other than the site office except as provided in Paragraph 1.5.3.11.

1.5.4.5 Overhead Expenses. Overhead and general expenses, except as may be expressly included in Articles 1.5.2 and 1.5.3, above.

1.5.4.6 Capital Expenses. Construction Manager's capital expenses, including interest on capital employed either in Construction Manager's plant or for expenditures incurred in connection with the Work.

1.5.4.7 Transportation. Costs of transportation, traveling, and temporary accommodation expenses of employees, officers, or other staff of Construction Manager, except as provided in Paragraph 1.5.3.20.

1.5.4.8 Relocation Expenses. Relocation costs for any employees, officers, or other staff of Construction Manager, except as provided in Paragraph 1.5.3.20.

1.5.4.9 Profit Sharing. Profit sharing, bonuses, or other similar compensation of any kind paid by Construction Manager to its employees.

1.5.4.10 Fines, Penalties, etc. The cost of all fines and penalties, including interest thereon, assessed against Construction Manager by any federal, state or local government or quasi governmental authorities.

1.5.4.11 Lost or Stolen Equipment. The cost of replacing lost or stolen equipment of any kind, tools, including hand and small tools, or materials of any kind.

1.5.4.12 Undocumented Costs. Costs for which records required by this Agreement are not established or maintained.

1.5.4.13 Negligent Costs. Costs which arise as a result of the default, breach, delinquency, oversight negligence, or lack of due care by Construction Manager or any of its employees, servants, consultants, officers, Trade Contractors, Trade Suppliers or any other person or party which performs services for the Construction Manager in connection with the Work.

1.5.4.14 Legal Fees. Legal fees.

1.5.4.15 Contingency Costs. Any contingency cost not covered by Article 1.5.5.

1.5.4.16 Other Costs. Any cost not specifically and expressly described in Articles 1.5.2 and 1.5.3 above.

1.5.4.17 Costs in Excess of GMP. Costs which would cause the Guaranteed Maximum Price, if any, to be exceeded.

1.5.4.18 Taxes. Taxes that are otherwise exempt if proper exemption procedures are followed.

1.5.5 Construction Contingency Costs. As provided in this Article 1.5.5, but only prior to the Architect's Certificate of Final Completion, the Construction Manager shall be entitled to payment as a Construction Contingency Cost item, but not in the aggregate in excess of the Construction Contingency Component of its Component Change Order or GMP Change Order, as the case may be as adjusted pursuant to Articles 1.5.6 and 1.5.7, all reasonable costs actually incurred prior to such Certificate of Final Completion incident to the performance of Work under this Agreement, which are not otherwise reimbursed or recovered by it, which are not attributable to Construction Manager's gross negligence or willful misconduct, and for which records required hereunder are established contemporaneously with the incurring of such costs and are maintained, for the following Construction Contingency Costs:

1.5.5.1 Unanticipated Events. Costs arising from unanticipated events, including, for purposes of illustration, unanticipated local market labor or materials conditions;

1.5.5.2 Proposer Defaults. Costs incurred as a result of defaults by proposers who submit proposals to Construction Manager for Trade Contracts or as a result of defaults by Trade Contractors or Trade Suppliers.

1.5.5.3 Omissions. Interfacing omissions between and from the various Work contingencies of the Construction Manager.

1.5.5.4 Legal Fees. Legal fees incurred by Construction Manager in connection with the performance of its services under this Agreement but not in any event legal fees incurred in the negotiation of or any dispute arising out of the relationship between Owner and Construction Manager.

1.5.6 Adjustments to Construction Contingency.

1.5.6.1 Basis of Adjustments. The contingency costs incurred by Construction Manager under Article 1.5.5 shall be reimbursable to Construction Manager from the Construction Contingency component of the GMP Change Order. The amount of the Construction Contingency shall be increased by the net amount of (i) the aggregate by which Trade Contracts entered by Construction Manager are less than line item amounts stated in Construction Manager's construction budget for each particular Trade Contract less (ii) the aggregate amount by which Trade Contracts entered by Construction Manager exceeds the line item amount stated in Construction Manager's construction budget for each particular Trade Contract. All net amounts saved, if any, shall be added to the existing Construction Contingency amount and shall be available for all purposes permitted under this Article 1.5.6.

1.5.6.2 Limitations on Adjustments. The Construction Contingency component of the GMP Change Order shall not be increased for any reason (other than by a Change Order in Owner's sole and absolute discretion) nor shall any claim for any Construction Contingency Costs in excess of Construction Contingency or for any increase in Construction Contingency be made by Construction Manager for any reason, including, in either case, default by Owner or any other circumstances which would otherwise permit an increase in other Components of the Change Order Sum of a Component Change Order or of the Guaranteed Maximum Price under a GMP Change Order or payment of additional compensation to Construction Manager, and without limitation of the foregoing, the Architect shall not have any authority to decide any such claim other than to reject and thereby deny such a claim.

1.5.7 Release of Construction Contingency.

1.5.7.1 Periodic Review. During the construction phase, the Owner's Representative and the Construction Manager shall review each transfer to and from the Construction Contingency on a weekly basis. The Owner shall determine if the transfer is consistent with the conditions of the Agreement. If the transfer is in compliance with the Agreement, the Owner shall approve the transfer. Additionally, the Construction Manager shall periodically review its accrued and anticipated Construction Contingency Costs and shall promptly inform Owner of Construction Manager's determination of the extent to which the remaining Construction Contingency exceeds Construction Manager's reasonably anticipated Construction Contingency Costs expected to be incurred prior to the issuance of a Final Certificate. Construction Manager shall in good faith negotiate with Owner for the release of any surplus of Construction Contingency over such anticipated Construction Contingency Costs so as to permit Owner to enhance the Project. Any such release shall be confirmed by a Change Proposal Request, defined as a document prepared by the Construction Manager, approved by the Architect and signed by the Owners Representative, which authorizes an alteration, addition, or deduction from the original scope of work as defined by the Contract Documents to address changes or unforeseen conditions necessary for Project completion which utilize Construction or Design Contingency balances included in the GMP. Release of Construction Contingency shall occur in a timely basis as to allow adequate decision making time for the Owner.

1.5.7.2 Confirmation of Balance. The amount of any balance of Construction Contingency upon the issuance of a Certificate of Final Completion of the entire Project, or upon the earlier termination of this Agreement, shall be confirmed by the written certification of the Owner at the time of the issuance of the Final Certificate.

1.5.7.3 No Relief of Obligations. The provisions of Article 1.5.5 permitting the Construction Manager to charge against the Construction Contingency for Contingency Costs described in Article 1.5.5 do not relieve the Construction Manager of the obligations stated in the Contract Documents, including, without limitation, this Agreement.

1.5.7.4 Gross Negligence. In no event shall Construction Manager be entitled to reimbursement of any cost attributable to Construction Manager's gross negligence or willful misconduct.

1.5.8 Final Disposition of Construction Contingency. The amount of any funds remaining in Construction Contingency upon the issuance of a Certificate of Final Completion of the entire Project, or upon the earlier termination of this Agreement, shall be confirmed by the written certification of the Owner at the time of the issuance of the Final Certificate and any funds remaining in the Construction Contingency after written certification at the time of the issuance of the Final Certificate shall be returned to the Owner.

1.5.9 Owner Option. With respect to any furniture, equipment, or other capital items of a similar nature for which the Owner reimburses Construction Manager its Actual Costs of acquisition, upon the termination or expiration of this Agreement, and at the election of the Owner, Construction Manager shall either deliver such furniture, equipment and other capital items to the Owner, or shall credit to the Owner the depreciated (normal wear and tear only) value of such items as to which the Owner elects not to obtain. The Construction Manager shall protect all such items during the term of this Agreement against loss or damage other than normal wear and tear.

1.5.10 Discounts, Rebates, Etc. The Construction Manager shall provide the Owner an opportunity to provide funds to take advantage of discounts for prompt payment of materials, supplies, equipment, etc. If the Owner chooses to take advantage of such discounts, the savings shall accrue to the Owner and shall have no impact on the Cost of the Work. If the Owner chooses not to take advantage of such discounts and the Construction Manager decides to do so with the funds of the Construction Manager, the savings shall accrue to the Construction Manager and shall have no impact on the Cost of the Work. Any trade or quantity discounts, rebates, refunds, and/or proceeds from the sale of surplus materials or equipments shall be credited to reduce the Cost of the Work.

1.5.11 Design Contingency Cost. As provided in this Article 1.5.11, but only prior to the Architect's Certificate of Final Completion, the Construction Manager shall be entitled to payment as a Design Contingency Cost item, but not in the aggregate in excess of the Design Contingency Component of its Component Change Order or GMP Change Order, as the case may be. Funds from the Design Contingency may not be encumbered without written direction from the Owner in the form of a Change Proposal Request. Guaranteed Maximum Price (GMP) is defined as the maximum amount which Owner is obligated to pay Construction Manager for construction of the Project under a GMP Change Order for all costs or fees of Construction Manager in connection with such Work. The following may qualify for payment under the Design Contingency:

1.5.11.1 Unanticipated Events. Costs arising from discrepancies in the construction documents that clearly do not show the intent of the design.

1.5.11.2 Omissions. Interfacing omissions between and from the various Work contingencies of the Construction Documents.

1.5.11.3 Scope Changes. By direction of the Architect and approval by the Owner, the Construction Manager may receive payment of scope changes through the Design Contingency.

1.5.12 Adjustments to Design Contingency.

1.5.12.1 Limitations on Adjustments. Design Contingency shall not be increased for any reason (other than by a Change Order in Owner's sole and absolute discretion) nor shall any claim for any Design Contingency Costs in excess of Design Contingency or for any increase in Design Contingency be made by Construction Manager for any reason, including, in either case, default by Owner or any other circumstances which would otherwise permit an increase in other Components of the Change Order Sum of a Component Change Order or of the Guaranteed Maximum Price under a GMP Change Order or payment of additional compensation to Construction Manager, and without limitation of the foregoing, the Architect shall not have any jurisdiction to decide any such claim other than to reject and thereby deny such a claim.

1.5.13 Release of Design Contingency.

1.5.13.1 Periodic Review. During the construction phase, the Owner's Representative and the Construction Manager shall review each transfer to and from the Design Contingency on a weekly basis. The Owner shall have absolute control over transfers to and from the Design Contingency as well as the release of the contingency.

1.5.13.2 Confirmation of Balance. The amount of any balance of Design Contingency upon the issuance of a Certificate of Final Completion of the entire Project, or upon the earlier termination of this Agreement, shall be confirmed by the written certification of the Owner at the time of the issuance of the Final Certificate.

1.5.14 Final Disposition of Design Contingency. The amount of any funds remaining in Design Contingency upon the issuance of a Certificate of Final Completion of the entire Project, or upon the earlier termination of this Agreement, shall be confirmed by the written certification of the Owner at the time of the issuance of the Final Certificate and any funds remaining in the Design Contingency after written certification at the time of the issuance of the Final Certificate shall be returned to the Owner.

PART 6 – CONSTRUCTION DOCUMENTS

1.6.1 Preparation of Construction Documents Following Acceptance of the GMP Change Order.

1.6.1.1 Construction Documents. The Owner shall cause the Architect to prepare and shall approve Construction Documents (Working drawings and specifications) in accordance with the assumptions set forth in the GMP Change Order pursuant to Section 3, Part 2. Construction Manager shall provide timely advice to the Architect and the Owner during the development of Construction Documents so they are prepared in accordance with the Construction Documents Schedule as set forth in the GMP Change Order, so they reflect the assumptions set forth in the GMP Change Order pursuant to Paragraph Section 3, Part 2, and shall recommend alternative solutions benefiting the Owner by reducing construction time, saving construction costs without reducing quality, or enhancing the quality of the Project.

1.6.1.2 Construction Document Change Order. Upon issuance of Construction Documents to satisfy the assumptions stated in the GMP Change Order pursuant to Section 3, Part 2 by the Architect and approval thereof by the Owner, the Architect shall submit them to the Construction Manager along with a proposed Construction Document Change Order for acceptance first by Construction Manager and then by Owner for the purpose of adding such approved Construction Documents to this Agreement. Construction Manager shall promptly accept or reject any such proposed Construction Document Change Order, but in any event within ten (10) business days of its receipt. If Construction Manager accepts the proposed Construction Document Change Order, then the Owner shall likewise accept same promptly and in any event within ten (10) business days of Construction Manager's acceptance.

1.6.1.3 Construction Manager's Review. Prior to its acceptance of any Construction Document Change Order tendered under Section 3, Part 2, Construction Manager shall promptly review the Construction Documents referenced therein for the purposes of recommending to the Owner and the Architect any changes or modifications thereof which will reduce the cost of the Project without reducing quality or expedite its completion or which, in the judgment of the Construction Manager, may otherwise be in the best interest of the Owner. The Owner shall not, however, be required to accept any such recommendations. The Construction Manager shall give notice to the Owner and to the Architect of any errors, inconsistencies or omissions (including non-conformance with applicable laws, statutes, building codes, rules and regulations) it may discover in the Construction Documents prior to acceptance of the proposed Construction Document Change Order. The Construction Manager will receive no additional payments or compensation for changes in the Work that result from coordination, errors or omissions in the documents for the installation of the Work. The Construction Manager shall be entitled to additional compensation pursuant to Section 3, Part 3 for changes due to unforeseen conditions at the site, changes required by governmental regulatory agencies, or scope changes requested by the Owner after the approval of the Construction Documents by the Owner. Construction Manager shall not be liable for any damages resulting from the failure of the Construction Documents to comply with said laws, statutes, building codes, rules and regulations unless it recognizes same and performs a construction activity knowing it is contrary to said laws, statutes, building codes, rules and regulations, without providing advanced notice of same to the Owner. Construction Manager shall also give notice of any inconsistencies, conflicts or omissions between said Construction Documents and either (i) the Program and revisions thereto by prior Construction Document Change Orders or (ii) the assumptions set forth in the GMP Change Order which were relied upon by Construction Manager in the preparation of the GMP Change Order, including observed inconsistencies, conflicts or omissions between the Construction Documents and any future design development of such assumptions.

1.6.1.4 Best Practices Standard. Construction Manager will perform due diligence using a best practices standard equivalent to construction managers for similar construction in the Greater Houston Metro Area during the preconstruction phase in the coordination of the drawings, and Construction Manager shall make reasonable efforts to notify the Architect of any conflicts in the documents. However, notwithstanding any other provision to the contrary in the Contract Documents, the Construction Manager will not be responsible for costs, delays or damages related to lack of coordinated drawings or for errors and omissions in the drawings, plans or specifications, unless Construction Manager had actual knowledge of and recognized such prior to construction, and failed to report same to the Owner or Architect. Upon Contractor's substantiation of cost and or impacts due to lack of coordinated drawings or to errors and omissions in the drawings, plans or specifications, Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time via Change Order.

1.6.1.5 Post-GMP Drawings and Specifications. As the Drawings and Specifications may not be completed at the time the Guaranteed Maximum Price proposal is prepared, the Construction Manager shall provide in the Guaranteed Maximum Price for further development of the Drawings and Specifications by the Architect that is consistent with the Contract Documents and reasonably inferable by the Construction Manager therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, design errors and/or omissions, or uncoordinated drawings and/or specifications all of which, if required, shall be incorporated by Change Order.

1.6.1.6 Rejection of Construction Drawings. If the Construction Documents referenced in a proposed Construction Document Change Order are not true developments of the assumptions set forth in the GMP Change Order relied upon by Construction Manager in the preparation of the GMP Change Order, as specified therein (other than variances due

solely to differences in Actual Costs versus estimated costs) and as a result of such variance the performance of the Work described therein will increase the Estimated Cost amount as stated in the GMP Change Order, or will require an extension of the time for Final Completion as stated in the GMP Change Order, the Construction Manager may reject the proposed Change Order and give notice of same to the Owner and the Architect setting forth the basis for its rejection of same and stating a proposed increase in the GMP Change Order and its various Components, including, if applicable, the Date for Final Completion, under which the Construction Manager would accept said Change Order. Following consultations with the Architect and Construction Manager, the Owner shall (i) require the Architect, without charge against the GMP Change Order, or its various Components, to revise the Construction Documents so as to make them true developments of the drawings, specifications and other documents relied upon by Construction Manager in the preparation of the GMP Change Order, with said revisions to be completed within ten (10) business days; (ii) accept the Construction Manager's proposed increase in the GMP Change Order and its specified Component(s), including, if applicable, the Date for Final Completion, or (iii) direct Construction Manager to proceed with the Work in accordance with the proposed Construction Documents. In the event Construction Manager is directed to proceed with the Work in accordance with the proposed Construction Documents, under (iii) above, Construction Manager shall be entitled to assert a claim in accordance with Paragraph 5.1.6.2 against Owner for an increase in the GMP Change Order, including, if applicable, an extension of the Date for Final Completion, provided that such claim by Construction Manager is asserted within ten (10) days after Construction Manager is directed to proceed. If the Construction Manager shall accept any proposed Change Order without notice as required by this Paragraph, then no claim shall thereafter be made by Construction Manager that the Construction Documents identified therein are not true developments of the assumptions set forth in the GMP Change Order relied upon by Construction Manager in the preparation of the GMP Change Order, and as specified therein.

1.6.1.7 Redesign of Construction Documents. If prior to its acceptance of any proposed Construction Document Change Order adding Construction Documents to this Agreement, the Construction Manager shall give notice to the Owner that the lowest responsible proposal received by the Construction Manager from a Trade Contractor to perform the Work described in the Construction Documents exceeds the Construction Manager's budget for that Work as set forth in the Construction Budget, or that no responsible proposal for that Work has been received, then the Construction Manager may request a redesign of the Construction Documents pertaining to said Work so long as the redesign is a functional and quality equivalent of the Work forming the basis of the GMP Change Order but the approval of such request shall be within Owner's sole and absolute discretion. The architectural fees and costs for a requested redesign which is approved by Owner shall be paid by the Owner to the Architect and such payment shall be deducted from the Construction Contingency Component of the GMP Change Order. The deduction shall not alter the obligation of Construction Manager under the GMP Change Order to perform the construction of the Project within the Guaranteed Maximum Price and any delays resulting therefrom shall not be a basis for an extension of the Date for Final Completion. If such redesign has been made once at the request of the Construction Manager pursuant to this Paragraph, the Construction Manager shall not request any further redesign with respect to the Construction Documents covered by that proposed Construction Document Change Order.

1.6.1.8 Failure to Reject within Time Limits. Construction Manager's failure to reject a proposed Change Order tendered for purposes of adding Construction Documents to this Agreement pursuant to this Article 1.6.1 within the time limitations stated in this Article 1.6.1 shall be deemed to evidence Construction Manager's acceptance of same without any claim of variance.

1.6.2 Ownership and Use of Documents. The drawings, specifications and other documents prepared by the Architect pursuant to this Agreement (including, without limitation, the Construction Documents), are at all times and will remain the property of the Owner, whether or not the Project for which they are made commences or completes construction. Neither the Construction Manager nor any Trade Contractor or material or equipment supplier shall own or claim a copyright in such drawings, specifications and other similar or related documents, and Owner shall retain all common law, statutory, and other reserved rights with respect thereto. The Construction Manager must deliver all copies of such documents to the Owner upon completion of the Work or upon the prior termination of this Agreement, except that the Construction Manager may keep one copy of such documents for its files. The Construction Manager shall use such drawings, specifications and other documents solely with respect to this Project. Neither the Construction Manager nor any Trade Contractor or material or equipment supplier may use such drawings, specifications, and other documents on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner in each instance.

PART 7 – CONTRACT ADJUSTMENTS, DISPUTES AND TERMINATION

1.7.1 Contract Adjustments and Disputes.

1.7.1.1 No Arbitration. Any and all references to arbitration in any of the Contract Documents, including without limitation any exhibits, attachments or references, are hereby deleted and rendered null and void.

1.7.1.2 Continuation of the Work. Unless otherwise agreed in writing, and notwithstanding any other rights or obligations of either of the parties under any Contract Documents or Agreements, the Construction Manager must carry on with the performance of its service and duties hereunder during the pendency of any claim, dispute, and other matter in question or arbitration or other proceeding to resolve any claim, dispute, and other matter in question, and the Owner will continue to make payments in accordance with the Contract Documents. But the Owner is under no obligation to make payments on or against such claims, disputes, and other matters in question during the time required to resolve such claims, disputes, and other matters in question.

1.7.1.3 Claims of the Construction Manager. If the Construction Manager suffers any injury or damage to person or property because of an act or omission of the Architect, Owner, the Owner's employees or agents, or third party for whose acts the Owner is legally liable, any claim shall be made in writing in the form of a Request for Change Order with the Architect within fourteen (14) days after such injury or damage is or should have been first observed. Except as otherwise provided by law, any and all claims not made within fourteen (14) days of any injury or damage are barred, waived, released, and discharged. The decision of the Architect is final and binding on both parties, unless the Construction Manager protests the decision of the Architect and files a Statement of Claim.

1.7.1.4 Statement of Claim: Time of Submission. Budgeting and cash flow being of material importance to the Owner, no claim of the Construction Manager, whether said claim shall be accrued or prospective, shall be valid unless a "Statement of Claim" in full accompanied by vouchers and other supporting data shall have been filed with the Owner by the Construction Manager not later than thirty (30) days after the Architect's decision to reject the claim, time being of the essence. The "Statement of Claim" shall contain a concise and clear recital of the ground or grounds on the basis of which the claim is asserted, including a designation of the provision or provisions of the Contract Documents on which the claim is based. The Statement of Claim shall indicate the dollar amount of the claim.

1.7.1.5 Claims Distinguished. Claims for damages arising out of alleged negligence of the Architect or Owner are distinguished from claims for allowances for changes as provided for under section 3 Part 3. Claims for damages must be filed entirely separately unless the Construction Manager and Owner agree in writing otherwise.

1.7.1.7 Consequential Damages. The Construction Manager and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination. .

1.7.2 Suspension and Termination of Agreement and Owner's Right to Perform Construction Manager's Responsibilities.

1.7.2.1 Termination Without Cause.

1.7.2.1.1 Owner's Right to Terminate. If Owner determines the Project lacks feasibility or for any other reason elects to forego its construction, the Owner shall have the right, upon thirty (30) days prior written notice to the Construction Manager, to terminate this Agreement without cause and irrespective of whether or not Construction Manager is in default of any of its obligations hereunder.

1.7.2.1.2 Items for Which Payment Shall Be Made. In the event such termination occurs prior to the entry of the GMP Change Order, the Owner shall pay Construction Manager for:

1.7.2.1.2.1 Sums due for Pre-Construction Fees earned prior to termination under Article 1.7.2, plus reasonable termination expenses, not exceeding the unpaid balance of the fee amount set forth in Paragraph 4.1.1.1.

1.7.2.1.2.2 Any unpaid Actual Costs, Contingency Costs and lump sum amounts due under Component Change Orders, incurred or earned to the date of termination;

1.7.2.1.2.3 Any other costs, not exceeding the unpaid balance of the aggregate of all Change Order Sums of all outstanding Component Change Orders, attributable to the termination (including by way of illustration only cancellation charges owed to and other obligations, commitments and claims of Trade Contractors or Trade Suppliers) and for which Construction Manager is not otherwise compensated;

1.7.2.1.2.4 All of Construction Manager's Fee earned to the date of termination, except that Construction Manager Fee shall be deemed earned only to the extent of an amount which bears to the total fee the same ratio which the Work in place at the time of termination bears to the total Work, as reasonably determined by the Architect; and

1.7.2.1.2.5 Fair compensation by purchase or rental (at Owner's election), for any equipment retained by Owner, to the extent it has not already paid for same as an item of Actual Cost or Contingency Cost.

1.7.2.1.3 Assignment. The Owner may also request the assignment from Construction Manager to Owner or to the entity of Owner's choice of all Trade Contracts entered into by Construction Manager under Component Change Orders and in that event the assignee shall be solely obligated to the Trade Contractors or Trade Suppliers under such Trade Contracts for all sums payable thereunder and not previously paid by the Owner to Construction Manager.

1.7.2.1.4 Termination After GMP Change Order. Should such termination occur after the entry of the GMP Change Order, the Owner shall pay Construction Manager, up to the unpaid balance of the GMP, for (1) all Actual Costs, Contingency Costs and lump sum amounts earned to the date of such termination; (2) all other costs attributable to the termination (including by way of illustration only cancellation charges owed to and other obligations, commitments and claims of Trade Contractors or Trade Suppliers) and for which Construction Manager is not otherwise compensated; (3) a proportionate amount of Construction Manager's Fee which bears to the total Fee under the GMP Change Order the same ratio which the Actual Cost and lump sum amounts due with respect to the Work in place at the date of termination bears to the Estimated Cost Component of the GMP Change Order; and (4) fair compensation by purchase or rental (at Owner's election), for any equipment retained by Owner, to the extent it has not already paid for same as an item of Actual Cost or Contingency Cost. In the event of termination, the Owner may also request the assignment to the Owner or to an entity of Owner's choice from Construction Manager of all Trade Contracts entered into by Construction Manager and in that event the assignee shall be solely obligated to Trade Contractors and Trade Suppliers under such Trade Contracts for all sums payable thereunder and not previously paid by the Owner to Construction Manager.

1.7.2.1.5 Condition Precedent to Payment. As a condition precedent to receiving the payment set forth in this Article 1.7.2, Construction Manager shall deliver to the Owner all papers, documents and agreements relating to the Project and if requested shall assign to the Owner or to an entity of Owner's choice all of Construction Manager's contractual rights in respect thereof, so that the assignee shall be fully vested with all rights and benefits of Construction Manager under such papers, documents and agreements, together with releases and waivers of lien in the same manner as would be required upon Final Completion.

1.7.2.1.6 Cessation of Entitlement. Upon the Construction Manager's assignment of Trade Contracts and/or Owner's payment of monies due Construction Manager as provided in Paragraph 1.2.1.5, Construction Manager shall be entitled to no further compensation of any kind from Owner.

1.7.3 Termination for Cause.

1.7.3.1 Owner's Right to Terminate. If Construction Manager makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, or if it persistently or repeatedly refuses or fails, except in cases for which extensions of time are provided, to supply enough properly skilled workmen or proper materials, or if it fails to make payment when due to Trade Contractors for materials or labor, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction over the Project, or otherwise is guilty of a substantial violation of any provision of this Agreement, then the Owner may, without prejudice to any right or remedy and after giving the Construction Manager and its surety, if any, ten (10) days' written notice, during which period the Construction Manager fails to cure or fails to commence and thereafter diligently prosecute Work necessary to cure the violation, terminate the employment of the Construction Manager.

1.7.3.2 Termination Prior to GMP. If such termination occurs prior to entry of any Component Change Order or GMP Change Order, Owner shall pay all Pre-Construction Fees earned prior to termination less such damages as may be incurred by Owner by reason of such termination.

1.7.3.3 Termination after GMP. Upon termination of this Agreement as set forth above after entry of a Component Change Order or GMP Change Order, the Owner shall have the right to take possession of the Work, together with all materials, equipment, tools and improvements thereon and to finish the Work by whatever reasonable method the Owner may deem expedient. In such case, Construction Manager shall not be entitled to receive any further payment until the Work is completed and shall take all necessary steps, including the legal assignment of its contract rights, as the Owner may require for the purpose of fully vesting in the Owner or the entity of Owner's choice the rights and benefits of Construction Manager under such obligations or commitments as the Owner may elect. Upon final completion of the Work governed by Change Orders then in force (including the GMP Change Order), Construction Manager shall pay the Owner the amount, if any, that the total cost of completing the Work governed by Change Orders in force at the time of

termination (including the GMP Change Order), plus any damages recoverable by Owner for delays in completion, together with amounts previously paid to Construction Manager, exceeds the amount stated in the Change Orders in force at the time of termination (including the GMP Change Order). If there is no such excess, the Owner shall pay Construction Manager any portion of the Actual Cost and lump sum amounts due with respect to the Work and the Construction Manager's Fee which has not previously been paid and which was owed to Construction Manager at the time of termination under Change Orders then in force, so long as the total amount paid by the Owner for completing the Work under such Change Orders, including all costs and damages incurred by the Owner as a result of any delay in completion and all amounts paid to Construction Manager do not exceed the amount stated in the Change Orders in force at the time of termination.

1.7.4 Suspension of Work. The Owner reserves the right to suspend the Work at any time or from time to time at the Owner's sole discretion, upon giving Construction Manager five (5) days advanced written notice thereof. If the Owner exercises this right and then resumes the Work covered hereby, Construction Manager shall be entitled upon timely claim to a Change Order for payment by Owner of any reasonable Actual Costs actually incurred by Construction Manager in connection with the suspension and resumption of the Work, as well as an extension in the time for performance of the Work to the extent Construction Manager is delayed by Owner's suspension.

1.7.5 Construction Manager Rights.

1.7.5.1 Construction Manager's Right to Terminate. If the Project, in whole or substantial part, is stopped for a period of thirty (30) days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Construction Manager, or if the Project should be stopped for a period of fifteen (15) business days by the Construction Manager due to the Owner's failure to make payment thereon as may be required by Section 4 herein, then the Construction Manager may, upon thirty (30) days' written notice to the Owner, terminate this Agreement and upon providing Owner with all releases and waivers of lien in the same manner as would be required upon Final Completion, recover from the Owner payment of Actual Costs, and lump sum amounts due for all Work properly executed, the Construction Manager's Fee earned to date, and, upon timely claim therefore, for any proven loss sustained or cost incurred upon any materials, equipment, tools, construction equipment and machinery, and cancellation charges on existing obligations of the Construction Manager.

1.7.5.2 Limitation on Fee. The Construction Manager Fee shall be deemed earned only to the extent of an amount which bears to the total fee the same ratio which the Work in place at the time of termination bears to the total Work, as reasonably determined by the Architect and the Owner.

1.7.6 Termination for Abandonment by Construction Manager. The Construction Manager agrees that the Owner, after fourteen (14) days written notice to the Construction Manager, during which period the Construction Manager fails to cure may terminate this Agreement if the Construction Manager abandons the Project. If such termination occurs, the Owner shall pay the Construction Manager for Work completed and for the Construction Manager's actual expenses for materials, equipment, tools and construction equipment and machinery, less any costs the Owner incurs in re-contracting and the start-up of a replacement for the Construction Manager.

1.7.7 Termination for Nonpayment. If the Owner fails to pay the Construction Manager when payment is due, the Construction Manager must give written notice of the Construction Manager's intention to terminate this Agreement. If the Owner fails to provide the Construction Manager payment or written notice of a dispute as to the amount sought by the Construction Manager within fifteen (15) business days after receipt of the Construction Manager's written notice, the Construction Manager may terminate this Agreement. Upon such termination, the Owner will pay the Construction Manager for the Work completed to date and reimbursable expenses, incurred to date, if the Owner had previously authorized such reimbursable expenses.

1.7.8 Notice of Termination. Notwithstanding any other provision of this Agreement, if the Owner elects to terminate this Agreement regardless of reason, the Owner will issue a written Notice of termination to the Construction Manager by Certified Mail, Return Receipt Requested.

1.7.9 Default of Construction Manager. If the Construction Manager shall default or shall fail or neglect to carry out the Work in accordance with the Contract Documents or the Construction Documents or shall fail to otherwise fully comply with its obligations under this Agreement, the Construction Manager agrees that the Owner may, after giving the Construction Manager fourteen (14) calendar days written notice, during which period the Construction Manager fails to cure, without prejudice to any other remedy, make good such deficiencies and may deduct the cost thereof from payment due the Construction Manager or at the Owner's option and without invalidating the performance bond, the Owner may terminate this Agreement and take possession of the site and of all materials, equipment, tools and construction equipment and machinery thereon owned by the Construction Manager and finish the Work by whatever method the Owner shall deem expedient. If the expense incurred by Owner in finishing the Work exceeds the unpaid balance of the contract price, the Construction Manager shall be liable for such deficiency and the Construction Manager shall, immediately upon demand, pay such amount to the Owner.

PART 8 - INDEMNITY, INSURANCE, BONDS AND WAIVER OF SUBROGATION

1.8.1 Responsibility. The Construction Manager shall be responsible to the extent set forth in this Part 8 and subject to limitations and allocations of risk set forth elsewhere in the Agreement to the Owner from the execution of the Agreement, for all injury or direct damage of any kind resulting from any negligent act or omission or breach, failure or other default regarding the Work by the Construction Manager, or any of its Trade Contractors, its agents, employees or others working at the direction of the Construction Manager or on its behalf, regardless of who may be the owner of the property.

1.8.2 Suits or Claims for Infringement. The Construction Manager shall indemnify and hold the Owner harmless from any suits or claims of infringement of any patent rights or copyrights arising out of any patented or copyrighted materials, methods, or systems used by the Construction Manager.

1.8.3 Indemnification and Hold Harmless Agreement. Notwithstanding Sections 1.7.1.6 and 1.7.1.7, the Construction Manager shall indemnify and hold harmless the Indemnified Parties, as defined below, as follows:

1.8.3.1 CONSTRUCTION MANAGER SHALL SAVE HARMLESS THE OWNER AND ALL OWNER'S OFFICERS, DIRECTORS, AGENTS (OTHER THAN ARCHITECTS OR ENGINEERS UNDER CONTRACT WITH OWNER FOR THIS PROJECT), EMPLOYEES, SUCCESSORS AND ASSIGNS, HEREINAFTER REFERRED TO AS "INDEMNIFIED PARTIES," FROM ALL DAMAGES, EXPENSES, SUITS, ACTIONS AND CLAIMS OF EVERY KIND AND CHARACTER WHATSOEVER WHICH THE INDEMNIFIED PARTIES MAY SUFFER DIRECTLY OR INDIRECTLY AS A RESULT OF CONSTRUCTION MANAGER'S NON-PERFORMANCE OF THE AGREEMENT.

1.8.3.2 CONSTRUCTION MANAGER SHALL ALSO SAVE HARMLESS AND INDEMNIFY THE INDEMNIFIED PARTIES FROM ALL DAMAGES, EXPENSES, SUITS, ACTIONS AND CLAIMS OF EVERY KIND AND CHARACTER WHATSOEVER WHICH THE INDEMNIFIED PARTIES MAY SUFFER DIRECTLY OR INDIRECTLY DUE TO ANY BANKRUPTCY, STATE OR FEDERAL TAX LEVIES OR LIENS, OTHER LEGAL PROCEEDINGS AFFECTING CONSTRUCTION MANAGER, IN WHICH THE INDEMNIFIED PARTIES MAY BECOME IN ANY WAY INVOLVED, WHETHER RELATED TO THE AGREEMENT AND/OR CONSTRUCTION MANAGER'S PERFORMANCE OR NON-PERFORMANCE UNDER THE AGREEMENT.

1.8.3.3 CONSTRUCTION MANAGER IS ASSUMED TO BE FAMILIAR WITH AND AT ALL TIMES SHALL OBSERVE AND COMPLY WITH ALL FEDERAL, STATE, COUNTY AND CITY LAWS, ORDINANCES AND REGULATIONS PERTAINING TO CONSTRUCTION MEANS AND METHODS IN ANY MANNER AFFECTING THE CONDUCT OF THE WORK, AND SHALL INDEMNIFY AND SAVE HARMLESS THE INDEMNIFIED PARTIES AGAINST CLAIMS ARISING FROM THE CONSTRUCTION MANAGER OR ITS EMPLOYEES VIOLATION OF, OR FAILURE TO COMPLY WITH ANY SUCH LAWS, ORDINANCES, OR REGULATIONS, IN CONDUCTING ITS MEANS AND METHODS.

1.8.3.4 CONSTRUCTION MANAGER SHALL INDEMNIFY AND SAVE HARMLESS THE INDEMNIFIED PARTIES FROM ALL CLAIMS OF PROPERTY DAMAGE GROWING OUT OF THE LAWFUL DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS AND ALL SUPPLIES, INCLUDING COMMISSARY, IN TRANSIT TO THE SITE INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THE AGREEMENT. WHEN SO DESIRED BY THE INDEMNIFIED PARTIES, CONSTRUCTION MANAGER SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF THE NATURE HEREIN ABOVE DESIGNATED HAVE BEEN PAID, DISCHARGED OR WAIVED.

1.8.3.5 PROVIDED THAT CONSTRUCTION MANAGER HAS BEEN PAID AMOUNTS DUE AND OWED IN ACCORDANCE WITH THE CONTRACT DOCUMENTS FOR THE MATTER THAT IS THE SUBJECT OF THE LIEN, CONSTRUCTION MANAGER SHALL, WITHIN TEN (10) DAYS OF RECEIPT OF WRITTEN NOTICE OF SUCH LIEN FROM THE OWNER, DISCHARGE ALL SUCH LIENS AND OTHER ENCUMBRANCES AGAINST THE PORTIONS OF THE WORK. IF THE CONSTRUCTION MANAGER FAILS TO DISCHARGE ANY SUCH LIEN WITHIN SAID TEN (10) DAY PERIOD, THE OWNER MAY DO SO AND UTILIZE RETENTION MONIES TO DEFRAY THE COSTS.

1.8.3.6 CONSTRUCTION MANAGER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE INDEMNIFIED PARTIES FROM ANY AND ALL CLAIMS, DAMAGES, LIABILITIES AND EXPENSES (INCLUDING, WITHOUT LIMITATION REASONABLE ATTORNEYS' FEES) FOR BODILY INJURY TO OR DEATH OF ANY PERSON OR FOR DAMAGE TO OR DESTRUCTION OF ANY TANGIBLE PROPERTY RESULTING DIRECTLY FROM ANY AND ALL NEGLIGENT ACTS OR OMISSIONS OF CONSTRUCTION MANAGER AND ANY SUBCONTRACTOR OR ANYONE EMPLOYED BY OR AFFILIATED WITH ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE.

1.8.3.7 CONSTRUCTION MANAGER IS RESPONSIBLE FOR ALL RISK OF LOSS TO ALL MATERIALS DELIVERED TO THE CONSTRUCTION SITE AND ALL MATERIALS AND EQUIPMENT INCORPORATED INTO THE WORK PRIOR

FINAL COMPLETION. CONSTRUCTION MANAGER SHALL, PRIOR TO FINAL COMPLETION, PROVIDE CONTINUOUS AND ADEQUATE PROTECTION OF THE WORK, THE PROPERTY AND ADJACENT PROPERTY OF OWNER OR CONSTRUCTION MANAGER CONSTITUTING THE CONSTRUCTION SITE. CONSTRUCTION MANAGER SHALL BE OBLIGATED TO REPLACE OR REPAIR ANY MATERIALS, EQUIPMENT OR SUPPLIES WHICH ARE (OR ARE TO BECOME) A PERMANENT PART OF THE WORK OR ANY TEMPORARY OR EXISTING FACILITIES AT THE SITE. THE DUTIES OF CONSTRUCTION MANAGER IN THIS SECTION 1.8.3.7 ARE INAPPLICABLE IF THE AGREEMENT IS SUSPENDED OR TERMINATED IN ACCORDANCE WITH THE TERMS OF THE AGREEMENT.

1.8.3.8 The provisions of this section shall survive the termination of this Agreement, howsoever caused, and no payment, partial payment nor issuance of a certificate of Final Completion nor acceptance of occupancy in whole or part of the Work shall waive or release any of the provisions of this Article.

1.8.4 Construction Manager's Insurance Requirements

1.8.4.1 Introduction. The Construction Manager shall not commence Work under this Agreement until the Construction Manager has obtained all the insurance required hereunder and Certificates of Insurance and a copy of a representative policy have been filed with and reviewed by the Owner. Acceptance of the insurance certificates by the Owner shall not relieve or decrease the liability of the Construction Manager. The Construction Manager shall furnish to the Owner's Representative copies of Certificates of such insurance prior to the commencement date of execution of this Agreement. The costs and premiums for such insurance will be at the expense of the Construction Manager as a cost of the Work.

1.8.4.2 This section shall govern the entire Agreement.

1.8.4.3 The insurance shall contain a provision that at least thirty (30) days prior written notice shall be given to the Owner in the event of cancellation, material change or non-renewal.

1.8.4.4 Insurance shall be underwritten by a company rated not less than A-VII in Best's latest published guide.

1.8.4.5 There shall be a hold harmless agreement in which the Construction Manager assumes liability on the Agreement and holds the Owner harmless.

1.8.4.6 The Construction Manager shall purchase and maintain in force the following kinds of insurance and bonds for operations under construction contracts and as specified in each section.

1.8.4.7 Casualty Insurance - Unless otherwise provided for in Supplementary Conditions, the Construction Manager shall provide and maintain, until the Work covered in this Agreement is completed and accepted by the Owner, the minimum insurance coverages as follows:

1.8.4.7.1 Workers Compensation Insurance shall be furnished for all employees as follows:

1.8.4.7.1.1 Statutory Workers Compensation and Employers Liability including an Alternate Employer Endorsement. A waiver of subrogation in favor of the Owner shall apply.

1.8.4.7.1.2 Employers Liability limits of liability shall not be less than as follows:

\$1,000,000 Aggregate – Bodily Injury by Accident
\$1,000,000 Policy Limit – Bodily Injury by Disease
\$1,000,000 Each Employee – Bodily Injury by Disease

1.8.4.8 A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Texas Insurance Commission, or a coverage agreement, showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a Project is required for the duration of the Project.

1.8.4.8.1 Duration of the Project includes the time from the beginning of the Work on the Project until the Construction Manager's Work on the Project has been completed and accepted by the Owner. Persons providing services on the Project include all persons or entities performing all or part of the services the Construction Manager has undertaken to perform on the Project, regardless of whether that person contracted directly with the Construction Manager 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 that furnishes persons to provide services on the Project.

1.8.4.8.2 Services include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a Project. Services do not include activities unrelated

to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets. The Construction Manager 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 the Labor Code for all employees of the Construction Manager providing services on the Project for the duration of the Project.

1.8.4.8.3 If the coverage period shown on the Construction Manager's current certificate of coverage ends during the duration of the Project, the Construction Manager must, prior to the end of the coverage period, file a new certificate of coverage with the Owner showing that coverage has been extended. The Construction Manager shall obtain from each person providing services on a Project, and provide to the Owner:

- 1.8.4.8.3.1 A certificate of coverage, prior to that person beginning Work on the Project, so the Owner will have on file certificates of coverage showing coverage for all persons providing services on the Project; and
- 1.8.4.8.3.2 No later than seven days after receipt by the Construction Manager, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.

1.8.4.9 The Construction Manager shall retain all required certificates of coverage for the duration of the Project and for one year thereafter.

1.8.4.10 The Construction Manager shall notify the Owner in writing by certified mail or personal delivery, within ten days after the Construction Manager knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project. The Construction Manager shall post on each Project site a notice, in the text, form, and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

1.8.4.11 The Construction Manager shall contractually require each person with whom it contracts to provide services on a Project, to:

- 1.8.4.11.1 Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Labor Code 401.011(44) for all of its employees providing services on the Project for the duration of the Project;
- 1.8.4.11.2 Provide to the Construction Manager, prior to that person beginning Work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project for the duration of the Project;
- 1.8.4.11.3 Provide the Construction Manager, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.
- 1.8.4.11.4 And provide to the Construction Manager:
 - a. A certificate of coverage, prior to the other person beginning Work on the Project; and
 - b. A new certificate of coverage showing extension obtained from each other person with whom it of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
- 1.8.4.11.5 Retain all required certificates of coverage on file for the duration of the Project and for one year thereafter;
- 1.8.4.11.6 Notify the Owner in writing by certified mail or personal delivery, within ten days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and
- 1.8.4.11.7 Contractually require each person with whom it contracts to perform as required by with the certificates of coverage to be provided to the person for whom they are providing services

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

1.8.4.13 The Construction Manager's failure to comply with any of these provisions is a breach this Agreement by the Construction Manager that entitles the Owner to declare the Agreement void if the Construction Manager does not remedy the breach within ten (10) days after receipt of notice of breach from the Owner.

1.8.4.14 The coverage requirement recited above does not apply to sole proprietors, partners, and corporate officers who are excluded from coverage in an insurance policy or certificate of authority to self-insure that is delivered, issued for delivery, or renewed on or after January 1, 1996. 28 TAC 110.110(i)

1.8.4.15 Commercial General Liability Insurance (Occurrence Basis Only)

1.8.4.15.1 The Owner shall be named additional insured on the Construction Manager's policy with waiver of subrogation as to the Project.

1.8.4.15.2 The full policy limits will protect the Owner if needed and a copy of a representative policy is to be placed on file with the Owner.

1.8.4.15.3 Commercial General Liability including, but not limited to minimum limits of liability as follows:

\$2,000,000 General Aggregate (Other than Products/Completed Operations)

\$2,000,000 Products/Completed Operations Aggregate

\$1,000,000 Personal & Advertising Injury – Any One Person or Organization

\$1,000,000 Each Occurrence Combined Single Limit Bodily Injury Property Damage

\$ 100,000 Fire Damage (Any One Fire)

\$ 5,000 Medical Expense (Any One Person)

1.8.4.15.4 The policy shall make provision for a "per project" general aggregate as well as include coverage for blasting, explosion or underground damage if appropriate. The policy shall also be endorsed to include the Owner as additional insured and provide waiver of subrogation in favor of same. Coverage as required shall apply on a primary basis without any right of contribution from any other insurance available to the Owner. The policy shall contain cross liability and severability of interest provisions accordingly. Any and all deductibles, which may apply, shall be the responsibility of the Construction Manager. The policy shall either specifically include or be silent as to damages where not otherwise prohibited by law.

1.8.4.16 Business (Commercial) Automobile Liability Insurance All Owned, Non-Owned, and Hired Coverage Business Automobile Coverage with minimum limit of liability of not less than \$1,000,000 Combined Single Limit as respects Bodily Injury and Property Damage. Coverage shall apply to all owned, hired and non-owned vehicles. The policy shall also be endorsed to include the Owner as additional insured and provide waiver of subrogation in favor of same.

1.8.4.17 Deletions and Exclusions:

1.8.4.17.1 No deletions/exclusions from standard coverage form shall be permitted without the written consent of the Owner.

1.8.4.18 Umbrella Liability Insurance: \$5MM Limit

1.8.4.18.1 Umbrella shall be issued as "Follow Form Policy".

1.8.4.18.2 This policy shall provide coverage over the Workmen's Compensation, Employers Liability Comprehensive General Liability, and Business Automobile Liability (Covering All Owned, Non-Owned, and Hired Vehicles.)

1.8.4.19 Builder's Risk Insurance: The Construction Manager shall obtain at the Construction Manager's expense, All Risk Property Insurance coverage, acceptable to the Owner, in the amount of insurance equal at all times to the insurable value of materials delivered and labor performed. The policy so issued in the name of the Construction Manager shall also name all Subcontractors and the Owner as additional insureds, as their respective interests may appear. The policy shall have endorsements as follows: "This insurance shall be specific as to coverage and not considered as contributing insurance with any permanent insurance maintained on the present premises."

1.8.4.19.1 The policy shall be written in the name of the Owner and the Construction Manager as their interest may appear.

1.8.4.19.2 The policy shall be written on all risk basis for physical loss or damage and include the vandalism, malicious mischief.

1.8.4.19.3 The amount of coverage shall be for the full insurable value of the Work.

1.8.4.19.4 The deductibles shall not be over \$25,000.00 for flood, earthquake and all other perils and not over \$100,000 for wind, without approval of the Owner. (Deductible losses shall be paid by the Construction Manager as a cost of the Work.)

1.8.4.19.5 The policy shall include an endorsement allowing the Owner occupancy, and the insurance shall not be canceled or altered on account of partial occupancy prior to completion.

1.8.4.19.6 The original Builder's Risk Policy shall be furnished to the Owner prior to start of the job. This shall be a "Stand Alone" Policy.

1.8.4.19.7 The Policy shall include \$500,000 extra expense coverage and \$100,000 of expediting expense coverage.

1.8.5 Waivers of Subrogation. The Owner and the Construction Manager waive all rights against each other and any of their consultants, separate contractors, if any, subcontractors, agents, and employees, each of the other, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Agreement or other applicable insurance applicable to the Work. The Construction Manager shall require of the separate contractors and subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of the other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsements or otherwise. A waiver of subrogation shall be effective as to a person or entity would otherwise have a duty of indemnification, contractual or otherwise, even though the person or entity did not pay the insurance premium directly or indirectly, and whether the person or entity had an insurable interest in the property damage. Notwithstanding this Section 1.8.5, the parties agree that under the Constitution and laws of the State of Texas, as a political subdivision of the State of Texas, the Owner cannot enter into an agreement whereby the Owner agrees to indemnify or hold harmless another party; therefore, all references of any kind to the Owner's indemnifying or holding or saving harmless any party for any reason are hereby void for all purposes.

1.8.6 Termination of Obligation to Insure. Unless otherwise expressly provided to the contrary, the obligation to insure as provided herein shall not terminate until the Architect shall have executed the final certificate.

1.8.7 Failure of Insurers. The Construction Manager is responsible for any delay resulting from the failure of his insurance carriers to furnish proof of proper coverage in the prescribed form.

1.8.8 Partial Occupancy. The Builders Risk policy has been endorsed as follows: 'The following may occur without diminishing, changing, altering or otherwise affecting the coverage and protection afforded the insured under this policy: (i) Furniture and equipment may be delivered to the insured premises and installed in place ready for use; and (ii) Partial or complete occupancy by Owner; and (iii) Performance of work in connection with construction operations insured by the Owner, by agents or lessees or other Contractors of Owner, or by contractors or the User.

1.8.9 Performance Bond and Payment Bonds. The Construction Manager shall furnish both a performance bond and a payment bond as set forth in Part 5. The surety must be one that is licensed to do business in the State of Texas, and the surety must in addition be acceptable to the Owner. Each bond shall be in an amount equal to 100% of the Project Cost. The Construction Manager shall deliver the required bonds to the Owner at least three days before the commencement of any Work at the Project site.

1.8.8.1 Bond Requirements. The performance bond and payment bond shall identify the Principal (Construction Manager) and Surety with the Owner. The Principal and Surety shall be identified by their full legal names, addresses, full telephone numbers, and legal status of the parties (i.e., sole proprietorship, general partnership, joint venture, unincorporated association, limited partnership, corporation (general or professional), etc.). The identification of the Owner will be for informational purposes only. The Principal and the Surety must separately sign the bond. The parties executing the bond should indicate their companies, print their names and titles, and impress the corporate seals, if any. The bonds must be payable to the Owner, and shall be delivered to the designated representative of the Owner within thirty (30) calendar days after execution of this Agreement. The performance bond must clearly and prominently display on the bond or on an attachment to the bond the name, mailing address, physical address, and telephone number, including the area code, of the surety company to which any notice of claim should be sent, or the toll-free telephone number maintained by the Texas Department of Insurance under Article 1.35D of the Texas Insurance Code, and a statement that the address of the surety company to which any notice of claim should be sent may be obtained from the Texas Department of Insurance by calling the toll-free telephone number.

1.8.8.2 Surety Companies. Any performance bond obtained hereunder must be executed by a duly authorized Surety company satisfactory to the Client, which in any event, must be a surety company listed in Circular 570 "Surety Companies Acceptable on Federal Bonds published in the Federal Register, U.S. Department of the Treasury" and authorized to do business in the State of Texas in accordance with Article 7.19-1 of the Texas Insurance Code. No surety will be accepted by Owner who is now in default or delinquent on any bonds or who is interested in any litigation against Owner. Each Surety shall designate an agent resident in the State of Texas to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of such suretyship.

PART 9 - MISCELLANEOUS PROVISIONS.

1.9.1 Captions. The captions throughout this Agreement and the Table of Contents are for convenience of reference only and the words contained therein shall in no way be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of any provision or the scope or intent of this Agreement, nor in any way affect this Agreement.

1.9.2 Gender. The use of any gender herein shall be deemed to include the other gender and the use of the singular herein shall be deemed to include the plural (and vice versa) whenever appropriate.

1.9.3 Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

1.9.4 Cumulative Remedies. Except as otherwise provided herein, each right and remedy provided for in this Agreement shall be cumulative and shall be in addition to every other right or remedy provided for in this Agreement as now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise of any one or more of the rights or remedies provided for in this Agreement as now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise of any or all other rights or remedies provided for in this Agreement as now or hereafter existing at law or in equity or by statute or otherwise.

1.9.5 No Waiver. No failure by either party to insist upon the strict performance of any term, covenant, agreement, provision, condition or limitation of this Agreement or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or of any such term, covenant, agreement, provision, condition or limitation of this Agreement to be kept, observed or performed by the Owner or by Construction Manager, and no breach thereof shall be waived, altered or modified except by a written instrument. No waiver of any breach shall affect or alter this Agreement, but each and every term, covenant, agreement, provision, condition and limitation of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

1.9.6 Applicable Law, Laws and Regulations, Laws or Regulations. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, including any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction. If the Construction Manager believes or is advised by the Architect or by another design professional retained to provide services on the Project that implementation of any instruction received from the Owner would cause a violation of any applicable law, the Construction Manager shall notify the Owner in writing. Neither the Construction Manager nor the Architect shall be obligated to perform any act that will violate any applicable law.

1.9.7 Legal Compliance. The Construction Manager shall comply with all laws, rules, regulations and ordinances and shall ensure the compliance of his Trade Contractors.

1.9.8 Employment of Texas Citizens and Use of Texas Products. Since the work provided for in this Agreement is to be performed in Texas, it is the wish of the Owner that materials and equipment manufactured or produced in Texas may be used in the work and that Texas citizens shall be employed in the work at wages consistent with those being paid in the general area in which the work is to be performed. This desire on the part of the Owner is not intended to restrict or limit competitive selection or to increase the cost of the work; nor shall the fulfillment of this desire be asserted by the Construction Manager as an excuse for any noncompliance or omission to fulfill any obligation under the Agreement. See Paragraphs 1.9.7.2, 1.9.7.3, and 1.9.7.4.

1.9.9 Compliance with the Owner's Policies. Pursuant Owner's policies, Construction Manager hereby certifies to Owner that:

1.9.9.1 A drug free Workplace will be provided for Construction Manager's employees, including all Trade Contractors, during the performance of this Agreement; and

1.9.9.2 A written certificate shall be secured from each Trade Contractor hired by Construction Manager stating that:

As part of the Trade Contract with Construction Manager, Trade Contractor certifies to Construction Manager that a drug free Workplace will be provided for Trade Contractor's employees during the performance of this Trade Contract.

1.9.10 Specification Arrangement. The specifications are separated into numbered and titled divisions for convenience of reference. Neither the Owner nor the Architect assumes any responsibility for defining the limits of any subcontracts on account of the arrangement of the specifications. Notwithstanding the appearance of such language in the various divisions of the specifications as, "The Plumbing Contractor", "The Electrical Contractor", "The Roofing Contractor", etc., the Construction Manager is responsible to the Owner for the entire contract and the execution of all of the work referred to in the Contract Documents.

1.9.11 Effect of Addenda, Amendments, Bulletins, Deletions, Omissions, and Change Orders. No special implication, interpretation, construction, connotation, denotation, import, or meaning shall be assigned to any provision of the Contract Documents because of changes created by the issuance of any (1) addendum, (2) amendment, (3) bulletin, (4) notice of deletion, (5) notice of omission, or (6) change order other than the precise meaning that the contract documents would have had if the provision thus created had read originally as it reads subsequently to the (1) addendum, (2) amendment, (3) bulletin, (4) notice of deletion, (5) notice of omission, or (6) change order by which it was created.

1.9.12 Conflicts.

1.9.12.1 Governing Principals. The following principles shall govern the settlement of disputes which may arise over conflicts in the Contract Documents: (a) as between figures given on drawings and the scaled measurements, the figures shall govern; (b) as between large-scale drawings and small-scale drawings, the larger scale shall govern; (c) as between drawings and specifications, the requirements of the specifications shall govern; and (d) as between the contract and the specifications, the requirements of the contract, as executed, shall govern. Conflicts noted shall be reported to the Architect. The principles set forth herein shall not alter provisions of Article 1.1.4 of the Agreement. Schedules, lists, indexes, tables, inventories, written instructions, written descriptions, summaries, statements, classifications, specifications, written selections, or written designations although appearing on the drawings are deemed to be and are "specifications" within the meaning of Article 1.9.12. In the event of conflict, the Supplementary Conditions control is over the Agreement, and the Agreement control is over the Supplementary Conditions and Agreement. The Architect has no authority to amend the Agreement orally or in writing either expressly or by implication.

1.9.12.2 Taken as a Whole. The Contract Documents are to be taken as a whole and are intended to be complementary with one another. It is also intended that they include all items necessary for the proper execution and completion of the Work. If a conflict exists between or within the Contract Documents, or if they are inconsistent, the provisions of this Agreement and the provisions of any Change Order added hereto after the date of this Agreement shall control over any contrary terms contained in the Contract Documents existing at the time of this Agreement. This Agreement shall govern in the event of any conflict with any other provisions of the Contract Documents unless written notice to the contrary shall have been issued by the Owner.

1.9.13 Drawings and Specifications at the Site. The Construction Manager shall keep at the site one copy of all drawings and specifications in good order with all addenda and change orders noted thereon (current and updated) and available to the Architect and the Owner and to their representatives, and the Program Manager. Additionally, the Construction Manager shall, at completion of the Project, provide in both hard copy (one original and two copies) and electronic format (one copy compatible with County's CAD program) to the Architect for inclusion in their ASBUILT drawings. The Construction Manager shall additionally provide one (1) electronic copy of above to the Program Manager.

1.9.14. Complete, Definite, and Clear Instructions and Schedules of Drawings. In the event the Contract Documents are not complete, definite, and clear, the Construction Manager shall make demand upon the Architect in writing for additional instructions and shall furnish the Owner a copy of the aforesaid demand. With reasonable promptness the Architect shall furnish complete, definite, and clear instructions in writing, or by means of drawings, or in writing and by means of drawings. Such additional instructions if given orally shall be confirmed in writing or by drawings or both within a reasonable space of time. Any such additional instructions shall be consistent with the Contract Documents, true developments thereof, and reasonably inferable therefrom. The work shall be executed in conformity with the aforesaid instructions. The Architect shall furnish the Owner a copy of all additional instructions issued to the Construction Manager.

1.9.15 Commencement, Prosecution and Completion. The Construction Manager will be required (a) to commence work under this Agreement upon receipt of the Notice to Proceed, (b) to prosecute the Work in accordance with the Contract Documents (c) to install the various parts of the work with equal steps shown on the Progress Schedule and at the same rate shown on the Progress Schedule to be furnished pursuant to Article 3.1.2 and (d) to complete the work within the Contract Time as adjusted by any extensions of time provided for under Section 1, Part 4. Commencement of work shall mean actual physical work on the site. In the event the Construction Manager shall be delinquent in respect to compliance with the time limits established in the Progress Schedule, he shall, within seven days after receipt of written demand of the Owner, commence working not less than a twelve hour day and no less than six days a week or equivalent with Owner's approval, until such time as he shall have brought the amount of work in place into compliance with the Progress Schedule. Fulfillment of this requirement as to overtime work (hereinafter referred to as "recovery of lost time required of the Construction Manager for his breach of covenant as to time") shall not relieve the Construction Manager from liability for breach of the covenant as to time. For account of recovery of lost time required of the Construction Manager for his breach

of covenant as to time the Construction Manager shall be entitled to no claim against the Owner for any payment, repayment, reimbursement, remittance, remuneration, compensation, profit, cost, overhead, expense, loss expenditure, allowance, charge, demand, hire, wages, salary, tax, cash, assessment, price, money, bill, statement, dues, recovery, restitution, benefit, recoup, exaction, injury or damages.

1.9.16 Samples. The Construction Manager shall furnish to the Owner for approval all samples as directed. The Work shall be in accordance with approved samples.

1.9.17 Manufacturer's Recommendations. In the event the contract shall require that given work or materials shall be installed in accordance with the manufacturer's recommendations or requirements, the Construction Manager shall obtain for his use at the site in executing the work copies of the bulletin, circular, catalogue, or other publication of the manufacturer bearing the title, number, edition, date, etc., [hereinafter referred to as the "doctrine"] designated in the contract. In the event no such designation appears in the Contract Documents, the Construction Manager shall not proceed with the installation of the work or materials until (1) he shall have requested from the Architect in writing (with copy of the request to the Owner) additional instructions pursuant to Article 1.9.14 as to title, number, edition, date, etc., of the bulletin, circular, catalogue or other publication of the manufacturer which contains the manufacturer's published recommendations or requirements for installation and use of the product and (2) until he shall have received the aforesaid additional instructions. Prior to proceeding with the installation of the said work or materials, the Construction Manager shall obtain for his use at the site in executing the work the "doctrine" designated in the said additional instructions of the Architect. The plans and specifications shall be adhered to in all cases where they call for quality of materials, quality of workmanship, or quality of construction that is equal to or in excess of the quality called for in the manufacturer's recommendations or requirements. There may be no deviations from the plans and specifications except to the extent that the said deviations shall be necessary in order to comply with the manufacturers express recommendations or express requirements. Any changes necessary to comply with the manufacturers express recommendations or express requirements shall be made at no additional expense to the Owner.

1.9.18 Office for Resident Engineer Inspector. If required, the Construction Manager shall provide a temporary office at the site of the Work for the use of the resident engineer inspector. The office shall be weather-tight and shall be provided with heat, electric lights, telephone extension, and adequate windows. The Construction Manager shall also provide plan table and rack, chair, legal-size fiber transfer file with fifty (50) manila folders for the permanent records, and use of such business machines as may be necessary for the resident engineer inspector's duties.

1.9.19 Keys. Keys with tags indicating number and/or description of door or room each key is intended to fit attached to each key shall be delivered to the Owner. Construction Manager shall prepare and furnish with the keys an itemized key schedule in quintuplicate listing the door or room number and/or description, serial number of key, and number of keys being delivered for each door or lock.

1.9.20 Geological and Archeological Specimens. If during the execution of the work the Construction Manager, and Trade Contractor, or any servant, employee or agent of either should uncover any valuable material or materials, such as, but not limited to, treasure trove, geological specimens, archival material, archeological specimens, or ore, the Construction Manager acknowledges that title to the foregoing is vested in the Owner. The Construction Manager shall notify the Owner upon the discovery of any of the foregoing, shall safeguard it, and shall deliver it promptly to the Owner.

1.9.21 Surveys, Permits and Regulations.

1.9.21.1 General. The Owner shall furnish all surveys unless otherwise specified. Permits and licenses of a temporary nature necessary for the prosecution of the work shall be obtained and paid for by the Construction Manager. Permits, licenses and easements for permanent structures or permanent changes in existing facilities shall be obtained and paid for by the Owner unless otherwise specified. The Construction Manager and sub-contractor must pay any municipal or county occupational licenses, taxes, or fees, if any. The Construction Manager shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the work. If the Construction Manager observes that the drawings or specifications are at variance therewith, he shall promptly notify the Owner in writing, and any necessary changes shall be adjusted as provided in the Agreement for changes in the work. If the Construction Manager performs any work knowing it to be contrary to such laws, ordinances, rules or regulations without such notice to the Owner, he shall bear all costs arising from those works.

1.9.21.2 Codes. The latest edition of the below listed codes with all amendments as of the date of the opening of proposals shall govern the installation of all work and is adopted and incorporated into the Contract Documents and made a part thereof by reference, provided, however: that the drawings and specifications shall be adhered to in all cases where they call for quality of materials, quality of workmanship, or quality of construction which is equal to or in excess of the quality required by the above state codes and provided also: that there may be no variances from the drawings and specifications except to the extent that the said variances shall be necessary in order to comply with the below listed codes. It shall be the responsibility of the Construction Manager to familiarize himself with the requirements of the below listed codes. If there are any express requirements in the drawings or specifications which are at variance to the below listed codes, all changes in the work necessary to eliminate the said requirements and make the work conform to the above stated codes shall be

adjusted as provided in the Agreement for changes in the work. Construction Manager's responsibility shall be limited to construction means and methods as opposed to design.

- *International Building Code (IBC)*
- *International Mechanical Code (IMC)*
- *International Plumbing Code (IPC)*
- *National Electric Code (NEC)*
- *International Energy Conservation Code (IECC)*
- *NFPA 101 Life Safety Code*
- *FEMA 100 Year Flood Plain Verification*
- *Texas Department of Licensing and Regulation (TDLR) Elimination of Architectural Barriers Act and Texas Accessibility Standards, Health and Safety Code Chapter 754 (Elevators and Escalators), Health and Safety Code Chapter 755 (Boilers)*
- *Americans with Disabilities Act*
- *Any applicable City of Richmond Ordinance(s)*
- *ASHRAE – American Society of Heating, Refrigerating and Air Conditioning Engineers*

1.9.22 Utilities. Pending the extension and connection of permanent water, permanent gas, permanent sewer taps, and permanent electric power, the Construction Manager shall obtain temporary water, temporary gas, temporary electric power, and provide sewage disposal not provided by the Owner. In the absence of provisions to the contrary, the Construction Manager shall pay for all utilities services until the final certificate has been executed or until the work is occupied, whichever is the earlier.

1.9.23 Materials, Appliances, Employees.

1.9.23.1 Payment for. Unless otherwise stipulated, the Construction Manager shall provide and pay for all materials, labor, water, tools, equipment, light, power, transportation, and other utilities and facilities necessary for the execution and completion of the work.

1.9.23.2 Quality of Materials and Workmanship. Unless otherwise specified, all materials shall be new, and both workmanship and materials shall be of good quality and free from defects. The Construction Manager shall, if required, furnish satisfactory evidence as to the kind and quality of materials and work. The burden of proof is on the Construction Manager.

1.9.23.3 Quality and Discipline of Employees. The Construction Manager shall at all times enforce strict discipline and good order among his employees and shall not employ on the work any unfit person or anyone not skilled in the work assigned to him. The Owner may, upon written notice to the Construction Manager, require the Construction Manager to remove an individual immediately from providing services for the following reasons: violation of the terms and conditions of this Agreement; violation of the Owner's or the Construction Manager's work rules and regulations; criminal activity; or violation of state, federal, or municipal statutes. The Owner may, upon thirty (30) days written notice to the Construction Manager, require the removal of any individual from providing services without cause.

1.9.24 Measurements and Dimensions. Before ordering material or doing work which is dependent upon coordination with building conditions, the Construction Manager shall verify all dimensions, elevations, grades, and pitch by taking measurements at the building and shall be responsible for the correctness of same. No consideration will be given to any claim based on differences between the actual dimensions and those indicated on the drawings. Any discrepancies between the drawings and/or specifications and the existing conditions shall be referred to the Architect for additional instructions before any work affected thereby is begun.

1.9.25 Space Conditions. All pipes passing through floors, walls, and ceilings shall be installed with sufficient space between them to permit installation of pipe insulation and floor, wall, and ceiling plates without cutting of insulation or plates. Roughing dimensions shall be prepared by the Construction Manager to accomplish this requirement. The Construction Manager shall locate all equipment that must be serviced, operated, or maintained in fully accessible positions. This provision includes but is not limited to valves, traps, cleanouts, motors, controllers, switchgear, drain points, and fire dampers. If spaces, dimensions, or other design conditions do not permit compliance with the present article, the Construction Manager shall file a demand in writing with the Architect for additional instructions, furnishing a copy of the aforesaid demand to the Owner.

1.9.26 Cutting, Patching, and Fitting. The Construction Manager shall do all cutting, fitting, or patching of his work that may be required to make its several parts come together properly and fit.

1.9.27 Use of Premises. The Construction Manager shall confine his plant, his apparatus, the staging and storage of materials, the operations of his forces, and the work to limits indicated by law, ordinances, permits, or the Contract Documents and shall not unreasonably encumber the premises with his materials. The Construction Manager shall not

load or permit any part of the work to be loaded with weight that will endanger its safety. The Construction Manager shall enforce the Architect's instructions regarding signs, advertisements, fires and smoking. Use of space will be closely coordinated with Owner and User so as not to interfere with ongoing User operations.

1.9.28 Cash Allowances. The Construction Manager shall include in the GMP all allowances named in the Contract Documents and shall cause the work thus covered to be done by such Contractors and for such sums as the Architect may direct, the GMP being adjusted in conformity therewith. The Construction Manager declares that the GMP includes such sums for overhead and profit on account of cash allowances as he deems proper. No demand for overhead and profit other than those included in the GMP shall be allowed. The Construction Manager shall not be required to employ for any such work persons against whom he has a reasonable objection.

1.9.29 Forms and Specimens. The forms and specimens in Section 5 or attached as exhibits are incorporated by reference herein and shall be executed in substantial conformance as required or convenient in describing obligations under the Contract Documents.

1.9.30 Owner's Right to Perform Work. The Owner reserves the right to perform construction or operations related to the Project with other Contractors, as well as the right to award separate contracts in connection with other portions of the Project or other construction or operations on the Project site under conditions of insurance and waiver of subrogation identical to the provisions of this Agreement. If the Construction Manager claims that delay or additional cost is because of such action by the Owner, the Construction Manager shall assert such claims as provided in the Contract Documents.

1.9.31 Observation of Materially Differing Conditions. If conditions are encountered at the site which are (a) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents, or (b) unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than three (3) days after the first observance of the conditions. The Architect shall promptly investigate such condition and, if they differ materially and cause an increase or decrease the Construction Manager's cost of, or time required for performance of any part of the Work, will recommend an equitable adjustment in the Guaranteed Maximum Price (GMP) or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Agreement is justified, the Architect shall so notify the Owner and the Construction Manager in writing, stating the reasons. Claims by either party in opposition to such determination must be made within twenty-one (21) days after the Architect has given notice of the decision. If the conditions encountered are materially different, the Guaranteed Maximum Price (GMP) and Contract Time shall be equitably adjusted.

1.9.32 Separate Contracts. The Owner reserves the right at any time and from time to time upon notice to Construction Manager to perform with its own personnel, or cause to be performed by other Contractors, other Work at the Project Site in connection with the development of the Project which is not contemplated hereby or which is contemplated hereby if the Construction Manager and the Owner shall be unable to agree upon a Change Order incorporating such Work as Work of the Construction Manager under this Agreement. In either case, the Owner shall assure that such personnel or Contractors do not cause any conflict with the Work of Construction Manager. Construction Manager shall afford the Owner and other Contractors reasonable opportunity for the introduction, protection and storage of material and equipment at the Site and the execution of Work, and shall properly connect and coordinate its Work with theirs. If any Work by the Owner or its other Contractors increases Construction Manager's costs or extends the time of performance, Construction Manager shall be entitled upon timely claim to a Change Order for payment by Owner of any reasonable Actual Costs actually incurred by Construction Manager as a result thereof and to an extension of time for performance for such reasonable time as the Architect shall determine. Construction Manager has no responsibility hereunder to inspect or certify the suitability or correctness of any Work performed by Owner's own personnel or other Contractors under direct contract with the Owner.

1.9.33 Third Party Beneficiary.

1.9.33.1 Owner as Third Party Beneficiary. Construction Manager agrees that all of its subcontracts, agreements with suppliers, and purchase orders shall name the Owner as an intended third-party beneficiary. Construction Manager agrees that all of its subcontracts, agreements with suppliers, and purchase orders shall assign all warranties and rights to the Owner, with that assignment becoming effective one (1) year after Final Completion of the Project Component to which such warranties and rights apply, so as to coincide with the termination of the Construction Manager's one (1) year duty to correct work as described in Article 3.1.25. Construction Manager further agrees that the above-referenced warranties and rights shall provide the Owner, upon becoming effective, with the right to have the Construction Manager's Trade Contractors and suppliers correct deficiencies discovered in the Work for a period of one (1) year after the effective date of each assignment. Construction Manager agrees that it shall protect the enforceability of any warranty or right provided by any Trade Contractor or supplier, and not, through action or omission, cause any warranty or right provided by any Trade Contractor or supplier to become void, voidable, or unenforceable.

1.9.33.2 User and County of Fort Bend, Texas. Construction Manager acknowledges, stipulates and agrees that the Owner is a political subdivision of the State of Texas, performing an essential public and governable function by means of the Agreement. Construction Manager acknowledges, stipulates and agrees that the User and the State of Texas, County of Fort Bend are express third party beneficiaries of this Agreement. Failure of Construction Manager to comply with this Agreement may cause general and special or damages to Owner or to officers, agencies, commissions, departments, instrumentalities or other entities of the State of Texas, County of Fort Bend, which will occupy the completed work or which provide governmental services or supplies to them. By way of illustration and not limitation, breach or repudiation of the Contract may cause the need to crowd other premises, to extend occupancies of other premises or to occupy unsatisfactory premises. Construction Manager shall be liable for damages under this Agreement not only to Owner but also to, and as third party beneficiaries of its Contract, the User, the State of Texas, County of Fort Bend, or to any officer, agency, commission, department, instrumentality or entity of the State of Texas, County of Fort Bend, which is to occupy the work or which performs a governmental function for the same and whose costs or burden is increased by a breach in the Contract.

1.9.34 Joint Drafting. The Construction Manager and the Owner agree that this Agreement was jointly drafted, and that both parties had an opportunity to negotiate all its terms and conditions and to obtain the assistance of counsel in reviewing its terms prior to executing the Agreement. Consequently, this Agreement shall be construed neither against nor in favor of either party, but shall be construed in a neutral manner.

1.9.35 Counterparts. This Agreement shall be executed in five (5) counterparts. All counterparts shall constitute one and the same instrument. Three (3) copies of this Agreement shall be delivered to the Owner and two (2) to the Construction Manager.

1.9.36 Entire Agreement. The Contract Documents referenced herein constitutes the entire Agreement between the Owner and the Construction Manager with respect to the preparation and submittal by the Construction Manager of the Construction Documents and supersedes all prior negotiations, representations and agreements with respect to such preparation and submittal. Except as set forth herein, there are no other promises, understandings, agreements, representations or warranties, oral or written, expressed or implied between them. This Agreement may not be changed, modified or terminated, in whole or in part, nor any provision waived except by an instrument in writing signed by the parties hereto.

SECTION 2 – PRECONSTRUCTION PHASE

Part 1 - Preconstruction Phase Services

2.1.1 General. The Construction Manager shall perform the services described in this Agreement. The services to be provided under Section 2 constitute the Preconstruction Phase services. If the Owner and Construction Manager agree, after consultation with the Architect, the Construction Phase may commence before the Preconstruction Phase is completed, in which case both phases shall proceed concurrently. Construction Manager shall provide the following consultation services to Owner:

2.1.1.1 Meetings. Develop in consultation with Architect a schedule for and attend scheduled meetings with the Architect, Owner and User conducted by the Construction Manager, during the development of Schematic Design, Preliminary Design, and Construction Documents by the Architect necessary for completion of the project in accordance with the Program and within time limits stated in this Agreement.

2.1.1.2 Advise. Advise the Owner, Architect and User regarding necessary revisions in connection with Site use and improvements, selection of materials, building systems and equipment, construction feasibility, availability of materials and labor, time requirements for installation and construction, other factors related to costs (including costs of alternative designs or materials, preliminary budgets and possible economies), and scheduling of design and construction services and perform and provide life-cycle costs and value engineering analyses and other studies for such purposes.

2.1.1.3 Project Schedule. With the Architect, develop and periodically revise a Project Schedule for review by the Owner, which coordinates and integrates the Architect's design efforts with Construction Manager's actual or anticipated construction schedules. The Project Schedule shall include:

2.1.1.3.1 Design Drawings. A schedule for completion of any necessary Design Drawings incident to the Program;

2.1.1.3.2 Early Components. Identification of (i) the Components of the Project (a) for which existing portions will be separated for incorporation into a Component Change Order or (b) for the description of specific components of the Work by a Construction Document Change Order issued after the GMP Change Order, so as to permit the immediate commencement of construction services or to facilitate the sequence of construction to further and without affecting the Owner' basic objectives, (ii) the sequence in which such Component Construction Documents will be prepared or separated, and (iii) a schedule for completion of such Component Construction Documents;

2.1.1.3.3 Construction Drawings. A schedule for completion of all Construction Documents necessary for the entire Project;

2.1.1.3.4 Commencement and Completion. A schedule for the anticipated commencement and completion of construction and procurement activities under a Component Change Order for each Component for which separate Component Construction Documents are to be prepared or separated;

2.1.1.3.5 Response Times. A schedule for Architect response times for shop drawings and other submittal schedule required to be made by Construction Manager in connection with the Work under a Component Change Order or GMP Change Order.

2.1.1.3.6 Design and review activities related to permit and regulatory approvals

2.1.1.4 Cost Estimates and Constructability Reviews. The Construction Manager shall also provide cost estimating, constructability evaluations and recommendations, and monitor and comment on the Project's scope and quality as both relate to the stated budget.

2.1.1.4.1 Construction Cost Estimates. Prepare Construction Cost Estimates setting forth in detail Construction Manager's estimate of construction costs, including all Actual Costs and Construction Manager Contingency and Fees, for the construction of the Project and each Component thereof. Such estimates shall include the cost of safety factors. Such Construction Cost Estimates shall be prepared and updated continuously as construction documents are developed and shall be formally submitted to Owner, to User and to Architect when each Component Change Order is issued or at such more frequent intervals as Owner may reasonably request.

2.1.1.4.2 Reconciled Construction Cost Estimates. Provide to the Owner and User Reconciled Construction Cost Estimates, consisting of a composite of the separately derived Architect's Estimate of Probable Construction Cost and the Construction Manager's Construction Cost Estimate, each based upon the Program and design documents prepared by the Architect. Reconciled Construction Cost Estimates shall be prepared prior to the submission of the Guaranteed Maximum Price Proposal. If at any time the Architect's Estimate of Probable

Construction Cost and the Construction Cost Estimate of the Construction Manager are, in the Construction Manager's judgment, not reconcilable or exceed corresponding components of the Project Budget, the Owner, the Architect and the Construction Manager shall confer to resolve such differences and, if such differences cannot be resolved, the Construction Manager shall make such recommendations to the Owner as Construction Manager may deem necessary or appropriate to resolve such differences.

2.1.1.5 Design Document Submission Procedures. With the Architect, develop a procedure for the regular submission by the Architect of design documents prepared by the Architect.

2.1.1.6 Program and Document Review. Review the Program and design documents prepared to implement proposed revisions as they are being prepared and are made available by the Architect for the purpose of recommending alternative solutions whenever such matters affect cost, construction feasibility or schedules without, however, assuming any of the Architect's responsibilities for design, and perform and provide life-cycle costs and value engineering analyses and other studies for such purposes.

2.1.1.7 Recommendations on Phasing. Make recommendations to the Owner and to the Architect regarding the division of the Work in the design documents and revisions to facilitate the phasing of the Work related to the Project, the selection and awarding of Trade Contracts, taking into consideration such factors as time of performance, the availability of labor, overlapping trade jurisdictions, provisions for temporary facilities, and the reduction of areas of conflict and overlapping in the Work to be performed by Construction Manager or by Trade Contractors.

2.1.1.8 Staffing Plan. Develop a proposed staffing plan, and wage and salary schedule for approval by Owner.

2.1.2 Limitation of Scope. Nothing herein shall be deemed to permit the Construction Manager to require of the Architect any services which the Owner is not authorized to require under the terms of the Architectural Agreement between the Owner and the Architect. Nothing herein shall be deemed to impose upon the Construction Manager and Construction Manager does not under any Article of this Agreement assume any responsibilities to provide any services constituting the practice of architecture, engineering or any related design profession. The Construction Manager shall use its best efforts in the performance of its construction management services, but does not warrant or guarantee the advice or recommendations furnished with respect to design and does not control, warrant or guarantee any design services performed or furnished by the Architect.

2.1.3 Local Conditions. The Construction Manager shall visit the site(s), become familiar with the local conditions, and correlate observable conditions with the requirements of the Contract Documents.

2.1.4 Laws and Regulations. The Construction Manager shall review federal and state laws and regulations, in effect at the time of this Agreement's execution, including but not limited to the Americans with Disabilities Act, applicable to construction of the Project; correlate such laws with the Contract Documents; and advise the Owner if any Project requirements may cause a violation of such laws.

2.1.5 Periodic Meetings. The Construction Manager shall attend periodic meetings with the Architect . The Construction Manager with the Architect shall jointly schedule and attend regular weekly Project coordination meetings with the Owner. The Construction Manager shall consult with the Owner and Architect regarding site use and improvements, and the selection of materials, building systems and equipment. The Construction Manager shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost including estimates of alternative designs or materials, preliminary budgets and possible economies.

2.1.6 Construction Manager's Schedule. When Project requirements have been sufficiently identified, the Construction Manager shall prepare, and periodically update, a Project Schedule for the Architect's review and the Owner's approval. See Approved Development Schedule, Exhibit F. The Construction Manager shall obtain the Architect's approval of the portion of the preliminary Project Schedule relating to the performance of the Architect's services. The Construction Manager shall coordinate and integrate the preliminary Project Schedule with the services and activities of the Owner, Architect and Construction Manager. As design proceeds, the Project Schedule shall be updated to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of a Guaranteed Maximum Price proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long lead-time procurement, Owner's occupancy requirements showing portions of the Project having occupancy priority, and proposed date of Final Completion. If Project Schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations to the Owner and Architect. The schedule must, at a minimum, include the following:

2.1.6.1 Submittals. The timing of major submittals due to the Architect and approvals by the Architect;

2.1.6.2 Early Start and Finish Dates. Early start and finish dates for major activities, including, but not limited to, the status of major equipment and systems purchasing; and any decisions, actions; and,

2.1.6.3 Approvals. Approvals required of the Architect or the Owner.

2.1.7 Information for Architect. The Construction Manager shall provide the Architect with information to enable the Architect to (1) establish the design and ordering times for long lead items; (2) coordinate the development and implication of the Construction Manager's master procurement schedule; which will facilitate the Architect's review and confirmation of compliance with or enactment of recovery procedures.

2.1.8 Consultation. Construction Manager shall consult with Owner and Project Architect regarding site use and improvements, and the selection of materials, building systems and equipment. Construction Manager shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost including estimates of alternative designs or materials, preliminary budgets and possible economies.

2.1.9 Phased Construction. The Construction Manager shall make recommendations to the Owner and Architect regarding the phased issuance of Drawings and Specifications to facilitate phased construction of the Project, if such phased construction is appropriate for the Project, taking into consideration such factors as economies, time of performance, availability of labor and materials, and provisions for temporary facilities. Construction Manager shall advise the design team to release drawings as needed to support Project schedule approved by Owner.

2.1.10 Preliminary Construction Cost Estimates.

2.1.10.1 Estimates Required. When Owner has sufficiently identified the Project requirements and criteria and the Project Architect has prepared other basic design criteria, Construction Manager shall prepare, for the review by the Project Architect and approval of Owner, a preliminary construction cost estimate utilizing area, volume or similar conceptual estimating techniques. When Schematic Design Documents have been prepared by the Architect and approved by the Owner, the Construction Manager shall prepare for the review of the Architect and approval of the Owner, a more detailed estimate with supporting data.

2.1.10.2 Preliminary Design. As applicable, within fourteen (14) calendar days after the preliminary design documents have been prepared by the Project Architect and approved by Owner, Construction Manager shall prepare for the review by the Project Architect and approval of Owner, a more detailed construction cost estimate with supporting data. During the preparation of the design development documents, Construction Manager shall update and refine this estimate at appropriate intervals agreed to by Owner, Project Architect and Construction Manager.

2.1.10.3 Design Development. As applicable, within fourteen (14) calendar days after the design development documents have been prepared by the Project Architect and approved by Owner, Construction Manager shall prepare a more detailed construction cost estimate with supporting data for review by the Project Architect and approval by Owner. The Construction Manager shall prepare a GMP proposal once the detailed construction cost estimate has been reconciled. During the preparation of the construction documents, Construction Manager shall work closely with the Architect to ensure the Construction Documents conform to the approved GMP.

2.1.10.4 Cost Exceed Previous Estimate. If any estimate submitted to Owner exceeds previously approved estimates or the construction cost estimate in the Development Budget, Construction Manager shall make appropriate recommendations to Owner and Project Architect.

2.1.11 Long-lead Items. The Construction Manager shall recommend to the Owner and Architect a schedule for procurement of long-lead time items which will constitute part of the Work as required to meet the Project schedule. If such long-lead time items are procured by the Owner, they shall be procured on terms and conditions acceptable to the Construction Manager. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, all contracts for such items shall be assigned by the Owner to the Construction Manager, who shall accept responsibility for such items as if procured by the Construction Manager. The Construction Manager shall expedite the delivery of long-lead time items.

SECTION 3 – CONSTRUCTION PHASE

PART 1 - SCOPE OF SERVICES

3.1.1 General. Without limitation of its responsibilities for the performance of the Work, the Construction Manager shall perform the following services:

3.1.1.1 Supervision. Supervise the Work of Trade Contractors and the procurement of supplies and materials from Trade Suppliers and coordinate the Work with the activities and responsibilities of the Owner, the Architect and Construction Manager so as to complete the Project in accordance with the Owner's objectives of quality, cost and time for completion.

3.1.1.2 Competent Full Time Staff. Maintain at the Project Site a competent, full time staff with appropriate expertise satisfactory to the Owner to coordinate and provide general direction of the Work, to conduct adequate review of the Work as to quality and compliance with the Contract Documents and to maintain satisfactory progress by the Trade Contractors involved in the performance of the Work.

3.1.1.3 Field Office. Establish at the Project Site a field office and provide therein an office, furnishings, and telephone and facsimile communications lines and equipment for use by Owner's Representative and resident engineer inspector.

3.1.1.4 Organization And Lines Of Authority. Establish with the Architect on site organization and lines of authority in order to carry out the overall progress of the Work.

3.1.1.5 Coordination. Establish with the Architect procedures for coordination among the Owner, the Architect and the Construction Manager and establish similar procedures for coordination between Construction Manager and its Trade Contractors and Trade Suppliers, with respect to all aspects of the Project and implement such procedures.

3.1.2 Project Progress Schedules and Meetings.

3.1.2.1 Meetings. Conduct scheduled meetings on a regular basis at which the Owner, the Architect, the Construction Manager and Trade Contractors may discuss jointly such matters as procedures, progress, problems and scheduling, and, provide and distribute minutes of such meetings, including therein a list of the action items, responsible parties and action dates to maintain schedule.

3.1.2.2 Project Progress Schedules. Construction Manager shall furnish the Owner with Project Progress Schedules which shall be revised as required by the conditions of the Work and Project showing complete pre-construction, procurement and construction schedules. Such schedules shall set forth:

3.1.2.2.1 Major Elements and Components. Listing of all major elements and Components of the Work and major equipment items to be purchased, with adequate information as to those items requiring long lead time;

3.1.2.2.2 Analysis. An analysis of the types, quantity and availability of labor required to perform all of the Work;

3.1.2.2.3 Separate Phases. A report of the separate phases of the Work to be performed by the Construction Manager and Trade Contractors and a flow chart of the activity sequences, coordination and duration of each;

3.1.2.2.4 Financial Requirements. A report of monthly and cumulative financial requirements; and

3.1.2.2.5 Status. The status of construction and completion.

3.1.2.3 Jointly Develop. Develop jointly with the Architect and Owner procedures for the following items:

3.1.2.3.1 Routing. Routing of correspondence;

3.1.2.3.2 Progress Reports. Progress reports;

3.1.2.3.3 Cost Control. Cost control and reporting;

3.1.2.3.4 Lines of Authority. Lines of authority and personnel assignments of Construction Manager's organization;

3.1.2.3.5 Field Construction Procedures. Field construction procedures, including, without limitation, safety, construction means and methods, and logistics and handling of material and equipment at the Site;

3.1.2.3.6 Inventory Control. Inventory control and security;

3.1.2.3.7 Accounting. Accounting and auditing;

3.1.2.3.8 Other. Such other procedures as may be reasonably required by the Owner.

3.1.2.4 Monitoring. Provide regular monitoring of the Project Progress Schedule as construction progresses; identify potential variances between scheduled and probable completion dates; review the schedule for Work not started or incomplete and recommend to the Owner and Trade Contractors adjustment in the Project Progress Schedule to meet the Date for Final Completion; provide written summary reports of each monitoring to all appropriate parties and document accordingly.

3.1.2.5 Record Progress. Record the progress of the Work; submit written progress reports monthly to the Owner and the Architect, including information on the percentage of completion; maintain a daily log, approved as to form and type of entries by the Architect, which log shall be accessible to the Owner and the Architect at all times during normal business hours.

3.1.2.6 Determine Adequacy. Determine the adequacy of the Construction Manager's, Trade Contractors' and Trade Suppliers' personnel, equipment and the availability of materials and supplies to meet the Project Progress Schedule and take appropriate action when requirements of the Trade Contracts are not being met.

3.1.2.7 Provide and Pay For. Provide and pay for all supervision, labor, materials, equipment, utility services (including water, gas, electricity, sewage, or waste water not provided by the Owner), tools, supplies, transportation and other items or facilities necessary for the execution and completion of the Work in accordance with the Contract Documents.

3.1.3 Construction Budget.

3.1.3.1 Provide Budget. Provide prior to the commencement of the Work under a Component Change Order, and in the GMP Change Order, a Construction Budget including therein as a line item the estimated cost for each discrete cost of the Work within the Change Order Sum or the Guaranteed Maximum Price, as the case may be; revise and refine the Construction Budget at appropriate intervals as required by the conditions of the Work and as the projected cost of the Work become more determinable; incorporate approved changes as they occur; develop cash flow reports and forecasts as needed; identify variances between actual and budgeted costs and advise the Owner and the Architect promptly whenever projected costs exceed or may exceed the budgeted cost. The Construction Budget, as revised thereafter, is provided by the Construction Manager for the purpose of permitting the Owner to monitor the progress of the Work and to establish the bases on which claims or requests by Construction Manager or other matters may be evaluated. The Construction Manager does not guarantee any line item cost stated in the Construction Budget and shall not be bound by the estimated line item amounts stated in the Construction Budget, except to the extent the Construction Budget, is used for the purposes stated in the various Articles and Paragraphs of the Agreement.

3.1.3.2 Cost Control System. Develop and monitor an effective system of Project cost control for the Work, revise from time to time the Construction Budget with approved changes, and develop cash flow reports and forecasts as requested by the Owner

3.1.3.3 Cost Accounting Records. Maintain cost accounting records on items of Actual Cost and Contingency Costs, including authorized Work performed under unit costs, Actual Costs and Contingency Costs for labor and materials, and other bases requiring accounting records. The Construction Manager shall maintain at the Project Site accounting records for Trade Contracts, this Agreement and other contracts related to the Project.

3.1.3.4 Payment Procedures. Develop jointly with the Architect and Owner and implement, consistent with the Contract Documents, procedures for reviewing, processing, recording and paying Trade Contractors and Trade Suppliers upon their application for same and develop and implement a procedure for the review, processing and payment of applications by Trade Contractors and Trade Suppliers for progress and final payments, including a retainer release method. Such procedure shall be submitted to the Owner for approval.

3.1.4 **Procedures for Change Orders**. Develop jointly with the Architect and Owner procedures for preparation, review and processing of Change Orders; recommend necessary or desirable changes to the Owner and the Architect; review request for changes by the Owner or by Trade Contractors or Suppliers; submit recommendations to the Owner and the Architect with respect to proposed Change Orders, and implement Change Orders as approved by the Owner.

3.1.5 **Coordination**. Coordinate the Work of the Construction Manager under the Contract Documents with professional consultants retained by the Owner or the Architect.

3.1.6 **Quality Control**. Review the Work of Trade Contractors and Trade Suppliers for defects and deficiencies and develop and implement a 3-phase inspection process based system, consisting of scheduled preparatory, scheduled initial, and follow-up inspections, as necessary, including appropriate quality control documentation, for ensuring that all such defects and deficiencies are corrected.

3.1.7 Security Program. Develop and implement an effective security program approved by the Owner for the Project Site, which program shall require the Construction Manager and the Trade Contractors to take measures for the protection of their tools, materials, equipment and structures to include, as a minimum, security fencing and a badge identification system.

3.1.8 Copies of Documents. Maintain at the Project Site, and on a current basis, copies of all Trade Contracts, Construction Documents, Contract Documents, the Project Schedule, shop drawings, maintenance and operating manuals and records relating to Project materials, equipment and construction, including marked up drawings and specifications showing actual locations of utilities and all changes and alterations made to the Project during construction.

3.1.9 Construction Means and Methods. The Construction Manager shall be responsible for construction means, methods, techniques, sequences and procedures, for safety precautions and programs in connection with the Work and for coordinating all portions of the Work under this Agreement. He shall ensure that the foregoing activities are performed in compliance with the Contract Documents. Notwithstanding the foregoing, no Trade Contractor is relieved of its responsibility for taking all reasonable and necessary steps to perform all Work consistent with the Contract Documents.

3.1.10 Safety. The Construction Manager shall submit its safety manual to the Owner, to review and advise, and the Construction Manager shall design and submit to the Owner a specific safety program, including activity hazard analysis, for the Work for the site(s). The Construction Manager shall establish and require all Trade Contractors or Trade Suppliers to establish reasonable safety programs. The Construction Manager shall also submit its standard monthly safety reports to the Architect. No imposition of responsibility on the Construction Manager for safety under this Agreement shall relieve any Trade Contractor of its responsibility for safety of persons or property on or near the Project Site.

3.1.11 Work Force.

3.1.11.1 Qualified Workforce. Construction Manager shall employ, and require all Trade Contractors and Trade Suppliers to employ, only skilled Workmen properly qualified by experience and ability to perform the task assigned to them. The Construction Manager shall immediately replace or cause to be replaced all employees or Workmen whose Work, as determined by the Construction Manager or the Owner, does not meet such requirements.

3.1.11.2 Sufficient Staff. Construction Manager and Trade Contractors shall maintain and assign to the Work, at all times, sufficient staff and personnel to perform their services in a skilled, professional and satisfactory manner so as not to delay the progress of the Work.

3.1.12. Conformity to Contract Documents.

3.1.12.1. No Deviations. Construction Manager shall supply all material equipment and supplies, and perform all Work in conformity with the Contract Documents and make no deviations therefrom.

3.1.12.2 Prior Approval Required. No materials shall be purchased nor Work performed at the Site unless and until Contract Documents, including Construction Documents, defining or affecting such materials and Work have been approved by the Owner and then only in accordance with such Change Order so approved.

3.1.12.3 Proposed Changes. Notwithstanding the foregoing, Construction Manager shall propose, as it deems necessary and appropriate, changes to the Contract Documents if said proposed changes will benefit the Owner by reducing costs, saving time, or enhance the quality of the Project. Owner shall evaluate each such proposed change within five (5) business days of its submittal.

3.1.13 Cleaning.

3.1.13.1 During Construction. The Construction Manager shall at all time keep the premises free from accumulations of waste material or rubbish caused by his employees, Trade Contractors, or work. Prior to Final Completion by a Trade Contractor of any Trade Contract, Construction Manager shall require the Trade Contractor to remove from the Work and Site all temporary systems, tools, equipment, machinery and surplus materials not required for the continued performance of any Work under the Trade Contract or this Agreement.

3.1.13.2 Prior to Final Completion. Prior to Final Completion of the Project under the GMP Change Order, Construction Manager shall remove from the Project Site all wastes and rubbish, clean all tile and glass surfaces, replace broken glass, remove stains, paint spots, and clean and polish all plumbing fixtures and equipment, leave the Work "vacuum clean" or its substantial equivalent, and restore existing facilities such as roads, other paved surfaces, fencing, curbing and the like at the Site to at least their pre-construction conditions; provided, however, the Construction Manager may, in an orderly fashion, leave such equipment and supplies at the Site as necessary to achieve Final Completion of the Project. To achieve Final Completion, the Construction Manager shall have fully cleaned the building(s) and site. All debris must have been removed from the site and all paved surfaces must have been broom swept and thoroughly hosed down. In and on the building(s), all debris shall have been removed, all hard surface floors swept and mopped, all

carpeted floors vacuumed, all surfaces other than floors dusted, blower dusted, or wiped (depending on type of surface) and mats cleaned, all glazing washed [both sides, and all electrical and mechanical equipment and fixtures cleaned with all ductwork cleaned before other cleaning started and re-cleaned if any dust or dirt has gotten into the ductwork during the cleaning process. This cleaning must be completed before the Construction Manager can expect the Architect to commence preparation of the punch list.

3.1.14 Security. As between Construction Manager and Owner, Construction Manager shall be solely responsible for security against theft of and damage to all tools and equipment of every kind and nature used in connection with the Work, regardless of by whom owned.

3.1.15 Mobilization. Construction Manager shall mobilize, transport and assemble its equipment, materials and supplies and construct such temporary systems as are necessary and required at the Site, all in adequate time for satisfactory performance of the Work.

3.1.16 Trade Contracts.

3.1.16.1 No Obligation of Owner. Construction Manager shall not enter into, execute or deliver any agreement, document or undertaking, or incur any obligation in the name of the Owner.

3.1.16.2 No Conditional Sales Agreements. Construction Manager shall not make or cause to be made, or permit, any contract for materials or equipment of any kind or nature whatsoever to be used in connection with the Work on a conditional sales or any other basis whereby the title to the equipment or materials does not pass to the Owner upon payment by the Owner for incorporation in the Project, free and clear of any lien, financing arrangement, or other impediment to title.

3.1.16.3 Separate, Distinct and Independent Covenants. The covenants of this Paragraph 3.1.16 are separate, distinct and independent covenants and no default by the Owner under the terms of this Agreement shall relieve or release Construction Manager of and from the covenants set forth in this Paragraph 3.1.16.

3.1.17 Effect of Change Order. A Change Order takes precedence over any inconsistent terms of the Contract Documents preexisting the Change Order.

3.1.18 Force Majeure.

3.1.18.1 Defined. If Construction Manager shall be unable to perform or shall be delayed in the performance of any of the terms and provisions of this Agreement as a result of (i) governmental preemption of materials in connection with a national emergency declared by the President of the United States; (ii) riot, insurrection, or other civil disorder affecting performance of the Work; (iii) power or other utility failure preventing the performance of the Work or substantial portions of same; (iv) fire or other unavoidable casualty; or (v) unusual and extreme weather conditions, then, and in any such event, such inability or delay shall be excused, and the time for completing the affected portions of the Project (and the entire Project, if applicable) shall be extended for such reasonable period of time as the delay has affected the performance of the Work hereunder. Construction Manager shall take all reasonable actions to minimize the delay caused by any of the above factors, and shall notify Owner in writing with a copy to the Architect of any event allowing for excuse or delay not later than seven (7) days after the event Construction Manager first becomes aware of the event; or may have become aware, of the event; otherwise Construction Manager will be deemed to have waived the excuse or delay.

3.1.18.2 Excluded Events. Construction Manager understands that delays occasioned by the events and occurrences set forth below are not included in Paragraph 3.1.18.1, do not constitute reason for extending the Date for Final Completion and that it is Construction Manager's responsibility to make adequate provision in scheduling the Work for the following:

3.1.18.2.1 Normal Weather Conditions. Weather conditions other than those that substantially vary from the normal climatology conditions that prevailed at the Site for the preceding 120 months, as evidenced by data published by the National Oceanic and Atmospheric Administration; and

3.1.18.2.2 Late Deliveries. Late deliveries of materials and/or equipment for any cause other than those specified in Subparagraph 3.1.18.1. No claim will be approved if materials and equipment are delayed due to Construction Manager's tardy procurement or expediting.

3.1.18.3 Additional Grounds. The provisions of this Paragraph 3.1.18 are in addition to other grounds for extension of time as set forth in the Contract Documents.

3.1.19 Inspection of Work.

3.1.19.1 Access to Work. The Architect and his representatives, the Owner and User shall at all times have access to the Work wherever it is in preparation or progress, and the Construction Manager shall provide proper facilities for such access and for inspection.

3.1.19.2 Notice to Architect from Construction Manager Prior to Covering Work. If the specifications, the Architect's instructions (either in the specifications or issued later in writing), laws, ordinances or any public authority require any work to be specially tested or approved, the Construction Manager shall give the Architect timely notice in writing of its readiness for inspection, and if the inspection is by any authority other than the Architect, of the date fixed for such inspection. Inspections by the Architect shall be made promptly and where practicable at the source of supply. If any work should be covered without approval or consent of the Architect, it must, if required by the Architect, be uncovered for examination at the Construction Manager's expense.

3.1.19.3 Re-examination or Re-testing of Work Covered pursuant to Consent of Architect. Re-examination or re-testing of questioned work covered pursuant to consent of the Architect may be ordered by the Architect, and if so ordered the work must be uncovered by the Construction Manager. If such work be found in accordance with the Contract Documents the Owner shall pay the cost of re-examination and replacement or of re-testing. If such work be found not in accordance with the Contract Documents the Construction Manager shall pay such cost. Re-examination or re-testing under the terms of Paragraph 3.1.19.3 applies only to work which has been covered with consent of the Architect. Work covered without consent of the Architect must be uncovered for examination as provided under Paragraph 3.1.19.2.

3.1.19.4 Inspection Does Not Relieve Construction Manager. Under the Agreement the Construction Manager has assumed the responsibility of furnishing all services, labor and materials for the entire work in accordance with such documents. No provisions of this article nor any inspection of the work by the Owner, representatives of the Owner, the User, resident engineer inspector, clerk-of-the-works, engineers employed by the Architect, representatives of the Architect, or the Architect shall in any way diminish, relieve, or alter said responsibility and undertaking of the Construction Manager; nor shall the omission of any of the foregoing to discover or to bring to the attention of the Construction Manager the existence of any work or materials injured or done not in accordance with said Contract Documents in any way diminish, relieve, or alter such obligation of the Construction Manager nor shall the aforesaid omission diminish or alter the rights or remedies of the Owner as set forth in the Contract Documents. The resident engineer inspector has no power to make decisions, to accept or reject work, or to consent to the covering of work. The resident engineer inspector owes no duty to the Construction Manager.

3.1.19.5 False Start. In the event notice of readiness pursuant to Subparagraph 3.1.19.2, above, shall have been issued prematurely by the Construction Manager, his action shall be deemed to be a "false start", and the Construction Manager shall be liable for the damage resulting from the aforesaid false start, including but not limited to the salary, professional fees, and travel and living expenses of the person or parties inconvenienced by the aforesaid false start.

3.1.20 Superintendence and Supervision by Construction Manager.

3.1.20.1 Superintendent of Construction Manager. The Construction Manager shall exclusively assign to the Project at the site(s) a qualified, full time Superintendent and Assistant meeting the approval of the Owner. No work will be done unless Superintendent or Assistant is present at the job site(s). The Superintendent and Assistant shall have no other project or business responsibilities or calls on their time other than this Project. Superintendent shall continue on a full time basis until completion of all Punch List and Supplemental Punch List items. The Construction Manager shall change the Superintendent or the Assistant only after receiving prior written approval of the proposed replacement Superintendent or Assistant from the Owner. The superintendent shall represent the Construction Manager's Project Manager in his absence, and all directions given to the superintendent shall be as binding as if given to the Construction Manager.

3.1.20.2 Supervision by Construction Manager. The Construction Manager shall give efficient supervision to the work, using his best skill and attention. He shall carefully study and compare all drawings, specifications, and instructions and shall at once report to the Architect any error, inconsistency, or omission which he may discover, but he shall not be held responsible for their existence or discovery. The Construction Manager shall coordinate the furnishing of materials between contractors and vendors. The Construction Manager shall inform the Architect as to unsatisfactory soil conditions. The Construction Manager shall protect all new equipment, furnishings, and finishes installed under the Contract Documents.

3.1.21 Architect's Decisions.

3.1.21.1 Promptness. The Architect shall make decisions with reasonable promptness after presentation of evidence on (1) any claim of the Owner or Construction Manager, (2) a demand of the Owner or Construction Manager for a decision on any matter relating to the execution or progress of the Work, or (3) a demand of the Construction Manager or Owner for interpretation of or additional instructions with respect to the Contract Documents.

3.1.21.2 On Artistic Effect. The Architect's decisions in matters relating to artistic effect shall be final if within the terms of the Contract Documents.

3.1.21.3 Claims for Alleged Procrastination. No claim for delay to the Construction Manager or for additional expense to the Construction Manager shall be allowed on account of failure of the Architect to render decisions, make interpretations, or furnish additional instructions unless a written claim for additional compensation, damages, or extension of time served upon the Architect and the Owner and not then unless such claim be reasonable, and in accordance with the terms of this Agreement.

3.1.22 Correction of Work after Final Payment. Neither (1) the final certificate, (2) nor any decision of the Architect, (3) nor payment, (4) nor any provision in the Agreement shall relieve the Construction Manager of responsibility for faulty materials, faulty workmanship, or omission of contract work, and he shall remedy any defects or supply any omissions resulting therefrom and pay for any damage to other work resulting therefrom. The Owner shall give notice of observed defects or omissions with reasonable promptness. The Construction Manager shall within the space of time designated in orders of condemnation and without expense to the Owner, correct, remedy, replace, re-execute, supply omitted work, or remove from the premises all Defective Work condemned by the Architect. The Construction Manager shall give prompt notice in writing to the Architect, with copy to the Owner, upon completion of the supplying of any omitted work or the correction of any work condemned by the Architect. In the absence of said notice, it shall be and is presumed under this Agreement that there has been no correction of the condemned work or supplying of omitted work. If the Construction Manager does not remove, make good the deficiency, correct, or remedy faulty work, or supply any omitted work within the space of time designated in orders of condemnation without expense to the Owner, the Owner, after ten days' notice in writing to the Construction Manager, may remove the work, correct the work, remedy the work or supply omitted work at the expense of the Construction Manager. In case of emergency involving health, safety of property, or safety of life the Owner may proceed at once. Correction of defective work executed under the plans and specifications or supplying of omitted work whether or not covered by warranty of a Trade Contractor or material men, remains the primary, direct responsibility of the Construction Manager. The foregoing obligation of the Construction Manager shall remain in effect for one year from Final Completion.

3.1.23 Sales and Use Taxes. The Construction Manager shall pay all sales, consumer, use and similar taxes applicable to, or incurred in connection with performance of, the Work and shall secure and pay for building, and other permits and governmental fees, excluding impact fees, licenses and inspections necessary for the proper execution and completion of the Work, which are either customarily secured after execution of a contract for construction or are otherwise applicable to, or incurred in connection with performance of the Work.

3.1.24 Notice of Commencement. The Construction Manager shall, in accordance with Texas law, record and post a Notice of Commencement for the construction portion of the Work and shall promptly deliver a stamped-recorded copy of such Notice of Commencement to the Architect.

3.1.25 Liens. Provided that the Owner has made payments to the Construction Manager in accordance with this Agreement, the Construction Manager shall prevent any liens from being filed against the Project, the Project site, or the Owner's interest in the Project or the Project site, or the User's interest in the Project or the Project site. The Construction Manager shall remove any lien filed against the Project, Project site, or the Owner's interest in the Project or Project site or the User's interest in the Project or the Project site, within fourteen (14) days of the filing of any such lien or claim of lien. Construction Manager must ensure that all its agreements, subcontracts, and purchase orders contain a provision requiring the Trade Contractor, supplier, or labor provider to provide the Construction Manager, the Owner, and the User fourteen (14) days prior written notice before filing a claim of lien against the Project, Project site, the Owner's interest in the Project or Project site, the User's interest in the Project or the Project site, however, failure to comply with this Agreement will not constitute waiver of any statutory lien rights. If the Owner so requests, the Construction Manager shall also obtain a Comprehensive Lien Waiver and Release from each Subcontractor, a model of which is attached as Exhibit K.

3.1.26 Owner/Architect/Construction Manager Meetings. The Construction Manager shall conduct monthly Owner/Architect/Construction Manager ("OAC") meetings in accordance with a Project Schedule approved by the Owner. These OAC meetings will be held at the job site, in the Construction Manager's construction office at a time mutually agreed upon by the Owner, the Construction Manager, the Architect, and the User. The Project Manager, Project Superintendent and the Architect shall attend each OAC meeting. The Construction Manager acknowledges that the Owner and the Stakeholders (the User, agencies and officials having jurisdiction regarding the Project, or any affiliates to the Project) may attend any OAC meeting, as each deems appropriate. The agenda of the meeting shall comply with the requirements of the Guide Specifications furnished by the Architect. The Owner or his representative shall schedule and conduct meetings at which the Owner, Architect, Construction Manager and appropriate Trade Contractors can discuss the status of the Work. The Construction Manager shall prepare and promptly distribute meeting minutes. The Construction Manager agrees to meet with the Owner and Architect at least two times each month during the construction phase.

3.1.27 Shop Drawings.

3.1.27.1 Architect Review. The Architect shall receive, check and approve all shop drawings from the Construction Manager after the Construction Manager has checked all field and surrounding structural conditions and met all other shop drawing requirements as described in the Construction Documents. Upon completion of the checking of a set of shop drawings by the Architect, the Architect shall file an approved copy of such shop drawings with the Owner. The Construction Manager shall maintain shop drawing logs, submittal logs, and charge order logs, and that those logs are available for the Architect's review. The Owner has no responsibility of any nature for reviewing or approving shop drawings.

3.1.27.2 Submission and Approval. The Construction Manager shall submit no shop drawings which do not comply with the Contract Documents. The Construction Manager shall review all shop drawings prior to submission. He shall submit such reasonable number of shop drawings as shall be required by the Architect for the work of the various trades, and the Architect shall review and approve, making proper corrections. The Construction Manager shall make any proper corrections required by the Architect, file with him two corrected copies, and furnish such other copies as may be needed. The Architect's approval of such drawings or schedules shall not relieve the Construction Manager from responsibility for deviations from drawings or specifications nor shall it relieve him from the responsibility for errors of any sort in shop drawings or schedules.

3.1.27.3 Schedule. The Construction Manager and the Architect shall jointly prepare a schedule, subject to change from time to time in accordance with the progress of the work, fixing the dates for submission of shop drawings by the Construction Manager and for furnishing of approval by the Architect. The Construction Manager shall submit in accordance with the schedule, and the Architect shall furnish approval in accordance with the schedule. The schedule must be consistent with the Project Progress Schedule required under Article 3.1.2.

3.1.28 No Changes without Owner Approval. Construction Manager shall not make any change in or omit any of the Work called for in the Contract Documents and the Project Schedule, unless the Owner approves such a change or omission pursuant to a written Change Order, signed by the Owner and the Construction Manager, pursuant to Section 3, Part 3.

3.1.29 Professional Services. The Construction Manager shall not be required to provide professional services which constitute the practice of architecture or engineering, unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Construction Manager has specifically agreed in writing to provide such services. In such event, the Construction Manager shall cause such services to be performed by appropriately licensed professionals.

3.1.30 Material Completion.

3.1.30.1 Construction Manager's Inspection. At such time as the Construction Manager believes that the work has progressed to the point that all remaining incomplete or non-complying work can be completed or corrected within not more than thirty (30) days, the Construction Manager shall perform an inspection of the Work in the presence of representatives of the various Trade Contractors involved on the project. At the conclusion of this inspection, the Construction Manager shall prepare an "Preliminary Punch List" indicating work which is either incomplete or not in compliance with the Contract Documents. A copy of the Preliminary Punch List will be provided to the affected Trade Contractors, the Architect and the Owner. When this work has been corrected or completed to the extent that all remaining work can be corrected or completed within thirty (30) days, the Construction Manager will send a notice to the Architect and the Owner requesting an inspection to determine Material Completion.

3.1.30.2 Initial and Supplemental Punch Lists. Upon receipt of the Construction Manager's notice, and before Owner occupancy, the Architect shall prepare a comprehensive list of items to be completed or corrected. Such a list is referred to as the "Initial Punch List." The "Initial Punch List" is defined as the list of items of required work that, as a minimum, are to be accomplished for the Construction Manager to achieve Final Completion of the Project. At its discretion, the Owner may choose to have the Architect review the Initial Punch List and issue one or more Supplemental Punch Lists before that time, but such should not be expected from the Owner by the Construction Manager in lieu of the Construction Manager's or Trade Contractors' routine Work list. Supplemental Punch Lists are prepared by the Architect as a convenience for the Construction Manager. The issuance of a Supplemental Punch List by the Architect does not imply that any item of work not listed is not required. The Architect may add items to its Supplemental Punch Lists from time to time as any additional defects or omissions come to the attention of the Architect. The Construction Manager shall proceed promptly to complete and correct items on the Initial Punch List and all Supplemental Punch Lists. Failure to include an item on any such list does not alter the responsibility of the Construction Manager to complete all work in accordance with the Contract Documents. Upon receipt of the Initial Punch List, or any Supplemental Punch List, the Architect will make an inspection to determine whether the Construction Manager has obtained Material Completion of the Project or designated portion thereof. If the Architect inspection, or observations by the Architect, discloses any item, whether or not included on the Initial Punch List or applicable Supplemental Punch List, which is not in accordance with the requirements of the Contract Documents, the Construction Manager shall, before issuance of any Certificate of Material Completion, complete or correct all items on the Initial Punch List and any applicable Supplemental Punch List

so that the Project is substantially complete and only minor and incidental items remain to be completed or corrected. The Construction Manager shall then submit a request for another inspection by the Architect, the Owner and the Architect to determine Final Completion.

3.1.30.3 Final Notice of Non-Conforming Work. The Final Notice of Non-Conforming Work is issued as a result of the Pre-final Inspection when the Work is Substantially Complete. Upon the completion of Initial and Supplemental Punch Lists, and correction of this Punch List work, the Architect, with the approval of the Owner, will issue the Final Certificate. Costs associated with the repair or replacement of nonconforming Work will be at the Construction Manager's sole expense, and shall not be deducted from the contingency funds of either the Construction Manager or the Owner.

3.1.31 Determination of Final Completion.

3.1.31.1 Notice from Construction Manager. The Construction Manager shall notify the Architect when the Construction Manager believes that it has obtained Final Completion. At that time, Construction Manager shall submit to the Architect a proposed Certificate of Final Completion for each portion of the Work Construction Manager believes is, in fact, complete. Each such proposed Certificate of Final Completion must state the responsibility of each party for security, maintenance, heat, utilities, damage to the work, and insurance, must include a list of items to be completed or corrected, and must fix the time within which the Construction Manager shall complete the items listed therein. The Architect may notify the Construction Manager that it does not approve of a proposed Certificate of Final Completion. If the Owner rejects a proposed Certificate of Final Completion, the Architect, on behalf of the Owner, will provide Construction Manager with written notice, as to the Owner's basis for rejecting a proposed Certificate of Final Completion.

3.1.31.2 Owner and Architect Inspection. Once Construction Manager completes all items identified in the Final Notice of Non-Conforming Work, the Construction Manager will submit to the Owner and the Architect a proposed Certificate of Final Completion for the Project, or a designated portion thereof. Upon receipt, the Owner and Architect will inspect that portion of the Work addressed by the proposed Certificate of Final Completion. The Architect will provide the Construction Manager a written list of any items that the Architect, after consultation with the Owner, identified as incomplete, incorrect, or otherwise in need of further effort by the Construction Manager. Failure to include an item on this list does not constitute a waiver by the Owner. The Construction Manager must complete or correct all items on the Architect's list in a reasonable time and request a re-inspection by the Architect. Only after the Architect determines, after consultation with the Owner, that the Construction Manager has completed or corrected all outstanding items, the Architect will produce the Certificate of Final Completion for the Work or a designated portion thereof, which upon the Owner's approval, will establish the date of Final Completion for the Work or the designated portion thereof. Warranties required by the Contract Documents shall commence on the date of issuance of Certificate of Occupancy.

3.1.31.3 Final Completion of the Project. Final Completion of the Project shall occur when the Architect determines that (1) the entire Project and all of its systems, including access to the Project and any off-site work required by the Contract Documents, are sufficiently complete and cleaned in accordance with the Contract Documents, (2) the required Certificates of Occupancy and other governmental approvals have been obtained, and (3) the Architect issues the Certificate of Final Completion. In order for the Construction Manager to have achieved Final Completion of the Project, the Architect must have determined that the Owner is able to occupy the Project and all of the site and utilize all building systems per the Contract Documents. The Project must also be properly cleaned as set out above (See Section 3.1.13). The Owner reserves the right to waive any of the above conditions for a part or all of the Project without relieving the Construction Manager of any other responsibilities. Construction Manager shall not stop or delay the Work because of a dispute regarding a proposed Certificate of Final Completion, a Certificate of Final Completion, or the Owner's or Architect's actions related to either a proposed Certificate of Final Completion or a Certificate of Final Completion.

3.1.32 Certificates of Occupancy. The Construction Manager shall obtain the Certificates of Occupancy.

3.1.33 Operating and Maintenance Manuals and Instructions.

3.1.33.1 Obtain Manuals. In accordance with the Contract Documents, the Construction Manager shall obtain operating and maintenance manuals and as-built drawings and specifications from consultants, Trade Contractors, and other vendors. The Construction Manager shall review such manuals and as-built drawings and specifications to determine their conformance. The Construction Manager shall provide those manuals and as-built drawings and specifications to the Architect and the Program Manager and shall train Owner's personnel in the operation and maintenance of the provided facilities and systems.

3.1.33.2 Instructions to User. Prior to furnishing instructions to the User concerning operation and maintenance of all mechanical and electrical equipment and prior to making request for final inspection, the Construction Manager shall put all mechanical systems and equipment into operation and shall make all tests and adjustments. The Construction Manager shall furnish proper instructions to the User in the presence of the Architect concerning operation and maintenance of all mechanical and electrical equipment. The Construction Manager shall give notice in writing to the Architect with copy to the Owner at least (15) fifteen days prior to the date on which it is proposed to give instructions to the User. The aforesaid notice shall state the date and hour the giving of instructions will commence. For all items of mechanical or electrical equipment or apparatus installed which require operation or maintenance after occupancy, the Construction Manager shall

furnish and deliver to the Owner complete brochures and data as prepared and published by the manufacturers covering details of operation and maintenance.

3.1.34 Record Documents. The Construction Manager shall prepare and provide to the Architect a set of reproducible record documents and electronic data showing significant changes in the Work made during construction.

3.1.35 Written Reports. The Construction Manager shall provide a minimum of monthly written reports to the Owner and the Architect on the progress of the entire Work. The Construction Manager shall maintain a daily log containing a record of weather, Trade Contractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as the Owner may reasonably require. The Construction Manager shall submit a daily report to the Owner and the Architect. The log shall be available to the Owner and Architect upon request.

3.1.36 Cost Control. The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect at regular intervals.

3.1.37 Scheduling Information and Notice Requirements. The Construction Manager will provide scheduling information in the form compatible with the Owner's software to keep the Architect and the Owner informed. Furthermore, specific weather affected activities, i.e., concrete foundations, roofing work, etc., will be scheduled and analyzed more frequently, as the need arises. The Construction Manager will provide this near term schedule information to the Architect as it is developed. The Construction Manager will cooperate to provide as much advance notice as reasonably possible, with the understanding the Architect needs at least 24 hours notice to view those areas deemed necessary to be inspected. In cases where weather is a factor in the construction of the Work, i.e., concrete footings, the Architect, in its role inspecting certain work, acknowledges the Construction Manager's need to be able to react in "same day" situations, which would involve only 4-hour "immediate" notice of covering the work. The Construction Manager shall use its best efforts to provide as much notice as possible.

3.1.38 Failure to Comply with Notice Requirements. If the Construction Manager fails to comply with the notice requirements above, the Owner may require the Construction Manager to uncover the Work in question and properly recover at no cost to the Owner, provided the uncovered Work proves not to be in compliance with the Construction Documents.

3.1.39 Owner Default. If Owner shall, in violation of the terms of this Agreement, fail to pay Construction Manager the entire or any material portion of an uncontested Application for Payment on or before the date of payment established in this Agreement, then Construction Manager may at its option, and upon the sending of seven (7) days' advanced written notice to the Owner, stop the performance of the Work hereunder until payment of the amount owing has been received, plus all accrued costs, time, and losses sustained arising from the Work stoppage.