

PART 2 – COMPONENT CHANGE ORDERS

3.2.1 Scope of Part. This Part shall govern the performance of all construction Work under Section 1 and Section 2 unless the provisions of this Agreement are modified by Change Order. This Agreement shall not apply to, and none of the responsibilities of the Construction Manager stated herein, apply to Work performed by separate Contractor for which Construction Manager is not responsible under this Agreement.

3.2.2 Bid. If prior to the execution of the GMP Change Order, the Owner authorizes the commencement of construction or procurement of any Component of the Project for which the Owner has approved Construction Documents which have been added to this Agreement by Change Order, the Owner shall request the Construction Manager to procure bids and to submit a proposed Component Change Order to this Agreement under which the Construction Manager shall offer to contract with a Trade Contractor(s) for the construction of the Component or with a Trade Supplier(s) for procurement of the Component in accordance with the Construction Documents added to this Agreement by Change Order. The Owner's request shall identify the specific Component of the Project for which a proposed Change Order is requested. The Component Change Order shall state a Change Order Sum as defined in Article 3.2.3 below, shall state a proposed Date for Final Completion of such Work, and shall be substantially in the form set forth in Exhibit G.

3.2.3 Component Change Order Sum.

3.2.3.1 Change Order Sum. The Change Order Sum for Work or materials contracted for by the Construction Manager under a Component Change Order shall consist of the following:

3.2.3.1.1 Trade Contractors and Trade Suppliers. The contract sums due the Trade Contractors or Trade Suppliers retained by Construction Manager for the performance of the Work;

3.2.3.1.2 Construction Manager's Estimated Costs. Construction Manager's Estimated Costs, if any, for Actual Costs (as defined in Section 1, Part 5) for the performance of the Work which are not represented by services under Article 1.2.3 and which are not included in the services or materials provided by the Trade Contractor or Trade Supplier;

3.2.3.1.3 Construction Contingency. Construction Contingency for Contingency Costs (as defined in Section 1, Part 5) incurred incident to the performance of the Work or procurement of the materials; and

3.2.3.1.4 Construction Manager's Fee. Construction Manager's Fee for the performance of the Work, which shall be stated as a lump sum amount which shall be not more than the amount shown in Exhibit A.

3.2.3.2 Lump Sum Amount. If Construction Manager proposes to perform Work with its own forces for a lump sum amount, the lump sum amount shall be the Change Order Sum and the Change Order Sum proposed shall not include Estimated Cost, Contingency or Fee components.

3.2.3.3 Mobilization Costs.

3.2.3.3.1 Staff. To the extent the Construction Manager's Estimated Cost Component of the Change Order Sum includes estimated Actual Costs for Construction Manager's staff reimbursable under Section 1, Part 5 incident to mobilization of its own forces for Work under the proposed Component Change Order, including mobilization of its own forces for Work under anticipated Change Orders, Construction Manager shall submit as part of its proposed Component Change Order estimated actual costs of staff as agreed upon in initial wage and salary schedule and proposed staffing plans, as referred to in Paragraph 1.2.3.7.

3.2.3.3.2 Temporary Structures. To the extent the Construction Manager's Estimated Cost Component of the Change Order Sum includes estimated Actual Costs for Construction Manager's on-site offices or for other temporary structures and equipment incident to mobilization of its own forces for Work under the proposed Component Change Order, including mobilization of its own forces for Work under anticipated Change Orders, Construction Manager shall submit as part of its proposed Component Change Order a proposed budget for such costs and a proposed plan for acquisition of such items. If the Owner approves the provision by Construction Manager of on-site office facilities and other temporary structures and equipment from Construction Manager's own inventory, then no Construction Manager's Fee shall be payable by Owner on account of such self-provided facilities in excess of any fee included in the approved sales price or rental rate and the Construction Manager's Fee shall be proportionately reduced.

3.2.4 Unacceptable Bids. If prior to its acceptance of a proposed Component Change Order the Construction Manager shall give notice to the Owner that the lowest responsible bid received by the Construction Manager from a Trade Contractor to perform the Work described in the proposed Change Order exceeds the Construction Manager's Construction Cost Estimate for that Work, or that no responsible bid for that Work has been received, then the Construction Manager may propose to either (1) request a redesign of Construction Document governing the Component so long as the redesign is a functional and quality equivalent but the Owner's grant of such request shall be in the Owner's sole

and absolute discretion, or (2) subject to the Owner's approval in Owner's sole and absolute discretion, that the Construction Manager perform the Work with its own forces for the lump sum amount stated in the Construction Manager's Construction Cost Estimate, which shall be the Component Change Order Sum. The architectural fees and costs for a requested redesign approved by Owner shall be paid by Owner to the Architect. The Owner may, in its sole and absolute discretion, reject either or both bids made by Construction Manager.

3.2.5 Time for Review. The Owner shall have fifteen (15) business days following its receipt of the Construction Manager's proposed Component Change Order under this Article to accept or reject same.

3.2.6 Rejection. If the Owner rejects the Construction Manager's proposed Component Change Order, Construction Manager may, but shall not be obligated to, revise and resubmit same. In the event no such Component Change Order can be agreed upon, Construction Manager shall continue its performance under any Component Change Orders then outstanding, and with the performance of any other services required under this Agreement until such time as either party shall terminate this Agreement. If the Owner rejects the Construction Manager's proposed Component Change Order, Owner may use alternative methods for the construction or procurement of the Work involved and Construction Manager shall not be entitled to any Fee or other compensation with respect to such Work. In the event the Owner uses alternative methods for the construction or procurement of the Work, the Construction Manager must cooperate with the Owner to get the Work completed.

3.2.7 Acceptance; Contract Date. If the Owner accepts the Construction Manager's proposed Component Change Order, it shall give written notice of same by returning the proposed Component Change Order with its acceptance endorsed thereon, and shall issue to Construction Manager a Notice of Acceptance. At that time the Component Change Order and the Notice of Acceptance shall become amendments to this Agreement. Thereafter, the Component Change Order and the Work performed there under shall be performed and administered in accordance with this Agreement. The date the Notice of Acceptance is issued by the Owner shall be the Contract Date for the Work covered by said Component Change Order.

3.2.8 Duty to Proceed. Upon receipt of the Owner's Notice of Acceptance of the proposed Component Change Order, the Construction Manager shall, in accordance with Article 3.2 of this Agreement, furnish Owner with items required there under, and upon the issuance of a Notice to Proceed, the Construction Manager shall, within a reasonable time thereafter, proceed with the performance of the Work covered by the Component Change Order.

3.2.9 Owner's Liability.

3.2.9.1 Maximum Liability. The Component Change Order Sum as stated in a Component Change Order shall be the maximum amount which the Owner is required to pay to the Construction Manager for the performance of the Work under a Component Change Order but the Component Change Order Sum shall be increased or decreased under those circumstances where other Article(s) of this Agreement authorizes an increase or decrease in the contract sum or contract price or the payment of additional compensation, and the increase or decrease shall be added to or subtracted from the original Component Change Order Sum to determine the revised Component Change Order Sum.

3.2.9.2 Maximum Sum Calculated. Where the Component Change Order Sum is so calculated, the sum of (i) the contract sum payable to the Trade Contractor or Trade Supplier plus (ii) Construction Manager's Estimated Costs plus (iii) Construction Contingency plus (iv) Construction Manager's Fee shall be the maximum sum which Owner shall be obligated to pay Construction Manager for the performance of the Work.

3.2.10 Final Completion. The Date for Final Completion of the Work as stated in a Component Change Order shall be subject to extension or acceleration under those circumstances where other Article(s) of this Agreement authorizes an extension or acceleration in the time for same.

3.2.11 Effect of GMP Change Order. At the time Construction Manager submits its GMP Change Order proposal, Construction Manager shall incorporate into the Estimated Cost, Contingency, and Fee components of the proposed Guaranteed Maximum Price the corresponding components or lump sum amounts of all Change Order Sums stated in all Component Change Orders accepted as of that date by the Owner, providing the Owner a credit for payments it has made under said Component Change Orders prior to the submittal of the GMP Change Order.

3.2.12 Cumulative Effect of Component Change Orders. Estimated Costs and Contingency Costs components of the Change Order sums of Component Change Orders shall be cumulative so that the aggregate of the Estimated Costs and Contingency Costs components of all Component Change Orders which are outstanding at any time shall be available for payment to Construction Manager for Actual Costs and Contingency Costs incurred by Construction Manager in the performance of any Work governed by the aggregate of such Component Change Orders outstanding.

3.2.13 Pre-Commencement Obligations. Within ten (10) days of the Construction Manager's receipt of notice of the Owner's acceptance of a Component Change Order or the GMP Change Order, as the case may be, the Owner, through the Architect, shall be provided, unless otherwise agreed, the following:

3.2.13.1 Payment and Performance Bonds.

3.2.13.1.1 Component Change Order. In the case of the initial Component Change Order, payment and performance bonds furnished by the Construction Manager in conformance with and in the form set forth in the Contract Documents designating the Construction Manager as the principal obligor and the Owner as the obligee, in an amount of the Change Order Sum, covering the Work under that Component Change Order and in the case of subsequent Component Change Orders an endorsement to such bonds increasing the aggregate amount of the bonds to an amount equal to the aggregate of the Change Order Sums of all Component Change Orders to this Agreement. If, in connection with a Component Change Order, the Construction Manager has furnished payment and performance bonds in the amount approved by the Owner as the reasonably expected aggregate amount of the Change Order Sums of that and any prior Component Change Order and all subsequent Component Change Orders and covering all such Work, then upon entry of a subsequent Component Change Order, no additional endorsement to payment or performance bonds shall be required provided that the aggregate amount of the Change Order Sums of all Component Change Orders does not exceed the penal sum of each bond. However, Owner may require written confirmation of the surety that the outstanding bonds cover the Work under a subsequent Component Change Order. No election or failure of the Owner to request such confirmation shall affect the rights of Owner or others under the existing bonds covering such Work.

3.2.13.1.2 GMP Change Order. In the case of the GMP Change Order, payment and performance bonds furnished by the Construction Manager and in conformance with and in the form set forth in Contract Documents, in the amount of the Guaranteed Maximum Price (as defined in Subparagraph 4.1.3.2.1), designating Construction Manager as the principal obligor and the Owner as the obligee. If in connection with a Component Change Order preceding the GMP Change Order, Construction Manager has furnished payment and performance bonds covering the Work under Component Change Orders and under the GMP Change Order and such bonds are in an amount not less than the Guaranteed Maximum Price, no additional payment or performance bonds shall be required. However, Owner may require written confirmation of the surety that the outstanding bonds cover the Work under the GMP Change Order. No election or failure of the Owner to request such confirmation shall affect the rights of Owner or others under the existing bonds covering such Work.

3.2.13.2 Certificates of Insurance. Certificates of insurance required under of this Agreement, including those required under Contract Documents.

3.2.13.3 Project Schedule. Project Schedule.

3.2.13.4 Construction Budget. Construction Budget.

3.2.13.5 Rental Rates. Schedules for (1) a proposed rental rates on heavy construction equipment, and (2) proposed wage rates of operating engineers. The Construction Manager firm shall certify that the proposal for rental rates and proposal for wage rates do not exceed current costs for like services.

3.2.14 Order to Proceed. Within two (2) business days of the Owner's receipt of the submissions under Article 3.2.13 in compliance with the requirements of this Agreement, the Owner shall issue Construction Manager a Notice to Proceed.

3.2.15 Duty to Commence.

3.2.15.1 Time for Commencement. The Construction Manager shall, immediately upon the receipt of the Notice to Proceed, commence to procure such services, labor and materials necessary to perform the Work described in the Change Order as accepted by the Owner, but only to the extent Construction Documents for said Work or affecting said Work have been approved by Owner and accepted by Construction Manager under an appropriate Change Order.

3.2.15.2 No Direct Performance. The Construction Manager shall not directly perform any Work or provide any materials, equipment or supplies but shall, pursuant to Section 3, Part 7 hereof, contract for performance of Work or procurement of materials, equipment or supplies through Trade Contracts, except as otherwise permitted (i) under Article 3.7.19.1; and (iii) under the proposed budget for and plan for acquisition of on-site offices and for other temporary structures and equipment which have been approved by the Owner under Section 3, Part 2 Section 3, Part 7, to the extent such approvals permit the Construction Manager to supply such items from Construction Manager's inventory. No fee shall be payable by Owner to Construction Manager for self-provided items in excess of any fee included in the sales price or rental rate approved by Owner for such items.

3.2.15.3 Responsibility for Proper Performance. Notwithstanding Construction Manager's entry of contracts with Trade Contractors or Trade Suppliers incident to the performance of the whole or any part of the Work, the Construction Manager shall be exclusively responsible to the Owner for the proper performance of the Work in compliance with the Contract Documents, unless the Contract Documents expressly provide to the contrary. Inefficiency, non performance or

improper performance or other default by any Trade Contractor or Trade Supplier under contract with Construction Manager, or employee thereof, shall not excuse the Construction Manager from its obligation to assure timely performance in compliance with the Contract Documents unless caused by the Owner or Architect.

3.2.15.4 Acts and Omissions. The Construction Manager shall be fully responsible for the acts and omissions of its officers, employees, agents, licensees, Trade Contractors and Trade Suppliers, invitees and guests and their respective officers, employees, agents, licensees, suppliers, guests, Trade Contractors and material-men and all other persons performing any of the Work or supplying labor, services, materials and/or equipment for or under the Trade Contracts entered by the Construction Manager. The failure of a Trade Contractor or Trade Supplier under contract with Construction Manager or employee thereof properly to perform shall not excuse the Construction Manager for any omission from or non compliance with the requirements of the Contract Documents nor shall the Construction Manager be entitled to an extension of time because of the failure of a Trade Contractor or Trade Supplier under contract with Construction Manager or employee thereof to perform unless such failure was a direct result of some delay to the Trade Contractor or Trade Supplier of the kind and character for which the Construction Manager is permitted to and shall have requested and received an extension of time under this Agreement.

3.2.15.5 Responsibility for Completion. Construction Manager shall commence the Work under a Component Change Order or the GMP Change Order upon the issuance of a Notice to Proceed from the Owner and shall achieve Final Completion of the specified Work not later than the date for same as set forth in the Change Order.

PART 3 - CHANGES TO THE WORK

3.3.1 Changes in Scope of the Project. Owner may make changes to the Project to the extent that such changes are within the general scope of the Project. Absent a Change Order establishing a different method of determining time extensions and compensation to Construction Manager for construction Work governed by a Change Order, the Contract Documents shall govern time extensions and compensation to Construction Manager for construction Work governed by a Change Order.

3.3.2 Owner's Right to Make Changes. The Owner without invalidating the Agreement may in writing authorize or order extra work or may authorize or order changes by altering, adding to, or deducting from the Work, the Guaranteed Maximum Price being adjusted accordingly. No action, conduct, omission, prior failure, or course of dealing by the Owner acts to waive, modify, change, or alter the requirement that Change Orders shall be in writing, signed by the Owner and Construction Manager, and that such written Change Orders are the exclusive method for effecting any change to the amounts to be paid to the Construction Manager or the amount of time allowed the Construction Manager to perform the obligations of this Agreement. The Construction Manager hereby expressly agrees that the Construction Manager shall have no right to a claim for damages or extended overhead because of changes made by the Owner. Such work is hereinafter designated "change" or "changes". All such changes shall be performed under the conditions of the original Agreement except that any claim for extension of time caused thereby shall be adjusted at the time of signing of the change order form. [See below for definition of the change order form.]

3.3.3 Change Order Further Defined. A Change Order is a written instrument prepared by the Architect and signed by the Program Manager, the Owner, the Architect and the Construction Manager, stating their agreement upon all of the following:

- a. A change in the Work;
- b. The amount of the adjustment, if any, in the Guaranteed Maximum Price (GMP); and
- c. The extent of the adjustment, if any, in the Contract Time.

3.3.4 The Change Order Form. There shall be a presumption against the need for Change Orders that increase the Guaranteed Maximum Price. The change order form is the instrument by which adjustments in the Guaranteed Maximum Price are effected pursuant to changes made in accordance with Section 3, Part 3. The Change Order form shall be accompanied by a breakdown in the form prescribed in the specimen shown in Exhibit I that is made a part of this Agreement by reference. The Architect shall certify to the amount of the adjustment. The Construction Manager, the Owner and the Architect shall sign the Change Order form. The breakdown is only for the purpose of enabling the Architect and the Owner to make a judgment on the dollar amount of the adjustment in the Guaranteed Maximum Price. No condition, term, qualification, limitation, exception, exemption, modification, or proviso shall appear in the breakdown. The breakdown shall be in the exact form and language of the above-mentioned specimen. In the event any condition, term, qualification, limitation, exception, exemption, modification, or proviso shall appear in a breakdown it shall be invalid unless expressly recited in the Change Order form under Paragraph 3, "Description of Change". Only such conditions, terms, qualifications, limitations, exceptions, exemptions, modifications and provisos as are recited under Paragraph 3, "Description of Change", are valid.

3.3.5 Changes in Guaranteed Maximum Price (GMP) and Contract Time. The Guaranteed Maximum Price (GMP) and Contract Time may be changed only by Change Order. The Construction Manager understands and agrees that the amount of money that the Construction Manager receives under this Agreement and the amount of time that the Construction Manager is allowed in which to perform the obligations of this Agreement cannot be changed by implication, oral agreements, actions, inactions, or course of conduct.

3.3.6 Cost to Owner for Changes. The cost to the Owner of any change shall be determined in one or more of the following ways:

3.3.6.1 Case (A). By estimate and acceptance in a lump sum.

3.3.6.2 Case (B). By unit prices named in the Agreement or subsequently agreed upon. Unit prices are net including overhead and profit. Neither establishment of unit prices in the Agreement nor later agreement to unit prices shall entitle the Construction Manager to execute any change under Case (b) prior to issuance of an authorization or order of the Owner in writing.

3.3.6.3 Case (C). By force account, which is defined as expenditures allowed under Article 3.3.12 plus a reasonable amount for General Conditions, overhead and profit.

3.3.7 Changes Forbidden without Consent of Owner. Neither the Architect nor the Construction Manager shall make any change whatsoever in the Work without authorization or order of the Owner in writing except in emergency as described herein below. The making of any change without authorization or order of the Owner in writing is a breach of contract except in emergency as referred to in Section 3, Part 4. In the absence of authorization or order of the Owner

given in advance in writing (except in emergency as referred to under Section 3, Part 4) the Construction Manager shall have no claim for 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, recoupment, exaction, injury, damages or time based upon or resulting from any change.

3.3.8 Notice of Demand of Construction Manager for Extraordinary Remuneration or for Damages. For a change in the work the Construction Manager shall be entitled to no claim other than or in excess of allowances permitted under this Part unless prior to commencement of execution of the change (a) the Construction Manager shall have notified the Owner in writing of the nature of the claim and (b) the Owner shall have agreed in writing to the claim. Commencement of execution of a change authorized by the Owner in the absence of the aforesaid written notice from the Construction Manager and written agreement to the claim by the Owner shall be deemed to be and is conclusive proof that the Construction Manager acknowledges that he makes no claim other than or in excess of allowances permitted under this Part.

3.3.9 Subsurface Conditions. Material below the surface of the earth is assumed to be earth and other material that can be removed by power shovel or similar equipment. Should conditions encountered below the surface of the ground be at variance to conditions indicated by drawings or specifications, the Guaranteed Maximum Price (GMP) shall be adjusted as provided in the Contract Documents for changes in the work upon claim by either party made in writing within a reasonable time after the first observance of the conditions, PROVIDED: That the Construction Manager shall in any event give written notice to the Owner before proceeding to execute any change resulting from subsurface conditions and PROVIDED FURTHER: That, except as referred to herein below the Owner shall not be liable to the Construction Manager for any claim (OCCASIONED by the aforesaid subsurface conditions) other than or in excess of the allowances permitted under this Part, and PROVIDED FURTHER: That the Owner shall not be liable to the Construction Manager for any claim occasioned by the aforesaid subsurface conditions except in accordance with and pursuant to authorization of the Owner issued in writing prior to commencement of execution of the aforesaid change to which authorization the Construction Manager shall have taken no exception. If the Construction Manager takes exception to the authorization the Owner may issue an order pursuant to this Part.

3.3.10 Rock. If rock, as hereinafter defined, is encountered, no claim for additional compensation for changes shall lie against the Owner in the absence of previous authorization by the Owner in writing, and the cost to the Owner for any changes shall be determined as provided in the Contract Documents for changes. CAUTION: No rock for which extra compensation is expected to be received shall be removed except pursuant to and in conformity with a written authorization or order of the Owner. Unless otherwise provided no removal of rock as defined herein shall be included in the base proposal. Shale, rottenstone, or stratified rock that can be loosened with a pick or removed by power shovel or similar equipment shall not be classified as rock. Rock is defined as follows:

3.3.10.1 Mass Rock. Mass rock is defined as any material which cannot be excavated with a single-tooth hydraulic ripper drawn by a crawler tractor having a minimum draw bar pull rated at not less than 56,000 pounds (Caterpillar D-8K or equivalent) and occupying an original volume of at least one cubic yard.

3.3.10.2 Rippable Rock. Rippable rock is defined as any material that cannot be excavated with a single engine pan (Caterpillar 621 or equivalent) which is pushed by a crawler tractor (Caterpillar D-8K or equivalent) and occupying an original volume of at least one cubic yard.

3.3.10.3 Trench Rock. Trench rock is defined as any material that must be removed from a trench which cannot be excavated with a backhoe having a bucket curling force rated at not less than 18,300 pounds (Caterpillar Model 215 or equal) and occupying an original volume of at least one-half cubic yard.

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

3.3.12 Allowable Costs for Change Orders. Except as otherwise agreed by the Owner and the Construction Manager, the adjustment to the Guaranteed Maximum Price (GMP) shall be determined on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, excluding the expenditures for design services and revisions to the Contract Documents. In case of an increase in the Guaranteed Maximum Price (GMP) that results in a change in the scope of work of the Construction Manager, the cost shall include a reasonable amount for General Conditions and Fee. In such case, the Construction Manager shall keep and present an itemized accounting together with appropriate supporting data for inclusion in a Change Order. Unless otherwise provided in the Contract Documents, costs for these purposes shall be limited to the costs identified in the section of this Agreement titled "Cost of the Work".

3.3.13 Execution of Changes Pursuant to Order. In the event neither Case (a), nor Case (b) can be mutually agreed upon as the method of determining the cost to the Owner for a change, the Construction Manager, provided he receives a written order from the Owner, shall proceed on force account under Case (c), and he shall keep and present in such form as the Architect may direct a correct account of the expenditures together with vouchers. Allowable expenditures shall in no event exceed current costs for like services and materials, the burden of proof being on the Construction Manager.

3.3.14 Stipulated Maximum Sum. Under Case (b) and Case (c), the Owner shall prescribe the limits of any authorization or order for a change by means of an authorization or order in writing stipulating the maximum sum of money committed toward execution of the said change, and the Construction Manager shall have no authority or obligation to perform any change which will cost the Owner in excess of the stipulated maximum sum. It shall be solely the Construction Manager's responsibility to apply in writing to the Owner, NOT to the Architect, for an enlargement of the scope of the authorization or order by an increase in the said stipulated maximum sum if during the course of the performance of a change on force account under Case (c) the additional cost of the change to the Owner as established in accordance with allowable expenditures and allowances for profit and overhead permitted under this Part is approaching the said stipulated maximum sum. It shall likewise be the responsibility of the Construction Manager to apply for an enlargement of the scope of the authorization or order if the total value of units at any agreed unit price under Case (b) is approaching the said stipulated maximum sum. For changes in the Work no claim for 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, recoupment, exaction, injury or damages shall lie against the Owner for any amount in excess of such amount as shall have been mutually agreed to under Case (a) or in excess of such amount as shall have been established as the stipulated maximum sum under Case (b) or Case (c). The cost to the Owner for any change in the work, except a change based upon agreed unit prices under Case (b), shall be established in accordance with the schedule of allowances and percentages stipulated under this Part.

3.3.15 Breakdown of Expenditures, Cases (a) and (c). To accompany all change orders, the Construction Manager shall furnish a breakdown of expenditures for labor and materials by units and quantities in the form prescribed by the Owner and the breakdown shall be accompanied by the following declaration: "I do solemnly swear, under criminal penalty of a felony for false statement under oath that is material and in connection with an official proceeding, that the costs shown hereinabove do not exceed current costs for like services or materials and do not exceed the actual costs to the Construction Manager therefore; and that the quantities shown do not exceed actual requirements". For all force account changes the Construction Manager shall promptly and in no event later than thirty (30) days after receipt of written demand therefore pursuant to this Part, submit to the Architect a complete, accurate, and final breakdown and account together with vouchers, showing all expenditures and percentages allowable under Case (c). For all unit price changes the Construction Manager shall promptly and in no event later than thirty (30) days after receipt of written demand therefore pursuant to this Part submit to the Architect and the Program Manager an accurate account of the quantity of work performed under Case (b). In any case, the Architect shall certify to the amount [including under Case (a) and Case (c) the allowance prescribed in the Contract Documents for overhead and profit] due the Construction Manager. The Construction Manager shall obtain and furnish as back up to the Construction Manager's breakdown a separate breakdown for each Trade Contractor's charges prepared by each Trade Contractor on the letterhead of the Trade Contractor and properly signed by the Trade Contractor.

3.3.16 Payment on Account. If the Construction Manager desires to obtain payment on account before any change in the Work has been completed, a change order certified by the Architect and signed by the Construction Manager and the Owner must have been executed for so much of the change as has been completed at the time of the filing of the request for payment on account.

3.3.17 Form and Execution of Change Orders.

3.3.17.1 Architect's Certification. Upon recommendation of the Architect and the Program Manager, Change orders shall be certified by the Architect and signed by the Construction Manager and the Owner in accordance with the form of change order prescribed by the Owner [Exhibit I]. No request for payment of the Construction Manager for account of a change shall be due nor shall any such request appear on a periodical estimate or demand for final payment until (1) the change order shall have been certified by the Architect and (2) a change order shall have been executed by the Construction Manager and the Owner.

3.3.17.2 Required Language. All change orders are issued under the following condition and shall contain the following language:

The payment and extension of time (if any) provided by this change order constitutes compensation in full on behalf of the Construction Manager and its Trade Contractors and suppliers for all costs and markups directly and indirectly attributable to the change order herein, for all delays related thereto and for performance of changes within the time stated. See item 11, Exhibit I.

3.3.18 Conditions Different from Those Indicated in Contract Documents. The parties contemplate delays necessary to complete tests, to redesign, and to perform change order work in the event conditions encountered at the site are different from those indicated in the Contract Documents or to perform change order work to correct errors in the plans and specifications. Execution of any change must be authorized. In such event there shall be an adjustment in the Guaranteed Maximum Price (GMP) as provided in the Contract Documents for changes in the work, but no claim for damages shall lie against the Owner for the aforesaid delays. Such delays are not a breach of contract because the parties contemplate such delays as a natural and probable consequence of construction operations. The parties agree that such delays constitute no wrong or injury, create no right to a claim for damages, and are not a ground for claiming extraordinary remuneration.

3.3.19 Unit Prices. The term "net" as used in reference to "unit prices" means in respect to change orders performed in accordance with Case (b) of this Part of the Agreement that the unit prices offered by the Construction Manager and accepted by the Owner shall be inclusive of all sums for 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, recoupment, exaction, or injury. Upon request of the Owner in writing and within such reasonable space of time as the Owner shall designate in writing the Construction Manager shall submit for consideration of the Owner proposals in writing for unit prices to be applied in the event work is authorized by the Owner to be performed under Case (b) of this Part. Under penalty of false swearing a principal of the contracting firm shall certify that the unit prices submitted do not exceed current costs for like services or materials. If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order that application of such unit prices to quantities of Work proposed would cause substantial inequity to the Owner or the Construction Manager, the applicable unit prices shall be equitably adjusted. The Architect, whose decision shall be final, conclusive and binding on all parties, will make the decision as to whether a substantial inequity exists.

3.3.20 Proceed Promptly with Changes. Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Construction Manager shall proceed promptly, unless otherwise provided in the Change Order.

3.3.21 Reimbursement for Cost of Estimating Unexecuted Change Proposals. If the Owner requests a proposal for a change in the Work from the Construction Manager and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse the Construction Manager for any reasonable costs incurred for estimating services.

3.3.22 Execution of Change Order. When the Owner and the Construction Manager agree upon the adjustments in the Guaranteed Maximum Price (GMP) and Contract Time, such agreement will be documented by preparation and if approved by the Fort Bend County Commissioners Court, execution of an appropriate Change Order and effective thereafter.

PART 4 – GMP CHANGE ORDER

3.4.1 Guaranteed Maximum Price

3.4.1.1 Guaranteed Maximum Price Proposal. The Construction Manager agrees that the Guaranteed Maximum Price (GMP) included in his proposal includes any and all services, equipment, labor, and materials to provide the Work described in the Contract Documents. In the execution of the GMP Change Order, the Construction Manager's proposal will be made a part of the Contract Documents by reference.

3.4.1.2 Submission of Guaranteed Maximum Price Proposal. Construction Manager shall submit to the Owner a proposed Change Order to this Agreement to establish the Guaranteed Maximum Price, which shall be the sum of the Cost of the Work (as defined in Part 5) and Construction Manager's Fee (as defined Article 4.1.2). Under the "GMP Change Order" the Construction Manager shall propose to (i) perform the construction of the Work in accordance with the Contract Documents which have been added to this Agreement by Change Order or to be effected in accordance with the assumptions stated in the GMP Change Order pursuant to Article 4.3.1 for a Guaranteed Maximum Price, which shall be specified in the proposed GMP Change Order and (ii) achieve final completion of the Project by a date specified in the proposed GMP Change Order, which specified date shall be the Date of Final Completion, as follows:

3.4.1.2.1 GMP Defined. The Guaranteed Maximum Price shall be the sum of (a) the Construction Manager's Estimated Cost of the Work, (b) the Construction Contingency and Design Contingency, (c) Construction Manager's Fee, and (d) the Maximum Construction Overhead Cost, to be stated in the proposed GMP Change Order as follows:

3.4.1.2.1.1 *Estimated Costs.* The proposed GMP Change Order shall include separately identified dollar amounts, stated as either fixed sums or as allowances, for Actual Costs as estimated by the Construction Manager for the complete construction of the Work, which amount shall include the Trade Contract Sum and Construction Manager's Estimated Costs and Change Order Sums stated as fixed lump sum amounts stated in all accepted Component Change Orders, less any payments for same from the Owner as of the date the GMP Change Order is proposed.

3.4.1.2.1.2 *Construction Contingency.* The proposed GMP Change Order shall include as a separately identified item, a Construction Contingency sum in an initial amount (subject to increase or decrease as provided in Article 1.5.6), against which Construction Manager can draw, at its election and discretion, for the purposes set forth in Article 1.5.5. The initial Construction Contingency sum shall include the Contingency amounts stated in all accepted Component Change Orders, less any portions of same paid to Construction Manager as of the date the GMP Change Order is proposed.

3.4.1.2.1.3 *Design Contingency.* The proposed GMP Change Order shall include as a separately identified item, a Design Contingency sum in an initial amount against which Construction Manager can draw as provided in Article 1.5.11.

3.4.1.2.1.4 *Construction Manager's Fee.* The proposed GMP Change Order shall include as a separately identified item, a Fee for Construction Manager's performance of the Work. The Fee shall be stated as a fixed lump sum amount, and shall be not more than the amount shown in Exhibit A (excluding lump sum amounts stated as the Change Order Sum under all outstanding Component Change Orders). Construction Manager's Fee amount shall include (a) all Fees of Construction Manager for which Construction Manager has not theretofore submitted an invoice or application for payment for Work performed under section 4, Part 2 of this Agreement prior to the tendering of the proposed GMP Change Order and (b) the Fee amounts stated in all accepted Component Change Orders under Article 3.2.3 of this Agreement for which Construction Manager has not theretofore submitted an invoice or application for payment. In the event the GMP Change Order is accepted by the Owner, the Construction Manager's Fee shall be fixed by the amount stated in the GMP Change Order, subject only to any provision contained therein or herein for its adjustment.

3.4.1.2.1.5 *Maximum Construction Overhead Cost.* The proposed GMP Change Order shall include as a separately identified item, a cost for Construction Manager's performance of the Work. The cost shall be stated as a fixed lump sum amount, and shall be not more than the amount show in Exhibit A.

3.4.1.2.2 Construction Manager's Statement. The Construction Manager shall include as part of the proposed GMP Change Order a statement identifying:

3.4.1.2.2.1 A list of the drawings and specifications, including all addenda thereto including without limitation the Conditions of the Contract, which were used in preparation of the Guaranteed Maximum Price proposal.

3.4.1.2.2.2 All allowances, noting whether they cover furnish and delivery, or furnish, delivery and installation. If an allowance is established by the GMP Change Order, then to the extent the Actual Cost of accomplishing the described item of the Work governed by the allowance varies from the allowance, the Estimated Cost Component of the Guaranteed Maximum Price will be adjusted (by addition or subtraction of such variance) accordingly. The Construction Manager's Fee shall not be reduced because the Actual Cost of the allowance item is less than the allowance and shall not be increased because the Actual Cost of the allowance item is greater than the allowance.

3.4.1.2.2.3 A listing of any trade, Work categories or other items which are not included in the Guaranteed Maximum Price.

3.4.1.2.2.4 A Construction Documents Schedule setting forth the dates assumed by Construction Manager for the Architect's completion of Construction Documents necessary to effect the Program to satisfy Subparagraph 3.4.1.2.2.12 which have not been completed and approved by Owner, to which schedule the Architect shall have agreed.

3.4.1.2.2.5 A Shop Drawing Approval Schedule setting forth the schedule assumed by Construction Manager for the Architect's response to Shop Drawings, submitted by the Construction Manager, to which schedule the Architect shall have agreed.

3.4.1.2.2.6 A Construction Progress Schedule prepared in accordance with Article 1.4.3 of this Agreement.

3.4.1.2.2.7 A Construction Budget prepared in accordance with Article 1.2.5 of this Agreement.

3.4.1.2.2.8 A Component Schedule showing any Components of the Project which the Construction Manager expects the Architect to segregate.

3.4.1.2.2.9 The Architect's concurrence with the Construction Documents Schedule, Shop Drawing Approval Schedule, and the Component Schedule referenced above.

3.4.1.2.2.10 A staffing plan and wage and salary schedule for the Construction Manager's staffing of the project during the course of the Work, for which the Construction Manager proposes that the Owner reimburse the Construction Manager Actual Costs under Article 1.5.3.

3.4.1.2.2.11 A proposed budget for the Construction Manager's estimated Actual Cost for the Construction Manager's on-site offices and for other temporary structures and equipment and a proposed plan for acquisition of such items.

3.4.1.2.2.12 A list of the clarifications and assumptions made by Construction Manager in the preparation of the Guaranteed Maximum Price proposal to supplement the information contained in the drawings and specifications.

3.4.1.2.2.13 The proposed Guaranteed Maximum Price, including a statement of the estimated cost organized by trade categories, allowances, contingency, and other items and the fee that comprise the Guaranteed Maximum Price.

3.4.1.2.2.14 The date of final completion upon which the proposed Guaranteed Maximum Price is based, and a schedule of the construction documents issuance dates upon which the date of final completion is based.

3.4.2 Submittal of GMP Change Order.

3.4.2.1 Format for Submittal. The Construction Manager's proposed GMP Change Order shall be submitted to the Owner as an offer in substantially the form set forth in Exhibit H.

3.4.2.2 GMP Proposal Review Meeting. Following the Construction Manager's submission of the proposed GMP Change Order and prior to its acceptance, the Owner and the Architect shall meet with the Construction Manager to review the proposed GMP Change Order and the statement of its basis. The Owner and the Architect shall promptly notify the Construction Manager of any errors or omissions they discover in the presented information during their review of same. The Construction Manager shall be entitled to make any necessary adjustments to the proposed GMP Change Order as a result of any errors discovered by the Construction Manager, the Architect or the Owner prior to its acceptance by the Owner. Neither the Architect nor the Owner has any duty to Construction Manager to examine the proposed GMP Change Order to discover such errors and no error discovered after acceptance by the Owner of the GMP Change Order shall constitute a basis for a change therein or a modification to this Agreement.

3.4.3 Acceptance or Rejection of GMP Change Order; Contract Date.

3.4.3.1 Time for Acceptance or Rejection. The Owner shall have fifteen (15) business days from the receipt of Construction Manager's proposed GMP Change Order to accept or reject same.

3.4.3.2 Written Notice of Acceptance. If the Owner accepts the Construction Manager's proposed GMP Change Order, the Owner shall give written notice of acceptance by returning the proposed GMP Change Order to the Construction Manager with the Owner's acceptance endorsed thereon, and by the issuance to the Construction Manager of a Notice of Acceptance. The GMP Change Order and the Notice of Acceptance shall constitute amendments to this Agreement. The date the Notice of Acceptance is issued by the Owner shall be the contract date for the Work covered by the GMP Change Order.

3.4.3.3 Rejection of GMP Proposal. If the Owner rejects the Construction Manager's proposed GMP Change Order, Construction Manager shall revise and resubmit same to the Owner within five (5) business days. In the event no GMP Change Order can be agreed upon the Construction Manager shall continue its performance under any Component Change Orders then outstanding, and with the performance of any other services required under this Agreement until such time as either party shall terminate this Agreement.

3.4.4 Acceptance of GMP Proposal. At such time as the Owner and the Construction Manager agree on an acceptable Guaranteed Maximum Price for the cost of the Project, the Owner and the Construction Manager shall, in good faith, enter into an amendment of this Agreement, as to such Project, pursuant to which specific terms, conditions and provisions shall be set forth regarding:

- (i) a scope of work for the Project, together with a reasonably detailed description of plans and specifications for such Project,
- (ii) a Project Progress Schedule for the Project, and,
- (iii) provisions for damages in the event the Construction Manager defaults with respect to its obligations regarding construction of the improvements for such Project.

3.4.5 Duty to Proceed. Following receipt of the Owner's Notice of Acceptance of the GMP Change Order, the Construction Manager and the Owner shall furnish each other with the items required by this Agreement, and upon the issuance of a Notice to Proceed, the Construction Manager shall promptly thereafter begin or continue the performance of any portion of the Work in accordance with the Construction Documents which have been approved by the Owner and added to this Agreement by Construction Document Change Order or by a Component Change Order and in accordance with subsequent Construction Document Change Orders and approved by the Owner and added to this agreement.

3.4.6 Modification of GMP. Whenever this Agreement authorizes an increase or decrease in the contract sum or contract price, the increase or decrease shall operate to increase or decrease the Estimated Cost Component and Fee Component of the GMP Change Order. The Guaranteed Maximum Price shall be subject to additions and deductions by Change Order executed by both parties.

Part 5 - Hazardous Conditions and Materials

3.5.1 Hazardous Material. A Hazardous Material is any substance or material identified as of the date of the Agreement as hazardous under any governmental law, rule or regulation or otherwise subject to governmental requirements concerning handling, disposal and/or cleanup. The Construction Manager shall not be required to perform any Work related to hazardous materials encountered at the work site. The Construction Manager is fully responsible for any Hazardous Materials brought on the site by any party, other than the Owner, who has a contractual relationship with the Construction Manager to perform Work under the Contract Documents. If the Construction Manager knows of the presence of Hazardous Materials in any form existing on or delivered to the Project Site, the Construction Manager shall promptly, but in no event later than twenty-four (24) hours after obtaining such knowledge, notify the Architect and the Owner as to the quantity, if known, and nature of the Hazardous Material.

3.5.2 Material Safety Data Sheets. The Construction Manager shall maintain any and all material safety data sheets required by law and pertaining to materials or substances used or consumed in the performance of the Work, regardless of their source. Such sheets shall be maintained at the Project site and shall be made available to the Owner and Program Manager on request.

3.5.3 Environmental Protection and Hazardous Substances. The Construction Manager shall be responsible for compliance with all applicable environmental protection requirements, codes, regulations, laws and ordinances pertaining to construction means and methods in any manner affecting the conduct of the Work.

3.5.3.1 The Construction Manager recognizes the special environmental requirements of the Project related to dust and noise pollution because of the proximity of residential neighborhoods and acknowledges that protocols will be developed to minimize the impact of dust and noise. Disturbed areas shall be strictly limited to boundaries established by the Owner. Particular attention is drawn to the avoidance of any pollution of any "on-site" streams, sewers, wells or other water sources.

3.5.3.2 The Construction Manager shall prevent erosion of soil and excess runoff of surface or subsurface water from the Site during the construction period. To retain existing drainage patterns external to the Site, the Construction Manager shall construct temporary ground cover as needed to control conditions. The Construction Manager shall legally dispose of all solid waste materials and other materials to be removed from the Site by transporting to disposal areas that are approved by state and local authorities. No burning shall be permitted unless otherwise noted. All Work shall be performed in such a manner as may be required to minimize pollution of the air by dust or other contaminants and allow the Construction Manager to meet the requirement of controlling excessive noise at the Site to minimize impact to the adjacent residential neighborhoods.

3.5.3.3 The Construction Manager agrees with respect to any hazardous substance it brings to the Site that it shall not transport to, use, generate, dispose or install at the Site any Hazardous Substance, except in accordance with applicable environmental laws. For purposes of this Agreement, the term "hazardous substance" shall mean and include, but shall not be limited to, any element, constituent, chemical, substance, compound or mixtures, which are defined in or included under or regulated by any local, state or federal law, rule, ordinance, bylaw or regulation pertaining to environmental regulation, contamination, clean-up or disclosure, including, without limitation, The Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), The Resource Conservation and Recovery Act ("RCRA"), The Toxic Substances Control Act ("TSCA"), The Clean Water Act ("CWA"), The Clean Air Act ("CAA") and The Marine Protection Research and Sanctuaries Act ("MPRSA"), The Occupational Safety and Health Act ("OSHA"), The Superfund Amendments and Reauthorization Act of 1986 ("SARA"), or other state superfund or environmental clean-up or disclosure statutes, including all state and local counterparts of such laws (all such laws, rules and regulations being referred to collectively as "Environmental Laws"). It is the Construction Manager's responsibility to comply with these provisions based on the law in effect at the time its services are rendered and to comply, subject to equitable adjustment of the Contract Time with any amendments to those laws for all services rendered after the effective date of any such amendments.

3.5.3.4 In performing Work, the Construction Manager, its Trade Contractors and agents shall not cause any release of Hazardous Substances they bring to the Site, or contamination of the environment including the soil, the atmosphere, any water course or ground water, except in accordance with applicable environmental laws. In the event the Construction Manager, its Trade Contractors and agents, in violation of an environmental law, releases a Hazardous Substance it brings to the site into the environment including the soil, the atmosphere, any water course or ground water, to the fullest extent permitted by law, the Construction Manager hereby indemnifies and holds harmless the Owner and the Architect, and all of its respective officers, directors, agents and employees from and against any and all claims, damages, losses, causes of action, suits and liabilities of every kind, including but not limited to, expenses of litigation, court costs, punitive damages and attorneys' fees, arising out of incidental to or resulting from the activities prohibited in these provisions.

3.5.3.5 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a Hazardous Material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the Site by the Construction Manager, the Construction Manager shall, upon recognizing the condition,

Section 3 - Construction Phase
Part 5 - Hazardous Conditions and Materials and Differing Site Conditions

immediately stop Work in the affected area and report the condition to the Owner and the Architect in writing. In the event the Construction Manager encounters on the Site material that the Construction Manager knows or reasonably believes to be a Hazardous Material or contaminated material which has not been rendered harmless, the Construction Manager shall immediately stop. The Owner may then elect to remove these materials and accordingly extend the construction schedule under which the Construction Manager is not entitled to additional compensation for such extension on these grounds, or terminate for convenience. Nothing herein shall excuse or relieve the Construction Manager of the duty and financial responsibility to investigate, treat, isolate, contain, handle and remove any hazardous substance or contaminated material that contaminated the Site as a result of an error, omission or neglect in violation of this Agreement by the Construction Manager or a Subcontractor.

3.5.3.6 The Construction Manager is not responsible for any costs associated with the investigation, testing, treatment, isolation, containment, handling or removal of any hazardous substances or contaminated materials on the Site which pre-exist this Agreement.

3.5.3.7 The Owner has not concealed any hazardous or contaminated environmental conditions known to the Owner from the Construction Manager.

PART 6 - CORRECTING OF WORK; COVERING AND UNCOVERING WORK

3.6.1 Promptly Correct Work. The Construction Manager shall promptly correct Work rejected by the Architect or the Owner not in accordance with the Contract Documents or known by the Construction Manager to be defective, damaged, or failing to conform to the requirements of the Contract Documents, whether observed before or after Final Completion and whether or not designed, fabricated, installed or completed. The Construction Manager shall bear the costs of correcting such rejected Work, including without limitation additional testing and inspections.

3.6.1.1 Full and Complete Charge. Notwithstanding the provisions of this Agreement, and until final acceptance of the Work by the Owner, the Construction Manager shall have full and complete charge and care of the Work or any portion thereof (including the Owner-furnished supplies, material, equipment or other items to be utilized or incorporated in the Work).

3.6.1.2 Make Good Losses. The Construction Manager shall rebuild, repair, restore and make good losses of, and injuries or damages to, the Work or any portion thereof (including the Owner-furnished supplies, material, equipment or other items to be utilized with, or incorporated in, the Work and which are in the Project site) before final acceptance of the Work. Such rebuilding, repair or restoration shall be at the Construction Manager's sole cost and expense provided, however, the Owner will make available applicable proceeds from the Builder's Risk policy provided by the Owner, as specified in Paragraph 1.8.4.8.

3.6.2 No Delay. Work requiring correction shall be corrected immediately and shall be carried out in such a way to not delay the completion of the Project. If it is not feasible to correct said Work immediately, the corrective Work shall be done on a schedule acceptable to the Owner.

3.6.3 Correction After Completion. If, within one (1) year after the date of issuance of the Authorization to Enter or within one (1) year after the date for commencement of warranties established under this Agreement or any other written agreement between the Owner and the Construction Manager or by terms of an applicable special warranty required by the Contract Documents (whichever one-year period expires later being applicable hereunder) any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Construction Manager shall correct such Work promptly after receipt of a written notice from the Owner to do so.

3.6.4 No Limitation. Nothing contained in this Part shall be construed to establish a period of limitation with respect to the Construction Manager's obligations as a developer or the Construction Manager's liability for obligations other than specifically to correct the Work.

3.6.5 Failure to Correct. 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 Owner. If the Construction Manager fails to correct nonconforming Work as required or fails to carry out Work in accordance with the Contract Documents, the Owner, by written order signed personally or by an agent specifically so empowered by the Owner in writing, may order the Construction Manager to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the Owner's right to stop the Work shall not give rise to a duty on the part of the Owner to exercise the right for benefit of the Construction Manager or other persons or entities.

3.6.6 Construction Manager Default. If the Construction Manager defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within fourteen (14) days after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued, deducting the costs of correcting such deficiencies from payments then or thereafter due the Construction Manager. If the payments then or thereafter due the Construction Manager are not sufficient to cover the amount of the deduction, the Construction Manager shall promptly pay the difference to the Owner.

3.6.7 Owner May Require Uncovering of Work. The Owner may require any Work to be uncovered, whether or not prior information was provided as to the schedule for covering. Should Work so uncovered prove to be in noncompliance with the Contract Documents or the Construction Documents, the cost of uncovering, correction of the Work, and recovering shall be borne by the Construction Manager and the Owner shall not be liable for any schedule recovery costs the Construction Manager may incur. But if the Construction Manager complies with the notice requirements above, and the Owner fails to make its desired inspections, and the Owner then requires the Construction Manager to uncover the Work, the Owner shall bear all additional costs of uncovering and recovering the Work, unless the Work is found to be non-compliant with the Construction Documents, in which case, the Construction Manager shall bear all such uncovering and recovering costs. Should the Work be compliant, however, the Owner will pay for the uncovering and repair of the affected Work, in addition to any delay that affects the critical path of the Project.

3.6.8 Owner May Pay for Uncovering Work. Should the Owner require Work to be uncovered contrary to the Contract Documents and the Construction Documents, the Owner shall compensate the Construction Manager for any extra cost caused the Construction Manager including any cost of schedule recovery.

3.6.9 Correction of Work before Final Payment.

3.6.9.1 Notices of Non-Conforming Work. The Construction Manager shall remove from the premises within the space of time designated in Notices of Non-Conforming Work all Work condemned by the Architect as failing to conform to the Contract Documents, whether incorporated in the Work or not, and the Construction Manager shall promptly replace and re-execute the Work in accordance with the contract and without expense to the Owner and shall bear the expense of making good all Work of other Contractors destroyed by such removal or replacement. The Construction Manager shall supply any omitted Work and perform all unexecuted Work within the space of time fixed by the Architect in Notices of Non-Conforming Work.

3.6.9.2 Remedy of the Owner for Breach of Notices of Non-Conforming Work. If the Construction Manager does not make good a deficiency within a reasonable space of time fixed in a Notice of Non-Conforming Work, the Owner may:

3.6.9.2.1 Remove Work. Remove the condemned Work and store it at the expense of the Construction Manager. If the Construction Manager does not pay the expenses of such removal and storing within ten days after receipt of written demand of the Owner, the Owner may upon three days' notice in writing to the Construction Manager sell such materials at private sale or at auction and shall account for the net proceeds thereof after deducting all proper costs incurred by the Owner, and

3.6.9.2.2 Supply Work. Supply omitted Work, perform unexecuted Work, replace and re-execute Work not done in accordance with the methods and materials designated in the Contract Documents and deduct the cost thereof from any payment then or thereafter due the Construction Manager, Provided: That the Architect shall approve the amount charged to the Construction Manager.

3.6.9.3 Additional Remedies. The remedies stated in this Part are in addition to the remedies otherwise available to the Owner, do not exclude such other remedies, and are without prejudice to any other remedies. Time limits stated in orders of condemnation are of the essence of the contract. Unless otherwise agreed to by the Owner in writing, the making good of condemned Work shall physically commence at the site in not more than seven days after receipt of the Notice of Non-Conforming Work except that in case of emergency correction shall physically commence at the site at once and except that the Construction Manager shall in any event physically commence the correction at the site early enough to complete within the space of time allowed in the Notice of Non-Conforming Work . The Owner shall give prompt consideration to reasonable requests for delay in commencement of the making good of orders of condemnation. The making good of condemned Work shall be completed within the space of time allowed in the Notice of Non-Conforming Work unless the Construction Manager shall have requested from the Architect an increase in the amount of time allowed and the Architect shall have given notice to the Construction Manager in writing, with copy to the Owner, stating the additional amount of time, if any, allowed.

3.6.9.4 Notice of Correction from Construction Manager. The Construction Manager shall give prompt notice in writing to the Architect, with copy to the Owner, upon completion of the correction of any Work, the supplying of any omission of any Work or materials or the performance of any unexecuted Work condemned by the Architect. In the absence of such notice, it shall be and is presumed under this Agreement that there has been no correction, supplying remedy, or performance of unexecuted Work.

3.6.10 Effect of Condemnation. Notwithstanding anything contained in the Contract Documents to the contrary, in order to minimize delays in the completion of the Project, the Construction Manager shall be entitled to continue Working while responding to a Notice of Non-Conforming Work , and may Work while protesting any decision by the Architect or the Owner.

3.6.11 Deductions for Uncorrected Work. If the Architect and the Owner deem it inexpedient to correct Work injured or done not in accordance with the Agreement, an equitable deduction from the contract price shall be made therefore; but there is no duty on the part of the Owner to accept any Work injured or done not in accordance with the methods and materials designated in the Contract Documents, nor does the Construction Manager have the right to demand that there shall be acceptance of Work injured or done not in accordance with the methods and materials designated in the Contract Documents.

PART 7 - TRADE CONTRACTORS; SELF PERFORMANCE

3.7.1 Parties. Trade Contracts shall be between the Construction Manager and the Trade Contractor or Trade Supplier selected by the Construction Manager, as the Construction Manager deems appropriate, subject to the requirements that such Trade Contract be awarded in accordance with the procedures set forth in this Part.

3.7.2 Selection.

3.7.2.1 Selection Process. All Trade Contracts between the Construction Manager and Trade Contractors or Trade Suppliers shall be entered into only after the Construction Manager's completion of the selection process required by this Section 3, Part 7. For each selection, the Construction Manager, in consultation with the Architect and the Owner, shall develop appropriate selection criteria for the selection of the Trade Contractor or Trade Supplier. The cost of the Work shall be a factor for consideration in every selection, but may not necessarily be the determining factor.

3.7.2.2 Information for Proposed Firms. The Construction Manager shall develop information for proposed firms for all of the Work. Such information shall describe the Work to be procured by the Construction Manager through Trade Contractors or Trade Suppliers, using the Construction Manager's own forms and procedures. Firms shall be required to submit a bid encompassing the full contract price for the Work to be procured, except as provided in Article 3.7.15 below.

3.7.2.3 Alternative Prices. With the approval of the Owner, the Construction Manager shall be entitled to take alternative prices as it deems necessary to advance the Work and by the stated Date of Final Completion. Such approval shall not unreasonably be withheld by Owner.

3.7.2.4 Timing of Bids. The Construction Manager may, at its discretion, procure bids for Work described in Construction Documents proposed for addition to this Agreement by Change Order prior to acceptance of such Change Order by the Construction Manager or by the Owner, but the Construction Manager shall not be authorized to reject a Construction Document Change Order proposed after the issuance of a GMP Change Order by reason of Construction Manager's failure to obtain any acceptable bids.

3.7.3 Bidders Lists. Prior to each solicitation of bids, the Construction Manager shall prepare and submit to the Owner for review a list of recommended bidders. The Construction Manager may require prospective bidders to undergo a pre-qualification process to permit the Construction Manager affirmatively to determine that bidders which desire to submit a proposal are responsible proposers as defined in Article 3.7.6.

3.7.4 Information to Bidders. Promptly after submitting to the Owner the list of recommended bidders, the Construction Manager shall furnish such bidders with the information as required in Paragraph 3.7.2.2 above.

3.7.5 Construction Manager Proposal Review. Upon receipt of proposals, and prior to acceptance of any proposal by the Construction Manager, the Construction Manager shall prepare and deliver to the Owner for its review a complete and thorough analysis of the proposals received. Such proposal analysis shall clearly indicate the apparent best proposal from the bidder or bidders determined by the Construction Manager to be responsible and responsive and shall be accompanied by a copy of each proposal received. Nothing herein requires the Construction Manager to select the lowest proposal. The risk and cost of the Construction Manager's selection of a successful bidder lies exclusively with the Construction Manager.

3.7.6 Responsible Bidders. The Construction Manager shall affirmatively determine whether each bidder is or is not responsible and whether each proposal is or is not responsive. To be deemed a responsible bidder, the proposed Trade Contractors or Trade Suppliers shall:

3.7.6.1 Qualified. Be reputable, skilled, reliable, competent, qualified in the trade or field in which they are to perform on the Project and be thoroughly familiar with applicable codes.

3.7.6.2 Bonding. Have the ability to obtain bonding from a bonding company acceptable to the Construction Manager.

3.7.6.3 Insurance. Shall have or shall have the ability to obtain insurance required by the Contract Documents.

3.7.7 Owner Rights. The Owner reserves the right in its sole and absolute discretion to require the Construction Manager to reject any Trade Supplier or Trade Contractor and any proposal. If after the acceptance of the GMP Change Order by the Owner, the Owner exercises its right to require the Construction Manager to reject a Trade Contractor, a Trade Supplier, or the lowest proposal submitted by a responsible bidder, the acceptance of which Construction Manager recommends, Construction Manager shall recommend an acceptable substitute Trade Contractor, Trade Supplier or bidder, and if the substitute Trade Contractor, Trade Supplier or bidder has submitted a higher proposal or price, the GMP Change Order and its Estimated Cost Component shall be adjusted to reflect the difference between the amount of the rejected proposal or price and the higher accepted proposal or price.

3.7.8 Construction Manager Award. Unless the Owner exercises its rights under Article 3.7.7, Construction Manager shall award the Work to a responsible Trade Contractor or Trade Supplier of Construction Manager's choosing and proceed with the preparation of a purchase order or Trade Contract incorporating all necessary terms and conditions of the Contract Documents. Upon execution by the Construction Manager, and if requested by the Owner, the Construction Manager shall send a copy of the executed purchase order or Trade Contract to the Owner.

3.7.9 No Owner Approval. Except to the extent the Owner exercise the Owner' rights under Article 3.7.7, the Owner does not undertake to pass upon or approve any Trade Contractor or Trade Supplier determined by the Construction Manager to be responsible.

3.7.10 Assignment. The Construction Manager shall not assign this Agreement or sublet it as a whole nor shall the Construction Manager assign any monies due or to become due hereunder. Each Trade Contract shall provide that it may, upon written election by the Owner, be assigned to the Owner or to any person who undertakes to perform for the Owner any of the obligations of the Construction Manager under this Agreement following termination of this Agreement.

3.7.12 Lump Sum Award. Unless otherwise agreed by the Owner, Trade Contracts shall be awarded on the basis of a fixed lump sum contract price.

3.7.13 Governing Documents. The performance of Work under Trade Contracts shall be governed by the Contract Documents. Notwithstanding the foregoing, as between the Construction Manager and any Trade Contractor or Trade Supplier, the contract between the Construction Manager and the Trade Contractor or Trade Supplier shall govern the relationship between them and no Trade Contractor or Trade Supplier shall be entitled to any extension of time, increase in compensation, or other right or benefit accruing to the Construction Manager under its relationship to the Owner under this Agreement unless otherwise expressly so provided in the Trade Contract. No Trade Contract shall operate to alter the obligations of the Construction Manager to the Owner.

3.7.14 Duty to Continue Work. Notwithstanding any dispute between the Owner and the Construction Manager or between the Construction Manager and any Trade Contractors or between such Trade Contractors, it shall be the responsibility of the Construction Manager to continue to prosecute all of the Work and perform all of its services diligently in a good and Workmanlike manner in conformity with this Agreement, and the Construction Manager and/or Trade Contractors shall have no right to cease performance hereunder or to permit the prosecution of the Work to be delayed so long as the Owner does not default hereunder, and so long as the Construction Manager continues performance under this Agreement, the Owner shall continue to pay the Construction Manager in accordance with this Agreement.

3.7.15 Alternative Price Terms. Notwithstanding the requirements of Paragraphs 3.7.2 and 3.7.12, the Construction Manager shall be permitted, with the Owner's advance approval in the Owner's sole discretion, to seek Trade Contractors or Trade Suppliers, who meet the requirements of Paragraphs 3.7.6.1, 3.7.6.2, and 3.7.6.3, through a proposal process, under which the proposed Trade Contractor or Trade Supplier offers to provide the Constructive Management services for designated Components of the Project and, with the Owner's approval, the Construction Manager may enter such contracts for the furnishing of such systems on a guaranteed maximum price basis.

3.7.16 Rental/Purchase of Equipment. Prior to awarding any Trade Contract for the rental or purchase by the Construction Manager of equipment to be supplied by Construction Manager for use by its Trade Contractors or Trade Suppliers or for use by the Construction Manager for Work performed by the Construction Manager's own forces, including facilities or equipment for use in Construction Manager's on-site offices, Construction Manager shall provide to the Owner a comparative analysis of the estimated costs and benefits of the rental and the purchase of such equipment and propose to the Owner for the Owner's approval, which approval shall not be unreasonably withheld or delayed, the Construction Manager's recommended method of procurement.

3.7.17 Construction Manager Supplied Equipment or Supplies. With the prior approval of the Owner in its sole discretion, the Construction Manager may supply for use by its Trade Contractors or Trade Suppliers or for use by the Construction Manager for the performance of Work performed by Construction Manager with its own forces, equipment and supplies necessary to the performance of the Work in addition to those items which the Construction Manager is authorized to supply under Article 3.2.15. However, the Actual Cost of such equipment or supplies reimbursable by Owner to Construction Manager shall not in any event exceed the least of (a) the amount which would be paid by Construction Manager for the procurement of such equipment or supplies under a competitive proposal procurement or (b) the amount which would be reimbursable to Construction Manager as an Actual Cost for such equipment or supplies had such equipment or supplies been procured from others under the terms of the Contract Documents or (c) the applicable amounts stated in Subparagraph 1.5.4.1. If Owner approves the provision by Construction Manager of such items from Construction Manager's inventory, then no Construction Manager's Fee shall be payable by Owner on account of such self-provided items in excess of any fee included in the approved sales price or rental rate. Construction Manager's Fee shall be reduced proportionately for such self-provided items.

3.7.18 No Conflict of Interests. Without the prior written approval by the Owner after full disclosure by Construction Manager, Construction Manager shall not award any Trade Contract to any Affiliate of Construction Manager.

3.7.19 Selection of Trade Contractors. All of the construction Work shall be performed pursuant to bid packages by qualified Trade Contractors. The Construction Manager shall make reasonable efforts to insure that Trade Contractors and Suppliers local to the Project site are given the fair opportunity to bid for, be considered for, and participate in the award of bid packages required for completion of the Project. The Construction Manager shall publicly advertise, as prescribed for counties under Section 271.025 of the Texas Local Government Code, and receive bids from Trade Contractors for the performance of all major elements of the Work other than Work authorized as general conditions by the Owner. All proposals will be delivered to the Construction Manager. The Construction Manager will, on behalf of the Owner, analyze all such bids to determine whether the bids are responsive and the bidders are responsible. The Construction Manager will recommend to the Owner, based on price and other factors, the Trade Contractor or Supplier. If the recommended Trade Contractor or Supplier is not the low bidder, Construction Manager will provide additional information justifying its recommendation. The Trade Package will be awarded upon receipt of the approval of the Owner. If the Owner does not agree with the Construction Manager's recommendation, the Owner will instruct the Construction Manager to award the Trade Package to the lowest responsive and responsible bidder, or to reissue the package for additional bidders.

3.7.19.1 The Construction Manager may seek to perform portions of the Work if the Construction Manager submits its bid for those portions of the Work in the same manner as all other trade contractors and if the Owner independently determines that the Construction Manager's bid provides the best value for the Owner.

3.7.20 No Approval of Trade Contractors. Neither the Owner nor the Architect undertakes to pass upon or approve any Trade Contractor; however, if a fire protection sprinkler system is required, the Construction Manager shall submit to the Architect the certificate of competency of the fire protection sprinkler system Trade Contractor as required by Texas Commission on Fire Protection. The certificate of competency shall be provided to the Architect prior to any Work being performed on the fire protection sprinkler system.

3.7.21 Warranty of Construction Manager. The Construction Manager warrants that the Trade Contractors selected by him are reputable, skilled, reliable, competent, qualified in the trade or field in which they are to perform on the Project, and thoroughly familiar with applicable codes. The Construction Manager will have primary responsibility for all Trade Packages. Trade Contractors are required to execute Construction Manager's standard subcontract, as amended to be consistent with this Agreement, with the Trade Contractors acting as Trade Contractors to Construction Manager. Construction Manager shall execute and administer all such Trade Package contracts and will assume full responsibility for each and every item of Work performed thereunder and the timely completion of all such Work in accordance herewith, including responsibility for all guarantees and warranties to be provided by each Trade Contractor.

3.7.22 Construction Manager Responsible for Acts and Omissions of Trade Contractors, Materialmen, Suppliers, and Employees. The Construction Manager agrees that he is as fully responsible for the acts and omissions of his Trade Contractors, material men, suppliers, and employees and of persons either directly or indirectly employed by them as he is for the acts and omissions of persons directly employed by him. The failure of a Trade Contractor, material man, supplier, or employee to perform shall not be asserted by the Construction Manager as an excuse for any omission from or noncompliance with requirements of the contract; nor shall the Construction Manager be entitled to an extension of time because of failure of a Trade Contractor, materialman, supplier, or employee to perform unless said failure was a direct result of some delay to the Trade Contractor, materialman, supplier, or employee of the kind and character described in the Agreement for which the Construction Manager shall have requested and received an extension of time under the terms of the General Requirements. The subcontracting of Work does not relieve the Construction Manager of the full responsibility for the execution of the Work and for compliance with all requirements of the Contract Documents. The Construction Manager shall not assert negligence, inefficiency, insolvency, bankruptcy, or incompetence of any Trade Contractor, material man, supplier, or employee as excuse for the existence of any noncompliance with or omission to fulfill any obligation under the Agreement either as to timely performance or as to compliance with methods and materials designated in the Contract Documents; nor shall the Construction Manager assert nonperformance (unless an extension of time shall have been granted pursuant to the Agreement requirements) of a Trade Contractor, materialman, supplier, or employee as excuse for the existence of any noncompliance with or omission to fulfill any obligation under the Agreement either as to timely performance or as to compliance with methods and materials designated in the Contract Documents. As to Trade Contractors, materialmen, suppliers, and employees of the Construction Manager, the doctrine that a principal is liable for the acts and omissions of his agent shall be binding on the Construction Manager in his relationship to the Owner, and the Construction Manager may not reverse the aforesaid doctrine by serving as a conduit or agent for his own agent. Any provision in any contract between the Construction Manager and any Trade Contractor pursuant to which the Construction Manager is obliged to present to the Owner any claim of any Trade Contractor shall be invalid.

3.7.23 No Contract Between Owner and Any Trade Contractor, Materialman, Supplier, or Employee. Nothing contained in the Contract Documents shall create any contractual relation between the Owner and any Trade Contractor or between the Owner and any materialman, supplier, or employee of the Construction Manager or his Trade Contractors.

3.7.24 Relationship of Construction Manager and Trade Contractors. The Construction Manager agrees to bind every Trade Contractor and every Trade Contractor agrees to be bound by the terms of the Contract Documents insofar as they are applicable to his work, including the following provisions of this article:

3.7.24.1 Trade Contractor Agreement. The Trade Contractor agrees:

3.7.24.1.1 Bound. To be bound to the Construction Manager by the terms of the Contract Documents and to assume toward the Construction Manager all the obligations and responsibilities that the Construction Manager by the aforesaid documents assumes toward the Owner

3.7.24.1.2 Payments. To submit to the Construction Manager applications for payment in such reasonable time as to enable the Construction Manager to apply for payment under the terms of the Contract Documents submitted in the form attached hereto as Exhibit K

3.7.24.1.3 Claims. To make all claims for extras, for extensions of time or for damages to the Construction Manager in the manner provided in the Agreement for like claims by the Construction Manager upon the Owner, except that the time for making such claims to the Construction Manager is 5 days.

3.7.24.2 Construction Manager Agreement. The Construction Manager agrees:

3.7.24.2.1 Bound. To be bound to the Trade Contractor by all the obligations that the Owner assumes to the Construction Manager under the Contract Documents.

3.7.24.2.2 Payments.

3.7.24.2.2.1 Schedule of Values. To pay the Trade Contractor upon the payment of certificates issued under the schedule of values described in the General Requirements the amount allowed to the Construction Manager on account of the Trade Contractor's Work to the extent of the Trade Contractor's interest therein; provided, however, that retainage shall be paid to the Trade Contractor as provided in the statutory affidavit specified under Section 3, Part 9.

3.7.24.2.2.2 Other. To pay the Trade Contractor upon the payment of certificates issued otherwise than as in the above in such manner that at all times the Trade Contractor's total payments shall be as large in proportion to the value of the Work done by the Trade Contractor as the total amount certified to the Construction Manager is to the value of the Work done by the Trade Contractor.

3.7.24.2.2.3 Earlier or Larger Payments. To pay the Trade Contractor to such extent as may be provided by the Contract Documents or the subcontract, if either of these provides for earlier or larger payments than the above.

3.7.24.2.2.4 On Demand. To pay the Trade Contractor on demand for his Work or materials as far as properly executed and fixed in place, less the retained percentage, at the time the certificate should issue, even though the Architect fails to issue it for any cause not the fault of the Trade Contractor.

3.7.24.2.2.5 Insurance Proceeds. To pay the Trade Contractor a just share of any fire insurance money received by the Construction Manager.

3.7.24.2.3 No Demand for Damages. To make no demand for damages or penalty for delay in any sum in excess of such amount as may be specifically named in the subcontract.

3.7.24.2.4 No Claim Without Written Notice. That no claim for services rendered or materials furnished by the Construction Manager to the Trade Contractor shall be valid unless written notice thereof is given by the Construction Manager to the Trade Contractor during the first ten days of the calendar month following that in which the claim originated.

3.7.24.2.5 Disputes. To give the Trade Contractor an opportunity to be present and to submit evidence in any dispute involving rights of the Trade Contractor.

3.7.25 Owner Not Obligated to any Trade Contractor. There is no obligation on the part of the Owner to pay to or to see to the payment of any sums to any (a) Trade Contractor, (2) material man, (c) supplier, (d) laborer, (e) employee, or (f) claimant as defined in the payment bond.

3.7.26 Incorporation of Terms in Trade Contracts. The Construction Manager agrees that failure on his part to incorporate in all trade contracts an express provision in accordance with this Article, shall be deemed to be and is a breach of an essential covenant and that in the event of such breach the Construction Manager shall, within five days after demand of the Owner, furnish proof in writing that the deficiency has been remedied to the end that (a) the Construction Manager may not maintain that it is beyond his competence to require performance of terms of the contract by a Trade Contractor and (b) no Trade Contractor may maintain that he has not assumed toward the Construction Manager all the obligations and responsibilities that the Construction Manager has assumed toward the Owner. Failure on the part of the Construction Manager to affect remedy as above within five (5) days after receipt of written demand of the Owner shall be *ipso facto* ground for issuance of a declaration of default by the Owner.

3.7.27 No Obligation Under Trade Contract. This Agreement does not create any contractual relationship between the Owner and any Trade Contractor or Trade Supplier under contract with Construction Manager or any duty by the Owner to any Trade Contractor or Trade Supplier under contract with Construction Manager. Payments on account of the Work under any Trade Contract entered by Construction Manager pursuant to this Agreement, and final certificates issued by the Architect under Section 3, Part 9 relating to Work performed on any Component by any Trade Contractor under contract with Construction Manager, in no way diminish, alter or affect the rights of the Owner under the Contract Documents. Without limitation, all warranties from any Trade Contractor or Trade Supplier under contract with Construction Manager, and corresponding warranties from the Construction Manager to the Owner, run from the date of Final Completion of the Project, or the acceptance of occupancy by the Owner, whichever occurs first.

PART 8 – BONDS AND WARRANTIES

3.8.1 Construction Manager Warranties.

3.8.1.1 Work Free from Defects. In addition to other warranties, guarantees, or bonds required by the Construction Document Change Orders, Construction Manager warrants to the Owner that except as provided in this Agreement, all Work, materials and equipment that it furnishes, or which are furnished, by its Trade Contractors or Trade Suppliers shall be free from defects not inherent in the quality required or permitted, shall be of first quality, shall be in conformity with the Contract Documents, and shall be free from improper Workmanship and defective materials for a period of one (1) year from the date of the commencement of the warranty period, or for such longer period as may be prescribed by the terms of any applicable special warranty required by the Construction Document Change Orders. Any portion of the Work not in conformity with these requirements, including substitutions not properly approved or authorized, may be considered defective. At the request of the Owner, Construction Manager shall furnish evidence as to the kind and quality of materials and equipment supplied.

3.8.1.2 Additional Security. As additional security for the fulfillment of such obligation, but in no way limiting the same, the Construction Manager warrants and guarantees (1) that all Work executed under the plans and specifications shall be free from defects of materials or workmanship for a period of one year from the date of the final certificate of the Architect, and (2) that for not less than one year from the date of the final certificate of the Architect, or for such greater space of time as may have been designated in the specifications, products or manufacturers shall be free from defects of materials and workmanship. Whenever written guaranties or warranties are called for, the Construction Manager shall furnish the aforesaid for such period of time as may be stipulated. The aforesaid instruments shall be in such form as to permit direct enforcement by the Owner against any Trade Contractor, material men, or manufacturer whose guaranty or warranty is called for, and the Construction Manager agrees that . . .

- (a) The Construction Manager is jointly and severally liable with such Trade Contractors, material men, or manufacturers.
- (b) The said Trade Contractors, material men, or manufacturers are agents of the Construction Manager for purposes of performance under this article, and the Construction Manager, as principal, ratifies the warranties or guaranties of his aforesaid agents by the filing of the aforesaid instruments with the Owner. The Construction Manager as principal is liable for the acts or omissions of his agents.
- (c) Service of Notice on the Construction Manager that there has been breach of any warranty or guaranty will be sufficient to invoke the terms of the instrument, Provided: That the Owner shall have furnished the Construction Manager with a copy of notice served on the Trade Contractor, material men, or manufacturer.
- (d) The Construction Manager will bind his Trade Contractor, material men, and manufacturers to the terms of this article.

3.8.1.3 No Limitation. The calling for or the furnishing of written warranties shall in no way limit the contractual obligation of the Construction Manager as set forth hereinabove. The remedies stated in this article are in addition to the remedies otherwise available to the Owner, do not exclude such other remedies, and are without prejudice to any other remedies.

3.8.1.4 Complaint Items. In light of the above stated Construction Manager's warranty and guarantee, during the one year period of the warranty and guarantee any defects of material or workmanship that become apparent shall be the responsibility of the Construction Manager until and unless the Construction Manager can show abuse or design defect. The Construction Manager shall immediately correct all defects that become known during the one year period at no cost to the Owner unless notice is given to the Architect prior to correcting the defect that the cause of the defect is the result of abuse or design deficiency. When the Construction Manager is notified by the owner or Architect of a defect, the Construction Manager will visit the site to review the complaint. If it is the Construction Manager's responsibility, it will be immediately corrected. If the Construction Manager alleges design defect or abuse, he will notify the Architect and the Architect will issue a formal decision in his capacity as Architect and impartial interpreter of the conditions of the contract. If the condition is an emergency, this will be communicated to the Construction Manager with the request that no matter what he finds, corrections are to be accomplished immediately. If it is determined the complaint is not the responsibility of the Construction Manager, the Construction Manager will be paid immediately for the cost of the service call. The Construction Manager shall respond to a notice of defect within three (3) days except when classified as an emergency, in which case the Construction Manager's response time shall be limited to 24 hours. If the Construction Manager fails to respond within these time limits, the Owner may correct the defect and charge the Construction Manager for the Work. The Construction Manager shall give notice in writing to the owner when corrections have been completed.

3.8.1.5 Notification of User of Site Visits. Following the final inspection the Construction Manager shall make no visits to the site without first giving notice to the User.

3.8.2 Commencement Date. The warranty period for the warranty under Article 3.8.1 and each other warranty required under the Contract Documents shall commence upon the earlier of (a) the date of Certificate of Occupancy or (b) if Owner accepts partial occupancy of any completed or partially completed portion of the Work, from the date, if any, expressly set forth in the agreement required by Article 3.9.3 as the date the commencement of a warranty applicable to the Work partially occupied by Owner but if no date is established by such agreement for the commencement of a warranty relating to the Work partially occupied, then partial occupancy by the Owner shall not commence the running of the warranty period.

3.8.3 Enforcement. Whenever written guaranties or warranties are called for by the Contract Documents, the Construction Manager shall furnish the aforesaid for such period of time as may be stipulated. The aforesaid instruments shall be in such form as to permit direct enforcement of same by the Owner against any Trade Contractor, Trade Supplier or manufacturer, and the Construction Manager shall be jointly and severally liable with such Trade Contractor, Trade Supplier or any manufacturer for a breach of any such guaranty or warranty.

3.8.4 Notice. During the effective period of any guaranty or warranty, service of any notice on the Construction Manager that there has been a breach of any warranty or guaranty shall be sufficient to invoke the terms any warranty or guaranty issued by Construction Manager, a Trade Contractor, Trade Supplier or manufacturer.

3.8.5 Trade Contracts. The Construction Manager shall bind its Trade Contractors, Trade Suppliers or manufacturers to the terms of this Article.

3.8.6 No Limitation. The calling for or the furnishing of written warranties or guaranties shall in no way limit the contractual obligation of the Construction Manager under this Agreement. The remedies stated in this Article are in addition to the remedies otherwise available to the Owner, do not exclude such other remedies, and are without prejudice to any other remedies.

3.8.7 Duty to Correct. Upon discovery, the Owner shall notify Construction Manager of any defects in the Work covered by a guaranty or warranty, whether observed before or after final inspection and whether or not fabricated, installed or completed. All costs associated with correcting such defective and/or non conforming Work, including but not limited to all costs associated with uncovering the Work, if such Work has been previously covered, all damage to the Project resulting from such defective and/or non conforming Work or the correction thereof, all damage to other Work or property which may be done in correcting, removing, repairing or replacing the Work, and all costs of the Owner, both direct and indirect, incurred because of or in conjunction with such defective Work shall be recoverable by Construction Manager from the responsible Trade Contractors or Trade Suppliers, if applicable, and be considered Contingency Costs of the Work recoverable to the extent and in the manner provided under Paragraph 3.8.3 for the period of time stated therein.

3.8.8 Bonds on Roofs and Walls. Prior to demand for payment of retainage, the Construction Manager shall furnish to the Owner a two-year bond written by a surety authorized to do business in the State of Texas in accordance with the form shown in Part 5 and in the penal sum of not less than the amount shown as the cost of the roof, wall, and roof deck in the approved initial breakdown.

3.8.9 Certificates of Manufacturers for Major Components.

3.8.9.1 Requirement. For elevators, moving walks, dumbwaiters, escalators, lifts, major components of air conditioning systems [i.e., cooling towers, compressors, condensers, absorption units, chiller units, fan coil units, air handling units, boilers, base mounted pumps, and temperature controls]; major components of heating systems [i.e., boilers, base mounted pumps, air handling units, unit ventilators, fan coil units, temperature controls, and boiler chemical feed systems]; major components of plumbing systems [i.e., boilers, base mounted pumps, sewage pumps and water treatment systems]; and incinerator systems; start-up, testing, and placing into operation shall be performed by the field representative(s) of the manufacturer(s), and certificate(s) of the manufacturer(s) shall be filed with the Owner on the letterhead(s) of the manufacturer(s) in which the manufacturer(s) certifies or certify that "the equipment has been installed in strict compliance with the recommendations of the manufacturer(s) and is operating properly". [See specimen of certificate, Form No 290, Exhibit H] The manufacturer(s) shall list in the certificate the item or items furnished to the job. The date, name, or other positive means of identifying the exact document or documents containing the recommendations of the manufacturer(s) shall be set forth in the certificate. A copy of each of the aforesaid documents shall be attached to the certificate. A specimen of the certificate will be furnished by the Owner and shall be adhered to by the manufacturer(s) in preparing the certificate. The Construction Manager expressly agrees that the aforesaid manufacturer(s) is (are) solely the agent(s) of the Construction Manager. The Construction Manager shall coordinate the performance of the aforesaid services and shall, in all cases where the equipment of two or more manufacturers ties in and functions together, require the field representatives to perform simultaneously the initial start-up, the testing, and the placing of their equipment into operation. "Start-up" is defined as putting the equipment into action. "Testing" is defined as performing such testing as is stipulated in the Contract Documents to be performed. "Placing into operation" is defined as operating the equipment for a sufficient period of time for the determination to be made that it is performing properly.

3.8.9.2 Retainage Withheld. For each certificate required for major components a sum of not less than \$500.00 shall be withheld until such certificate as described in Article 3.8.9 shall have been filed with the Owner.

PART 9 - PROTECTION OF PERSONS AND PROPERTY

3.9.1 Reasonable Precautions. The Construction Manager shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to: (a) employees performing the Work and other persons, including without limitation the general public, who may be affected thereby; (b) the Work and materials and equipment to be incorporated therein, whether in storage on or off the Project site, under care, custody, or control of the Construction Manager or the Construction Manager's Trade Contractors; and/or (c) other property at or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation, replacement or other rearrangement in the course of construction.

3.9.2 Duty to Protect Property. The Construction Manager shall continuously maintain adequate protection of all his Work from damage and shall protect all other property from damage, injury, or loss arising in connection with the Work regardless of who may be the owner of said property. He shall make good any such damage, injury, or loss except such as may be directly the result of errors in the Contract Documents or such as shall be caused directly by agents or employees of the Owner.

3.9.3 Safety Precautions. The Construction Manager shall comply with the rules and regulations of OSHA and/or the Department of Labor, and, where not inconsistent with the foregoing, the "Manual of Accident Prevention in Construction" issued by the Associated General Contractors of America, Inc., for safety and prevention of accidents, and shall maintain an accurate record of all cases of death, occupational disease, and injury requiring medical attention or causing loss of time from Work arising out of and in the course of employment on Work under the Agreement. The Construction Manager alone shall be responsible for the safety, efficiency, and adequacy of his plant, appliances, and methods, and for any damage which may result from their improper construction, maintenance, or operations. The Construction Manager shall erect and properly maintain at all times as required by the conditions and progress of the Work proper safeguards for the protection of workmen and the public and shall post danger warnings against any hazards created by the construction operations. The Construction Manager shall designate a responsible member of his organization on the Work whose duty shall be the prevention of accidents. In the absence of notice to the contrary, filed with the Architect in writing with copy to the Owner, this person shall be the superintendent of the Construction Manager.

3.9.4 Emergencies. In an emergency affecting the safety of persons or property or the Work or of adjoining property, the Construction Manager shall take reasonable precautions to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Construction Manager on account of an emergency may be added to the Agreement by Change Order upon written consent of the Owner.

3.9.5 Blasting. In the absence of an express provision in the Contract Documents permitting blasting, there shall be no blasting. If blasting is permitted under the Agreement and under the law which is applicable to the premises, such blasting shall in all events be done in such manner as to prevent all scattering.

3.9.6 Rain Water, Surface Water, and Back-up. The Construction Manager shall protect all Work, including but not limited to excavations and trenches, from rainwater, surface water, and back up of drains and sewers. The Construction Manager shall furnish all labor, pumps, shoring, enclosures, and equipment necessary to protect and to keep the Work free of water.

3.9.7 Fire Protection. The Construction Manager shall take adequate and reasonable precautions to protect Work against damage by fire and smoke. For example, without limitation, the Construction Manager shall:

- a. Provide fire extinguishers in readily accessible locations;
- b. Periodically inspect fire extinguishers, remove discharged extinguishers immediately and replace with new or recharged extinguishers;
- c. Keep one fire extinguishers within five (5) feet of any welding or open flame operations;
- d. Remove oil-soaked and paint-soaked materials, including paper and rags, from building daily, and more frequently as necessary, to eliminate danger of fire.
- e. Not permit workmen to smoke during operations involving combustible adhesives, solvents, mastics, or other fire hazard materials.

3.9.8 Dust Control. The Construction Manager shall be responsible for dust-proof enclosures or partitions for protection wherever dusty or dirty Work is performed and dampening of debris to avoid dusting when removed shall be provided and included as a cost of the Work.

3.9.9 Occupational Safety and Health Act. The Construction Manager, by signing the Agreement, acknowledges that he is aware of and familiar with the contents and requirements of the Federal Occupational Safety and Health Act of 1970, 29 U. S. C. Section 651 *et. seq.*, as amended.

3.9.10 Emergency Planning and Community Right-to-Know Act. The Construction Manager, by signing the Agreement, acknowledges that he is aware of and familiar with the contents and requirements of the Federal Emergency Planning and Community Right-to-Know Act, 42 U. S. C. Section 11001 *et. seq.*, as amended, and does hereby certify that the Construction Manager and its Trade Contractors and their sub-contractors are in compliance with these laws.

3.9.11 Notices and Comply with Laws. The Construction Manager shall give notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on the safety of persons or property or on their protection from damage, injury or loss.

3.9.12 Remedy Damages. The Construction Manager shall promptly remedy damages and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property at the Project site caused in whole or in part by the Construction Manager, by any Trade Contractor of the Construction Manager, by anyone directly or indirectly employed by the Construction Manager or any such Trade Contractor, or by anyone for whose acts the Construction Manager or any such Construction Manager may be liable.

3.9.13 Written Safety Program. The Construction Manager shall submit a written safety program and, at a minimum, monthly safety reports to the Architect and the Owner.

PART 10– FINAL PAYMENT

3.10.1 Incomplete Work. In the event any Work required hereunder is incomplete, and the Architect so certifies at the time it issues the Certificate of Final Completion, the Owner may, without terminating this Agreement, make payment of the balance due to the Construction Manager hereunder, including the unpaid remainder of Construction Manager's Fee for the portion of the Work fully completed; and such payment shall be made under the terms and conditions governing final payment hereunder except that the Owner may retain an amount equal to 150% of the cost of the performance of such incomplete Work as estimated by the Architect.

3.10.2 Final Completion of Components. The Owner does not intend to accept partial occupancy of components. If partial occupancy is later desired a separate change order will be executed.

3.10.3 Partial Occupancy. In the event partial occupancy becomes appropriate, which decision shall be at the sole discretion of the Owner, a Change Order will be executed and partial occupancy will be governed by the following:

3.10.3.1 Written Agreement Required. The Owner may obtain beneficial use and occupancy of any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Construction Manager by Change Order, provided such use and occupancy is consented to by the insurer providing property insurance coverage, is authorized by public authorities having jurisdiction over the Work, and a written agreement establishing such occupancy is made in accordance with this Paragraph. Such partial use and occupancy may commence whether or not the portion is finally complete, provided the Owner and Construction Manager have agreed in writing by Change Order (a) to the commencement date for such partial use and occupancy, describing the portion of the Work covered by such use and occupancy, (b) to the respective responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and (c) to the period for correction of the Work and commencement of warranties required by the Contract Documents. Consent of the Construction Manager to partial use and occupancy shall not be unreasonably withheld. No use or occupancy by the Owner of any portion of the Work shall be deemed use or occupancy unless the written agreement required hereunder is executed.

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

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

3.10.4 No Substantial Completion. The Project must be finally complete before acceptance by the Owner. Substantial completion is not acceptable.

3.10.5 Final Completion of the Entire Project and Final Payment.

3.10.5.1 Notice Required. When the entire Project as defined in the GMP Change Order is completed, Construction Manager shall notify the Owner in writing of its intention to make an application to the Architect to certify Final Completion seven (7) days before the application is made.

3.10.5.2 Form of Notice. When the Construction Manager is ready for a final inspection, it shall give notice to the Architect with a copy to the Owner in the following words: "*The Work on the Project has been fully completed except as stipulated herein below, and it is requested that a final inspection be made promptly by the Architect. The following Work is incomplete through no fault of the Construction Manager: (List any Work which the Construction Manager regards as incomplete through no fault on its part).*" Upon such application, the Owner shall confirm the unexpended balance of the Construction Contingency.

3.10.5.3 No Inspection Without Prior Notice. No final inspection shall be made until such time as the Architect has received a notice in the exact form indicated above and a copy thereof has been received by the Owner.

3.10.5.4 Final Accounting. At the time Construction Manager gives notice to the Architect pursuant to this Paragraph, Construction Manager shall submit to the Owner a final accounting showing the total Actual Cost of the Work in such form as the Owner may reasonably require, accompanied by the following:

3.10.5.4.1 Documentation. All documentation (in proper form) required to be submitted by the Owner and Program Manager pursuant to any provision of this Agreement;

3.10.5.4.2 Certificates. Certificates and other documents as may be required to demonstrate that all payrolls, bills for materials and equipment, and other indebtedness and liabilities connected with the Work for which the Owner or the property thereof might in any way be responsible have been paid or otherwise satisfied;

3.10.5.4.3 Waivers.

3.10.5.4.3.1 Liens. Subject to Paragraph 3.10.5.7, full waivers of lien and general releases (to the extent not theretofore submitted) issued by the Construction Manager and by all Trade Contractors and Trade Suppliers who may claim through Construction Manager or its Trade Contractors, in favor of the Owner and its designees;

3.10.5.4.3.2 Claims. Subject to Paragraph 3.10.5.7, full waivers of lien and general releases for any claim theretofore asserted for damages resulting from injury or death to any employee, Trade Contactor, or the public at large or for any other claims theretofore asserted which might constitute a lien upon the property of Owner; and

3.10.5.4.4 Full Accounting. A full accounting of the Actual Cost and Contingency Cost of the Work. The Construction Manager shall be deemed to waive all rights to submit any claim for any cost incurred as of the date the request for final payment is submitted and for which proper documentation was not retained or does not exist;

3.10.5.4.5 Drawings and Specifications. One complete set of marked up drawings and specifications (record documents) showing actual locations of utilities and all changes and alterations made to the Work during construction;

3.10.5.4.6 Affidavits. All affidavits required by Subparagraph 4.3.8.6.11;

3.10.5.5 Certificate of Final Completion. The Architect, upon receipt of such application and required documentation from Construction Manager, shall make an inspection of the Work accompanied by the Construction Manager, Owner and User, and if the Work is finally complete, shall issue a Certificate of Final Completion, certifying that the Work is fully and finally complete and that all certificates of occupancy and permits necessary to permit the Owner to occupy and use the Project have been issued.

3.10.5.6 Payment. Upon the Architect's issuance of a Certificate of Final Completion under Paragraph 3.10.5.5, Owner shall pay to Construction Manager all amounts owed to Construction Manager for Actual Costs, Contingency Costs or Fees earned but not yet paid Construction Manager under the GMP Change Order, assuming all other conditions of the Agreement have been met.

3.10.5.7 Conditional Certificate. If a Certificate of Final Completion should be issued by Architect but for claims described in Paragraphs 3.10.5.4.3 and 3.10.5.4.4, Architect may, with the prior approval of Owner, in Owner's sole discretion, issue such Certificate, but Owner may condition such approval on the retention of such amounts from any sums due the Construction Manager, the certificate of insurance coverage or the provision of such other security, as the Owner shall determine necessary or appropriate to protect the interests of the Owner.

3.10.6 Prerequisites to Payment. Neither final payment nor any amounts withheld pursuant to Section 4, Part 3 shall become due until the Construction Manager submits to the Owner:

3.10.6.1 Statutory Affidavit. An affidavit (Statutory Affidavit) that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or Owner's property might be responsible or encumbered (less amounts withheld by the Owner) have been paid or otherwise satisfied, including unconditional waivers and releases upon final payment from all Trade Contractors, suppliers, material men, or other third parties that provided labor, services, equipment, or material to the Project, satisfying the requirements for such releases set forth in V.T.C.A., Property Code §53.085.

3.10.6.2 Non-Influence Affidavit. An affidavit (Non-Influence Affidavit) that no undue influence was used by the Construction Manager in obtaining the Project;

3.10.6.3 Consent of Surety. Consent to final payment by any surety having issued a performance or payment bond for any Work; and

3.10.6.4 Other. Other data establishing payment or satisfaction of obligations, such as receipts, releases and waiver of liens, claims, security interests or encumbrances arising out of the Contract Documents, to the extent and in such form as may be designated by the Owner.

3.10.7 Disbursement of Retainage. The Retainage under this Agreement shall be disbursed only after:

3.10.7.1 Satisfactory Performance. This Agreement shall have been performed to the satisfaction of the Owner in accordance with the Contract Documents, as evidenced by the signature of Architect on the Final Application and Certificate of Payment and approval by the Owner.

3.10.7.2 Lien Waivers. Owner shall have received from the Construction Manager a lien waiver or an affidavit to the effect that it and all its Trade Contractors and suppliers of labor and materials have been paid in full (which lien waiver or affidavit must be in form and substance sufficient as a matter of law to dissolve all liens or claims of lien for labor or service performed or rendered and materials supplied or furnished, in connection with the construction and installation of the Project), and with respect to this Agreement, the Construction Manager shall have provided to the Owner the Final Certificate of Occupancy for the building.

3.10.8 Failure to Provide Release or Waiver. If a Trade Contractor or other person or entity entitled to assert a lien against the Owner's property refuses to furnish a release or waiver required by the Owner the Construction Manager may furnish a notice from the surety on the payment bond that the lien is covered under the payment bond or a bond satisfactory to the Owner to indemnify the Owner against such lien. If such liens remain after the Owner makes payments to the Construction Manager in accordance with this Agreement, the Construction Manager shall indemnify the Owner for all loss and cost, including reasonable attorneys' fees incurred as a result of any and all such liens.

3.10.9 Final Application for Payment. When Final Completion of the Work has been achieved and the Contract Documents have been fully performed, the Construction Manager shall submit a Final Application for Payment to the Owner for the Work, and the Owner shall make final payment in accordance with the schedule for the paying of progress payments set forth in Section 4, Part 3.

3.10.10 Waiver of Claims. The making of final payment shall constitute a waiver of claims by the Owner, except those arising from:

3.10.10.1 Liens. Liens, claims, security interests or encumbrances arising out of the Agreement and unsettled;

3.10.10.2 Defective Work. Defective or non-conforming not in compliance with the requirements of the Contract Documents; or

3.10.10.3 Warranties. Terms of warranties required by the Contract Documents.

3.10.10.4 Indemnification of the Owner by the Construction Manager.

3.10.11 Acceptance of Final Payment by Construction Manager. Acceptance of final payment with respect to the Project shall constitute a waiver of all claims by the Construction Manager with respect to the Project.

3.10.12 Certification of Construction Manager Before Final Payment. Before submitting its Final Application for Payment, Construction Manager shall certify to the Owner the following:

3.10.12.1 Work Completed. Construction of the Project has been completed substantially in accordance with the Contract Documents and all labor, services, materials, and supplies used in such construction have been paid or provided for;

3.10.12.2 Necessary Facilities Complete. All other facilities necessary in connection with the construction of the Project have been constructed, acquired, and installed substantially in accordance with the Contract Documents;

3.10.12.3 Work Paid For. All costs and expenses incurred as required by the Contract Documents, have been paid or provided for. The Architect shall certify (to the best of its knowledge and belief) the matters covered by the clauses above.

3.10.13 Continued Right to Audit. Approval of an Application for Payment by the Owner shall not foreclose the right of the Owner to examine the books and records in accordance with the Contract Documents to determine the correctness and accuracy of any item.

3.10.14 Records; Access; Audits.

3.10.14.1 Construction Manager Oversight. Construction Manager shall oversee the receipt of all materials, the use of all equipment, and the doing of all labor entering into the performance of the Work; shall retain all invoices, checks and other records showing billing and payment for materials, equipment and labor going into the performance of the Work; shall maintain books of account with respect to the performance of the Work; and shall require its Trade Contractors to maintain similar records throughout the Project and for a period of four (4) years from the date of Final Completion. Said records shall be maintained by the Construction Manager and its Trade Contractors during the course of the project and until the issuance of the Final Certificate of the Architect.

3.10.14.2 Access. Construction Manager and its Trade Contractors shall, at reasonable times and upon request at any time during the progress of the Work or during the required record retention period, afford the Owner and Program Manager access to the Site and to the aforesaid books and records of account, wherever located, as they relate to the Work and determination of the cost thereof for such examination and audit by Owner or by a designated representative of the Owner as Owner may elect. Such right of access, examination and audit includes the right to obtain access to and to examine and audit Construction Manager's and each of its Trade Contractors' home office records relating to the Work. Owner may make copies of any records which Owner and Program Manager have the rights to access, examine, and audit.

3.10.14.3 Audit. If the Owner so requests at any time subsequent to the execution of this Agreement, and within anytime until the records are turned over to the Owner, Construction Manager shall have an audit made by an independent certified public accountant, selected by the Owner, of Construction Manager's determinations of Actual Cost and Contingency Costs, with Owner to pay all reasonable costs incurred by Construction Manager for same, including all fees charged by the accountant to the extent such costs exceed any amount determined to be due the Owner as a result of such audit. The Construction Manager shall in all agreements with Trade Contractors a provision that the Owner shall have the same rights with respect to Trade Contractors.

3.10.15 Payments Withheld. The Architect or Owner may withhold or, on account of subsequently discovered evidence, nullify the whole or a part of any certificate to such extent as may be necessary to protect the Owner from loss on account of:

- (a) Defective Work not remedied
- (b) Claims filed or reasonable evidence indicating probable filing of claims.
- (c) Failure of the Contractor to make payments properly to subcontractor or for materials or labor.
- (d) A reasonable doubt that the contract can be completed for the balance then unpaid.
- (e) Damage to another contractor or to some third party.
- (f) Failure to maintain a rate of progress in accordance with the Project Progress Schedule.
- (g) Failure to supply enough skilled workmen or proper materials.

When the above grounds are removed, payment shall be made for amounts withheld because of them.

SECTION 4 - COMPENSATION

PART 1 - GENERAL.

4.1.1 General.

4.1.1.1 Pre-Construction Consulting Services Fee. For the pre-construction consulting services provided by the Construction Manager, the Owner shall pay to the Construction Manager a pre-construction fee not in excess of to the amount shown in Exhibit A.

4.1.1.2 Construction Overhead Costs. The maximum fee for construction overhead cost (Agreement) is inclusive of all direct and incidental expenses including but not limited to travel, sustenance, reproduction, salaries, wages, home and field office expenses, and those cost listed in Article 1.5.4 and is the maximum amount the Owner shall be liable to Construction Manager for overhead cost. The maximum fee for construction overhead costs is shown in Exhibit A.

4.1.1.3 Construction Manager's Fee. Construction Manager's fee for the Construction Phase shall be the amount shown in Exhibit A.

4.1.1.4 Stated Cost Limitation. The Guaranteed Maximum Price shall not be in excess of the amount shown in Exhibit A.

4.1.1.5 Basis of Compensation. For the Construction Manager's complete and timely performance of Work, the Owner shall pay the Construction Manager an amount not to exceed, in any event or for any reason, the Guaranteed Maximum Price as shown in the executed Agreement, as adjusted by Change Orders, if any, signed by both parties.

4.1.1.6 Method of Compensation. The Owner shall compensate the Construction Manager in accordance with Section 4 and the other provisions of this Agreement.

4.1.1.7 Payment Schedule. The Pre-Construction Fee payable under Paragraph 4.1.1.1 shall be paid monthly in proportion to the services actually performed. Construction Manager shall submit not later than the tenth (10th) day of any month an invoice for the proportionate part of the Consultation Fee which represents the services actually performed for the period subsequent to the period covered by any prior invoice to the end of the preceding month. If and to the extent approved by Owner, the amount of such invoice shall be paid by Owner promptly.

4.1.1.8 Effect of GMP Change Order. When Construction Manager Proposes a GMP Change Order, the unbilled balance of the Pre-Construction Consulting Services Fee shall be included in the Construction Manager's Fee of the proposed GMP Change Order and upon acceptance of the GMP Change Order by Owner, the GMP Change Order shall exclusively govern the compensation to Construction Manager for all services thereafter provided by Construction Manager under Article 1.2.3 and all services theretofore provided for which payment has not been made or application for payment made or invoice submitted.

4.1.2 Construction Manager's Fee

4.1.2.1 Basis of Fee. The Construction Manager's fee is the amount, established by and agreed to by both parties, which is the full amount of compensation due to the Construction Manager as profit and overhead, and for any and all expenses of the Project not included and identified as a Cost of the Work, provided that the Construction Manager performs all the requirements of the Contract Documents within the time limits established. The Fee includes the amount listed in Paragraph 4.1.1.1 for Preconstruction Consulting Services.

4.1.2.2 Adjustments in the Construction Manager's Fees. The Construction Manager's Fee can only be changed by a written Change Order executed by both parties. The Fee can only be adjusted for changes in the scope of the Work, which includes without limitation the management of the replacement of an insured or uninsured loss, or for delays in the Work not caused by the Construction Manager, excluding delays due to normal weather conditions.

4.1.3 Effect of Delays.

4.1.3.1 Delay of Drawings. If the Architect shall fail to prepare Construction Documents 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 to the 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 Estimated Cost Component of the GMP Change Order shall be increased by such additional Actual Costs as Construction Manager may reasonably incur as a result of the Architect's failure to perform provided that Construction Manager shall make a timely claim therefore. The Construction Manager shall not, however, be entitled to an increase in its Construction Manager's Fee.

4.1.3.2 Delay of Shop Drawings Review. If the Architect shall fail to respond to Shop Drawings submitted by Construction Manager in accordance with the Shop Drawing Approval Schedule as set forth in the GMP Change Order, Construction Manager shall give notice of same to the Architect and to the Owner, and if within seven (7) business days of the issuance of the notice, the Architect does not respond to the subject Shop Drawings submitted by Construction Manager, then and in that event Estimated Cost Component of the GMP Change Order shall be increased by such

additional Actual Costs as Construction Manager may reasonably incur as a result of the Architect's failure to perform provided that Construction Manager shall make a timely claim therefore. The Construction Manager shall not, however, be entitled to an increase in its Construction Manager's Fee.

4.1.3.3 Change in Tax Rates. If the rate of sales, use, payroll or other similar direct taxes on materials, equipment, or labor required for the performance of the Work shall increase above the rate in force on the date of the GMP Change Order, then the Estimated Cost Component (but not the Fee Component) of the GMP Change Order shall be increased by the amount of additional taxes incurred by Construction Manager as a result of such change in rate.

4.1.4 Time for Monetary Claims.

4.1.4.1 Time. Except as specified below, any claim by Construction Manager for an increase in the GMP Change Order under Article 1.7.1 shall be made within seven (7) 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 for claims with respect to such event, within the period specified by the Contract Documents.

4.1.4.2 Method of Filing Claim. A claim made under Paragraph 1.4.10.1 shall be made as provided in Paragraph 1.6.1.3.

4.1.4.3 Claims for Delay. Any claim by Construction Manager for an increase in the GMP Change Order under Article 4.1.3 may be made, provided that notice required by that Paragraph 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.

4.1.4.4 Claims for Tax Increase. A claim under Paragraph 4.1.9.3 shall be made promptly after Construction Manager receives notice of such tax increase.

4.1.4.5 Claims Must Be In Writing. Any claim not made in writing to Owner within the foregoing time periods shall be deemed waived and shall not thereafter be valid. In the case of a continuing event, only one claim is necessary.

4.1.5 Limitation. The Construction Manager shall not be entitled to any increase in the Guaranteed Maximum Price or extension of the Date for Final Completion to the extent Construction Manager unreasonably delays acceptance or rejection of Construction Document Change Orders proposed under Paragraph 1.6.1.2 for the addition of Construction Documents to this Agreement, or as a result of Construction Manager's improper rejection of such proposed Change Orders.

4.1.6 Owner Duty to Pay.

4.1.6.1 GMP Components. In the event the Owner and Construction Manager shall enter into the GMP Change Order, the Owner shall pay to Construction Manager for the performance by the Construction Manager of the Work required thereunder, an amount not to exceed the Guaranteed Maximum Price set forth therein comprised of the following sums:

4.1.6.1.1 Construction Manager's Actual Cost. Construction Manager's Actual Cost for the Work described in the GMP Change Order, not to exceed the amount stated in the Estimated Cost Component thereof, subject to appropriate changes and adjustments as provided under this Agreement.

4.1.6.1.2 Lump Sum Amounts. In addition, where the Construction Manager performs Work on a lump sum basis, the Owner shall pay Construction Manager the fixed lump sum which together with Actual Costs shall not exceed the Estimated Cost Component of the Guaranteed Maximum Price. No Actual Costs incurred in the performance of Work on a lump sum basis shall be paid to Construction Manager. No Construction Manager's Fee shall be payable to Construction Manager on account of Work performed on a fixed lump sum basis in excess of any fee included in the fixed lump sum and the Construction Manager's Fee shall be reduced in the same proportion which the lump sum paid to Construction Manager for Work performed with its own forces bears to the Estimated Cost Component of the Guaranteed Maximum Price.

4.1.6.1.3 Contingency. Construction Contingency in the amount set forth in the GMP Change Order, which Owner shall pay to Construction Manager at such times and in such amounts as Construction Manager shall request to defray Contingency Costs described in Article 1.5.5. Design Contingency in the amount set forth in the GMP Change Order, which Owner shall pay to the Construction Manager at such time and in such amounts as the Construction Manager shall request to defray Contingency Costs described in Article 1.5.5.

4.1.6.1.4 Construction Manager's Fee. Construction Manager's Fee in the amount set forth in the GMP Change Order, subject to appropriate changes and adjustments as provided therein or under this Agreement.

4.1.7 Limitation of Owner Liability. The Owner shall not be liable to pay Construction Manager any amount for Work performed after the date of the GMP Change Order which, after the payment of such amount or any portion thereof,

would cause the aggregate amount paid to Construction Manager hereunder to exceed the Guaranteed Maximum Price, as adjusted herein.

4.1.8 Payments. Payment under this Section shall be made in accordance with Article 4.3.8 and other provisions of this Agreement.

4.1.9 Provision for Further Development of the Drawings and Specifications. As the Drawings and Specifications may not be finished 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 there from. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

4.1.10 Inclusion of Contingency.

4.1.10.1 Part of the Cost of the Work. The estimated Cost of the Work shall include the Construction Contingency, a sum established by the Construction Manager for the Construction Manager's use to cover costs arising under Article 1.5.5 and other costs which are properly reimbursable as Cost of the Work but not the basis for a Change Order. The estimated Cost of the Work shall also include the Design Contingency, a sum established by the Construction Manager for the Construction Manager's use to cover costs arising under Article 1.5.11 and other costs which are properly reimbursable as Cost of the Work but not the basis for a Change Order.

4.1.10.2 Agreement to Monitor. The Owner and the Construction Manager agree that the amount established will be monitored by both parties as provided by Section 1.5.13. The balance of any contingency fund will be returned to the Owner at the completion of the project. The Construction Manager will provide a full accounting of the status of the Construction Contingency to the Owner on a monthly basis until the Work is completed or the Contingency is exhausted, whichever comes first.

4.1.11 Construction Manager's Compensation Prior to Acceptance of GMP. Prior to the Owner's acceptance of Construction Manager's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, Construction Manager's compensation shall be limited to an amount equal to the sum of (i) all direct personnel expenses plus (ii) reimbursement of all reasonable out-of-pocket costs and expenses incurred in the performance hereunder with respect to such and a pro-rata portion of Project Fee. Prior to the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work, except as the Owner may specifically authorize in writing.

4.1.12 Modifications of Drawings and Specifications as a Result of Acceptance of GMP Proposal. The Owner shall authorize and cause the Architect to revise the Drawings and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the GMP Change Order. Such revised Drawings and Specifications shall be furnished to the Construction Manager in accordance with schedules agreed to by the Owner, Architect and Construction Manager. The Construction Manager shall promptly notify the Architect and Owner if such revised Drawings and Specifications are inconsistent with the agreed upon assumptions and clarifications. The Final Contract Documents, including Drawings and Specifications will be added to the Agreement by Change Order.

4.1.13 Taxes. The Guaranteed Maximum Price shall include in the cost of the Work only those taxes that are enacted at the time the Guaranteed Maximum Price is established, excluding any taxes on income and any taxes from which the Owner is exempt. Any changes in tax rate subsequent to the establishment of the Guaranteed Maximum Price shall be adjusted in accordance with Paragraph 4.1.3.3.

4.1.14 Abandonment Prior to Acceptance of GMP Proposal. In the event that Owner does not proceed with the Project, Owner or Construction Manager shall have the right to terminate this Agreement as to such Project, whereupon Construction Manager shall be compensated, as compensation for services rendered hereunder. Compensation shall be limited to an amount equal to the sum of (i) all direct personal expenses plus (ii) reimbursement of all reasonable out-of-pocket expenses incurred in the performance hereunder with respect to such and Project fee (as provided for in Article 1.7.2).

4.1.15 Effect of Acceptance of the GMP Proposal. By executing the GMP Change Order, the Construction Manager and the Owner agree that any and all discussions, changes, adjustments, or modifications to the Construction Manager's proposal have been properly identified and included, in some form or fashion, in the Contract Documents. By executing the GMP Change Order, the Construction Manager, in its fiduciary role and capacity, certifies that the facility described in the Contract Documents and further identified in the Construction Manager's proposal, can be constructed at a cost not to exceed the Guaranteed Maximum Price and within the time period shown in the Project Schedule included in the Construction Manager's proposal.

PART 2 - PAYMENT FOR PRECONSTRUCTION PHASE SERVICES.

4.2.1 Basis of Compensation. For the services described above, the Construction Manager will be reimbursed for its actual time based on the agreed upon wage rates set forth in Exhibit J and costs incurred in the performance of the Work.

4.2.2 Payment Schedule. The Pre-Construction Fee payable under Paragraph 4.1.1.1 shall be paid monthly in proportion to the services actually performed. Construction Manager shall submit not later than the tenth (10th) day of any month an invoice for the proportionate part of the Consultation Fee which represents the services actually performed for the period subsequent to the period covered by any prior invoice to the end of the preceding month. If and to the extent approved by Owner, the amount of such invoice shall be paid by Owner promptly.

4.2.3 Payment Due. Payments are due and payable thirty (30) days from the date the Construction Manager's proper invoice is received by the Owner.

4.2.4 Construction Manager's Fee. Each monthly invoice shall include a pro-rata portion of the Construction Manager's fee based on the Approved Development Schedule and the Construction Manager's projected Cash Flow. As the schedule is adjusted, each subsequent invoice will be adjusted to provide for the allocation of the Fee throughout the life of the Project.

4.2.5 Effect of GMP Change Order. When Construction Manager Proposes a GMP Change Order, the unbilled balance of the Construction Manager's fee shall be included in the Fee Component of the proposed GMP Change Order and upon acceptance of the GMP Change Order by Owner, the GMP Change Order shall exclusively govern the compensation to Construction Manager for all services thereafter provided by Construction Manager and all services theretofore provided for which payment has not been made or application for payment made or invoice submitted.

PART 3 - PAYMENT FOR CONSTRUCTION PHASE SERVICES

4.3.1 Schedule of Values. Before the first Application for Payment, the Construction Manager shall submit to the Architect a Schedule of Values allocated to various portions of the construction Work, prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This Schedule of Values, as approved by the Owner, will be used as a basis for reviewing the Construction Manager's Applications for Payment. Each Application for Payment will be submitted and reviewed based on percentage completion of the Schedule of Values.

4.3.2 Applications for Payment. By the twenty-fifth day (25th) of each month, the Construction Manager shall submit to the Architect itemized Applications for Payment in the form attached hereto as Exhibit K. The Construction Manager shall submit no more than one (1) Application for Payment during each month. An updated Progress CPM must accompany each of the Construction Manager's Applications for Payment. The Architect will review each Application for Payment and make recommendations to the Owner by the fifth (5th) of the month following the month in which the Construction Manager submits its Application for Payment.

4.3.3 Timing of Payments. No later than the thirtieth (30) day of the month following Owner's timely approval of an Application for Payment (in the form required by this Agreement) from the Construction Manager, and to the extent it has approved the Application, it shall pay to the Construction Manager 100% of all Actual Costs and Contingency Costs properly incurred by the Construction Manager during the preceding period (less retainage, if applicable, as provided herein), subject to adjustment on account of any prior overpayment attributable to error of Construction Manager, Architect, or Owner, whether discovered by audit or otherwise. Within seven(7) days after receiving an approved Application for Payment, the Owner will notify the Construction Manager of any disputed amounts. The Owner and the Construction Manager agree to use their best efforts to resolve all disputes concerning the disputed amounts within thirty (30) days of the Owner's notice to the Construction Manager of the dispute.

4.3.4 Retainage.

4.3.4.1 First Half of Project. Through the first half of the Project, as determined by value completed to date, the amount that Owner pays on any Application for Payment will be equal to the amount requested in such Application for Payment less any disputed amounts and less retainage in an amount equal to five percent (5%) of the amount for which payment is requested, with respect to all Work covered by such Application for Payment (the "Retainage.")

4.3.5 Representations of Construction Manager. The Application for Payment constitutes a representation by the Construction Manager to the Owner that (i) the construction has progressed to the point indicated; (ii) the quality of the Work covered by the application is in accordance with the Contract Documents; and (iii) the Construction Manager is entitled to payment in the amount requested.

4.3.6 Payment Not Acceptance. Neither any progress payment nor any partial or entire use or occupancy of the Project by the Owner shall constitute an acceptance of Work not in accordance with the Contract Documents.

4.3.7 Construction Manager's Warranty. The Construction Manager hereby warrants to the Owner that, subject to Owner making payments to the Construction Manager in accordance with the Contract Documents:

4.3.7.1 Title to Work. Title to Work, materials and equipment covered by an approved Application for Payment will pass to the Owner either by incorporation in construction or upon receipt of payment by the Construction Manager, whichever shall occur first;

4.3.7.2 No Liens. Work, materials and equipment covered by any previously approved Applications for Payment are free and clear of liens, claims, security interests or encumbrances, hereinafter referred to as "liens";

4.3.7.3 No Encumbrance. No Work, materials or equipment covered by an approved Application for Payment will have been acquired by the Construction Manager, or any other person performing Work at the site or furnishing materials or equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Construction Manager or such other person.

4.3.8 Payments to Construction Manager under a Component or GMP Change Order.

4.3.8.1 Applications for Payment. On or before the twenty fifth (25th) day of each month, the Construction Manager shall prepare and submit to the Owner, through the Architect, for review and approval by the Architect, an Application for Payment for the total Actual Costs, Contingency Costs and lump sum amounts due with respect to the Work performed since the preceding pay period, plus that portion of Construction Manager's Fee earned during the pay period. Applications for Payment from Construction Manager shall be accompanied by applications for payment submitted to Construction Manager by its Trade Contractors and by invoices received from its Trade Suppliers. If requested by Owner, Construction Manager's Applications for Payment shall be supported by releases of liens and copies of canceled checks for Work from all first tier Trade Contractors and Trade Suppliers for which payment has previously been made by the Owner, and such documentation and detailed information as may be reasonably required to substantiate the validity

of the Actual Costs, Contingency Costs, lump sum, and Fee amounts requested. The Owner may refuse to pay any item or items contained in any such Application for Payment until and unless documentation and details are submitted to the reasonable satisfaction of the Owner. Each Application shall also be accompanied by certified payroll from the Construction Manager and a written schedule which sets out the quantities and costs of each item of Actual Cost and Contingency Cost for which payment is requested. Such schedule shall be accompanied by Construction Manager's affidavit under seal before a notary public that the costs of such items of Actual Cost and Contingency Cost do not, to the best of Construction Manager's knowledge and belief, exceed current costs for like services or materials. In addition, after the entry of a GMP Change Order, the Construction Manager shall furnish a statement indicating the dollar amount of the Estimated Cost and Contingency Components of the GMP Change Order which has been obligated by Construction Manager, together with the Construction Manager's estimate of the cost to complete the Work. Applications for Payment by Construction Manager under this Article 4.3.8 shall be in such form as may be approved by the Owner and the Architect. Each Application for Payment under this Article shall also bear or be accompanied by a certificate from the Architect in the form specified by Owner. Applications for payment by Trade Contractors to Construction Manager which are to accompany Construction Manager's Application for Payment to the Owner shall be in the same form as Construction Manager employs for its Application for Payment, except that applications for payment from Trade Contractors need not themselves bear or be accompanied by a certificate of the Architect.

4.3.8.2 Time for Approval or Rejection. Within seven (7) business days after the receipt of an approved Application for Payment from Architect, Owner shall approve payment of same, or notify Construction Manager in writing of its reasons for withholding approval. The Owner may withhold payment on account of a breach of this Agreement by Construction Manager, its failure to perform hereunder, its failure to provide information it is required to provide to the Owner hereunder, or on account of any ground which permits the withholding of payments under the Contract Documents.

4.3.8.3 Omitted.

4.3.8.4 Payment of Fee.

4.3.8.4.1 Prior to GMP. With respect to Component Change Orders prior to the GMP Change Order, the Owner shall also pay monthly Construction Manager's Fee proportionately to the ratio which the Actual Costs for the Work performed under the Component Change Order bears to the Trade Contract sum stated in the applicable Component Change Order less retainage, if applicable.

4.3.8.4.2 After GMP. After a GMP Change Order, Construction Manager's Fee shall be paid on a monthly basis and proportionate to the ratio the Actual Costs incurred for Work on the Project bear to the Estimated Cost Component of the GMP Change Order, less retainage.

4.3.8.5 Payment Withheld. The Owner may withhold payment only on account of a breach of this Agreement by Construction Manager, its failure to perform hereunder, or its failure to provide information it is required to provide to the Owner hereunder, or under other circumstances as may be permitted by the Agreement or the Construction Manager's Proposal.

4.3.8.6 Retention.

4.3.8.6.1 Trade Contractors. Ten percent (10%) of the amounts due by Construction Manager to each Trade Contractor or Trade Supplier shall be held by the Owner hereunder as retention until the Work performed by each such Trade Contractor or Trade Supplier is fifty percent (50%) of the value completed to date and fifty (50%) of the schedule completed to date, at which time no further retention shall be withheld by Owner if the manner of completion and progress of the Work under the Trade Contract and, after a GMP Change Order, under the GMP Change Order are reasonably satisfactory and approved by the Owner and the Architect so certifies.

4.3.8.6.2 Construction Manager's Work. Ten percent (10%) of the amounts due Construction Manager for Work performed by its own forces as a Trade Contractor and done on a lump sum basis, shall be held by the Owner as retention, until said Work is fifty percent (50%) complete, at which time no further retention shall be withheld by the Owner if the manner of completion and progress of the Work performed by Construction Manager's own forces and, after a GMP Change Order, under the GMP Change Order are reasonably satisfactory and the Architect so certifies.

4.3.8.6.3 Force Account Work. As to Work performed by Construction Manager's own forces as a Trade Contractor and done on an Actual Costs plus a fee basis (i.e., by force account), ten percent (10%) retention shall be withheld by the Owner on the fee component only and not on any of Construction Manager's Actual Costs until such time as the Work done by force account is fifty percent (50%) complete, at which time no further retention shall be withheld by Owner if the manner of completion and progress of the Work performed by Construction Manager's own forces and, after a GMP Change Order, under the GMP Change Order are reasonably satisfactory and the Architect so certifies.

4.3.8.6.4 Reinstate Retainage. The Owner may reinstate retainage with respect to any Work described in Paragraphs 4.3.8.6.1 through 4.3.8.6.3 if Work thereafter performed under the Trade Contract or by Construction Manager, as the case may be, is unsatisfactory or if it reasonably appears that the Work performed under the Trade Contract or by Construction Manager, as the case may be, cannot be completed by the time stated for the completion of same in the then current Project Progress Schedule. The Owner may also reinstate retainage if the Work on the entire Project is unsatisfactory as a whole or as a whole falls behind the time stated for the completion of same in the then current Project Progress Schedule.

4.3.8.6.5 Retainage Release. The retainage withheld as to each Trade Contractor or Trade Supplier under Paragraph 4.3.8.6.1 above or as to Work done by Construction Manager's own forces under with respect to any Component of the Project shall be released upon Final Completion of that Component Worked on by said Trade Contractor, Trade Supplier or by Construction Manager's own forces upon the request for its release by the Construction Manager and certification by the Architect that said Component of the Work is finally complete and satisfactory unless grounds exist for withholding payment on account of other defaults by Construction Manager, including Work performed by other Trade Contractors.

4.3.8.6.6 Retainage on Fee. Five percent (5%) of the amounts due Construction Manager for its Fee under a Component Change Order and under the GMP Change Order shall be held by the Owner hereunder as retention until the entire Project is fifty percent (50%) complete, at which time no further retention shall be withheld by Owner if the manner of completion and progress of the Work thereafter is reasonably satisfactory and the Architect so certifies.

4.3.8.6.7 Reinstate Retainage on Fee. The Owner may reinstate retainage with respect to Construction Manager's Fee as described in Paragraphs 4.3.8.6.6 if Work thereafter performed under the GMP Change Order is unsatisfactory or if it reasonably appears that the Work performed there under cannot be completed by the time stated for the completion of same in the then current Project Progress Schedule.

4.3.8.6.8 Release Retainage on Fee. The retainage withheld as to Construction Manager's Fee under Paragraph 4.3.8.6.6 above shall be released upon Final Completion of the entire Project upon the request for its release by the Construction Manager, and certification by the Architect that said Work is finally complete and satisfactory, unless grounds exist for withholding payment on account of other defaults by Construction Manager, including Work performed by its Trade Contractors.

4.3.8.6.9 Retainage on Contingency Cost. Five percent (5%) of the amounts due Construction Manager as Contingency Costs which are payable to a Trade Contractor or Trade Supplier shall be held by the Owner as retention until Final Completion and the issuance by the Architect of a certificate of final completion, but no retention shall be held on other Contingency Costs due to Construction Manager.

4.3.8.6.10 Owner May Elect Not to Withhold Retainage. Upon request by Construction Manager, Owner may elect not to withhold any retention or amounts due a Trade Supplier if the Trade Supplier has fully performed all delivery obligations under its Trade Contract or to permit Construction Manager to take advantage of discounts or for other reasons in the best interest of the Owner.

4.3.8.6.11 Affidavits. Before receiving any portion of the retainage the Construction Manager will be required to furnish a non-influence affidavit and a statutory affidavit in the exact form as shown in Section 5.

4.3.8.6.12 Reimbursable, etc. Direct reimbursable, general conditions, temporary facility expenditures, Construction Manager's Overhead Costs are subject to retainage as described above.

4.3.8.6.13 Schedule of Payments. The Construction Manager shall keep the Owner advised in a timely manner of schedule of payments reasonably anticipated to be made to the Construction Manager hereunder.

4.3.8.6.14 Warranty Retainage. The Owner shall retain the sum of \$25,000 from the Construction Manager's fee as a warranty retainage. Any unused warranty retainage shall be paid to the Construction Manager on the first (1st) anniversary of the effective date of the warranty period.

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

**CONSTRUCTION MANAGEMENT AGREEMENT
BETWEEN CONSTRUCTION MANAGER AND OWNER**

THIS AGREEMENT made by and between Fort Bend County, Texas, by and through its governing body, the Fort Bend County Commissioners Court, hereinafter referred to as "the Owner," and Phoenix I Restoration and Construction, Ltd., hereinafter referred to as "the Construction Manager."

WITNESSETH

WHEREAS, the Construction Manager accepts the relationship of trust and confidence established between him and the Owner by this Agreement; and,

WHEREAS, the Construction Manager covenants with the Owner to furnish his best skill and judgment and to cooperate with the Architect/Engineer in furthering the interests of the Owner; and,

WHEREAS, the Construction Manager agrees to furnish efficient business administration and superintendence and to use his best efforts to complete the Work in an expeditious and economical manner consistent with the interest of the Owner.

NOW, THEREFORE, the Construction Manager and the Owner for the considerations hereinafter named agree as follows:

AGREEMENT

- 1. SCOPE OF THE WORK.** The Construction Manager shall furnish all of the materials and perform all of the Work shown on the drawings or described in the specifications for the Project and shall do everything required by this Agreement, the Specifications, the Drawings, and all Addenda.
- 2. TIME OF COMPLETION.** The Work to be performed under this Agreement shall be commenced upon execution of the Agreement and shall be completed in accordance with the approved Progress Schedule.
- 3. THE GUARANTEED MAXIMUM PRICE (GMP).** A GMP will be established in accordance with Section 3, Part 4 of the Construction Manager's General Requirements.
- 4. PAYMENTS.** Payments on account of the Agreement shall be made in accordance with Section 4, Parts 1 and 2 of the Construction Manager's General Requirements.
- 5. FINAL PAYMENT.** Final payment will be made in accordance with Section 3, Part 10 of the Construction Manager's General Requirements.
- 6. THE CONTRACT DOCUMENTS.** The Contract Documents for the Project shall consist of the Agreement (as defined in 1.1.2.4), the Construction Manager's Proposal, 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.
- 7. BONDS.** The Construction Manager shall furnish both a performance bond and a payment bond and shall pay the premium thereon. The performance bond shall guarantee the full performance of the contract.
- 8. FULL PERFORMANCE.** The Owner and the Construction Manager hereby agree to the full performance of all the conditions and stipulations contained in this Agreement and the Construction Manager's General Requirements.
- 9. APPLICABLE LAW.** This Agreement and all rights, privileges and responsibilities shall be interpreted and construed according to the laws of the State of Texas. Venue for any action regarding this Agreement shall lie exclusively in Fort Bend County, Texas.

10. NO CONFLICT OF INTEREST. The Construction Manager covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance required under this Contract. The Construction Manager further covenants that in the performance of this Contract, no person having any such interest shall be employed or contracted with.

11. RELATIONS WITH COUNTY OFFICIALS AND EMPLOYEES. Construction Manager acknowledges that Construction Manager occupies in this Agreement a position of trust and confidence, and will use best skill and judgment. Contractor will cooperate with Owner and Architect, and work with others as necessary to fulfill the goals and intents of this Agreement. Contractor and all Subcontractors and their employees are prohibited from giving or lending money, services or any other thing of value, to any official, employee or representative of Owner, and should it appear that this provision has been violated, Commissioners' Court, at its option, may terminate any and all agreements that may exist between the said Construction Manager and the Owner.

12. NO ASSIGNMENT. This Agreement and the proceeds of this Agreement may not be assigned nor may the performance there under be assigned, without the prior written consent of the Owner.

13. NO WAIVER. The failure of the Owner at any time to require performance by the Construction Manager of any provision hereof, shall in no way affect the right of the Owner thereafter to enforce any provision or any part of the Contract, nor shall the failure of the Owner to enforce any breach of any provision hereof to be taken or held to be a waiver of such provision, or as a waiver, modification or recession of the Agreement itself.

EXECUTION PAGE TO FOLLOW

IN WITNESS WHEREOF, the COUNTY OF FORT BEND, TEXAS, has caused this Agreement to be signed in duplicate by its County Judge, duly authorized to execute the same in its behalf by Commissioners Court. Order approved by the Court on the date attested by the County Clerk. This Agreement shall not become effective until approved by Owner.

OWNER
Fort Bend County, Texas
Ltd.

CONSTRUCTION MANAGER
Phoenix I Restoration and Construction,

BY: *Robert E. Hebert*
Robert E. Hebert, County Judge

BY: *Dale C. Sellers*
Dale C. Sellers,
President and CEO

Date: 8-7-2012

Date: 8-1-2012

ATTEST:

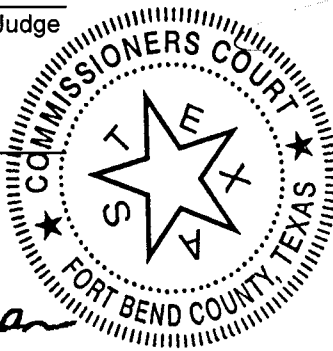
ATTEST:

BY: *Dianne Wilson*
Dianne Wilson, County Clerk

BY: *Amanda Martin*
Amanda Martin

Date: 8-7-12

Date: 8/1/2012



APPROVED AS TO FORM:

By: *Mary E. Reveles*
Mary E. Reveles
First Assistant County Attorney

APPROVED:

By: *Don Brady*
Don Brady, Director
Facilities Management & Planning Department

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in an amount not to exceed \$ 3,700,000⁰⁰, plus ~~_____~~ in Reimbursable Expenses, to accomplish and pay the obligation of Fort Bend County in the foregoing matter.

Robert Ed Sturdivant
Robert Ed Sturdivant, County Auditor

Exhibits A-L

Travelers Bond No.
Federal Bond No.
F&D/Zurich Bond No.

**Conforms with the American Institute of Architects AIA Document A312
PERFORMANCE BOND**

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

SURETY (Name and Principal Place of Business):

Travelers Casualty and Surety Company of America
One Constitution Plaza
Hartford, CT 06183

Federal Insurance Company
15 Mountain View Road
Warren, NJ 07061

Fidelity and Deposit Company of Maryland
1400 American Lane
Schaumburg, IL 60196

Zurich American Insurance Company
3910 Keswick Road
Baltimore, MD 21211

OWNER (Name and Address):

CONSTRUCTION CONTRACT

Date:

Amount:

Description (Name and Location):

BOND

Date: (Not earlier than Construction Contract Date):

Amount:

Modifications to this Bond: None

CONTRACTOR AS PRINCIPAL:

Company: _____

Signature: _____

Name & Title:

SURETIES:

Company: Travelers Casualty and Surety Company of America

Signature: _____

Name & Title: _____ Attorney-in-Fact

Company: Federal Insurance Company

Signature: _____

Name & Title: _____ Attorney-in-Fact

Company: Fidelity and Deposit Company of Maryland

Signature: _____

Name & Title: _____ Attorney in Fact

Company: Zurich American Insurance Company

Signature: _____

Name & Title: Attorney-in-Fact

1. The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference. The Surety to this bond, for value received, hereby stipulates and agrees that no change or changes, extension of time or extensions of time, alteration or alterations or addition or additions to the terms of the contract or to the Work to be performed there under, or the specifications or drawings accompanying same, or the exercise of the Owner's right to do Work pursuant to Articles 3.1.24 or 1.3.7, shall in any wise affect its obligation on this bond, and it does hereby waive notice of any such change or changes, extension of time or extensions of time, alteration or alterations or addition or additions to the terms of the contract or to the Work or to the specifications or drawings.
2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.
3. If pursuant to the Contract Documents the Contractor shall be declared in default by the Owner under the Construction Contract, the Surety shall promptly perform this bond agreement in accordance with its terms and conditions. If there is no Owner Default, the Surety's obligation under this bond shall arise after
 - 3.1 The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and the Surety agree on the methods of performing the Construction Contract, the Surety shall indicate the date on which the remedy or performance will commence, and it shall then be the duty of the Surety to give prompt notice in writing to the Owner immediately upon completion of (a) the remedy and/or correction of each default, (b) the remedy and/or correction of each item of condemned Work, (c) the furnishing of each omitted item of Work, and (d) the performance of the contract. The Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default; and
 - 3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Subparagraph 3.1; and
 - 3.3 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.
4. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
 - 4.1 Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract; or
 - 4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; or
 - 4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, request that the Owner prepare a contract for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default; or
 - 4.4 Waive its right to perform and complete, arrange for completion or obtain a new contractor and with reasonable promptness under the circumstances:

- .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, tender payment therefor to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner citing reasons therefor.

5. If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Subparagraph 4.4, and the Owner refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

6. After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:

6.1 The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

6.2 Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; and

6.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

7. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators or successors.

8. The Surety hereby waives notice of any change, including changes of time to the Construction Contract or to related subcontracts, purchase orders and other obligations.

9. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

10. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.

11. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

12. DEFINITIONS

12.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

12.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

12.3 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.

12.4 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

MODIFICATIONS TO THIS BOND ARE AS FOLLOWS: NONE

Travelers Bond No.

Federal Bond No.

F&D/Zurich Bond No.

Conforms with the American Institute of Architects AIA Document A312

(*) Attach Power of Attorney

Travelers Bond No.
Federal Bond No.
F&D/Zurich Bond No.

Conforms with the American Institute of Architects AIA Document A312

PAYMENT BOND

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

SURETY (Name and Principal Place of Business):

Travelers Casualty and Surety Company of America
One Constitution Plaza
Hartford, CT 06183

Federal Insurance Company
15 Mountain View Road
Warren, NJ 07061

Fidelity and Deposit Company of Maryland
1400 American Lane
Schaumburg, IL 60196

Zurich American Insurance Company
3910 Keswick Road
Baltimore, MD 21211

OWNER (Name and Address):

CONSTRUCTION CONTRACT

Date:
Amount:
Description (Name and Location):

BOND

Date: (Not earlier than Construction Contract Date):
Amount:
Modifications to this Bond: None

CONTRACTOR AS PRINCIPAL:

Company: _____

Signature: _____

Name & Title:

SURETIES:

Company: Travelers Casualty and Surety Company of America

Signature: _____
Name & Title: Attorney-in-Fact

Company: Federal Insurance Company

Signature: _____
Name & Title: Attorney-in-Fact

Company: Fidelity and Deposit Company of Maryland

Signature: _____
Name & Title: Attorney in Fact

Company: Zurich American Insurance Company

Signature: _____
Name & Title: Attorney-in-Fact

1. The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.
2. With respect to the Owner, this obligation shall be null and void if the Contractor;
 - 2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and
 - 2.2 Defends, indemnifies, and holds harmless the Owner from claims, demands, liens or suits by any person or entity whose claim, demand, lien or suit is for the payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.
3. With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.
4. The Surety shall have no obligation to Claimants under this Bond until:
 - 4.1 Claimants who are employed by or have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.
 - 4.2 Claimants who do not have a direct contract with the Contractor:
 - .1 Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and
 - .2 Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and
 - .3 Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.
5. If a notice required by Paragraph 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.
6. When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:
 - 6.1 Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.
 - 6.2 Pay or arrange for payment of any undisputed amounts.
7. The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

8. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
9. The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable to payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.
11. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
12. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.
13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
14. Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

15. DEFINITIONS

- 15.1 Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas power, light, heat, oil gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.
- 15.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.
- 15.3 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

MODIFICATIONS TO THIS BOND ARE AS FOLLOWS: NONE

(* Attach Power of Attorney)

Pre-Work Outline

Contractor:	Date:
Location:	Job Number:
Contact:	Completed By:

Description of Operations:

Operations Subcontracted:

Items Discussed

1.	Safety Manual
2.	Hazardous related (insp, cntl, labeling)
3.	Pre-job Planning (coord mtgs, pre-lift, airport)
4.	New Ee Training/Orient (badges, drugs, retrain)
5.	Periodic Ee Training
6.	Self-insp Pgm (documented?)
7.	Acc Inv & F/U
8.	PPE (mandatory?)
9.	Fire Prot (lines, source, trning)
10.	Emerg Prep (fa, rescue)
11.	Light Duty (mg'd care contact)
12.	Contractor Coord (comp persons ID's)
13.	Trench/Exc (CP)
14.	Elevated Work (CP)
15.	Cranes (insp, baskets, X-mas treeing)
16.	Heavy Equip (Training)
17.	Material Handling (stg, taglines, rigging)
18.	Fuel Stg (loc, grding, dikes, mtl self close)
19.	Hot work (permits, blankets)
20.	Electrical (gfci's, cord insp)
21.	Occ Hlth & Sfty (sanitary, noise)
22.	Confined spaces (permits, watches)
23.	Security/Site Cntl (passes)

NON-INFLUENCE AFFIDAVIT

COUNTY OF FORT BEND

STATE OF TEXAS

I do solemnly swear on my oath that as to the Agreement, dated 1 August, 2012, between Fort Bend County, Texas and Phoenix Restoration and Construction Ltd owner(s) and I have no knowledge of the exertion of any influence or the attempted exertion of any influence on the firm on behalf of which this affidavit is made in any way, manner, or form in the purchase of materials, equipment, or other items involved in construction, manufacture, or employment of labor under the aforesaid Agreement by any employee, officer, or agent of the Owner, or any person connected with the county government of Texas, County of Fort Bend, in any way whatsoever.

This 1 day of August, 2012.

[Signature] (L.S.)
Signature

President/CEO of G.P.
Title

Phoenix Restoration and Construction Ltd
Construction Company

COUNTY OF Dallas

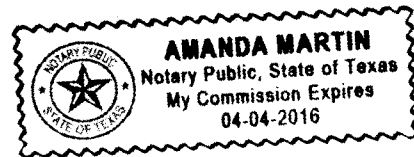
STATE OF Texas

Personally before me, the undersigned authority, appeared Dale C. Sellers who
(NAME OF PERSON SIGNING THE AFFIDAVIT)
is known to me to be an official of the firm of Phoenix Restoration & Constr, Ltd who, after being duly sworn,
(NAME OF Construction Manager)
stated on his oath that he had read the above statement and that the same is true and correct.

[Signature]
Notary Public

My Commission expires April 4, 2016

this 1st day of August, 2012.



STATUTORY AFFIDAVIT

COUNTY OF _____ STATE OF _____

FROM: _____
Construction Manager

TO: _____
Owner

Re: Contract entered into the _____ day of _____, 20____, between the above-mentioned parties for the construction of Project No. _____ located at _____

KNOW ALL MEN BY THESE PRESENTS:

1. The undersigned hereby certifies that all work required under the above Contract has been performed in accordance with the terms thereof, that all material men, Trade Contractors, mechanics, and laborers have been paid and satisfied in full, and that there are no outstanding claims of any character [including disputed claims or any claims to which the Construction Manager has or will assert any defense] arising out of the performance of the Contract which have not been paid and satisfied in full except as listed herein below:.....

[Instructions to Construction Manager-ENTER THE WORD "NONE" OR LIST THE NAMES OF CLAIMANTS

2. The undersigned further certifies that to the best of his knowledge and belief there are no unsatisfied claims for damages resulting from injury or death to any employees, Trade Contractors, or the public at large arising out of the performance of the contract, or any suits or claims for any other damage of any kind, nature, or description which might constitute a lien upon the property of the Owner.

3. The undersigned makes this affidavit for the purpose of receiving final payment in full settlement of all claims against the Owner arising under or by virtue of the contract, and acceptance of such payment is acknowledged as a release of the Owner from any and all claims arising under or by virtue of the contract.

This _____ day of _____, 20__.

Signature (L.S.)

Title

Firm

COUNTY OF _____ STATE OF _____

Personally before me, the undersigned authority, appeared _____, who is known
(NAME OF PERSON SIGNING AFFIDAVIT)

to me to be an official of the firm of _____ who, after being duly sworn, stated on his
(NAME OF CONSTRUCTION MANAGER)

oath that he had read the above statement and that the same is true and correct.

Notary Public

My commission expires _____

This _____ day of _____, 20__.

TWO YEAR BOND ON ROOFS AND WALLS

STATE OF TEXAS

COUNTY OF _____

Firmly Bound. Know all men by these presents, that we (Construction Manager) as Principal, and (Name Of Surety), as Surety, are held and firmly bound unto _____,

(Insert Name of Owner)

Owner, in the sum of _____ Dollars (\$ _____) for the payment of which well and truly to be made and done, we bind ourselves, our executors and administrators, our successors and assign, jointly and severally, by these presents.

Condition of Obligation. The condition of the above obligation is such that WHEREAS (Construction Manager) has entered into a Contract with Owner dated (enter date of contract), for construction of Project No. _____.

Warranty. WHEREAS, the said (Construction Manager) warrants with respect to the said work that for a period of two years from the date of the execution of the final certificate of the Architect, the roofs of the building (or buildings) and roofs of covered passages, including but not limited to roof decking; deck sheathing; material used as a roof base or insulation over which roof is applied; roofing materials; promenade decks or any other work on the surface of the roof; flashing; base flashing; counter flashing; metal work, gravel stops; or roof expansion joints shall be absolutely watertight and free from all leaks. At no expense to the Owner, the Construction Manager will make repairs to any defects which may develop in the work including but not limited to: blisters, exposed felts, ridges, wrinkles, splits, warped insulation and loose flashing, in a manner compatible to the system and acceptable under industry standards and in accordance with the construction specifications. The Construction Manager also warrants that for the same two-year period the walls of the building (or buildings) including but not limited to: vertical and/or horizontal expansion joints, below and/or above grade waterproofing, below and/or above grade damp-proofing, thru-wall flashing, damp course flashing and waterproofing of joints at openings in walls including but not limited to door perimeters, window perimeters, vents and pipe openings shall be absolutely watertight and free from all leaks, seepage or dampness, and that he shall, at no expense to the Owner, make repairs to any defects which may develop in the work in a manner compatible to the system and acceptable under industry standards and in accordance with the construction specifications, Provided, however: That the following are excluded from the warranty:

- (a) Defects or failures resulting from abuse by the Owner or inadequate maintenance.
- (b) Defects in design including but not limited to those involving failure of:
 - (1) Structural Frame
 - (2) Load bearing walls
 - (3) Foundations

nor shall the (Construction Manager) be responsible for correction of leaks resulting from said failure.

- (c) Damage caused by fire, tornado, hail, hurricane, acts of God, wars, riots, or civil commotion.
- (d) The Construction Manager is not an insurer nor is he a guarantor of the suitability of adequacy of design. Any other provisions of this bond to the contrary notwithstanding, the Construction Manager shall not be required to remedy any unsuitable or inadequate design.

Leaks or Defect. WHEREAS the said (Construction Manager) agrees that should any leaks or defects occur in the roofs or walls of the said (Name and Number of Project) the said (Construction Manager) will promptly remedy the said leaks or defects and pay for any damage to other work of said Project resulting there from, except, however, that when this instrument is executed by a Trade Contractor this Contract, shall, insofar as the Trade Contractor is concerned, extend only to the work executed by said Trade Contractor.

Full Force and Effect. NOW, THEREFORE, the condition of this obligation is such that if the (Construction Manager) shall in all things promptly and faithfully perform and comply with the terms and conditions hereinbefore set forth, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed this _____ day of _____, 20__.

Principal

By: _____

TITLE _____

WITNESS

_____ WITNESS
Surety

By: _____
TITLE _____

(* Attach Power of Attorney

Instructions for execution by Construction Manager

- (a) If the firm is a partnership, all members of the partnership must execute.
- (b) If the firm is a corporation, the president must sign, the secretary must attest, and the seal of corporation must be affixed.
- (c) If the firm operates as a sole proprietorship, the proprietor must execute.

SPECIMEN CERTIFICATE OF MANUFACTURER

INSTRUCTIONS FOR PREPARATION OF CERTIFICATE: To be acceptable, the certificate must be prepared in the form indicated by this specimen on the official letterhead of the manufacturer. No portions of the certificate may be omitted. Attached is a copy of the Contract provision under which the certificate is required. The Authority needs only one copy of the certificate. If equipment of a manufacturer is not installed in strict compliance with the recommendations of the manufacturer or if in the design of the work the equipment is not applied in strict compliance with the recommendations of the manufacturer, a letter from the manufacturer should be forwarded to the Construction Manager [with copies to the Architect and the Owner] setting forth a list of the deviations from the recommendations of the manufacturer and stating what remains to be done in order to bring the work into strict compliance with the recommendations of the manufacturer.[See "Definitions" set forth on the last page of this specimen]. Prior to calling upon the representative of the manufacturer for performance of the services necessary to enable him to execute a certificate in accordance with this specimen, it is the obligation of the Construction Manager to have installed the work in strict compliance with the recommendations of the manufacturer [See Article E-53 of the Agreement], and it is likewise the obligation of the Construction Manager to have put the equipment in good operating condition in absolute and final readiness for the "start-up", "testing", and "placing into operation" as defined herein below by the representative of the manufacturer.

Date: _____

Insert name and address of Owner

Re: Certificate of _____ - that equipment or components furnished by it has [or have, as the case may be] been installed in strict compliance with its recommendations and is [or are, as the case may be] operating properly at PROJECT NO. _____

Gentlemen:

1. We certify through our duly authorized and acting agent that the following item [or items, as the case may be] furnished by us to the Project named in the caption was [or were, as the case may be] started up, tested, and placed in operation by our authorized field representative on [enter the date on which the field representative performed the start-up, test, and placing into operation] and is [or are, as the case may be] operating properly:

[List the item or items furnished to the job. Show catalogue number or numbers.]

2. We certify further that the aforesaid equipment was installed in strict compliance with our recommendations as published by us in the following document [or documents, as the case may be]:

[Insert the date, name or other positive means of identifying the exact document or documents in which the recommendations for installation and use of the item or items are published.] (*)

3. A copy of the aforesaid document(s) is (are) attached hereto.

This _____ day of _____, 20__.

JOHN DOE CORPORATION

By: _____
Authorized Representative

(*) The date must be shown
[Attachment-Copy of Contract provision-(Article E-67)]

DEFINITIONS:

1. "Start-up" is defined as putting the equipment into action.
2. "Testing" is defined as performing such testing as is stipulated in the Contract Documents to be performed.
3. "Placing into operation" is defined as operating the equipment for a sufficient period of time for the determination to be made that it is performing properly.

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

EXHIBIT A
CONTRACT PARTICULARS

Project No. SOQ 12-050

Project Name and Description: Fort Bend County Historic Courthouse Restoration

1. Existing Documents. The following is a list of existing documents which the Construction Manager has reviewed and taken into consideration in preparing his proposal for fees and general conditions.

PROGRAM: **FORT BEND COUNTY COURTHOUSE REHABILITATION**
PROJECT NO. 12006
ISSUED FOR 100% CONSTRUCTION DOCUMENTS
15 JUNE 2012
(Including Plans & Specifications)

2. Notice. Notice in accordance with Section 1.1.2.32 shall be given to the following addresses:

CONSTRUCTION MANAGER: Phoenix I Restoration and Construction, Ltd.
9411 Hargrove Drive
Dallas, Texas 75220
Telephone No. 214-902-0111
Fax No. 214-904-9635

OWNER: Fort Bend County Commissioners Court
301 Jackson St., Suite 719
Richmond, Texas 77469
Attn: Robert E. Hebert, County Judge
Facsimile Number: (281) 341-8609

USER: County Judge & County Attorney
& their respective offices, Fort Bend County

ARCHITECT: Bailey Architects
4100 South Shepherd
Houston, Texas 77098
713-524-2155
Attention: Ray Leiker, AIA, Vice President

3. Owner's Representative: All notices sent to the Owner at the above address shall also be sent to the Owner's Representative. The Owner's Representative for this project shall be:

Donald G. Brady, Director
Facilities Management and Planning
301 Jackson St.
Richmond, Texas 77469

4. Stated Cost Limitation: The amount allowable for the Guaranteed Maximum Price shall in no event exceed \$3,700,000.00.

5. CM's Preconstruction Fee. The amount allowable for the Construction Manager's Preconstruction Fee shall in no event exceed \$16,000.00, includes monthly preconstruction fee of \$8,000.00 and Maximum monthly preconstruction Incidental and Direct Expenses of \$2,000.00.

6. CM's Construction Phase Fee: The amount allowable for the Construction Manager's Construction Phase Fee shall in no event exceed \$129,500.00 based on \$9,250.00 per month for fourteen (14) months.

7. CM's Overhead Costs: The amount allowable for the Construction Manager's Overhead Costs (General Conditions) shall in no event exceed \$333,000.00, including Builder's Risk, Permits and Insurance Premiums based on a construction cost of \$3,700,000.00.

APPROVED:

CONSTRUCTION MANAGER

By

Date:

OWNER


FORT BEND COUNTY

By:

Robert E. Hebert, County Judge

Date:

I hereby certify that funds are available in the amount of \$ 3,700,000.⁰⁰ to accomplish and pay the obligation of the Fort Bend County under this contract.


Ed Sturdivant, Fort Bend County Auditor