Board of Trustees

Regular Board Meeting

Supplemental Documents
for 2013 Bond Construction Program

Tuesday, February 24, 2015
5:30 p.m.

1. REQUEST FOR PROPOSALS FOR CONSTRUCTION MANAGER AT RISK..... 1 - 22

2. CONSTRUCTION MANAGER-AT-RISK CONTRACT..... 23 - 143

3. OWNER / ENGINEER CONTRACT..... 144 - 169

SOUTH TEXAS COLLEGE

REQUEST FOR PROPOSALS
FOR
CONSTRUCTION MANAGER AT RISK (One Step)
SELECTION PROCESS UNDER
(TEXAS GOV'T CODE 2269.253)

2013 Bond Construction Program
RFP No. 14-15-1045

PROPOSAL MUST BE RECEIVED BEFORE:
2:00 p.m., CST XXXXXXXX
Opening will be public

MAIL PROPOSAL TO:

South Texas College
Purchasing Department
P O Box 9701
McAllen, TX 78502

HAND DELIVER AND/OR EXPRESS MAIL TO:

South Texas College
Purchasing Department
3200 W Pecan Building N Rm 145
McAllen, TX 78501

NOTE: PROPOSALS must be time stamped at **the South Texas College Purchasing Department** before the hour and date specified for receipt of responses.

Responses shall be submitted in an opaque envelope plainly marked with the name and address of the entity submitting a response. The response envelope must contain the following: 2013 South Texas College Bond Program Projects, the RFP No.14-15-1045 and the date and time of the submittal deadline.

A contract will **NOT** be awarded on opening day. The South Texas College will only award after study and consideration of proposals. Acceptance of proposals shall not constitute or imply the College's acceptance of the suitability of the respondent or response. Prices and other proposal details will be divulged after the award, as allowed.

For information regarding any part of this proposal, call:

Mr. Gerry Rodriguez, AIA
Director of Facilities Planning and Construction
South Texas College
3200 W Pecan Blvd Bldg N-179
McAllen, Texas 78501
Phone: (956) 872-3737
Fax: (956) 872-3747

E-mail: gerry@southtexascollege.edu

Or

Ms. Diana Bravo Gonzalez, AIA
Senior Project Manager
Broaddus & Associates
(The Construction Program Manager)
1100 E Jasmine Ave Ste 102
McAllen, Texas 78501
Phone: (956) 688-2307
Fax: (956) 688-2315
E-mail: dgonzalez@broaddusassociates.com

NOTE: Proposals received after the 2:00 p.m. CST deadline will not be accepted and will be returned to proposers unopened.

DRAFT

TABLE OF CONTENTS

1. Introduction

1.1 Description of South Texas College
1.2 Background, Special Concerns, and Definitions
1.3 Objective

2. Notice to Respondents

2.1 General
2.2 Submittal Deadline
2.3 Contacts
2.4 Type of Contract
2.5 Inquiries and Interpretations
2.6 Public Information
2.7 Contract Award Process
2.8 Criteria for Award
2.9 Respondent's Acceptance of Evaluation Methodology
2.10 Commitment
2.11 Local Business Participation
2.12 Key Events Schedule
2.13 Eligible Respondents

3. Proposal Requirements

3.1 General Instructions
3.2 Preparation and Submittal Instructions
3.3 Bonding
3.4 Pricing
3.5 Submittal Checklist

4. General Terms and Conditions

4.1 General
4.2 Definitions
4.3 Entire Contract
4.4 Time of Performance
4.5 Default
4.6 Termination
4.7 Payment
4.8 Contract Amendments
4.9 Independent Contractor Status
4.10 Compliance with Law
4.11 South Texas College Right to Audit
4.12 Access to Documents
4.13 Title and Risk of Loss
4.14 Acceptance of Products and Services
4.15 Sales and Use Tax
4.16 Insurance and Bonds
4.17 Indemnification
4.18 Force Majeure
4.19 Other Benefits

DRAFT

4.20 Non-Disclosure
4.21 Publicity
4.22 Assignment
4.23 Assignment of Overcharge Claims
4.24 Severability
4.25 Non-Waiver of Defaults
4.26 Patent and Copyright
4.27 Texas Public Information Act
4.28 Freedom of Access and Use of Facilities
4.29 Observance of the South Texas College Rules and Regulations
4.30 Section Headings
4.31 Notices
4.32 Governing Law
4.33 Owner's Special Conditions

5. Specifications

5.1 General
5.2 Specifications/Scope of Work
5.3 Delivery
5.4 Miscellaneous Provisions
5.5 Liquidated Damages

6. Execution of Offer

7. Pricing & Delivery Schedule

8. Respondent Questionnaire

EXHIBITS

A. List of Groups/Projects
B. Sample Contract
C. Pricing and Delivery Schedule
D. Proposed Schedule
E. STC Space Programs

DRAFT

SECTION 1

INTRODUCTION

1.1 Description of South Texas College (the "College")

It is the intent of South Texas College to select multiple Construction Manager at Risk firms to provide preconstruction and construction phase services for various groups of campus projects included in the 2013 Bond Construction Program. Due to the number and specialized use of the buildings included in this construction program, firms with construction experience directly related to each specialized use are encouraged to present such information as part of their response. South Texas College's buildings requiring specialized construction include Science Technology Engineering and Math, Nursing and Allied Health, Law Enforcement, Library, Industrial Technology, Cafeteria and General Classrooms equipped with the latest instructional technology. Attached Exhibit "A" describes the construction projects with associated estimated square footage and projected cost included in this Bond Construction Program.

1.2 Background and Special Concerns

A. Definition: A "construction manager-at-risk" is a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for construction, rehabilitation, alteration, or repair of a facility at the contracted price as a general contractor and provides consultation to the College regarding construction methods, techniques and materials during and after the design process of the facility.

B. Architects and Engineers: Before or concurrently with selecting a construction manager-at-risk, the College shall select or designate an engineer or architect who shall prepare the design documents for the project and who has full responsibility for complying with the Texas Engineering Practice Act (Article 3271a, Texas Revised Civil Statutes), or the Texas Architectural Practice Act (Article 249a, Texas Revised Civil Statutes), as applicable.

C. Trade Contractors and Subcontractors: A construction manager-at-risk shall as instructed publicly advertise and solicit either competitive bids or competitive sealed proposals from trade contractors or subcontractors for the performance of all major elements of the work other than the minor work that may be included in general conditions. A construction manager-at-risk may seek to perform portions of the work itself if the construction manager-at-risk submits its bid or proposal for those portions of the work in the same manner as all other trade contractors or subcontractors and if the College determines that the construction manager-at-risk's bid proposal provides the best value for the institution. The College's determination in such matters is final.

D. Receipt of Bids or Proposals: The construction manager-at-risk and the College shall receive and open all trade contractor or subcontractor bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process. All bids and proposals shall be made public within seven (7) days after the date of final selection.

E. Acceptance of Recommendations for Trade Contractors and Subcontractors: If the construction manager-at-risk reviews, evaluates, and recommends to the College a bid or proposal from a trade contractor or subcontractor, but the College requires a bid or proposal from another trade contractor or subcontractor to be accepted, then, pursuant to the terms of the Contract, the College shall compensate the construction manager-at-risk

by a change in price, time, or guaranteed maximum cost for any additional cost and risk, which has been demonstrated to the College's satisfaction and as required by the Contract, that the construction manager-at-risk may incur because of the College's requirement that another trade contractor or subcontractor bid or proposal be accepted.

F. Scope, Schedule, and Budget: Detailed information about scope, schedule, and budget are contained in section 4.2 herein below.

1.3 Objective

The objective is for the South Texas College is to select one Construction Manager-at-Risk organization for each project group. By selecting the Construction Manager-at-Risk, it is the desire of the South Texas College to complete all bond-funded facilities by May of 2017.

DRAFT

SECTION 2

NOTICE TO RESPONDENTS

2.1 General

South Texas College is accepting proposals for a construction Manager-at-risk contract, pursuant to the one step process noted in Sec. 2269.253 Selection Process of the, *Texas Goverment Code*, in accordance with the terms, conditions and requirements set forth in this Request for Proposal ("RFP"). This RFP provides sufficient information for interested parties to prepare and submit submittals for consideration by the College.

RESPONDENTS ARE CAUTIONED TO READ THE INFORMATION CONTAINED IN THIS RFP CAREFULLY AND TO SUBMIT A COMPLETE RESPONSE TO ALL REQUIREMENTS AND QUESTIONS AS DIRECTED.

2.2 Submittal Deadline

The College will accept proposals until 2:00 p.m. CST XXXXXXXX. Proposals will be publicly read shortly after 2:00 p.m. CST.

2.3 Authorized Designated Person for College

South Texas College respectfully requests that none of the short list respondents contact any member of the South Texas College Board or Executive Administration. This will allow for a process that will be based upon submission information and a fair evaluation of criteria established within this RFP.

Any questions or concerns regarding this Request for Proposal shall be directed to:

Gerry Rodriguez, AIA
Director of Facilities Planning and Construction
South Texas College
3200 W Pecan Blvd Bldg N-179
McAllen, Texas 78501
Phone: (956) 872-3737
Fax: (956) 872-3747
E-mail: gerry@southtexascollege.edu

Or

Diana Bravo Gonzalez, AIA
Senior Project Manager
Broaddus & Associates
(The Construction Program Manager)
1100 E Jasmine Ave Ste 102
McAllen, Texas 78501
Phone: (956) 688-2307
Fax: (956) 688-2315
E-mail: dgonzalez@broaddusassociates.com

The College specifically requests that Respondents restrict all contact and questions regarding this RFP to the above named individuals.

DRAFT

Rider 1: The Construction Program Manager

2.4 Type of Contract

After proposals are received in response hereto, and an award of contract is made, the successful respondent will be required to enter into a contract in the form of the Construction Manager-at-Risk Contract attached hereto.

Submission of a proposal indicates Respondent's acceptance of the terms and conditions of the Construction Manager at Risk Contract, attached hereto for reference Exhibit B

ANY SIGNIFICANT CHANGES TO THE CONTRACT WILL REQUIRE THE OWNER TO ALLOW OTHER RESPONDENTS AN OPPORTUNITY TO SUBMIT REVISED PROPOSALS SO AS TO PRESERVE THE NOTION OF FAIR COMPETITION. PLEASE SUBMIT ISSUES, QUESTIONS OR COMMENTS REGARDING CONTRACT AS PART OF RESPONSE.

2.5 Inquiries and Interpretations

Responses by the College to inquiries which directly affect an interpretation or change to this RFP will be issued in writing by addendum (amendment) and mailed to all parties recorded by the College as having received a copy of the RFP. All such addenda issued by the College prior to the time that proposals are received shall be considered part of the RFP, and the Respondent shall be required to consider and acknowledge receipt of such in its proposal. Firms receiving this RFP other than directly from the College are responsible for notifying the College that they are in receipt of a proposal package and for providing a name and address in the event an addendum is issued.

Only those inquiries the College replies to which are made by formal written addenda shall be binding. Oral and other interpretations or clarifications will be without legal effect. Respondents must acknowledge receipt of all addenda in Section 6.4 of this RFP.

There will be a pre-proposal meeting on XXXXXXXX, at 2:00 p.m. CST, at the Cooper Center on the South Texas College Pecan Campus (North Side). At this meeting, Respondents will have an opportunity to ask any questions regarding this RFP. This pre proposal meeting is not mandatory but highly encouraged.

2.6 Public Information

The College considers all information, documentation and other materials requested to be submitted in response to this solicitation to be of a non-confidential and/or non-proprietary nature and therefore shall be subject to public disclosure under the Texas Public Information Act (the "TPIA", Texas Government Code, Chapter 552.001, et seq.) after contracts are entered into with Successful Respondents.

Respondents are hereby notified that the College adheres to state laws with respect to disclosure of information under the TPIA.

2.7 Contract Award Process

An award to one or more Respondents for the construction Manager-at-risk services specified herein will be made following a procedure using competitive sealed proposals. Proposals will be opened publicly to identify the names of the Respondents, and their proposals. Other contents of the proposals will be kept confidential to preclude disclosure of the contents of the proposal prior to award. Within 30 days after the date of opening the proposals, the College will evaluate and rank each proposal with respect to the

DRAFT

selection criteria contained in the Request for Proposals (RFP). After opening and ranking, an award may be made on the basis of the proposals initially submitted, without discussion, clarification or modification, or, the College may discuss with the selected Respondent offers for cost reduction and other elements of the Respondent's proposal. If the College determines that it is unable to reach a contract satisfactory to the College with the selected Respondent, then the College will terminate discussions with the selected Respondent and proceed to the next Respondent in order of selection ranking until a contract is reached or the College has rejected all proposals. The College may not disclose any information derived from the proposals submitted from competing offers in conducting such discussions. The College reserves the right to award a Contract for all or any portion of the requirements proposed by reason of this request, award multiple Contracts, or to reject any and all proposals if deemed to be in the best interests of the College and to re-solicit for proposals, or to reject any and all proposals if deemed to be in the best interests of the College and to temporarily or permanently abandon the procurement. If the College awards a contract, it will award the contract to the offeror or offerors whose proposal is the most advantageous to the College and offers the best value, considering price and the evaluation factors set forth in the RFP. The contract file must state in writing the basis upon which the award is made.

2.8 Criteria for Award

The Respondent(s) selected will be the Respondent whose proposal, as presented in the response to this RFP, are the most advantageous and offer the best value to the College.

Responses will be evaluated by a group representing South Texas College Staff and Program Manager. The criteria for evaluation of proposals, and selection of the qualified respondent(s), will be based on the factors listed below:

A. Respondent's proposed fees set forth in Section 6. (100 points)

B. Respondent's capability to perform the construction management services for the project. (100 points)

C. Respondent's project execution plan & technical competence as a construction manager. (100 points)

D. Respondent's utilization of project scheduling, throughout the design and construction phases, in construction management. (100 points)

E. Respondent's utilization of a project cost control plan, in construction management, which will assure that the Owner's project budget shall not be exceeded. (100 points)

F. Respondent's capability to perform a quality control process during the entire project duration. (100 points)

G. Respondent's job site safety program. (100 points)

H. The Respondent's local participation plan in terms of adequacy & probable level of success. (100 points)

Consideration may also be given to any additional information and comments if they should increase the benefits to The College.

2.9 Respondent's Acceptance of Evaluation Methodology

Submission of proposals indicates Respondent's acceptance of the evaluation technique and Respondent's recognition that some subjective judgments must be made by South Texas College Staff and Program Manager during the determination of ranking order and award.

DRAFT

2.10 Commitment

Respondent understands and agrees that this RFP is issued predicated on anticipated requirements for South Texas College and that the College has made no representation, written or oral, that any such requirements be furnished under a Contract arising from this RFP. Furthermore, Respondent recognizes and understands that any cost borne by the Respondent which arises from Respondent's performance hereunder shall be at the sole risk and responsibility of Respondent.

2.11 Local Business Participation

It is desire of South Texas College to maximize local and Rio Grande Valley participation and to promote and encourage contracting and subcontracting opportunities for Locally Owned Businesses and labor in all contracts. Accordingly, the Construction Manager at Risk will be required to outline local participation plan and documentation thereof as projects move forward.

2.12 Key Events Schedule:

Pre Proposal Conference	XXXXX 2:00 CST
Receive RFP's	XXXXX 2:00 CST
Board Approval	XXXXXX, 2014
NTP Preconstruction Services	XXXXX, 2014
GMP	XXXXXX 2015
Substantial Completion	XXXXX 2015

2.13 Eligible Respondents

Only individual firms or lawfully formed formal business organizations may apply, unless, if the Respondent does not meet the foregoing criteria, the Respondent states in writing to the College that, if awarded the contract, it will lawfully form a formal business organization in a timely manner so as not to delay the Project. Any associates will be disqualified. (This does not preclude an applicant from having consultants.) The College will contract only with individual firms or formal organizations such as a) joint ventures, b) limited liability corporations, c) partnerships, or d) corporations authorized to do business in the State of Texas.

DRAFT

SECTION 3

PROPOSAL REQUIREMENTS

3.1 General Instructions

A. Respondents should carefully read the information contained herein, and submit a complete response to all requirements and questions as directed.

B. Proposals and any other information submitted by Respondents in response to this RFP shall become the property of the College.

C. The cost of a proposal is exclusively the responsibility of Offeror.

D. Submittals which are qualified with conditional clauses, or alterations, or items not called for in the RFP documents, or irregularities of any kind are subject to disqualification by the College, at its option.

E. Each proposal should be prepared simply and economically, providing a straightforward, concise description of the firm's ability to meet the requirements of this RFP. Emphasis should be on completeness, clarity of content, responsiveness to the requirements, and an understanding of the College's needs.

F. The College makes no guarantee that an award will be made as a result of this RFP, and reserves the right to accept or reject any or all proposals, waive any formalities or minor technical inconsistencies, or delete any item/requirements from this RFP or contract when deemed to be in the College's best interest. Representations made within the qualifications submittal and any subsequent proposal will be binding on responding firms. The College will not be bound to act by any previous communication or proposal submitted by the firms other than this RFP.

G. Firms wishing to submit a "No-Response" are requested to return the first page of the Execution of Offer (ref. Section 5). The returned form should indicate your company's name and include the words "No-Response" in the right-hand column.

H. Failure to comply with the requirements contained in this RFP may result in a finding that the respondent is not qualified and is ineligible to submit a proposal in response to any RFP.

3.2 Preparation and Submittal Instructions

A. Respondents must complete, sign and return the attached Execution of Offer, Section 5, as part of their qualifications proposal response. Proposals must be signed by Respondent's company official(s) authorized to commit such proposals. Failure to sign and return these forms will subject your proposal to disqualification.

B. Responses to this RFP should consist of answers to required questions in Section 7 Respondent Questionnaire. It is not necessary to repeat the question in your response; however, it is essential that you reference the question number with your response corresponding accordingly. In cases where a question does not apply or if unable to respond, reference the question number and indicate N/A (Not Applicable) or N/R (No Response), as appropriate. Briefly explain your reason when responding N/R.

DRAFT

C. Page Size, Binders and Dividers

Proposals must be typed or printed on letter-size (8-1/2" x 11") paper. The College requests that proposals be submitted in a binder. Preprinted material should be referenced in the proposal and included as labeled attachments. Sections should be divided by tabs for ease of reference. Number each side of each page consecutively, including letter of interest, brochures, licenses, resumes, supplemental information, etc. Submittals must be limited to one hundred (100) pages. Covers, table of contents and divider tabs will not count as pages, provided no additional information is included on those pages. Provide the number of copies of the submittal specified in the advertisement. Any submittals exceeding the one hundred (100) page limit will be disqualified.

D. Table of Contents

Include with the proposal a table of contents that includes page number references. The table of contents should facilitate easy reference of the sections of the proposal as well as separate attachments (which should be included in the main table of contents). Supplemental information and attachments included by your firm (i.e., not required) should be clearly identified in the table of contents and provided as a separate section.

E. Pagination

All pages of the proposal should be numbered sequentially within each section response in Arabic numerals (1, 2, 3, etc.) Attachments should be numbered or referenced separately.

F. Number of Copies

Submit a total of ten (10) complete copies of the entire response. An original signature must appear on the Execution of Offer (ref. Section 5) on at least one (1) copy submitted.

G. Submission

1. Ten (10) identical copies of the proposal including any supplemental printed material referenced with the RFP, must be submitted and received at the Purchasing Department of the College on or before the time and date specified, pursuant to the Notice to Respondents (ref. Subsection 2.2) and delivered to:

South Texas College
Purchasing Department
3200 W Pecan Building N Rm 145
McAllen, TX 78501

NOTE: Show the RFP Reference Number and submittal date in the lower left-hand corner of your sealed proposal envelope (box/container).

2. The materials submitted must be enclosed in a sealed envelope (box or container); the package must show clearly the submittal deadline; the project name number must be clearly visible; and name and the return address of the Respondent must be clearly visible.

3. Late proposals properly identified will be returned to Respondent unopened. Late proposals will not be considered under any circumstances.

DRAFT

4. Telephone proposals are not acceptable when in response to the Request for Proposals.

5. Facsimile ("FAX") proposals or digital submissions are not acceptable when in response to this Request for Proposals.

6. Proposals shall not exceed one hundred (100 pages).

3.3 Bonding Capacity

Attach a surety's acknowledgement of the respondent's aggregate and current bonding capacity. List the following information for projects currently under construction.

A. Current Projects
   1. Owner
   2. Location
   3. Total contract amount
   4. Balance to complete
   5. Expected date of completion

3.4 Pricing

Respondent must complete Pricing and Delivery Schedule Section 6:

A. Pricing reflects the full Scope of Work defined herein; inclusive of all associated cost for delivery, labor, insurance, taxes, overhead, and profit, or as otherwise defined, as appropriate.

B. The College will not recognize or accept any charges or fees to perform this work that are not specifically stated in the Respondent's proposal.

C. Cash or prompt payment discounts will not be considered in determining an award. All payment discounts offered will be taken, if earned and deemed in the College's best interest.

3.5 Submittal Checklist

Firms are instructed to complete, sign, and return the following documents as a part of their proposal submittal. Failure to return these documents may subject your proposal to disqualification.

Payment & Performance Bonds letter (ref. Section 3.3)
Signed and Completed Execution of Offer (ref. Section 5)
Pricing and Delivery Schedule (ref. Section 6)
Responses to Respondent's Questionnaire (ref. Section 7)
Specimen Contract & Construction Manager at Risk Contractor

hSECTION 4

SPECIFICATIONS

4.1 General

The College requests proposals from qualified and experienced firms for the 2013 South Texas College Bond Projects meeting the following minimum requirements stated in this Section.

4.2 Scope of Work – See attached Exhibit A
Estimated Construction Cost Limitations – See attached Exhibit A

DRAFT

The Construction Cost Limitations include Preconstruction Services, Construction Manager's Fees, Cost of Work, Allowances, and Contingencies is as per above program cost breakdown.

Respondents are instructed to carefully review all project information which has been provided to interested potential respondents.

4.3 Delivery

1. Schedule: A gant chart project schedule shall be provided as part of the RFP response for each Group.

2. Time will be of the essence in the performance of Contractor's duties. Failure of the Contractor to notify the College sufficiently in advance of inability to complete within the delivery schedule, shall grant the College the option of canceling the Contract, purchasing from the best available source, and charging the Contractor the difference between the Contract price and actual purchase, if any, plus cost of handling. Notwithstanding the foregoing, the College shall have no obligation to accept late performance or to waive timely performance by Contractor.

4.4 Miscellaneous Provisions

A. Personnel

Contractor shall maintain a staff of properly trained and experienced personnel to ensure satisfactory performance under this Contract.

1. Contractor shall assign to the College a designated representative who will be responsible for the coordination and administration of the College's requirements.

B. Project Execution

The College shall provide or contract for, independently of the construction manager-at-risk, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the facility by the College.

DRAFT

SECTION 5

EXECUTION OF OFFER

THIS EXECUTION OF OFFER MUST BE COMPLETED, SIGNED, AND RETURNED WITH RESPONDENT'S PROPOSAL. FAILURE TO COMPLETE, SIGN AND RETURN THIS EXECUTION OF OFFER WITH THE PROPOSAL SHALL RESULT IN REJECTION OF THE PROPOSAL.

SIGNING A FALSE STATEMENT MAY VOID THE SUBMITTED PROPOSAL OR ANY CONTRACTS OR OTHER CONTRACTUAL ARRANGEMENTS WHICH MAY RESULT FROM THE SUBMISSION OF RESPONDENT'S PROPOSAL, AND THE RESPONDENT MAY BE REMOVED FROM ALL PROPOSER LISTS AT THE COLLEGE. A FALSE CERTIFICATION SHALL BE DEEMED A MATERIAL BREACH OF CONTRACT AND, AT THE COLLEGE'S OPTION, MAY RESULT IN TERMINATION OF ANY RESULTING CONTRACT OR PURCHASE ORDER.

By signature hereon, Respondent acknowledges and agrees that (1) this RFP is a solicitation for proposal and is not a contract or an offer to contract; (2) the submission of a proposal by Respondent in response to this RFP will not create a contract between the College and Respondent; (3) the College has made no representation or warranty, written or oral, that one or more contracts with the College will be awarded under this RFP; and (4) Proposer shall bear, as its sole risk and responsibility, any cost which arises from Respondent's preparation of a response to this RFP.

By signature hereon, Respondent offers and agrees to furnish to the College the products and/or services more particularly described in its proposal, at the at the prices quoted in the proposal, and to comply with all terms, conditions and requirements set forth in the RFP documents and contained herein.

By signature hereon, Respondent affirms that he has not given, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with the submitted proposal.

By signature hereon, a corporate Respondent certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171, Texas Tax Code, or that the corporate Respondent is exempt from the payment of such taxes, or that the corporate Respondent is an out-of-state corporation that is not subject to the Texas Franchise Tax, whichever is applicable.

By signature hereon, Respondent represents and warrants that:

Respondent is aware of, is fully informed about, and is in full compliance with all applicable federal, state and local laws, rules, regulations and ordinances;

Respondent understands (i) the requirements and specifications set forth in this RFP and (ii) the terms and conditions set forth in the Contract under which Respondent will be required to operate;

Respondent, if selected by the College, will maintain insurance as required by the Contract;

All statements, information and representations prepared and submitted in response to this RFP are current, complete, true and accurate. Respondent acknowledges that the College will rely on such statements, information and representations in selecting the Successful Respondent. If selected by the College as the Successful Respondent, Respondent will notify the College immediately of any material change in any matters with regard to which Respondent has made a statement or representation or provided information.

DRAFT

By signature hereon, Respondent certifies that the individual signing this document and the documents made part of the RFP is authorized to sign such documents on behalf of the company and to bind the company under any contracts or other contractual arrangements which may result from the submission of Respondent's proposal.

By signature hereon, Respondent certifies that if a Texas address is shown as the address of the Respondent, Respondent qualifies as a Texas Resident Respondent as defined in Rule 1 TAC 111.2.

By signature hereon, Respondent certifies as follows:

"Under Section 2155.004, Texas Government Code, the vendor or applicant certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."

By signature hereon, Respondent certifies that no relationship, whether by relative, business associate, capital funding agreement or by any other such kinship exist between Respondent and an employee of any the College of Texas component, or Respondent has not been an employee of any the College of Texas component within the immediate twelve (12) months prior to your RFP response. All such disclosures will be subject to administrative review and approval prior to the College entering into any contract with Respondent.

By signature hereon, Respondent affirms that no compensation has been received for participation in the preparation of the specifications for this RFP. (ref. Section 2155.004 Texas Government Code).

Respondent represents and warrants that all articles and services quoted in response to this RFP meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Law (Public Law 91-596) and its regulations in effect or proposed as of the date of this solicitation.

By signature hereon, Respondent signifies his compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action.

By signature hereon, Respondent agrees to defend, indemnify, and hold harmless the College, all of its officers, agents and employees from and against all claims, actions, suits, demands, proceedings, costs, damages, and liabilities, arising out of, connected with, or resulting from any acts or omissions of Respondent or any agent, employee, subcontractor, or supplier of Respondent in the execution or performance of any contracts or other contractual arrangements which may result from the submission of Respondent's proposal.

By signature hereon, Respondent agrees that any payments that may become due under any contracts or other contractual arrangements which may result from the submission of Respondent's proposal will be applied towards any debt including, but not limited to, delinquent taxes and child support that is owed to the State of Texas.

Please complete the following:

Respondent's VIN No: _____

Respondent's FEI No: _____

DRAFT

If Sole Owner:

Respondent's SS No:_____

If a Corporation:

Respondent's State of Incorporation:_____

Respondent's Charter No:_____

Please identify each person who owns at least 25% of Respondent's business entity by first and last name:

_____	_____
Name	Name
_____	_____
Name	Name
_____	_____
Name	Name
_____	_____
Name	Name

Submitted and Certified By:

_____	_____
(Respondent's Name)	(Authorized Signature)
_____	_____
(Date)	(Printed Name/Title)

_____
(Telephone Number)

_____
(Street Address)

_____
(Facsimile Number)

_____
(City, State, Zip Code)

DRAFT

SECTION 6

PRICING AND DELIVERY SCHEDULE
See Exhibit C

SECTION 7

RESPONDENT QUESTIONNAIRE

Respondents are requested to submit a complete proposal to each of the below listed items. Proposals requiring additional space should be brief and submitted as an attachment to your proposal package. Please reference each response by its item number indicated below. Additionally, it is highly encouraged to respond to every criterion item below so as to allow for proper score and evaluation.

A. CRITERION: Respondent's proposed fees set forth in Section 6

1. Refer to Section 6, Pricing and Delivery Schedule

B. CRITERION: Respondent's previous experience with Construction Manager at Risk Construction Projects.

1. List a minimum of five and maximum of ten projects for which your firm has provided/is providing construction manager at risk services which are most related to these projects. For each of the listed projects, provide the following information:
    - Project description
    - Owner's contact person and contact information
    - Project architect and contact information
    - Construction cost (original GMP and final construction cost)

2. For past five years, please provide the firm's aggregate bond capacity for every year.

3. Have any sub-contractors or materials suppliers filed suit for non-payment. If yes, please summarize the nature of claim(s).

C. CRITERION: Respondent's capability to perform the construction management services for the project:

1. Describe your management plan for performing the work required of these projects and include your program for managing subcontractors and material providers.

2. Describe your method of subcontractor contract award process including review/approval by Owner.

3. List separately all key personnel to be employed on site and those to be employed in home office for these projects . Provide resumes for Project Manager, Project Superintendent, Cost Estimator, Safety Officer and other key support staff.

DRAFT

4. Describe your approach for partnering and team building at all levels for your preferred project groups.

5. Describe how you propose to interface with the design team and influence the design process.

6. Describe your firm's start-up and commissioning (closeout procedures) procedures for your preferred project groups.

7. Describe the pre-construction phase services to be provided by your firm for the preferred project groups.

D. CRITERION: Respondent's project execution plan, schedule, and technical competence as a construction manager:

1. Describe your construction execution plan, and schedule for your preferred project groups.

2. Describe the types of records, reports, monitoring systems, and information management systems which your firm will utilize.

3. Describe your plan for assuring that the project design meets the Owner's contract requirements.

4. Describe your procedures and objectives for reviewing the design and construction documents, constructability, value engineering process and providing feedback to the A/E team and Owner.

5. Describe your method of assuring that materials, equipment, and construction methods meet the Owner's design requirements.

6. Describe your firm's procedures for implementing the industry's "best practices" as defined by the Construction Industry Institute and similar organizations.

E. CRITERION: Respondent's utilization of project scheduling throughout the design and construction phases, as part of construction management.

1. Describe in detail the project scheduling system or methodology you propose to use on your preferred project group.

2. Describe your execution plan for meeting or shortening the Owner's schedule; during design; and during construction.

3. Describe any phased construction you anticipate or recommend for your preferred group of projects.

4. Describe your ability to provide a scheduling system utilizing Primavera Project Planner (P3).

F. CRITERION: Respondent's utilization of a project cost control plan, in construction management, which will assure that the Owner's project budget shall not be exceeded.

1. Describe your cost control methods and what procedures you will utilize to maintain the GMP within the Owner's budget for your preferred group of projects.

2. Describe your project financial plan and the projected monthly cash flow (draw-down) during the design and construction phases for your preferred group of projects.

DRAFT

3. Describe your cost control method for confirmation of subcontractor pricing with Owner.

4. Describe your firm's plans for cost reporting and tracking and change order management systems.

5. Describe your payment plan to the subcontractors and material suppliers.

6. Describe your cost estimating system using CSI format.

G. CRITERION: Respondent's capability to perform a quality control process during the entire project duration.

1. Describe your firm's quality control program for each phase for your preferred group of projects in detail.

2. Describe your quality control objectives for your preferred group of projects.

3. Identify the quality control team and their duties.

4. Describe how you will affect the quality control during the design process and development of construction documents.

5. Describe how you propose to control the quality of construction performed by your subcontractors for your preferred group of projects.

H. CRITERION: Respondent's job site safety program.

1. Describe your job site safety program plan and specific safety policies in which employees must be in compliance.

2. Identify the safety team, and their duties.

I. CRITERION: Service Support

1. Provide a minimum of three (3) reference letters, from previous project customers, which describe your firm's post construction quality regarding warranty service. Describe the extent to which your firm can utilize local sub-contractors and material suppliers when addressing warranty requests.

EXHIBITS TO THE RFP

The following documents are a part of the RFP and are provided for information purposes and will be incorporated into the Construction Manager at Risk Contract.

A. List of Groups/Projects
B. Draft Contract and Uniform General Conditions
C. Pricing and Delivery Schedule
D. Proposed Schedule

DRAFT

EXHIBIT C
SECTION 6

PRICING AND DELIVERY SCHEDULE
(Provide one Exhibit C for each project group proposed)

Proposal of: _____
(Company Name)

Group:_____

To: Gerry Rodriguez, AIA
Director of Facilities Planning and Construction
South Texas College
3200 W Pecan Blvd Bldg N-179
McAllen, Texas 78501
Phone: (956) 872-3737
Fax: (956) 872-3747
e-mail: gerry@southtexascollege.edu

Ladies and Gentlemen:

Having carefully examined all the requirements of this RFP, the form of Construction Manager at Risk (CM@R) Agreement with General and Supplementary Conditions, the programmatic documentation and any attachments to them, the undersigned Respondent proposes to furnish CM@R services as required for this Project on the following terms:

6.1 Pricing Schedule

a) RESPONDENT'S PRE-CONSTRUCTION PHASE SERVICES FEE: The Respondent shall identify a Pre-Construction Phase Fee, pursuant to the CM@R Agreement as follow:

Part I - Preconstruction Phase Services	%	Proposed Amount
Schematic Design Phase		$
Design Development Phase		$
Construction Document Phase		$
Part I - Preconstruction Phase Services Total		$

NOTE : Preconstruction services are complete at GMP Submission

b) RESPONDENT'S CONSTRUCTION PHASE SERVICES FEE: The Respondent shall identify a Construction Phase Fee, pursuant to the CM@R Agreement as follows:

Part II - Construction Phase Services	%	Proposed Amount
Construction Phase (Overhead & Profit)		$
Estimated General Conditions (See 6.1.c, below)		$
Contractor's Construction Contingency	2%	$
Contractor's Design Contingency (See 6.1.d, below)		$
Cost of Work (All the above subtracted from CCL)		$
Part I - Preconstruction Phase Services Total		$

c) RESPONDENT'S ESTIMATED GENERAL CONDITIONS COSTS: The Respondent shall identify General Conditions based on similar type projects as defined by Exhibit H of the Agreement, the General and Supplementary General Conditions and 6.2 Delivery Schedule (Note: General Conditions will be further negotiated as part of GMP Submission and commencement of Part II Construction Services).

d) RESPONDENT'S PROPOSED DESIGN CONTINGENCY COST: Based on 6.2 Delivery Schedule below and scope identified within this RFP, Respondent shall propose a Contractor's Design Contingency percentage amount that will be used at Contractor's discretion with Owner oversight and which falls within CCL and which will meets the terms of Agreement. All savings not utilized as part of buyout and unknowns will be returned to Owner. The GMP will be obtained at 50% CD's for pricing purposes only

6.2 Delivery Schedule

Respondent, having carefully examined the Owner's delivery schedule as described in Section 5.4 herein, agrees to furnish the Construction Management services based on the aforementioned delivery schedule.

See Exhibit D - Project Schedule

6.3 Payment Terms

The following payment term options and discounts are quoted (STC's suggested payment terms are 2%/10 NET 30):

Net 30 days _____%

Net 15 days _____%

Net 10 days _____%

Respondent may offer additional payment term options and discounts for the College to consider.

6.4 Addenda Checklist

Receipt is hereby acknowledged of the following addenda to this RFP. (initial if applicable)

No. 1 _____ No. 2 _____ No. 3 _____ No. 4 _____

Respectfully submitted,

By :_____
(Authorized Signature)

Date:_____

DRAFT

CONSTRUCTION MANAGER-AT-RISK CONTRACT

This Construction Manager-at-Risk Contract ("Contract" or "CMR Contract") is entered into effective as of _____, 2015 (the "Effective Date"), by and between South Texas College hereinafter referred to as "Owner," and _____, hereinafter referred to as "CMR" (also hereinafter referred to as "Party" individually or "Parties" collectively).

ARTICLE I
PROJECT

1.01 Owner intends to construct _____ (the "Project") for which Owner intends to achieve Substantial Completion (as defined in Owner's Standard Uniform General and Supplementary Conditions) for all stages of construction (as defined below) on or before _____, 2016. The date by which Substantial Completion should be achieved will be established if and when Owner agrees on the Guaranteed Maximum Price.

1.02 Liquidated Damages: Time is of the essence in the performance by CMR under this contract. In the event that the CMR shall fail to achieve substantial completion of the work on the project by the Substantial Completion Date, as the date may be equitably adjusted for excusable delay, the CMR shall be liable to pay the Owner liquidated damages in the amount of $1,000.00 per day for each day the Substantial Completion Date exceeds the date stated in this Contract. The CMR authorizes the Owner to deduct such liquidated damages amount from any monies due to the CMR under this Contract, if an. The Owner shall have the right to recover any unpaid liquidated damages from the CMR, not as a penalty but as liquidated damages representing the parties' estimate on the date of contract execution for the damages which the Owner will sustain for failure to timely complete.

ARTICLE II
DEFINITIONS

2.01 Definitions. Terms used herein shall have the definitions in this section. Terms not defined shall have the meaning ascribed to them in the contract documents.

(a) Construction Cost Limitation (CCL): The budget established for the project site preparation and construction of the Project not be exceeded as a result of the Design Consultant's plans and specifications as stipulated in the contract between owner and the Design Consultant.

(b) Construction Manager-at-Risk (CMR): Refers to construction contract procurement administration and compensation as described at section 2269.253, Texas Government Code.

(c) Construction Phase: The implementation and execution of the work required by the Contract Documents. The work may be divided into different stages each

DRAFT

with different dates for implementation and completion (each referred to as a "Stage").

(d) Contract Documents: This Contract, including Owner's Standard Uniform General and Supplementary Conditions, Special Conditions, Specifications, all Addenda issued prior to the Effective Date, the Program, the Project Manuals developed for the construction of the Project or a portion thereof, all documents required hereunder, the Drawings and Specifications developed by the Design Consultant(s), and to the relevant extent for interpretation of the Contact Document. The Contract Documents form the Contract between Owner and CMR. CMR shall perform all of its services and complete the Work (as defined below) pursuant to the entire Contract Documents. "CMR" shall be substituted for "Contractor" or "General Contractor" in Owner's Standard Uniform General and Supplementary Conditions and Specifications.

(e) Cost of the Work is defined in Article VIII.

(f) Day: The calendar day unless otherwise specifically designated.

(g) Design Consultant: Licensed professionals, including architects and engineers, or firms employing such licensed professionals, engaged by Owner as independent consultants for design of all or a portion of the Project Improvements and to prepare drawings and specifications for the construction of the Project (the "Drawings and Specifications"). More than one such professional or firm may be engaged by Owner. (All such professionals or firms, regardless of number, may be referred to in the singular herein.)

(h) Final Completion: As defined by Owner's Standard Uniform and Supplementary General Conditions.

(i) General Conditions Work: Refer to Exhibit H for a complete list of approved General Conditions items. These approved items shall be reflected in the General Conditions lump sum cost shown as a line item in the Guaranteed Maximum Price Proposal and the schedule of values/cost breakdown. Items not included on Exhibit H will not be accepted or paid as General Conditions and are incorporated as part of the Pre-construction Phase Fee, Construction Phase Fee or Cost of Work.

(j) Pre-construction Phase: The programming, schematic design, design development, construction documents and bidding phases.

(k) Pre-construction Phase Fee: Fixed fee paid to CMR for its services provided during the Pre-construction Phase.

(l) Project Data: All documentation required under the CMR contract to track design, construct, complete and deliver of the Project, included but not limited to, all documents required and prepared in connection with performance of the work under the construction documents and all information, records, correspondence, test data, field reports, inspection reports and photographs.

(m) Project Facility Space Program: A project-specific outline containing project space requirement and space technical requirements.

(n) Project Improvements: All Project facilities requiring construction, including all preparatory matters prior to construction, including site preparation.

(o) Project Manager: Broaddus & Associates and its agents.

(p) Project Team: The Owner, Project Manager, CMR, Design Consultant(s), any separate CMRs employed by Owner, and other consultants employed for the

DRAFT

purpose of programming, design, and construction of the Project. The constitution of the Project Team may vary at different phases of the Project, as approved by Owner.

(q) Schedule: A critical timeline of Construction Phase specific sequence of events.

(r) Standards and Standard Specifications: The construction and design requirements and standards as specified by Owner which are hereby incorporated by reference and transmitted to Design Professionals and CMR by Project Manager.

(s) Subcontractors: All trade contractors, separate contractors, subcontractors, and any material men entering into contracts ("Subcontracts") with the CMR and a Subcontractor for the performance of the Work. The relationship between the CMR and the Subcontractors shall be that of a general contractor to its subcontractors, as an independent contractor, unless otherwise approved in advance in writing by Owner, or except when Owner enters into a separate contract directly with a Subcontractor, which shall not be authorized unless in writing.

(t) Substantial Completion: As defined by Owner's Standard Uniform General and Supplementary General Conditions.

(u) Work: All services, labor, materials, supplies, and equipment which are required or reasonably inferable to complete the Project in strict accordance with the requirements of the Contract Documents (as such may be modified or amended). The term "reasonably inferable" takes into consideration the understanding of the parties hereto and that every detail will not necessarily be shown in the Contract Documents.

ARTICLE III
CONSTRUCTION MANAGER-AT-RISK DUTIES

3.01 Construction Manager-at-Risk has tendered a third party surety bid bond, in the amount of 5% of the Construction Cost Limitation in the form approved by the Owner.

3.02 The Owner engages CMR and authorizes the CMR to perform the Pre Construction Phase services and the Work set forth and described in this Contract.

3.03 Notwithstanding anything to the contrary contained in this Contract, Owner and CMR agree and acknowledge that Owner is entering into this Contract in reliance on CMR's representations and special and unique experience and abilities to perform its obligations hereunder as a CMR as defined in Texas Government Code Section 2269.253. The CMR accepts the relationship of trust and confidence established between it and the Owner by this Contract. CMR covenants with Owner to use its experience, skill, judgment, and abilities to perform the services hereunder and to further the interests of Owner in accordance with Owner's requirements and procedures, in accordance with the highest standards of CMR's profession or business and in compliance with all applicable national, federal, state, municipal, laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction. CMR warrants, represents, covenants, and agrees that it has no obligations, commitments, or impediments which limit or prevent CMR to perform its Pre

DRAFT

Construction Phase services or work required hereunder.

3.04 Warranties and Representations:

(a) The CMR warrants, represents, covenants, and agrees that all of the services to be performed by the CMR under or pursuant to this Contract shall be of the standard and quality which prevail among similar businesses and organizations engaged in providing CMR services in similar areas under the same or similar circumstances and involving a project such as the Project.

(b) The CMR warrants, represents, covenants, and agrees that all persons performing services on behalf of the CMR are registered and/or licensed under the laws, rules and regulations of any authority having jurisdiction, if so required by such laws, rules and regulations.

(c) The CMR covenants and agrees to advise Owner during all phases or stages of work, in writing, of any apparent omissions, oversight or inconsistency, in any drawings, specifications, plans, sketches, instructions, information, requirements, procedures, and other data supplied to the CMR (by the Owner or any other party). Nothing shall excuse or detract from the CMR's responsibilities or obligations hereunder, or entitle the CMR to a change order for additional compensation should its failure to notify Owner result in changes in the Work resulting in additional cost.

(d) The CMR warrants, represents, covenants, and agrees to furnish efficient business administration and superintendence and perform its services hereunder or pursuant to this Contract in the best way and in the most expeditious and economical manner consistent with the interests of Owner.

(e) CMR warrants, represents, and agrees that if it is a corporation or limited liability company, then it is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas, or a foreign corporation or limited liability company duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary corporate power and has received all necessary corporate approvals to execute and deliver the Contract, and the individual executing the Contract on behalf of CMR has been duly authorized to act for and bind CMR; or (ii) if it is a partnership, limited partnership, or limited liability partnership, then it has all necessary partnership power and has secured all necessary approvals to execute and deliver this Contract and perform all its obligations hereunder; and the individual executing this Contract on behalf of CMR has been duly authorized to act for and bind CMR. Upon execution of this contract, CMR shall tender a separate certification, prepared by Owner, to the foregoing effect, substantially in the form attached hereto as Exhibit " ".

3.05 The CMR's duties as set forth herein shall at no time be in any way diminished by reason of any approval by the Owner nor shall the CMR be released from any liability by reason of such approval by the Owner, it being understood that the Owner at all times is ultimately relying upon the CMR's skill and knowledge in performing the services required hereunder.

3.06 Neither the execution and delivery of this Agreement by Construction Manager nor the performance of its obligations hereunder will result in the violation of any provision, if a corporation, of its articles of incorporation or by-laws, if a limited liability company, of its

DRAFT

articles of organization or regulations, or if a partnership, by any partnership agreement by which Construction Manager is bound, or any agreement by which Construction Manager is bound or to the best of the Construction Manager's knowledge and belief, will conflict with any order or decree of any court or governmental instrumentality relating to Construction Manager. CMR incorporates Exhibit J hereto.

3.07 Except for the obligation of Owner to pay CMR certain fees and expenses and to perform certain other obligations pursuant to the terms and conditions explicitly set forth herein, Owner shall have no liability to CMR or to anyone claiming through or under CMR by reason of the execution or performance of this Contract. Notwithstanding any obligation or liability of Owner to CMR, no present or future agent, officer, director, employee, or Trustee of Owner, has or shall have any personal liability to CMR or to anyone claiming through or under CMR by reason of the execution or performance of this Contract.

3.08 The CMR, at its own cost, shall correct repair or remediate any work completed or partially completed by CMR in reliance on the Contract Documents containing an error or omission which CMR could have reasonably identified upon its reviews was obligated to disclose during any phase or stage of work or failed to disclose before proceeding with the Work.

3.09 The CMR, at its own cost, shall correct, repair or remediate any completed, or partially completed, Work of CMR which fails to conform to the plans and specifications. Failure by the CMR to timely repair, replace or remediate its non-complying Work, after written notice thereof, shall constitute a breach of the contract. Owner shall be entitled to repair, replace or remediate such defective work at the expense of the CMR. This commitment by CMR is in addition to, and not in substitution for, any other remedy for defective services or Work which the Owner may have at law or in equity.

3.10 CMR's obligations with respect to Construction Phase Services are set forth in Owner's Standard Uniform General and Supplementary Conditions and elsewhere as may be noted.

ARTICLE IV
CMR'S PERSONNEL AND SUBCONTRACTORS

4.01 The CMR's personnel, and the CMR's associated sub consultants to be employed in the Project are identified in Exhibit A. CMR shall not substitute personnel or entities identified in Exhibit A except with the Owner's prior written agreement, which shall not be unreasonably withheld.

4.02 All subcontracts shall be awarded in accordance with the applicable provisions of this Contract. Owner reserves the right to require all potential subcontractors to answer questionnaires and to submit certain information, including financial information and references. CMR shall notify Owner in advance in writing of the identities of all Subcontractors with which it intends to subcontract. Such notice shall be given sufficiently in advance to permit Owner adequate time for review without delay to the

DRAFT

Project, and allowing time for CMR to make substitute selections, but in no event shall such notice be given less than twenty (20) days before the intended subcontract date. CMR shall not subcontract with any Subcontractor to which Owner has a reasonable objection. CMR shall not be required to subcontract with any Subcontractor to which it has reasonable objection. If CMR intends to submit a proposal for subcontract work in competition with any subcontractor who has bid on the work, CM-R shall notify Owner in writing prior to soliciting proposals from potential subcontractors. CMR shall not incur any Subcontract costs prior to issuance by Owner of a Notice to Proceed for such Work.

4.03 Provide a security bid bond, in the amount of 5% of the Construction Cost Limitation, upon Owner's approval to commence Construction Phase, as required by Section 3.01.

ARTICLE V
CMR'S SERVICES:
PART 1: PRECONSTRUCTION PHASE SERVICES

5.01 In implementation of the responsibilities and duties of the CMR as set forth herein, the CMR shall perform, in accordance with the Schedule (as defined in Section 5.01(b)), the following Preconstruction Phase Services:

(a) General Coordination.

(1) Participate as a member of the Project Team in the development of the Project Facility Space Program if it has not been developed prior to the Effective Date of this Contract.

(2) Attend regular meetings with other members of the Project Team during the Pre-Construction Phase to advise on site usage and site improvements, selection of materials, building systems and equipment, and methods of delivery of materials, systems, and equipment. The CMR's Pre-construction Phase Services team shall attend project team meetings with the Owner, the Owner's representatives, Project Architect and project team for a kickoff session in a location designated by owner.

(3) Provide recommendations and information to Project team members regarding: construction feasibility; availability of materials and labor; time requirements for installation and construction; assignment of responsibilities for safety precautions and programs, temporary Project facilities; equipment, materials and services for common use of the CMR and Owner's separate contractors, if any; cost factors, including costs of alternative materials or designs, preliminary budgets, and possible cost savings; methods of verification for determining that the requirement and assignment of responsibilities are included in the Contract Documents, and any other matters necessary to complete the Work in accordance with the Schedule (as defined below) and Project Construction Budget.

DRAFT

(4) At Owner's request, attend public meetings and hearings of Owner's Trustees concerning the development and schedule of the Project.

(5) Implement and conduct a Constructability Implementation Program as set forth in Exhibit E hereto, which is hereby incorporated herein by reference. Whenever the term "value engineering" is used in conjunction with this Contract or the Project, it has its commonly accepted meaning within the construction industry and does not imply the practice of professional engineering without a license. If any value engineering activities constitute the professional practice of engineering, then such activities shall be performed by an engineer licensed in Texas.

(6) Develop and update a "Constructability Review" report which is a report resulting from frequent communication with the Project Team and which will outline items that in the CMR's opinion may cause problems in the way the Project is to be constructed and which will review the overall coordination of specifications and drawings, details and discrepancies that if left unattended may result in Change Orders or claims once Project construction commences. Constructability recommendations and documentation shall be in conformance with mutually agreed upon format.

(7) Update Project Data, using the project management software ***Owner in Site.*** Access to Owner in Site shall be provided by Project Manager for all decision tracking and document tracking.

(8) As instructed by the Project Architect, coordinate and manage the construction and demolition of one or more full-scale architectural design mock-ups at the project site based on plans and specifications.

(b) Scheduling.

(1) Develop a critical path Project schedule ("Schedule") for the other Project Team members' review and the Owner's approval, that coordinates and integrates the CMR's services, the Design Consultant's design, the work of other consultants and suppliers, and the Owner's activities with the anticipated construction schedules for other contractors.

(2) Update the Schedule as is reasonably required but at least monthly to incorporate an updated, detailed listing for all activities of the Project, including, without limitation:

a) Commencement, milestone and completion dates for Facility Space Program Phase, Schematic Design Phase, Design Development Phase, Construction Documents Phase, Bidding/Proposals Phase, construction phasing and Project Stages;

b) Times of commencement and completion for each Subcontractor;

c) Required activity sequences and durations;

d) Contract document packages, completion dates, Owner contract document package review periods, Project building permits acquisition time requirements, construction contract bid dates;

DRAFT

e) Processing of shop drawings and samples;

f) A recommended schedule for the Owner's direct purchase of materials and equipment requiring long lead time procurement, delivery dates of products requiring long lead time procurement, and methods to expedite and coordinate delivery of long lead time procurements including coordination of the Schedule with the early preparation of relevant portions of the Contract Documents by the Design Consultant.

g) A separate Schedule shall be prepared for each Stage and each set of bidding documents.

(3) Provide the necessary critical path schedule control with a goal to attain the Substantial Completion of the Project on or before the date set forth hereinabove, so that the Owner can occupy and utilize the entire Project facilities on such date; and

(4) Create and maintain the Schedule using the latest available version of the *Primavera* software program (the license and training for which shall be at CMR's sole expense).

(5) The CMR shall also include in the Schedule additional detailed schedule activities which may include be Owner-managed work under separate contracts including: equipment, furniture and furnishings, telephones, project security, property protection and life-safety systems, integration with central campus monitoring systems, information and instructional technology data-transmission system and computer technology systems.

(6) Upload and maintain all construction related schedules on ***Owner in Site*** project management.

(c) Budget and Cost Consultation.

(1) Review with Owner all Project direct and indirect cost, which will impact the Guaranteed Maximum Price.

(2) Prepare and update a Project budget during the Schematic Design Phase, Design Development Phase, and Construction Documents Phase at thirty percent (30%), sixty percent (60%) and ninety five percent (95%) completion (for each Stage), for written approval by the Owner, such budget to include estimating, updating and reporting of all Project costs including, without limitation, construction, regardless of whether such costs are included in Owner's CCL. The Design Development Phase and Construction Documents phase estimates shall be detailed estimates derived from cost quantity surveys. Such cost quantity surveys shall be based upon unit prices for labor, materials, and overhead and profit.

(3) Provide, throughout the duration of the Project, updates of ongoing cost and budget impact, and provide continuous cost consultation services. Prepare and be responsible for all procurement and construction cost estimates. Advise the other members of the Project Team in writing including fax or email immediately if at any time the CMR has knowledge

DRAFT

or belief that the previously established CCL or Schedule may not be met, and make recommendations to the Project Team for corrective action.

(4) At the completion of the Construction Contract Documents (for any Stage of the Project), update and refine a comparison of actual and projected costs to the Project Construction Budget, and in the event such actual and projected may costs exceed the original Project Construction Budget, develop and implement reasonable strategies to be approved by the Owner to reduce the costs projected to be incurred during all phases of the Project.

(d) Coordination of Design and Construction Contract Documents.

(1) Review all plans, specifications, and other design documents during the Schematic Design Phase, Design Development Phase, and Construction Documents phase, and advise Owner on site use, foundations, systems, materials, equipment, construction feasibility, availability of labor and materials, procurement time requirements, installation and construction, relative costs, and provide recommendations to Owner without assuming Design Consultants' professional responsibility.

(2) Coordinate the incorporation of the Owner's Programming Design Guidelines and Standard Specifications and procedures, including, without limitation, Site Construction Guidelines, all of which are hereby incorporated by reference, into the Construction Contract Documents, and use of the Owner's format as directed by the Owner.

(3) Assist in development of any Special Conditions of the Construction Contract Documents, which shall be approved in writing by the Owner at Owner's sole option and discretion.

(4) At specified times required by the Owner, review the drawings and Project Manual as they are being prepared, advise Owner of any error, inconsistency or omission discovered, and recommend alternative solutions whenever the design affects construction feasibility, budget, risks, or schedules (without assuming the Design Consultants' professional responsibility).

(5) Prepare a Constructability review report based on Exhibit E and mutually agreed upon format, a copy of which has been provided to CMR at the time or times indicated therein.

(6) Coordinate with the Owner to ensure that the Construction Contract Documents comply with all applicable laws and Owner policies regarding procurement.

(7) Consult with Owner and Design Consultant to determine what materials, equipment, component systems, and construction types should be included in the Contract Documents; suggest reasonable adjustments in the scope of the Project; and suggest alternate bids in the Construction Documents to adjust the Construction Cost to the Guaranteed Maximum Price (as defined herein).

DRAFT

(e) Construction Planning.

(1) Identify for and recommend to the Owner the need for purchase of items requiring extended delivery times ("long lead items"), and expedite the procurement of such items to ensure their delivery by the required dates. Participate with Design Consultant, as requested by Owner and subject to Owner's prior approval, in the preparation of performance specifications and requests for technical proposals for the procurement and installation of systems, components, and for the procurement of long lead time equipment and materials. If requested by Owner, and subject to Owner's prior approval, issue requests for technical proposals to qualified sources and receive proposals and assist in their evaluation.

(2) Make recommendations to the other members of the Project Team regarding the division of Contract Documents and Project Manual to facilitate the bidding and awarding of construction contracts, to allow for phased or staged construction, or multiple separate contracts, and to take into consideration such factors as time of performance, type and scope of work, availability of labor and materials, overlapping trade jurisdictions, provisions for temporary facilities, comparisons of factory and on-site production costs, shipping costs, code restrictions, the Owner's goals for Local Participation, if any, and other constraints.

(3) Review the Drawings and the Project Manual with the other members of the Project Team to eliminate areas of conflict and overlap in the work to be performed by the various Subcontractors or Owner's separate contractors.

(4) Schedule and conduct pre-bid conferences with interested bidders, subcontractors, material suppliers, and equipment suppliers, and record minutes of same.

(5) Coordinate and develop with Design Consultant bid packages and work scope descriptions for each separate bid category that represent the entirety of the scope of the Work for each phase and stage of the Project.

(6) In accordance with *Texas Government Code* section 2267.254-2267.256, CMR shall publicly advertise and solicit either competitive bids or competitive sealed proposals from trade contractors or subcontractors for the performance of all major elements of the work other than the minor work that may be included in General Conditions. CMR may seek to perform portions of the work itself if CMR submits its bid or proposal for those portions of the work in the same manner as all other trade contractors or subcontractors and if Owner determines that CMR's bid proposal provides the best value for Owner. Owner's determination in such matters is final. If CMR intends to submit a proposal for such work, it shall notify Owner in writing prior to soliciting proposals. Criteria for determination of best value shall be provided by Owner. CMR and Owner shall receive and open all trade contractor or subcontractor bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process. All bids and proposals shall be

DRAFT

made public within seven (7) days after the date of final selection. If CMR reviews, evaluates, and recommends to Owner a bid or proposal from a trade contractor or subcontractor, but Owner requires a bid or proposal from another trade contractor or subcontractor to be accepted, then, pursuant to the terms of the Contract, Owner shall compensate CMR by a change in price, time, or Guaranteed Maximum Price for any additional cost and risk, which has been demonstrated to Owner's satisfaction and as required by the Contract, which CMR may incur because of Owner's requirement that another trade contractor or subcontractor bid or proposal be accepted.

(7) Assist the Owner, the appropriate separate Owner's contractor, the appropriate Design Consultant or other consultant, in obtain all applicable risk management, code, and regulatory agency reviews and approvals for the Project or any portion thereof including, without limitation, the Texas Department of Licensing and Regulation, the fire department providing fire protection, and Factory Mutual Engineering, a wholly owned subsidiary of the Factory Mutual System.

(8) Advise Owner of any tests to be performed, and assist Owner in selecting testing laboratories and consultants, without assuming direct responsibility for the work of such laboratories and consultants.

(9) Review the Contract Documents to ensure that they contain adequate provision for all temporary facilities necessary to enable the Subcontractors to perform their work, and provisions for all of the job site facilities necessary to manage, inspect, and supervise construction of the Work.

(10) In accordance with the Standard Uniform General and Supplementary Conditions, initiate, maintain, and supervise all safety precautions and programs in connection with the Work. CMR shall provide recommendations and information to Owner and Design Consultant with respect to the assignment of responsibilities for safety precautions and programs, temporary Project facilities, and equipment, materials, and services for common use of the Subcontractors. Verify that such assignments with respect to the Subcontractors are included in the Contract Documents.

(11) Provide an analysis of the types and quantities of labor required for the Project and review the appropriate categories of labor required for critical phases or Stages. Make recommendations for actions which will minimize adverse effects of labor shortages.

(f) Guaranteed Maximum Price.

(1) At the conclusion of the Design Development Phase, or such other time as the Parties may agree upon when the Drawings and Specifications are sufficiently complete, CMR shall submit a Guaranteed Maximum Price proposal to Owner in the form attached hereto as Exhibit C which shall also state a Contract Time and date of Substantial Completion upon which

DRAFT

the proposal is based. If Owner accepts the proposal, both parties shall sign the proposal and the Guaranteed Maximum Price, Contract Time and date of Substantial Completion therein shall become part of this contract. Based on particular Project requirements and the development of the Project design, Owner, at its sole option and discretion, may specify a different format than that contained at Exhibit C, which is provided as an example only.

(2) Owner, at its sole option and discretion, may reject the Guaranteed Maximum Price proposal, attempt to renegotiate the proposal with CMR (with the right to cease negotiations at any time and reject the proposal), or increase the Project Construction Budget. CMR shall not withdraw its Guaranteed Maximum Price proposal for ninety (90) days from its date of submission.

(3) The Guaranteed Maximum Price proposal must be prepared in the format specified by Owner which shall require a breakdown of estimated costs organized by trade, allowances, contingencies, CMR's Construction Phase Fee, and other approved items as defined in Attachment 1 to Exhibit C (Guidelines for the Preparation of the GMP).

(4) The Guaranteed Maximum Price proposal must include a written statement describing how it was derived and prepared, which shall include, at a minimum, Drawings and Specifications, addenda, Owner's Standard Uniform General and Supplementary Conditions, allowances, all clarifications and assumptions made by the CMR due to the incompleteness of the Drawings and Specifications, and assumptions as to when Contract Documents will be issued. This information shall be fully described in Attachment 1 to Exhibit C.

(5) In formulating the Guaranteed Maximum Price proposal, CMR shall allow for the continued development and completion of the Drawings and Specifications which are reasonably inferable, except for material changes in scope, and the Guaranteed Maximum Price proposal shall include a CMR's contingency to allow for costs arising out of such development and completion which do not qualify for a change order. Amounts attributable to clarifications, assumptions, and further development and completion of the Drawings and Specifications shall be specified in an itemized breakdown as part of the proposal.

(6) In formulating the Guaranteed Maximum Price proposal, include an Owner provided Construction Contingency Allowance in the amount per Pricing and Delivery schedule**.** Indicate this specified amount under Guaranteed Maximum Price, Exhibit C, Item 6, and under Attachment 1 to Exhibit C, Tab 3, Description of Work, and Allowance Schedule.

DRAFT

ARTICLE VI
CMR'S SERVICES:
PART 2: CONSTRUCTION PHASE SERVICES

6.01 The Construction Phase shall commence upon the date specified in a Notice to Proceed.

6.02 CMR shall provide the following services:

(a) Project Control.

(1) CMR shall transmit all Project Correspondence, including but not limited to, shop drawings, Project team meetings, Meeting notes, Request For Information (RFI's), Architectural Supplementary Instruction (ASI's) and Change Orders through the Project Management Software *Owner in Site.* Access to the site will be provided by the owner.

(2) CMR shall construct the Work in strict accordance with the Contract Documents within the time required by the Schedule approved by Owner and as required by Standard Uniform General and Supplementary General Conditions and Specifications. CMR shall award and enter into, as a general contractor, all Subcontracts necessary and appropriate to provide all labor and materials for the construction of the Project. CMR shall self-perform only General Conditions Work and other Work which has been awarded to CMR by Owner in accordance with the requirements of *Texas Government Code* section 2267 Subchapter F and this Contract. Owner reserves the right to perform Work related to the Project and to award separate contracts for Work related to the Project.

(3) Monitor the Work of the Subcontractors as required and coordinate such Work with the activities and responsibilities of the Project Team with a goal to attain completion of the Project at a cost not to exceed the Project Construction Budget and Guaranteed Maximum Price, and to attain Substantial Completion by the date set forth in Exhibit C herein when executed.

(4) Attend Owner's Project progress meetings scheduled by Owner no less often that once per month, and fully advise the Project Team at such meetings as to Project status.

(5) Schedule, direct and attend regular meetings with other members of the Project Team during the construction of the Project to discuss jointly such matters as procedures, progress, problems and scheduling. Prior to each meeting, the CMR shall prepare and distribute to the other Project Team members a written agenda for the meeting. Prepare and distribute at each Project Team meeting a memorandum setting forth the list of critical activities which require immediate action and the date(s) by when the activity must be completed, and record and distribute the minutes of each meeting.

DRAFT

(6) As provided in Exhibit A, maintain a competent, full-time staff at the Project site to coordinate and provide general direction over the Work and progress of the Subcontractors on the Project.

(7) As provided in Exhibit A, establish on-site organization of personnel and clearly defined lines of authority in order to effectuate the overall plans of the Project Team. At a minimum, CMR's site personnel shall include a project manager, project superintendent, assistant superintendent, project engineer, and appropriate administrative support personnel.

(8) In consultation with Owner, establish procedures for coordination among the Project Team, Subcontractors, separate contractors, Design Consultants, and other consultants with respect to all aspects of the construction of the Project, and implement such procedures.

(9) Expedite and coordinate delivery and installation of Owner-procured material and equipment.

(10) CMR shall supervise and direct the Work and shall be solely responsible for construction means, methods, techniques, sequences, and procedures for the Work.

(11) In accordance with Owner's Standard Uniform General and Supplementary Conditions, provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and all other facilities and services necessary for the proper execution and completion of the Work in strict accordance with the requirements of the Contract Documents.

(12) Obtain building permits and special permits for permanent improvements as required by law or the Contract Documents. Assist Owner or Design Consultant in obtaining all approvals required from authorities having jurisdiction over the Project.

(13) Inspect the Work of Subcontractors to ensure conformance with the Contract Documents.

(b) Scheduling.

(1) Perform Project scheduling in compliance with Article XXIII of Standard Uniform General and Supplementary Conditions entitled "Time Allotted for Performance; Construction Schedules" if included therein;

(2) otherwise provide regular monitoring, updating, and reissuing of the all Project Schedules as construction progresses, including, without limitation, master project schedules, detailed construction schedules, submittal schedules, inspection schedules, and occupancy schedules;

(3) Identify potential and actual variances between scheduled and probable completion dates, review the schedules for Work not started or incomplete and recommend to the Owner adjustments in the schedules to conform with the probable completion dates and provide summary reports to the Owner of each schedule update and document all changes in construction schedules

DRAFT

(4) Incorporate activities of the Subcontractors and other parties affecting the progress of the Work, including, without limitation, activity sequences and durations, allocation of labor and materials, processing of shop drawings, data, and samples, delivery of long lead time items;

(5) Include Owner's occupancy requirements and occupancy priorities;

(6) Evaluate Subcontractor's personnel and equipment, and availability of supplies and materials, with respect to each Subcontractor's ability to meet the Schedule;

(7) Recommend action to Owner when any Subcontract requirements are not met or appear unlikely to be met.

(c) Cost Control.

(1) Account for all Project expenditures and materials in an electronic format. Afford the Owner, upon request, access to these records and preserve them for a period of four (4) years after final payment is made by the Owner to the CMR.

(2) Prepare and administer, and provide to Owner, Subcontractors' schedule of values, Subcontractors' sworn statements and waivers of lien as required, contract and disbursement summaries, change order listings and change orders, and budget cost summary reports as required by Owner.

(3) Promptly identify all variances between estimated costs and actual costs, and report such variances to the Project Team along with recommendations for action, but in any event, no more than two (2) business days after acquiring such information.

(d) Change Orders. Develop and implement a system acceptable to the Owner for the preparation, review and processing of Change Orders, change order requests, and requests for information, in accordance with Owner's Standard Uniform General and Supplementary Conditions and Specifications.

(e) Wage Rates. CMR and all sub-contractors shall pay prevailing wages rates in accordance with state law and the general and supplementary conditions.

(f) Special Consultants. Assist the Owner in selecting and retaining professional services not otherwise described in this Contract for the Project, and coordinate these services at the Owner's request in order to meet the Schedule, without, however, assuming direct responsibility for the work of these consultants.

(g) Documents, Shop Drawings, and Submissions.

i) CMR shall use web based ***Owner InSite*** software, access to which shall be provided by the Owner's Project Manager. Documentation uploads will be required at each of the following five phases by the CMR, Architect and all consultants: (1) Schematic Design Phase; (2) Design Development Phase; (3) Construction Documents Phase; (4) Bidding or Negotiation

DRAFT

Phase; and (5) Construction Phase-Administration of the Construction Contract. Training will be provided by the Owner's Project Manager. The documents which will be uploaded include but are not limited to the following:

Design Management

- Drawings and Specification at all phases
- Planning and approval documents

Communications

- Meetings
- Photos
- Issues

Construction

- Issues
- Schedule
- ASI's
- RFI's
- Submittals
- Field Reports
- Punch lists
- Warranties

ii) CMR shall request interpretations from the Design Consultant, with Owner's consent, from time to time, in order to facilitate the CMR's accomplishment of its duties under this Contract. The Owner's consent may be provided to the CMR at the beginning of Part 1, Services, and does not have to be requested on an item by item basis. The Design Consultant shall be the initial interpreter of the design intent of the construction contract documents.

(2) In collaboration with the other members of the Project Team, the CMR shall establish and implement procedures for expediting the processing and Design Consultants' approval of shop drawings and other submissions, and in accordance with Specifications, as applicable. Receive from the Subcontractors, and review, all shop drawings and other submissions for conformance with the Contract Documents. Coordinate Shop Drawings and other submissions with the Contract Documents and other related documents prior to transmitting them to other members of the Project Team.

(3) The CMR shall record the progress of the Project, submit written progress reports to the other members of the Project Team, including information on the Subcontractor's Work and the percentage of completion, and keep a daily log of Project construction activities available to the other members of the Project Team in accordance with Owner's Standard Uniform General and Supplementary Conditions; the job superintendent, shall maintain a daily log of construction activities and observations, which

DRAFT

daily logs shall be submitted to the Owner no less frequently than weekly for the immediately preceding week.

(4) The CMR shall maintain at the Project site and make available to Owner, updated records of subcontracts, drawings, examples, purchases, materials, equipment, maintenance and operating manuals and instructions, and other construction related documents, including all changes and revisions, a directory of personnel, Project correspondence, inspection procedures (as prepared by others), testing laboratory procedures (as prepared by others), contract changes, time extensions, progress payment data, final acceptance procedures, instructions from Owner; and shall obtain data from Subcontractors and maintain a current set of record drawings and project manual.

(5) Coordinate and facilitate the creation of record and as-built drawings, and the procurement of warranties and guarantees.

(6) Provide Owner with complete, unaltered copies of all Subcontracts, and all amendments thereto.

(7) Submit to Owner all documents substantiating payments to qualifying HUB's, if any, in a format designated by Owner.

(8) The CMR shall coordinate efforts to include the Owner's Project Architect and Program Manager in the preparation, development which will and review of the CMR's GMP Proposal which will include the qualifications, clarifications, assumptions, exclusions, value engineering and all other requirements identified within *Attachment 1 to Exhibit C (Guidelines for the Preparation of the GMP).* Following Owner approval of the GMP Proposal, the CMR shall monitor the development of the Construction Documents to confirm that, when complete, the documents reflect the appropriate detail describing all qualifications, assumptions, exclusions and value engineering issues contained in the GMP Proposal. The CMR and the Project Architect shall jointly provide a monthly status report stating the progress of the incorporation of the GMP qualifications, clarifications, assumptions, exclusions, value engineering and all other provisions, identified in *Attachment 1 to Exhibit C*, into the Construction Documents.

(h) CMR shall be solely responsible for all safety precautions and programs in connection with the Work. CMR shall review the safety programs developed by each of the Subcontractors and prepare and submit to Owner a comprehensive safety program which complies with all applicable requirements of the Occupational Safety and Health Act of 1970 Owners traffic and safety Policies and all other applicable state, local or federal laws or regulations. CMR shall ensure compliance by the Subcontractors with their contractual safety requirements.

(i) On or before execution of the GMP, provide Payment and Performance Bonds on a form prescribed by Owner in the form attached hereto as Exhibit F, within ten (10) days of contract execution in accordance with Standard Uniform and

DRAFT

Supplementary General Conditions. The surety for Payment and Performance Bonds shall meet the same requirements as set forth for payment and performance bonds as provided for in Texas Local Government Code Section 2253.021 et. seq. If the construction price is not known, then the payment and performance bonds shall be based on Owner's Construction Cost Limitation, and revised when the construction price is established. When the Guaranteed Maximum Price is established, the payment and performance bonds shall be revised to reflect any changes from estimated costs, or shall be issued concurrently with the execution of the Guaranteed Maximum Price proposal if a security bond was previously issued. If construction is phased or staged with different Guaranteed Maximum Prices established at different times, then the penal sum of the bonds shall be increased based on the cumulative total value of all Guaranteed Maximum Prices in effect. The CMR shall deliver to the Owner a fully executed Security Bond within 10 days after the execution of the Contract, in the amount of 5% of the sum of the CCL. The bond form will be provided by the Owner. Refer to Article XIV Item 14.03 for the amount of the CCL and to Exhibit F for the Security Bond form.

(h) Owner shall not compensate a CMR for the cost or premium of any Payment and Performance Bonds supplied on behalf of a Subcontractor and such cost or premium shall not constitute a General Condition.

ARTICLE VII
PAYMENTS TO THE CONSTRUCTION MANAGER-AT-RISK

7.01 Preconstruction Phase Services:

(a) In full consideration of CMR's services Preconstruction Phase Services, Owner will pay CMR following fee: ***(Description of the scope)***

CMR shall invoice Owner in a monthly basis.

(b) Additional Services:

(1) From time to time, Owner may request that CMR perform services in addition to those Services required or reasonably inferable herein (such services are hereinafter called "Additional Services"). Prior to performing such Additional Services, CMR shall complete and forward to Owner for acceptance by Owner an Additional Services Requisition in the form of Exhibit D attached hereto, which shall describe in detail the nature or scope of the Additional Services, the basis upon which CMR has determined that the requested services are Additional Services, and which shall set forth the maximum and reimbursable expenses for which CMR is prepared to perform such Additional Services, together with a proposed schedule for the performances of such Additional Services. CMR shall

DRAFT

proceed only after written acceptance by Owner of the Additional Services Requisition and written approval from Owner to proceed.

(2) If Owner concludes that all or part of the services described in the Additional Services Requisition are Services already required to be performed by CMR pursuant to this Contract or are reasonably inferable there from, then Owner shall notify CMR of Owner's determination and Owner and CMR shall attempt, in good faith, to resolve by negotiation their differences in reliance on the Design Consultants initial interpretation. If within seven (7) business days for CMR's proposal to Owner and CMR are unable to resolve their differences, then CMR shall nevertheless perform the services requested by Owner as if the services were Services required to be performed pursuant to this Contract, without prejudice, however, to CMR's right to pursue a claim for compensation for such disputed services.

(3) Upon acceptance by Owner, each Additional Services Requisition and the services performed by CMR pursuant to such Additional Services Requisition shall become part of this Contract and shall be subject to all the terms and conditions of this Contract, as fully and completely as though the same had been included in this Contract as a required Service at the original execution of this Contract.

(c) CMR shall not be entitled to any increase in the Preconstruction Phase Fee because of Schedule extensions or delays, or changes in the scope of the proposed Project, unless such extensions, delays, or changes are material and significant, as determined by Owner at its reasonable discretion.

7.02 Construction Phase:

(a) Owner shall compensate CMR for Construction Phase services on the basis of the sum of the Cost of the Work as defined herein plus the CMR's Construction Phase Fee (such sum is referred to as the "Contract Sum") as set forth below. The Contract Sum shall not exceed the Guaranteed Maximum Price set forth in Exhibit C hereto, subject to changes authorized by the terms and conditions of the Contract Documents. Any cost which is not authorized by the terms and conditions of the Contract Documents, but which would cause the Guaranteed Maximum Price to be exceeded shall be paid by CMR without reimbursement by Owner. In the event that the CMR is required to pay or bear the burden of any new federal, state, or local tax, or of any rate increase of an existing tax (except a tax on income) with respect to its forces and/or its performance of the Work (not including the forces and Work performed by Subcontractors) as a result of any statute, court decision, written ruling, or regulation taking effect after the effective date of this Contract, the Guaranteed Maximum Price shall be increased by the amount of the new tax or tax increase.

(b) The Owner has afforded the CMR unrestricted access to the Project Site, and existing improvements, if any, and conditions on the Project Site and has given

DRAFT

the CMR the opportunity to thoroughly investigate the existing conditions, which the CMR represents it has done. The results of CMR's investigation have been taken by CMR reasonable into account in establishing the Guaranteed Maximum Price of the Work. CMR shall not be entitled to a claim for an adjustment in time or price under Owner's Standard Uniform General and Supplementary Conditions for conditions which CMR discovered or ought to have discovered in CMR's investigation. Before proceeding with the Work, the CMR shall review the Drawings and Specifications and notify the Design Consultant and Owner of any errors, omissions or discrepancies in the Drawings and Specifications it discovers with respect to the existing conditions. The CMR shall not proceed with the Work, if any defect, defined as any error, omission, conflict, inconsistency or lack of clarity, is known or should be known by CMR to exist in the Drawings or Specifications or other Contract Documents, and if CMR nevertheless proceeds to perform the Work then CMR shall be responsible for all foreseeable resulting cost, including the cost of redoing or remedying the Work and time delays resulting there from unless and to the extent such costs result from design or concealed conditions. Upon discovering a defect in the Drawings or Specifications or underground improvements not detailed or incorrectly detailed in a plan, the CMR shall immediately submit a written request for an explanation or decision to the Design Consultant and the Owner.

(c) If the actual Cost of the Work plus CMR's Construction Phase Fee is less than the Guaranteed Maximum Price, then the entire savings shall be returned to the Owner and a final adjustment made to the contract amount. For items in the Contract Documents and on Exhibit C hereto which are noted as "Allowances", 100% of any savings shall be the Owner's. The Cost of the Work included in the Allowances shall be determined in accordance with Owner's Standard Uniform General and Supplementary Conditions except that any claim by the CMR for an adjustment to the Guaranteed Maximum Price based on the cost for Allowance work shall be made within a reasonable time after the issuance of the Drawings and Specifications for the Allowance items. Any increase to Allowance amounts based upon estimates by the CMR which exceed the Allowance amounts shall not result in any increase to the CMR's Fee.

The CMR shall not be entitled to an increase in the Guaranteed Maximum Price (as described in section 5.01(f)) due to the absence of any detail or specification the CMR may require or for any construction which may be found necessary as the Work progresses in order to complete the construction of the Project. If any building component or building system is either shown or specified, all material and equipment required for the proper installation and function of such component or system and needed to make a complete operating installation shall be provided whether or not detailed or specified, omitting only such parts as are specifically excepted by the Owner. Notwithstanding the above, the CMR shall not be responsible for design, except incidental designing/detailing as required by the Specifications for shop drawing purposes.

DRAFT

(d) If the actual, final General Conditions cost is less than the amount shown in Exhibit C – Guaranteed Maximum Price Proposal, then the entire savings shall be returned to the Owner and a final adjustment made to the contract amount. The Owner shall be entitled to one hundred percent (100%) of any unexpended contingencies or allowances or of the savings resulting from any design or construction changes reducing the scope of the Work.

(e) In full consideration of CMR's services during the Construction Phase of this Contract, Owner shall pay CMR a Construction Phase Fee per Pricing and Delivery Schedule previously submitted

(f) If the Guaranteed Maximum Price increases from the amount originally set forth in Exhibit C hereto, then CMR shall be entitled to an equitable increase in the CMR's Construction Phase Fee which shall be limited to a markup as defined in Article XXII of the Owner's Standard Uniform General and Supplementary Conditions.

(g) In Standard Uniform General and Supplementary Conditions, references to adjustments in "cost" or "costs" refer to Costs of the Work as defined herein below, and references to CMR's "overhead" and "profit" refer to CMR's Construction Phase Fee.

(h) The CMR's Fee shall cover the CMR's profit, general overhead and the following costs and expenses:

All expenses in connection with maintaining and operating CMR's main office and any branch or field offices, including (except as otherwise provided hereinafter):

(1) Salaries of CMR's officers, project manager(s), estimators and schedulers not directly assigned to the project.
(2) Salaries of persons employed in the main or branch offices of the CMR whose time is devoted to the general conduct of the CMR's business, such as office managers, stenographers, plan clerks, file clerks, and draftsmen.
(3) Overhead or general expenses of any kind except those specifically included herein.
(4) Services and expenses of the estimating, personnel, accounting, budget control, audit and management information systems (other than pre-construction services) relating to accounting in CMR's office and even if at the site, except as specifically identified herein.
(5) Interest on the CMR's capital or on money borrowed by the CMR, including the capital employed by the CMR in the performance of the Work.

DRAFT

(6) Amounts required to be paid by CMR for Federal and/or State income and franchise taxes.

(7) Legal, accounting, or other similar professional services provided by or to CMR, in regard to disputes, arbitrations, litigations or other such proceedings with Subcontractors, with municipal authorities, with the Owner, the Design Consultants or any other person or entity relating to the Project or otherwise.

(8) Purchase or lease of vehicles and related maintenance costs, radios/communication equipment, jobsite computer and electronic equipment and specialized telephone systems (including cellular/digital phones).

(i) In addition to the payment procedures described in Owner's Standard Uniform General and Supplementary Conditions, Specifications, CMR shall submit with each application for payment all receipts, invoices with check vouchers or other evidence of payment, petty cash account information, payrolls, and any and all other evidence which Owner or Design Consultant shall deem necessary to support the amount requested. The CMR's Construction Phase Fee shall be shown as a separate line item on the Schedule of Values. In determining the percentage of completion, CMR shall use the lesser of the percentage of the Work actually completed for each classification on the Schedule of Values, or the percentage of the Guaranteed Maximum Price allocable to that item which has been actually incurred and demonstrated as an expense by the CMR. If the CMR's Construction Phase Fee is a fixed fee then the amount requested for such fee shall be in the same proportion to the total fee as the amount requested for the Cost of the Work relative to the total Cost of the Work used in deriving the then current Guaranteed Maximum Price. Retainage as specified in Standard Uniform General and Supplementary Condition will be applied to the entire amount requested including the Cost of the Work and the CMR's Construction Phase Fee. Each Schedule of Values submitted shall maintain the originally established value for each work classification line item or subcontractor, and shall contain any revisions to costs or cost estimates for each such classification or subcontractor. The format and tracking method of the original Schedule of Values and of all updates thereto shall be subject to the approval of Owner and Design Consultant. If at any time, the amount shown on the schedule of values exceeds the Guaranteed Maximum Price allocable to that classification or subcontractor, then the amount payable to CMR by Owner shall be reduced by the amount of such excess. At all times, the estimated cost of performing the uncompleted and unpaid portion of the Work (including CMR's overhead and profit) shall not exceed the unpaid balance of the Guaranteed Maximum Price (less retainage on Work previously completed). Payments to Subcontractors included in an application for payment shall not exceed the percentage of Work allocable to that Subcontractor for each respective Schedule of Values classification which has been actually completed.

7.03 Owner shall have the right to withhold from payments due CMR such sums as are

DRAFT

necessary to protect Owner against any loss or damage which may result from negligence by CMR or failure of CMR to perform CMR's obligations under this Contract

7.04 CMR's Request for Final Payment shall not be made until all Work is completed and all requirements of the Contract Documents have been satisfied including, without limitation: delivery to Owner of a complete release of all liens and claims arising out of the Work; written consent of surety to release of final payment; and an affidavit certifying that, to the best of CMR's information, knowledge and belief, the release includes and covers all materials and services over which CMR has control and for which a lien or claim on the P&P Bond could be filed and that all known debts and claims arising from the Project have been satisfied.

7.05 In addition to the procedures contained in Owner's Standard Uniform General and Supplementary General Conditions, Owner shall have no obligation to make final payment until a final accounting of the Cost of the Work has been submitted by CMR and has been verified by Owner or Owner's representatives. The aggregate total of payments to CMR shall not exceed the total of the actual Cost of the Work as verified by Owner or Owner's representative from CMR's final accounting plus the applicable CMR's Construction Phase Fee, as certified for payment in accordance with the Contract, but in no event more than the Guaranteed Maximum Price. If payments made to CMR exceed that which is due and owing pursuant to this Article, then CMR shall promptly refund such excess to Owner.

7.06 Any provision hereof to the contrary notwithstanding, Owner shall not be obligated to make any payment (whether a progress payment or final payment) to CMR hereunder if any one or more of the following conditions precedent exist:

(a) Owner has given CMR written notice of CMR's breach or default under this Contract;

(b) Any part of such payment is attributable to services which are not performed in accordance with this Contract; provided, however, such payment shall be made as to the part thereof attributable to services which were performed in accordance with this Contract;

(c) CMR has failed to make payments promptly to consultants or other third parties used in connection with the services for which Owner has made payment to CMR; or

(d) Owner, in its good faith judgment, determines that the portion of the compensation then remaining unpaid will not be sufficient to complete the services in accordance with this Contract, no additional payments will be due CMR hereunder unless and until CMR, at CMR's sole cost, performs a sufficient portion of the remaining services so that such portion of the compensation then remaining unpaid is determined by Owner to be sufficient to so complete the then remaining services.

DRAFT

(e) Nothing contained herein shall require the Owner to pay the CMR an aggregate amount exceeding the Guaranteed Maximum Price or to make payment if in the Owner's belief the cost to complete the Work would exceed the Guaranteed Maximum Price less previous payments to CMR.

7.07 No partial payment made hereunder shall be, or shall be construed to be, final acceptance or approval of that part of the services to which such partial payment relates, or a release of CMR of any of CMR's obligations hereunder or liabilities with respect to such services.

7.08 CMR shall promptly pay all bills validly due and owing for labor and material performed and furnished by others in connection with the performance of the Preconstruction Phase Services and the construction of the Work.

7.09 Owner shall have the right to verify and audit the details set forth in CMR's billings, certificates, accountings, cost data, and statements, either before or after payment here for, by (1) inspecting the books and records of CMR during normal business hours; (2) examining any reports with respect to this Project; (3) interviewing CMR's business employees; (4) visiting the Project site; and (5) other reasonable action.

7.10 The acceptance by CMR or CMR's successors of final payment under this Contract, shall constitute a full and complete release of Owner from any and all claims, demands, and causes of action whatsoever which CMR or CMR's successors have or may have against Owner under the provisions of this Contract except those previously made in writing and identified by CMR as unsettled at the time of the final request for payment.

ARTICLE VIII
COST OF THE WORK

8.01 The term Cost of the Work means all costs which the CMR must necessarily incur to properly perform the Work in strict compliance with the Contract Documents. Cost of the Work includes, to the exclusion of any item not listed, only the vocabulary items set forth in this Article.

(a) Labor and Administrative:

(1) Reasonable and customary wages paid to construction workers directly employed by CMR who perform the construction of the Work.

(2) Reasonable and customary wages or salaries of CMR's supervisory and administrative personnel who are identified on Exhibit A but only when stationed full-time at the site with the Owner's prior consent. The salaries of CMR at Risk "project manager's" salary, when directly associated with the project, shall be included in the General Conditions Costs.

(3) Costs paid or incurred by CMR for labor costs arising out of taxes, insurance, and benefits which are (i) required by law, (ii) required by

DRAFT

collective bargaining agreements, (iii), or otherwise customary, so long as such costs are based on wages and salaries which are properly included in the Cost of the Work as defined herein.

(4) Reasonable and customary travel expenses of CMR's personnel incurred directly and solely in support of the Project and approved in advance in writing by Owner.

(5) Costs of long-distance telephone calls, telegrams, postage, package delivery and courier service, telephone service, and reasonable and customary petty cash expenses of CMR's jobsite office, incurred directly and solely in support of the Work, and all incurred at the site.

(b) Materials, Equipment, Tools, Rentals:

(1) Costs of materials and equipment to be incorporated (or incorporated) into the Work, including transportation charges, and a reasonable and customary allowance for waste and spoilage. Owner shall be entitled to take possession of excess materials not incorporated into the Work, or at Owner's option, CMR shall sell such materials and deduct the gross proceeds from the Cost of the Work. Payment for stored materials is subject to Owner's Standard Uniform General and Supplementary General Conditions.

(2) Costs of materials, supplies, temporary facilities, equipment, and hand tools except for those customarily owned by construction workers, all provided at the site by CMR, if such items are fully consumed in the construction of the Work, and Owner approves such purchase in advance in writing. Cost for used items shall be based on fair market value and may include costs of transportation, installation, minor maintenance costs, and removal. If the item is not fully consumed, then the cost shall be based on cost of the item minus its fair market salvage value.

(3) Rental charges for temporary facilities, equipment, and hand tools except for those customarily owned by construction workers, all provided at the site by CMR, and may include transportation, installation, and minor maintenance costs, and removal, all so long as Owner has approved such items and the rental rates in advance in writing. If tools, machinery or construction equipment are rented from the CMR, the amount of such rental, the rate of such rentals, including the freight and delivery cost thereon and all operating expenses except labor, shall be determined by application of "CMR's Equipment Cost Guide," latest edition published by the AGC, approved by the Owner before commitments are made and shall in no event be higher than the prevailing competitive rates paid in the locality for similar equipment. In no event shall the aggregate rental cost to Owner exceed the purchase price and maintenance cost of the item. In the event equipment can be purchased for an amount comparable to the aggregate rental cost of said equipment, CMR shall purchase such equipment and turn it over to Owner upon final completion of the Work,

DRAFT

or, at Owner's option, credit to the Owner with the amount of the fair market resale value.

(4) Site debris removal and disposal costs in accordance with all applicable laws and regulations.

(c) Subcontracts: Payments made to Subcontractors by CMR for the construction of the Work in accordance with the Contract Documents and the requirements of the subcontracts with such Subcontractors.

(d) Other costs:

(1) Governmental sales and use taxes directly attributable to the Work. Owner is a political subdivision of the State of Texas and CMR shall avail itself of all exemptions which may exist for such taxes based on Owner's status.

(2) Permit and inspection fees, except that Owner is typically exempt from such fees.

(3) Premiums for insurance and bonds to the extent directly attributable to this Contract.

(4) Testing fees pursuant to the terms and conditions of Owner's Standard Uniform General and Supplementary Conditions.

(5) Intellectual property royalties and licenses for items specifically required by the Contract Documents which are, or will be, incorporated into the Work.

(6) Forfeited deposits, but only if such deposit has been forfeited in the absence of any fault or negligence of CMR.

(7) Other costs approved in advance in writing by Owner at Owner's sole option and discretion.

8.0.2 Costs Expressly Excluded in the Cost of the Work

The following is intended as an exclusive list of last not included in the Cost of Work to be paid by Owner, the specific included costs having been listed in section 8.01

(a) Costs including, but not limited to, the failure to perform of any Subcontractor or the bankruptcy or insolvency of any Subcontractor.

(b) Legal and administrative costs to review and negotiate these Contract Documents.

(c) Travel and subsistence expense of CMR, its officers or employees incurred while traveling between the Project and CMR's principal or branch offices, and travel in the metropolitan area of the Project.

(d) Fines, penalties, sanctions or impositions assessed or imposed by any governmental body, instrumentality or tribunal arising from the fault of CMR.

DRAFT

(e) Costs incurred by CMR resulting from the failure of CMR or its Subcontractors to coordinate their work with that of Owner and its contractors, if any, after agreeing to the schedules therefore, or failure of CMR to comply with directives of Owner not in conflict with said schedules.

(f) Costs resulting from the failure of CMR or any Subcontractor to procure and maintain insurance as and to the extent required by the Contract Documents.

(g) Any and all personnel costs, including, without limitation, wages, salaries, and benefits, except for personnel based at the site office and only as specifically provided herein.

(h) Any and all overhead expense or office expense at any location, except site office expense to the extent specifically included herein.

(i) Costs related to CMR's indemnification obligations.

(j) The cost of capital, including, without limitation, interest on capital, regardless of whether it is related to the Project.

(k) Any cost arising out of the fault or negligence of CMR, its Subcontractors, or any person or entity for whom they may be liable, including, without limitation, costs related to defective, rejected, or nonconforming work, materials or equipment, and damage to persons or property.

(l) Liquidated or actual damages imposed by Owner for failure of CMR to complete the Work within the Contract Time.

(m) Any and all costs not specifically authorized herein, including, without limitation, any cost which would cause the Guaranteed Maximum Price to be exceeded.

8.0.3 Discounts, Rebates and Refunds

The Cost of the Work to be paid by Owner shall be credited with the following items:

(a) Proceeds of the sale of all tools, surplus materials, construction equipment, and temporary structures which have been charged to the Work other than by way of rental, and remaining after completion, whether such sale is made to the Owner, the CMR, or to some other party; and any such sale, if made to others than the Owner, shall be at fair market price. Upon completion of the Work or when no longer required, all tools, construction equipment and materials purchased for the Work shall be sold and the CMR shall use its best efforts to obtain the highest price in respect of such sales.

(b) If Owner makes funds available to CMR, discounts earned by the CMR through advance or prompt payments. The CMR shall obtain all possible trade and time discounts on bills for material furnished, and shall pay said bills within the highest

DRAFT

discount periods. The CMR shall purchase materials for this Project in such quantities as will provide the most advantageous prices to the Owner.

(c) Reasonable market value as approved by the Owner at the time of removal of all materials, tools, and equipment actually purchased for the work and upon completion of the work retained by the CMR.

(d) Rebates, discounts, or commissions allowed to and collected by the CMR from suppliers of materials or from subcontractors, together with all other refunds, returns, or credits received for return of materials, or on bond premiums, or insurance and sales taxes.

(e) CMR shall reimburse Owner for deposits made by Owner and not returned to Owner due to the fault of the CMR. Should CMR not promptly so reimburse Owner upon demand, Owner shall be entitled to recover said amount from CMR, including, but not limited to, by deducting the amount from payments due the CMR.

ARTICLE IX
OWNER'S RESPONSIBILITIES

9.01 The Owner shall be fully acquainted with the Project and shall facilitate and coordinate the Owner's Project issues with the CMR. Upon request, the Owner will furnish in writing the authorization of each representative of the Owner to represent it in connection with the Project. The Authority of the Project Manager and the Architect to represent and bind the Owner are set out in Exhibit I.

9.02 The Owner shall cooperate in providing information to the Project Team Members regarding its requirements for the Project.

9.03 Owner shall furnish for the site of the Project any necessary surveys describing the physical characteristics, soil reports and subsurface investigations, known legal limitations, utility locations, and the legal description; to the extent such items may be required by contracts between Owner and Design Consultant or other consultants. Owner shall inform all special consultants retained by the Owner that they shall coordinate their services through the CMR. Owner shall provide special testing and inspection services to the extent required by *Texas Government Code*, as amended.

9.04 If the Owner has actual knowledge of any fault or defect in the Project or non-conformance with the Drawings and Project Manual, Owner shall give prompt written notice thereof to the CMR.

DRAFT

ARTICLE X
INDEMNITY

10.01 TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE CMR AND ITS AGENTS, PARTNERS, EMPLOYEES, AND CONSULTANTS (COLLECTIVELY "INDEMNITORS") SHALL AND DO AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY OWNER, AND HOLD HARMLESS THE OWNER AND ITS OFFICERS, TRUSTEES, EMPLOYEES AND AGENTS (COLLECTIVELY "INDEMNITEES") FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS AND EXPENSES, INCLUDING ATTORNEY FEES, OF ANY NATURE, KIND, OR DESCRIPTION (COLLECTIVELY "LIABILITIES") OF ANY PERSON OR ENTITY WHOMSOEVER ARISING OUT OF, CAUSED BY, OR RESULTING FROM THE PERFORMANCE OF THE SERVICES OR ANY PART THEREOF WHICH ARE CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT OR OMISSION OF THE CMR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY IT OR ANYONE FOR WHOSE ACTS IT MAY BE LIABLE EVEN IF IT IS CAUSED IN PART BY THE NEGLIGENCE OR OMISSION OF ANY INDEMNITEE, SO LONG AS IT IS NOT CAUSED BY THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE. IN THE EVENT MORE THAN ONE OF THE INDEMNITORS ARE CONNECTED WITH AN ACCIDENT OR OCCURRENCE COVERED BY THIS INDEMNIFICATION, THEN EACH OF SUCH INDEMNITORS SHALL BE JOINTLY AND SEVERALLY RESPONSIBLE TO THE INDEMNITEES FOR INDEMNIFICATION AND THE ULTIMATE RESPONSIBILITY AMONG SUCH INDEMNITORS FOR THE LOSS AND EXPENSE OF ANY SUCH INDEMNIFICATION SHALL BE SETTLED BY SEPARATE PROCEEDINGS AND WITHOUT JEOPARDY TO ANY INDEMNITEE. THE PROVISIONS OF THIS ARTICLE SHALL NOT BE CONSTRUED TO ELIMINATE OR REDUCE ANY OTHER INDEMNIFICATION OR RIGHT WHICH OWNER OR ANY OF THE INDEMNITEES HAS BY LAW.

10.02 CMR SHALL PROTECT AND INDEMNIFY THE OWNER FROM AND AGAINST ALL CLAIMS, DAMAGES, JUDGMENTS AND LOSS ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY UNITED STATES PATENT, OR COPYRIGHT, ARISING BY OR OUT OF ANY OF THE WORK PERFORMED HEREUNDER OR THE USE BY CMR, OR BY OWNER AT THE DIRECTION OF CMR, OF ANY ARTICLE OR MATERIAL, PROVIDED THAT UPON BECOMING AWARE OF A SUIT OR THREAT OF SUIT FOR PATENT OR COPYRIGHT INFRINGEMENT, OWNER SHALL PROMPTLY NOTIFY CMR AND CMR SHALL BE GIVEN FULL OPPORTUNITY TO NEGOTIATE A SETTLEMENT. CMR DOES NOT WARRANT AGAINST INFRINGEMENT BY REASON OF OWNER'S OR DESIGN CONSULTANT'S DESIGN OF ARTICLES OR THE USE THEREOF IN COMBINATION WITH OTHER MATERIALS OR IN THE OPERATION OF ANY PROCESS. IN THE EVENT OF LITIGATION, OWNER AGREES TO COOPERATE REASONABLY WITH CMR AND PARTIES SHALL BE ENTITLED, IN CONNECTION WITH ANY SUCH LITIGATION, TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

DRAFT

10.03 The indemnities contained herein shall survive the termination of this Contract for any reason whatsoever.

ARTICLE XI
CONSTRUCTION MANAGER-AT-RISK'S INSURANCE

11.01 The CMR shall not commence work under the Contract until it has obtained all required insurance and until such insurance has been reviewed and approved in writing by the Owner. Approval of the insurance by the Owner shall not relieve nor decrease the liability of the CMR hereunder. Prior to commencing any of the Preconstruction Services, CMR shall provide evidence as required by this Article that coverage's for Employer's Liability, Workers' Compensation, Comprehensive General Liability, Comprehensive Automobile Liability and Owner's and CMR's Protective as set forth in Standard Uniform General and Supplementary Conditions are in full force and effect. Prior to commencing any construction work, Builder's Risk as set forth in Owner's Standard Uniform General and Supplementary Conditions and paid for by CMR shall be in full force and effect and shall be increased as necessary for each separate bid package, phase, or Stage of construction prior to the commencement of construction for that package, phase, or Stage.

11.02 The CMR shall not cause or allow any of its insurance to be not canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract. If the CMR fails to obtain, maintain or renew any insurance required by the Contract, the Owner may obtain insurance coverage directly and recover the cost of that insurance from the CMR.

11.03 The Owner reserves the right to review the insurance requirements set forth in this Article during the effective period of the Contract and to make reasonable adjustments to the insurance coverage's and their limits when deemed necessary and prudent by the Owner based upon changes in statutory law, court decisions, or the claims history of the industry as well as the CMR.

11.04 The Owner shall be entitled, upon request, and without expense, to receive copies of the policies and all endorsements thereto and may make any reasonable requests for deletion, or revision or modification of particular policy terms, conditions, limitations, or exclusions, except where policy provisions are established by law or regulation binding upon either of the Parties or the underwriter of any of such polices. Actual losses not covered by insurance as required by this Article shall be paid by the CMR.

11.05 The premiums for any additional insurance coverage desired by the CMR in excess of that required by this Contract, the Uniform General and Supplementary Conditions, or the Contract Documents shall be borne solely by the CMR out of its fees and not included in the GMP Proposal as a Direct Construction Cost unless approved by the Owner.

DRAFT

ARTICLE XII
SUSPENSION AND TERMINATION

12.01 In addition to the termination for cause procedures set forth in Section 25, Uniform Standard General Conditions, Owner may, at its sole discretion, suspend or terminate the Contract for convenience on any date and during by phase or stage of the contract upon fourteen (14) days' written notice to CMR.

12.02 A termination under this Contract above shall not relieve CMR or any of its employees, as applicable, of liability for violations of this Contract, of for any act or omission.

12.03 As of the date of termination of this Contract, CMR shall furnish to Owner all statements, accounts, reports and other materials as are required hereunder or as have been prepared by CMR in connection with CMR's responsibilities hereunder. Owner shall have the right to use the ideas and designs therein contained for the completion of the services described by this Contract, and for completion of the Project, or otherwise. All drawings, plans, specifications, renderings and models, etc., prepared by the Design Consultant are the property of Owner or Design Consultant, as set forth in the terms and conditions of the contract between Owner and the Design Consultant. They are not to be used by any person or entity other than Owner on other projects unless expressly authorized by Owner.

12.04 Ceasing Performance upon Suspension. From and upon the effective date of any suspension ordered by Owner under this Section, CMR, and its consultants shall incur no further expense or obligations in connection with the Contract and CMR, and its consultants shall upon receipt of notice, cease their performance. CMR shall also, at Owner's direction, suspend any of its purchase orders, pending instructions, or open or outstanding subcontracts or Contracts.

12.05 Claim for Costs of Suspension. In the event Owner directs a suspension or termination of performance for convenience during the Pre-construction Phase, through no fault of CMR, and provide CMR submits a proper claim as provided in this Contract, Owner shall pay as full compensation for work performed to that date, the CMR's earned fees through the suspension date, plus verifiable, reasonable and necessary costs incurred and payable under terms or this Contract, actually incurred and paid for by CMR, under CMR's Pricing and Delivery Schedule included as Exhibit C to the Request for Proposal.

12.06 Claim for Costs of Suspension or Termination During Construction Phase. In the event Owner directs a suspension or termination of performance during the Construction Phase, through no fault of CMR, and provided CMR submits a proper claim as provided in this Contract, Owner shall pay as compensation for work performed to that date, (a) the CMR's Construction Phase Fees (overhead and profit), (b) General Conditions verifiable, reasonable and necessary for operation on behalf of this Contract, actually incurred and paid for, and (d) the amount due CMR to that date for Work in place.

12.07 Resumption of Work after Suspension. If Owner lifts the suspension it shall do so in writing, and CMR shall promptly resume performance of the Contract unless, prior to

DRAFT

receiving the notice to resume, CMR has exercised its right of termination as provided herein,

12.08 Termination by CMR for Prolonged Suspension of Performance. If performance of this Contract is suspended for a period of thirty (30) consecutive days at the direction of Owner pursuant to Sections 12.01 and 12.04, or by an order of any court or other public authority, or as a result of any act of the Government, and provided that such suspension by Owner or public authority is through no fault of CMR or any person or entity working directly or indirectly for CMR, CMR may, upon ten (10) days' written notice to Owner, terminate performance under the Contract and recover from Owner on the terms and conditions and in the amounts provided in Section 12.05

12.09 Owner Not Liable for Additional Costs or Damages. The compensation due to CMR under Section 12.05 for Costs of Suspension shall be only the amounts paid to CMR arising out of a suspension and Owner shall not be liable for any not previously written authorized additional costs incurred by CMR, either directly or indirectly, or for any of CMR's consequential damages.

12.10 Submission of Termination Claim and Compensation for Termination for Convenience. When terminated for convenience, CMR shall be compensated as follows:

a. CMR waives any claims for damages including loss of anticipated profits, and consequential damages on account thereof.
b. all amounts due and not previously paid to CMR for work completed in accordance with the Contract prior to such notice of termination, and work thereafter completed as specified in such notice, but not to exceed in the aggregate the actual costs of the services performed to the date of notice, and if the notice specified other services to be performed, the reasonable cost of those approved services, and

c. Actual reasonable and necessary administrative costs associated with settling and paying claims arising out of the termination of work under CMR subcontracts or Contracts.

ARTICLE XIII
MISCELLANEOUS PROVISIONS

13.01 Exhibits: All exhibits hereto are hereby incorporated herein by reference for all purposes.

13.02 Assignment: CMR's obligations under this Contract may not be assigned or delegated without Owner's consent.

13.03 Certifications:
Sales Tax Certification. Under Section 2155.004, Government Code, the CMR certifies that the individual or business entity named in this bid or contract is not ineligible to receive

DRAFT

the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

13.04 Entire Contract; Modifications; Conflicts: This Contract supersedes all prior contracts, written or oral, between CMR and Owner and shall constitute the entire Contract and understanding between the parties with respect to the subject matter hereof. This Contract and each of its provisions shall be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by Owner and CMR. If there is a conflict between this Contract and Standard Uniform General and Supplementary General Conditions, then the provision which provides the greatest benefit to Owner shall govern.

13.05 Captions: The captions of paragraphs in this Contract are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

13.06 Governing Law: This Contract and all of the rights and obligations of the parties hereto and all of the terms and conditions hereof shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas.

13.07 Waivers: No delay or omission by either of the parties hereto in exercising any right or power accruing upon the non-compliance or failure of performance by the other party hereto of any of the provisions of this Contract shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions or contracts hereof to be performed by the other party hereto shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or contract herein contained.

13.08 Appointment: Owner hereby expressly reserves the right from time to time to designate by notice to CMR Owner's representatives with authority to act partially or wholly for Owner in connection with the performance of Owner's obligations hereunder. CMR shall act only upon instructions from such representatives unless otherwise specifically notified to the contrary.

13.09 Notices: All notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Contract shall be in writing and shall be deemed to have been duly given or served when delivered by hand delivery or when deposited in the U.S. mail by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

DRAFT

If to Owner:

Gerry Rodriguez, AIA
Director of Facilities Planning and Construction
South Texas College
3200 W Pecan Blvd Bldg N-179
McAllen, Texas 78501
Phone: (956) 872-3737
Fax: (956) 872-3747
E-mail: gerry@southtexascollege.edu

With Copies to:

Diana Bravo Gonzalez, AIA
Senior Project Manager
Broaddus & Associates
1100 E Jasmine Ave Ste 102
McAllen, Texas 78501
Phone: (956) 688-2307
Fax: (956) 688-2315
E-mail: dgonzalez@broaddusassociates.com

Or to such other person or address as may be given in writing by either party to the other in accordance with the aforesaid.

13.10 Severability: In case any provision hereof shall, for any reason, be held invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof, and this Contract shall be construed as if such invalid or unenforceable provision had not been included herein.

13.11 Enforcement: It is acknowledged and agreed that CMR's services to Owner are unique, which gives CMR a peculiar value to Owner and for the loss of which Owner cannot be reasonably or adequately compensated in damages; accordingly, CMR acknowledges and agrees that a breach by CMR of the provisions hereof will cause Owner irreparable injury and damage. CMR, therefore, expressly agrees that Owner shall be entitled to injunctive and/or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Contract, but only if Owner is not in breach of this Contract.

13.12 Independent Contractor: CMR recognizes that it is engaged as an independent contractor and acknowledges that Owner will have no responsibility to provide transportation, insurance or other fringe benefits normally associated in an employer relationship. CMR, in accordance with its status as an independent contractor, covenants and agrees that it shall conduct itself consistent with such status, that it will neither hold itself out as nor

DRAFT

claim to be an officer, partner, employee or agent of Owner, by reason hereof, and that it will not make any claim, demand or application to or for any right or privilege applicable to an officer, partner, employee or agent of Owner, including, but not limited to, unemployment insurance benefits, social security coverage or retirement benefits. CMR hereby agrees to make its own arrangements for any of such benefits as it may desire and agrees that it is responsible for all income taxes required by applicable law.

13.13 The following exhibits are hereby incorporated into this Contract for all purposes as if fully set forth herein:

Exhibit	A	Staff/Personnel
Exhibit	B	Scope and Owners Construction Cost Limitation & Attachments
Exhibit	C	GMP Proposal Attachment 1 to Exhibit C Guidelines for the Preparation of the GMP
Exhibit	D	Additional Services Requisition
Exhibit	E	Constructability Program Guidelines and Implementation Guidelines
Exhibit	F	Security Bond form
Exhibit	G	Additional Contract Documents/Specification Sections 1. Uniform General Conditions and 2. Supplementary General Conditions 3. Special Conditions
Exhibit	H	Approved General Conditions Line Items
Exhibit	I	Authority of Project Manager and Architect to Represent and Bind the Owner
Exhibit	J	Self Interest Disclosure

DRAFT

ARTICLE XIV
OTHER CONDITIONS OR SERVICES

14.1 Certification of No Asbestos Containing Materials or Work

(a) The CMR shall provide a certification statement, included with each materials submittal, stating that no asbestos containing materials or work is included within the scope of the proposed submittal.

(b) The CMR shall provide at Substantial Completion, a notarized certification to the Owner and the Architect that no asbestos containing materials or work was provided, installed, furnished or added to the project.

(c) The CMR shall take whatever measures he deems necessary to insure that all employees, suppliers, fabricators, material men, subcontractors, or their assigns, comply with this requirement.

(d) The CMR shall insure compliance with the following act – Asbestos Hazard Emergency Response Act (AHERA – 40 CFR 763-99 (7)) from all of his subcontractors and assigns as listed in item C above. All materials used on this project shall be certified as non-Asbestos Containing Building Materials (ACBM).

1. Every subcontractor shall provide a notarized statement that no ACBM has been used, provided, or left on this project.
2. The CMR shall provide to the extent deemed necessary for compliance by the State, data sheets and/or labels as proof of compliance.
3. The CMR shall provide a notarized certification that no ACBM's were used.

14.2 All the requirements contained within Request for Proposals issued in connection with this Project shall become a part of this.

14.3 The Construction Cost Limitation (CCL) for the Project shall be:

Per Exhibit B

The CCL shall include the Cost of Work, Construction Contingency Allowance, Design Contingency Allowance and CMR's Fee and shall not include the Preconstruction Phase Fee.

DRAFT

IN WITNESS WHEREOF, intending to be bound, the Parties have entered into this Contract as of the Effective Date.

ATTEST:
(Seal)

By: _____
(Original signature)

(Name typed)
Corporate Secretary

_____

By: _____
(Original signature)

Dr. Shirley A. Reed
President

SOUTH TEXAS COLLEGE

Name:
Title:

By: _____

DRAFT

EXHIBIT A
PERSONNEL, STAFF, SUBCONSULTANTS AND DUTIES
HOURLY RATES (if applicable under 7.01(a))

(To be completed by CMR and returned with executed Contract)

DRAFT

EXHIBIT B

Group	Construction Project Description	Square Feet	Bldg Cost
	Pecan Campus		
A	1 - Construct new north academic building with classrooms, computer labs, and support space to accommodate student enrollment growth	61,267	$10,500,000
	2 - STEM (Science, Technology, Engineering, and Math) building with related classrooms and labs	48,879	$8,500,000
	3 - Multi-purpose space for student support services and activities	33,042	$5,700,000
	4 - Construct new south academic building with classrooms, computer labs, and support space to accommodate student enrollment growth	40,000	$6,800,000
	5-Pecan Campus Thermal Plant Expansion	1,440	$4,300,000
	6-Pecan Campus Parking and Site Improvements		$2,000,000
	Subtotal Group A	**184,628**	**$37,800,000**
	Nursing & Allied Health Campus		
B	7 - Major campus expansion for new and expanded nursing and allied health training programs, hospital simulation center, and library	87,222	$16,600,000
	8- Parking and Site Improvements		$1,100,000
	Subtotal Group B	**87,222**	**$17,700,000**
	Technology Campus		
C	9 - Expansion for technical and workforce training programs in response to local employment opportunities	72,000	$12,000,000
	10-Technology Campus Parking and Site Improvements		$650,000
	Subtotal Group C	**72,000**	**$12,650,000**
	Mid Valley Campus		
D	11 - Health professions, STEM (Science, Technology, Engineering, and Math) and other academic programs, labs, and related classrooms	76,069	$13,500,000
	12 - Expansion of facilities for: high-wage, high-demand workforce	10,000	$1,750,000
	13 - Expansion of library	10,369	$1,750,000
	14 - Expansion of student advising and student services building	14,269	$2,500,000
	15-Mid Valley Campus Thermal Plant Expansion	4,000	$3,800,000
	16-Mid Valley Campus Parking and Site Improvements		$2,000,000
	Subtotal Group D	**110,707**	**$25,300,000**
	Starr County Campus		
E	17 - Construct Health Professions and Science Center with classrooms and labs to offer nursing and allied health programs and STEM (Science, Technology, Engineering, and Math) programs	48,690	$8,500,000
	18 - Expand technical workforce training facilities for high-wage, high-demand jobs	9,302	$1,600,000
	19 - Construct new library and renovate existing space for Cultural Arts Center	16,516	$2,800,000
	20 - Expansion of student services, advising, admissions, and financial services building	5,000	$850,000
	21 - Expansion of student activities building	4,923	$2,800,000
	22-Starr County Campus Thermal Plant	4,000	$3,800,000
	23-Starr County Campus Parking and Site Improvements		$1,000,000
	Subtotal	**88,431**	**$21,350,000**
	TOTAL		**$ 114,800,000**

DRAFT

EXHIBIT C
GUARANTEED MAXIMUM PRICE PROPOSAL

We hereby submit to the South Texas College District D("STC") pursuant to the provisions of Article V of the CMR-At-Risk Contract by and between STC and [specify component]_____ and [specify CMR] dated _____ __, ____ (the "Contract"), a Guaranteed Maximum Price for the _____ Project, _____project number, (as defined in the Contract) based on the Contract Documents (as defined by the Contract) developed for the Project, as follows:

1. A not-to exceed amount for the reimbursable Cost of the Work provided by the Contract:

   Provide detailed breakdown by project element, phase, stage, schedule of values, separate subcontract, or as otherwise specified by Owner for this Project.

   $_____

2. A not-to-exceed amount for General Conditions items provided by CMR pursuant to the Contract
   (provide detailed breakdown by project element, phase, stage, schedule of values, separate subcontract, or as otherwise specified by Owner for this Project)

   $_____

3. A total, not-to-exceed amount for contingencies for design completion, assumptions and clarifications, bidding, and price escalation:

   (provide detailed breakdown as required by Contract or as specified by Owner)

   $_____

DRAFT

4. Total of CMR's Construction Phase Fees pursuant to the Contract

$_____

5. A construction contingency allowance the Owner will provide. This is a lump sum amount from which changes are to be paid in accordance with the Uniform General Conditions and the Supplementary General Conditions. Any unused amount will be deducted from the Guaranteed Maximum Price by Change Order.

$_____

6. TOTAL OF 1 THROUGH 5

$_____

This figure shall be the Guaranteed Maximum Price (GMP) which we hereby guarantee to the Owner. Attached is a breakdown showing the dollar amount allocated to each bidding package; all of which totals the GMP amount.

Corporations/LLC's: Attest:

_____

Corporate Secretary

or:
Other business forms: Witness:

_____

Seal:

_____

By: _____
Name: _____(print or type)
Title: _____
Date of Signature

Accepted and Agreed

South Texas College District

By: _____
(original signature)

Name:
Title:
Date:_____

DRAFT

ATTACHMENT 1 TO EXHIBIT C

GUIDELINES FOR THE PREPARATION OF GUARANTEED MAXIMUM PRICE PROPOSAL TO BE ATTACHED TO EXHIBIT C, GUARANTEED MAXIMUM PRICE PROPOSAL OF THE CMR-AT– RISK CONTRACT.

The Guaranteed Maximum Price proposal is developed at the phase specified in the CMR-at-Risk Contract.

The GMP proposal should be bound and entitled, "Guaranteed Maximum Price Proposals for (*name of project, project number*)" and must include a date on the cover. Proposal pages must be numbered. Bound inside the proposal, in the order indicated, should be:

1. Transmittal Letter, including confirmation of project team
2. Table of Contents

Tab 1 GMP Summary – (brief general summary of scope of work, alternates, etc.)

Tab 2 List of documents (project manual(s), drawings by sheet number & date)

Tab 3 Description of Work

1. Specification listing – provide a detailed listing of specifications by division and section, which describes exclusions, substitutions, modifications, etc. If no changes are proposed for a particular section, insert "as per specifications"

2. Qualifications and Assumptions – a summary of all qualifications and assumptions included in the specification listing

3. Exclusions – a summary of all exclusions included in the specification listing, plus any exclusion not related to the specifications

4. Value Engineering recommendations – if applicable

5. Allowance Schedule – if applicable

6. Contingency Breakdown

7. Add/Deduct Alternate Schedule – if applicable (a description of alternates with accompanying breakdown of GMP cost

Tab 4 Guaranteed Maximum Price Proposal Cost Breakdown:

1. Exhibit C - Guaranteed Maximum Price Proposal (form as attached to the Contract).

DRAFT

2. The CMR shall provide a detailed initial Total Project Construction Cost estimate using standard estimating industry practices, utilizing the Construction Specifications Institute (CSI) Master-Format, with additional cost breakdown as required by the Project Manager.

3. The CMR shall provide an initial GMP proposal line item cost breakdown for all anticipated bid package strategies {BPS} included in Exhibit C, Item No. 1, Cost of Work, including all self-perform work not associated with General Conditions. The breakdown shall be shown on the Standard Schedule of Values Format – Part I (shown below).

4. The CMR shall provide a cost breakdown, including unit prices, for all items included in Exhibit C, Item No.2, and General Conditions, as defined by Exhibit I, contained within the Contract.

Standard Schedule of Values Format – Part I			
A	B	C	D
CSI Section	Work Breakdown Structure	CSI Description of Work / Subcontractor Name / Specification Section	Initial GMP Proposal Line Item Value
General Conditions (Breakdown per Exhibit I)			$ -
Cost of Work			
		Division 1 - Not included in Exhibit I	$ -
		Division 2 - Sitework	$ -
		Division 3 - Concrete	$ -
		Division 4 - Masonry	$ -
		Division 5 - Metals	$ -
		Division 6 - Woods & Plastics	$ -
		Division 7 - Thermal & Moisture Protection	$ -
		Division 8 - Doors & Windows	$ -
		Division 9 - Finishes	$ -
		Division 10 - Specialties	$ -
		Division 11 - Equipment	$ -
		Division 12 - Furnishings	$ -
		Division13 - Special Construction	$ -
		Division14 - Conveying Systems	$ -
		Division 15 - Mechanical	$ -
		Division 16 - Electrical	$ -
CM / D-B Design Contingency			$ -
CM / D-B Construction Phase Fee			$ -
Owner's Construction Contingency			$ -
Owner's Cash Allowance (If Applicable)			$ -
Part II Services (GMP) Total			$ -

Tab 5 Master Project Schedule

1. This schedule shall be a computer generated CPM Schedule developed in *Primavera Project Planner* or *SureTrak Project Manager* software. It shall be presented in bar chart form and contain detailed activities for all events and milestones included in Part I Construction Phase Services, including permitting and the development of trade packages.
2. Additionally, the schedule shall include detailed, logic driven activities for all Part II, Construction Phase activities scheduled to commence during the first 90 days following acceptance of the GMP.
3. The remainder of the construction activities, those commencing after the first 90 days, shall be included in this schedule but may be summarized by trade and may have longer durations than the "detailed" activities mentioned above.
4. All paths in the schedule must lead to a milestone activity for Substantial Completion. This milestone shall be logic driven and shall indicate completion within approximately 90% of the contract construction period. (Total Float shall be no less than 10% of the project duration.)
5. This Summary Level Schedule shall comply with the requirements of Specification ___00153, including subparagraphs and shall form the basis for the "Detail" schedule, submittal of which is required within 21 days following Notice to Proceed with Part II Services.
6. The Summary Level Schedule shall be provided in hard copy form in the notebook and also in a USB format attached in the notebook.

DRAFT

EXHIBIT D
ADDITIONAL SERVICES REQUISITION

Requisition Number _____
Project Number:_____
Project Name: _____

Date:_____

To: PM _____
STC President_____
Central File (original)

(CMR)

_____
_____
_____

Gentlemen:

Please refer to the Contract dated _____, 20 between _____ ("Owner") and the undersigned ("CMR") as amended to the date hereof (such contract as so modified and amended being hereafter called the "Contract") pursuant to which CMR is to perform certain services. The terms which are defined in the Contract shall have the same meanings when used in this letter.

1. Owner has requested the performance of the services described below which CMR deems to be Additional Services.

   (Description of Services)

2. CMR agrees to perform the Additional Services described above subject to and in accordance with the terms and provisions of the Contract for a fee which will be determined in accordance with the Contract but which will not exceed _____ Dollars ($_____) and for reimbursement of expenses in accordance with the Contract incurred solely in connection with the performance of such Additional Services, but which reimbursement for expenses will not exceed _____ Dollars ($_____).

3. CMR will perform the services in accordance with any schedule attached hereto (attach schedule if applicable), but in any event not later than _____ (_____) days after CMR is authorized to proceed.

DRAFT

If the foregoing is acceptable to you, please so execute by signing the enclosed copy of this letter at the space provided for this purpose and by inserting the date upon which CMR is authorized to commence performance of the Additional Services described in Paragraph 1 above.

Sincerely yours,

CONSTRUCTION MANAGER-AT-RISK
By:_____
Name:_____
Title:_____

Accepted this _____ day of _____, 20 _.
CONSTRUCTION MANAGER-AT-RISK is authorized to commence performance of the Additional Services on _____, 20 _

OWNER
By:_____
Name:_____
Title:_____

PART I: PRECONSTRUCTION PHASE SERVICES

ORIGINAL CONTRACT AMOUNT	($_____)
PREVIOUS ADDITIONS	($_____)
PREVIOUS DEDUCTIONS	($_____)
NET BALANCE CONTRACT AMOUNT	($_____)
THIS (Addition) (Deduction):	($_____)
ADJUSTED CONTRACT AMOUNT	($_____)

XC: CMR
Project Manager
Facilities Director STC
Central File

DRAFT

EXHIBIT E
CONSTRUCTABILITY IMPLEMENTATION PROGRAM

0.0 PROGRAM OBJECTIVES

0.1 Implement a rigorous constructability program.

0.2 Identify and document project cost and schedule savings (targeted costs are 5% of construction costs).

1.0 PROGRAM IMPLEMENTATION

1.1 Project Team Meeting with Constructability Advisor

(Initial meeting) Constructability Implementation: Identify preliminary constructability priorities and any special challenges or concerns.

1.2 Schematic Design Phase

(On-going tasks during Schematic Design Phase and for final review of Schematic Design Documents)

1.2.1 Constructability Advisor

a) Attend project team meetings, review documents, and develop constructability recommendations and documentation.
b) Provide construction cost estimates to coincide with the Project Architect's submissions. The Project Architect and Constructability Consultant shall consult and resolve any differences in their respective construction cost estimates.

.

1.2.2 Project Team and Constructability Advisor-Review constructability recommendations, documentation and construction cost estimates for acceptance.

1.3 Design Development Phase

(On-going tasks during Design Development Phase and for final review of Design Development Documents)

1.3.1 Constructability Advisor

Provide Cost Quantity Surveys to coincide with the Project Architect's submissions. The Project Architect and at Risk (CMR) shall consult and resolve any differences in their respective Cost Quantity Surveys.

1.3.2 Project Team and CMR

Review constructability recommendations, documentation and Cost Quantity Surveys for acceptance.

1.4 Construction Documents Phase

(On-going tasks during Construction Documents Phase and for final review of Construction Documents)

1.4.1 Constructability Advisor

a) Attend project team meetings, review documents, and develop constructability recommendations and documentation.
b) Provide Cost Quantity Surveys to coincide with the Project Architect's
c) Submissions: The Project Architect and Constructability Consultant shall consult and resolve any differences in their respective Cost Quantity Surveys.

DRAFT

1.4.2 Project Team and Constructability Advisor -Review constructability recommendations, documentation and Cost Quantity Surveys for acceptance.

DRAFT

EXHIBIT F
(IF REQUIRED)
SECURITY BOND

Surety Bond No._____

STATE OF TEXAS §

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF _____§

That we, _____, as Principal, and _____, as Surety, are hereby held and firmly bound unto South Texas College as Oblige in the penal sum of Five Percent (5%) of _____ ($_____), the Construction Cost Limitation (CCL) for the Project defined herein below, for payment whereof the said Principal and Surety bind themselves, their heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

Whereas the Principal has executed a contract, with Obligee for the use and benefit of _____ _____, dated _ _____, _____ (the "Contract"), for _____ _____, Project No. _____, (the "Project").

NOW THEREFORE, the condition of this obligation is such that, if the aforesaid Principal shall execute a Guaranteed Maximum Price Proposal acceptable to all parties, the said Principal will, within the time required by the Contract, give Performance and Payment Bonds, as required by the Contract, to secure the performance of the terms and conditions of the Contract, then this obligation to be void; otherwise the Principal and surety will pay unto the Obligee the difference in money between the amount of the Guaranteed Maximum Price Proposal of the said Principal and the amount for which the Obligee legally contracts with another party to perform the work if the latter amount be in excess of the former, but in no event shall liability hereunder exceed the penal sum hereof.

IN WITNESS WHEREOF, the above bounden parties have executed this instrument under their several seals this _____ day of _____ in the year _____, the name and corporate seal of each corporate party being hereto affixed, and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

(SEAL) _____
Principal

ATTEST:

By: _____ By: _____

_____ _____
(Typed Name and Title) (Typed Name and Title)

(SEAL) _____
Surety

ATTEST:

By: _____ By: _____

_____ _____
(Typed Name and Title) (Typed Name and Title)

DRAFT

EXHIBIT G

ADDITIONAL CONTRACT DOCUMENTS

1. Uniform General Conditions (Attached)

DRAFT

EXHIBIT H

APPROVED GENERAL CONDITIONS LINE ITEMS

Project Management

- Superintendent
- CPM Scheduler
- Project Executive
- Field Office Support Staff
- Assistant Superintendent(s)
- Safety Manager
- Project Manager
- Field/Office Engineer
- Project Engineer/Expeditor

* Project Manager/Superintendent bonuses/incentives/rewards shall NOT be included in the General Conditions GMP proposal, but may be included in the Construction Phase Fee.

Bonds and Insurance

- Builder's Risk Insurance
- Payment & Performance Bonds
- General Liability Insurance

Temporary Utilities

- Dumpsters
- Monthly Water Costs
- Temporary Fire Protection
- Fencing & Covered Walkways
- Temporary Water Distribution & Meters
- Temporary Electrical Distribution & Meters
- Site Erosion Control (BMPs) & Project Entrance(s)
- Temporary Toilets
- Monthly Electrical Costs
- Street Rental & Barricades
- Monthly Telephone Installation Costs
- Temporary Telephone System Installation

Field Offices & Construction Supplies

- Partnering Costs
- Job Photos/Videos
- Reproduction Services
- Project Specific Signage
- Remote Parking Expenses
- Security System/Watchman
- Mobilization & Demobilization
- Safety Material and Equipment
- Small Tools and Storage Trailers
- Monthly Office Trailer Rental Costs
- Project Cleaning at Substantial Completion & Final Acceptance
- First Aid Supplies
- Reference Manuals
- Monthly Office Supplies
- Postage/Special Shipping
- Project/As-Built Drawings
- Move-In/Out & Office Setup
- Drinking Water & Accessories
- Employee Identification System
- Office Clean-Up/Janitorial Services

* All items listed above, are subject to requests for additional information or breakdown.

Items NOT TO BE INCLUDED in the General Conditions GMP line item, but shall be included in the CM/DB CMR's Construction Phase Fee if required for contract.

- Purchase/Lease of Vehicles and Maintenance Costs
- Purchase/Rental of Radios/Communication Equipment
- Purchase/Rental of Jobsite Computer & Electronic Equipment
- Purchase/Rental of Specialized Telephone Systems (including cellular/digital phones)

DRAFT

EXHIBIT I

Authority of Project Manager and Architect to Represent and Bind the Owner

The authority and power of the Project Manager to represent and bind the Owner come from the contract between the Project Manager and the Owner. The following is a list of powers, duties, and responsibilities of the Project Manager, the list is intended for illustration purposes only and not as an exclusive list.

The Project Manager is to mobilize office staff, implement communication systems, secure offices and other expenses.

During all Phases of Program Execution Plan the Project Manager shall:

1. Serve as a single point of contact for the Owner.
2. Coordinate overall schedule with key milestones, referred to as Master Project Schedule (MPS).
3. Provide cost and schedule control systems.
4. Lead partnering and team building activities to build the project team.
5. Brief the governing board and executive sponsors at regular intervals and as required.
6. Conduct meeting of the key project participants on regular intervals and as required.
7. Provide customer interfacing to resolve issues, provide guidance and insight, and to address concerns, if applicable.
8. Execute and oversee quality assurance program in order to protect interest of Owner.
9. Assist with review of potential design team(s) and negotiate with the selected firms and assist in A-E contract preparation and review
10. Conduct meetings with staff to identify detailed programming needs such as communication systems, special equipment and furniture needs and provide data to architects.
11. Develop and design facilities standards and design guidelines.
12. Establish an index of terms for master filing of all projects and assist in centralized filing system for program.

During the Schematic Design Phase the Project Manager shall:

1. Conduct partnering and kickoff meeting with Owner and Architect and/or Engineer firms
2. Communicate all pre-project planning information to Architects and/or Engineers
3. Conduct weekly or bi-weekly design meetings between Owner and Architect.
4. Conduct review of schedule. Conduct schedule optimization session(s) and Project Definition Rating Index evaluations.
5. Submit to the Owner a Statement of Probable Construction Cost based on current area, volume of other unit costs.
6. Conduct reviews of cost estimate & take action to keep cost under control. Provide an ongoing Constructability Program, complete with documented cost savings and value-added impacts.
7. Coordinate, review, evaluate and recommend approval of all schematic design documents submitted by architects and consultant engineers for compliance with Owner's design guidelines, space program needs and performance specifications per campus.

During the Design Development Phase the Project Manager shall:

1. Continue weekly or bi-weekly meetings between Owner & Architect to review and evaluate design documents for compliance with guidelines.
2. Develop a schedule for Design Development stage. Conduct Schedule Optimization

DRAFT

session and Project Definition Rating index evaluations.

3. Advise Owner of any adjustments to preliminary Statement of Probable Construction Cost.
4. Conduct more detailed cost estimates, including independent estimate at end of Design Development and provide Owner with a detailed report.
5. Coordinate, review, evaluate and recommend approval of all design development documents submitted by architects and consultant engineers for compliance with STC's design guidelines, detailed program needs and performance specifications per campus

During the Construction Documents Phase the Project Manager shall:

1. Continue bi-weekly design review meetings either on site or through video conferencing.
2. Conduct weekly project management meetings with Owner to update on progress, financial status, construction issues and use of project contingencies.
3. Advise Owner on any adjustment to previous Statements of Probable Construction Cost.
4. Coordinate with government entities for permit, building permit reviews, and other approvals.
5. Coordinate, review, evaluate and recommend approval of all construction documents submitted by architects and consultant engineers for compliance with STC's design guidelines, detailed program needs and performance specifications per campus before procurement of CMR.

During CMR Procurement Phase the Project Manager shall:

1. Review standard construction contract for billing, procurement, timelines, change orders, applications for payment and all processes required.
2. Assist Owner with CMR selection criteria and review of CMR qualifications and capability to perform scope of work and comply with schedule, programming guidelines and specifications.
3. Assist Owner with negotiating with CMRs; re-bid or re-negotiate Project if lowest bid or proposal is greater than Project budget after selection of CMR by Owner.
4. After selection of CMR by Owner, assist Architect with transmitting standard procurement requirements to CMR and subcontractors.
5. Review information submitted by CMR to include insurance, employee pay scales, material suppliers, subcontractors list, bonds, and financing.

During Construction Phase the Project Manager shall:

1. Serve as the Owner's Point of Contact during construction.
2. Conduct Partnering sessions at the beginning of each Project. Conduct periodic update sessions.
3. Conduct construction update meetings at construction sites on a scheduled and as-needed basis.
4. Review required documents/outlines from CMR including Quality Control Plan, Safety Plan, Environmental Compliance Plan, Minority Contracting plan(if required), and Texas Architectural Barriers Plan and report to Architect and Owner
5. Review CMR cost control plan with Architect and Owner
6. Evaluate requests for proposed Change Orders and Construction Change Proposals and make recommendations.
7. Conduct site visits and inspections as determined by Consultant to review work in place and report in a standard format to Owner with reference to STC facilities standards/specifications, schedules and budgets, and to advise Owner regarding work that has been completed in accordance with the plans and specifications

DRAFT

8. Assist Owner in contracting with Independent Testing Firms. Review testing program results.
9. Administer Construction Contract and General Conditions & act as Owner's representative. Act as conduit between Architect and CMR. Review compliance with all plans, specifications and required terms and conditions and report to Owner on status.
10. Stay up-to-date on submittals. Obtain Owner approvals needed.
11. Monitor Requests For Information and A-E responsiveness
12. Review CMR's Building Commissioning and Turnover Plan.
13. Evaluate payment applications and make recommendations on approval of requests for progress payments.
14. Perform final inspections and review punch list work.

During the Commissioning/Turnover Phase the Project Manager shall:

1. Plan for furnishing procurement and building turnover
2. Review the results of the HVAC Test and Balance for compliance with construction contract requirements.
3. Oversee turnover of all certification documentation and submittals to proper agencies on behalf of Owner.
4. Coordinating training of facility maintenance staff for familiarization with all systems.

During the Warranty/Occupancy Phase the Project Manager shall:

1. Review all contractual and warranty obligations for compliance including the issuance of all documents such as operations and maintenance manuals.
2. Generate and deliver tickler file of all warranty deadlines for each project.
3. Coordinate closing reviews of warranty items after a 30 day and 6 month period.

During the Schematic Design Phase the Architect shall:

1. Review approved program furnished by consultant to ascertain requirements of Project and arrive at mutual understanding and provide preliminary evaluation of program, budget and schedule requirements.
2. Prepare schematic design documents

During the Design Development Phase the Architect shall:

1. Prepare Design Development Documents addressing architectural, structural, mechanical and electrical systems, materials and other appropriate elements.

During the Construction Documents Phase the Architect shall:

1. Prepare Construction Documents consisting of drawings and specs detailing construction requirements suitable for CMR's use, and to document the constructed facility (modification to be detailed by the CMR.)
2. Coordinate Mylar film reproducible drawings including significant changes during construction based on marked-up prints, drawings and other data.
3. Assist Owner in filing documents for governmental approval by preparing and submitting permit requests, etc.
4. Prepare necessary bidding information, bidding conditions of CMR and owner's standard Owner/CMR Contract for review and approval by owner.

During the CMR Procurement Phase the Architect shall:

1. Provide Owner with necessary modifications to construction documents for Project if lowest bid or proposal is greater than Project budget.

DRAFT

During the Construction Phase the Architect shall:

1. Generate proposed Change Orders and Construction Change Directives; order minor changes.
2. Make visits to the site for compliance with (not exhaustive or continuous on-site inspections). Inform Owner of work progress; notify Owner of defects, reject non-conforming work.
3. Review inspection or testing of the Work – fabricated, installed or to be completed and report results to owner.
4. Approve or reject submittals from the CMR.
5. Respond to Requests for Information from the CMR and advise the Owner
6. Determine amounts owed to the CMR based on site observations & CMR's Applications for Payment & issue Certificates for Payment.
7. Perform final inspections and generate punch list.
8. Conduct inspections to determine the dates of Substantial and Final Completion, issue Final Certificate of Payment, and submit to the Owner upon Final Completion a letter that work has been completed in total in accordance with Contract Documents, to the best of his knowledge.

During the Commissioning/Turnover Phase the Architect shall:

1. Receive from CMR and forward to Owner all completed HVAC test and balance reports.
2. Verify that all certification inspections are executed and documentation is provided to the Owner.

During the Warranty/Occupancy Phase the Architect shall:

1. Receive and forward to the Owner written warranties and related documents required by Contract Documents.

DRAFT

EXHIBIT J

Self Interest Disclosure

I, _____, certify, on behalf of CMR, that I am an Owner of CMR and have undertaken a reasonable due diligence inquiry of the CMR's owners and that for the period beginning three hundred sixty five days prior to the date hereof, except as disclosed in an attachment, neither the CMR nor any owner of CMR has a business affiliation with, direct financial interest in, or financial involvement with any person or entity that that has been selected as an Architect, Engineer, or a subcontractor or materials provider to the Construction Manager at Risk on the Project. I further certify that any sub-contractor engaged by CMR to perform services for the Project shall have no business affiliation with, direct financial interest in, or financial involvement with any person or entity that provides construction services, materials or products in connection with the Project.

Construction Manager @Risk

BY:

_____

NAME:

TITLE:

DRAFT

UNIFORM GENERAL CONDITIONS
FOR BUILDING CONSTRUCTION CONTRACTS
FOR THE SOUTH TEXAS COLLEGE

TABLE OF CONTENTS:

Article I	**General Contract Definitions**	**Page 3**
Article II	**General Laws Governing Construction**	**Page 6**
Article III	**Compliance with and Enforcement of Prevailing Wage Laws**	**Page 8**
Article IV	**Drawings and Specifications**	**Page 9**
Article V	**Construction Bonds**	**Page 12**
Article VI	**Insurance Requirements**	**Page 13**
Article VII	**General Responsibilities of Owner and Contractor**	**Page 18**
Article VIII	**Additional Contractor Responsibilities when the Owner Awards Separate Contracts**	**Page 25**
Article IX	**The Contractor's Responsibility for Jobsite Safety**	**Page 26**
Article X	**Materials and Workmanship; Licensing and Testing**	**Page 28**
Article XI	**Shop Drawings and Submittals**	**Page 31**
Article XII	**Inspection of the Project During Construction**	**Page 33**
Article XIII	**Contract Payments**	**Page 36**
Article XIV	**Closing Inspections**	**Page 39**
Article XV	**Early Occupancy**	**Page 41**
Article XVI	**Contract Final Acceptance and Payment**	**Page 43**
Article XVII	**Contract Warranty and Guarantee**	**Page 44**
Article XVIII	**Not Used**	
Article XIX	**Concealed Site Conditions**	**Page 45**
Article XX	**Change Orders**	**Page 46**
Article XXI	**Administration of Change Order Requests**	**Page 48**
Article XXII	**Pricing Change Order Work**	**Page 52**
Article XXIII	**Time Allotted for Performance; Construction Schedules**	**Page 55**

DRAFT

Article XXIV	**Modification of the Contract Time**	**Page 57**
Article XXV	**Termination and Suspension of the Contract Prior to Completion**	**Page 61**
Article XXVI	**Dispute Resolution**	**Page 63**
Article XXVII	**Miscellaneous**	**Page 64**

DRAFT

UNIFORM GENERAL CONDITIONS
FOR BUILDING CONSTRUCTION CONTRACTS
FOR THE SOUTH TEXAS COLLEGE

Article I - General Contract Definitions

Unless the context clearly requires another meaning, the following terms shall have the meaning assigned herein:

Architect/Engineer means a person registered as an architect pursuant to Article 249a, Tex. Civ. Stat. Ann., as a landscape architect pursuant to Article 249c, Tex. Civ. Stat. Ann., and/or a person licensed as a professional engineer pursuant to Article 327la, Tex. Civ. Stat. Ann., or a firm employed by Owner or Design-Build Contractor to provide professional architectural or engineering services and exercising overall responsibility for the design of a Project or a significant portion thereof, and performing certain contract administration responsibilities as set forth in the Contract.

Change Authorization (CA) means a Change Order Proposal Evaluation (CPE) which has been marked "Accepted" by the ODR and, upon receipt of the CA by contractor, constitutes notice to proceed with the changed work described therein.

Change Order means a written modification of the Contract between the Owner and Contractor, signed by the Owner, the Contractor and the Architect/Engineer.

Change Order Proposal Evaluation (CPE) means a Contractor-generated document in response to a Change Order Request (COR) or Change Proposal Request (CPR) or Field Order (FO***)*** which states the adjustment necessary to Contract Sum and Time, if any, in response to the changed work described in the Change Order Request (COR).

Change Order Request (COR) or Change Proposal Request (CPR) means an Owner-generated document which describes a change in the Work, including a description and Drawings and Specifications, as necessary, to inform the Contractor of the nature of the change.

Close-out documents means the product brochures, product/equipment maintenance and operations instructions, manuals, warranties, as-built record documents, affidavit of payment, release of lien and claim, etc., and as may be further defined or identified and required by the Contract Documents.

Contract means all of the Contract Documents between the Owner and the Contractor.

Contract Date is the date of the Owner-Contractor Contract is effective between the Owner and Contractor.

Contract Documents means the Owner-Contractor Contract, the Conditions of the Contract (General, Supplementary General and Special Conditions), the Drawings, the Specifications, the Bidding Documents, Advertisement, Invitation and Instruction to Bidders or Proposer, Contractor's Proposal, Contract Award and all Addenda issued prior to and any Change Orders issued after execution of the Contract.

DRAFT

Contractor means the individual, corporation, company, partnership, firm or other organization that has contracted to perform the Work under the Contract with the Owner. The term Contractor also means a Construction Manager-at-Risk or a Design-Build Contractor.

Contract Sum means the total compensation payable to the Contractor for completion of the Work in accordance with the Contract Documents as originally contracted for and as subsequently adjusted by Change Order.

Contract Time means the period between Notice to Proceed and the date scheduled for substantial completion in the Contract Documents, as may be amended by Change Order.

Date of Commencement means the date designated in the Notice to Proceed that Contractor shall commence the Work.

Day means a calendar day, unless otherwise specifically stipulated.

Drawings mean the work product of the Architect/Engineer which depicts the location and quantity of elements of the Work.

1.16 *Final Completion* means the date established by the Owner in writing –in a certificate when the Contract is fully performed according to the Contract Documents and is acceptable to Owner. Unless otherwise specified in writing contractor shall achieve final completion within thirty (30) days of substantial completion.

1.17 *Interim Change Authorization (ICA)* means an Owner generated document authorized and issued by the ODR which authorizes the Contractor to proceed with changed work before acceptance of a CPE, when work must proceed in order to prevent damage to Work in place, to prevent significant delay in the Project Schedule or to maintain safety, or otherwise when determined to be in the interest of the Owner.

1.18 *Owner* means the South Texas College acting through any duly authorized representative.

Owner's Designated Representative (ODR) means the individual appointed or assigned by the Owner to be its on-site representative during the Project, to exercise certain power on behalf of the Owner and to undertake certain contract administration activities as specifically outlined in the Contract.

Not Used.

Project means the Work as described by the Contract Documents.

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

Schedule of Values means the detailed breakdown of the cost of the materials and labor necessary to accomplish the Work as described in the Contract Documents, submitted by Contractor for approval by Owner and Architect/Engineer.

DRAFT

Shop Drawings means the drawings, diagrams, illustrations, schedules, performance charts, brochures and other data which are prepared by the Contractor or any Subcontractor, manufacturer, supplier or distributor, and which illustrate some portion of the Work.

Site means the geographical area at the location where the Work is to be performed.

Special Conditions means the documents containing terms and conditions, which relate to specific project and are peculiar to it. Special Conditions when used are a part of the Contract Documents and supercede the Uniform General Conditions to the extent of conflict.

Specifications means the Architect'/Engineer's work product which establishes the quality of the products and processes to be used to produce the Work and the Owner's Division 1 specifications.

Subcontractor means a person or organization who, as an independent contractor, contracts directly or indirectly with Contractor to perform part or all of the Contract between the Owner and the Contractor. The term does not include the Architect/Engineer.

Substantial Completion means the date jointly certified by the Contractor, Owner, and Architect/Engineer when the Work or a designated portion thereof, is so sufficiently complete, in accordance with the Contract Documents, as to be functionally operational in all its components and fit for the use for which it is intended.

Supplementary General Conditions means the standard procedures and contract administration requirements of an individual State contracting agency that alter or expand upon matters covered in the Uniform General Conditions. Supplementary General Conditions, when used, are a part of the Contract Documents and supercede the Uniform General Conditions to the extent of conflict.

Unit Price Work means Work to be paid for on the basis of unit prices.

Unilateral Change Order (ULCO) means a Change Order issued by the Owner without the contract of the Contractor as more fully described in § 20.4.

1.32 *Work* means all labor, plant, materials, facilities, and all other things, including the construction and services necessary or incidental to fulfill Contractor's obligations for the Project in conformance with the Contract Documents.

1.33 *Substantial Completion Inspection* means an inspection conducted to determine that a project, or a portion thereof, is substantially complete as defined herein, and usable for its intended purposes. The Substantial Completion Inspection results in a Pre-Final Punch list.

Final Inspection means an inspection conducted to determine that all deficiencies listed on the pre-final punch list or subsequently have been corrected and that, depending on the outcome of the Final Inspection, it may be appropriate to release retainage and/or make final payment.

1.35 *The terms "bid", "bidder", or similar terms used in this document* also mean "proposal", "proposer", or "respondent" as appropriate for the type of project for which these General Conditions are used.

Article II - General Laws Governing Construction

2.1 Compliance with Laws. In the execution of the Contract Documents and the Work, the Contractor shall comply with all applicable local building codes, State and Federal laws, including but not limited to, laws governing labor, equal employment opportunity, safety, environmental protection and prevailing wage rates. The Contractor shall make himself familiar with and at all times shall observe and comply with all Federal, State and Local laws, ordinances and regulations which in any manner affect the conduct of the Work. The Contractor shall indemnify and save harmless the State and its official representatives against any claim arising from violation of any such law, ordinance or regulation by himself, his subcontractors and his employees. Except where expressly required otherwise by applicable laws and regulations, neither Owner nor the Architect/Engineer shall be responsible for monitoring Contractor's compliance with any laws or regulations. Competent evidence of compliance with applicable laws shall be furnished.

2.1.1 The Contractor shall cooperate with the College or other governmental officials at all times where their jurisdiction applies. The Contractor shall make application, pay all fees, and provide supporting documentation necessary to secure permits, which are required for the performance of the Contract Documents and the Work. Contractor has a continuing obligation throughout the term of the Contract to conduct his operations under duly issued permits and, in the event Contractor loses or has revoked a necessary permit, Contractor must take immediate steps to apply for and receive another permit.

Where the Underwriters' Laboratories have established standards and issued labels for a particular group, class, or type of equipment the Underwriters' label shall be required on all equipment in that category. The National Electric Code and the National Plumbing code shall be minimum requirements. Competent evidence of compliance with applicable codes shall be furnished.

2.2 State Sales and Use Taxes. The Owner qualifies for exemption from State and Local Sales and Use Taxes pursuant to the provisions of Chapter 151, Texas Tax Code. The Contractor may claim exemption from payment of applicable State taxes by complying with such procedures as may be prescribed by the State Comptroller of Public Accounts.

2.3 Antitrust Claims. The Contractor hereby assigns to the Owner any and all claims for overcharges associated with this Contract which arise under the antitrust laws of the United States, 15 U.S.C.A. Sec. 1 et seq.

2.4 Venue for Suits. The venue for any suit arising from this Project shall be in a court of competent jurisdiction in Cameron County, Texas.

2.5 Licensing of Trades. The Contractor shall comply with all applicable provisions of state law related to required licensing of skilled tradesmen, contractors, materialmen, suppliers and or laborers, as necessary to accomplish the Work.

2.5.1 In the event the Contractor or one of his Subcontractors loses his license for any reason during the term of performance of the Contract, the Contractor shall promptly hire or contract with a licensed provider of the service at no additional cost to the Owner.

2.6 Patents and Copyrights. The Contractor shall be responsible at all times for compliance with applicable patents or copyrights encompassing, in whole or in part, any design, device, material, or process utilized, directly or indirectly, in the performance of the Work.

2.6.1 Whether or not Owner has specified the use of a particular design, devise, material or process, the Contractor shall pay all royalties and license fees and shall provide, prior to commencement of the Work hereunder, and at all time during the performance of same, for the lawful use of any design, device, material or process covered by letters patent or copyright by suitable legal contract with patentee, copyright holder or their duly authorized representative.

2.6.2 Contractor shall defend all suits or claims for infringement of any patent or copyright and shall save the Owner harmless from loss or liability, direct or indirect, arising with respect to the Contractor's process in the formulation of its bid or performance of the Work or otherwise arising in connection therewith. Owner reserves the right to provide its own defense to any suit or claim of infringement of any patent or copyright, in which event the Contractor shall indemnify and save harmless the Owner from all costs and expenses, including reasonable attorney's fees and judgments, arising from such defense.

2.7 Environmental Regulations. At all times, Contractor shall conduct its activities in compliance with applicable laws and regulations and other requirements of the Contract relating to the environment, and its protection. Owner and Contractor are jointly responsible for obtaining and maintaining permits related to storm water run-off. Contractor covenants to conduct its operations consistent with storm water run-off permit conditions. Contractor shall be responsible for any hazardous materials brought to the site by Contractor, Subcontractor, Suppliers or anyone else for whom Contractor is responsible. No hazardous materials shall be incorporated into the Work.

2.8 Antiquities. Contractor shall take precaution to avoid disturbing primitive records and antiquities of archaeological, paleontological or historical significance. No objects of this nature shall be disturbed without written permission of Owner and the Texas Historical Commission. When such objects are uncovered unexpectedly, the Contractor shall stop all Work in close proximity and notify the ODR and the Texas Historical Commission of their presence and shall not disturb them until written permission and permit to do so is granted. All primitive rights and antiquities, as defined in Chapter 191, Texas Natural Resource Code, discovered on the Owner's property shall remain property of State of Texas, the Texas Historical Commission. If it is determined by Owner, in consultation with the Texas Historical Commission that exploration or excavation of primitive records or antiquities on Project Site is necessary to avoid loss, Contractor shall cooperate in salvage work attendant to preservation. If the Work stoppage or salvage work causes an increase in the Contractor's cost of, or time required for, performance of the Work, Contractor may file with the ODR a Notice of Claim as described in § 21.1.2.2.

2.9 Franchise Tax Status: The Contractor agrees to execute and provide to the Owner a Certification of Franchise Tax Payment, on a form approved by the Owner.

2.10 Tax payer and Vendor Account Information: The Contractor agrees to execute and provide to the Owner a Taxpayer and Vendor Account Information form as obtained from the Texas Comptroller of Public Accounts stating that the Contractor is in "Good Standing" and not on "Vendor Hold".

DRAFT

Article III- Compliance with and Enforcement of Prevailing Wage Laws

3.1 Duty to Pay Prevailing Wage Rates. The Contractor shall pay not less than the wage scale of the various classes of labor as shown on the "Prevailing Wage Schedule" provided by the Owner. The specified wage rates are minimum rates only. The Owner will not consider any claims for additional compensation made by any Contractor because the Contractor pays wages in excess of the applicable minimum rate contained in the Contract. The "Prevailing Wage Schedule" is not a representation that quantities of qualified labor adequate to perform the Work may be found locally at the specified wage rates.

3.1.1 Each worker shall be classified in one of the classifications in the prevailing wage rate table. The Contractor shall notify each worker commencing work on the contract the worker's job classification and the established minimum wage rate required to be paid, as well as the actual amount being paid. The notice must be delivered to and signed in acknowledgement of receipt by the employee and must list both the monetary wages and fringe benefits to be paid or furnished for each classification in which the worker is assigned duties. When requested, competent evidence of compliance with the Texas Prevailing Wage Law shall be furnished.

3.1.2 A copy of each worker wage rate notification shall be submitted to the ODR with the application for progress payment for the period during which the worker began on-site activities.

3.2 Prevailing Wage Schedule. The "Prevailing Wage Schedule" shall be determined by the Owner in compliance with Chapter 2258, Texas Government Code. Should the Contractor at any time become aware that a particular skill or trade not reflected on the Owner's Prevailing Wage Schedule will be or is being employed in the Work, whether by the Contractor or by a subcontractor, the Contractor shall promptly inform the ODR and the Owner shall specify a wage rate for that skill or trade, which shall bind the Contractor.

3.3 Penalty for Violation. The Contractor and any Subcontractor shall pay to the Owner a penalty of sixty dollars ($60.00) for each worker employed for each calendar day, or portion thereof, that the worker is paid less than the wage rates stipulated in the Prevailing Wage Schedule or any supplement thereto pursuant to §3.2. The Contractor and each Subcontractor shall keep, or cause to be kept, an accurate record showing the names and occupations of all workers employed in connection with the Work, and showing the actual per diem wages paid to each worker, which records shall be open at all reasonable hours for the inspection by the Owner.

3.4 Complaints of Violations of Prevailing Wage Rates.

3.4.1. Owner's Determination of Good Cause. Within 31 days of receipt of information concerning a violation of Chapter 2258, Texas Government Code, the Owner shall make an initial determination as to whether good cause exists to believe a violation occurred. The Owner's decision on the initial determination shall be reduced to writing and sent to the Contractor or Subcontractor against whom the violation was alleged, and to the affected worker. When a good cause finding is made, the Owner shall retain the full amounts claimed by the claimant or claimants as the difference between wages paid and wages due under the Prevailing Wage Schedule and any supplements thereto, together with the applicable penalties, such amounts being subtracted from successive progress payments pending a final decision on the violation.

3.4.2 Arbitration Required if Violation not Resolved. After the Owner makes its initial

determination, the affected Contractor or Subcontractor and worker have 14 days in which to resolve the issue of whether a violation occurred, including the amount that should be retained by Owner or paid to the affected worker. If the Contractor or Subcontractor and affected worker reach an contract concerning the worker's claim, the Contractor shall promptly notify the Owner in a written document signed by the worker. It the Contractor or Subcontractor and affected worker do not agree before the 15th day after the Owner's determination, the Contractor or Subcontractor and affected worker must participate in binding arbitration in accordance with the Texas General Arbitration Act, Chapter 171, Tex. Civ. Prac. & Rev. Code. The parties to the arbitration have 10 days after the expiration of the 15 days referred to above, to agree on an arbitrator; if by the 11th day there is no contract to an arbitrator, a district court shall appoint an arbitrator on the petition of any of the parties to the arbitration.

3.4.3 Arbitration Award. If an arbitrator determines that a violation has occurred, the arbitrator shall assess and award against the Contractor or Subcontractor the amount of penalty as provided in § 3.4.1 thereof and the amount owed the worker. The Owner may use any amounts retained under § 3.2 hereof to pay the worker the amount as designated in the arbitration award. If the Owner has not retained enough from the Contractor or Subcontractor to pay the worker in accordance with the arbitration award, the worker has a right of action against the Contractor and Subcontractor as appropriate, and the surety of either to receive the amount owed, attorney's fees and court costs. The Contractor shall promptly furnish a copy of the arbitration award to the Owner.

3.5 Prevailing Wage Retainage. Money retained pursuant to §3.4 shall be used to pay the claimant or claimants the difference between the amount the worker received in wages for labor on the Project at the rate paid by the Contractor or Subcontractor and the amount the worker would have received at the general prevailing wage rate as provided by the contract of the claimant and the Contractor or Subcontractor affected, or in the arbitrator's award. The full statutory penalty of $60.00 per day of violation per worker shall be retained by the Owner to offset its administrative costs, pursuant to Texas Government Code §2258.023. Any retained funds in excess of these amounts shall be paid to the Contractor on the earlier of the next progress payment or final payment. Provided, however, that the Owner shall have no duty to release any funds to either the claimant or the Contractor until it has received the notices of contract or the arbitration award as provided under §§3.4.2 and 3.4.3.

3.6 No Extension of Time. If the Owner determines that good cause exists to believe a violation has occurred, the Contractor shall not be entitled to an extension of time for any delay arising directly or indirectly from of the procedures set forth in §3.4.

Article IV - Drawings and Specifications

4.1 Ownership of Drawings and Specifications. All Drawings, Specifications and copies thereof furnished by the Architect/Engineer are, and shall remain, his property. They are not to be used on any other project by the Contractor and, with the exception of one contract set are to be returned to the Architect/Engineer, upon request, following completion of the Work.

4.2 Copies Furnished. The Contractor will be furnished free of charge the number of complete sets of the Contract Drawings and Specifications before on-site work commences as provided in the Supplementary General Conditions or Special Conditions. Additional complete sets of Drawings and Specifications, if requested, will be furnished at reproduction cost to the one requesting such additional sets.

4.3 Interrelation of Documents. The Drawings depict the location and quantity of elements of the work. The specifications indicate quality. All documents are intended to be complimentary to produce the Work.

4.4 Resolution of Conflicts in Documents.

4.4.1 In the event of conflict between or among Drawings and Specifications, the better quality or greatest quantity shall prevail. In the event of conflict among provisions of Specifications, using the CSI format, what is called for in the division of the predominant discipline will govern inconsistent provisions found elsewhere.

4.4.2. In the event of conflict among the drawings, the large scale drawings prevail over the small scale drawings.

4.5 Contractor's Duty to Review Contract Documents. In order to facilitate its responsibilities for completion of the Work in accordance with and as reasonably inferable from the Contract Documents, prior to commencing the Work, the Contractor shall examine and compare: the Contract Documents; information furnished by the Owner pursuant to §§4.7; relevant field measurements made by the Contractor; and any visible conditions at the Site affecting the Work.

4. 6 Discrepancies and Omissions in Drawings and Specifications.

4.6.1 If in the course of the performance of the obligations in § 4.5, the Contractor discovers any errors, omissions or inconsistencies in the Contract Documents, the Contractor shall promptly report them to the Owner and the Architect/Engineer. It is recognized, however, that the Contractor is not acting in the College of a licensed design professional, and that the Contractor's examination is to facilitate construction and does not create an affirmative responsibility to detect errors, omissions or inconsistencies or to ascertain compliance with applicable laws, building codes or regulations.

4.6.2 The Contractor has no liability for errors, omissions, or inconsistencies described in §§ 4.5 and 4.6.1 unless the Contractor knowingly failed to report a recognized problem to the Owner. If, however, the Contractor fails to perform the examination and reporting obligations of these provisions, the Contractor shall be responsible for any avoidable costs or direct damages.

4.6.3 The Contractor shall propose the most practical solution to resolve the conflict or omission requiring the minimum schedule and budget impact and furthering the best interest of the project. The Owner and Architect/Engineer shall evaluate the proposed solution and provide a response to Contractor. If the solution prompts changes to the Contract Sum or Contract Time the contract shall be adjusted under Article XX.

4.6.4 Owner makes no representations, express or implied, about the adequacy or accuracy of the drawing, specifications or other Construction Documents provided or their suitability for their intended use. Owner expressly disclaims any implied warranty that the Construction Documents are adequate, accurate or suitable for their intended use.

4.7 Other Information Provided to Contractor.

4.7.1 The Owner may provide Contractor with information, reports, pictures or other items which are not contained within the Contract Documents , but which Contractor should review and use pursuant to § 4.5.

4.8 Requirements for Record Documents

4.8.1 The Contractor shall maintain at the site one copy of all Drawings, Specifications, Addenda, approved Shop Drawings and Contract Modifications, and all project correspondence. The Contractor shall maintain Drawings and Specifications in good order and marked to record all changes made during construction. The Contractor shall keep on the site of Work a copy of the current and updated Contract Drawings and Specifications and shall at all times give the Owner or its representatives and agents access thereto.

4.8.2 Further, the Contractor shall maintain this record set of drawings and specifications which reflect the "As-Constructed" conditions and representations of the Work performed, whether it be directed by Addendum, Change Order or otherwise. All records prescribed herein shall be made available for reference and examination by the Owner and its representatives and agents.

4.8.3 The Contractor shall update the "As-Constructed" drawings and specifications monthly prior to submission of periodic partial pay estimates. Failure to maintain such records shall constitute cause for denial of a progress payment otherwise due.

4.8.4 Prior to requesting Substantial Completion Inspection by the Owner and Architect/Engineer; the Contractor shall furnish a complete set of the "mark-up" blueline “As-Constructed” set maintained at the site and one photocopy of same. Concurrently with furnishing these record blueline drawings, the Contractor shall also furnish a preliminary copy of each operating and maintenance manual (O&M) required by the contract documents, for review by the Architect/Engineer and the Owner.

4.8.5 Once determined acceptable, the Contractor shall provide photographic mylar prints of professionally drafted “As-Constructed” drawings, two sets of blueline copies of the mylar “As-Constructed” drawings, two sets of operating and maintenance manuals, two sets of approved submittals, and other record documents as required elsewhere in the contract documents.

V - Construction Bonds

5.1 Performance and Payment Bonds. The Contractor is required to tender to Owner, prior to commencing the Work, performance and payment bonds, as required by Chapter 2253, Texas Government Code.

5.1.1 A Performance Bond is required if the Contract Price is in excess of $100,000. The performance bond is solely for the protection of the Owner, in the full amount of the Contract and conditioned on the faithful performance of the Work in accordance with the Contract Documents. The form of the bond shall be approved by legal counsel for the Owner.

5.1.2 A Payment Bond is required if the Contract Price is in excess of $25,000. A payment bond is payable to the state, in the full amount of the Contract and solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the Contractor or a supplier of required materials or labor. The form of bond shall be approved by the Attorney General of Texas.

5.1.3 Corporate sureties authorized to issue bonds shall be qualified and comply with relevant provisions of the Texas Insurance Code.

5.1.4 A Security Bond in the amount of 5% of the Construction Cost Limitation shall be provided to the Owner when the Contract is executed. Payment and Performance Bonds, as required above, shall be furnished in the full amount of the Guaranteed Maximum Price (GMP) when the GMP is executed.

5.1.5 Each bond shall be executed by a corporate surety or sureties authorized to do business in the State of Texas and acceptable to the Owner, and on the Owner's form. If any bond is for more than 10 percent of the surety's capital and surplus, the Owner may require certification that the company has reinsured the excess portion with one or more reinsurers authorized, accredited, or trusteed to do business in the State. A reinsurer may not reinsure for more than 10 percent of its capital and surplus. If a surety upon a bond loses its authority to do business in the State, the Contractor shall within thirty (30) days after such loss furnish a replacement bond at no added cost to the Owner.

5.1.6 Each bond shall be accompanied by a valid Power-of-Attorney (issued by the surety company and attached, signed and sealed with the corporate embosses seal, to the bond) authorizing the attorney in fact who signs the bond to commit the company to the terms of the bond, and stating any limit in the amount for which the attorney can issue a single bond.

5.2 The process of requiring and accepting bonds and making claims thereunder shall be conducted in compliance with Chapter 2253, Texas Government Code. If for any reason a statutory payment or performance bond is not honored by the surety, the Contractor shall fully indemnify and hold the Owner harmless of and from any costs, losses, obligations or liabilities it incurs as a result.

5.3 Owner shall furnish certified copies of a payment bond and the related Contract to any qualified person seeking copies who complies with §2253.026, Texas Government Code.

5.4 Claims on Payment Bonds. Claims on payment bonds must be sent directly to the Contractor and his surety in accordance with § 2253.041, Texas Government Code. All Payment Bond claimants are cautioned that no lien exists on the funds unpaid to the Contractor on such Contract, and that reliance on notices sent to the Owner may result in loss of their rights against the Contractor and/or his surety. The Owner is not responsible in any manner to a claimant for collection of unpaid bills, and accepts no such responsibility because of any representation by any agent or employee.

5.5 Payment Claims when Payment Bond not Required. When the value of the Contract between the Owner and the Contractor is less than $25,000.00, claimants and their rights are governed by Texas Property Code, §§ 53.231 – 53.239. These provisions set out the requirements for filing a valid lien on funds unpaid to the Contractor as of the time of filing the claim, actions necessary to release the lien and satisfaction of such claims.

5.6 All bonds shall be issued by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company, or otherwise acceptable to Owner.

Article VI - Insurance Requirements

6.1 Insurance Requirements.

6.1.1 The Contractor shall carry insurance in the types and amounts indicated in this Article for the duration of the Contract, which shall include items owned by Owner in the care, custody and control of Contractor prior to, during construction and during the warranty period. Contractor must also complete and file the declaration pages from the insurance policies with Owner whenever a previously identified policy period expires during the term of the Contract, as proof of continuing coverage. Acceptance of the insurance policy declaration pages by the Owner shall not relieve or decrease the liability of the Contractor. Contractor shall upon submission for monthly payment certify that all policies required are in place. Failure to update policies shall be reason for payment to be withheld until evidence for renewal is provided to the Owner.

6.1.2 Unless otherwise provided for in Supplementary General Conditions, the Contractor shall provide and maintain, until the Work covered in this Contract is completed and accepted by the Owner, the minimum insurance coverage's in the minimum amounts as described below. Coverage shall be written on an occurrence basis by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company, or otherwise acceptable to Owner.

Type of Coverage	Limits of Liability
a. Worker's Compensation	Statutory
b. Employer's Liability	
Bodily Injury by Accident	$1,000,000 Ea. Accident
Bodily Injury by Disease	$1,000,000 Ea. Employee
Bodily Injury by Disease	$1,000,000 Policy Limit

c. Commercial General Liability, including coverage for the following:

1)	Premises Operations	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence or its equivalent.
2)	Independent Contractors	
3)	Products/Completed Operations	
4)	Personal Injury	
5)	Contractual Liability	
6)	Explosion, Collapse, Underground	
7)	Broad form property damage, to include fire legal liability	
8)	General aggregate	$2,000,000

d. Business Automobile Liability owned/leased, owned, hired
Combined single limit for Non-Bodily Injury and Property Damage of $1,000,000 per occurrence or its equivalent

e. Owner's Protective Liability Insurance Policy, naming the Owner, its employees, and the Architect/Engineer as insured with the following limits:

Bodily Injury $1,000,000 Each Occurrence
$1,000,000 Aggregate

f. Builder's Risk Insurance
An all risk policy, including workmanship acceptable to the Owner, in the amount equal at all times to 100% of the Contract Sum. The policy shall be issued in the name of the Contractor and shall name his Subcontractors as additional insured's. The Owner shall be named as a loss payee on the policy. The builders risk policy shall have endorsements as follow:

1. This insurance shall be specific as to coverage and not considered as contributing insurance with any permanent insurance maintained on the present premises. If off site storage is permitted, coverage shall include transit and storage in an amount sufficient to protect property being transported or stored.

2. For renovation projects and or work, the Owner waives subrogation for damage by fire to existing building structure(s), if building structure(s) is in care, custody or control of Contractor, and Builder's Risk Policy shall be endorsed to include coverage for existing building structure(s), except that (i) Contractor shall not be required to obtain such an endorsement unless specifically required by the Special Conditions or the Specifications, and (ii) the aforementioned waiver of subrogation shall not be effective unless such endorsement is obtained.

3. Builder's Risk Policy shall be endorsed to include coverage for existing building structure(s).

DRAFT

g. Flood insurance when specified in Supplementary General Conditions or Special Conditions.

h. Umbrella coverage when specified in Supplementary General Conditions or Special Conditions.

6.1.2.1 The above insurance requirements are not intended to be compounded with the Contractor's standing insurance policies. If the Contractor already has in force insurance policies which provide the required coverage, there is no need to purchase duplicate coverage for this project

6.1.3 Policies must include the following clauses, as applicable.

a. "This insurance shall not be canceled, limited in scope or coverage, or non-renewed until after thirty (30) days prior written notice, or ten (10) days for non-payment of premium, has been given to the Owner."

b. "It is agreed that the Contractor's insurance shall be deemed primary with respect to any insurance or self insurance carried by Owner for liability arising out of operations under the Contract with the Owner."

c. "The Owner, its officials, directors, employees, representatives, and volunteers are added as additional insured as respects operations and activities of, or on behalf of the named insured performed under contract with the Owner." This is not applicable to the workers' compensation policy.

d. "The workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of the Owner."

6.1.4 Workers' Compensation Insurance Coverage:

a. Definitions:

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

(2) Duration of the project - includes the time from the beginning of the work on the project until the contractor's work on the project has been completed and accepted by Owner

(3) Coverage – Workers' compensation insurance meeting the statutory requirements of the Texas Labor Code, §401.011(44).

(4) Persons providing services on the project ("subcontractor" in §406.096) - includes all persons or entities performing all or part of

the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

b. The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage contracts, which meets the statutory requirements of Texas labor Code, Section 401.011(44) for all employees of the contractor providing services on the project, for the duration of the project.

c. The contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

d. If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

e. The contractor shall obtain from each person providing services on a project, and provide to the governmental entity:

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

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

f. The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

g. The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

DRAFT

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

i. The contractor shall contractually require each person with whom it contracts to provide services on a project, to:

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

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

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

(4) obtain from each other person with whom it contracts, and provide to the contractor:

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

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

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

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

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

DRAFT

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

k. The contractor's failure to comply with any of these provisions is a breach of contract by the contractor which entitles the governmental entity to declare the contract void if the contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

6.1.5 If insurance policies are not written for the amounts specified in 6.1.2, Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of primary coverage.

6.2 The furnishing of the above listed insurance coverage, as may be modified by Supplementary General Conditions or Special Conditions, must be tendered prior to execution of the Contract, and in no event later than ten (10) days from Notice of Award. Failure to provide the insurance in a timely fashion may result in loss of Contractor's bid bond.

6.3 Owner shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements as they apply to the limits set out in 6.1.2.

Article VII - General Responsibilities of Owner and Contractor

7.1 Owner's General Responsibilities.

7.1.1 The Owner is the entity identified as such in the Contract and is referred to throughout the Contract Documents as if singular in number.

7.1.2 Preconstruction Conference. Prior to, or concurrent with, the issuance of Notice to Proceed, a conference will be held attended by the Owner, Contractor, Architect/Engineer and Subcontractors, as appropriate, to establish a working understanding among the parties as to the Work, the operational conditions at the project site, and general administration of the project, including communications, schedules, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, maintaining required records and all other matters of importance to the administration of the Project and effective communications on Site.

7.1.3 Owner's Designated Representative. Prior to the start of construction, Owner shall designate the Owner's Designated Representative (ODR), with specific express authority within certain dollar amounts to act and bind the Owner to the extent and for the purposes described in the various Articles of the Contract, including responsibilities for general administration of the Contract. Unless otherwise specifically provided for, the ODR is the single point of contact between the Owner and Contractor. Notice to the ODR, unless otherwise noted, constitutes notice to the Owner under the Contract.

7.1.4 The Owner shall furnish to Contractor all surveys describing the physical characteristics, legal description and limitations, site utility locations and other information under the Owner's control. Necessary actions of the Owner, including processing of payments to the Contractor, shall be accomplished with reasonable promptness and subject to Article XIII hereof. The Owner shall pay for all routine testing of materials agreed by the Owner and the Architect/Engineer to be required by the Contract Documents, except when for retesting of materials failing the initial test is required, in which instance the cost of reinspection will be paid for by the Contractor; provided, however, any special testing which is specifically required in the scope of work and listed in a technical section of the specifications shall be paid by the Contractor.

7.1.5 Owner supplied materials and information. Information, equipment or services under the Owner's control shall be furnished by the Owner to the Contractor with reasonable promptness to avoid delay in orderly progress of the work.

7.1.6 Availability of Lands. Owner shall furnish, as indicated in the Contract Documents, all required rights to use the lands upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands which are designated for use by Contractor. Owner shall identify any encumbrances or restrictions specifically related to use of lands so furnished with which Contractor will have to comply. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by Owner, unless otherwise provided in the Contract Documents. If Owner fails to furnish these lands, rights of way or easements in a timely manner, Contractor may make a claim under Article XXI.

7.1.7 The foregoing listing is in addition to the specific duties and authority of Owner and the ODR found in other Articles of the Contract.

7.2 Limitation on Owner's and ODR's Duties. Owner and ODR will not supervise, direct, control or have authority over or be responsible for Contractor's means, methods, technologies, sequences or procedures of construction or the safety precautions and programs incident thereto. Owner and ODR are not responsible for any failure of Contractor to comply with laws and regulations applicable to furnishing or performing the Work. Owner and ODR are not responsible for the failure of Contractor to perform or furnish the work in accordance with the Contract Documents. Owner and ODR are not responsible for the acts or omissions of Contractor, or of any Subcontractor, any supplier, or of any other person or organization performing or furnishing any of the Work.

DRAFT

7.3 Role of Architect/Engineer.

7.3.1 In General. Unless otherwise provided for in the Contract Documents, the Architect/Engineer will perform the duties of the Architect/Engineer as described in this Contract during construction and until final payment, including advising the ODR on matters where assistance is needed. The assignment of any authority, duties or responsibilities to the Architect/Engineer under the Contract Documents, or under any contract between Owner and Architect/Engineer, or any performance thereof by Architect/Engineer is for the exclusive benefit of Owner and not for the benefit of Contractor, any Subcontractors, suppliers or their respective employees or sureties.

7.3.2 The Architect/Engineer has the authority to act on behalf of the Owner to the extent provided for in the Contract Documents, unless otherwise modified by written instrument which will be furnished to the Contractor. The Architect/Engineer will advise and consult with the Owner, and the Owner's instructions to the Contractor will generally be issued through the Architect/Engineer, except that the Owner reserves the right, on occasions, as deemed appropriate by the Owner, to issue instructions directly to the Contractor through the ODR.

7.3.3 All written communications between the Owner, Contractor, and the Architect/Engineer concerned with the construction of the Project shall be furnished to the Owner (central office), the Owner's Resident Construction Manager (ODR) and on-site Construction Inspector, the Architect/Engineer, and the Contractor by the party originating the communication.

7.3.4 All oral directives to the Contractor shall be given through the Owner's Construction Inspector or Resident Construction Manager (ODR) and promptly confirmed in writing.

7.3.5 All instructions affecting the Contract Sum, Contract Time or contract interpretation, shall be confirmed expeditiously in writing with copies furnished to the Architect/Engineer, the ODR and the Contractor by the party issuing the instruction. No instruction affecting the Architect/Engineer's design liability shall be issued without the Architect/Engineer's prior written consent.

7.3.6 The Owner and the Architect/Engineer with the Owner's consent shall interpret Contract requirements and have the authority to reject work performed by the Contractor which, in the opinion of the Owner or the Architect/Engineer, does not meet the requirements of the Contract Documents. Architect/Engineer shall communicate with the ODR upon discovery of non-compliant Work and shall provide a recommendation upon request for review by the ODR. The ODR shall order in writing such work removed and replaced in accordance with Article XII.

7.3.7 Visits of Site. Architect/Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Architect/Engineer deems necessary or as provided in Architect/Engineer's contract with Owner, in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Architect/Engineer will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Architect/Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work, unless otherwise noted. The Architect/Engineer's efforts will be directed toward providing the Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and on-site observations, Architect/Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work. Architect/Engineer visits and on-site observations are subject to all the limitations on Architect/Engineer's authority and responsibility set forth in § 7.4.

7.3.8 Clarifications and Interpretations. Architect/Engineer may determine that written clarifications or interpretations of the requirements of the Contract Documents (in the form of drawings or otherwise) are necessary. Such written clarifications or interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents, will be issued with reasonable promptness to the Contractor as Architect's Supplemental Instruction (ASI). If Owner or Contractor believes that a written clarification or interpretation justifies an adjustment in the Contract Sum or the Contract Time, Owner and Contractor may make a claim therefore as provided in Articles XX and XXI.

7.3.9 The duties listed above are in addition to other duties, responsibilities and actions to be undertaken by Architect/Engineer as specified in other Articles of the Contract.

7.4 Limitations on Architect/Engineer Authority. Architect/Engineer will not supervise, direct, control or have authority over or be responsible for Contractor's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto. Architect/Engineer is not responsible for any failure of Contractor to comply with laws and regulations applicable to the furnishing or performing the Work. Architect/Engineer is not responsible for Contractor's failure to perform or furnish the Work in accordance with the Contract Documents. Architect/Engineer is not responsible for the acts or omissions of Contractor, or of any Subcontractor, any supplier, or of any other person or organization performing or furnishing any of the Work.

7.5 Contractor's General Responsibilities.

7.5.1 The Contractor is the person or entity identified as such in the Contract and is referred to throughout the Contract Documents as if singular in number. The Contractor shall supervise and direct the Work using the best skill and attention to assure that each element of the work conforms to the contract requirements. The Contractor shall be solely responsible for all construction means, methods, techniques, safety, sequences and procedures, and for coordinating all portions of the Work under the Contract. Contractor shall be responsible to see that the completed Work complies accurately with the Contract Documents.

7.5.1.1 The Contractor shall provide project administration in accordance with provisions of Division 1 Specifications and as outlined in the Pre-Construction Conference.

7.5.2 Contractor's Superintendent. The Contractor shall employ a competent resident superintendent who shall be in attendance at the Project Site during the progress of the Work. The superintendent shall be satisfactory to the Owner, and shall not be changed except with the written approval of the Owner unless he leaves the employment of the Contractor. The superintendent shall represent the Contractor at the Site and shall have full authority to act on behalf of the Contractor including, but not limited to, signature authority for progress payments and change orders. All communications given to the superintendent shall be binding on Contractor. All oral communications affecting Contract Time, Contract Sum and contract interpretation will be confirmed in writing to Owner.

7.5.3 Labor. Contractor shall provide competent, suitably qualified personnel to survey, lay out, and construct the Work as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.

7.5.4 Services, Materials, and Equipment. Unless otherwise specified in the Supplementary General Conditions, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work. The Contractor shall provide, without extra charge, all incidental items required as a part of the Work, even though not particularly specified or indicated in the Contract.

7.5.5 No Substitutions Without Approval. The Contractor may make substitutions only with the consent of the Owner, after evaluation and recommendation by the Architect/Engineer and in accordance with a Change Order. If the Contractor has good reason for objecting to the use of a material, appliance, or method of construction as shown or specified, it shall register its objections with the Architect/Engineer in writing, sending a copy to the Owner; otherwise, it shall proceed with the work with the understanding that a satisfactory job is required.

7.5.6 Documents and Samples at the Site. The Contractor shall maintain at the site for the Owner one record copy of the Drawings, Specifications, addenda, Change Orders and other modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of approved Shop Drawings, Samples and similar required submittals. These shall be available to the Architect/Engineer and shall be delivered to the Architect/Engineer for submittal to the Owner upon completion of the Work or Contractor's request for Substantial Completion Inspection.

7.5.7 Should Work be identified by either the Architect/Engineer and/or the ODR as not being in compliance with the Contract Documents, the ODR shall communicate the finding to Contractor and such Work shall be corrected by the Contractor at its expense. The approval of Work by either the Architect/Engineer or ODR does not relieve the Contractor from compliance with all requirements of the Contract Documents where such requirements are not judged at the time of observation of the Work due to work sequences by the Contractor or the lack of time to judge the performance characteristics of the particular Work item.

7.5.8 Subcontractors. Contractor shall not employ any Subcontractor, supplier or other person or organization, whether initially or as a substitute, against whom Owner may have reasonable objection. Owner will communicate such objections in writing. If a rejection causes a change to the Contract Sum, Contractor may file a contractor-initiated Type I change claim under Article XX. Contractor shall not be required to employ any Subcontractor, supplier or other person or organization to furnish any of the work to whom Contractor has reasonable objection. Contractor will not substitute Subcontractors without the approval of Owner.

7.5.8.1 Contractor shall enter into written contracts with all Subcontractors and suppliers which specifically bind the Subcontractors and suppliers to the terms and conditions of the Contract Documents for the benefit of the Owner and the Architect/Engineer.

7.5.8.2 Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with Contractor. Contractor shall require all Subcontractors, suppliers and such other persons and organizations performing or furnishing any of the Work to communicate with Owner through Contractor.

7.5.8.3 The Contractor shall furnish to the Owner a copy of each first-tier subcontract promptly after it has been executed. The Contractor agrees that the Owner has no obligation to review or approve the content of such contracts and that providing the Owner such copies shall in no way relieve the Contractor of any of the terms and conditions of the Contract, including, without limitation, any provisions of the Contract which require the subcontractor to be bound to the Contractor in the same manner in which the Contractor is bound to the Owner.

7.5.9 Continuing the Work. Contractor shall carry on the Work and adhere to the progress schedule during all disputes, disagreements or alternative resolution processes with Owner. No Work shall be delayed or postponed pending resolution of any disputes, disagreements or processes, except as Owner and Contractor may agree in writing.

7.5.10 Cleaning. The Contractor shall at all times keep the Site and the Work clean and free from accumulation of waste materials or rubbish caused by the construction activities under the Contract. Upon completion of the Project, and prior to the final inspection, the Contractor shall have the Work in a neat and clean condition.

7.5.11 Acts and Omissions of Contractor, his Subcontractors and employees. The Contractor shall be responsible for acts and omissions of his employees and his subcontractors, their agents and employees. The Owner may, in writing, require the Contractor to remove from the work any of its subcontractor's or its employees that the Owner's representative finds to be careless, incompetent or otherwise objectionable.

7.5.12 Indemnification of Owner. Contractor covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the Owner and the elected officials, employees, officers, directors, volunteers, and representatives of the Owner, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the Owner directly or indirectly arising out of, resulting from or related to Contractor's activities under this Contract, including any acts or omissions of Contractor, any agent, officer, director, representative, employee, consultant or Subcontractor of Contractor, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this Contract. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of Owner, officers or employees, separate contractors or assigned contractors, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONTRACTOR AND OWNER ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE STATE UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

7.5.12.1 The provisions of this Indemnification are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

7.5.12.2 Contractor shall promptly advise the Owner in writing of any claim or demand against the Owner or Contractor known to Contractor related to or arising out of Contractor's activities under this Contract.

7.5.13 the duties listed above are in addition to the duties, responsibilities and activities to be undertaken by Contractor as specified throughout the Articles of the Contract.

7.5.14 The Contractor will operate and maintain operations areas and associated storage areas at the site of the Work in accordance with the following:

7.5.14.1 All Contractor operations, including storage of materials and employee parking upon the site of work, shall be confined to areas designated by the Owner.

7.5.14.2 The Contractor may erect temporary buildings at its expense, which shall remain its property. The Contractor shall remove such buildings and associated utilities service lines upon completion of the Work, unless the Contractor requests and the Owner provides written consent that it may abandon such buildings and utilities in place.

7.5.14.3 The Contractor will use only established roadways or construct and use such temporary roadways as may be authorized by the Owner. Load limits of vehicles shall not exceed the limits prescribed by appropriate regulations or law. The Contractor will provide protection to road surfaces, curbs, sidewalks, trees, shrubbery, sprinkler systems, drainage structures and other like existing improvements to prevent damage, and any damage thereto shall be repaired by and at the expense of the Contractor.

7.5.15 The Owner may restrict the Contractor's entry to the site to specifically assigned entrances and routes.

7.5.16 The Contractor shall at all times keep construction areas, including storage areas used by it, free from the accumulation of water, waste materials or rubbish during performance of the work. During the period of construction, and not less frequently than once a week, the Contractor shall remove from the site any and all waste materials, rubbish and trash, and shall dispose of such waste materials, rubbish and trash off the property of the Owner. Prior to the Contractor's requested date for a pre-final inspection, the Contractor shall remove any and all remaining equipment from the site and shall leave the premises in a clean, neat and workmanlike condition satisfactory to the Owner.

7.5.17 Royalties and Patents: The Contractor shall pay all royalties and license fees, and defend all suits or claims for infringement of any patent rights and shall save the Owner and its representatives harmless from loss on account thereof.

Article VIII - Additional Contractor Responsibilities when the Owner Awards Separate Contracts

8.1 Separate Contracts. The Owner reserves the right to award other contracts in connection with other portions of the Project under these or similar contract conditions. The Owner reserves the right to perform operations related to the Project with Owner's own forces. Each separate contractor shall undertake to indemnify the Owner as set forth in §7.5.12.

8.1.1 When separate contracts are awarded for different portions of the Project, "the Contractor" in the Contract Documents in each case shall be the Contractor who signs each separate Contract. This Contractor shall cooperate with the separate contractors and Owner's own forces. This Contractor shall properly connect and coordinate its work with the work of the separate contractors as defined in these Contract Documents. If any part of this Contractor's work depends for proper execution or proper results on the work of any of the separate contractors, this Contractor shall inspect and promptly report in writing to the ODR any visually apparent discrepancies or defects found in such other work that render it unsuitable for such proper execution and results. Failure of this Contractor to so inspect and report the visually apparent discrepancies or defects shall constitute an acceptance of the separate contractor's work as fit and proper to receive the Contractor's Work, except as to defects which may develop in the separate contractor's work after the execution of this Contractor's work.

8.1.2 Should this Contractor cause delay or damage to the Work or property of any separate contractor on the Project, this Contractor shall, upon due written notice, endeavor to settle with the separate contractor by contract. If such separate contractor does not settle with this Contractor, the Owner shall initiate a Dispute Resolution process and each party to the dispute shall be financially accountable for any damages or loss based on their proportionate fault determined by the Dispute Resolution process.

8.1.3 This Contractor shall afford the Owner, the Architect/Engineer, the separate contractors and Owner's own forces, as necessary, with the reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work.

8.1.4 The Owner reserves the right to make essential installations which are pertinent to the early use of the building or project. Within this right the Owner may let other contracts or may do such work with its own labor forces and materials. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other Contractor or supplier, or by Owner's employees. The Contractor shall cooperate to the end that the Owner may realize complete functioning of the building or project on the day of substantial completion.

8.2 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of this Contractor, who shall cooperate with them. This Contractor shall participate with other separate contractors and the Owner in reviewing the respective construction schedules, when directed to do so. This Contractor shall make any revisions to his construction schedule as necessary, after receiving Owner's instructions.

8.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction by the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, and damage to the Work or defective construction by a separate contractor. Contractor may make claim for such amounts as outlined in Articles XX.

Article IX - The Contractor's Responsibility for Jobsite Safety

9.1 Unless otherwise specified in the Specifications, Contract Documents, or Supplementary General Conditions, Contractor shall be responsible for initiating, maintaining, supervising, and enforcing all safety precautions and programs in connection with the Work. It shall be the duty and responsibility of the Contractor and all of its Subcontractors to be familiar and comply with all requirements of Public Law 91-596, 29 U.S.C. §§ 651 et. seq., the Occupational Safety and Health Act of 1970, (OSHA) and all amendments thereto, and to enforce and comply with all of the provisions of the Act. Contractor shall comply with all applicable laws and regulations of any public body having jurisdiction for safety of persons or property to protect them from damage, injury or loss and shall erect and maintain all necessary safeguards for such safety and protection.

9.1.1 Contractor shall notify owners of adjacent property and of underground facilities and utility owners when prosecution of the Work may affect them or their facilities, and shall cooperate with them in the protection, removal, relocation and replacement of their facilities and/or utilities.

9.2 In any emergency affecting the safety of persons or property, the Contractor shall act reasonably to prevent threatened damage, injury or loss. Contractor shall give the ODR and Architect/Engineer prompt notice if Contractor believes that any significant changes in the Work or variations from Contract Documents have been caused by its emergency response. Any additional compensation or extension of time claimed by the Contractor resulting from emergency work shall be considered in accordance with Articles XX and XXI.

9.2.1 Authorized agents of Contractor shall respond immediately to call out at anytime of day or night when circumstances warrant the presence of Contractor to protect the Work or adjacent property from damage, restriction or limitation or to take such action pertaining to the Work as may be necessary to provide for the safety of the public. Should Contractor fail to respond, Owner is authorized to direct other forces to take action as necessary and Owner may deduct any cost of remedial action from the funds due the Contractor under the Contract.

9.3 In the event of an incident or accident involving outside medical care or a lost time injury to an individual on or near the Work, Contractor shall notify the ODR as soon as possible within 24 hours of the event. Contractor shall record the location of the event, the circumstances surrounding the event, by using photography or other means, and shall gather witness statements and other documentation which describes the event. Contractor shall supply the ODR and Architect/Engineer with a set of incident investigation documents no later than 36 hours after the occurrence of the event. In the event of a catastrophic incident (one fatality or three workers hospitalized), the scene of the incident shall be barricaded and left intact until all investigations are completed.

Contractor shall be responsible for coordinating the exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the site in connection with laws and regulations.

9.4 Environmental Safety and Control. Upon encountering any previously unknown potentially hazardous material, or other materials potentially contaminated by hazardous material, the Contractor shall immediately stop work in and secure the affected area, and notify the ODR. All subcontracts shall expressly bind subcontractors to the same duty. On receiving such notice, the ODR shall promptly engage qualified experts to make such investigations and conduct such tests as may be reasonably necessary to determine the existence or extent of any environmental hazard. As soon as possible upon completion of this investigation, the ODR shall issue a written report to the Contractor identifying the material or materials found and indicating any necessary steps to be taken to treat, handle, transport or dispose of the material. The Owner may hire third-party contractors to perform any or all such steps. Should compliance with the ODR's instructions result in an increase in the Contractor's cost of performance, or delay the Work, an adjustment in the contract price or time may be claimed by the Contractor pursuant to the provisions of Articles XX, XXI, XXII and XXIII. The Contractor shall fully indemnify, save and hold harmless the Owner of and from any costs, losses, damages or liabilities resulting from its failure, of the failure of its subcontractors, to comply strictly with these provisions.

DRAFT

9.4.1 Contractor shall be responsible for coordinating the exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the site in connection with laws and regulations.

9.5 Trenching safety precautions, applicable only if the project requires excavation which exceeds a depth of five feet, shall comply with the following:

9.5.1 The Contractor will submit a trenching plan to the Owner within fifteen (15) days after bid opening. The plan will be approved and sealed by a professional engineer registered in the State of Texas and employed by the Contractor. Said engineer cannot be anyone who is employed on this project by the Owner or the Owner's Architect or Engineer. Receipt of the plan is prerequisite to award of a contract. Failure to submit a plan as required will result in forfeiture of the bid bond.

9.5.2 The Contractor shall indemnify and hold harmless the Owner and its employees and agents, including the Owner's Architect and Engineer, from any and all damages, costs (including, without limitation, legal fees, court costs, and the cost of investigation), judgments, and claims by anyone for injury or death of persons resulting from the collapse or failure of trenches constructed under this contract. THE CONTRACTOR ACKNOWLEDGES AND AGREES THAT THIS INDEMNITY PROVISION APPLIES EVEN IF THE COLLAPSE OR FAILURE IS PARTLY CAUSED BY THE OWNER'S NEGLIGENCE INCLUDING WITHOUT LIMITATION THE OWNER'S NEGLIGENT ACTS OR OMISSIONS IN FAILING TO PROVIDE ADEQUATELY FOR TRENCH SAFETY. SUCH NEGLIGENT ACTS OR OMISSIONS MAY INCLUDE BUT ARE NOT LIMITED TO, INSPECTIONS, FAILURE TO ISSUE STOP WORK ORDERS, AND THE HIRING OF THE CONTRACTOR.

Article X - Materials and Workmanship; **Licensing and Testing**

10.1 Materials and Workmanship. The Contractor warrants and guarantees that all Work shall be executed in a good and workmanlike matter in accordance with the Contract Documents, complete in all parts and in accordance with approved practices and customs. Unless otherwise specified, all materials and equipment incorporated into the Work under the Contract shall be new.

10.2 Contractor's Warranty of Workmanship.

10.2.1 Limits on Warranty. Contractor's Warranty and guarantee hereunder excludes defects or damage caused by:

a. Abuse, modification or improper maintenance or operation by persons other than Contractor, Subcontractors, suppliers or any other individual or entity for whom Contractor is responsible, or

b. Normal wear and tear under normal usage.

10.2.2 Events Not Affecting Warranty. Contractor's obligation to perform and complete the Work in a good and workmanlike manner in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:

a. Observations by Owner and/or Architect/Engineer;

b. Recommendation to pay any progress or final payment of Architect/Engineer;

c. The issuance of a certificate of Substantial Completion or any payment by Owner to Contractor under the Contract Documents;

d. Use or occupancy of the Work or any part thereof by Owner;

e. Any acceptance by Owner or any failure to do so;

f. Any review of a Shop Drawing or sample submittal; or

g. Any inspection, test or approval by others.

10.3 Routine Testing. If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any work to be inspected, tested or approved, the Contractor shall give the Owner and the Architect/Engineer timely notice of its readiness and of the date arranged so the Architect/Engineer may observe such inspection, testing or approval. Should the material or work fail to comply with the requirements of the Contract Documents, the Contractor shall bear all costs of the testing, inspection or approval as well as the cost of replacement of unsatisfactory material or Work as provided by Article XII; otherwise, the Owner shall bear such costs and an appropriate change order shall be issued.

10.3.1 The costs of routine testing shall be borne by the Owner, but the Contractor shall be responsible for the cost of material tested. When directed by the Owner, demonstration of a material's compliance with the specifications shall be made by one of the following:

a. Manufacturer's certificate of compliance.
b. Mill certificate.
c. Testing laboratory certification.
d. Report of actual laboratory test from the Owner's laboratory or from a laboratory satisfactory to the Owner. Samples tested shall be selected by or in the presence of the Owner and the method of testing shall comply with the professional societies' standard specifications.

10.3.2 Materials incorporated into the Project may be subject to routine tests as specified or as deemed necessary by the ODR or the Architect/Engineer to insure their compliance with the specifications. Materials to be tested may include, but are not limited to, the following:

a. Concrete - Primary mix design, slump tests and cylinder compression tests.
b. Steel - Tensile tests.
c. Welds - Field inspection and X-ray equipment.

d. Soils - Subsoil investigation, physical analysis and compaction tests.
e. Pavement - Physical analysis and compaction tests.
f. Roofing - Samples cut from in-place roof.

Any other basic materials for which standard laboratory test procedures have been established may also be included if doubt as to their quality should arise. Any testing, as described, will be done at the discretion of the Owner who will bear all costs. The Contractor shall be held responsible for providing samples of sufficient size for test purposes and for cooperating with the Owner or his representative in obtaining and preparing samples for tests. All tests will be in accordance with standard test procedures and will be performed by a laboratory selected by the Owner. Results of all tests will be provided to the Owner, Architect/Engineer and the Contractor.

10.3.2.1 Not included in tests provided by the Owner are:

a. Any test of basic material or fabricated equipment offered as a substitute for a specified item on which a test may be required in order to prove its compliance with the Specifications, which testing shall be paid for by Contractor.

b. Tests on mechanical systems required to insure their proper installation and operation, which shall be paid for by Contractor.

10.3.3 Should any of the routine tests indicate that a material does not comply with the job requirements, the burden of proof of compliance shall be with the Contractor, subject to the following conditions:

a. Contractor may select the laboratory for further testing, but selection must be approved by the Owner.
b. Quality and nature of tests will be determined by the Owner.
c. All tests shall be taken in the presence of the Owner or ODR.
d. If tests prove that the material complies with specifications, the laboratory fees will be paid by the Owner. If noncompliance is proved, laboratory fees will be paid by the Contractor.
e. Proof of noncompliance will make the Contractor liable for any corrective action which the Owner feels is prudent, including complete removal and replacement of defective material.

10.3.3.1. All subsequent tests on original or replaced materials conducted as a result of prior failure will be paid by the Contractor.

10.3.4 Special Testing. The Owner or the Architect/Engineer may require special inspection, testing or approval of material or Work in addition to that which may be specified for compliance with requirements of the Contract Documents. Upon direction by the Owner and the Architect/Engineer for additional special testing, the Contractor shall promptly arrange for such special testing, inspection or approval procedure. The costs of special testing shall be at Owner's expense, except if the materials fail, Contractor shall pay the expense; provided, however, that the entire cost of any additional testing, whether routing or special, required because of failure of a prior test shall be borne by the Contractor.

10.4 If any Work (or the work of others) that is to be inspected, tested or approved is covered by Contractor without providing the Owner an opportunity to review based on written notification as set forth in 12.2.3 , or if any Work is covered contrary to the written request of Owner or Architect/Engineer or as specifically indicated elsewhere in the contract documents, the covered work must, if requested by Owner, be uncovered and recovered at Contractor's expense, except as set forth in § 12.2.3.

10.5 Contractor's Testing. Nothing contained herein is intended to imply that the Contractor does not have the right to have tests performed on any material at any time for his own information and job control so long as the Owner is not charged for costs or forced to rely upon such tests when appraising quality of materials. Any modification of, or elaboration on, these test procedures which may be included for specific materials under their respective specification sections shall take precedence over these procedures and all testing required in the technical specification sections shall be the responsibility of the Contractor to coordinate and pay for.

Article XI – Shop Drawings and Submittals

11.1 Contractor's Submittals. The Contractor shall submit, with reasonable promptness consistent with the Project Schedule and in orderly sequence, all Shop Drawings, Samples or other information required by the Contract Documents, or subsequently required by the Architect/Engineer as governed by Change Orders. The Contractor shall review each submittal for compliance with Contract Documents and shall certify that it has done so by stamp, or otherwise, affixed to each copy thereof. Submittal data presented without the Contractor certification will be returned without review or other comment, and any delay resulting therefrom will be the Contractor's responsibility.

11.1.1 The Contractor shall, within twenty (20) calendar days after receipt of the Notice to Proceed, submit to the Owner through the Architect/Engineer four (4) copies of a submittal schedule, listing all items that shall be furnished, for review and approval by the Owner and/or the Architect/ Engineer. The schedule shall also list all items that are to be reviewed and approved by the Contractor.

11.1.2 Such submittal schedules shall include, among other things, shop drawings, manufacturer's literature, certificates of compliance, materials samples, materials colors, guarantees, etc.

11.1.3 The submittal schedules shall indicate the type of item, contract requirements reference, the Contractor's scheduled dates for submitting the above and like items and the projected need dates for approval answers from the Owner or the Architect/Engineer and the projected or actual dates for procurement. This schedule shall show a minimum of thirty (30) calendar days after receipt for review and approval by the Owner and Architect/Engineer, and if resubmittal is required an additional fifteen (15) days will be allowed for approval after receipt. The Contractor will revise and/or update this schedule as appropriate, and submit same with each payment estimate.

11.1.4 The submittal schedule shall be coordinated with the Work Progress Schedule for all the Work. The Contractor shall revise and/or update both schedules monthly to insure consistency and current project data. Four (4) copies of such updated schedules shall be provided to the Owner concurrent with each application for progress payment.

11.1.5 Shop Drawings, Samples or other required information shall be properly identified, as specified or as the Owner and/or the Architect/Engineer may require. At the time of submission, the Contractor shall inform the Owner and the Architect/Engineer in writing of any deviation in the Shop Drawings or Samples from the requirements of the Contract Documents.

11.1.6 By submitting Shop Drawings, Samples or other required information, the Contractor thereby represents that he has determined and verified all field measurements, field construction criteria, materials, catalog numbers and similar data, or will do so, and that he has checked and coordinated each Shop Drawing and Sample with the requirements of the Work and of the Contract Documents and he shall so certify as required by § 11.1.

11.2 Nature and Effect of Review. The Architect/Engineer and the Owner, if required by Supplementary General Conditions, will review and approve all submittals with reasonable promptness, but only for conformance with the design concept of the Project and with the information given in the Contract Documents. Such approval will be indicated in writing. The approval of a separate item shall not indicate approval of an assembly in which the item functions. The approval of the Shop Drawings or Samples shall not relieve the Contractor of responsibility for any deviation from the requirements of the Contract Documents unless the Contractor has informed the Owner and the Architect/Engineer in writing of such deviation at the time of submission and the Owner or the Architect/Engineer has not objected to the specified deviation. The approval shall not relieve the Contractor from responsibility for errors or omissions in the Shop Drawings or Samples.

11.3 Correction and Resubmission. The Contractor shall make any corrections required to a submittal and shall resubmit the required number of corrected copies of the submittals promptly so as to avoid delay, until approved. The Contractor shall address in writing the Architect/Engineer and the Owner, when required, any new revisions other than the corrections requested on previous submissions.

11.4 Limits on Shop Drawing Approvals. No Work requiring a Shop Drawing or Sample submission shall be commenced until the submission has been approved. All such work shall be in accordance with approved Shop Drawings and Samples. Approvals of Shop Drawings and Samples is not authorization to Contractor to perform extra work or changed work unless the procedures of Articles XX and XXI are followed. The Architect/Engineer's and Owner's approval, if necessary, does not relieve Contractor from responsibility for defects in the Work resulting from errors or omissions of any kind on the approved Shop Drawing or Sample.

11.5 The Owner may establish routine review procedures and schedules for submittals at the preconstruction conference.

11.6 Intent of Contract Documents. It is not the intent of the Specifications or Contract Documents to limit materials, equipment or fixtures to the product of any particular manufacturer. Where definite materials, equipment and/or fixtures have been specified by name, manufacturer or catalog number, it has been done to set a definite standard and a reference for comparison as to quality, application, physical conformity, and other characteristics. It is the Owner's or Architect/Engineer's intention to not discriminate against or prevent any dealer, jobber or manufacturer from furnishing materials, equipment, and/or fixtures which meet or exceed the characteristics of the specified items. Substitution of materials shall not be made without prior written approval from the Architect/Engineer and Owner.

11.6.1 The Owner shall be the final judge of whether a proposed substitution meets the required characteristics of a specified item and such decisions of the Owner shall be final and conclusive.

11.7 Unauthorized Substitutions at Contractor's Risk. All proposed substitution of materials, equipment or fixtures shall be presented through the submittal process. The Contractor shall be financially responsible for any additional costs or delays resulting from using materials, equipment or fixtures other than those specified, and shall reimburse the Owner for any increased design or contract administration costs resulting from such unauthorized substitutions.

Article XII - Inspection of the Project During Construction

12.1 Contractor Quality Control. Contractor is responsible for controlling the quality of the work as set forth in the Contract Documents.

12.2 Owner Quality Assurance.

12.2.1 The Owner and the Architect/Engineer and/or other Owner agents and consultants will make periodic visits to the site to familiarize themselves with the progress and quality of the Work, conduct inspections and tests and to determine if the Work is proceeding in accordance with the Contract Documents. The Contractor shall provide sufficient, safe and proper facilities at all reasonable times for observation and/or inspection of the Work by the authorized representatives of the Owner.

12.2.2 The Contractor shall not cover up any work with finishing materials or other building components prior to an opportunity to perform an inspection of the work by the Owner or its authorized representatives for review of the installation. Should corrections of the work be required for approval, cover-up shall be delayed until another inspection can be made and approval is indicated.

12.2.3 The Contractor shall be responsible for providing notification of at least five (5) working days or as mutually agreed, to the Owner of the anticipated need for a cover-up inspection. Should the Owner fail to respond to the requested inspection within the five (5) working day period, or as mutually agreed, the Contractor may proceed with the particular cover-up work identified in the notification. The five (5) working day notice requirement shall not be reduced or waived by the Owner's ability to respond in less time.

12.3. Condemnation and Removal of Defective Work.

12.3.1 The ODR and the Architect/Engineer have the authority to reject and condemn Work, which does not meet the requirements of the Contract and to order such work removed and replaced in accordance with paragraph 12.3.2 hereof. The approval of a work item by the ODR does not relieve the Contractor from compliance with the Contract Documents where such requirements are not judged at the time of observation of the Work due to work sequences by the contractor or the lack of time to judge the performance characteristics of the particular work item, or where the particular work item is part of a system that has not been fully completed and reviewed for overall operation.

12.3.2 The Owner's Designated Representative (ODR) and the Architect/Engineer shall interpret the Contract requirements and shall be the final judge of the acceptability of the Work under the Contract Documents. If any materials or Work furnished under this Contract are condemned or rejected by the ODR or the Architect/Engineer, the Contractor shall, after notice from the ODR or the Architect/Engineer, proceed to remove materials, whether worked or unworked, and to take down all portions of the Work condemned. Contractor shall make good all Work damaged or destroyed by the removal and replacement process.

DRAFT

12.3.2.1 The Contractor shall, without charge or assessment against any contract contingency or allowance, replace any material or correct any workmanship found by the Owner or Architect/ Engineer not to conform to the contract requirements, unless in the public interest the Owner consents in writing to accept such material or workmanship with an appropriate adjustment in the contract price. The Contractor shall promptly correct all Work rejected by the Owner or Architect/Engineer as defective or as failing to conform to the Contract Documents whether observed before or after the Date of Substantial Completion or final inspection and acceptance and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work. The costs of such corrective work shall also include reimbursement by the Contractor to the Owner of the amount of the fee to be paid by the Owner to the Architect/Engineer for the extra services of the Architect/Engineer in performing its responsibilities to the Owner relative to such corrective work.

12.3.2.2 If the Contractor does not promptly complete the work, replace rejected material or correct rejected workmanship, the Owner may, 1) by separate contract or otherwise, replace such material or correct such workmanship and charge the cost thereof to the Contractor, or 2) terminate the Contractor's employment in accordance with Article XXV, Contract Termination.

12.3.2.3 If any portion of the Work is concealed by subsequent work without notification to the Owner as set forth in 12.2.3 contrary to the instructions of the Owner or Architect/Engineer or to the requirements specifically expressed in the Contract Documents, it must be uncovered for observation and recovered at the Contractor's expense.

12.3.2.4 If any other portion of the Work has been covered and the Owner or Architect/Engineer has not specifically requested to observe or it is not specifically indicated elsewhere in the Contract Documents to be observed prior to being covered, either may request to see such Work and it shall be uncovered by the Contractor. If such Work is found to be in accordance with the Contract Documents, the cost of uncovering and recovering shall, by appropriate Change Order, be charged to the Owner. If such Work is found not to be in accordance with the Contract Documents, the Contractor shall pay such costs including the amount of fee to be paid by the Owner to the Architect/Engineer for extra services related to such non-complying work.

12.3.3 Upon notice of condemnation, the Contractor may request to prove to Owner and the Architect/Engineer, at Contractor's sole cost, that the Work should be accepted because it meets performance and other relevant standards. The Contractor shall have ten (10) working days from receipt of the notice to present documentation to prove compliance. Owner shall respond to Contractor's showing of proof in writing within fifteen (15) working days of receipt of Contractor’s documentation.

DRAFT

Article XIII – Contract Payments

13.1 Schedule of Values. Within twenty (20) days of Notice to Proceed under the Contract, the Contractor shall submit to the ODR and the Architect/Engineer for approval a Schedule of Values, accurately itemizing material and labor for the various classifications of the Work. The approved Schedule of Values will be used as the basis for the progress payments under the Contract.

13.1.1 No progress payments will be made prior to receipt and approval of the breakdown, which shall be in such detail as may be required by the Owner. The breakdown shall be submitted to the Architect and Owner not less than twenty (20) days prior to the first request for payment, and this shall be a condition precedent to the processing of the first payment. The breakdown shall follow the trade divisions of the specifications along with provision for general conditions costs, fees, contingencies, and allowances so that the sum of the items will equal the contract price. Each item shall be assigned labor or material values, or both, the subtotal thereof equaling the value of the work in place when completed.

13.1.2 The Contractor shall retain in its files a copy of all worksheets used in preparation of its bid, supported by a notarized statement that the worksheets are true and complete copies of the documents used to prepare the bid. The worksheets shall be made available to the Owner for verification at the time that Contract Documents are being executed and thereafter the Contractor shall grant the Owner during normal business hours access to said notarized copy of worksheets from time to time and at any time during the period commencing upon execution of the Contract and ending one year after final payment.

13.2 Progress Payments. Periodic progress payments will be made to the Contractor for Work performed, and materials in place or suitably stored and protected on sites or as otherwise agreed to by the Owner and the Contractor. Payment shall not become due until receipt by the ODR or his designee of a correct and complete Pay Application, certified by the Architect Engineer pursuant to this article. Progress payments are made provisionally and do not constitute acceptance of work not in accordance with the Contract Documents. Progress payments for Change Order work will not be accepted for payment until Change Order is executed by Contractor.

13.2.1 Preliminary Pay Worksheet. Once each month, the Contractor may submit to the Architect Engineer and the ODR a complete, clean copy of a Preliminary Pay Worksheet, which shall attach the following:

1) The Contractor's estimate of the amount of Work performed, labor furnished and materials incorporated into the Work, using the approved Schedule of Values; and
2) A schedule update as specified, HUB Subcontracting Plan Reports, an updated Submittal Schedule, invoices for stored materials and other supporting documentation, and such additional documentation as Owner may require and as specified in the Supplementary General Conditions of the Contract, Special conditions, or Planning and Scheduling Specification.

13.2.2 Contractor's Periodic Invoice. As soon as practicable, but in no event later than seven days after receipt of the Preliminary Pay Worksheet, the Architect/Engineer and ODR shall meet with the Contractor to review the Preliminary Pay Worksheet and to observe the condition of the Work. On the basis of this review, the ODR and the AE may require modifications to the Preliminary Pay Worksheet prior to the submittal of a Periodic Invoice, and shall promptly notify the Contractor of revisions necessary for approval. As soon as practicable, but in no event later than seven days following the Preliminary Pay Worksheet review meeting, the Contractor shall submit a Periodic Invoice reflecting the required modifications to the AE, and attaching all additional documentation required by the ODR and AE, as well as his affidavit swearing or affirming that all payrolls, bills for labor, materials, equipment, subcontracted work or other indebtedness connected with the Contractor's Periodic Invoice (Application for Payment) have been paid or will be paid within the time specified in Chapter 2251, Government Code. No Periodic Invoice shall be complete unless it fully reflects all required modifications, and attaches all required documentation including the Contractor's affidavit.

13.2.3 Certification by AE. As soon as practicable, but in no event later than five days following the AE's receipt of the Contractor's Periodic Invoice (Application for Payment), the Architect/Engineer shall review the same for completeness, and shall forward the Periodic Invoice (Application for Payment) to the ODR, with a copy to the Contractor, together with the AE's certification that the application is complete and payable, or that it is incomplete, stating in particular what is missing. If the Periodic Invoice is incomplete, the Contractor shall make the required corrections and resubmit the Periodic Invoice for processing in accordance with this §13.2.3. –Upon receipt of such a Periodic Invoice and affidavit certified by the Architect/Engineer, the Owner shall make final review and process the payment through established administrative procedures.

13.3 Owner's Duty to Pay. The Owner shall have no duty to pay the Contractor except on receipt by the ODR of (1) a complete Periodic Invoice certified by the AE.

13.3.1 Bulk materials must be approved by the Owner in accordance with the contract submission requirements before payment. Payment for stored materials shall be limited to 85% of the invoice price or 85% of the scheduled value for the materials, whichever is less. Bulk materials are eligible for full payment only after they have been incorporated into the Work.

13.4 Retainage. The Owner shall withhold from each progress payment, as retainage, five percent (5%) of the total earned amount. Retainage so withheld shall be managed in conformance with Subchapter B, Chapter 2252, Texas Government Code.

13.4.1 Any request for reduction or release of retainage shall be accompanied by written consent of the Contractor's Surety. No such request shall be made until the Contractor has earned at least sixty-five percent (65%) of the total Contract Price.

13.5 Reduction to Cover Loss. The Owner may reduce any Periodic Invoice prior to payment to the extent necessary to protect the Owner from loss on account of actions of the Contractor, including, but not limited to:

a. Defective work not remedied;
b. Damage to work of a separate contractor;
c. Failure to maintain scheduled progress or reasonable evidence that the work will not be completed within the contract time;

d. Failure to comply with the requirements of Texas Government Code Chapter 2258 (Prevailing Wage Law); or
e. Persistent failure to carry out the work in accordance with the Contract Documents.
f. Reasonable evidence that the work cannot be completed for the remainder of the contract sum.
g. Assessment of fines for violations of Prevailing Wage Rate laws
h. Failure to include the appropriate amount of retainage for that periodic payment.

13.6 Title to all material and Work covered by progress payments transfers to the Owner upon payment. Transfer of title to Owner does not relieve the Contractor of the sole responsibility for the care and protection of materials and work upon which payments have been made, or the restoration of any damaged work, or waive the right of the Owner to require the fulfillment of all the terms of the Contract.

13.7 Progress payments to the Contractor shall not release the Contractor or his surety from any obligations under this Contract.

13.8 Upon the Owner's request, manifest proof of the status of Subcontractor's accounts shall be furnished in a form acceptable to the Owner.

13.9 Pay estimate certificates must be signed by a corporate officer or a representative duly authorized by the Contractor.

13.10 The Contractor, in requesting payment for materials, shall provide copies of bills of lading, invoices, delivery receipts or other evidence of the location and value of such materials.

13.11 For purposes of Texas Government Code 2251.021 (a)(2), the date the performance of service is completed is the date when the Owner's representative approves the application for payment.

13.12 Off-Site Storage: With prior approval by the Owner and in the event Contractor elects to store materials at an off-site location, he shall abide by the following conditions.

13.12.1 Materials shall be stored in a BONDED COMMERCIAL Warehouse.

13.12.2 The Contractor shall provide separate Insurance Coverage adequate not only to cover materials while in storage, but also in transit from the off-site storage areas to the project site. Copies of duly authenticated Certificates of Insurance, made out to insure the Owner.

13.12.3 Inspection by Owner's representative is allowed at any time. The Owner's Inspectors must be satisfied with the security, control, maintenance, and preservation measures.

13.12.4 Materials for this project are physically separated and marked for the project in a sectioned-off area. Only materials which have been approved through the submittal process are to be stored in the area.

13.12.5 Owner reserves the right to reject materials at any time prior to final acceptance of the complete Contract if they do not meet Drawings and Specifications requirements regardless of any previous progress payment made.

13.12.6 With each monthly payment estimate, the Contractor shall submit a report to the ODR, Architect/Engineer, and Inspector listing the quantities of materials already paid for still stored in the off-site location.

13.12.7 Warehouse records, receipts and invoices shall be made available to Owner's

representatives, upon request, to verify the quantities and their disposition.

13.12.8 In the event of Contract termination or default by Contractor, the items in storage off-site, upon which payment has been made, will be promptly turned over to Owner or Owner's agents at a location near the jobsite as directed by the ODR.

13.12.9 The full provisions of PERFORMANCE AND PAYMENT BONDS on this project shall cover the materials off-site in every respect as though they were stored on the Project Site.

Article XIV - Closing Inspections

14.1 Substantial Completion Inspection. When the Contractor considers the entire Work or part thereof Substantially Complete, the Contractor shall inspect the Work, or designated portion thereof, for compliance with the Contract Documents and notify the ODR and the Architect/Engineer in writing that the Work will be ready for Substantial Completion Inspection on a date certain. The Contractor shall include with this notice a copy of its updated inspection list marked to indicate corrected items plus a list of items to be completed or corrected prior to final inspection which the Contractor recognizes exist but believes do not prevent the Work or part thereof from being substantially complete, and shall request a substantial completion inspection for the Work or designated portion thereof. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. The Architect / Engineer and the Owner will review the Contractor's list of items and either will schedule the requested inspection or will inform the Contractor in writing that such an inspection would be premature because the Work is not sufficiently advanced or that conditions are not as represented on the Contractor's list.

14.1.1 Prior to the substantial completion inspection, the Contractor shall furnish to the Owner a copy of the As-Built blueline prints and a preliminary copy of each instructional manual, maintenance and operating manual, parts catalog, wiring diagrams, spare parts, specified written warranties and like publications or parts for all installed equipment, systems and like items. If the Contractor does not furnish these requirements and the Owner must of necessity otherwise obtain this information and data, the costs for obtaining it will be deducted from payments otherwise due the Contractor. The substantial completion inspection will be jointly conducted by the Architect/Engineer, the Owner, and the Contractor.

14.1.2 On the date indicated by Contractor, or as soon thereafter as is practicable, the ODR, the Architect/Engineer, and the Contractor shall inspect the work and if the ODR and the Architect/Engineer determines that the Work is Substantially Complete a Certificate of Substantial Completion shall be issued by the ODR for certification by the Owner, Architect/Engineer and Contractor, fixing the date of Substantial Completion. The Architect/Engineer will provide with this certificate a list of items to be completed prior to final inspection (the Pre-Final Punch list). This list may include additional items not included on the Contractor's list, which are deemed necessary by the Architect/Engineer or by the Owner to correct or complete prior to Final Inspection.

14.2 Final Inspection The Contractor shall fully complete the list of items listed on the Prefinal Punchlist prior to Final Inspection. Unless otherwise specified in Special Conditions, or otherwise agreed in writing by the parties, the Contractor shall complete this work within 30 days of the certified date of Substantial Completion. When the Contractor has completed the Prefinal Punch list, he shall give written notice to the ODR and Architect/Engineer that the Work will be ready for Final Inspection on a date certain. This notice shall be accompanied by a copy of the contractor's updated Punch list indicating resolution of all items. On this date, or as soon thereafter as is practicable, the ODR, the Architect/Engineer and the Contractor shall inspect the Work and the Architect/Engineer shall submit to the Contractor a list of items which the Owner and the Architect/Engineer have determined to require correction or completion before the Work will be accepted by the Owner (the Final Punch list).

14.3 The Contractor shall correct or complete all items on the Final Punch list before Acceptance and Final Payment. Unless otherwise specified in Special Conditions, or otherwise agreed in writing by the parties, the Contractor shall complete this work within 7 days of receiving the Final Punch list. Upon completion of the Final Punch list, the Contractor shall notify the Architect/Engineer and ODR in writing stating the disposition of each punch list item, and the Architect/Engineer and Owner shall promptly inspect the completed items. When the Final Punch list has been completed, and the Contract is fully performed according to the Contract Documents, and is acceptable to the Owner, the ODR shall issue a certificate fixing the date of Final Completion. Final Completion of all work shall be a condition precedent to the Contractor's right to receive Final Payment.

14.4 Annotation. Any Certificate issued under this Article may be annotated to indicate that it is not applicable to specified portions of the Work, or that it is subject to any limitation as determined by the Owner.

14.5 Purpose of Inspection. Inspection by the Owner and Architect/Engineer is for the purpose of determining the completion of the Work, and does not relieve the Contractor of its overall responsibility for completing the Work in a good and workmanlike fashion, in compliance with the Contract Documents. Failure of the Owner or Architect/Engineer to identify Work that is not in compliance with the Contract Documents, or which is defective in operation or workmanship, or acceptance of the Work with punch list items left incomplete, does not constitute a waiver of such a defect or of the Owner's rights under the Contract Documents or relieve the Contractor of its warranties contained at Article XVII.

14.6 Additional Inspections.

14.6.1 If on the basis of the Substantial Completion Inspection, the ODR or the Architect/Engineer determines that the Work is not Substantially Complete, the ODR or the Architect/Engineer shall give the Contractor written notice thereof, informing the Contractor what Work was found to be incomplete, out of compliance with the Contract Documents, or defective in operation or workmanship, and setting a time in which incomplete or defective work is to be completed. The Contractor shall complete or correct all work so designated prior to requesting a second Substantial Completion Inspection.

14.6.2 If on the basis of the Final Inspection, the ODR or the Architect/Engineer determines that the Work is not complete according to the Contract Documents, or that the Work required by the Retinal Punch list had not been performed, the ODR or the Architect/Engineer shall give the Contractor written notice thereof, and shall inform the Contractor what Work was found to be incomplete, out of compliance with the Contract Documents or defective in operation or workmanship, and setting a time in which incomplete or defective work is to be completed. The Contractor shall complete or correct all Work so designated prior to requesting a second Final Inspection.

14.6.3 This Contract contemplates three inspections only: the Substantial Completion Inspection, the Final Completion Inspection, and the Inspection of Completed Final Punch list Items. The cost to the Owner of any and all additional inspections deemed necessary by the ODR or Architect/Engineer because the Work was not ready for one or more of these inspections shall be borne by the Contractor, and the Owner may issue a Unilateral Change Order deducting these costs from Final Payment. Upon the Contractor's written request, the Owner shall furnish documentation of all costs so deducted. Work added to the Contract by Change Order after Final Inspection shall not be considered as corrective work for purposes of determining timely completion or assessing the cost of additional inspections.

14. 7 Phased Completion. The Special Conditions may provide, or other project conditions may warrant, as determined by the ODR, that designated elements or parts of the Work shall or may be completed in phases. Where phased completion is required or specifically agreed to by the parties, the provisions of Articles XIV (Closing Inspections) and Article XV (Early Occupancy) shall apply independently to each designated element or part of the project. For all other purposes, unless otherwise agreed by the parties in writing, Substantial Completion of the Work as a whole shall be the date on which the last element or part of the Work to be completed is certified as Substantially Complete, and Final Completion of the Work as a whole shall be the date on which the last element or part of the Work to be completed is certified as Finally Complete.

Article XV - Early Occupancy

15.1 Right of Occupancy. The Owner may occupy or use all or any portion of the Work following Substantial Completion, or at any earlier stage of completion, provided that such occupancy or use is consented to by any and all insurers of the Work. Should the Owner wish to use or occupy the Work, or part thereof, prior to substantial ~~completion~~, the ODR shall so notify the Contractor in writing. Work performed on the premises by third parties on the Owner's behalf does not constitute occupation or use of the Work by the Owner for purposes of this Article.

15.2 Occupancy of Substantially Completed Work. If the Owner wishes to occupy all or part of the Work that has been Substantially Completed it shall so notify the Contractor and the Architect Engineer prior to the Substantial Completion Inspection, and the ODR shall annotate the Certificate of Substantial Completion to set out, pursuant to §§ 14.4, 14.6 or the parties' written contract, the responsibilities of the Owner and the Contractor for maintenance, heat, utilities, operation of permanent equipment, and insurance. The Certificate of Substantial Completion shall be submitted to the Architect/Engineer and Contractor for their written acceptance of the responsibilities assigned to each of them in such Certificate. The accepted Certificate shall not constitute a change in Contract Time which can only be modified by an agreed Change Order. See Article XX.

15.3 Occupancy of Work Prior to Substantial Completion.

15.3.1. Notice and Early Occupancy Proposal. If the Owner determines that substantial hardship will result if it is unable to occupy some portion of the Work prior to substantial completion, it shall so inform the Architect/Engineer and the Contractor no less than 30 days before the date the Owner wishes to occupy the Work, and designate those portions of the Work to be occupied and the uses to be made of the occupied premises. As soon as practicable, but not less than five working days after receiving this notice, the Contractor shall make the designated portions of the Work available to the Architect/Engineer and the Owner for observation. The Architect/ Engineer and the Owner shall observe the Work jointly with the Contractor. As soon as practicable, but not later than the third day next following the date of the inspection, the ODR or the Architect/Engineer shall prepare and submit to the Contractor an Early Occupancy Proposal, specifying any Work that must be completed or corrected as well as any operation and maintenance manuals or other documentation necessary for the Work to be occupied by the Owner and used for the purposes designated by the Owner in its notice, and setting out the division of responsibility between the Owner and the Contractor for utilities, security, maintenance, insurance and liability for damage to the Work or damage arising from the condition of the Work. The Early Occupancy Proposal shall also specify whether the area to be occupied must be Substantially Complete before occupation, and shall specify the date for Substantial Completion of the Work to be occupied if other than the date previously specified by the Contract Documents.

15.3.2. Administration as Change Order. The Early Occupancy Proposal shall be administered as an Interim Change Authorization pursuant to the provisions of § 21.5, except that the Contractor shall submit a CPE as soon as possible, but not later than the seventh day next following receipt of the Early Occupancy Proposal. All cost adjustment, including any increased costs of insurance, related to the Early Occupancy Proposal, shall be stated in the CPE; any such relief not so requested shall be deemed waived. If the Early Occupancy Proposal requires early Substantial Completion, the Contractor shall be entitled to an equitable cost adjustment for acceleration and impact costs, to be submitted pursuant to §22.2 (Type II Changes) If an early completion date is not required, the Contractor shall submit any claim for time extension as a Type I change in the Work and Interim Change Authorization. If by the date designated by the Owner as the proposed date of occupancy, the ODR and Contractor have not reached a contract concerning adjustment of time or cost, or the division of responsibility for the occupied portions of the Work, the ODR may issue a ULCO.

15.3.3. Project Completion Administration with Early Occupancy. Where under the provisions of this Article the Contract Time is modified for any part of the Work due to early occupancy, then the provisions of §14.6 shall apply. All required documentation shall be furnished by the Contractor to the ODR on or before the date of occupation by the Owner.

15.3.4. No waiver of Timely Completion. Early occupancy of any portion of the Work does not waive the Contractor's duty to complete the remaining Work within the Contract Time as specified by the Contract Documents or as subsequently modified by Change Order.

Article. XVI - Contract Final Acceptance and Payment

16.1 Request for Final Payment. At any time following the completion of all work, including all substantial completion punch list items, cleanup, and the delivery of record documents, the Contractor shall submit a certified Application for Final Payment; including all sums held as retain age, to the Architect/Engineer and the ODR for their review and approval.

16.2 Final Payment Documentation. The Contractor shall submit, prior to or with the Application for Final Payment, final copies of all close out documents, including maintenance and operating instructions, guarantees and warranties, certificates, record documents and all other items required by the Contract Documents. The Contractor shall also submit Consent of Surety to Final Payment, an affidavit that all payrolls, bills for materials and equipment, subcontracted work and other indebtedness connected with the Work, except as specifically noted, have been paid or will be paid or otherwise satisfied within the period of time required by Chapter 2251, Texas Government Code. The Contractor shall furnish documentation establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of claims arising out of the Contract. The Owner is entitled to rely upon this affidavit; the Contractor may not submit a claim on behalf of a subcontractor or vendor if that claim has not been noted as an exception in the affidavit.

16.3 Architect/Engineer Approval. The Architect /Engineer shall review a submitted Application for Final Payment promptly but in no event later than ten (10) days after its receipt. Prior to the expiration of this deadline, Architect/Engineer shall either: 1) return the Application for Final Payment to Contractor with corrections for action and resubmission; 2) accept it, note his approval and send to Owner.

16.4 Offsets and Deductions: The Owner may deduct from the Final Payment all sums due from the Contractor for any reason, all deductions authorized by §13.5, and as Liquidated Damages. If the Certificate of Final Completion notes any Work remaining incomplete or defects not remedied, the Owner may deduct the reasonable cost of remedying such deficiencies from the Final Payment. If such deductions are made, the Owner shall identify each deduction made and the reason therefore, and furnish the Contractor with an explanation of the deduction and the amount deducted on or by the 21st day after Owner's receipt of an approved or deemed approved Application for Final Payment.

16.5 Final Payment Due. Final Payment shall become due and payable by Owner, subject to all allowable offsets and deductions, on the 31st day next following Owner's approval of the Application for Payment. If the Contractor disputes any amount deducted by the Owner, the Contractor shall give notice of the dispute on or before the thirtieth day next following receipt of Final Payment; failure to do so will bar any subsequent claim for payment of amounts deducted.

16.6 Effect of Final Payment: Final Payment shall constitute a waiver of all claims by the Owner**,** relating to the condition of the Work except those arising from (1) faulty or defective Work appearing after Substantial Completion (latent defects); (2) failure of the Work to comply with the requirements of the Contract Documents; (3) terms of any warranties required by the Contract Documents or implied by law, and (4) claims arising from personal injury or property damage to third parties. Final payment shall constitute a waiver of all claims by the Contractor except those specifically identified in writing and submitted to the ODR prior to the application for Final Payment. Provided, however, that the Contract shall not be deemed fully performed by the Contractor and closed until the expiration of all warranty periods.

Article XVII - Contract Warranty and Guarantee

17.1 Contractor's General Warranty and Guarantee. Contractor warrants to the Owner that all Work shall be executed in accordance with the Contract Documents, complete in all parts and in accordance with approved practices and customs, and of the best finish and workmanship. Unless otherwise specified, all materials and equipment incorporated in the Work under the Contract shall be new. The Owner may, at its option, agree in writing to waive any failure of the Work to conform to the Contract Documents, and to accept a reduction in the Contract Price for the cost of repair or diminution in value of the Work by reason of such defect. Absent such a written contract, however, the Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute and is not waived by any inspection or observation by the Owner, Architect/Engineer or others, by making any progress payment or final payment, except as provided in §16.6, by the use or occupancy of the Work or any portion thereof by the Owner, at any time, or by any repair or correction of such defect made by the Owner.

17.2 Warranty Period. Except as otherwise specified, the Contractor shall repair all defects in materials, equipment or workmanship appearing within one year from the date of Substantial Completion of the Work as a whole if such date establishes the beginning of the period of Owner occupancy and/or use of the Work, otherwise this warranty begins upon final completion and acceptance of the Work. Upon receipt of written notice from the Owner of the discovery of any defects, the Contractor shall promptly and at its own cost remedy the defects and replace any property damaged there from and shall promptly provide written notice to the Owner indicating action taken to resolve the defect. In case of emergency where delay would cause serious risk of loss or damage to the Owner, or if the Contractor, after notice, fails to proceed promptly and remedy within 30 days or within another period of time which has been agreed to in writing, in compliance with the terms of the warranty and guarantee, the Owner may have the defects corrected and the Contractor and his surety shall be liable for all expenses incurred.

17.3 Separate Warranties. Where a particular piece of equipment or component of the work for which a separate warranty is required under the Contract Documents is placed in continuous service before Substantial Completion, the date of service commencement shall be certified by the ODR and/or Architect/ Engineer and the Warranty Period for that equipment or component shall run from the date so certified. In addition to the Contractor's warranty and duty to repair, as set forth in §§17.1 and 17.2, the Contractor expressly assumes all warranty obligations required under the Contract Documents for specific building components, systems and equipment. The Contractor may satisfy any such obligation by obtaining and assigning to the Owner a complying warranty from a manufacturer, supplier, or subcontractor. Where an assigned warranty is tendered and accepted by the Owner which does not fully comply with the requirements of the Contract Documents, the Contractor shall remain liable to the Owner on all elements of the required warranty that are not provided by the assigned warranty.

17.4 Certification of No Asbestos Containing Materials or Work

17.4.1 The Contractor shall provide a certification statement, included with each materials submittal, stating that no asbestos containing materials or work is included within the scope of the proposed submittal.

17.4.2 The Contractor shall provide at Substantial completion, a notarized certification to the Owner and the Architect that no asbestos containing materials or work was provided, installed, furnished or added to the project.

17.4.3 The Contractor shall take whatever measures he deems necessary to insure that all employees, suppliers, fabricators, material men, subcontractors, or their

assigns, comply with this requirement.

17.4.4 The Contractor shall insure compliance with the following act – Asbestos Hazard Emergency Response Act (AHERA – 40 CFR 763-99 (7)) from all of his subcontractors and assigns as listed in item 17.4.3 above. All materials used on this project shall be certified as non Asbestos Containing building Materials (ACBM).

17.4.4.1 Every subcontractor shall provide a notarized statement that no ACBM has been used, provided, or left on this project.

17.4.4.2 The Contractor shall provide to the extent deemed necessary for compliance by the State, data sheets and/or labels as proof of compliance.

17.4.4.3 The Contractor shall provide a notarized certification that no ACBM's were used.

Article XVIII – Not Used

Article XIX - Concealed Site Conditions

19.1 The Contractor is responsible for having visited the Site and having ascertained pertinent local conditions such as location, accessibility, and general character of the Site or building, the character and extent of existing Work within and adjacent to the Site, and any other Work being performed thereon at the time of the submission of its proposal. Any failure to do so will not relieve it from responsibility for successfully performing the Work without additional expense to the Owner.

19.2 If, in the performance of the Contract, subsurface, latent or concealed conditions at the Site are found to be materially different from the information included in the bid documents, or if unknown conditions of an unusual nature are discovered differing materially from the conditions usually inherent in Work of the character shown and specified, the Contractor shall notify the Architect/Engineer and the Owner in writing of such conditions before proceeding with the Work. If necessary, the Architect/Engineer and/or the Owner shall develop a solution and provide it to Contractor. If the solution prompts changes to the Contract Amount and/or Time, the Contract shall be adjusted under Article XX hereof.

19.3 For environmental matters, see § 9.4.

19.4 The Owner makes no representations as to the accuracy or completeness of the site information furnished to the Contractor by Owner and does not expressly or implicitly warrant same and is not responsible for any interpretations or conclusions reached by the Contractor with respect thereto. It is Contractor's sole responsibility to verify to its own satisfaction all site information, including but not restricted to topographical data, borings, subsurface information, utilities and easements and to account for all reasonably anticipated costs in their proposal for construction.

Article XX - Change Orders

20.1 Change Order Defined. A Change Order is a written modification of the Contract between the Owner and the Contractor, signed by the Owner, the Contractor and the Architect/Engineer.

20.2 Effect of Change Order. A Change Order authorizes a change in the Scope of the Work or an adjustment in the Contract Sum or the Contract Time. Work performed under a Change Order is subject to all provisions of the Contract Documents.

20.2.1 Contingency Allowance: The Construction Contingency Allowance is controlled solely by the Owner and is in addition to any cost allowance provided for under the various sections. Expenditures from the Contingency Allowance must be made by Change Order issued by the ODR or the Architect/Engineer and approved by the Owner. Expenditures from the Construction Contingency Allowance do not alter the total Contract Price. Any unused portion of the Contingency Allowance will be deducted from the final payment.

20.3 Modifications for which a Change Order is required. All changes in the scope of the Work, the Contract Sum and/or the Contract Time shall be documented by a Change Order. Change Orders are the exclusive method for modifying the Contract Sum or Contract Time. Neither the Architect/Engineer, nor the ODR or any other party may change the scope of the Work, the Contract Sum or the Contract Time by any method, expressed or implied, other than a Change Order.

20.3.1 Any direction, instruction, interpretation, or determination from the Architect/Engineer or Owner shall not be considered for a Change Order under this clause unless the Contractor gives the Owner written notice within fifteen (15) days requesting a change order and stating the date, circumstances, and source of the directive.

20.4 Agreed and Unilateral Change Orders. A Change Order may be either an Agreed Change Order or a Unilateral Change Order.

20.4.1 Agreed Change Orders. An Agreed Change Order is a Change Order jointly executed by the Owner and the Contractor, in which each agrees to all of the terms of the amendment.

20.4.2 Effect of an Agreed Change Order. The execution of a Agreed Change Order by the ODR and the Contractor constitutes the full, final and complete settlement of all claims with regard to the modifications contained in the Change Order, provided however, that an Agreed Change Order may be reformed by a written modification signed by the Contractor and the ODR, for the limited purpose of correcting an error in computation.

20.4.3 Unilateral Change Order (ULCO). A Unilateral Change Order is a Change Order issued by the Owner without the contract of the Contractor.

DRAFT

20.4.4 Effect of a Unilateral Change Order; conversion to an Agreed Change Order. The issuance of a ULCO does not prejudice any of the Contractor's rights to relief otherwise available under the Contract Documents. The Contractor may preserve such rights by submitting to the Owner and the Architect/Engineer a written objection to the ULCO setting forth in detail the reasons for its objections and the contract provisions on which the objection is based within 30 days of receipt of the ULCO. If the Contractor does not submit a written objection within that time, Contractor shall be deemed to have accepted the terms of the ULCO and waived all claims related to the ULCO and the ULCO shall have the full force and effect of an Agreed Change Order.

20.5 Who May Request Change Orders. Change Order Requests may be initiated by the Owner or by the Contractor as provided in §§20.6 and 20.7.

20.6 Type I Change Orders. A Type I Change Order adjusts the Contract Sum and/or Contract Time because of an actual or constructive change in the scope or character of the Work, which originates from the Owner or Architect/Engineer. Type I Change Orders are initiated in one of two ways:

20.6.1 Owner-Initiated Changes. The Owner, without invalidating the Contract and without approval of the Surety, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions.

20.6.2 Contractor-Initiated Changes. If the Contractor claims that it will incur additional cost or time because of any writing containing a written interpretation of the Contract Documents, or instruction concerning the execution of the Work, issued by the Owner or the Architect/Engineer, and constituting a constructive change in the scope or character of the Work, the Contractor may request a Change Order pursuant to this Article and, if appropriate, a Time Extension Request as provided by Article XXIV.

20.6.3 Commencement of Work. The Contractor shall not commence work on a Type I change work prior to receipt of a Change Authorization, or a Interim Change Authorization, as set out in §§ 21.3.3 and 21.5, respectively.

20.7 Type II (Claim) Change Orders A Type II Change Order adjusts the Contract Sum or Contract Time because of a change in the conditions of performance of the Work that changes the cost or time required for performance without changing the scope of the Work to be performed under the Contract Documents and which are not otherwise resolved as a Type I change. The Contractor may request a Type II Change Order under the following circumstances only:

a. The occurrence of excusable delays as designated in § 24.3.3;
b. Reasonably unanticipated and unknown physical conditions at the Site, pursuant to § 19.2, which the Architect/Engineer addresses by means of changes in the Drawings and Specifications, or unanticipated conditions at the Site as described in §§ 2.8 and 2.9;
c. The existence of material errors, omissions and imperfections in the design documents which the Architect/Engineer corrects by means of changes in the Drawings and Specifications;

d. The failure of the Owner or the Architect/Engineer to take timely actions required under the Contract Documents or to provide information required by the Contractor to proceed with the Work;
e. The failure of the Owner to provide reasonable access to the Site;
f. The failure of the Owner to timely provide materials which are to be furnished by the Owner under the Contract Documents; and

20.8 Contractor's Risk of Performance. Except as expressly provided in this Article XX, the Contractor shall not be entitled to an increase in the Contract Sum or the Contract Time and shall bear full responsibility for all risks affecting the Contractor's cost of performance.

20.9 Approval of Surety. Type II change orders shall require the surety's approval.

Article XXI - Administration of Change Order Requests

21.1 Requests for Changes.

21.1.1 Time Extension Requests. All relief related to excusable delays shall be governed by the provisions of Article XXIV, and any time extension granted shall be made pursuant to that Article. A single Change Order may be issued, adjusting both Contract Time and Contract Sum, where both arise from the same claim.

21.1.2 Requests for Cost Adjustment. All requests for adjustment in the Contract Sum shall be made as follows:

21.1.2.1. Type I Change Orders.

Owner-initiated Changes. When the Owner wishes to order changes in the Work, the ODR or the Architect/Engineer shall submit to the Contractor a Change Order Request (COR), consisting of a description of the request, including such Drawings and Specifications as are reasonably necessary to inform the Contractor of the nature of the change. Within 30 days of receipt of the Owner's COR, the Contractor shall submit a Change Order Proposal Evaluation (CPE) to the ODR and the Architect/Engineer, stating that the proposed change is a no-cost change, or proposing an adjustment in the Contract Sum, as provided under Article XXII. Following resolution of impact of cost and/or time for the change, the ODR or the Architect/Engineer shall issue and the Contractor shall execute a Change Order documenting the change in scope of the Work. The Owner may process formal Change Orders that accumulate several separate change actions.

Contractor-initiated Changes. When the Contractor considers that any written instruction or interpretation of the Contract Documents issued by the Owner or the Architect/Engineer constitutes a change in the Work affecting the Contract Sum, the Contractor shall so notify the Owner and Architect/Engineer in writing as soon as possible, but not later than 15 days after receipt of the instruction or interpretation, and shall submit a CPE to the ODR and Architect/Engineer as soon as possible thereafter, but not later than 30 days after issuance of the notice. The Contractor's failure to meet either of these time requirements shall constitute waiver of any and all claims related to such instruction, interpretation, or notice. This CPE shall contain a proposal for an adjustment in the Contract Sum, as provided under Article XXII. The CPE shall be accompanied by a copy of the writing containing the instruction or interpretation, evidence of the date Contractor received the writing and an explanation of how the writing creates the need for a change under terms of the contract.

21.1.2.2 Type II Change Orders.

Notice of Claim. If the Contractor claims that additional cost or time is involved because of the occurrence of one or more of the circumstances set forth in §20.7, the Contractor shall give the ODR and the Architect/Engineer written notice of its intent to submit a claim and shall proceed immediately to document all increased costs or time delays actually incurred as a result. Such notice shall be given as soon as the Contractor becomes aware that such circumstances exist, but not later than 30 calendar days after the onset of the circumstance giving rise to the claim. This notice shall identify the circumstances giving rise to the additional cost or time delay, the elements of cost affected, and the claimed contractual basis for entitlement to relief. The Contractor shall certify that the claim is made in good faith and that the supporting data is current, accurate and complete to the best of its knowledge and belief, and that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Owner is liable. Failure to certify a claim will result in a determination that no claim has been filed. Such notices shall be accompanied by sufficient written evidence to document the occurrence of ~~a~~n estimated cost impact, but the full amount of the claim need not be stated at the time the initial claim notice is given to the ODR and the Architect/Engineer. This notice shall include the following additional elements: (1) an analysis of the relevant contract provisions; (2) with description of the facts; and (3) the statement of why the particular facts warrant compensation under the terms of the contract. The Contractor and Owner recognize and agree that it is beneficial to each other to identify factors affecting the Contractor's cost of performance, and to take prompt action to control them. Therefore, it is agreed that the Contractor shall not be entitled to request a Type II cost adjustment unless the required notice is submitted timely. The Contractor waives all claims for which such notice is not given.

Submission of Claim. Claims for adjustment of the Contract Sum for Type II Change Orders shall be made in the form of a CPE submitted to the ODR and Architect/Engineer no later than thirty (30) calendar days after the cessation of the circumstances giving rise to

the claim. The CPE shall set forth the Contractor's proposed cost adjustment, computed pursuant to Article XXII, together with the Contractor's documentation of costs incurred. Within thirty (30) days after completion of the work in question, the Contractor shall submit in writing to the Owner and the Architect/engineer the additional following elements of the claim: (4) supporting cost or pricing data; (5) legal analysis, if appropriate; (6) an expert's opinion, if appropriate; (7) certification; and (8) a formal request for decision. No such claim shall be valid unless these additional elements are so submitted, and the Contractor hereby waives all such invalid claims.

21.1.2.3 Bar to Claims: No claim shall be allowed for an adjustment under this or any other provision of the Contract if asserted after the Owner makes or tenders final payment under this contract.

21.2 Processing Requests for Change.

21.2.1 Response to CPE. As soon as practical allowing for consultant review after receipt of any CPE submitted by the Contractor, the ODR or the Architect/Engineer shall respond either directly to the Contractor in writing or verbally at a project meeting the outcome of which is committed to the written record as to the Owner's response being ~~by~~ either (1) accepting the contractor's proposal, (2) rejecting the same, (3) initiating negotiations with the contractor concerning the proposed cost adjustment, or (4) requesting additional information.

21.2.2 Not Used

21.2.3 Change Authorization. When agreement has been reached concerning the adjustment of cost, the ODR shall accept the Contractor's CPE, or any subsequently revised CPE issued pursuant to negotiation, by endorsing the CPE "Accepted", with the date, and returning it to the Contractor. A CPE that has been accepted is a Change Authorization (CA). A CA is effective upon receipt and constitutes the Contractor's notice to proceed with the changed work, entitles the Contractor to prepare to submit the adjusted cost of the Work to be incorporated into the approved Schedule of Values on succeeding Pay Applications, as it is completed.

21.2.3.1 The Owner may, in writing, issue a notice to proceed for any portion of the Work in a Change Order for which final adjustment in Contract Sum and/or Contract Time has not been finalized. The Notice to Proceed letter may have a not-to-exceed cost amount for any or all portions of the Change Order. This amount is not to be exceeded without prior written approval by the Owner.

21.2.4 Not Used

21.2.5 Execution and Processing of Change Order: The Owner will undertake to issue Owner-Contractor agreed Change Order for signatures within thirty (30) calendar days of contract, unless otherwise agreed to, provided the Contingency Allowance is not exceeded. In those cases where Change Order work causes the Contingency Allowance to be exceeded, approval of higher authority may be necessary and, if such approvals are necessary, the Owner will have up to ninety (90) additional calendar days to issue such agreed Change Order.

21.2.5.1 The ODR will authorize the Architect/Engineer to prepare a Change Order to include specific change items for which time and cost impacts have been agreed, and will state whether the Change Order is to be funded by the Owner's Construction Contingency allowance or directly impacts the contract Price.

21.2.5.2 The Architect/Engineer shall affix seal and signatures and distribute directly to the Contractor. The Contractor shall execute the Change Order within ten (10) calendar days of receipt and return it directly to the ODR.

21.2.5.3 The ODR will obtain signature of component institution and Owner, normally within ten (10) calendar days of receipt of Contractor's executed copies and will make final distribution to all parties.

21.3 Unilateral Change Orders.

21.3.1 For any Type I or Type II change, the ODR may issue a Unilateral Change Order (ULCO), establishing such adjustment of cost or time, if any, as the Owner deems fair and reasonable, under the following circumstances:

1. If the Contractor fails to submit a CPE within the time required under §§ 21.1.2.1 or 21.1.2.2 above,
2. If negotiations fail to achieve an agreed price;
3. If, in the Owner's judgment based on the Progress Schedule, a failure to authorize the Contractor to proceed with a change in the Work may adversely affect the timely completion of the Work.
4. In addition to the above, the ODR shall issue a ULCO on any CPE that remains unresolved 90 days after Substantial Completion of the Project unless otherwise agreed to by the parties or barred by tender of final payment.

21.3.2 A ULCO is effective on receipt by the Contractor. The ULCO obligates the Contractor to perform the Work according to its terms, and authorizes the Contractor to submit the adjusted cost of the Work as allowed in the ULCO on succeeding Pay Applications.

21.3.3 When a Unilateral Change Order has been issued, it will have the full force and effect of a contract modification. It will be included in schedules, payment estimates, reports and all official records of the Contract. The issuance of a Unilateral Change Order will not prejudice any of the Contractor's rights to make claims or to appeal disputed matters under other provisions of this Contract.

21.4. Interim Change Authorization. When the Owner determines that an Owner-initiated Type I change in the Work, or a written instruction or interpretation of the Contract Documents for which the Contractor has given notice of its intent to initiate a Type I claim or any other change implementation, must be made promptly in order to prevent damage to the Work in place, to prevent significant delay in the Project Schedule or to maintain safety or for any other reason as determined by the ODR, the ODR may issue an Interim Change Authorization (ICA) directing the Contractor to proceed with changed work before submitting or during the review of a CPE. The ICA shall authorize the Contractor to proceed with the work on the basis of either (1) time and materials or (2) cost not to exceed a specified

amount. Upon receipt of an ICA, the Contractor shall proceed immediately to document all increased costs actually incurred as a result of the Work required under the ICA. At any time prior to the completion of the changed Work, the Contractor may submit a CPE containing a lump sum proposal for the cost of the changed Work, which, if accepted, shall be administered as a Type I change; provided, however, that if the Work is completed prior to acceptance by the ODR of the Contractor's CPE, the Contractor's adjustment of the cost shall be limited to the actual cost of the Work. If the ODR or the Architect/Engineer determines that a Contractor-initiated Type I change is without merit, the ODR or the Architect/Engineer shall notify the Contractor to proceed according to the subject written interpretation or instruction. Such a notice to proceed shall have the same effect as a Unilateral Change Order pursuant to §20.4.4, and the Contractor's rights shall be as set forth in § 20.4.4.

Article XXII - Pricing Change Order Work

22.1 Lump Sum Cost Proposals. All proposals for an adjustment in Contract Sum shall be made on a lump sum basis as outlined below, setting forth the Contractor's estimated or actual costs attributable to the changed Work only. The proposed lump sum cost adjustment shall consist of a Base Cost, reflecting the Contractor's actual or estimated cost of performing the changed Work, in the case of a Type I change, or the increased cost of performance in the case of a Type II change. The Base Cost of Type I changes may be marked up to cover the Contractor's profit, general conditions costs, scheduling costs, bonding and insurance costs, and all other costs directly attributable to performance of the change Work. The markup also covers all impact costs on unchanged Work. These lump sum cost provisions also apply to Work performed by or claims submitted by Subcontractors as part of the Contractor's CPE.

22.1.1 Base Cost Computation for Type I Changes. The Base Cost computation includes the following elements only, as relevant:

a. The total cost of materials and supplies, reflecting all available discounts, itemized by cost and quantity;
b. The total cost of all labor, including supervision up to the level of Project Superintendent, itemized to show man-hours by trade and classification, unburdened hourly rates, and total labor cost. Man-hour costs for labor shall be based on the latest version of the "Means Facility Cost Data" as published by R. S. Means Company;
c. The cost of additional supervision at and above the level of Project Superintendent, itemized by job function, man-hours, and multiplied by the Contractor's as-bid burdened unit cost for supervision as set out at Contractor's Proposal;

d. The reasonable equipment cost calculated for each type of equipment used in performing the changed Work, based on hours of use. Mobilization costs will not be allowed except when the Contractor demonstrates that the need to mobilize a piece of equipment arose solely because of the changed Work;
e. All transportation costs for delivery and handling of materials, equipment and supplies, and the removal of waste or debris related solely and directly to the change work; and
f. All storage costs in excess of 30 days for materials and supplies, if necessitated solely by the changed Work

22.1.2 Markup on Type I Changes.
The amounts that the Contractor or his Subcontractors may add to the base cost computation in a Change Order for profit and overhead are as follows:

a. For Work performed by his forces, the Contractor may add up to 15% on the first $10,000.00, 10% on the next $10,000.00 and 7-1/2% on the balance over $20,000.00, for any specific Change Order.

b. For subcontracted Work, the Contractor may add up to 10% on the first $10,000.00, 7-1/2% on the next $10,000.00 and 5% on the balance over $20,000.00.

c. For work performed directly by his forces a subcontractor may add up to 15% to his base cost computation for any specific change order.

~~d.~~ Sub-subcontracted work (second tier) a subcontractor may add up to 5% administrative costs for any specific change order.

e. On changes involving both additions and deletions, percentages for overhead and profit will be allowed only on the net addition.

22.1.3 Labor Burden. To the base cost computation plus the mark-up amount may be added the actual amount for labor burden for the following, if applicable: Social Security, Old Age Pension and/or other taxes of like nature imposed upon the Subcontractor, or Contractor (when it performs the work) by the State or Federal Government, or both, which are incident solely to such Change Order work and which the Contractor would be required to pay if or as it performs the work.

22.1.4 The amount of the allowed markup covers all overhead expenses and profit, including supervision, small tools, insurance and bond.

22.1.5 Unit Prices. Unit prices bid by the Contractor, or subsequently agreed upon, shall include only those cost elements as those set out in §22.1.1, and shall be subject to markup pursuant to §22.1.2.

22.1.5.1 Each unit price bid by the Contractor shall include all costs applicable to the work, including but not limited to mobilization, demobilization, labor, materials, equipment, supervision, delays, overhead at any level, and profit.

22.1.5.2 Either party may request an equitable adjustment. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above one hundred and fifteen percent (115%) or

below eighty-five percent (85%) of the originally specified amount. If the quantity variation causes an increase in the time necessary for completion, the Owner, upon receipt of a written request for an extension of time within thirty (30) days from the recognition of the variation or within such further period of time as may be granted by written contract signed by the Owner, will ascertain the facts and make such adjustment for changing the completion date as in its judgment the findings justify.

22.2 Cost Computation for Type II Changes.

22.2.1 Costs and Documentation. For a Type II change, the CPE shall include all information required by Section 21.2.2.2 including but not limited to a reasonably detailed narrative setting forth (1) the nature of the cost impact and its cause, (2) the contractual basis of the Contractor's claim of entitlement to a cost adjustment, (3) description and documentation of steps taken by the Contractor to mitigate the claimed cost impact, and (4) such other information that is necessary to justify its claim. The Contractor hereby waives any such claim for which they cannot document steps taken to mitigate the claimed cost impact. The cost adjustment proposal for a Type II claim shall be based on itemized documented costs actually incurred. If and only if the actual cost claimed cannot be demonstrated with reasonable certainty, the Contractor may utilize mathematical formulas or models to compute the proposed cost adjustment, but no CPE will be valid unless accompanied by documentation showing that the increased costs claimed in fact resulted from the alleged cause and that the increased costs are compensable under terms of the contract.

22.2.2 No Markup Authorized. No mark up is authorized on the Base Cost of a Type II claim for costs alleged by either the Contractor or its Subcontractors.

22.2.3 Certification. On CPEs for Type II changes, the Contractor shall certify in writing that all information contained in the CPE is true and correct, and that the costs claimed were incurred as a result of the alleged cause, and were reasonably necessary for the performance of the Work. In the case of Subcontractor pass-through claims, the Contractor shall further certify that the claim stated by the Subcontractor constitutes a legitimate claim against the Contractor, that it is not barred by the terms of the subcontract, and whether and to what extent the claim has been paid. The Contractor may not subsequently modify a claim that has been so certified except for the correction of errors. No Type II CPE shall be considered valid that is not certified and submitted within the time limits set forth in 21.1.2.2.

DRAFT

22.2.4 Cost Computations Under Interim Change Authorizations. Where the Owner issues an ICA authorizing the Contractor to proceed on a time and materials, or a cost not to exceed basis, the Contractor may submit the cost of the Work for payment, as authorized by the ICA, in succeeding Pay Applications once the Contractor has executed the Change Order that includes the particular change action. At any time after receipt of an ICA, the Contractor may submit a CPE proposing a lump sum cost for the changed work, which shall be processed as a Type I change under §22.1 above. The method of incorporating approved changes into the parameters of the accepted Schedule of Values must be coordinated and administered in a manner acceptable to the ODR.

Article XXIII - Time Allotted for Performance; Construction Schedules

23.1 Contract Time. The Contract Time will be measured from the date designated in the Notice to Proceed to the date specified for substantial completion by the Contract Documents, including any modification by Change Order. Failure to achieve Substantial Completion within the Contract Time or Final Completion within thirty (30) days following Substantial Completion or as otherwise agreed to in writing will subject the Contractor to Liquidated Damages as provided in § 24.3.1.

23.2 Work Progress Schedule. Within the period set forth in the Special Conditions and/or the Planning and Scheduling Specification Section of the Project Manual, the Contractor shall submit in duplicate to the Owner and the Architect/Engineer, for review and acceptance, a proposed Progress Schedule for the Work. The Progress Schedule shall show the dates for starting and completing the various component activities making up the Work, and the logical relationships between them, and shall be in a format and in sufficient detail to permit the Work to be competently managed and its progress monitored. Unless otherwise provided in the Special Conditions, the schedule should utilize the Critical Path Method. The Progress Schedule shall take account of the time required for the preparation and review of required Shop Drawings and submittals. If the Submittal Schedule is not fully integrated into the CPM Schedule, or if specifically required by the Special Conditions or elsewhere in the Contract Documents, the Contractor shall also submit a separate Submittal Schedule, correlated with the Progress Schedule that shows the dates the Contractor intends to make the required submittals.

23.2.1 Schedule Requirements. The Progress Schedule should be accurate and a reliable representation of the progress of the Work to date, and of the Contractor's actual plans for its completion. The Progress Schedule~~s~~ shall be capable of measuring and forecasting the effect of delaying events on completed and uncompleted activities. Submittal of a schedule, schedule revision or schedule update constitutes the Contractor's representation to the Owner and Architect/Engineer that the Contractor will follow the schedule as submitted in performing all Work as yet not completed, and that all progress to date shown on the schedule is accurately depicted.

23.2.2 Schedule Updates. The Progress Schedule and Submittal Schedule (if required) shall be updated periodically to reflect progress to date, and current plans for completing the Work. The form and contents of the updates, and the required update interval, shall be as specified in the Planning and Scheduling Specification Section and/or the Special Conditions. The updated Progress Schedule shall be submitted to the Owner, and the Architect/Engineer for acceptance, and the Owner shall have no duty to make progress payments until the updated Progress Schedule has been timely submitted. The Contractor shall show the anticipated date of completion reflecting all extensions of time granted as of the date of the update. The Contractor may revise the Progress Schedule logic only with the Owner's concurrence when in the Contractor's judgment it becomes necessary for the management of the Work. The Contractor shall submit any schedule revision to Owner and AE for acceptance before it is implemented.

23.2.3 Effect of Schedule Submittal. Submittal of the Progress Schedule, and successive updates or revisions, is for the information of the Owner and Architect/Engineer, and to permit the coordination of their activities with those of the Contractor. Owner and AE shall accept or reject the submittal of a schedule within the same period allowed for review of other submittals. Acceptance of a schedule, schedule update or revision constitutes the Owner's contract to coordinate their own activities with the Contractor's activities as shown on the schedule. Acceptance of a Progress Schedule, update or revision does not indicate the approval of the Contractor's proposed sequences and duration. Acceptance of a Progress Schedule update or revision indicating late completion does not constitute the Owner's consent to a late finish, or waive either the Contractor's responsibility for timely completion or the Owner's right to damages for the Contractor's failure to do so. The Contractor's scheduled dates for completion do not constitute a change in terms of the contract. The completion Date(s) can only be modified by Change Order.

23.2.4 Ownership of Float. Unless accepted otherwise by the Owner in writing, the Contractor shall develop its project execution plan to provide 10% total float at the project level, at submission of each Baseline Schedule, as specified. Float time contained in the Progress Schedule is not for the exclusive benefit of the Contractor or the Owner, but may be consumed by either as needed on a first-used basis.

23.2.5 Completion of Work: The Contractor will be held to account for the Work being completed in the time that is stated in the Contract, or any extension thereof.

23.2.5.1 If, in the judgment of the Owner, the work is behind schedule and the rate of placement of work is inadequate to regain scheduled progress so as to insure timely completion of the entire work or a separable portion thereof, the Contractor, when so informed by the Owner, shall immediately take action to increase the rate of work placement. This increase shall be accomplished by any one or a combination of the following or other suitable measures:

.1 An increase in working forces.

.2 An increase in equipment or tools.

.3 An increase in hours of work or number of shifts.

.4 Expedite delivery of materials.

23.2.5.2 The Contractor shall, within ten (10) calendar days after being so informed, notify the Owner in writing of the specific measures taken and/or planned to increase the rate of progress together with an estimate as to when scheduled progress will be regained and an updated Work Progress Schedule illustrating the Contractor's plan for achieving timely completion of the project. Should the plan of action be deemed inadequate by the Owner, the Contractor will take additional steps or make adjustments as necessary to its plan of action until it meets with the Owner's approval. The increased rate of work will continue until scheduled progress is regained. Scheduled progress will be established from the latest revised progress schedule for the job. Timely completion will be understood to be the contract completion date as revised by all time extensions granted at the time acceleration is undertaken. The Contractor shall not be entitled to additional compensation for the additional effort it applies to the work under the terms of this subparagraph.

Article XXIV - Modification of the Contract Time

24.1 Delays of and Extension of Time. When a delay defined herein as excusable prevents the Contractor from completing the Work within the Contract Time, the Contractor shall be entitled to an extension of time as set forth in § 24.3.3. The Contract Time shall be extended by the number of calendar days lost by reason of excusable delay, as measured by the Contractor's progress schedule (or current update). All extensions of time shall be given in calendar days. In no event, however, will an extension of time be granted for delays that merely extend the duration of non-critical activities, or which consume only float without delaying the project completion date.

24.1.1 Time Extensions for Weather Days**.** A "Weather Day" is a day on which the Contractor's current schedule indicates Work is to be done, on which inclement weather and related Site conditions prevented the Contractor from performing seven continuous hours of Work between the hours of 7:00 AM and 6:00 PM. Weather days are excusable noncompensable delays. When weather conditions at the site prevent work from proceeding, the Contractor shall immediately notify the ODR so conditions can be confirmed by the Owner. At the end of each calendar month, the Contractor shall submit to the Owner and Architect/Engineer a list of Weather Days occurring in that month. The Owner and Architect/Engineer shall meet with the Contractor to discuss and resolve any disagreements concerning the number of Weather Days that have directly impacted the Completion Date. Upon Owner and Contractor contract, any time extension granted will be issued by Change Order. If the Contractor and Owner cannot agree on the amount of time extension, the Owner may issue a ULCO for fair and reasonable time extension. The requirements of §24.4 concerning requests for time extension shall not apply to requests for extensions of time for Weather Days, which are governed by this section alone. The Contractor's sole relief for delay for Weather Days will be a time extension.

24.1.2 Non-Weather Excusable Noncompensable Delay. The Contractor shall be entitled only to an extension of time for unforeseeable delays not within the control of or arising from the fault of either the Contractor or the Owner caused by the following:

a. Unusual delay in the delivery of materials, components or equipment to be incorporated into the work. Strikes and labor disputes (but not the availability of adequately skilled labor, unless such impact is caused solely by the conduct of the Owner);
b. Physical damage to the work caused by circumstances beyond the control of the Contractor;
c. War, civil unrest or insurrection;
d. Other unforeseeable causes beyond the control of either the Contractor or the Owner.

24.1.3 Excusable Delay. The Contractor shall be entitled to an equitable adjustment of a time extension, issued via change order, for delays caused by the following:

a. Failure of the Owner or the Architect/Engineer to take timely actions required under the Contract Documents, or to provide information required by the Contractor to proceed with the Work in a timely manner.
b. Detrimental or obstructive actions of separate contractors employed by the Owner.
c. Failure of the Owner to provide access to the Site of the Work.
d. Failure of the Owner to provide materials which are to be furnished by the Owner under the Contract Documents, consistent with the Progress Schedule.
e. Errors, omissions and imperfections in design which the Architect/Engineer corrects by means of changes in the drawings and specifications.
f. Unanticipated physical conditions at the Site which the Architect/Engineer corrects by means of changes to the drawings and specifications.
g. Changes in the work ordered by the Owner or the Architect/Engineer.

24.1.3.1 No Damages for Delay: The Contractor shall have no claim for monetary compensation or damages for delay or hindrances to the work from any cause including without limitation any act or omission of the Owner. The Contractor's only claim for any such delay or hindrance shall be for an extension of time as provided in this Article XXIV.

Draft

24.1.4 Suspension of Work for Cause. The Owner may, at any time without prior notice, suspend all or any part of the Work, if, in the Owner's sole discretion, it is considered reasonably necessary to do so to prevent or correct, any condition of the Work, which constitutes an immediate safety hazard, or which may reasonably be expected to impair the integrity, usefulness or longevity of the Work when completed. The Owner shall give the Contractor a written notice of suspension for cause, setting forth the reason for the suspension and identifying the Work to be suspended. Upon receipt of such notice, the Contractor shall immediately stop the Work so identified. As soon as practicable following the issuance of such a notice, the Owner, with the assistance of the Architect/Engineer, shall initiate and complete an investigation of the circumstances giving rise to the suspension, and shall issue a written determination of their cause. The Contractor will not be entitled to an extension of time or compensation for delay resulting from a suspension if the Owner's investigation determines that the cause was within the control of the Contractor. If the cause is determined not to have been within the control of the Contractor, and the suspension prevents the Contractor from completing the Work within the Contract Time, the suspension is an Excusable Delay and a Time Extension shall be granted through a Change Order. Suspensions of work under this provision shall be no longer than is reasonably necessary to identify and remedy the conditions giving rise to the suspension.

24.1.5 Suspension of Work for Owner's Convenience. Upon seven calendar days' prior written notice to the Contractor, the Owner may at any time without breach of the Contract suspend all or any portion of the Work for a period of up to thirty days for its own convenience. The Owner shall give the Contractor a written notice of suspension for convenience, which shall set forth the number of days for which the Work, or any portion of it, will be suspended, and the date on which the suspension of Work shall cease. When such a suspension prevents the Contractor from completing the Work within the Contract Time, it is Excusable Delay. A notice of suspension for convenience may be modified by the Owner at any time on seven calendar days' prior written notice to the Contractor. If the Owner suspends the Work for its convenience for more than 60 consecutive calendar days, the Contractor may elect to terminate the contract pursuant to the provisions of Article XXV.

24.1.6 Concurrent Delay. When the completion of the Work is simultaneously delayed by an excusable delay and a delay arising from a cause not designated as excusable under the Contract Documents, the Contractor shall be entitled only to a time extension, and not to compensation, for the period of concurrent delay. When the completion of the Work is simultaneously delayed by an excusable delay and an excusable no compensable delay, the Contractor shall be entitled to a time extension only, as provided under § 24.3.3***1***.

24.1.7 Except as expressly provided in this § 24.3, the Contractor shall not be entitled to an extension of the Contract Time, and shall bear all responsibility for financial risks which may accrue from various causes of delay in the construction progress.

Draft

24.2 Time Extension Requests. If the Contractor believes that the completion of the Work has been delayed by a circumstance designated as excusable under § 24.3, other than inclement weather, he shall give the Owner written notice, stating the nature of the delay and the activities potentially affected, within 30 calendar days after the onset of the event or circumstance giving rise to the excusable delay. Such claims should be accompanied by sufficient written evidence to document the delay. In the case of a continuing cause of delay, only one claim is necessary. Claims for extensions of time shall be stated in numbers of whole or half calendar days. All requests for extensions of time not submitted in connection with proposed costs for changed or added work must be made in writing within 30 calendar days after the cessation of the delay. The Contractor and Owner recognize and agree that it is beneficial to each to identify delays and make necessary schedule adjustments promptly, and that a Progress Schedule prepared and updated by the Contractor provides an effective tool for measuring and tracking the impact of delays. Therefore, it is agreed that no extension of time will be granted unless the required notice is submitted timely, the required Work Progress Schedule has been regularly updated and submitted as specified, and the notice includes sufficient documentation.

All Changes to the Contract Time made as a result of such claims shall be by Change Order, as provided under Article XX.

24.2.1 No extension of time shall release the Contractor or the Surety furnishing a performance or payment bond from any obligations under the contract or such a bond. Those obligations shall remain in full force until the discharge of the Contract

24.2.2 Contents of Time Extension Requests. Each Time Extension Request shall be accompanied by a quantitative demonstration of the impact of the delay on the current Progress Schedule. Time Extension Requests shall include a reasonably detailed narrative setting forth (1) the nature of the delay and its cause, (2) the basis of the Contractor's claim of entitlement to a time extension, (3) documentation of the actual impacts of the claimed delay on the Progress Schedule, and any concurrent delays, (4) description and documentation of steps taken by the Contractor to mitigate the effect of the claimed delay, including, when appropriate, the modification of the Progress Schedule, and (5) such other information that the Contractor and/or Owner and/or Architect/Engineer considers necessary to justify the claim for an extension of time. No time extensions shall be granted for delays that do not affect the Project Schedule.

24.2.3 Owner's Response. The Owner or the Architect/Engineer with the owner's concurrence shall respond to the Time Extension Request by providing to the Contractor written notice of the number of days granted, if any, and giving its reason if this number differs from the number of days requested by the Contractor. Such an Extension of Time is effective on the date the Architect/Engineer's or Owner's notice is received by the Contractor, but a Change Order reflecting the Extension of Time shall be executed by the parties in accordance with Article XX. The Owner will respond to each properly submitted Time Extension Request within 15 calendar days following its submittal; if the Owner and Architect/Engineer cannot reasonably make a determination about the Contractor's entitlement to a time extension within that time, the Owner or Architect/Engineer shall so notify the Contractor in writing. Upon written contract with the Contractor, the Owner shall then have not more than 30 additional calendar days to prepare a final response.

24.3 Failure to Complete Work Within the Contract Time. Time is of the essence of this Contract. The Contractor's failure to substantially complete the Work within the Contract Time or to

Draft

achieve final completion as required will cause damage to the Owner. These damages shall be liquidated by contract of the Contractor and the Owner, as set forth in the Contract Documents.

24.3.1 Collection of Liquidated Damages. The Owner may collect Liquidated Damages due from the Contractor directly or indirectly by reducing the contract sum in the amount of Liquidated Damages stated in the Special Conditions and the Contract.

Article XXV - Termination and Suspension of the Contract Prior to Completion

25.1 Termination by Owner for Cause. The Owner may, without prejudice to any right or remedy, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor, under the following circumstances:

a. Persistent or repeated failure or refusal, except during complete or partial suspensions of work authorized under the Contract Documents, to supply enough properly skilled workmen or proper materials;

b. Persistent disregard of laws, ordinances, rules, regulations or orders of any public authority having jurisdiction;

c. Persistent failure to prosecute the work in accordance with the Contract Documents, and to insure its completion within the time, or any extension thereof, specified in this contract;

d. Failure to remedy defective work condemned by the ODR pursuant to Article XII;

e. Failure to pay subcontractors, laborers, materialmen and suppliers pursuant to Texas Government Code Chapter 2251;

f. Persistent endangerment, by the Contractor or its Subcontractors or other vendors, of the safety of labor or of the Work itself;

g. Failure to supply or maintain statutory bonds, pursuant to Article V, or the supply or maintain Required insurance, pursuant to Article VI ;or

h. Any other material breach of the Contract,.

i. The Contractor becomes insolvent, files for bankruptcy protection, makes a general assignment of its rights and obligations for the benefit of creditors or is, in the Owner's estimation, otherwise financially incapable of performing the Work.

The Owner reserves the right to terminate at any time for any of the above listed causes. Failure to exercise the right to terminate in any instance or for any proper reason shall not be construed as waiver of the right to do so in any other instance or for any other proper reason.

25.1.1 The ODR shall give the Contractor and its Surety thirty days' prior written notice of its intent to terminate for any of the above reasons. If the Contractor or the Surety demonstrates, to the satisfaction of the Owner, that the condition or conditions upon which the notice of termination is based have been removed, corrected, or will not recur, then the Owner shall rescind the notice and the Contract shall continue unmodified, and the Contractor shall not be entitled an

Draft

extension of time.

25.1.2. Should the Contractor or the surety fail to so demonstrate within thirty days following receipt of such notice, or fail to satisfy the Owner that the condition or conditions upon which the notice of termination is based have been removed, corrected, or will not recur, the Owner may arrange for completion of the Work and deduct the cost thereof from the unpaid Contract sum remaining, including the cost of additional Architect/Engineer services and of Owner contract administrative costs made necessary by such default or neglect, in which event no further payment shall then be made by the Owner until all costs of completing the Work shall have been paid. If the unpaid balance of the Contract Sum exceeds the costs of finishing the Work, including compensation for the Architect/Engineer's additional services made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor or his surety shall pay the difference to the Owner. This obligation for payment shall survive the termination of the Contract. The Owner reserves the right, where the Contract is terminated for cause, to take assignment of any and all contracts between the Contractor and its Subcontractors, vendors and suppliers, and the ODR shall promptly notify the Contractor of the contracts the Owner elects to assume. Upon receipt of such notice, the Contractor shall promptly take all steps necessary to effect such assignment.

25.2 Termination for Convenience of Owner. The Owner reserves the right, without breach, to terminate the Contract prior to, or during the performance of the Work, for any reason. Upon such an occurrence, the following procedures will be adhered to:

a. The Owner will immediately notify the Architect/Engineer and the Contractor in writing, specifying the reason for and the effective date of contract termination. Such notice shall also contain any instructions necessary for the protection, storage or decommissioning of incomplete work or systems, and for safety.

b. After receipt of the notice of termination, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due at that point in the Contract.

1. Stop all work.
2. Place no further subcontracts or orders for materials or services.
3. Terminate all subcontracts.
4. Cancel all materials and equipment orders as applicable.
5. Take action that is necessary to protect and preserve all property related to this Contract which is in the possession of the Contractor.

c. When the Contract is terminated for the Owner's convenience, the Contractor may recover from the Owner payment for all Work executed, including any additional work required pursuant to the notice of termination, and for any provable loss and reasonable expenses attributable to the Work resulting from such termination.

25.3 Termination by Contractor. If the Work is stopped for a period of ninety (90) days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing any of the Work under a contract with the Contractor, then the Contractor may, upon thirty (30) additional days' written notice to the ODR, terminate the Contract and recover from the Owner payment for all Work executed and for any provable loss and reasonable expenses attributable to the Work resulting from such termination. If the cause of the work stoppage is removed prior to the end of the thirty (30) day notice period,

Draft

the Contractor may not terminate the Contract.

25.4. Settlement on Termination. When the Contract is terminated for any reason, the Contractor shall, at any time prior to 180 days of the effective date of termination, submit a final termination settlement proposal to the Owner based upon recoverable costs as provided under §§25.1, 25.2 or 25.3. If the Contractor fails to submit the proposal within the time allowed, the Owner may determine the amount due to the Contractor because of the termination and shall pay the determined amount to the Contractor. All settlements on termination shall be administered as Type II Change Orders as provided under Articles XX, XXI and XXII.

Article XXVI – Dispute Resolution.

26. To the extent that Chapter 2260 of the Texas Government Code, as it may be amended from time to time ("Chapter 2260"), is applicable to this Contract and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 shall be used, as further d escribed herein, by Owner and Construction Manager to attempt to resolve any claim for breach of contract made by Construction Manager:

a) Construction Manager's claims for breach of this Contract that the parties cannot resolve pursuant to other provisions of this Contract or in the ordinary course of business shall be submitted to the negotiation process provided in subchapter B of Chapter 2260. To initiate the process, Construction Manager shall submit written notice, as required by subchapter B of Chapter 2260, to Owner in accordance with the notice provisions in this Contract. Construction Manager's notice shall specifically state that the provisions of subchapter B of Chapter 2260 are being invoked, the date and nature of the event giving rise to the claim, the specific contract provision that Owner allegedly breached, the amount of damages Construction Manager seeks, and the method used to calculate the damages. Compliance by Construction Manager with subchapter B of Chapter 2260 is a required prerequisite to Construction Manager's filing of a contested case proceeding under subchapter C of Chapter 2260. The Vice President for Administration and Partnership Affairs, or such other officer of Owner as may be designated from time to time by Owner by written notice thereof to Construction Manager, shall examine Construction Manager's claim and any counterclaim and negotiate with Construction Manager in an effort to resolve such claims.

b) If the parties are unable to resolve their disputes under subparagraph (1) of this section, the contested case process provided in subchapter C of Chapter 2260 is Construction Manager's sole and exclusive process for seeking a remedy for any and all of Construction Manager's claims for breach of this Contract by Owner.

c) Compliance with the contested case process provided in subchapter C of Chapter 2260 is a required prerequisite to seeking consent to sue from the Legislature under Chapter 107 of the Texas Civil Practices and Remedies Code. The parties hereto specifically agree that (i) neither the execution of this Contract by Owner nor any other conduct, action or inaction of any representative of Owner relating to this Contract constitutes or is intended to constitute a waiver of Owner's or the state's sovereign immunity to suit and (ii) Owner has not waived its right to seek redress in the courts.

The submission, processing and resolution of Construction Manager's claim Iis governed by the published rules adopted by the Texas Attorney General pursuant to Chapter 2260, as currently effective, hereafter enacted or subsequently amended

Neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of a claim constitute grounds for the suspension of performance by Construction Manager, in whole or in part. Owner and Construction Manager agree

Draft

that any periods set forth in this Contract for notice and cure of defaults are not waived, delayed, or suspended by Chapter 2260 or this section.

It is agreed that such process is not invoked if Owner initiates the dispute by first bringing a claim against Construction Manager, except at Owner's sole option. If Owner makes a claim against Construction Manager and Construction Manager then makes a counterclaim against Owner as a claim under Chapter 2260 and in compliance therewith, the Owner's original claim against Construction Manager does not become a counterclaim and is not subject to the mandatory counterclaim provisions of Chapter 2260 of the *Texas Government Code*, except at the sole option of the Owner.

Article XXVII – Miscellaneous

27.1 Written Notice. *Written notice shall be considered to have been duly given if the document is delivered in person to the designated representative* of the Contractor or Owner for whom it is intended, if delivered at or sent by registered or certified mail to the last business address of the designated representative known to one who gives the notice, or transmitted by fax machine to the last known business fax number of the designated representative, with a receipt retained to prove delivery. Notice is deemed effective when given rather than when received, however notice by mail is not effective until three (3) days after the date of mailing and notice by fax is not effective until the next business day after faxing.

27.2 Supplemental and Special Conditions When the Work contemplated by the Owner is of such a character that the foregoing Uniform General Conditions and Supplemental General Conditions of the Contract cannot adequately cover necessary and additional contractual relationships, the Contract may include Special Conditions and other administrative requirements in Division 1 Specifications sections and as described below:

27.2.1 Supplemental General Conditions are incorporated herein and describe the standard procedures and requirements of contract administration followed by The University of Texas System, a contracting agency of the State. Supplemental Conditions may expand upon matters covered by the Uniform General Conditions, where necessary, provided the expansion does not weaken the character or intent of the Uniform General Conditions. Supplemental Conditions are of such a character that it is to be anticipated that a contracting agency of the State will normally use the same, or similar, conditions to supplement each of its several projects. Owner's Standard Supplemental Conditions have been incorporated into this document as indicated by strikethroughs in the original text and insertion of additional terms in bold and italicized type.

27.2.2 Special Conditions and Division 1 Specification sections shall relate to a particular project and be peculiar to that project but shall not weaken the character or intent of the Uniform General or Supplemental General Conditions.

27.3 Federally Funded Projects. If this project is federally funded, the Special Conditions will indicate that fact and will contain any modifications of these General Conditions required as a condition of obtaining federal funding.

27.4 Computation of Time. In computing any time period set forth in this Contract, the first day of the period shall not be included, but the last day shall be.

27.5 Survival of Obligations. All representations, indemnifications, warranties and guarantees made in accordance with the Contract Documents will survive final payment, completion and acceptance of the Work, as well as termination for any reason. All duties imposed upon the

Draft

Contractor by reason of termination, including without limitation the duty to assign subcontracts and contracts with vendors and suppliers, shall likewise survive the termination of the Contract.

27.6 No Waiver of Performance. The failure of either party in any instance to insist on the performance of any of the terms, covenants or conditions of the Contract Documents, or to exercise any of the rights granted thereunder, shall not be construed as waiver of any such term, covenant, condition or right with respect to further performance.

27.7 Governing Law. This Contract shall be governed by the law of the State of Texas.

27.8 Captions and catchlines. The captions and catchlines used throughout the Uniform General and Supplemental General Conditions are for ease of reference only and have no effect on the meaning of the terms and conditions set forth herein.

27.9 Independent Contractor Status. The Contract Documents create an independent contractor relationship between the Owner and Contractor and neither party's employees or contractors shall be considered employees, contractors, partners or agents of the other party.

27.10 No third party beneficiaries. The parties do not intend, nor shall any clause be interpreted to create in any third party, any obligations to, or right of benefit by, such third party under these Contract Documents from either the Owner or Contractor.

27.11 Entire Contract. These Contract Documents supercede in full all prior discussions and contracts (oral and written) between the parties relating to the subject matter hereof and constitutes the entire contract.

27.12 Assignment. This Contract may not be assigned by either party without the prior written consent of the other, except either party may, upon notice to the other party but without the other party's consent, assign this Contract to a present or future Affiliate or successor, provided that any such assignment by Contractor shall be contingent on Owner's determination that the assignee is qualified to perform the work, is in good standing with the State of Texas and otherwise eligible to so business with the State of Texas.

27.13 Severability. If any provision, sentence, clause or article of this Contract is found to be invalid or unenforceable for any reason, the remaining provisions shall continue in effect as is the invalid or unenforceable provision were not in the Contract. All provisions, sentences, clauses and articles of this Contract are severable for this purpose.

27.14 Parties Bound. Execution of this Contract by each party binds the entity represented as well as its employees, agents, successors and assigns to its faithful performance.

27.15 No waiver of Sovereign Immunity. Nothing herein shall be construed as a waiver of the state's sovereign immunity.

Draft

OWNER / ENGINEER CONTRACT

SOUTH TEXAS COLLEGE

McAllen, Texas

DRAFT

February 2015

CONTRACT BETWEEN
OWNER AND ENGINEER

STATE OF TEXAS
COUNTY OF HIDALGO

PART I. PARTIES

This Contract for Engineer Services is made on the __st day of February of 2015 between The South Texas College (Owner) and _____Engineers, Inc. (Engineer)

The following Exhibits are incorporated herein as part of this contract:

Exhibit "A"	Scope and Construction Cost Limitation
Exhibit "B"	Engineers and Consultant project team personnel and responsibility diagram
Exhibit "C".	Project Schedule
Exhibit "D"	Drawing and submittal requirements for each phase
Exhibit "E"	STC Ethics Statement
Exhibit "F"	Facilities Programs
Exhibit "G"	AE Statement Template
Exhibit "H"	Additional Service Proposal Form
Exhibit "I"	Engineer Project Team Hourly Rates
Exhibit "J"	Self Interest Disclosure

Owner engages the Engineer to perform professional Engineering services in connection with the project as set forth in this Contract and the Owner agrees to pay the Engineer for such services a fee in accordance with the terms and conditions hereinafter stated. The services shall include but are not limited to the following description of work on the South Texas College _____ Campus in _____, Texas.

(Description of Work)

PART II. TERMS AND CONDITIONS, as defined in Articles 1-20 herein.

ARTICLE 1
REPRESENTATIONS

1.1 Legal Authority. Engineer represents that the Engineer has the requisite authority to enter into and perform its obligations under this Contract. Upon execution hereof, the Engineer shall submit a notarized affidavit sworn to by an authorized officer or agent of the Engineer avowing that the Engineer is not in violation of any laws material to its ability to perform its obligations under this Contract.

1.2 Engineer's Professional Qualifications.

a. The Engineer represents that it is duly licensed under the laws of the State of Texas to undertake its obligations hereunder.

b. Notwithstanding anything to the contrary contained in this Contract, Owner and Engineer agree and acknowledge that Owner is entering into this Contract in reliance on Engineer's special and unique abilities with respect to performing Engineer's services, duties, and obligations under this Contract ("Engineer's Services"). Engineer accepts the relationship established between Engineer and Owner and will strive to use Engineer's appropriate efforts, skill, judgment, and abilities in performing Engineer's Services. Engineer shall perform Engineer's Services (i) in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession for those Engineering firms

Draft

currently practicing under similar circumstances or similar locality and (ii) in compliance with all applicable federal, state, and municipal laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction. The Engineer covenants that there are no obligations, commitments, or impediments of any kind that will limit or prevent performance of Engineer's Services.

1.2.1 Engineer's Qualifications. In performing its obligations under this Contract, the Engineer shall engage or cause to employ the services of one or more individual(s) licensed to practice engineering under the laws of the state of Texas, as set forth in The Texas Engineering Practice Act, Article 3271a, Vernon's Texas Civil Statutes (the "Engineer"). Regardless of the legal relationship between the Engineer and the Engineer, at all times herein, the Engineer shall also have an independent legal duty to the Owner with respect to the respective engineer design functions set out in the Engineer's contract. The Engineer's duty shall include separate errors and omissions coverage as set forth in Article 19 hereof.

1.2.2 Certification to Owner. Prior to issuance of the Owner's Notice to Proceed to the Engineer, the Engineer shall have employed, and Owner shall have approved the services of Engineer's Engineers as set out in Engineer's written engagement of Engineers. In this regard, the Engineer shall:

a. provide the Owner with written evidence of the Engineer's and Engineer's qualifications to perform the design services required under this Contract;

b. certify to the Owner that the Engineer and Engineers that are to be members of its team are being selected based on demonstrated competence and qualifications; and

c. tender to Owner the Engineer's and Engineer's errors and omission insurance policies.

1.3 Design Service Representations.

1.3.1 The Engineer shall exercise usual and customary professional care in the performance of its service hereunder to the end that the final design recommended by Engineer and accepted by the Owner shall be sufficient for construction of the Project, and that the Project can be constructed as designed and as shown in the plans and specifications and will be fit for the purposes for which it is intended. Approval by the Owner of any of the Engineer's plans, drawings, specifications, documents, or other Work performed under this Contract shall not relieve the Engineer of responsibility for design, coordination with sub consultant engineers, or the workability of the details. The Project design, plans, and specifications shall incorporate the requirements approved by the Owner at the various design phases and shall comply with the requirements of applicable laws including, but not limited to, the Americans with Disabilities Act, local building codes, local ordinances, local health department standards, fire department standards, rules and regulations including, but not limited to, fire safety regulations and elevator regulations, electrical, mechanical, plumbing, structural, and all other laws or regulations applicable to the design and construction of the Project.

1.3.2 Standard of Care. Service provided by the Engineer under this contract will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances or similar locality.

1.3.3 Separate Contracts. Engineer acknowledges that Owner has entered into separate contracts with other Consultants, including but not limited to a Construction Program Manager who will be Owner's Representative during design and construction of the Project. Engineer agrees with the Owner to be bound by the Project Schedule, incorporated herein by reference. In this regard, Engineer shall devote such time and in-house personnel and resources as reasonably necessary to perform Engineer's services hereunder and comply with the Owner's Project Schedule attached hereto as Exhibit "C". The Owner reserves exclusively to itself the discretion to alter the overall Project Schedule, Engineer's services and deliverables are intended solely for the Owner on the Project and are not intended to create any third party rights or benefits or for any other purpose.

ARTICLE 2

Draft

ENGINEER RESPONSIBILITIES

2.1 Engineer Services

2.1.1 Engineer's services consist of those services specifically required to be performed by the Engineer under other provisions of this contract, services performed by Engineer's Consulting Engineers, and related usual and customary services necessary and reasonably inferable to complete the Project and each phase of the Project. Engineer's basic services include the following: structural, mechanical and electrical engineering necessary to carry out Engineer's Basic Services in addition to the services included in paragraph 1.3 Design Service Representations; coordination of all landscape, civil, audio/visual, acoustical, technology and communication systems, any specialty consultants approved and contracted by the Owner.

2.1.2 The Engineer will receive from Owner the documents and information contained in Exhibit "A" through "J", including a Preliminary Project Cost Estimate supporting the Construction Cost Limitation established for the Project. The Engineer shall review those documents to understand the objectives of the Project and shall work with Owner to arrive at a mutual understanding of such objectives. The Engineer will conduct its activities related to the Project so as to achieve project, objectives as reflected in the contract documents.

2.1.3 The services covered by this contract are subject to the time limitations as set forth in the Project Schedule attached hereto as Exhibit "C".

2.1.4 Design of the Project shall commence immediately from the date the Engineer receives a written Notice to Proceed from the Owner. A Notice to Proceed for reach phase shall be required. The Engineer shall proceed in accordance with the mutually agreed upon Project Schedule. Engineer shall complete the work in accordance with the Project Schedule requirements. It is understood the Engineer shall be provided sufficient time to employ sound professional practices. Upon request, Engineer shall be allowed reasonable extensions of time.

2.1.5 Prior to beginning the Engineer Services for the Project, Engineer shall submit for the Owner's review a schedule for the performance of the Engineer's services consistent with the Project Schedule which shall include allowances for periods of time required for the Owner's review and for approval of submissions by governmental authorities having jurisdiction over the Project.

2.1.6 The Engineer shall be liable for its negligent acts and omissions, and for the negligent acts and omissions of anyone directly employed or engaged by the Engineer, including Engineer's Consulting Engineers, or anyone acting under Engineer~~,~~ including for all damages and losses proximately caused as a result of its negligent acts or omissions. Engineer shall not be responsible (financially or otherwise) for the performance, lapses, acts, errors or omissions of any person or entity not under its control, including but not limited to owner, owners other consultants and representatives, building officials or contractors/subcontractors

2.1.7 The Owner intends to employ a Construction Manager at Risk (CM@R) to provide pre-construction services and to perform all of the construction work required by the Project. The Engineer will work collaboratively with the Owner, the Owner's Construction Program Manager ("CPM") and CM@R to fulfill the objectives of the Project.

2.1.8 The Engineer and the CPM shall participate in the development and review of the CM@R's Guaranteed Maximum Price (GMP) proposal. This GMP Proposal will include the qualifications, assumptions, exclusions, value engineering and all other requirements identified by Owner to the CM@R. Furthermore, the Engineer and the CPM shall participate in the documentation of the CM@R's GMP Proposal so as to adequately understand the contents of the GMP Proposal and ultimately confirm that the Construction Documents, when complete, reflect necessary qualifications, clarifications and assumptions contained within the GMP Proposal. Following Owner's Approval of the GMP proposal, the Engineer shall be responsible for developing the Construction Documents, consisting of plans and specifications, and any other needed materials, and setting forth in detail requirements embodied in the approved GMP proposal.

2.1.9 The Owner has employed a Construction Program Manager ("CPM") to perform most of the responsibilities

Draft

required of the Owner under this Contract. The Engineer will work collaboratively with the CPM to facilitate the CPM's fulfillment of delegated Owner responsibilities and to fulfill the objectives of the Project.

2.1.10 Upon Engineer's request, Owner will provide Engineer with an executed version of the Owner's contracts with the CM@R. Nothing in the CM@R Contract shall confer direct responsibility on the CM@R for the Engineer's services, nor shall anything contained therein diminish Engineer's responsibility for its services as set forth in this Contract, or impose on Engineer reasonability for means and methods of construction.

2.1.11 The CM@R will provide GMP Proposal to the Owner on the same submittal schedule dates as those required of the Engineer. The Engineer shall be required to confer with the Owner and the CM@R to reconcile any material differences between the two estimates. These estimate reconciliation efforts are considered a part of Engineer's Basic Services and will not be considered as Additional Services. The level of detail of this estimate shall follow the Construction Specifications Institute (CSI) format. Such estimates shall be submitted with plans and specifications when submitted for review at the completion of the Schematic Design phase, Design Development phase, and at each of the stages of completion of the Construction Documents as described in paragraph 3.6. Should any Construction Cost Estimate indicate a cost which exceeds the Construction Cost Limitation, the Owner will determine whether to increase the Construction Cost Limitation, or require the Engineer to revise the Project scope or quality to bring the estimated cost within the Construction Cost Limitation at no additional cost to Owner. Reductions in Project scope or quality shall be subject to Owner's review and approval. Should any Construction Cost Estimate indicate a cost which is below the Construction Cost Limitation, the Owner and Engineer shall mutually agree on any changes to the Project scope, quality or to the Construction Cost Limitation. The CM@R shall provide the GMP Proposal to the Owner on the same submittal schedule dates as those required of the Engineer. The Engineer shall be required to confer with the Owner and the CM@R to reconcile any material differences between the two estimates. These estimate reconciliation efforts are considered a part of Engineer's Basic Services and will not be considered as Additional Services.

2.1.12 The Engineer shall submit document deliverables to the Owner for review at completion of the Schematic Design and Design Development phases and at the 30%, 60% and 95% stages of completion of the Construction Documents. The Engineer shall incorporate into the documents such corrections and amendments resulting from Owners reviews, unless the Engineer has objected in writing and has received the Owner's consent not to make the incorporation to which the Engineer objects. If costs are incurred at a later date due to a failure to incorporate written requested corrections and amendments, the added design costs shall be at the Engineer's sole expense.

2.1.13 NOT USED

2.1.14 Engineer shall advise Owner of anything in drawings, plans, sketches, instructions, information, requirements, procedures, requests in writing for action, and other data supplied to Engineer (by Owner or any other party) which Engineer regards in Engineer's professional opinion as unsuitable, improper, or inaccurate in connection with the purposes for which such documents or data are furnished.

2.1.15 Engineer's duties as set forth herein shall not be diminished by reason of any approval or acceptance by Owner, nor shall Engineer be released from liability by reason of such approval by Owner, it being understood that Owner is relying upon Engineer's skill and knowledge in performing Engineer's services. Owner shall have the right to reject any portion of Engineer's Services on the Project because of any fault or defect in the Project due to the plans, drawings and specifications, and other materials prepared by Engineer, and prompt notice of any such rejection shall be given by Owner to Engineer. Engineer shall forthwith perform, without any additional cost or expense to Owner, design services as are required to correct or remedy any act, error, or omission directly attributable to the plans, drawings, and specifications and other materials of Engineer, or in connection with the Engineer's Services, or the services of Engineer's Consultants or other persons employed by Engineer, in the performance of any of the provisions of this Contract. Should the Engineer refuse or neglect to correct or remedy such defects within a reasonable time after receiving notice requesting such correction or remedy, then Owner shall be entitled to effect such correction or remedy itself at the expense of Engineer, and Engineer shall reimburse Owner upon demand for all expenses incurred by Owner to effect such correction or remedy. This commitment by Engineer is in addition to, and not in substitution for, any other remedy for

Draft

defective services that Owner may have at law or in equity, or both. Engineers services shall be limited to those expressly identified in this contract and shall not include any other services or deliverables.

2.1.16 In view of the services to be performed by Engineer, Engineer shall devote such time and in-house personnel as may be required to perform Engineer's services hereunder. Unless and until Owner grants its prior written approval to any substitution, or requests any substitution, Engineer's Senior Principal responsible for completing the Engineer's services shall be as listed on **Exhibit B** attached hereto and incorporated herein. The day-to-day Project team will be led by the person or persons as listed on **Exhibit B** attached hereto and incorporated herein, unless otherwise directed by Owner or prevented by factors beyond the control of Engineer. The Senior Principal shall act on behalf of Engineer with respect to all phases of Engineer's Services and shall be available as required for the benefit of the Project and Owner**.**

ARTICLE 3
BASIC SERVICES

3.1 The Engineer's Basic Services consist of the following five phases: (1) Schematic Design and Planning Phase;(2) Design Development Phase; (3) Construction Documents Phase; (4) Bidding or Negotiation Phase; and (5) Construction Phase-Administration of the Construction Contract. Basic Services shall include all Civil engineering, including any electrical engineering and structural engineering. Building information modeling ("BIM") coordination between disciplines will be required. Engineer is responsible for coordinating all specialty consultants such as landscape design, irrigation and surveying, as well as, coordination with all the design professionals hired by the owner, such as, Architects, AVIT and Kitchen. The Engineer shall provide all record drawings on CADD and any other services included in this Article as part of Basic Services. **See Article 5 Other services for additional services considered part of Basic Services**

3.2 Prior to proceeding with any of the phases of services set out herein, the Engineer must receive written notice to proceed from the Owner. The Engineer and its Consultants shall not proceed beyond a phase of design authorized by the Owner, except at the Engineer's and Consultants' own financial risk. The Owner may, at its sole discretion, choose not to issue a Notice to Proceed for any particular phase, subject to Engineer's right of termination for Owner's abandonment of the project.

3.3 Engineer shall correct, without any additional cost or expense to Owner, any error or omission in Contract Documents. This obligation of the Engineer is in addition to, and not in substitution for, any other remedy which Owner may have.

3.4 <u>Schematic Design and Planning Phase</u>

3.4.1 Based on Owner's Program, Construction Cost Limitation and Project Schedule, the Engineer shall prepare sufficient alternative approaches to design and construction of the Project to satisfy Owner's requirements. The Engineer shall review the understanding of such requirements with Owner, the CPM and CM@R, and shall, at completion of this phase, submit Schematic Design Documents in accordance with Owner's Minimum Design Guidelines and any additional requirements set forth in this Contract. Upon submission of the Schematic Design documents, the Engineer shall review design and construction alternatives with the Owner, the CPM and the CM@R at the Project site. The Engineer shall incorporate the alternatives selected by the Owner, especially those regarding aesthetic design issues.

3.4.2 The Engineer shall furnish and deliver to the Owner four complete printed sets of Schematic Design documents. The Engineer shall provide the CM@R with copies of the Engineer's documents at the CM@R's expense to assist the CM@R in fulfilling its responsibilities to the Owner.

3.4.3 The Engineer and the CPM shall work collaboratively to review and assist in the preparation of a construction cost estimate as described in paragraph 2.1.12 to confirm adherence to the Construction Cost Limitation and present same with the completed Schematic Design Documents. The Engineer shall review the CPM's construction cost estimate in comparison with the construction cost estimate prepared by the CM@R, and shall assist the CPM in reconciling any differences between the two construction cost estimates in coordination with

Draft

the CM@R. If the Engineer is unable to reconcile all differences between the two construction cost estimates with the CM@R, then the Engineer shall assist the CPM in provide a detailed explanation of the differences to the Owner.

3.4.4 Before proceeding into the Design Development Phase, the Engineer shall obtain Owner's written acceptance of the Schematic Design Documents.

3.4.5 The Engineer shall participate in a final review of the Schematic Design Documents with the Owner and CM@R at the Project location or other location in the Hidalgo County specified by Owner. The Engineer shall present the schematic design drawings and designs at a Facilities Committee and STC Board of Trustee ("Board") meeting which will be held in McAllen, Texas. Prior to the Board's approval of the Schematic Design Documents, the Engineer shall incorporate such changes as are necessary to satisfy the Owner's review comments.

3.4.6 The Engineer shall prepare presentation materials as defined in Owner's Design Guidelines at completion of Schematic Design and if so requested shall present same for approval to the Board at a regular or special Board meeting. 3D modeling of the schematics design approved by the Owner is required under Basic Services.

3.5 Design Development Phase

3.5.1 Based on the approved Schematic Design Documents and any adjustments to the Program or Construction Cost Limitation authorized by the Owner, the Engineer shall prepare, for approval by the Owner and review by the CM@R, Design Development Documents in accordance with Owner's written requirements to further define and finalize the size and character of the Project in accordance with Owner's Design Guidelines and any additional requirements set forth in this Contract. The Engineer shall review the Design Development Documents with the Owner, the CPM and CM@R as they are being prepared at intervals appropriate to the progress of the Project and incorporate Owner's comments in the documents. Such reviews will take place at the Project location or other location in the Hidalgo County specified the Owner.

3.5.2 The Engineer shall furnish and deliver to the Owner four complete printed sets of Design Development documents and specifications. The Engineer shall provide the CM@R with copies of the Engineer's documents at the CM@R's expense to assist the CM@R in fulfilling its responsibilities to the Owner.

3.5.3 The Engineer shall assist in the review and preparation of a detailed Construction Cost Estimate that will be prepared by the CPM at milestones described in paragraph 2.1.12 in order to confirm adherence to the Construction Cost Limitation. The Engineer shall review the CPM Construction Cost Estimate in comparison with the Construction Cost Estimate prepared by the CM@R, and shall assist in reconciling any differences between the two construction cost estimates. If the Engineer is unable to reconcile all differences between the two construction cost estimates with the CM@R, the Engineer shall provide a detailed explanation of the differences to the Owner.

3.5.4 Before proceeding into the Construction Document Phase, the Engineer shall obtain Owner's written acceptance of the Design Development documents and approval of the mutually established Construction Cost Limitation.

3.5.5 The Engineer shall prepare preliminary recommended furniture layouts for all spaces where it is deemed important to substantiate the fulfillment of program space requirements, or to coordinate with specific Engineering, mechanical and electrical elements. More detailed and finalized furniture layout and development can be provided to the Owner as an Additional Service. Furniture selection and lists by Owner.

3.5.6 The Engineer shall participate in a final review of the Design Development Documents with the Owner and CM@R at the Project site. Prior to the Owner's approval of the Design Development Documents, the Engineer shall incorporate such changes as are necessary to satisfy the Owner's written review comments.

3.6 Construction Document Phase

3.6.1 Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the Project Construction Cost Limitation authorized by the Owner, the Engineer shall prepare, for approval by the Owner and review by the CM@R, Construction Documents consisting of Drawings and

Draft

Specifications in accordance with Owner's written requirements setting forth in detail the requirements for construction of the Project, including, without limitation, Owner's Design Guidelines and any additional requirements contained in Article 2 of this Contract. The plans, drawings and specifications for the entire Project shall call for the construction of the building and related facilities, together with its built-in permanent fixtures and equipment at a cost not more than the Guaranteed Maximum Price, or the Construction Cost Limitation as applicable.

3.6.2 The Engineer and the CPM shall assist the Owner and CM@R in the determination of construction phasing and scheduling, bid or proposal alternates, special cash allowances, liquidated damages, the construction contract time period, and such other construction conditions considered appropriate for the Project and advantageous to the Owner. The Engineer shall assist the Owner and CM@R in the preparation of the necessary bidding information, bidding forms, RFP information, and RFP forms, and the Terms and Conditions of the Construction Contracts.

3.6.3 The Engineer shall assist the Owner and CM@R in connection with the Owner's responsibility and procedures for obtaining approval of all authorities having jurisdiction over the Project.

3.6.4 The Engineer, at the Engineer's expense, at each phase of submission of Construction Documents, shall furnish and deliver to the Owner one complete printed copies of all plans, drawings and specifications and a CD containing drawings in CADD format, with all information of every character made or furnished in connection with the Construction Work, which copies shall become the property of the Owner. The Engineer shall incorporate into the plans, drawings and specifications such changes as are necessary to satisfy the Owner's review comments, any of which may be appealed in writing for good cause.

3.6.5 The Engineer shall pay for the reproduction of four sets of plans, specifications and other documents for use by the office of the Engineer and its Consultants and for review by the Owner prior to the reproduction of bidding or proposal documents. The CM@R will reimburse Engineer for all review documents CM@R requests prior to the issuance of bid sets. All other reproduction costs shall be borne by the Owner, provided that all invoices for such reproduction work are billed directly to the Owner, free of state sales taxes, and identified by the Engineer as to the project name, number and institution.

3.6.6 The Engineer shall assist the CPM with the preparation of a detailed Construction Cost Estimate to confirm adherence to the Construction Cost Limitation and present same with each phased submission of the Construction Documents. The Engineer shall review the Construction Cost Estimate in comparison with the Construction Cost Estimates prepared by the CM@R, and shall assist in reconciling any differences between the two Construction Cost Estimates in coordination with the CM@R.

3.6.7 The Owner may require the Engineer to perform Basic Services in a manner such that the Project is constructed using multiple construction contracts or awards.

3.6.8 The Owner will require Construction Document drawings to be produced on a CADD system as part of Basic Services. The Owner will assist in defining the CADD drawing requirements and the final media for the CADD data as well and BIM Modeling requirements

3.6.9 The Engineer shall participate in a review of each phase of the submission of the Construction Documents with the Owner and CM@R at the Project location. Prior to Owner's approval of a particular phase of the Construction Documents, the Engineer shall incorporate such changes as are necessary to satisfy the Owner's review comments. Before proceeding into the next scheduled phase of Construction Document development, the Engineer shall obtain Owner's written acceptance of the prior phase and approval of the Construction Cost Limitation related thereto.

3.6.10 At the completion of the Construction Document Phase, Owner will furnish Engineer with a Guaranteed Maximum Price proposal prepared by CM@R based upon the final construction documents prepared by the Engineer and approved by the Owner. The Engineer shall assist the Owner and advocate the Owner's interests in Owner's negotiations with the CM@R in an effort to develop a GMP proposal acceptable to Owner, in Owner's sole option and discretion. If the Owner does not accept the CM@R's GMP proposal, the Engineer and CPM shall

Draft

participate with the Owner and CM@R in constructability reviews and Value Engineering efforts and the Engineer shall revise the documents as necessary in order to reach an agreement. If CM@R's GMP proposal exceeds the latest Construction Cost Limitation, and Owner directs Engineer to revise the documents, then Engineer shall revise the documents at its own expense so that the GMP proposal for constructing the Project shall not exceed the Construction Cost Limitation. If it is determined to be in the Owner's best interest, instead of requiring the Engineer to revise the drawings and specifications, the Owner reserves the right to accept a GMP proposal that exceeds the stipulated Construction Cost Limitation. The Engineer and CPM shall analyze the final GMP proposal document, together with its supporting assumptions, clarifications, and contingencies, and shall submit a detailed written analysis of the document to the Owner. Such analysis shall include, without limitation, reference to and explanation of any inaccurate or improper assumptions and clarifications made by the CM@R in its preparation of the GMP proposal.

3.6.11 After the GMP proposal has been accepted, the Engineer shall incorporate into the Construction Documents any revisions which are necessary due to accepted assumptions and clarifications made in the development of the GMP.

3.7 Bidding and Negotiation Phase

3.7.1 In conjunction with the implementation of the Guaranteed Maximum Price and at other times as appropriate to the Project, the Engineer and CPM shall assist the Owner and CM@R by receiving and recording requests for Bid and Request for Proposal ("RFP") Documents, issuing Bid and RFP Documents, and accounting for Bid and RFP Documents issued; receiving and resolving questions about Bid and RFP Documents; preparing addenda, issuing addenda, and accounting for addenda issued; attending pre-bid and pre-proposal conferences; obtaining and evaluating bids and proposals; and assisting in preparing and awarding multiple contracts for construction. Engineer shall answer inquiries from bidders and proposers at Owner's request, and shall prepare and issue any necessary addenda to the bidding or proposal documents.

3.8 Construction Phase – Administration of the Construction Contract

3.8.1 The Construction Phase shall commence with the earlier of (1) Owner's acceptance of the CM@R's Guaranteed Maximum Price (or acceptance of a partial Guaranteed Maximum Price for a stage or phase), (2) award of any subcontract or trade contract by CM@R after authorization by Owner, or (3) the issuance of a purchase order by CM@R for materials or equipment for the Project after prior written authorization by Owner and, together with the Engineer's obligation to provide Basic Services under this Contract, will terminate when final payment is made to the CM@R at completion of all of the Construction Work, or sixty days after the last Date of Substantial Completion, whichever occurs last.

3.8.2 Unless otherwise provided in this Contract and incorporated in the Construction Documents, the Engineer shall provide administration of the Contract during the Construction Phase as set forth below consisting of the "Owner's Design Guidelines" current as of the date of this Contract which are hereby incorporated herein by reference:

3.8.2.1 The Engineer shall establish and maintain a numbering and tracking system for all project records, including, but not limited to: changes, requests for information, submittals, and supplementary instructions and, for the purpose of monitoring and overseeing the Construction Phase shall provide updated records to all attendees at each Owner's monthly meeting and at other times when requested.

3.8.2.2 The Engineer shall prepare agendas in advance of and shall conduct all meetings scheduled by the Owner or Engineer and shall promptly provide summary notes to all parties. The Engineer shall attend CM@R's regularly scheduled planning meetings when requested but will not be responsible for administering such.

3.8.2.3 The Engineer shall assist the Owner in make arrangements for, and participate in a Pre-Construction Conference/Partnering Workshop.

3.8.2.4 The Engineer shall utilize the CPM's web-based information system in order to facilitate ease and quicker communication, documentation of meeting minutes, and exchange of information related to RFI's, reports, etc. SEE

Draft

Article 5 Other Basic Services for details

3.8.3 The Engineer shall review the CM@R's initial administrative submittals for Project Schedule, Schedule of Values, Submittal Schedule, and Equipment Matrix to establish appropriate bases for construction monitoring, payment processing, and system commissioning. The Engineer shall provide detailed written comments to the CM@R for necessary revisions and recommend acceptance of these documents to the Owner when appropriate. The Engineer shall review periodic updates of all schedules with Owner and CM@R to evaluate appropriateness.

3.8.4 The Engineer and its Consultants shall prepare appropriate documentary materials for, and conduct, a Pre-Construction Conference at the Project site prior to commencement of construction by the CM@R.

3.8.5 The Engineer shall be a representative of the Owner during the Construction Phase, and shall advise and consult with the Owner and the CPM. All formal instructions to the CM@R shall be forwarded through the Engineer and the CPM and all communication by and with the Engineer's Consultants shall be through the Engineer, except that the Owner reserves the right to communicate in writing directly with the CM@R and Consultants as it deems necessary or appropriate at any time with a copy to the Engineer. The Engineer shall have authority to act on behalf of the Owner to the extent provided in the Construction Documents unless otherwise modified by written instrument. Duties, responsibilities and limitations of authority of the Engineer shall not be restricted, modified or extended without written acceptance of the Owner and Engineer.

3.8.6 The Engineer shall visit the site as reasonably necessary, but in no event less frequently than weekly, in order to monitor the contractor's progress and performance of the work during construction period, and each Engineer's Consultant shall visit the site as required during the construction work as it proceeds to observe the progress and quality of the Construction Work and to determine in general if the Construction Work is proceeding in accordance with the Construction Documents. Engineer and each Consultant shall within no later than five days after the visit submit written reports for each of such visits and meetings. However, the Engineer shall not be required to make exhaustive or continuous on site visits to inspect the quality or quantity of the Construction Work. On the basis of such onsite observations, the Engineer shall keep the CPM and Owner informed of the progress and quality of the Construction Work, and shall endeavor to guard the Owner against defects and deficiencies in the Construction Work of the CM@R. Engineer shall notify Owner and the CM@R in writing of any portions of the Construction Work which Engineer has observed as not being in conformity with the Construction Documents and shall make recommendations as to correction of such deficiencies or defects. As part of such on-site observation, Engineer shall make its site representative available and shall consult with Owner and the CM@R on the occasion of circumstances arising during the course of construction which would make such consultation in Owner's interests. In addition to site visits for general inspection and observation, the Engineer and its Consultants shall visit the site for specific purposes related to certification of progress payments, start-up or mock-up reviews for significant work activities and for formal inspections of the Construction Work.

3.8.7 The Engineer shall assist The CM@R in the preparation of agendas and attend monthly job conferences by representatives of the CM@R, major Trade Contractors and Subcontractors, the Engineer and the Owner's Representative, and shall prepare and distribute minutes of the meetings using the Owner Insite Project management system.

3.8.8 The Engineer shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Construction Work.

3.8.9 The Engineer shall at all times have access to the Construction Work whenever it is in preparation or progress.

3.8.10 The Engineer shall determine the amounts owing to the CM@R based on observations of Construction Work placed at the site and on evaluations of the CM@R's Estimate for Partial Payment, shall coordinate such review and evaluation with the Owner's representatives, and shall certify CM@R's Estimates for Partial Payment in such amounts as Engineer deems to be due and payable.

3.8.11 The certification of a CM@R's Estimate for Partial Payment shall constitute a representation by the Engineer to the Owner, based on the Engineer's observations at the site as provided in this Contract and on the data comprising

Draft

the CM@R's Estimate for Partial Payment, that the Construction Work has progressed to the point indicated; that, to the best of the Engineer's knowledge, information and belief, the quality of the work is in accordance with the Construction Documents (subject to an evaluation of the Construction Work for conformance with the Construction Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Construction Documents, to minor deviations from the Construction Documents correctable prior to completion, and to any specific qualifications stated in the CM@R's Estimate for Partial Payment); and that the CM@R is entitled to payment in the amount certified.

3.8.12 The Engineer shall be the interpreter of the technical requirements of the Construction Documents and the judge of the performance thereunder by the CM@R. The Engineer shall render interpretations necessary for the proper execution or progress of the Construction Work with reasonable promptness on written requests of either the Owner or the CM@R, and shall render written recommendations within a reasonable time, on all claims, disputes and other matters in question between the Owner and the CM@R relating to the execution or progress of the Construction Work or the interpretation of the Construction Documents.

3.8.13 Interpretations and recommendations of the Engineer shall be consistent with the intent of and reasonably inferable from, the Construction Documents and shall be in written or graphic form.

3.8.14 Subject to approval of the Owner, the Engineer's decisions in matters relating to artistic effect shall be final if consistent with the reasonably inferable intent of the Construction Documents. The Engineer shall review interior designs and/or furniture selections proposed by the Owner as the Owner endeavors to promote an aesthetic compatibility with the Engineer's design.

3.8.15 The Engineer shall recommend to the Owner rejection of Construction Work which it observes that does not conform to the Construction Documents. Whenever, in the Engineer's reasonable opinion, it is necessary or advisable for the implementation of the intent of the Construction Documents, the Engineer will have authority to require special inspection or testing of the Construction Work in accordance with the provisions of the Construction Documents, whether or not such Construction Work is then fabricated, installed or completed. The Engineer shall review construction materials testing and any special testing required and shall provide recommendations for retesting, actions or any appropriate corrective measures as may be necessary or appropriate based on the results of such tests.

3.8.16 The Engineer and its Consultants shall review and approve or take other appropriate action upon the CM@R's submittals such as Shop Drawings, Product Data and Samples, but only for conformance with the design concept of the Construction Work set forth in the Construction Documents, and shall respond to CM@R's inquiries and questions and provide such supplemental information as appropriate. Such action shall be taken with reasonable promptness so as to cause no delay to the CM@R's scheduled progress, but in any event within fourteen (14) business days. The Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

3.8.17 Engineer shall provide consultation for the purpose of clarification and interpretation of the intent and scope of the Construction Documents and, if necessary or appropriate, issue supplemental documents to amplify or clarify portions of the Construction Documents.

3.8.18 Engineer shall provide assistance in the review of the CM@R's requests for change orders or claims for additional costs or time, and make recommendations to Owner as to such requests or claims.

3.8.19 The Engineer shall review Change Orders for the Owner's approval prepared by the Contractor and execution in accordance with the Construction Documents, and shall have authority to order minor changes in the Construction Work which are consistent with the intent of the Construction Documents and do not involve an adjustment in the Guaranteed Maximum Price or an extension of the Contract Time. Any changes must be approved by the CPM. In conjunction with each Change issued by the Engineer, the Engineer shall recommend to the Owner whether the CM@R's proposal is reasonable. The Engineer shall prepare revised Contract Drawings, where appropriate, to illustrate and document the work required by the Change. All proposed changes to drawings, plans and specifications, regardless of how initiated, shall be defined in the document depicting them as to scope of work added, removed, or changed. The original copies of the Construction Documents may be revised to show such

Draft

changes, provided that all such revisions shall be separately recorded on media acceptable to Owner, including, without limitation, CADD. Such revisions shall be clearly indicated and a current revision date shall be included on the reproducible copy. Changes to the Construction Documents shall be made by consecutively numbered and dated addenda. All changes to the Construction Documents will be identified with date of change, revision number and other customary identification references. Areas changed on drawings will be "clouded" to show each change. Clouds designating previous changes will be removed so that only the most recent changes will be clouded. If the revised drawings are due to Changes ordered by the Owner and not due to errors and omissions on the part of the Engineer, Engineer's reasonable extra expenses to produce them will be treated as Additional Services.

3.8.20 Engineer shall conduct and its Consultants shall participate with the CM@R in concealed space inspections, systems start-up inspections, Substantial Completion or pre-Final inspections to determine the Dates of Substantial Completion, and Final Inspection. In association with each inspection, Engineer and its Consultants shall prepare a list of items which have been observed as deficiencies in the Construction Work requiring remedial work or replacement, and shall assemble and distribute the official prepared punch list(s) to all affected parties, and thereafter review the corrected and/or replaced work and assist in verification of correction of all items.

3.8.21 Engineer shall review, for conformance with the Construction Documents, CM@R's submission of Guaranteed Maximum Price (GMP) including assumptions, exclusions, etc.

3.8.22 The Engineer and its Consultants shall endeavor to assist the Owner in confirming contractor as-built drawing documentation during the course of the Construction Work and as a prerequisite for certifying progress payments and shall review final as-built documents for completeness as it relates to as-built documentation.

3.8.23 Engineer shall assist in review of CM@R's submission of operating and maintenance instructions, manuals, brochures, drawings, and other close-out documentation furnished by the CM@R; shall require necessary revisions to same; and, when acceptable in the Engineers judgment they are consistent with the terms of the Contract between Owner and CM@R, shall forward them to the Owner. The Engineer shall certify that final payment to the CM@R when, to the best of its knowledge and belief based upon observations, the requirements of the Contract between Owner and CM@R have been met.

3.8.24 Engineer shall assist Owner by advising and counseling Owner's personnel in the initial usage, operation and maintenance of the building mechanical, electrical, and plumbing systems.

3.8.25 The Engineer shall be available after final payment to advise the Owner regarding Warranty items and to observe Warranty work during the Warranty period. Engineer shall participate in the Project's pre-one-year warranty review at no additional expense to the owner.

ARTICLE 4
ADDITIONAL SERVICES

4.1 The following services do not included in Basic Services. They shall be provided only if authorized or confirmed in writing by the Owner, and they are paid for by the Owner as provided in this Contract, in addition to the compensation for Basic Services. Prior to commencing any Additional Service, Engineer shall prepare for acceptance by the Owner an Additional Services Proposal that shall describe in detail the nature or scope of the Additional Services, the basis upon which Engineer has determined that such service are Additional Services, and which shall set forth the maximum amount of fees and reimbursable expenses for which Engineer is prepared to perform such Additional Services, together with a proposed schedule for the performances of such Additional Service. The fee shall be based on actual time needed to perform additional service. Engineer shall proceed only after written acceptance by Owner of the Additional Services Proposal.

4.2 Contingent Additional Services

4.2.1 Making revisions in Drawings, Specifications or other documents when such revisions are made necessary by adjustments in the Owner's program, are required by the enactment or revision of codes, laws or regulations in

Draft

effect or known to be in effect subsequent to the initial preparation of such documents; or are due to changes required as a result of the Owner's failure to render decisions in a timely manner.

4.2.2 Providing services required because of significant changes in the Project, including, but not limited to size, quality, complexity, the Owner's Project Schedule, or the method of bidding or negotiating and contracting for construction, except for services required under Section 3.8.

4.2.3 Preparing Drawings, Specifications and other documentation and supporting data, evaluating CM@R's proposals and providing other services in connection with Change Orders and Construction Change Proposals if the actions required were caused by Owner or CPM's actions or other factors beyond the Engineer's reasonable control or knowledge. Example: The Owner decides to change the plan of the building during construction, therefore requiring additional work. Note that this paragraph does not authorize Additional Services for Change Orders due to design errors or omissions, document clarification, etc.

4.2.4 Providing consultation concerning replacement of any Work damaged by fire or other cause during construction, and furnishing services as may be required in connection with the replacement of such Work unless the damage or loss are based on confirmed defective plans or specifications prepared by Engineer. In the event that the allegations of defective plans or specifications are not proved, Engineer shall be compensated for any services provided in connection with replacement of such Work as additional services.

4.2.5 Providing services made necessary by the default of the CM@R, or by major defects or deficiencies in the Work of CM@R, or by failure of performance of either the Owner or CM@R under the Contract for Construction.

4.2.6 Evaluating claims submitted by the CM@R or third parties in connection with the Work, unless such claims are based on confirmed defective plans and specifications prepared by Engineer. In the event that the allegations of defective plans or specifications are not proved, Engineer shall be compensated for any services provided in connection with replacement of such Work as additional services.

4.2.7 Addressing litigation causes or preparing to serve or serving as an expert witness in connection with any public hearing, non-binding mediation proceeding, unless Engineer or its sub-consultant is a party to the litigation.

4.3 Optional Additional Services

4.3.1 Providing financial feasibility or other special studies.

4.3.2 Providing planning surveys, site evaluations, environmental studies or comparative studies of prospective sites.

4.3.3 Providing services relative to future facilities, systems and equipment which are not intended to be constructed during the Construction Phase.

4.3.4 Providing services to investigate existing conditions or facilities or to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by the Owner.

4.3.5 Providing coordination of Work performed by separate CM@Rs or by the Owner's own forces.

4.3.6 Providing detailed quantity surveys or inventories of material, equipment and labor.

4.3.7 Providing interior design and other similar services required for or in connection with the selection, procurement or installation of furniture, furnishings and related equipment. Preliminary furniture layouts are part of basic services. Furniture will be selected by the owner and submitted to the Engineer.

4.3.8 Making investigations, surveys, evaluations, inventories or detailed appraisals of existing facilities, and services required in connection with construction performed by the Owner.

4.3.9 Except for services in connection with warranty claims as provided for in section 3.8.25, providing Services after

Draft

issuance to the Owner of the final Certificate for Payment, or in the absence of a final Certificate for Payment, more than sixty (60) days after the Date of Substantial Completion of the Work, unless resulting from Engineer's error or omissions.

4.3.10 Providing services of Consulting Engineers for other than the normal Engineering, structural, mechanical and electrical for the Project.

4.3.11 Providing any other Services not otherwise included in this Contract or as identified as Basic Services and not customarily furnished in accordance with generally accepted Engineering practice as designated below:

- TDLR Review and inspection
- Geotechnical Services
- Landscape Design
- Surveying
- Graphics & Way Finding (if special signage only)

ARTICLE 5
OTHER BASIC SERVICES

The Engineer's Basic Services include the following:

5.1 ***Owner InSite*** software: Mandatory use of the web-based project management software; ***Owner InSite.*** Access to this software will be provided at no charge to the Engineer and Consultants by the CPM. Documentation uploads will be required at each of the following five phases by the Engineer and all consultants: (1) Schematic Design Phase; (2) Design Development Phase; (3) Construction Documents Phase; (4) Bidding or Negotiation Phase; and (5) Construction Phase-Administration of the Construction Contract. Training will be provided at no charge by the CPM. The documents which will be uploaded include but are not limited to the following:

Design Management
- Drawings and Specification at all phases
- Planning and approval documents

Communications
- Meetings
- Photos
- Issues

Construction
- Issues
- Schedule
- ASI's
- RFI's
- Submittals
- Field Reports
- Punch lists
- Warranties

5.2 Building Information Modeling (BIM) – BIM modeling is considered basic services. All sub consultants and specialty consultants must also provide this service as a basic service though all phase of the design and construction

ARTICLE 6
THE OWNER'S RESPONSIBILITIES

Draft

6.1 The Owner shall provide full information regarding requirements for the Project including a Facilities Program, which shall set forth the Owner's design objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility and expandability, special equipment and systems and site requirements.

6.2 The Owner, or its authorized representatives or the CPM, shall examine the documents submitted by the Engineer and shall render decisions pertaining thereto promptly to avoid unreasonable delay in the progress of the Engineer's Services.

6.3 The Owner shall furnish a written legal description and a certified land survey of the Project site giving, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures, adjacent drainage, rights-of-way, restrictions, easements, encroachment, zoning, deed restrictions boundaries and contours of the site; locations, dimensions and complete necessary data pertaining to existing buildings, other improvements and trees; and full information concerning available service and utility lines both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

6.4 The Owner shall furnish the services of Geotechnical Consulting Engineers or other Consulting Engineers as selected when such services are deemed necessary by the Engineer and the Owner. Such Services shall include test borings, test pits, soil bearing values, percolation tests, surveys of hazardous materials, air and water pollution tests, ground corrosion and resistivity test, including necessary operations for determining sub-soil, air and water conditions, with reports and appropriate professional recommendations.

6.5 The aforementioned services, information, surveys and reports required herein shall be furnished at the Owner's expense. The Engineer shall be entitled to rely upon the accuracy of all information provided by the Owner. The Engineer shall not be held responsible for any injury or damage resulting from erroneous or incomplete information provided by the Owner and/or the Owner's consultants and contractors.

6.6 If the Owner observes or otherwise becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents, prompt written notice thereof shall be given by the Owner to the Engineer.

6.7 The Owner shall establish and update an overall budget for the Project, including the Construction Cost Limitation, the Owner's other costs and reasonable contingencies related to all of these costs.

Draft

ARTICLE 7
STATEMENT OF CONSTRUCTION COST

7.1 Definition

The Construction Cost Limitation shall be the total cost or estimated cost to the Owner of all elements of the Project designed or specified by the Engineer.

7.2 Responsibility for Construction Cost Limitation

7.2.1. Evaluations of the Owner's Project budget, Construction Cost Limitation and Detailed Estimates of Construction Cost Limitation, if any, shall be prepared by the CPM. It is recognized, however, that neither the Engineer nor the Owner or the CPM have control over the cost of labor, materials or equipment, the CM@R's methods of determining bid prices or over competitive bidding, market or negotiating conditions.

7.2.2 While the Engineer does not represent that Engineer's design will assure a bid or proposal price equal to or lower than the Construction Cost Limitation, Engineer shall, as part of Basic Services, alter and adjust the design, with the assistance of Owner and the CPM, as necessary to produce a Project that conforms to the Construction Cost Limitation.

7.2.3 If a Project budget or the Construction Cost Limitation is exceeded by GMP or negotiated proposal, (by more than five (5) percent), the Owner shall (1) give written approval of an increase in such fixed limit, (2)

authorize re-bidding or re-negotiating of the Project within a reasonable time, (3) if the Project is abandoned, terminate this Contract, or (4) cooperate in revising the Project scope and quality as required to reduce the Construction Cost Limitation.

7.2.4 Provided the Construction Cost Limitation has been established as a condition of this Contract, the Engineer, without additional charge, shall modify the Drawings and Specifications as necessary to comply with the fixed limit.

ARTICLE 8
COMPENSATION TO THE ENGINEER

8.1 Basic Compensation. The Owner shall compensate the Engineer, as follows:

8.1.1 For Basic Services, Basic Compensation shall be computed as follows:

A fixed fee of $_____based upon _____% of the Construction Cost Limitation (CCL) of_____

8.1.2 Where compensation is based on a stipulated sum or percentage of the Construction Cost Limitation, progress payments for Basic Services in each phase shall total the following percentages of the total Basic Compensation payable:

Schematic Design Phase:	Fifteen percent	(15%)
Design Development Phase:	Twenty percent	(20%)
Construction Documents Phase:	Thirty Five percent	(35%)
Bidding or Negotiation Phase:	Five percent	(05%)
Construction Phase	Twenty Five percent	(25%)

8.2 Compensation for Additional Services.

8.2.1 For project representation beyond Basic Services compensation shall be computed follows:

8.2.2 For Additional Services of Consulting Engineers, including additional structural, mechanical and Consulting Engineering services and those identified as part of Additional Services, a multiple of 1.1 times the amount billed to the Engineer for such services.

8.3 Reimbursable Expenses. For Project Expenses and any other items included as Reimbursable Expenses, a multiple of One (1) times the amounts expended by the Engineer, the Engineer's employees and Consulting Engineers in the interest of the Project.

8.4 Additional Provisions

8.4.1 If the Basic Services covered by this Contract have not been completed within 90 days from the date of Substantial Completion, through no fault of the Engineer, extension of the Engineer's services beyond that time shall be further compensated as provided in this Contract.

8.4.2 Owner's payments to Engineer are due and payable thirty (30) days from the date of the Engineer's invoice. Amounts unpaid sixty (60) days after the invoice date shall bear interest at the rate of 6.0% per annum

The rates and multiples used for Additional Services shall be adjusted annually in accordance with the normal salary review practices of the Engineer.

8.5 Basic Service Fee Compensation Adjustment

Draft

The basic fee lump sum compensation may be adjusted when authorized in writing by Owner and when the Construction Cost Limitation (CCL) increases more that 5% during any phase including acceptance of final GMP award amount. Provided however that in no event shall the Engineers fee be lowered after a phase of basic services has been completed.

ARTICLE 9
REIMBURSABLE PAYMENTS TO THE ENGINEER

9.1 Direct Personnel Expense. Direct Personnel Expense is defined as the direct salaries of all the Engineer's personnel engaged on the Project, and the portion of the cost of their mandatory and employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

9.2 Reimbursable Expenses. Reimbursable expenses are in addition to the compensation for Basic and Additional Services and include actual expenditures made by the Engineer and the Engineer's employees and Consulting Engineers in the interest of the Project for the expenses listed in the following Subparagraphs:

a. Travel by Engineer, in excess of two hundred miles per month, except as follows, will be reimbursable at the rate of $0.56 per mile, or at the current IRS rate, whichever is less;

(1) Travel outside of Hidalgo and Starr Counties, will be considered only if requested and approved by the Owner;

(2) Travel within a radius of 15 miles from the Engineer/Engineer's office will be considered incidental and a part of the firm's overhead;

(3) Travel to and from the Engineer's office to project sites in Hidalgo and Starr County by Engineer, or Engineer's sub- consultants and specialty consultants;

b. Fees paid for securing approval of authorities having jurisdiction over the Project;

c. Expense of reproductions of Contract Documents only over and above the sets supplied as part of the Engineer's Basic

d. Services;

e. Expense of renderings, models and mock-ups requested by the Owner;

f. Long distance phone service only if not associated with in - office or consultant communication. Phone and internet service shall not be considered a reimbursable expense;

g. Mail and overnight delivery costs for items specifically requested by Owner on Owner's authorized forms only;

h. Insurance premiums above Engineer's standard coverage as approved by Owner. The amount of the premium to be reimbursed on an individual basis.

9.3 Payments on Account of Basic Services. Payments for Basic Services shall be made monthly and, where applicable, shall be in proportion to Services performed within each phase of services.

9.4 When compensation is based on a percentage of the Construction Cost Limitation, and any portions of the Project are deleted or otherwise not constructed, compensation for such portions of the Project shall be payable to the extent services are performed on such portions, based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent Construction Cost Limitation or detailed estimate of the Construction Cost Limitation for such portions of the Project.

Draft

9.5 Payments on Account of Additional Services. Payments on account of the Engineer's Additional Services and for Reimbursable Expenses shall be made monthly upon presentation of the Engineer's statement of services rendered or expenses incurred.

9.6 Engineer's Accounting Records. Records of Reimbursable Expenses and expenses pertaining to Additional Services and services performed on the basis of a Multiple of Direct Personnel Expense shall be kept on the basis of generally accepted accounting principles and shall be available to the Owner and Owner's authorized representative within ten (10) days of request.

ARTICLE 10
CONSTRUCTION CHANGE ORDERS

10.1 A Change Order is a written instrument prepared by the contractor, submitted to the CPM and Owner for review and signed by the Owner, CM@R and Engineer, stating their contract upon all of the following:

a. change in the Work

b. The amount of the adjustment in the Contract Sum, if any

c. The extent of the adjustment in the Contract Time, if any.

10.2 Methods used in determining adjustments to the Contract Sum shall include those listed in Paragraph 11.3.

ARTICLE 11
CONSTRUCTION CHANGE PROPOSALS

11.1 A Construction Change Proposal is a written order prepared by the CMR, submitted to the Engineer and Owner and signed by the Owner and Engineer, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum, or Contract Time, or both. The Owner may by Construction Change Proposal, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

11.2 If the Construction Change Proposal provides for any adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

a. Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation

b. By unit prices stated in the Contract Documents or otherwise mutually agreed upon

c. By cost estimated by the CM@R plus, if applicable, overhead and/or profit percentage, and accepted by the Engineer. The CM@R's estimate shall become a fixed price which shall not be changed by any variation in the actual cost of executing the Work covered by the change

d. On Cost to be determined in a manner agreed upon by the parties plus, if applicable, overhead and/or profit percentage

e. By actual cost determined after the Work covered by the change is completed, plus, if applicable, overhead and/or profit percentage

11.3 As used in this section, Construction Change Proposal's "cost" shall mean the estimated or actual net increase in cost to the CM@R, or Subcontractor for performing the work covered by the change, including actual payments for materials equipment rentals, expendable items, wages and associated benefits to workmen and to supervisors employed full time at the Site where the Work is performed, insurance, bonds, and other provable direct costs, but not including any administrative, accounting or expediting costs, or other indirect or overhead costs, or any wages or benefits of supervisory personnel not assigned full time to the Site, or any amount for profit or fee to the

Draft

CM@R, Subcontractor, or Sub-subcontractor. Rates for the CM@R and Subcontractor owned equipment shall not exceed the rates listed in the Associated Equipment Distributors rental rate book as adjusted to the regional area of the Work under this Contract.

11.4 Upon receipt of a request for a Construction Change Proposal, the CM@R shall promptly proceed with the change in the Work involved and advise the Engineer of the CM@R's contract or disagreement with the method, if any, provided in the Construction Change Proposal for determining the proposed adjustment in the Contract Sum or Contract Time.

11.5 A Construction Change Proposal Signed by the CM@R indicates the agreement of the CM@R therewith, including adjustment in Contract Sum and Contract Time or the Method for determining them. Such agreement shall be effective immediately and shall be subsequently recorded as a Change Order.

11.6 The amount of credit to be allowed by the CM@R to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Engineer. When both additions and credits covering related Work or Substitutions are involved in a change, the percentage for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

11.7 If the Owner and CM@R do not agree with the adjustment in Contract Time or the method for determining it, the adjustment or the method shall be referred to the Engineer for determination, whose decision shall be final.

11.8 When the Owner, CPM and CM@R agree with the determination made by the Engineer concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be subsequently recorded by preparation and execution of an appropriate Change Order.

Draft

ARTICLE 12
MINOR CHANGES IN THE WORK

The Engineer shall have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written execution and shall be binding on the Owner and CM@R. The CM@R shall carry out such written orders promptly.

ARTICLE 13
SUBSTANTIAL COMPLETION

13.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.

13.2 When the CM@R considers that the whole Work, or a portion thereof designed in the Contract Documents for separate completion is substantially complete the CM@R shall submit to the Engineer the permits and certificates, and the CM@R's request for review of the permits and certificates by the Engineer. The Engineer will determine whether the Work or designated portion thereof is substantially complete. If the Engineer's review and observation discloses any item which is not in accordance with the requirements of the Contract Documents, the Engineer will then prepare and submit to the CM@R a comprehensive list of items to be completed and/or corrected. The CM@R shall proceed promptly to complete and correct items on the list before issuance of the Certificate of Substantial Completion. All Work items or Contract Requirements which remain incomplete/unsatisfied at the Date of Substantial Completion will form the initial "Punch-list" for Final Acceptance. When the Work or designated portion thereof is substantially complete, the Engineer will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion. All representations

required by the Contract Documents shall commence on the date of Final Completion and Acceptance which is thirty days after substantial completion. The Certificate of Substantial Completion shall be submitted to the Owner and CM@R for their written acceptance of responsibilities assigned to them in such Certificate.

13.3 Upon Substantial Completion of the Work and upon application by the CM@R and certification by the Engineer, the Owner shall make payment, reflecting adjustment in retainage, if any, for such Work as provided in the Contract Documents.

13.4 After Substantial Completion of the Work, at the Engineer's discretion and with the consent of the CM@R's Surety, Engineer may approve an Application for Payment from the withheld retainage amount but not more than one-half the estimated cost of the Work remaining to be done. Remaining retainage will be released with Final Payment after Final Completion and Acceptance of the whole Work.

ARTICLE 14
FINAL COMPLETION AND FINAL PAYMENT

14.1 Upon receipt of written notice that the whole Work is ready for Final Observation and Acceptance, the Engineer will promptly (14 days or less) undertake its review. The Engineer will promptly (14 days or less) issue and issue date a Certificate of Final Completion and Acceptance, stating that to the best of the Engineer's knowledge, information, and belief, on the basis of the Engineer's observations, the Work has been completed in accordance with the terms and conditions of the Contract Documents, or it will advise the CM@R and the Owner in writing of any matters that prevent it from issuing such a Certificate. When any such matters have been addressed and resolved to the Engineer's satisfaction, it shall thereafter promptly issue and date a Certificate of Final Completion and Acceptance as set forth above. In the Final Certificate for Payment, the Engineer will state the date on which the whole Work was fully complete and acceptable, which date shall be the date of Final Completion and Acceptance.

14.2 Neither final payment to the CM@R nor any remaining retained percentage shall become due until the CM@R submits to the Engineer (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's Property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given and acknowledged by the Owner, (3) a written statement that the CM@R knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner.

ARTICLE 15
DELAYS AND EXTENSIONS OF TIME

15.1 If Engineer's performance of this Contract is prevented or delayed by any unforeseeable cause, existing or future, which is beyond the reasonable control and without the fault or negligence of Engineer, Engineer shall, within twenty-four hours of the commencement of any such delay, give to Owner written notice thereof and within seven days of commencement of the delay and advise of the impact of delay on performance of the Work. Within seven days after the termination of any such delay, Engineer shall file a written notice with Owner specifying the actual duration of the delay. Failure to give any of the above notices shall be sufficient ground for denial of an extension of time. If Owner, at their discretion, reasonably determines that the delay was unforeseeable, beyond the control and without the fault or negligence of Engineer, Owner will extend the time of performance of this Contract accordingly.

15.2 The Engineer shall provide assistance in the review of the CM@R's claims for additional time or costs and make recommendations to Owner of such claims.

Draft

ARTICLE 16
SUSPENSION AND TERMINATION

16.1 Suspension of Performance for Owner's Benefit without Fault of Engineer.

16.1.1 Owner may, for any reason whatsoever, suspend performance under the Contract. Owner shall give written notice of such suspension to Engineer and specify, if known, the beginning and ending dates of the suspension.

16.1.2 Ceasing Performance upon Suspension. From and upon the effective date of any suspension ordered by Owner under this Article, Engineer, and its consultants shall incur no further expense or obligations in connection with the Contract and Engineer, and its consultants shall upon receipt of notice, cease their performance. Engineer shall also, at Owner's direction, suspend any of its open or outstanding subcontracts or Contracts.

16.1.3 Claim for Costs of Suspension. In the event Owner directs a suspension of performance through no fault of Engineer, and provided Engineer submits a proper claim as provided in this Contract, Owner shall pay Engineer (based on the most current and provided level of services) as full compensation for such suspension Engineer's earned fees through the suspension date, plus verifiable, reasonable and necessary costs of operation on behalf of this Contract, actually incurred and paid, for:

a. Demobilization and remobilization, including such costs paid to Engineer's consultants

b. Preserving and protecting Work in place

c. Storage of documents, materials or equipment acquired for the Project, including insurance thereon.

16.1.4 Resumption of Work after Suspension. If Owner lifts the suspension it shall do so in writing, and Engineer shall promptly resume performance of the Contract unless, prior to receiving the notice to resume, Engineer has exercised its right of termination as provided herein,

16.1.5 Termination by Engineer for Prolonged Suspension of Performance. If performance of this Contract is suspended for a period of ninety (90) consecutive days at the direction of Owner pursuant to Paragraph 16.1.1, or by an order of any court or other public authority, or as a result of any act of the Government, and provided that such suspension by Owner or public authority is through no fault of Engineer or any person or entity working directly or indirectly for Engineer, Engineer may, upon ten (10) days' written notice to Owner, terminate performance under the Contract and recover from Owner on the terms and conditions and in the amounts provided in Paragraph 16.1.3.

16.1.6 Owner Not Liable for Additional Costs or Damages. The compensation due to Engineer under Section 16.1.3 for Costs of Suspension shall be only the amounts paid to Engineer arising out of a suspension and Owner shall not be liable for any additional costs incurred by Engineer, either directly or indirectly, or for any of Engineer's consequential damages.

16.2 Termination by Engineer for Cause. If Owner shall persistently or repeatedly fail to perform any material obligation to Engineer for a period of thirty (30) days after receiving written notice from Engineer of its intent to terminate hereunder, Engineer may terminate performance under the Contract by written notice to Owner. In such event, Engineer shall be entitled to recover from Owner on the terms and conditions and in the amounts as though Owner had terminated Engineer's performance under the Contract for convenience pursuant to Paragraph 16.3 below.

16.3 Termination by Owner for Convenience. Owner may, at its option, terminate for convenience any work under the Contract in whole or, from time to time, in part, at any time by written notice to Engineer. Such notice shall specify the extent to which the performance of work is terminated and the effective date of such termination.

16.3.1 Upon receipt of such notice, Engineer shall immediately discontinue work on the date and to the extent

Draft

specified in the notice and advice all of its consultants that all design work has been terminated;

16.3.2 Engineer waives any claims for damages including loss of anticipated profits, and consequential damages on account thereof, but as the sole right and remedy of Engineer, Owner shall pay in accordance with the following:

16.3.3 Submission of Termination Claim and Compensation for Termination for Convenience. When terminated for convenience, Engineer shall be compensated as follows:

a. all amounts due and not previously paid to Engineer for work completed in accordance with the Contract prior to such notice of termination, and work thereafter completed as specified in such notice, but not to exceed in the aggregate the actual costs of the services performed to the date of notice, and if the notice specified other services to be performed, the cost of those services, and

b. Actual reasonable and necessary administrative costs associated with settling and paying claims arising out of the termination of work under Engineer subcontracts or Contracts,

In no event shall Engineer be entitled to recover anticipated profits or other consequential damages from Owner on account of a suspension termination for convenience or by an erroneous termination for cause, as described below. The total sum to be paid Engineer under this Paragraph shall never exceed the Engineer's fee based on the Construction Cost Limitation, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

16.4 Termination for Default by Engineer. Notwithstanding any other provision of this Contract, Engineer shall be considered in default of its contractual obligations under this Contract if it:

a. Performs work which fails to conform to the requirements of this Contract

b. Fails to meet the Project Schedule or fails to make progress so as to endanger performance

c. Fails to pay any required fees

d. Fails to supply adequate labor, supervisory personnel or proper equipment or materials

e. Fails to timely discharge its obligations for labor, equipment, materials, and insurance

f. Disobeys applicable laws, ordinances, rules, regulations or orders of any public authority having jurisdiction

g. Abandons or refuses to proceed with any or all work, including directed modifications; h) fails to fulfill any of the terms of this Contract

h. fails to provide, within the time specified in the following paragraph, in response to demand by Owner in the event that an order for relief in bankruptcy in entered with respect to Engineer or Engineer becomes insolvent or makes a general assignment for the benefit or creditors, adequate assurance of Engineer's future performance in accordance with the terms and conditions of the Contract. Owner shall be the sole judge of the adequacy of said assurance

i. The errors and omissions insurance policy should be cancelled.

16.4.1 Upon the occurrence of any of the provisions in Section 16.4, Owner shall notify Engineer in writing of the nature of the Engineer's failure and of Owner's intention to terminate the Contract for default. If Engineer fails to

Draft

cure such failure within seven (7) calendar days from the receipt of notification, or sooner if safety of persons is involved, or if Engineer fails to provide satisfactory evidence that such failure will be corrected within a reasonable period of time consistent with established Project objectives, Owner may, without notice to Engineer's sureties, if any, terminate in whole or in part Engineer's right to proceed with work by written notice and prosecute the work to completion by any other method deemed expedient.

16.4.2 Engineer and its sureties, if any, shall be liable for all costs in excess of the Contract price for such terminated work reasonably and necessarily incurred in the completion of the work as scheduled, including cost of administration of any Contract awarded to others for completion.

16.4.3 Upon termination for default, Engineer shall:

a. Immediately discontinue work on the date and to the extent specified in the notice and place no further orders

b. Promptly obtain cancellation upon terms satisfactory to Owner of all consulting agreements

c. Cooperate with the Owner in the transfer of information and disposition of work in progress so as to mitigate damages

d. Comply with other reasonable requests from Owner regarding the terminated work.

16.4.4 If, after termination pursuant to this section, it is determined that Engineer was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the section entitled Optional Termination.

16.5 Non-Waiver. Failure by Owner to insist upon strict performance of any terms or conditions of this Contract, or failure or delay to exercise any rights or remedies provided herein or by law, or failure to properly notify Engineer, in the event of breach, or payment for services provided, or failure to review designs, shall not release Engineer from any of the representations or obligations of this Contract and shall not be deemed a waiver of any right of Owner, to insist upon strict performance hereof or of its rights or remedies hereunder.

Draft

ARTICLE 17
OWNERSHIP AND USE OF DOCUMENTS

17.1 The Engineer shall provide to the Owner originals of the following documents including but not limited to: drawings, specifications and other documents or things prepared by the Engineer and Engineers for the Project, in written reproducible form and electronic form (AutoCAD CD) of the original design, signed and sealed by the Engineer(s) and Engineer(s) to be used by Owner as Owner deems necessary for the use of the project without violating any copyrights of the Engineer. The Owner acknowledges, however, that all reports, plans, specifications, field data and notes and other documents, including documents on electronic media, prepared by the Engineer as instruments of service shall remain the property of the Engineer.

17.2 If the Contract is terminated by the Owner for any reason, at any stage of the Contract, the Engineer has granted the Owner a limited license that allows the Owner to use the documents to complete the design and/or construction of the Project

17.3 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with 8.1.2 based on (1) the most recent guaranteed maximum price or the most recent estimate of the Cost of the Work for such portions of the Project. The Engineer shall be entitled to compensation in accordance with this Contract for all services performed whether

or not the Construction Phase is commenced.

ARTICLE 18
NON-BINDING MEDIATION

18.1 In the event of a dispute or claim between the Engineer and Owner arising out of or related to this contract, both parties agree to submit to Non-Binding Mediation prior to proceeding with formal litigation processes, including the filing of claims against parties (unless a failure to file causes waiver or loss of rights of subsequent action).

18.2 Such Non-Binding Mediation shall be with a mediator and rules agreed to by both parties. Both parties shall mediate through a selected and mutually agreed to senior representative of each respective party.

18.3 Both the Engineer and Owner will bind their respective Consulting Engineers, Contractors, Fabricators, and Suppliers involved in this Project to contracts which provide similar Non-Binding Mediation as the primary dispute resolution method to other agreements.

ARTICLE 19
INSURANCE AND CLAIMS NOTIFICATION

19.1. The maintenance in full force and effect of such form and amount of insurance as follows shall be a condition precedent to the Engineer's exercise or enforcement of any rights under this Contract.

19.2 Engineer shall, promptly after execution of this Contract and prior to working on the Project, deposit, with the Owner, Certificates of Insurance from a company with an A.M. Best Company rating of "A-" or better, and a financial classification of VII or better or a rating of Standard & Poor's Ratings Services, A Division of the McGraw-Hill Companies, Inc. of AA or better or a Moody's Investor's Service, Inc. rating of AA or better, or as otherwise approved by Owner, evidencing compliance with this Contract, including the following requirements.

19.3 Failure to provide evidence of insurance coverage or failure to maintain coverage during the term of this Contract, subject to waiver by Owner, shall constitute a material breach of this Contract. Information concerning reduction of coverage shall be furnished by the Engineer with reasonable promptness in accordance with the Engineer's information and belief.

19.4 Coverage's shall not be cancelled, allowed to expire, or non-renewed without 30 days written notice of cancellation, expiration, or non-renewal. Such notice shall be provided to the following persons: (1) Owner's CPM; (2) Owner's legal counsel; and (3) Owner's Assistant President for Construction. In the event that any policy is cancelled, allowed to expire, or be non-renewed, Engineer or its Consultant, shall obtain another policy with the same coverage's as set forth below and all future policies shall include a prior acts date dated the same date as the Notice to Proceed with the respective phase.

19.5 All insurance policies shall apply to the acts or omissions of Engineer, its officers, agents and employees, and for Engineer's legal responsibility for the acts or omissions of its Consultants and anyone directly or indirectly under the control, supervision, or employ of Engineer or Engineer's Consultants and shall encompass site services including, but not limited to, monitoring the work as it proceeds for issuing payments and completion certificates and professional services involved in bid preparation and submission. Coverage should include failure to complete construction documents or to act on submittals in the time promised unless those losses are due to improper design.

19.6 Where applicable, Owner shall be named as an Additional Insured on the policies specified herein.

19.7 <u>Professional Liability Insurance.</u> Engineer and all Consultants shall carry Professional Liability Insurance covering the Project in the amounts set forth below. Coverage's shall be maintained as follows:

a. The Engineer shall submit proof of such insurance in the amount of not less than $1,000,000.00 per claim and $1,000,000 in the aggregate claims made policy with coverage for a minimum of one-year after substantial completion

Draft

b. The structural Consulting Engineer(s) shall submit proof of such insurance in the amount of not less than $1,000,000.00 per claim and $1,000,000 in the aggregate claims made policy with coverage for a minimum of one-year after substantial completion

c. The mechanical/electrical Consulting Engineer(s) shall submit proof of such insurance in the amount of not less than

d. $1,000,000 per claim and $1,000,000 in the aggregate claims made policy with coverage for a minimum of one-year after substantial completion

e. The civil Consulting Engineer(s) shall submit proof of such insurance in the amount of not less than $1,000,000 per claim and $1,000,000 in the aggregate claims made policy with coverage for a minimum of one-year after substantial completion.

19.7.1 A project specific policy may also be obtained with the same coverage's and minimum one-year tail end coverage.

19.8 Business Automobile Liability Insurance. Engineer shall obtain and maintain Business Automobile Liability Insurance for owned, scheduled, non-owned or hired automobiles, with a combined single limit of no less than $500,000 per accident and shall name the Owner as an Additional Insured.

19.9 Worker's Compensation Insurance. Engineer shall carry Worker's Compensation insurance as required by the Workers Compensation Law of the State of Texas, as amended from time to time.

19.10 Employer's Liability Insurance. Engineer shall carry Employer's Liability Insurance coverage in an amount of at least $1,000,000.00 per accident for bodily injury per accident.

ARTICLE 20
MISCELLANEOUS PROVISIONS

20.1 Venue. This Contract is to be governed by the laws of the State of Texas. Venue shall be in Hidalgo County, Texas.

20.2 Interpretation of Contract. The Engineer, with the assistance of the CPM, shall be the interpreter of the technical requirements of the Contract Documents and the judge of the performance thereunder by the CM@R. The Engineer, with the assistance of the CPM, shall render interpretations necessary for the proper execution or progress of the Work with reasonable promptness on written request of either the Owner or the CM@R, and shall render written recommendations within a reasonable time, on all claims, disputes and other matters in question between the Owner and the CM@R relating to the execution or progress of the Work or the interpretation of the Contract Documents. The Engineer's decisions in matters relating to artistic effect shall be final if consistent with the intent of the Contract Documents.

20.3 Hazardous Materials. It is acknowledged by the parties that the scope of services does not include any services related to the use of asbestos or hazardous or toxic materials. The Engineer and Engineer's Consulting Engineers shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances.

20.4 As between the Owner and Engineer, the applicable statute of limitations shall commence and be applied as governed by state law.

20.5.1 For purposes of this Contract, "Force Majeure" shall mean any of the following events: (1) war and other hostilities (whether war be declared or not), invasion, act of foreign enemies, mobilization, requisition, or embargo; (2) contamination by radioactivity; (3) rebellion, revolution, insurrection, military or usurped power, and civil war; (4) riot, commotion or disorder, and strike, except where solely restricted to employees of persons directly engaged

Draft

by the Owner or their suppliers; or (5) flood, earthquake, fire, and other acts of nature that are beyond the control of the Owner and Engineer.

20.5.2 Owner and Engineer shall be absolved from liability for any act, omission, or circumstance occasioned by any cause whatsoever not within the control of the party affected thereby and which such party could not, by reasonable diligence, have avoided. Such acts, omissions, or circumstances, however, shall not relieve such party of liability in the event of its failure to use reasonable diligence to remedy the situation and remove the cause in an adequate manner and with all reasonable dispatch and to give notice and full particulars of the same in writing to the other party as soon as possible after the occurrence of the cause relied on. The requirement that any force majeure be remedied with all reasonable dispatch shall not require the settlement of strikes or labor controversies by acceding to the demands of the opposing party or parties.

20.6 The Owner and the Engineer, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Contract and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Contract. Neither the Owner nor the Engineer shall assign, sublet or transfer any interest in this Contract without the written consent of the other.

20.7 This Contract represents the entire and integrated agreement between the Owner and the Engineer and supersedes all prior negotiations, representations or agreements, either written or oral. This Contract may be amended only by written instrument signed by both Owner and Engineer.

20.8 Nothing contained in this Contract shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Engineer.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract as of the day and year written above.

ATTEST:

(Seal)

ENGINEER

BY:_____
NAME: _____
TITLE: Principal in Charge

South Texas College

BY:_____
NAME: Dr. Shirley Reed
TITLE: President

Draft