

AGREEMENT

FOR

CONSTRUCTION MANAGEMENT SERVICES
The Design and Construction of New Administration
Offices/Building for Hidalgo Precinct No. 4

BETWEEN

PRODIGY CONSTRUCTION MANAGEMENT L.L.C.

AND

THE COUNTY OF HIDALGO, TEXAS

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**Agreement for Construction Management Services
Between
The County Of Hidalgo, Texas
and
Prodigy Construction Management L.L.C**

This AGREEMENT(the "Agreement") made this 25TH day of **October, 2011** between the County of Hidalgo, Texas (the "Owner") and Prodigy Construction Management LLC (hereinafter "Construction Manager or PM") for Services in connection with the project known as "**The Design and Construction of New Administration Offices/Building for Hidalgo County Precinct No. 4**".

**ARTICLE I
DEFINITIONS**

The following words and phrases appearing in initial capitalization shall for the purposes of this Agreement have the following meanings:

1.1 **ADDITIONAL SERVICES.** "Additional Services" means services not included in Basic Services, the performance of which by the Construction Manager is specifically approved in writing prior to the performance by the Construction Manager of such Service.

1.2 **ADDITIONAL SERVICES AGREEMENTS.** "Additional Services Agreements" means any written agreement signed by Owner and PM for the provision of Additional Services by PM for which PM will be paid Additional Services Compensation.

1.3 **ADDITIONAL SERVICES COMPENSATION.** "Additional Services Compensation" means the fees determined in accordance with Additional Service Agreements to be paid by the Owner to the Construction Manager in connection with the performance of Additional Services or on account of the occurrence of an event specified in Excusable Delays.

1.4 **AGREEMENT.** "Agreement" has the meaning set forth in the introductory paragraph.

1.5 **AIA CONTRACT.** "AIA Contract" means that certain AIA B101 2007 Agreement between Owner and ERO Architect, made as of the 20th day of September, 2011, for architect's services for the Project, including the exhibits attached thereto, as such agreement may be amended from time to time..

1.6 BASIC SERVICES. "Basic Services" means (a) the services set forth in Attachment A and (b) each other service performed by or on behalf of the Construction Manager, even though such service is not included on Attachment A, which Service the Owner did not specifically approve in writing as an Additional Service in advance of performance of such Service.

1.7 BASIC SERVICES COMPENSATION. "Basic Services Compensation" means the lump sum fee designated in Article 4 to be paid by the Owner to the Construction Manager for the satisfactory performance of all of the Basic Services by the Construction Manager.

1.8 CONSTRUCTION CONTRACT DOCUMENTS. "Construction Contract Documents" means the plans and specifications prepared by the Design Consultant, and any addenda and change orders thereto, and the Owner-Contractor agreement, all of which shall be compatible with this Agreement.

1.9 CONSTRUCTION MANAGER. "Construction Manager" has the meaning set forth in the introductory paragraph.

1.10 CONTRACTOR. "Contractor" means any person or entity that enters into an agreement with the Owner to perform all or part of the construction on the Project, including, without limitation, the providing of labor, materials, and equipment incorporated or to be incorporated into the Project. The term "Contractor" includes the authorized representative or a Contractor, but excludes the Construction Manager and the Design Consultant.

1.11 DESIGN CONSULTANT. "Design Consultant" means the architect designated pursuant to the AIA Contract, and any substitute selected by the Owner.

1.12 INDEMNITEES. "Indemnities" has the meaning set forth in Section 10.1.

1.13 INDEMNITORS. "Indemnitors" has the meaning set forth in Section 10.1.

1.14 LIABILITIES. "Liabilities" has the meaning set forth in Section 10.1.

1.15 OWNER. "Owner" has the meaning set forth in the introductory paragraph.

1.16 OWNER-CONTRACTOR AGREEMENT. "Owner-Contractor Agreement" means an agreement related to the Project between the Owner and a Contractor.

1.17 OWNER'S DESIGNEE. "Owner's Designee" means the Hidalgo County Commissioner's Court.

1.18 PM. "PM" has the meaning set forth in the introductory paragraph.

1.19 PROJECT. "Project" means the design and construction of new administration offices and buildings for Hidalgo County Precinct No. 4, which includes three separate buildings with the approximate square footage, set forth below:

| <u>Part of Project:</u> | <u>Approximate Square Footage:</u> |
|--------------------------------|------------------------------------|
| Administrative Office | 10,000 |
| Maintenance Facility Building | 5,000 |
| Storage and Warehouse Building | 6,000 |

1.20 PROJECT SCOPE. The "Project Scope" is the provision of construction management services for the Project.

1.21 REIMBURSABLE EXPENSES. "Reimbursable Expenses" has the meaning set forth in Section 7.4.

1.22 SERVICES. "Services" means the Basic Services and Additional Services.

1.23 WORK. The "Work" means the work to be performed by the PM hereunder, consisting of the Basic Services and the Additional Services and the work performed by the Design Consultant and the Contract.

ARTICLE 2 RELATIONSHIP OF THE PARTIES

2.1 REPRESENTATIVE OF OWNER. The Construction Manager shall act as the "Designated Representative" of the Owner under the AIA Contract in consultation with the Hidalgo County Commissioner's Court and Hidalgo County Precinct No. 4 as Designated Representative of the Owner as specified in the AIA Contract. Notwithstanding anything to the contrary contained herein, PM acknowledges and agrees that it does not have the authority to bind the Owner, including with respect to the AIA Contract or Owner-Contractor Agreements and that decisions affecting the cost, quality or design of the Project cannot be made by the PM without the prior written agreement from the Commissioner's Court. All matters requiring decision will be submitted by the Construction Manager to the Commissioner's Court for their decision.

2.2 STANDARD OF CARE. The Construction Manager will serve as a fiduciary of the Owner and will represent the best interest of the Owner and the utmost good faith, honesty and fairness as required by statute. The Construction Manager covenants with

the Owner to furnish its professional skill and judgment with due care in accordance with the generally accepted standards of construction management practice in the same or similar locality and in accordance with the federal, state and local laws, regulations and Owner's policies which are applicable to the performance of the Services and which are in effect on the date of this Agreement or as may be amended during the term thereof. The Construction Manager shall not be regarded as a guarantor with respect to any work product provided hereunder. Construction Manager's warranty for its Services begins on the date specified in the certificate of substantial completion of the Project, and extends for a period of twelve months thereafter. In the event there is a defect in the Construction Manager's Services and such defect is reported by Owner, in writing, within the above warranty period, Construction Manager shall promptly take appropriate action to remedy the defect and furnish at no cost to Owner all Services required in connection therewith.

2.3 In providing Services, the Construction Manager shall maintain a work relationship with the Contractor and Design Consultant on behalf of the Owner. However, nothing in this Agreement shall be construed to mean that the Construction Manager supplants or assumes any of the Contractor's or the Design Consultant's contractual or customarily assumed responsibilities unless expressly provided herein or in an Additional Services Agreement. The Construction Manager will use its best efforts to monitor the Work in accordance with the Scope of Services set forth in Attachment A and provide written reports to Owner of any inadequacies observed. Subject to this requirement, the Construction Manager shall not be responsible for construction means, methods, sequences or procedures utilized by the Contractor or the Contractor's breach of contract; or Contractor's failure to carry out safety or security in connection with the Project (unless otherwise specified as a Basic Service); acts or omissions of the Design Consultant; or adequacy or accuracy of any part or all of the Project design.

2.4 Both parties to this Agreement recognize that performance under the agreement(s) between the Owner and the Contractor, the Owner and the Design Consultant, or Owner and any third party is solely the responsibility of the individual Contractor, Design Consultant, or third party; consequently, nothing in this Agreement shall be construed to mean that said performance or lack thereof by Owner, Contractor and/or Design Consultant, or any third party, is in any way to be considered the responsibility of the Construction Manager. The Construction Manager shall, however, promptly notify the Owner of any issues with such parties performance of which the Construction Manager becomes aware.

2.5 **SUBSTITUTION OF PERSONNEL.** The Construction Manager and the Owner shall each respectively reserve the right to substitute duly qualified personnel for the purpose of carrying out their respective responsibilities under this Agreement; provided,

however, that in the event of any such substitution by the Construction Manager, the Owner shall have the right to approve any such substitute.

ARTICLE 3 BASIC SERVICES

3.1 The Construction Manager shall perform all of the Basic Services set forth in Attachment A. The Basic Services shall be performed under and in accordance with this Agreement and the Construction Contract Documents.

ARTICLE 4 COMPENSATION

4.1 **BASIC SERVICES COMPENSATION.** The Owner shall pay the Construction Manager Basic Services Compensation in accordance with the terms and conditions of this Agreement as follows:

4.2 (a) The Basic Services Compensation shall be three and a half percent (3.5%) of the lesser of (1) Owner's final budget for the Project and (2) One Million Five Hundred Dollars (\$1,500,000.00). Accordingly, the Basic Services Compensation will not exceed Fifty Two Thousand Five Hundred Dollars (\$52,500.00) regardless of the final budget.

(b) The projected schedule for payment of the Basic Services Compensation is set forth in Attachment E. The parties acknowledge that if the Work is performed more slowly than currently anticipated, the schedule will be revised to provide for equal monthly payments over the duration of the project timeline as established by the Owner. At the satisfactory completion of the all Basic Services, the total payments paid to the Construction Manager shall equal the Basic Services Compensation. No payment shall be due prior to receipt of the applicable invoice pursuant to section 4.3 below.

(c) The Owner reserves the right to add other work to the Scope of Services of the Construction Manager hereunder, and adjust the fees of this Agreement by a reasonable amount, which shall be agreed to in written by the Owner and the Construction Manager.

4.3 **INVOICES.** No more than monthly, the Construction Manager shall submit invoices to the Owner, to the attention of the Owner's Designee, for payment of the Basic Services Compensation and any approved Additional Services. The Owner shall notify the Construction Manager of any dispute related to the invoice.

4.4 PAYMENTS WITHHELD. There are no monies related to retainage under this contract with the Construction Managers Services.

4.5 PAYMENT. The Owner shall pay all undisputed amounts and invoices to Construction Manager pursuant to this Agreement within 30 days after receipt of the invoice.

4.6 CONDITIONS FOR BASIC SERVICES COMPENSATION. The general Project Scope is described in this Agreement. So long as there is no deviation in the Project Scope, the Basic Service fee shall not change. If there is a deviation that results in an increase in the final cost of construction, the Basic Services Compensation shall increase in accordance with Section 4.1(a), subject to the prior written agreement of the Owner thereto.

4.7 EXPENSES. The Construction Manager's monthly invoice shall include a portion of the Construction Managers expense items that are payable by the Owner as set forth in Attachment D that were incurred by the Construction Manager on the Owner's behalf. Items provided by Owner at no expense to the Construction Manager are referenced in Attachment D as provided "By Owner". The Construction Manager acknowledges and agrees that any such expenses payable by Owner must be included in the construction budget and are subject to Owner's prior written approval before the Construction Manager incurs any such expense.

4.8 ADDITIONAL SERVICES COMPENSATION. Additional Services Compensation shall be determined and paid in accordance with the provisions of Attachment B.

4.9 SUSPENSION OF SERVICES. In the event any undisputed invoice submitted by the Construction Manager for Services rendered is not paid within 60 days after receipt of the invoice, the Construction Manager shall have the right to cease or suspend all performance required under this Agreement until all outstanding undisputed invoices from the Construction Manager to the Owner are paid in full. Notwithstanding anything herein to the contrary, suspension of Services by the Construction Manager shall not be deemed a breach of this Agreement in whole or in part or the fault of the Construction Manager.

If the Construction Manager ceases or suspends performance for non-payment under this Agreement, the Construction Manager shall not be liable to the Owner for any increase in construction or other costs, for delay in the time for completion of the Program, or for any other adverse consequences, claims, liabilities or expenses (including without limitation reasonable attorney's fees and court costs) which may arise due to the exercise of this right to cease or suspend performance.

In the event of suspension of Services under this Agreement, the duration of Services and Phases shall be extended by a period of time corresponding with the period for which Services were suspended.

ARTICLE 5 DURATION OF BASIC SERVICES

5.1 **TOTAL DURATION OF BASIC SERVICES.** The duration of Basic Services under this Agreement shall begin as of the date this Agreement is executed by all parties. It is currently anticipated that the Services will be completed in ten (10) to twelve (12) months from the execution of the Contract between the Owner and the Design Consultant for the project. The parties acknowledge that this estimate may change based on subsequent revision to the project timeline. If design delays, construction delays, or other factors beyond the control of the Construction Manager cause the duration of the Project to extend beyond the anticipated duration shown in the Project timeline, the staffing required for the extended duration will be considered as an Additional Service, subject to the following limitation: Additional Services Compensation will only be due to the PM with the prior written agreement of the Owner and only to the extent the late completion of the Work is not the fault of the PM and is instead the fault of the architect or general contractor.

5.2 The duration of the Basic Services set forth in this Agreement shall be extended as required in accordance with amendments to this Agreement signed by the parties hereto in the event of any suspension, delay or interruption of the Services or the Work on the Project pursuant to the Project time line.

ARTICLE 6 OWNER'S RESPONSIBILITIES

6.1 **OWNER'S DECISIONS.** The Owner shall examine information submitted by the Construction Manager and shall render decisions pertaining thereto promptly, in order to avoid delay in the progress of the Work and Services. The Construction Manager acknowledges that the Owner is a political subdivision of the state of Texas, subject to statutory requirements concerning when and how it may meet and act.

6.2 **INFORMATION, SURVEYS, REPORTS.** The Owner, after notice from the Design Consultant, shall furnish or obtain site information, soil and surveyor services, and structural, mechanical, chemical, electrical, conductivity and other laboratory tests, inspections and reports as deemed necessary by the Owner. The Construction Manager shall be entitled to rely upon accuracy and completeness of information, surveys, tests, and reports furnished by the Owner, its Design Consultant, other consultants of the Owner and the Contractor; provided, however, that the Construction Manager shall

promptly notify the Owner of any inaccuracies or lack of completeness of which it becomes aware.

6.3 NOTICE OF FAULT OR DEFECT. If the Owner observes or otherwise becomes aware of any fault or defect in the Project or nonconformance with the Construction Contract Documents prompt written notice thereof shall be given to the Construction Manager to resolve with the responsible party. The Construction Manager will notify the Owner of any such fault or defect of which it becomes aware and shall resolve such issues with the responsible party.

6.4 OWNER INFORMATION AND APPROVALS. The Owner shall furnish required information and approvals for orderly progress of the Work. If the Construction Manager knows of a particular item on which a decision, information or approval is needed from the Owner, Construction Manager shall notify the Owner of that need in writing.

6.5 DESIGN CONSULTANT AGREEMENT. The Owner has retained and contracted separately with the Design Consultant through the AIA Contract. The Construction Manager shall promptly notify the Owner of any irreconcilable inconsistency between the AIA Contract and this Agreement.

6.6 BUDGET. The Project budget shall be established by the Owner.

6.7 CONTRACTOR AGREEMENT. The Owner shall contract separately with Contractor(s) for the construction of the Project. The Owner shall cause all Agreements between the Owner and Contractors to be compatible and consistent with this Agreement, and such agreements shall recognize the Construction Manager as the Owner's agent, subject to the limitations on the Construction Manager's authority as set forth herein, in providing the Services under this Agreement. In addition to other provisions which require the Contractor to complete the Project within the time and contract amount stated in such Agreements.

6.8 CONSTRUCTION CONTRACT DOCUMENTS. Sufficient copies of Construction Contract Documents shall be furnished to the Construction Manager by the Owner by the Owner's expense.

6.9 PERMITS AND LICENSES. The Construction Manager shall not be obligated to pay for any necessary permits, license, fees, approvals, easements, assessments, re-inspect, plan review and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities, or new facilities unless included in an Additional Services Agreement.

6.10 PROJECT COMMUNICATION. The Owner shall direct the Design Consultant(s) and General Contractors to deliver a copy of all Project information or communication to the Construction Manager.

6.11 The Owner's Designee shall act in the Owner's behalf with respect to the Project. The Owner shall make representatives reasonably available during regular working hours as reasonably necessary to examine information submitted by Construction Manager; it being understood that only Commissioner's Court may render decisions. Owner shall cause its representatives to furnish information in a reasonably timely manner. *Construction Manager acknowledges that the Owner is a public body and decisions of the Owner can only be made by the Commissioner's Court, and agrees this provision does not require the Owner's representative to make decisions, which are reserved for the Commissioner's Court.*

6.12 CONSTRUCTION MANAGER FIELD OFFICE (not applicable).

6.13 Additional Disclosures: Owner has disclosed to PM (1) the Project budget (2) the Project timeline and (3) the Project Scope, and will keep the PM apprised of any material changes thereto.

6.14 Document Control License: The Owner may subscribe for the usage of a document control license through Prodigy Construction Management, as per Attachment D, through an Additional Services Agreement. PM acknowledges that the Owner does not currently intend to subscribe for any such license.

ARTICLE 7 CHANGES IN SERVICE AND PROJECT

7.1 CHANGES WITHIN THE GENERAL SCOPE OF PROJECT. The Owner reserves the right to modify, by addition or reduction, the scope and duration of the Project. PM acknowledges that change orders to the construction contracts, additional services under the design contracts, and changes in the general Project which do not result in a substantial deviation in the Project Scope are to be expected, and do not result in changes to the Basic Services Compensation hereunder. When there is a substantial deviation from the Project Scope from that shown on Section 1.1, it may result in an increase or decrease in Basic Services Compensation as provided in Section 4.1

7.2 EXTENSION OF DURATION OF BASIC SERVICES AND PHASES; ADDITIONAL SERVICES. Should a substantial extension of the Project timeline occur through no fault of the Construction Manager, which extension is not expected to result in an increase in the Basic Services Compensation, the parties shall negotiate in advance concerning whether entry into an Additional Services Agreement to provide for

Additional Services Compensation for the Construction Manager for the performance by the Construction Manager of Additional Services.

7.3 **ADDITIONAL SERVICES COMPENSATION.** The amount of Additional Services Compensation to be paid to the Construction Manager with respect to Additional Services shall be set forth in an advance in a written **ADDITIONAL SERVICES AGREEMENT** executed by the Owner and the Construction Manager. In the event an Additional Services Agreement is entered into by the Owner and Construction Manager without specifying the Additional Services Compensation to be paid with respect thereto, the Additional Services Compensation shall be determined on a time-spent basis calculated by multiplying the number of hours spent on performing the Additional services times the applicable Hourly Billing Rate for the personnel set forth on Attachment A plus Reimbursable Expenses pursuant to Attachment B.

7.4 **REIMBURSABLE EXPENSES.** In connection with Additional Services, "Reimbursable Expenses" are those actual expenditures made by the Project Management, its employees, or its professional consultants, directly as a result of performance of Additional Services and which are expressly set forth as Reimbursable Expenses on the related Additional Services Agreement. No reimbursable expenses shall be chargeable to the Owner unless such costs are specifically agreed in writing between Owner and the Construction Manager prior to performance of Additional Services.

7.5 **PROFESSIONAL CONSULTANTS.** Cost of professional consultants retained by the Construction Manager with regard to such Additional Services shall be invoiced to the Owner without a surcharge. No professional consultant charges are chargeable unless specifically agreed to in writing in the related Additional Services Agreement by Owner prior to performance of any Additional Services.

7.6 **PAYMENT FOR SERVICES UNDER THIS ARTICLE.** The Construction Manager shall submit invoices for the Additional Services Compensation, reimbursable Expenses, and professional consultant's costs to the extent each is allowed in accordance with the terms of this Agreement, which shall be paid pursuant to the provisions of Attachment B of this Agreement.

ARTICLE 8 NOTICES

8.1 **NOTICES.** Any notice required by this Agreement to either party by the other shall be in writing and deemed given when delivered personally or five days after deposit in the United States Post Office, as postage prepaid, certified mail, return receipt requested, addressed as follows, or to such other address as shall be duly given by notice meeting the requirement of this Article.

Owner: County of Hidalgo
Attn: Hidalgo County Judge
Address: 1615 S. Closner, Ste. J
City, State & Zip: Edinburg, Texas 78539-3523

Company: Prodigy Construction Management L.L.C.
Construction Manager: S. Alex Palacios
Address: 4409 N. 22nd
City, State & Zip: McAllen, Texas 78504
Telephone: (956) 821-8014 cell

ARTICLE 9 INSURANCE

9.1 CONSTRUCTION MANAGER INSURANCE. The Construction Manager shall purchase and maintain for the duration of this Agreement insurance for protection from (a) claims under worker's compensation acts in at least the minimum statutory amounts as listed below and (b) claims resulting from negligent acts for which the Construction Manager is legally liable arising from (i) claims for damages because of bodily injury, including personal injury, sickness, disease or death of any of the Construction Manager's employees or any other person and (ii) claims for damages because of injury to or destruction of tangible personal property equivalent protection acceptable to Owner.

- I. Worker's Compensation
 1. State Statutory
 2. Employer's Liability; \$100,000 Each Occurrence

2. Automobile Liability
 - I.) Bodily Injury
 - a. Each Person, \$500,000
 - b. Each Occurrence, \$500,000
 - 2) Property Damage
 - a. Each Occurrence, \$300,000
 - b. Each Occurrence, \$300,000

3. General Liability \$1,000,000 Each Occurrence

ARTICLE 10 INDEMNIFICATION

10.1 INDEMNIFICATION. To the fullest extent permitted by applicable law, the Construction Manager and its agents, partners, sub-contractors, and consultants (collectively "Indemnitors") shall and do agree to indemnify, protect, defend, and hold harmless the Owner and the Owner's elected officials, employees and agents (collectively "Indemnitees") from and against all claims, damages, losses, liens, cause of action, suits, judgments and expenses, including attorney fees and expenses, of any nature, kind or description (collectively "Liabilities") whatsoever arising out of, caused by or resulting from the performance of the Construction Manager's Services or through activities or any negligent act or omission of the Indemnitors or any of their agents, partners, subcontractors and/or consultants performed under this Agreement, or from any breach of this Agreement by any of the Indemnitors.

10.2 ACTS AND OMISSIONS. The Construction Manager shall not be responsible for any portion of the Liability proximately caused by the Owner's or an unrelated third party's acts or omissions. Nothing in this paragraph shall be constructed to excuse the Construction Manager from liability for its or the other Indemnitors own acts or omissions. Owner agrees that in new contracts for the Project with engineers, contractors, sub-contractors, and suppliers that the Owner will use reasonable efforts to obtain in such agreements obligations for the other party thereto to defend and indemnify Construction Manager against such other party's acts and to add Construction Manager as an additional insured to each such party's insurance policies, in the same manner and the same form, if any, that the Owner requires for itself from such parties.

10.3 EXCUSABLE DELAY. The Construction Manager and the Owner shall not be liable to each other for any delays in the performance of their obligations and responsibilities occurring beyond their reasonable control and or without their fault or negligence, including but not limited to any of the following events or occurrences; fire, flood, earthquake, epidemic, hurricanes, archaeological finds, war and strikes.

10.4 SURVIVAL OF INDEMNITIES. Indemnity hereunder shall survive expiration or termination of this Agreement.

ARTICLE 11 TERMINATION AND SUSPENSION

11.1 TERMINATION. This Agreement may be terminated by Owner without cause upon 30 days written notice to the Construction Manager.

11.2 This Agreement may be terminated by either party with cause hereto upon seven (7) days written notice and a reasonable opportunity to cure (which shall be deemed to be such seven (7) day period unless the parties otherwise agree in writing), should the other party fail substantially to perform in accordance with the terms hereof through no fault of the terminating party, or if the Project in whole or substantial part is abandoned or stopped for a period of sixty (60) or more 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 material unavailable, provided that if the Project Scope as a whole is terminated as a time when one or more sub-project if required to do so by the Owner.

11.3 In the event of a termination under 11.1 or 11.2, the Construction Manager shall be paid only any Basic Services Compensation and Additional Services Compensation for Services performed to the date of termination or abandonment, including any expenses and services of professional consultants then due and payable under this Agreement.

11.4 SUSPENSION. The Owner may order the Construction Manager in writing to suspend, delay or interrupt all or any part of the Work on the Project for sixty (60) day period for the convenience of the Owner, or because of events beyond the control of the Owner or the Construction Manager.

11.5 In the event the Work on the Project is suspended, delayed or interrupted pursuant to section 11.14, the parties may agree to Additional Services Compensation pursuant to section 7.2 above, and in the event such agreement is reached, unless otherwise set forth in the applicable Additional Services Agreement, the terms shall be as follow: for the first twenty (20) work days of such suspension, delay or interruption Owner shall compensate the Construction Manager on a time spent basis deemed to consist of eight hours a day for each of the Construction Manager's site and office personnel exclusive involved in the Project immediately prior to such suspension, delay or interruption and who are both are not reassigned to other projects and remain in the full-time employment of the Construction Manager, multiplied by the applicable hourly rate for such personnel set forth on Attachment A, plus Reimbursable Expenses pursuant to Attachment B. Construction Manager will not receive compensation according to the fee schedule set out in Attachment E during such suspension period. Such amounts shall be invoiced to the Owner and paid by the Owner pursuant to the provisions of Article 4 of the Agreement. Any time after the sixty (60) day suspension period, Construction Manager may, at its sole option elect to terminate this Agreement or remobilize on the Project and resume the Services. The Construction Manager shall restore construction site personnel and office personnel to its former size as quickly as is reasonable feasible upon its election to remobilize.

11.6 SUSPENSION OF WORK WHERE ASBESTOS OR OTHER TOXIC OR HAZARDOUS MATERIAL IS FOUND.

The Construction Manager and its consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at a Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances.

In the event the Construction Manager or any Contractor encounters on the Project site material reasonably believed to be asbestos, PCB or any toxic or material which has not been rendered harmless and which is not part of the Work to be performed by the Contractor on the Project, the Construction Manager shall immediately stop Work in the affected area and report the condition to the Owner in writing. The Work in the affected area shall not thereafter resume except by written agreement of the Owner and the Construction Manager if in fact the material is asbestos, PCB or any toxic or hazardous material and has not been rendered harmless. The Work in the affected area shall resume in the absence of asbestos, PCB or any other toxic or hazardous material, or when it has been rendered harmless, by written agreement of the Owner and Construction Management.

The Owner shall not require the Construction Manager without its consent to perform any Services related to asbestos, PCB or any other toxic or hazardous material.

In the event of any suspension, delay or interruption of any or all the Work on the Project pursuant to this section, the time for the completion of Basic Services shall be extended by a period of time corresponding to the impact such suspension has in the completion of all the Work of the Project covered by this Agreement, and the Construction Manager may be entitled to receive Additional Services Compensation in accordance with Section 7.2.

11.7 EFFECT OF DELAY OR SUSPENSION. A suspension, delay or interruption of the Work on the Project shall not terminate nor void this Agreement.

ARTICLE 12 SUCCESSORS/ASSIGNMENT/THIRD PARTIES

12.1 SUCCESSORS. This Agreement shall inure to the benefit of and be binding on the heirs, successors, permitted assigns, trustees and personal representatives of the Owner, as well as the permitted assigns of Construction Manager.

12.2 ASSIGNMENT. Neither the Owner nor the Construction Manager shall assign, sublet or transfer its interest in this Agreement without the prior written consent of the

other, except that the Construction Manager may assign accounts receivable to a commercial bank or financial institution for securing loans, without prior approval of the Owner.

12.3 THIRD PARTIES. This Agreement is not intended to create nor shall it be construed as creating any contractual relationship or obligations between the Construction Manager and any other third party, including but not limited to the Design Consultant and the Contractor. Nothing contained in this Agreement, nor the performance of the parties hereunder, shall inure to the benefit of any third party.

ARTICLE 13 CERTIFICATES FOR PAYMENT TO THE CONTRACTOR

Based upon observations at the site and upon the Contractor's applications for payment, the Construction Manager, within 14 days of receipt of the Contractor's application for payment (or such shorter period as reasonably required due to the requirements of the related Owner-Contractor Agreement) shall determine the amount owing to each Contractor pursuant to the terms of the respective Owner-Contractor Agreement, and shall issue certificates for payment to the Contractor in such amount. The Construction Manager shall consult with the Design Consultant in the determination of the amount due to the Contractor. The Construction Manager and the Design Consultant shall sign the certificates for payment prior to the time they are transmitted to the Owner by the Construction Manager. The signing of a certificate for payment by the Construction Manager shall constitute representation by the Construction Manager to the Owner based on the Construction Manager's observations at the site pursuant to this Agreement, the data comprising the application for payment, and information supplied by the Design Consultant, that the Work has progressed to the point indicated, and that after due inquiry to the best of the Construction Manager's knowledge, information and belief, the quality of the Work appears to be in accordance with the Construction Contract Documents (subject to an evaluation of the Work for conformance with the Construction Contract Documents upon Substantial Completion, the results of any subsequent test required or performed under the Construction Contract Documents, minor deviations from the Construction Contract Documents correctable without cost to Owner prior to completion, and any specific qualifications stated in the certificate for payment) and the respective Owner-Contractor Agreement, and that the Contractor is entitled to payment in the amount certified. However, by signing a certificate for payment, the Construction Manager shall not hereby be deemed to represent that the Construction Manager has made exhaustive or continuous on-site inspections to check the quality of the work or that Construction Manager has reviewed the construction means, methods, techniques, sequences or procedures, or that the Construction Manager has made any examination to ascertain how and for what purpose the Contractor has used the monies paid on account of the construction contract sum.

ARTICLE 14 ADDITIONAL PROVISIONS

14.1 **MEDIATION.** Resolution of any dispute arising under this Agreement between the Owner and Contractor may first be attempted by submitting the dispute to non-binding mediation. The dispute may be submitted to non-binding mediation upon the written demand of either party with the consent of the other party. The non-binding mediation shall be held in Hidalgo County, Texas, at a location agreed to by the parties. The mediator shall be selected by agreement within twenty (20) calendar days from the date the demand for mediation is received by the other party, and absent such agreement, mediation shall not occur. Thereafter, the mediation shall be held at the selected designation within thirty (30) calendar days. The party demanding the mediation shall be responsible for payment of the mediator's fee and associated costs. Mediation of any dispute shall not be a condition precedent to filing a lawsuit, including seeking a mandatory or prohibitive injunction, or equitable relief from any court of competent jurisdiction to enforce or maintain the status quo pending mediation of any dispute.

14.2 **ARBITRATION.** It was the express of the parties hereto to delete any and all provisions regarding, in any form, or rules pertaining to Arbitration.

14.3 **CONFIDENTIALITY.** In order for the Construction Manager to effectively provide the Services required under this Agreement, it may be necessary or desirable for the Owner to disclose to the Construction Manager confidential and proprietary information and trade secrets pertaining to the Owner's past, present, or future activities. The Construction Manager hereby agrees to treat information which has been designated to the Construction Manager by the Owner in writing as being confidential and proprietary information or trade secrets in confidential manner. The Construction Manager further agrees that it will not disclose any such information so designated to anyone outside of the Owner at any time. The terms of this Article shall not apply to (a) information which at the time of disclosure is in the public domain or which subsequent to disclosure enters the public domain except by breach of this Agreement by Construction Manager, (b) information which Construction Manager can show by competent proof was in its possession prior to Owner's disclosure of such information to Construction Manager, or (c) information which Construction Manager received from third parties in the absence of a confidentiality agreement thereon.

14.4 **DOCUMENTS AND RECORDS.** Upon termination or expiration of this Agreement, the Construction Manager shall, upon written request from the Owner, return to the Owner all documents and records provided by the Owner that are in the Construction Manager's possession or control and shall deliver all Project files maintained by the Construction Manager for the Project. However, the Construction Manager shall be allowed to make copies of all such documents, records, information and material.

14.5 Construction Manager's liability arising in any way out of the provision of Services under this Agreement shall be limited to and in no event shall exceed the limits of the General Liability coverage, regardless of the cause, including the fault, breach of contract, tort, strict liability or otherwise of Construction Manager.

14.6 GOVERNING LAW. This Agreement shall be governed by the laws of the State of Texas. Venue of any dispute shall be in Hidalgo County Texas.

14.7 ENTIRE AGREEMENT. This Agreement represents the entire Agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. No part of the proposal for this work from the Construction Manager is part of this Agreement.

14.8 MODIFICATION OF AGREEMENT. This Agreement may be amended only by written instrument signed by both the Owner and the Construction Manager.

14.9 SEVERABILITY. If any one or more of the provisions contained in this Agreement, for any reason, are held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

14.10 CALENDAR DAYS. Except where specifically stated otherwise, all periods of time stated in terms of days shall be considered periods calculated in calendar days.

14.11 HEADINGS. The headings or captions within this Agreement shall be deemed set forth in the manner presented for the purposes of reference only and shall not control or otherwise affect the information set forth therein or interpretation thereof.

14.12 INTERPRETATION OF CERTAIN WORDS. For the purposes of this Agreement unless the context clearly indicates otherwise, the singular includes the plural, and the plural includes the singular.

14.13 COUNTERPARTS. This Agreement may be executed in any number of counterparts, which shall constitute one and the same instrument.

14.14 CONFLICT AMONG CONTRACTORS. In the event of any conflict between the terms and provisions of this Agreement and the AIA Contract and/or the Owner-Contractor Agreement, the Owner shall determine the order of priority of the terms and provisions of the various agreements.

14.15 NON-DISCRIMINATION. By the signing of this Agreement, the Construction Manager certifies that it complies with all applicable laws concerning equal opportunity and non-discrimination and that it does not maintain or provide for its employees to perform their services at any location, under its control, where segregated facilities are maintain.

14.16 E.E.O.C. AFFIDAVIT. The Construction Manager and all of its consultants agree to submit to the Owner, prior to performance of any Services, an affidavit in the form prescribed at Attachment C.

14.17 Construction Manager will conduct its business on this Agreement in accordance with all Minority and Women Business Enterprises policies of the Owner as of the date of the Contract, and as amended during the course of the Work for work going forward from the time of any amendment.

14.18 COMMITMENT OF CURRENT REVENUES ONLY. In the event that, during the term, hereof, the governing body of the Owner does not appropriate sufficient funds to meet the obligations of such party under this Agreement, then any party may terminate this Agreement upon ninety (90) days written notice to the other party. Owner agrees, however, to use its best efforts to secure funds necessary for the continued performance of this Agreement. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of the Owner pursuant to the provisions of Tex. Loc. Govt. Code Ann. §271.903.

[SIGNATURE

PAGE

FOLLOWS]

This Agreement executed the day and year first written above.

Owner:

The County of Hidalgo

By: _____
Ramon Garcia, County Judge

Project Manager:

Prodigy Construction Management LLC

By: _____
Mario A. Rodriguez, Legal - Principal
Prodigy Construction Management LLC

Attest:

By: _____
Arturo Guajardo Jr., County Clerk

**Approved as to form:
ATLAS & HALL, LLP**

By: _____
Stephen L. Crain

ATTACHMENT A SCOPE OF SERVICES

CONSTRUCTION MANAGEMENT

Construction Manager LLC Services are listed below.

I. PROJECT PLANNING AND MANAGEMENT

a) Construction Manager Implementation Plan: PM will work with Owner to prepare a comprehensive Construction Manager Implementation Plan, which will include:

- Identification of the Owner's overall objectives.
- Project policies necessary to manage to the desired outcome.
- Overall Master Project Schedule including the phasing, sequencing and packaging of design, consulting, equipment or construction contracts so that the work meets the capacity of the design and construction community.
- Overall Project Budget including both soft and hard costs.
- Procurement techniques and forms of contract that can be utilized for the delivery of the Project.
- Project Organization Chart including integration of Construction Manager Services with other related services including design services, FF&E procurement and installation (if necessary), operations & maintenance, technology design and installation, etc.

b) Construction Manager Procedures: Construction Manager will prepare Construction Manager Procedures that:

- Establishes procedures for communication among the Project participants.
- Describes roles and responsibilities for all of the key players in the Project participants.
- Presents administrative procedures for pre-design, design, procurement, construction and post construction services
- Are aligned with Owner goals.

c) Architect-Engineer Selection (PARAGRAPH DELETED)

d) Information and Control System: Construction Manager will establish and implement a Construction Manager information and control system for expediting and processing requests for information; shop drawings, material, equipment, and sample submittals;; contract adjustments; change orders; payment requests and the maintenance of logs.

e) Project Budgeting and Cost Management: Construction Manager will prepare a Conceptual Project Budget based on information from Owner. The Project Budget will identify all sources of potential funding, and will account for all Project expenses.

Construction Manager will develop and implement an effective system to assist Owner in the management of Project costs. In developing and implementing this system, Construction Manager will collect budget information for the Project related soft and hard costs, including design costs, construction costs and other related costs; recommend adjustments as necessary and provide input to Construction Manager's computerized cost reporting system. Cost reports will be updated monthly as commitments are made and costs are incurred and incorporated into the monthly report. Any budget adjustments must be approved by the Owner in writing. Construction Manager will record documentation of the change, and transfer of funds.

f) Master Project Schedule: Construction Manager will, working with other Project participants, prepare an overall "Master Project Schedule" showing duration and precedence for major design, bidding, construction and occupancy activities; establishing the overall duration of the Project and identifying those activities that are most critical. Owner's occupancy requirements will be incorporated into the Project Schedule. Construction Manager will update the Project Schedule on a regular basis indicating current status of activities, expanding the level of detail and status as the Project progresses. If significant variance from planned activities occurs, review the recovery plans and/or acceleration plans. Construction Manager work-plan and staffing is based on completion dates of projects in the master Schedule. Schedule extensions beyond original dates will be additional services.

g) Commissioning Services

Limited scope MEP Services:

- Assist the Owner with development and design facilities standards and design guidelines related to MEP Commission requirement.
- Review Contractor's building Commissioning and turnover Plan.
- Develop plan for furnishing procurement and building turnover.
- Review the results of the HVAC Test and Balance for compliance with construction contract requirements.
- Oversee turnover of all certification documentation and submittals proper agencies on behalf of Owner.
- Coordinate training of facility maintenance staff for familiarization with all systems.

h) Project-Wide Progress Meetings: Construction Manager will attend regularly scheduled meetings with Owner for the purpose of reviewing overall progress as measured against the Construction Manager implementation Plan. Major issues affecting the

progress of the Project will be identified, monitored, and reported by Construction Manager. Construction Manager will issue meeting minutes. Such meeting minutes will include the status of major issues discussed and will prescribe recommended actions required by team members.

l) Project-Wide Progress Reports: Construction Manager will produce a periodic Project report that will include at a minimum: an executive summary narrative, cost status report, schedule status report, key issues & concerns, major variances to the Construction Manager strategy along with recovery action plans and identification of major activities to be accomplished in the following period.

m) Project Guidelines and Standards: Construction Manager will work with the Owner to identify, collect, develop and distribute to the Design Consultant and Owner's staff the Owner's Project guidelines. In preparing these guidelines consideration will be given to equality in Project scope. Construction Manager will assist the Owner in the prioritization of Project and space needs.

n) Construction Contract Agreements: Construction Manager will review contract documents and associated general conditions, special conditions and other related documents for the Project.

Construction Manager will recommend to the Design Consultant contractual language for inclusion in the Construction Documents that will require submittal performance by the Contractor that will support effective cost, schedule and quality control.

Construction Manager will verify that the requirements are included in construction contract documents.

o) Davis Bacon Act: Construction Manager will assist and ensure general contractor in the enforcement of the Davis Bacon Act compliance.

II PRE-DESIGN AND DESIGN PHASE SERVICES

a) Design Consultant Coordination and Management: Construction Manager will assist the Owner with managing each Design Consultant directly and will provide overall coordination, administration, management, and technical support services during the design, procurement and construction phases of work.

Construction Manager will:

- Monitor performance of each design Consultant.
- Review Design Consultant applications for payment and/or claims for additional services and provide an analysis and recommendation of action to the Owner
- Review and manage approved re-design activities

· Assist the Owner in determining design submittal requirements at schematic design, design development and construction document phase of design.

b) Budget Review and Cost of Work: Construction Manager will review cost estimates of the design at each design development milestone submittal. Construction Manager will recommend bid alternates as a means of cost control if needed.

Construction Manager's cost estimate review will represent Construction Manager's best judgment as a Construction Manager familiar with the construction industry. It is recognized, however, that neither Construction Manager nor Owner has control over the cost of labor, materials or equipment, over Contractor's methods of determining bid prices or other competitive bidding or negotiating conditions. Accordingly, Construction Manager cannot and does not warrant or represent that available prices will not vary from the Project Budget proposal established and approved by Owner, or from any cost evaluation or report prepared by Construction Manager. Construction Manager acknowledges that Owner retains all approval over bids and that Construction Manager does not have authority to agree to any cost increases.

c) Schedule Updates: Construction Manager will update the Project schedule based upon information provided by the Design Consultant.

d) Agency Approvals: Construction Manager will assist the Owner and Design Consultant in scheduling necessary plan reviews and obtaining required permits and approvals.

III. PROCUREMENT PHASE SERVICES

a) Market Project/Project to the Bidders: Construction Manager will review the Project with the bidders, including the designs established by the Design Consultant. Construction Manager's efforts will be coordinated with the Owner's procurement practices.

b) Procurement Management: Bidding & Awarding of Construction Contracts. Construction Manager will review the bidding and awarding process established by the Design Consultant for each contract; it being agreed that only Owner has authority to award any contracts or otherwise bind Owner.

c) Contractual Review: Construction Manager will advise Owner regarding suggested language for inclusion within bid and contract documents for the services for approval and acceptance by Owner.

Construction Manager will review Design Consultant's bid summaries and make recommendations to Owner for award of contracts or rejection of bids. Construction Manager will review the proposed contract for each successful bidder. Construction Manager will

incorporate appropriate contract terms and conditions such as contractor mark-ups on change orders, contingencies, allowances, contractor general conditions and liquidated damages in the contract documents for Owner's review.

Construction Manager will assist the Owner in negotiation of contract agreements between Owner and the bidders, to the limit of Construction Manager's authority as defined in this Agreement, and assist the Owner and design Consultant with rebidding of the work as required. The Construction Manager will not be a bidder on any contract within the Project.

Construction Manager will notify all parties of awarded scope of work, including acceptance of alternates, for coordination with other activities.

IV. CONSTRUCTION PHASE SERVICES – Project Administration

a) Construction Phase Meetings: Construction Manager will attend pre-construction conferences with Contractors prior to mobilization. Throughout the duration of construction, Construction Manager will attend regular progress meetings with Owner, Design Consultant, and Contractor(s) related to the review and documentation of Project status and coordination of efforts of all Project participants. Design Consultant will be responsible for preparation of individual meeting minutes for each respective part of the Project.

b) On-Site Presence: As progress requires the Construction Manager, including appropriate staff of the Construction Manager, will assist the Design Consultant to observe all phases of construction activities periodically in order to assist in achieving completion of the Project in accordance with the Owner's objectives for cost, time, and quality. Observations will not cause Construction Manager to be responsible for those duties and responsibilities which belong to the Design Consultant or the Contractor(s), and which include, but are not limited to, the Design Consultant's obligation to produce clear, accurate drawings and specifications and responsibilities of full time construction administration and the Contractor(s) responsibilities for the techniques and sequences of construction and safety precautions incidental thereto, and for performing the construction work in accordance with the Contract Documents.

c) Plan Temporary Facilities, Services and Utilities: Construction Manager will review and recommend for approval Contractor's plan for temporary on-site facilities, equipment, materials, and services for the common use of Contractors.

d) Expedite Permits and Approvals: Construction Manager will review the Design Consultant's identification of special permits or approvals required for Project improvements, excluding permits obtained directly by the Contractor. Construction Manager will review and monitor the inspection process of outside agencies. Construction Manager will assist in obtaining approvals for the Project from authorities having jurisdiction over the Project.

e) Coordinate Requests of Information: Construction Manager will coordinate requests for clarification of Construction Contract Documents from the Contractor(s) with the Design Consultant. Construction Manager will review status of requests in a regular or special progress meeting in an effort to monitor timely responses from the Design Consultant.

f) Implement a Change order System and Procedure: When changes in the work become a necessary due to request of Owner, request of the Contractor, or design document issue, Construction Manager will work with the Design Consultant to coordinate the preparation of Owner approved change order documents, log the proposed change in the control log and transmit to the Contractor for response.

g) Processing of Contractor's Shop Drawings & Submittals: Construction Manager will monitor schedules prepared by Contractor for required submittals of shop drawings and samples for approval by Architect, other members of the design Consultant and Owner. The Contractor's and Design Consultant's submittal logs will be reviewed in the weekly progress meeting in an effort to assure timely processing by the Contractor and Design Consultant.

Construction Manager will review the Contractor's schedules for submittal and approval of shop drawings and samples to assure that they coincide with the Construction schedule.

h) Review and Approve Contractor's Applications for Payment: The Design Consultant will receive Contractors' applications for payment, review for completeness and review Contractor's proposed schedule of values for use in processing payments. Construction Manager will review the Design Consultant's submittal and process payment application to the Owner. Construction Manager will monitor the payment process for compliance with the Construction Contract Documents. If it should later be found that a Contractor has failed to comply with the provisions of its Owner-Contractor Agreement in any way or detail, such failures and subsequent compliance will be the sole responsibility of the Contractor. By issuing and processing an Application for Payment, Construction Manager will not be deemed to represent that it has made any examination to ascertain how and for what the purpose the Contractor has used the previous monies paid on account of the construction contract sum.

i) Project Schedules: Construction Manager will receive, review and comment on the suitability of the detailed construction schedule prepared by the Contractor. Once approved, Construction Manager will monitor the schedule monthly and report on deviations from the schedule. Construction Manager will recommend necessary actions to Owner should the Contractor fail to correct schedule variances caused by the Contractor.

j) Evaluate Contractor Performance: Construction Manager will periodically evaluate the Contractor's performance and will recommend courses of action to Owner when the Contractors' schedule and quality objectives are not being met.

k) Provide Monthly Status Reports: Construction Manager will prepare a monthly status report which will include financial status reports and projections for cost of completion, change order status reports, potential claims identification and status, schedule status and identification of major problems encountered along with corrective action taken or recommended. The schedule status report will compare the status of construction with the construction schedules and Project schedules, making recommendations and recovery plans in the event the schedules do not match.

l) Quality Control Monitoring: Construction Manager will notify the Design Consultant and Owner in writing when it is the opinion of Construction Manager that the work does not conform to the requirements of the Construction Contract Documents. Construction Manager is not authorized to change, revoke, enlarge, relax, alter, or release any requirements of the Construction Contract Documents or to approve or accept any portion of the work not performed strictly in accordance with the Contract Documents.

V. CLOSE OUT PHASE SERVICES

a) Determine Final Completion of the Project: Construction Manager will determine, in conjunction with the Design Consultant and Owner, final completion of the Project. Upon completion, Construction Manager will receive the Contractor's final application for payment, confer with the Design Consultant and Owner to determine if all records, certificates, guarantees, warranties and releases have been received, obtain signatures from the Design Consultant and forward to Owner for final payment. In the event any of the items listed above have not been submitted, Construction Manager will assist Owner in obtaining completed items from the appropriate parties. Construction Manager will monitor the final payment process for compliance with contract documents.

b) Operations & Maintenance Manuals: Construction Manager will work with the Design Consultant and Contractor to coordinate delivery of operations manuals and warranties provided to the Owner in a timely manner.

c) Coordinate Punch-List Activities: In consultation with the Owner, Construction Manager will arrange for and coordinate preparation of punch-lists by the Design Consultant when requested by the Contractor or Owner. Project Management will assist the Design Consultant in verifying completion of punch-list activities and in determining substantial completion of the Project. In consultation with the Owner, Construction Manager will arrange for issuance of the Certificate of Substantial Completion by the Design Consultant to the Contractor.

d) Occupancy Activities: Construction Manager will review occupancy schedules prepared by Design Consultant, and will detail and coordinate the activities between final inspection of the Project and the Owner's occupancy needs.

e) FF&E Coordination: When necessary, Construction Manager will include FF&E procurement schedules provided by the Owner in the master Project schedule.

f) Plan for Correction of Defective Items: Construction Manager will assist the Owner to develop a plan to facilitate the correction of defective items that require repair or replacement during the warranty period.

g) Transfer of Final Record Set of Documents: Construction Manager will monitor Contractor's preparation of record drawings and specifications and coordinate and expedite the transmittal of the record documents to the Owner. Construction Manager will prepare the final Project accounting and close out reports.

**ATTACHMENT B
ADDITIONAL SERVICES COMPENSATION**

When Additional Services are approved by the Owner in advance through an Additional Services Agreement signed by the parties, Construction Manager shall be compensated the amount approved in advance for the particular Additional Service, but in no event shall the amount to be paid exceed the rates set out in Attachment B.

- a) Maximum hourly billing rates for personnel assigned to the Project will be as follows:

| <u>Position</u> | <u>Hourly Rate</u> |
|-------------------------|--------------------|
| 1) Construction Manager | \$150 |
| 2) Legal Review | \$150 |
| 3) Document Control | \$120 |
| 4) Engineer Review | \$150 |
| 5) Field Inspector I | \$120 |
| 6) Clerical | \$ 60 |

Rates valid through December 2011. Rates increase 5% per calendar year.

- b) Expenses for Additional Services and professional consultants shall be specifically approved by the Owner by category in advance in the Additional Services Agreement otherwise they will not be allowed.

**ATTACHMENT C
CONSULTANT E.E.O.C. AFFIDAVIT**

This firm, partnership, corporation, consultant agrees to refrain from discrimination in terms and conditions of employment on the basis of race, color, religion, sex, or national origin, and agrees to take affirmative action as required by federal statutes and rules and regulations issued pursuant thereto in order to maintain and ensure non-discriminatory employment practices.

By: _____
Title: _____

Sworn to and subscribed before me this ____ day of _____.

Notary Public in and for the State of Texas

ATTACHMENT D
Schedule of Direct Expenses

| <u>Item</u> | <u>Unit Cost</u> | <u>Subtotal</u> | <u>By PCM</u> | <u>By Owner</u> |
|----------------------------------|------------------|-----------------|---------------|-----------------|
| <u>Computers</u> | | | | |
| Desk top computers | | | PCM | |
| Laptops | | | PCM | |
| Accessories | | | PCM | |
| <u>Document Control Software</u> | | | | |
| License fee usage | | | | By Owner |
| <u>Office Productivity</u> | | | | |
| Laser printers | | | PCM | |
| Color Printer | | | PCM | |
| Scanner | | | PCM | |
| Postage & Courier | | | PCM | |
| Copier -Lease | | | PCM | |
| Fax | | | PCM | |
| <u>Miscellaneous</u> | | | | |
| Mileage | | | PCM | |
| <u>Office</u> | | | | |
| Office Supplies | | | PCM | |
| Safety Supplies | | | PCM | |
| <u>Photography</u> | | | | |
| Digital Cameras | | | PCM | |
| Project Camera(s) | | | | By Owner |
| IT systems | | | | By Owner |
| <u>Owner Total Expenses</u> | | | | |

No expenses reimbursable by Owner hereunder shall be incurred without the prior written approval of Owner through an Additional Services Agreement or other amendment to this Agreement.

ATTACHMENT E
Payment Schedule*

| <u>Month</u> | <u>Date Submitted</u> | <u>Monthly Amount Drawn</u> | <u>Cumulative Amount Draw</u> | <u>Remaining Amount Balance</u> |
|--------------|-----------------------|-------------------------------------|---------------------------------------|---|
| 01 | | \$ 4,375.00 | \$ 4,375.00 | \$ 48,125.00 |
| 02 | | \$ 4,375.00 | \$ 8,750.00 | \$ 43,750.00 |
| 03 | | \$ 4,375.00 | \$ 13,125.00 | \$ 39,375.00 |
| 04 | | \$ 4,375.00 | \$ 17,500.00 | \$ 35,000.00 |
| 05 | | \$ 4,375.00 | \$ 21,875.00 | \$ 30,625.00 |
| 06 | | \$ 4,375.00 | \$ 26,250.00 | \$ 26,250.00 |
| 07 | | \$ 4,375.00 | \$ 30,625.00 | \$ 21,875.00 |
| 08 | | \$ 4,375.00 | \$ 35,000.00 | \$ 17,500.00 |
| 09 | | \$ 4,375.00 | \$ 39,375.00 | \$ 13,125.00 |
| 10 | | \$ 4,375.00 | \$ 43,750.00 | \$ 8,750.00 |
| 11 | | \$ 4,375.00 | \$ 48,125.00 | \$ 4,375.00 |
| 12 | | \$ 4,375.00 | \$ 52,500.00 | \$ 0.00 |

* To be modified in accordance with Project timeline adjustments pursuant to the terms of the Agreement.

