

AGREEMENT

FOR

CONSTRUCTION MANAGEMENT SERVICES
Law Enforcement/Adult Detention Facilities Repair

BETWEEN

PRODIGY CONSTRUCTION MANAGEMENT L.L.C

&

THE COUNTY of HIDALGO, TEXAS

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Agreement for Construction Management Services Between
Prodigy Construction Management L.L.C and
The County Of Hidalgo, Texas
C-14-000-00-00

This AGREEMENT (the "Agreement") made this 30th day of September, 2014 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 Law Enforcement/Adult Detention Facilities Repair (the "Project"). Whereas the plans and specifications have been previously completed by OWNER hired structure engineer - Chanin Engineering of McAllen, Tx. The Owner and the PM agree as set forth below:

ARTICLE 1
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 which will require to be specifically approved in writing prior to the performance by the Construction Manager of such Service or Services.

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 any agreement as authored by the American Institute of Architects.

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.

1.7 BASIC SERVICES COMPENSATION. “Basic Services Compensation” means the fee designated in Article 4 to be paid by the Owner to the Construction Manager for Basic Services set forth in Attachment A 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 contracted registered architect or licensed engineer(s), 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’s Commissioner’s Court.

1.18 PM. “PM” has the meaning set forth in the introductory paragraph.

1.19 PROJECT. “Project” has the meaning set forth in the introductory paragraph.

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 performed by the Construction Manager’s services consist of those services performed by the Construction Manager, Construction Manager’s Employees and/or Construction Manager’s Consultants.

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 this agreement and in consultation with the Hidalgo County Commissioner’s Court. 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 represent the best interest of the Owner and perform services in utmost good faith, honesty and fairness. The Construction Manager covenants with the Owner to furnish its professional skill and judgment with the highest 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 effective duration for its Services begins on the date of this executed Agreement signed by all parties and will end at the conclusion of the acceptance by the Owner of the Work.

In the event there is a defect in the Construction of the Project, such defect is reported by Owner, in writing, to Construction Manager within the above warranty period,

Construction Manager shall promptly take appropriate action to consult with the Design Professional and Construction Contractor to remedy the defect. Warranty period Services shall be at no cost to the Owner.

2.3 In providing Services, the Construction Manager shall maintain a working 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 to the Construction Manager is in a lump sum fee of Ninety Thousand and no 00/100 the Dollars (\$90,000.00).

(b) Payment to the Construction Manager shall be based on the Design Consultant's monthly progress reports submitted to the Owner. The Design Consultant's monthly progress report shall indicate the percent completion of the work by the Contractor under the Contractor's contract with the Owner during the previous month less the cumulative percentage of all months completion of the work prior to such previous month (the "Design Consultant Monthly Construction Percentage"). On or before noon of the first Monday of each month during the performance of construction services by the Contractor, the Design Consultant's shall submit to the Owner the Design Consultant's Monthly Construction Percentage. Monthly payment of Basic Services Compensation shall be the product of the Construction Manager Basic Services Compensation lump sum fee of Ninety Thousand and no 00/100th Dollars (\$90,000.00) (as defined in Article 4.2 (a) hereof) multiplied by such month's Design Consultant's Monthly Construction Percentage (the "Monthly Construction Manager Payment"). The Owner shall review each such Design Consultant's Monthly Contractor Percentage and may make such exceptions as the Owner reasonably deems necessary or appropriate under the circumstances then existing. About ten (10) working days after the Commissioners' Court of Owner approves the Design Consultant's Monthly Construction Percentage and the Monthly Construction Manager Payment as aforesaid, the Owner shall make payment to the Construction Manager of the Monthly Construction Manager Payment.

(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 writing by the Owner and the Construction Manager.

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

4.4 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 4.2(a), subject to the prior written agreement of the Owner thereto.

4.5 EXPENSES. Items provided by Owner at no expense to the Construction Manager are referenced in Attachment "B" 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.

4.6 ADDITIONAL SERVICES COMPENSATION. Additional Services Compensation shall be determined and paid in accordance as follows:

	Position	Hourly Rate
1)	Consultant-Project Manager	\$150
2)	Clerical	\$ 60

4.7 TERMINATION 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 terminate this Agreement.

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 anticipated that all of the Services will be completed per the established Project timeline of 365 calendar days as defined by the Owner. If design delays, construction delays, or other factors beyond the control of the Construction Manager cause the durations of the Project to extend beyond the anticipated durations shown in the Project timeline, CM and Owner shall negotiate the payment increases if any, to PM:

- (1) There will be Additional Services Compensation granted only to the extent that the reason for the late completion of the works is not the fault of the Construction Manager, and
- (2) The prior written agreement of the Owner to incur such Additional Services Compensation must be obtained by the Construction Manager.

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 the 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 a general professional services contract.

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

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 DISPUTES. Any dispute between the Construction Manager and the Owner regarding, but not limited to project budget, project scope, project layout, or types and quality of materials, shall be submitted in writing within 21 days after occurrence of the event giving rise to the claim to be resolved by the Owner's Representative. If not resolved by the Owner's Representative within 10 days, then the Construction Manager may submit in writing the issues(s) in dispute to the Hidalgo County Commissioners Court. The determination of the County's Designee or

Commissioners Court is the final institutional decision.

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 from Construction allowances 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 may not result in changes to the Basic Services Compensation hereunder. When there is a substantial deviation from the Project Scope from that shown on in Section 1.1, it may result in an increase or decrease in Basic Services Compensation as provided in Article 4.

7.2 EXTENSION OF DURATION OF BASIC SERVICES AND PHASES; ADDITIONAL SERVICES. Should a substantial extension of the Owner's PROJECT timeline of 320 calendar days should occur through no fault of the Construction Manager, the parties may 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 advance as an Amendment by virtue of a Work Authorization Request (Attachment "D") as part to this Agreement executed by the Owner and the Construction Manager. In the event an Amendment to 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 in Article 4.6 ADDITIONAL SERVICES COMPENSATION 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 Amendment to 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 at a multiplier of 1.1. No professional consultant charges are chargeable unless specifically agreed to in writing in the related Amendment to 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 Article 4.8 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
	Attention: Hidalgo County Judge
Address:	302 W. University Drive
City State Zip:	Edinburg, Texas 78539-3523
Construction Manager:	S. Alex Palacios, Owner/Principal
Company:	PRODIGY CONSTRUCTION MANAGEMENT L.L.C.
Address:	1335 E. Jasmine Ave.
City State Zip:	McAllen, Texas 78501
Telephone:	(956) 800-1122 office
	(956) 800-4618 fax

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.

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

2. Automobile Liability
 - 1.) 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.

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.

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 party without cause upon thirty (30) days written notice.

11.2 In the event of a termination under 11.1, the Construction Manager shall be paid any Basic Services Compensation, Reimbursable Expenses and Additional Services Compensation for Services performed to the date of termination.

11.3 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.

11.4 In the event the Work on the Project is suspended, delayed or interrupted, the parties may agree in writing to Additional Services Compensation pursuant to section 7.2 above. 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.

11.5 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.

11.6 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, 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. [INTENTIONALLY DELETED]

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 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.

14.6 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.

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

14.8 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.

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

14.10 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.

14.11 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.

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

14.13 CONFLICT AMONG CONTRACTORS. In the event of any conflict between the terms and provisions of this Agreement and the AIA Design Professional Contract and/or the Owner-Contractor Agreement, the AIA Design Professional Contract shall control.

14.14 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.

14.15 IMMUNITIES. Nothing in this Agreement is intended to and Owner does not hereby waive, release or relinquish any right to assert any of the defenses Owner enjoys by virtue of the state or federal constitution, laws, rules or regulations, and any sovereign, official or qualified immunity available to Owner as to any claim or action of any person, entity, or individual against Owner.

[SIGNATURE PAGE FOLLOWS]

This Agreement executed the day and year first written above.

Owner:
The County of Hidalgo

PM:
Prodigy Construction Management LLC

Ramon Garcia, County Judge

S. Alex Palacios, Owner/Principal

ATTEST:

Arturo Guajardo, County Clerk

APPROVED AS TO FORM:
ATLAS, HALL, & RODRIGUEZ, LLP

Stephen L. Crain

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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: Construction Manager, when necessary, will advise, if requested by Owner, in the Architect and Engineer selection and advise Owner on language for approval and acceptance by Owner. Construction Manager will assist with review of potential design team(s) qualifications for capability to perform scope of work and meet schedule. Construction Manager will negotiate with the selected firms and assist in Architect and Engineer contract preparation and review. Construction Manager will review the selected firms' certificate of insurance for compliance with Owner's guidelines.

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 construction and occupancy activities; establishing the overall duration of the Project and identifying those activities that are most critical. 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.

g) Plan Room: Construction Manager will maintain a plan room for the use of entities wanting to review the Project plans and specifications.

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 statue of major issues discussed and will prescribe recommended actions required by team members.

i) 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.

j) 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 needs.

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

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

II. 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 Design Consultant, 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 Assurance 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.

III. 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. PM 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.

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.

End of Section

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ATTACHMENT "B"

Schedule of Direct Expense

Schedule of Direct Expenses	
Item	Reimbursable Multiplier of Direct Cost
Computers	0
Inner Office Copies	0
Postage and Courier	1.1
Office Supplies	0
Digital Cameras	0
Plans and Specifications Reproducibles	1.1

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 "C"

” Payment Schedule*

APPLICATION FOR PAYMENT

TO OWNER The County of Hidalgo, Texas 2812 So. Business Hwy 281 Edinburg, TX 78539	PROJECT: First Floor & Second Floor Renovation/Remodeling 2812 So. Business Hwy 281 Edinburg, TX 78539	Application ONE Application ##### Period From: Period To:
--	--	--

APPLICATION FOR PAYMENT

Application is made for payment as shown below, in connection with the Contract.
 (Continuation Sheet is attached)

- | | | |
|--|--------------------------------------|-------------|
| 1. ORIGINAL CONTR. ##### | Prodigy Construction Services | |
| 2. Net Change by Ch <u>0</u> | 1335 E. Jasmine Ave | |
| 3. CONTRACT SUM TO DATE (Line 1 + 2) | McAllen, Texas 78501 | |
| 4. TOTAL COMPLETED & STORED TO DATE
(Column G on) | | |
| 5. RETAINAGE | By: _____ | Date: _____ |
| a. <u>0</u>
(Column D + E on Continuation Sheet) | Alex Palacios | |
| b. <u>0</u>
(Column F on Continuation Sheet) | | |
| Total Retainage (Line 5a + 5b or
Total in Column <u>0.00</u>) | By: _____ | Date: _____ |
| 6. TOTAL EARNED LE <u>0.00</u>
(Line 4 less Line 5 Total) | Hidalgo County Representative | |
| 7. LESS PREVIOUS CE <u>0.00</u>
(Line 6 from Prior Certificate) | | |
| 8. CURRENT PAYMENT DUE | | |
| 9. BALAN #####
(Line 3 less Line 6) | | |

CHANGE O	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner		
Total approved this month		
TOTALS		0
NET CHANGES by Char		0

RECAP:
 Total Billed this period
 Retainage this period
 Net billing this period _____ \$0.00

Attachment "D"
SAMPLE
Owner Work Authorization

Work Authorization No.	001
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THIS WORK AUTHORIZATION is made between Prodigy Construction Management LLC and Hidalgo County (Owner)

PART 1. Scope of Work. The purpose of this Work Authorization is:

PART 2. Estimated Cost. The cost for services under this Work Authorization is

Estimated Cost (\$)	\$
---------------------	----

PART 3. Payment. Compensation and payment for the services established under this Work Authorization shall be made on a monthly unless the work is completed prior to.

PART 4. Acceptance and Acknowledgement. This Work Authorization is hereby accepted and acknowledged as indicated below and effective as of ____ day of _____, 2013.

THE Consultant:
Prodigy Construction Management LLC

THE OWNER:
Hidalgo County

By:	Alex Palacios	By:	
Title:	Principal/Owner	Title:	

Date:		Date:	
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