

DRAFT AIA® Document A133™ – 2009

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

MODIFIED AIA DOCUMENT A133-2009 AGREEMENT made as of the « » day of «March »
in the year «2018 »
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status and address)

«County of Hidalgo, Texas »« »
«HIDALGO COUNTY PURCHASING DEPT.
2812 S. Business Hwy 281
Edinburg, Texas 78539 »

and the Construction Manager:
(Name, legal status and address)

«Morganti Group, Inc.
10590 Westoffice Drive, Suite 150
Houston, Texas 77042 »« »
« »

for the following Project:
(Name and address or location)

«Hidalgo County Courthouse
Edinburg, Texas»
« »

The Architect:
(Name, legal status and address)

«HDR Architecture, Inc.
8750 N. Central Expressway, Suite 100
Dallas, Texas 75231 »« »
« »

The Owner's Designated Representative:
(Name, address and other information)

«Valde Guerra, Michael Leo and Sergio Cruz when acting jointly and unanimously on behalf of the Owner with respect to this Agreement are the Owner's Designated Representative for the Project, subject to all limitations on the Designated Representative's authority as provided by this Agreement. »

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

ELECTRONIC COPYING of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

The Construction Manager's Designated Representative:
(Name, address and other information)

« »
« »
« »
« »
« »
« »

The Designated Representative of the Program Manager ("PM"):
(Name, address and other information)

«Brian McIntyre »
«Jacobs Project Management Com. »
«911 Central Parkway North, Suite 425 »
«San Antonio, Texas 78232 »

The Architect's Designated Representative:
(Name, address and other information)

«John Niesen, RA, LEED »
«Project Manager »
«HDR Architecture, Inc. »
«8750 N. Central Expressway, Suite 100 »
«Dallas, Texas 75231 »
« »

The Owner and Construction Manager agree as follows.

TABLE OF ARTICLES

1	GENERAL PROVISIONS
2	CONSTRUCTION MANAGER'S RESPONSIBILITIES
3	OWNER'S RESPONSIBILITIES
4	COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
5	COMPENSATION FOR CONSTRUCTION PHASE SERVICES
6	COST OF THE WORK FOR CONSTRUCTION PHASE
7	PAYMENTS FOR CONSTRUCTION PHASE SERVICES
8	INSURANCE AND BONDS
9	DISPUTE RESOLUTION
10	TERMINATION OR SUSPENSION
11	MISCELLANEOUS PROVISIONS
12	SCOPE OF THE AGREEMENT

EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Drawings, the Project Manual including, without limitation, Conditions of the Contract (General, Supplementary and other Conditions), Specifications and Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal (or sometimes herein, "**GMP proposal**"), the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment (or sometimes herein "**GMP Amendment**") and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

The Drawings and Specifications of the Contract Documents are complementary, and the requirements of each shall be deemed required by both. If, and to the extent of, any direct inconsistency, ambiguity, or discrepancy in the Contract Documents, subject to the Modified A201-2007 Section 1.2.1, precedence shall be given to the Contract Documents in the following order of priority: (1) duly approved and written Change Orders and Modifications issued after the execution of this Agreement; (2) this Agreement, including the exhibits attached hereto and incorporated fully herein, but not including Modified A201-2007; (3) the Modified A201-2007; (4) the Drawings identified in the GMP Amendment; and (5) the Project Specifications identified in the GMP Amendment. Without limiting the foregoing, the terms of the Agreement and the Modified A201-2007 shall control over any terms in the Drawings or Specifications inconsistent therewith.

Construction Manager has the responsibility to provide the most cost-effective procurement and construction methodology consistent with the Owner's goals for the Project. Construction Manager shall have overall responsibility for and will provide complete Preconstruction Phase services and, subject to the provisions hereof regarding Owner's acceptance of the Guaranteed Maximum Price, Construction Phase services. Construction Manager shall furnish all materials, equipment, tools and labor as necessary or reasonably inferable to complete the

work, in accordance with Owner's requirements and the terms of the Contract Documents. During the Preconstruction Phase, Construction Manager shall develop the GMP Proposal which shall include, without limitation, a Guaranteed Maximum Price and associated schedule for the Construction Phase and building systems commissioning. Should the GMP Proposal be unacceptable to the Owner, Owner reserves the right (in its sole and absolute discretion) to request from other firms competitive proposals with respect to the Project and to obtain different contractor to perform the Construction Phase services or any portion thereof. Owner and Construction Manager contemplate that the work to be performed pursuant to the Contract Documents for the entire Project will be performed in separate and distinct work packages. Therefore, the terms and conditions set forth in this Agreement shall not only apply to the Work as it relates to the entire Project but to each individual work package, as well. Unless otherwise noted, the obligations and duties of each party to this Agreement shall apply to each work package to the extent applicable with the same force and effect as they do to the entire Project. Construction Manager recognizes that various external factors will influence the Owner's decision whether or not it desires to have one or more of the work packages designed and constructed by Construction Manager in accordance with the terms and provisions of this Agreement. Accordingly, Owner reserves the right to decide that it does not want one or more of the work packages initiated and/or completed as contemplated by this Agreement.

§ 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Owner, PM and Architect and exercise the Construction Manager's best skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; to perform the Work in an expeditious and economical manner consistent with the Owner's interests; and to perform the Work defined in the Contract Documents in accordance with the Owner's requirements and construction cost limitations, as approved by the Owner. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager, subject to the ability of The Owner's ability as a governmental agency to provide information, and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 1.3 General Conditions

For the Preconstruction Phase, the Modified AIA Document A201™–2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in the Modified A201–2007, which document is incorporated herein by reference. The term "Contractor" as used in the Modified A201–2007 shall mean the Construction Manager.

§ 1.4 Registrations, Approvals and Laws

The Construction Manager and all of its consultants, trade contractors, subcontractors and suppliers shall at all time each is performing Work or services in connection with the Project possess and maintain all registrations, licenses, certifications and approvals necessary for the performance of any requirements of this Agreement. It is the Construction Manager's duty to monitor the compliance of the consultants, trade contractors, subcontractors and suppliers with, and to enforce, the requirements of this provision. The Construction Manager shall, upon request, promptly provide evidence of compliance with such registrations, licenses, certifications and approvals.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 2.1 Preconstruction Phase

§ 2.1.1 In addition to the services described in this Section 2.1, the Construction Manager shall provide the Preconstruction Phase services described in Exhibit H. The Construction Manager shall provide a preliminary written evaluation and report, not later than the 30th day following delivery of the Notice to Proceed under this Agreement, of the Owner's program, design, schedule and construction budget requirements, each in terms of the other, identifying any possible conflicts, discrepancies or concerns that may negatively impact the Project.

§ 2.1.2 Consultation

The Construction Manager shall schedule, conduct and document meetings with the PM, Architect and Owner to discuss such matters as procedures, progress, coordination and scheduling of the Work. The Construction Manager shall advise the Owner, PM and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also submit written recommendations consistent with the Project requirements to the Owner, PM and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; construction which shall satisfy the Owner's time requirements; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 2.1.2.1 Throughout the Preconstruction Phase, the Construction Manager shall review and monitor the various phases of the development of the design documents to determine whether or not the Project as designed by the Architect can meet the budget and schedule goals of the Owner. It is the desire of the Owner to recognize any likely budget and schedule overruns as soon as possible, and by this Agreement it is employing the Construction Manager to review the design documents for constructability and to provide estimating services, value engineering services, Project scheduling services, and to perform other Preconstruction Phase Services described herein to help the Owner meet the project budget and schedule. At any time that Construction Manager develops misgivings about the integrity of the Project budget and/or schedule, Construction Manager is to promptly advise the Owner, PM and Architect in writing of the misgivings, and make any suggestions Construction Manager may have as to how to address the problem.

§ 2.1.2.2 During the Pre-Construction Phase, the Construction Manager shall review the Contract Documents to ascertain whether the components of the plumbing, electrical, technology, life safety and mechanical systems may be constructed without interference with each other, or with the structural or architectural components of the Project. In the event that conflicts between the systems are discovered, the Construction Manager shall promptly notify the Owner, PM and Architect in writing.

§ 2.1.2.3 Notwithstanding any provision of the Contract Documents to the contrary, the Construction Manager shall not be entitled to additional compensation for any delay or disruption to the Work arising from any conflict between the mechanical, electrical, technology, life safety and plumbing systems with each other, or with the structural or architectural components of the Work, if such conflicts could have been discovered during the Preconstruction Phase by the Construction Manager through the exercise of reasonable diligence, and the Owner, PM and Architect were not informed of such conflicts as required by Paragraph 2.1.2.2. This provision shall apply only with respect to conflicts appearing in the Drawings and Specifications provided for the Construction Manager's review prior to proposal of a Guaranteed Maximum Price.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project Schedule in coordination with the PM's project schedule, for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the PM's and Architect's approval for the portion of the Project Schedule relating to the performance of the PM's and Architect's services, respectively. The Project Schedule shall coordinate and integrate the Construction Manager's services, Construction Manager's subcontractors' services, the PM's services, the Architect's services, other Owner, Architect or PM's consultants' services (such as materials testing, test & balance and commissioning), FF&E procurement, move-in activities, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; proposed date of Substantial Completion; proposed date of Final Completion; and the occupancy requirements of the Owner.

§ 2.1.4 The duration of the Preconstruction Phase, in terms of the Construction Manager's scope of work, shall extend from the Notice to Proceed for this Agreement until a Final Guaranteed Maximum Price is formally accepted by the Owner's governing body and the GMP Amendment is signed.

§ 2.1.5 Preliminary Cost Estimates

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the

Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at 100% Schematic Design, 100% Design Development, and 50% Construction Documents, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a final Guaranteed Maximum Price for the Work, which shall be issued by the Construction Manager prior to the 95% Construction Documents being issued by the Architect. Such estimates shall be provided for the PM's and Architect's review and the Owner's approval. The Construction Manager shall inform the Owner, PM and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action for cost reductions, including but not limited to, substitution of materials or revisions or alterations to the design to bring the Project within the Owner's budget, but without deleting necessary components of the Project without Owner's consent. In the event that the quality or scope identified in the estimates are unacceptable or exceed the Owner's identified budget, the Construction Manager shall work with the PM and Architect to develop options that are acceptable to Owner and are within the Owner's budget.

§ 2.1.6 Phased Construction

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues. The Construction Manager shall make recommendations to the Owner, PM, and Architect regarding the phased issuance of Drawings and Specifications. The Construction Manager may be required to issue an early Guaranteed Maximum Price, subject to the terms of Section 2.2, prior to the Construction Documents phase, to accelerate the start of site demolition, site utilities, and structural components. If an early Guaranteed Maximum Price is submitted and accepted by the Owner, the Construction Manager shall not be allowed to use the final Guaranteed Maximum Price to cover any losses for scopes of work covered in any early Guaranteed Maximum Price, to the extent the scope of work was not materially changed.

§ 2.1.7 OMITTED

§ 2.1.8 Extent of Responsibility

The Construction Manager shall exercise level of care exercised by nationally-recognized construction management firms in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect, PM and Owner any nonconformity discovered, or in the exercise of reasonable diligence should have discovered, by or made known to the Construction Manager as a request for information in such form as the PM or Architect may require.

§ 2.1.9 Notices and Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities for inclusion in the Contract Documents. Such compliance includes, without limitation, compliance with all applicable provisions of Chapter 2269 of the Texas Government Code government public work procurement by Construction Manager At-Risk.

§ 2.1.10 Value Analysis

Construction Manager shall, in consultation with the PM, assist the Owner and the Architect in performing value analysis studies on construction systems and major construction components, including but not limited to the mechanical system, exterior envelope, structural system, roofing system, lighting and power service. Construction Manager shall submit a Value Analysis report no later than the 50% Construction Document set.

§ 2.2 Guaranteed Maximum Price Proposal and Contract Time

§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the PM and Architect, but in no case later than 30 days following the Owner's approval of the 50% Construction Documents, the Construction Manager shall prepare a final Guaranteed Maximum Price proposal for the entire Project Work for the Owner's review and acceptance. The Guaranteed Maximum Price proposal shall be computed as the sum of the following:

- .1 the Construction Manager's Estimated Cost of the Work (as approved by the Owner) which consists of the sum of the guaranteed or fixed prices of the Work and any reasonable, good faith estimate of the cost of the balance of the Work.;
- .2 the Construction Manager's General Conditions Fee (to the extent that they are segregated from the Cost of the Work) pursuant to Section 5.1.5 below;
- .3 the Construction Manager's contingency pursuant to (and as limited by) Sections 2.2.4 and 5.2.1.2 below;
- .4 the Construction Manager's Fee in accordance with Section 5.1.1 below; and
- .5 Allowances as approved by the Owner, which may (but shall not be required to) include an Owner's Contingency.

The Owner shall be entitled to full access to the details of the process of developing the Guaranteed Maximum Price proposal. It is the intent of this Agreement that allowances, assumptions, clarifications, and any other elements that could lead to change orders after the Guaranteed Maximum Price is approved be held to a minimum.

§ 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order, unless otherwise noted in the GMP Proposal and associated assumptions and clarifications.

§ 2.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;
- .4 An updated Project Schedule, to include all major construction milestones, and the anticipated date of Substantial Completion and Final Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price not less than 30 days following the submission of the proposal.

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency ("**Construction Contingency**") for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order. The Construction Contingency may be required for costs incurred in the Work from unforeseeable causes, or details which should have been anticipated by the Construction Manager at the time of the Owner's approval of the Guaranteed Maximum Price. Such unforeseeable causes or unanticipated details include, but are not limited to, refinement of details of design within the scope of standards, quality and quantities which are reasonably inferable from the Guaranteed Maximum Price documents, the correction of minor defects not relating to design, delays in receipt of materials, and additional costs relating to Subcontractor defaults not reimbursed by the Subcontractor's bonding company. Only those items of cost that meet the definition of Cost of the Work under Section 6.1 may be charged against the Construction Contingency. Any unforeseeable causes or unanticipated details that exceed the

Construction Contingency shall be borne by the Construction Manager at the Construction Manager's sole risk and expense.

It is expressly understood and agreed that, to the extent a Change Order is warranted under the terms of this Agreement, the Construction Contingency shall not be utilized. Sums may be charged to the Construction Contingency only to the extent the same have been paid or are to be paid by the Construction Manager. Notwithstanding anything in the Contract Documents to the contrary, no charge shall be made against the Construction Contingency without Owner's written consent, such consent not to be unreasonably withheld. The Guaranteed Maximum Price shall also include any contingency established by the Owner which is defined as an allowance established by the Owner for the Owner's exclusive use. Upon final accounting, all remaining monies in the Construction Contingency and any Owner's contingency shall accrue to the Owner.

§ 2.2.5 The Construction Manager shall meet with the Owner, PM and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner, PM or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both. If the Guaranteed Maximum Price proposal submitted to the Owner exceeds the Owner's budget, the Construction Manager shall make appropriate recommendations to the Owner, PM and Architect for cost reductions, including but not limited to, substitution of materials or revisions or alterations to the Design, to bring the Project within the Owner's budget, but shall not delete necessary components of the Project without Owner's express written consent. In the event that the quality or scope identified in the Guaranteed Maximum Price proposal are unacceptable or exceed the Owner's identified budget, the Construction Manager shall work with the Owner, PM and Architect to develop options that are acceptable to Owner, that are within the Owner's budget, and that meet the Owner's requirements for dates of Substantial Completion and Final Completion.

§ 2.2.6 Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the PM and Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase.

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner, PM and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

§ 2.2.9 The Construction Manager shall include in the Guaranteed Maximum Price any sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted and enforceable against the Owner, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed; provided, however, that the Construction Manager shall take such steps as necessary to not incur any taxes charges from which the Owner is exempt, and the Owner shall pay no such taxes to which it is exempt.

§ 2.3 Construction Phase

§ 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of the Modified A201–2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal.

§ 2.3.2 Administration

§ 2.3.2.1 The Construction Manager shall enter into contracts with the trade contractors, subcontractors and suppliers that have been selected as provided in this Agreement.

§ 2.3.2.2 The contracts with the trade contractors, subcontractors and suppliers shall use contract forms submitted to the Owner, PM and Architect and deemed by Owner acceptable to the Owner and that pass through all requirement, obligations and duties that the Construction Manager owes Owner under this Agreement. The Owner shall be made a third-party beneficiary of such contracts.

§ 2.3.2.3 The contracts with the trade contractors, subcontractors and suppliers shall conform to the applicable payment and other procedural provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee.

§ 2.3.2.4 The Construction Manager shall not enter into a contract with a “related party” according to Section 6.10.

§ 2.3.2.5 The Construction Manager, in coordination with the Program Manager, shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner, PM and Architect.

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner, PM and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201–2007.

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written monthly progress reports to the Owner, PM and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and submit to the Owner and PM, a daily log containing a record for each day of weather, portions of the Work in progress detailed with work areas and trades, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the PM and Owner. The daily log shall be submitted to Owner and PM at any time during work hours and shall be presented for discussion at the meetings referenced in § 2.3.2.5 above.

§ 2.3.2.8 The Construction Manager shall with the PM develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress, including changes to the Work approved by Owner, and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner, PM and Architect and shall provide this information in its monthly reports to the Owner, PM and Architect, in accordance with Section 2.3.2.7 above.

§ 2.3.2.9 To the extent that any portion of the Work requires a trench excavation exceeding five (5) feet in depth, in accordance with Texas Health and Safety Code Section 756.023(a), Construction Manager shall fully comply, and shall require any applicable subcontractor to comply, with:

- .1 The Occupational Safety and Health Administration standards for trench safety in effect for the Construction of the Work.
- .2 The special shoring requirements, if any, of the Owner.
- .3 Any geotechnical information obtained by Owner for use by the Construction Manager in the design of the trench safety system.

§ 2.3.2.10 Trench excavation safety protection shall be a separate pay item, and shall be based on linear feet of trench excavated. Special shoring requirements shall also be a separate pay item, and shall be based on the square feet of shoring used. Said cost shall be included within the Guaranteed Maximum Price.

§ 2.3.2.11 Trade Contractors, Subcontractors & Suppliers

§ 2.3.2.11.1 The Construction Manager shall publicly advertise for, in cooperation with the PM and Architect, and distribute all necessary bidding materials and receive bids or proposals from trade contractors, subcontractors, and suppliers, some of which may be designated by County, for the performance of all major elements of the Project Work. Any bids received before Owner’s acceptance of the GMP Proposal shall remain open until after the acceptance by Owner of the GMP Proposal. The Construction Manager may seek to self-perform portions of the Work required to be publicly advertised. If the Construction Manager submits its own proposal for any portion of the Work, it shall do so in the same manner as required of all trade contractors, subcontractors, and suppliers and

submit shall submit its proposal(s) to the PM at least twenty-four (24) hours prior to the published opening of bids. Owner, in consultation with the PM, shall decide whether or not Construction Manager's proposal for self-performing portions of the Project offers the best value to Owner. In opening proposals, neither Construction Manager nor Owner shall disclose the contents of a proposal. All proposals shall be made public pursuant to Texas law. If Construction Manager's proposal is selected by the Owner, the proposed cost for the self-performed work shall be paid to the Construction Manager, pursuant to progress payments, as if Construction Manager were a subcontractor. Such payments to Construction Manager shall be included in the Cost of the Work.

All trade contractors, subcontractors, and suppliers shall be selected on the basis of "best-value" to the Owner, utilizing the Competitive Sealed Proposals procurement process.

The Construction Manager shall adhere to and include among the other terms for bidding the following specific requirements of bidders in the information to proposers:

- .1 The successful proposer's responsibility to provide workers' compensation insurance in accordance with Texas Labor Code Chapter 406;
- .2 The successful proposer's responsibility to pay prevailing wages pursuant to Texas Government Code Chapter 2258;
- .3 A notice of the sales tax exemption for the Work and the procedure for obtaining any required exemption verification or certificate;
- .4 The notice regarding trench and shoring safety required by Texas Health and Safety Code Section 756.02;
- .5 Any other notice required by Owner.

Nothing herein shall preclude the Construction Manager from including other notices required or allowed by law. The Construction manager shall meet the requirements of Chapter 2269, Subchapter F, with respect to selection of and contracting with trade contractors, subcontractors and suppliers.

§ 2.3.2.11.2 The Construction Manager shall review all trade contractor and subcontractor bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process to a person not employed by the Owner, PM or Architect or any other professional retained by the Owner. All bids or proposals shall be made available to the Owner on request and to the public after the later of the award of the contract or the seventh day after the date of final selection of bids or proposals. The Construction Manager shall prepare a Trade Contractor evaluation packet for each bid package with a recommended trade contractor for award. The evaluation packet shall identify all the bidders, their original proposals, any modifications or "bid-levelling", and any non-cost based evaluations used to make the final recommendation. The evaluation packet shall be submitted to the PM and Owner for review. Construction Manager will be allowed to enter into a subcontract with the recommended bidder if no objections are received from either the PM or Owner within seven (7) calendar days after the evaluation packet is submitted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection. If the Construction Manager reviews, evaluates, and recommends to the Owner a bid or proposal from a trade contractor or subcontractor but the Owner requires another bid or proposal to be accepted, the Owner shall compensate the Construction Manager by an adjustment to the Guaranteed Maximum Price for any additional cost and risk that the Construction Manager incurs because of the Owner's requirement that another bid or proposal be accepted.

§2.3.3 Time, Milestones and Liquidated Damages

§2.3.3.1 The Contract Time with regard to the Construction Phase Services shall be measured from the date of commencement of the Work as provided pursuant to Section 2.3.1.1.

§2.3.3.2 The time of performance of the Construction Manager is the essence of this Agreement. The Construction Manager shall diligently prosecute the Work and achieve Substantial Completion of the Work within the Contract Time requirements set forth in Guaranteed Maximum Price Amendment, subject to adjustments as provided in the Contract Documents. After Substantial Completion, the Construction Manager shall diligently continue to prosecute the Work to final completion and shall achieve final completion of the punch list within thirty (30) days of Substantial Completion and final completion of all other requirements of the Contract Documents within sixty (60) days of Substantial Completion, subject to adjustments as provided in the Contract Documents.

§2.3.3.3 Owner retains the right to identify specific areas of the Project for early Substantial Completion sufficient to allow for installation of Owner's equipment, furniture, millwork, phased use or partial occupancy of the facility. The parties acknowledge that a Modification of the Agreement may create milestones requiring certain phases or scopes of work to be substantially performed or completed at certain specified times. Collectively, the times required for early Substantial Completion and the milestones described above are referred to in the Contract Documents as "Critical Milestones." The Construction Manager's performance of Critical Milestones made a part of the Agreement are critical elements of the Contract Time requirements under the Agreement and are "of the essence" of the Agreement.

§2.3.3.4 The Owner reserves the right to modify or revise the Critical Milestones and any agreed construction schedule by written notice to Construction Manager. In the event that Construction Manager intends to request an increase in the Contract Sum or Contract Time as a result of such modification or revision of the Critical Milestones or the construction schedule, the Construction Manager shall comply with the notice requirements set forth in Section 15.1.2 of the Modified A201-2007.

§2.3.3.5 In the event Construction Manager shall fall behind schedule for any reason that does not justify an extension under Section 8.3 of the Modified A201-2007 of the Substantial Completion Date, Construction Manager shall, within 10 days after written request of Owner, develop and deliver a recovery plan to the Owner and PM with a recovery schedule and a program describing the additional manpower, overtime, material expediting, re-sequencing of the Work and other steps necessary for Construction Manager to meet the requirements of the Contract with regard to the Contract Time. Construction Manager shall not be entitled to compensation from the Owner or any increase in the Contract Sum for the schedule recovery efforts, except as to causes of delay for which a time extension is allowed under Section 8.3 of the Modified A201-2007. No approval or consent by the Owner or any plan for re-sequencing or acceleration of the Work submitted by Construction Manager pursuant to this Section shall constitute a waiver by Owner of any damages or losses that Owner may suffer by reason of such re-sequencing or the failure of the Construction Manager to meet the Substantial Completion Date.

§2.3.3.5.1 Owner shall additionally be entitled to direct the acceleration or re-sequencing of the Work in order to achieve completion prior to the required date for Substantial Completion, and Construction Manager shall be reimbursed for all additional costs actually incurred in respect thereto limited to the Cost of the Work, and Construction Manager shall be entitled to an increase adjustment to the GMP therefor. Before proceeding with any such Owner-directed acceleration plan under this subsection, the Construction Manager shall have received a duly prepared and authorized Change Order equitably adjusting the GMP in accordance with this Section 2.3.3.5.1.

§2.3.3.5.2 Notwithstanding any provision of the Contract Documents to the contrary, to the extent the Work is simultaneously delayed by a cause of delay for which Construction Manager is responsible and a cause of delay for which a time extension is allowed under Section 8.3 of the Modified A201-2007, Construction Manager's sole remedy will be an extension of the Contract Time without additional compensation.

§ 2.3.3.6 The agreed Substantial Completion Date anticipates that the Work will be delayed by the following number of days each month due to adverse weather and/or resulting site conditions:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
4	4	4	4	6	4	3	3	4	4	3	4

Work shall be considered delayed due to adverse weather and/or resulting site conditions only if Construction Manager is prevented from performing critical path activities for 50% or more of a day on which Construction Manager had scheduled to perform Work. Construction Manager will record on a daily basis whether its job progress has been materially affected by such conditions or resulting site conditions. Any such day lost due to adverse weather conditions or resulting site conditions shall be documented by independent weather records and photographs and shall, if reasonably possible, be made up by Construction Manager performing work on the ensuing Saturday or by extended hours during that week, and treating such as a work day for the purpose of complying with and meeting Construction Manager's construction schedule, it being understood that no application for extension of time will be made unless the critical path of the Project is affected. The Construction Manager will provide written explanation and CPM schedule evidencing such impact has occurred. Construction Manager will notify Owner and PM of any such delay in writing, and on a monthly basis submit a report to the Owner and PM substantiating any

days claimed to have been lost, over and above those allotted for in in this Section 2.3.3.6, due to adverse weather conditions and resulting site conditions. Each month, the parties shall agree in writing to the actual days lost for such delay and shall execute a Change Order after Substantial Completion equitably adjusting the Contract Time for the cumulative total of such days.

§ 2.3.3.7 Liquidated Damages.

§ 2.3.3.7.1 The Construction Manager acknowledges and agrees that, if the Construction Manager fails to achieve Substantial Completion of a Milestone or the entire Work, as such dates may be amended from time to time in accordance with the Contract Documents, the Owner will sustain extensive damages and serious loss as a result of such failure. The exact amount of such damages will be difficult to ascertain. Therefore, the Owner and Construction Manager agree that, if the Construction Manager shall neglect, fail or refuse to achieve Substantial Completion of a Milestone or the entire Work by the date required by the Contract Documents for Substantial Completion of such Milestone or the entire Work, subject to adjustments in the Contract Time as provided in the Contract Documents, then the Construction Manager (and the Construction Manager's surety in the case of default) agrees to pay to the Owner as liquidated damages, and not as a penalty or forfeiture, Two Thousand, Five Hundred Dollars (\$2,500.00) per calendar day for each day of such delay, subject to the limitations and potential reductions set forth in this Section 2.3.3.7. Such liquidated damages are hereby agreed to be a reasonable pre-estimate of damages the Owner will incur as a result of delayed completion of the Work. The Owner may deduct liquidated damages described in this Subsection from any unpaid amounts then or thereafter due the Construction Manager under this Agreement. Any liquidated damages not so deducted from any unpaid amounts due the Construction Manager shall be payable to the Owner at the demand of the Owner, together with interest from the date of the demand at a rate equal to the lesser of the highest lawful rate of interest payable by the Construction Manager or 7% *per annum*. The liquidated damages established in this Section 2.3.3.7 shall be the Construction Manager's sole liability for delay in achieving Substantial Completion of the Work by the date required by the Contract Documents. In no event shall Construction Manager be liable for aggregate liquidated damages in excess of Two Hundred, Fifty Thousand Dollars (\$250,000.00).

Notwithstanding any provision of the Contract Documents to the contrary, in the event multiple Milestones are subject to an unexcused delay, the Construction Manager shall only be assessed liquidated damages in connection with the Milestone for which the highest total liquidated damages are owed.

§ 2.3.4 Additional Requirements for the Work

§ 2.3.4.1 The Construction Manager shall fully and properly execute all of the Work described in the Contract Documents and reasonably inferable therefrom, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

§ 2.3.4.2 The Construction Manager shall confine its operations and restrict its staging and storage of machinery, equipment, and materials to those areas within the Project site or to such other areas authorized in writing by the Owner (the "**Staging Areas**") and shall operate in accordance with the logistics plan prepared by the Construction Manager in consultation with the PM and approved by Owner ("**Logistics Plan**"). Construction Manager shall not unduly encumber the Project site and adjacent areas with any materials or equipment and shall cooperate with Owner's separate contractors in providing reasonable access to and within the Project site and any construction occurring there and in adjacent areas. The Project site and Staging Areas shall be maintained at all time in an organized and clean manner.

§ 2.3.4.2.1 The Owner reserves the right to make reasonable modifications or revisions to the Construction Manager's Logistics Plan by written notice to Construction Manager. In the event that Construction Manager intends to request an increase in the Contract Sum or Contract Time as a result of such modification or revision of the Construction Manager's Logistics Plan, the Construction Manager shall comply with the notice requirements set forth in Section 4.3 of the Modified A201-2007.

§ 2.3.4.3 The Construction Manager shall furnish only skilled and properly trained staff for performance of the Work. The key members of the Construction Manager's staff shall be persons identified in the Construction Manager's Statement of Qualifications and agreed upon with the Owner, any such agreement not to be unreasonably withheld. Such key members of the Construction Manager's staff shall not be changed without the written consent of the Owner, unless such person becomes unable to perform any required duties due to death, disability, transfer, or

termination of employment with the Construction Manager. Without limiting the foregoing, during the performance of the Work, the Construction Manager shall keep a competent superintendent at the Project site at all times whose work responsibilities are solely dedicated to the Project, who is fully authorized to act on behalf of the Construction Manager. Notice from the Owner to such superintendent in connection with defective Work or instructions for performance of the Work shall be considered notice of such issues to the Construction Manager. Construction Manager shall remove from the Project any of Construction Manager's employees which Owner reasonably determines to be incompetent, unfit or otherwise objectionable.

§ 2.4 Professional Services

Section 3.12.10 of the Modified A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 2.5 Hazardous Materials

Section 10.3 of the Modified A201–2007 shall apply to both the Preconstruction and Construction Phases.

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 3.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.

§ 3.1.3 The Owner has established an overall budget for the Project based upon consultation with the Construction Manager, PM and Architect, which may include contingencies, as determined in the Owner's sole discretion, for Changes in the Work and other costs that are the responsibility of the Owner.

§ 3.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. Such documents shall be provided for information only and are not warranted or represented to show the conditions at the Project site accurately. Construction Manager may use the information at its own risk and shall use customary and reasonable precautions relating to the performance of the Work. Construction Manager shall perform all Work to avoid damaging any cables, pipes, pipelines and other utilities on the Property. Construction Manager shall be responsible for any damage done to such cables, pipes, pipelines and other utilities during the Work.

§ 3.1.4.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 3.1.4.2 The Architect shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 3.1.4.3 The Architect shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 3.1.4.4 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's Designated Representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of Modified A201–2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's Designated Representative. Owner's Designated Representative shall have authority to act on behalf of the Owner, including appropriate reviews and approvals, with respect to the Project in all circumstances, including Applications for Payment and Allowance Expenditure Authorizations, except as follows: (1) approval of the Guaranteed Maximum Price Amendment; (2) approval of Change Orders increasing the Guaranteed Maximum Price in excess of \$50,000; and (3) approval of Change Orders increasing the contractual duration. The Owner's Designated Representative has only such authority as granted by the Commissioners' Court of the Owner.

§ 3.2.1 Legal Requirements. The Owner shall furnish such legal, insurance and accounting services, including auditing services, as it may determine are reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 3.3 Architect

The Owner has retained an Architect to provide services, duties, and responsibilities as described in the agreement between the Owner and Architect. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect. Owner reserves the right to change the Architect at any time or to modify the terms of its contractual agreement with the Architect. Owner shall give Construction Manager reasonably timely notice of any termination or replacement of the Architect and of any material changes in its contractual agreement with the Architect that bears on the Work hereunder or the responsibilities or liabilities of the Construction Manager arising under this Agreement

§ 3.4 Program Manager

The Owner has retained a Program Manager to provide services, duties, and responsibilities as described in the agreement between the Owner and Program Manager. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Program Manager. Owner reserves the right to change the Program at any time, to modify the terms of its contractual agreement with the Program Manager or to terminate the Program Manager, with or without a replacement. Owner shall give Construction Manager reasonably timely notice of any termination or replacement of the Program Manager and of any material changes in its contractual agreement with the Program Manager that bears on the Work hereunder or the responsibilities or liabilities of the Construction Manager arising under this Agreement

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

§ 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2:
(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

«A lump sum of Five Hundred, Fifteen Thousand and Sixty-Five Dollars (\$515,065) , which includes consideration for all expenses necessary to timely and properly deliver all Preconstruction Phase services. »

§ 4.1.3 Omitted.

§ 4.1.4 Compensation based on Direct Personnel Expense, if any, includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

§ 4.2 Payments

§ 4.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice with all supporting documentation as reasonably required by the Owner. Amounts unpaid « » (« ») days after the invoice date shall bear interest at the rate entered below:

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds for the proper and timely performance of this Agreement. The "Contract Sum" is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee and General Conditions Fee, plus the Contractor's Contingency, plus any other allowances, the total of which shall not exceed the Guaranteed Maximum Price. For the purposes of Article 5, the Contract Sum does not include any Preconstruction Phase compensation.

§ 5.1.1 The Construction Manager's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

«»« The "Construction Manager's Fee" for the Work shall be two and two tenths percent (2.2 %) of the Contract Sum minus the sum of the General Conditions Fee as defined in Section 5.1.5 and minus any Construction Manager Fee paid or to be paid. The Construction Manager's Fee, generally, shall include all home office expenses, profit, overhead, transportation, travel, meals, and lodging, legal fees, internal accounting, relocation expenses, administrative support, office trailer equipment & supplies, office printing, training, licensing, and other expenses as detailed in Exhibit D, Division of Cost Elements. »

§ 5.1.2 The method of adjustment of the Construction Manager's Fee for changes in the Work:

« The Construction Manager's Fee shall be adjusted by Change Order that modifies the final and duly accepted Guaranteed Maximum Price, by three percent (3%). »

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

See A201-2007, § 7.1.6.

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed «ninety» percent («90» %) of the standard rate paid at the place of the Project.

§ 5.1.5 The General Conditions Fee

The General Conditions Fee shall be identified separately on the GMP Amendment as a not-to-exceed reimbursable expense, subject to the limitations of General Conditions Fee as submitted in the original Request for Proposals. The General Conditions Fee is the Construction Manager's direct cost necessary to execute the Work, which includes the professional staff's (such as Project Executive, Project Manager, Superintendent, etc.) labor cost (salary and labor burden), project safety measures (such as First Aid kits, Barricades, Temporary Fencing, Temporary Parking, golf carts, etc.), office trailer installation and rental, on-site sanitary facilities, on-site technology requirements, drinking water & ice, temporary water and power expenses, project signs, dumpsters, plan reproductions, construction

photographs and videography, builder's risk insurance, small tools, equipment rental charges for use by Construction Manager not included in Section 6.5.1, and other expenses as detailed in Exhibit D, Division of Cost Elements.

The Construction Manager shall submit detailed receipts, invoices, and other substantiating material as may be required by Owner and PM to verify the General Conditions Fee on a monthly basis. At the end of the project, unspent General Conditions Fee shall be returned to the Owner subject to the terms of 5.2.4. Expenses exceeding the not-to-exceed General Conditions Fee as identified on the GMP Amendment shall be the sole responsibility of the Construction Manager (Contractor's Contingency may not be used to cover overages in the General Conditions Fee).

Changes to the General Conditions Fee will only be considered with a valid Time Extension claim. The GMP Amendment should include the hourly rates, including provisions for escalation, for each of its staff members as assigned under the General Conditions Fee, to serve as the basis for any potential time extension evaluation.

§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Contract Sum exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.

§ 5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

§ 5.2.3 Buyout Savings

As Trade Contractors, Subcontractors, and Suppliers are procured pursuant to Section 2.3.2.11, the Construction Manager shall maintain a buyout log, indicating any potential savings from the procured subcontractors against the Estimated Cost of Work in the GMP Amendment. At ninety (90) days following the Owner's acceptance of the Guaranteed Maximum Price, the Construction Manager and PM shall meet to review the buyout log and identify any actual savings from the sum of all procurements to-date against the Estimated Cost of Work. If Construction Manager and PM mutually agree that actual savings exist, those savings will be transferred out of the Cost of Work into an Owner-controlled allowance within the Contract, for Owner's exclusive use, without the need for a Change Order. Any funds transferred in this manner will no longer be available for the use of the Construction Manager to fund the Cost of Work. Following the initial meeting, the Construction Manager and PM shall continue to meet every sixty (60) days to review the buyout log and identify any potential savings that may continue to accrue.

§ 5.2.4 Guaranteed Maximum Price Savings

Should the final audited Contract Sum be less than the Guaranteed Maximum Price set forth in the GMP Amendment, as it is amended from time to time, those savings, including remaining Contractor's Contingency, unspent General Conditions, and any other allowances, if any, shall be returned to the Owner in the form of a final deductive Change Order at the end of the Project, inclusive of any Construction Manager's fee applicable to those savings.

§ 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work, as provided in the Modified A201-2007.

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of the Modified AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of the Modified AIA Document A201-2007

and the term “costs” as used in Section 7.3.7 of the Modified AIA Document A201–2007 shall have the meanings assigned to them in the Modified AIA Document A201–2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner’s prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms “cost” and “costs” as used in the above-referenced provisions of the Modified AIA Document A201–2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term “fee” shall mean the Construction Manager’s Fee as defined in Section 5.1 of this Agreement.

§ 5.3.5 Except as otherwise expressly provided herein or in the GMP Amendment, in calculating an adjustment to the Guaranteed Maximum Price for a change in the Work, such adjustment shall be based upon the actual increase or reduction of such costs rather than a percentage or otherwise predetermined mark-up or mark-down. The Construction Manager will not be automatically entitled to additional Construction Manager’s Fee or General Conditions Fee, but will rather be required to detail any costs, if any, that may be required to deliver the change. Generally, no additional Construction Manager’s Fee or General Conditions Fee will be allowed if the Contract Time is not extended.

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

§ 6.1.1 The term “Cost of the Work” shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

§ 6.1.2 Where any cost is subject to the Owner’s prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

§ 6.2 Construction Manager’s Labor Costs

All of Construction Manager’s labor costs necessary to oversee the Work shall be included in the Construction Manager’s Fee or General Conditions Fee, as appropriate. All Construction Manager’s labor costs directly associated with a trade contractor work package will be treated as a subcontract cost, to the extent the labor utilized to deliver those subcontract services does not duplicate the administrative or oversight services detailed in Section 5.1.

§ 6.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

§ 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 6.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner’s property at the completion of the Work or, at the Owner’s option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 6.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value. This Section 6.5.1 is limited to those items not covered by Section 5.1.

§ 6.5.2 Omitted.

§ 6.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 6.5.4 Omitted.

§ 6.5.5 Omitted.

§ 6.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval and specified insurance and bonding requirements.

§ 6.6 Miscellaneous Costs

§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 6.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable and the Owner has no exemption.

§ 6.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

§ 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201–2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of the Modified AIA Document A201–2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work. Construction Manager will promptly notify Owner in writing if Construction Manager discovers that a particular design, process or product required of Construction Manager under the Contract Documents requires the payment of a license fee or royalty. Upon receipt of such notice, the Owner shall advise promptly Construction Manager whether or not the Owner is willing to pay such license fee or royalty. If Owner is not willing to pay such license fee or royalty, the Owner shall cause the Architect to revise the Contract Documents as necessary to eliminate the need for such license fee or royalty to be paid, and the Contract Time and GMP shall be adjusted accordingly.

§ 6.6.6 Omitted.

§ 6.6.7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 6.6.8 Omitted

§ 6.6.9 Omitted.

§ 6.7 Other Costs and Emergencies

§ 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of the Modified AIA Document A201–2007, provided that the emergency is not caused by the negligence or failure to fulfill a specific responsibility of the

Construction Manager to the Owner as set forth in the Contract Documents or the failure of the Construction Manager's personnel to adequately supervise the Work of the Subcontractors.

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors of any tier or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recoverable by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others. Construction Manager shall notify the Owner before incurring costs described in this Section 6.7.3. The Contractor's contingency may be utilized to cover these costs, with the prior written authorization of Owner.

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

§ 6.8 Costs Not To Be Reimbursed

§ 6.8.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors of any tier and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;
- .8 Costs for services incurred during the Preconstruction Phase;
- .9 Subject to and as limited by Section 9.3.3 of the Modified A201-2007, costs and expenses arising from Construction Manager's indemnity obligations; and
- .10 Costs to repair defective Work and other costs to comply with Construction Manager's warranty obligations under the Agreement, except as may be expressly included in Section 6.7.3 above.

§ 6.9 Discounts, Rebates and Refunds

§ 6.9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Construction Manager shall take reasonable advantage of all available discounts, rebates and refunds for supplies, materials and equipment connected with the Work and that conform to the Contract Documents. Such discounts, rebates and refunds shall accrue to the benefit of the Owner. Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, in its sole discretion authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor. If the Owner does not so authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of this Agreement and applicable procurements laws.

§ 6.11 Accounting Records

The Construction Manager shall keep full and detailed records, Project files and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner and maintain records according to GAAP. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract and the Work hereunder, including but not limited to all records and back-up documentation relating to reimbursable expenses and Cost of Work items. The Construction Manager shall preserve these records for a period of five years after final payment, or for such longer period as may be required by law.

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

§ 7.1.1 The Construction Manager shall submit monthly Applications for Payment to both the Architect and PM (with a copy to Owner), on AIA Form G702 and continuation sheets on AIA Form G703, as modified and included in Exhibit E, for approval. Upon approval by PM and Architect, PM shall forward the approved Application for Payment to the Owner. Based upon Applications for Payment submitted to the Owner, the PM and the Architect by the Construction Manager, with all supporting documentation as herein provided and Certificates for Payment issued by the PM or Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents.

- .1** During the final week of the month immediately preceding a month in which the Construction Manager will submit an Application for Payment, the Owner, the PM, Architect and the Construction Manager shall meet to review a preliminary draft of such Application for Payment (hereinafter referred to as a "**Pencil Draw**") prepared by the Construction Manager. Each line item will be reviewed and either accepted or noted for changes. The Owner may withhold approval for charges as provided in Modified A201-2007.
- .2** The Construction Manager shall revise the Pencil Draw in accordance with any bona fide dispute about the Work, objection or recommendation of the Owner, PM or the Architect that is consistent with the requirements of the Contract Documents. Such revised Pencil Draw shall be re-submitted by the Construction Manager to the Owner, PM and Architect.
- .3** A second meeting will be held with the Owner, PM, Architect and Construction Manager to review the revised Pencil Draw. If acceptable, PM will recommend approval to the Owner and Architect. If changes need to occur, PM will work with the Construction Manager to get all changes made as soon as possible for acceptance.
- .4** The revised and accepted Application for Payment shall be promptly certified, and the approved Certificate of Payment shall be considered the "invoice" under Chapter 2251 of the Texas Government Code.

§ 7.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

§ 7.1.3 The Architect and PM shall have seven (7) days from date of receipt from the Construction Manager of an Application for Payment to approve or reject all or any part of the Application for Payment. Provided that all conditions precedent to payment set forth in the Contract Documents have been satisfied, including but not limited

to such documentation as required by the Modified A201-2007, the Owner shall make payment of the certified amount to the Construction Manager not later than thirty (30) days after the Owner receives the approved Certificate of Payment. The time periods stated in this Section supersede those stated in Section 9.4.1 of the Modified AIA Document A201-2007.

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner, PM or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.

§ 7.1.5 Each Application for Payment shall be based on the most recent, approved schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee, any Allowances and agreed-upon Construction Contingency shall be shown as separate items, accounting for any transfers that may have been approved. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Owner, PM or Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment and determining the amount due for each such progress payment but shall not be considered as a basis for increasing or decreasing the Guaranteed Maximum Price. After the entire Work is "bought-out" the schedule of values shall not be modified or revised without the prior written consent of the Owner and the Construction Manager in each instance.

§ 7.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 7.1.6.1 In addition to other required items, each Application for Payment shall be accompanied by the following documentation, statements and information, all in form and substance reasonably satisfactory to the Owner and in compliance with applicable state statutes:

- .1 a duly executed statement from Construction Manager detailing all moneys paid out or costs incurred by it on account of the Cost of the Work and for which payment is sought;
- .2 with regard to payments sought for Work (labor and materials) furnished by Subcontractors (including vendors or material suppliers), Construction Manager must identify all Subcontractors for whose Work payment is being sought in the Application and provide each Subcontractor's application for payment;
- .3 with regard to Work performed by Construction Manager or its own forces, Construction Manager must provide an accurate description of the Work performed and for which payment is sought, including such supporting documentation required by this Agreement;
- .4 a statement, under oath, by Construction Manager that all bills or obligations incurred by Construction Manager, for which previous Applications for Payment have been submitted and paid by Owner, have been paid by Construction Manager, or, if some bill or obligation remains outstanding, the statement shall fully disclose the outstanding bill or obligation by stating the name of the person or entity to whom the bill or obligation remains outstanding, the amount of the outstanding bill or obligation, and the basis or reason why such bill or obligation has not been paid;
- .5 A statement, under oath, by Construction Manager that, to the best of its information and belief, no person or entity has a claim for payment or has asserted a claim for payment arising from or in connection with the Work performed under this Agreement, other than any claim which has been fully paid and duly released or is included in the Application for Payment and fully described in subparagraph .4 immediately above, or, if Construction Manager knows or believes such a claim

exists or has been asserted or made, the statement shall fully disclose the claim by stating the name of the claimant or potential claimant, a description of the Work for which payment is claimed, the amount of such claim, and the basis or reason why such claim has not been paid;

§ 7.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values, not to exceed the actual Cost of such Work incurred by the Construction Manager for such period, less the Retainage to be withheld. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of the Modified AIA Document A201–2007;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner or PM, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Construction Manager's Fee, less retainage of «ten» percent («10» %). The Construction Manager's Fee shall be computed at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of «ten» percent («10» %) from that portion of the Work that the Construction Manager self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Architect or PM has withheld or nullified a Certificate for Payment as provided in Section 9.5 of the Modified AIA Document A201–2007.

§ 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements. Construction Manager shall make such payments included in Construction Manager's Application for Payment to its Subcontractors within seven (7) days after receipt of payment from Owner.

§ 7.1.9 Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Owner, PM and Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Owner, PM or Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Owner, PM or Architect has made exhaustive or continuous on-site inspections; or that the Owner, PM or Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 7.2 Final Payment

§ 7.2.1 Subject to Section 9.5.1 of the Modified A201-2007, "Final Payment," constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager after, without limitation, the following:

- .1 the Construction Manager has fully, timely and properly performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of the Modified AIA Document A201–2007, and to satisfy other requirements, if any, which extend beyond final payment;

- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment;
- .3 any other conditions precedent to final payment expressly set forth in the Contract Documents have been satisfied including but not limited to the following: (a) Construction Manager shall deliver to Owner the documents required by the Modified A201-2007 §3.19(d), (b) the Certificate of Occupancy required by the Modified A201-2007 §3.19(f) and (c) consent of surety;
- .4 the Construction Manager shall have delivered to Owner a reproducible sets of Record Documents, reflecting the “as-built” conditions of the Project at final completion, including, without limitation, all warranties, manuals, instructions, reports, and other such documentation as Owner may have previously requested or required by the Contract Documents; and
- .5 Commissioners’ Court has duly approved such Final Payment.

§ 7.2.2 The Owner’s auditors will review and report in writing on the Construction Manager’s final accounting within 30 days after delivery of the final accounting to the Owner, PM and Architect by the Construction Manager. Based upon such Cost of the Work as the Owner’s auditors report to be substantiated by the Construction Manager’s final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner’s auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect’s reasons for withholding a certificate. The time periods stated in this Section supersede those stated in Section 9.4.1 of the Modified AIA Document A201–2007. The Owner, PM and Architect are not responsible for verifying the accuracy of the Construction Manager’s final accounting.

§ 7.2.3 If the Owner’s auditors report the Cost of the Work as substantiated by the Construction Manager’s final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the undisputed amount certified in the Architect’s final Certificate for Payment.

§ 7.2.4 The Owner’s final payment to the Construction Manager of undisputed amounts shall be made no later than the business day that is next after the expiration of 31 after the issuance of the Architect’s final Certificate for Payment for the undisputed amounts.

§ 7.2.5 If, subsequent to final payment and at the Owner’s request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager’s Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but in event in excess of the Guaranteed Maximum Price.

ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds, as set forth in Article 11 of the Modified AIA Document A201–2007 and in the exhibit referenced below.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007.)

Insurance and Bond Requirements

Set out in Exhibit A

ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201–2007.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:

Jury trial with exclusive venue in a State District Court of Hidalgo County, Texas.

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of the Modified A201–2007.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be compensated for Preconstruction Phase services performed prior to receipt of a notice of termination consistent with any compensation terms pursuant to Section 4.1 above. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 4.1.

§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of the Modified AIA Document A201–2007.

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of the Modified A201–2007 shall not exceed the amount set forth in those sections.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of the Modified A201–2007 shall not exceed the amount set forth in the section.

§ 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of the Modified AIA Document A201–2007. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of the Modified AIA Document A201–2007, except that the term “**profit**” shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in the Modified A201–2007.

§ 11.2 Ownership and Use of Documents

Section 1.5 of the Modified A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.3 Governing Law

Section 13.1 of the Modified A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 11.5 Other provisions:

§11.5.1 Changes in Work

As a condition precedent to an increase in the Guaranteed Maximum Price, an extension of the Contract Time, or a recovery of the Cost of Work for performing work outside the scope of this Agreement, the Construction Manager must, prior to the performance of any such work, obtain the written approval of the Owner, as a condition precedent to such increase, extension or recovery.

§11.5.2 Limitation of Remedies for Delay

Except as otherwise provided herein, extensions of time shall be the Construction Manager's sole remedy for any delay, unless the delay shall have been caused by acts or omissions of those performing by, through or under the Owner or by a cause otherwise within the control of those persons or entities, and then only to the extent that such acts continue after the Construction Manager has provided written notice to Owner. The Owner's reasonable exercise of any of its rights or remedies under the Contract Documents, regardless of the extent or frequency, shall not under any circumstances be construed as intentional interference with the Construction Manager's performance of the Work.

§11.5.3 Authority of Architect and PM

Notwithstanding any contrary provision hereof of any Contract Document, no consent, decision, determination, approval or certification to be made by the PM or Architect hereunder shall be binding upon Owner unless and to the extent agreed to in writing by Owner.

§11.5.4 Agreement Modifications

This Agreement may be amended only by written Modification approved by the Commissioners Court or its authorized designee, and signed by Owner's authorized representative and Construction Manager.

§11.5.5 No delay or omission by either of the parties hereto in exercising any right or power accruing upon the noncompliance or failure of performance by the other party hereto of any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions or agreements hereof to be performed by the other party hereto shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

§11.5.6 Construction Manager shall require all construction workers, whether Construction Manager's own forces, or the forces of Construction Manager's subcontractors, to wear identification tags on the front of their persons during all times that they are on Owner's property. Such identification tags shall have identification of the construction worker by number or other identifying medium in a typeface large enough to be seen from a reasonable distance.

§11.5.7 Construction Manager shall require all construction workers, whether Construction Manager's own forces or the forces of Construction Manager's subcontractors, to park their personal motor vehicles only in the parking places designated by the Owner or as otherwise agreed to in writing with the Construction Manager. Any vehicles not parked in the appropriate locations shall be towed at the vehicle owner's sole expense.

§11.5.8 Construction Manager shall follow, and shall require all employees, agents or subcontractors to follow, any tree ordinance of the municipality in which the Project is located. In addition, if not covered by the municipal tree ordinance, Contractor shall barricade and protect all trees on the Project, unless specifically designated in writing by Owner for removal, which shall be included in the Cost of the Work.

§11.5.9 Construction Manager shall institute a theft deterrent program designed to restrict construction worker theft, to maintain supervision of Construction Manager's and Construction Manager's subcontractor's forces.

§11.5.10 Construction Manager stipulates that Owner is a political subdivision of the State of Texas, and as such, may enjoy immunities from suit and liability under the Constitution and laws of the State of Texas. By entering into this Agreement, Owner does not waive any of its immunities from suit and/or liability, except as otherwise specifically provided herein and as specifically authorized by law.

§11.5.11 In case any one or more provisions of this Agreement, or the application thereof to any person or circumstance, shall for any reason be held invalid, illegal or unenforceable in any respect, any such invalidity, illegality or unenforceability shall be deemed stricken and shall not affect any other provision of this Agreement or the application of such provisions to other persons or circumstances, and the balance of this Agreement shall be enforced to the greatest extent permitted by law.

§11.5.12 Construction Manager shall be required to utilize the project technology platforms as indicated on Exhibit G – Project Technology.

ARTICLE 12 SCOPE OF THE AGREEMENT

§ 12.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 12.2 The following documents comprise the Contract Documents:

- .1 AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as modified
- .2 AIA Document A201–2007, General Conditions of the Contract for Construction, as modified
- .3 Exhibit A – Insurance and Bond Requirements
- .4 Exhibit B – Construction Manager’s Organizational Chart
- .5 Exhibit C – Construction Manager’s Statement of Qualifications
- .6 Exhibit D – Division of Cost Elements
- .7 Exhibit E – Sample G702 and G703
- .8 Exhibit F – Sample GMP Amendment Form
- .9 Exhibit G – Project Technology
- .10 Exhibit H – Preconstruction Services
- .11 Exhibit I – Prevailing Wage Rates

- .11 Other documents:
(List other documents, if any, forming part of the Agreement.)

«None »

This Agreement is entered into as of the day and year first written above.

OWNER (Signature)

«County of Hidalgo, Texas »« »
(Printed name and title)

CONSTRUCTION MANAGER (Signature)

« Morganti Group, Inc. »« »
(Printed name and title)

AIA Document A201-2007

**General Conditions of the Contract for
Construction-as modified**

DRAFT AIA® Document A201™ – 2007

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

«Hidalgo County Courthouse»

« »

THE OWNER:

(Name, legal status and address)

«County of Hidalgo, Texas »« »

«Hidalgo County Purchasing Department

2812 S. Business Hwy 281

Edinburg, Texas 78539 »

THE CONSTRUCTION MANAGER:

(Name, legal status and address)

««Morganti Group, Inc.

10590 Westoffice Drive, Suite 150

Houston, Texas 77042 »« »

« »

The Construction Manager is referred to in the Modified AIA Document A201-2007 as the “Contractor.”

THE PROGRAM MANAGER:

(Name, legal status and address)

« Jacobs Project Management Com. »

«911 Central Parkway North, Suite 425 »

«San Antonio, Texas 78232 »« »

« »

The Program Manager is referred to in the Modified AIA Document A201-2007 as the “Program Manager” or “PM.”

THE ARCHITECT:

(Name, legal status and address)

««HDR Architecture, Inc.

8750 N. Central Expressway, Suite 100

Dallas, Texas 75231 »« »

« »

TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 OWNER
- 3 CONTRACTOR
- 4 ARCHITECT
- 5 SUBCONTRACTORS

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

ELECTRONIC COPYING of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

- 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
- 7 CHANGES IN THE WORK
- 8 TIME
- 9 PAYMENTS AND COMPLETION
- 10 PROTECTION OF PERSONS AND PROPERTY
- 11 INSURANCE AND BONDS
- 12 UNCOVERING AND CORRECTION OF WORK
- 13 MISCELLANEOUS PROVISIONS
- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
- 15 CLAIMS AND DISPUTES



INDEX

(Topics and numbers in bold are section headings.)

Acceptance of Nonconforming Work

9.6.6, 9.9.3, **12.3**

Acceptance of Work

9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, **12.3**

Access to Work

3.16, 6.2.1, 12.1

Accident Prevention

10

Acts and Omissions

3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5,
10.2.8, 13.4.2, 13.7, 14.1, 15.2

Addenda

1.1.1, 3.11

Additional Costs, Claims for

3.7.4, 3.7.5, 6.1.1, 7.3.7.5, 10.3, 15.1.4

Additional Inspections and Testing

9.4.2, 9.8.3, 12.2.1, **13.5**

Additional Insured

11.1.4

Additional Time, Claims for

3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, **15.1.5**

Administration of the Contract

3.1.3, **4.2**, 9.4, 9.5

Advertisement or Invitation to Bid

1.1.1

Aesthetic Effect

4.2.13

Allowances

3.8, 7.3.8

All-risk Insurance

11.3.1, 11.3.1.1

Applications for Payment

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.6.3, 9.7, 9.10,

11.1.3

Approvals

2.1.1, 2.2.2, 2.4, 3.1.3, 3.10.2, 3.12.8, 3.12.9, 3.12.10,

4.2.7, 9.3.2, 13.5.1

Arbitration

8.3.1, 11.3.10, 13.1, 15.3.2, **15.4**

ARCHITECT

4

Architect, Definition of

4.1.1

Architect, Extent of Authority

2.4, 3.12.7, 4.1, 4.2, 5.2, 6.3, 7.1.2, 7.3.7, 7.4, 9.2,
9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1, 12.2.1,
13.5.1, 13.5.2, 14.2.2, 14.2.4, 15.1.3, 15.2.1

Architect, Limitations of Authority and
Responsibility

2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2,
4.2.3, 4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4,
9.4.2, 9.5.3, 9.6.4, 15.1.3, 15.2

Architect's Additional Services and Expenses

2.4, 11.3.1.1, 12.2.1, 13.5.2, 13.5.3, 14.2.4

Architect's Administration of the Contract

3.1.3, 4.2, 3.7.4, 15.2, 9.4.1, 9.5

Architect's Approvals

2.4, 3.1.3, 3.5, 3.10.2, 4.2.7

Architect's Authority to Reject Work

3.5, 4.2.6, 12.1.2, 12.2.1

Architect's Copyright

1.1.7, 1.5

Architect's Decisions

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3,
7.3.7, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4.1, 9.5, 9.8.4, 9.9.1,
13.5.2, 15.2, 15.3

Architect's Inspections

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 13.5

Architect's Instructions

3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.5.2

Architect's Interpretations

4.2.11, 4.2.12

Architect's Project Representative

4.2.10

Architect's Relationship with Contractor

1.1.2, 1.5, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5,
3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16, 3.18,
4.1.2, 4.1.3, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5,
9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.4.2, 13.5,
15.2

Architect's Relationship with Subcontractors

1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.3.7

Architect's Representations

9.4.2, 9.5.1, 9.10.1

Architect's Site Visits

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.5

Asbestos

10.3.1

Attorneys' Fees

3.18.1, 9.10.2, 10.3.3

Award of Separate Contracts

6.1.1, 6.1.2

Award of Subcontracts and Other Contracts for Portions of the Work

5.2

Basic Definitions

1.1

Bidding Requirements

1.1.1, 5.2.1, 11.4.1

Binding Dispute Resolution

9.7, 11.3.9, 11.3.10, 13.1, 15.2.5, 15.2.6.1, 15.3.1,
15.3.2, 15.4.1

Boiler and Machinery Insurance

11.3.2

Bonds, Lien

7.3.7.4, 9.10.2, 9.10.3

Bonds, Performance, and Payment

7.3.7.4, 9.6.7, 9.10.3, 11.3.9, **11.4**

Building Permit

3.7.1

Capitalization

1.3

Certificate of Substantial Completion

9.8.3, 9.8.4, 9.8.5

Certificates for Payment

4.2.1, 4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7,

9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.3

Certificates of Inspection, Testing or Approval

13.5.4

Certificates of Insurance

9.10.2, 11.1.3

Change Orders

1.1.1, 2.4, 3.4.2, 3.7.4, 3.8.2.3, 3.11, 3.12.8, 4.2.8,

5.2.3, 7.1.2, 7.1.3, **7.2**, 7.3.2, 7.3.6, 7.3.9, 7.3.10,

8.3.1, 9.3.1.1, 9.10.3, 10.3.2, 11.3.1.2, 11.3.4, 11.3.9,

12.1.2, 15.1.3

Change Orders, Definition of

7.2.1

CHANGES IN THE WORK

2.2.1, 3.11, 4.2.8, **7**, 7.2.1, 7.3.1, 7.4, 8.3.1, 9.3.1.1,

11.3.9

Claims, Definition of

15.1.1

CLAIMS AND DISPUTES

3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, 9.10.4, 10.3.3, **15**, 15.4

Claims and Timely Assertion of Claims

15.4.1

Claims for Additional Cost

3.2.4, 3.7.4, 6.1.1, 7.3.9, 10.3.2, **15.1.4**

Claims for Additional Time

3.2.4, 3.7.4, 6.1.1, 8.3.2, 10.3.2, **15.1.5**

Concealed or Unknown Conditions, Claims for

3.7.4

Claims for Damages

3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1,

11.3.5, 11.3.7, 14.1.3, 14.2.4, 15.1.6

Claims Subject to Arbitration

15.3.1, 15.4.1

Cleaning Up

3.15, 6.3

Commencement of the Work, Conditions Relating to

2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3,

6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.3.1, 11.3.6, 11.4.1,

15.1.4

Commencement of the Work, Definition of

8.1.2

Communications Facilitating Contract

Administration

3.9.1, **4.2.4**

Completion, Conditions Relating to

3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1,

9.10, 12.2, 13.7, 14.1.2

COMPLETION, PAYMENTS AND

9

Completion, Substantial

4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3,

12.2, 13.7

Compliance with Laws

1.6, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 10.2.2,

11.1, 11.3, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14.1.1,

14.2.1.3, 15.2.8, 15.4.2, 15.4.3

Concealed or Unknown Conditions

3.7.4, 4.2.8, 8.3.1, 10.3

Conditions of the Contract

1.1.1, 6.1.1, 6.1.4

Consent, Written

3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.8.5, 9.9.1,

9.10.2, 9.10.3, 11.3.1, 13.2, 13.4.2, 15.4.4.2

Consolidation or Joinder

15.4.4

CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

1.1.4, **6**

Construction Change Directive, Definition of

7.3.1

Construction Change Directives

1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3, **7.3**,

9.3.1.1

Construction Schedules, Contractor's

3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2

Contingent Assignment of Subcontracts

5.4, 14.2.2.2

Continuing Contract Performance

15.1.3

Contract, Definition of

1.1.2

CONTRACT, TERMINATION OR SUSPENSION OF THE

5.4.1.1, 11.3.9, **14**

Contract Administration

3.1.3, 4, 9.4, 9.5

Contract Award and Execution, Conditions Relating to

3.7.1, 3.10, 5.2, 6.1, 11.1.3, 11.3.6, 11.4.1

Contract Documents, Copies Furnished and Use of

1.5.2, 2.2.5, 5.3

Contract Documents, Definition of

1.1.1

Contract Sum

3.7.4, 3.8, 5.2.3, 7.2, 7.3, 7.4, **9.1**, 9.4.2, 9.5.1.4,

9.6.7, 9.7, 10.3.2, 11.3.1, 14.2.4, 14.3.2, 15.1.4,

15.2.5

Contract Sum, Definition of

9.1

Contract Time

3.7.4, 3.7.5, 3.10.2, 5.2.3, 7.2.1.3, 7.3.1, 7.3.5, 7.4,

8.1.1, 8.2.1, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 14.3.2,

15.1.5.1, 15.2.5

Contract Time, Definition of

8.1.1

CONTRACTOR

3

Contractor, Definition of

3.1, 6.1.2

Contractor's Construction Schedules

3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2

Contractor's Employees

3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3, 11.1.1, 11.3.7, 14.1, 14.2.1.1

Contractor's Liability Insurance

11.1

Contractor's Relationship with Separate Contractors and Owner's Forces

3.12.5, 3.14.2, 4.2.4, 6, 11.3.7, 12.1.2, 12.2.4

Contractor's Relationship with Subcontractors

1.2.2, 3.3.2, 3.18.1, 3.18.2, 5, 9.6.2, 9.6.7, 9.10.2, 11.3.1.2, 11.3.7, 11.3.8

Contractor's Relationship with the Architect

1.1.2, 1.5, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.3, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.5, 15.1.2, 15.2.1

Contractor's Representations

3.2.1, 3.2.2, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2

Contractor's Responsibility for Those Performing the Work

3.3.2, 3.18, 5.3, 6.1.3, 6.2, 9.5.1, 10.2.8

Contractor's Review of Contract Documents

3.2

Contractor's Right to Stop the Work

9.7

Contractor's Right to Terminate the Contract

14.1, 15.1.6

Contractor's Submittals

3.10, 3.11, 3.12.4, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2, 9.8.3, 9.9.1, 9.10.2, 9.10.3, 11.1.3, 11.4.2

Contractor's Superintendent

3.9, 10.2.6

Contractor's Supervision and Construction

Procedures

1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.5, 7.3.7, 8.2, 10, 12, 14, 15.1.3

Contractual Liability Insurance

11.1.1.8, 11.2

Coordination and Correlation

1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1

Copies Furnished of Drawings and Specifications

1.5, 2.2.5, 3.11

Copyrights

1.5, 3.17

Correction of Work

2.3, 2.4, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, **12.2**

Correlation and Intent of the Contract Documents
1.2

Cost, Definition of

7.3.7

Costs

2.4, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3, 7.3.3.3, 7.3.7, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.3, 12.1.2, 12.2.1, 12.2.4, 13.5, 14

Cutting and Patching

3.14, 6.2.5

Damage to Construction of Owner or Separate Contractors

3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 11.1.1, 11.3, 12.2.4

Damage to the Work

3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4, 11.3.1, 12.2.4

Damages, Claims for

3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1, 11.3.5, 11.3.7, 14.1.3, 14.2.4, 15.1.6

Damages for Delay

6.1.1, 8.3.3, 9.5.1.6, 9.7, 10.3.2

Date of Commencement of the Work, Definition of

8.1.2

Date of Substantial Completion, Definition of

8.1.3

Day, Definition of

8.1.4

Decisions of the Architect

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 15.2, 6.3, 7.3.7, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.5.2, 14.2.2, 14.2.4, 15.1, 15.2

Decisions to Withhold Certification

9.4.1, **9.5**, 9.7, 14.1.1.3

Defective or Nonconforming Work, Acceptance, Rejection and Correction of

2.3, 2.4, 3.5, 4.2.6, 6.2.5, 9.5.1, 9.5.2, 9.6.6, 9.8.2, 9.9.3, 9.10.4, 12.2.1

Definitions

1.1, 2.1.1, 3.1.1, 3.5, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 15.1.1, 5.1, 6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1

Delays and Extensions of Time

3.2, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, **8.3**, 9.5.1, 9.7, 10.3.2, 10.4, 14.3.2, 15.1.5, 15.2.5

Disputes

6.3, 7.3.9, 15.1, 15.2

Documents and Samples at the Site

3.11

Drawings, Definition of

1.1.5

Drawings and Specifications, Use and Ownership of
3.11

Effective Date of Insurance

8.2.2, 11.1.2

Emergencies

10.4, 14.1.1.2, 15.1.4

Employees, Contractor's

3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3.3, 11.1.1, 11.3.7, 14.1, 14.2.1.1

Equipment, Labor, Materials or

1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,

4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2
Execution and Progress of the Work
1.1.3, 1.2.1, 1.2.2, 2.2.3, 2.2.5, 3.1, 3.3.1, 3.4.1, 3.5, 3.7.1, 3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.5, 8.2, 9.5.1, 9.9.1, 10.2, 10.3, 12.2, 14.2, 14.3.1, 15.1.3
Extensions of Time
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4, 9.5.1, 9.7, 10.3.2, 10.4, 14.3, 15.1.5, 15.2.5
Failure of Payment
9.5.1.3, **9.7**, 9.10.2, 13.6, 14.1.1.3, 14.2.1.2
Faulty Work
(See Defective or Nonconforming Work)
Final Completion and Final Payment
4.2.1, 4.2.9, 9.8.2, **9.10**, 11.1.2, 11.1.3, 11.3.1, 11.3.5, 12.3, 14.2.4, 14.4.3
Financial Arrangements, Owner's
2.2.1, 13.2.2, 14.1.1.4
Fire and Extended Coverage Insurance
11.3.1.1
GENERAL PROVISIONS
1
Governing Law
13.1
Guarantees (See Warranty)
Hazardous Materials
10.2.4, **10.3**
Identification of Subcontractors and Suppliers
5.2.1
Indemnification
3.17, **3.18**, 9.10.2, 10.3.3, 10.3.5, 10.3.6, 11.3.1.2, 11.3.7
Information and Services Required of the Owner
2.1.2, **2.2**, 3.2.2, 3.12.4, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 11.4, 13.5.1, 13.5.2, 14.1.1.4, 14.1.4, 15.1.3
Initial Decision
15.2
Initial Decision Maker, Definition of
1.1.8
Initial Decision Maker, Decisions
14.2.2, 14.2.4, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5
Initial Decision Maker, Extent of Authority
14.2.2, 14.2.4, 15.1.3, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5
Injury or Damage to Person or Property
10.2.8, 10.4
Inspections
3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 12.2.1, 13.5
Instructions to Bidders
1.1.1
Instructions to the Contractor
3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.5.2
Instruments of Service, Definition of
1.1.7

Insurance
3.18.1, 6.1.1, 7.3.7, 9.3.2, 9.8.4, 9.9.1, 9.10.2, **11**
Insurance, Boiler and Machinery
11.3.2
Insurance, Contractor's Liability
11.1
Insurance, Effective Date of
8.2.2, 11.1.2
Insurance, Loss of Use
11.3.3
Insurance, Owner's Liability
11.2
Insurance, Property
10.2.5, **11.3**
Insurance, Stored Materials
9.3.2
INSURANCE AND BONDS
11
Insurance Companies, Consent to Partial Occupancy
9.9.1
Intent of the Contract Documents
1.2.1, 4.2.7, 4.2.12, 4.2.13, 7.4
Interest
13.6
Interpretation
1.2.3, **1.4**, 4.1.1, 5.1, 6.1.2, 15.1.1
Interpretations, Written
4.2.11, 4.2.12, 15.1.4
Judgment on Final Award
15.4.2
Labor and Materials, Equipment
1.1.3, 1.1.6, **3.4**, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2
Labor Disputes
8.3.1
Laws and Regulations
1.5, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 9.9.1, 10.2.2, 11.1.1, 11.3, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14, 15.2.8, 15.4
Liens
2.1.2, 9.3.3, 9.10.2, 9.10.4, 15.2.8
Limitations, Statutes of
12.2.5, 13.7, 15.4.1.1
Limitations of Liability
2.3, 3.2.2, 3.5, 3.12.10, 3.17, 3.18.1, 4.2.6, 4.2.7, 4.2.12, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 10.2.5, 10.3.3, 11.1.2, 11.2, 11.3.7, 12.2.5, 13.4.2
Limitations of Time
2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7, 5.2, 5.3, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 11.1.3, 11.3.1.5, 11.3.6, 11.3.10, 12.2, 13.5, 13.7, 14, 15
Loss of Use Insurance
11.3.3
Material Suppliers
1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.6, 9.10.5

Materials, Hazardous

10.2.4, 10.3

Materials, Labor, Equipment and

1.1.3, 1.1.6, 1.5.1, 3.4.1, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2

Means, Methods, Techniques, Sequences and Procedures of Construction

3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2

Mechanic's Lien

2.1.2, 15.2.8

Mediation

8.3.1, 10.3.5, 10.3.6, 15.2.1, 15.2.5, 15.2.6, **15.3**, 15.4.1

Minor Changes in the Work

1.1.1, 3.12.8, 4.2.8, 7.1, **7.4**

MISCELLANEOUS PROVISIONS

13

Modifications, Definition of

1.1.1

Modifications to the Contract

1.1.1, 1.1.2, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7, 10.3.2, 11.3.1

Mutual Responsibility

6.2

Nonconforming Work, Acceptance of

9.6.6, 9.9.3, **12.3**

Nonconforming Work, Rejection and Correction of
2.3, 2.4, 3.5, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4, 12.2.1

Notice

2.2.1, 2.3, 2.4, 3.2.4, 3.3.1, 3.7.2, 3.12.9, 5.2.1, 9.7, 9.10, 10.2.2, 11.1.3, 12.2.2.1, 13.3, 13.5.1, 13.5.2, 14.1, 14.2, 15.2.8, 15.4.1

Notice, Written

2.3, 2.4, 3.3.1, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 9.7, 9.10, 10.2.2, 10.3, 11.1.3, 11.3.6, 12.2.2.1, **13.3**, 14, 15.2.8, 15.4.1

Notice of Claims

3.7.4, 10.2.8, **15.1.2**, 15.4

Notice of Testing and Inspections

13.5.1, 13.5.2

Observations, Contractor's

3.2, 3.7.4

Occupancy

2.2.2, 9.6.6, 9.8, 11.3.1.5

Orders, Written

1.1.1, 2.3, 3.9.2, 7, 8.2.2, 11.3.9, 12.1, 12.2.2.1, 13.5.2, 14.3.1

OWNER

2

Owner, Definition of

2.1.1

Owner, Information and Services Required of the

2.1.2, **2.2**, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 11.3, 13.5.1, 13.5.2, 14.1.1.4, 14.1.4, 15.1.3

Owner's Authority

1.5, 2.1.1, 2.3, 2.4, 3.4.2, 3.8.1, 3.12.10, 3.14.2, 4.1.2, 4.1.3, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3, 7.2.1, 7.3.1, 8.2.2, 8.3.1, 9.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2, 10.3.2, 11.1.3, 11.3.3, 11.3.10, 12.2.2, 12.3, 13.2.2, 14.3, 14.4, 15.2.7

Owner's Financial Capability

2.2.1, 13.2.2, 14.1.1.4

Owner's Liability Insurance

11.2

Owner's Relationship with Subcontractors

1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2

Owner's Right to Carry Out the Work

2.4, 14.2.2

Owner's Right to Clean Up

6.3

Owner's Right to Perform Construction and to Award Separate Contracts

6.1

Owner's Right to Stop the Work

2.3

Owner's Right to Suspend the Work

14.3

Owner's Right to Terminate the Contract

14.2

Ownership and Use of Drawings, Specifications and Other Instruments of Service

1.1.1, 1.1.6, 1.1.7, **1.5**, 2.2.5, 3.2.2, 3.11, 3.17, 4.2.12, 5.3

Partial Occupancy or Use

9.6.6, **9.9**, 11.3.1.5

Patching, Cutting and

3.14, 6.2.5

Patents

3.17

Payment, Applications for

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5, 9.6.3, 9.7, 9.8.5, 9.10.1, 14.2.3, 14.2.4, 14.4.3

Payment, Certificates for

4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 13.7, 14.1.1.3, 14.2.4

Payment, Failure of

9.5.1.3, **9.7**, 9.10.2, 13.6, 14.1.1.3, 14.2.1.2

Payment, Final

4.2.1, 4.2.9, 9.8.2, 9.10, 11.1.2, 11.1.3, 11.4.1, 12.3, 13.7, 14.2.4, 14.4.3

Payment Bond, Performance Bond and

7.3.7.4, 9.6.7, 9.10.3, **11.4**

Payments, Progress

9.3, **9.6**, 9.8.5, 9.10.3, 13.6, 14.2.3, 15.1.3

PAYMENTS AND COMPLETION

9

Payments to Subcontractors

5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 14.2.1.2

PCB

10.3.1

Performance Bond and Payment Bond

7.3.7.4, 9.6.7, 9.10.3, 11.4

Permits, Fees, Notices and Compliance with Laws

2.2.2, 3.7, 3.13, 7.3.7.4, 10.2.2

PERSONS AND PROPERTY, PROTECTION OF

10

Polychlorinated Biphenyl

10.3.1

Product Data, Definition of

3.12.2

Product Data and Samples, Shop Drawings

3.11, 3.12, 4.2.7

Progress and Completion

4.2.2, 8.2, 9.8, 9.9.1, 14.1.4, 15.1.3

Progress Payments

9.3, 9.6, 9.8.5, 9.10.3, 13.6, 14.2.3, 15.1.3

Project, Definition of

1.1.4

Project Representatives

4.2.10

Property Insurance

10.2.5, 11.3

PROTECTION OF PERSONS AND PROPERTY 10

Regulations and Laws

1.5, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 9.9.1, 10.2.2, 11.1, 11.4, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14, 15.2.8, 15.4

Rejection of Work

3.5, 4.2.6, 12.2.1

Releases and Waivers of Liens

9.10.2

Representations

3.2.1, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.8.2, 9.10.1

Representatives

2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.1, 4.2.2, 4.2.10, 5.1.1, 5.1.2, 13.2.1

Responsibility for Those Performing the Work

3.3.2, 3.18, 4.2.3, 5.3, 6.1.3, 6.2, 6.3, 9.5.1, 10

Retainage

9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3

Review of Contract Documents and Field

Conditions by Contractor

3.2, 3.12.7, 6.1.3

Review of Contractor's Submittals by Owner and Architect

3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2

Review of Shop Drawings, Product Data and Samples by Contractor

3.12

Rights and Remedies

1.1.2, 2.3, 2.4, 3.5, 3.7.4, 3.15.2, 4.2.6, 5.3, 5.4, 6.1, 6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.2, 12.2.4, 13.4, 14, 15.4

Royalties, Patents and Copyrights

3.17

Rules and Notices for Arbitration

15.4.1

Safety of Persons and Property

10.2, 10.4

Safety Precautions and Programs

3.3.1, 4.2.2, 4.2.7, 5.3, 10.1, 10.2, 10.4

Samples, Definition of

3.12.3

Samples, Shop Drawings, Product Data and

3.11, 3.12, 4.2.7

Samples at the Site, Documents and

3.11

Schedule of Values

9.2, 9.3.1

Schedules, Construction

3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2

Separate Contracts and Contractors

1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 12.1.2

Shop Drawings, Definition of

3.12.1

Shop Drawings, Product Data and Samples

3.11, 3.12, 4.2.7

Site, Use of

3.13, 6.1.1, 6.2.1

Site Inspections

3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.4.2, 9.10.1, 13.5

Site Visits, Architect's

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.5

Special Inspections and Testing

4.2.6, 12.2.1, 13.5

Specifications, Definition of

1.1.6

Specifications

1.1.1, 1.1.6, 1.2.2, 1.5, 3.11, 3.12.10, 3.17, 4.2.14

Statute of Limitations

13.7, 15.4.1.1

Stopping the Work

2.3, 9.7, 10.3, 14.1

Stored Materials

6.2.1, 9.3.2, 10.2.1.2, 10.2.4

Subcontractor, Definition of

5.1.1

SUBCONTRACTORS

5

Subcontractors, Work by

1.2.2, 3.3.2, 3.12.1, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2, 9.6.7

Subcontractual Relations

5.3, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 14.1, 14.2.1

Submittals

3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.7, 9.2, 9.3, 9.8, 9.9.1, 9.10.2, 9.10.3, 11.1.3

Submittal Schedule

3.10.2, 3.12.5, 4.2.7

Subrogation, Waivers of

6.1.1, **11.3.7**

Substantial Completion

4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, **9.8**, 9.9.1, 9.10.3, 12.2, 13.7

Substantial Completion, Definition of

9.8.1

Substitution of Subcontractors

5.2.3, 5.2.4

Substitution of Architect

4.1.3

Substitutions of Materials

3.4.2, 3.5, 7.3.8

Sub-subcontractor, Definition of

5.1.2

Subsurface Conditions

3.7.4

Successors and Assigns

13.2

Superintendent

3.9, 10.2.6

Supervision and Construction Procedures

1.2.2, **3.3**, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.7, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.3

Surety

5.4.1.2, 9.8.5, 9.10.2, 9.10.3, 14.2.2, 15.2.7

Surety, Consent of

9.10.2, 9.10.3

Surveys

2.2.3

Suspension by the Owner for Convenience

14.3

Suspension of the Work

5.4.2, 14.3

Suspension or Termination of the Contract

5.4.1.1, 14

Taxes

3.6, 3.8.2.1, 7.3.7.4

Termination by the Contractor

14.1, 15.1.6

Termination by the Owner for Cause

5.4.1.1, **14.2**, 15.1.6

Termination by the Owner for Convenience

14.4

Termination of the Architect

4.1.3

Termination of the Contractor

14.2.2

TERMINATION OR SUSPENSION OF THE CONTRACT

14

Tests and Inspections

3.1.3, 3.3.3, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 10.3.2, 11.4.1, 12.2.1, **13.5**

TIME

8

Time, Delays and Extensions of

3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, **8.3**, 9.5.1, 9.7, 10.3.2, 10.4, 14.3.2, 15.1.5, 15.2.5

Time Limits

2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 11.1.3, 12.2, 13.5, 13.7, 14, 15.1.2, 15.4

Time Limits on Claims

3.7.4, 10.2.8, **13.7**, 15.1.2

Title to Work

9.3.2, 9.3.3

Transmission of Data in Digital Form

1.6

UNCOVERING AND CORRECTION OF WORK

12

Uncovering of Work

12.1

Unforeseen Conditions, Concealed or Unknown

3.7.4, 8.3.1, 10.3

Unit Prices

7.3.3.2, 7.3.4

Use of Documents

1.1.1, 1.5, 2.2.5, 3.12.6, 5.3

Use of Site

3.13, 6.1.1, 6.2.1

Values, Schedule of

9.2, 9.3.1

Waiver of Claims by the Architect

13.4.2

Waiver of Claims by the Contractor

9.10.5, 13.4.2, 15.1.6

Waiver of Claims by the Owner

9.9.3, 9.10.3, 9.10.4, 12.2.2.1, 13.4.2, 14.2.4, 15.1.6

Waiver of Consequential Damages

14.2.4, 15.1.6

Waiver of Liens

9.10.2, 9.10.4

Waivers of Subrogation

6.1.1, **11.3.7**

Warranty

3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.4, 12.2.2, 13.7

Weather Delays

15.1.5.2

Work, Definition of

1.1.3

Written Consent

1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 11.4.1, 13.2, 13.4.2, 15.4.4.2

Written Interpretations

4.2.11, 4.2.12

Written Notice

2.3, 2.4, 3.3.1, 3.9, 3.12.9, 3.12.10, 5.2.1, 8.2.2, 9.7, 9.10, 10.2.2, 10.3, 11.1.3, 12.2.2, 12.2.4, **13.3**, 14, 15.4.1

Written Orders

1.1.1, 2.3, 3.9, 7, 8.2.2, 12.1, 12.2, 13.5.2, 14.3.1,
15.1.2



ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in Section 1.1 of the Modified A133-2009 Agreement of which these General Terms and Conditions are a part.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction (herein, “**Contract**” or “**Contract Documents**”). The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect’s consultants or between the PM or PM’s consultants or, (2) between the Owner and any Subcontractor or a Sub-subcontractor (except as provided in 5.4), (3) between the Owner and the Architect or the Architect’s consultants or between the PM or PM’s consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect and PM shall, however, be entitled, respectively, to performance and enforcement of obligations under the Contract intended to facilitate their performance.

§ 1.1.3 THE WORK

The term “**Work**” means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor’s obligations. The Work may constitute the whole or a part of the Project. The Work includes all labor, parts, supplies, skill, supervision, transportation, services, storage and other facilities and things necessary, proper or incidental to the carrying out and completion of the terms of the Contract Documents and all other items reasonably inferable from the Contract Documents as needed to produce, construct and fully complete the Work items shown by the Contract Documents.

§ 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

§ 1.1.5 THE DRAWINGS

The “**Drawings**” are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.6 THE SPECIFICATIONS

The “**Specifications**” are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 INSTRUMENTS OF SERVICE

“**Instruments of Service**” are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect’s consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 CONTRACTOR-RELATED PERSON

A “**Contractor-Related Person**” means Contractor’s Subcontractors of any tier, suppliers, consultants, and their employees, agents and representatives and any other persons or entities performing portions of the Work for or on behalf of them and all other persons for whom Contractor is legally liable with respect to this Project.

§ 1.1.9 PROGRAM MANAGER

The Owner retained the Program Manager (“**PM**”) to carry out some of the functions of the administration of the Owner’s construction program. The Contractor shall cooperate with the PM and Architect in the performance of their respective functions. The management and reporting systems used by the Owner or Program Manager may be changed by Owner during the Project.

§ 1.1.10 KNOWLEDGE

The terms “**knowledge**,” “**recognized**” and “**discover**,” their respective derivatives, and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor actually knows, recognizes or discovers. The expression “**reasonably inferable**” and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a contractor familiar with the Project and exercising the care, skill and diligence required of a contractor experienced in working on projects similar to the Project.

§ 1.1.11 BUSINESS DAY

The term “**business day**” is a day the Owner's Administration Building is scheduled to be open for normal business purposes, unless closed by the Owner for inclement weather or other reason. A business day does not include a day on which the Owner's Administration Building is open only for the purposes of conducting candidate filing, early voting, elections, or other special events.

§ 1.1.12 ANTICIPATED WEATHER DAYS

An allowance Anticipated Weather Days, established as anticipated Work Days lost due to weather days, shall be included in Contractor's proposed completion time. Only lost weather days in excess of Anticipated Weather Days shall be considered by Owner for time extensions based upon weather.

§ 1.1.13 CALENDAR DAY

A calendar day is a day on the Gregorian Calendar. The Contract Time is established in calendar days. Extensions of time granted, if any, will be converted to calendar days. Unless otherwise stated, all references to “day” or “days” shall mean Calendar Days.

§ 1.1.14 HOLIDAYS

Owner-approved holidays for Contractor's Work are limited to New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. Notwithstanding the foregoing, in the event of inconsistencies within or between parts of the Contract Documents or between the Contract Documents and applicable standards, codes and ordinances, the Contractor shall (1) provide the better quality or greater quantity of Work or (2) comply with the more stringent requirement. With regard to inconsistencies in the Drawings, given dimensions shall take precedence over scaled measurements, and large scale Drawings over small scale Drawings. The terms and conditions of this paragraph shall not relieve the Contractor of any of the obligations set forth in Section 3.2 and Section 3.7. Without limiting the foregoing, should discrepancies appear, Contractor shall not proceed with the Work without clarification from the Architect. Contractor shall request clarification in a reasonable time to avoid delays and increases in the Contract Sum. Owner shall respond in a reasonable time.

§ 1.2.1.1 Except as otherwise provided in the Agreement, the most recently issued document takes precedence over previously issued forms of the same document. If Contractor discovers that an item is shown one place in the Drawings, but not another, or is called for in a schedule or the Specifications, but not shown on the Drawings, such discrepancy shall be promptly brought to the attention of the Owner and Architect. Existing conditions take precedence over Drawings and Specifications for dimensions and such dimensions shall be verified by Contractor.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.2.4 Any material or system specified by reference to the number, symbol, or title of a specific standard, such as a commercial standard, a federal specification, a trade association standard, or other similar standard, shall comply with the requirements in the latest revision thereof and any amendment or supplement thereto in effect on the date of the Contract Documents, except as limited to type, class, or grade or modified in such reference.

§ 1.2.5 The standards referred to, except as modified in the Specifications, shall have full force and effect as though printed in the Specifications. These standards are not fully set out in the Contract Documents for the reason that the manufacturers and trades involved are assumed to be familiar with the requirements.

§ 1.2.6 When specific products, systems or items of equipment are referred to in the Contract Documents, any ancillary devices necessary for proper functioning shall also be provided, but not including any manufacturers' options on any particular device. When standards, codes, manufacturer's instructions and guarantees are required by the Contract Documents with no edition specified, the current edition as of the date of the Contract Documents shall apply. Unless otherwise stated in the Contract Documents, references to standards, codes, manufacturer's instructions and guarantees shall apply in full, except they do not supersede more stringent standards set out in the Contract Documents, and any exclusions or waivers that are inconsistent with the Contract Documents do not apply.

§ 1.2.7 DISCOVERY OF ERRORS OR CONFLICTS

The Contractor shall make no changes in the Work inconsistent with the Contract Documents and anything reasonably inferable therefrom without a duly executed Change Order. If the Contractor, either before commencing the Work or in the course of performing the Work finds (1) that the Drawings and Specifications are at variance with one another, (2) that the Work has not been sufficiently detailed or explained in the Drawings and Specifications, (3) any discrepancy between the Drawings and/or Specifications, and the physical conditions on the site, or (4) any error or omission in any of the Drawings or Specifications or in any survey, or a misunderstanding arises regarding the real meaning of the Drawings or Specifications, the Contractor shall promptly notify the Owner, PM and the Architect in writing of such variance, insufficiency, discrepancy, error, omission or misunderstanding (collectively, "**Design Errors**"). If the Contractor observes that any portion of the Drawings and/or Specifications are at variance with any applicable law, ordinance, regulation, order or decree (collectively, "**Conflicts**"), the Contractor shall promptly notify the Owner, with a copy to the PM and Architect, in writing of such Conflict. If the Contractor observes any Error in work done by others affecting the Work, Contractor shall promptly notify the Owner, PM and the Architect in writing of such Error. The Owner, upon receipt of any such notice, shall have the issue promptly investigated and give appropriate written instructions to the Contractor. Until such instructions are given, any Work done by the Contractor, either directly or indirectly, after the Contractor's discovery of such Error or Conflict but before receiving clarifying instructions, will be at the Contractor's own risk, and the Contractor shall bear all costs and loss arising there from. Contractor shall include in any requests for information or clarification from the Owner, PM or the Architect the reasonable time period within which a response from the Owner, PM or the Architect is required in order for Contractor to meet the critical path set out in the construction schedule of and the extension of time and delay costs anticipated to be incurred by Contractor due to the Error or Conflict, to the extent quantifiable.

§ 1.3 CAPITALIZATION

Terms capitalized in these Modified A201-2007 General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 INTERPRETATION

In the interest of brevity, the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain or give all common law, statutory and other reserved rights, including copyrights, and licenses as provided in the contract between the Owner and Architect. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or

claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of such rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

§ 1.5.3 Contractor hereby grants Owner a paid-up, royalty-free non-exclusive license to use any and all drawings, specifications, submittals and other documents prepared or produced by or for Contractor or any Contractor-Related Person. This license shall survive termination of the Agreement. Additionally, all subcontracts between Contractor and its Subcontractors shall expressly grant Owner an exclusive license and shall require all sub-subcontracts to contain similar provisions. , from both itself and its Subcontractors,

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

§ 1.6.1 Contractor and its Subcontractors may request copies of the Architect's Drawings in electronic format (hereinafter referred to as "Drawing Files") from the Architect, through the PM, in connection with the design and construction of the Project for use as backgrounds for submittals or drawings prepared by Contractor or its Subcontractors. The Contractor or Subcontractor shall obtain a copy of the signed and sealed drawings before any use or reuse of the Drawing Files on this Project. In the event of any inconsistency between the information in the signed and sealed Drawings and the information in the Drawing Files, the signed and sealed drawings shall prevail. The Contractor and any Subcontractor using such Drawing Files agree that Architect and the Owner shall not be responsible or liable to such party to the extent that information in the Drawing Files is inconsistent with information in the latest version of the sealed Drawings issued for construction. The Architect, as a condition to providing Drawing Files to Contractor or its Subcontractors, may require the requesting party to acknowledge these terms and expressly agree to additional terms and conditions. Any and all use or reuse of Drawing Files by Contractor or any Subcontractor shall be at the sole risk of that party. Contractor and any Subcontractor using such Drawing Files agrees that the Owner, PM and Architect shall have no liability to such party for such use or reuse of Drawing Files, all of which are produced "AS IS." The Owner, PM and Architect have no duty to keep Contractor or any Subcontractors informed of, or provide any, updates of revisions to the Drawing Files. To the fullest extent permitted by applicable law, Contractor shall indemnify and hold harmless and release and waive all claims against the Owner Parties, as defined below, and the PM and Architect from all claims, damages, costs, causes of action and expenses, including without limitation attorney's and experts' fees and costs of litigation ("Claims"), arising from any use or reuse of the Drawing Files by the Contractor or any Subcontractors.

§ 1.7 Contractor may submit for consideration proposed substitutions of materials, equipment or processes from those set out in the Contract Documents. Submittals of proposed substitutions must be made in writing at such time as not to delay the Work and should contain sufficient information to allow the Architect and Owner to determine if the proposed substitution is in fact equal or better than the requirements of the Contract Documents. Contractor shall bear the risk of any delay in performance caused by submitting substitutions. Also refer to 3.4 and other sections herein related to substitutions.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who has only such authority as granted by the Commissioners' Court of the Owner. Except as otherwise provided in Section 4.2.1, neither the PM nor Architect have such authority.

§ 2.1.2 The presence of the Owner (or its representatives), PM or Architect at the Project site does not imply acceptance or approval of the Work.

§ 2.1.3 The Contractor stipulates and agrees that the Owner has no duty to discover any design errors or omissions in the Construction Documents, and has no duty to notify Contractor of same. By entering into the Contract, Owner does not warrant the adequacy and accuracy of any Construction Documents.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 [Omitted]

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 The Owner shall furnish geotechnical information and surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall review this information and shall promptly inform Owner and PM of any concerns it has, errors it observed and additional information reasonably required for Contractor's execution of the Work. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner, except with respect to certain survey information described below and except to the extent of known errors or concerns not properly addressed, but shall exercise proper precautions relating to the safe performance of the Work. The Contractor shall not be entitled to rely upon the accuracy in surveys of non-dimensioned information and information on subsurface utilities including, without limitation, the locations of utility lines, cables, pipes or pipelines. The Contractor shall field verify the locations of such utilities and perform the Work in a manner that will not cause injury to them. The Contractor shall be responsible for and repair or have repaired any damage to such utilities caused by failing to take such precautions.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services. The Contractor acknowledges, however, that the Owner is a public entity and often cannot obtain or provide information as promptly as private entities. The Contractor shall submit requests for such information with ample lead time in order for the Owner to respond. The Contractor waives any claims against Owner for not timely providing information requested if the Contractor has not timely requested such information or left inadequate time for Owner to respond to any such request.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3. The Contract Time shall not be extended and the GMP shall not be increased due to the Work being stopped pursuant to this Section.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

§ 2.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the PM and Architect's additional services made necessary by such default, neglect or failure. The amounts charged by the Owner shall be reasonable and necessary. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

§ 2.4.2 After the Work is complete, the Owner may make emergency repairs to the Work if the Contractor does not promptly respond to a notice of a condition requiring repairs. Contractor shall be responsible to Owner for this cost if the reason for the repairs is defects in Contractor's Work. If payments then or thereafter due the Contractor are not sufficient to cover such costs by offsets made by Owner, the Contractor shall pay the difference to the Owner.

§ 2.5.2 Owner has the authority to reject Work which does not conform to the Contract Documents. Whenever, in its reasonable opinion, Owner considers it necessary or advisable for implementation of the requirements of the Contract Documents (which, for the purposes of this Agreement, includes both the express requirements and those requirements which are reasonably inferable from the Contract Documents), Owner will have the authority to require special inspection or testing of the Work in accordance with Section 13.5.2 whether or not such Work is then fabricated, installed or completed. However, neither the Owner's authority to act under this Section 2.5.2, nor any decision made by the Owner, either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the Owner to the Contractor, any Subcontractor, Sub-subcontractors or supplier, any of their agents, representatives or employees, or any other person performing any of the Work.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative. The terms "Construction Manager" and "Contractor" are synonymous for the purposes of this Agreement.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the PM in providing its services or Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed.

§ 3.1.4 The Contractor represents and warrants the following to the Owner (in addition to the other representations and warranties contained in the Contract Documents), as an inducement to the Owner to execute this Contract, which representations and warranties shall survive the execution and delivery of the Contract and the Final Completion of the Work:

- .1 that it is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents;
- .2 that it is able to furnish the tools, materials, supplies, equipment and labor required to timely complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;
- .3 that it is authorized to do business in the State of Texas, and it and all its trade contractors, subcontracts, suppliers and any consultants are properly licensed by all necessary governmental, public and quasi-public authorities having jurisdiction over it, the Work, or the site of the Project to perform the Work required by the Contract; and
- .4 that the execution of the Contract and its performance thereof are within its duly-authorized powers.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents. The Contractor and each Subcontractor shall evaluate

and satisfy themselves as to the unconcealed conditions and limitations under which the Work is to be performed, including, without limitation (1) the location, condition, layout and nature of the Project site and surrounding areas, (2) generally prevailing climatic conditions, (3) anticipated labor supply and costs, (4) availability and cost of materials, tools and equipment, (5) all applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities relating to Contractor's means, methods, techniques and sequences. With the exception of pre-existing hazardous materials, Owner assumes no responsibility or liability for the safety of or safety programs for the Project site or any improvements located on the site. Contractor shall be solely responsible for providing all safety programs and ensuring a safe place for the performance of the Work. Owner shall not be required to make any adjustment in either the Contract Sum or Contract Time in connection with any failure by the Contractor or any Contractor-Related Person to comply with the requirements of this Section. Neither any oral representation by nor oral agreement with any officer, agent, or employee of Owner, PM or Architect before or after execution of this Agreement shall affect or modify any of Contractor's obligations hereunder. Contractor is not aware of any facts that make misleading or inaccurate in any material respect any information Owner, PM or Architect has furnished to Contractor which would have a material, adverse effect on the Contract Time or Contract Sum, and if, during the course of the performance of the Work, Contractor learns of any such facts, it will so advise each of said parties.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall warrant that it has or will, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, take field measurements of any existing conditions related to that portion of the Work, and observe any conditions at the site affecting it, also as required by Section 2.2.3. Before ordering any materials or doing any Work, Contractor shall verify all measurements at the site and shall be responsible for the correctness of same. Contractor shall not be entitled to additional compensation or an extension of the Contract Time arising from the Contractor's failure to visit the site and take the measurements required by the Contract prior to commencing Work. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Owner, PM and Architect in writing any errors, deficiencies, inconsistencies or omissions discovered by or made known to the Contractor. Such inquiries shall be made through a request for information ("RFI") in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. It is the Contractor's duty, however, to seek clarifications through RFI's of any condition in the Work about which it has any uncertainty before commencing Work at such conditions. The Contractor shall submit follow-up RFI's if prior responses to the RFI do not provide the information needed.

§ 3.2.2.1 The Contractor shall not submit RFI's when the information sought can be ascertained from the Contract Documents. The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for evaluation and response to the Contractor's requests for information, where such information was available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation. If, in the reasonable opinion of the Architect, the Contractor does not make reasonable effort to comply with any of the above requirements of the Contract Documents and this causes the PM or the Architect or its Consultants to expend an unreasonable amount of time in the discharge of the duties imposed by the Contract Documents, then the Contractor shall bear the cost of compensation for the Architect's additional services made necessary by such failure.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report in writing to the PM and Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor has knowledge that any of the products or systems specified will perform in a manner that will limit the Contractor's ability to satisfactorily perform the Work or to honor any warranty, or will result in a limitation of or interference with the Owner's intended use, then the Contractor shall promptly notify the Owner, PM and Architect in writing, providing substantiation for its position. If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If

the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.2.5 Prior to performing any Work, and only if applicable, Contractor shall locate all utility lines as shown and located on the plans and specifications, including telephone company lines and cables, sewer lines, water pipes, gas lines, electrical lines, including, but not limited to, all buried pipelines and buried telephone cables, and shall perform any Work in such a manner so as to avoid damaging any such lines, cables, pipes, and pipelines. In addition, Contractor shall independently determine the location of same. Contractor shall be responsible for any damage done to such utility lines, cables, pipes and pipelines during its Work, and shall be responsible for any loss, damage, or extra expense resulting from such damage. Repairs shall be made immediately to restore all service. Any delay for such break shall be attributable to Contractor. In addition, and only if applicable, Contractor shall review the appropriate AHERA and hazardous materials surveys for the Project, and shall notify all Subcontractors and Sub-subcontractors of the necessity to review said surveys. Contractor shall perform any Work in such a manner as to avoid damaging, exposing, or dislodging any asbestos containing materials that are clearly identified and located in AHERA and other hazardous material surveys. Before performing any portion of the Work, the Contractor shall fully investigate all physical aspects of the Project Site and verify all dimensions, measurements, property lines, grades and elevations, existing improvements, and general suitability of existing conditions at the Project site.

§ 3.2.6 The Contractor shall arrange meetings prior to commencement of the Work of all major Subcontractors to allow the Subcontractors to demonstrate an understanding of the Construction and Contract Documents to the PM and Architect and to allow the Subcontractors to ask for interpretations, when necessary. The Contractor and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including without limitation:

- .1 The location, condition, layout, drainage and nature of the Project site and surrounding areas;
- .2 Generally prevailing climatic conditions;
- .3 Anticipated labor supply and costs;
- .4 Availability and cost of materials, tools and equipment; and
- .5 Other similar issues.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, trenching and procedures and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner, PM and Architect and shall not proceed with that portion of the Work without further written instructions from the PM or Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures, except to the extent such loss or damage results from or is caused by the Contractor's failure to follow such instructions or the Contractor's failure to exercise reasonable care and skill in carrying out such instructions.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor and any Contractor-Related Person. As part of this responsibility, Contractor shall enforce alcohol-free, drug-free, tobacco-free, harassment-free and weapon-free policies and zones, which will require compliance with those policies and zones by Contractor and any Contractor-Related Person. Failure of an individual to adhere to these standards of conduct shall result in the immediate removal as permitted by law of the offending employee from all construction

Work on any of Owner's property. Repeated violations of these rules can result in the immediate termination of the Contract by Owner for cause.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.3.4 Laying Out and Constructing the Project

Contractor shall employ an experienced and competent licensed surveyor or civil engineer to establish permanent benchmarks to which easy access may be had during the progress of the Work, determine all lines and grades, and verify same from time to time during the progress of the Work.

§ 3.3.5 To the extent that any portion of the Work requires a trench excavation exceeding five (5) feet in depth, in accordance with Texas Health and Safety Code Section 756.023(a), Contractor shall fully comply, and shall require any applicable subcontractor to comply, with:

- .1 The Occupational Safety and Health Administration standards for trench safety in effect for the Construction of the Work;
- .2 The special shoring requirements, if any, of the Owner; and
- .3 Any geotechnical information obtained by Owner for use by the Contractor in the design of the trench safety system.
- .4 Trench excavation safety protection shall be a separate pay item, and shall be based on linear feet of trench excavated. Special shoring requirements shall also be a separate pay item, and shall be based on the square feet of shoring used.

§ 3.3.6 The Contractor shall review Subcontractor safety programs, procedures, and precautions in connection with performance of the Work. However, the Contractor's duties shall not relieve any Subcontractor(s) or any other person or entity (e.g., a supplier), including any person or entity with whom the Contractor does not have a contractual relationship, of their responsibility or liability relative to compliance with all applicable federal, state, and local laws, rules, regulations, and ordinances which shall include the obligation to provide for the safety of their employees, persons, and property and their requirements to maintain a work environment free of recognized hazards. The foregoing notwithstanding, the requirements of this Paragraph are not intended to impose upon the Contractor any additional obligations that the Contractor would not have under any applicable state or federal laws, including, but not limited to, any rules, regulations, or statutes pertaining to the Occupational Safety and Health Administration.

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for qualified, careful, and efficient workers and labor eligible to work in accordance with state and federal law, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.2.1 After the Guaranteed Maximum Price Amendment is executed, if the Contractor seeks to substitute a material or product of a different brand or manufacturer in lieu of that specified in the Contract Documents, it shall submit a written request to the Owner, PM and Architect for approval of such proposed substitution pursuant to this Section and Section 1.7 herein. Each request for substitution shall be accompanied by complete descriptive literature, performance data, and cost information with regard to both the specified item and the proposed substitution, plus any samples as may be required by the Owner, PM or Architect. Each proposed substitution shall require the written approval of the Owner, PM or Architect before its incorporation into the Work. The Contractor

shall submit requests for substitution as soon as practicable after the need for the substitution is determined to allow for adequate consideration of such request and to minimize delay in the progress of the Work. Owner shall promptly act on such request so as to endeavor to minimize delay in the progress of the Work. Contractor shall bear the risk of any delay in performance caused by submitting requests for substitutions. The Owner may condition approval of the substitution on Contractor's proving clearly and certifying that the substitution is equal in performance characteristics to the requirements of the Contract Documents, equally compatible with existing installations and complementary to the design for the Work. The Owner may reject any proposed substitution in its sole discretion.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor and all Contractor-Related Persons. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. TO THE MAXIMUM EXTENT ALLOWED BY LAW, THE CONTRACTOR RELEASES, INDEMNIFIES, DEFENDS AND HOLDS HARMLESS THE OWNER FOR CONTRACTOR'S FORCES' NON-COMPLIANCE WITH OWNER'S DRUG-FREE, ALCOHOL-FREE, WEAPON-FREE, HARASSMENT-FREE, AND TOBACCO-FREE ZONES, CONTRACTOR'S FORCES' NON-COMPLIANCE WITH CRIMINAL LAW, OR CONTRACTOR'S OR CONTRACTOR'S FORCES' NON-COMPLIANCE WITH IMMIGRATION LAW OR REGULATIONS. Any individual found by Owner to have violated these restrictions is subject to permanent removal from the Project, at Owner's request. Contractor shall place similar language in its subcontract agreements, requiring its Subcontractors and Sub-subcontractors to be responsible for their own forces and Contractor shall cooperate with the Owner to ensure Subcontractor and Sub-subcontractor compliance.

§ 3.4.8 PREVAILING WAGE RATES

§ 3.4.8.1 In accordance with and to the extent required by applicable law, including without limitation Texas Government Code Section 2258 *et seq.* and Texas Labor Code Section 62.051 *et seq.*, Contractor, Contractor's Subcontractors and Sub-subcontractors shall pay all workers not less than the general prevailing rate of per diem wages for work of a similar character where the Project is located, as detailed in the "Minimum Wage Schedule" provided herein. Wages listed are minimum rates only. However, no claims for additional compensation above the Contract Sum shall be considered by the Owner because of payments of wage rates in excess of the applicable rate provided herein.

§ 3.4.8.2 Contractor shall be liable to Owner in the sum of \$60 (which may be offset of sums thereafter due and payable to Contractor) for each laborer, worker or mechanic employed for each Calendar Day or part of the day that the worker is paid less than the wage rates stipulated in the Contract Documents or as otherwise required by applicable law. It is agreed that the sum of \$60 per day is a reasonable estimation of the damages that Owner will incur as a result of Contractor's failure to comply (such damages being difficult to ascertain) with this Section 3.4.8 and is not being assessed as a penalty.

§ 3.4.8.3 Owner reserves the right to receive and review payroll records, payment records, and earning statements of employees of Contractor, and of Contractor's Subcontractors and Sub-subcontractors.

§ 3.4.8.4 In executing the Work under the Contract Documents, Contractor shall comply with all applicable state and federal laws, including but not limited to, laws concerned with labor, equal employment opportunity, safety and minimum wages.

§ 3.4.8.5 Prevailing Wage Rates are as set forth on Exhibit I of the A133-2009 Agreement. If no schedule is attached then the parties shall use the wage rate determined by the US Department of Labor in accordance with the Davis-Bacon Act, 40 USC Section 276a, which can be accessed on the internet at www.gpo.gov/davisbacon/.

§ 3.5 WARRANTY

§ 3.5.1 The Contractor warrants to the Owner, PM and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that Contractor shall perform the Work in a good and workmanlike manner, continuously and diligently in accordance with the Contractor's standard of care stated in the Contract, except to the extent the Contract Documents expressly specify a higher degree of finish or workmanship, in which case the standard shall be the higher standard. All material shall be installed in a true and straight alignment, level and plumb; patterns shall be uniform; and jointing of materials shall be flush and level, unless otherwise directed in writing by the Architect. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract

Documents require or permit. Work, materials, or equipment not conforming to these requirements shall be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, PM or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 The Contractor agrees to assign to the Owner at the time of final completion of the Work or termination of this Agreement, whichever is earlier, any and all manufacturer's, subcontractors' and suppliers' warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties required by Contract Documents or otherwise provided. The Contractor shall obtain and deliver to owner of warranty documentation necessary for owner to enforce such warranties. Contractor retains the non-exclusive right to enforce directly any manufacturer's warranties. Contractor shall request that each trade contractor, Subcontractor or supplier making bids or proposals include with its bid or proposal an Add/Alternate to provide the longest available manufacturer's or supplier's warranty, or if longer than that, take all required actions to obtain the longest available manufacturer's or suppliers' warranties required by the Contract Documents, unless instructed otherwise by Owner in writing. Upon selection of the successful bidders, the Owner shall advise Contractor whether the Owner desires to purchase any such longer warranty, and the cost of such warranty shall be included in the Guaranteed Maximum Price.

§ 3.5.3 The warranties of Contractor provided in Paragraphs 3.5 shall in no way limit or abridge the warranties of the suppliers of equipment and systems which are to comprise a portion of the Work. All such warranties shall be in form and substance as required by the Contract Documents. Contractor shall take no action or fail to act in any way that results in the termination or expiration of such third party warranties or that otherwise results in prejudice to the rights of Owner under such warranties. Contractor agrees to provide all notices required for the effectiveness of such warranties and shall include provisions in the contracts with the providers and manufacturers of such systems and equipment whereby Owner shall have a direct right, but not a duty, of enforcement of such warranty obligations.

§ 3.5.4 The form of warranty to be issued by each first tier Subcontractor and supplier shall be submitted to the Owner, PM and Architect for review and approval. Contractor shall maintain a complete and accurate schedule of the dates upon which any warranty will expire. Contractor shall provide a copy of such schedule to Owner, PM and Architect.

§ 3.5.5 Contractor shall, in addition to the other perquisites to achieving final completion:

- .1 Obtain documentation of warranties making the date of beginning of the warranties the Date of Final Completion, unless an earlier date is required by use of operating equipment before final completion;
- .2 Verify that the documents are in proper form and contain full information;
- .3 Co-sign warranties when required;
- .4 Retain warranties and bonds for simultaneous submissions to the Architect;
- .5 Bind all warranties in commercial quality binders;
- .6 Include a Table of Contents, with each item identified by the number and title of the specification section under which the product is specified; and
- .7 Separate each warranty with index tab sheets keyed to the Table of Contents listing.

§ 3.5.6 The Contractor shall certify to Owner that the Project has been constructed in conformance with the Construction Documents, as modified from time to time pursuant to the terms of the Contract. Contractor shall fully complete a "Certification of Project Completion" as required by 19 Texas Administrative Code Section 61.103(c)(3)(F).

§ 3.5.7 When deemed necessary by the Owner and prior to installation of any item specifically made subject to a performance standard or regulatory agency standard under any provision of the Contract Documents, Contractor shall furnish proof of conformance to the PM and Architect. Proof of conformance shall be in the form of: an affidavit from the manufacturer certifying that the item is in conformance with the applicable standards; an affidavit from a testing laboratory certifying that the product has been tested and is in conformance with applicable standards; or such further reasonable proof as is required by the Architect.

§ 3.6 TAXES

The Owner is an exempt entity under the tax laws of the State of Texas. The Owner represents that this Project is eligible for exemption from the State Sales Tax on tangible personal property and material incorporated in the Project, provided that the Contractor fulfills the requirements of the Limited Sales, Excise and Use Tax Rules and Regulations. For the purpose of establishing exemption, it is understood and agreed that the Contractor may be required to segregate materials and labor costs at the time the Contract is awarded, and will accept a Certificate of Exemption from the Owner. Contractor shall obtain Certificates of Resale from suppliers. Failure of Contractor or any Contractor-Related Person to obtain Certificates of Resale from their suppliers shall make the Contractor or any Contractor-Related Person responsible for absorbing the tax, without compensation from Owner. Contractor shall pay all necessary local, county and state taxes, income tax, compensation tax, social security and withholding payments as required by law. Contractor shall release, defend, indemnify and hold harmless Owner from any and all claims and demands made as a result of the failure of Contractor or any Subcontractor to comply with the provisions of any or all such laws and regulations.

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.1.1 The Contractor shall arrange and pay for all temporary utility charges, tap charges, and water meter charges. After consultation with the Owner and PM, the Contractor shall also obtain all permits and approvals, and pay all fees and expenses, if any: associated with National Pollutant Discharge Elimination System (NPDES) regulations administered by the Environmental Protection Agency (EPA) and local authorities, if applicable, that require completion of documentation and/or acquisition of a "Land Disturbing Activities Permit" for the Project; and obtain all permits and approvals, and pay all fees and expenses, if any, associated with Storm Water Pollution Prevention and Pollution Control Plan (SWPPP) regulations administered by the Texas Commission on Environmental Quality (TCEQ) and local authorities. Contractor's obligations under this section may require it to obtain or perform engineering services during the pre-construction phase to prepare proper drainage for the construction sites. The Contractor shall obtain any permits and approvals for drainage alterations made by Contractor during the construction process. Reimbursable expenses shall not include any fines or penalties assessed against the Contractor, any Contractor-Related Person or the Project. Reimbursement of such fees shall be in accordance with Article 6 of the Modified A133-2009 Agreement.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. The Contractor shall procure and obtain all bonds required of the Owner or the Contractor by the city or by any other public or private body with jurisdiction over the Project. In connection with such bonds, the Contractor shall prepare all applications, supply all necessary back-up material and furnish the surety with any required personal undertakings.

§ 3.7.3 If the Contractor performs Work it knows or reasonably should have known to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner, PM and the Architect before conditions are disturbed and in no event later than three (3) business days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, may recommend an equitable adjustment in the Contract Sum or Contract Time, or both. The Owner's Contingency (if any) may, in Owner's sole discretion, be utilized to cover increased costs, if any. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner, PM and Contractor in writing, stating the

reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.7.6 The Contractor shall be responsible for timely notification to and coordination with all utility companies regarding the provision of all necessary services to the Project. The Contractor shall inform the Owner, PM and Architect at once when the Owner's participation is required. Obtaining connections for permanent utilities and payment for temporary utilities services required for the Work are the responsibility of the Contractor unless otherwise agreed.

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order, to the extent Owner's Contingency (if any) within the Contract Sum is available to cover the cost. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness subject to the Contractor providing adequate time for the Owner to make such selection.

§ 3.8.4 When performing Work under allowances, Contractor shall solicit and receive not less than three written proposals or bids, and the selection shall be made, as required by 2269.255 and 2269.256 of the Texas Government Code.

§ 3.8.5 Contractor shall keep separate and adequate records of all allowances and shall submit such records to Owner no less than on a monthly basis.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent(s), project manager(s) and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner, PM and the Architect the name and qualifications of a proposed superintendent. The Owner, PM or Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner has reasonable objection to the proposed superintendent or (2) that the Owner requires additional time to review.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner has made reasonable and timely objection.

§ 3.9.4 At all times during the construction Work and through final completion, Contractor shall assign to the Project a project manager assigned to the Project through final completion, approved by Owner and shall keep on the job the full-time through final completion a superintendent approved by Owner, and neither the project manager nor the superintendent shall be removed or transferred from the Work without Owner's consent, which shall not be unreasonably withheld. However, such obligation to furnish the superintendent shall not be construed (a) to preclude the promotion within Contractor's organization of any person assigned to the Work or (b) to give rise to any liability of Contractor if any person assigned to the Work leaves Contractor's employ. If Owner reasonably determines that any employee of Contractor or any Contractor-Related Person is uncooperative, careless, not qualified to perform the Work assigned to him or otherwise unsuitable, and Owner and Contractor cannot, after a diligent and good faith attempt, agree what action should be taken with respect to the removal or reassignment of such employee, the Contractor shall promptly and lawfully remove such employee from the Work and replace such employee. At all times during the construction Work and through final completion, Contractor shall appoint a resident individual (approved by Owner, acting reasonably) authorized to act on behalf of Contractor and with whom Owner may consult at all reasonable times, and who shall be authorized to receive the instructions, requests and decisions of Owner. All of Contractor's and Subcontractors' personnel shall comply with all applicable health, safety, and loss prevention rules of applicable authorities and all rules, policies, procedures, and requirements of the Owner. Contractor shall, at its own expense, remove from the Work any person who fails to comply with such rules and instructions in any material respect. Prior to the commencement of the Work, Contractor's shall deliver to Owner for Owner's approval an organization chart setting forth the job titles, names and responsibilities of Contractor's personnel who will be assigned to the Work.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The construction schedule shall be furnished in a detailed precedence-style critical path management or Primavera-type format (P6) satisfactory to the Owner PM, and Architect that shall include a graphic representation of all activities and events that will occur during the performance of the Work and set forth dates and milestones that are critical in ensuring the timely completion of the Work. Upon approval by the Owner, PM and Architect, the construction schedule so provided shall become a part of the Contract Documents. The accepted construction schedule shall be updated to reflect actual conditions of the site. A detailed, critical path schedule format shall be used for the construction schedule with thorough updates to the construction schedule prepared and distributed to Owner and Architect at least monthly. The construction schedule and all updates should address submittal activities as well as actual field construction activities.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the approval by the Owner, PM and Architect. The schedule shall provide for adequate time for review and response. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner, PM and Architect, provided such schedules are consistent with and do not exceed the time limits under the Contract Documents.

§ 3.10.4 The Contractor shall hold weekly progress meetings at the Project Site, or at such other time and frequency as are acceptable to the Owner and PM. Progress of the work shall be reported at said meetings with reference to Contractor's construction schedule. The Contractor shall submit to the PM and Architect with each monthly application for payment, an XER or equivalent native format copy of the progress schedule showing all modifications required, and shall take whatever corrective action is necessary to assure that the Project completion schedule is met at no additional cost to Owner, except as allowed herein. In the event that Contractor shall fail

behind schedule at any time, Contractor shall develop and deliver a recovery plan to the Owner and PM with a recovery schedule and a program describing the additional manpower, overtime, material expediting, resequencing of the Work and other steps Contractor shall take to meet the requirements of the Contract. Contractor shall not be entitled to compensation from the Owner or any increase in the Contract Sum for the schedule recovery efforts. No approval or consent by the Owner of any plan for resequencing or acceleration of the Work submitted by Contractor shall constitute a waiver by Owner of any damages or losses which Owner may suffer by reason of such resequencing or the failure of Contractor to meet the Substantial Completion Date or the Final Completion Date

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one record copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Owner, PM and Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. References herein to the "Architect" with regard to submittals may include such other designated design professionals retained by Owner. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect and PM, if requested by the Owner, to the Owner, all Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the PM and Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner, PM Architect or of separate contractors. The form, quantity and recipients of such material shall be established by the PM.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner, PM and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing

the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the approval thereof by Architect or Owner's other retained professional.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to, and shall not, provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify the performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner, PM and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents, however, Contractor shall comply with the requirements of Section 3.2.1 and Section 3.2.2 above and shall notify Owner, PM and Architect if it believes that the performance or design criteria required by the Contract Documents are inadequate.

§ 3.12.14 The Contractor represents and warrants that to the best of Contractor's knowledge, all such submittals shall be prepared by persons and entities possessing the necessary expertise and experience in the trade for which the submittals, or by duly licensed professionals where required for performance specifications.

§ 3.12.15 Shop Drawings and other submittals may be transmitted electronically via the Project's technology platforms, to the extent they can be transmitted in such a manner. Physical samples are excluded from this provision.

§ 3.13 USE OF SITE

§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, instructions of the Owner or PM and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.13.2 Contractor shall employ reasonable measures to protect construction materials and equipment stored at the Project site from weather, theft, damage and all other adversity.

§ 3.13.3 Contractor and its subcontractors shall not erect any sign on the Project site without the prior written consent of the Owner.

§ 3.13.4 Contractor shall ensure that the Work, at all times, is performed in a manner that affords Owner, PM and Architect reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed in such a manner that public areas adjacent to the Site of the Work shall be free from all debris, building material, over-spray, dust (within the Contractor's control) and equipment likely to cause hazardous conditions or a nuisance. Contractor shall use its best efforts to minimize any interference with the occupancy or beneficial use of any area or building adjacent to the site of the Work.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.14.3 No cutting of structural elements will be permitted unless specifically approved in writing by Architect. Fitting and patching shall only be done with new products, and shall only be performed by those skilled in the performance of the original Work. Visible patching that does not match its surroundings shall be corrected by any means necessary.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall, on not less than a daily basis, keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. Contractor shall provide on-site containers for the collection of waste materials, debris and rubbish, and shall periodically remove waste materials, debris and rubbish from the Work site and dispose of all such materials at legal disposal areas away from the site. All cleaning operations shall be scheduled so as to ensure that contaminants resulting from the cleaning process will not harm or deface surfaces or travel off the Project site. Immediately after unpacking materials, all packing case lumber or other packing materials, wrapping or other waste shall be collected and properly disposed of. Care shall be taken by all workers not to mark, soil or otherwise deface any finish. In the event that any finish becomes defaced in any way by mechanics or workers, the Contractor shall clean and restore such surfaces to their original conditions. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

§ 3.15.3 The Contractor shall be responsible for the protection of the Work. Prior to the Architect's inspection for Substantial Completion, the Contractor shall clean exterior and interior surfaces exposed to view; remove temporary labels, stains, putty, soil, paint and foreign substances from all surfaces, including glass and painted surfaces; polish transparent and glossy surfaces; clean equipment and fixtures to a sanitary condition; replace air filters in mechanical equipment; clean roofs, gutters, and downspouts; remove obstructions and flush debris from drainage systems; clean site; sweep paved areas and rake clean other surfaces; remove trash and surplus materials from the site; clean and polish all floors; clean and polish all hardware; and repair all Work damaged during cleaning.

§ 3.15.4 After construction is complete, Contractor shall: (1) employ skilled workers for final cleaning; (2) remove grease, mastic adhesive, dust, dirt, stains, fingerprints, labels and other foreign materials from all sight-exposed interior and exterior surfaces; (3) wash and shine glazing and mirrors; (4) polish glossy surfaces to a clear shine; (5) vacuum clean carpeted and similar soft surfaces; (6) clean (damp mop with clean mop and water) resilient and hard surface floors, repeating as necessary until no visible residue remains on floors; clean plumbing fixtures to a sanitary condition; (8) clean surfaces of all equipment and remove excess lubrication; (9) clean permanent filters and replace disposable filters in ventilating systems if units were operated during construction and clean ducts, blowers and coils; (10) clean light fixtures; (11) remove waste, foreign matter and debris from roofs, gutters, area ways and drainage ways; (12) remove waste, debris and surplus materials from the site; (13) remove stains, spills and foreign substances from paved areas; and (14) clean exterior concrete and paved surfaces and clean the grounds.

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner, PM and Architect access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner, PM and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 3.18 INDEMNIFICATION

§ 3.18.1 TO THE FULLEST EXTENT PERMITTED BY LAW THE CONTRACTOR SHALL INDEMNIFY, DEFEND (TO THE MAXIMUM EXTENT PERMITTED BY LAW) AND HOLD HARMLESS THE OWNER, AND ITS COMMISSIONERS, OFFICIALS, AGENTS AND EMPLOYEES (“OWNER PARTIES”) FROM AND AGAINST:

- .1 ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS’ FEES, EXPERTS’ FEES AND COSTS OF LITIGATION ARISING, OR ALLEGED TO ARISE, FROM ANY OF THE FOLLOWING (THE “INDEMNIFIED MATTERS”):**
 - (A) THE ACTS OR OMISSIONS, INCLUDING THE ONGOING OR COMPLETED OPERATIONS, OF CONTRACTOR AND ANY CONTRACTOR-RELATED PERSON;**
 - (B) NEGLIGENCE, NEGLIGENT MISREPRESENTATION, FRAUD, BREACH OF FIDUCIARY DUTY, WILLFUL, RECKLESS, OR CRIMINAL MISCONDUCT, OR ANY ACTIONS OF CONTRACTOR AND ANY CONTRACTOR-RELATED PERSON BEYOND THE SCOPE OF WORK;**
 - (C) DEFAULT BY CONTRACTOR UNDER THIS AGREEMENT;**
 - (D) FAILURE BY CONTRACTOR OR ANY CONTRACTOR-RELATED PERSON TO MAINTAIN INSURANCE REQUIRED TO BE MAINTAINED BY IT PURSUANT TO THIS AGREEMENT;**
 - (E) CONTRACTOR’S OR ANY CONTRACTOR-RELATED PERSON’S VIOLATION OF ANY ORDINANCE, REGULATION, STATUTE OR OTHER LEGAL REQUIREMENTS; OR**
 - (F) RELEASE OR DISTURBANCE OF HAZARDOUS MATERIALS OR SUBSTANCES THAT OCCURS IN OR FROM THE PROPERTY AND ARISES FROM CONTRACTOR’S OR A CONTRACTOR-RELATED PERSON’S ACTIVITIES OR OPERATIONS OR THE REMEDIATION OF SUCH RELEASE OR DISTURBANCE ARISING OUT OF OR RESULTING FROM PERFORMANCE OF THE WORK;**

PROVIDED THAT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY (OTHER THAN THE WORK ITSELF) CAUSED IN WHOLE OR IN PART BY THE NEGLIGENT ACTS OR OMISSIONS OF THE CONTRACTOR OR ANY CONTRACTOR-RELATED PERSON;

- .2 REGARDLESS OF:**

- (A) WHETHER THE CLAIM IS ALSO CAUSED IN PART BY THE ORDINARY, ACTIVE OR PASSIVE, JOINT, CONCURRENT OR COMPARATIVE NEGLIGENCE OF SUCH OWNER PARTY;**
- (B) WHETHER LIABILITY WITHOUT FAULT OR STRICT LIABILITY IS IMPOSED UPON OR ALLEGED AGAINST THE OWNER PARTY; AND**
- (C) THE SCOPE OF ANY PERSON’S INSURANCE AND IS INDEPENDENT OF INSURANCE;**

- .3 BUT WILL NOT BE ENFORCED TO THE FOLLOWING EXTENT (“EXCLUDED MATTERS”):**

(A) OF OWNER'S BREACH OF THIS CONTRACT; OR

(B) A LOSS IS CAUSED IN WHOLE OR IN PART BY THE MISCONDUCT OR NEGLIGENCE OF AN OWNER PARTY.

IF LOSSES, DAMAGES, LIABILITIES AND EXPENSES ARISE OUT OF THE CONCURRENT NEGLIGENCE OF BOTH OWNER AND CONTRACTOR OR THE RESPECTIVE PARTIES FOR WHOM EACH IS RESPONSIBLE, CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS OWNER ONLY TO THE EXTENT OF CONTRACTOR'S OWN NEGLIGENCE OR THOSE FOR WHICH IT IS RESPONSIBLE HEREUNDER OR UNDER APPLICABLE LAW; PROVIDED, HOWEVER, CONTRACTOR SHALL PROVIDE OWNER AND/OR THE OWNER PARTIES WITH A COMPLETE DEFENSE OF SUCH CONCURRENT NEGLIGENCE CLAIM UNTIL THE CLAIM IS SETTLED OR A FINAL JUDGMENT IS ENTERED ON SUCH CLAIM, AT WHICH TIME OWNER AND/OR ITS INSURANCE CARRIER(S) SHALL REIMBURSE CONTRACTOR AND/OR ITS INSURANCE CARRIER(S) FOR DEFENSE COSTS PROPERLY ALLOCATED TO OWNER AND/OR THE OWNER PARTIES. CONTRACTOR'S INDEMNITY HEREIN IS EXPRESSLY INTENDED TO CONSTITUTE A WAIVER OF ANY IMMUNITY IT MAY HAVE UNDER THE LAW TO THE EXTENT NECESSARY TO PROVIDE OWNER AND OWNER PARTIES WITH A COMPLETE INDEMNITY FOR THE NEGLIGENCE OF CONTRACTOR OR CONTRACTOR'S EMPLOYEES, TO THE EXTENT OF THEIR NEGLIGENCE.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.18.3 Expenses recoverable by the Owner Parties as part of the Contractor's indemnity obligations under this Section 3.18 shall include, without limitation, reasonable attorney's fees, experts' fees and any other costs incurred by such Owner Parties in a legal proceeding brought against the Contractor to enforce this Section 3.18.1. The provisions contained Section 3.18 shall survive the expiration or earlier termination of this Agreement, the final completion of the Work, and any other services to be provided pursuant to the Contract Documents.

§ 3.18.4 The Contractor shall promptly advise Owner in writing of any action, administrative or legal proceeding or investigation as to which this indemnification may apply, and Contractor, at Contractor's expense, shall as permitted by law assume on behalf of the Owner Parties and conduct with due diligence and in good faith the defense thereof (to the maximum extent permitted by law) with counsel satisfactory to Owner; provided, however, that Owner and the other Owner Parties shall each have the right, at their option, to be represented therein by legal counsel of their own selection and at their own expense. In the event of failure by the Contractor to fully perform in accordance with this Indemnification paragraph, the Owner Parties, at their option, and without relieving Contractor of its obligations hereunder, may so perform, but all costs and expenses so incurred by the Owner Parties in that event shall be reimbursed by Contractor to such Owner Parties, together with interest on the same from the date any such expense was paid by such Owner Parties until reimbursed by Contractor, at the rate of interest provided to be paid on judgments under the laws of the State of Texas.

§ 3.18.5 TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR WAIVES ALL CLAIMS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO, USE OR DESTRUCTION OF TANGIBLE PROPERTY AGAINST OWNER AND ALL OWNER PARTIES ARISING IN CONNECTION WITH THIS AGREEMENT, ITS PERFORMANCE OR INTERPRETATION OR WITH RESPECT TO THE PROJECT OR WORK THE AGREEMENT REQUIRES REGARDLESS OF WHETHER ANY SUCH CLAIMS ARE CAUSED, OR ARE ALLEGED TO BE CAUSED, BY ANY NEGLIGENCE, NEGLIGENT MISREPRESENTATION, BREACH OF CONTRACT OR BREACH OF ANY OTHER DUTY OR OBLIGATION OF OWNER OR ANY OWNER PARTIES.

§ 3.19 DELIVERY OF DOCUMENTS*

Contractor shall furnish Owner with such documents, instruments and certificates as may reasonably be required by Owner, PM or Architect with respect to the construction of the Project and the payment of the costs thereof.

Without limiting the generality of the foregoing, Contractor shall furnish:

- .1 a breakdown of the cost of each category of the Work included in the construction of the Project certified by Contractor to be true and complete in the form of a cost certificate;
- .2 an projected disbursement schedule in form and content acceptable to Owner setting forth the dates on which Contractor expects to request payment and specifying the portions of the Work, materials and other costs to be covered by such requests for payment ("**Disbursement Schedule**"). Such Disbursement Schedule is a projection provided for Owner's convenience only. Construction Manager does not guarantee or warrant that it will strictly adhere to such Disbursement Schedule;
- .3 the site development and construction drawings approved by all applicable governmental authorities (bearing stamps or other evidence of such government authorities' approval) issued to Contractor;
- .4 for each trade or division of the Work, under the direction of the Contractor, a complete and accurate record of all changes or deviations from the Contract Documents. The Contractor shall prepare or cause to be prepared drawings certifying the as-built conditions of the entire Work and specifically defining the variations, if any, from requirements of the Contract Documents (referred to herein as the "**As-Built Drawings**"). All such changes shall be neatly and correctly shown on the drawings affected, or in the specifications, with appropriate supplementary notes. The record set of prints of Drawings, Shop Drawings and Specifications shall be kept at the site for inspection of Architect, PM and Owner. The Contractor's As-Built, along with such other Drawings, Shop Drawings and Specifications kept by the Contractor at the site, shall be delivered to Owner in good condition at or before final completion and as a condition precedent to final payment.
- .5 certificates that the Work has, to date, been constructed in accordance with the Contract Documents, and
- .6 temporary and final certificates of occupancy, as a condition precedent to final payment.

*As-builts are to be delivered at completion in both hard copy and CADD format.

§ 3.20 INSPECTIONS

Contractor shall use diligent efforts to cause all necessary governmental inspections and approvals of the Work to be performed on a timely basis. No inspection performed or failed to be performed by Owner, PM or Architect shall constitute a waiver of any of Contractor's obligations hereunder or be construed as an approval or acceptance of the Work or any part thereof.

§ 3.21 SAFETY

Contractor shall take reasonable precautions to prevent damage, injury or loss to (1) all persons involved with the Work and other persons who may be affected by the Work, (2) all the Work and all materials and equipment to be incorporated therein, including those in storage on or off site under the care, custody or control of Contractor or any Subcontractor, Sub-subcontractor or supplier, and (3) the Owner's personal and real property and other property at the Work site or adjacent thereto, including without limitation, fixtures, carpets and other related items. Contractor shall at all times take such precautions as may be reasonably necessary to shore, brace, secure and protect the Work. Contractor shall further post necessary danger signs and other warnings against hazards, promulgate and enforce safety codes and rules. Contractor shall particularly be responsible for compliance with all applicable state and federal safety laws, ordinances, rules, regulations and lawful orders of all governmental authorities and other persons or entities having jurisdiction which pertain to the Work.

§ 3.22 MATERIALS

Any material specified by reference to the number, symbol or title of a specific standard such as that of the American Society for Testing Materials ("ASTM"), a product or commercial standard, federal specification or other similar standards, shall comply with the requirements of the dated revisions stated in the Specifications, or where the Specifications contain no revision date, shall unless otherwise specified comply with the requirements of the latest revisions thereof and any supplement or amendment thereto, in effect on the date of Owner's receipt of the GMP. The standards referred to, except as specifically modified in the Specifications, shall have the same force as if they were printed verbatim within the Specifications.

§ 3.23 MANUFACTURER'S INSTRUCTIONS

Where it is required in the Specifications that materials, products, processes, equipment or the like be installed or applied in accord with manufacturer's instructions, directions or specifications or words to this effect, it shall be construed to mean that said application or installation shall be in strict accord with current printed instructions furnished by the manufacturer of the material concerned for use under conditions similar to those at the site.

§ 3.24 MONTHLY REPORTS*

The Contractor shall perform the Work in general accordance with the most recent schedules submitted to and approved by the Owner, PM and Architect. On or before the first day of each calendar month, the Contractor shall provide a written monthly report in PDF format to each of the Owner, PM and the Architect on the progress of the entire Work (the "Monthly Report"), which includes a narrative noting major activities (both those in progress and those completed) during the preceding month, as well as those activities planned for the following month. An XER file of the latest progress schedule, as compared to the baseline schedule, shall be included in the report. Delays and disruptions incurred during the preceding month shall be noted in such Monthly Report, along with the Contractor's proposal for making up any lost time to ensure that the Work is satisfactorily completed within the Contract Time (as defined in Section 8.1.1). Each Monthly Report shall include a Change Order log, an updated construction schedule (electronic with hard copies in the computer application format), the progress of pending decisions with impacts on the construction schedule, a Request for Information ("RFI") log, a submittal log, project progress photos, and a log of accidents and other incidents involving the safety of persons on or about the Project site. Owner's obligation to release the progress payment for any given month shall be conditioned upon Owner's receipt of a complete and accurate Monthly Report for such previous month. On or before the first day of each calendar quarter, the Contractor shall provide the Owner with a detailed accounting ledger indicating amounts actually paid by Contractor pursuant to the previous calendar quarter's Applications for Payment and accounting for any underpayment or overpayment by Owner on the previous calendar quarter's Progress Payments (the "**Quarterly Accounting Report**"). The Contractor shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Contractor shall identify variances between actual and estimated costs and report the variances to the Owner and Architect in each Quarterly Accounting Report.

*Master schedule is to be updated monthly and included in Contractor's Monthly Report. Monthly report is to include status of any LEED reports required from Contractor.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 4.1.2 Omitted

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect and whose status under the Contract Documents shall be that of the Architect.

§ 4.1.4 Except as expressly provided herein, the Contractor shall not be relieved of Contractor's obligation to perform the Work in strict accordance with the Construction Documents and Contract Documents by the duties, responsibilities or activities of the PM or Architect.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Owner, PM and Architect will

not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Owner, PM and Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Owner, PM and Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Owner, PM and Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work. The Contractor shall reimburse the Owner for compensation paid to the Architect for additional site visits made necessary by the fault, neglect or excessive requests of the Contractor.

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the PM or Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner and PM.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts based upon its evaluations of the Work and of the Contractor's Applications for Payment.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. The authority to reject Work by the Architect shall not limit the Owner's right to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner, PM or Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The PM's and Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, with the prior written approval of Owner and PM, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine or to assist Owner in determining the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to

Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret and make recommendations concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or PM. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and recommendations of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Owner's or Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 4.2.15 Notwithstanding any other provision of this Agreement to the contrary, the Architect (or such other design professional designated by the Owner) shall not have the authority to order or approve any material deviation from the Contract Documents, whether or not such deviation affects the Contract Sum or other Substantial Completion Date (as defined herein). In the event any such deviation is sought, prior written approval from Owner must be obtained.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 All subcontractors shall be procured in accordance with Texas Government Code Chapter 2269, and the requirements of this Contract. The Contractor shall be fully responsible for the performance of its subcontractors, including those recommended or approved by the Owner.

§ 5.3 SUBCONTRACTUAL RELATIONS

§ 5.3.1 By written agreement the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner, PM and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract

agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.3.2 Contractor shall receive, review and approve all requests for payment from Subcontractors and material suppliers performing work and providing materials in the construction of the Project before submitting such requests for payment to Owner, PM or Architect, and Contractor shall pay such Subcontractors and material suppliers within 10 days after receipt of payment from Owner except only for any amounts that Contractor is entitled to retain for retention or for incomplete or unsatisfactory Work or other claims under a Subcontract or purchase order.

§ 5.3.3 Contractor shall furnish the Owner or PM with copies of all executed subcontracts and with a list of all the Subcontractors and major suppliers on the Project. Each subcontract or supply agreement shall contain provisions that:

- .1 require that the Contract forms a part of such Subcontract to the extent applicable to the Work of the Subcontractor;
- .2 require that the Work performed pursuant to such subcontract be performed in accordance with the requirements of the Contract Documents (both express requirements and those that are reasonably inferable from the Contract Documents);
- .3 require submission of Applications for Payment in a form reasonably approved by Owner, together with a reasonably detailed schedule of values and other supporting documentation required by Owner;
- .4 require each Subcontractor and supplier to maintain insurance coverage as provided in the subcontract or other applicable agreement and to file certificates of such coverage with Contractor;
- .5 require each Subcontractor and supplier to furnish to Contractor in a timely fashion all information necessary for the preparation and submission of the Monthly Reports and Quarterly Reports required herein; and
- .6 require that each Subcontractor and supplier continue to perform under its subcontract if the Contract is terminated for cause and if Owner takes an assignment of the subcontract or supply agreement and requests the Subcontractor or supplier to continue such performance.

§ 5.3.4 Contractor shall require Subcontractors of any tier and suppliers to submit a payment application schedule of values to the Owner and PM for the Owner's approval before the Work commences. Such schedule of values must be consistent with the schedule of values required by Section 9.2 hereof and the Agreement, and must fairly estimate the percentage of the Subcontractor's, Sub-subcontractor's or supplier's work that will be completed (or materially delivered) each application date. The percentage of the total cost reflected in any tier of Subcontractors' and supplier's bid to be requested on each payment application date shall not exceed the percentage of the Work completed (or materials delivered) prior to the submission of such request for payment, less the percentage of the total cost reflected in prior applications for payment. The Contractor shall obtain the Owner's approval of such schedule of values before the Contractor submits the first Application for Payment to the Owner.

§ 5.3.5 The Owner, PM and Architect shall be obligated to pay or to insure the payment of any monies to subcontractors due to any non-payment to the Contractor or non-payment of subcontractors by the Contractor.

§ 5.3.6 The Contractor shall require any potential subcontractor to disclose to the Contractor any ownership

interest or familial relationship between the Contractor, Architect, PM or any Owner Party and the potential subcontractor prior to entering into a subcontract. Contractor shall report to Owner and PM all such disclosures and the Owner shall have the right, in its sole discretion, to reject any such affiliated subcontractor.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract that accrue subsequent to Owner's exercise of this right of conditional assignment. Such assignment shall not constitute a waiver by Owner of its right against Contractor, because of defaults, delays, and defects for which a Subcontractor or supplier may also be liable. Contractor shall defend, indemnify and hold Owner harmless from any loss or damages caused by failure or refusal of any Subcontractor to comply with any provision of the Contract Documents.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 90 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension. Such assignment shall not constitute a waiver by Owner of its rights against Contractor, including, but not limited to, claims for defaults, delays or defects for which a Subcontractor or supplier may also be liable.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

§ 5.4.4 Contractor will assign to the Owner all express and implied Subcontractor warranties at the earlier of the Owner's termination of the Contract or substantial completion of the entire Work.

§ 5.4.5 Owner, or its follow-on contractor as applicable, shall only be responsible for compensating Subcontractors and suppliers for Work performed or material furnished from and after the date on which the Owner gives written notice of its acceptance of the subcontract agreement assignment. Owner shall not be responsible for any Work performed or materials furnished by subcontractors prior to the date of Owner's written notice of acceptance.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Owner, PM and Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Owner, PM or Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents. No change in the Contract Sum and/or Contract Time will be allowed for a change in the Work unless prior to performing the changed Work the Contractor has provided the Owner in writing with a proposal for any increase in the Contract Sum and/or increase in Contract Time caused by the change in Work. No response to a Request for Information to the Architect or a field directive from the Architect or Owner shall be recognized as having any impact upon the Contract Sum or the Contract Time, and Contractor shall have no Claim therefore, unless Contractor shall, within 30 days of receipt (or otherwise as soon as practicable) and prior to complying with such response or field directive submit a preliminary Change Proposal to the Owner.

§ 7.1.2 A Change Order or Allowance Expenditure Authorization (as hereinafter defined) shall be based upon agreement between the Owner and Contractor; a Construction Change Directive requires agreement by the Owner and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Allowance Expenditure Authorization, Construction Change Directive or order for a minor change in the Work.

§ 7.1.4 The Contractor, upon receipt of written notification by the Owner, PM or the Architect of a proposed item of change in the Work, shall prepare as soon as possible a proposal for the change ("Change Proposal") in such form or forms as directed by the Owner, PM or the Architect and in accordance with the following:

- .1 Each Change Proposal shall be numbered consecutively and shall include material's costs, labor costs, fees, overhead and profit. The Change Proposal shall specify all costs related to the proposed Change in the Work, including any disruption or impact on performance.
- .2 The Subcontractors' itemized accounting shall be included with the Change Proposal.
- .3 If a Change Proposal is returned to the Contractor for additional information or if the scope of the proposed change in the Work is modified by additions, deletions or other revisions, the Contractor shall revise the Change Proposal accordingly and resubmit the revised Change Proposal to the Owner, PM and Architect.
- .4 A revised Change Proposal shall bear the same Change Proposal number but shall indicate a sequential revision number.
- .5 If a Change Proposal will be funded by an Allowance within the Contract Sum, upon written approval of a Change Proposal by the Owner, the Contractor will prepare an Allowance Expenditure Authorization authorizing such change in the Work. If funds are required in excess of the Contract Sum, Contractor will prepare a Change Order authorizing such change in the Work on such form as directed by the Owner.
- .6 The Contractor shall request extensions of Contract Time due to change in the Work only at the time of submitting its Change Proposal. Contractor's failure to do so shall represent a waiver of any right to request a time extension.
- .7 The Contractor shall maintain such Allowance Expenditure Authorization and Change Order log (with Change Proposals) in such form as directed by Owner.

§ 7.1.5 Except as permitted in the Agreement with regard to amounts to which Owner is entitled to payment or offset arising from Contractor's breach or default hereunder, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order Modification. No course of conduct or dealings between the parties, nor express or implied acceptance of unauthorized alterations or additions to the Work, and no claim that the Owner has been unjustly enriched by any such alternations or additions to the Work whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim of any increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents. Contractor shall obtain the Owner's written authorization before proceeding with any change in the Work. The PM and Architect are not authorized to give instructions to the Contractor that will increase the cost or price of the Work to the Owner unless the PM or Architect has separate specific written authorization from Owner to do so. Prior to instituting Work requested by the PM or Architect that may result in an increase in the cost or price to Owner above the previously approved Contract Sum, Contractor must verify with the Owner that the PM and Architect is authorized to order the Work costing the additional amount. Any advice the PM or Architect gives the Contractor is not given as agent for or on behalf of Owner and shall in no way be construed as authorizing Contractor to perform extra Work.

§ 7.1.6 The total subcontractor mark-up for overhead, profit and fee for work performed by the subcontractor's own forces shall not exceed 10% of the cost of the Change in the Work. The total subcontractor mark-up for overhead, profit and fee for supervision of work performed by a sub-subcontractors' forces shall not exceed 5% of the cost of the Change in the Work. In no event shall total markup for overhead, profit and fee in any work which involves a subcontractor or one or more Sub-subcontractors, regardless of who performs the work, exceed 15% of the total cost of the Change in the Work.

The Contractor will not be allowed an overhead, profit and fee mark-up when changes in the Work are funded by one of the Allowances within the Contract Sum as any such markups are assumed to already be included in the Contractor's Fee.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 An Allowance Expenditure Authorization (herein so called) is a written instrument prepared by the Architect and signed by the Owner, PM, Contractor and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The reallocation of money from/to an allowance or contingency to/from the Cost of Work

§ 7.2.3 Contractor stipulates that acceptance of a Change Order and Allowance Expenditure Authorization by the Contractor constitutes full accord and satisfaction for any and all Claims, whether direct or indirect, arising from the subject matter of the Change Order.

§ 7.2.4 In no event shall a single change, or the aggregate of all changes, result in the total costs, reimbursements and fees exceeding the Contract Sum or the Guaranteed Maximum Price unless agreed to in writing by Owner prior to the commencement of such modified or changed Work.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner, PM and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order or Allowance Expenditure Authorization.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods, all subject to the limitations of Section 7.1.6:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Owner, PM and Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly nor object in writing to the Owner and Architect within 10 calendar days after receipt of the Construction Change Directive, such Directive shall be deemed accepted by the Contractor and shall be effective and recorded as a Change Order, or Allowance Expenditure Authorization if funded within the Contract Sum. If Contractor disagrees with the method for adjustment in the Contract Sum, and timely and properly objects, the method and the adjustment shall be determined on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, subject to such provisions for adjustments to the Contract Sum as provided in the Contract Documents and as further limited immediately below including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following costs, to the extent such costs are actually incurred by the Contractor and are reasonable, subject to the limitations of Section 7.1.6:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation used in performing the Change in the Work;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of additional premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

The Contractor shall keep and present in such form as the Owner or PM may prescribe, an itemized account of the items listed above, together with appropriate supporting documentation.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Owner will make an interim determination per 7.3.7 for purposes of monthly certification for payment for those costs. The Owner's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree to reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded preparation and execution of an appropriate Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor. Contractor shall carry out such written orders promptly. Minor changes in the Work shall not include changes that involve the material change to outward appearance of the structure, color schemes, floor plans, building materials or mechanical equipment.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the first business day following the Contractor's written notice to proceed. The notice to proceed shall not be issued until Guaranteed Maximum Price Amendment has been signed by the Contractor and the Owner, and the Owner, PM and Architect have received and approved as to form all required payment and performance bonds and insurance as required by Article 11.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8. The date of Final Completion is the date certified by the Architect in accordance with Paragraph 9.10. Unless otherwise agreed in writing by Owner, Contractor agrees that Final Completion shall occur not more than 30 days after the date of Substantial Completion.

§ 8.1.4 The term “day” as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor’s critical path is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner, PM or Architect, or of an employee of them, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor’s control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Owner or PM determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine. Contractor agrees to include a contingency of 20 business days, in addition to the required Weather Days, at the end of the schedule, and prior to Substantial Completion, to account for any possibly delays and will not be entitled to a delay claim or time extension unless said contingency is exceeded.

§ 8.3.1.1 If the Contractor becomes entitled to time extensions that would result in the Contract Time being extended, the Contractor will, upon the Owner's request, expeditiously develop and deliver to Owner, a recovery plan consistent with the requirements of the Agreement. In its subcontracts, Contractor will obtain commitments from its Subcontractors to the obligation to expeditiously develop recovery schedules and budgets, if needed. The Owner may either elect to institute the plan for accelerated performance or extend the Contract Time.

§ 8.3.1.2 The Owner's consideration of extension of the Contract Time by Change Order shall be based on the following:

- .1** Claims for extension of time must be made in writing on or before the due date of Contractor's Application for Payment covering the period in which the delay began. In the case of a continuing cause of delay, only one claim is necessary.
- .2** Claims for extension of time shall be stated in whole or half Calendar Days, as applicable. The actual date on which the delay(s) occurred must be stated in the claim.
- .3** In case of claims for extension of time because of unusual inclement weather, such extension of time will be granted only if such unusual inclement weather prevented the execution of Work on normal working days. Unusual inclement weather as used herein means unusually severe weather which is beyond the normal weather recorded and expected for the locality of the Work and/or the season or seasons of the year. Normal weather conditions shall be determined based upon information compiled from the records of the U.S. Weather Bureau Station at the location of the Work. If unusually inclement weather conditions are the basis for a claim for additional time, such claim shall be documented by data substantiating such conditions, the fact that the same could not have been reasonably anticipated, and the fact that they had an adverse effect on the scheduled

construction.

- .4 Any claim for extension of time for strikes or lockouts shall be supported by a statement of facts concerning the strike, including the dates, the craft concerned, the reason for the strike, efforts to resolve the dispute, and the efforts of the Contractor to minimize the impact of the strike upon progress of the Work.
- .5 Any claim for extension of time for delays in transportation shall be supported by a statement of facts demonstrating that the delays are beyond the Contractor's control, and reciting the Contractor's efforts to overcome such delays.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 To the fullest extent permitted by law, this Section 8.3 precludes recovery of damages for delay, and the sole remedy shall be an extension of any delay to the critical path commensurate with the delay.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents. Subject to the provisions of Section 9.5.1, Owner shall have the right to withhold payment due Contractor hereunder to the extent allowed by Section 9.5.1 or as otherwise required by applicable law. However, Owner shall not be entitled to withhold more than the sum of (a) the amount that Owner reasonably estimates is necessary to cure any such default or failure of performance by Contractor, and (b) the amount of damages incurred by Owner as a result of such default or failure of performance by Contractor, subject to any limitation or waiver of damages or costs set forth herein.

§ 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Owner, PM and Architect, before the first Application for Payment, a schedule of values fairly allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner, PM or Architect may require. The schedule of values shall be developed in such detail as the Owner may reasonably require. Once approved by the Owner and updated for changes in the Work, the schedule of values shall be used only as a basis for reviewing the Contractor's Applications for Payment and is not to be taken as evidence of market or other value. The schedule of values and any modifications or amendments thereto shall not overvalue early job activities. Contractor's Fee and general conditions costs shall be set out as separate line items. The schedule of values shall follow the trade divisions of the Specifications so far as practicable. Any modifications or amendments thereto after execution of the Guaranteed Maximum Price Amendment and completion of the "buy out" process must be approved by the Owner, which approval will not be unreasonably withheld. Contractor shall revise its original schedule of values or cost breakdown from time to time at the reasonable request of the Owner or as circumstances otherwise may require. Such schedule of values and any supplements or amendments thereto shall be subject to the prior written approval of Owner, PM and Architect, which approval will not be unreasonably withheld. Unless otherwise agreed by the Owner, in writing, the schedule of values shall be on an AIA Document G703 (most recent edition) or such other form as may be required or approved, in writing, by the Owner and the first schedule of values submitted shall be accompanied by such other information as the Owner may reasonably require to substantiate its accuracy including, if applicable, a detailed breakdown of that portion of the Cost of the Work to be performed by the Contractor using its own force .

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 Procedures and requirements for payments under the Contract Documents are provided in Article 3 of the Modified A133-2009 Agreement. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site. Without limiting the foregoing, the following conditions shall be met for all materials and equipment stored off the site, for which the Contractor is requesting payment:

- .1 The location must be agreed to, in writing, by the Owner and Surety.
- .2 The location must be a bonded warehouse.
- .3 The Contractor's Surety must agree, in writing, to the amounts included in each Application for Payment.
- .4 The Contractor must bear the cost of the Owner's and Architect's expenses related to visiting the off-site storage area and reviewing the stored contents. Contractor acknowledges that Architect's time is an additional service and shall compensate Architect directly for same.
- .5 Payment shall not include any charges for overhead or profit on stored materials.
- .6 Payments for materials or equipment stored on or off the site shall be conditioned upon submission by the Contractor of bills of sale or such other procedures satisfactory to the Owner to establish the Owner's title to such materials or equipment or otherwise protect the Owner's interest, including applicable insurance (naming the Owner as insured and naming the specific materials or equipment stored and their location) and transportation to the site for those materials and equipment stored off the site. Under no circumstances will the Owner reimburse the Contractor for down payments, deposits, or other advance payments for materials or equipment until the materials or equipment are delivered to Owner's site. Failure to follow these procedures shall result in nonpayment for storage of or insurance on stored materials and equipment. Failure to follow these procedures shall also result in nonpayment of materials and equipment until said materials and equipment are incorporated into the Work.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. CONTRACTOR SHALL INDEMNIFY AND HOLD OWNER HARMLESS FROM ANY CLAIMS, SECURITY INTERESTS OR ENCUMBRANCES FILED BY THE CONTRACTOR, SUBCONTRACTORS, OR ANYONE CLAIMING BY, THROUGH OR UNDER THE CONTRACTOR OR SUBCONTRACTOR FOR ITEMS COVERED BY PAYMENTS MADE BY THE OWNER TO CONTRACTOR.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 See Article 7 of the Modified A133-2009 Agreement.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers

and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.4.3 The issuance of a Certificate for Payment shall constitute a recommendation to the Owner regarding the amount to be paid. This recommendation is not binding on the Owner if Owner knows of other reasons under the Contract Documents why payment should be withheld.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Owner may withhold payment in whole or in part, to the extent reasonably necessary to protect the Owner for any reason permitted by the Contract Documents for any loss for which the Contractor is responsible, including, without limitation, loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied, proper materials not furnished, clean-up not performed;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment, transportation or shipping costs, taxes, fees or other obligations properly incurred in connection with the Work;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 failure to carry out the Work in accordance with the Contract Documents;
- .8 with respect to the final request for payment, failure to deliver all close-out documents required by the Contract Documents, including As-Built or Record Drawings, written guarantees or warranties, operating instructions and maintenance manuals when requested, but in any event prior to the earlier of (a) one month after the issuance of the certificate of occupancy, or (b) submitting the Application for Payment for the final payment;
9. failure to obtain the approvals (including the release of applicable bonds), permits, certificates of occupancies required by any authority having jurisdiction;
10. failure to provide Owner with a revised construction schedule and recovery plan acceptable to Owner in accordance with the Agreement to address how the Contractor intends to timely achieve the Substantial Completion Date;
11. failure to timely provide Owner with accurate and complete Monthly Reports and Quarterly Reports, Project photographs and/or videotape and all of the other items required to be included in each Monthly Report or Quarterly Report; or
12. failure to provide Owner with accurate and complete evidence that Contractor and any Contractor-Related Person currently performing any portion of the Work or providing materials to the Project is carrying the insurance required by their respective agreements.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Owner is entitled to withhold payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered.

§ 9.5.4 If Contractor disputes any determination by Owner with regard to all or any part of an Application for Payment or a Certificate of Payment, Contractor shall nevertheless expeditiously continue to prosecute the Work but shall be entitled to make a Claim as provided in Article 15.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 Omitted

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate

agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. Should Contractor neglect or refuse to cause to be paid when due any undisputed bill or charge legitimately incurred by it, Owner shall have the right, but not the obligation, to pay the bill directly, and Contractor shall immediately reimburse Owner for same. If Contractor does not reimburse Owner, Owner may offset the amount of the unpaid, undisputed bill against amounts owed by Owner to Contractor hereunder. Owner shall have the further right to pay such unpaid, undisputed bills due to any Subcontractor or supplier by joint check payable to Contractor and each such Subcontractor, Sub-subcontractor or supplier.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. The Owner shall have the right to contact Subcontractors or any tier and suppliers to ascertain whether they have been properly paid. Neither the Owner, PM nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Contractor shall pay promptly when due all lawful demands of Subcontractors, suppliers, laborers, workmen, mechanics, materialmen, and persons who furnish labor, materials, machinery or parts thereof, equipment, power tools, or any other supplies whatsoever for debts incurred in the furtherance of the performance of this Contract, and (provided Owner has paid Contractor in accordance with the Contract Documents) shall indemnify and save Owner harmless from all claims growing out of such demands. Upon request by Owner, PM or Architect, Contractor shall furnish satisfactory evidence that all such obligations have been paid, discharged, bonded around or waived or that such obligations relate to or arise outstanding payments due Contractor. In the event Contractor fails to do so, Owner may, at its election, after having served written notice on Contractor, either pay unpaid bills of which Owner has written notice or withhold from Contractor's unpaid compensation a sum of money equal to the claimed amount. When satisfactory evidence has been received by Owner that all such liabilities have been fully discharged, waived, release or bonded around, Owner shall resume payment in accordance with the terms of the Agreement. In no event shall the provisions of this Section be construed to impose any obligation upon the Owner to either Contractor or its surety. The provisions of this Section shall be deemed to be in addition to the provisions of state law relating to the matters dealt with therein, and in no event shall they be deemed to alter, amend, or change the same, nor as an attempt to do so.

§ 9.7 FAILURE OF PAYMENT

§ 9.7.1 Subject to Article 7 of the Modified A133-2009 Agreement, if the Architect does not timely issue a Certificate for Payment or if the Owner does not timely pay the Contractor after the date established in the Contract Documents the amount certified by the Architect for payment, subject to Owner's right to withhold payment as set out in Section 9.5.1 above, or awarded by binding dispute resolution, then the Contractor may give written notice to the Owner, PM and Architect, and Owner shall have fourteen (14) business days after receipt of such notice to provide or obtain a Certificate for Payment. If Owner fails to provide or obtain the Certificate for Payment suspend the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.7.2 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due the Owner, or the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to: (1) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (2) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use; provided, however, as a condition precedent to Substantial Completion, the Owner has received a temporary certificates of occupancy and any other permits, approvals, license, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project (or if the same has not been delivered for reasons not the fault or responsibility of Contractor, nevertheless all Contractor's obligations necessary to the issuance of such certificates, permits, approvals, or licenses will have been performed). Without limiting the foregoing, Substantial Completion shall not occur until the Project has the appearance of completion in accordance with the Contract Documents, all systems, equipment, and components are working properly, except for minor adjustment, and any corrective or completion work required for final completion is minor in nature.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the owner, PN and Architect a comprehensive list of items to be completed or corrected prior to final payment ("**punch list**"). Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's punch list, the owner, PM and Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the owner's, PM's or Architect's inspection discloses any item, whether or not included on the Contractor's punch list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner, PM or Architect. In such case, the Contractor shall then submit a request for another inspection by the owner, PM and Architect to determine Substantial Completion.

If, in Owner's, Architect's or PM's opinion, the Project is not sufficiently complete to warrant a substantial completion inspection, or if the list of items included in the Contractor's punch list is excessive for this type of project, the Owner, Architect or PM may terminate the inspection until such time as either deem the project ready for inspection.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, upon request by the Owner, the Contractor will prepare and execute a Certificate of Substantial Completion that shall set out the agreed upon date of Substantial Completion and the responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the punch list accompanying the Certificate not exceeding 30 days from the date of Substantial Completion. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion if a different date is set out in the Certificate of Substantial Completion and if the Owner agrees to the different date pursuant to Section 9.8.5.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner for its acceptance and to the PM and Architect for the Architect's Certificate, if requested by Owner.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Owner, PM and Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. Contractor agrees that the Owner may place and install as much equipment and furnishings as is possible before completion or partial completion of portions of the Work.

§ 9.9.2 Immediately prior to such partial occupancy, installation or use, the Owner, Contractor, PM and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy, installation or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.9.4 In the event that Owner takes partial occupancy or installs furnishings and equipment prior to Substantial Completion of the Project, Owner shall request Contractor to obtain an endorsement to Contractor's Builder's Risk Policy to provide extended coverage for partial occupancy if Contractor's Builder's Risk Coverage required by Article 11 would not otherwise provide such coverage.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner, PM and Architect will promptly make such inspection and, when the Owner finds the Work acceptable under the Contract Documents and the Contract fully performed, Owner will make the final payment as provided by the Contract Documents. All warranties and guarantees required under or pursuant to the Contract Documents shall be assembled and delivered by the Contractor to the Owner as part of the final Application for Payment. The final payment will not be made by the Owner until all warranties and guarantees have been received and accepted by the Owner. Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Owner, PM and Architect, in addition to other information required to achieve Final Completion: (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) such documentation and assignments with regard to warranties as required by Section 3.5.1, Section 5.4.4 or otherwise in the Contract Documents; (6) such drawings and record documents as required by Section 3.19 or as otherwise required by the Contract Documents; (7) such operations and maintenance manuals, records, instructions, and data, as required by the Contract Documents; (8) keys, access cards, and any other items for access to and security of the premises; (9) such other close-out submittals or documentation required by the Contract Documents.

§ 9.10.3 Omitted

§ 9.10.4 The making of final payment shall not constitute a waiver of Claims by the Owner.\

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

§ 9.10.6 Except as otherwise provided in the Agreement, records of reimbursable expenses and costs incurred by the Contractor and for which payment is sought or received from Owner for Work performed or to be performed hereunder shall be made available to Owner for its reasonable review and examination. Such records shall be preserved by the Contractor and made available to the Owner for a period of at least 3 years after final completion of the Work.

§ 9.10.7 Upon satisfaction of these conditions, final payment is to be made after 31 days have elapsed since final completion without Owner or Contractor having received notice of claim of a Subcontractor or other person relating to the Work of non-payment for the Work performed or labor or materials furnished by such person; provided, however, if the Contractor has provided the Owner with (a) consent of surety, if requested by Owner, and (b) security legally sufficient to hold Owner and its property harmless from such claim, the Owner shall not withhold final payment on the basis of such claim. Final payment shall not be deemed a waiver by Owner of defects in construction or performance of the Work by Contractor or of any other breach of this Contract by Contractor.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract including, without limitation, enforcement of Section 3.3.2 and compliance with all provisions of the "Manual of Accident Prevention in Construction." published by the Associated General Contractors of America, Inc., latest edition. Contractor will develop a Site Specific Safety Program and submit a written manual that defines the Site Specific Safety Program and how it will be implemented and managed.

§ 10.1.2 Contractor's employees and any Contractor-Related Person shall not perform any Work or services while under the influence of any amount of alcohol or controlled substance, or use, possess, distribute, or sell alcoholic beverages while on Owner's premises. No person shall use, possess, distribute, or sell illicit or non-prescribed controlled drugs or drug paraphernalia; misuse legitimate prescription drugs, or act in contravention of warnings on medication while performing the Work or on Owner's premises.

§ 10.1.3 Contractor shall comply with all applicable federal, state, and local drug and alcohol-related laws and regulations. Any and all weapons are banned from the Project site, whether or not the owner thereof has a permit.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including all necessary and adequate fall protection, barriers and fencing, posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities. The Contractor shall also be responsible, at the Contractor's sole

cost and expense, for all measures reasonably necessary to protect the building in which the improvements are being constructed, including interior areas, and any improvements therein. Any damage to such property or improvements caused by, through or under the Contractor shall be promptly repaired by the Contractor.

§ 10.2.4 When use or storage of hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall give the Owner, PM and Architect reasonable advance notice thereof and shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. No explosives or use of explosives is allowed on the project site.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter. In addition, if death, serious personal injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner.

§ 10.2.9 When all or a portion of the Work is suspended for any reason, the Contractor shall protect the Work, as reasonably necessary, from injury damage to persons or property.

§ 10.2.10 TEMPORARY FACILITIES

Contractor shall make temporary connections for all utilities necessary during construction and shall remove them after completion of Project. Contractor shall provide, at a location on the Project site approved by Architect, a suitable weather-tight field office with raised floors available for use by Contractor at all times. Contractor shall furnish such field office with electric lights, telephone and ample desk space for use by Contractor. Field office is to include a separate room/office for use by Architect, PM and Owner. Contractor shall provide and maintain sanitary facilities for workmen at the job in accordance with the laws of Texas and the code and ordinances of the City. Contractor shall completely remove such facilities when the Project is completed. In conjunction with, but not in lieu of the requirements of Section 10.2.3, the Contractor shall provide an appropriate fence around the entire construction area for the duration of the Project as a minimum safety separation. This fence shall be equipped with vehicular and pedestrian gates with locks. The Contractor shall maintain the construction fences and gates in a state of good repair at all times for the duration of the Project. Gates shall be kept locked at all times when the Contractor's or any Contractor-Related Persons are not on the site. Any conditions of the construction fence and/or gates which the Architect, PM or Owner deems hazardous will be corrected promptly; provided, however, the Owner, PM and Architect shall have no duty to monitor any such hazardous conditions, as such activity is the Contractor's duty. If such conditions are not corrected promptly upon written notice, the Owner may correct the hazardous conditions and the cost of the corrective action will be deducted from the Contractor's payment.

§ 10.2.11 Contractor's obligations under Section 10.2 shall continue until final completion of the Project, Owner has taken 100% occupancy and all of Contractor's temporary facilities have been removed..

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. The Contractor shall not and shall not permit any hazardous materials to be brought to the Work site or used in the Work, except with respect to any materials expressly required by the Contract Documents that could have hazardous qualities in their pre-installation state. The Contractor shall follow all manufacturers' safety requirements when using such materials.

If the Contractor encounters a pre-existing hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing. The term "hazardous materials" includes, without limitation, any flammables, explosive, radioactive materials, petroleum based materials exceeding applicable federal, state, or local regulatory limits, asbestos, toxic substances or related materials, including without limitation, substances defined as "hazardous wastes," "hazardous substances," "hazardous materials," "toxic substances" or "solid wastes" in the Comprehensive Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C.A. Section 9601 *et. seq.*; the Resource Conservation and Recovery Act, 42 U.S.C.A. Section 2601, *et seq.*; and any other applicable laws statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, an amendments and revisions thereto. Contractor shall obtain from manufacturers and furnish to Owner Material Safety Data Sheets (OSHA Form 20) for all materials incorporated into the Project by the Contractor; provided, however, that providing such material shall in no way relieve Contractor of its duties under Section 10.3.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the pre-existing material or substance reported by the Contractor and, in the event such pre-existing material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor, PM and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. When the pre-existing material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up. Notwithstanding the foregoing, in those instances in which Contractor had notice of or should reasonably have known of the presence of such materials through information reviewed by Contractor, Contractor shall not be entitled to a Claim for any delays, disruption or interference it encounters.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor and any Contractor-Related Person from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in an area affected by hazardous materials if in fact such material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity. Notwithstanding any provision of the Contract Documents to the contrary, any recovery from the Owner under this Section 10.3.3 and Section 10.3.6 hereof is limited to coverage available to Owner under Owner's Pollution Liability insurance, including any deductible required by such policy. The Owner shall purchase a Pollution Liability insurance policy for this Project with project-specific limits of \$2,000,000 each loss and a \$2,000,000 policy aggregate. Such policy shall be written on an occurrence basis and shall include contractual liability coverage. A certificate of insurance evidencing such coverage and copy of such policy shall be provided to Contractor prior to commencement of the Construction Phase. The Owner will maintain such Pollution Liability insurance until the Work is substantially complete. The policy will be endorsed to provide Contractor with at 30 days' notice of cancellation. **WAIVER: THE CONTRACTOR WAIVES ALL SUCH CLAIMS IN EXCESS OF SUCH LIMITATION, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, REGARDLESS OF WHETHER ANY SUCH CLAIMS, CAUSES OF ACTION, LOSS, DAMAGES, FEES OR EXPENSES THAT ARE THE SUBJECT OF SUCH TERMS ARE CAUSED, OR ARE ALLEGED TO BE CAUSED, BY ANY**

NEGLIGENCE, NEGLIGENT MISREPRESENTATION, BREACH OF CONTRACT OR BREACH OF ANY OTHER DUTY OR OBLIGATION OF OWNER, PM, ARCHITECT OR THEIR OFFICIALS, EMPLOYEES, AGENTS OR REPRESENTATIVES.

§ 10.3.4 The Contractor shall be responsible under this Section 10.3 for such hazardous materials or substances the Contractor or a Contractor-Related Person brings to the site. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 INDEMNITY

THE CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE OWNER PARTIES AGAINST:

- .1 ANY CLAIM AND FOR LOSS THE OWNER INCURS (1) FOR REMEDIATION OF A MATERIAL OR SUBSTANCE THE CONTRACTOR OR A CONTRACTOR-RELATED PERSON BRINGS TO THE SITE, OR (2) WHERE THE CONTRACTOR FAILS TO PERFORM ITS OBLIGATIONS UNDER 10.3.1 OR AS REQUIRED BY LAW OR REGULATION
- .2 REGARDLESS OF
 - (A) WHETHER LIABILITY WITHOUT FAULT OR STRICT LIABILITY IS IMPOSED UPON OR ALLEGED UPON CONTRACTOR OR AGAINST ANY OWNER PARTIES, AND
 - (B) THE SCOPE OF ANY PERSON'S INSURANCE AND ITS INDEPENDENT OF INSURANCE;
- .3 BUT WILL NOT BE ENFORCED TO THE FOLLOWING EXTENT ("EXCLUDED MATTERS"):
 - (A) OF OWNER'S PRIOR, MATERIAL BREACH OF AN ESSENTIAL TERM OF THIS CONTRACT; OR
 - (B) A LOSS IS CAUSED IN WHOLE OR IN PART BY THE WILLFUL MISCONDUCT OR NEGLIGENCE OF AN OWNER PARTY.

NOTWITHSTANDING THE FOREGOING LIMITATIONS ON INDEMNITY OBLIGATIONS, THE OBLIGATIONS OF THE CONTRACTOR WITH REGARD TO THOSE CLAIMS OR LOSSES ASSERTED AGAINST OR INCURRED BY AN OWNER PARTY DUE TO OR ARISING OUT OF (A) A FAILURE OR ALLEGED FAILURE BY THAT INDEMNIFIED PARTY TO SUPERVISE, MONITOR, OR CONTROL CONTRACTOR'S OR ANY SUBCONTRACTOR'S ACTIVITIES ON OR ABOUT THE SITE OR OTHERWISE IN RESPECT TO PERFORMANCE OF THE WORK, OR (B) A FAILURE OR ALLEGED FAILURE BY THAT OWNER PARTY TO ENFORCE THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT DOCUMENTS SHALL NOT BE REDUCED BY THE COMPARATIVE NEGLIGENCE OF THE OWNER PARTY ATTRIBUTABLE TO OR RESULTING FROM SUCH OWNER'S ALLEGED FAILURE TO SUPERVISE, MONITOR OR CONTROL ANY CONTRACTOR-RELATED PERSON OR ALLEGED FAILURE TO ENFORCE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT DOCUMENTS.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7; provided the Contractor shall not be entitled to additional compensation or an extension of time if an emergency is caused by the negligence or breach of the Contract Documents or the failure of the Contractor's personnel to supervise adequately the Work of any Contractor-Related Parties.

§ 10.5 HAZARDOUS MATERIALS CERTIFICATION

The Contractor shall provide written certification that no materials used in the Work contain lead or asbestos materials in excess of amounts allowed by federal, state or local standards, laws, codes, rules and regulations; the Federal Environmental Protection Agency (EPA) standards; and/or the Federal Occupational Safety

and Health Administration (OSHA) standards, whichever is most restrictive. The Contractor shall provide this written certification as part of submittals under the section in the Project Manual related to Contract Closeout.

ARTICLE 11 INSURANCE AND BONDS

§ 11.0 Attached hereto as Exhibit ____ to the Modified A133-2009 Agreement are specifications for insurance and bonds to be obtained and maintained by the party identified in the Exhibit. The specifications are in addition to the requirements set out in this Article 11. In the event of any direct conflict between the specification in the Exhibit and the requirements set out in the below sections of Article 11, the specifications in Exhibit ____ to the Agreement control and amend and supersede the conflicting requirement set out in the below sections of Article 11.

Commercial General Liability, Worker's Compensation, Automobile Liability and Excess/Umbrella insurance will be provided by or on behalf of all Subcontractors of any tier and suppliers. Contractor will maintain certificates and evidence of insurance from all Subcontractors of any tier and suppliers, enumerating, among other information, the waivers of subrogation in favor of and additional insured status of the Owner Parties (as herein defined), as required by this Agreement. Contractor will make such certificates and evidence of insurance available to Owner Parties upon request. The coverages and limits set forth in Exhibit to ____ are minimum requirements and not a determination as to all of the coverages and maximum limits that Contractor should carry. The failure of a party to demand full compliance by the other party with respect to the minimum coverages outlined in Exhibit to ____ will not constitute a waiver with respect to the other party's obligation to maintain such coverages.

The failure of Contractor or any Contractor-Related Parties to obtain and maintain the required insurance will constitute a material breach of, and default under, Contract Documents. If Contractor or any Contractor-Related Parties fail to remedy such breach within 5 days after notice from Owner, Owner may, in addition to any other remedy available to it, at the Owner's sole option, purchase such insurance, at the Contractor's expense. The Contractor will indemnify the Owner, its officers and employees against any Claims arising from the Contractor's failure to purchase and/or maintain the insurance coverages required by this Agreement.

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance in coverage types, amounts and features not less than that required by the insurance requirements in Contract Documents including, without limitation both Exhibit ____ of the Agreement and this Article 11, and as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Contractor-Related Person or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 and the Contract Documents shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the

expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability, auto and umbrella liability coverage required by the Contract Documents to include (1) the Owner Parties as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner Parties as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during arising after as to the Contractor's completed operations. All such liability policies carried and maintained by Contractor must be endorsed to be primary to any liability insurance policies carried by the additional insureds with respect to Contractor's operations hereunder. Waivers of subrogation shall be provided in favor of the additional insureds on general, auto, workers' compensation/employers, umbrella and all other liability policies carried and maintained by Contractor where allowed by law.

§ 11.1.5 If the Contractor fails to purchase and maintain, or require to be purchased and maintained, any insurance required under this Article 11 or the insurance requirements in the Agreement, Owner may, but shall not be obligated to, upon 5 days' written notice to the Contractor, purchase such insurance on behalf of the Contractor and shall be entitled to be reimbursed by the Contractor upon demand.

§ 11.1.6 When any required insurance, due to the attainment of a normal expiration date or renewal date shall expire, the Contractor shall supply the Owner with certificates of insurance and amendatory riders or endorsements that clearly evidence the continuation of all coverage in the same manner, limits of protection, and scope of coverage as was provided by the previous policy. In the event any renewal or replacement policy, for whatever reason obtain or required, is written by a carrier other than that with whom the coverage was previously placed, or the subsequent policy differs in any way from the previous policy, the Contractor shall also furnish the Owner with a certified copy of the renewal or replacement policy unless the Owner provides the Contractor with prior written consent to submit only a Certificate of insurance for any such policy. All renewal and replacement policies shall be in form and substance satisfactory to the Owner and written by carrier acceptable to the Owner.

§ 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's liability insurance.

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, lightning, hurricane, hail, explosion, riot, civil commotion, smoke, damage caused by aircraft or land vehicles, damages to materials stored on or off site or in transit, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris

removal including demolition occasioned by enforcement of any applicable legal requirements, increased cost of construction and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss. Such property insurance shall not cover any tools, apparatus, machinery, scaffolding, hoists, forms, staging, shoring and similar items commonly referred to as construction equipment, which may be on the site and the capital value of which is not included in the Work, to the extent that such premiums are made part of the Contract Sum. The Contractor shall have adequately insured all such construction equipment. Any such policy obtained by the Contractor under this paragraph shall include a waiver of subrogation in accordance with the requirements of Section 11.3.7.

§ 11.3.1.2 Omitted

§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE

Contractor shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.3.3 LOSS OF USE INSURANCE

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused, except as set forth in Section 15.1.6 hereof.

§ 11.3.4 If the Owner requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Contractor shall, if possible, include such insurance, and the cost thereof shall be charged to the Owner by appropriate Change Order.

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise. If, after final payment, Owner provides property insurance for the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Omitted

§ 11.3.7 WAIVERS OF RECOVERY AND SUBROGATION

THE OWNER AND CONTRACTOR (THE "RELEASING PARTIES") WAIVE ALL RIGHTS AGAINST THE FOLLOWING PERSONS (THE "RELEASED PERSONS"): (1) EACH OTHER AND ANY OF THEIR SUBCONTRACTORS OF ANY TIER, SUB-SUBCONTRACTORS, COMMISSIONERS, OFFICIALS, AGENTS AND OFFICERS, DIRECTORS AND EMPLOYEES, EACH OF THE OTHER, AND (2) THE ARCHITECT, ARCHITECT'S CONSULTANTS, SEPARATE CONTRACTORS DESCRIBED IN ARTICLE 6, IF

ANY, AND ANY OF THEIR SUBCONTRACTORS OF ANY TIER, SUB-SUBCONTRACTORS, AGENTS AND EMPLOYEES, FOR LOSSES AND CLAIMS FOR DAMAGE TO THE WORK UNDER CONSTRUCTION, DAMAGE TO THE COMPLETED WORK, AND DAMAGE TO OR LOSS OF FIXTURES OR MATERIALS, EQUIPMENT OR OTHER PERSONAL PROPERTY TO THE EXTENT PAID BY PROPERTY INSURANCE OBTAINED PURSUANT TO THIS SECTION 11.3 OR OTHER PROPERTY INSURANCE APPLICABLE TO THE WORK, OR THAT WOULD HAVE BEEN COVERED BY INSURANCE IF THE RELEASING PARTY FAILS TO MAINTAIN THE PROPERTY COVERAGE REQUIRED OF IT BY THIS AGREEMENT EXCEPT SUCH RIGHTS AS THEY HAVE TO PROCEEDS OF SUCH INSURANCE HELD BY THE OWNER OR CONTRACTOR IN GOOD FAITH. IN THE EVENT OF PROPERTY DAMAGE POTENTIALLY COVERED BY A PARTY'S PROPERTY INSURANCE POLICY, SUCH PARTY SHALL SUBMIT A CLAIM WITH ITS PROPERTY INSURANCE CARRIER AND USE COMMERCIALY REASONABLE EFFORTS TO SECURE PAYMENT FROM SUCH CARRIER BEFORE PURSUING ANY CLAIM AGAINST THE OTHER PARTY. SUBJECT TO SECTION 11.3.1.3, COSTS NOT COVERED BECAUSE OF DEDUCTIBLES OR SELF-INSURED RETENTIONS SHALL BE "PAID BY PROPERTY INSURANCE" FOR PURPOSES OF THIS SECTION 11.3.7. THE OWNER OR CONTRACTOR, AS APPROPRIATE, SHALL REQUIRE OF THE ARCHITECT, ARCHITECT'S CONSULTANTS, SEPARATE CONTRACTORS DESCRIBED IN ARTICLE 6, IF ANY, AND THE SUBCONTRACTORS OF ANY TIER, SUB-SUBCONTRACTORS, AGENTS AND EMPLOYEES OF ANY OF THEM, BY APPROPRIATE AGREEMENTS, WRITTEN WHERE LEGALLY REQUIRED FOR VALIDITY, SIMILAR WAIVERS EACH IN FAVOR OF THE RELEASED PERSONS ENUMERATED HEREIN. THE POLICIES SHALL PROVIDE SUCH WAIVERS OF SUBROGATION BY ENDORSEMENT OR OTHERWISE. A WAIVER OF SUBROGATION SHALL BE EFFECTIVE AS TO A PERSON OR ENTITY EVEN THOUGH THAT PERSON OR ENTITY WOULD OTHERWISE HAVE A DUTY OF INDEMNIFICATION, CONTRACTUAL OR OTHERWISE, DID NOT PAY THE INSURANCE PREMIUM DIRECTLY OR INDIRECTLY, AND WHETHER OR NOT THE PERSON OR ENTITY HAD AN INSURABLE INTEREST IN THE PROPERTY DAMAGED. THE RELEASES IN THIS SECTION WILL APPLY EVEN IF THE LOSS IS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE, NEGLIGENT MISREPRESENTATION, BREACH OF CONTRACT OR OTHER LEGAL DUTY OR STRICT LIABILITY OF ANY RELEASED PERSON. THE RELEASES IN THIS SECTION SURVIVES COMPLETION OF THE WORK AND COMPLETION, TERMINATION OR EXPIRATION OF THIS AGREEMENT.

§ 11.3.8 A loss insured under the property insurance shall be adjusted by the Contractor as fiduciary and made payable to the Contractor as fiduciary for the insureds, as their interests may appear. The Contractor shall pay Owner and Contractor-Related Parties their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner. Contractor shall bear and pay the portion of the loss falling within the deductible of the property insurance.

§ 11.3.9 If required in writing by a party in interest, the Contractor as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Contractor's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Contractor as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Contractor's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Owner requires the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract. The performance bond shall also include an amount necessary to reimburse Owner its reasonable and necessary attorneys' and experts' fees and litigation costs incurred in claims arising under the performance bond, and liquidated damages arising under the Contract Documents. The payment bond shall be in the statutorily required amount and form and issued by an issuer acceptable to Owner. The payment bond shall not be on an AIA bond form or such other form as Owner may require at the time of contracting. Any person, firm or corporation executing a performance or payment bond upon the Contractor's Work under the Agreement, shall be deemed to have consented in advance to any changes in the Work made by order of the Owner; any such changes shall in no way alter or impair the obligations of such person, firm or corporation executing such a bond. The amount of the bonds shall be written to increase with Change Orders. Contractor shall obtain and file with Owner bond increase riders for any increases in the Contract Sum as may be necessary to effectuate coverage for increases in the Contract Sum. Issuer must be at least a Best's Key Rating Guide A/VII company and listed on

the United States Department of the Treasury's List of Acceptable Sureties and Reinsurers (the "T" list). The payment bond shall meet the requirements of Section 53.201 et seq. of the Texas Property Code. The surety company shall provide, if requested, information on bonding capacity and other projects under coverage and shall provide proof to establish adequate financial capacity for this Project. Should the bond amount be in excess of ten percent (10%) of the surety company's capital and surplus, then the surety company issuing the bond shall certify that the surety company has acquired reinsurance, in a form and amount acceptable to the Owner, to reinsure the portion of the risk that exceeds ten percent (10%) of the surety company's capital and surplus with one or more reinsurers who are duly authorized and admitted to do business in Texas and that amount reinsured by a reinsurer does not exceed ten percent (10%) of the reinsurer's capital and surplus. Contractor shall immediately notify the Owner and Architect in writing if there is any change in: the rating; insolvency or receivership in any State; bankruptcy; right to do business in the State; or status of Contractor's sureties at any time until Final Completion.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.4.3 All bonds shall be originals. The Contractor shall require the attorney-in-fact who executes the required Bonds on behalf of the Surety to affix thereto a certified and current copy of the power-of-attorney. The name, address and telephone number of a contact person for the bonding company shall be provided including, without limitation the same contact information for any claim.

§ 11.4.4 Bonds shall guarantee the faithful performance of all of the covenants, stipulations, and agreements of the Contract. Bond shall be signed by an agent, resident in the State of Texas. If at any time during the continuance of the Contract, the Owner determines that the Contractor is unable to complete the Work in accordance with the Contract Documents, any of the Contractor's bonds become insufficient, the surety becomes insolvent, or the surety's rating drops below the required level, then the Owner shall have the right to require from the Contractor additional and sufficient sureties or other security acceptable to the Owner, which the Contractor shall furnish to the satisfaction of the Owner, within ten (10) days after notice to do so. These contractual remedies are in addition to all remedies available by law. In default thereof, all payment or money due to the Contractor may be withheld until the Contractor provides additional surety or security.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's or PM's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the owner, PM, or Architect, be uncovered for the owner's PM's and Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the owner, PM or Architect has not specifically requested to examine prior to its being covered, the Owner, PM or Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order or Allowance Expenditure Authorization (if applicable), be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Owner, PM or Architect or Work failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the PM's and Architect's services and expenses made necessary thereby, shall be at the Contractor's expense. If prior to the date of Substantial Completion, the Contractor or Contractor-Related Person or anyone for whom they may be responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing and other building systems, machinery, equipment or other mechanical device, the Contractor shall cause such item to be restored to "like new" condition at no expense to the Owner.

§ 12.2.1.1 The Owner may make emergency repairs to the Work or take such other measures necessary under the circumstances, if the Contractor does not promptly respond to a notice of defect or non-conforming Work. Contractor shall be responsible to Owner for this cost if the reason for the repairs is attributable to the Contractor. If payments then or thereafter due to the Contractor are not sufficient to cover such costs, then the Contractor shall pay the difference to the Owner on demand.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. Written notice shall not be required if Contractor has actual notice. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4. Nothing herein shall be construed to negate or limit Contractor's obligations set forth in Section 3.18 above, including without limitation Contractor's duties to defend and indemnify the Owner Parties. Nothing contained in this Section 12.2 is intended to limit or modify any obligations under the law or under the Contract Documents, including any warranty obligations, expressed or implied.

§ 12.2.2.2 Any corrective Work performed under or pursuant Section 12.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2 shall be warranted to the same extent as the Work is warranted hereunder for the greater of the remainder of the applicable warranty period or 90 days from the date such corrective Work has been completed.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.2.6 Owner shall have the right to operate equipment before defects are corrected and warranties met and shall have the right operate rejected equipment until it is replaced without charge for depreciation, use or wear.

§ 12.2.7 Contractor shall replace, repair, or restore any parts of the Project or furniture, fixtures, equipment or other items placed therein (whether by Owner or any other party) that are injured or damaged by any such parts of the Work that do not conform to the requirements of the Construction Documents or the Contract Documents or by defects in the Work.

§ 12.2.8 The provisions of this Section 12.2 apply to Work done by Subcontractors of the Contractor as well as Work done directly by employees of the Contractor. The provision of this Section shall not apply to corrective work attributable solely to the acts or omissions of any separate contractor of Owner (unless Contractor is acting in such capacities). The cost to Contractor of performing any of its obligations under

this Section 12.2.7 to the extent not covered by insurance shall be borne by Contractor.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable, based on the difference in value between the installed work and that which is shown or specified in the drawings (“diminished value”). Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the State of Texas, and where applicable, of the United States of America. Exclusive venue for any proceeding, claim or dispute arising out of the Work, the Project or the Contract Documents or their interpretation shall be in a District Court in Hidalgo County, Texas.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner’s rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the representative(s) designated in writing in the Contract Documents to receive notices, with copies where required; or if delivered at, or sent by registered or certified mail return receipt requested or by courier service with signed receipt providing proof of delivery to the representative(s) designated in writing in the Contract Documents to receive notices, with copies where required.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the owner, PM and Architect timely notice of when and where tests and inspections are to be made so that the Owner, PM and Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Owner will, instruct the Contractor

to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the owner, PM and Architect of when and where tests and inspections are to be made so that the owner, PM and Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense. The Contractor also agrees that the cost of testing services required for the convenience of the Contractor in its scheduling and performance of the Work, and the cost of testing services related to remedial operations performed to correct deficiencies in the Work that are not the result of design deficiencies shall be borne by the Contractor.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the PM and Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.5.5 If the Owner, PM or Architect is to observe tests, inspections or approvals required by the Contract Documents, the Owner, PM or Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at rate established in the Modified A133-209 Agreement.

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the applicable legal requirements.

§ 13.8 COSTS AND FEES. If any action at law or in equity is necessary to enforce or interpret the terms of the Contract Documents, the prevailing party shall be entitled to reasonable attorneys' fees, expert witness fees, costs, and necessary disbursements in addition to any relief to which it may be entitled.

§ 13.9 INTERPRETATION This Contract shall not be construed more or less favorable between the parties by reason of authorship or origin of language. Contractor agrees not to use the construction Documents in connection with any other construction that Contractor may be involved with. This provision shall survive the completion of the Work or the completion, termination or expiration of the Contract Documents.

§13.10 EQUAL OPPORTUNITY IN EMPLOYMENT

§ 13.10.1 The Contractor and the Contractor Related Persons shall comply with all laws prohibiting discrimination against any employee or applicant for employment because of race, religion, age, disability, sex, or national origin. The Contractor agrees to post in conspicuous places, available to employees and applicants, all legal notices setting forth the Contractors nondiscrimination policies and as required by law.

§ 13.10.2 The Contractor and the Contractor-Related Persons shall, in all solicitations or advertisements for employees placed by them or on their behalf, comply with all laws prohibiting discrimination against any employee or applicant for employment because of race, religion, age, disability, sex, or national origin and state that all qualified applications will receive consideration for employment without regard to race, religion, age, disability, sex, or national origin.

§ 13.9 JOB RECORDS

§ 13.9.1 Contractor shall at all times through the date of Final Completion, maintain Job Records, including, but not limited to, invoices, payment records, payroll record, daily reports, diaries, logs, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda, other financial data including, without limitation, the records described in Modified A133-2009 Agreement, Section 6.11, and job meeting

minutes applicable to the Project, in a manner which maintains the integrity of the documents. Job Records must be retained by Contractor for at least five (5) years after the date of Final Completion of the Project. Within 10 days of Owner's request, Contractor shall make such Job Records available for inspection, copying and auditing by the Owner, PM, Owner's auditors or experts, Architect or their respective representatives.

§ 13.9.2 Contractor shall also maintain, in accordance with the provisions of Section 13.9.1, the following: subcontract files, including proposals of successful and unsuccessful bidders, bid recaps and subcontractor payments; original estimates; estimating work sheets; general ledger entries detail cash and trade discounts received; insurance rebates and dividends; and any other supporting evidence deemed necessary by the Owner or PM to substantiate charges related to the Contract.

§ 13.9.3 Contractor shall keep a full and detailed financial accounting system and shall exercise such controls as may necessary for proper financial management under this Contract; the accounting and control system shall be satisfactory to the Owner and shall be subject to the provisions of Section 13.9.1.

§ 13.9.4 Contractor shall keep all Construction Documents related to the Project, subject to the provisions of Section 13.9.1, provided, however, Contractor shall not destroy said documents until Contractor has confirmed doing so with Owner.

§ 13.9.5 In the event that an audit by the Owner reveals any errors or overpayments by the Owner, then the Contractor shall refund to the Owner the full amount of such overpayment within thirty (30) days of such audit findings, or the Owner, at its option, reserves the right to deduct such amounts owed to the Owner from any payments due to the Contractor.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 90 consecutive days through no act or fault of the Contractor or any Contractor-Related Person performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons, subject to the requirements of Section 14.1.3 below:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 The Contractor is entitled to and has suspended performance in accordance with the Contract Documents.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or any Contractor-Related Person performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit for the properly executed portion of the Work and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 90 consecutive days through no act or fault of the Contractor or any Contractor-Related Person performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner, PM and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor:

- .1 fails to diligently prosecute the Work to completion thereof in an efficient, timely, workmanlike, skillful and careful manner and in strict accordance with the provisions of the Contract Documents, including, but not limited to, refusing or failing repeatedly to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.
- .5 the Contractor becomes insolvent, or makes a transfer in fraud of creditors, or makes an assignment for the benefit of creditors;
- .6 the Contractor files or has filed against it a petition under any chapter or section of the United States Bankruptcy Code, as amended, or under any similar law or statute of the United States or any state thereof, or shall be adjudged bankrupt or insolvent in any legal proceeding;
- .7 a receiver or trustee is appointed for all or a significant portion of the assets of Contractor;
- .8 the Contractor actually or constructively abandons, or puts Owner on actual or constructive notice that it intends to abandon, the Project;
- .9 engages in conduct that would constitute a violation of state or federal criminal law, including but not limited to, the law prohibiting certain gifts to public servants, or engages in conduct that would constitute a violation of the Owner's ethics or conflict of interest policies; or
- .10 the progress of construction is such that Owner reasonably believes that the Contractor shall not be able to achieve Substantial Completion within 60 days following the date of Substantial Completion required by the Agreement. Without limiting the foregoing, Owner shall be deemed to have a reasonable belief that the Contractor shall not be able to achieve Substantial Completion by the date required pursuant to the preceding sentence if the Contractor shall fail to achieve a critical milestone within 60 days of the date for such critical milestone set forth in the critical path schedule.

§ 14.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

Notwithstanding the foregoing, if Owner reasonably determines that Contractor's acts or omissions pose an immediate and substantial threat or danger of injury to persons or damage to the Work or other property, Owner may, without prejudice to any other rights or remedies granted by Contract Documents or by law, immediately suspend Contractor's performance of the Work, take immediate possession of the Project site, take such further action reasonably necessary to prevent, mitigate against, remove, or repair such threat or damage, and deduct such costs and expenses it reasonably incurs from any sums due and owing to the Contractor, or, in the absence thereof, to recover such costs and expenses from the Contractor.

It is recognized that if Contractor is adjudged a bankrupt, or makes a general assignment for the benefit of creditors, or if a receiver is appointed for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, such could impair or frustrate Contractor's performance of this Agreement. Accordingly, it is agreed that upon the occurrence of any such event, Owner shall be entitled to request of Contractor or its successor in interest adequate assurance of future performance in accordance with the terms and conditions hereof. Failure to comply with such request within 10 days of delivery of the request shall entitle Owner to terminate this Agreement and to the accompanying rights set forth above. In all events pending receipt of adequate assurance of performance and actual performance in accordance therewith, Owner shall be entitled to proceed with the Work with its own forces or with other contractors on a time and material or other appropriate basis the cost of which will be back charged against the Contract Sum hereof.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 As required by Texas Government Code Chapter 2253, if a Performance Bond has been furnished and the Contractor is declared by the Owner to be in default under the Contract Documents, then the Surety shall promptly perform the Work, in full accordance with the plans, specifications and Contract Documents. Unless otherwise agreed in writing between the Surety and the Owner, the Surety shall complete the Work by the Surety entering into a Contract acceptable to Owner, with a Contractor acceptable to Owner, and shall obtain new Payment and Performance Bonds as required by law.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 Subject to Section 2.3.3.5.2 of the Agreement, the Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. Furthermore, if this Contract is a multi-year contract funded through Owner's current general funds that are not bond funds, then the Owner's Commissioners' Court has the right to not appropriate adequate monies for the next fiscal year and to terminate this Contract at the end of each fiscal year during the term of the Contract, without the Owner incurring any further liability to Contractor as a result of such termination.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall promptly and expeditiously:

- .1 cease operations as directed by the Owner in the notice, including the prompt removal of its employees and equipment from the site, except to the extent necessary to carry out its remaining duties and obligations hereunder;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, assign to Owner or terminate all existing subcontracts and purchase orders as directed by Owner and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be paid for Work properly executed and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed and fee earned on such Work in accordance with the Contract Documents prior to the effective date of termination, as measured by the Contract Sum, and the direct, actual, and unavoidable (by exercising reasonable care) costs incurred by Contractor in terminating the Work, including but not limited to, demobilization costs, the cost of canceling subcontracts and purchase orders not assumed by the Owner and other such out-of-pocket costs incurred by Contractor to third parties with respect to termination of this Agreement. Owner shall not be responsible for any lost profits or reimbursement for overhead on the Work not performed. The amounts owing by Owner to Contractor pursuant to this Section shall be as specified in Contractor's final Application for Payment and approved by Owner. In addition to payment for the Work performed prior to the effective date of termination and for any Work performed following the date of termination pursuant to Owner's written request, Contractor shall be entitled to payment for materials and equipment (whether specifically fabricated or otherwise) delivered and stored in accordance with the Owner's instructions, as well as restocking fees incurred for materials or equipment returned.

§ 14.4.4 Upon determination by a Court of competent jurisdiction that termination of the Contractor pursuant to Section 14.2 was wrongful, such termination will be deemed converted to a termination for convenience pursuant to Section 14.4, and Contractor's remedy for wrongful termination shall be limited to

the recovery of the payments permitted for termination for convenience as set forth in Section 14.4.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

For purposes of Section 15.1, a “**Claim**” is a demand or assertion by a party, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term “Claim” also includes other disputes and matters in question that a party may have or assert arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party, and against the Owner to the PM and Architect. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Neither party shall waive a Claim against the other solely by virtue of the fact that notice of such Claim was not provided in strict accordance with a notice deadline set forth in the Contract Documents; provided, however, each party shall provide the other with reasonable notice of any Claim that they may have against the other. No failure of Owner to give a notice timely shall result in a waiver or forfeiture of rights.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract, and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.4.1 Except as otherwise provided in the Agreement, in calculating the amount of any Claim recoverable by the Contractor, the following standards will apply:

- .1 No indirect or consequential damages will be allowed.
- .2 No recovery shall be based on a comparison of planned expenditures to total actual expenditures, or on estimated losses of labor efficiency, or on a comparison of planned man-loading to actual man-loading, or any other analysis that is used to shown damages indirectly.
- .3 Damages are limited to extra costs specifically shown to have been directly caused by a proven wrong, Contractor’s Fee applicable thereto, and interest, if applicable..
- .4 Except to the extent the Contract Documents expressly provide otherwise, no damages will be allowed for home office overhead or other indirect home office charges or any Eichlay formula calculation.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, timely written notice as provided herein shall be given. The Contractor’s Claim shall include an estimate of the probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, prevented the execution of major items of work on normal working days, and impacted the critical path. “Adverse weather conditions” means severe weather which is beyond the normal weather recorded and expected for the locality and/or the season or seasons of the year. In the case of rain as the basis for an adverse weather conditions claim, rainfall needs to exceed one-half (0.5) inch during a normal working day. Rain days do not extend to subsequent days as “dry-out” days; they are limited to the actual date of the rainfall.

§ 15.1.5.3 Claims for additional time based upon causes other than adverse weather will not be granted

unless (a) the event upon which the claim is predicated was not within the control of or caused by the Contractor or any Contractor-Related Party; and (b) the construction schedule cannot be revised so as to reasonably accommodate and absorb the event into the construction schedule within the remaining Contract Time.

§ 15.1.5.4 No extension of time shall be made to the Contractor because of hindrances or delays from any cause that is the fault of Contractor or any Contractor-Related Person. Claims for extension of time may only be considered because of abnormal weather delays, or other hindrances or delays that are the fault of Owner, and the construction schedule cannot be revised so as to reasonably accommodate and absorb the event into the construction schedule within the remaining Contract Time. Commissioners Court approval shall be required for any extension of the Contract Time. No damage shall be paid for any delays. Contractor shall only be entitled to time extensions per the terms of the Contract Documents.

§ 15.1.5.5 Neither Saturdays nor Sundays shall be included in the Claim for additional time unless the Contractor furnishes to owner, PM and Architect proof that (a) Contractor's current Work schedule on file with the PM and Architect indicated that Contractor was scheduled to work on each Saturday or Sunday for which an extension is sought and that Contractor had, in fact, been complying with such construction schedule; or (b) Contractor had scheduled critical work to be performed on such Saturday or Sunday for which an extension of the Contract Time is sought and that such Work was delayed or had to be aborted because of adverse weather or other cause meeting the requirements in this Section 15.1.5.

§ 15.1.5.6 In the event the progress of the Work is delayed or interrupted by occurrences or events that entitle Contractor to request an extension of time pursuant to the terms of the Contract Documents, then the scheduled Substantial Completion date may not exceed a period of time equal to the length of such delay. Except to the extent a delay is expressly permitted elsewhere in the Contract Documents, an extension will only be considered provided that (a) within 7 days after the Contractor discovers such delay, Contractor delivers to Owner, PM and Architect a written notice of such delay stating the nature and cause thereof and (b) within 7 days following the expiration of any such delay Contractor delivers to Owner, PM and Architect a written request for extension of the scheduled Contract Time by reason of such delay, with such additional information required, and such request is approved by Commissioners' Court, which approval shall not be unreasonably withheld. No extension of the scheduled substantial completion date (or right on the part of Contractor to secure any such extension) pursuant to this Section shall prejudice any right Owner may have under this Contract, or otherwise, to terminate this Agreement as permitted by the Contract.

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor waives all Claims against the Owner for consequential damages arising out of or relating to this Contract. Nothing contained in this Section shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the Contract Documents.

§ 15.2 Omitted

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be submitted to non-binding mediation.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall not be administered by the American Arbitration Association. A request for mediation shall be made in writing, delivered to the other party to the Contract.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Hidalgo County, Texas. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

Exhibit A-

Insurance and Bond Requirements

Exhibit C

County of Hidalgo, Texas Insurance and Bond Requirements of Construction Manager At Risk

1. **Insurance and Bond Coverage To Be Provided By Construction Manager At Risk ("CMAR")**. This Exhibit (the "Insurance and Bond Requirements") is attached as an Exhibit as part of the Contract Documents. In the event of conflict between any of the following Insurance and Bond Requirements and any provision in the Contract Documents, these requirements control, amend and supplement the conflicting provision. Subject to review and revision by County of Hidalgo, Texas ("Owner") from time to time, in Owner's good faith judgment, the following insurance shall be maintained by CMAR with coverage and limits of not less than those set forth below at all times during the term of the Agreement and thereafter as required.

No.	Specifications	Coverages, Limits and Other Requirements
A. LIABILITY		
1.0	<u>Commercial General Liability</u> . CMAR is to maintain commercial general liability ("CGL") insurance and, if necessary, commercial excess insurance, issued on an Occurrence Basis meeting at least the following specifications.	
1.1	Minimum Limits	The limits of coverage shall not be less than the following amounts. These policy limits may be provided by a combination of primary and excess policies, but in no event shall the total limits of liability available for any one occurrence or accident be less than the amount required herein. \$20,000,000 Per Occurrence \$20,000,000 General Aggregate \$20,000,000 Products and Completed Operations Aggregate \$20,000,000 Personal and Advertising Injury
1.2	General Aggregate	A Designated Construction Project(s) General Aggregate Limit shall be provided on ISO form CG 25 03 05 09.
1.3	Post-Completion Coverage	CMAR agrees to maintain Products-Completed Operations coverage with respect to the Work performed under the Agreement in identical coverage, form and amount, including required endorsements, for the full term of the Statute of Repose following Date of Substantial Completion of the Work by CMAR. CMAR shall provide written representation to Owner stating Work completion date.
1.4	Form	This insurance is to be issued on the most recent reasonably available and unmodified ISO form CG 00 01 or equivalent and

		shall cover liability arising from premises, ongoing and completed operations.
1.5	Insured Contracts	Coverage shall include but not be limited to liability assumed by CMAR under the Agreement, including the tort liability of another assumed in a business contract, and shall include unmodified Separation of Insureds coverage.
1.6	Additional Insureds	Additional Insured status shall be provided in favor of Owner Parties on a combination of ISO forms CG 20 10 10 01 and CG 20 37 10 01 to the full extent permitted by law.
1.7	Electronic Data Liability	This insurance is to include an Electronic Data Liability endorsement ISO CG 04 37 with coverage to the full limits of the policy(ies).
1.8	Personal Injury Contractual Liability	The personal injury contractual liability exclusion shall be deleted.
1.9	Primary and Noncontributory	This insurance shall be endorsed to provide primary and noncontributing liability coverage by ISO CG 20 01 04 13. It is the specific intent of the parties to the Agreement that all insurance required herein shall be primary to and shall seek no contribution from any other insurance (primary, umbrella, contingent or excess) maintained by Owner Parties, with Owner Parties' insurance being excess, secondary and noncontributing.
1.10	Waiver of Right of Recovery and Subrogation	CMAR agrees to waive its rights of recovery and shall cause this insurance to be endorsed to waive all rights of subrogation in favor of Owner Parties on ISO form CG 24 04 05 09.
1.11	Notice of Cancellation	This insurance shall be endorsed to provide a 30 day notice of cancellation to Owner.
1.12	Prohibited Exclusions/Limitations	Prohibited exclusions/limitations or their equivalents include but are not limited to: a. Amendment of Insured Contract Definition ISO CG 24 26; b. Any endorsement modifying the Employer's Liability exclusion; c. Classification or Business Description; d. Construction Defect Completed Operations; e. Contractual Liability Limitation ISO CG 21 39; f. Damage to Work Performed by Subcontractors On Your Behalf ISOCG 22 94 or CG 22 95; g. Explosion, Collapse and Underground Property Damage

		Hazard, ISO CG 21 42 or CG 21 43; h. "Insured vs. Insured" except Named Insured vs. Named Insured; i. Known, Continuous or Progressive Injury or Damage; j. Limitation of Coverage to Designated Premises or Project ISO CG 21 44; k. Punitive, Exemplary or Multiplied Damages (Where Permitted By Law is acceptable) l. Subsidence; m. Work Height; n. Any other exclusion or limitation reasonably unacceptable to Owner.
2.0	<u>Business Auto Liability.</u>	CMAR is to maintain business auto insurance and, if necessary, commercial excess insurance, meeting at least the following specifications.
2.1	Minimum Limits	The limits of liability shall be no less than \$5,000,000 per accident. This policy limit may be provided by a combination of primary and excess policies, but in no event shall the total limits of liability available for any one occurrence or accident be less than the amount required herein.
2.2	Form	This insurance is to be issued on the current edition of the ISO CA 00 01
2.3	Scope	This insurance is to cover damages because of bodily injury or property damages caused by an accident and resulting from the ownership, maintenance or use (1) of any auto, including owned, hired and non-owned autos, and (2) of any mobile equipment subject to compulsory insurance or financial responsibility laws or other motor vehicle insurance laws.
2.4	Additional Insureds	Additional Insured status shall be provided in favor of Owner Parties on ISO form CA 20 48 10 13.
2.5	Waiver of Right of Recovery and Subrogation	CMAR agrees to waive its rights of recovery and shall cause this insurance to be endorsed to waive all rights of subrogation in favor of Owner Parties on ISO form CA 04 44 10 13.
2.6	Notice of Cancellation	This insurance shall be endorsed to provide a 30 day notice of cancellation to Owner.
3.0	<u>Workers' Compensation and Employer's Liability.</u>	CMAR is to maintain workers' compensation and employer's liability insurance and, if necessary, commercial excess insurance, meeting at least the following specifications.

3.1	Workers' Compensation Limits	The minimum limits of this insurance shall be no less than the statutory limits.
3.2	Employer's Liability Limits	The minimum limits of this insurance shall be no less than \$20,000,000 each accident and disease. These policy limits may be provided by a combination of primary and excess policies, but in no event shall the total limits of liability available for any one occurrence or accident be less than the amount required herein.
3.3	Territory	The state in which the Work is to be performed must be listed under Item 3.A. on the Information Page of the policy.
3.4	Scope	This insurance is to cover liability arising out the CMAR's employment of workers and anyone for whom the CMAR may be liable for workers' compensation claims. Worker's compensation insurance is required and no "alternative" form of insurance is permitted.
3.5	Prohibitions	Employees leased through a Professional Employment Organization ("PEO") are not permitted.
3.6	United States Longshoremen and Harbor Workers ("USL&H")	USL&H coverage must be provided where such exposure exists listing the state(s) in which Work is to be performed.
3.7	Waiver of Right of Recovery and Subrogation	To the extent permitted by law, CMAR agrees to waive its rights of recovery and shall cause this insurance to be endorsed to waive all rights of subrogation in favor of Owner Parties on form WC 42 03 04.
3.8	Notice of Cancellation	This insurance shall be endorsed to provide a 30 day notice of cancellation to Owner.
4.0	<u>Excess Liability.</u> If any of the required coverages are to be maintained by and through excess liability insurance, CMAR is to maintain excess liability insurance meeting at least the following specifications.	
4.1	Scope	This insurance shall follow form of the underlying coverages. It shall be excess over and be no less broad than all coverages and conditions described above, including but not limited to the required additional insured status, designated construction project(s) and/or location(s) general aggregate, waiver of subrogation, notice of cancellation, and prohibited exclusions or limitations, and will be primary to and not seek

		contribution from any other insurance (primary, umbrella, contingent or excess) maintained by Owner Parties.
4.2	Concurrency	Such coverage shall have the same inception date as the commercial general liability and employer's liability coverages.
4.3	Drop Down Coverage	Drop-down coverage shall be provided for reduction and/or exhaustion of underlying aggregate limits.
4.4	Defense Costs	This insurance is to include a duty to defend any insured.
5.0	<u>Professional Liability.</u> CMAR ☒ is ☐ is not required to maintain Professional Liability insurance meeting at least the following specifications.	
5.1	Minimum Limits	Limits of coverage shall be no less than: \$2,000,000 each claim \$4,000,000 annual aggregate If a combined Pollution Liability and Professional Liability policy is utilized, the limits shall be \$3,000,000 Each Loss and Aggregate.
5.2	Scope	Such insurance shall cover all professional services rendered by the CMAR and its vicarious liability arising out of engagement of subcontractors under the Agreement, including but not limited to design or design/build services.
5.3	Retroactive Date	Any retroactive date must be effective prior to beginning of services for the Owner.
5.4	Prohibitions	This insurance is not permitted to include any type of exclusion or limitation of coverage applicable to claims arising from: a. Bodily Injury or Property Damage Where Coverage Is Provided On Behalf Of Design Professionals or Design/Build Contractors; b. Habitational or Residential Operations; c. Mold and/or Microbial Matter and/or Fungus and/or Biological Substance; and d. Punitive, Exemplary or Multiplied Damages (Where Permitted By Law is acceptable) A professional liability endorsement to a general liability policy is not acceptable.
5.5	Term	Policies written on a Claims-Made basis shall be maintained for at least two years beyond termination of the Agreement. The purchase of an extended discovery period or an extended

		reporting period on a Claims-Made policy will not be sufficient to meet the terms of this provision.
5.6	Waiver of Right of Recovery and Subrogation	CMAR agrees to waive its rights of recovery and shall cause this insurance to be endorsed to waive all rights of subrogation in favor of Owner Parties.
5.7	Notice of Cancellation	This insurance shall be endorsed to provide a 30 day notice of cancellation to Owner.
6.0	<u>Pollution Liability.</u> CMAR ☒ is ☐ is not required to maintain Pollution Liability insurance meeting at least the following specifications.	
6.1	Minimum Limits	Limits of coverage shall be no less than: \$2,000,000 each claim \$4,000,000 annual aggregate If a combined Pollution Liability and Professional Liability policy is utilized, the limits shall be \$3,000,000 Each Loss and Aggregate.
6.2	Scope	The policy must provide coverage for: a. the full scope of the named insured's Work (on-going and completed) as described within the scope of Work for the Agreement b. loss arising from pollutants including but not limited to fungus, bacteria, biological substances, mold, microbial matter, asbestos, lead, silica and contaminated drywall c. third party liability for bodily injury, property damage, clean up expenses, and defense arising from the Work; d. diminution of value and Natural Resources damages e. contractual liability f. claims arising from owned and non-owned disposal sites utilized in the performance of the Agreement. Coverage extensions to the General Liability insurance policy without a separate insurance agreement for Contractors Pollution Liability insurance will not fulfill this requirement
6.3	Additional Insured Status	Additional Insured status shall be provided in favor of Owner Parties.
6.4	Insured Contracts	Coverage shall include but not be limited to liability assumed by CMAR under the Agreement, including the tort liability of another assumed in a business contract.

6.5	Primary and Noncontributory Coverage	This insurance shall be endorsed to provide primary and noncontributing liability coverage. It is the specific intent of the parties to the Agreement that all insurance required herein shall be primary to and shall seek no contribution from all insurance held by Owner Parties, with Owner Parties' insurance being excess, secondary and noncontributing.
6.6	Waiver of Right of Recovery and Subrogation	CMAR agrees to waive its rights of recovery and shall cause this insurance to be endorsed to waive all rights of subrogation in favor of Owner Parties.
6.7	Notice of Cancellation	This insurance shall be endorsed to provide a 30 day notice of cancellation to Owner.
6.8	Retroactive Date	If coverage is provided on a Claims Made basis, coverage will at least be retroactive to the earlier of the date of the Agreement or the commencement of CMAR services relation to the Work.
6.9	Prohibitions	This insurance is not permitted to include any type of exclusion or limitation of coverage applicable to claims arising from: a. Insured Vs. Insured actions. However exclusion for claims made between insured within the same economic family are acceptable; b. Impaired Property That Has Not Been Physically Injured; c. Materials Supplied Or Handled By The Named Insured. However, exclusions for the sale and manufacture of products are allowed. Exclusionary language pertaining to materials supplied by the insured shall be reviewed by the certificate holder for approval; d. Property Damage To The Work Performed By The CMAR; e. Faulty Workmanship as it relates to clean up costs; f. Punitive, Exemplary Or Multiplied Damages (Where Permitted By Law is acceptable); g. Work Performed By Subcontractors; and h. Contractual Liability incurred as a result of an injury to an employee of the insured.
6.10	Term	Completed operations coverage shall be maintained for a minimum of seven (7) years after the completion of work. The extended reporting period on a claims-made based policy does not fulfill this requirement. Pollution Liability insurance policies insuring a specific job shall have completed operations coverage for at least the duration of the work plus seven (7) years.

B. Property		
1.0	<u>Builder's Risk.</u>	CMAR is to maintain "all risk" builder's risk at all times prior to acceptance of the Work by Owner.
1.1	Insureds	Insureds shall include: a. Owner, CMAR, and all Loss Payees and Mortgagees as Named Insureds b. Subcontractors of all tiers.
1.2	Amount	Limits of coverage are to be the initial contract sum as increased by amount of subsequent modification of the contract sum. Coverage shall be provided in amount equal at all times to the full replacement value and cost of debris removal for any single occurrence.
1.3	Form	Coverage shall be at least as broad as an unmodified ISO Special Causes of Loss form and shall include coverage for theft, collapse, flood and earthquake. All exclusions must be pre-approved by Owner. This insurance is to be written on a Completed Value, non-reporting form basis and shall be primary to any other insurance coverage available to the named insureds, with that other insurance being excess, secondary and noncontributing. No coinsurance is permitted.
1.4	Covered Property	Such insurance shall cover: a. All structure(s) under construction, including retaining walls, paved surfaces and roadways, bridges, glass, foundation(s), footings, underground pipes and wiring, excavations, grading, backfilling or filling. b. All temporary structures (e.g., fencing, scaffolding, cribbing, false work, forms, site lighting, temporary utilities and buildings) located at the site. c. All property including materials and supplies on site for installation. d. All property including materials and supplies at other locations but intended for use at the site. e. All property including materials and supplies in transit to the site for installation by all means of transportation other than ocean transit. f. Other property for which an insured is liable in connection with the project.
1.5	Prohibition	No protective safeguard warranty is permitted.

1.6	Coverage and Minimum Sublimits	Coverage	Minimum Sublimit
		a. Additional expenses due to delay in completion of project (where applicable)	TBD
		b. Damage resulting from error, omission or deficiency in construction methods, design, specifications, workmanship or materials, including collapse and ensuing loss	Included without sublimit
		c. Debris removal additional limit	Included without sublimit
		d. Earthquake and Earthquake Sprinkler Leakage	\$1,000,000
		e. Flood	\$1,000,000
		f. Freezing	Included without sublimit
		g. Mechanical breakdown including hot & cold testing (where applicable)	Included without sublimit
		h. Occupancy pre-completion	Included without sublimit
		i. Ordinance or law	Included without sublimit
		j. Pollutant clean-up and removal	\$1,000,000
		k. Preservation of property	Included without sublimit
		l. Replacement cost	Included without sublimit
		m. Theft	Included without sublimit
1.7	Deductible(s)	Deductibles shall not exceed:	
		All Risks of Direct Damage, Per Occurrence, except	\$10,000

		a. Delayed Opening Waiting Period	5 days
		b. Earthquake and Earthquake Sprinkler Leakage, Per Occurrence	\$50,000
		c. Flood, Per Occurrence, excess of maximum available through National Flood Insurance Program or	\$50,000
1.8	Occupancy	The termination of coverage provision shall be endorsed to permit occupancy of the coverage property being constructed.	
1.9	Term and Termination	This insurance shall be maintained in effect, unless otherwise provided for in the Contract Documents, until the earliest of the following dates: a. The date on which all persons and organizations who are insureds under the policy agree that it shall be terminated; b. The date of final payment, as provided for in the Contract Documents; or c. The date on which the insurable interests in the Covered Property of all insureds other than CMAR have ceased.	
1.10	Waiver of Right of Recovery and Subrogation	CMAR waives all rights against (1) the Owner, (2) the Project, (3) any lender whose loan is secured by a lien against the Work, (4) Subcontractors of any tier, and (5) any other person or entity performing Work by, through or under CMAR, each of the other.	
1.11	Notice of Cancellation	This insurance shall be endorsed to provide a 30 day notice of cancellation to Owner.	
C. Bonds			
1.0	CMAR ☒ is ☐ is not required to arrange and furnish, at CMAR's sole cost and expense, separate performance and payment bonds, each for the full amount of this Agreement guaranteeing the faithful performance of all of the provision of this Agreement as well as payment to all persons for labor and material used in the performance of this Agreement. The bonds shall be executed by a surety company acceptable to Owner, on a form acceptable to Owner, and shall become a part of this Agreement. Owner may withhold payments on account until such time as said bonds have been furnished and accepted. No change, alteration or modification in the terms and conditions of the Agreement, or in the terms or manner of payment shall in any way exonerate or release, in whole or in part, any surety on any bond furnished on behalf of CMAR. The cost of the bonds is included in the amount of this Agreement. Any additions to this Agreement occasioned by Change Orders will include any additional bond premiums.		

2. General Insurance Requirements.

.1 Definitions. For purposes of the Agreement:

- a. "Agreement" means the Agreement to which this Exhibit is attached.
- b. "ISO" means Insurance Services Office.
- c. "CMAR" shall include subcontractors of any tier and any other person or entity performing Work by, through or under CMAR.
- d. "Owner Parties" means (a) the Owner, (b) the Project, (c) any lender whose loan is secured by a lien against the Work, (d) their respective shareholders, members, partners, joint venturers, affiliates, subsidiaries, successors and assigns, (e) any directors, officers, employees, or agents of such persons or entities, and (f) others as required by the Construction Documents.

.2 Limits. "Limits" set out in these specifications are the minimum dollar amount of insured coverage for the risk, cause of loss or peril specified. If CMAR maintains greater limits, then these specifications shall not limit the amount of recovery available to Owner Parties and the limits specified above as the minimum limits are increased to the greater limits.

.3 Policies. All policies held by CMAR and required herein must be written through insurance companies authorized to do business in the State in which the work is to be performed and rated no less than A-: VII in the most current edition of A. M. Best's Key Rating Guide at all times Work is to be performed.

.4 Waiver. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, Contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

.5 Deductibles and Retentions. If CMAR elects to self-insure or to maintain insurance required herein subject to deductibles and/or retentions exceeding \$25,000.00, Owner Parties and CMAR shall maintain all rights and obligations between themselves as if CMAR maintained the insurance with a commercial insurer including but not limited to Additional Insured status, Primary and Non-Contributory Liability, Waivers of Rights of Recovery, Other Insurance Clauses, and any other extensions of coverage required herein. CMAR shall pay from its assets the costs, expenses, damages, claims, losses and liabilities, including attorney's fees and necessary litigation expenses at least to the extent that an insurance company would have been obligated to pay those amounts if CMAR had maintained the insurance pursuant to this Exhibit. All deductibles and/or retentions shall be paid by, assumed by, for the account of, and at the CMAR's sole risk. The CMAR shall not be reimbursed for same.

.6 Forms. If the forms of policies, endorsements, certificates or evidence of insurance required by this Exhibit are superseded or discontinued, Owner will have the right to require other equivalent forms. Any policy or endorsement form other than a form specified in this Exhibit must be approved in advance by Owner.

.7 Evidence of Insurance. CMAR is to provide Owner with evidence of insurance prior to entry by CMAR on the property and thereafter is to provide Owner refreshed evidence of continued insurance after the expiration of the current policies prior to the expiration of the current policies. Insurance must be evidenced as follows:

- a. ACORD Form 28 Evidence of Commercial Property Insurance for property coverages.
- b. ACORD Form 25 Certificate of Liability Insurance for liability coverages which shall specify:
 - 1) Owner as certificate holder at Owner's mailing address;
 - 2) Insured's name, which must match that on the Agreement;
 - 3) Insurance companies producing each coverage and the policy number and policy date of each coverage;
 - 4) Producer of the certificate with correct address and phone number and have the signature of the authorized representative of the producer;
 - 5) Additional Insured status in favor of Owner Parties on forms required herein on General Liability, Auto Liability, Excess Liability and, when required herein, Pollution Liability;
 - 6) Designated Construction Project(s) General Aggregate Limit on General Liability and Excess Liability;
 - 7) Electronic Data Liability on General Liability and Excess Liability;
 - 8) Personal Injury Contractual Liability on General Liability and Excess Liability;
 - 9) Primary and non-contributory status on General Liability and Excess Liability;
 - 10) Pollution Liability;
 - 11) Professional Liability;
 - 12) Waivers of subrogation on all coverages;
 - 13) Amount of any deductible or self-insured retention in excess of \$25,000;
 - 14) 30 Day Notice of Cancellation on all coverages;
 - 15) All exclusions and limitations added by endorsement to the General Liability coverage. This can be achieved by attachment of the Schedule of Forms and Endorsements page.
- c. Copies of the following shall also be provided:
 - 1) General Liability Additional Insured endorsement(s);
 - 2) General Liability Schedule of Forms and Endorsements page(s); and
 - 3) 30 Day Notice of Cancellation endorsement applicable to all required policies.

If requested in writing by Owner, CMAR will provide to Owner a certified copy of any or all insurance policies required herein including endorsements within ten (10) days of any such request.

Commencement of Work without provision of the required certificate of insurance, evidence of insurance and/or required endorsements, or without compliance with any other provision of the Agreement or this Exhibit, shall not constitute a waiver by any Owner Party of any rights. The Owner shall have the right, but not the obligation, of prohibiting the CMAR or any subcontractor from performing any Work until such certificate of insurance, evidence of insurance and/or required endorsements are received and approved by the Owner.

.8 Insurance Requirements of CMAR's Subcontractors

- a. Insurance similar to that required of the CMAR (being the same coverage, but with such lesser limits as are proposed by such subcontractors and approved by Owner on a case by case basis) shall be provided by all subcontractors (or provided by the CMAR on behalf of subcontractors) to cover operations performed under any subcontract agreement. The CMAR shall be held responsible for any modification in these insurance coverage (but not limit) requirements as they apply to subcontractors. The CMAR shall maintain certificates of insurance from all subcontractors containing provisions similar to those listed herein (modified to recognize that the certificate is from subcontractor) enumerating, among other things, the waivers of subrogation, additional insured status, and primary liability as required herein, and make them available to the Owner upon request.
- b. The CMAR is fully responsible for loss and damage to its property on the site, including tools and equipment, and shall take necessary precautions to prevent damage to or vandalism, theft, burglary, pilferage and unexplained disappearance of property. Any insurance covering the CMAR's or its subcontractor's property shall be the CMAR's and its subcontractor's sole and complete means or recovery for any such loss. To the extent any loss is not covered by said insurance or subject to any deductible or co-insurance, the CMAR and its subcontractors shall not be reimbursed for same. Should the CMAR or its subcontractors choose to self insure this risk, it is expressly agreed that the CMAR hereby waives, and shall cause its subcontractors to waive, any claim for damage or loss to said property in favor of the Owner Parties.

3. Miscellaneous

- .1 Release and Waiver.** The CMAR hereby waives all rights of recovery and releases, and shall cause its subcontractors to release, the Owner Parties from any and all claims or causes of action whatsoever which the CMAR and/or its subcontractors might otherwise now or hereafter possess resulting in or from or in any way connected with any loss covered by insurance, whether required herein or not, or which should have been covered by insurance required herein, including the deductible and/or uninsured portion thereof, maintained and/or required to be maintained by the CMAR and/or its subcontractors pursuant to the Agreement. **THE FOREGOING RELEASE AND WAIVER APPLY EVEN IF THE LOSS OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE FAULT OR NEGLIGENCE OR STRICT LIABILITY OF THE OWNER PARTIES.**
- .2 No Waiver.** Failure of any Owner Party to demand such certificate or other evidence of full compliance with these insurance requirements or failure of any Owner Party to identify a deficiency from evidence that is provided shall not be construed as a waiver of the CMAR's obligation to maintain such insurance.
- .3 Suspension.** Owner shall have the right, but not the obligation, of suspending CMAR's authority to perform Work, without an increase in the sum payable by Owner to CMAR due to such suspension, until such certificates or other evidence that the required insurance has been placed in compliance with these requirements is received and approved by Owner.

- .4 Post Completion Coverage.** With respect to the insurance to be maintained after final payment to CMAR, an additional certificate(s) evidencing such coverage shall be provided to Owner with final application for payment if prior certificate has expired, and thereafter upon renewal or replacement of such insurance until the expiration of the time period for which such insurance must be maintained.
- .5 Compliance With Laws.** If any insurance requirements are deemed to violate any law, statute or ordinance, the insurance requirements shall be reformed to provide the maximum amount of protection to Owner as allowed under the law.
- .6 Use of the Owners Equipment.** The CMAR, its agents, employees, subcontractors or suppliers shall use the Owners equipment only with express written permission of the Owners designated representative and in accordance with the Owners terms and condition for such use. If the CMAR or any of its agents, employees, subcontractors or suppliers utilize any of the Owners equipment for any purpose, including machinery, tools, scaffolding, hoists, lifts or similar items owned, leased or under the control of the Owner, the CMAR shall defend, indemnify and be liable to the Owner Parties for any and all loss or damage which may arise from such use. **THE FOREGOING INDEMNIFICATION SHALL APPLY EVEN IF THE LOSS OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE FAULT OR NEGLIGENCE OR STRICT LIABILITY OF THE OWNER PARTIES.**

.7 CMAR Insurance Representations to Owner Parties

- a. It is expressly understood and agreed that the insurance coverages required herein (a) represent Owner Parties' minimum requirements and are not to be construed to void or limit the CMAR's indemnity obligations as contained in the Agreement nor represent in any manner a determination of the insurance coverages the CMAR should or should not maintain for its own protection; and (b) are being, or have been, obtained by the CMAR in support of the CMAR's liability and indemnity obligations under the Agreement. Irrespective of the requirements as to insurance to be carried as provided for herein, the insolvency, bankruptcy or failure of any insurance company carrying insurance of the CMAR, or the failure of any insurance company to pay claims accruing, shall not be held to affect, negate or waive any of the provisions of the Agreement.
- b. Failure to obtain and maintain the required insurance shall constitute a material breach of, and default under, the Agreement. If the CMAR shall fail to remedy such breach within five (5) business days after notice by the Owner, the CMAR will be liable for any and all costs, liabilities, damages and penalties resulting to the Owner Parties from such breach, unless a written waiver of the specific insurance requirement(s) is provided to the CMAR by the Owner. In the event of any failure by the CMAR to comply with the provisions of the Agreement, the Owner may, without in any way compromising or waiving any right or remedy at law or in equity, on notice to the CMAR, purchase such insurance, at the CMAR's expense, provided that the Owner shall have no obligation to do so and if the Owner shall do so, the CMAR shall

not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages.

- .8 Survival.** This Exhibit is an independent contract provision and shall survive the completion of the Work or termination or expiration of the Construction Agreement.

Exhibit B-

**Construction Manager's Organizational
Chart**

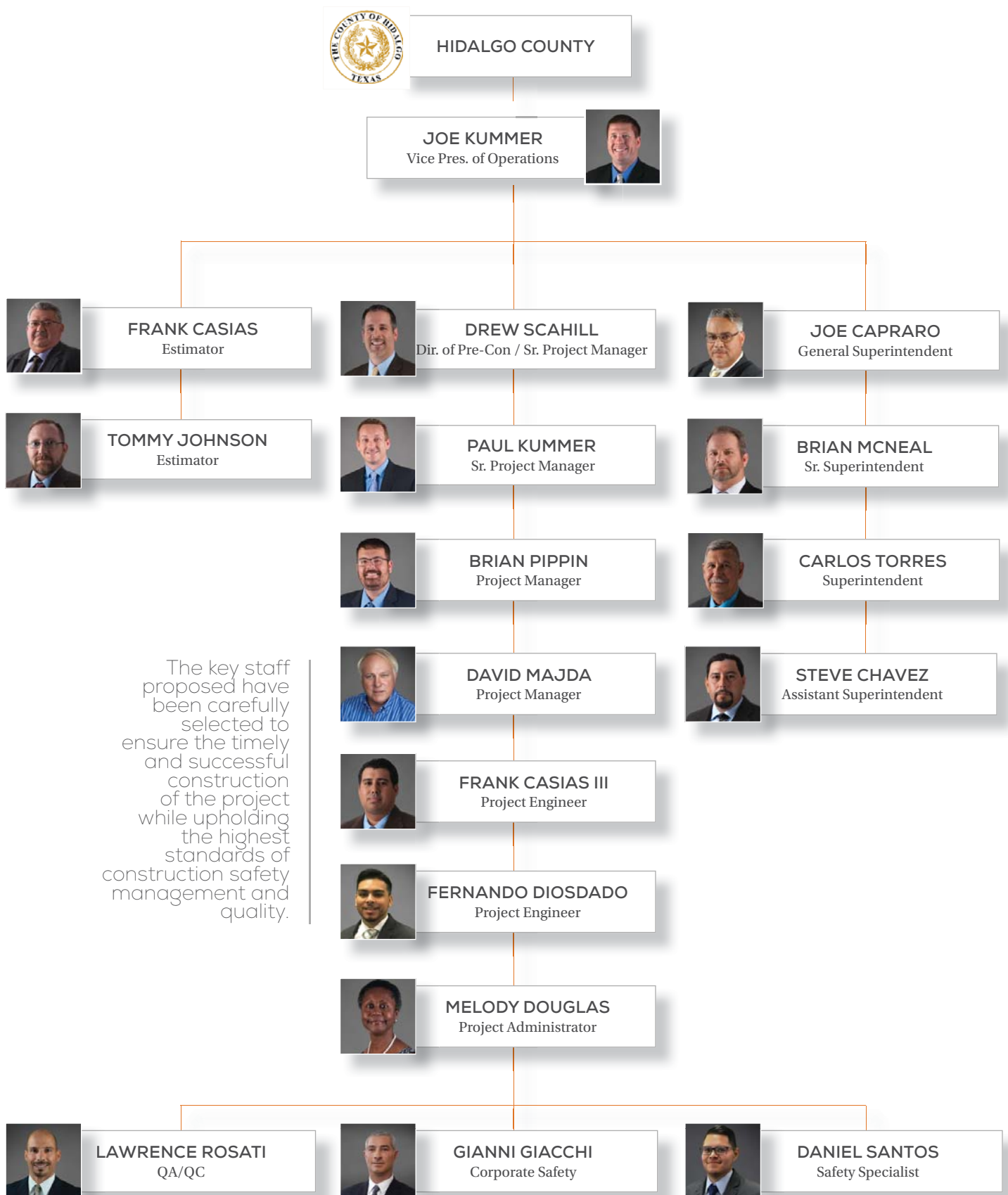


Exhibit C-

**Construction Manager's Statement of
Qualifications**

EXHIBIT C - Statement of Qualifications NEW HIDALGO CO. COURTHOUSE



QUALIFICATIONS | RFQ/P: 2017-292A-02-13-RFV



MORGANTI TEXAS, INC. IN ASSOCIATION WITH CASIAS CONSTRUCTION, LLC
HIDALGO COUNTY SOLICITATION | FEBRUARY 13TH, 2018
10590 West Office Drive, Suite 150, Houston, TX 77042
P: (210) 308-1067 | F: (210) 308-1068 | www.morganti.com

CONTENTS

New Hidalgo County Courthouse

Section 1 Cover Letter

Section 2 Understanding of the Project

Section 3 Firm Qualifications & Approach

Section 4 Personnel & Staffing

Section 5 Safety Record

Section 6 Additional Info

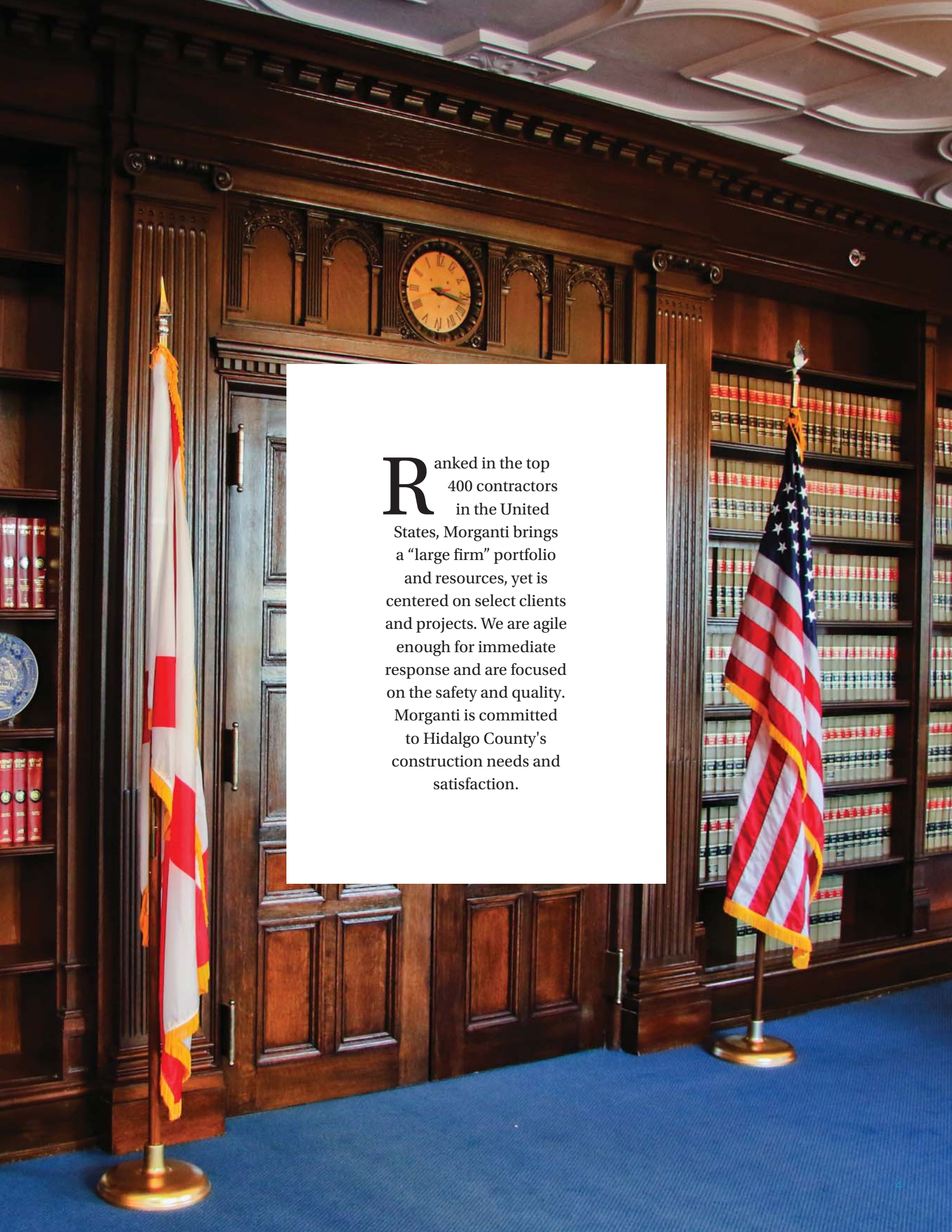
Section 7 Appendix



SECTION 1

Cover letter: Morganti Texas, Inc.





Ranked in the top 400 contractors in the United States, Morganti brings a “large firm” portfolio and resources, yet is centered on select clients and projects. We are agile enough for immediate response and are focused on the safety and quality. Morganti is committed to Hidalgo County's construction needs and satisfaction.

February 13, 2018

Hidalgo County Purchasing Department
Attn: Ms. Martha Salazar, CPPB
Hidalgo County Purchasing Agent
2812 S. Business Highway 281
New Administration Building
Edinburg, Texas 78539

PROJECT CONTACT:
Paul Kummer
Morganti Texas, Inc.
PKummer@Morganti.com
c: (281) 541-2420
f: (281) 448-8416

**Re: RFQ/P No. 2017-292A-02-13-RFV
Request for Qualifications/Proposals (RFQ/P)
Construction Manager at Risk (CMAR) for
New Hidalgo County Courthouse**

To Ms. Salazar and Members of the Selection Committee:

Thank you for this opportunity to present our team's CMAR qualifications and proposal to Hidalgo County.

Morganti Texas in association with Casias Construction is very excited about the new Courthouse project and what it means to Hidalgo County and the Rio Grande Valley. **Morganti brings a large amount of experience in the construction of courthouses, detention centers and other judicial system projects.** Our firm features a large portfolio of projects and clients that include; the Fort Bend County Courthouse, Fort Bend County Jail, Texas Department of Corrections, Ed Austin State Attorney's Office Federal Courthouse, Harris County Juvenile Detention Center, The Manhattan Family Courthouse, Kings County Courthouse, State of Connecticut Superior Courthouse, Broome County Public Safety Building, Abu Dhabi Crown Prince Courthouse and many others. Our team has also completed multiple projects in the Rio Grande Valley. Morganti Texas, in association with Casias Construction (a Texas certified HUB contractor), have also completed several large-scale projects with Jacobs in the recent past.

Morganti's proven approach to courthouse construction results in immediate and long-term cost savings, delivering Hidalgo County the best value for the funds available. Our team understands that these types of projects require a specialized level of knowledge and detail, especially while construction takes place on an occupied campus and around operating businesses. Morganti brings experienced staff, expert pre-construction services, collaborative planning and strict procedures that produce high quality, outstanding results in a safe manner to provide confidence for Hidalgo County. In relation to the Hidalgo County Courthouse our personnel offer the following:

- Excitement of our team to be a part of this very important project for Hidalgo County and the Rio Grande Valley
- Prior experience constructing courthouses and detention centers in Texas and the country
- Previous completed projects in the Rio Grande Valley
- Vast experience with construction on occupied campuses with limited space and on-going operations
- Knowledge of construction guidelines and best practices in the construction of courthouses
- Dedicated pre-construction personnel with previous success establishing a detailed project scope, innovative value engineering options and accurate GMPs for similar facilities
- Strong relationships among our proposed key personnel, our proposed team recently completed a \$75 million, 200,000+ sf project together as well as an \$80M bond program package
- Our commitment for Edinburg and the RGV Communities to be a large part of the project
- Extensive understanding of the region's construction markets and subcontractor base including the ability to utilize the Rio Grande Valley, Houston Metro Area and the San Antonio Metro Area subcontractor base to ensure best value and performance
- Senior staff commitment to this project, from pre-construction through final project close-out, turnover and warranty period
- Exceptional safety record with organizational strength, resources, and structure to support Hidalgo County with proven Safety and Quality programs

Morganti understands the complexity involved in courthouse and detention construction projects and offers a record of on-time, in-budget completion. Our focus is also to maintain the integrity of the existing campus and neighboring businesses during construction. We welcome this opportunity to work with Hidalgo County and look forward to contributing to your organization's growth and future success.

Morganti has completed over \$200 Million dollars of correctional and courthouse projects in Texas and over \$1.1 Billion dollars of these types of facilities as a company. We pride ourselves on having small firm values with large firm experience and resources providing the best service possible for Hidalgo County.

Thank you for reviewing our information. We look forward to speaking with you soon in regards to this opportunity. If you have any questions, please feel free to call me.

Sincerely yours,



Paul Kummer
Director of Construction Development / Project Executive
Morganti Texas, Inc.

SECTION 2

Understanding the Project



Morganti's Experience

Morganti has \$1+ billion of Corrections and Courthouse Experience. This includes \$200+ million of project experience in the State of Texas.

Our team has worked in the Victoria, Beeville, and Rio Grand Valley area. These projects include: McAllen ISD Stadium Improvements, the Anzalduas Port of Entry, GSA US Federal Courthouse, and the UT Texas Southmost College Wellness-Recreation and Kinesiology Complex.

Morganti Texas has not had the pleasure of working with Hidalgo County in the past. We are looking forward to developing a lasting relationship with the County, being your advocate and good stewards of the available funds.

COURTHOUSES

New Abu Dhabi Courthouse Complex and Detainee Centre	\$397,495,249
Manhattan Family Courthouse	\$77,600,000
Kings County Criminal Courthouse	\$44,661,283
Abu Dhabi Courthouse Rehabilitation	\$32,805,629
Ed Austin State Attorney's Office	\$25,808,600
Hyattsville Justice Center	\$21,333,000
Abu Dhabi Crown Prince Court	\$1,987,476

CORRECTIONS

Dallas County 2,000 Bed Mode II State Jail	\$26,600,000
Liberty County 500-Bed Substance Abuse Treatment Facility	\$8,654,627
Harris County 667-Bed Mode II State Jail	\$8,400,000
Jasper County 500-Bed Substance Abuse Treatment Facility	\$8,118,904
Harris County Boot Camp	\$1,500,000
Massachusetts Correctional Institute	\$53,700,000
Plymouth County Multi-Use Detention Facility	\$47,500,434
Kershaw Correctional Institute	\$36,483,000

Corrigan Correctional Institute \$35,000,000

New Jersey Prison Dorms Correctional Facilities \$31,445,000

Essex Prison Phase I Modular Expansion \$28,000,000

MCI Norfolk Housing Unit \$6,518,138

State of Connecticut 300 Bed Inmate Housing & Support \$15,000,000

Orange County Corrections Kitchen, Laundry and Staff Dining \$10,959,000

State of Connecticut Alternative Incarceration Unit Boot Camp \$10,000,000

HCCSCD Conservation Probation Program \$2,500,000

State of Connecticut 150 Bed Inmate Housing & Support \$2,500,000

MCI Norfolk Housing Unit \$5,800,000

State of Connecticut Inmate Housing & Support \$10,000,000

Wood County 500-Bed Substance Abuse Treatment Facility \$8,157,467

St. Lucie County Correctional Center \$6,800,000

Troop G State Police Station \$6,500,000

Okeechobee Level 10 Maximum Risk Facility \$5,700,000

Citrus County Level 10 Max. Risk Facility \$5,220,000

Understanding of the Scope: Concerns & Opportunities

- Ensuring public and project safety (no hoisting over non-construction areas)
- Minimize impact to existing courthouse operations, entrance and sally port
- Job site cleanliness & organization
- Correction of existing drainage, road relocation and site work in order to begin courthouse work
- Producing zero defect punchlist
- Providing the building that the county wants and needs
- Engaging and utilizing local resources
- Quick drying-in of the courthouse building
- Accelerated completion of central plant and operational utilities, HVAC, and electrical
- Care and detail of high end courtroom finishes
- Focus on security/safety elements; detention, cameras, ballistics protection, access
- Building system commissioning
- Budget concious design and material selections
- Quality suitable for institutional building that should last 75+ years
- Smooth and efficient turnover
- Importance of meeting schedule placement dates of concrete



Our team is committed to working with Hidalgo County to ensure that the existing courthouse operations proceed without disruption and providing for the safety of courthouse visitors and staff. We approach this process by "Keeping the End in Mind" as we focus in on needs of the County and the community, as well as how we will deliver a successful project on an occupied and busy campus.

Morganti's Approach

We will consider ourselves an extension of Hidalgo County and strive to serve you with your best interests in mind. We understand and have experience with working on occupied campuses and minimizing the impact construction has on current operations. We act as guests and understand that the work must be completed while not

compromising safety to visitors, staff and county personnel. It is our priority to protect the operations and services of the existing courthouse and to eliminate disruptions throughout the duration of construction.

Our team will set budget, quality and safety expectations for the Hidalgo Courthouse project early, and actively manage them to ensure cost effectiveness, a high quality and safe project are all achieved.

The Morganti team will determine and manage the proper phasing and flow of work to ensure timely delivery and best value for Hidalgo County. Building efficiently with proper sequencing of the central plant, courthouse and secure parking area allows us to complete the project on-schedule and on-budget

Time spent during pre-construction reaps substantial dividends in the timely completion of these projects through development of early estimates, cost saving options, identifying possible early release packages, material selection, constructability analysis, and appropriate coordination with the end users. We ensure the plans and specifications are properly coordinated and that work requiring multiple trades is well coordinated. We use our experience to anticipate and plan for construction issues which may arise and we account for their cost. **This allows us to develop accurate estimates that cover the entire scope of the project, even if the documents are at a preliminary stage.**

Critical Elements & Strategies for this Project

- Knowledge in building specialized projects such as the Hidalgo County Courthouse and the key design and construction concerns in courthouses that include; separate circulation patterns for public, detainee, and judiciary members, detention areas, security, access control and related special systems to ensure they are well coordinated and properly functional. A high level of quality and craftsmanship of building components with special attention to acoustic and lighting levels; and balancing information technology and A/V systems design with the need for highly aesthetic spaces. All of this must be consistent with a building designed for the long term and a lifespan of greater than 75 years
- Incorporation of secure and in some cases projectile resistant materials in key areas and the coordination of these elements with other work
- Relocating or providing temporary measures to continue use of the existing courthouse main entrance and sally port
- Early coordination and scheduling with utility providers for permanent service availability as well as work related to the re-routing the highway and site utility and drainage upgrades
- Construction of the central plant and courthouse will need to take place in parallel so conditioned air, utilities and building systems will be operational as the construction of the courthouse requires it
- Delivery of mechanical and electrical equipment, and the ability to dry-in the building and condition it to allow for finishes to be installed, particular care will be required due to the amount of wood finishes consistent with this type of building
- High level of detail to scheduled delivery of materials to make best use of the limited space available to the project, and utilization of just in time delivery procedures
- Ensuring we have a local, capable and available subcontractor base and labor force. We will utilize our strong relationships with the subcontractor base in South Texas to ensure good bid coverage and the best possible pricing
- It is crucial to the project schedule that there is little to no down time between work activities, or lost time waiting for materials to arrive at the site. The project schedule developed by Morganti will indicate the critical path work flow. This will be updated regularly and will be supplemented by the use of three week look ahead schedules to plan and coordinate upcoming activities in further detail
- Utilizing and engaging the local community through subcontracting, labor and construction materials. In the Rio Grande Valley, like other regions in Texas, it is important to have local connections and personnel that benefits the project greatly. Morganti has several resources in place that will enable us to do so

Key Activities for the New Hidalgo County Courthouse Project

- Determining options and methods to provide cost savings
- Cost benefit comparisons with alternative building materials
- Review and coordination of differing skin materials to eliminate quality concerns
- Building mock-ups for exterior building envelope and courtroom finishes, including millwork
- Quality assurance pre-installation conferences
- Clearly defined subcontractor responsibilities
- Thorough advertising and outreach to local subcontractor base, labor force and local businesses
- Real time budgeting updates
- Completing milestone activities as scheduled (particularly placement of concrete).

PROJECT DETAILS**CONTRACT TYPE**

- › Construction Management at Risk

VALUE

- › Actual: \$59,200,00
- › Original GMP: \$58,400,000
- Due to adding the build-out of originally scheduled shell space

SCOPE

- › 265,000 SF New Construction

SCHEDULE

- › Actual: May 2009 - February 2011
- › Projected: May 2009 - February 2011

REFERENCES**OWNER**

- › James Knight
(281) 238-3097
Director of Facilities
Fort Bend County

**ARCHITECT/
ENGINEER**

- › Paul Bonnette
(713) 622-1444
PBonnette@pgal.com

PROJECT TEAM

- › Joseph Kummer
Project Executive
(Individual experience prior to joining Morganti)

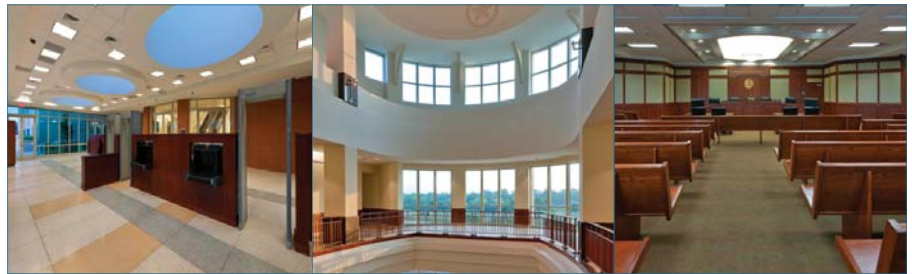
**PROJECT
HIGHLIGHTS**

- › New construction
- › Detention areas and holding cells
- › Construction of high-end interiors



FORT BEND COUNTY JUSTICE CENTER

Richmond, TX

**PROJECT SYNOPSIS**

This project's design is neoclassical with two 4-story buildings flanking a 5-story 85' high domed rotunda from which secured entry, all circulation and access takes place. A total of 17 courtrooms were constructed with an additional 10 planned at build-out, Phase 1 also includes jury assembly and grand jury rooms. Phase 2 includes a Courthouse Administration Building housing District and County Clerk offices, District Attorney and Bailiff's offices, and Law Library.

The lower level includes holding cells for 112 incarcerated adults and juveniles with future provisions for 45 additional cells that access the courtrooms through a secured on-grade sally port.

PROJECT INFORMATION

Pre-Construction Phase fee \$160,000

Construction Phase Fee 3.5%

Completion Orig Schedule 22 months

Final Schedule 22 months

Duration from Substantial Completion to Final Completion was 60 days

Open Punchlist items at substantial completion 150

Of submitted change proposals 1

Of approved change proposals 1

Of approved change orders 1

Of submitted RFIs 280

PROJECT DETAILS**CONTRACT TYPE**

- › CMAR

VALUE

- › Original \$77,600,000
- › Actual \$77,600,000

SCOPE

- › 315,000 SF Addition & Renovation

SCHEDULE

- › Original Apr. 2002 - Nov. 2009
- › Actual Apr. 2002 - Nov. 2009

REFERENCES**OWNER**

- › Patricia Weber
(212) 406-9752
Owner
Dormitory Authority
of The State of New
York

ARCHITECT

- › Steve Dietz
(212) 663-4000
Partner
Mitchell | Giurola
Architects



MANHATTAN FAMILY COURTHOUSE

New York, NY

**PROJECT SYNOPSIS**

Morganti managed the pre-construction and construction process for this 300,000 SF four phased extensive addition/renovation to an occupied court house building in downtown Manhattan.

Pre-Construction included collaboration with the owner, end users and design teams to coordinate phased activities to accommodate years of construction in an operational city courthouse.

Site logistics, safety & security planning, estimating various budgets, phased scheduling, constructibility reviews, scope development & sequenced bid packaging comprised years of pre-construction effort. Construction services included master scheduling and budget reporting, RFI and submittal reviews, change order management, commissioning and close-out processes.

PROJECT INFORMATION

Pre-Construction Phase fee .1%

Construction Phase Fee 2.5

Project finished on-budget and on schedule

Duration from Substantial Completion to Final Completion was 45 days

Open Punchlist items at substantial completion 220

Of submitted change proposals 65

Of approved change proposals 22

Of approved change orders 3

Of submitted RFIs 297

PROJECT DETAILS**CONTRACT TYPE**

- › Construction Management at Risk

CONSTRUCTION COST

- › Original GMP: \$28,000,000*
- › Actual: \$45,710,128*
- › *Due to owner driven scope increases

SCHEDULE

- › Original: September 2009- September 2016
- › Actual: September 2009 - December 2016

SCOPE

- › 264,000 SF Addition & Renovation

OWNER

- › Richard Brotherton (718) 391-1243
brothert@ddc.nyc.gov
Program Director
NYC Dept. of Design and Construction

ARCHITECT/ENGINEER

- › Erica Godun (646) 292-8273
egodun@fxfowle.com
Project Architect
FX Fowle
- › Marisa Visciano 212-532-96000
Project Engineer
SP Flack & Kurtz

PROJECT HIGHLIGHTS

- › Holding Cells
- › Tight site
- › Occupied Courthouse



KINGS COUNTY CRIMINAL COURTHOUSE

Brooklyn, NY

**PROJECT SYNOPSIS**

This 264,000 SF 12-story historic Kings County Courthouse building in New York City included facility additions, interior remodeling of court rooms, main entry lobbies, judges offices, holding cells, detainment areas and a central booking facility.

Interior renovations were phased and completed while the facility remained fully operational.

This renovation project has received a LEED Gold certification level.

PROJECT INFORMATION

Pre-Construction Phase fee .1%

Construction Phase Fee 3.25%

Reasons for change in Design Development and construction budgets resulted from additional scope of work being added as we proceeded through construction as well as schedule extensions due to owner approved changes to the work.

Duration from Substantial Completion to Final Completion was 75 days

Open Punchlist items at substantial completion 232

Of submitted change proposals 98

Of approved change proposals 77

Of approved change orders 17

Of submitted RFIs 270

PROJECT DETAILS**CONTRACT TYPE**

- > General Contractor

VALUE

- > Original:
\$31,000,000
- > Actual:
\$25,808,600

SCHEDULE

- > Original: Aug. 2013 - Aug. 2015
- > Actual: Aug. 2013 - Mar. 2015
- > Project finished ahead of schedule

SCOPE

- > 254,000 SF
Addition &
Renovation

REFERENCES**OWNER**

- > City of Jacksonville
Tom Goldsbury
(904) 255-8799
tomg@coj.net

ARCHITECT

- > AECOM
Doug McKenzie
(305) 444-4691
doug.mckenzie@aecom.com

AWARDS

- > LEED Certified
- > AGC Unique Safety Award

PROJECT TEAM

- > **Joe Capraro**
General
Superintendent

PROJECT HIGHLIGHTS

- > Detention area and holding cells
- > Occupied courthouse



ED AUSTIN STATE ATTORNEY'S OFFICE & COURTHOUSE

Jacksonville FL

**PROJECT SYNOPSIS**

This 254,000 SF courthouse project incorporated upgrades and additions to the existing 5-story building, including historic courtrooms, law library, first floor main lobbies and historical stairwells. Design development and the construction budgets were equal. Budget saving during construction resulted from early project finish, construction activity improvements, responsible use of project allowances and protection of owner budget contingency.

Morganti utilized BIM technology to coordinate the new roof with the existing roof. This project also required renovations to the loading docks and the construction of a new steel and panel connector bridge from the Old Courthouse building to the new Duval Unified Courthouse building.

PROJECT INFORMATION

Pre-Construction Phase fee .008%

Construction Phase Fee 3.5%

Design Development and the Construction Budgets were equal.

Budget savings during construction resulted from early project finish, construction activity improvements, responsible use of project allowances and protection of owner budget contingency

Duration from Substantial Completion to Final Completion was 50 days

Open Punchlist items at substantial completion 129

Of submitted change proposals 42

Of approved change proposals 17

Of approved change orders 5

Of submitted RFIs 272

PROJECT DETAILS**CONTRACT TYPE**

- > Construction Management at Risk

VALUE

- > Original \$61,000,000
- > Actual \$64,000,000

SCOPE

- > 455,000 SF new construction

SCHEDULE

- > Original Dec 2014 - Sept.. 2016
- > Actual Dec 2014 - Aug. 2016

REFERENCES**OWNER**

- > Nadim Zabaneh
(713) 535-2460
nadim@temadevelopment.com
Tema Development

ARCHITECT

- > Mary Hart
(214) 748-2000
mary.hart@corgan.com
Corgan Associates

PROJECT TEAM

- > **Joe Kummer**
VP Operations
- > **Drew Scahill**
Sr. Project Manager
- > **Brian McNeal**
Superintendent
- > **Brian Phippen**
Project Manager
- > **Fernando Diosdado**
Project Engineer
- > **Daniel Santos**
QA/QC / Project Engineer



ONE HERMANN PLACE LUXURY APARTMENT COMPLEX

Houston, TX

**PROJECT SYNOPSIS**

Morganti, as the Construction Manager at Risk, managed the new construction of this masonry, stone, steel frame and windowed curtain wall 7-story luxury residential apartment building. This new high-end residential structure features 240,000 SF of net residential space (311,000 SF gross) with 224 high-end units composed of studios, one- and two-bedroom units, with a penthouse level. Each unit is fit-out with high-end details, ranging in size from 580 SF to 2,800 SF. In addition, a 144,000 SF, 5-story, 351-space pre-cast concrete parking garage was constructed with a metal ceiling entry and second-floor electric-car charging stations.

PROJECT INFORMATION

Pre-Construction Phase fee 0%

Construction Phase Fee 2.0%

Completion Orig Schedule 6/30/2016

Final Schedule 9/8/2017

Project budget and schedule duration increase was driven by owner requested change items and 3 months of weather-related delays.

Duration from Substantial Completion to Final Completion was 60 days

Open Punchlist items at substantial completion 608

Of submitted change proposals 70

Of approved change proposals 55

Of approved change orders 15

Of submitted RFIs 307

SECTION 3

Firm Qualifications & Approach



From day one, we take a teamwork-based approach to completing this project. Morganti works hand in hand with Hidalgo County, the design team, consultants and subcontractors to provide quality and value-driven construction projects. We want to be responsible stewards for the County's project and funds. This includes thorough life cycle evaluations, constructability reviews and budgeting.

Morganti's Typical Cost Estimating Methods During Pre-Construction

Early in the pre-construction process Morganti develops an accurate picture of the Owners' schedule and project goals and requirements.

Morganti produces detailed milestone cost estimates, schedule, list of cost savings opportunities, and constructability comments at each stage of design, (SD, DD, and CDs). We are happy to provide a GMP at any stage of design estimating with the appropriate contingencies included.

Our detailed pre-construction estimates are developed in-house along with estimates from subcontractors to determine the cost of each specialized trade and scope of work. Morganti utilizes information from similar projects along with historical costs and current market projections. We develop a value management log for cost savings options to present to Hidalgo County.

We establish the owner's expectations early for function and program. We listen to the architect's description of their design intent and performance. Then we provide thoughtful feedback intended to help guide the project to meet or exceed expectations while maintaining focus on budget and schedule



After Approval of Guaranteed Maximum Price Proposal, our team will be prepared to immediately transition into timely buyout of all defined scopes of work. All GMPs will include general conditions, fee and appropriate contingencies or allowances to allow for final completion of the design documents.

Morganti's Methodology for Working with the Project Team to Deliver a GMP within budget

GMP preparation is at the center of Estimating and Pre-Construction activities. It must be executed properly and it's planning must be executed in a detailed manner at the earliest stage possible.

3 FIRM QUALIFICATIONS | COST CONTROL

Morganti understands the Hidalgo County has a fixed budget for the project and it is critical that the team be able to prioritize the needs and maximize the scope of work for the dollars spent. Providing accurate cost information is a critical component in identifying the priorities and making decisions on work to be performed. Early options can be priced and discussed, eliminating delays caused by re-design.

Our focus is ensuring design and construction milestone dates and deliverables are achieved as necessary to meet the project schedule. **The A/E team take the lead during design but our focus at each stage of design will be to work with the consultants to provide Hidalgo County a detailed estimate, a formal constructability analysis, a priced list of alternatives (with cost saving measures), and an updated project schedule.** Variance reports between the previous milestone and current estimates will be produced so the evolution of each stage is clear to all parties, and appropriate decisions can be made efficiently. This approach assures that the project remains on budget, with the best possible schedule. We also include the furniture and equipment vendors early in the process when possible to account for their requirements.

Our goal is to provide expert pre-construction services and an accurate GMP for Hidalgo County by:

- Ensuring Hidalgo County's needs are the priority
- Open and Honest Communication
- Team Approach
- Transparent Cost Estimating and Reporting
- Build Common Expectations Early
- Weekly Meetings or Updates
- Everyone Must Succeed Mentality

Typical Cost Control Methods During Construction

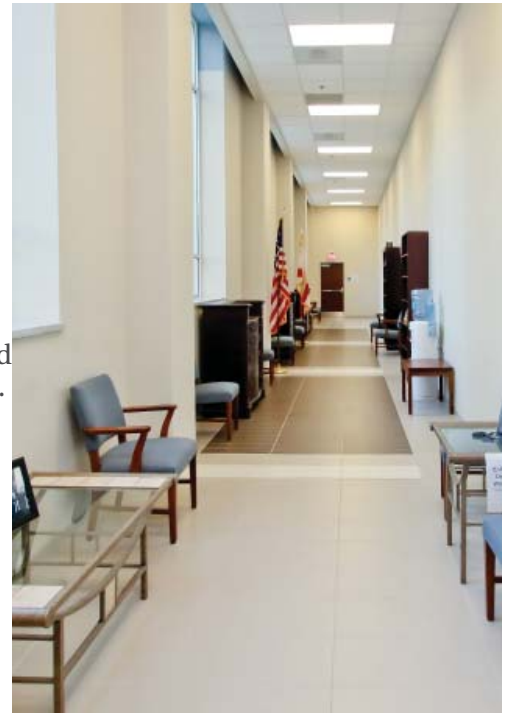
Cost control during construction starts at bid time. Providing clear and concise scope bid packages to subcontractors to develop their bids and followed by thorough buyout of subcontracts sets a project up for success early. Cost control methods we utilize include:

- Real time budget updating
- Accurate forecasting
- Compare actual to projected costs (analysis and trending)
- Contingency protection

Subcontractor Management: Morganti ensures that pre-qualified subcontractors bidding on the project have accurate and adequate information to maximize the competitiveness of their bid, including detailed scope of work statements, project schedule and project safety requirements. This also includes demanding compliance with all design and contract requirements.

Change Order Management Systems: Morganti has a regimented system for the evaluation and tracking of the requested project cost changes from pricing through review and approval.

Detailed Cost Reports: Detailed cost reports including actual/committed reports, labor reports and subcontractor and purchase order payment reports are used to monitor project costs on a bimonthly basis.



Means of Procuring Subcontracts, Scope Confirmation, Amounts, and Ensuring Proper Payment

As options are vetted and final decisions are made Morganti will seek competitive subcontractor pricing to develop a total Guaranteed Maximum Price (GMP) for the project. Morganti has a pre-qualification process for each

subcontractor and bid package that will include a standard pre-qualification statement, financial information, insurance coverage, bonding ability, references, similar project history, safety record and an assurance of an adequate labor force. A detailed cope of work description will also be provided to each subcontractor to ensure complete coverage.

Construction

- Mobilization
 - Field Supervision
 - Site Facilities
- Administrative Controls
- Implement Logistic Plan
- Quality Management
 - Permits/Inspection/Testing
 - Samples/Mock-ups/Approvals
 - Testing & Documents
- Schedule Coordination
- Safety Management

- Document Controls
 - Plans & Specs
 - Submittals & Shop Drawings
 - Distribution of Information
- Materials Management
 - Material Delivery Schedule
 - Shop Inspection / Expediting
- Cost Control & Reporting
 - Change Management
 - Monthly Report
 - Forecasting Trends/Expenditures
- Green Building
 - Implement Green Building Practices

Post Construction

- Final Inspection
- Punch List
- Approvals
- Record Documentation
- O&M Manuals
- Turn-Over
- Warranty

Through pre-construction, we develop detailed bid packages for each trade that includes every scope of work necessary to complete the project. We pay special attention to items that can potentially fall in between trades, create overlap or not be covered at all. Once the bid packages are developed and the project goes to bid to the subcontractor market we include the bid packages with the project drawings, specs and other bid documents to help identify all of the things that need to be included and accounted for by subcontractors bidding specific scopes of work. This ensures that each subcontractors bid is complete and eliminates scope gaps or double-ups. Doing so helps achieve thorough, competitive and easily comparable bids while providing best value to Hidalgo County and reducing the risk of unaccounted for items through the course of the project.

Once bids are received, they are reviewed internally, as well as with Hidalgo County, to help identify the most complete and competitive subcontractors. Following this, we conduct post bid interviews with those subcontractors to review their bids against the project documents and scope of work to further guarantee everything is included for the best and most complete price, affords Hidalgo County a full assessment of each bid and allows us to move forward with awarding subcontracts.

Morganti believes in utilizing the full team during all phases of our projects, including subcontractor selection. Consultation and input from Hidalgo County and each of the team members leading up to, and through the bid process is a large part of our methodology.

Payment to subcontractors are made on a pay when paid basis, although certain exceptions can be made to reduce any potential hardships to smaller subcontractors. All proper documentation must accompany subcontractor pay applications. Pay applications are thoroughly reviewed and approved based on work performed by the project team, the design team, Jacobs and Hidalgo County to ensure proper payment.

Morganti's Process for Ensuring that the Design Documents Provide the Information Necessary to Arrive at a Complete GMP, Including all Owner Requirements with Reasonable Contingencies

In order to provide a complete and accurate GMP we conduct reviews for constructability, drawing completeness, coordination and quality assurance starting in early design stages. This allows us to eliminate questions and concerns to better develop a thorough and reliable GMP in the next stage of design. At later stages we also utilize 3rd-party peer reviews for the structural, MEP and building envelope designs. **During the design development,**

Morganti's estimators and project team carefully review the drawings for design and construction alternatives that maintain quality but keep life cycle and value at the forefront.

This process allows for implementation of various alternative types of construction and materials that either extend the life of the facility or reduce the construction and/or operating costs. Morganti has the expertise to deliver effective analysis ensuring the integrity of the project while simultaneously working toward a Guaranteed Maximum Price.

This savings is maximized through Morganti's implementation of:

- **Contractibility reviews**
- **Drawings coordination reviews**
- **Early furniture, fixtures and equipment coordination meetings**
- **3rd party peer reviews**
- **Subcontractor input**
- **Adjustable contingencies reduced as design progresses**

During the pre-construction process, Morganti develops an accurate picture of the Owners' schedule and Project requirements. The Contingency Fund is developed based upon the current status of the design percentage of completion. As the design is further developed a smaller contingency is included in the budget as the scope becomes more defined. We recommend establishing the contingency at the most complete state of the drawings allowed by the schedule.

As your construction manager, Morganti has the fiduciary responsibility to operate as an extension of Hidalgo County, to deliver the best project value. 100% of all Savings realized is returned to Hidalgo County.



Please find One Hermann Place Estimate example on the following page

ONE HERMANN PLACE COST ESTIMATE

272000	DATA & VOICE STRUCTURED CABLING	VIP SYSTEMS	0	0	317,393	0	0
272001	SOUND SYSTEM	ALARMTECHS	0	0	51,300	0	0
281000	BURGLAR ALARM & ACCESS CONTROL	ALARMTECHS	0	0	231,694	0	0
	SOUND SYSTEM		0	0	*	0	0

28000

	FLOOR SAFE		0	0	*	0	0
	LIBRARY SECURITY SYSTEMS		0	0	*	0	0
	STAGE CURTAINS		0	0	*	0	0
	LAUNDRY EQUIPMENT		0	0	*	0	0
	MOTORIZED ELECTRIC PROJECTION SCREENS		0	0	*	0	0
11XXXX	LAUNDRY EQUIPMENT		0	0	10,000	0	0

113000

	SHEET METAL FLASHING & TRIM		0	0	*	0	0
077100	ROOF ACCESSORIES	CHAMBERLIN	0	0	w/ roofing	0	0
	ROOF SCUTTLE & HEAT SMOKE DETECTORS		0	0	*	0	0
	BUILDING SEALANTS		0	0	*	0	0
079200	JOINT SEALANTS	CHAMBERLIN	0	0	251,229	0	0

124813

081113	CONCRETE WALKS		0	0	0	0	0
081400	EPOXY RELATED WORK		0	0	0	0	0
122100	CONCRETE PAVING		0	0	0	0	0
083327	CONCRETE CURB		0	0	0	0	0

033100

083326	CONCRETE CURB		0	0	0	0	0
083323	CONCRETE CURB		0	0	0	0	0
083213	CONCRETE CURB		0	0	0	0	0
084413	CONCRETE CURB		0	0	0	0	0

033500

031000	CONCRETE CURB		0	0	0	0	0
321313	CONCRETE CURB		0	0	0	0	0
031001	CONCRETE CURB		0	0	0	0	0
072413	CONCRETE CURB		0	0	0	0	0
092950	CONCRETE CURB		0	0	0	0	0
093023	CONCRETE CURB		0	0	0	0	0
072600	CONCRETE CURB		0	0	0	0	0
032000	CONCRETE CURB		0	0	0	0	0
033816	CONCRETE CURB		0	0	0	0	0

031000

087000	CONCRETE CURB		0	0	0	0	0
085113	CONCRETE CURB		0	0	0	0	0
107113	CONCRETE CURB		0	0	0	0	0

031000

087000	CONCRETE CURB		0	0	0	0	0
085113	CONCRETE CURB		0	0	0	0	0
107113	CONCRETE CURB		0	0	0	0	0

031000

087000	CONCRETE CURB		0	0	0	0	0
085113	CONCRETE CURB		0	0	0	0	0
107113	CONCRETE CURB		0	0	0	0	0

031000

087000	CONCRETE CURB		0	0	0	0	0
085113	CONCRETE CURB		0	0	0	0	0
107113	CONCRETE CURB		0	0	0	0	0

031000

087000	CONCRETE CURB		0	0	0	0	0
085113	CONCRETE CURB		0	0	0	0	0
107113	CONCRETE CURB		0	0	0	0	0

031000

087000	CONCRETE CURB		0	0	0	0	0
085113	CONCRETE CURB		0	0	0	0	0
107113	CONCRETE CURB		0	0	0	0	0

031000

087000	CONCRETE CURB		0	0	0	0	0
085113	CONCRETE CURB		0	0	0	0	0
107113	CONCRETE CURB		0	0	0	0	0

031000

087000	CONCRETE CURB		0	0	0	0	0
085113	CONCRETE CURB		0	0	0	0	0
107113	CONCRETE CURB		0	0	0	0	0

031000

087000	CONCRETE CURB		0	0	0	0	0
085113	CONCRETE CURB		0	0	0	0	0
107113	CONCRETE CURB		0	0	0	0	0

031000

087000	CONCRETE CURB		0	0	0	0	0
085113	CONCRETE CURB		0	0	0	0	0
107113	CONCRETE CURB		0	0	0	0	0

031000

087000	CONCRETE CURB		0	0	0	0	0
085113	CONCRETE CURB		0	0	0	0	0
107113	CONCRETE CURB		0	0	0	0	0

031000

087000	CONCRETE CURB		0	0	0	0	0
085113	CONCRETE CURB		0	0	0	0	0
107113	CONCRETE CURB		0	0	0	0	0

031000

087000	CONCRETE CURB		0	0	0	0	0
085113	CONCRETE CURB		0	0	0	0	0
107113	CONCRETE CURB		0	0	0	0	0

031000

087000	CONCRETE CURB		0	0	0	0	0
085113	CONCRETE CURB		0	0	0	0	0
107113	CONCRETE CURB		0	0	0	0	0

031000

087000	CONCRETE CURB		0	0	0	0	0
085113	CONCRETE CURB		0	0	0	0	0
107113	CONCRETE CURB		0	0	0	0	0

031000

087000	CONCRETE CURB		0	0	0	0	0
085113	CONCRETE CURB		0	0	0	0	0
107113	CONCRETE CURB		0	0	0	0	0

031000

087000	CONCRETE CURB		0	0	0	0	0
085113	CONCRETE CURB		0	0	0	0	0
107113	CONCRETE CURB		0	0	0	0	0

031000

087000	CONCRETE CURB		0	0	0	0	0
085113	CONCRETE CURB		0	0	0	0	0
107113	CONCRETE CURB		0	0	0	0	0

031000

087000	CONCRETE CURB		0	0	0	0	0
085113	CONCRETE CURB		0	0	0	0	0
107113	CONCRETE CURB		0	0	0	0	0

031000

087000	CONCRETE CURB		0	0	0	0	0
085113	CONCRETE CURB		0	0	0	0	0
107113	CONCRETE CURB		0	0	0	0	0

031000

087000	CONCRETE CURB		0	0	0	0	0
085113	CONCRETE CURB		0	0	0	0	0
107113	CONCRETE CURB		0	0	0	0	0

031000

087000	CONCRETE CURB		0	0	0	0	0
085113	CONCRETE CURB		0	0	0	0	0
107113	CONCRETE CURB		0	0	0	0	0

031000

087000	CONCRETE CURB		0	0	0	0	0
085113	CONCRETE CURB		0	0	0	0	0
107113	CONCRETE CURB		0	0	0	0	0

031000

087000	CONCRETE CURB		0	0	0	0	0
085113	CONCRETE CURB		0	0	0	0	0
107113	CONCRETE CURB		0	0	0	0	0

031000

087000	CONCRETE CURB		0	0	0	0	0
085113	CONCRETE CURB		0	0	0	0	0
107113	CONCRETE CURB		0	0	0	0	0

031000

087000	CONCRETE CURB		0	0	0	0	0
085113	CONCRETE CURB		0	0	0	0	0
107113	CONCRETE CURB		0	0	0	0	0

031000

087000	CONCRETE CURB		0	0	0	0	0
085113	CONCRETE CURB		0	0	0	0	0
107113	CONCRETE CURB		0	0	0	0	0

031000

087000	CONCRETE CURB		0	0	0	0	0
085113	CONCRETE CURB		0	0	0	0	0
107113	CONCRETE CURB		0	0	0	0	0

031000

087000	CONCRETE CURB		0	0	0	0	0
085113	CONCRETE CURB		0	0	0	0	0
107113	CONCRETE CURB		0	0	0	0	0

031000

087000	CONCRETE CURB		0	0	0	0	0
085113	CONCRETE CURB		0	0	0	0	0
107113	CONCRETE CURB		0	0	0	0	0

031000

087000	CONCRETE CURB		0	0	0	0	0
085113	CONCRETE CURB		0	0	0	0	0
107113	CONCRETE CURB		0	0	0	0	0

031000

087000	CONCRETE CURB		0	0	0	0	0
085113	CONCRETE CURB		0	0	0	0	0
107113	CONCRETE CURB		0	0	0	0	0

031000

087000	CONCRETE CURB		0	0	0	0	0
085113	CONCRETE CURB		0	0	0	0	0
107113	CONCRETE CURB		0	0	0	0	0

031000

087000	CONCRETE CURB		0	0	0	0	0
085113	CONCRETE CURB		0	0	0	0	0
107113	CONCRETE CURB		0	0	0	0	0

031000

087000	CONCRETE CURB		0	0	0	0	0
085113	CONCRETE CURB		0	0	0	0	0
107113	CONCRETE CURB		0	0	0	0	0

031000

087000	CONCRETE CURB		0	0	0	0	0
085113	CONCRETE CURB		0	0	0	0	0
107113	CONCRETE CURB		0	0	0	0	0

031000

087000	CONCRETE CURB		0	0	0	0	0
085113	CONCRETE CURB		0	0	0	0	0
107113	CONCRETE CURB		0	0	0	0	0

031000

087000	CONCRETE CURB		0	0	0	0	0
085113	CONCRETE CURB		0	0	0	0	0
107113	CONCRETE CURB		0	0	0	0	0

031000

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Morganti's Typical Scheduling Methods During the Pre-Construction & Construction Phases

Identifying critical activities and developing these into a well coordinated plan assures a seamless transition from pre-construction to construction in regards to managing and updating the project schedule.

We build and manage the schedule and coordinate with project team members (county officials, designers, consultants and subcontractors) on important tasks and activities. We have completed numerous projects of this size and scope and are responsible for establishing, managing, and delivering the overall project schedule.

Describe Typical Schedule Control Methods During Construction

Our on-site team's responsibilities include scheduling of work activities, managing the labor force to meet deadlines, developing detailed look ahead schedules, coordinating material deliveries and equipment. In addition, coordination with the Project Manager takes place on a regular basis for schedule and budget projections. **By keeping the schedule up to date and using our experience, scheduling tools and flexible reports we can quickly identify areas that are not meeting the schedule and react immediately so the project is not impacted.**

We prefer to build our schedules so they include all major project milestones from Notice to Proceed for Construction through client move in. Comprehensively being able to track all construction and owner activities and important dates provides critical awareness to the project team of the project status. We will turn over and make available areas to Hidalgo County as early as possible to ensure that installation of furniture and equipment can take place as needed.

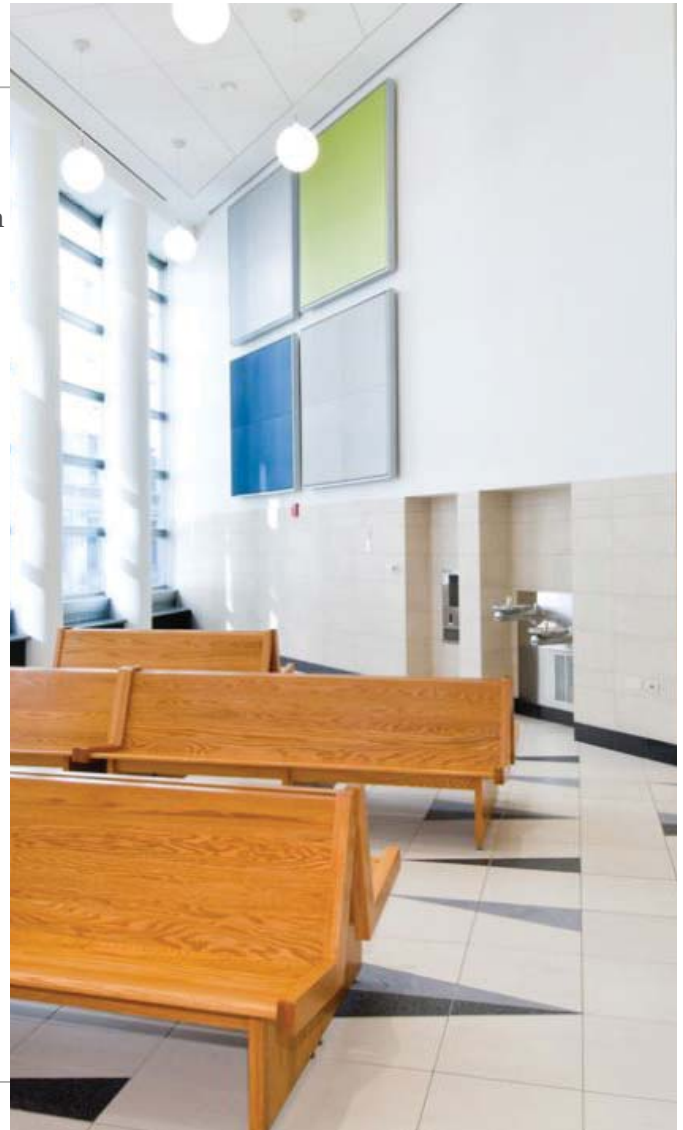
Morganti appreciates that Hidalgo County has deadlines and activities relevant to the overall success of the project. During our coordination meetings with the owner an ongoing topic will be schedule updates. We will use this time to discuss any potential accelerations that will benefit Hidalgo County.

Give Examples of How Morganti Assured Timely Completion of Other Projects, Including Methods for Schedule Recovery, if Necessary.

On our projects, we take our client's time frames seriously. Meeting their deadlines is imperative. **When developing a schedule we investigate how to construct your project as efficiently as possible without reducing quality or taking short-cuts.** We are open and honest with durations to set agreeable and accurate expectations. Schedule recovery example: **For One Hermann Place we had over 90 days of weather related delays. Through a combination of subcontractor collaboration and extended daily hours, weekend and multiple shifts we were able to recover the lost time and complete the project on schedule.**

From the Projects Listed in Response to Section II.2, Provide Examples of How These Techniques Were Used Including Specific Scheduling Challenges/Requirements & Actual Solutions.

On One Hermann Place, despite recovering from the weather delays, we were still able to finish some areas of the building early to benefit the client. We identified that several floors could be completed and gain occupancy months



3 FIRM QUALIFICATIONS | SCHEDULE CONTROL

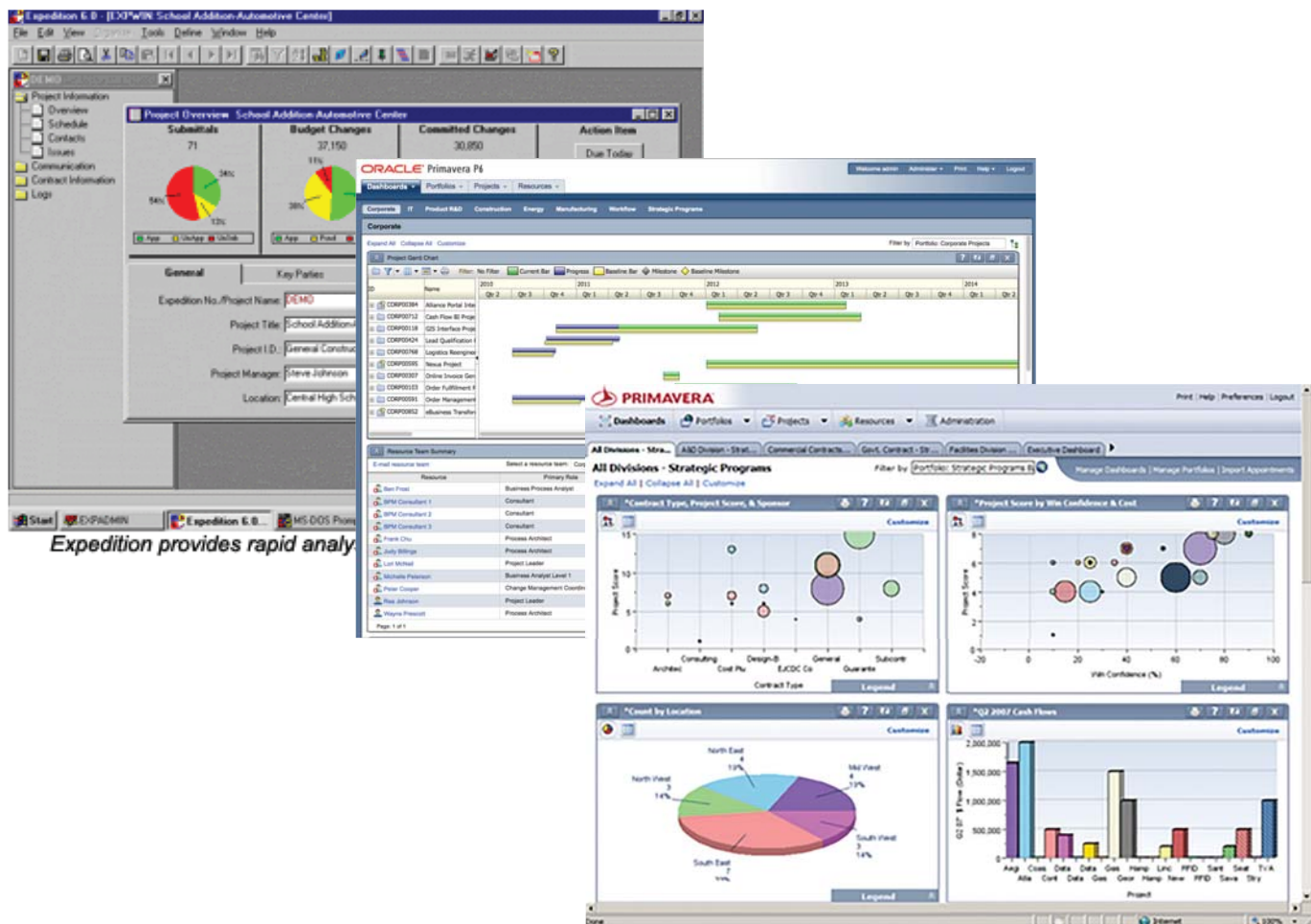
before the overall project completion. These floors, being a revenue generation source, were quickly put on an expedited breakout schedule to finish these areas well ahead of the original date and the rest of the project enabling our client to gain early revenue.

For the Manhattan County Courthouse, we extensively used our material procurement schedule. Early in the project, we developed the schedule of building materials and the dates they were to be available on-site. We issued this schedule to subcontractors and had them commit to the dates required. This helped us with the very tight project site and limited storage area and also acted as a notification to subs when we had to have specific material or equipment available. Having them commit to our procurement schedule also makes our subcontractors responsible to meet those dates by whatever means is necessary for them to do so.

We will use this same mindset going into the Hidalgo County Courthouse Project, if areas of the facility are able to be turned over earlier and it makes sense to do so, Morganti will create a breakout schedule showing how much time can be gained so Hidalgo County can make the decision of whether or not it makes sense for this project. We will also provide close coordination of material and equipment deliveries to make best use of limited space.

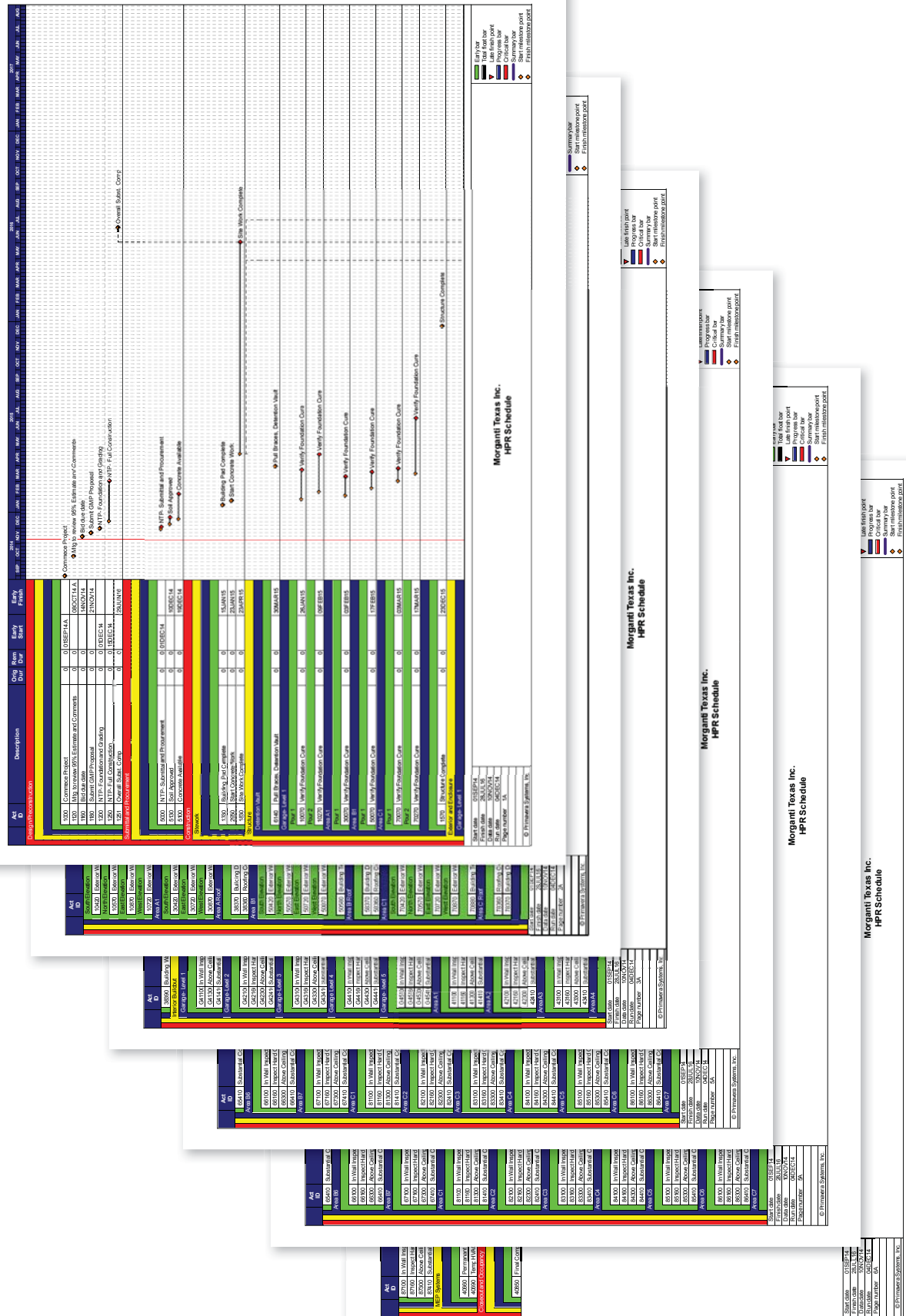
Morganti's experience with using CPM scheduling. From the projects listed in response Section II.2, provide one (1) sample of the monthly schedule reports, including identified milestones and schedule recovery plans.

Our staff experience includes P6, SureTrak and Microsoft Project CPM software as well as more detailed 3 week look ahead schedules.



Please find One Hermann Place Schedule example on the following page

ONE HERMANN PLACE SCHEDULE



Litigation

Morganti Texas, Inc. has no litigation or claims related to relevant projects within the past five years.
Morganti Texas, Inc. has never been barred from performing public work projects.

References

MANHATTAN FAMILY COURTHOUSE

- > Patricia Weber
Domitory Authority of
The State of New York
(212) 406-9752

ED AUSTIN STATE ATTORNEY'S OFFICE

- > Tom Goldsbury
City of Jacksonville
(904) 255-8799
tomg@coj.net

KING'S COUNTY CRIMINAL COURTHOUSE

- > Richard Brotherton
NYC Dept. of Design and Construction
(718) 391-1243
brother@ddc.nyc.gov

Mitchell | Giurgola Architects, LLP 170 WEST 97TH STREET NEW YORK, NY 10025 TEL 212.663.4000 FAX 212.866.5006 WWW.MITCHELLGIURGOLA.COM

02 March 2007

RE: The Morganti Company
Reference Letter

To whom it may concern,

I have been working with Construction Management professionals from The Morganti Company for over 8 years, specifically on a very complicated multi-phase renovation project of an existing 12-story Courthouse Building in Lower Manhattan. The Project has required enormous patience, significant design team interaction and cooperation, complicated construction techniques and a lot of client interface. The Project has included the renovation of the entire exterior facade and a good portion of the interior space, all completed while the building has remained fully operational.

In their capacity as the Construction Manager (not-at-risk) on the Project, the Morganti Company has provided a very high level of professional service. They are able to add significant value during the design phase, have managed the execution of the construction smoothly, and in general have created a productive team environment between all the professionals that have become involved in the effort.

I would certainly recommend them for similar projects. Please do not hesitate to contact me with any questions or concerns.

Regards,



Stephen M. Dietz, AIA
Partner

BUILDING INSPECTION DIVISION



July 21, 2014

The Morganti Group, Inc.
1450 Centrepark Blvd., Suite 260
West Palm Beach, FL 33401

Re: Letter of Recommendation

Dear Selection Committee:

It is my pleasure to have this opportunity to express my gratitude to The Morganti Group. As the project manager for Renovation to the Old Federal Courthouse project as well as the Building Official for the City of Jacksonville, I have seen Morganti illustrate the professional experience and knowledge necessary to complete the renovation of this historical building here in Jacksonville.

In the last year, Morganti has continuously assisted the design team, State Attorney's Office, and the City of Jacksonville in resolving hidden obstacles that arose, which helped save the project in both cost and time. Morganti has passed all the tests a contractor could have been subjected to during this project.

The City of Jacksonville and the State Attorney's Office are very excited to complete this major renovation project. We would all like to thank Morganti for all of their efforts to make this happen. I would recommend Morganti for any future projects and look forward to working with them again.

Sincerely,



Thomas H. Goldsbury, P.E., CBO, LEED AP
Chief, Building Inspection Division
City of Jacksonville

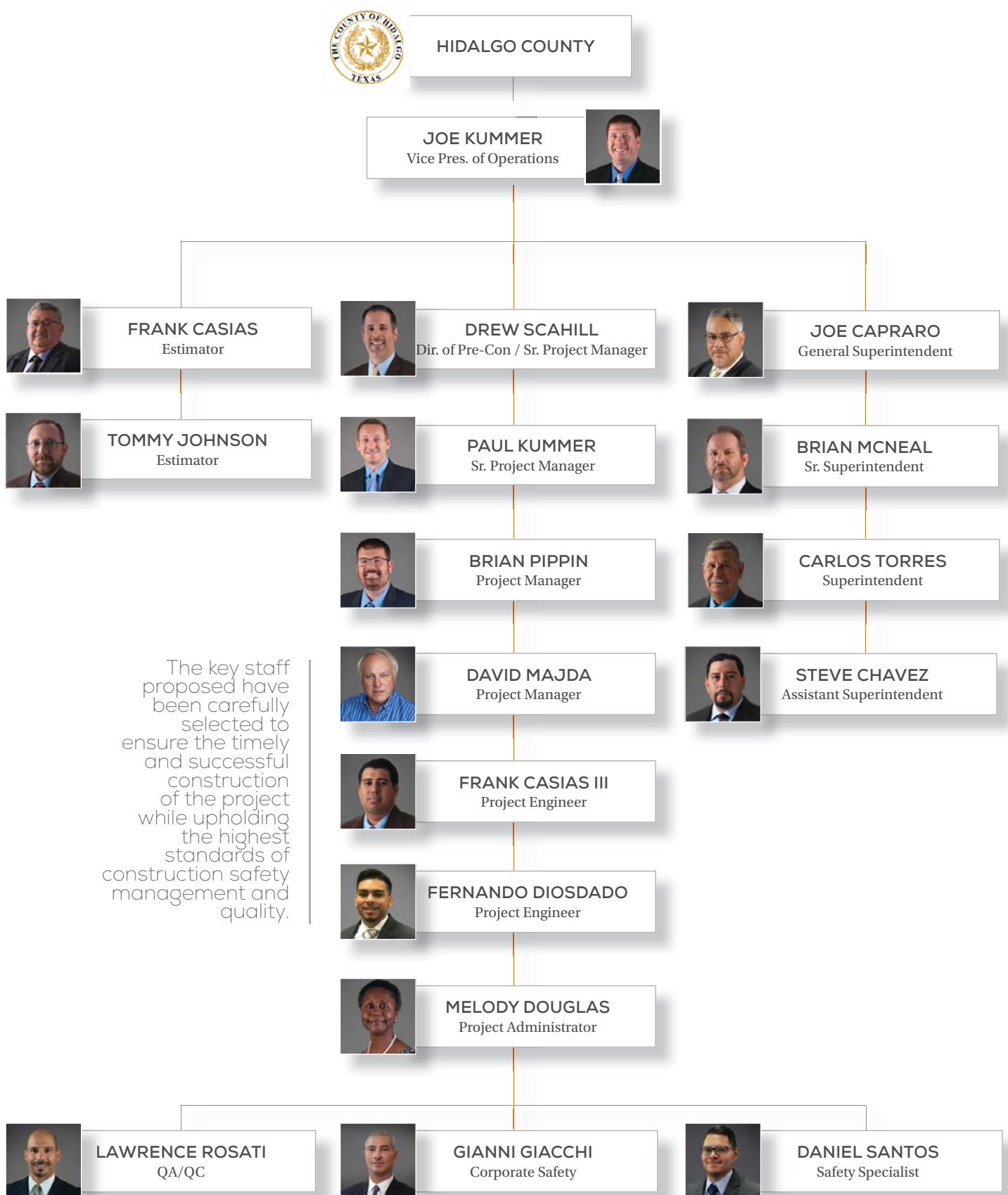
PLANNING and DEVELOPMENT DEPARTMENT

214 N. Hogan Street, Room 273 | Jacksonville, FL 32202 | Phone: 904.630.1100 | Fax: 904.255.8552 | www.coj.net

SECTION FOUR

Personnel & Staffing





As project executive, **Joseph Kummer** is responsible for the overall success and client satisfaction for the project. He manages the pre-construction and construction team from project award through close-out. Joseph will build a positive and collaborative working relationship with Hidalgo County, design team, and will focus his efforts on ensuring a high quality and best value court house for the Hidalgo County community. With the authority to draw on the entire Morganti organization, he will manage our team and ultimately ensure that Hidalgo County's needs and expectations are exceeded. Joseph has served as Project Executive on multiple high value and complex capital projects, including projects in the Rio Grande Valley.

Drew Scahill leads the pre-construction effort as well as serves as Senior Project Manager. Working with the design team, estimators and construction team he is responsible for developing accurate estimates, providing value management options, constructibility reviews, and identifying best value at each stage of the design. Drew will work constructively with the design team to ensure design milestones are met in order to keep the project on schedule. The continuity from pre-construction through construction ensures nothing is lost in translation and detailed knowledge of the project is consistent. Drew will ensure that the functionality, cost and schedule requirements of Hidalgo County are met. His experience includes pre-construction and project management on several large capital projects, court house projects and has project experience in the Rio Grande Valley.

Involved from the start of pre-construction through close-out of the project, **Paul Kummer** will co-lead the project management team and be heavily involved with community and local firm engagement. His experience with managing occupied campus projects, organizational and communication skills are an asset to the project team. He will provide oversight of communication and coordination for construction and ensure that on-going courthouse operations aren't affected. He is also involved in overseeing the project progress and meeting the safety and quality goals. Paul has completed over \$450M worth of projects on occupied campuses with limited space for construction. His experience and attitude towards working in, on or around operational facilities while being able to deliver a new project will greatly benefit the Hidalgo County Court House Project.

Brian Pippin has over 13 years of CMAR experience on large capital projects. Brian's hands-on project management experience includes the Bell County Court House Project. Brian will participate in pre-construction before transitioning full time to the management of the project. He will oversee the field staff and project office staff as well as the submittal/shop drawing process, material expediting and overall construction schedule. Brian will be responsible for progression of work in the field and communication to the rest of the project team on budget, schedule and construction activities. Brian takes an active approach ensure the project's budget and schedule goals are met. Towards completion of the project he directs the elimination of punch list items and early assembly of close-out documents.

David Majda is a long-term Rio Grande Valley resident and has been project manager on many projects in the valley. He will be involved in pre-construction and lead our local purchasing efforts as well as our local subcontractor and supplier outreach. David has extensive mechanical, electrical and plumbing experience and will take the lead on the management of construction for the Central Utility Plan and coordination of material and equipment related to the building utilities. David's local knowledge and experience will be a great benefit to the Hidalgo County Court House project and will help ensure a significant amount of local subcontractor participation. David will also ensure that the MEP equipment is available as needed to condition the building to allow for proper completion of finishes and is fully tested to meet project specifications.

Our field supervision, led by **Joseph Capraro and Brian McNeal** are responsible during pre-construction for schedule input, constructability reviews and logistics plans. They participate in investigations of existing conditions of the project site and relay relevant information to the design team. The focus of Joseph Capraro, Brian McNeal, **Carlos Torres and Steve Chavez** during construction is building your project safely and efficiently with a high level of quality. They are responsible for overseeing the daily construction activities, managing material and equipment deliveries and overall progress of the project. Our expert team of field supervision professionals have completed multiple court house/corrections projects and many other complex, high value projects including significant work completed on a self-perform basis.

Frank Casias and Tommy Johnson support the pre-construction efforts including; value management, budgeting and how to achieve economy without sacrificing performance or aesthetics. They perform subcontractor and supplier outreach and develop thorough bid packages to eliminate scope gaps and ensure completeness of sub bids. Frank and Tommy also assess market conditions with regard to material and labor availability and the impact on construction pricing. They bring additional strong subcontractor relationships to ensure sub bid coverage leading up to bid day.

As Project Engineers, **Frank Casias III and Fernando Diosdado** will assist the Project Manager and Superintendents in all construction activities. Frank and Fernando will initially focus on submittals and procurement of material to make sure all items will be ready when needed. Frank and Fernando will be responsible for managing the procurement schedule and for regular communication with subcontractors or suppliers to confirm delivery dates due to the limited space for the project. During construction they will review the site daily, drive progress, review project controls, facilitate communication and documentation to keep the project running smoothly. They also take a very active and early role in the close-out process.

Lawrence Rosati our QA/QC Manager will work with the owner and design team to establish and implement a project specific quality program. Morganti's Quality Control System (QCS) is developed and highly detailed in accordance with the contract documents and the US Army Corps of Engineers Quality Control Standards. Our QA/QC staff are involved in pre-construction to develop constructability reviews and participate in material selection for cost control and functionality. Particularly focused on concrete quality, building envelope performance and MEP system operation, Lawrence will conduct regular inspections throughout the project to ensure quality assurance is met and verify that the specified and approved materials are being used. Lawrence will also participate in pre-installation meetings for various scopes of work to make sure that installation details and multiple trade scopes of work.

To support of company culture of safety, our safety team of **Gianni Ginocchi and Daniel Santos** develop a customized project specific safety plan for the Hidalgo County Court House and review specific subcontractor safety programs. They will create a plan to identify and eliminate safety risks during the life of the project. This specific plan will include procedures, inspections, enforcement, documentation and reporting tailored to the project and the specific tasks required. In addition to the safety audits, inspection, checklists and other tools Morganti utilizes, they will be involved in on-going training for all personnel on-site. Each person entering the project site will be required to complete training prior to being badged and receiving a hard hat sticker.

Melody Douglas serves as the communication and administration hub for the project. Melody manages the required documentation for the project, insurance certificates, subcontractor compliance, owner's reports, subcontractor prompt payments and SWMBE documentation.

Additional local staff will be added to the team as necessary for a completely successful project and ensure that Hidalgo County's expectations are met. Some of the staff we will be looking to hire locally include; field supervision, foremen, field labor, administrative personnel and college interns.



JOSEPH KUMMER
VP / Project Executive

- ✓ *Courthouse Experience*
- ✓ *OSHA 30*
- ✓ *Project Experience in Rio Grande Valley*

Mr. Kummer has over 2 decades of experience in the construction of a wide range of building types and infrastructure projects. His diversified background and extensive experience with complex, multi-phased and schedule driven projects provides him with a broad perspective and a firm comprehension of the technical solutions vital to the success of any project. He possesses a thorough understanding of contract management, procurement and management reporting systems necessary to effectively manage the costs, schedule and quality of multiple projects.

RELEVANT EXPERIENCE

CENTERPOINT MEDICAL CENTER

MISSION, TX
\$134,000,000

SCOPE HIGHLIGHTS

- New 434,898 SF hospital combined and replaced existing building. Project included 26,500 MOB, and central plant



FT. BEND COUNTY COURTHOUSE

RICHMOND, TX
\$59,000,000

SCOPE HIGHLIGHTS

- New construction of two 4-story buildings
- 17 courtrooms
- Holding cells



UT BROWNSVILLE - TX SOUTHMOST

BROWNSVILLE, TX
\$21,000,000

SCOPE HIGHLIGHTS

- New construction of the Wellness, Recreation and Kinesiology Complex



FRANK D. CASIAS
ESTIMATOR

- ✓ *Phased Construction Experience*
- ✓ *Occupied Project Experience*
- ✓ *OSHA 30*
- ✓ *Project Experience in The Valley area*

Mr. Casias has been in the Construction Management industry since 1981. As Estimator, he provides accurate estimates, scope analysis, scheduling, value engineering, constructability analysis, cost and quality control. He will be involved in estimating, value engineering, estimate analysis/studies, participate in constructability reviews. He is well versed in establishing project objectives, policies, procedures and performance standards within boundaries of corporate rate policy, initiating and maintain liaison with prime client, architect and engineer contacts.

RELEVANT EXPERIENCE

SAISD ADDITIONS & RENOVATIONS

SAN ANTONIO, TX
\$56,769,000

SCOPE HIGHLIGHTS

- CMAR projects
- Occupied sites
- Phased construction
- 373,000 SF



WAVE BREAKER & AQUATICA SEAWORLD

SAN ANTONIO, TX
\$19,950,000

SCOPE HIGHLIGHTS

- CMAR
- New water-coaster over existing lake and water slide
- Self performed concrete



UH-VICTORIA STUDENT HOUSING

VICTORIA, TX
\$19,000,00

SCOPE HIGHLIGHTS

- CMAR
- New construction
- Occupied Campus



**DREW SCAHILL**

Director of Pre-Construction / Sr. PM

- ✓ Courthouse Experience
- ✓ Phased Construction Experience
- ✓ OSHA 30
- ✓ Project Experience in Rio Grande Valley

Mr. Scahill is responsible from the Pre-Construction phase through final completion. He collaborates with the owner and design professionals during the planning stage and develops estimates during the schematic, design development and construction document phases which leads to a final Guaranteed Maximum Cost (GMC). Other responsibilities include constructability reviews, value engineering, bid package preparation, sub-contractor qualifications, scheduling and site logistics. Pre-Construction activities develop the guidelines that ensure successful project goals, budget and schedule.

RELEVANT EXPERIENCE

METHODIST WEST HOUSTON

HOUSTON, TX
\$230,000,000

SCOPE HIGHLIGHTS

- New hospital campus
- 500,000 SF hospital, 170,000 sf MOB, and 25,000 SF central plant



GALLERIA OFFICE TOWERS

HOUSTON, TX
\$120,000,000

SCOPE HIGHLIGHTS

- New construction of 13-story and 16-story office towers
- New construction of 7-story parking garage



BROWNSVILLE FED. COURTHOUSE

BROWNSVILLE, TX
\$24,000,000

SCOPE HIGHLIGHTS

- New construction of 3-story structure with basement, parking, central plant, and 4 courtrooms

**PAUL KUMMER**

SR. PROJECT MANAGER

- ✓ LEED GA
- ✓ OSHA 30
- ✓ Correctional Project Experience

Mr. Kummer has over 20 years of construction experience with complex and challenging projects. Paul has completed multiple large scale projects on or near occupied campuses that also included new central utility plans. His experience includes projects in the following market sectors: governmental, health-care, higher education, central utility plants, life sciences, general office and correctional.

RELEVANT EXPERIENCE

SHAWNEE MISSION MEDICAL CENTER

MERRIAM, KS
\$145,000,000

SCOPE HIGHLIGHTS

- 360,000 sf, new 7-story cast in place concrete tower
- Occupied campus
- New central plant and garage
- Relocation of ED



MRIGLOBAL RESEARCH INSTITUTE

KANSAS CITY, MO
\$42,000,000

SCOPE HIGHLIGHTS

- New 140,000 SF 8-story cast in place concrete life sciences building with bio-safety laboratories and clean rooms
- Occupied campus



ALOFT HOTEL IN THE GALLERIA

HOUSTON, TX
\$23,000,000

SCOPE HIGHLIGHTS

- New 5 story 143,324 SF garage with a 65,325 SF, 5 story hotel on top
- Occupied site
- Tight project site
- Cast-in-place





THOMAS JOHNSON
Estimator

- ✓ *Phased Construction Experience*
- ✓ *Occupied Project Experience*
- ✓ *OSHA 30*

As Estimator, Mr. Johnson will serve as the advisor throughout pre-construction and construction to provide checks and balances and identify any issues that need to be addressed in order to achieve project milestones. For any trade that falls behind schedule, he will assist the team in developing a recovery schedule to get the project back on track promptly. The schedule will be formatted to meet all the requirements of the contract. He will also provide monthly updates to the schedule as required to manage the project and to satisfy the contract requirements.

RELEVANT EXPERIENCE

SAISD ADDITIONS & RENOVATIONS

SAN ANTONIO, TX
\$56,769,000

SCOPE HIGHLIGHTS

- CMAR projects
- Occupied sites
- Phased construction
- 373,000 SF



WAVE BREAKER & AQUATICA SEAWORLD

SAN ANTONIO, TX
\$19,950,000

SCOPE HIGHLIGHTS

- CMAR
- New water-coaster over existing lake and water slide
- Self performed concrete

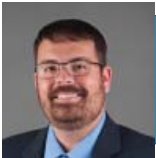


UH-VICTORIA STUDENT HOUSING

VICTORIA, TX
\$19,000,00

SCOPE HIGHLIGHTS

- CMAR
- New construction
- Occupied Campus



BRIAN PIPPIN
Project Manager

- ✓ *Courthouse Experience*
- ✓ *High Value/Intricate Construction Experience*
- ✓ *Occupied & Phased Project Experience*
- ✓ *OSHA 30*

Mr. Pippin has been working in the construction industry since 2005. As Project Manager, Mr. Pippin is involved in this project from beginning to end. He is a dedicated professional familiar with complex projects. His experience, knowledge of the industry gives him a clear working knowledge of the skills required to deliver each project on-time, within budget and to the owner's satisfaction. He is the key member of the on-site construction staff and has the daily responsibility to plan, permit, review, direct, coordinate and supervise the project.

RELEVANT EXPERIENCE

BELL COUNTY COURTHOUSE

BELTON, TX
\$22,700,000

SCOPE HIGHLIGHTS

- 92,500 SF expansion
- 6 new courtrooms
- Holding cells



ONE HERMANN PLACE LUXURY APARTMENTS

HOUSTON, TX
\$75,000,000

SCOPE HIGHLIGHTS

- Class "A" cast in place residential structure
- 455,000 sf
- Limited project site



METHODIST STONE OAK HOSPITAL

SAN ANTONIO, TX
\$111,000,000

SCOPE HIGHLIGHTS

- 400,000 sf
- New 5-story steel building and medical office building and precast garage





DAVID MAJDA
PROJECT MANAGER

- ✓ High Value/Intricate Construction Experience
- ✓ Phased and Occupied Construction Experience
- ✓ OSHA 30
- ✓ Project Experience in Rio Grande Valley
- ✓ Rio Grande Valley Resident

Mr. Majda resides in the Rio Grand Valley area and has completed several projects in the area. David brings over 35 years of experience in the construction industry. He has experience in a variety of positions including management and supervision, project coordination and development coupled with extensive field experience. David has demonstrated excellent planning and organizational skills. He displays excellent communication skills and interfaces effectively with all levels of management as evidenced by successful negotiations and construction management achievements which contributed significantly to projects being completed on schedule and within budget.

RELEVANT EXPERIENCE

TENANT FINISH ENRON BUILDING 2

HOUSTON, TX
\$250,000,000

SCOPE HIGHLIGHTS

- New 42-story tower in downtown Houston
- Project also included new 40,000 SF data center



ALAMODOME STADIUM

SAN ANTONIO, TX
\$182,000,000

SCOPE HIGHLIGHTS

- New 65,000 seat facility and convention center accommodating 72,000 people



SEAWORLD THEME PARK- TEXAS

SAN ANTONIO, TX
\$147,000,000

SCOPE HIGHLIGHTS

- New construction of the Seaworld Theme Park including Shamu Stadium, Lake, and Water Ski Stadium



FERNANDO DIOSDADO
Project Engineer

- ✓ Courthouse Experience
- ✓ Phased Construction Experience
- ✓ Occupied Project Experience
- ✓ OSHA 30

The Project Engineer assists the Project Manager in all construction activities, including preparing and managing estimates, schedules, submittals, RFIs, work plans, and updating the project while maintaining productive working relationships with subcontractors and Owner representatives. He will help with coordinating bids during pre-construction phase. Fernando takes a very active role from start of the project to ensure a thorough project close-out.

RELEVANT EXPERIENCE

FT. BEND COUNTY COURTHOUSE - PH.2

RICHMOND, TX
\$2,538,700

SCOPE HIGHLIGHTS

- 2 new courtrooms, judges chambers, administrative space and holding cells
- Occupied site



UH-VICTORIA STUDENT HOUSING

VICTORIA, TX
\$19,000,000

SCOPE HIGHLIGHTS

- CMAR
- New construction
- Occupied Campus



ONE HERMANN PLACE LUXURY APARTMENTS

HOUSTON, TX
\$75,000,000

SCOPE HIGHLIGHTS

- Class "A" cast in place residential structure
- 455,000 sf
- Limited project site





FRANK CASIAS III
Project Engineer

- ☑ *Phased Construction Experience*
- ☑ *Occupied Project Experience*
- ☑ *OSHA 30*

Frank supports the pre-construction efforts including; value management, budgeting and how to achieve economy without sacrificing performance or aesthetics. Frank also assesses market conditions with regard to material and labor availability and the impact on construction pricing. Frank brings additional strong subcontractor relationships to ensure sub bid coverage leading up to bid day.

RELEVANT EXPERIENCE

SAISD ADDITIONS & RENOVATIONS

SAN ANTONIO, TX
\$56,769,000

SCOPE HIGHLIGHTS

- CMAR projects
- Occupied sites
- Phased construction
- 373,000 SF



WAVE BREAKER & AQUATICA SEAWORLD

SAN ANTONIO, TX
\$19,950,000

SCOPE HIGHLIGHTS

- CMAR
- New water-coaster over existing lake and water slide
- Self performed concrete



UH-VICTORIA STUDENT HOUSING

VICTORIA, TX
\$19,000,00

SCOPE HIGHLIGHTS

- CMAR
- New construction
- Occupied Campus



MELODY DOUGLAS
Project Administrator

- ☑ *High Value/Intricate Construction Experience*
- ☑ *Phased Project Experience*
- ☑ *Occupied Project Experience*
- ☑ *OSHA 30*

Mrs. Douglas has over 30 years of construction experience. She serves as the communication hub for all parties involved in the construction process. Melody leads the planning, organizing and staffing of key field personnel and establishes project objectives, policies, procedures and performance standards within boundaries of corporate rate policy. Melody also initiates and maintains communication between the prime client, architect and engineer to facilitate critical construction activities.

RELEVANT EXPERIENCE

BERGSTROM INT'L AIRPORT TERMINAL

AUSTIN, TX
\$120,000,000

SCOPE HIGHLIGHTS

- 2 560,000 SF terminal building with 21 passenger gates
- New 11,293 SF central plant with CMU block walls



HOBBY INT'L AIRPORT CENTRAL CONCOURSE

HOUSTON, TX
\$77,039,273

SCOPE HIGHLIGHTS

- 374,000 SF 20 passenger gates
- Built with structural steel, curtain wall, cast-in-place concrete and stone masonry



ONE HERMANN PLACE LUXURY APARTMENTS

HOUSTON, TX
\$75,000,000

SCOPE HIGHLIGHTS

- Class "A" cast in place residential structure
- 455,000 sf
- Limited project site





JOE CAPRARO
GENERAL SUPERINTENDENT

- ✓ Courthouse Experience
- ✓ High Value/Intricate Construction Experience
- ✓ Occupied & Phased Project Experience
- ✓ OSHA 30

Mr. Capraro has been working in the construction industry since 1989. As a OSHA Certified professional Joe provides the leadership necessary for not only the project(s) superintendents but the entire team and has the overall responsibility to schedule, plan, direct, coordinate and supervise the project. His work schedules set the pace for the construction processes. His management of the construction process directly results in the successful delivery of on-time / on-schedule projects.

RELEVANT EXPERIENCE

DENVER BRONCOS NFL STADIUM

DENVER, CO
\$220,000,000

SCOPE HIGHLIGHTS

- Internationally recognized sports venue with 76,000 seats
- Unique, undulating profile, skin of steel, glass and aluminum



BALTIMORE RAVENS NFL STADIUM

BALTIMORE, MD
\$220,000,000

SCOPE HIGHLIGHTS

- New 65,000 seat facility and convention center accommodating 72,000 people



ED AUSTIN COURTHOUSE

JACKSONVILLE, FL
\$25,800,000

SCOPE HIGHLIGHTS

- 254,000 SF occupied additions and renovations to existing 5-story historical building
- Early and under budget finish



BRIAN MCNEAL
Senior Superintendent

- ✓ High Value/Intricate Construction Experience
- ✓ Occupied & Phased Project Experience
- ✓ OSHA 30

Mr. McNeal is responsible for running the project's on-site day to day operations. He supervises and coordinates all site work by contracted trades. Working collaboratively with the Project Manager and Project Engineer, Brian initiates construction mobilization, maintains quality control, schedule adherence, safety and security programs. He is also involved during the pre-construction process developing site logistics, constructability reviews, bid packages and scheduling.

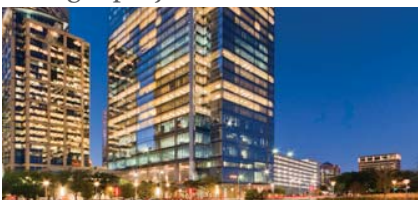
RELEVANT EXPERIENCE

DISCOVERY GREEN TOWER AND GARAGE

HOUSTON, TX
\$160,000,000

SCOPE HIGHLIGHTS

- New construction
- 30-story Class "A" building with parking garage
- Tight project site



PHILLIPS 66 HEADQUARTERS

HOUSTON, TX
\$3,500,000,000

SCOPE HIGHLIGHTS

- 14-acre campus with 2 office towers connected by pedestrian bridge



PROJECT DELTA EXXON MOBIL

HOUSTON, TX
\$120,000,000

SCOPE HIGHLIGHTS

- 3,000,000 SF
- New 10-story corporate building for Exxon Mobil





CARLOS TORRES
SUPERINTENDENT

- ✓ *Courthouse Experience*
- ✓ *Occupied & Phased Project Experience*
- ✓ *OSHA 30*

Mr. Torres supervises and coordinates all site work by contracted trades. Working collaboratively with the Project Manager and Project Engineer, he initiates construction mobilization, maintains quality control, schedule adherence, safety and security programs. He is also involved during the pre-construction process developing site logistics, constructability reviews, bid packages and scheduling. Additional responsibilities include site documentation, workforce compliance, LEED documentation, punch-lists and final inspections.

RELEVANT EXPERIENCE

KENDALL COUNTY COURTHOUSE

BOERNE, TX

\$12,000,000

SCOPE HIGHLIGHTS

- Additions and renovations to existing 2-story courthouse with courtrooms and prisoner holding cells



ATASCOSA COUNTY COURTHOUSE

JOURDANTON, TX

\$8,000,000

SCOPE HIGHLIGHTS

- Additions, complete renovation and historical restoration to existing courthouse built in 1912



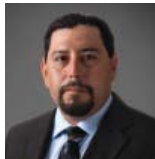
WILLIAMSON COUNTY COURTHOUSE

GEORGETOWN, TX

\$8,500,000

SCOPE HIGHLIGHTS

- Additions, complete renovation and historical restoration to existing courthouse built in 1911



STEVE CHAVEZ
Assistant Superintendent

- ✓ *Phased Construction Experience*
- ✓ *Occupied Project Experience*
- ✓ *OSHA 30*

Throughout his career as Superintendent, Steve has specialized in cast in place concrete buildings.

As superintendent, Steve is responsible for running the project's on-site day to day operations. He supervises and coordinates all site work by contracted trades. Working collaboratively with the Project Manager and Project Engineer. Steve initiates construction mobilization, maintains quality control, schedule adherence, safety and security programs. Additional responsibilities include site documentation, workforce compliance, LEED documentation, punchlists, and final inspections.

RELEVANT EXPERIENCE

SAISD ADDITIONS & RENOVATIONS

SAN ANTONIO, TX

\$56,769,000

SCOPE HIGHLIGHTS

- CMAR projects
- Occupied sites
- Phased construction
- 373,000 SF



WAVE BREAKER & AQUATICA SEAWORLD

SAN ANTONIO, TX

\$19,950,000

SCOPE HIGHLIGHTS

- CMAR
- New water-coaster over existing lake and water slide
- Self performed concrete



UH-VICTORIA STUDENT HOUSING

VICTORIA, TX

\$19,000,00

SCOPE HIGHLIGHTS

- CMAR
- New construction
- Occupied Campus





LAWRENCE ROSATI
QUALITY ASSURANCE & CONTROL

- ✓ Courthouse Experience
- ✓ High Value/Intricate Construction Experience
- ✓ Occupied & Phased Project Experience
- ✓ OSHA 30

As the QA/QC Officer, Lawrence reviews and investigates quality adherence. He is responsible for the representation, implementation, and direct communication of quality control measures with the project staff. Other responsibilities include coordination with the owner on quality requirements based on contractual obligations, review and approval of submittals, monitoring and managing deficiency log and subcontractor performance, documenting non-conformances, monitoring and managing testing, inspections, testing logs and daily schedule adherence.

RELEVANT EXPERIENCE

KINGS COUNTY COURTHOUSE

BROOKLYN, NY

\$45,710,128

SCOPE HIGHLIGHTS

- 264,000 SF 12-story courthouse
- Interior and exterior phased renovations and additions



GUILFORD HIGH SCHOOL

GUILFORD, CT

\$78,473,000

SCOPE HIGHLIGHTS

- New 216,285 SF high school building. Phased scheduling, occupied campus, strict safety procedures



GREENWICH HOSPITAL

GREENWICH, CT

\$75,000,000

SCOPE HIGHLIGHTS

- New 256,000 SF hospital built while maintaining all utilities in order for operating facility



GIANNI GIACCHI
Corporate Safety

- ✓ Courthouse Experience
- ✓ High Value/Intricate Construction Experience
- ✓ Occupied & Phased Project Experience
- ✓ OSHA 30

As the Corporate Safety Manager, Gianni monitors workplace activities to ensure that workers comply with company policies and government safety regulations. His responsibilities pertain to policy development, safety inspections, safety training and compliance with the federal Occupational Safety & Health Administration (OSHA).

RELEVANT EXPERIENCE

450 COLUMBUS STATE OFFICE RENOVATION

HARTFORD, CT

\$64,200,000

SCOPE HIGHLIGHTS

- 15- and 11-story towers totaling 545,000 SF and underground 5-story parking garage for state employees



WALLINGFORD POWER PLANT

WALLINGFORD, CT

\$150,000,000

SCOPE HIGHLIGHTS

- New construction of industrial power plant for Wallingford Energy on 8.5 acres



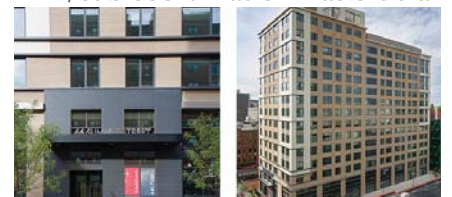
PARK SQUARE WEST TOWER

STAMFORD, CT

\$53,690,000

SCOPE HIGHLIGHTS

- 12-story 209 unit Class "A" luxury residential structure
- Due to tight site and lack of lay down area, scheduling /sub coordination was crucial





DANIEL SANTOS
SAFETY SPECIALIST

- ☑ *Phased Construction Experience*
- ☑ *Occupied Project Experience*
- ☑ *OSHA 30*

Daniel develops and implements safety policies to reduce accident-related costs and prevent losses due to a decline in productivity. As safety specialist, he determines what policies are needed and solicits input from both the project managers and subcontractors. Once a policy has been finalized for a project, Daniel is responsible to alert subcontractors of any changes and monitors compliance.

RELEVANT EXPERIENCE

ONE HERMANN PLACE LUXURY APARTMENTS

HOUSTON, TX
\$75,000,000

SCOPE HIGHLIGHTS

- Class "A" cast in place residential structure
- 455,000 sf
- Limited project site



WAVE BREAKER & AQUATICA SEAWORLD

SAN ANTONIO, TX
\$19,950,000

SCOPE HIGHLIGHTS

- CMAR
- New water-coaster over existing lake and water slide
- Self performed concrete



UH-VICTORIA STUDENT HOUSING

VICTORIA, TX
\$19,000,000

SCOPE HIGHLIGHTS

- CMAR
- New construction of student housing building
- Occupied campus



Our proposed staff understands the complexity involved in courthouse construction projects and offers a record of on-time, in-budget completion.

Our focus is to maintain the integrity of the existing courthouse and neighboring business operations during construction. Our company offers small firm values with large firm experience and resources providing the best service possible for Hidalgo County.

SECTION 5

Safety Record



5 SAFETY RECORD | NARRATIVE

Morganti's Safety Programs and Record, Including Achievements and Disclosure of Any Safety Citations Within the Past Five Years

Morganti is committed to safety as is evidenced by our OSHA incident rate. In the last 5 years Morganti has had no recordable injuries which translates to an OSHA incident rate of zero (0). We have not received any safety citations in the past 5 years.

Our proactive approach to safety comes at the direction of Morganti's President. All operations leaders and project managers are required to participate in regular safety and awareness training to include OSHA 10 and OSHA 30 training. Additionally, Morganti makes good use of the services offered by Aon and their Insurance Carrier by conducting both scheduled and random safety visits and inspections; valuing the constructive feedback offered; and implementing the safety recommendations when provided.

Morganti's Accident Frequency Rate for the Last Five Years, Including Any Osha Citations and Deaths

OSHA RECORDABLE INCIDENT RATE	OSHA LOST WORKDAY CASE INCIDENT RATE	SAFETY/INSURANCE CLAIM HISTORY
2017 0	2017 0	2017 0
2016 0	2016 0	2016 0
2015 0	2015 0	2015 0
2014 0	2014 0	2014 0
2013 0	2013 0	2013 0
2012 0	2012 0	2012 0

Morganti's Safety Program and Provide Your Workers' Compensation Experience Modification Factor. List Any Safety Awards Morganti Has Received Within the Past Five (5) Years

Our safety program
and record is among
the finest in the
industry.
Our current experience
modifier is 0.91 which
means we bring
additional savings to
the owner.
To achieve the
desired goal of "Zero
Losses", Morganti will
incorporate a site/
campus wide Safety
Action Plan.



February 6, 2018

Martha L. Salazar, CPPB, Purchasing Agent
Hidalgo County Purchasing Department
Administration Building
2812 S. Business Hwy 281
Edinburg, TX 78539

Re: The Morganti Group, Inc.
Confirmation of Experience Modification – Five Year History
RFQ No. 2017-292A-02-13-RFV
Construction Manager at Risk (CMAR) for New Hidalgo County Courthouse

Ms. Salazar,

Please allow this letter to serve as confirmation of The Morganti Group, Inc.'s experience modification for the past five years.

2017	0.91
2016	0.74
2015	0.75
2014	0.97
2013	0.92

Should you have any questions, please do not hesitate to contact my office at 617-457-7653.

Regards,

Brian T. Quinn
Account Specialist
brian.quinn@aon.com
617-457-7653

Describe How Morganti Manages Construction Safety Risks and the Safety Resources That Morganti Provides for Each Project's Safety Program

Developing safety plans for construction projects on operational campuses requires a construction firm that has significant experience working in these types of environments. Our Goal Zero safety and quality program has been developed through many years of construction experience and working in, on and around operating public facilities.

As the Construction Manager at Risk for Hidalgo County, Morganti will be responsible for the development and management of the Site Specific Safety Plan as well as the management and enforcement of each individual Subcontractor's Safety Plan. Morganti's safety record is exemplary with zero incidents in the past 7 years. **With more than 75% of Morganti's construction services conducted within occupied facilities, it is imperative that we protect the well-being of our client's staff, subcontractors, visitors and the public at large. Our goal of "Zero Losses" includes avoiding injury, property damage, lost productivity and occupational illnesses within a safe and secure environment.**



Total safety and security management requires a dedicated focus on prevention, continuous improvement of the management process, team problem solving and the involvement of the Owner at all levels. During the Pre-construction phase we will meet with the county, Owner's representative, design professionals and the Hidalgo County staff and courthouse staff to develop a Project Specific Safety Plan that will incorporate Morganti's Safety Program as well as address specific project concerns. We will also review all site conditions and develop a Site Logistics Plan which will establish construction zones and points of entry into the site for Subcontractors and material deliveries as well as **safe access to the building for all staff and visitors. The Site Logistics Plan will reflect how we propose to isolate the construction work from the building occupants and operations.**

During Pre-construction, we will review these Plans with Hidalgo County Courthouse staff and expand upon them to show bus traffic routes, parent drop off areas and access for emergency vehicles as well as emergency evacuation routes and muster locations. In addition, the Plan will address revised roadway traffic routes, athletic field access and parking. **To ensure the safety of all Hidalgo County Courthouse staff and visiting public, the plan segregates construction vehicle, material deliveries, storage and personnel access to the job-site while maintaining safe and open access for courthouse occupants. Once completed and approved, the Project Specific Safety and Site Logistics Plans will become part of the contract documents and be included in each trade bid package and subcontract.**

Describe the Level of Importance for Enforcement/Support of Project Safety Morganti Attaches to Performance Evaluations for Superintendents and Project Managers

We consider a safe construction environment our top priority. The safety and security of construction personnel, staff, visitors and the surrounding community is paramount. Our bi-annual staff performance evaluations put an emphasis on the safety audits regularly conducted for each of their respective projects. During performance evaluations, we review each person's focus on prevention, their dedication to clean and orderly jobsites, attendance to regular safety meeting, trade worker tool box talk attendance and safety topic relevance based on work activities that are taking place. Embracing our culture of safety and performance related to safe projects factor heavily into our employees performance bonuses and cost of living adjustments

Our PMs and Superintendents safety records are thoroughly reviewed monthly in project reviews. If a person has a history or frequent safety issues on their projects immediate steps can be taken. We reward safe projects/

5 SAFETY RECORD | NARRATIVE

project teams based on several factors. Safety on projects plays a large part in our employees performance evaluations, performance bonuses and employment.

During pre-construction, we collaboratively identify safety risks and determine the measures and procedures needed to control them. Project specific safety plans for the New Hidalgo County Courthouse are developed to put procedures in place to control safety concerns that are singularly related to this project. Potential safety risks to patients, staff, visitors and construction personnel are all part of the specialized plan for the project. Safety risks with these kinds of projects go beyond the norm for constructing a typical building. We identify and plan for safety risks during construction and post-construction. Examples of some of the procedures we will develop to control risk for this project are:

- › Job Safety Analysis
- › Fall Hazards
- › Crane and Hoisting Safety
- › Construction area barriers and containment
- › Infection Control
- › Hot Work
- › MEP/Utility Disruptions
- › Life Safety System Operation
- › Moisture Control / Temporary Weatherproofing
- › Clean Ductwork
- › Clean Project Site
- › Interim Life Safety Measures

Describe How Morganti Evaluates the Safety Performance of Trade Contractors During the Bid Evaluation Process

Morganti takes a proactive approach to the safety performance of trade contractors during the bid evaluation process. During the bidding process, we acquire D&B reports and references so we can properly vet each potential subcontractor. Also, with working in this area of Texas, we rely on personal experiences of the proposed project team working with local subcontractors. It is important to us to maintain and grow these relationships to help better serve the local community.

As part of our bid management process, Morganti concentrates our efforts on assuring qualified firm participation on projects, in accordance with the Owner's guidelines. As the estimating and scheduling efforts progress, an emphasis is made on utilizing qualified firms properly suited for the project and able to meet the safety standards enforced by Morganti and Hidalgo County.

Date Completed	% Complete	Was a Bond provided?	Final Contract Price	Original Contract Price	GC's Contact Name and Phone	Name of GC	Project Name	SUBCONTRACTOR'S EXPERIENCE QUESTIONNAIRE AND FINANCIAL STATEMENT																																				
								The Morganti Group, Inc. 1450 Centrepark Blvd., Suite 200, West Palm Beach, FL 33401 Ph: (561) 689-0200 Fax: (561) 689-4774 •MORGANTI CONSTRUCTION Please complete, print, sign and return to estimating@morganti.com or fax to (561) 689-4774 SUBCONTRACTOR'S EXPERIENCE QUESTIONNAIRE AND FINANCIAL STATEMENT Company Name: _____ Date: _____ Address: _____ Title: _____ Contact Person: _____ Fax: _____ Phone: _____ Email: _____ Mobile Phone: _____ Primary Trades: _____ STRUCTURE OF COMPANY Corporation ☐ Partnership ☐ Individual ☐ Joint Venture ☐ LLC ☐ Date of Incorporation or establishment: _____ State of Incorporation or establishment: _____ Certified MBE Contractor Yes ☐ No ☐ Certified WBE Contractor Yes ☐ No ☐ Certified DBE Contractor Yes ☐ No ☐ Certified SBE Contractor Yes ☐ No ☐ CURRENT WORKLOAD Value of work under contract: _____ Value of work in progress: _____ Value of incomplete work: _____ BONDING INFORMATION Can subcontractor provide bond: Yes ☐ No ☐ Name of Bonding Agency: _____ Surety's A.M. Best Rating: _____ Phone #: _____ Fax #: _____ Bonding Capacity: Single Job \$ _____ Aggregate \$ _____ PERSONNEL Number of full time personnel within your organization <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th>Current</th> <th>Maxim</th> </tr> </thead> <tbody> <tr><td>Management Personnel</td><td></td><td></td></tr> <tr><td>Support Personnel</td><td></td><td></td></tr> <tr><td>Estimators</td><td></td><td></td></tr> <tr><td>Supervisors, Foreman, or Superintendent</td><td></td><td></td></tr> <tr><td>Skilled Employees including Technicians</td><td></td><td></td></tr> <tr><td>Unskilled Employees</td><td></td><td></td></tr> <tr><td>Total number of full time personnel</td><td></td><td></td></tr> </tbody> </table> REFERENCES list three trade references with whom you have worked in the last year (include at least one from each of the following categories) <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>Firm's Name</th> <th>Contact</th> <th>PI</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> </tbody> </table>		Current	Maxim	Management Personnel			Support Personnel			Estimators			Supervisors, Foreman, or Superintendent			Skilled Employees including Technicians			Unskilled Employees			Total number of full time personnel			Firm's Name	Contact	PI									
	Current	Maxim																																										
Management Personnel																																												
Support Personnel																																												
Estimators																																												
Supervisors, Foreman, or Superintendent																																												
Skilled Employees including Technicians																																												
Unskilled Employees																																												
Total number of full time personnel																																												
Firm's Name	Contact	PI																																										

Have you, in the previous five years, been denied a contract award on which you submitted the low bid in competitive bidding or been refused a contract based on pre-qualification data submitted? ☐ Yes ☐ No

If yes, please describe: _____

Within the previous 3 fiscal years, has your organization or predecessor organizations ever failed to complete a project? ☐ Yes ☐ No

If so, state name of organization and reason thereof: _____

Within the previous 3 fiscal years has your organization been involved in litigation? ☐ Yes ☐ No

If yes, describe and give current status: _____

Have there ever been any liquidated damages, penalties, liens, defaults or cancellations imposed or filed against your organization? ☐ Yes ☐ No

If so, list the name and location of the project and explain: _____

SUBCONTRACTORS SAFETY INFORMATION

Do you have a written Safety Program (including Hazard Communications)? ☐ Yes ☐ No If yes, briefly describe scope: _____

Who enforces it? _____

What type of safety training is given to your employees? _____

Do you have a Company Safety Director or other Safety Contact? ☐ Yes ☐ No

Name: _____ Phone: _____

Does your company conduct regular safety inspections of jobsites? ☐ Yes ☐ No

If yes, by whom is it conducted and how often? _____

What is your EMR (experience modification rate) for the last 3 years? _____

Has your company had any job related employee deaths in the last 3 years? ☐ Yes ☐ No If yes, describe: _____

Has your company had any OSHA citations in the last 3 years? ☐ Yes ☐ No If yes, describe: _____

Do you qualify for a "Florida Drug Free Workplace" credit for Worker's Compensation coverage? ☐ Yes ☐ No

If no, do you have a drug-testing program? ☐ Yes ☐ No If yes, describe: _____

Attach the following documents

- * Financial Statement
- * Attach Insurance Certificate
- * Experience Modification Rate data calculation
- * Most recent OSHA 300 log
- * Resumes of Principals and Supervisory Personnel

The undersigned certifies that the information provided above is accurate to the best of their knowledge and acknowledges that the submission of the "Subcontractor's Experience Questionnaire" does not automatically include your company on The Morganti Group, Inc.'s bid list.

Signature: _____

Typed Name: _____

Date: _____

Sample Sub Questionnaire

5 SAFETY RECORD | OSHA RECORDS

Morganti's OSHA Records for the past 5 years

OSHA's Form 300A (Rev. 01/2004)
Summary of Work-Related Injuries and Illnesses

Year 2013

Establishment Information
New establishment name: The Morganti Group, Inc.
Address: 100 Hill Plain Road
City: Danbury State: CT Zip: 06811

Number of Cases
Total number of deaths: 0 Total number of cases with days away from work: 0 Total number of cases with job transfer or restriction: 0 Total number of other recordable cases: 0

Number of Days
Total number of days away from work: 0 Total number of days of job transfer or restriction: 0

Injury and Illness Types
(1) Fatigue: 0 (4) Poisoning: 0
(2) Skin disorders: 0 (5) Hearing loss: 0
(3) Respiratory conditions: 0 (6) All other illnesses: 0

Sign here
I certify that I have examined this document and that to the best of my knowledge the entries are true, accurate, and complete.
Nabil M. Taki President
203-743-2675 Jan. 31, 2014

2013

OSHA's Form 300A (Rev. 01/2004)
Summary of Work-Related Injuries and Illnesses

Year 2014

Establishment Information
New establishment name: The Morganti Group, Inc.
Address: 100 Hill Plain Rd., 4th Floor
City: Danbury State: CT Zip: 06811

Number of Cases
Total number of deaths: 0 Total number of cases with days away from work: 0 Total number of cases with job transfer or restriction: 0 Total number of other recordable cases: 0

Number of Days
Total number of days away from work: 0 Total number of days of job transfer or restriction: 0

Injury and Illness Types
(1) Fatigue: 0 (4) Poisoning: 0
(2) Skin disorders: 0 (5) Hearing loss: 0
(3) Respiratory conditions: 0 (6) All other illnesses: 0

Sign here
I certify that I have examined this document and that to the best of my knowledge the entries are true, accurate, and complete.
Nabil M. Taki President & CEO
203-743-2675 01/29/15

2014

OSHA's Form 300A (Rev. 01/2004)
Summary of Work-Related Injuries and Illnesses

Year 2015

Establishment Information
New establishment name: The Morganti Group, Inc.
Address: 100 Hill Plain Rd., 4th Floor
City: Danbury State: CT Zip: 06811

Number of Cases
Total number of deaths: 0 Total number of cases with days away from work: 0 Total number of cases with job transfer or restriction: 0 Total number of other recordable cases: 0

Number of Days
Total number of days away from work: 0 Total number of days of job transfer or restriction: 0

Injury and Illness Types
(1) Fatigue: 0 (4) Poisoning: 0
(2) Skin disorders: 0 (5) Hearing loss: 0
(3) Respiratory conditions: 0 (6) All other illnesses: 0

Sign here
I certify that I have examined this document and that to the best of my knowledge the entries are true, accurate, and complete.
Nabil M. Taki President & CEO
203-743-2675 01/29/2016

2015

OSHA's Form 300A (Rev. 01/2004)
Summary of Work-Related Injuries and Illnesses

Year 2016

Establishment Information
New establishment name: The Morganti Group, Inc.
Address: 100 Hill Plain Rd., 4th Floor
City: Danbury State: CT Zip: 06811

Number of Cases
Total number of deaths: 0 Total number of cases with days away from work: 0 Total number of cases with job transfer or restriction: 0 Total number of other recordable cases: 0

Number of Days
Total number of days away from work: 0 Total number of days of job transfer or restriction: 0

Injury and Illness Types
(1) Fatigue: 0 (4) Poisoning: 0
(2) Skin disorders: 0 (5) Hearing loss: 0
(3) Respiratory conditions: 0 (6) All other illnesses: 0

Sign here
I certify that I have examined this document and that to the best of my knowledge the entries are true, accurate, and complete.
Nabil M. Taki President & CEO
203-743-2675 01/29/2016

2016

OSHA's Form 300A (Rev. 01/2004)
Summary of Work-Related Injuries and Illnesses

Year 2017

Establishment Information
New establishment name: The Morganti Group, Inc.
Address: 100 Hill Plain Rd., 4th Floor
City: Danbury State: CT Zip: 06811

Number of Cases
Total number of deaths: 0 Total number of cases with days away from work: 0 Total number of cases with job transfer or restriction: 0 Total number of other recordable cases: 0

Number of Days
Total number of days away from work: 0 Total number of days of job transfer or restriction: 0

Injury and Illness Types
(1) Fatigue: 0 (4) Poisoning: 0
(2) Skin disorders: 0 (5) Hearing loss: 0
(3) Respiratory conditions: 0 (6) All other illnesses: 0

Sign here
I certify that I have examined this document and that to the best of my knowledge the entries are true, accurate, and complete.
Nabil M. Taki President & CEO
203-743-2675 01/29/2016

2017

SECTION 6

Additional Information



Morganti's HUB Participation Program

Morganti is dedicated to affirmative action and enforcing an ongoing policy to afford opportunities and maximize award of contracts to small business enterprises and disadvantaged businesses and to pre-qualify businesses for inclusion in our companies bidders list. This commitment is evident by the support and involvement we offer to industry outreach events, conferences, and workshops in which we promote and encourage HUB, Minority, and Veteran participation in our construction projects.

Morganti will commit to utilizing good faith efforts to meet – and exceed – the required HUB goals set forth by the County while maintaining the integrity of the safety, quality and schedule of the project. Fulfillment of these goals will be accomplished through the affirmative steps set forth below:

- › Identified trades likely to deliver HUB's participation on this project as: Structural Steel, Framing, Drywall, Stucco, Flooring, Wall Panels, Arch. Metal Coverings, Acoustical Panel Ceiling, Mech. Sheet Metal, Fire Proofing, Surveying, Site Work and Landscaping.
- › Divide total requirements, when economically feasible, into small tasks or quantities to permit maximum participation of small businesses. While we are dedicated to reaching and exceeding the goals for every project, we are committed to risk assessment and the evaluation of the viability of subcontractors who are bidding the project. We can mitigate potential exposure to risk (due to factors such as limited experience, financial inconsistencies, bonding capability, etc.) by making smaller bid packages available to small businesses. For example, smaller packages can be made available to HUB's within the following trades: painting, carpentry/drywall, flooring, hardware, consultants, material suppliers and service providers.
- › Offer assistance to small businesses by ensuring they have a detailed understanding of the scope of work. All HUB's will be provided with our Estimator's name and contact information for the respective trade in order to assist HUB's with questions or clarification.
- › Provide potential bidders with an electronic pre-qualification application. As subcontractors confirm interest in submitting a bid for the project, we provide them with an electronic pre-qualification form so we can assess their viability as a suitable contractor for the project.
- › Conduct meetings, conferences, and/or workshops to review the project opportunities for HUB's. This type of event will provide the firms with an overview of the project, required services, construction trades, available packages, guidance with insurance and bond requirements, estimator's direct contact information, and an overview of the expectations for attaining the goals of the Project.
- › Dedicated staff to oversee HUB efforts, fulfillment and monitor participation.
- › Contact business associations and minority media to inform these groups of opportunities to provide supplies, services, and construction opportunities.
- › Maintain a database and bidders list of small business companies that have pre-qualified to work with the firm.
- › Look for existing vendors that unknowingly might qualify to become HUB certified and assist them with the potentially arduous submission process.
- › Participate in the community's outreach events and various events hosted by different agencies and groups in support of a networking event for small and under-utilized businesses.
- › Maximize outreach efforts by requiring Prime Subcontractors and lower tier subcontractors to award to HUB's to achieve fair share objectives. Morganti will require all subcontractors to use good faith efforts to achieve the project goals. A subcontractor's HUB participation will be reviewed and considered prior to award of a contract.

Upon award of the New Hidalgo County Courthouse, Morganti will work with Hidalgo County to expand opportunities for local, minority and veteran contractors to participate in this project whenever possible. Morganti looks forward to the opportunity of mentoring them for future growth.



Morganti has developed a proven Minority Utilization Program that ensures maximum participation by Minority/ Women Business Enterprise (MWBE) firms, Disadvantaged Business Enterprise (DBE) firms, Small Business Enterprise (SBE) firms and Historically Underutilized Business (HUB) firms. The Morganti Group's Minority Development Program was established to substantially increase the number of contracts awarded to Minority, Women and Developing Business Enterprises and provide the necessary support to enhance the viability of such firms. It is essential and beneficial to the growth of a healthy construction industry that profitable opportunities for these types of firms be developed.

Morganti's HUB Subcontractor Development

Morganti's 4 key areas of concentration:

1. Creative approach to finding opportunities for local Minority participation; including creative bid packaging and segmentation of work.
2. Maintenance of solicitation database and a means to communicate with minority firms
3. Encouragement of joint ventures between known contractors and minority firms
4. Creative support of minority firms on bonding, estimating and management issues

At the subcontractor, consultant and vendor level Morganti seeks 2 types of participation:

1. Independent Minority subcontractors, consultants and vendors solely responsible for specific areas of work
2. Joint venture partnerships between Minority and established subs, consultants and vendors similar to the general contractor partnership described above.

Morganti's History of HUB Participation

Due to the fact that most of Morganti's construction projects are performed for the public sector, we are very familiar with minority participation requirements and the procedures necessary to make these programs work. **This experience has resulted in not only meeting, but exceeding the participation goals set by the owner on almost every project awarded.**

Southwest Multi-Service Center	Texas	\$4,000,000	32%
Northeast Multi-Service Center	Texas	\$6,500,000	26%
Bayport Cruise Ship Terminal	Texas	\$22,500,000	36%
METRO West Bellfort Park & Ride	Texas	\$1,300,000	70%
Research Forest Park & Ride	Texas	\$520,000	45%
METRO Rail Finishes	Texas	\$18,000,000	36%
Hobby Airport New Terminal	Texas	\$77,000,000	20%
Bush IAH Airport Consolidated Car Rental	Texas	\$55,725,000	20%
Bush IAH Airport Central Plant Upgrades	Texas	\$14,000,000	20%
METRO Bus Washer Facility	Texas	\$3,300,000	35%
Austin Int'l Airport Freight/GSEM Facility	Texas	\$6,000,000	37%
Austin Int'l Airport Passenger Terminal	Texas	\$120,000,000	34%
Southern Regional Medical Facility	Texas	\$15,425,000	29%
Wood County Substance Treatment Facility	Texas	\$8,150,000	29%
Jasper County Substance Treatment Facility	Texas	\$8,120,000	30%
Liberty Substance Treatment Facility	Texas	\$8,655,000	31%



As part of our bid management process, Morganti concentrates our efforts on assuring Local / Historically Underutilized Business (HUB) contractor participation on every project. Our commitment to involve local suppliers and subcontractors, including Minority and HUB Companies enhances performance, increases quality workmanship and provides for quick follow-up responses long after the project is occupied.

Morganti's CMAR Experience

Over the past century, Morganti has provided construction management services on a multitude of challenging projects across the United States and abroad. Occupied sites, tight schedules, tight budgets, unexpected budget cuts, owner initiated changes in project scope, facilities in a flood plane, facilities near the ocean, and many other types of challenges can arise when building a complex facility.

Morganti's experience as an exclusive provider of CMAR services uniquely prepares us to serve and meet the construction needs of Hidalgo County. Morganti personnel are project-focused and problem-solving oriented. Our personnel are accustomed to working collaboratively, not combatively, because they operate in a CMAR, not low bid environment. With continued success completing every project on-schedule and on-budget, this track record speaks for itself.



40+	\$1.1B	350+	0	\$2.6B	\$150M
COURTHOUSE & CORRECTIONAL FACILITIES	PRISON & CORRECTIONAL CONSTRUCTION	OCCUPIED CONSTRUCTION SITES	SAFETY INCIDENTS IN THE PAST 5 YRS	VALUE OF CMAR CONSTRUCTION AWARDS	CMAR SAVINGS RETURNED TO OWNER

Experience Highlighted in this Proposal:

PROJECT TITLE	CMAR PROJECT	HOLDING CELLS	NEW CONSTRUCTION / ADDITIONS	OCCUPIED SITE
Fort Bend County Justice Center	X	X	X	X
Kings County Criminal Courthouse	X	X	X	X
Ed Austin State Attorney's Office & Courthouse	GC	X	X	X
Manhattan Family Courthouse	X	X	X	X
One Hermann Place	X		X	

Morganti has a proven track record with new construction and renovation of prisons and courthouses locally, across the country, and around the world. Morganti has delivered dozens of courthouses, jails, detention centers and public facilities in the past twenty years. A number of these facilities possess similar components such as: new construction needs, safety concerns, occupied sites, state-of-the-art technology components, administrative space, hurricane resistant materials, security and telecommunication systems. Our firm experience and individual experience ensure the successful on-time and in-budget delivery of the New Hidalgo County Courthouse.

Why Morganti?

Dear Ms. Salazar and Members of the Selection Committee:

Morganti Texas is very excited to present to you our qualifications for the new Hidalgo County Court House project. **Our team is experienced in projects of this importance, size and scope. Our team members include local personnel and experience in Edinburg and the Rio Grande Valley.** Additionally, Morganti's team has completed several large courthouses and detention centers in Texas as well as nationally and we recently completed a large-scale project with the Jacobs team In San Antonio.

We want this to be an enjoyable and memorable experience for the County and the rest of the project team. Our responsibility is to always be good stewards for the available funds for the clients we serve. We have a history of helping our clients achieve their project goals by providing solid advice and being their advocate from pre-construction through construction. We strive to find beneficial cost savings early in design in order to ensure that all aspects and goals of the project fit within the limited budget, particularly the 3rd floor "bump out". Value management and value engineering will be a large focus of our pre-construction team to ensure that the county receives the building they want in the most effective and efficient fashion. During construction we will focus on delivering the project as safely and rapidly as possible, without waste, by utilizing lean construction methods and by striving to improve activities, processes and methods as we progress.

We are always in search of how to provide greater value for our clients in terms of cost, time and quality.

A few brief examples of clients/projects where our team members have significantly helped meet project budget or schedule goals include:

Fort Bend County Court House

- Established a significant list of alternates and value management options to reduce cost, including: wireless temperature controls, alternative light fixtures, alternative ceiling tiles and reduced conduit for low voltage cabling.
- Our team worked with the structural engineer to relocate the pour contraction strip for the structure to allow for better economy and schedule outcome.
- Provided alternative cast stone products to the specified manufacturer resulting in considerable savings.
- Suggested an alternative hardwood for multiple finishes when combined with the specified stain resulted in a nearly identical appearance at great savings.

One Hermann Place

- Despite experiencing over 90 weather days on the project and major flooding in the Houston area we were able to recover the lost days and accelerate the project through multiple shifts, over time and weekend work.

University of Houston Victoria Student Housing

- Developed floor plan alternatives to reduce costs for electrical, plumbing, mill-work and other finishes. Relocated components to reduce costs with no change in amenities. We also evaluated the building skin components to determine alternatives and potential cost savings.

SeaWorld Wave Breaker/Aquatica

- Identified and significant time and cost savings to the project through an alternative plan for the concrete foundations. The client also accelerated the project to meet the summer holiday season and we were able to complete the project well in advance of the originally scheduled finish date.

Shawnee Mission Medical Center

- Through pre-construction and value management we were able to identify several acceptable budget savings options. One of which was an alternative stone panel for a large portion of the building in lieu of the more exotic stone that was previously selected. This alternate had a close to identical look but provided a significant cost savings to the project. The alternate also had a much shorter lead time that allowed for schedule improvements which also benefited the project.

Our team understands and embraces that this is a very important project for the county stakeholders, officials and the community. Community involvement will be a very large part of the overall success of this project. Financially this project represents a large opportunity for local subcontractors, material and equipment suppliers, the labor force and SWMBE businesses. It also will be a benefit for local retail, restaurants, lodging and other private businesses. With the County's blessing, we will initiate many community outreach and engagement activities to keep them aware of upcoming opportunities, project activities, the benefits of the project and the building. We want to represent Hidalgo County in the best possible way and we are aware that this project is of great significance to the community and the Rio Grande Valley. I personally have talked to many people that live or are from the Rio Grande Valley and when I mentioned this project they were well aware of it and very excited about what it means to the area. Community connectivity is something that we will eagerly embrace.

An area that sets us apart the most is our collective personal excitement and eagerness to serve the Hidalgo County on this great project. Our team feels very strongly about this opportunity to work hand in hand with Hidalgo County, Jacobs, HDR/ERO and the community as a whole. We will take individual responsibility and demonstrate personal investment to successfully deliver this project for the County and provide a Court House that will benefit the community for generations to come.

Sincerely yours,



Paul Kummer
281-541-2420

Contract and Project Improvement Suggestions

We have reviewed the contract and find it acceptable as written. Once the contract is finalized, we will be happy to review it again based on design progression for comments that would prove beneficial. Use of a CCIP/OCIP Program could potentially benefit the project and should be considered as an option.

Potential OCIP/CCIP Program Enhanced By:

- Use of Morganti's Comprehensive Project Specific Safety Plan, developed in conjunction with Hidalgo County and the Project Team
- Morganti's safety culture, history of safe projects and NO lost time accidents in the last 7 years.
- Uniform and unified approach to insurance preventing any potential gaps in coverage or issues between parties/insurers in the event of a claim.

Overall Project Benefits of Utilizing OCIP/CCIP Program on this Project:

- Budget Savings
- Cost Control
- Compliant and consistent coverage terms and conditions
- Streamlined claims process
- Loss Prevention
- Reduction in time required to obtain subcontractor insurance certificates
- Opportunities for smaller subcontractors to participate in the project
- Eliminates duplication of coverage

Additional Project Improvements:

Budget and Schedule Improvements – Conduct a thorough review of large equipment, building skin and interior components or assemblies for cost reduction and lead time reduction, including alternative but equal materials.

SECTION 7

Appendix



ADDENDUM NO. 1

January 12, 2018

Hidalgo County
"Construction Manager-at-Risk (CMAR)
For New Hidalgo County Courthouse"

RFQ/P NO.: 2017-292A-02-13-RFV

CLARIFICATIONS ARE AS FOLLOWS:

Exhibit "A"

1. Add –Attachment D-Draft A133-2009-Standard Form of Agreement and Draft A201-2007-General Conditions of the Contract for Construction
2. Replace-Attachment E-Revised Price Proposal Summary Sheet
3. Replace-Attachment F-Revised Price Proposal Breakdown
4. Replace-Attachment G-Revised Schematic Design

Exhibit "C"

1. Replace-Revised Insurance and Bond Requirements of Construction Manager At Risk

I, Joseph Kummer, acknowledge receipt of ADDENDUM NO. 1 dated, 01/12/2018 for "Construction Manager-at-Risk (CMAR) for New Hidalgo County Courthouse"

Joseph Kummer
Printed Name
Morganti Texas, Inc.
Organization Name

02/13/2018
Date

NOTE: PLEASE SUBMIT THIS ADDENDUM WITH YOUR PACKET, IN ORDER TO COMPLETE THE QUALIFICATION.

ADDENDUM NO. 2

January 26, 2018

Hidalgo County
"Construction Manager-at-Risk (CMAR)
For New Hidalgo County Courthouse"

RFQ/P NO.: 2017-292A-02-13-RFV

CLARIFICATIONS ARE AS FOLLOWS:

1. RFQ/P Questions and Answers Response
2. Issued Memorandum from Jacobs on revision of AIA A133 Article 3.2
3. Pre-Submittal Conference-Meeting Minutes & Sign-In Sheet

Exhibit "A"

1. Replace-Attachment E-Revised Price Proposal Summary Sheet
2. Replace-Attachment F-Revised Price Proposal Breakdown

I, Joseph Kummer, acknowledge receipt of ADDENDUM NO. 2 dated,
01/26/2018 for "Construction Manager-at-Risk (CMAR) for New Hidalgo County
Courthouse"

Joseph Kummer

Printed Name

Morganti Texas, Inc.

Organization Name

02/13/2018

Date

NOTE: PLEASE SUBMIT THIS ADDENDUM WITH YOUR
PACKET, IN ORDER TO COMPLETE THE QUALIFICATION.

**HIDALGO COUNTY****REQUEST FOR QUALIFICATIONS/PROPOSALS
"Construction Manager at Risk (CMAR) – New Hidalgo County Courthouse Project"****RFQ/P No.: 2017-292A-02-13-RFV****RFQ/P SUBMITTAL CHECKLIST**

All forms listed below must be included in the RFQ/P response.

Indicate with a check mark (✓) the Forms completed and included in this response:

- ☒ Page 10 of Legal Notice
- ☒ Exhibit "D" - CIQ Form -Copy of Co. Clerk Recording fee receipt (if applicable)
- ☒ Exhibit "E" - Vendor Bidder Applications and IRS form W-9
- ☒ Exhibit "F" - Certification Regarding Debarment
- ☒ Exhibit "H" - Proposer's Affidavit
- ☒ SAMS.gov Registration - Acknowledgement www.sam.gov
- ☒ One (1) Original, Three (3) Copies of Proposal(s) and Two (2) Flash Drive in PDF format (see number 2 of Legal Notice).

LEGAL NOTICE

RFQ/P No.: 2017-292A-02-13-RFV

Request for Qualifications/Proposal

For

HIDALGO COUNTY

“Construction Manager at Risk (CMAR) for New Hidalgo County Courthouse Project”**RFQ/P NO: 2017-292A-02-13-RFV**

To: Martha L. Salazar, CPPB, Purchasing Agent
Hidalgo County Purchasing Department
Physical Location: 2802 S. Business Hwy. 281
Postal/ Mailing: 2812 S. Business Hwy. 281
Edinburg, Texas 78539

In accordance with the Requirements, and subject to all laws and regulations of the United States and state and local laws, the undersigned proposer proposes and commits to furnish all labor, equipment, material, software, and services as set forth in the documents hereinbefore mentioned. The undersigned further agrees, upon acceptance of its qualification, to execute a contract and/or Purchase Order issued by Hidalgo County for performing and completing the work described in the Requirements within the time stated and for the prices proposed in the documents attached hereto and made a part hereof.

Proposer acknowledges receipt of all of the pages of the documents referenced in the Request for Qualification/Proposals Checklist presented in connection with this procurement. Proposer understands that Hidalgo County reserves the right to reject any or all qualifications/proposals and further reserves the right to design the evaluation criteria to be used in selecting the lowest and best qualification/proposal.

Proposer agrees that this qualification shall be good and may not be withdrawn for a period of ninety (90) calendar days after the scheduled closing time for receiving qualifications, as contained in the Requirements.

Respectfully submitted,

Firm: Morganti Texas, Inc.

Address: 10590 Westoffice Dr. Suite 150

By: Houston, TX 77042

Printed Name: Joseph Kummer

Title: Vice President

Commencement of Work without provision of the required certificate of insurance, evidence of insurance and/or required endorsements, or without compliance with any other provision of the Agreement or this Exhibit, shall not constitute a waiver by any Owner Party of any rights. The Owner shall have the right, but not the obligation, of prohibiting the CMAR or any subcontractor from performing any Work until such certificate of insurance, evidence of insurance and/or required endorsements are received and approved by the Owner.

.8 Insurance Requirements of CMAR's Subcontractors

- a. Insurance similar to that required of the CMAR shall be provided by all subcontractors (or provided by the CMAR on behalf of subcontractors) to cover operations performed under any subcontract agreement. The CMAR shall be held responsible for any modification in these insurance requirements as they apply to subcontractors. The CMAR shall maintain certificates of insurance from all subcontractors containing provisions similar to those listed herein (modified to recognize that the certificate is from subcontractor) enumerating, among other things, the waivers of subrogation, additional insured status, and primary liability as required herein, and make them available to the Owner upon request.
- b. The CMAR is fully responsible for loss and damage to its property on the site, including tools and equipment, and shall take necessary precautions to prevent damage to or vandalism, theft, burglary, pilferage and unexplained disappearance of property. Any insurance covering the CMAR's or its subcontractor's property shall be the CMAR's and its subcontractor's sole and complete means or recovery for any such loss. To the extent any loss is not covered by said insurance or subject to any deductible or co-insurance, the CMAR and its subcontractors shall not be reimbursed for same. Should the CMAR or its subcontractors choose to self insure this risk, it is expressly agreed that the CMAR hereby waives, and shall cause its subcontractors to waive, any claim for damage or loss to said property in favor of the Owner Parties.

3. Miscellaneous

- .1 Release and Waiver.** The CMAR hereby waives all rights of recovery and releases, and shall cause its subcontractors to release, the Owner Parties from any and all claims or causes of action whatsoever which the CMAR and/or its subcontractors might otherwise now or hereafter possess resulting in or from or in any way connected with any loss covered by insurance, whether required herein or not, or which should have been covered by insurance required herein, including the deductible and/or uninsured portion thereof, maintained and/or required to be maintained by the CMAR and/or its subcontractors pursuant to the Agreement. **THE FOREGOING RELEASE AND WAIVER APPLY EVEN IF THE LOSS OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE FAULT OR NEGLIGENCE OR STRICT LIABILITY OF THE OWNER PARTIES.**
- .2 No Waiver.** Failure of any Owner Party to demand such certificate or other evidence of full compliance with these insurance requirements or failure of any Owner Party to identify a deficiency from evidence that is provided shall not be construed as a waiver of the CMAR's obligation to maintain such insurance.
- .3 Suspension.** Owner shall have the right, but not the obligation, of suspending CMAR's authority to perform Work, without an increase in the sum payable by Owner to CMAR due

to such suspension, until such certificates or other evidence that the required insurance has been placed in compliance with these requirements is received and approved by Owner.

- .4 **Post Completion Coverage.** With respect to the insurance to be maintained after final payment to CMAR, an additional certificate(s) evidencing such coverage shall be provided to Owner with final application for payment if prior certificate has expired, and thereafter upon renewal or replacement of such insurance until the expiration of the time period for which such insurance must be maintained.
- .5 **Compliance With Laws.** If any insurance requirements are deemed to violate any law, statute or ordinance, the insurance requirements shall be reformed to provide the maximum amount of protection to Owner as allowed under the law.
- .6 **Use of the Owners Equipment.** The CMAR, its agents, employees, subcontractors or suppliers shall use the Owners equipment only with express written permission of the Owners designated representative and in accordance with the Owners terms and condition for such use. If the CMAR or any of its agents, employees, subcontractors or suppliers utilize any of the Owners equipment for any purpose, including machinery, tools, scaffolding, hoists, lifts or similar items owned, leased or under the control of the Owner, the CMAR shall defend, indemnify and be liable to the Owner Parties for any and all loss or damage which may arise from such use. **THE FOREGOING INDEMNIFICATION SHALL APPLY EVEN IF THE LOSS OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE FAULT OR NEGLIGENCE OR STRICT LIABILITY OF THE OWNER PARTIES.**
- .7 **CMAR Insurance Representations to Owner Parties**
 - a. It is expressly understood and agreed that the insurance coverages required herein (a) represent Owner Parties' minimum requirements and are not to be construed to void or limit the CMAR's indemnity obligations as contained in the Agreement nor represent in any manner a determination of the insurance coverages the CMAR should or should not maintain for its own protection; and (b) are being, or have been, obtained by the CMAR in support of the CMAR's liability and indemnity obligations under the Agreement. Irrespective of the requirements as to insurance to be carried as provided for herein, the insolvency, bankruptcy or failure of any insurance company carrying insurance of the CMAR, or the failure of any insurance company to pay claims accruing, shall not be held to affect, negate or waive any of the provisions of the Agreement.
 - b. Failure to obtain and maintain the required insurance shall constitute a material breach of, and default under, the Agreement. If the CMAR shall fail to remedy such breach within five (5) business days after notice by the Owner, the CMAR will be liable for any and all costs, liabilities, damages and penalties resulting to the Owner Parties from such breach, unless a written waiver of the specific insurance requirement(s) is provided to the CMAR by the Owner. In the event of any failure by the CMAR to comply with the provisions of the Agreement, the Owner may, without in any way compromising or waiving any right or remedy at law or in equity, on notice to the CMAR, purchase such insurance, at the CMAR's expense, provided that the Owner shall have no obligation to

do so and if the Owner shall do so, the CMAR shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages.

.8 Survival. This Exhibit is an independent contract provision and shall survive the completion of the Work or termination or expiration of the Construction Agreement.

Morganti Texas, Inc.'s insurance program meets the mandatory insurance requirements described in Exhibit C, Insurance Requirements.

See a copy of Morganti's Insurance Certificate on the following page.



CERTIFICATE OF LIABILITY INSURANCE

 DATE(MM/DD/YYYY)
02/08/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Aon Risk Services Northeast, Inc.
Boston MA Office
One Federal Street
Boston MA 02110 USA

CONTACT
NAME:
PHONE (A/C. No. Ext): (866) 283-7122 FAX (A/C. No.): (800) 363-0105
E-MAIL ADDRESS:

INSURED
Morganti Texas, Inc.
10590 Westoffice Drive, Suite 150
Houston TX 77042 USA

INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A:	Executive Risk Indemnity Inc.	35181
INSURER B:	Executive Risk Specialty Insurance Co.	44792
INSURER C:	Federal Insurance Company	20281
INSURER D:	Berkley Assurance Company	39462
INSURER E:	Starr Indemnity & Liability Company	38318
INSURER F:	American Guarantee & Liability Ins Co	26247

COVERAGES

CERTIFICATE NUMBER: 570070171180

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

Limits shown are as requested

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY	Y	Y	54309476	07/01/2017	07/01/2018	EACH OCCURRENCE \$2,000,000
B	☐ CLAIMS-MADE ☒ OCCUR	Y	Y	AOS 54309475	07/01/2017	07/01/2018	DAMAGE TO RENTED PREMISES (Ea occurrence) \$100,000
				CT			MED EXP (Any one person) \$5,000
							PERSONAL & ADV INJURY \$2,000,000
							GENERAL AGGREGATE \$4,000,000
							PRODUCTS - COMP/OP AGG \$4,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						
	☐ POLICY ☒ PRO-JECT ☐ LOC						
	OTHER:						
C	AUTOMOBILE LIABILITY	Y	Y	54309474	07/01/2017	07/01/2018	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000
	☒ ANY AUTO						BODILY INJURY (Per person)
	☐ OWNED AUTOS ONLY						BODILY INJURY (Per accident)
	☐ SCHEDULED AUTOS						PROPERTY DAMAGE (Per accident)
	☐ HIRED AUTOS ONLY						
	☐ NON-OWNED AUTOS ONLY						
E	UMBRELLA LIAB	Y	Y	1000584535171	07/01/2017	07/01/2018	EACH OCCURRENCE
	☒ EXCESS LIAB			Primary \$5M			AGGREGATE \$5,000,000
	☐ DED ☐ RETENTION						
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	Y	Y	54309477	07/01/2017	07/01/2018	☒ PER STATUTE ☐ OTHER
	ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	N	N/A				E.L. EACH ACCIDENT \$1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE-EA EMPLOYEE \$1,000,000
							E.L. DISEASE-POLICY LIMIT \$1,000,000
D	Env Prof (E&O)			PCADB50029940717	07/01/2017	07/01/2018	Each Claim \$5,000,000
				Professional/Claims Made			SIR \$250,000
				SIR applies per policy terms & conditions			Aggregate \$5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Evidence only - RFQ/P No. 2017-29A-02-13-RFV Construction Manager at Risk (CMAR) for New Hidalgo County Courthouse

CERTIFICATE HOLDER

CANCELLATION

Hidalgo County Purchasing Department
2812 S. Business Highway 281
New Administration Building
Edinburg, TX 78539 USA

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Aon Risk Services Northeast Inc.

Holder Identifier :

Certificate No : 570070171180

AGENCY CUSTOMER ID: 10755562

LOC #:



ADDITIONAL REMARKS SCHEDULE

Page _ of _

AGENCY Aon Risk Services Northeast, Inc.		NAMED INSURED Morganti Texas, Inc.	
POLICY NUMBER See Certificate Number: 570070171180		EFFECTIVE DATE:	
CARRIER See Certificate Number: 570070171180	NAIC CODE		

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: ACORD 25 **FORM TITLE:** Certificate of Liability Insurance

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER G: Allied World National Assurance Company	10690
INSURER	
INSURER	
INSURER	

ADDITIONAL POLICIES If a policy below does not include limit information, refer to the corresponding policy on the ACORD certificate form for policy limits.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS	
	EXCESS LIABILITY							
F		Y	Y	AEC038479800 \$5M xs \$5M	07/01/2017	07/01/2018	Aggregate	\$5,000,000
G		Y	Y	03108098 \$15M xs \$10M	07/01/2017	07/01/2018	Aggregate	\$15,000,000
							Each Occurrence	\$15,000,000
	OTHER							
D	Env Site Liab			PCADB50029940717 Pollution/Claims Made SIR applies per policy terms & conditions	07/01/2017	07/01/2018	Each Claim	\$5,000,000
							SIR	\$100,000
							Aggregate	\$5,000,000

CONFLICT OF INTEREST QUESTIONNAIRE For vendor doing business with local governmental entity		FORM CIQ
This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session. This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a). By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code. A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.	OFFICE USE ONLY 	
1 Name of vendor who has a business relationship with local governmental entity. N/A	2 ☐ Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)	
3 Name of local government officer about whom the information is being disclosed. N/A Name of Officer		
4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary. N/A A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor? ☐ Yes ☐ No B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity? ☐ Yes ☐ No		
5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more. N/A		
6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).		
7 Signature of vendor doing business with the governmental entity Date		

HIDALGO COUNTY PURCHASING DEPARTMENT Bidder/Vendor Application

Complete in print or type. Please return this application to the Hidalgo County Purchasing Department
thru Facsimile: (956) 318-2629 or (956) 292-7612
in person or regular mail to: 2812 S. Business Hwy. 281 , Edinburg, Texas 78539
or email: purchasing@co.hidalgo.tx.us

Company Name: <u>Morganti Texas, Inc.</u>		Telephone No. (<u>281</u>) <u>448-1015</u>
dba Name: <u>Morganti Texas, Inc.</u>		
Legal Name: <u>Morganti Texas, Inc.</u>		
Mailing Address : <u>10590 Westoffice Dr. Suite 150</u>		Fax No. <u>(281) 448-8416</u>
Physical Address: <u>10590 Westoffice Dr. Suite 150</u>		
City, State, Zip <u>Houston, TX 77042</u>		Tax I.D. No. (Fed ID): <u>06-1293345</u>
Remit to Address : <u>10590 Westoffice Dr. Ste 150</u> City, State, Zip <u>Houston, TX 77042</u>		
E-Mail Address: <u>jkummer@morganti.com</u>		
Representative(s) Name(s) & Title(s) <u>Joseph Kummer, VP of Operations</u>		
Type of Organization (check one): ☐ Individual ☐ Partnership ☒ Corporation ☐ Non-Profit ☐ LLC ☐ Sole Proprietor ☐ Other, Specify		
State Identification No. <u>10612933456 (TX)</u> (Please attached completed W-9 form with this application) Federal Identification No. or (if individual) SS No.		
State of Incorporation: <u>Texas</u>		Date: <u>02/13/2018</u> Other:
Type of Business (check one): ☐ Manufacturer ☐ Wholesaler ☐ Retailer ☐ Broker ☐ Distributor ☐ Service Organization ☒ Other, Specify <u>Construction</u>		
Name & Title of Person(s) Authorized to Sign Bids, Proposals, and/or Contracts: <u>Joseph Kummer, VP of Operations</u>		
Small and/or Disadvantaged Business Information (check application criteria)		
Small Business: ☐ Disadvantaged Business (At Least 51% Ownership)		
☐ Less than 125,000 annual gross receipt	☐ Black American	☐ Native American
☐ Less than 250,000 annual gross receipt	☐ Hispanic American	☐ Women
☐ Less than 499,000 annual gross receipt	☐ Asian Pacific American	☐ Other
☐ More than 500,000 annual gross receipt		
Have you been certified as a HUB or an MBE/WBE source?:		☐ Yes ☒ No
Indicate Certification No.(s): _____ or are Certificate(s) attached?:		☐ Yes ☐ No
What type of product(s) is/are solicited by your company?: <u>Construction Services</u>		
Would you like to be provided with specifications for procurements of such products?: ☒ Yes ☐ No		
To Be Completed by the County: Rec'd by (Purchasing): _____ Date Rec'd by (Purchasing): _____		
Date Forwarded Information to Auditor's Office: _____ Entry Date: _____ Vendor No.: _____		

HISTORICALLY UNDERUTILIZED BUSINESS (HUB) DECLARATION

The primary objective of the Hidalgo County HUB Program is to ensure Historically Underutilized Businesses receive a fair and equal opportunity for participation in the County's procurement process. This fact holds true for Services (Professional & Non-Professional), Commodities, and Construction contracts and any subcontracts thereto. The program strongly encourages Prime Contractors to provide subcontracting opportunities to Certified Hub Contractors/Vendors. Our goal for HUB contractor/vendor participation, as well as HUB subcontractor participation is 30%. To be considered as a "Certified HUB Contractor/Vendor" the contractor/vendor must have been certified by, and hold a current and valid certification with any of the three agencies listed below.

Have you been Certified as a HUB or an MBE/WBE source?: ☐ Yes ☒ No

If yes, by whom?: ☐ Texas Building & Procurement Commission ☐ Other _____

Indicate Certification No(s): _____ or Are Certificate(s) Attached?: ☐ Yes ☐ No

LIST OF CERTIFIED HUB SUBCONTRACTORS

(Attach additional pages if necessary)

What percentage of the Bid, RFP, or RFQ is to be subcontracted with Certified HUB sources?: 10 %
(List HUB Subcontractor information below).

HUB Subcontractor Name: Casias Construction, LLC HUB Status:

Certifying Agency (Check all applicable): ☒ Texas Building & Procurement Commission ☐ Other

Address: 6825 Breeden Ave City: San Antonio State: TX Zip: 78216

Contact Person: Frank D. Casias Title: Owner Phone No.: (210) 308-1067

Subcontract Amount: \$95,606 Description of Work to be Performed: Pre-Construction

HUB Subcontractor Name: _____ HUB Status:

Certifying Agency (Check all applicable): ☐ Texas Building & Procurement Commission ☐ Other

Address: _____ City: _____ State: _____ Zip: _____

Contact Person: _____ Title: _____ Phone No.: () _____

Subcontract Amount: \$ _____ Description of Work to be Performed: _____

HUB Subcontractor Name: _____ HUB Status:

Certifying Agency (Check all applicable): ☐ Texas Building & Procurement Commission ☐ Other

Address: _____ City: _____ State: _____ Zip: _____

Contact Person: _____ Title: _____ Phone No.: () _____

Subcontract Amount: \$ _____ Description of Work to be Performed: _____


GLENN HEGAR TEXAS COMPTROLLER OF PUBLIC ACCOUNTS

The Texas Comptroller of Public Accounts (CPA) administers the Statewide Historically Underutilized Business (HUB) Program for the State of Texas, which includes certifying minority, woman, and service disabled veteran-owned businesses as HUBs and facilitates the use of HUBs in state procurement and provides them with information on the state's procurement process.

We are pleased to inform you that your application for certification/re-certification as a HUB has been approved. Your company's profile is listed in the State of Texas HUB Directory and may be viewed online at <https://mycpa.cpa.state.tx.us/tpasscmblsearch/index.jsp>. Provided that your company continues to meet HUB eligibility requirements, the attached HUB certificate is valid for the time period specified.

You must notify the HUB Program in writing of any changes affecting your company's compliance with the HUB eligibility requirements, including changes in ownership, day-to-day management, control and/or principal place of business. *Note: Any changes made to your company's information may require the HUB Program to re-evaluate your company's eligibility.*

Please visit our website at <http://comptroller.texas.gov/procurement/prog/hub/> and reference our publications (i.e. Grow Your Business pamphlet, HUB Brochure and Vendor Guide) providing addition information on state procurement resources that can increase your company's chances of doing business with the state.

Thank you for your participation in the HUB Program! If you have any questions, you may contact a HUB Program representative at 512-463-5872 or toll-free in Texas at 1-888-863-5881.

Texas Historically Underutilized Business (HUB) Certificate


Certificate/VID Number:	1200547573100
File/Vendor Number:	040207
Approval Date:	31-JUL-2017
Scheduled Expiration Date:	31-JUL-2021

The Texas Comptroller of Public Accounts (CPA), hereby certifies that

CASIAS CONSTRUCTION, LLC

has successfully met the established requirements of the State of Texas Historically Underutilized Business (HUB) Program to be recognized as a HUB. This certificate printed 04-AUG-2017, supersedes any registration and certificate previously issued by the HUB Program. If there are any changes regarding the information (i.e., business structure, ownership, day-to-day management, operational control, business location) provided in the submission of the business' application for registration/certification as a HUB, you must immediately (within 30 days of such changes) notify the HUB Program in writing. The CPA reserves the right to conduct a compliance review at any time to confirm HUB eligibility. HUB certification may be suspended or revoked upon findings of ineligibility.

Laura Cagle-Hinojosa, Statewide HUB Program Manager
Statewide Support Services Division

Note: In order for State agencies and institutions of higher education (universities) to be credited for utilizing this business as a HUB, they must award payment under the Certificate/VID Number identified above. Agencies, universities and prime contractors are encouraged to verify the company's HUB certification prior to issuing a notice of award by accessing the Internet (<https://mycpa.cpa.state.tx.us/tpasscmblsearch/index.jsp>) or by contacting the HUB Program at 512-463-5872 or toll-free in Texas at 1-888-863-5881.

Form W-9 (Rev. October 2007) Department of the Treasury Internal Revenue Service	Request for Taxpayer Identification Number and Certification	Give form to the requester. Do not send to the IRS.
Print or type See Specific instructions on page 2.	Name (as shown on your income tax return) Morganti Texas, Inc.	
	Business name, if different from above	
	Check appropriate box: ☐ Individual/Sole proprietor ☒ Corporation ☐ Partnership ☐ Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ▶ ☐ Other (see instructions) ▶	
	☐ Exempt payee	
	Address (number, street, and apt. or suite no.) 10590 West Office Drive, Suite 150 City, state, and ZIP code Houston, TX 77042 List account number(s) here (optional)	
Requester's name and address (optional)		

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

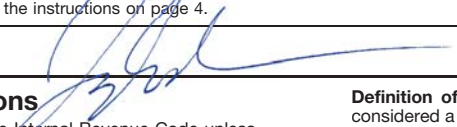
Social security number
or
Employer identification number 06 : 1293345

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. citizen or other U.S. person (defined below).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

Sign Here	Signature of U.S. person ▶ 	Date ▶ 02/13/2018
------------------	--	--------------------------

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,

- The U.S. grantor or other owner of a grantor trust and not the trust, and
- The U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

Foreign person. If you are a foreign person, do not use Form W-9. Instead, use the appropriate Form W-8 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Example. Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity not subject to backup withholding, give the requester the appropriate completed Form W-8.

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS 28% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the Part II instructions on page 3 for details),
3. The IRS tells the requester that you furnished an incorrect TIN,

4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or

5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See the instructions below and the separate Instructions for the Requester of Form W-9.

Also see *Special rules for partnerships* on page 1.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Name

If you are an individual, you must generally enter the name shown on your income tax return. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first, and then circle, the name of the person or entity whose number you entered in Part I of the form.

Sole proprietor. Enter your individual name as shown on your income tax return on the "Name" line. You may enter your business, trade, or "doing business as (DBA)" name on the "Business name" line.

Limited liability company (LLC). Check the "Limited liability company" box only and enter the appropriate code for the tax classification ("D" for disregarded entity, "C" for corporation, "P" for partnership) in the space provided.

For a single-member LLC (including a foreign LLC with a domestic owner) that is disregarded as an entity separate from its owner under Regulations section 301.7701-3, enter the owner's name on the "Name" line. Enter the LLC's name on the "Business name" line.

For an LLC classified as a partnership or a corporation, enter the LLC's name on the "Name" line and any business, trade, or DBA name on the "Business name" line.

Other entities. Enter your business name as shown on required federal tax documents on the "Name" line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the "Business name" line.

Note. You are requested to check the appropriate box for your status (individual/sole proprietor, corporation, etc.).

Exempt Payee

If you are exempt from backup withholding, enter your name as described above and check the appropriate box for your status, then check the "Exempt payee" box in the line following the business name, sign and date the form.

Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends.

Note. If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.

The following payees are exempt from backup withholding:

1. An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2),
2. The United States or any of its agencies or instrumentalities,
3. A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities,
4. A foreign government or any of its political subdivisions, agencies, or instrumentalities, or
5. An international organization or any of its agencies or instrumentalities.

Other payees that may be exempt from backup withholding include:

6. A corporation,
7. A foreign central bank of issue,
8. A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States,
9. A futures commission merchant registered with the Commodity Futures Trading Commission,
10. A real estate investment trust,
11. An entity registered at all times during the tax year under the Investment Company Act of 1940,
12. A common trust fund operated by a bank under section 584(a),
13. A financial institution,
14. A middleman known in the investment community as a nominee or custodian, or
15. A trust exempt from tax under section 664 or described in section 4947.

The chart below shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 15.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 9
Broker transactions	Exempt payees 1 through 13. Also, a person registered under the Investment Advisers Act of 1940 who regularly acts as a broker
Barter exchange transactions and patronage dividends	Exempt payees 1 through 5
Payments over \$600 required to be reported and direct sales over \$5,000 ¹	Generally, exempt payees 1 through 7

¹See Form 1099-MISC, Miscellaneous Income, and its instructions.

²However, the following payments made to a corporation (including gross proceeds paid to an attorney under section 6045(f), even if the attorney is a corporation) and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, and payments for services paid by a federal executive agency.

Part I. Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-member LLC that is disregarded as an entity separate from its owner (see *Limited liability company (LLC)* on page 2), enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

Note. See the chart on page 4 for further clarification of name and TIN combinations.

How to get a TIN. If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local Social Security Administration office or get this form online at www.ssa.gov. You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at www.irs.gov/businesses and clicking on Employer Identification Number (EIN) under Starting a Business. You can get Forms W-7 and SS-4 from the IRS by visiting www.irs.gov or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

Note. Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

Caution: A disregarded domestic entity that has a foreign owner must use the appropriate Form W-8.

Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if items 1, 4, and 5 below indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). Exempt payees, see *Exempt Payee* on page 2.

Signature requirements. Complete the certification as indicated in 1 through 5 below.

1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983. You must give your correct TIN, but you do not have to sign the certification.

2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983. You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

3. Real estate transactions. You must sign the certification. You may cross out item 2 of the certification.

4. Other payments. You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions. You must give your correct TIN, but you do not have to sign the certification.

What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account ¹
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor ²
4. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee ¹
b. So-called trust account that is not a legal or valid trust under state law	The actual owner ¹
5. Sole proprietorship or disregarded entity owned by an individual	The owner ³
For this type of account:	Give name and EIN of:
6. Disregarded entity not owned by an individual	The owner
7. A valid trust, estate, or pension trust	Legal entity ⁴
8. Corporate or LLC electing corporate status on Form 8832	The corporation
9. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
10. Partnership or multi-member LLC	The partnership
11. A broker or registered nominee	The broker or nominee
12. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity

¹ List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

² Circle the minor's name and furnish the minor's SSN.

³ You must show your individual name and you may also enter your business or "DBA" name on the second name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

⁴ List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships* on page 1.

Note. If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons who must file information returns with the IRS to report interest, dividends, and certain other income paid to you, mortgage interest you paid, the acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA, or Archer MSA or HSA. The IRS uses the numbers for identification purposes and to help verify the accuracy of your tax return. The IRS may also provide this information to the Department of Justice for civil and criminal litigation, and to cities, states, the District of Columbia, and U.S. possessions to carry out their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

You must provide your TIN whether or not you are required to file a tax return. Payers must generally withhold 28% of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to a payer. Certain penalties may also apply.

Secure Your Tax Records from Identity Theft

Identity theft occurs when someone uses your personal information such as your name, social security number (SSN), or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

Call the IRS at 1-800-829-1040 if you think your identity has been used inappropriately for tax purposes.

Victims of identity theft who are experiencing economic harm or a system problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

Protect yourself from suspicious emails or phishing schemes. Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to phishing@irs.gov. You may also report misuse of the IRS name, logo, or other IRS personal property to the Treasury Inspector General for Tax Administration at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at: spam@uce.gov or contact them at www.consumer.gov/idtheft or 1-877-IDTHEFT(438-4338).

Visit the IRS website at www.irs.gov to learn more about identity theft and how to reduce your risk.

EXHIBIT "H"
PROPOSER'S AFFIDAVIT

**PROPOSER'S AFFIDAVIT OF NON-COLLUSION
NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING
FOR "CONSTRUCTION MANAGER AT RISK (CMAR) FOR NEW HIDALGO COUNTY
COURTHOUSE"
RFQ/P NO. 2017-292A-02-13-RFV**

The STATE OF TEXAS
COUNTY OF HIDALGO

Affiant, Joseph Kummer, being first duly sworn, deposes that:

- (1) Affiant does hereby state neither the Proposer nor any of the Proposer's officers, partners, owners, agents, representatives, employees, or parties in interest, has in any way colluded, conspired, agreed, directly or indirectly with any person, firm, corporation, or another proposer, or potential proposer, to provide any money or other valuable consideration for assistance in procuring or attempting to procure a contract or fix the prices in the attached proposal or the proposal of any other proposer, and further states that no such money or other reward will be hereinafter paid.
- (2) Affiant further states they have neither recommended or suggested to Hidalgo County or any of its officials or employees, any of the terms or provisions set forth in their Request for Proposal and subsequent agreement, except at a meeting open to all interested proposers, of which proper notice was given.
- (3) Affiant, further states their officers, employees, or agents have not, and will not attempt to lobby, directly or indirectly, the Hidalgo County Commissioner's Court between proposal submission date and award by the Hidalgo County Commissioner's Court.
- (4) Affiant further states no officer, or stockholder of the Proposer is a member of the staff, or related to any employee of the Hidalgo County except as noted herein below:

Signature/Title: _____

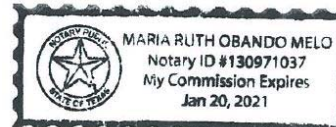
VP of Operations

Subscribed and sworn to before me this 13th day of Feb., 2018

Maria Ruth Obando Melo

Notary Public

My commission expires: January 20th, 20 21



Entity Registrations

Morganti Texas, Inc.

DUNS: 613062652 CAGE Code: 80E34

Existing Entity Registrations

Page Description

This page allows you to manage your existing entity registrations regardless of the record status. The Entity List contains all entities with which you have user roles. You can search for entities within this list or simply select the entity for which you want to view, update, delete, or deactivate a registration record.

Once you select an entity, your registration details will display in either the Registration Details for Complete Record section or the Registration Details for Incomplete Record section. If you started an update to either an active or inactive registration record, you will find registration details in both sections. Check the Registration Status, then select the action you wish to take.

For keyboard only users, please tab to the desired entity and then press the Enter key to expand the child entities. Press the space bar to select an entity from the Entity List and the details will display in the appropriate Registration Details table.

To register a new entity in SAM, select the Register New Entity link from the sub-navigation menu.

IMPORTANT: If you navigate away from a page during the registration process without selecting Save and Continue, the information entered on the page will NOT be saved, you must select Save and Continue on every page.

Search for an Entity :

Legal Business Name:

DUNS Number:

CAGE/NCAGE Code:

Search Clear

[Download Your Active SAM Registrations \(XML\)](#)[Download Your Expired SAM Registrations \(XML\)](#)

Entity List

[MORGANTI TEXAS INC \(613062652\)](#)

Registration Details for Complete Record

Entity Name: Morganti Texas, Inc.

DUNS Number: 613062652

CAGE: 80E34

Address:

350 N SAM HOUSTON PKWY E STE 121

HOUSTON, TX 77060-3398

UNITED STATES

Purpose of Registration: All Awards

Registration Status: Active

Expiration Date: 12/05/2018

Address Update Required: No

UPDATE ENTITY

VIEW

DEACTIVATE

Registration Details for Incomplete Record

**Certification
Regarding Debarment, Suspension and Ineligibility**

As is required by the Federal Regulations Implementing Executive Order 12549, Debarment and Suspension, 45 CFR Part 76, Government-wide Debarment and Suspension, the applicant certifies, to the best of his or her knowledge and belief, that both it and its principals:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency;
- b. Have not within a three-year period preceding this bid proposal and/or application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction, violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c. Are not presently indicted for or otherwise criminally or civilly charged by a government entity with commission of any of the offenses enumerated herein; and
- d. Have not within a three-year period preceding this bid proposal and/or application had one or more public transactions terminated for cause or default.

Signature: 
Print Name: Joseph Kummer
Title: VP of Operations
Telephone Number: 281-448-1015
Date: 02/13/2018

If the bidder is unable to certify to all of the statements in this Certification, such bidder should attach an explanation to this proposal.

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY
CERTIFICATION OF FILING

Certificate Number:
2018-308076

Date Filed:
01/31/2018

Date Acknowledged:

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Morganti Texas, Inc.
Houston, TX United States

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

The County of Hidalgo Texas

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

RFQ No. 2017-292-12-12-RFV
Construction Manager at Risk for New Hidalgo County Courthouse

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Nabil, Takla	Danbury, CT United States	X	
	Kummer, Joseph	Houston, TX United States	X	
	Douglas, Melody	Houston, TX United States	X	

5 Check only if there is NO Interested Party. ☐

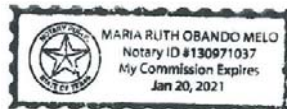
6 UNSWORN DECLARATION

My name is Joseph Kummer, and my date of birth is 07/29/1972.

My address is 10590 Westoffice Dr. Suite 150, Houston, TX, 77042, USA.
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Harris County, State of Texas, on the 13th day of February, 2018.
(month) (year)



Signature of authorized agent of contracting business entity
(Declarant)

AIG Europe Limited
American Home Assurance Company
Chartis Insurance Company of Canada
The Insurance Company of the State of Pennsylvania
National Union Fire Insurance Company of Pittsburgh, Pa.
New Hampshire Insurance Company



AIG Companies
Principal Bond Office
175 Water Street, 25th Floor
New York, NY 10038

February 5, 2018

Hidalgo County
Hidalgo County Purchasing Department
Attn: Martha L. Salazar, CPPB
Hidalgo County Purchasing Agent
2812 S. Business Highway 281
New Administration Building
Edinburg, TX 78539

RE: **Morganti Texas, Inc.**
Request for Qualifications/Proposals for Construction Manager at Risk
New Hidalgo County Courthouse
RFQ/P No. 2017-292A-02-13-RFV
Estimated Construction Cost: \$150,000,000 +/-

Dear Ms. Salazar:

American Home Assurance Company ("American Home") is privileged to act as surety for Morganti Texas, Inc. ("Morganti"). As Morganti's surety, we have always been impressed by our client's diverse capabilities, past project experience, track record of performance and depth of the company's professional staff.

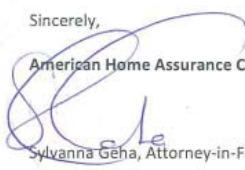
Throughout our relationship, American Home has provided all of the surety bonds that Morganti's clients have requested. With respect to Morganti's current bonding requirements, please be advised that American Home is willing to support individual projects with contract values approaching \$200,000,000 with corresponding backlogs approaching \$500,000,000. Currently, Morganti has \$200,000,000 of capacity available. Subject to underwriting particulars expressed in the following paragraph, Morganti has the ability to provide Performance and Payment Bonds for the entire construction cost of this project.

As is customary within the surety industry, the execution of any bonds would be subject to, but not necessarily limited to receipt and favorable review of all contract terms and conditions, bond forms, confirmation of project financing and all current underwriting information needed at the time of the request for bonds is made by Morganti to American Home. Please understand that any arrangement for surety bonds is a matter strictly between Morganti and American Home. As such, we assume no liability to you or any third party by the issuance of this letter.

American Home is fully licensed and authorized to conduct surety business in all fifty States, is listed in the US Department of Treasury's listing of Approved Sureties (Department Circular 570) and has a policyholder rating of "A" by A.M. Best Company with Financial Size Category "XV."

Sincerely,

American Home Assurance Company



Sylvanna Geha, Attorney-in-Fact



**STATE OF TEXAS
IMPORTANT NOTICE**

To obtain information on Insurance Companies, coverages, rights or to make a complaint, you may contact the Texas Department of Insurance at:

P. O. Box 149104
Austin, TX 78714-9104
Telephone: 1-800-252-3439
Fax No.: (512) 475-1771
Web: <http://www.tdi.state.tx.us>
E-mail: ConsumerProtection@tdi.state.tx.us

ATTACH THIS NOTICE TO YOUR BOND. This notice is for information only and does not become a part or a condition of the attached document and is given to comply with Section 2253.048, Government Code, and Section 53.202, Property Code, effective September 1, 2001.

To report a claim against an American Home Assurance Company Contract or Commercial Surety Bond, all mail should be forwarded to:

AIG Surety Claims
Attn: Shelly Adams
PO Box 26707
Shawnee Mission, KS 66225

AIG Surety maintains a dedicated staff of claim analysts within its Surety Claims Department located at:

101 Hudson Street, 28th Floor
Attn: David Koziel
Jersey City, NJ 07302
Telephone: (201) 631-4400
Fax No.: (201) 631-5119

POLICYHOLDER NOTICE

Thank you for purchasing insurance from a member company of American International Group, Inc. (AIG). The AIG member companies generally pay compensation to brokers and independent agents, and may have paid compensation in connection with your policy. You can review and obtain information about the nature and range of compensation paid by AIG member companies to brokers and independent agents in the United States by visiting our website at www.aig.com/producer-compensation or by calling 1-800-706-3102.

OFAC TERRITORY RIDER

Whenever coverage provided by this policy would be in violation of any U.S. economic or trade sanctions such as, but not limited to, those sanctions administered and enforced by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC"), such coverage shall be null and void. Similarly, any coverage relating to or referred to in any certificates or other evidences of insurance or any claim that would be in violation of U.S. economic or trade sanctions as described above shall also be null and void.

(Revised 3/17)

POWER OF ATTORNEY

American Home Assurance Company
National Union Fire Insurance Company of Pittsburgh, PA.
Principal Bond Office: 175 Water Street, New York, NY 10038

Power No. 4141

No. 04-B-100925

KNOW ALL MEN BY THESE PRESENTS:

That American Home Assurance Company, a New York corporation, and National Union Fire Insurance Company of Pittsburgh, PA., a Pennsylvania corporation, does each hereby appoint

--Michael J. Cusack, John J. Gambino, Sandra C. Lopes, Nicole Roy, Donald H. McCarter,
Kathleen M. Flanagan, Richard A. Leveroni, Jean M. Feeney, Nicholas Labbe,
John DeChiaro, Laurie Rothwell, Sylvanna Ceha, Eric J. Canterbury-- of Boston, Massachusetts--

its true and lawful Attorney(s)-in-Fact, with full authority to execute on its behalf bonds, undertakings, recognizances and other contracts of indemnity and writings obligatory in the nature thereof, issued in the course of its business, and to bind the respective company thereby.

IN WITNESS WHEREOF, American Home Assurance Company and National Union Fire Insurance Company of Pittsburgh, PA., have each executed these presents

this 28th day of September, 2017



Michael Yang, Vice President

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.

On this 28th day of September, 2017 before me came the above named officer of American Home Assurance Company and National Union Fire Insurance Company of Pittsburgh, PA., to me personally known to be the individual and officer described herein, and acknowledged that he executed the foregoing instrument and affixed the seals of said corporations thereto by authority of his office.

Juliana Hallenbeck
JULIANA HALLENBECK
Notary Public - State of New York
No. 01662125871
Qualified in Bronx County
My Commission Expires April 18, 2021

CERTIFICATE

Excerpts of Resolutions adopted by the Boards of Directors of American Home Assurance Company and National Union Fire Insurance Company of Pittsburgh, PA. on May 18, 1976:

"RESOLVED, that the Chairman of the Board, the President, or any Vice President be, and hereby is, authorized to appoint Attorneys-in-Fact to represent and act for and on behalf of the Company to execute bonds, undertakings, recognizances and other contracts of indemnity and writings obligatory in the nature thereof, and to attach thereto the corporate seal of the Company, in the transaction of its surety business;

"RESOLVED, that the signatures and attestations of such officers and the seal of the Company may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company when so affixed with respect to any bond, undertaking, recognizance and other contract of indemnity and writing obligatory in the nature thereof;

"RESOLVED, that any such Attorney-in-Fact delivering a secretarial certification that the foregoing resolutions still be in effect may insert in such certification the date thereof, said date to be not later than the date of delivery thereof by such Attorney-in-Fact."

I, Martin Bogue, Assistant Secretary of American Home Assurance Company and of National Union Fire Insurance Company of Pittsburgh, PA. do hereby certify that the foregoing excerpts of Resolutions adopted by the Boards of Directors of these corporations, and the Powers of Attorney issued pursuant thereto, are true and correct, and that both the Resolutions and the Powers of Attorney are in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the facsimile seal of each corporation

FEB 05 2018

this day of



Martin Bogue, Assistant Secretary

65166 (4/96)

Document A310™ – 2010

Conforms with The American Institute of Architects AIA Document 310

Bid Bond**CONTRACTOR:***(Name, legal status and address)*

Morganti Texas, Inc.
10590 Westoffice Drive, Suite 150
Houston, TX 77042

OWNER:*(Name, legal status and address)*

Hidalgo County
Purchasing Department, Hidalgo County Purchasing Agent
2812 S. Business Highway 281
New Business Administration Building
Edinburg, TX 78539

BOND AMOUNT: 5% Five Percent of Amount Bid**SURETY:***(Name, legal status and principal place of business)*

American Home Assurance Company
175 Water Street, 18th Floor
New York, NY 10038
Mailing Address for Notices
101 Hudson Street, Floor 28
Jersey City, NJ 07302

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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

PROJECT:*(Name, location or address, and Project number, if any)*

New Hidalgo County Courthouse - RFQ/P No. 2017-292A-02-13-RFV

The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid documents, or within such time period as may be agreed to by the Owner and Contractor, and the Contractor either (1) enters into a contract with the Owner in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Owner the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Owner may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding sixty (60) days in the aggregate beyond the time for acceptance of bids specified in the bid documents, and the Owner and Contractor shall obtain the Surety's consent for an extension beyond sixty (60) days.

If this Bond is issued in connection with a subcontractor's bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

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

Signed and sealed this 5th day of February, 2018.

Deborah Anderson
(Witness)

M. C. Key
(Witness)

Morganti Texas, Inc.

*(Principal)**(Seal)*

By: Nathan O'Brien
(Title) President & CEO

American Home Assurance Company

*(Surety)**(Seal)*

By: Sylvanna Geha
(Title) Sylvanna Geha, Attorney-in-Fact





**STATE OF TEXAS
IMPORTANT NOTICE**

To obtain information on Insurance Companies, coverages, rights or to make a complaint, you may contact the Texas Department of Insurance at:

P. O. Box 149104
Austin, TX 78714-9104
Telephone: 1-800-252-3439
Fax No.: (512) 475-1771
Web: <http://www.tdi.state.tx.us>
E-mail: ConsumerProtection@tdi.state.tx.us

ATTACH THIS NOTICE TO YOUR BOND. This notice is for information only and does not become a part or a condition of the attached document and is given to comply with Section 2253.048, Government Code, and Section 53.202, Property Code, effective September 1, 2001.

To report a claim against an American Home Assurance Company Contract or Commercial Surety Bond, all mail should be forwarded to:

AIG Surety Claims
Attn: Shelly Adams
PO Box 26707
Shawnee Mission, KS 66225

AIG Surety maintains a dedicated staff of claim analysts within its Surety Claims Department located at:

101 Hudson Street, 28th Floor
Attn: David Koziel
Jersey City, NJ 07302
Telephone: (201) 631-4400
Fax No.: (201) 631-5119

POLICYHOLDER NOTICE

Thank you for purchasing insurance from a member company of American International Group, Inc. (AIG). The AIG member companies generally pay compensation to brokers and independent agents, and may have paid compensation in connection with your policy. You can review and obtain information about the nature and range of compensation paid by AIG member companies to brokers and independent agents in the United States by visiting our website at www.aig.com/producer-compensation or by calling 1-800-706-3102.

OFAC TERRITORY RIDER

Whenever coverage provided by this policy would be in violation of any U.S. economic or trade sanctions such as, but not limited to, those sanctions administered and enforced by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC"), such coverage shall be null and void. Similarly, any coverage relating to or referred to in any certificates or other evidences of insurance or any claim that would be in violation of U.S. economic or trade sanctions as described above shall also be null and void.

(Revised 3/17)

American Home Assurance Company
 National Union Fire Insurance Company of Pittsburgh, Pa
 The Insurance Company of the State of Pennsylvania
 Principal Bond Office: 175 Water Street, New York, NY 10038

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

That American Home Assurance Company, a New York corporation, National Union Fire Insurance Company of Pittsburgh, Pa, a Pennsylvania corporation, The Insurance Company of the State of Pennsylvania, a Pennsylvania corporation, does hereby appoint

--- Sylvanna Geha ---

its true and lawful Attorney-in-Fact, with full authority to execute on its behalf bonds, undertakings, recognizances and other contracts of indemnity and writings obligatory in the nature thereof, issued in the course of its business, and to bind the company thereby.

Surety Bond No: Bid Bond
 Principal: Morganti Texas, Inc.
 Obligor: Hidalgo County

IN WITNESS WHEREOF, American Home Assurance Company, National Union Fire Insurance Company of Pittsburgh, Pa, The Insurance Company of the State of Pennsylvania have each executed these presents

this 11th day of April 2017.



Michael Yang, Vice President

STATE OF NEW YORK }
 COUNTY OF NEW YORK}ss.

On this 11th day of April, 2017 before me came the above named Officer of American Home Assurance Company, National Union Fire Insurance Company of Pittsburgh, Pa, The Insurance Company of the State of Pennsylvania, to me personally known to be the individual and officer described herein, and acknowledged that he executed the foregoing instrument and affixed the seal of said corporation thereto by authority of his office.

JULIANA HALLENBECK
 Notary Public – State of New York
 No. 01HA612671
 Qualified in Bronx County
 My Commission Expires April 18, 2021

CERTIFICATE

Excerpts of Resolutions adopted by the Boards of Directors of American Home Assurance Company, National Union Fire Insurance Company of Pittsburgh, Pa, The Insurance Company of the State of Pennsylvania on May 18, 1976 :

“RESOLVED, that the Chairman of the Board, the President, or any Vice Presidents be, and hereby is, authorized to appoint Attorneys-in-Fact to represent and act for and on behalf of the Company to execute bonds, undertakings, recognizances and other contracts of indemnity and writings obligatory in the nature thereof, and to attach thereto the corporate seal of the Company, in the transaction of its surety business;

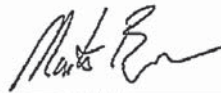
“RESOLVED, that the signatures and attestations of such officers and the seal of the Company may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company when so affixed with respect to any bond, undertaking, recognizance or other contract of indemnity or writing obligatory in the nature thereof;

“RESOLVED, that any such Attorney-in-Fact delivering a secretarial certification that the foregoing resolutions still be in effect may insert in such certification the date thereof, said date to be not later than the date of delivery thereof by such Attorney-in-Fact.”

I, Martin Bogue, Assistant Secretary of the American Home Assurance Company, National Union Fire Insurance Company of Pittsburgh, Pa, The Insurance Company of the State of Pennsylvania, do hereby certify that the foregoing excerpts of Resolutions adopted by the Board of Directors of these corporations, and the Powers of Attorney issued pursuant thereto, are true and correct, and that both the Resolutions and the Powers of Attorney are in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the facsimile seal of each corporation.

this 5th day of February, 2018.



Martin Bogue

EXHIBIT C - Original Proposal

NEW HIDALGO CO.

COURTHOUSE



PRICE PROPOSAL | RFQ/P: 2017-292A-02-13-RFV



MORGANTI TEXAS, INC. IN ASSOCIATION WITH CASIAS CONSTRUCTION, LLC
HIDALGO COUNTY SOLICITATION | FEBRUARY 13TH, 2018
10590 West Office Drive, Suite 150, Houston, TX 77042
P: (210) 308-1067 | F: (210) 308-1068 | www.morganti.com

TABLE OF CONTENTS



New Hidalgo County Courthouse

Section 1

Price Proposal Summary

Section 2

Price Proposal Breakdown

Section 3

Draft Schedule

Section 4

Staffing Plan

SECTION 1

Price Proposal Summary



ATTACHMENT E
Price Proposal Summary Sheet

Proposal of: Morganti Texas Inc.
(Respondent's Name)

2/13/2018
(Date)

Having carefully examined all the requirements of the referenced RFQ/P (including all addenda issued as of the date of this proposal) and the Contract Form (including the contract Documents identified therein), and any attachments to them, the undersigned proposes to furnish CM @ Risk services as required for the Project on the following terms.

Respondent's Pre-Construction Service Fee	\$ 956,064.71
(Lump Sum – should match the backup provided in Attachment F)	

Respondent's General Conditions Fee	\$ 4,938,112.00
(Not-To-Exceed, Reimbursable – should match the backup provided in Attachment F; As defined in A133 5.1.5.)	

Note: The above staffing plan is based upon a 30 month duration as required by the RFP. Based on our preliminary schedule of 27 months for the courthouse this duration can potentially include the early sitework and enabling activities within the 30 months. For comparison purposes this could be viewed as a savings of ~\$460,000.

Respondent's Construction Manager's Fee	2.20%
(Percentage of Construction Cost as defined in 5.1.1 of the A133 Agreement)	

Fee Percentage for Additional Work	4%
(Percentage as defined in 5.1.2 of the A133 Agreement)	

Preliminary Estimated Construction Cost for this Project	\$ 101,255,177.00
---	-------------------

Although abatement and demolition of the existing courthouse was not to be included in the new Courthouse proposal, we would be happy to discuss that service at the county's convenience and perform it once all operations have been transferred to the new Courthouse.

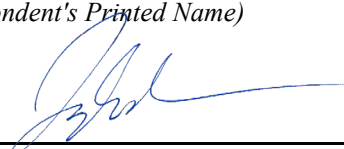
The undersigned agrees to execute an agreement based on the foregoing and the referenced RFQ/P on the contract Form (as defined in the RFQ/P) if awarded the contract for the Project (as defined in the RFQ/P). The undersigned acknowledges that owner has and reserves the right to accept or reject any and all Proposals and to waive irregularities in any Proposal(s).

Proposals shall be valid and binding, and not subject to withdrawal, for a period of ninety (90) days from the date of opening thereof.

Respectfully Submitted and Certified By:

Joseph Kummer
(Respondent's Printed Name)

VP of Operations
(Title)


(Authorized Signature)

SECTION 2

Price Proposal Breakdown



9

L

The County is considering the use of a CCIP or OCIP program. However, in lieu of those, the County is requesting the premium cost of traditional insurance for this RFQ/P

Builder's Risk Insurance				\$	-	\$215,988.00	1	LS	\$	215,988.00
General Liability				\$	-	\$810,041.00	1	LS	\$	810,041.00
Workmen's Compensation				\$	-				\$	-
Off-site insurance				\$	-				\$	-
			Precon Insurance Total	\$	-	Construction Insurance Total			\$	1,026,029.00



A SOLID FOUNDATION

Total (Multiple Items)

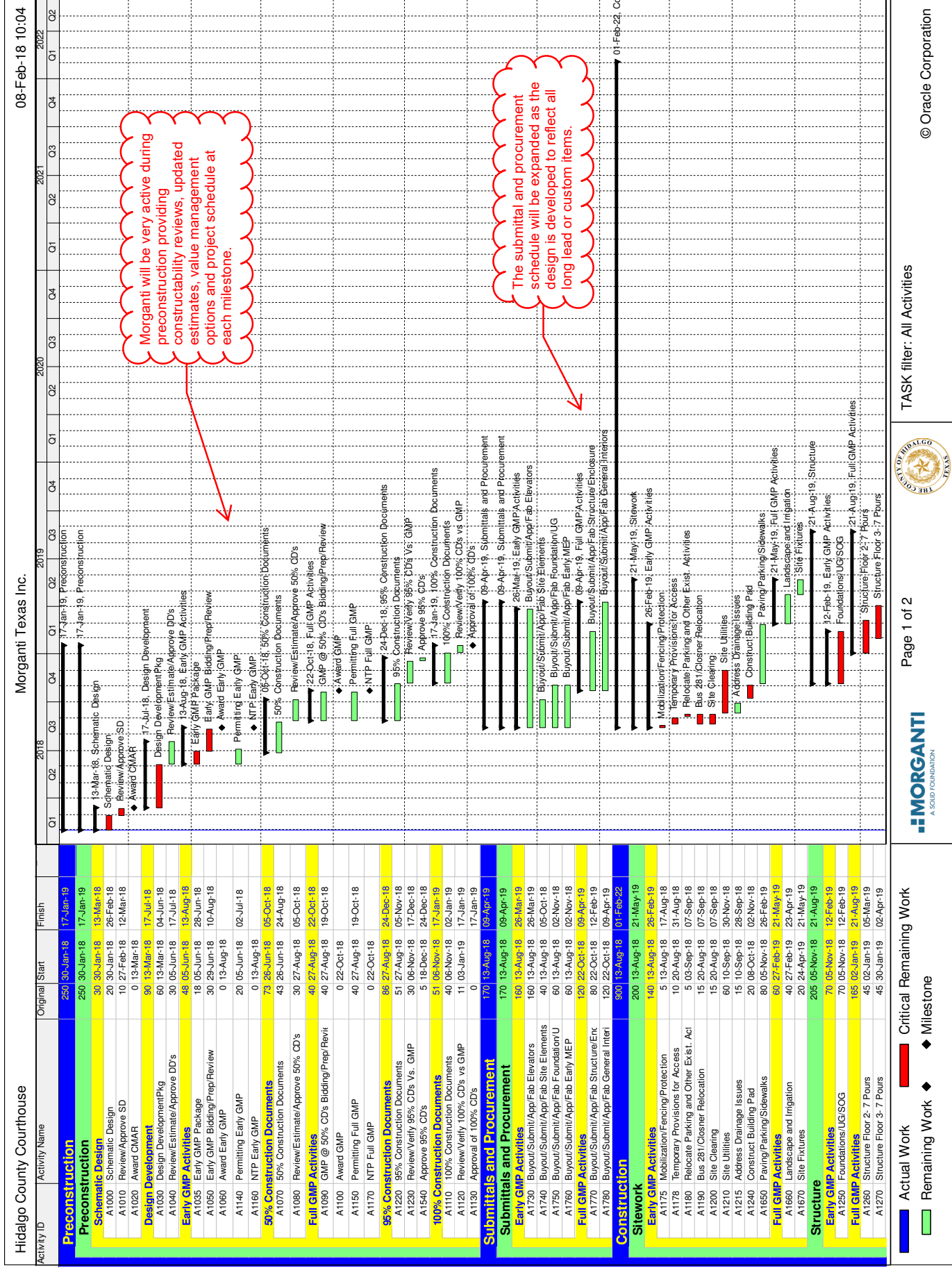
Division	Spec	Description	Sub/Notes	Sum of Subcontract	Sum of Labor	Sum of Material	Sum of Total
	1 010000	General Conditions		\$ -	\$ 4,786,746	\$ 81,787	\$ 4,868,533
	1 010001	General Requirements		\$ -	\$ 2,700	\$ 66,879	\$ 69,579
	1 400005	BUILDING PERMIT HILDAGO COUNTY	1=Reqd 2=Exclude	\$ -	\$ -	\$ 140,300	\$ 140,300
1 Total				\$ -	\$ 4,789,446	\$ 288,966	\$ 5,078,412
	2 024119	FINAL CLEAN		\$ 385,200	\$ -	\$ -	\$ 385,200
	2 024119	DAILY CLEAN UP		\$ 287,280	\$ -	\$ -	\$ 287,280
	2 029999	BUILDING & SITE DEMO		\$ 609,900	\$ -	\$ -	\$ 609,900
	2 029999	SURVEYING		\$ 40,000	\$ -	\$ -	\$ 40,000
	2 029999	DUMPSTERS		\$ 91,200	\$ -	\$ -	\$ 91,200
2 Total				\$ 1,413,580	\$ -	\$ -	\$ 1,413,580
	3 033000	CAST IN PLACE CONCRETE		\$ 14,445,000	\$ -	\$ -	\$ 14,445,000
	3 039999	TOWER CRANE (2 EA)		\$ 272,850	\$ -	\$ -	\$ 272,850
3 Total				\$ 14,717,850	\$ -	\$ -	\$ 14,717,850
	4 042000	UNIT MASONRY		\$ 4,633,500	\$ -	\$ -	\$ 4,633,500
4 Total				\$ 4,633,500	\$ -	\$ -	\$ 4,633,500
	5 051200	STRUCTURALMETAL FRAMING		\$ 4,586,500	\$ -	\$ -	\$ 4,586,500
	5 054000	STEEL ERECTION		\$ 1,243,250	\$ -	\$ -	\$ 1,243,250
	5 055000	ORNAMENTAL METAL		\$ 260,500	\$ -	\$ -	\$ 260,500
5 Total				\$ 6,090,250	\$ -	\$ -	\$ 6,090,250
	6 061000	ROUGH CARPENTRY		\$ 802,500	\$ -	\$ -	\$ 802,500
	6 064100	INTERIOR ARCHITECTURAL WOODWORK		\$ 5,015,000	\$ -	\$ -	\$ 5,015,000
	6 064100	STONE COUNTER TOPS		\$ 401,250	\$ -	\$ -	\$ 401,250
6 Total				\$ 6,218,750	\$ -	\$ -	\$ 6,218,750
	7 071150	BIT DAMPROOFING		\$ 1,588,950	\$ -	\$ -	\$ 1,588,950
	7 071300	BELOW GRADE WP		\$ 31,779	\$ -	\$ -	\$ 31,779
	7 072180	SPRAY-ON FIREPROOFING		\$ 401,250	\$ -	\$ -	\$ 401,250
	7 075520	SBS MODIFIED BIT ROOFING		\$ 2,247,000	\$ -	\$ -	\$ 2,247,000
	7 079500	EXPANSION CONTROL		\$ 57,780	\$ -	\$ -	\$ 57,780
7 Total				\$ 4,326,759	\$ -	\$ -	\$ 4,326,759
	8 061002	HAND RAILS AND GENERAL SAFETY		\$ 87,511	\$ -	\$ -	\$ 87,511
	8 081313	DOORS, DOOR FRAMES AND HARDWARE		\$ 1,284,000	\$ -	\$ -	\$ 1,284,000
	8 081416	OVERHEAD COILING DOORS		\$ 64,200	\$ -	\$ -	\$ 64,200
	8 083000	BALISTIC RESISTANT SECURITY DOOR FRAME		\$ 102,720	\$ -	\$ -	\$ 102,720
	8 084413	GLAZED ALUMINUM CURTAIN WALL		\$ 1,605,000	\$ -	\$ -	\$ 1,605,000
	8 085667	BULLET-RESISTANT ALUM TRANSACTION WINDOWS		\$ 32,100	\$ -	\$ -	\$ 32,100
8 Total				\$ 3,175,531	\$ -	\$ -	\$ 3,175,531
	9 092900	GYPSUM BOARD		\$ 3,049,500	\$ -	\$ -	\$ 3,049,500
	9 092905	LATH AND PLASTER		\$ 32,100	\$ -	\$ -	\$ 32,100
	9 093000	TILING		\$ 481,500	\$ -	\$ -	\$ 481,500
	9 095113	ACOUSTICAL LAY-IN CEILINGS		\$ 642,000	\$ -	\$ -	\$ 642,000
	9 096530	CARPET RESILIENT WALL BASS & ACCESSORIES		\$ 1,139,550	\$ -	\$ -	\$ 1,139,550
	9 096813	POLISHED CONCRETE		\$ 54,570	\$ -	\$ -	\$ 54,570
	9 096813	TERRAZZO		\$ 272,850	\$ -	\$ -	\$ 272,850
	9 097950	ACCESS FLOORING		\$ 83,460	\$ -	\$ -	\$ 83,460
	9 099000	PAINTING AND STAINING		\$ 706,200	\$ -	\$ -	\$ 706,200
9 Total				\$ 6,461,730	\$ -	\$ -	\$ 6,461,730
	10 102000	LOUVER AND VENTS		\$ 256,800	\$ -	\$ -	\$ 256,800
	10 102113	TOILET COMPARTMENTS		\$ 160,500	\$ -	\$ -	\$ 160,500
	10 102813	TOILET ACCESSORIES		\$ 102,720	\$ -	\$ -	\$ 102,720
	10 104310	SIGNAGE		\$ 304,950	\$ -	\$ -	\$ 304,950
	10 104310	FLAG POLE		\$ 6,420	\$ -	\$ -	\$ 6,420
	10 105200	FIRE PROTECTION SPECIALTIES		\$ 22,470	\$ -	\$ -	\$ 22,470
	10 105200	LOCKERS		\$ 160,500	\$ -	\$ -	\$ 160,500
	10 105200	STAIR NOSINGS		\$ 32,100	\$ -	\$ -	\$ 32,100
	10 105200	PROJECTION SCREENS		\$ 86,670	\$ -	\$ -	\$ 86,670
	10 106500	CANOPIES		\$ 224,700	\$ -	\$ -	\$ 224,700
10 Total				\$ 1,357,830	\$ -	\$ -	\$ 1,357,830
	11 110000	DOCK LEVELER		\$ 12,840	\$ -	\$ -	\$ 12,840
	11 110000	DETENTION EQUIPMENT		\$ 1,284,000	\$ -	\$ -	\$ 1,284,000
	11 110000	FOOD SERVICE EQUIPMENT		\$ 166,920	\$ -	\$ -	\$ 166,920
11 Total				\$ 1,463,760	\$ -	\$ -	\$ 1,463,760
	12 124910	BLINDS AND SHADES		\$ 25,680	\$ -	\$ -	\$ 25,680
	12 124930	ELECTRONIC SECUIRTY		\$ 2,247,000	\$ -	\$ -	\$ 2,247,000
12 Total				\$ 2,272,680	\$ -	\$ -	\$ 2,272,680
	14 142100	ELEVATOR SYSTEM		\$ 1,765,500	\$ -	\$ -	\$ 1,765,500
	14 149999	WHEEL CHAIR LIFT		\$ 401,250	\$ -	\$ -	\$ 401,250
14 Total				\$ 2,166,750	\$ -	\$ -	\$ 2,166,750
	21 210100	Fire Suppression		\$ 963,000	\$ -	\$ -	\$ 963,000
21 Total				\$ 963,000	\$ -	\$ -	\$ 963,000
	22 220100	PLUMBING		\$ 1,926,000	\$ -	\$ -	\$ 1,926,000
22 Total				\$ 1,926,000	\$ -	\$ -	\$ 1,926,000
	23 230100	HVAC		\$ 8,346,000	\$ -	\$ -	\$ 8,346,000
23 Total				\$ 8,346,000	\$ -	\$ -	\$ 8,346,000

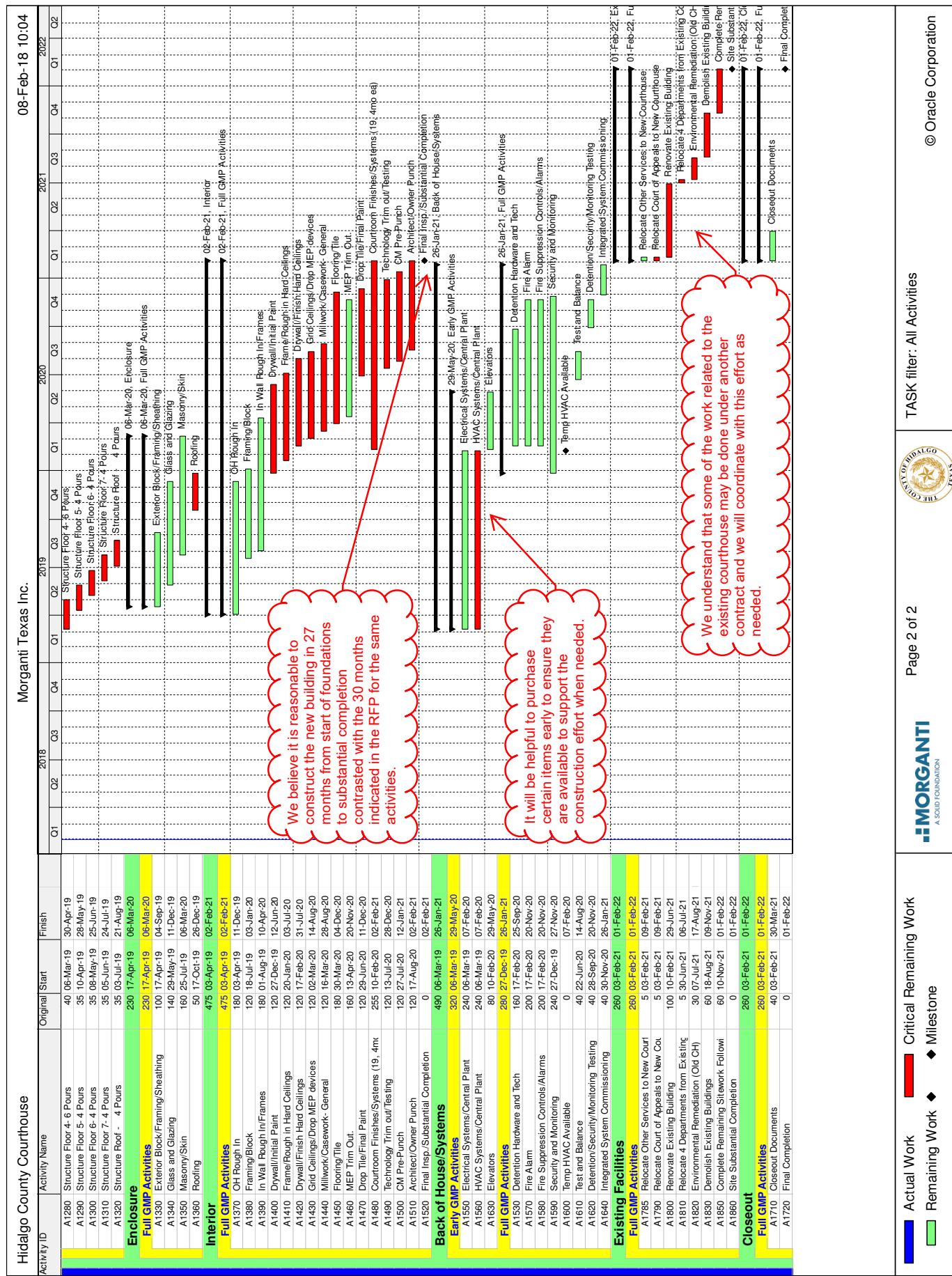
26 260100	ELECTRICAL		\$	8,843,550	\$	-	\$	-	\$	8,843,550
26 Total			\$	8,843,550	\$	-	\$	-	\$	8,843,550
27 270000	COMMUNICATIONS & BASIC REQUIREMENTS		\$	963,000	\$	-	\$	-	\$	963,000
27 Total			\$	963,000	\$	-	\$	-	\$	963,000
28 280000	ELECTRONIC SECUIRTY		\$	2,247,000	\$	-	\$	-	\$	2,247,000
28 283100	FIRE ALARM SYSTEM		\$	321,000	\$	-	\$	-	\$	321,000
28 Total			\$	2,568,000	\$	-	\$	-	\$	2,568,000
31 311000	SITE CLEARING		\$	1,300,050	\$	-	\$	-	\$	1,300,050
31 312000	EARTHMOVING		\$	1,605,000	\$	-	\$	-	\$	1,605,000
31 312300	TRAFFIC CONTROL		\$	64,200	\$	-	\$	-	\$	64,200
31 312319	SWPPP		\$	38,520	\$	-	\$	-	\$	38,520
31 312500	LIME STABILIZED SUBGRADE		\$	192,600	\$	-	\$	-	\$	192,600
31 313116	TERMITE CONTROL		\$	9,630	\$	-	\$	-	\$	9,630
31 Total			\$	3,210,000	\$	-	\$	-	\$	3,210,000
32 321273	CONCRETE PAVING JOINT SYSTEM		\$	57,780	\$	-	\$	-	\$	57,780
32 321313	CONCRETE PAVING		\$	577,800	\$	-	\$	-	\$	577,800
32 328423	LANDSCAPE & IRRIGATION SYSTEM		\$	481,500	\$	-	\$	-	\$	481,500
32 329000	PAVEMENT MARKINGS		\$	28,890	\$	-	\$	-	\$	28,890
32 329200	TEMP FENCING		\$	85,000	\$	-	\$	-	\$	85,000
32 329200	FENCING AND GATES		\$	182,970	\$	-	\$	-	\$	182,970
32 Total			\$	1,413,940	\$	-	\$	-	\$	1,413,940
33 334100	SITE UTILITIES		\$	802,500	\$	-	\$	-	\$	802,500
33 Total			\$	802,500	\$	-	\$	-	\$	802,500
40 010150	SUB BONDS	0.50%							\$	416,675
40 400002	BUILDERS RISK	See Calculator	\$	-					\$	215,988
40 400003	G/L , Umbrella	0.80%							\$	810,041
40 400010	DESIGN CONTINGENCY	ALLOWANCE	\$	-	\$	-	\$	-	\$	4,187,582
40 400011	CONTRACTOR'S CONTINGENCY	ALLOWANCE	\$	-	\$	-	\$	-	\$	4,187,582
40 400100	PROFIT		\$	0	\$	-			\$	2,161,087
40 401000	BOND PREMIUM	See Calculator	\$	-	\$	-			\$	862,850
40 Total			\$	0	\$	-	\$	-	\$	12,841,805
Grand Total			\$	83,334,960	\$	4,789,446	\$	288,966	\$	101,255,177

SECTION 5

Draft Schedule







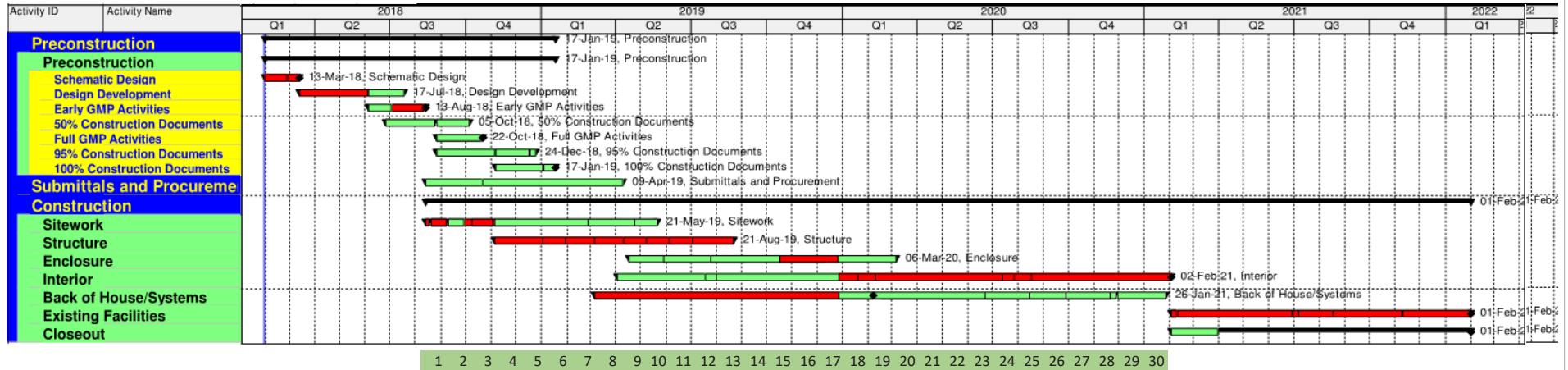
SECTION 6

Staffing Plan





STAFFING PLAN: HIDALGO COUNTY COURTHOUSE



Position		Billing Rate/Hr	A-18	S-18	O-18	N-18	D-18	J-19	F-19	M-19	A-19	M-19	J-19	J-19	A-19	S-19	O-19	N-19	D-19	J-20	F-20	M-20	A-20	M-20	J-20	J-20	A-20	S-20	O-20	N-20	D-20	J-21	F-21	M-21	Average	Total		
Project Executive	\$	117	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.20	\$	117,936		
SPM (2)	\$	107	0.5	0.5	0.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.40	\$	754,992		
PM (2)	\$	98	1.0	1.0	1.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	1.0	1.0	1.0	1.0	x	x	1.73	\$	856,128		
PE(2)	\$	62	1.0	1.0	1.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	x	x	1.90	\$	593,712	
Gen. Supt.	\$	113	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.20	\$	113,904		
Sr. Supt	\$	105	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.00	\$	529,200		
Supt.	\$	80	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	x	x	1.73	\$	698,880
Assist. Supt	\$	59	0.0	0.0	0.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.33	\$	99,120		
Safety	\$	59	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.56	\$	166,522		
QA/QC	\$	78	0.0	0.0	0.0	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.18	\$	70,762		
Admin	\$	48	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.00	\$	241,920		
Intern/Foreman	\$	54	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	x	x	2.00	\$	544,320	

Note: The above staffing plan is based upon a 30 month duration as required by the RFP. Based on our preliminary schedule of 27 months for the courthouse this duration can potentially include the early sitework and enabling activities within the 30 months. For comparison purposes this could be viewed as a savings of ~\$460,000.

\$ 4,787,395



March 1, 2018

Hidalgo County Commissioners
100 E. Cano St.
Edinburg, TX 78539

**Re: New Hidalgo County Courthouse
Updated Proposal**

Dear Hidalgo County Commissioners:

Thank you for selecting Morganti Texas as the CMAR for the New Hidalgo County Courthouse project, we are very proud and excited to be joining the project team.

As requested during our teleconference, we have reviewed and updated our pricing for the courthouse project. Our initial proposal reflected the scoring criteria outlined in the RFQ/P and was developed in a competitive environment, therefore the structure of our price proposal was designed to be as competitive as possible and earn the highest points available.

Based on our discussion and in good faith, we are happy to be able to provide additional value to the project by making the following updates to our price proposal:

- Reducing our overall pre-construction services fee by **\$250,000**.
- Reallocating approximately **\$191,000** from pre-construction services to general conditions to provide for on-going budgeting, constructability, scheduling and value engineering that will take place after the GMP is established at 50% Construction Documents. This aligns our proposal with the guidelines provided by Jacobs in our meeting and benefits the project by allowing us to continue to provide the necessary services as the design progresses from 50% CDs to 100% CDs. The General Conditions remain based upon a 30-month total duration per the RFP. **All savings on General Conditions will be returned 100% to Hidalgo County at the conclusion of the project.**
- Reducing our fee percentage for any additional work from 4% to **3%**.

We have structured this proposal based on an August 2018 start date for the early sitework, enabling activities and the foundation packages with completion of design in December 2018. We are also interested in discussing the inclusion of the abatement and demolition of the existing courthouse when convenient for Hidalgo County and conduct that work after all courthouse services have been transferred to the new building.

Please see the attached updated proposal summary and thank you again for your time and consideration. We are eager to get started working with you and the project team so please let us know if we can provide any additional information or if there are any questions or comments.

Sincerely,

Paul Kummer
281-541-2420
Pkummer@morganti.com

ATTACHMENT E
Price Proposal Summary Sheet

Proposal of: Morganti Texas Inc.
(Respondent's Name)

3/1/2018

(Date)

Having carefully examined all the requirements of the referenced RFQ/P (including all addenda issued as of the date of this proposal) and the Contract Form (including the contract Documents identified therein), and any attachments to them, the undersigned proposes to furnish CM @ Risk services as required for the Project on the following terms.

Respondent's Pre-Construction Service Fee

\$ 515,065

(Lump Sum – should match the backup provided in Attachment F)

Respondent's General Conditions Fee

\$ 5,129,112

(Not-To-Exceed, Reimbursable – should match the backup provided in Attachment F; As defined in A133 5.1.5.)

Respondent's Construction Manager's Fee

2.20%

(Percentage of Construction Cost as defined in 5.1.1 of the A133 Agreement)

Fee Percentage for Additional Work

3%

(Percentage as defined in 5.1.2 of the A133 Agreement)

Preliminary Estimated Construction Cost for this Project

\$

Reduction based on NTP for construction in August 2018. Pre-construction to end at GMP, remaining Pre-construction services to be reimbursed as GCs. Documents to be 100% complete in December 2018.

The undersigned agrees to execute an agreement based on the foregoing and the referenced RFQ/P on the contract Form (as defined in the RFQ/P) if awarded the contract for the Project (as defined in the RFQ/P). The undersigned acknowledges that owner has and reserves the right to accept or reject any and all Proposals and to waive irregularities in any Proposal(s).

Proposals shall be valid and binding, and not subject to withdrawal, for a period of ninety (90) days from the date of opening thereof.

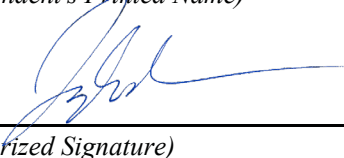
Respectfully Submitted and Certified By:

Joseph Kummer

(Respondent's Printed Name)

VP of Operations

(Title)



(Authorized Signature)

Exhibit D-

Division of Cost Elements

Draft of A133 Exhibit D
Division of Cost Elements

I- CONSTRUCTION MANAGEMENT SERVICES

Description	Precon Phase Fee	Construction Manager's Fee	General Conditions	Cost of Work	A/E's Costs	Owner's Costs
Cost Engineers	x		x			
Drawing Checker	x					
Estimating	x					
Not Used						
Project Budget Estimating	x					
Project Phasing	x					
Scheduling	x		x			
Scheduling Engineer	x					
Valve Engineer	x					
Corporate Executive		x				
Principle in Charge		x				
Secretarial (off site)		x				
Clerk / Typist		x				
Time Keeper / Checker		x				
Accounting (at main office)		x				
Accounting (at Job site)			x			
Purchasing (at main office)		x				
Purchasing (at Job site)			x			
Legal (basis service)		x				
EEO Officer		x				
Production Engineer		x				
Energy Management		x				
Drafting Detailer		x				
Engineer's Transportation*		x				
Off Site Staff Transportation*		x				
Off Site Staff Travel Costs		x				
Project Staff Moving Expense		x				
Project Staff Subsistence cost		x				
Staff Training and Education		x				
Project Executive			x			
Project Manager (s)			x			
Project Superintendent (s)			x			
Assistant Superintendent (s)			x			
Project Coordinator			x			
Project Expeditor			x			
Safety Engineer (on site)			x			
Safety Officer (Internal /consultant)			x			
Secretarial (on site)			x			
Field Engineer			x			
Drug Screening			x			
On Site Project Mngr. Transport**		x				
Superintendents Transportation**		x				

Note: All personnel Costs shall include salaries and labor burden*

*Labor Burden, with the exception of liability insurance, must be a direct benefit to the employee

**Transportation includes purchase, lease, rental of or allowance for vehicles and their maintenance

Draft of A133 Exhibit D
Division of Cost Elements

II. SAFETY, SECURITY, AND SERVICES

Description	Precon Phase Fee	Construction Manager's Fee	General Conditions	Cost of Work	A/E's Costs	Owner's Costs
2-Way Radio Equipment		x				
Barricades			x			
Covered Walkways			x			
Debris Hauling / Removal				x		
Dust Controls				x		
Final Cleanup				x		
Fire Extinguishers / Fire Watch				x		
First Aid Supplies			x			
Handrails and toe Boards				x		
Infection Control Measures				x		
Opening Protection				x		
Roadway Maintenance				x		
Safety Equipment				x		
Safety Nets				x		
Security Guard / Watchman Services				x		
Snow and Ice Removal				x		
Temporary Fencing			x			
Traffic Control				x		
Trash Chute & Hoppers				x		
Weekly Cleanup				x		

Note: All personnel costs shall include salaries and labor burden*

*Labor Burden, with the exception of liability insurance, must be a direct benefit to the employee

Draft of A133 Exhibit D
Division of Cost Elements

III. FACILITIES, EQUIPMENT & SERVICES

Description	Precon Phase Fee	Construction Manager's Fee	General Conditions	Cost of Work	A/E's Costs	Owner's Costs
Air Compressors				x		
Change / Shower Rooms				x		
Computer Network Connections			x			
Dewatering Equipment				x		
Fuel / Repairs / Maintenance				x		
Generators				x		
Lunch Rooms				x		
Miscellaneous Equipment				x		
Office Trailer Rental			x			
Office Trailer Equipment***		x				
Electric Power Expenses						x
Project Signs / Bulletin boards			x			
Telephone Expenses*			x			
Temp. Cooling Expenses (allowance)				x		
Temp. Enclosures / Partitions				x		
Temp. Heating Expenses (allowance)				x		
Temp. Lighting / Wiring				x		
Temp. Roads				x		
Temp. Stairs				x		
Temp. Toilet / Sewer Services			x			
Temp. Water Expenses			x			
Tool / Utility Trailer Rental			x			
Water / Ice			x			

*Site office telephone & computer network operating expense only; equipment is part of Construction Manager's Fee

**Office Trailer Equipment includes computers, business equipment, telephone equipment and cellular phones

Note: all personnel costs shall include salaries and labor burden

Draft of A133 Exhibit D
Division of Cost Elements

IV. VERTICAL HOISTING

Description	Precon Phase Fee	Construction Manager's Fee	General Conditions	Cost of Work	A/E's Costs	Owner's Costs
Crane erect and dismantle				x		
Crane Fuel/repairs/maintenance				x		
Crane operator				x		
Crane raising/jumping cost				x		
Crane Rental				x		
Crane Safety Inspections				x		
Elevator Cage Rider				x		
Elevator operation costs				x		
Elevator repairs and maintenance				x		
Elevator Service costs				x		
Forklift Fuel/repairs/maintenance				x		
Forklift Operators				x		
Forklift rental				x		
Forklift Safety Inspection				x		
Hoist communications				x		
Hoist Electrical				x		
Hoist Erect and Dismantle				x		
Hoist Fuel/repairs/maintenance				x		
Hoist Landings and Forms				x		
Hoist Material Hoppers				x		
Hoist Material Skips				x		
Hoist Operators				x		
Hoist Rentals				x		
Hoist Safety Inspection				x		
Safety Inspections				x		
Small Materials Hoist Rental				x		

Note: All personnel costs shall include salaries and labor burden*

Draft of A133 Exhibit D
Division of Cost Elements

V. REPRODUCTION AND PRINTING

Description	Precon Phase Fee	Construction Manager's Fee	General Conditions	Cost of Work	A/E's Costs	Owner's Costs
DESIGN PHASE						
Bid Package Documents	X					
Bidding Instructions	X					
Construction Documents					X	
Cost study Documents					X	
Postage and Express costs					X	
Systems Study Documents					X	
As Built Documents (drafting)				x	x	
CONSTRUCTION PHASE						
Accounting Forms		x				
Contract Agreements		x				
Cost Report Forms		x				
Data Processing (in house)		x				
Estimating Forms		x				
Field Reporting Forms		x				
Presentation Charts and Graphics		x				
Reference Materials		x				
Schedule Reporting Forms		x				
Special Forms		x				
Value Analysis Studies		x				
Duplication Expense			x			
Maintenance Manuals			x			
Operation Manual			x			
Postage and delivery expense			x			
Shop Drawing Printing			x			

Note: All personnel costs shall include salaries and labor burden*

Draft of A133 Exhibit D
Division of Cost Elements

VI. QUALITY CONTROL

Description	Precon Phase Fee	Construction Manager's Fee	General Conditions	Cost of Work	A/E's Costs	Owner's Costs
Chief Inspector					x	
Field Inspector					x	
Inspector's Transportation					x	
Inspector's Equipment					x	
Inspector's Office			x			
Compaction Testing						x
Concrete Testing						x
Fireproofing Testing						x
Masonry Testing						x
Soils Investigation						x
Special Inspection Consultants						x
Special Testing Consultants						x
Special Testing Services						x
Welding Inspections						x
Field Office Supplies/Materials			x			
Project Photographs			x			
Warranty Inspection Coordination		x				
Air and Water Balancing						x
Operations on site training				x		
Prepare operations manuals			x			
Prepare maintenance manuals			x			

Note: All personnel costs shall include salaries and labor burden*

Draft of A133 Exhibit D
Division of Cost Elements

VII. PERMITS AND SPECIAL FEES

Description	Precon Phase Fee	Construction Manager's Fee	General Conditions	Cost of Work	A/E's Costs	Owner's Costs
Not Used						
Construction Equipment licenses				x		
Construction Equipment Permits				x		
Parking Fees			x			
Parking Lot Rental			x			
Royalties			x			
Staking and layout fees/costs				x		
Not Used						
Storage yard rental				x		
Association Fees		x				
Contractor's licenses		x				
Building Permits						x
Curb and gutter permits						x
Gas service charge*						x
Plan check fee						x
Power service charge*						x
Sanitary connection fee*						x
Sidewalk permits						x
Sign permits						x
Special tap fees						x
Storm connection fee*						x
Water connection fee*						x
Zoning fees/consultant						x

*Represent final connection costs, not temporary

Note: all personnel costs shall include salaries and labor burden

VIII. INSURANCE AND BONDS

Description	Precon Phase Fee	Construction Manager's Fee	General Conditions	Cost of Work	A/E's Costs	Owner's Costs
Builder's Risk Insurance			x			
Errors and Omissions					x	
General Liability				x		
Completed Operations Liability				x		
Excess Liability Coverage				x		
Workmen's Compensation			x			
FICA Insurance*			x			
Federal Unemployment*			x			
State Unemployment*			x			
Payment Bond						
Performance Bond						
Off-site insurance			x			
Off-site Taxes		x				

*On-site staff only

Note: All personnel costs shall include salaries and Labor burden

Draft of A133 Exhibit D
Division of Cost Elements

IX. OTHER COSTS

Description	Precon Phase Fee	Construction Manager's Fee	General Conditions	Cost of Work	A/E's Costs	Owner's Costs
Construction Equipment				x		
Construction Labor Costs				x		
Construction Material				x		
Cost of Emergency Work				x		
Project Taxes				x		
Cost of Design and Engineering					x	
A/E cost for bid Packages					x	
Building Maint. After Move-In						x
Building Operations after Move-In						x
Land costs						x
Moving coordination						x
Moving costs						x
Owner Change contingency						x
Soils Investigation						x
Title/Development costs						x
C.M. General Overhead costs		x				
C.M. profit/Margin		x				
Corrective Extra Work		x				
Costs over GMP		x				

Note: all personnel costs shall include salaries and labor burden

Exhibit E-
Sample G702 and G703

EXHIBIT E - SAMPLE G702 AND G703

Application and Certificate for Payment

OWNER:	PROJECT:	APPLICATION NO:	Distribution To:
County of Hidalgo, Texas	New Hidalgo County Courthouse	PERIOD TO:	Owner ☐
100 N. Closner Boulevard	100 N. Closner Boulevard	CONTRACT FOR:	Architect ☐
Edinburg, Texas 78539	Edinburg, Texas 78539	CONTRACT DATE:	Contractor ☐
		PROJECT NOS:	Field ☐
CONTRACTOR:	ARCHITECT:		Project Manager ☐
Morganti Texas, Inc.	HDR Architecture, Inc.		Other ☐
10590 W. Office Drive, Suite 150	8750 N. Central Expy, Suite 100		
Houston, Texas 77042	Dallas, Texas 75231		

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract.
AIA Document G703™, Continuation Sheet, is attached.

1. ORIGINAL CONTRACT SUM	\$	8,235,110.00
2. NET CHANGE BY CHANGE ORDERS	\$	-
3. CONTRACT SUM TO DATE (Line 1 ± 2)	\$	8,235,110.00
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$	5,453,122.00
5. RETAINAGE:		
a. 5% of Completed Work (Columns D + E on G703)	\$	272,656.10
b. 5% of Stored Material (Column F on G703)	\$	-
Total Retainage (Lines 5a + 5b, or Total in Column I of G703):	\$	272,656.10
6. TOTAL EARNED LESS RETAINAGE (Line 4 minus Line 5 Total)	\$	5,180,465.90
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	\$	-
8. CURRENT PAYMENT DUE:	\$	5,180,465.90
9. BALANCE TO FINISH, INCLUDING RETAINAGE: (Line 3 minus Line 6)	\$	3,054,644.10

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$: -	\$: -
Total approved this month	\$: -	\$: -
TOTAL	\$: -	\$: -
NET CHANGES by Change Order	\$: -	\$: -

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payment received from the Owner, and that current payment shown herein is now due.

CONTRACTOR:	DATE:
By: _____	_____
Print of: _____	
County: _____ United States of America	
Subscribed and sworn to before	
_____ this _____ day of _____	
Notary Public: _____	
My commission expires: _____	

ARCHITECT'S CERTIFICATE OF PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief that Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED:	\$	_____
(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)		

ARCHITECT:	
By: _____	Date: _____
This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.	

CONTINUATION SHEET

Application and Certificate for Payment, Construction Manager at Risk,
containing Contractor's signed certification is attached.
In tabulations below, amounts are in US dollars.
[Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO. : 0
APPLICATION DATE : Jan 0, 1900
PERIOD TO : 0
ARCHITECT'S PROJECT NO: 0

A ITEM NO.	B DESCRIPTION OF WORK	B-1 CONTRACT VALUE	C CURRENT BUYOUT VALUE	D WORK COMPLETED		F MATERIALS PRESENTLY STORED	G TOTAL COMPLETED AND STORED TO DATE (D+E+F)	H % COMPLETE (G/C)	I BALANCE TO FINISH (C-G)	J RETAINAGE 5% OF COMPLETED TO DATE (G*0.05)	
				PREVIOUS APPLICATION	THIS PERIOD						
	GENERAL CONDITIONS & FEES	\$ 2,310,060.00	\$ 2,310,060.00	\$ 1,645,500.00	\$ 45,000.00	\$ -	\$ 1,690,500.00	73.18%	\$ 619,560.00	\$ 84,525.00	5%
	Pre-Construction Services	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ -	\$ -	\$ 25,000.00	100%	\$ -	\$ 1,250.00	5%
	SDI	\$ 250,000.00	\$ 250,000.00	\$ 185,000.00	\$ -	\$ -	\$ 185,000.00	74%	\$ 65,000.00	\$ 9,250.00	5%
	Building Permit	\$ 65,000.00	\$ 65,000.00	\$ 65,000.00	\$ -	\$ -	\$ 65,000.00	100%	\$ -	\$ 3,250.00	5%
	Insurance	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	\$ -	\$ -	\$ 20,000.00	100%	\$ -	\$ 1,000.00	5%
	CCIP	\$ 450,000.00	\$ 450,000.00	\$ 450,000.00	\$ -	\$ -	\$ 450,000.00	100%	\$ -	\$ 22,500.00	5%
	Builder's Risk	\$ 45,000.00	\$ 45,000.00	\$ 45,000.00	\$ -	\$ -	\$ 45,000.00	100%	\$ -	\$ 2,250.00	5%
	General Conditions	\$ 800,000.00	\$ 800,000.00	\$ 400,000.00	\$ -	\$ -	\$ 400,000.00	50%	\$ 400,000.00	\$ 20,000.00	5%
	Payment & Performance Bond	\$ 200,000.00	\$ 200,000.00	\$ 200,000.00	\$ -	\$ -	\$ 200,000.00	100%	\$ -	\$ 10,000.00	5%
	CMAR Fee	\$ 455,060.00	\$ 455,060.00	\$ 500.00	\$ 45,000.00	\$ -	\$ 300,500.00	66%	\$ 154,560.00	\$ 15,025.00	5%
	CM CONTINGENCY	\$ 335,000.00	\$ 335,000.00						\$ 180,000.00		
	GMP #1	\$ 85,000.00	\$ 85,000.00						\$ 85,000.00		
	GMP #2 (if applicable)	\$ 250,000.00	\$ 250,000.00						\$ 250,000.00		
	AEA #002 - CM Contingency - Additional Crews		\$ (155,000.00)						\$ (155,000.00)		
	OWNER'S CONTINGENCY	\$ 335,000.00	\$ 309,564.00						\$ 309,564.00		
	GMP #1	\$ 85,000.00	\$ 85,000.00						\$ 85,000.00		
	GMP #2 (if applicable)	\$ 250,000.00	\$ 250,000.00						\$ 250,000.00		
	AEA #004 - Owner Contingency - Owner Requested Plants		\$ (25,436.00)						\$ (25,436.00)		
	ALLOWANCES	\$ 205,050.00	\$ 9,425.00						\$ 9,425.00		
	Utilities Allowance	\$ 100,000.00	\$ 100,000.00						\$ 100,000.00		
	AEA #003 - Unforeseen Utilities		\$ (95,375.00)						\$ (95,375.00)		
	Printing Allowance	\$ 105,050.00	\$ 105,050.00						\$ 105,050.00		
	AEA #001 - Additional Printing Services		\$ (100,250.00)						\$ (100,250.00)		
	COST OF WORK	\$ 5,050,000.00	\$ 4,756,661.00	\$ 2,950,565.00	\$ 812,057.00	\$ -	\$ 3,762,622.00	79.10%	\$ 994,039.00	\$ 188,131.10	5%
	DIVISION 01: GENERAL REQUIREMENTS	\$ 1,000,000.00	\$ 925,250.00								
	Contractor's Name		\$ 750,000.00	\$ 350,000.00	\$ 150,000.00	\$ -	\$ 500,000.00	67%	\$ 250,000.00	\$ 25,000.00	5%
	SCO #001 - AEA #001 - Additional Printing Services		\$ 100,250.00	\$ -	\$ 50,654.00	\$ -	\$ 50,654.00	51%	\$ 49,596.00	\$ 2,532.70	5%
	SCO #002 - Buyout #001 - Temporary Partitions		\$ 75,000.00	\$ -	\$ 35,000.00	\$ -	\$ 35,000.00	47%	\$ 40,000.00	\$ 1,750.00	5%
	Contractor's Name - CONTRACT SUM		\$ 925,250.00	\$ 350,000.00	\$ 235,654.00	\$ -	\$ 585,654.00	63%	\$ 339,596.00	\$ 29,282.70	5%
	DIVISION 05: METALS	\$ 2,500,000.00	\$ 2,005,600.00								
	Contractor's Name		\$ 150,000.00	\$ 150,000.00	\$ -	\$ -	\$ 150,000.00	100%	\$ -	\$ 7,500.00	5%
	SCO #001 - Buyout #002 - Additional Rebar		\$ 55,600.00	\$ -	\$ 55,600.00	\$ -	\$ 55,600.00	100%	\$ -	\$ 2,780.00	5%
	Contractor's Name - CONTRACT SUM		\$ 205,600.00	\$ 150,000.00	\$ 55,600.00	\$ -	\$ 205,600.00	100%	\$ -	\$ 10,280.00	5%
	Contractor's Name		\$ 1,800,000.00	\$ 1,500,000.00	\$ 250,653.00	\$ -	\$ 1,750,653.00	97%	\$ 49,347.00	\$ 87,532.65	5%
	Contractor's Name - CONTRACT SUM		\$ 1,800,000.00	\$ 1,500,000.00	\$ 250,653.00	\$ -	\$ 1,750,653.00	97%	\$ 49,347.00	\$ 87,532.65	5%
	DIVISION 32: EXTERIOR IMPROVEMENTS	\$ 750,000.00	\$ 775,436.00								
	Contractor's Name		\$ 750,000.00	\$ 300,000.00	\$ 25,600.00	\$ -	\$ 325,600.00	43%	\$ 424,400.00	\$ 16,280.00	5%
	SCO #001 - AEA #004 - Owner Requested Plants		\$ 25,436.00	\$ 565.00	\$ 18,000.00	\$ -	\$ 18,565.00	73%	\$ 6,871.00	\$ 928.25	5%
	Contractor's Name - CONTRACT SUM		\$ 775,436.00	\$ 300,565.00	\$ 43,600.00	\$ -	\$ 344,165.00	44%	\$ 431,271.00	\$ 17,208.25	5%
	DIVISION 33: UTILITIES	\$ 800,000.00	\$ 1,050,375.00								
	Contractor's Name		\$ 800,000.00	\$ 650,000.00	\$ 26,250.00	\$ -	\$ 676,250.00	85%	\$ 123,750.00	\$ 33,812.50	5%
	SCO #001 - AEA #002 - Additional Crews		\$ 155,000.00	\$ -	\$ 135,000.00	\$ -	\$ 135,000.00	87%	\$ 20,000.00	\$ 6,750.00	5%
	SCO #002 - AEA #003 - Unforeseen Utilities		\$ 95,375.00	\$ -	\$ 65,300.00	\$ -	\$ 65,300.00	68%	\$ 30,075.00	\$ 3,265.00	5%

	Contractor's Name - CONTRACT SUM		\$ 1,050,375.00	\$ 850,000.00	\$ 228,550.00	\$ -	\$ 876,550.00	63.2%	\$ 173,825.00	\$ 44,897.50	5%	
	WORK REMAINING TO PROCURE ORIGINAL BALANCE		\$ 800,000.00						\$ 800,000.00			
	Buyout #001 - Temporary Partitions		\$ (75,000.00)						\$ (75,000.00)			
	Buyout #012 - Additional Rebar		\$ (55,600.00)						\$ (55,600.00)			
	WORK REMAINING TO PROCURE REMAINING BALANCE		\$ 669,400.00						\$ 669,400.00			
	CONTRACT TOTAL	\$ 8,235,110.00	\$ 8,235,110.00	\$ 4,596,065.00	\$ 857,057.00	\$ -	\$ 5,453,122.00	66.22%	\$ 2,781,988.00	\$ 272,656.10	5.00%	

Exhibit F-

Sample GMP Amendment Form

DRAFT AIA® Document A133™ – 2009

Exhibit F

Guaranteed Maximum Price Amendment

for the following PROJECT:

(Name and address or location)

«New Hidalgo County Courthouse »
« 100 N. Closner
Edinburg, TX 78539 »

THE OWNER:

(Name, legal status and address)

»The County of Hidalgo Texas, «
100 N. Closner
Edinburg, TX 78539 »
« »

THE CONSTRUCTION MANAGER:

(Name, legal status and address)

«Morganti Texas, Inc.
10590 Westoffice Dr. Suite 150
Houston, TX 77459»« »
« »

ARTICLE A.1

§ A.1.1 Guaranteed Maximum Price

Pursuant to Section 2.2.6 of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Guaranteed Maximum Price. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed. The Contract Sum consists of the Construction Manager's Fee plus the Cost of the Work, as that term is defined in Article 6 of this Agreement.

§ A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed «» (\$ «»), subject to additions and deductions by Change Order as provided in the Contract Documents.

§ A.1.1.2 Itemized Statement of the Guaranteed Maximum Price. Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Construction Manager's Fee, and other items that comprise the Guaranteed Maximum Price.
(Provide below or reference an attachment.)

« »

§ A.1.1.3 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner: (State the numbers or other identification of accepted alternates. If the Contract Documents permit the Owner to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the amount for each and the date when the amount expires.)

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

ELECTRONIC COPYING of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

« »

§ A.1.1.4 Allowances included in the Guaranteed Maximum Price, if any:
(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price (\$0.00)
« »	

§ A.1.1.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

« »

§ A.1.1.6 The Guaranteed Maximum Price is based upon the following Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
« »			

§ A.1.1.7 The Guaranteed Maximum Price is based upon the following Specifications:
(Either list the Specifications here, or refer to an exhibit attached to this Agreement.)

« »

Section	Title	Date	Pages
« »			

§ A.1.1.8 The Guaranteed Maximum Price is based upon the following Drawings:
(Either list the Drawings here, or refer to an exhibit attached to this Agreement.)

« »

Number	Title	Date
« »		

§ A.1.1.9 The Guaranteed Maximum Price is based upon the following other documents and information:
(List any other documents or information here, or refer to an exhibit attached to this Agreement.)

« »

ARTICLE A.2

§ A.2.1 The anticipated date of Substantial Completion established by this Amendment:

« »

« »

OWNER (Signature)

«The County of Hidalgo Texas »« »

(Printed name and title)

OWNER (Signature)

(Printed name and title)

CONSTRUCTION MANAGER (Signature)

«Morganti Texas, Inc. »« »

(Printed name and title)

CONSTRUCTION MANAGER (Signature)

(Printed name and title)

Exhibit G-

Project Technology

Exhibit G – Technology Platforms

The following technology platforms are intended to be used on the project by all members of the project team, including the CMAR.

1.1 BIM (Building Information Modeling) (Only if utilized by the ARCHITECT for this Project)

Should ARCHITECT choose to utilize BIM for this project, the following rules apply:

1. Software – Autodesk® Revit® Architecture building design software
2. At Programming Phase provide the Revit® Template that will be used with the project – provide detail for all custom families, associated fonts, etc.
3. BIM Submittals – Full model and backup at each phase (SD, DD, CD's and record documents)
4. Provide narrative documentation explaining the elements, templates, families, and any special conventions used – provide detail for any changes to the standard object visibility / graphics elements

1.2 Prolog Converge

Project Manager will implement Prolog Converge as the primary tool of the Project Management Control System (PMCS). The intent is to improve project work efforts by promoting timely and efficient communications and to reduce the number of paper documents. CONSTRUCTION MANAGER will be required to utilize Prolog Converge for the following document types:

- a) Requests for Information (RFIs)
- b) Submittals
- c) Transmittals
- d) Applications for Payment
- e) Field Reports
- f) Other document types as assigned by Project Manager

Project Manager will provide CONSTRUCTION MANAGER access to Prolog Converge at no cost.

1.2 Microsoft SharePoint

Project Manager will implement a Microsoft SharePoint environment as the primary document server as part of the PMCS. ARCHITECT will be required to upload and maintain documents within this environment, which will include the following document types:

- a) Meeting Minutes
- b) Photographs
- c) Drawings
- d) Supplemental Sketches
- e) Schedules
- f) Specifications
- g) Other document types as assigned by Project Manager

Project Manager will provide CONSTRUCTION MANAGER access to the Microsoft SharePoint environment at no cost.

1.2 BlueBeam Revu

To standardize the document review process, ARCHITECT and CONSTRUCTION MANAGER will be required to utilize BlueBeam Revu as the document design review platform for preparing and addressing all design review comments. CONSTRUCTION MANAGER will submit design review comments within the BlueBeam Revu platform.

CONSTRUCTION MANAGER will need to purchase licenses for the use of this commercial product.

Exhibit H-

Preconstruction Services

Exhibit H - List of Pre-Construction Services

This list is intended to clarify the expectations for the pre-construction services phase of the Agreement, but is not meant to be all-inclusive or exhaustive.

- **Estimating**

Produce increasingly detailed estimates as appropriate for the level of design (with assumed quantities, target values, and materials specified) with qualifications and assumptions at the following milestones:

- 100% SD - Full Estimate
- 100% DD - Full Estimate and Possible Early package GMP
- 50% CD - Updated from 100% DD Estimate and Full GMP
- 100% CD - Full Estimate (not a Pre-Construction Service. This is CMAR's back-check against GMP; part of General Conditions)

- **Scheduling**

- Produce increasingly detailed schedules as appropriate for the level of design at the following milestones.:
 - 100% SD
 - 100% DD
 - 50% CD
 - 100% CD (not a Pre-Construction Service. This is CMAR's back-check against GMP; part of General Conditions)

- **Design Coordination**

- Assist in identification of existing site utilities
- Evaluate the following for cost, schedule, and constructability:
 - Building Massing Studies
 - Exterior Material Systems
 - Foundation Systems
 - Superstructure (Steel vs Concrete vs Hybrid)
 - MEPF Systems
 - Elevators & Escalators
- Document increasingly detailed constructability reviews appropriate for the level of design at the following milestones:
 - 100% SD
 - 100% DD
 - 50% CD
 - 100% CD (not a Pre-Construction Service. This is CMAR's back-check against GMP; part of General Conditions)
- Participate in user review meetings of progress sets of drawings at:
 - 100% DD

Exhibit H - List of Pre-Construction Services

- 50% CD
 - 100% CD's
- Develop BIM requirements required of the CM and trade contractors
- Present and maintain value engineering (VE) log at 100% SD to determine possible added value or cost reduction items to be incorporated into the project.
- Setup exterior envelope meetings with owner, owners third party consultant, and project team at 100% SD, 100%DD, and final review before issued for bid
- Document and update status of long lead items at each development of drawings
- Engage the AE team to make sure that all constructability comments are incorporated into each evolving set of documents. Design revisions and updates are the responsibility of the design team based on reviews and acceptance of constructability comments
- Verify that all constructability comments and VE items are addressed and incorporated into the documents prior to issue for bid. Continue to track and ensure that 100% documents issued post GMP do not exceed the parameters established at GMP. Design revisions, inclusions or exclusions are the responsibility of the design team. CMAR will conduct a review for updates and revisions but are not responsible for design accuracy.
- Assist with courtroom mock-up as determined in coordination with design team. Pricing to be provided after mock-up drawings are issued. (Construction of mockup is a cost of work element not included in Pre-Construction Services.)
- **Site & Safety Planning**
 - Assist in the development of project limits for safety and site control
 - Evaluate and recommend egress pathways, within or from existing buildings
 - Develop site logistics plan for pedestrian safety, construction personnel, construction traffic, and emergency response
 - Develop hoisting plan and crane radius plan in relation to other structures and/or helipads if applicable
 - Develop emergency and hurricane response plans
 - Assess existing outside air intakes in relation to construction site if attaching to existing buildings or in close proximity to buildings
 - Establish safety and background check requirements with the project team for incorporation into the project manuals
- **Coordination of Third Party Vendors**
 - Assist in development of responsibility for low voltage systems
 - Assist in development of equipment responsibility matrix
 - Develop commissioning requirements and forms with owner's third party commissioning agent, in conjunction with the design team and based on commissioning requirements set forth in the construction documents.
- **Outreach and Development**
 - Market the project to the community
 - Develop HUB and SMWBE plans with the owner and community outreach
- **Trade Contractor Procurement**

Exhibit H - List of Pre-Construction Services

- Develop bid package strategy and gain buy-in from project team
- Investigate labor and material availabilities for proposed materials and report back to project team
- Advertise and conduct pre-proposal conferences for each bid package
- Develop grading matrices for best value evaluation
- Make recommendations based off grading matrix from received valid proposals
- Develop RFQ/P for design assist scopes and establish grading evaluation

Exhibit I-
Prevailing Wage Rates