



**AGREEMENT
BETWEEN OWNER
AND
CONSTRUCTION MANAGER-AT-RISK**

This Agreement is made as of May 9, 2011 (the "Effective Date"), by and between

The Owner: Williamson County, Texas
710 Main Street, Suite 101
Georgetown, Texas 78626

and Construction Manager: J.T. Vaughn Construction, LLC
10355 Westpark Drive
Houston, TX 77042

for the Project: Williamson County
Emergency Services Operations Center

Project Architect: Parsons
106 East 6th Street
Austin, TX 78701

**Owner's Designated
Representative or
Project Manager:** Gary Wilson
Project Manager
3101 SE Inner Loop
Georgetown, TX 78626

TABLE OF CONTENTS

ARTICLE

1	SCOPE OF WORK	20	PROJECT TERMINATION & SUSPENSION
2	CONTRACT DOCUMENTS	21	INDEMNITY
3	DEFINITIONS	22	SPECIAL WARRANTIES
4	SUBSTANTIAL COMPLETION	23	CERTIFICATION OF NO ASBESTOS CONTAINING MATERIALS OR WORK
5	CONSTRUCTION MANAGER'S GENERAL RESPONSIBILITIES	24	MISCELLANEOUS PROVISIONS
6	PRE-CONSTRUCTION PHASE SERVICES	25	COMPENSATION
6.1	General Coordination	25.1	Construction Cost Limitation
6.2	Constructability Program	25.2	Pre-Construction Phase Fee
6.3	Scheduling	25.3	Construction Phase Fee
6.4	Budget and Cost Consultation	25.4	Limitation on General Condition Costs
6.5	Coordination of Design and Construction Contract Documents	26	OTHER TERMS AND CONDITIONS
6.6	Construction Planning	26.1	Time of Completion
6.7	Obtaining Bids/Proposals for the Work	26.2	Liquidated Damages
6.8	Safety	26.3	Estimated Construction Cost Reports
7	PRE-CONSTRUCTION PHASE FEE	26.4	Notices
8	GUARANTEED MAXIMUM PRICE PROPOSAL	26.5	Party Representatives
9	CONSTRUCTION PHASE SERVICES	26.6	Construction Document Sets
10	COMMISSIONING & WARRANTY	26.7	Interim Record Drawings and Specifications
11	OWNER'S RESPONSIBILITIES	-----	
12	OWNERSHIP AND USE OF DOCUMENTS		List of Exhibits
13	TIME	Ex. A	Uniform General Conditions For Construction Manager-At-Risk Contracts For Williamson County
14	PAYMENTS	Ex. B	Allowable General Conditions Line Items
14.1	General Requirements	Ex. C	Guaranteed Maximum Price Proposal Form
14.2	Pre-Construction Phase Payments	Ex. D	Security Bond
14.3	Construction Phase Payments	Ex. E	CM's Personnel & Monthly Salary Rate
15	DIRECT CONSTRUCTION COST	Ex. F	Constructability Implementation Program
15.1	General Conditions Cost	Ex. G	Special Provisions Concerning Aspects of the Work
15.2	Cost of the Work		
15.3	Construction Manager's Contingency		
16	CONSTRUCTION PHASE FEE		
17	CONTRACT SAVINGS, ALLOWANCES, REBATES & REFUNDS		
18	PRE-EXISTING CONDITIONS & DESIGN ERRORS AND OMISSIONS		
19	BONDS AND INSURANCE		

The Owner and the Construction Manager agree as follows:

AGREEMENT, this Construction Management-at-Risk Agreement (hereinafter called "Agreement") is entered into effective as of the date indicated on the preceding cover page (the "Effective Date"), by and between Williamson County, a political subdivision of the State of Texas (hereinafter called the "Owner") and J.T Vaughn Construction, LLC, a Limited Liability Corporation (hereinafter called "Construction Manager").

WHEREAS, the Owner desires to retain a Construction Manager for the Williamson County Emergency Services Operations Center (hereinafter called the "Project"),

WHEREAS, the Owner desires a Construction Manager who will render, diligently and competently in accordance with the highest standards used in the profession, all Construction Manager services which shall be necessary or advisable for the expeditious, economical and satisfactory completion of the Project, and

NOW, THEREFORE, in consideration of the mutual undertakings herein contained, the parties hereto agree as follows:

ARTICLE 1 SCOPE OF WORK

The Construction Manager has overall responsibility for and shall provide complete Pre-Construction Phase and Construction Phase Services and furnish all materials, equipment, tools and labor as necessary or reasonably inferable to complete the Work, or any phase of the Work, in accordance with the Owner's requirements and the terms of the Contract Documents.

ARTICLE 2 CONTRACT DOCUMENTS

2.1 The Contract Documents consist of:

- a. This Agreement and all exhibits and attachments listed, contained or referenced in this Agreement;
- b. The Uniform General Conditions for Construction Manager-at-Risk Contracts for Williamson County (the "Uniform General Conditions") as attached hereto as Exhibit A; provided, however, this Agreement shall control in the event of a conflict with those Uniform General Conditions. Any reference herein to the Uniform General Conditions shall mean and include all Supplementary General Conditions that may be added by Owner;
- c. All Addenda issued prior to the Effective Date of this Agreement;
- d. The Guaranteed Maximum Price Proposal when accepted by the Owner and executed by the parties;
- e. All Change Orders issued after the Effective Date of this Agreement;
- f. The Drawings, Specifications, details and other documents developed by Project Architect to describe the Project and accepted by Owner; and
- g. The Drawings and Specifications developed or prepared by Owner's other consultants, if any, and accepted by the Owner.

2.2 The Contract Documents form the entire and integrated Agreement between Owner and Construction Manager and supersede all prior negotiations, representations or agreements, written or oral.

2.3 The term "Construction Manager" shall be interchangeable with the terms "Construction Management-at-Risk", "Contractor" and "General Contractor" or other similar terms as appropriate in the Contract Documents.

ARTICLE 3 DEFINITIONS

The terms, words and phrases used in the Contract Documents shall have meanings as follows.

3.1 "Construction Cost Limitation" (CCL) means the maximum monetary amount payable to the Construction Manager for all Construction Phase services, materials, labor and other work required for completion of the Work in accordance with the Contract Documents. The CCL includes, without limitation, the General Conditions Costs, the Cost of the Work, the Construction Phase Fee and the Construction Manager's Contingency. The CCL may be adjusted by the parties for changes in the scope of the Project before or after acceptance of the Guaranteed Maximum Price Proposal. The CCL does not include the Construction Manager's Pre-Construction Phase Fee, or Owner's Construction Contingency or Owner's Special Cash Allowance.

3.2 "Construction Documents" means, collectively, the Drawings, Specifications, details, accepted and approved Change Orders and other documents prepared by the Project Architect, its consultants and by the Owner's other consultants that describe the scope and quality of the Project and the materials, supplies, equipment, systems and other elements that are required for construction of the Project that are accepted by the Owner.

3.3 "Construction Phase Services" means the coordination, implementation and execution of the construction work required by the Contract Documents. The construction of the Project may be divided into different stages, each with different dates for implementation and completion. (referred to as a "Stage").

3.4 "Contract Sum" means the total amount of all compensation payable to the Construction Manager for the Project and shall not exceed the sum total amount of the Pre-Construction Phase Fee plus the Guaranteed Maximum Price Proposal accepted by the parties, subject to adjustment as approved by Owner for Additional Services or Change Orders. Any costs that exceed the Contract Sum shall be borne solely by Construction Manager without reimbursement by Owner.

3.5 "Direct Construction Cost" means the sum of the amounts that the Construction Manager actually and necessarily incurs for General Conditions Costs, Cost of the Work and Construction Manager's Contingency during the Construction Phase as allowed by this Agreement. Direct Construction Cost does not include Pre-Construction Phase Fees or Construction Phase Fees.

3.6 "Estimated Construction Cost" (ECC) means the amount calculated by the Construction Manager for the total cost of all elements of the Work based on the Contract Documents available at the time(s) that the ECC is prepared. The ECC shall be based on

current market rates with reasonable allowance for overhead, profit and price escalation and shall include and consider, without limitation, all alternates, allowances and contingencies, designed and specified by the Project Architect and the cost of labor and materials necessary for installation of Owner furnished equipment. The ECC shall not include Construction Manager's Pre-Construction Phase Fee, Project Architect Fees, cost of the land, rights-of-way, or any other costs that are the direct responsibility of the Owner.

3.7 **"Final Completion"** means the stage in the progress of the Work when, in the Owner's opinion, the entire Work has been completed, the Construction Manager's obligations under the Contract Documents have been fulfilled, and the Owner is processing or has made final payment to the Construction Manager, as evidenced by a Certificate of Acceptance approved by the Owner. The Final Completion Date is a crucial element of the Project. Therefore, Substantial Completion Date is not subject to change unless due to "force majeure" as defined herein and in any associated Contract Documents or unless agreed to in advance in writing by the parties.

3.8 **"Guaranteed Maximum Price"** or "GMP" means the amount proposed by the Construction Manager and accepted by the Owner as the maximum cost to the Owner for construction of the Work in accordance with the Contract Documents. The GMP includes Construction Manager's Construction Phase Fee, the General Conditions Costs, the Cost of the Work, Construction Manager's Construction Contingency amount, and the Owner's Construction Contingency amount and Owner's Special Cash Allowance.

3.9 **"General Conditions Cost"** means costs incurred and minor work performed by the Construction Manager without the need for competitive bids/proposals. The allowable General Conditions items are further described and limited by attached Exhibit B.

3.10 **"Monthly Salary Rate"** means the amount agreed to by the Owner that can be used on Applications for Payment throughout the Construction Phase to account for the services of Construction Manager's salaried personnel assigned to the Project. A Monthly Salary Rate must be established for each salaried person and must be approved in writing by the Owner in advance of any Application for Payment for that person. The Monthly Salary Rate is for convenience only and any payments made for Construction Manager's personnel are subject to audit to determine the actual cost of the wages and allowable employer contributions incurred by the Construction Manager for services performed for the Project.

3.11 **"Notice to Proceed with Construction"** refers to the written document issued by the Owner following acceptance of the GMP which indicates the date on which construction phase services are to begin.

3.12 **"Owner"** means Williamson County and includes its contracted Project Manager, if any, and Owner's Designated Representative which has been designated to act on behalf of Williamson County to the extent allowed by Texas Law.

3.13 **"Owner's Specifications"** means the construction and contract administration requirements and standards as interpreted by Owner.

3.14 **"Pre-Construction Phase Services"** means the participation, documentation and execution of the Construction Manager's Pre-Construction Phase deliverables as required by the Contract Documents.

3.15 "Preliminary Project Cost" (PPC) means the total estimated cost of the entire Project, including design, construction, and other associated costs and services that is established by the Owner prior to the commencement of design.

3.16 "Project Architect" means the professional architect employed by the Owner as architect of record for the Project along with its consultants.

3.17 "Project Construction Budget" (PCB) means the budget established for the site preparation and construction of all the Project Improvements and facilities relating to and being a part of the Project, which includes the Construction Cost Limitation and other costs specified by Owner.

3.18 "Project Improvements" means all Project facilities requiring construction, including all preparatory matters prior to construction, such as site preparation.

3.19 "Project Team" means the Owner, Construction Manager, Project Architect and its consultants, any separate contractors employed by Owner, and other consultants employed for the purpose of programming, design, and construction of the Project. The members of the Project Team will be designated by Owner and may be modified from time to time by Owner.

3.20 "Standards and Standard Specifications" means the construction and design requirements and the highest standards of Construction Manager's profession or business and in compliance with all applicable national, federal, state, municipal, laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction

3.21 "Subcontractor" means a person or entity that has an agreement with the Construction Manager to perform any portion of the Work. The term Subcontractor does not include the Project Architect or any person or entity hired directly by the Owner.

3.22 "Substantial Completion" means the stage in the progress of the Work when the Work, or designated portions thereof, may still require minor modifications or adjustments but, in the Owner's opinion, the Work has progressed to the point such that all parts of the Work under consideration are fully operational and usable for intended purposes, as evidenced by a Certificate of Substantial Completion approved by the Owner.

3.23 "Total Project Cost" (TPC) means the total budget established for the Project by Williamson County at the end of the design development phase (subject to subsequent modification by Owner). The TPC includes, but is not limited to, Construction Manager's Pre-Construction Fee, Guaranteed Maximum Price Proposal(s), Project Architect and other professional service fees, and other miscellaneous Project costs.

3.24 "Work" means provision of all services, labor, materials, supplies, and equipment which are required or reasonably inferable to complete the Project in strict accordance with the requirements of the Contract Documents (as such may be modified or amended). The term "reasonably inferable" takes into consideration the understanding of the parties that some details necessary for completion of the Work may not be shown on the Drawings or included in the Specifications, but they are a requirement of the Work if they are a usual and customary component of the Work or otherwise necessary for

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

3.25 "Worker Wage Rate" means the actual hourly wage of non-salaried persons performing work on the Project plus allowable employer contributions as established on the Worker Wage Rate Form required by the Construction Documents. The Worker Wage Rate for individual persons must be reasonable and customary for their industry and must be approved in writing by the Owner in advance of any Application for Payment for that person. Any payments made for Construction Manager's personnel are subject to audit to determine the actual cost of the wages and allowable employer contributions incurred by the Construction Manager for services performed for the Project.

ARTICLE 4 SUBSTANTIAL COMPLETION

4.1 Substantial Completion. If a Certificate of Occupancy is required by public authorities having jurisdiction over the Work, said certificate shall be issued before the Work or any portion thereof is considered substantially complete. When the Construction Manager considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Construction Manager shall notify Owner's Designated Representative and request a determination as to whether the Work or designated portion thereof is substantially complete. If Owner's Designated Representative does not consider the Work substantially complete, Owner's Designated Representative will notify the Construction Manager giving reasons therefore. Failure on the Owner's part to list a reason does not alter the responsibility of the Construction Manager to complete all Work in accordance with the Contract Documents. After satisfactorily completing items identified by Owner's Designated Representative, the Construction Manager shall then submit another request for Owner's Designated Representative to determine substantial completion. If Owner's Designated Representative considers the Work substantially complete, Owner's Designated Representative will prepare and deliver a certificate of Substantial Completion which shall establish the date of Substantial Completion, shall include a punch list of items to be completed or corrected before final payment, shall establish the time within which the Construction Manager shall finish the punch list, and shall establish responsibilities of the Owner and the Construction Manager for security, maintenance, heat, utilities, damage to the Work, warranty and insurance. Failure to include an item on the punch list does not alter the responsibility of the Construction Manager to complete all Work in accordance with the Contract Documents. The certificate of Substantial Completion shall be signed by the Owner and the Construction Manager to evidence acceptance of the responsibilities assigned to them in such certificate.

4.2 Owner intends to achieve Substantial Completion (as defined in this Agreement) for all stages of construction on or before completion date set forth in a Guaranteed Maximum Price

Proposal executed by the Parties. Under no circumstances will the completion date exceed date to be established in the GMP without a written amendment to this Agreement.

ARTICLE 5 CONSTRUCTION MANAGER'S GENERAL RESPONSIBILITIES

5.1 Construction Manager shall perform all services specifically allocated to it by the Contract Documents, as well as those services reasonably inferable from the Construction Documents as necessary for completion of the Work and the Project. Construction manager shall render, diligently and competently in accordance with the highest standards used in the profession, all Construction Manager services which shall be necessary or advisable for the expeditious, economical and satisfactory completion of the Project. The enumeration of specific duties and obligations performed by the Construction Manager hereunder shall not be construed to limit the general undertakings of the Construction Manager. The obligations of the Construction Manager hereunder run to and are for the benefit of only the Owner.

5.2 Notwithstanding anything to the contrary contained in this Agreement, Owner and Construction Manager agree and acknowledge that Owner is entering into this Agreement in reliance on Construction Manager's represented expertise and ability to provide construction management services. Construction Manager agrees to use its best efforts, skill, judgment, and abilities to perform its obligations and to further the interests of Owner in accordance with Owner's requirements and procedures.

5.3 Construction Manager represents and agrees that all persons connected with the Construction Manager directly in charge of its services are duly registered and/or licensed under the laws, rules and regulations of any authority having jurisdiction over the Project if registration is required.

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

5.5 Construction Manager shall cooperate with the Project Architect and endeavor to further the interests of the Owner and the Project. Construction Manager shall furnish Pre-Construction Phase Services and Construction Phase Services and complete the Project in an expeditious and economical manner consistent with the interests of the Owner and in accordance with the Project Schedule.

5.6 Construction Manager shall designate a representative authorized to act on the Construction Manager's behalf with respect to the Project. Construction manager warrants, represents, covenants, and agrees to furnish efficient business administration and superintendence and perform its services hereunder or pursuant to this Agreement in the best way and in the most expeditious and economical manner consistent with the interest of Owner. The Construction Manager agrees to provide an on-site, full-time superintendent for the duration of the Project.

5.7 Construction Manager shall establish procedures for website communication and coordination among the Project Team, Subcontractors, separate contractors, and others with respect to all aspects of the construction of the Project, and implement such procedures.

5.8 Intentionally Omitted.

5.9 Construction Manager shall identify to the Owner the employees and other personnel that it will assign to the Project and provide the Monthly Salary Rate for each of them. Construction Manager shall also identify any consultants that will be performing services for the Project. After execution of this Agreement by the Owner, Construction Manager shall not remove or replace the persons or entities assigned to the Project except with the Owner's written consent, which consent shall not be unreasonably withheld. Construction Manager shall not assign to the Project or contract with any person or entity to which Owner has a reasonable objection. Construction Manager shall promptly update the list of persons and consultants if they change during the course of the Project. Construction Manager shall provide copies of all contracts and/or agreements executed between Construction Manager and its subcontractors to the Owner, Project Architect, as directed by the requesting party.

ARTICLE 6 PRE-CONSTRUCTION PHASE SERVICES

The Pre-Construction Phase shall be deemed to commence upon the date specified in a Notice to Proceed with Pre-Construction Phase Services issued by Owner and shall continue through completion of the Construction Documents and procurement of all major Subcontractor agreements. Construction Manager is not entitled to reimbursement for any costs incurred for Pre-Construction Phase Services performed before issuance of the Notice to Proceed with Pre-Construction Phase Services. Pre-Construction Phase Services may overlap Construction Phase Services. The Construction Manager warrants, represents, covenants, and agrees that it shall, at its own cost, make good any defects in the Preconstruction Phase Services as soon as the Construction Manager becomes aware of such defects or is notified of such defects. Should the Construction Manager refuse or neglect to make good such defects within a reasonable time after receiving notice requesting such remedial work, then the Owner shall be entitled to make good such defective services at the expense of the Construction Manager. This commitment by Construction Manager is in addition to, and not in substitution for, any other remedy for defective services which the Owner may have at law or in equity. The Construction Manager shall perform the following Pre-Construction Phase Services:

6.1 General Coordination

6.1.1 The Construction Manager's Pre-construction Phase Services team shall attend Project Team meetings with the Owner, the Owner's representatives, and the Project Architect at regularly scheduled intervals throughout the Pre-Construction Phase. Frequent Project Team meetings are anticipated prior to the Owner's acceptance of the GMP and during completion of the Construction Documents.

6.1.2 Construction Manager shall provide a preliminary evaluation of the Owner's Design Criteria and the Construction Cost Limitation, each in terms of the other.

6.1.3 Construction Manager shall review and understand the standards and requirements in Owner's Specifications and perform all services in accordance with those standards and requirements.

6.1.4 Construction Manager shall visit the site and inspect the existing facilities, systems and conditions to insure an accurate understanding of the existing conditions as required.

6.1.5 Construction Manager shall participate as a member of the Project Team in the development of the Project Facility Program if such program has not been developed prior to the Effective Date of this Agreement.

6.1.6 Construction Manager shall provide recommendations and information to the Project Team on: site usage and site improvements; building systems, equipment and construction feasibility; selection and availability of materials and labor; time requirements for installation and construction; assignment of responsibilities for safety precautions and programs; temporary Project facilities; equipment, materials and services for common use of the Construction Manager and Owner's separate contractors, if any; cost factors, including costs of alternative materials or designs, preliminary budgets, and possible cost savings; recognizing and tracking the resolution of conflicts in the proposed Drawings and Specifications; methods of delivery of materials, systems, and equipment; and any other matters necessary to accomplish the Project in accordance with the Project Schedule (as defined below) and the CCL.

6.1.7 Construction Manager shall assist the Owner in selecting and directing the services of surveyors, soils engineers, existing facility surveys, testing and balancing, environmental surveys or other special consultants hired by the Owner to develop additional information for the design or construction of the Project.

6.1.8 Construction Manager shall, at Owner's request, attend public meetings and hearings concerning the development and schedule of the Project.

6.2 Constructability Program

6.2.1 Construction Manager shall implement and conduct a constructability program with targeted construction cost savings of five percent (5%) to identify and document Project cost and schedule savings opportunities. The constructability program shall follow accepted industry practices and be in accordance with the requirements of the attached Exhibit F. Whenever the term "value engineering" is used in conjunction with this Agreement or the Project, it has its commonly accepted meaning within the construction industry and does not imply the practice of professional engineering without a license. If any value engineering activities constitute the professional practice of engineering, then such activities shall be performed by an engineer licensed in Texas.

6.2.2 Construction Manager shall prepare a "Constructability Report" that identifies items that, in the Construction Manager's opinion, may either positively or negatively impact construction of the Project. The Constructability Report shall address the overall coordination of Project Drawings, Specifications, and details and identify discrepancies that may generate Change Orders or claims once Project construction commences. The Constructability Report shall be updated at least monthly during the Pre-Construction Phase.

6.2.3 Construction Manager shall provide and implement a system for tracking questions, resolutions, decisions, directions and other information matters that arise during the development of the Drawings and Specifications for the Project. The decision

tracking system shall be in a format approved by the Owner and updated at least monthly during the Pre-Construction Phase and as necessary into the construction phase.

6.2.4 Construction Manager shall provide and maintain a log of savings that have been identified and achieved through review of design documents, value engineering and constructability, or savings derived from any other means.

6.3 Scheduling

6.3.1 Develop a critical path method schedule ("CPM Schedule") for Project Team review and the Owner's approval, that coordinates and integrates activities on the Project, including the Construction Manager's services, the Project Architect's design services, the work of other consultants and suppliers, and the Owner's activities with the anticipated construction schedules for other contractors. The CPM Schedule must identify all major milestones through Project Final Completion. The CPM Schedule shall be created and maintained in accordance with the Owner's Specifications using the Owner specified format and software.

6.3.2 The Construction Manager shall update the CPM Schedule throughout the Pre-Construction and Construction Phases as described in the Owner's Specifications.

6.3.3 The CPM Schedule shall include other detailed schedule activities as directed by the Owner including, but not limited to, Owner-managed work under separate contracts such as equipment, furniture and furnishings, telephones, project security, property protection, life-safety systems, and computer technology systems.

6.4 Budget and Cost Consultation

6.4.1 The Construction Manager is responsible for preparing and updating all procurement and construction cost estimates and distributing them to the Project Team throughout the duration of the Project.

6.4.2 The Construction Manager shall provide Estimated Construction Cost (ECC) reports at the required stages of completion of the Design and Construction Documents Phases of the Project as required in Article 26.3. The Estimated Construction Cost reports shall be detailed estimates derived from cost quantity surveys based on unit prices for labor, materials, overhead and profit, organized in Construction Specifications Institute Division 1-16 format for each portion of the Work.

6.4.3 The Construction Manager shall provide continuous cost consultation services coordinated with the constructability program throughout the duration of the Project, including identification and tracking of decisions that affect the scope or quality of the Project and providing ongoing updates of their cost and budget impact. Construction Manager shall advise the Project Team immediately if the Construction Manager has reason to believe that the most current ECC will exceed the Construction Cost Limitation (CCL) or not meet Schedule requirements and recommend reasonable strategies for bringing the Project in line with the CCL and the Schedule.

6.4.4 The Construction Manager shall promptly identify all variances between estimated costs and actual costs during the Construction Phase, and shall promptly

report such variances to the Project Team along with recommendations for action, but in any event no more than two (2) business days after acquiring such information.

6.4.5 Following Owner's approval of the ECC provided at the completion of the construction documents phase of design, Construction Manager shall not be entitled to any adjustment in the approved CCL except for changes in Project scope or quality which materially increase or decrease the cost to construct the Project that are ordered by Owner in writing in accordance with the Uniform General Conditions.

6.5 Coordination of Design and Construction Contract Documents

6.5.1 Construction Manager shall review all Drawings, Specifications, and other Construction Documents as they are developed by the Project Architect during the Design and Construction Phases of the Project.

6.5.2 Construction Manager shall consult with Owner and Project Architect on the selection of materials, equipment, component systems, and types of construction used on the Project. Construction Manager shall advise Owner on site use, construction feasibility, availability of labor and materials, procurement time requirements, and construction coordination.

6.5.3 Construction Manager shall advise Owner of any error, inconsistency or omission discovered in the Drawings, Specifications, and other Construction Documents.

6.5.4 Construction Manager shall advise Owner on reasonable adjustments in the Project scope, quality or other options for keeping the Project cost within the CCL.

6.5.5 Construction Manager shall review the Construction Documents for compliance with all applicable laws and code requirements and with Williamson County requirements.

6.6 Construction Planning

6.6.1 Construction Manager shall identify equipment or material requiring extended delivery times ("long lead items") and advise Owner on expedited procurement of those items. Advise Owner and Project Architect on the preparation of performance specifications and requests for technical proposals for the procurement and installation of systems and components and for the procurement of long lead items. If requested by Owner, and subject to Owner's prior approval, issue requests for technical proposals to qualified sources and receive proposals and assist in their evaluation.

6.6.2 Construction Manager shall make recommendations to the Project Team regarding organization of the Construction Documents to facilitate the procurement of construction subcontracts in a manner that promotes the interests of the Project and the Owner. These recommendations may include, but are not limited to, phased or staged construction or multiple separate contracts. The recommendations shall take into consideration such factors as time of performance, type and scope of work, availability of labor and materials, overlapping trade jurisdictions, provisions for temporary facilities, comparisons of factory and on-site production costs, shipping costs, code restrictions, and other constraints.

6.6.3 Construction Manager shall review the Construction Documents with the Project Team to eliminate areas of conflict, overlap and gaps in the work to be performed by the various Subcontractors or Owner's separate contractors.

6.6.4 Construction Manager shall assist the Owner, the Project Architect, Owner's other consultants, and the Owner's separate contractors in obtaining all applicable risk management, code, and regulatory agency reviews and approvals for the Project including, without limitation, the Texas Department of Licensing and Regulation, the State Fire Marshal, the local fire department, applicable code authority and the Owner's insurance provider.

6.6.5 Construction Manager shall advise Owner of any tests to be performed, and assist Owner in selecting testing laboratories and consultants, without assuming direct responsibility for the work of such laboratories and consultants.

6.6.6 Construction Manager shall review the Construction Documents to ensure that they contain adequate provision for all temporary facilities necessary for performance of the Work, and provisions for all of the job site facilities necessary to manage, inspect, and supervise construction of the Work.

6.6.7 Construction Manager shall provide an analysis of the types and quantities of labor required for the Project and review the appropriate categories of labor required for critical phases or Stages. Make recommendations that minimize adverse effects of labor shortages.

6.6.8 Furniture, Fixtures and Equipment. Construction Manager shall consult with and make recommendations to the Owner on the acquisition schedule for fixtures, furniture and equipment, and coordinate the Owner's purchase and installation of such items with the Owner as may be required to meet the Schedule.

6.7 Obtaining Bids/Proposals for the Work

6.7.1 Construction Manager shall obtain competitive bids/proposals from trade contractors or subcontractors for the performance of all major elements of the work other than the minor work that may be included in General Conditions. Criteria for determining the proposal that provides the best value to the Owner shall be established by the Project Team and approved in writing by the Owner.

6.7.2 All subcontracts shall be awarded in accordance with the applicable provisions of the Texas Local Government Code.

6.7.3 Construction Manager and Owner shall review all trade contractor or Subcontractor bids/proposals and, based on the approved selection criteria, Construction Manager shall recommend to the Owner the bid/proposal that provides the best value for the Project. Upon Owner's concurrence in the recommendation, Construction Manager may negotiate the terms of the subcontract with the apparent best value bidder/proposer.

6.7.4 Construction Manager may seek to self-perform portions of the Work only with prior approval by the Owner. In such case, the Construction Manager must submit a proposal for the self-performance work in the same manner as all other trade contractors

or Subcontractors except that such proposal must be submitted to the Owner at least twenty four hours prior to the deadline established for other trade contractors and Subcontractors submitting for the same Work. The Owner will determine whether the Construction Manager's bid/proposal provides the best value for Owner, which determination is final. Construction Manager must perform approved self-performance work in accordance with the same terms and conditions as its other Subcontractors. For payment purposes, the Construction Manager shall account for self-performance work in the same manner as it does all other subcontract costs.

6.7.5 Construction Manager shall identify every Subcontractor it intends to use on the Project, including Subcontractors used for self-performed work, to the Owner in writing at least ten (10) days before entering into any subcontract. Construction Manager shall not use any Subcontractor to which Owner has a reasonable objection. Construction Manager shall not be required to subcontract with any Subcontractor to which it has reasonable objection. Following Owner acceptance of a Subcontractor, that Subcontractor shall not be changed without Owner's written consent, which shall not be unreasonably withheld.

6.7.6 If a selected trade contractor or subcontractor fails to execute a subcontract after being selected in accordance with this section or defaults in the performance of its work, the Construction Manager may, in consultation with the Owner and without further advertising, fulfill the subcontract requirements itself or select a replacement trade contractor or subcontractor to do so.

6.8 Safety

6.8.1 Construction Manager is responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. The safety program shall comply with all applicable requirements of the current federal Occupational Safety and Health Act and all other applicable federal, state and local laws and regulations and with the requirements of an Owner controlled insurance program, if any.

6.8.2 Construction Manager shall provide recommendations and information to Owner and Project Architect regarding the assignment of responsibilities for safety precautions and programs, temporary Project facilities, and equipment, materials, and services for common use of the Subcontractors. Construction Manager shall verify that appropriate safety provisions are included in the Construction Documents.

ARTICLE 7 PRE-CONSTRUCTION PHASE FEE

7.1 The Pre-Construction Phase Fee is the total compensation payable to the Construction Manager for the performance of Pre-Construction Phase Services, except for Additional Pre-Construction Phase Services approved in advance and in writing by the Owner. The Pre-Construction Phase Fee shall be a lump sum amount based on the CCL established in this Agreement.

7.2 Except as specifically allowed in paragraph 8.4, the Construction Manager shall not be entitled to any increase in the Pre-Construction Phase Fee for any costs, expenses, liabilities or other obligations arising from the performance of Pre-Construction Phase Services.

7.3 Costs associated with the following items are included in the establishment of the Pre-Construction Phase Fee: profit and profit sharing; general overhead; salaries and labor; housing and relocation; estimating, scheduling and information management systems and software; contract administration; office expenses; printing and copying; consulting fees; legal or accounting fees; cost of money; taxes; insurance premiums and deductibles; bond costs; purchase or rental of equipment; utilities; travel; per diem; fines or penalties; and damage awards.

7.4 If the scope of the Pre-Construction Phase Services is changed materially, the Pre-Construction Phase Fee shall be equitably adjusted. If the CCL is changed materially before acceptance of the GMP Proposal, the Pre-Construction Phase Fee shall be adjusted in proportion to the change in the CCL. There shall be no adjustments in the Pre-Construction Phase Fee following acceptance of the GMP Proposal.

7.5 For Additional Pre-Construction Phase Services that are approved in advance and in writing by the Owner, Construction Manager shall be entitled to additional compensation computed as:

7.5.1 A pre-established lump sum amount; or

7.5.2 The hourly cost of Construction Manager's employee's or consultants who actually perform the Additional Services based on the employee's Worker Wage Rate or prorated Monthly Salary Rate plus the actual cost of allowable expenses incurred in the performance of the Additional Services plus an overhead and profit markup of ten percent (10%) of the total cost; or

7.5.3 As otherwise agreed to by the parties in advance of performing the Additional Pre-Construction Phase Services.

ARTICLE 8 **GUARANTEED MAXIMUM PRICE PROPOSAL**

8.1 Within 30 days of selection by the Owner, the Construction Manager shall prepare and submit a preliminary Guaranteed Maximum Price ("GMP") Proposal to Owner. Prior to construction commencement, the Construction Manager shall submit the final GMP for Owner's approval. The GMP shall include a detailed summary of costs, arranged by CSI category, line items for project supervision, contingency, allowances, insurance and all fees. The GMP Proposal must be prepared in accordance with the guidelines and delivered in the format specified by Owner in the attached exhibits. Owner, at its sole option and discretion, may specify different requirements for the GMP Proposal. Construction Manager shall not withdraw its Guaranteed Maximum Price Proposal for ninety (90) days following submission to the Owner.

8.2 In developing the GMP Proposal, the Construction Manager shall coordinate efforts with the Project Architect to identify qualifications, clarifications, assumptions, exclusions, value engineering, constructability savings and any other factors relevant to establishment of a GMP. The Construction Manager shall review development of the GMP Proposal with the Owner on an ongoing basis to address clarifications of scope and pricing, distribution of contingencies, schedule, assumptions, exclusions, and other matters relevant to the establishment of a GMP.

8.3 The GMP Proposal must include a written description of how it was derived that specifically identifies the clarifications and assumptions made by the Construction Manager in

the GMP and the monetary amounts attributable to them. The GMP Proposal shall include, without limitation, a breakdown of Construction Manager's estimated General Conditions Costs and estimated Costs of the Work organized by trade; contingency amounts; the Construction Phase Fee; and the proposed Contract Time, including dates for Notice to Proceed with Construction, Substantial Completion and Final Completion.

8.4 The Guaranteed Maximum Price Proposal shall allow for reasonably expected changes and refinements in the Drawings and Specifications through completion of the Construction Documents, except for material changes in scope.

8.5 The GMP Proposal may include a Construction Manager's Contingency amount as allowed under Cost of the Work.

8.6 Included with its GMP Proposal, Construction Manager shall provide two complete, bound sets of the drawings, specifications, plans, sketches, instructions, requirements, materials, equipment specifications and other information or documents that fully describe the Project as developed at the time of the GMP Proposal and that are relevant to the establishment of the GMP. The bound supporting documents shall be referenced in and incorporated into the GMP Proposal.

8.7 The GMP Proposal and all supporting documents shall identify and describe all items, assumptions, costs, contingencies, schedules and other matters necessary and relevant for proper execution and completion of the Work and for establishment of the Guaranteed Maximum Price. The GMP Proposal and the supporting documents are complementary and, in the event of an irreconcilable conflict between or among them, the interpretation that provides for the higher quality of material and/or workmanship shall prevail over all other interpretations.

8.8 In submitting the GMP Proposal, the Construction Manager represents that it will provide every item, system or element of Work that is identified, shown or specified in the GMP Proposal or the supporting documents, along with all necessary or ancillary materials and equipment for their complete operating installation, unless specifically accepted by the Owner. Upon Owner's acceptance of the GMP Proposal, the Construction Manager shall not be entitled to any increase in the Guaranteed Maximum Price due to the continued refinement of the Construction Documents or the absence or addition of any detail or specification that may be required in order to complete the construction of the Project as described in and reasonably inferable from the GMP Proposal or the supporting documents used to establish the GMP.

8.9 The GMP Proposal shall adopt and incorporate all of the terms and conditions of this Agreement and all attachments to this Agreement. Any proposed deviation from the terms and conditions of this Agreement must be clearly and conspicuously identified to the Owner in writing and specifically accepted by the Owner. In the event of a conflict between any term of the GMP Proposal that was not clearly and conspicuously identified and approved by the Owner and the terms of this Agreement and its attachments, the terms of the Agreement and its attachments shall control.

8.10 Owner may accept or reject the Guaranteed Maximum Price Proposal or attempt to negotiate its terms with Construction Manager. Upon acceptance by the Owner of the GMP Proposal in writing, both parties shall execute the GMP Proposal and the terms of the GMP Proposal, including the Guaranteed Maximum Price and the supporting documents, shall become part of the Contract between the Owner and the Construction Manager. If the Owner rejects the GMP Proposal or the parties are unable or unwilling to agree on a GMP, the Owner may terminate this Agreement.

8.11 Following Owner acceptance of the GMP Proposal, Construction Manager shall continue to monitor the development of the Construction Documents so that, when complete, the Construction Documents adequately incorporate and resolve all qualifications, assumptions, clarifications, exclusions, constructability savings and value engineering issues identified in the GMP Proposal. During the Construction Documents stage, the Construction Manager and the Project Architect shall jointly deliver a monthly status report to the Owner describing the progress on the incorporation of all qualifications, assumptions, clarifications, exclusions, value engineering issues and all other matters relevant to the establishment of the GMP into the Construction Documents.

8.12 The Construction Manager shall document the actual Cost of the Work at buyout as compared to the Guaranteed Maximum Price proposal and shall report this information to the Owner monthly and with Construction Manager's recommendation for selection of a bid/proposal for each subcontracting package.

ARTICLE 9 CONSTRUCTION PHASE SERVICES

The Construction Phase shall be deemed to commence upon the date specified in a Notice to Proceed with Construction issued by Owner after approval of the Guaranteed Maximum Price Proposal and shall continue until Final Completion of all Work. Pre-Construction Phase Services may overlap Construction Phase Services. Construction Manager shall not incur any Subcontractor costs for construction of the Work prior to issuance by Owner of written authorization to commence such Work. The Construction Manager shall perform the following Construction Phase Services:

9.1 Construct the Work in strict accordance with the Construction Documents and Owner's Specifications within the time required by the Project Schedule (sometimes referred to herein as the "Schedule"), as approved by Owner.

9.2 Organize and maintain a competent, full-time staff at the Project site with clearly defined lines of authority and communication as necessary to coordinate construction activities, monitor and direct progress of the Work, and further the goals of the Project Team.

9.3 Designate, in writing, a representative who is responsible for the day-to-day management of the Construction Phase Services. The designated representative shall be the Owner's primary contact during the Construction Phase and shall be available as required for the benefit of the Project and the Owner. The designated representative shall be authorized to act on behalf of and bind the Construction Manager in all matters related to Construction Phase Services including, but not limited to, execution of Change Orders and Applications for Payment.

9.4 Attend Owner's regularly scheduled Project progress meetings and fully advise the Project Team of the Project status including schedule, costs, quality and changes. Furthermore, the Construction Manager shall appear, upon Owner's request, at sessions of the Williamson County Commissioners Court and provide the members of such court with responses in relation to matters of interest relating to the Project.

9.5 In addition to attending Owner's regularly scheduled Project progress meetings, Construction Manager shall schedule, direct and attend interim progress meetings with other

members of the Project Team as required to maintain Project progress. Construction Manager shall record and distribute the minutes of each meeting to each Project Team member. The minutes shall identify critical activities that require action and the dates by which each activity must be completed.

9.6 Coordinate delivery and installation of Owner-procured material and equipment.

9.7 Provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation, and all other facilities and services necessary for the proper execution and completion of the Work in strict accordance with the requirements of the Construction Documents.

9.8 Assist in obtaining building permits and obtain special permits for permanent improvements as required by law or the Construction Documents. Assist Owner or Project Architect in obtaining all approvals required from authorities having jurisdiction over the Project.

9.9 Coordinate, monitor and inspect the work of Subcontractors to ensure conformance with the Construction Documents.

9.10 Be responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work. The Construction Manager shall keep the Owner informed of the progress and quality of the Work.

9.11 Construction Manager shall promptly correct any defective Work at Construction Manager's sole expense, unless the Owner specifically agrees to accept the Work.

9.12 Warrant that the materials and equipment provided for the Project will be of good quality and new unless otherwise required or permitted by the Construction Documents; that the construction will be free from faults and defects; and that the construction will conform to the requirements of the Construction Documents. The Construction Manager shall be responsible for correcting Work that does not comply with the Construction Documents at its sole expense without cost to the Owner.

9.13 Regarding Record Documents and the Owner's Project Closeout Specification, the Construction Manager shall maintain and deliver the required documents that describe changes or deviations from the Construction Documents that occurred during construction and that reflect the actual "As Built" conditions of the completed Work.

ARTICLE 10 COMMISSIONING & WARRANTY RESPONSIBILITIES

10.1 Construction Manager shall provide commissioning, starting and check-out services for the systems installed in the Project prior to completion and acceptance. Operation manuals and instructions will be provided to the Owner, the systems will be demonstrated and training provided to Williamson County's operators upon completion and prior to acceptance.

10.2 Construction Manager shall provide warranty services for the work for a full eighteen months (thirty months for work in the mechanical subcontract) following Final Completion. Just before the warranty period expires, Construction Manager shall attend an on-site meeting with the Owner and Project Manager to ensure that all warranty issues have been identified and properly remedied.

10.3 Construction Manager shall provide a written warranty period service plan that includes monthly site visits by an individual capable of making minor repairs and coordinating subcontractor warranty work.

ARTICLE 11 OWNER'S RESPONSIBILITIES

11.1 The Owner will designate a Project Architect for the Project.

11.2 The Owner will provide the Preliminary Project Cost (PPC) and general schedule for the Project. The PPC will include the Construction Cost Limitation, contingencies for changes in the Work during construction, and other costs that are the responsibility of the Owner. The general schedule will set forth the Owner's plan for milestone dates and completion of the Project.

11.3 The Owner will identify a person as its Project Manager (PM) who is authorized to act in the Owner's behalf with respect to the Project. The Project Manager shall also be referred to as the Owner's Designated Representative (ODR) and/or Resident Construction Manager (RCM). The Project Manager shall examine the documents submitted by the Construction Manager and shall render decisions on behalf of the Owner to the extent allowed by Texas law.

11.4 The Project Manager shall be authorized to administer this Agreement on behalf of the Owner, including final determination of fees and costs earned by the Construction Manager and equitable back-charges against the Construction Manager.

11.5 The Owner, at Owner's cost, will secure the services of surveyors, soils engineers, existing facility surveys, testing and balancing, environmental surveys or other special consultants to develop such additional information as may be necessary for the design or construction of the Project.

11.6 The Owner shall arrange and pay for materials, structural, mechanical, chemical and other laboratory tests as required by the Construction Documents.

11.7 The Owner shall furnish required information and services and shall render approvals and decisions as expeditiously as is consistent with reasonable skill and care and the orderly progress of the Construction Manager's services and of the Work.

11.8 The Owner may designate one or more construction inspectors who shall be given access to the Work as requested or needed. The provision of inspection services by Owner shall not reduce or lessen Construction Manager's responsibility for the Work. Construction Manager is fully and solely responsible for constructing the Project in strict accordance with the Construction Documents.

11.9 Owner shall have the right to reject any defective Work on the Project. Should Construction Manager refuse or neglect to correct any such Work within a reasonable time after notice, Owner may have the Work corrected and recover all expenses incurred from Construction Manager on demand.

11.10 Owner shall furnish to the Construction Manager the number of Construction Document sets as required by this Agreement.

ARTICLE 12 OWNERSHIP AND USE OF DOCUMENTS

12.1 Drawings, specifications and other documents prepared by the Project Architect, its consultants, or other consultants retained by the Owner for the Project that describe the Work to be executed by the Construction Manager (the "Construction Documents") are instruments of service and shall remain the property of the Owner whether the Project for which they are made is executed or not. The Construction Manager and its Subcontractors are authorized to reproduce and use portions of the Construction Documents as necessary and appropriate for the execution of the Work. The Construction Manager and its Subcontractors shall not use the Construction Documents on any other projects.

12.2 Submission or distribution of the Construction Documents to meet official regulatory requirements or for other purposes in connection with the Project is authorized.

ARTICLE 13 TIME

13.1 TIME LIMITS STATED IN THE CONTRACT DOCUMENTS ARE OF THE ESSENCE OF THIS AGREEMENT.

13.2 Unless otherwise approved, the Owner and the Construction Manager shall perform their respective obligations under the Agreement as expeditiously as is consistent with reasonable skill and care and the orderly progress of the Work.

13.3 Prior to commencement of the Construction Phase Services and concurrently with submission of the Guaranteed Maximum Price Proposal, the Construction Manager shall submit an up-to-date CPM Schedule for the performance of Construction Phase Services as specified. The CPM Schedule shall include reasonable periods of time for the Owner's and Project Architect's review and approval of shop drawings and submissions and for the approval of other authorities having jurisdiction over the Project.

ARTICLE 14 PAYMENTS

14.1 General Requirements

14.1.1 Each schedule of values submitted with an Application for Payment shall include the originally established value for each work classification line item or subcontract and shall identify any revisions to the costs or cost estimates for each work classification or subcontract. The format and tracking method of the original schedule of values and of all updates shall be subject to approval by the Owner. At all times, the estimated cost of performing the uncompleted and unpaid portion of the Work, including Construction Manager's overhead and profit, shall not exceed the unpaid balance of the Guaranteed Maximum Price, less retainage on Work previously completed.

14.1.2 Expenses of transportation and overnight living expenses in connection with Owner approved out-of-state travel shall be identified separately in each Application for Payment. All travel must be approved in writing and in advance by Owner to be eligible for payment. Expenses specifically excluded from reimbursement include telephone charges, FAX services, alcoholic beverages, tips, laundry service, valet service, entertainment expenses, and any other non-project related items.

14.1.3 Retainage will be withheld from the entire amount approved in an Application for Payment including the Cost of the Work, General Conditions, and the Construction Manager's Construction Phase Fee. Retainage will not be withheld from payments for Pre-Construction Phase Services.

14.1.4 This Agreement is subject to the assessment of liquidated damages against Construction Manager. Amounts assessed as liquidated damages, and other amounts to which Owner is entitled by way of setoff or recovery, may be deducted from any moneys due Construction Manager.

14.1.5 Owner shall have the right to withhold from payments due Construction Manager such sums as are necessary to protect Owner against any loss or damage which may result from negligence by Construction Manager or any Subcontractor or failure of Construction Manager or any Subcontractor to perform their obligations under this Agreement.

14.1.6 Notwithstanding any other contractual provision to the contrary, Owner shall not be obligated to make any payment to Construction Manager under any of the following circumstances:

14.1.6.1 Construction Manager persistently fails to perform the Work in accordance with the Contract Documents or is otherwise in material breach or default under this Agreement;

14.1.6.2 The payment request includes services that are not performed in accordance with the Construction Documents; provided, however, Owner shall pay for those services performed in accordance with the Construction Documents;

14.1.6.3 The payment request has insufficient documentation to support the amount of payment requested for Project costs; provided, however, Owner shall pay for allowable Project costs for which there is sufficient documentation;

14.1.6.4 Construction Manager has failed to make payments promptly to Subcontractors or other third parties used in connection with any services or materials for which Owner has made payment to Construction Manager;

14.1.6.5 If Owner, in its good faith judgment, determines that the unpaid balance of the GMP is not sufficient to complete the Work in accordance with the Construction Documents;

14.1.6.6 Construction Manager has persistently failed to complete the Work in accordance with the CPM Schedule requirements or if Owner, in its good faith judgment, determines that the remaining Work will not be completed within the contract time;

14.1.6.7 Construction Manager is insolvent, makes a general assignment for the benefit of its creditors or otherwise seeks protection under the laws and regulations of the bankruptcy courts; or

14.1.6.8 Construction Manager fails to obtain, maintain or renew insurance coverage as required by the Agreement.

14.1.7 No partial payment made by the Owner shall constitute, or be construed to constitute, final acceptance or approval of the work to which the partial payment relates or of the documentation provided in support of the partial payment. No partial payment made by the Owner shall constitute, or be construed to constitute, a release of Construction Manager from any of its obligations or liabilities with respect to the Work.

14.1.8 Owner shall have the right to verify and audit the details of Construction Manager's billings, certificates, accountings, cost data, and statements, either before or after payment, by (1) inspecting the books and records of Construction Manager during normal business hours; (2) examining any reports with respect to this Project; (3) interviewing Construction Manager's employees; (4) visiting the Project site; and (5) any other reasonable action. Construction Manager's records shall be kept on the basis of generally accepted accounting principles and organized by each Application for Payment period.

14.2 Pre-Construction Phase Payments

14.2.1 Payments for Pre-Construction Phase Services shall be made monthly based on the percentage completion of the Construction Manager's required services for each stage of development of the Construction Documents and the procurement of Subcontractor bids/proposals in accordance with the following schedule:

Schematic Design Stage	15%
Design Development Stage	20%
GMP Development Stage	20%
Construction Documents Stage	40%
Subcontractor Bid/Proposal Stage	5%

14.2.2 All payment requests for Pre-Construction Phase Services shall be submitted on an Application for Payment and Schedule of Values approved by the Owner and includes all required attachments identifying payments to all Subcontractors.

14.3 Construction Phase Payments

14.3.1 Payment requests for Construction Phase Services shall be submitted on an Application for Payment with a schedule of values approved by the Owner and include all required attachments identifying payments to all Subcontractors. Payment for approved Change Orders shall be made as part of the Construction Manager's Application for Payment.

14.3.2 The Construction Manager's Construction Phase Fee shall be shown as a separate line item on the Schedule of Values. Payment of the Construction Manager's Construction Phase Fee shall be made with each Application for Payment in the same proportion as the percentage completion of the Cost of the Work of the Project.

14.3.3 For General Conditions Costs, Construction Manager's Application for Payment shall include complete copies of all receipts, invoices with check

vouchers or other evidence of payment, payrolls, and any and all other evidence which Owner or its designated representatives shall deem necessary to support the amount requested. This information is subject to audit and payment for these costs is dependent on Owner's receipt of accurate and complete records of all transactions. Owner may reduce the amount requested for General Conditions Costs in any Application for Payment if the Owner, in its good faith judgment, determines that the unpaid balance of the General Conditions line item in the schedule of values is not sufficient to fund necessary General Conditions Costs for the remainder of the Project.

14.3.4 Pay requests for Subcontractor work included in an Application for Payment shall not exceed the percentage of Work allocated to that Subcontractor for each respective schedule of values work classification which has been actually completed and shall not exceed the total value of the subcontract amount.

14.3.5 Construction Manager's Request for Final Payment shall not be made until all Work is completed and all requirements of the Contract Documents have been satisfied including, without limitation: delivery to Owner of a complete release of all liens and claims arising out of the Work; written consent of surety to release of final payment; and a sworn affidavit that, to the best of Construction Manager information, knowledge and belief, the release includes and covers all materials and services over which Construction Manager has control and for which a lien could be filed and that all known debts and claims arising from the Project have been satisfied. Alternatively, Construction Manager may, at its sole expense, furnish a bond satisfactory to Owner to indemnify Owner against any lien or claim arising out of the Work. If any lien or claim is asserted against Owner after all payments are made, Construction Manager shall reimburse Owner for all damages and costs Owner may incur in discharging such lien, including all costs or court and reasonable attorneys' fees, and Owner shall retain all other remedies available to it at law and in equity.

14.3.6 Owner shall have no obligation to make Final Payment until a complete and final accounting of the Direct Construction Cost has been submitted by Construction Manager and has been audited and verified by Owner or Owner's representatives.

14.3.7 Nothing contained herein shall require the Owner to pay the Construction Manager an aggregate amount for Construction Phase Services that exceeds the Guaranteed Maximum Price or to make any payment if, in the Owner's belief, the cost to complete the Work would exceed the Guaranteed Maximum Price less previous payments to Construction Manager. The total amount of all Construction Phase payments to the Construction Manager shall not exceed the actual verified Direct Construction Cost for the Project plus the Construction Manager's Construction Phase Fee.

14.3.8 THE ACCEPTANCE BY CONSTRUCTION MANAGER OR CONSTRUCTION MANAGER'S SUCCESSORS OF FINAL PAYMENT UNDER THIS AGREEMENT, SHALL CONSTITUTE A FULL AND COMPLETE RELEASE OF OWNER FROM ANY AND ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION WHATSOEVER THAT CONSTRUCTION MANAGER, ITS SUBCONTRACTORS, SUPPLIERS AND CONSULTANTS OR ANY OF THEIR SUCCESSORS OR

ASSIGNS HAVE OR MAY HAVE AGAINST OWNER ARISING FROM THE PROJECT OR ANY PROVISION(S) OF THIS AGREEMENT EXCEPT FOR THOSE PREVIOUSLY MADE IN WRITING AND IDENTIFIED BY CONSTRUCTION MANAGER AS UNSETTLED AT THE TIME OF THE REQUEST FOR FINAL PAYMENT.

ARTICLE 15 DIRECT CONSTRUCTION COST

Direct Construction Cost means the sum of the amounts that the Construction Manager actually and necessarily incurs constructing the Work in strict compliance with the Construction Documents. Direct Construction Cost includes only the cost categories set forth in this Article and does not include the Pre-Construction Phase Fees or the Construction Phase Fees unless specifically noted.

15.1 General Conditions Costs

Construction Manager is entitled to receive payment for the actual cost of the allowable General Conditions items incurred after receipt of a Notice to Proceed with Construction from the Owner through Substantial Completion of the Project. Construction Manager is not entitled to reimbursement for General Conditions Costs incurred before receipt of the Notice to Proceed with Construction. General Conditions Costs incurred after Substantial Completion must be approved in advance by the Owner.

Allowable General Conditions items are identified below and by attached exhibit. These items shall be included in the General Conditions cost amount shown as a line item in the Guaranteed Maximum Price Proposal and as detailed on the schedule of values. Items not specifically included below or in the exhibit will not be allowed as a General Condition costs.

15.1.1 Personnel Costs. The actual Worker Wage Rate for Construction Manager's hourly employees and the Monthly Salary Rate of Construction Manager's salaried personnel who are identified to the Owner in advance and in writing but only for the time actually stationed at the Project site with the Owner's prior consent. The Monthly Salary Rate of the Construction Manager's Project Manager may be included in the General Conditions Costs only when the Construction Manager's Project Manager is directly managing the Project. All personnel costs are subject to audit to determine the actual cost of the wages, salaries and allowable employer contributions incurred by the Construction Manager for services performed for the Project.

15.1.2 Costs of long-distance telephone calls, telegrams, postage, package delivery and courier service, hardwired telephone service, and reasonable expenses of Construction Manager's jobsite office if incurred at the Project site and directly and solely in support of the Work.

15.1.3 Costs of materials, supplies, temporary facilities, equipment, and hand tools (except those customarily owned by construction workers), supplied to the Project site by Construction Manager, if such items are fully consumed in the construction of the Work and are included in the list of allowable General Condition Line Items. Cost for used items shall be based on fair market value and may include transportation, installation, and minor maintenance costs, and removal costs. If an item is not fully consumed in the construction of the Work, its cost shall be based on actual cost of the item less its fair market salvage value.

15.1.4 Rental charges for temporary facilities, equipment, and hand tools (except those customarily owned by construction workers), supplied to the Project site by Construction Manager, provided they are included in the list of allowable General Condition Line Items and Owner has approved the rentals and the rental rates in advance and in writing. Rental rates may include transportation, installation, and minor maintenance costs, and removal costs. For tools, machinery or construction equipment rented directly from the Construction Manager, the rental rate, including freight and delivery costs and all operating expenses except labor, shall be approved in advance by the Owner and shall be in accordance with the "Rental Rate Blue Book for Construction Mobilization Costs" published by Primedia, latest edition, but no higher than the prevailing competitive rates for rental of similar equipment in the Project vicinity.

15.1.5 The aggregate rental cost of any item charged to Owner shall not exceed ninety percent (90%) of the purchase price and maintenance cost of the item. If the anticipated aggregate rental cost for an item of equipment exceeds ninety percent (90%) of the purchase and maintenance price, Construction Manager shall purchase the equipment and turn it over to Owner upon final completion of the Work or, at Owner's option, credit the Owner with the fair market resale value of the item.

15.1.6 Permit and inspection fees that are not subject to exemption.

15.1.7 Premiums for insurance and bonds to the extent directly attributable to this Project.

15.1.8 Governmental sales and use taxes directly attributable to the General Conditions Items.

15.2 Cost of the Work

Construction Manager is entitled to receive payment for the actual cost of the allowable Cost of the Work items incurred after receipt of Owner's written authorization to commence the Construction Phase Work through Final Completion of the Project. Construction Manager is not entitled to reimbursement for Cost of the Work incurred before receipt of Owner's written authorization. "Cost of the Work" includes the following:

15.2.1 Costs of materials and equipment purchased directly by the Construction Manager and incorporated into or consumed in the performance of the Work, including transportation charges, and a reasonable and customary allowance for waste and spoilage. Payment for stored materials is subject to prior approval of the Owner for such storage and payment.

15.2.2 Costs of site debris removal and disposal in accordance with all applicable laws and regulations if not otherwise included in General Conditions.

15.2.3 Payments made to Subcontractors and their vendors or suppliers by Construction Manager for the subcontract work in accordance with the Construction Documents and the requirements of the subcontracts with the Subcontractors, vendors or suppliers.

15.2.4 Payments earned by Construction Manager for self-performed subcontract work, other than General Conditions work, in accordance with the Construction Documents and the terms of this Agreement and approved by the Owner.

15.2.5 Testing fees incurred by the Construction Manager and approved by the Owner.

15.2.6 Intellectual property royalties and licenses for items specifically required by the Construction Documents which are, or will be, incorporated into the Work.

15.3 Construction Manager's Contingency

15.3.1 The Guaranteed Maximum Price Proposal may include a Construction Manager's Contingency amount to be used to fund increases in the Direct Construction Cost of the Project identified through the refinement, development and completion of the Construction Documents or procurement of the Work.

15.3.2 Any re-allocation of funds from the Construction Manager's Contingency to cover increases in the Direct Construction Cost must be approved by the Owner in advance and in writing. In written requests to use the Construction Manager's Contingency, the Construction Manager shall provide detailed documentation of the scope of work affected and the bases for any increases in costs.

15.3.3 The Construction Manager's Contingency is specifically not to be used for Construction Manager rework, unforeseen conditions, cost increases caused by lack of coordination or communication with the Project Architect or trade Subcontractors, or to correct errors or omissions in the Construction Documents.

15.3.4 As the Construction Documents are finalized and the Buyout of the Work progresses, the Construction Manager's Contingency amount shall be reduced by mutual agreement of Owner and Construction Manager. Any balance in the Construction Manager's Contingency fund remaining at the end of the Project shall be returned to the Owner as savings.

ARTICLE 16 CONSTRUCTION PHASE FEE

The Construction Manager's Construction Phase Fee is the maximum amount payable to the Construction Manager for any cost or profit expectation incurred in the performance of the Work that is not specifically identified as being eligible for reimbursement by the Owner elsewhere in the Agreement. References to Construction Manager's "overhead" and "profit" mean the Construction Manager's Construction Phase Fee. The Construction Phase Fee includes, but is not limited to, the following items.

16.1 All profit, profit expectations and costs associated with profit sharing plans such as personnel bonuses, incentives, and rewards; company stock options; or any other like expenses of the Construction Manager.

16.2 Salaries of Construction Manager's officers, project manager(s), estimators, schedulers and all other employees not stationed at the Project site and performing services directly related to the Project.

16.3 Any and all overhead, labor or general expenses of any kind unless specifically allowed under General Conditions. These costs include, but are limited to: costs for the purchase, lease, rental of or allowance for vehicles and their maintenance, radios/communication equipment, jobsite computers and other business equipment, and specialized telephone systems, including cellular/digital phones; trade or professional association dues; cost for relocation of any of the Construction Manager's personnel; and travel, per diem and subsistence expense of Construction Manager, its officers or employees except as specifically allowed under General Conditions.

16.4 Any financial costs incurred by the Construction Manager including the cost of capital or interest on capital, regardless of whether it is related to the Project, and costs associated with construction warranty reserves.

16.5 Any legal, accounting, professional or other similar costs incurred by the Construction Manager, including costs incurred in connection with the prosecution or defense any dispute, mediation, arbitration, litigation or other such proceeding related to or arising from the Project.

16.6 Any Federal and/or State income and franchise taxes paid by Construction Manager. Any fines, penalties, sanctions or other levies assessed by any governmental body against Construction Manager.

16.7 Any cost arising out of a breach of any of the terms and conditions of the Contract Documents or the fault, failure or negligence of Construction Manager, its Subcontractors, or any person or entity for whom they may be liable. These costs include, without limitation: costs to remedy defective, rejected, or nonconforming work, materials or equipment including costs for retesting to verify compliance with specifications; costs due to failure to coordinate the Work or meet CPM Schedule milestones; costs arising from Construction Manager's contractual indemnification obligations; liquidated or actual damages imposed by Owner for failure to complete the Work within the Contract Time; costs due to the bankruptcy or insolvency of any Subcontractor; and damage or losses to persons or property.

16.8 The cost of any and all insurance deductibles payable by the Construction Manager and costs due to the failure of Construction Manager or any Subcontractor to procure and maintain insurance as and to the extent required by the Contract Documents.

16.9 Any and all costs that would cause the Guaranteed Maximum Price, minus the amounts allocated in the GMP for Owner's Contingency and Owner's Special Cash Allowance, to be exceeded.

16.10 Any and all costs not specifically identified as an element of the Direct Construction Cost.

ARTICLE 17 CONTRACT SAVINGS, ALLOWANCES, REBATES & REFUNDS

17.1 If the allowable, final, verified, audited amount of the cost of General Conditions, Cost of the Work, Allowance items and Construction Manager's Contingency is less than the amount established for each of those categories in the originally approved Guaranteed Maximum Price Proposal, the entire difference shall be credited to the Owner as savings and the final contract amount shall be adjusted accordingly. When buyout of the Project is at least 85% complete, the

Owner may recognize any savings achieved to that point by issuing a deductive change order for the saved amount.

17.2 Items to be provided for through Owner's Special Cash Allowances shall be clearly identified in the Construction Documents and the Guaranteed Maximum Price Proposal. The Cost of the Work included in the Allowances shall be determined in accordance with the Uniform General Conditions. Any claim by the Construction Manager for an adjustment to an Allowance amount included in the Guaranteed Maximum Price based on the cost of Allowance work shall be made within a reasonable time after the issuance of the Construction Documents for the Allowance items. The Construction Manager shall not be entitled to any increase in its Construction Phase Fee for increases to Allowance amounts that were initially based on estimates provided by the Construction Manager. Owner shall be entitled to retain 100% of the balance of any unused Allowance amount.

17.3 The Owner shall be entitled to deduct amounts for the following items from any Application for Payment or from the Request for Final Payment submitted by the Construction Manager:

17.3.1 The fair market value of all tools, surplus materials, construction equipment, and temporary structures that were charged to the Work (other than rental items) but were not consumed during construction or retained by the Owner. Upon completion of the Work or when no longer required, Construction Manager shall either credit the Owner for the fair market value (as approved by the Owner) for all surplus tools, construction equipment and materials retained by the Construction Manager or, at Owner's option, use commercially reasonable efforts to sell the surplus tools, construction equipment and materials for the highest available price and credit the proceeds to the Owner's account.

17.3.2 Discounts earned by the Construction Manager through advance or prompt payments funded by the Owner. The Construction Manager shall obtain all possible trade and time discounts on bills for material furnished, and shall pay bills within the highest discount periods. The Construction Manager shall purchase materials for the Project in quantities that provide the most advantageous prices to the Owner.

17.3.3 Rebates, discounts, or commissions obtained by the Construction Manager from material suppliers or Subcontractors, together with all other refunds, returns, or credits received for materials, bond premiums, insurance and sales taxes.

17.3.4 Deposits made by Owner and forfeited due to the fault of the Construction Manager.

17.3.5 Balances remaining on any Allowances, the Construction Manager's Contingency, or any other identified contract savings.

17.4 Owner shall be entitled to recover any savings realized between the Guaranteed Maximum Price and the buyout price for subcontracting work, provided however, that Construction Manager may use such savings to offset other buyout packages that exceed the amounts identified in the initial Guaranteed Maximum Price, so long as the total Cost of Work proposed in the Guaranteed Maximum Price does not increase.

17.5 Owner shall be entitled to recognize and recover 100% of any savings identified by cost review or audit at any time, before or after Final Payment.

ARTICLE 18 PRE-EXISTING CONDITIONS & DESIGN ERRORS AND OMISSIONS

18.1 The Construction Manager acknowledges that it has been provided unrestricted access to the existing improvements and conditions on the Project site and that it has thoroughly investigated those conditions. Construction Manager's investigation was instrumental in preparing its Guaranteed Maximum Price Proposal for the Work. Construction Manager shall not make or be entitled to any claim for any adjustment to the Contract Time or the Contract Sum for Pre-Construction Phase Services or for Construction Phase Services arising from Project conditions that Construction Manager discovered or, in the exercise of reasonable care, should have discovered in Construction Manager's investigation.

18.2 The Construction Manager acknowledges that as part of its Pre-Construction Phase Services it shall participate in the review and revision of the Construction Documents. Construction Manager's participation in this review process will be instrumental in preparing its Guaranteed Maximum Price Proposal for the Work. Before submitting its Guaranteed Maximum Price Proposal, the Construction Manager shall review the drawings, specifications and other Construction Documents and notify the Owner of any errors, omissions or discrepancies in the documents of which it is aware. Construction Manager shall not make or be entitled to any claim for any adjustment to the Contract Time or the Contract Sum for errors or omissions in the Construction Documents that Construction Manager discovered or, in the exercise of reasonable care, should have discovered in Construction Manager's Pre-Construction Phase design review process that Construction Manager did not bring to the attention of the Owner and the Project Architect in a timely manner.

ARTICLE 19 BONDS AND INSURANCE

19.1 Upon execution of this Agreement, Construction Manager shall provide a security bond in the amount of 5% of the Construction Cost Limitation. The surety for a security bond shall meet the same requirements as set forth for payment and performance bonds.

19.2 Upon acceptance by the Owner of a Guaranteed Maximum Price Proposal, Construction Manager shall provide performance and payment bonds on forms acceptable to the Owner. The penal sum of the payment and performance bonds shall be equal to the Guaranteed Maximum Price. If construction is phased or staged with different Guaranteed Maximum Prices established at different times, the penal sum of the bonds shall be increased at the start of each stage or phase based on the cumulative total value of all Guaranteed Maximum Prices in effect.

19.3 The Construction Manager shall not commence work under the Agreement until it has obtained all required insurance and until evidence of the required insurance has been reviewed and approved by the Owner. Owner's review of the insurance shall not relieve nor decrease the liability of the Construction Manager. Prior to commencing any work under this Agreement, Construction Manager shall provide evidence of the following insurance coverages:

19.3.1 Pre-Construction Phase: Employer's Liability, Workers' Compensation, Comprehensive General Liability and Comprehensive Automobile Liability in the amounts as set forth in the Request for Proposal.

19.3.2 Construction Phase: In addition to the coverages required during the Pre-Construction Phase, Builder's Risk and Owner's Protective Liability in the amounts as set forth in the Request for Proposal.

19.3.3 Prior to commencing any construction work, Construction Manager shall provide evidence of Builder's Risk coverage as set forth in the Request for Proposal, which coverage shall remain in full force and effect throughout the term of the Project and shall be increased as necessary for each separate bid package, phase, change order, or Stage of construction prior to the commencement of construction for that package, phase, or Stage.

19.3.4 Construction Manager shall include required insurance information in trade packages and indicate on bid/proposal forms the insurance that bidders/proposers are to include in their base bids/proposals.

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

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

19.6 The Owner shall be entitled, upon request, and without expense, to receive complete copies of the policies with all endorsements and may make any reasonable requests for deletion, or revision or modification of particular policy terms, conditions, limitations, or exclusions, except where policy provisions are established by law or regulation binding upon the Parties or the underwriter of any of such policies. Damages caused by the Construction Manager and not covered by insurance shall be paid by the Construction Manager.

19.7 The cost of premiums for any additional insurance coverage desired by the Construction Manager in excess of that required by this Agreement or the Contract Documents shall be borne solely by the Construction Manager out of its fees and not included in the GMP Proposal as a Direct Construction Cost.

ARTICLE 20 PROJECT TERMINATION AND SUSPENSION

20.1 These project termination and suspension provisions are in addition to those project termination and suspension provisions as described in the Uniform General Conditions for Construction Manager-at-Risk Contracts for Williamson County, as attached.

20.2 This Agreement may be terminated during the Pre-Construction Phase by either party upon fifteen (15) days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination and breach is not cured or an acceptable plan to cure the breach is not established within the fifteen (15) day period.

20.3 This Agreement may be terminated by the Owner during the Pre-Construction Phase upon at least three days written notice to the Construction Manager in the event that the Project is to be temporarily or permanently abandoned.

20.4 This Agreement may be terminated by the Owner at the GMP Proposal stage upon at least three (3) days written notice to the Construction Manager in the event that the parties are unable or unwilling to agree on a GMP Proposal.

20.5 In the event of termination that is not the fault of the Construction Manager, the Construction Manager shall be entitled to compensation for all services performed to the termination date provided, however, Construction Manager has delivered to Owner such statements, accounts, reports and other materials as required together with all reports, documents and other materials prepared by Construction Manager prior to termination. Upon such payment, Owner shall have no further obligation to the Construction Manager.

20.6 Termination of this Agreement shall not relieve Construction Manager or any of its employees, subcontractors, or consultants of liability for violations of this Agreement or for any act or omission, or negligence, of Construction Manager related to the Project. In the event of a termination, Construction Manager hereby consents to employment by Owner of a substitute Construction Manager to complete the services under this Agreement.

20.7 In the event of termination, Owner shall have the right to use any documents or other materials prepared for the Project and the ideas and designs they contain for the completion of the services described by this Agreement, for completion of the Project, or for any other purpose.

20.8 If the Project is suspended or abandoned in whole or in part for more than ninety (90) consecutive days during the Pre-Construction Phase, the Construction Manager shall be compensated for all services performed prior to receipt of written notice from the Owner of such suspension or abandonment. If the Project is resumed after being suspended for more than ninety (90) consecutive days, the Construction Manager's compensation for Pre-Construction Services shall be equitably adjusted if, in the Owner's reasonable opinion, such adjustment is warranted.

ARTICLE 21 INDEMNITY

21.1 TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE CONSTRUCTION MANAGER AND ITS AGENTS, PARTNERS, EMPLOYEES, AND CONSULTANTS (COLLECTIVELY "INDEMNITORS") SHALL AND DO AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY OWNER, AND HOLD HARMLESS THE OWNER, REPRESENTATIVES OF THE OWNER AND THE COMMISSIONERS COURT OF WILLIAMSON COUNTY, ITS VARIOUS DEPARTMENTS, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS (COLLECTIVELY "INDEMNITEES") FROM AND AGAINST ALL CLAIMS, DAMAGES,

LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, AND EXPENSES, INCLUDING ATTORNEY FEES, OF ANY NATURE, KIND, OR DESCRIPTION (COLLECTIVELY "LIABILITIES") OF ANY PERSON OR ENTITY WHOMSOEVER ARISING OUT OF, CAUSED BY, OR RESULTING FROM THE PERFORMANCE OF THE SERVICES OR ANY PART THEREOF WHICH ARE CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT OR OMISSION OF THE CONSTRUCTION MANAGER, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY IT OR ANYONE FOR WHOSE ACTS IT MAY BE LIABLE, EVEN IF IT IS CAUSED IN PART BY THE NEGLIGENCE OR OMISSION OF ANY INDEMNITEE, SO LONG AS IT IS NOT CAUSED BY THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE. IN THE EVENT MORE THAN ONE OF THE INDEMNITORS ARE CONNECTED WITH AN ACCIDENT OR OCCURRENCE COVERED BY THIS INDEMNIFICATION, THEN EACH OF SUCH INDEMNITORS SHALL BE JOINTLY AND SEVERALLY RESPONSIBLE TO THE INDEMNITEES FOR INDEMNIFICATION AND THE ULTIMATE RESPONSIBILITY AMONG SUCH INDEMNITORS FOR THE LOSS AND EXPENSE OF ANY SUCH INDEMNIFICATION SHALL BE SETTLED BY SEPARATE PROCEEDINGS AND WITHOUT JEOPARDY TO ANY INDEMNITEE. THE PROVISIONS OF THIS ARTICLE SHALL NOT BE CONSTRUED TO ELIMINATE OR REDUCE ANY OTHER INDEMNIFICATION OR RIGHT WHICH OWNER OR ANY OF THE INDEMNITEES HAS BY LAW.

21.2 The indemnities contained herein shall survive the termination of this Agreement for any reason whatsoever.

ARTICLE 22 SPECIAL WARRANTIES

22.1 Notwithstanding anything to the contrary contained in this Agreement, Owner and Construction Manager agree and acknowledge that Owner is entering into this Agreement in reliance on Construction Manager's represented expertise and ability to provide construction management services. Construction Manager agrees to use its best efforts, skill, judgment, and abilities to perform its obligations and to further the interests of Owner in accordance with Owner's requirements and procedures.

22.2 The Construction Manager represents, and agrees that it will perform its services in accordance with the usual and customary standards of Construction Manager's profession or business and in compliance with all applicable national, federal, state, municipal, laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction over the Project. Construction Manager agrees to bear the full cost of correcting Construction Manager's negligent or improper work and services, those of its consultants, and any harm caused by the negligent or improper work or services.

22.3 The Construction Manager's duties shall not be diminished by any approval by Owner nor shall the Construction Manager be released from any liability by any approval by Owner, it being understood that the Owner is ultimately relying upon the Construction Manager's skill and knowledge in performing the services required hereunder.

22.4 The Construction Manager represents and agrees that all persons connected with the Construction Manager directly in charge of its services are duly registered and/or licensed under the laws, rules and regulations of any authority having jurisdiction over the Project if registration is required.

22.5 The Construction Manager represents and agrees to advise Owner of anything of any nature in any drawings, specifications, plans, sketches, instructions, information, requirements, procedures, and other data supplied to the Construction Manager (by the Owner or any other party) that is, in its opinion, unsuitable, improper, or inaccurate for the purposes for which the document or data is furnished.

22.6 The Construction Manager represents and agrees to perform its services under this Agreement in an expeditious and economical manner consistent with good business practices and the interests of Owner.

22.7 Construction Manager represents and agrees that there are no obligations, commitments, or impediments of any kind that will limit or prevent performance of its obligations under this Agreement.

22.8 Construction Manager represents and agrees that the individual executing this Agreement on behalf of Construction Manager has been duly authorized to act for and to bind Construction Manager to its terms.

22.9 Construction Manager warrants, represents, and agrees that if (i) it is a corporation or limited liability company, then it is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas, or a foreign corporation or limited liability company duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary corporate power and has received all necessary corporate approvals to execute and deliver the Agreement, and the individual executing the Agreement on behalf of Construction Manager has been duly authorized to act for and bind Construction Manager; or (ii) if it is a partnership, limited partnership, or limited liability partnership, then it has all necessary partnership power and has secured all necessary approvals to execute and deliver this Agreement and perform all its obligations hereunder; and the individual executing this Agreement on behalf of Construction Manager has been duly authorized to act for and bind Construction Manager.

22.10 Neither the execution and delivery of this Agreement by Construction Manager nor the performance of its obligations hereunder will result in the violation of any provision, if a corporation, of its articles of incorporation or by-laws, if a limited liability company, of its articles of organization or regulations, or if a partnership, by any partnership agreement by which Construction Manager is bound, or any agreement by which Construction Manager is bound or to the best of the Construction Manager's knowledge and belief, will conflict with any order or decree of any court or governmental instrumentality relating to Construction Manager.

22.11 Except for the obligation of Owner to pay Construction Manager certain fees and expenses pursuant to the terms of this Agreement, and to perform certain other obligations pursuant to the terms and conditions explicitly set forth herein, Owner shall have no liability to Construction Manager or to anyone claiming through or under Construction Manager by reason of the execution or performance of this Agreement. Notwithstanding any obligation or liability of Owner to Construction Manager, no present or future partner or affiliate of Owner or any agent, officer, director, or employee of Owner, Williamson County, or of the various departments comprising Williamson County, or anyone claiming under Owner has or shall have any personal liability to construction manager or to anyone claiming through or under Construction Manager by reason of the execution or performance of this Agreement.

ARTICLE 23 CERTIFICATION OF NO ASBESTOS CONTAINING MATERIALS OR WORK

The Construction Manager shall provide at Substantial Completion, a notarized affidavit to the Owner and the Architect stating that no asbestos containing materials or work was provided, installed, furnished or added to the Project.

ARTICLE 24 MISCELLANEOUS PROVISIONS

24.1 Assignment. This Agreement is a personal service contract for the services of Construction Manager, and Construction Manager's interest in this Agreement, duties hereunder and/or fees due hereunder may not be assigned or delegated to a third party.

24.2 Records of expenses pertaining to Additional Services and services performed on the basis of a Worker Wage Rate or Monthly Salary Rate shall be kept on the basis of generally accepted accounting principles and in accordance with cost accounting standards and shall be available for audit by the Owner or the Owner's authorized representative on reasonable notice.

24.3 Entire Agreement; Modifications. This Agreement supersedes all prior agreements, written or oral, between Construction Manager and Owner and shall constitute the entire Agreement and understanding between the parties with respect to the Project. This Agreement and each of its provisions shall be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by Construction Manager and Owner.

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

24.5 Governing Law and Venue. This Agreement and all of the rights and obligations of the parties and all of the terms and conditions shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas without reference to its conflicts of law provisions. Williamson County where the Project is located shall be the sole place of venue for any legal action arising from or related to this Agreement or the Project in which the Owner is a party.

24.6 Waivers. No delay or omission by either party in exercising any right or power arising from non-compliance or failure of performance by the other party with any of the provisions of this Agreement shall impair or constitute a waiver of any such right or power. A waiver by either party of any covenant or condition of this Agreement shall not be construed as a waiver of any subsequent breach of that or of any other covenant or condition of the Agreement.

24.7 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective permitted assigns and successors.

24.8 Appointment. Owner hereby expressly reserves the right from time to time to designate by notice to Construction Manager a representative(s) to act partially or wholly for Owner in connection with the performance of Owner's obligations. Construction Manager shall act only upon instructions from the designated representative(s) unless otherwise specifically notified to the contrary.

24.9 Records. Records of Construction Manager's costs, reimbursable expenses pertaining to the Project and payments shall be available to Owner or its authorized representative during business hours and shall be retained for two (2) years after final Payment or abandonment of the Project, unless Owner otherwise instructs Construction Manager in writing.

24.10 Notices. All notices, consents, approvals, demands, requests or other communications relied on by the parties shall be in writing. Written notice shall be deemed to have been given when delivered in person to the designated representative of the Construction Manager or Owner for whom it is intended; or sent by U. S. Mail to the last known business address of the designated representative; or transmitted by fax machine to the last known business fax number of the designated representative. Mail notices are deemed effective upon receipt or on the third business day after the date of mailing, whichever is sooner. Fax notices are deemed effective the next business day after faxing.

24.11 Severability. Should any term or provision of this Agreement be held invalid or unenforceable in any respect, the remaining terms and provisions shall not be affected and this Agreement shall be construed as if the invalid or unenforceable term or provision had never been included.

24.12 No Waiver of Sovereign Immunity. Nothing herein shall be construed as a waiver of sovereign immunity by Williamson County.

ARTICLE 25 COMPENSATION

25.1 Construction Cost Limitation

The anticipated Construction Cost Limitation for the Project at the time this Agreement was executed is:

Thirteen Million Six Hundred Thirty Three Thousand Dollars (\$13,633,000)

25.2 Pre-Construction Phase Fee

For Pre-Construction Phase Services, Owner shall pay Construction Manager a Pre-Construction Phase Fee in the total stipulated amount of:

Seventeen Thousand Dollars (\$17,000);

25.3 Construction Phase Fee

25.3.1 For Construction Phase Services, Owner shall pay Construction Manager a stipulated Construction Phase Fee equal to Two point Six percent (2.600%) of the Construction Cost Limitation for the Project.

25.3.2 Based on the anticipated CCL established at the time of this Agreement, the Construction Phase Fee would be the total stipulated amount of:

Three Hundred Fifty Four Thousand Four Hundred Sixty Dollars (\$354,460).

25.3.3 If the Owner agrees to an increase in the Guaranteed Maximum Price during the Construction Phase, the Construction Phase Fee shall be equitably adjusted by applying the percentage established in paragraph 25.3.1 to the amount of the increase in the GMP.

25.3.4 The percentage rate established in paragraph 25.3.1 of this Agreement for calculation of the Construction Phase Fee cannot be increased except with the express written approval of the Owner.

25.3.5 If the Owner agrees to any increases in the Construction Cost Limitation during the Construction Phase without increasing the GMP (for example, change orders funded by Owner's Special Cash Allowance or Owner's Construction Contingency), the Construction Manager's fee for these increases shall be calculated accordance with the provisions of the Uniform General Conditions for Change Orders.

25.4 Limitation on General Condition Costs

25.4.1 The maximum allowable amount of General Conditions Costs payable to the Construction Manager during the Construction Phase of the Project shall not exceed Four point Eight Eight One percent (4.881%) of the Construction Cost Limitation for the Project.

25.4.2 Based on the anticipated CCL established at the time of this Agreement, the maximum allowable amount of General Conditions Costs would be the total amount of:

Six Hundred Sixty Five Thousand Four Hundred Twenty Four Dollars (\$665,424).

25.4.3 If the Owner agrees to an increase in the Guaranteed Maximum Price during the Construction Phase the maximum allowable amount of General Conditions Costs shall be equitably adjusted by applying the percentage established in paragraph 25.4.1 to the amount of the increase in the GMP.

25.4.4 The percentage rate established in paragraph 25.4.1 of this Agreement for calculation of the maximum allowable amount of General Conditions Costs cannot be increased except with the express written approval of the Owner.

25.4.5 If the Owner agrees to any increases in the Construction Cost Limitation during the Construction Phase without increasing the GMP (for example, change orders funded by Owner's Special Cash Allowance or Owner's Construction Contingency) the allowable General Conditions Costs for these increases shall be calculated accordance with the provisions of the Uniform General Conditions for Change Orders.

ARTICLE 26 OTHER TERMS AND CONDITIONS

26.1 Time of Completion

26.1.1 *The anticipated date for achieving Substantial Completion of the Project at the time this Agreement was executed is:*

Four Hundred and Five calendar days from Notice to Proceed with Construction.

25.1.2 The Construction Phase shall be deemed to commence on the date specified in a Notice to Proceed with Construction issued by Owner after approval of the Guaranteed Maximum Price Proposal.

25.1.3 The Construction Manager shall achieve Substantial Completion of the Work and Final Completion of the Work on or before the dates agreed to in the Guaranteed Maximum Price Proposal, subject to time extensions granted by Change Order.

25.1.4 THE TIMES SET FORTH FOR COMPLETION OF THE WORK IN THE NOTICE TO PROCEED WITH CONSTRUCTION AND THE GUARANTEED MAXIMUM PRICE PROPOSAL ARE AN ESSENTIAL ELEMENT OF THE AGREEMENT. The Owner may elect, at its option, to stage or "fast-track" portions of the work. The Owner shall issue a separate Notice to Proceed or Change Order for each such stage and each such stage shall have a separate substantial completion date and a separate liquidated damages amount.

26.2 Liquidated Damages

26.2.1 For each consecutive calendar day after the Substantial Completion Date that the Work is not substantially completed, the Owner may deduct the amount of:

One Thousand Dollars per day (\$1,000/day)

from any money due or that becomes due the Construction Manager, not as a penalty but as liquidated damages representing the parties' estimate at the time of contract execution of the damages that the Owner will sustain for late completion.

26.2.2 The parties stipulate and agree that calculating Owner's actual damages for late completion of the Project would be impractical, unduly burdensome, and cause unnecessary delay and that the amount of daily liquidated damages set forth is reasonable.

26.3 Estimated Construction Cost Reports

Construction Manager will prepare an Estimated Construction Cost within 20 calendar days of receipt of Notice to Proceed on Preconstruction Services and at a minimum shall update such estimate immediately prior to obtaining competitive bids/proposals from trade contractors or subcontractors for all major elements of the work.

26.4 Notices

Notices of claims or disputes or other legal notices required by this Agreement shall be sent to the following persons at the indicated locations.

If to Owner:

Williamson County Judge
Dan A. Gattis (or Successor)
710 Main Street, Suite 101
Georgetown, Texas 78626

With Copy to: Williamson County Attorney
Jana Duty (or Successor)
405 M.L.K. Street, Box #7
Georgetown, Texas 78626

If to Construction Manager: Name: J.Thomas Vaughn
Title: CEO
Address: 10355 Westpark Drive
Houston, TX 77042
Phone: 713-243-8300
Fax: 713-243-8350

The parties may make reasonable changes in the person or place designated for receipt of notices upon advance written notice to the other party.

26.5 Party Representatives

26.5.1 The Owner's Designated Representative/Project Manager authorized to act in the Owner's behalf with respect to the Project is:

Gary Wilson
Project Manager
3101 SE Inner Loop
Georgetown, TX 78626

26.5.2 The Construction Manager's Project Manager/Estimator is Doug Boram. The Construction Manager's Project Superintendent is Stuart Baker. The Construction Manager's designated representative authorized to act on the Construction Manager's behalf and bind the Construction Manager with respect to the Project is:

Name: Danny Thompson
Title: Construction Director
Address: 10355 Westpark Drive
Houston, TX 77042
Phone: 713-243-8300
Fax: 713-243-8350

26.5.3 The parties may make reasonable changes in their designated representatives upon advance written notice to the other party and in accordance with Paragraph 4.8.

26.6 Construction Document Sets

The Project Architect shall coordinate the printing, binding and distribution of the initial issuance of all construction documents to all Subcontractor bidders/proposers requesting documents in order to provide bids/proposals to the Construction Manager. A minimum of fifty (50) sets will be furnished at the expense of the Owner. The Construction Manager shall utilize all construction documents returned to the Project Architect from the Subcontractor bidders/proposers.

26.7 Interim Record Drawings and Specifications

As a requirement for acceptance of Substantial Completion, Construction Manager shall reproduce two (2) copies of the current As-Built Drawings and Specifications maintained at the job site and provide these copies to the Owner. These documents shall be labeled "Interim Record Drawings and Specifications", and are required to assist the Owner in the operation of the facility until Final Completion is accomplished and the final As-Built Drawings and Specifications are provided to the Project Architect to prepare the final "Record Drawings" and "Record Specifications".

BY SIGNING BELOW, the Parties have executed and bound themselves to this Agreement as of the day and year first above written.

WILLIAMSON COUNTY, TEXAS

By: 

Printed Name: DAN D. GALT 05-25-2018

Title: Williamson County Judge

ATTEST:

By: _____

Printed Name: _____

Title: _____

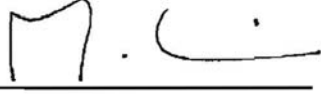
J.T Vaughn Construction, LLC

By: 

Printed Name: J. Thomas Vaughn

Title: CEO

ATTEST:

By: 

Printed Name: Mike Simpson

Title: Corporate Secretary

EXHIBIT A
UNIFORM GENERAL CONDITIONS
FOR
CONSTRUCTION MANAGER-AT-RISK CONTRACTS
FOR WILLIAMSON COUNTY

TABLE OF CONTENTS:

<i>Article I</i>	<i>General Contract Definitions</i>	<i>Page 3</i>
<i>Article II</i>	General Laws Governing Construction	Page 6
Article III	Compliance with and Enforcement of Prevailing Wage Laws	Page 8
Article IV	Drawings and Specifications	Page 10
Article V	Construction Bonds	Page 12
Article VI	Insurance Requirements	Page 14
Article VII	General Responsibilities of Owner and Contractor	Page 20
Article VIII	Additional Contractor Responsibilities when the Owner Awards Separate Contracts	Page 28
Article IX	The Contractor's Responsibility for Jobsite Safety	Page 29
Article X	Materials and Workmanship; Licensing and Testing	Page 31
Article XI		Page 34
	<i>Shop Drawings and Submittals</i>	
Article XII	Inspection of the Project During Construction	Page 37
Article XIII		Page 39
	<i>Contract Payments</i>	
Article XIV	Closing Inspections	Page 43
Article XV	Early Occupancy	Page 46
Article XVI	Contract Final Acceptance and Payment	Page 48
Article XVII	Contract Warranty and Guarantee	Page 49
Article XVIII	Concealed Site Conditions	Page 50
Article XIX	Change Orders	Page 51

Article XX	Administration of Change Order Requests	Page 53
Article XXI	Pricing Change Order Work	Page 58
Article XXII	Time Allotted for Performance; Construction Schedules	Page 61
Article XXIII	Modification of the Contract Time	Page 63
Article XXIV	Termination and Suspension of the Contract Prior to Completion	Page 67
Article XXV	Miscellaneous	Page 70

**UNIFORM GENERAL CONDITIONS
FOR
CONSTRUCTION MANAGER-AT-RISK CONTRACTS
FOR WILLIAMSON COUNTY**

Article I - General Contract Definitions

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

- 1.1 *Architect/Engineer* means a person registered as an architect pursuant to Chapter 1051 of the Texas Occupations Code, as a landscape architect pursuant to Chapter 1052 of the Texas Occupations Code, and/or a person licensed as a professional engineer pursuant to Chapter 1001 of the Texas Occupations Code, or a firm employed by Owner to provide professional architectural or engineering services and exercising overall responsibility for the design of a Project or a significant portion thereof, and performing certain contract administration responsibilities as set forth in the Contract.
- 1.2 *Change Authorization (CA)* means a Change Order Proposal Evaluation (CPE) which has been marked "Accepted" by the ODR and, upon receipt of the CA by Contractor, constitutes notice to proceed with the changed work described therein.
- 1.3 *Change Order* means a written modification of the Contract between the Owner and Contractor, signed by the Owner, the Contractor and the Architect/Engineer.
- 1.4 *Change Order Proposal Evaluation (CPE)* means a Contractor-generated document in response to a Change Order Request (COR) or Change Proposal Request (CPR) which states the adjustment necessary to Contract Sum and Time, if any, in response to the changed work described in the Change Order Request (COR).
- 1.5 *Change Order Request (COR) or Change Proposal Request (CPR)* means an Owner-generated document which describes a change in the Work, including a description and Drawings and Specifications, as necessary, to inform the Contractor of the nature of the change.
- 1.6 *Close-out Documents* means the product brochures, product/equipment maintenance and operations instructions, manuals, warranties, as-built record documents, affidavit of payment, release of lien and claim, etc., and as may be further defined or identified and required by the Contract Documents.
- 1.7 *Contract* means the Contract Documents between the Owner and the Contractor as defined by the Owner-Contractor Agreement.
- 1.8 *Contract Date* is the date Owner-Contractor Agreement is effective between the Owner and Contractor.
- 1.9 *Contract Documents* has the meaning assigned by the Owner-Contractor Agreement.

- 1.10 *Contractor* means the individual, corporation, company, partnership, firm or other organization that has contracted to perform the Work under the Contract with the Owner. The term Contractor also means a Construction Manager-at-Risk.
- 1.11 *Contract Sum* mean the total compensation payable to the Contractor for completion of the Work in accordance with the Contract Documents as originally contracted for and as subsequently adjusted by Change Order.
- 1.12 *Contract Time* means the period between Notice to Proceed and the date scheduled for substantial completion in the Contract Documents, as may be amended by Change Order. Unless otherwise specified in writing, Contractor shall achieve final completion within thirty (30) days of substantial completion.
- 1.13 *Date of Commencement* means the date designated in the Notice to Proceed that Contractor shall commence the Work.
- 1.14 *Day* means a calendar day, unless otherwise specifically stipulated.
- 1.15 *Drawings* mean the work product of the Architect/Engineer which depicts the location and quantity of elements of the Work.
- 1.16 *Final Completion* has the meaning assigned in the Owner-Contractor Agreement. Unless otherwise specified in writing, Contractor shall achieve final completion within thirty (30) days of substantial completion.
- 1.17 *Interim Change Authorization (ICA)* means an Owner generated document which authorizes the Contractor to proceed with changed work before acceptance of a CPE, when work must proceed in order to prevent damage to Work in place, to prevent significant delay in the Project Schedule or to maintain safety, or otherwise when determined to be in the interest of the Owner.
- 1.18 *Owner* means Williamson County acting through any duly authorized representative as provided in the Owner-Contractor Agreement.
- 1.19 *Owner's Designated Representative (ODR)* means the individual appointed or assigned by the Owner to be its on-site representative during the Project, to exercise certain power on behalf of the Owner and to undertake certain contract administration activities as specifically outlined in the Contract. The ODR is also referred to as the Project Manager (PM) and/or Resident Construction Manager (RCM).
- 1.20 *Project* means the Work as described by the Contract Documents.
- 1.21 *Samples* means the physical examples of materials, equipment or workmanship, that are representative of some portion of the Work and which establish standards by which the Work will be judged.
- 1.22 *Schedule of Values* means the detailed breakdown of the cost of the materials and labor necessary to accomplish the Work as described in the Contract Documents, submitted by Contractor for approval by Owner and Architect/Engineer.

- 1.23 *Shop Drawings* means the drawings, diagrams, illustrations, schedules, performance charts, brochures and other data which are prepared by the Contractor or any Subcontractor, manufacturer, supplier or distributor, and which illustrate some portion of the Work.
- 1.24 *Site* means the geographical area at the location where the Work is to be performed.
- 1.25 *Special Conditions* means the documents containing terms and conditions, which relate to specific project and are peculiar to it. Special Conditions when used, are a part of the Contract Documents and supersede the Uniform General Conditions to the extent of conflict.
- 1.26 *Specifications* means the Architect'/Engineer's work product which establishes the quality of the products and processes to be used to produce the Work as provided by the Owner-Contractor Agreement.
- 1.27 *Subcontractor* means a person or organization who, as an independent contractor, contracts directly or indirectly with Contractor to perform part or all of the Contract between the Owner and the Contractor. The term does not include the Architect/Engineer.
- 1.28 *Substantial Completion* means the stage in the progress of the Work when the Work, or designated portions thereof, may still require minor modifications or adjustments but, in the Owner's opinion, the Work has progressed to the point such that all parts of the Work under consideration are fully operational, as evidenced by a Certificate of Substantial Completion approved by the Owner.
- 1.29 *Supplementary General Conditions* means the procedures and contract administration requirements that alter or expand upon matters covered in the Uniform General Conditions. Supplementary General Conditions, when used, are a part of the Contract Documents and supersede the Uniform General Conditions to the extent of conflict.
- 1.30 *Unit Price Work* means Work to be paid for on the basis of unit prices.
- 1.31 *Unilateral Change Order (ULCO)* means a Change Order issued by the Owner without the agreement of the Contractor.
- 1.32 *Work* means all labor, plant, materials, facilities, and all other things, including the construction and services necessary or incidental to fulfill Contractor's obligations for the Project in conformance with the Contract Documents.
- 1.33 *Substantial Completion Inspection* means an inspection conducted to determine that a project, or a portion thereof, is substantially complete as defined herein, and usable for its intended purposes. The Substantial Completion Inspection results in a Pre-Final Punchlist.
- 1.34 *Final Inspection* means an inspection conducted to determine that all deficiencies listed on the pre-final punchlist or subsequently have been corrected and that, depending on the outcome of the Final Inspection, it may be appropriate to release

retainage and/or make final payment.

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

Article II - General Laws Governing Construction

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

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

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

- 2.2 **State Sales and Use Taxes.** *The Owner qualifies for exemption from State and Local Sales and Use Taxes pursuant to the provisions of Chapter 151, Texas Tax Code. The Contractor may claim exemption from payment of applicable State taxes by complying with such procedures as may be prescribed by the State Comptroller of Public Accounts.*
- 2.3 **Antitrust Claims.** *The Contractor hereby assigns to the Owner any and all claims for overcharges associated with this Contract which arise under the antitrust laws of the United States, 15 U.S.C.A. Sec. 1 et seq.*
- 2.4 **Venue for Suits.** *The venue for any suit arising from this Project shall be in a court of competent jurisdiction in Williamson County, Texas.*
- 2.5 **Licensing of Trades.** *The Contractor shall comply with all applicable provisions of state law related to required licensing of skilled tradesmen, contractors, materialmen, suppliers and or laborers, as necessary to accomplish the Work.*
- 2.5.1 *In the event the Contractor or one of his Subcontractors loses his license for any reason during the term of performance of the Contract, the Contractor shall promptly notify the Owner or the ODR and hire or contract with a licensed provider of the service at no additional cost to the Owner.*
- 2.6 **Patents and Copyrights.** *The Contractor shall be responsible at all times for compliance with applicable patents or copyrights encompassing, in whole or in part, any design, device, material, or process utilized, directly or indirectly, in the performance of the Work.*
- 2.6.1 *Whether or not Owner has specified the use of a particular design, devise, material or process, the Contractor shall pay all royalties and license fees and shall provide, prior to commencement of the Work hereunder, and at all time during the performance of same, for the lawful use of any design, device, material or process covered by letters patent or copyright by suitable legal agreement with patentee, copyright holder or their duly authorized representative.*
- 2.6.2 *Contractor shall defend all suits or claims for infringement of any patent or copyright and shall save the Owner harmless from loss or liability, direct or indirect, arising with respect to the Contractor's process in the formulation of its bid or performance of the Work or otherwise arising in connection therewith. Owner reserves the right to provide its own defense to any suit or claim of infringement of any patent or copyright, in which event the Contractor shall indemnify and save harmless the Owner from all costs and expenses, including reasonable attorney's fees and judgments, arising from such defense.*

- 2.8** ***Environmental Regulations.*** At all times, Contractor shall conduct its activities in compliance with applicable laws and regulations and other requirements of the Contract relating to the environment, and its protection. Contractor covenants to conduct its operations consistent with storm water run-off permit conditions. Contractor shall be responsible for any hazardous materials brought to the site by Contractor, Subcontractor, Suppliers or anyone else for whom Contractor is responsible. No hazardous materials shall be incorporated into the Work without prior approval of Owner.
- 2.9** ***Antiquities.*** Contractor shall take precaution to avoid disturbing primitive records and antiquities of archaeological, paleontological or historical significance. No objects of this nature shall be disturbed without written permission of Owner and the Texas Historical Commission. When such objects are uncovered unexpectedly, the Contractor shall stop all Work in close proximity and notify the ODR and the Texas Historical Commission of their presence and shall not disturb them until written permission and permit to do so is granted. All primitive rights and antiquities, as defined in Chapter 191, Texas Natural Resource Code, discovered on the Owner's property shall remain property of the State of Texas, the Texas Historical Commission. If it is determined by Owner, in consultation with the Texas Historical Commission that exploration or excavation of primitive records or antiquities on Project Site is necessary to avoid loss, Contractor shall cooperate in salvage work attendant to preservation. If the Work stoppage or salvage work causes an increase in the Contractor's cost of, or time required for, performance of the Work, Contractor may file with the ODR a Notice of Claim as provided in the Contract Documents.
- 2.10** ***Franchise Tax Status:*** The Contractor agrees to execute and provide to the Owner a Certification of Franchise Tax Payment, on a form approved by the Owner.
- 2.11** ***Tax payer and Vendor Account Information:*** The Contractor agrees to execute and provide to the Owner a Taxpayer and Vendor Account Information form as obtained from the Texas Comptroller of Public Accounts stating that the Contractor is in "Good Standing" and not on "Vendor Hold."

Article III - Compliance with and Enforcement of Prevailing Wage Laws

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

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

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

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

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

- 3.4 Complaints of Violations of Prevailing Wage Rates.

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

- 3.4.2 Arbitration Required if Violation not Resolved. After the Owner makes its initial determination, the affected Contractor or Subcontractor and worker have 14 days in which to resolve the issue of whether a violation occurred, including the amount that should be retained by Owner or paid to the affected worker. If the Contractor or Subcontractor and affected worker reach an agreement concerning the worker's claim, the Contractor

shall promptly notify the Owner in a written document signed by the worker. If the Contractor or Subcontractor and affected worker do not agree before the 15th day after the Owner's determination, the Contractor or Subcontractor and affected worker must participate in binding arbitration in accordance with the Texas General Arbitration Act, Chapter 171, Tex. Civ. Prac. & Rev. Code. The parties to the arbitration have 10 days after the expiration of the 15 days referred to above, to agree on an arbitrator; if by the 11th day there is no agreement to an arbitrator, a district court shall appoint an arbitrator on the petition of any of the parties to the arbitration.

3.4.3 Arbitration Award. If an arbitrator determines that a violation has occurred, the arbitrator shall assess and award against the Contractor or Subcontractor the amount of penalty as provided in § 3.3 thereof and the amount owed the worker. The Owner may use any amounts retained under § 3.4.1 hereof to pay the worker the amount as designated in the arbitration award. If the Owner has not retained enough from the Contractor or Subcontractor to pay the worker in accordance with the arbitration award, the worker has a right of action against the Contractor and Subcontractor as appropriate, and the surety of either to receive the amount owed, attorneys' fees and court costs. The Contractor shall promptly furnish a copy of the arbitration award to the Owner.

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

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

Article IV - Drawings and Specifications

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

4.2 Copies Furnished. The Contractor will be furnished free of charge the number of complete sets of the Contract Drawings and Specifications before on-site work

commences as provided in the Supplementary General Conditions or Special Conditions. Additional complete sets of Drawings and Specifications, if requested, will be furnished at reproduction cost to the one requesting such additional sets.

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

4.4 Resolution of Conflicts in Documents.

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

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

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

4.6 Discrepancies and Omissions in Drawings and Specifications.

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

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

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

Contract Documents.

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

4.7 Other Information Provided to Contractor.

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

4.8 Requirements for Record Documents

- 4.8.1 The Contractor shall maintain at the site one copy of all Drawings, Specifications, Addenda, approved Shop Drawings and Contract Modifications, and all project correspondence. The Contractor shall maintain Drawings and Specifications in good order and marked to record all changes made during construction. The Contractor shall keep on the site of Work a copy of the current and updated Contract Drawings and Specifications and shall at all times give the Owner or its representatives and agents access thereto.
- 4.8.2 Further, the Contractor shall maintain this record set of drawings and specifications which reflect the "As-Constructed" conditions and representations of the Work performed, whether it be directed by Addendum, Change Order or otherwise. All records prescribed herein shall be made available for reference and examination by the Owner and its representatives and agents.
- 4.8.3 The Contractor shall update the "As-Constructed" drawings and specifications monthly prior to submission of periodic partial pay estimates. Failure to maintain such records shall constitute cause for denial of a progress payment otherwise due.
- 4.8.4 Prior to requesting Substantial Completion Inspection by the Owner and Architect/Engineer, the Contractor shall furnish a complete set of the "mark-up" blueline "As-Constructed" set maintained at the site and one photocopy of same. Concurrently with furnishing these record blueline drawings, the Contractor shall also furnish a preliminary copy of each operating and maintenance manual (O&M) required by the contract documents, for review by the Architect/Engineer and the Owner.
- 4.8.5 Once determined acceptable, the Contractor shall provide photographic mylar prints of professionally drafted "As-Constructed" drawings, two sets of blueline copies of the mylar "As-Constructed" drawings, two sets of operating and maintenance manuals, two sets of approved submittals, and other record documents as required elsewhere in the contract documents.

Article V - Construction Bonds

- 5.1 Performance and Payment Bonds. The Contractor is required to tender to Owner, prior to commencing the Work, performance and payment bonds, as required by Chapter 2253, Texas Government Code.
- 5.1.1 A Performance Bond is required if the Contract Price is in excess of \$100,000. The performance bond is solely for the protection of the Owner, in the full amount of the Contract and conditioned on the faithful performance of the Work in accordance with the Contract Documents. The form of the bond shall be approved by the Owner.
 - 5.1.2 A Payment Bond is required if the Contract Price is in excess of \$25,000. A payment bond is payable to the Owner, in the full amount of the Contract and solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the Contractor or a supplier of required materials or labor. The form of bond shall be approved by the Owner.
 - 5.1.3 Corporate sureties authorized to issue bonds shall be qualified and comply with relevant provisions of the Texas Insurance Code.
 - 5.1.4 For Construction Manager-at-Risk contracts, a Security Bond in the amount of 5% of the Construction Cost Limitation shall be provided to the Owner when the Agreement is executed. Payment and Performance Bonds, as required above, shall be furnished in the full amount of the Guaranteed Maximum Price (GMP) when the GMP is executed.
 - 5.1.5 Each bond shall be executed by a corporate surety or sureties authorized to do business in the State of Texas and acceptable to the Owner, and on the Owner's form. If any bond is for more than 10 percent of the surety's capital and surplus, the Owner may require certification that the company has reinsured the excess portion with one or more reinsurers authorized, accredited, or trusted to do business in the State. A reinsurer may not reinsure for more than 10 percent of its capital and surplus. If a surety upon a bond loses its authority to do business in the State, the Contractor shall within thirty (30) days after such loss furnish a replacement bond at no added cost to the Owner.
 - 5.1.6 Each bond shall be accompanied by a valid Power-of-Attorney (issued by the surety company and attached, signed and sealed with the corporate embossed seal, to the bond) authorizing the attorney in fact who signs the bond to commit the company to the terms of the bond, and stating any limit in the amount for which the attorney can issue a single bond.
- 5.2 The process of requiring and accepting bonds and making claims thereunder shall be conducted in compliance with Chapter 2253, Texas Government Code. If for any reason a statutory payment or performance bond is not honored by the surety, the Contractor shall fully indemnify and hold the Owner harmless of and from any costs, losses, obligations or liabilities it incurs as a result.

- 5.3 Owner shall furnish certified copies of a payment bond and the related Contract to any qualified person seeking copies who complies with §2253.026, Texas Government Code.
- 5.4 Claims on Payment Bonds. Claims on payment bonds must be sent directly to the Contractor and his surety in accordance with § 2253.041, Texas Government Code. All Payment Bond claimants are cautioned that no lien exists on the funds unpaid to the Contractor on such Contract, and that reliance on notices sent to the Owner may result in loss of their rights against the Contractor and/or his surety. The Owner is not responsible in any manner to a claimant for collection of unpaid bills, and accepts no such responsibility because of any representation by any agent or employee.
- 5.5 Payment Claims when Payment Bond not Required. When the value of the Contract between the Owner and the Contractor is less than \$25,000.00, claimants and their rights are governed by Texas Property Code, §§ 53.231 – 53.239. These provisions set out the requirements for filing a valid lien on funds unpaid to the Contractor as of the time of filing the claim, actions necessary to release the lien and satisfaction of such claims.
- 5.6 Sureties shall be listed on the Department of the Treasury's Listing of Approved Sureties stating companies holding Certificates of Authority as acceptable sureties on Federal Bonds and acceptable reinsuring companies (Department Circular 570).

Article VI - Insurance Requirements

6.1 Insurance Requirements.

- 6.1.1 *The Contractor shall carry insurance in the types and amounts indicated in this Article for the duration of the Contract, which shall include items owned by Owner in the care, custody and control of Contractor prior to, during construction and during the warranty period. Contractor must also complete and file the declaration pages from the insurance policies with Owner whenever a previously identified policy period expires during the term of the Contract, as proof of continuing coverage. Acceptance of the insurance policy declaration pages by the Owner shall not relieve or decrease the liability of the Contractor. Contractor shall update all expired policies prior to submission for monthly payment. Failure to update policies shall be reason for payment to be withheld until evidence for renewal is provided to the Owner.*
- 6.1.2 *Unless otherwise provided for in Supplementary General Conditions, the Contractor shall provide and maintain, until the Work covered in this Contract is completed and accepted by the Owner, the minimum insurance coverages in the minimum amounts as described below. Coverage shall be written on an occurrence basis by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company, or otherwise acceptable to Owner.*

Type of Coverage	Limits of Liability
a. Worker's Compensation	Statutory
b. Employer's Liability	
<i>Bodily Injury by Accident</i>	<i>\$500,000 Ea. Accident</i>
<i>Bodily Injury by Disease</i>	<i>\$500,000 Ea. Employee</i>
<i>Bodily Injury by Disease</i>	<i>\$500,000 Policy Limit</i>
c. Commercial General Liability, including coverage for the following:	
1) <i>Premises Operations</i>	<i>Combined Single</i>
2) <i>Independent Contractors</i>	<i>Limit for Bodily</i>
3) <i>Products/Completed Operations</i>	<i>Injury and Property</i>
4) <i>Personal Injury</i>	<i>Damage of</i>
	<i>\$1,000,000</i>
	<i>per occurrence or</i>
	<i>its equivalent.</i>
5) <i>Contractual Liability</i>	
6) <i>Explosion, Collapse, Underground</i>	
7) <i>Broad form property damage, to include fire legal liability</i>	
d. Business Automobile Liability owned/leased, owned, hired	
	<i>Combined single limit for</i>
	<i>Non-Bodily Injury and</i>
	<i>Property Damage of</i>
	<i>\$1,000,000</i>
	<i>per occurrence or its</i>
	<i>equivalent</i>
e. Owner's Protective Liability Insurance Policy, naming Williamson County, its employees, and the Architect/Engineer as insured with the following limits:	
<i>Bodily Injury</i>	<i>\$1,000,000 Each Occurrence</i>
	<i>\$1,000,000 Aggregate</i>
f. Builder's Risk Insurance	

An all risk policy, in the amount equal at all times to 100% of the Contract Sum. The policy shall include coverage for loss or damage caused by certified acts of terrorism as defined in the Terrorism Risk Insurance Act. The policy shall be issued in the name of the Contractor and shall name his Subcontractors as additional insureds. The Owner shall be named as a loss payee on the policy. The builders risk policy shall have endorsements as follow:

- 1. This insurance shall be specific as to coverage and not considered as contributing insurance with any permanent insurance maintained on the present premises. If off site storage is permitted, coverage shall include transit and storage in an amount sufficient to protect property being transported or stored.**
- 2. For renovation projects and or portions of work contained within an existing structure, the Owner waives subrogation for damage by fire to existing building structure(s), if the Builder's Risk Policy has been endorsed to include coverage for existing building structure(s) in the amount described in the Special Conditions. However, Contractor shall not be required to obtain such an endorsement unless specifically required by the Special Conditions., in this Agreement The aforementioned waiver of subrogation shall not be effective unless such endorsement is obtained.**

- g. Flood insurance when specified in Supplementary General Conditions or Special Conditions.**
- h. Umbrella coverage when specified in Supplementary General Conditions or Special Conditions.**

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

6.1.3 Policies must include the following clauses, as applicable.

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

- b. ***"It is agreed that the Contractor's insurance shall be deemed primary with respect to any insurance or self insurance carried by Williamson County for liability arising out of operations under the Contract with the Owner."***
- c. ***"The Owner, its officials, directors, employees, representatives, and volunteers are added as additional insured as respects operations and activities of, or on behalf of the named insured performed under contract with the Owner." This is not applicable to the workers' compensation policy.***
- d. ***"The workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of the Owner."***

6.1.4 Workers' Compensation Insurance Coverage:

- a. Definitions:
 - (1) Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Texas Workers' Compensation Commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.
 - (2) Duration of the project - includes the time from the beginning of the work on the project until the Contractor's/person's work on the project has been completed and accepted by the Owner.
 - (3) Coverage – Workers' compensation insurance meeting the statutory requirements of the Texas Labor Code, §401.011(44).
 - (4) Persons providing services on the project ("subcontractor") - includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities

unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

- b. The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas labor Code, §401.011(44) for all employees of the Contractor providing services on the project, for the duration of the project.
- c. The Contractor must provide a certificate of coverage to the Owner prior to being awarded the contract.
- d. If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the Owner showing that coverage has been extended.
- e. The Contractor shall obtain from each person providing services on a project, and provide to the Owner:
 - (1) a certificate of coverage, prior to that person beginning work on the project, so the Owner will have on file certificates of coverage showing coverage for all persons providing services on the project; and
 - (2) no later than seven days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- f. The Contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
- g. The Contractor shall notify the Owner in writing by certified mail or personal delivery, within 10 days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
- h. The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- i. The Contractor shall contractually require each person with who it contracts to provide services on a project, to:
 - (1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas labor Code, Section 401.011(44) for

all of its employees providing services on the project, for the duration of the project;

- (2) provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
 - (3) provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (4) obtain from each other person with whom it contracts, and provide to the Contractor:
 - a. a certificate of coverage, prior to the other person beginning work on the project; and
 - b. a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (5) retain all required certificate of coverage on file for the duration of the project and for one year thereafter;
 - (6) notify the Owner in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
 - (7) contractually require each person with whom it contracts, to perform as required by paragraphs (1)-(7), with the certificates of coverage to be provided to the person for whom they are providing services.
- j. By signing this contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the Owner that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

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

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

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

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

Article VII - General Responsibilities of Owner and Contractor

7.1 Owner's General Responsibilities.

- 7.1.1 The Owner is the entity identified as such in the Contract and is referred to throughout the Contract Documents as if singular in number.
- 7.1.2 Preconstruction Conference. Prior to, or concurrent with, the issuance of Notice to Proceed, a conference will be held attended by the Owner, Contractor, Architect/Engineer and Subcontractors, as appropriate, to establish a working understanding among the parties as to the Work, the operational conditions at the project site, and general administration of the project, including communications, schedules, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, maintaining required records and all other matters of importance to the administration of the Project and effective communications on Site.
- 7.1.3 Owner's Designated Representative. Prior to the start of construction, Owner shall designate in writing the Owner's Designated Representative (ODR), who shall have express authority to act and bind the Owner to the extent and for the purposes described in the various Articles of the Contract, including responsibilities for general administration of the Contract. Unless otherwise specifically provided for, the ODR is the single point of contact between the Owner and Contractor. Notice to the ODR, unless otherwise noted, constitutes notice to the Owner under the Contract.
- 7.1.4 The Owner shall furnish all surveys describing the physical characteristics, legal description and limitations, site utility locations and other information under the Owner's control to the Contractor. Necessary actions of the Owner, including processing of payments to the Contractor, shall be accomplished with reasonable promptness. The Owner shall pay for all routine testing of materials agreed by the Owner and the Architect/Engineer to be required by the Contract Documents, except when for retesting of materials failing the initial test is required, in which instance the cost of reinspection will be paid for by the Contractor; provided, however, any special testing which is specifically required in the scope of work and listed in a technical section of the specifications shall be paid by the Contractor.
- 7.1.5 Owner supplied materials and information. Information, equipment or services under the Owner's control shall be furnished by the Owner to the Contractor with reasonable promptness to avoid delay in orderly progress of the work.
- 7.1.6 Availability of Lands. Owner shall furnish, as indicated in the Contract Documents, all required rights to use the lands upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands which are designated for use by Contractor. Owner shall identify any encumbrances or restrictions specifically related to use of

lands so furnished with which Contractor will have to comply. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by Owner, unless otherwise provided in the Contract Documents. If Owner fails to furnish these lands, rights of way or easements in a timely manner, Contractor may make a change order claim pursuant to the Contract Documents.

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

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

7.3 **Role of Architect/Engineer.**

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

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

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

Architect/Engineer, and the Contractor by the party originating the communication.

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

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

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

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

7.3.6 Clarifications and Interpretations. Architect/Engineer may determine that written clarifications or interpretations of the requirements of the Contract Documents (in the form of drawings or otherwise) are necessary. Such written clarifications or interpretations will be

consistent with the intent of and reasonably inferable from the Contract Documents, will be issued with reasonable promptness to the Contractor as Architect's Supplemental Instruction (ASI). If Owner or Contractor believes that a written clarification or interpretation justifies an adjustment in the Contract Sum or the Contract Time, Owner and Contractor may make a change order claim therefore as provided in the Contract Documents.

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

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

7.5 **Contractor's General Responsibilities.**

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

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

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

Contractor. All oral communications affecting Contract Time, Contract Sum and contract interpretation will be confirmed in writing to Owner.

- 7.5.3** **Labor.** Contractor shall provide competent, suitably qualified personnel to survey, lay out, and construct the Work as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- 7.5.4** **Services, Materials, and Equipment.** Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work. The Contractor shall provide, without extra charge, all incidental items required as a part of the Work, even though not particularly specified or indicated in the Contract.
- 7.5.5** **No Substitutions Without Approval.** The Contractor may make substitutions only with the consent of the Owner, after evaluation and recommendation by the Architect/Engineer and in accordance with a Change Order. If the Contractor has good reason for objecting to the use of a material, appliance, or method of construction as shown or specified, it shall register its objections with the Architect/Engineer in writing, sending a copy to the Owner; otherwise, it shall proceed with the work with the understanding that a satisfactory job is required.
- 7.5.6** **Documents and Samples at the Site.** The Contractor shall maintain at the site for the Owner one record copy of the Drawings, Specifications, addenda, Change Orders and other modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of approved Shop Drawings, Samples and similar required submittals. These shall be available to the Architect/Engineer and shall be delivered to the Architect/Engineer for submittal to the Owner upon completion of the Work or Contractor's request for Substantial Completion Inspection.
- 7.5.7** Should Work be identified by either the Architect/Engineer and/or the ODR as not being in compliance with the Contract Documents, the ODR shall communicate the finding to Contractor and such Work shall be corrected by the Contractor at its expense. The approval of Work by either the Architect/Engineer or ODR does not relieve the Contractor from compliance with all requirements of the Contract Documents where such requirements are not judged at the time of observation of the Work due to work sequences by the Contractor or the lack of time to judge the performance characteristics of the particular Work item.

- 7.5.8 Subcontractors.** *Contractor shall not employ any Subcontractor, supplier or other person or organization, whether initially or as a substitute, against whom Owner may have reasonable objection. Owner will communicate such objections in writing. If a rejection causes a change to the Contract Sum, Contractor may file a contractor-initiated Type I change claim as provided in the Contract Documents. Contractor shall not be required to employ any Subcontractor, supplier or other person or organization to furnish any of the work to whom Contractor has reasonable objection. Contractor will not substitute Subcontractors without the approval of Owner.*
- 7.5.8.1** *Contractor shall enter into written agreements with all Subcontractors and suppliers which specifically bind the Subcontractors and suppliers to the terms and conditions of the Contract Documents for the benefit of the Owner and the Architect/Engineer.*
- 7.5.8.2** *Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with Contractor. Contractor shall require all Subcontractors, suppliers and such other persons and organizations performing or furnishing any of the Work to communicate with Owner through Contractor.*
- 7.5.8.3** *The Contractor shall furnish to the Owner a copy of each first-tier subcontract promptly after it has been executed. The Contractor agrees that the Owner has no obligation to review or approve the content of such contracts and that providing the Owner such copies shall in no way relieve the Contractor of any of the terms and conditions of the Contract, including, without limitation, any provisions of the Contract which require the subcontractor to be bound to the Contractor in the same manner in which the Contractor is bound to the Owner.*
- 7.5.9 Continuing the Work.** *Contractor shall carry on the Work and adhere to the progress schedule during all disputes, disagreements or alternative resolution processes with Owner. No Work shall be delayed or postponed pending resolution of any disputes, disagreements or processes, except as Owner and Contractor may agree in writing.*
- 7.5.10 Signage.** *All construction signage, including, but not limited to, that appearing on tower cranes and other construction equipment located at the Project site, shall be subject to the prior written approval of Owner. The Contractor recognizes that all signage may be disallowed, in Owner's sole discretion and that existing signage or advertising on construction equipment, field offices, trailers,*

construction fences, etc., may be required to be masked or deleted, all or not cost or expense to Owner.

- 7.5.11 **Confidentiality.** *Contractor shall treat all information relating to the Project and all information supplied to the Contractor by Owner or Architect as confidential and proprietary information of Owner and shall not permit its release to other parties or make any public announcement or publicity releases without Owner's written authorization unless required to do so by applicable law. The Contractor shall also require Subcontractors and vendors to comply with this requirement.*
- 7.5.12 **Cleaning.** *The Contractor shall at all times keep the Site and the Work clean and free from accumulation of waste materials or rubbish caused by the construction activities under the Contract. Upon completion of the Project, and prior to the final inspection, the Contractor shall have the Work in a neat and clean condition.*
- 7.5.13 **Acts and Omissions of Contractor, his Subcontractors and employees.** *The Contractor shall be responsible for acts and omissions of his employees and his subcontractors, their agents and employees. The Owner may, in writing, require the Contractor to remove from the work any of its or its subcontractor's employees that the Owner's representative finds to be careless, incompetent or otherwise objectionable.*
- 7.5.14 **Indemnification of Owner.**

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE CONTRACTOR AND ITS AGENTS, PARTNERS, EMPLOYEES, AND CONSULTANTS (COLLECTIVELY "INDEMNITORS") SHALL AND DO AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY OWNER, AND HOLD HARMLESS OWNER, ITS AFFILIATED ENTERPRISES, REPRESENTATIVES OF OWNER, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, TRUSTEES, PARTNERS, EMPLOYEES AND AGENTS (COLLECTIVELY "INDEMNITEES") FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS AND EXPENSES, INCLUDING ATTORNEY FEES, OF ANY NATURE, KIND, OR DESCRIPTION (COLLECTIVELY "LIABILITIES") OF ANY PERSON OR ENTITY WHOMSOEVER ARISING OUT OF, CAUSED BY, OR RESULTING FROM THE PERFORMANCE OF SERVICES, OR PROVISION OF GOODS, BY CONTRACTOR PURSUANT TO THIS CONTRACT, OR ANY PART THEREOF, WHICH ARE CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT OR OMISSION OF THE CONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY IT OR ANYONE FOR WHOSE ACTS IT MAY BE LIABLE EVEN IF IT IS CAUSED IN PART BY THE NEGLIGENCE OR OMISSION OF ANY INDEMNITEE, SO LONG AS IT IS NOT CAUSED BY THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE. IN THE EVENT MORE THAN ONE OF THE INDEMNITORS ARE CONNECTED WITH AN ACCIDENT OR OCCURRENCE COVERED BY THIS INDEMNIFICATION, THEN EACH OF SUCH INDEMNITORS SHALL BE JOINTLY AND SEVERALLY RESPONSIBLE TO THE INDEMNITEES FOR INDEMNIFICATION AND THE ULTIMATE RESPONSIBILITY AMONG SUCH INDEMNITORS FOR THE LOSS

AND EXPENSE OF ANY SUCH INDEMNIFICATION SHALL BE SETTLED BY SEPARATE PROCEEDINGS AND WITHOUT JEOPARDY TO ANY INDEMNITEE. THE PROVISIONS OF THIS ARTICLE SHALL NOT BE CONSTRUED TO ELIMINATE OR REDUCE ANY OTHER INDEMNIFICATION OR RIGHT WHICH OWNER OR ANY OF THE INDEMNITEES HAS BY LAW.

7.5.15 Indemnity for Patent and Copyright infringement.

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

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

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

7.5.16 *The duties listed above are in addition to the duties, responsibilities an activities to be undertaken by Contractor as specified throughout the Articles of the Contract.*

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

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

7.5.17.2 The Contractor may erect temporary buildings at its expense, which shall remain its property. The Contractor shall remove such buildings and associated utilities service lines upon completion of the Work, unless the Contractor

requests and the Owner provides written consent that it may abandon such buildings and utilities in place.

- 7.5.17.3 The Contractor will use only established roadways or construct and use such temporary roadways as may be authorized by the Owner. Load limits of vehicles shall not exceed the limits prescribed by appropriate regulations or law. The Contractor will provide protection to road surfaces, curbs, sidewalks, trees, shrubbery, sprinkler systems, drainage structures and other like existing improvements to prevent damage, and any damage thereto shall be repaired by and at the expense of the Contractor.
- 7.5.18 The Owner may restrict the Contractor's entry to the site to specifically assigned entrances and routes.
- 7.5.19 The Contractor shall at all times keep construction areas, including storage areas used by it, free from the accumulation of water, waste materials or rubbish during performance of the work. During the period of construction, and not less frequently than once a week, the Contractor shall remove from the site any and all waste materials, rubbish and trash, and shall dispose of such waste materials, rubbish and trash off the property of the Owner. Prior to the Contractor's requested date for a pre-final inspection, the Contractor shall remove any and all remaining equipment from the site and shall leave the premises in a clean, neat and workmanlike condition satisfactory to the Owner.
- 7.5.20 The Contractor shall pay all royalties and license fees, and defend all suits or claims for infringement of any patent rights and shall save the Owner and its representatives harmless from loss on account thereof.

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

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

8.1.1 When separate contracts are awarded for different portions of the Project, "the Contractor" in the Contract Documents in each case shall be the Contractor who signs each separate Contract. This Contractor shall cooperate with the separate contractors and Owner's own forces. This Contractor shall properly connect and coordinate its work with the work of the separate contractors as defined in these Contract Documents. If any part of this Contractor's work depends for proper execution or proper results on the work of any of the separate contractors, this Contractor shall inspect and promptly report in writing to the ODR any visually apparent discrepancies or defects found in such other work that

render it unsuitable for such proper execution and results. Failure of this Contractor to so inspect and report the visually apparent discrepancies or defects shall constitute an acceptance of the separate contractor's work as fit and proper to receive the Contractor's Work, except as to defects which may develop in the separate contractor's work after the execution of this Contractor's work.

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

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

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

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

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

Article IX - The Contractor's Responsibility for Jobsite Safety

9.1 *Unless otherwise specified in the Specifications, Contract Documents, or*

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

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

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

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

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

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

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

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

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

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

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

Article X - Materials and Workmanship; Licensing and Testing

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

10.2 Contractor's Warranty of Workmanship.

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

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

b. Normal wear and tear under normal usage.

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

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

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

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

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

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

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

g. Any inspection, test or approval by others.

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

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

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

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

- a. *Concrete - Primary mix design, slump tests and cylinder compression tests.*
- b. *Steel - Tensile tests.*
- c. *Welds - Field inspection and X-ray equipment.*
- d. *Soils - Subsoil investigation, physical analysis and compaction tests.*
- e. *Pavement - Physical analysis and compaction tests.*
- f. *Roofing - Samples cut from in-place roof.*

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

10.3.2.1 *Not included in tests provided by the Owner are:*

- a. Any test of basic material or fabricated equipment offered as a substitute for a specified item on which a test may be required in order to prove its compliance with the Specifications, which testing shall be paid for by Contractor.*
- b. Routine or preliminary tests on mechanical systems required to insure their proper installation and operation, prior to final testing and balancing, and any other requirements described in other contract documents or specifications, shall be paid for by Contractor. Final testing and balancing shall be paid for by the Owner.*

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

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

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

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

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

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

Article XI – Shop Drawings and Submittals

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

11.1.1 The Contractor shall, within twenty (20) calendar days after receipt of the Notice to Proceed, submit to the Owner through the Architect/Engineer four (4) copies of a submittal schedule, listing all items that shall be furnished,

for review and approval by the Owner and/or the Architect/ Engineer. The schedule shall also list all items that are to be reviewed and approved by the Contractor.

- 11.1.2 Such submittal schedules shall list, among other things, shop drawings, manufacturer's literature, certificates of compliance, materials samples, materials colors, guarantees, etc.
- 11.1.3 ***The submittal schedules shall indicate the type of item, contract requirements reference, the Contractor's scheduled dates for submitting the above and like items and the projected need dates for approval answers from the Owner or the Architect/Engineer and the projected or actual dates for procurement. This schedule shall show a minimum of thirty (30) calendar days after receipt for review and approval by the Owner and Architect/Engineer, and if resubmittal is required an additional fifteen (15) days will be allowed for approval after receipt. The Contractor will revise and/or update this schedule as appropriate, and submit same with each payment estimate.***
- 11.1.4 The submittal schedule shall be coordinated with the Work Progress Schedule for all the Work. The Contractor shall revise and/or update both schedules monthly to insure consistency and current project data. Four (4) copies of such updated schedules shall be provided to the Owner concurrent with each application for progress payment.
- 11.1.5 ***Shop Drawings, Samples or other required information shall be properly identified, as specified or as the Owner and/or the Architect/Engineer may require. At the time of submission, the Contractor shall inform the Owner and the Architect/Engineer in writing of any deviation in the Shop Drawings or Samples from the requirements of the Contract Documents.***
- 11.1.6 ***By submitting Shop Drawings, Samples or other required information, the Contractor thereby represents that he has determined and verified all field measurements, field construction criteria, materials, catalog numbers and similar data, or will do so, and that he has checked and coordinated each Shop Drawing and Sample with the requirements of the Work and of the Contract Documents and he shall so certify as required by § 11.1.***

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

Architect/Engineer in writing of such deviation at the time of submission and the Owner or the Architect/Engineer has not objected to the specified deviation. The approval shall not relieve the Contractor from responsibility for errors or omissions in the Shop Drawings or Samples.

- 11.3 **Correction and Resubmission.** The Contractor shall make any corrections required to a submittal and shall resubmit the required number of corrected copies of the submittals promptly so as to avoid delay, until approved. The Contractor shall direct attention in writing to the Architect/Engineer and the Owner when required, to any new revisions other than the corrections requested on previous submissions.
- 11.4 **Limits on Shop Drawing Approvals.** No Work requiring a Shop Drawing or Sample submission shall be commenced until the submission has been approved. All such work shall be in accordance with approved Shop Drawings and Samples. Approval of Shop Drawings and Samples is not authorization to Contractor to perform extra work or changed work unless the procedures of the Contract Documents are followed. The Architect/Engineer's and Owner's approval, if necessary, does not relieve Contractor from responsibility for defects in the Work resulting from errors or omissions of any kind on the approved Shop Drawing or Sample.
- 11.5 The Owner may establish routine review procedures and schedules for submittals at the preconstruction conference.
- 11.6 **Intent of Contract Documents.** It is not the intent of the Specifications or Contract Documents to limit materials, equipment or fixtures to the product of any particular manufacturer. Where definite materials, equipment and/or fixtures have been specified by name, manufacturer or catalog number, it has been done to set a definite standard and a reference for comparison as to quality, application, physical conformity, and other characteristics. It is the Owner's or Architect/Engineer's intention to not discriminate against or prevent any dealer, jobber or manufacturer from furnishing materials, equipment, and/or fixtures which meet or exceed the characteristics of the specified items. Substitution of materials shall not be made without prior written approval from the Architect/Engineer and Owner.
- 11.6.1 The Owner shall be the final judge of whether a proposed substitution meets the required characteristics of a specified item and such decisions of the Owner shall be final and conclusive.
- 11.7 **Unauthorized Substitutions at Contractor's Risk.** All proposed substitution of materials, equipment or fixtures shall be presented through the submittal process. The Contractor shall be financially responsible for any additional costs or delays resulting from using materials, equipment or fixtures other than those specified, and shall reimburse the Owner for any increased design or contract administration costs resulting from such unauthorized substitutions.

Article XII - Inspection of the Project During Construction

- 12.1 Contractor Quality Control. Contractor is responsible for controlling the quality of the work as set forth in the Contract Documents.
- 12.2 Owner Quality Assurance.
- 12.2.1 The Owner and the Architect/Engineer and/or other Owner agents and consultants will make periodic visits to the site to familiarize themselves with the progress and quality of the Work, conduct inspections and tests and to determine if the Work is proceeding in accordance with the Contract Documents. The Contractor shall provide sufficient, safe and proper facilities at all reasonable times for observation and/or inspection of the Work by the authorized representatives of the Owner.
- 12.2.2 The Contractor shall not cover up any work with finishing materials or other building components prior to providing the Owner an opportunity to perform an inspection of the work by the Owner or its authorized representatives for review of the installation. Should corrections of the work be required for approval, cover up shall be delayed until another inspection can be made and approval is indicated.
- 12.2.3 The Contractor shall be responsible for providing notification of at least five (5) working days or as mutually agreed, to the Owner of the anticipated need for a cover up inspection. Should the Owner fail to respond to the requested inspection within the five (5) working day period, or as mutually agreed, the Contractor may proceed with the particular cover up work identified in the notification. The five (5) working day notice requirement shall not be reduced or waived by the Owner's ability to respond in less time.
- 12.3. Condemnation and Removal of Defective Work.
- 12.3.1 The ODR and the Architect/Engineer has the authority to reject and condemn Work, which does not meet the requirements of the Contract and to order such work removed and replaced in accordance with paragraph 12.3.2 hereof. The approval of a work item by the ODR does not relieve the Contractor from compliance with the Contract Documents where such requirements are not judged at the time of observation of the Work due to work sequences by the Contractor or the lack of time to judge the performance characteristics of the particular work item, or where the particular work item is part of a system that has not been fully completed and reviewed for overall operation.
- 12.3.2 The Owner's Designated Representatives (ODR) and the Architect/Engineer shall interpret the Contract requirements and shall be the final judge of the acceptability of the Work under the Contract Documents. If any materials or Work furnished under this Contract are condemned or rejected by the Owner or the Architect/Engineer, the Contractor shall, after notice from the Owner or the Architect/Engineer, proceed to remove materials, whether worked or unworked, and to take down all portions of the Work condemned. Contractor shall make good

all Work damaged or destroyed by the removal and replacement process.

- 12.3.2.1 The Contractor shall, without charge or assessment against any contract contingency or allowance, replace any material or correct any workmanship found by the Owner or Architect/Engineer not to conform to the contract requirements, unless in the public interest the Owner consents in writing to accept such material or workmanship with an appropriate adjustment in the contract price. The Contractor shall promptly correct all Work rejected by the Owner or Architect/Engineer as defective or as failing to conform to the Contract Documents whether observed before or after the Date of Substantial Completion or final inspection and acceptance and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work. The costs of such corrective work shall also include reimbursement by the Contractor to the Owner of the amount of the fee to be paid by the Owner to the Architect/Engineer for the extra services of the Architect/Engineer in performing its responsibilities to the Owner relative to such corrective work.
- 12.3.2.2 If the Contractor does not promptly complete the work, replace rejected material or correct rejected workmanship, the Owner may, 1) by separate contract or otherwise, replace such material or correct such workmanship and charge the cost thereof to the Contractor, or 2) terminate the Contractor's employment in accordance the Contract Documents.
- 12.3.2.3 If any portion of the Work is concealed by subsequent work without notification to the Owner as set forth in 12.2.3 contrary to the instructions of the Owner or Architect/Engineer or to the requirements specifically expressed in the Contract Documents, it must be uncovered for observation and recovered at the Contractor's expense.
- 12.3.2.4 If any other portion of the Work has been covered which the Owner or Architect/Engineer has not specifically requested or is not specifically indicated elsewhere in the Contract Documents to observe prior to being covered, either may request to see such Work and it shall be uncovered by the Contractor. If such Work is found to be in accordance with the Contract Documents, the cost of uncovering and recovering shall, by appropriate Change Order, be charged to the Owner. If such Work is found not to be in accordance with the Contract Documents, the Contractor shall pay such costs including the amount of fee to be paid by the Owner to the Architect/Engineer for extra services related to such non-complying work.
- 12.3.3 Upon notice of condemnation, the Contractor may request to prove to Owner and the Architect/Engineer, at Contractor's sole cost, that the