

**REQUEST FOR QUALIFICATIONS
REQUEST FOR PROPOSALS**

**CONSTRUCTION MANAGER-AT-RISK
FOR
COMAL COUNTY JAIL CONSTRUCTION AND
COMAL COUNTY SHERIFF'S OFFICE BUILDING
RENOVATION**

RFQ/RFP # 2016-375

RFQ Due Date: December 1, 2016, 2:00 P.M.

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COMAL COUNTY, TEXAS
REQUEST FOR QUALIFICATIONS/REQUEST FOR PROPOSALS (RFQ/RFP)
CONSTRUCTION MANAGER-AT-RISK
FOR
COMAL COUNTY JAIL CONSTRUCTION AND
COMAL COUNTY SHERIFF'S OFFICE BUILDING RENOVATION

SECTION I - GENERAL

In accordance with the provisions of Texas Government Code, Section 2269, Comal County is requesting qualifications and proposals for a Construction Manager-at-Risk (CMR) to undertake a construction project for the construction of the Comal County Jail and renovation of the Comal County Sheriff's Office Building, hereinafter described as the "Project". The selection of the Construction Manager-at-Risk shall follow the two-step selection process as defined in the statute.

The Project includes a three phase project, including new construction of the Comal County Jail and Renovation of the Comal County Sheriff's Office building. Additional project information is included in Section II.

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

COUNTY POINT-OF-CONTACT (POC)

The County designates the following person as its representative and Point-of-Contact for this solicitation. The Company shall restrict all contact with the County and direct all questions regarding this solicitation, including questions regarding terms and conditions in writing at least four (4) days prior to the scheduled time for the RFQ or RFP opening to the Point-of-Contact person. RFQ and RFP are due on the date and time shown in the schedule on page two (2) at the Comal County Purchasing Office.

Comal County Purchasing Office

Ramona Womack, CPPO, CPPB

Purchasing Director

1297 Church Hill Drive, New Braunfels, Texas 78130

e-mail: purrjw@co.comal.tx.us

fax: (830)608-2031

All inquiries will result in written responses with copies posted to http://www.co.comal.tx.us/PUR_BIDS.htm .

Upon issuance of this RFQ and RFP, beside written inquiries as described above, other employees and representatives of Comal County will not answer questions or otherwise discuss the contents of the RFQ and RFP with any potential CMR or its representatives. Failure to observe this restriction may result in disqualification of any subsequent response. This

restriction does not preclude discussions between affected parties for the purpose of conducting business unrelated to this proposal.

COMAL COUNTY reserves the right, in its sole judgment and discretion, to accept or reject any and all qualifications and proposals, and to waive minor technicalities and errors in the best interest of the County.

SCHEDULE

County issues RFQ/RFP	November 3, 2016
RFQ Submittal Deadline/Opening Date	December 1, 2016, 2:00 pm
County issues short list of 5 or fewer qualified Companies	January 12, 2017
County conducts Pre-Proposal Conference	January 19, 2017, 2:00 pm
Deadline for Questions.....	January 23, 2017, 2:00 pm
RFP Submittal Deadline/Opening Date.....	February 9, 2017, 2:00 pm
County interviews Short-listed Companies	February 20-24, 2017

All times noted within this document is Central Standard Time (CST).

Note that all required sealed submittals must be received and date-stamped in the office of the County Point of Contact by the deadline dates and times shown. Only hard copies of required sealed submittals will be accepted. Submittals will not be accepted via e-mail or fax. Submittals received after the deadlines indicated will not be considered for the award of the Contract and shall be considered void and unacceptable in accordance with state law.

Proposals submitted constitute an offer for a period of ninety (90) calendar days or until selection is made by Comal County.

If Comal County has not made an award within ninety (90) days after RFP responses are received, respondents may withdraw their responses without prejudice.

SECTION II - SCOPE OF WORK

Project Description

GENERAL

Construction of the Comal County Jail and renovation of the Comal County Sheriff's Office building, including but not limited to:

Phase One – Construct a new County Jail of approximately 155,000 square feet containing 589 beds, a booking area with temporary holding cells, support areas, a detention administration area and visitations spaces for attorneys and families.

Phase Two – Once the new jail is built, all of the inmates will be transferred from the existing jail; the interior of the existing jail will be demolished and renovated as offices for the Sheriff's Office.

Phase Three – Upon completing the renovation of the existing jail, the Sheriff will relocate staff into the newly renovated office space completed in Phase Two. The previously occupied Sheriff's Office area will then be demolished and renovated into additional office space. Upon completion, the Sheriff's Office will contain approximately 68,000 square feet, including space for future expansion.

The phases described herein are for general guidance. These phases or portions thereof may overlap or be combined in the interest of efficiency or cost effectiveness by agreement of the parties.

Exhibit G, attached hereto and incorporated herein by reference, provides a location map and preliminary sketches of the floor plans and site plan of the proposed project. These sketches are very preliminary and are included only as a general concept of the project scope.

PRECONSTRUCTION PHASE SERVICES

Provide Preconstruction Phase Services as defined in Article 6 of the Agreement attached hereto as Appendix A.

PHASE ONE – JAIL CONSTRUCTION

The new jail will have an estimated rated bed capacity of 589 inmates, including approximately 442 males and approximately 147 females. Included in the rated bed capacity are 9 male and 9 female infirmary beds, and 24 male and 14 female mental health beds.

General population housing will provide beds for approximately 408 males and approximately 124 females. Housing options include a wide range of custody levels, including separation cells, single cells, double occupancy cells, quad cells, and open dormitory housing units. Supervision will include a second level control room overlooking the housing pods and exercise yards.

The jail intake area will utilize the "open booking" concept. Intake area will also have holding and detox cells having an estimated total capacity of 81 persons.

The jail has been programmed to include adequate space for administration, visitation, magistration/arraignment, kitchen, laundry, and related support facilities. These facilities have

been sized to accommodate the future addition of two housing clusters, bringing the total population to approximately 900 inmates.

PHASES TWO AND THREE - SHERIFF'S OFFICE BUILDING RENOVATION

Planning and programming for the renovated Walter Fellers Law Enforcement Center was based upon accommodating future anticipated growth. Various sub-departments within the Sheriff's Office will have expansion space allocated in the initial construction but will be unoccupied at the point of initial occupancy.

The renovated Sheriff's Office has been programmed to include administrative offices, training and conference rooms, evidence processing and storage, interview rooms, records storage, communications/dispatch, patrol section, and criminal investigation section, and related support facilities. Comal County's Architect is currently evaluating building exterior, interior, structural, mechanical systems, electrical systems, plumbing systems, lighting, landscaping, and fire protection systems. Renovation or replacement of these systems will be determined upon Design Development Phase completion.

The remodeled Walter Fellers Law Enforcement Center must comply with the new building code requirements for an "essential services" building. Essential services buildings have increased code related structural requirements. These requirements are intended to ensure the building will remain functional after a natural or man-made disaster, allowing the uninterrupted delivery of emergency response services. Initial review of the building's existing condition is favorable for minor upgrades required to meet the new code criteria.

Estimated GMP Budget \$62,291,696.00

SECTION III – SUBMITTAL REQUIREMENTS

A. General Submittal Requirements

1. Respondents to this Solicitation are responsible for all costs related to preparation and delivery of required submittals.
2. Sealed submittals shall be delivered to the Comal County Purchasing Office by hand delivery, U.S. Postal Service, overnight or express mail. Faxed or e-mailed submissions will not be accepted. Comal County will not be responsible for failure of service of any delivery method.
3. Sealed submittals should be placed in a separate envelope/package and correctly identified with the RFQ/RFP Number, submittal deadline/opening date and time. When sent by mail, Federal Express, UPS, Express Mail or other delivery service, sealed submittals shall be enclosed in an additional sealed envelope clearly identified on outside as a submittal to County with Respondent's name and address, RFQ/RFP Number and due date and time. It is the respondent's sole responsibility to appropriately mark and deliver the submittals to Comal County by the specified dates and times to the appropriate location as specified herein.
4. Receipt of all addenda to this Solicitation should be acknowledged by attaching a signed copy of each addendum.
5. Each submittal shall include one (1) unbound original, twelve (12) bound copies, and an electronic copy on USB drive. Pages should be numbered and include a table of contents. Tabs are encouraged for the Step 1 submittal.
6. All submittals shall become the property of Comal County after the submittal deadline/opening date. Information, documentation, and other material in connection with this solicitation or any resulting contract may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the "Public Information Act") after the solicitation process is completed. Respondent may request protection of trade and confidential information from public release by clearly marking each page on which this information appears with "Confidential" in bold face type at least **14 point font**; however, all information submitted is subject to the Act and considered for release.

B. Step One: Request for Qualifications (Exhibits A -D)

1. The Company's past performance record, proposed personnel, experience with applicable skilled trades, project methodology, and experience with projects of similar size and scope shall be evaluated by the County to determine qualified applicants to advance to the next step. The responses will be evaluated using the following point distribution:
 - a. Verifiable Experience on Jail/Correction Facilities 30 points
 - b. Qualifications of Company and Key Personnel
Relevant to Project 20 points
 - c. Verifiable Experience on Law Enforcement Centers 20 points
 - d. Demonstrated Schedule Compliance on Past Projects 10 points
 - e. Demonstrated Budget Management on Past Projects 10 points

- f. Responsiveness to RFQ 10 points
2. The following are mandatory requirements of the CMR as demonstrated through this submittal:
- a. Certificate of Authority to do business in Texas;
 - b. Demonstrated experience with the construction of Jails or Correction Facilities, including a minimum of two (2) projects of similar scope, size, and complexity completed within the last ten (10) years;
 - c. Demonstrated experience with construction or renovation of law enforcement facilities within the last ten (10) years;
 - d. Demonstration of bonding capacity to meet the requirements of this project;
 - e. Compliance with Family Code and Tax Record Requirements; and
 - f. Demonstration of successful Safety History, including an Experience Modification Rate history for the past six (6) years at or below 1.0.
3. Qualifications shall not include any information regarding respondent's fees, pricing, or other compensation. Such information will be solicited from companies qualified by the County to participate in Step 2 of the selection process.
4. Required Attachments:
- a. Certificate of Authority to do business in Texas
 - b. Letter of Intent from Surety (ref requirements in Exhibit A)
 - c. Completed Safety Record Questionnaire (Exhibit B)
 - d. Completed Non-Collusion/Anti-Trust Affidavit (Exhibit C)
 - e. Completed Family Code and Tax Record Verification (Exhibit D)
 - f. Completed Texas Ethics Commission Form 1295, Certificate of Interested Parties. (www.ethics.state.tx.us)

C. Step Two: Request for Proposals (Exhibit E)

Fee Proposal

1. In Step 2, the County shall invite five (5) or fewer qualified Companies to provide fee proposals. This step will include a mandatory Pre-Proposal Conference, scheduled for 2:00 pm January 19, 2017, commencing at the of the Comal County Sheriff's Office, 3005 W. San Antonio Street, New Braunfels, Texas.
2. The fee proposal shall include all requested information. Incomplete proposals are deemed unresponsive and will not be considered. The County reserves the right to waive any minor technicalities within the fee proposals.
3. The costs and terms offered in Step 2 fee proposals will not be made public until after contract award. Only the names of the Companies who submitted proposals will be made public.

4. Comal County shall select the Company that submits the proposal that offers the best value for the County based on the published selection criteria and on its ranking evaluation. Comal County shall first attempt to negotiate a contract with the selected Company. If Comal County is unable to negotiate a satisfactory contract with the selected Company, Comal County shall, formally and in writing, end negotiations with that Company and proceed to negotiate with the next Company in the order of the selection ranking until a contract is reached or negotiations with all ranked Companies end.
5. Respondents are advised that the Texas Prevailing Wage Law will be administered in accordance with State requirements.
6. 100% Performance and Payment Bonds will be required from the selected Company that submits the best value for the County based on the published selection criteria and its ranking evaluation.
7. Required Attachments:
 - a. Bid Bond: The Fee Proposal shall be accompanied by a bid security in the form of a bid bond, certified and/or cashier's check (on a solvent bank in the State of Texas) drawn to the order of the Comal County, in the sum of not less than five percent (5%) of the Line 5 of the Fee Proposal. No other form of security will be accepted.
 - i. Should the contractor fail, neglect, or refuse to begin performance of the contract after receiving the award, said security will be forfeited to Comal County. Performance shall be considered begun upon acknowledgement of the contract award and the furnishing of all required security bonds and insurance coverage.
 - ii. Bid security furnished by the successful Company will be returned when a Notice to Proceed is issued. Bid security furnished by unsuccessful Company will be returned when a contract award is made.
 - b. Signed Local Participation Plan (Exhibit F).

Evaluation for Request for Proposals

Comal County intends to award the Contract for Construction to the Company who successfully demonstrates the best value to the County in accordance with this selection process. An evaluation committee established by Commissioners Court will evaluate the proposals. The committee includes employees of Comal County, the project architect (as a non-voting member), the program manager (as a non-voting member), and may include other impartial individuals. The final selection criteria will glean important elements from the Step 1 submittal in the final evaluation of the submittals. The evaluation committee will evaluate and score each proposal based on the following criteria.

1. Interviews (30 Points)

Interviews will further expand on the qualifications and pricing information provided in the Company's response to this RFP. The following will be expected during an interview:

1. A short presentation (approx. 1 hour) detailing company history and projects relevant to the current project, and confirmation of information presented in the submittal.

2. Attendance by team members and Commissioners Court assigned to the project to represent themselves as to their relative experience and proposed involvement in the project. Representation by the CMR Project Manager and key personnel is important in this interview.

2. Proposal Pricing & Schedule (25 Points)

Evaluation will be based upon the fully completed Fee Proposal, proposed schedule, and all required bonds.

3. Verifiable Experience on Jail/Correction Facilities/Law Enforcement Facilities, including references. (20 Points)

Information gathered in Step 1 – Qualifications will be incorporated into this criterion.

4. Demonstrated Schedule Compliance and Budget Management on Past Projects (15 Points)

Information gathered in Step 1 – Qualifications will be incorporated into this criterion.

5. Demonstrated experience with Subcontractors and Local Opportunity Plan (10 Points)

In addition to information gathered in Step 1 – Qualifications, this criterion requires a completed Local Opportunity Plan (Exhibit F).

SECTION IV – AWARD OF CONTRACT

The evaluation committee will determine if discussion and/or Best and Final Offers are necessary. Award of a contract may be made without discussions or Best and Final Offers, if in the best interest of the County. The evaluation committee may determine that discussions are necessary to clarify or verify a written proposal. A request for Best and Final Offer is at the sole discretion of Comal County and will be requested in writing. The evaluation committee will evaluate the finalists and make a recommendation for award to Commissioners Court. Commissioners Court, in its sole discretion, has final approval and will make the award of contract.

The Contract used for the project shall be as attached as Appendix A and Appendix B, where the basis of payment is the Cost of the Work plus a Fee with a Guaranteed Maximum Price.

Public Disclosure:

No public disclosures or news releases pertaining to this contract shall be made without prior written approval of Comal County.

EXHIBIT A - STATEMENT OF QUALIFICATIONS

I. VERIFIABLE EXPERIENCE ON JAIL/CORRECTIONS FACILITIES

(30 POINTS)

A. Statement of Qualifications and Availability to Undertake the Project.

1. Provide a statement of interest for the Project including a narrative describing the Company's unique qualifications as they pertain to this particular Project.
2. Provide a statement on the availability and commitment of the Company, its principal(s) and assigned professionals, including all key personnel, to undertake the Project.

B. Ability to Identify and Resolve Problems on Past Projects

1. Describe your experience with construction of jail/correction facilities in Texas.
2. Describe your experience with construction of jail/correction facilities nationally.
3. For all projects listed in response to this RFQ, describe any conflicts with the owner, consultants, architect/engineer, program manager, or subcontractors and describe the methods used by the Company to resolve those conflicts (e.g., Notice of Breach of Contract, Surety Involvement, Liens Filed, Financial Settlements, Payroll Disputes, Regulatory Penalties).
4. Provide examples of preconstruction services provided by your company that incorporated innovative solutions.
5. Provide previous work experience working with Texas Jail Standards, including variances, dispute resolution, project impacts, and compliance costs.

II. QUALIFICATIONS OF COMPANY AND KEY PERSONNEL RELEVANT TO THE PROJECT (20 POINTS)

A. Past Performance on Representative Projects

1. Identify and describe the proposed Key Personnel past experience for providing CMR Services that are MOST RELATED TO THIS PROJECT pertaining to Jail/Correction Facilities and Law Enforcement Centers:
 - a. Project name, location, and description
 - b. Type of construction (new, renovation, or addition)
 - c. Initial contract amount
 - d. Final construction cost
 - e. Final project size in gross square feet
 - f. Date of Contract
 - g. Date of Final Completion
 - h. Project Manager
 - i. Project Superintendent
 - j. Photograph(s) of the project
 - k. References: Include the name, company names, and phone numbers for the following individuals for each project listed above:

- i. The Owner's representative who served as the day-to-day liaison during the design and construction phases of the project, including telephone number and length of business relationship.
- ii. Architect/Engineer's representative who served as the day-to-day liaison during the construction phase of the project, including telephone number and length of business relationship.

References shall be considered relevant based on specific project participation and experience with the Company. The County or its representatives reserves the right to contact references during any part of this process. The County reserves the right to contact any other references at any time during the RFQ/RFP process.

2. Identify a maximum of three (3) completed projects, of any type, for which your company has received an award for construction excellence from a recognized organization and provide descriptive information for each.
3. If any of projects listed for key personnel were while employed or contracted with another company, please indicate that explicitly for each project and on each resume.

B. Knowledge of Current Construction Methodologies, Technologies, and Best Practices

1. Describe your knowledge of current construction methodologies, technologies, and best practices relevant to this project.
2. Describe your quality control and assurance program. Explain the methods used to ensure quality control during the Design and Construction Phases of a project. Provide specific examples of how these techniques or procedures were used from any projects listed above.
3. Provide any other details regarding special services, products, advantages or other benefits that will be, or may be offered to the County by the Company in completing this Project.

C. Qualifications of Company and Key Personnel

1. Describe, in one to three paragraphs, your management philosophy for the CMR construction delivery method.
2. Provide resumes for all key personnel proposed including, Project Manager and Project Superintendent, that will be directly involved in the Project, including their experience with similar Jail/Correction Facilities, and Law Enforcement Centers, the number of years with the company, and their city(s) of residence.
3. Indicate the estimated percent of time the proposed Project Manager and Project Superintendent will dedicate to this Project for Pre-construction and Construction Services.

D. Ability to Provide CMR Services.

1. Provide the following information on your Company:
 - a. Contracts (past 5 years)

- i. Texas - Annual number, total value per year, and percent change of contracts annually; and
 - ii. National - Annual number, total value per year, and percent change of contracts annually.
 - b. Revenues: Annual revenue totals and percent change per year (past 5 years)
 - c. Bonding
 - i. Total bonding capacity; and
 - ii. Available bonding capacity and current backlog.
2. Attach a letter of intent from a surety company indicating your company's ability to bond for the entire construction cost of the project. The surety shall acknowledge that the company is eligible for bonding every stage/phase of the project, with a maximum construction cost of up to \$62,291,696.00.
3. Identify if your company is currently for sale or involved in any transaction to expand, merge, or to become acquired by another business entity. If so, please explain the impact both in organization and company direction.
4. Provide details of any past or pending litigation, or claims filed, involving your company within the past 7 years.
5. Identify if your company is currently in default on any loan agreement or financing agreement with any bank, financial institution, or other entity. If so, specify date(s), details, circumstances, and prospects for resolution.

III. VERIFIABLE EXPERIENCE ON LAW ENFORCEMENT CENTERS

(20 POINTS)

A. Statement of Qualifications and Availability to Undertake the Project.

1. Provide a statement of interest for the Project including a narrative describing the Company's unique qualifications as they pertain to this particular Project.
2. Provide a statement on the availability and commitment of the Company, its principal(s) and assigned professionals, including all key personnel, to undertake the Project.

B. Ability to Identify and Resolve Problems on Past Projects

1. Describe your experience with construction/renovation of law enforcement centers in Texas.
2. Describe your experience with construction/renovation of law enforcement centers nationally.
3. For all projects listed in response to this RFQ, describe any conflicts with the owner, consultants, architect/engineer, program manager, or subcontractors and describe the methods used by the Company to resolve those conflicts (e.g., Notice of Breach of Contract, Surety Involvement, Liens Filed, Financial Settlements, Payroll Disputes, Regulatory Penalties).
4. Provide examples of preconstruction services provided by your company that

incorporated innovative solutions.

IV. DEMONSTRATED SCHEDULE COMPLIANCE ON PAST PROJECTS (10 POINTS)

1. Describe how your company will develop, maintain and update the schedule for this project during construction of all phases. Include information on project management software and processes used by your company.
2. Describe your approach to assuring timely completion of this project, including methods for schedule recovery, if necessary.
3. From the projects listed in the response, provide examples of how these techniques were used, including specific scheduling challenges/requirements and actual solutions.
4. For each project listed in the response identify whether project was completed within the original schedule or the amount of time the completed project exceeded the original schedule.

V. DEMONSTRATED BUDGET MANAGEMENT ON PAST PROJECTS (10 POINTS)

1. Describe your fiduciary responsibility as a CMR using Guaranteed Maximum Price contracts for publicly funded projects.
2. Describe your methodology for working with the Project Architect/Engineer and their consultants to deliver a Guaranteed Maximum Price and to maintain the GMP throughout the design and construction process.
3. Describe your cost control methods. For all projects listed in response, describe how the estimates were developed, how often they were updated and the degree of accuracy achieved.
4. Provide an example of a successful constructability program used to maintain project budgets without sacrificing quality.
5. Provide a sample of a cost estimate used to establish a contract amount from any project listed.

VI. RESPONSIVENESS TO RFQ (10 POINTS)

EXHIBIT B - SAFETY RECORD QUESTIONNAIRE

Comal County will consider the safety records of potential contractors prior to awarding a contract for construction. Pursuant to Local Government Code Section 262.0275, Comal County hereby adopts the following written definition and criteria for accurately determining the safety record of proposed Contractor on this project:

That Comal County shall determine at its discretion the disqualification of any bidder which, in response to the following two questions, reveals more than one case in which final orders have been entered by the Occupational Safety and Health Review Commission (OSHRC) against the bidder, or the company, corporation, partnership, or institution represented by the bidder, or anyone acting for such company, corporation, partnership, or institution, for serious violations of OSHA regulations within the past three years; and/or to disqualify any bidder which in response to the following two questions, reveals that the bidder, or the company, corporation, partnership or institution represented by the bidder, or anyone acting for such company, corporation, partnership or institution, has been convicted of a criminal offense within the past ten years which resulted in a serious bodily injury or death.

In order to obtain proper information from bidders so that Comal County may consider the safety records of potential contractors prior to awarding bid on county contracts, Comal County requires that bidders answer the following two questions to be submitted with their bids:

1. Has the Bidder, or the company, corporation, partnership, or institution represented by the Bidder, or anyone acting for such company, corporation, partnership, or institution, received citation for violations of OSHA within the past three years?

Yes _____ No _____

If the Bidder has indicated YES for question above, the Bidder shall provide to Comal County, with its bid submission, the following information with respect to each citation: Date of citation, location of establishment inspected, category of citation, final disposition of citation, and penalty assessed.

2. Has the Bidder, or the company, corporation, partnership, or institution represented by the Bidder, or anyone acting for such company, corporation, partnership, or institution, ever been convicted of a criminal offense which resulted in serious bodily injury or death?

Yes _____ No _____

If the Bidder has indicated YES for question above, the Bidder shall provide to Comal County, with its bid submission, the following information with respect to each citation: Date of offense, County where offense occurred, type of offense, final disposition of offense, and penalty assessed.

3. Provide Experience Modification Rate (EMR) history for the past three (3) to six (6) years.

ACKNOWLEDGEMENT:

THE STATE OF TEXAS

COUNTY OF _____

I certify that I have made no willful misrepresentations in this Questionnaire, nor have I withheld information in my statements and answers to questions. I am aware that the information given by me in this questionnaire will be investigated, with my full permission, and that any misrepresentations or omissions may cause my bid to be rejected.

Signature

Title

EXHIBIT C –NON-COLLUSION/ANTI-TRUST AFFIDAVIT

The Company has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted response. Failure to sign this document or signing it with a false statement shall void the submitted offer or any resulting contracts.

Neither the Company nor corporation, partnership, or institution represented by the Company nor anyone acting for such company, corporation, or institution has violated the antitrust laws of this State, codified in Section 15.01, et seq., Texas Business and Commerce Code, or the Federal antitrust laws, nor communicated directly or indirectly the offer made to any competitor or any other person engaged in such line of business. The Company's signature herein assigns to the County any and all claims for overcharges associated with his contract for this project, which arise under the Antitrust Laws of the United States, 15 USCA, Section 1, Et. Seq. (1973). By signing this proposal, Company certifies that if a Texas address is shown as its address, Company qualifies as a Texas Resident Bidder as defined in Rule 1 TAC 111.2.

RESPECTFULLY SUBMITTED:

Authorized Signature:

Printed Name:

Title:

Company Name:

Company's Corporate Charter No.:

EXHIBIT D – TAX RECORD AND FAMILY CODE REQUIREMENTS

The Company's signature herein certifies that the company is not currently delinquent in the payment of any debt owed to the State of Texas; including but not limited to franchise taxes and child support, and that any payments due the company under this contract will be applied to that debt.

Texas Family Code Compliance Requirement:

Under Section 231.006, Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate. The response includes the names and Social Security Numbers of each person with a minimum of twenty-five percent (25%) ownership of the business entity submitting the response.

Company Owner(s), Partners, Sole Proprietors, Share Holder(s) of twenty-five percent (25%) interest:

Name:	SSN:

RESPECTFULLY SUBMITTED:

Authorized Signature:

Printed Name:

Title:

Company Name:

Company's Corporate Charter No.:

EXHIBIT E – PROPOSAL

PROJECT

Project Number:	2016-375
Project Title:	Comal County Jail Construction and Comal County Sheriff's Office Renovation
Owner:	Comal County ("County")
Project Location:	3005 W. San Antonio Street, New Braunfels, Texas

COMPANY

Company Name:	
Contact Person:	
Contact Phone:	
Contact E-Mail:	
Physical Address:	
City, State, Zip:	

Having carefully examined the RFP, solicitation documents, drawings and specifications for the referenced project, as well as the premises and conditions affecting the work, as prepared by HDR, Inc., we hereby propose to furnish all labor, materials, and equipment necessary to complete the work for the following amounts and times.

SCHEDULE

The Company, by the signature of their authorized representative below, further agrees that, if awarded the contract, and upon the completion of the contract documents, the construction phase of the work will be substantially complete by the date indicated herein.

Projected Project Completion (months from date of Notice to Proceed) _____

FEE PROPOSAL

1	Pre-Construction Services		
2	Construction Overhead & Profit		%
3	Staffing (line 11)		\$-
4	General Conditions – Lump Sum (from line 44 below)		\$-
5	Total Cost (Pre-Construction Services + Staffing + General Conditions)		\$-
Staffing		% of time dedicated to this Project	
6	Project Manager		
7	Project Superintendent		
8	Project Engineer		
9	Admin		
10	Other Staff		
11	Subtotal: Personnel		\$-
General Conditions			
12	Performance and Payment Bond		
13	All Risk Builders Insurance		
14	General Commercial Liability Insurance		
15	Insurance rate modifier		
16	Amount of Commercial General Liability		
17	Building Permit Fee		
18	Inspections & Certificate of Occupancy		
19	Mobilization		
20	OSHA requirements		
21	Temporary Protection		

22	Field Office (including all furnishings)	
23	Computers	
24	Temporary fire extinguishers, safety equipment, & labor	
25	Office supplies	
26	Cell phone/ fax/internet services	
27	Janitorial services	
28	Temporary sanitary facilities	
29	Ice/water/first aid worker support	
30	Postage/Fed Ex/courier services	
31	Document reproduction/printing	
32	Misc. small tools and consumables	
33	Travel costs (i.e. room & per diem)	
34	Vehicle costs (i.e. lease, fuel, maintenance and repair)	
35	Vehicle insurance	
36	Project sign	
37	Construction equipment rental, freight & insurance	
38	Scaffolding (interior and exterior)	
39	Dumpsters	
40	Barricades, protections, runs, safety rails	
41	Site maintenance and clean up	
42	Record Documents	
43	Final clean up	
44	Subtotal: General Conditions	\$-

ADDENDA

Company acknowledges receipt of the following Addenda:

NUMBER	DATE	DATE RECEIVED

Provided the proposal is accepted, the Company, by their signature herein, agrees to initiate contract performance at time of award while furnishing all required surety bonds and insurance in accordance with the specified conditions of the Contract at the time of acceptance of the Guaranteed Maximum Price. Should the Company fail to complete these particulars by the specified date, the County may retain as forfeit the enclosed Certified Check, Cashier's Check or Bid Bond in the sum of not less than five percent (5%) of the total price of the fee proposal.

All statements and information prepared and submitted in the response to this RFP are current, complete and accurate.

RESPECTFULLY SUBMITTED:

Authorized Signature:

Printed Name:

Title:

Company's Corporate Charter No.:

If a Corporation, attach a corporation resolution or other official corporate documentation, which states that person signing this proposal is an authorized person to sign for and legally bind the corporation.

REQUIRED ATTACHMENTS:

- 1. Local Opportunity Plan**
- 2. Bid Bond (form not provided)**

EXHIBIT F - LOCAL OPPORTUNITY PLAN

_____ agrees to implement the following steps directed at increasing the utilization of material providers and qualified craftspeople, trades people, businesses and lower income residents within COMAL COUNTY.

- Demonstrate efforts to recruit and employ qualified craftspeople, trades people, and lower income local residents from within COMAL County through: local advertising media, signs placed at the project site, and community organizations and public or private institutions operating within and servicing the project area.
- To maintain a list of all lower income qualified residents who have applied either on their own or on referral from any source, and to employ such persons, if otherwise eligible and if a vacancy exists.
- To formally contact unions, subcontractors, and trade associations to secure their cooperation in this effort.
- To ensure that all appropriate project area business concerns are notified of pending sub-contractual opportunities.
- To maintain records, including copies of correspondence, memoranda, etc., which document that all of the above steps have been taken.
- To appoint or recruit an executive official of the company or agency as Local Opportunity Officer to coordinate the implementation of this plan.
- To maintain records of all projected work force needs for all phases of the project by occupation, trade, skill level, and number of positions and to update these projections based on the extent to which hiring meets these Local Opportunity objectives.
- To provide complete and accurate records to County as part of the Record Documents listing actual monetary amounts expended within Comal County for material and labor used in the Project.

As officers and representatives of _____, we the undersigned have read and fully agree to this Plan, and become a party to the full implementation of the program and its provisions.

Signature

Title

Date

LOCAL OPPORTUNITY PLAN*
PROPOSED LOCAL SUBCONTRACTORS

Name and Address of Local Provider	Trades Provided	Estimated \$ Amount to Local Business
TOTALS:		

PROPOSED LOCAL MATERIAL PROVIDERS

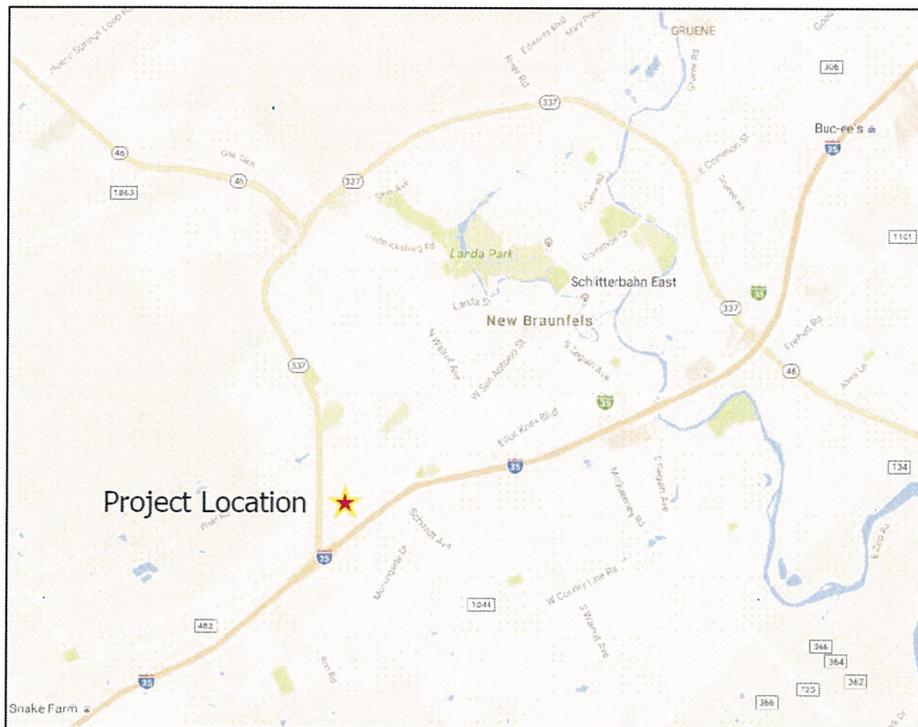
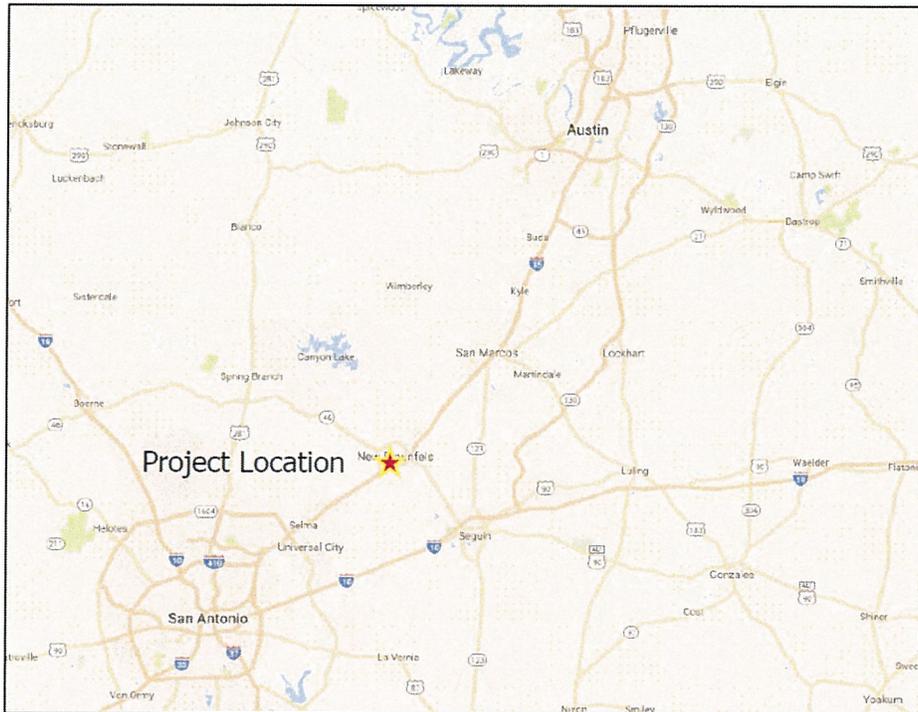
Name and Address of Local Provider	Materials Provided	Estimated \$ Amount to Local Business
TOTALS:		

PROPOSED LOCAL LABOR PROVIDERS

Name and Address of Local Provider	Work Classifications	Total Estimated Positions	Estimated \$ Amount to Local Business
TOTALS:			

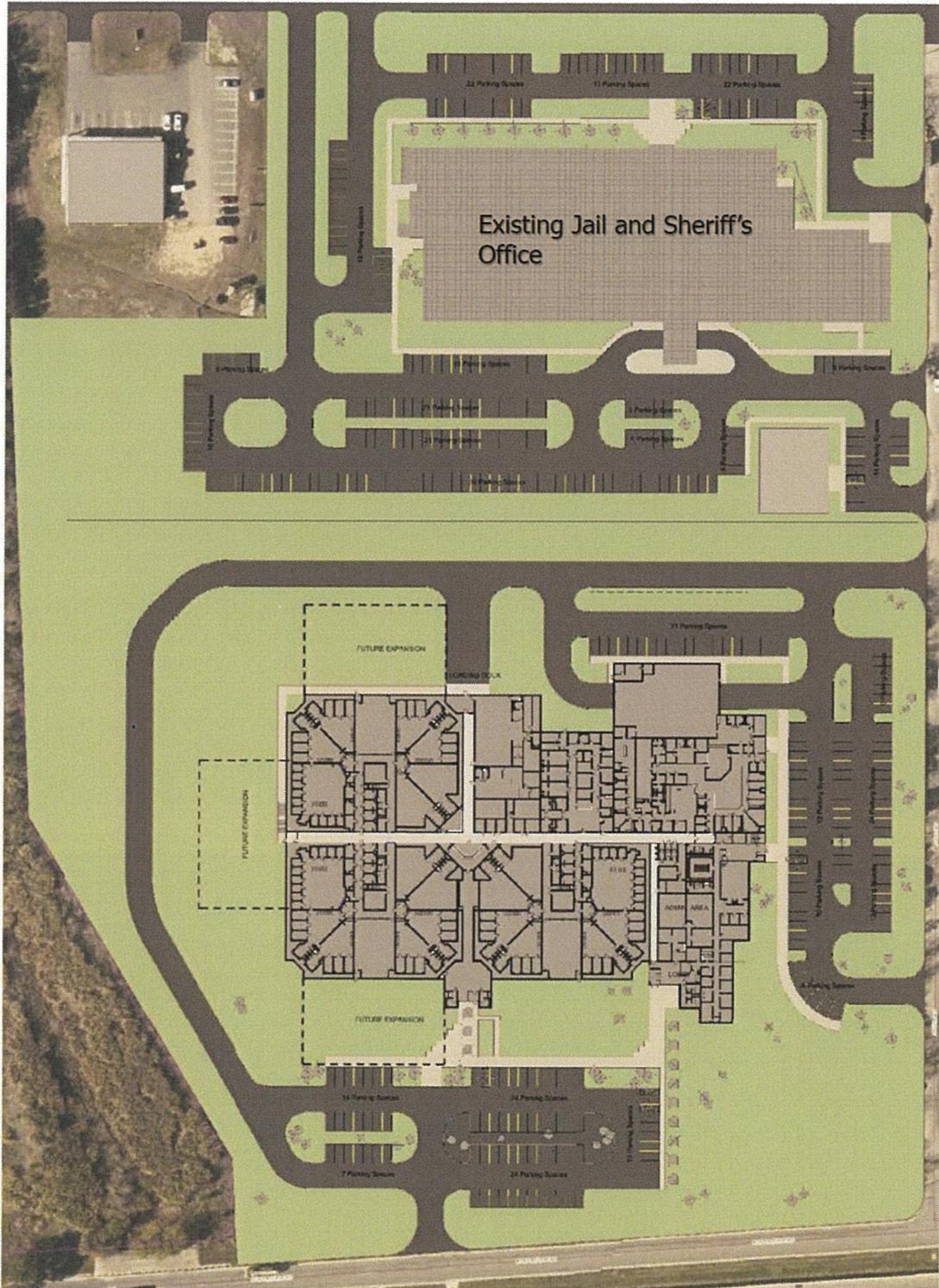
- **For the purposes of this document, "LOCAL" is defined as companies or persons with an active and current business address in Comal County.**

EXHIBIT G - LOCATION MAP AND PRELIMINARY SKETCHES OF THE FLOOR PLANS AND SITE PLAN



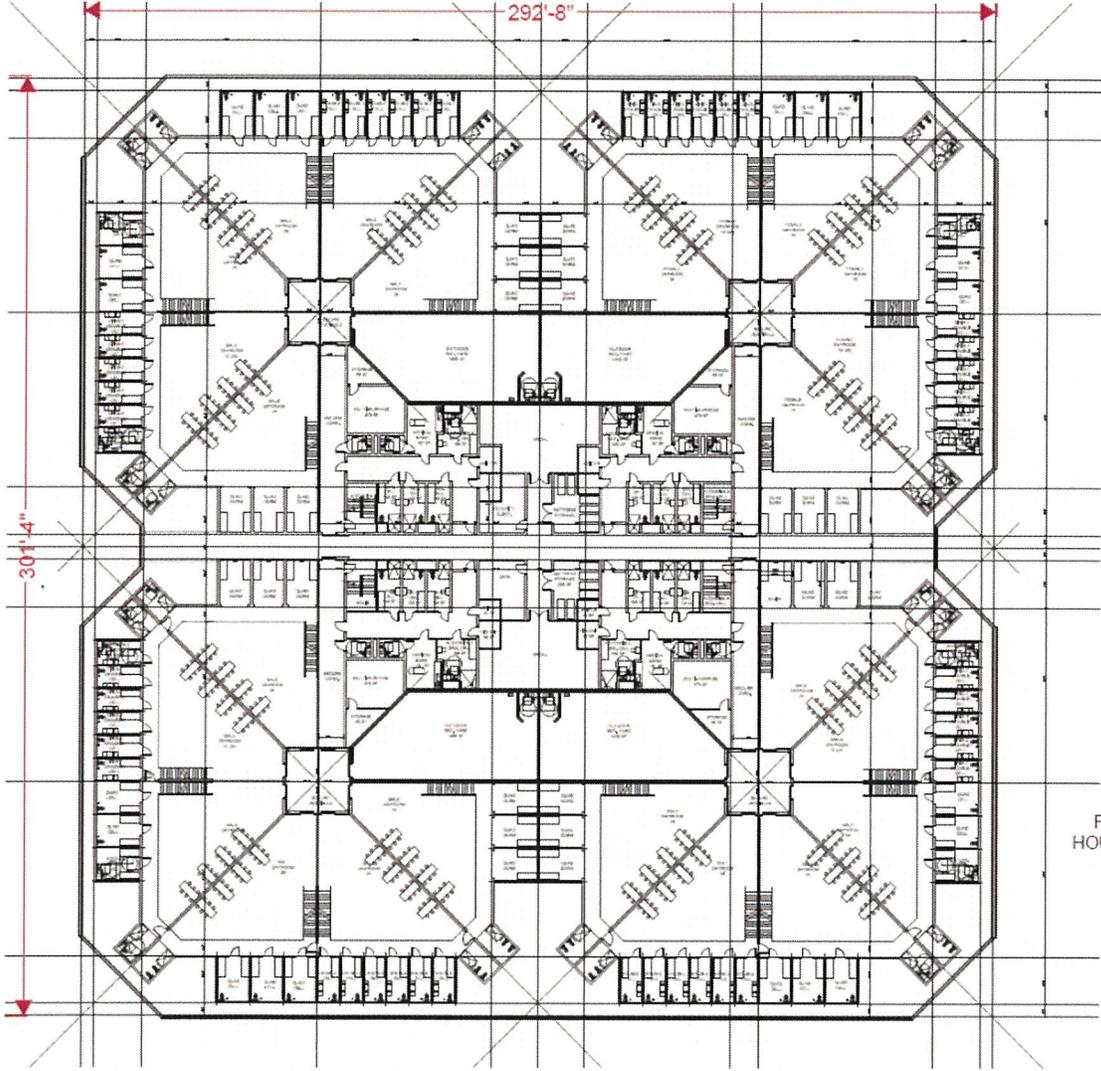
LOCATION MAPS

EXHIBIT G - LOCATION MAP AND PRELIMINARY SKETCHES OF THE FLOOR PLANS AND SITE PLAN



PRELIMINARY SITE PLAN

EXHIBIT G - LOCATION MAP AND PRELIMINARY SKETCHES OF THE FLOOR PLANS AND SITE PLAN



PRELIMINARY
HOUSING SCHEME
10/31/2016



PRELIMINARY HOUSING FLOORPLAN

EXHIBIT H - VENDOR PROTEST PROCEDURES
FOR COMAL COUNTY, TEXAS

1. Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation, evaluation, or award of a contract may formally protest to the Director of Purchasing. Such protests must be in writing and received in the Purchasing Office within 10 working days after the protesting party knows, or should have known, of the occurrence of the action which is protested. However, no protests may be submitted more than 10 working days from the date of award of a contract. Formal protests must conform to the requirements of this subsection and paragraph 3 of this subsection, and shall be resolved in accordance with the procedure set forth in paragraphs 4 and 5 of this subsection. Copies of the protest must be mailed or delivered by the protesting party to the Purchasing Office and all respondents who have submitted bids, proposals or offers for the contract involved. Names and addresses of such respondents may be obtained by sending a written request for the information to the Purchasing Office.
2. In the event of a timely protest under paragraph 1 of this subsection, and an award has not been made, the Purchasing Office shall not proceed further with the solicitation or award of the contract unless the Director of Purchasing makes a written determination that the award of contract without delay is necessary to protect substantial interests of Comal County.
3. A formal protest must be in writing, sworn, and contain:
 - a. a specific identification of the statutory or regulatory provision(s) that the action complained of is alleged to have violated;
 - b. a specific description of each act alleged to have violated the statutory or regulatory provision(s) identified in subparagraph (a) of this paragraph;
 - c. a precise statement of the relevant facts;
 - d. an identification of the issue(s) to be resolved;
 - e. argument and authorities in support of the protest; and
 - f. proof that copies of the protest have been mailed or delivered to all respondents who have submitted bids, proposals or offers for the contract involved. A certification that copies were supplied to all interested parties with a list of the addresses the protest was sent to will be accepted as proof of delivery of copies.
4. The Director of Purchasing, or his or her designee, shall settle and resolve the dispute concerning the solicitation or award of a contract.
5. The Director of Purchasing may solicit written responses to the protest from respondents who have submitted bids, proposals or offers for the contract involved and from other interested parties. Upon written request, the protesting party shall be given notice of the request and any written responses received.
6. The Director of Purchasing may consult with legal counsel concerning the dispute.

7. If the protest is not resolved by mutual agreement, the Director of Purchasing will issue a written determination on the protest.
 - a. If Director of Purchasing determines no violation of rules or statutes occurred, he or she shall so inform the protesting party and each respondent who submitted a bid, proposal or offer for the contract involved by letter. The letter shall set forth the reasons for the determination.
 - b. In instances in which the contract has not been awarded, if the Director of Purchasing determines that a violation of the rules or statutes has occurred, he or she shall so inform the protesting party and each respondent who submitted a bid, proposal or offer for the contract involved by letter. The letter shall set forth the reasons for the determination and the appropriate remedial action.
 - c. In instances in which the contract has been awarded, if the Director of Purchasing determines that a violation of the rules or statutes has occurred, he or she shall so inform the protesting party and each respondent who submitted a bid, proposal or offer for the contract by letter. The letter shall set forth the reasons for the determination.



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

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

The Owner: Comal County, Texas
100 Main Plaza
New Braunfels, Texas 78130

and Construction Manager: _____

for the Project: Comal County Jail Construction and Sheriff's Office Building Renovation
132 Water Lane/3005 W. San Antonio St.
New Braunfels, Texas 78130

Project Architect: Halden Tally
HDR
8750 N. Central Expressway, Suite 100
Dallas, Texas 75231

Owner's Designated Representative: Tom Hornseth
Comal County Engineer
195 David Jonas Drive
New Braunfels, Texas 78132

Program Manager: David Swies
Broaddus & Associates
401 E. Sonterra Blvd., Suite 375
San Antonio, Texas 78258

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	Ex. D CM's Personnel & Monthly Salary Rate

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 latest date of the signatories indicated at the conclusion of this document and all attachments (the "Effective Date"), by and between Comal County, a political subdivision of the State of Texas (hereinafter called the "Owner") and _____, a Texas corporation (hereinafter called "Construction Manager").

WHEREAS, the Owner desires to retain a Construction Manager-at-Risk for Comal County Jail Construction and Sheriff's Office Building Renovation (hereinafter called the "Project");

WHEREAS, the Owner desires a Construction Manager-at-Risk who will render, diligently and competently in accordance with the highest standards used in the profession, all Construction Manager-at-Risk 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 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 Comal County as attached; provided, however, this Agreement shall control in the event of a conflict with those Uniform General Conditions;
- c. Request for Proposal, Construction Manager's Response, and 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 Manager-at-Risk", "CMR", "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"** (hereinafter referred to as the "CCL") means the maximum monetary amount payable to the Construction Manager for all Pre-Construction Phase and 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 Pre-Construction Phase Fee, Construction Phase Fee, and the Construction Manager's Contingency. The CCL may be adjusted by the parties by separate written agreement for changes in the scope of the Project before or after acceptance of the Guaranteed Maximum Price Proposal. The CCL does not include Owner's Construction Contingency or Owner's Special Cash Allowance, if any.

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 the Owner's other consultants, if any, that describe the scope of the Project, quality of construction, 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"** (hereinafter referred to as "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”** (hereinafter referred to as the “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, if any.

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 A.

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 Comal County and includes its contracted Program Manager and Owner’s Designated Representative (“ODR”), which has been designated to exercise certain power on behalf of Comal 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”** (hereinafter referred to as “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”** means the Site and the Improvements, specifically the construction of the Comal County Jail and renovation of the Comal County Sheriff’s Office building, including but not limited to:

Phase One – Construct a new County Jail of approximately 155,000 square feet containing 589 beds, a booking area with temporary holding cells, support areas, a detention administration area and visitations spaces for attorneys and families.

Phase Two – Once the new jail is built, all of the inmates will be transferred from the existing jail; the interior of the existing jail will be demolished and renovated as offices for the Sheriff's Office.

Phase Three – Upon completing the renovation of the existing jail, the Sheriff will relocate staff into the newly renovated office space completed in Phase Two. The previously occupied Sheriff's Office area will then be demolished and renovated into additional office space. Upon completion, the Sheriff's Office will contain approximately 68,000 square feet, including space for future expansion.

The phases described herein are for general guidance. These phases or portions thereof may overlap or be combined in the interest of efficiency or cost effectiveness by agreement of the parties.

3.17 **"Project Architect"** means the professional architect employed by the Owner as Architect of Record for the Project along with its consultants.

3.18 **"Project Construction Budget"** (hereinafter referred to as "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.

3.19 **"Project Improvements"** means, collectively, all buildings, structures, and other improvements, including but not limited to construction of the new jail and renovation of the existing jail and administrative offices, all site development, improvements and landscaping, to be developed on the site pursuant to this Agreement.

3.20 **"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.

3.21 **"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.

3.22 **"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.

3.23 **"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.

3.24 **"Total Project Cost"** (hereinafter referred to as the "TPC") means the total budget established for the Project by Comal 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, GMP Proposal(s), Project Architect, other professional service fees, and other miscellaneous Project costs.

3.25 **"Work"** means provision of all services, supervision, insurance, 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 GMP 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.

3.26 **"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 must be in compliance with Texas Government Code Chapter 2258, Prevailing Wage Rates. 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 ODR and request a determination as to whether the Work or designated portion thereof is substantially complete. If ODR does not consider the Work substantially complete, ODR 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 ODR, the Construction Manager shall then submit another request for ODR to determine substantial completion. If ODR considers the Work substantially complete, ODR 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 GMP Proposal executed by the Parties.

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 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(s) 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 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 remove or replace any persons or entities assigned to the Project to which Owner submits a written objection to Construction Manager. 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 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 preliminary evaluations of the Owner's Design Criteria and the CCL, each in terms of the other, for both the new construction of the Jail and the renovation of the existing building for Sheriff's Office.

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 ensure 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 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, environmental surveys, or other special consultants hired by the Owner to develop additional information for the design or construction of the Project, as required.

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

6.1.9 Construction Manager shall perform selective demolition as directed by Architect to reveal hidden conditions that may affect the scope or cost of the Project.

6.2 Constructability Program

6.2.1 Construction Manager shall implement and conduct a constructability program to identify and document Project cost and schedule savings opportunities. The constructability program shall follow accepted industry practices. 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 ("CPM") Project Schedule (the "Schedule") for the other Project Team members' review and the Owner's approval, that coordinates and integrates the Construction Manager's services, the Architect of Record's design, the work of other consultants and suppliers, and the Owner's activities with the anticipated construction schedules for Owner contractors.

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

6.3.1.1 Commencement, milestone and completion dates for Schematic Design Phase, Design Development Phase, Construction Documents Phase, Construction Phase and other required project phases as deemed necessary by the Owner;

6.3.1.2 Times of commencement and completion for each Subcontractor;

6.3.1.3 Required activity sequences and durations, making sure to take in account all necessary scheduling resources; contract document packages; Owner contract document package review periods; completion dates; Project building permit acquisition time requirements; and construction contract bid dates;

6.3.1.4 Processing of shop drawings and samples;

6.3.1.5 A recommended schedule for the purchase of furniture, fixtures and equipment (FF&E) requiring long lead time procurement, delivery dates of same products requiring long lead time procurement, and methods to expedite and coordinate delivery of long lead time procurements including coordination of the Schedule with the early preparation of relevant portions of the Contract Documents by the Architect of Record; and

6.3.1.6 A separate Schedule shall be prepared for each Phase and each set of bidding documents.

6.3.2 The Construction Manager shall provide the necessary critical path schedule control with a goal to attain the Substantial Completion of the Project on or before thirty (30) months from the completion of the Construction Documents Phase, so that the Owner can occupy and utilize the entire Project facilities on such date.

6.3.3 The Construction Manager shall create and maintain the Schedule using an industry standard scheduling software, as approved by Owner.

6.3.4 The Construction Manager shall upload and maintain all construction-related schedules on Project Team project management software, if any.

6.3.5 The Construction Manager shall update the Schedule throughout the Pre-Construction and Construction Phases as described in the Uniform General Conditions and Specifications.

6.3.6 The Schedule shall include other detailed schedule activities as directed by the Owner including, but not limited to, Owner-managed work under separate contracts.

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 ECC reports at the required stages of completion of the Design Development and Construction Documents Phases of the Project. The ECC reports shall be detailed estimates derived from cost quantity surveys based on unit prices for labor, materials, overhead and profit, organized in current MasterFormat Divisions 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 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 Pre-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 Development 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 within two days of discovery.

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 Comal 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 Texas Jail Standards Commission, Architectural Barriers Texas Accessibility Standards, and the Fire Marshal.

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 FF&E, and coordinate the purchase and installation of such items as may be required to meet the Schedule. Construction Manager, in coordination with the Program Manager and Architect, shall inventory the Owner's existing FF&E and determine the reuse of the existing FF&E.

6.7 Obtaining Bids/Proposals for the Work

6.7.1 Construction Manager shall obtain competitive sealed 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. Construction Manager and Owner shall be present at the opening of all competitive sealed bids/proposals. All bid openings shall be at a location and time specified by Owner.

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

6.7.3 Construction Manager, Architect, 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 written 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 bid/proposal for the self-performance work in the same manner as all other trade contractors or Subcontractors except that such bid/proposal must be submitted to the Owner at least 24 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, at no additional cost to Owner.

6.8 Safety

6.8.1 Construction Manager is solely 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.

6.9 Quality Control

6.9.1 The Construction Manager is to include a full-time Quality Control Manager (the "QCM") for the duration of this Project and shall establish a Construction Manager's Quality Control ("QC") Program ("QC Program") in accordance with industry standards. The QCM shall be an employee of the Construction Manager and shall be responsible for the complete management of the QC Program. The QC Program shall be furnished to Owner.

6.9.2 The QCM must be an individual with a minimum of ten (10) years construction experience. The QCM must maintain a presence at the Project site at all times during progress of the Work. The QCM shall have complete authority and responsibility to take all necessary action to ensure complete contract compliance. The QCM will be subject to acceptance by the Owner.

6.9.3 The QCM can be assigned other project roles and responsibilities as long as the Construction Manager's QC Program remains in compliance with this Agreement. If the QC Program becomes non-compliant, the Owner may require the Construction Manager replace the QCM or request that the secondary management roles and responsibilities be removed from the QCM to allow primary focus on QC Program for this Project.

6.9.4 In the event the QCM is absent or away from the project site, the Construction Manager is responsible for identifying and providing the appropriate resume for the QCM Alternate. While the QCM is away from the project site, the QCM Alternate must maintain a presence at the site at all times during progress of the Work. The QCM Alternate shall have complete authority and responsibility to take all necessary action to ensure complete contract compliance. The QCM Alternate will be subject to acceptance by the Owner.

6.9.5 If the QC Program becomes non-compliant while under the supervision of the QCM Alternate, the Owner may require the Construction Manager replace the QCM Alternate.

6.9.6 The Construction Manager QC personnel shall hold specialized skills to assure the required Work is being performed per contract documents, industry standards and manufacturer's recommendations. The Construction Manager shall be responsible to provide adequate staff, office space, filing systems and other QC resources as necessary to maintain an effective and fully compliant QC Program.

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. The Pre-Construction Phase Fee shall be a lump sum amount 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 substantially and materially, the Pre-Construction Phase Fee shall be equitably adjusted as agreed to in a separate written agreement by the parties. 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 employees 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 writing in advance of performing the Additional Pre-Construction Phase Services.

ARTICLE 8 GUARANTEED MAXIMUM PRICE PROPOSAL

8.1 Within 21 days of Owner's written approval of the Design Development Phase, 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 the current MasterFormat Divisions, 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, in its sole option and discretion, may specify different requirements for the GMP Proposal. Construction Manager shall not withdraw its GMP 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 GMP Proposal shall account for and include 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 (2) complete, duplicate, 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 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 GMP. 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 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, and element of Work that is identified, shown, or specified in the GMP Proposal and the supporting documents, along with all necessary or ancillary materials and equipment for their complete operating installation, unless specifically excepted by the Owner in writing. Upon Owner's acceptance of the GMP Proposal, the Construction Manager shall not be entitled to any increase in the GMP 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 this Agreement and its attachments shall control.

8.10 Owner may accept or reject the GMP 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 GMP 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 without consequence to Owner.

8.11 The Construction Manager shall document the actual Cost of the Work at buyout as compared to the GMP 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 GMP 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.

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

9.1.1.1 Commencement, milestone and completion dates for Construction Phase and other required project phases as deemed necessary by the Owner;

9.1.1.2 Times of commencement and completion for each Subcontractor;

9.1.1.3 Required activity sequences and durations, making sure to take in account all necessary scheduling resources; contract document packages; Owner contract document package review periods; completion dates; Project building permit acquisition time requirements; and construction contract bid dates;

9.1.1.4 Processing of shop drawings and samples;

9.1.1.5 Maintain and update recommended schedule for the purchase of furniture, fixtures and equipment (FF&E) requiring long lead time procurement, delivery dates of same products requiring long lead time procurement, and methods to expedite and coordinate delivery of long lead time procurements including coordination of the Schedule with the early preparation of relevant portions of the Contract Documents by the Architect of Record; and

9.1.1.6 A separate Schedule shall be prepared for each Phase and each set of bidding documents.

9.1.2 The Construction Manager shall provide the necessary critical path schedule control with a goal to attain the Substantial Completion of the Project on or before 30 months from the completion of the Construction Documents Phase, so that the Owner can occupy and utilize the entire Project facilities on such date.

9.1.3 The Construction Manager shall update the Schedule throughout the Construction Phase as described in the Uniform General Conditions and Specifications.

9.1.4 The Schedule shall include other detailed schedule activities as directed by the Owner including, but not limited to, Owner-managed work under separate contracts.

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 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 Comal 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 regularly scheduled Project progress meetings, the 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, storage 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 advise Owner of any error, inconsistency or omission discovered in the Drawings, Specifications, and other Construction Documents within two days of discovery.

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

9.13 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 with 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.

9.14 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 Comal County's operators upon completion and prior to acceptance.

10.2 Construction Manager shall provide at a minimum warranty services for the work for one year following Substantial Completion, or as more particularly specified in the contract documents. Sixty (60) days 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 individuals 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 CCL, 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 may identify a person who is authorized to act in the Owner's behalf with respect to the Project. If identified, the person shall be referred to as the Owner's Designated Representative (the "ODR"). If identified, the ODR 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 If identified, the ODR 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, 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 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, but as soon as practicable and without delay, 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 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 Architect and 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 by Construction Manager shall be approved by Owner in writing.

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 GMP 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. Each schedule of values submitted shall correspond with the GMP. 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 GMP, 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 and must be in compliance with Comal County travel policies. 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 as specified in this Agreement 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;

14.1.6.3 The payment request has insufficient documentation to support the amount of payment requested for Project costs;

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 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, subcontracts, 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, including but not limited to copying, scanning or otherwise documenting said records. 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	-
Design Development Stage	20%
Construction Documents Stage	15%
GMP Development Stage	30%
Subcontractor Bid/Proposal Stage	35%

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 and affidavit of lien waiver or release of lien. 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 and Construction 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 or Construction Costs in any Application for Payment if the Owner, in its good faith judgment, determines that the unpaid balance of the line item in the schedule of values is not sufficient to fund necessary line item cost 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. 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 GMP or to make any payment if, in the Owner's belief, the cost to complete the Work would exceed the GMP 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 writing 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 GMP 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 postage, package delivery and courier service if incurred at the Project site and directly and solely in support of the Work.

15.1.3 Costs of materials, supplies, temporary facilities, and equipment 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, and equipment 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.

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 for government entities.

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, which are not eligible for exemption in accordance with law.

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 written 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 Uniform 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 Contingencies

15.3.1 The GMP Proposal shall include a three percent (3%) 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. The Construction Manager's Contingency shall be used to cover scope gaps between trade contractors, contract default by trade contractors, and design omissions which a prudent Construction Manager could not have reasonably detected during the pre-construction phase.

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, or cost increases caused by lack of coordination or communication with the Project Architect or subcontractors.

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. Any cost overruns in excess of the Construction Manager's Contingency shall be borne by the Construction Manager.

15.3.5 The GMP Proposal shall include a four percent (4%) Owner's Contingency amount to be used to cover costs due to Owner's change in scope and unforeseen field conditions. Owner, in its sole discretion, may authorize the use of the Owner's Contingency. Any balance in the Owner'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 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 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 Uniform 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; incentive compensation for Construction Manager personnel, including but not limited to bonuses; 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 Uniform 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 GMP, 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 Uniform 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 GMP 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% (eighty-five percent) 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 GMP 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 GMP 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% (One Hundred Percent) 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 GMP 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 GMP, so long as the total Cost of Work proposed in the GMP does not increase.

17.5 Owner shall be entitled to recognize and recover 100% (one hundred percent) 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 GMP 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 GMP Proposal for the Work. Before submitting its GMP 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 \$1,000,000 (One Million Dollars). 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 GMP 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 GMP. If construction is phased or staged with different GMPs 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 GMPs 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.

19.8 The Construction Manager must require all bonded subcontractors to name the Owner as a dual obligee for all subcontractor bonds.

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 Comal County, as attached.

20.2 This Agreement may be terminated 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 (3) 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 This Agreement may be terminated by Owner, at any time, upon thirty (30) days written notice to the Construction Manager for the Owner's convenience and without cause.

20.6 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.

20.7 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.

20.8 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 contained therein for the completion of the services described by this Agreement, for completion of the Project, or for any other purpose.

20.9 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 COMAL 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, Comal County, or of the various departments comprising Comal 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 Unless covered by an exception to mandatory disclosure under the Texas Public Information Act, any and all documents submitted to the County of Comal become Public Records and are, therefore, subject to public disclosure.

24.4 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. This Agreement shall control in the event of a conflict with any other Contract Documents, including

but not limited to, Uniform General Conditions, Project Manual, GMP Proposal, Plans, Specifications and Drawings.

24.5 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.

24.6 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. Comal County where the Project is located shall be the exclusive venue for any legal action arising from or related to this Agreement or the Project in which the Owner is a party.

24.7 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.

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

24.9 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.

24.10 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.

24.11 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 know 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.

24.12 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.

24.13 No Waiver of Sovereign Immunity. Nothing herein shall be construed as a waiver of governmental or sovereign immunity by Comal 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:

\$_____.

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:

\$_____.

25.3 Construction Phase Fee

25.3.1 For Construction Phase Services, Owner shall pay Construction Manager a stipulated Construction Phase Fee equal to _____% of the CCL 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:

\$_____.

25.3.3 If the Owner agrees to an increase in the GMP 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 CCL 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

\$_____.

25.4.2 If the Owner agrees to an increase in the GMP during the Construction Phase the maximum allowable amount of General Conditions Costs shall be equitably adjusted by applying the percentage established in paragraph 25.3.1 to the amount of the increase in the GMP.

25.4.3 The percentage rate established in paragraph 25.3.1 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.

25.4.4 If the Owner agrees to any increases in the CCL 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:

30 months or less from Construction Notice to Proceed.

26.1.2 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 GMP Proposal.

26.1.3 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 GMP Proposal, subject to time extensions granted by Change Order.

26.1.4 **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 AND ARE OF THE ESSENCE.** 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 Complete, the Owner shall deduct the amount of:

Two Thousand Dollars per day (\$2,000/day)

from any monies 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 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: Comal County Judge
100 Main Plaza
New Braunfels, Texas 78130

With Copy to: Comal County Criminal District Attorney
Tiffany Leal, Chief Civil Prosecutor
150 N. Seguin Ave, Suite 307
New Braunfels, Texas 78130

Comal County ODR
Tom Hornseth, County Engineer
195 David Jonas Dr.
New Braunfels, Texas 78132

If to Construction Manager: Name: _____
Title: _____
Address: _____

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

26.4 Party Representatives

26.5.1 The ODR authorized to act in the Owner's behalf with respect to the Project is:

Tom Hornseth
195 David Jonas Drive
New Braunfels, Texas 78132
Phone: (210)749-3355
Email: rabthh@co.comal.tx.us

26.5.2 The Construction Manager's Project Manager/Estimator is _____. The Construction Manager's Project Superintendent is _____. 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: _____
Title: _____
Address: _____

Phone: _____
Fax: _____

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 5.8.

26.5 Construction Document Sets

The Project Architect shall provide the initial issuance of all Construction Documents, including project manual and plans, in electronic format to the Construction Manager to be distributed to all subcontractor bidders/proposers requesting documents in order to provide bids/proposals to the Construction Manager.

26.6 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."

26.7 Field Office Space for Program Manager and Project Architect

Construction Manager shall provide on-site Project offices for the Program Manager and Project Architect, which at a minimum shall include per office: one (1) office desk, two (2) office chairs, computer connectivity with internet access, dedicated wired-telephone, facsimile, access to construction documents, access and use of a copy machine, small meeting space, and two (2) metal filing cabinets.

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

COMAL COUNTY, TEXAS

CONSTRUCTION MANAGER-AT-RISK

By: _____

By: _____

Sherman Krause, Comal County Judge

Printed Name: _____

Title: _____

ATTEST:

ATTEST:

By: _____

By: _____

Bobbie Koepp, Comal County Clerk

Printed Name: _____

Title: _____

EXHIBIT A
ALLOWABLE GENERAL CONDITION LINE ITEMS

On-Site Project Management Staff

Safety Coordinator/Assistant(s)	CPM Scheduler
Project Executive	Superintendent(s)
Office Engineer(s)	Construction Manager's Project Manager(s)
Project Expeditor(s)	Project Support Staff
Assistant Superintendent(s)	Project Specific Travel*

Bonds and Insurance

Builder's Risk Insurance
General Liability Insurance
Bid/Security Bond
Payment and Performance Bonds
Other Project Insurance, as required by the Agreement

Temporary Project Utilities

Dumpsters	Project Water
Project Electricity	Temporary Toilets
Monthly Telephone Service	Temporary Fire Protection
Street Rental and Barricades	Telephone System Installation
Fencing and Covered Walkways	
Temporary Water Distribution and Meters	
Temporary Electrical Distribution and Meters	
Site Erosion Control (BMP) and Project Entrance(s)	

Field Offices & Office Supplies

Project Architect's Field Offices	Job Photos/Videos
Project Manager's Field Offices	First Aid Supplies
Postage/Special Shipping	Reproduction Services
Project/As-Built Drawings	Monthly Office Supplies
Project Milestone Event(s)*	Remote Parking Expenses
Move-In/Out and Office Setup	Project Reference Manuals
Employee Identification System	Security System/Watchman
Small Tools and Storage Trailers	Safety Material and Equipment
Monthly Office Trailer Rental Costs	Drinking Water and Accessories
Mobilization/Demobilization (Equipment Only)	Office Clean-Up/Janitorial Services
Project Specific Signage	

* Specific justification and all estimated costs shall be submitted and approved by the Owner prior to any travel or event.

EXHIBIT B
GUARANTEED MAXIMUM PRICE PROPOSAL

The Construction Manager-at-Risk hereby submits to Owner for the use and benefit of Owner pursuant to the provisions of Article 8 of the Agreement by and between Comal County (the "Owner") and _____ (the "Construction Manager-at-Risk") dated _____, 20____ (the "Agreement"), a Guaranteed Maximum Price ("GMP") for the *Comal County Jail Construction and Sheriff's Office Building Renovation*, (the "Project", as defined in the Agreement), based on the Contract Documents (as defined by the Agreement) developed for the Project, as follows:

1. A not-to exceed amount for the Cost of the Work pursuant to the Agreement: \$ _____
2. A not-to exceed amount for the General Conditions pursuant to the Agreement: \$ _____
3. A not-to exceed amount for the Construction Manager-at-Risk's Contingency pursuant to the Agreement: \$ _____
4. A lump sum amount for the Construction Phase Fee pursuant to the Agreement: \$ _____
5. Owner's Special Cash Allowance provided by the Owner: \$ _____
6. Owner's Construction Contingency provided by the Owner. This is a lump sum amount from which changes are to be paid in accordance with the Uniform General Conditions. Any unused amount will be deducted from the GMP by Change Order: \$ _____
7. TOTAL OF GMP LINE ITEMS 1 THROUGH 6: \$ _____

This figure shall be the Guaranteed Maximum Price (GMP), which we hereby guarantee to the Owner.

GUARANTEED MAXIMUM PRICE PROPOSAL SIGNATURE PAGE

(Continuation of Exhibit B)

COMAL COUNTY, TEXAS

Construction Manager-at-Risk

By: _____

Sherman Krause, Comal County Judge

ATTEST:

By: _____

Bobbie Koepp, Comal County Clerk

By: _____

Name: _____

[Print or Type]

Title: _____

Corporations/LLC's: Attest:

Corporate Secretary

Other business forms: Witness:

SEAL:

21-375 C-11

COMMENTS

ATTACHMENT 1 TO EXHIBIT B

GUIDELINES FOR THE PREPARATION OF THE GUARANTEED MAXIMUM PRICE PROPOSAL

1. CONTRACT REQUIREMENTS:

Refer to Article 8 of the Agreement. The provisions of the GMP are defined here and other related requirements are included throughout the Agreement. In the event of irreconcilable conflict between the GMP Proposal and the Agreement, the interpretation that provides for the higher quality of material and/or workmanship shall prevail.

The GMP Proposal shall adopt and incorporate all of the terms and conditions of the Agreement. Any exceptions to or modifications of such terms and conditions proposed shall not be effective unless they are expressly stated and conspicuously identified in the GMP Proposal and are specifically accepted and approved by the Owner in writing. In general, proposed revisions or modifications to the language, terms or conditions of the Agreement will not be accepted.

2. PRE SUBMITTAL REQUIREMENTS:

- A. **Scope Definition:** Prior to GMP submittal, the Construction Manager-at-Risk shall thoroughly review the GMP construction document package with the Owner and determine if the scope is sufficiently defined and identify those areas requiring additional scope definition. As a minimum the following should be defined: Program building size, site limits and access, utility systems (existing and new), complete building systems descriptions, materials outline by division, MEP systems descriptions including materials, MEP system options shall be defined and accepted.
- B. **Estimated Construction Cost:** Cost estimates shall be updated concurrently with the construction document development.
- C. **Schedule:** The anticipated Notice to Proceed with Construction and Substantial Completion dates for Construction shall be coordinated and approved by the Owner.
- D. **Value Engineering (VE):** Proposed value engineering items included in the GMP shall be updated from previously submitted value engineering and should reflect the "final acceptance" of VE items, which are part of the scope of work. The VE schedule shall identify current acceptance and the date of acceptance in an adjacent column. VE items must be resolved and accepted by the Owner prior to GMP submittal.
- E. **Pre-submittal Conference:** The Construction Manager-at-Risk shall schedule a conference with the ODR no later than one (1) week prior to submitting the GMP to the Owner. Issues regarding the required materials to be included in the GMP should be reviewed so that there is a clear understanding of the format and contents of each division of work to be submitted. The Construction Manager-at-Risk shall obtain a copy of the "Standard Schedule of Values Format" from the Owner. Additionally, a review of acceptable "General Condition" items, as defined in the Agreement, is required.

3. CONSOLIDATION OF REVIEW COMMENTS:

The Owner, the Owner's Architects and Engineers, and the Program Manager, shall provide review comments. The Construction Manager-at-Risk shall consolidate all responses. Each comment shall have a corresponding answer directly below the original comment. A reply to each owner comment is required even if only a clarification is required. Each reply shall state where in the GMP Proposal the corresponding information may be located.

4. GENERAL REQUIREMENTS:

The GMP Proposal shall be submitted at the phase specified by the Owner. The GMP Proposal shall be submitted in the format described below. Proposals substantially deviating from the required format will be returned to the Construction Manager-at-Risk for re-submittal. Proposals not in compliance with the format, which result in substantial delay, will be the responsibility of the Construction Manager-at-Risk and may not extend the construction duration or substantial completion date.

5. MULTIPLE GMPS:

In order to expedite the Project Schedule, the Owner and Construction Manager-at-Risk may execute multiple GMP Proposals (stages), which shall be incorporated into the contract through a change order to the previous approved GMP Proposal(s), identified in Article 7. The requirements for this method shall be identical to the requirements for the first GMP submittal/approval process.

6. GMP PROPOSAL PACKAGE:

The GMP Proposal shall be submitted electronically and bound in 3-ring notebook or spiral notebook and entitled "Guaranteed Maximum Price Proposal". Below the title, the following items shall be shown:

- Submittal number (i.e. Submittal #1)
- Date of Submittal
- Project Name
- Project Number

Since several submittal revisions may be submitted, always state which submittal number is currently being submitted.

All pages within each tab shall be numbered.

The proposal shall be organized in the order described below:

TABLE OF CONTENTS

- List all the following items. Provide a brief summary of the major components within each Tab.

TAB 1 – Guaranteed Maximum Price Proposal (Exhibit B)

- Refer to the GMP Proposal document attached to this Exhibit. Type in the cost amounts and sign, attest, date and seal the form.
- In addition to the bound notebooks, provide two (2) loose original executed copies. (Do not bind into spiral notebooks.)
- Do not alter any language from the original document without prior approval from the Owner.
- Do not electronically alter the document.
- Each line item cost must exactly match the corresponding cost summary shown on the TAB 6 GMP Proposal Cost Breakdown.
- Provide a Corporate Resolution or Articles of Organization, stating individual's authorization to execute contracts on behalf of the corporation, for any individual signing the GMP, who is not the President or CEO of the firm.

TAB 2 - Executive Project Summary

- State any amended services or scope changes included in the Proposal.
- Provide a brief project summary defining the scope of work associated with the construction phase of work included in this GMP Proposal.
- Include the description of building type, size, character and general materials.
- Summarize any relationship with existing structures, unusual site conditions, utility issues, or conditions effected by other governmental agencies (i.e. right-of-way issues)
- State the anticipated Notice to Proceed with Construction date and Substantial Completion date.

TAB 3 - Project Team

- List the various teams and the team members, in graphic and written form, for including names, titles, job responsibilities, and contact information.
- Identify all consultants.

TAB 4 - List of Documents

- Drawings Index – provide detailed listing of each sheet number, sheet title, original date of drawing, revised date of drawing
- Specification Index:
 - Provide a detailed listing of each specification section required by the Owner as identified in the Agreement.
 - Provide a detailed listing of all other specification sections describing the project.
 - Specifications shall be organized by the current MasterFormat Divisions. State the name, original date of issue, and a column for revision date.

TAB 5 - Qualifications and Value Engineering

- Qualifications – A summary of all qualifications and assumptions organized by drawing sheet number or by specification sections to match those in TAB 4.
- Exclusions – A summary of exclusions organized by drawing sheet number or by specification section.
- Substitutions – A summary of substitutions to materials or systems described by drawing sheet number or by the specifications listed in TAB 4. Organize by specification section.
- Value Engineering Recommendations - List all items proposed to date and for each item identify if the item is accepted by the Owner and included in the GMP. State the date of acceptance. In addition, identify those VE items not currently accepted. State if the price is good for a limited time period.

TAB 6 - GMP Proposal Cost Breakdown

- Provide a Construction Cost Breakdown based on anticipated subcontracts organized by the current MasterFormat Divisions, General Conditions per exhibit, Construction Manager's Contingency, Construction Phase Fee, any Owner's Special Cash Allowance and/or Owner's Construction Contingency as identified by the Owner.
- The Construction Manager-at-Risk shall provide a breakdown for all Allowable General Condition Line Items by unit cost and duration, including completion of the attached "CM's Personnel and Monthly Salary Rate" for all salary employees assigned to the Project.
- The Construction Manager-at-Risk shall include an updated Exhibit E, "CM's Personnel and Monthly Salary Rates" identifying any new staff or rate modifications. **Any revisions should be in bold type.**
- The Construction Manager-at-Risk shall provide a detailed initial Total Project Construction Cost Estimate using standard estimating industry practices, utilizing the current MasterFormat Divisions, with any additional cost breakdown as required by the Project Manager.

TAB 7 - Master Project Schedule (Summary Level)

- The Summary Level schedule shall be submitted electronically and on paper bound with the GMP Proposal.
- Summary Schedule Requirements:
 - The schedule shall comply with the requirements of and shall form the basis for the "Detail" schedule, which shall be submitted within sixty (60) days following Notice to Proceed with Construction for Construction Services.
 - The schedule shall be a computer generated CPM schedule.
 - The schedule shall be presented in "bar chart" form and contain detailed activities for all events and milestones as determined in the Pre-Construction Phase Services.
 - The schedule shall include detailed, logic driven activities for all Construction Service activities scheduled to commence during the first ninety (90) days following the Construction Notice to Proceed. The remaining construction activities (those commencing after the first ninety (90) days) may be summarized by trades and may have longer durations than the "detailed" activities mentioned above.

EXHIBIT C

SAMPLE SECURITY BOND

Surety Bond No. _____

STATE OF TEXAS §

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF _____ §

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

Whereas the Principal has executed a contractual agreement, with Obligees for the use and benefit of _____, dated _____, (the "Agreement"), for _____, (the "Project").

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

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

(SEAL)

Principal

ATTEST:

By: _____

By: _____

(Typed Name and Title)

(Typed Name and Title)

(SEAL)

Surety

ATTEST:

By: _____

By: _____

(Typed Name and Title)

(Typed Name and Title)

**EXHIBIT D
CM'S PERSONNEL AND MONTHLY SALARY RATES**

Comal County Project Name: Construction of Comal County Jail and Renovation of Sheriff's Office Building

The following Monthly Salary Rate (MSR) shall identify the estimated billable rate prior to execution of the Agreement, and shall be confirmed during the Guaranteed Maximum Price Proposal phase for use throughout Construction Phase Services on the Estimated Construction Cost Breakdown for all salaried General Conditions type personnel pursuant to the Agreement. The MSR shall include the employee's estimated monthly direct salary expense (including possible future salary increases), plus any employer payroll taxes and/or fringe benefit contributions as identified below. Any additional employer contributions not identified below shall be included in the Construction Phase Fee pursuant to Article 16 of the Agreement.

Employee Name and Title	Estimated Monthly Direct Salary Expense	Estimated Employer's Monthly Contributions						Monthly Salary Rate
		Federal & State Unemployment (Approx. 1%)	Social Security & Medicare (7.65%)	Worker's Compensation	Health & Insurance	Pension / 401(k)	Vacation / Holiday	
1.	\$	\$	\$	\$	\$	\$	\$	\$
2.	\$	\$	\$	\$	\$	\$	\$	\$
3.	\$	\$	\$	\$	\$	\$	\$	\$
4.	\$	\$	\$	\$	\$	\$	\$	\$
5.	\$	\$	\$	\$	\$	\$	\$	\$
6.	\$	\$	\$	\$	\$	\$	\$	\$
7.	\$	\$	\$	\$	\$	\$	\$	\$
8.	\$	\$	\$	\$	\$	\$	\$	\$
9.	\$	\$	\$	\$	\$	\$	\$	\$
10.	\$	\$	\$	\$	\$	\$	\$	\$
11.	\$	\$	\$	\$	\$	\$	\$	\$
12.	\$	\$	\$	\$	\$	\$	\$	\$

Construction Manager shall certify, to the best of his knowledge, that the above referenced salary information is accurate.
 CM signature: _____ (same individual who signs agreement)

2 1-375 C n a t c m nts

**UNIFORM GENERAL CONDITIONS
FOR
CONSTRUCTION MANAGER AT RISK CONTRACTS
FOR COMAL COUNTY**

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**UNIFORM GENERAL CONDITIONS
FOR
CONSTRUCTION MANAGER AT RISK CONTRACTS
FOR COMAL 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, referred to in the Owner-Contractor Agreement as "Construction Manager".
- 1.11 *Contract Sum* means the total compensation payable to the Contractor for completion of the Work in accordance with the Contract Documents as originally contracted for and as subsequently adjusted by Change Order.
- 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 Comal 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.
- 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 allow Owner beneficial and intended use of its Project, as evidenced by a fully executed Certificate of Substantial Completion.
- 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, also known as a "Change Directive."
- 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 COMAL 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 exclusive venue for any suit arising from this Project shall be in a court of competent jurisdiction in Comal 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 Owner has specified the use of a particular design, device, 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.**

2.7 Environmental Regulations. At all times, Contractor shall conduct its activities in compliance with applicable laws and regulations and other requirements of the Contract relating to the environment, and its protection. 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. **TO THE FULLEST EXTENT PERMITTED BY LAW, ANY HAZARDOUS MATERIALS ABATEMENT CONTRACTOR ENGAGED BY THE CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE OWNER AND THE ARCHITECT/ENGINEER, INCLUDING THEIR RESPECTIVE EMPLOYEES AND REPRESENTATIVES, FOR GENERAL CONSTRUCTION AND NON-HAZARDOUS MATERIAL RE-MEDIATION, FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING, BUT NOT LIMITED TO,**

ATTORNEY'S FEES, ARISING OUT OF OR RESULTING FROM THE PERFORMANCE OF THE HAZARDOUS MATERIALS ABATEMENT WORK. SUCH OBLIGATION WILL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR OTHERWISE REDUCE ANY OTHER RIGHT OR OBLIGATION ON INDEMNITY WHICH WOULD OTHERWISE EXIST AS TO ANY PARTY OR PERSON DESCRIBED IN THIS SECTION.

- 2.8 Antiquities. Contractor shall take precaution to avoid disturbing primitive records and antiquities of archaeological, paleontological or historical significance. No objects of this nature shall be disturbed without written permission of Owner and the Texas Historical Commission. When such objects are uncovered unexpectedly, the Contractor shall stop all Work in close proximity and notify the ODR and the Texas Historical Commission of their presence and shall not disturb them until written permission and permit to do so is granted. All primitive rights and antiquities, as defined in Chapter 191, Texas Natural Resource Code, discovered on the Owner's property shall remain property of 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.
- 2.9 Franchise Tax Status. The Contractor agrees to execute and provide to the Owner a Certification of Franchise Tax Payment, on a form approved by the Owner.
- 2.10 Taxpayer 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. The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service or use the Instruments of Service on other projects. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architects consultants' reserved rights.
- 4.2 Copies Furnished. The Contractor will be furnished free of charge digital sets of the Contract Drawings and Specifications before on-site work commences. Additional complete sets of Drawings and Specifications, if requested, will be furnished at reproduction cost to be paid by the entity 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, 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 report them to the Owner and the Architect/Engineer within two (2) days of discovery. 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" drawing and specification set 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" "As-Constructed" set maintained at the site and one photocopy of same. Concurrently with furnishing these preliminary record documents, 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 data files of electronically scanned color images of professionally drafted "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 \$1 million (\$1,000,000) 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 a form acceptable to Owner. 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 of Texas. 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 U.S. 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. Insurance shall be written with no deductibles.

6.1.2 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.

Insurance for Claims of Damages	
1) Comprehensive General Liability (Except Products - Completed Operations)	\$2,000,000/Occurrence \$2,000,000/Aggregate
2) Personal and Advertising Injury (One Person/Organization)	\$1,000,000
3) Each Occurrence (Bodily Injury and Property Damage)	\$1,000,000
4) Limit Per Person - Medical Expense	\$300,000

5) Personal Injury Liability coverage will include claims arising out of Employment Practices Liability, limited to coverage provided under standard contract.	\$1,000,000
6) Property Damage Liability insurance will provide explosion, collapse and underground coverage where applicable	\$1,000,000
Automobile Liability Insurance - Bodily Injury	
1) Each Person	\$1,000,000
2) Each Accident	\$1,000,000
Automobile Liability Insurance - Property Damage	
1) Each Accident, or	\$1,000,000
2) Combined Single Limit (Bodily Injury and Property Damage)	\$1,000,000
Workers' Compensation	
1) State:	Statutory
Employers' Liability	
1) Bodily Injury by Accident	\$500,000
2) Bodily Injury by Disease - Each Employee	\$500,000
3) Bodily Injury by Disease - Policy Limit	\$500,000
Umbrella/Excess Liability	
1) Umbrella/Excess Liability Policy	\$10,000,000

6.1.3 To the fullest extent permitted by law, Contractor agrees to indemnify and hold harmless the Indemnified Parties (hereafter defined) from and against any and all claims, demands, actions, causes of action, losses, liabilities, costs and expenses (all of the foregoing being hereinafter individually and collectively called "claims"), including, without limitation, reasonable attorney's fees, or any kind, nature or description (including, without limitation, claims for property loss or damage, or personal injury or death), suffered or incurred by, or asserted against, the Indemnified Parties to the extent, but only to the extent, that the claims are the result of any negligent act or omission or any intentional act of omission in violation of Contractor's standard of care, by Contractor, its consultant or sub-contractor or anyone directly or indirectly employed by Contractor or anyone for whose acts Contractor may be liable. As used herein, "Indemnified Parties" shall mean, individually and collectively, the Owner and its respective affiliates, personal representatives, successors, officers, directors and employees. The terms of this Article shall survive the termination of this Agreement. With regard to claims against any party seeking indemnity under this Article which are made by an employee of Contractor, its consultant or sub-contractor, or anyone directly employed by Contractor, or anyone for whose acts Contractor may be liable, the indemnification obligations assumed under this Article shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for Contractor or any other employer under Worker's Compensation Act, Disability Benefit Acts, or

other similar employee benefit acts. The Indemnified Parties, to the extent specifically identified at the time of contracting, shall be an additional insured on Contractor's commercial general liability insurance policy. Such policy shall be primary to any insurance carried independently by the Indemnified Parties. Contractor's commercial general liability insurance policy and worker's compensation policy shall also provide waiver of subrogation endorsements in favor of the Indemnified Parties.

6.1.4 If Contractor for any reason fails to obtain and/or maintain in force any of the insurance required under this Article, then Contractor shall, and Contractor does hereby agree to, indemnify Owner against, and hold, save, and defend Owner harmless from, any and all claims, demands, actions, causes of action, suits, liabilities, damages, losses, costs and expenses of any kind or nature whatsoever (including, without limitation, reasonable attorneys' fees and court costs incurred in enforcing this indemnity and otherwise) which Owner may suffer or incur, or which may be asserted against Owner, whether meritorious or not, against which Owner would or should have been insured under any required insurance which Contractor does not for any reason obtain or maintain in force. This Article shall survive termination of this Agreement.

6.1.5 None of the requirements contained herein as to types, limits and necessary approvals are intended to and shall not in any manner limit, qualify or quantify the liabilities and obligations assumed by Contractor under this Agreement or as otherwise provided by law.

6.1.6 Builder's Risk Insurance

6.1.6.1 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:

- a. 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.
- b. 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, if any. However,

Contractor shall not be required to obtain such an endorsement unless specifically required in this Agreement. The aforementioned waiver of subrogation shall not be effective unless such endorsement is obtained.

6.1.6.2 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.

6.1.7 Policies must include the following clauses, as applicable.

- a. "It is agreed that the Contractor's insurance shall be deemed primary with respect to any insurance or self insurance carried by Comal County for liability arising out of operations under the Contract with the Owner."
- b. "The Owner, its officials, directors, employees, representatives, consultants, 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.
- c. "The workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of the Owner."

6.1.8 With respect to the required insurances listed herein, Contractor shall:

- a. Name Comal County, Texas, as additional insured as its interests may appear, with the exception of worker's compensation insurance;
- b. Provide Owner a waiver of subrogation regarding Contractor's worker's compensation insurance;
- c. Provide Owner with a thirty (30) day advance written notice of cancellation or material change to said insurance. Such certificate shall be accompanied by endorsement indicating the required coverage and shall bear the endorsement "Not to be cancelled without thirty (30) days prior written notice to Comal County, Texas"; and
- d. Provide Owner with certificates of insurance evidencing required coverages upon acceptance of this Agreement by Owner. Contractor shall submit copies of each insurance policy to Owner evidencing the effectiveness of the foregoing insurance policies for Owner's approval, which approval shall not be unreasonably withheld.

6.1.9 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 (7) 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 ten (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 whom it contracts to provide services on a project, to:
- (1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage 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 ten (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 Workers' Compensation 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.
- 6.2 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 security 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.
- 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 retesting will be paid for by the Contractor. Any special testing 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 time 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, the ODR, 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 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 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 advise the 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 therefor 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.

7.5.2 Contractor's Project Manager and Superintendent(s).

7.5.2.1 The Contractor shall employ a competent Project Manager who shall be in attendance at the Project Site during the progress of the Work. The Project Manager 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 Project Manager 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 Project Manager shall be binding on Contractor, unless otherwise agreed upon by both parties in writing. All oral communications that may affect Contract Time, Contract Sum and contract interpretation will be confirmed in writing to Owner.

7.5.2.2 The Contractor shall employ a competent resident superintendent(s) who shall be in attendance at the Project Site during the progress of the Work. The superintendent(s) 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(s) shall represent the Contractor at the Site during all times of construction activity, 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(s) shall be

binding on Contractor, unless otherwise agreed upon by both parties in writing. All oral communications that may affect 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 written 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 Non-compliant Work. 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 written 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.

7.5.16 The provisions of these Indemnifications 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.

7.5.17 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 or duties under this Contract.

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

7.5.17 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 upon the site of work, including storage of materials and employee parking, shall be confined to areas designated by the Owner. Due to the location of the project, parking may be limited and Owner may require Contractor and Subcontractors establish parking at remote locations for their workers. Any costs associated with remote storage and parking shall be borne solely by the Contractor and Subcontractors.

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 sole 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 direct with the separate contractor separate from this Agreement. If separate contractor and this Contractor fail to resolve the delay or damage dispute, the Owner shall initiate the dispute resolution terms and conditions of this Agreement to determine financial accountability of each party based on their damage or loss responsibility as 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 The 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 the regulated depth, shall comply with the following:

9.5.1 The Contractor will timely submit a trenching plan to the Owner. 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.

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 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. The Owner shall contract independently of the Contractor, the inspection services, testing of construction materials engineering, and the verification testing services necessary for acceptance of the facility by the Owner. 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 materials 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; or

- 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 ensure 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; and
- 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; or
- 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 said testing.

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, 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 will, and the Owner may 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.
- 11.8 Mockups. Mockups are full size assemblies for review of construction, coordination, testing, or operation.

11.8.1 Contractor shall notify Architect/Engineer when mockups are complete and ready for review. Mockup review shall be scheduled in coordination with the regular project meeting schedule. If the Architect/Engineer visits the site and the scheduled mock up is not fully complete and ready for review in coordination with a regular project meeting, then the Contractor shall be responsible for all costs associated with the Architect/Engineer's additional services to visit the site at another time, including time, travel, and related reimbursables. Such costs will be paid by the Owner and deducted from amounts owed the Contractor in the subsequent Application for Payment.

11.9 If the Architect/Engineer is required to perform more than two reviews of each Shop Drawing, Product Data item, Mockup, Sample, and similar submittals of the Contractor, and the Architect/Engineer charges the Owner for the Additional Services required, then such costs shall be deducted from amounts owed the Contractor in the subsequent Application for Payment.

11.10 Refer to Specification Section pertaining to Submittals, Shop Drawings, Product Data/Samples for additional requirements.

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

12.3. Condemnation and Removal of Defective Work.

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

12.3.2 The 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 extending through the warranty period. 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 Agreement 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 Work should be accepted because it meets performance, and other relevant standards. The Contractor shall have ten (10) working days from receipt of the notice to present documentation to prove compliance. Owner shall respond to Contractor's showing of proof in writing within fifteen (15) working days of receipt of Contractor's documentation.

Article XIII – Contract Payments

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

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

13.1.2 The Contractor shall retain in its files a copy of all worksheets used in preparation of its bids and any and all subcontractors' bids, supported by a notarized statement that the worksheets are true and complete copies of the documents used to prepare the bids. The worksheets shall be

made available to the Owner for verification at the time that Contract Documents are being executed, and thereafter the Contractor shall grant the Owner during normal business hours access to said notarized copy of worksheets from time to time and at any time during the period commencing upon execution of the Contract and ending one year after final payment.

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

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

- 1) The Contractor's estimate of the amount of Work performed, labor furnished and materials incorporated into the Work, using the approved Schedule of Values; and
- 2) A schedule update as specified, an updated Submittal Schedule, invoices for stored materials and other supporting documentation, and such additional documentation as Owner may require and as otherwise specified.

13.2.2 Contractor's Periodic Invoice. As soon as practicable, but in no event later than seven (7) days after receipt of the Preliminary Pay Worksheet, the Architect/Engineer and ODR or his designee shall meet with the Contractor to review the Preliminary Pay Worksheet and to observe the condition of the Work. On the basis of this review, the ODR or his designee and the Architect/Engineer may require modifications to the Preliminary Pay Worksheet prior to the submittal of a Periodic Invoice, and shall promptly notify the Contractor of revisions necessary for approval. As soon as practicable, but in no event later than seven (7) days following the Preliminary Pay Worksheet Periodic review meeting, the Contractor shall submit a Periodic Invoice reflecting the required modifications to the Architect/Engineer, and attaching all additional documentation required by the ODR or his designee and Architect/Engineer, as well as his affidavit swearing or affirming that all payrolls, bills for labor, materials, equipment, subcontracted work or other indebtedness connected with the Contractor's Periodic Invoice (Application for Payment) have been paid or will be paid within the time specified in Chapter 2251, Government Code. No Periodic Invoice shall be complete unless it fully reflects all required modifications, and attaches all required documentation including the Contractor's affidavit.

13.2.3 Certification by Architect/Engineer. As soon as practicable, but in no

event later than five days following the Architect/Engineer's receipt of the Contractor's Periodic Invoice (Application for Payment), the Architect/Engineer shall review the same for completeness, and shall forward the Periodic Invoice (Application for Payment) to the ODR or his designee, with a copy to the Contractor, together with the Architect/Engineer's certification that the application is complete and payable, or that it is incomplete, stating in particular what is missing. If the Periodic Invoice is incomplete, the Contractor shall make the required corrections and resubmit the Periodic Invoice for processing in accordance with this §13.2.3. Upon receipt of such a Periodic Invoice and affidavit certified by the Architect/Engineer, the Owner shall make final review and process the payment through established administrative procedures.

13.3 Owner's Duty to Pay. The Owner shall have no duty to pay the Contractor except on receipt by the ODR of (1) a complete Periodic Invoice certified by the Architect/Engineer.

13.3.1 Bulk materials must be approved by the Owner in accordance with the contract submission requirements before payment. Payment for stored materials shall be limited to 85% of the invoice price or 85% of the scheduled value for the materials, whichever is less. Bulk materials are eligible for full payment only after they have been incorporated into the Work.

13.4 Subcontractor Affidavits. All payment requests shall be accompanied by sworn affidavit of Contractor listing all subcontractors and material suppliers, the amounts due each and the amounts to be paid out of said progress payment to each of them and by unconditional lien waivers releasing all liens and lien rights with respect to Work for which Owner has made payment under a prior progress payment request in a form satisfactory to Owner from Contractor and all its subcontractors and material suppliers with contracts in excess of \$5,000.00. When Contractor submits its request for payment of retainage, Contractor shall submit all bills paid affidavits and conditional final lien waivers fully releasing all liens and lien rights with respect to the Work in a form satisfactory to Owner from Contractor and all its subcontractors and material suppliers with contracts in excess of \$5,000.00. Such Application for Payment shall be certified as correct by Contractor. Each Application for Payment shall also be accompanied by such other affidavits, certificates, information, data and schedules as Owner may reasonably require. The Owner is not required to make any payment to Contractor to the extent reasonably necessary to protect Owner, if Contractor has not supplied all items required by the Agreement.

13.5 Right of Owner to Contact Subcontractors. The Owner shall have the right at all times to contact the Contractor's subcontractors and suppliers to ensure that the same are being paid by the Contractor for labor, materials, or both furnished for or in connection with the Contractor's Work. Contractor will receive the payments made by Owner and will hold such payments as a trust fund to be applied first to the payment of any parties furnishing labor, materials, equipment or services for the Work and Contractor will so apply the payments within seven (7) days after receipt from Owner before using any part thereof for any other purpose. Progress payments may, in the discretion of Owner, be made in the form of checks payable jointly to Contractor and

such parties for such amounts as Contractor agrees are due. If Contractor shall fail to pay promptly when due, for all labor, materials, equipment and services and materials furnished in connection with the performance of the Work, Owner may, after seven (7) days written notice to Contractor and such amounts are not disputed by Contractor within said seven (7) day period, pay the amount of such liabilities and recover the amount from Contractor or deduct such amount from any monies due or to become due Contractor. The Owner may offset against any sums due the Contractor hereunder the amount of any obligations of the Contractor to Owner, whether or not said obligations arise out of this Agreement.

13.6 Retainage. The Owner shall withhold from each progress payment, as retainage, five percent (5%) of the total earned amount. Retainage so withheld shall be managed in conformance with Subchapter B, Chapter 2252, Texas Government Code.

13.6.1 Any request for reduction or release of retainage shall be accompanied by written consent of the Contractor's Surety. No such request shall be made until the Contractor has earned at least ninety percent (90%) of the total Contract Price.

13.6.2 Contractor shall not withhold more than five percent (5%) retainage on Subcontractor contracts. Retainage so withheld shall be managed in conformance with Subchapter B, Chapter 2252, Texas Government Code.

13.7 Reduction to Cover Loss. The Owner may reduce any Periodic Invoice prior to payment to the extent necessary to protect the Owner from loss on account of actions of the Contractor, including, but not limited to:

- a. Defective work not remedied;
- b. Damage to work of a separate contractor;
- c. Failure to maintain scheduled progress or reasonable evidence that the work will not be completed within the contract time;
- d. Failure to comply with the requirements of Texas Government Code Chapter 2258 (Prevailing Wage Law);
- e. For Contracts with a value of less than \$25,000 for which no payment bond is posted, receipt of written notice by the Owner of unpaid bills, filed in conformance with §53.232, Texas Property Code. Any funds so withheld shall be released to the Contractor if he furnishes a bond for release of lien as provided in §53.236, Texas Property Code;
- f. Persistent failure to carry out the work in accordance with the Contract Documents;
- g. Reasonable evidence that the work cannot be completed for the remainder of the contract sum;

- h. Assessment of fines for violations of Prevailing Wage Rate laws; or
 - i. Failure to include the appropriate amount of retainage for that periodic payment.
- 13.8 Title to all material and Work covered by progress payments transfers to the Owner upon payment. Transfer of title to Owner does not relieve the Contractor of the sole responsibility for the care and protection of materials and work upon which payments have been made, or the restoration of any damaged work, or waive the right of the Owner to require the fulfillment of all the terms of the Contract.
- 13.9 Progress payments to the Contractor shall not release the Contractor or his surety from any obligations under this Contract.
- 13.10 Upon the Owner's request, manifest proof of the status of Subcontractor's accounts shall be furnished in a form acceptable to the Owner.
- 13.11 Pay estimate certificates must be signed by a corporate officer or a representative duly authorized by the Contractor.
- 13.12 The Contractor, in requesting payment for materials, shall provide copies of bills of lading, invoices, delivery receipts or other evidence of the location and value of such materials.
- 13.13 For purposes of Texas Government Code §2251.021(a)(2), the date the performance of service is completed is the date when the Owner's representative approves the application for payment.
- 13.14 Off-Site Storage: With prior approval by the Owner and in the event Contractor elects to store materials at an off-site location, Contractor shall abide by the following conditions.
- 13.14.1 Materials shall be stored in a BONDED COMMERCIAL Warehouse.
 - 13.14.2 The Contractor shall provide separate Insurance Coverage adequate not only to cover materials while in storage, but also in transit from the off-site storage areas to the project site. Copies of duly authenticated Certificates of Insurance, made out to insure COMAL COUNTY, must be filed with the Owner's representative.
 - 13.14.3 Inspection by Owner's representative is allowed at any time. The Owner's Inspectors must be satisfied with the security, control, maintenance, and preservation measures.
 - 13.14.4 Materials for this project are physically separated and marked for the project in a sectioned-off area. Only materials which have been approved through the submittal process are to be stored in the area.
 - 13.14.5 Owner reserves the right to reject materials at any time prior to final acceptance of the complete Contract if they do not meet Drawings and Specifications requirements regardless of any previous progress payment

made.

- 13.14.6 With each monthly payment estimate, the Contractor shall submit a report to the ODR, or his designee, and Architect/Engineer listing the quantities of materials already paid for still stored in the off-site location.
- 13.14.7 Warehouse records, receipts and invoices shall be made available to Owner's representatives, upon request, to verify the quantities and their disposition.
- 13.14.8 In the event of Contract termination or default by Contractor, the items in storage off-site, upon which payment has been made, will be promptly turned over to Owner or Owner's agents at a location near the jobsite as directed by the ODR.
- 13.14.9 The full provisions of PERFORMANCE AND PAYMENT BONDS on this project shall cover the materials off-site in every respect as though they were stored on the Project Site.

Article XIV - Closing Inspections

- 14.1 Substantial Completion Observation. When the Contractor considers the entire Work or part thereof Substantially Complete, the Contractor shall inspect the Work, or designated portion thereof, for compliance with the Contract Documents and notify the ODR and the Architect/Engineer in writing that the Work will be ready for Substantial Completion Observation on a date certain. The Contractor shall include with this notice a copy of its updated inspection list marked to indicate corrected items plus a list of items to be completed or corrected prior to final inspection which the Contractor recognizes exist but believes do not prevent the Work or part thereof from being substantially complete, and shall request a Substantial Completion Observation for the Work or designated portion thereof. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. The Architect/Engineer and the Owner will review the Contractor's list of items and either will schedule the requested observation or will inform the Contractor in writing that such an observation would be premature because the Work is not sufficiently advanced or that conditions are not as represented on the Contractor's list.
 - 14.1.1 Prior to the Substantial Completion Observation, the Contractor shall furnish to the Owner a copy of the As-Built prints and a preliminary copy of each instructional manual, maintenance and operating manual, parts catalog, wiring diagrams, spare parts, specified written warranties and like publications or parts for all installed equipment, systems and like items as specified. If the Contractor does not furnish these requirements and the Owner must of necessity otherwise obtain this information and data, the costs for obtaining it will be deducted from payments otherwise due the Contractor. The substantial completion inspection will be jointly conducted by the Architect/Engineer, the Owner, and the Contractor.
 - 14.1.2 On the date indicated by Contractor, or as soon thereafter as is practicable, the ODR, the Architect/Engineer, and the Contractor shall

inspect the work and if the ODR and the Architect/Engineer determines that the Work is Substantially Complete a Certificate of Substantial Completion shall be issued by the ODR for certification by the Owner, Architect/Engineer and Contractor, fixing the date of Substantial Completion. The Architect/Engineer will provide with this certificate a list of items to be completed prior to final inspection (the "Pre-Final Punchlist"). This list may include additional items not included on the Contractor's list, which are deemed necessary by the Architect/Engineer or by the Owner to correct or complete prior to Final Inspection.

- 14.2 Final Observation. The Contractor shall fully complete the list of items listed on the Pre-Final Punchlist prior to Final Observation. Unless otherwise agreed in writing by the parties, the Contractor shall complete this work within thirty (30) days of the certified date of Substantial Completion. When the Contractor has completed the Pre-Final Punchlist, he shall give written notice to the ODR and Architect/Engineer that the Work will be ready for Final Inspection on a date certain. This notice shall be accompanied by a copy of the Contractor's updated punchlist indicating resolution of all items. On this date, or as soon thereafter as is practicable, the ODR, the Architect/Engineer and the Contractor shall inspect the Work and the Architect/Engineer shall submit to the Contractor a list of items which the Owner and the Architect/Engineer have determined to require correction or completion before the Work will be accepted by the Owner (the "Final Punchlist").
- 14.3 The Contractor shall correct or complete all items on the Final Punchlist before Acceptance and Final Payment. Unless otherwise agreed in writing by the parties, the Contractor shall complete this work within fifteen (15) days of receiving the Final Punchlist. Upon completion of the Final Punchlist, the Contractor shall notify the Architect/Engineer and ODR in writing stating the disposition of each punchlist item, and the Architect/Engineer and Owner shall promptly inspect the completed items. When the Final Punchlist has been completed, and the Contract is fully performed according to the Contract Documents, and is acceptable to the Owner, the ODR Architect shall issue a certificate fixing the date of Final Completion. Final Completion of all work shall be a condition precedent to the Contractor's right to receive Final Payment.
- 14.4 Annotation. Any Certificate issued under this Article may be annotated to indicate that it is not applicable to specified portions of the Work, or that it is subject to any limitation as determined by the Owner.
- 14.5 Purpose of Observation. Observation by the Owner and Architect/Engineer is for the purpose of determining the completion of the Work, and does not relieve the Contractor of its overall responsibility for completing the Work in a good and workmanlike fashion, in compliance with the Contract Documents. Failure of the Owner or Architect/Engineer to identify Work that is not in compliance with the Contract Documents, or which is defective in operation or workmanship, or acceptance of the Work with punchlist items left incomplete, does not constitute a waiver of such a defect or of the Owner's rights under the Contract Documents or relieve the Contractor of its warranties contained in the Contract Documents.

14.6 Additional Inspections.

14.6.1 If on the basis of the Substantial Completion Observation, the ODR or the Architect/Engineer determines that the Work is not Substantially Complete, the ODR or the Architect/Engineer shall give the Contractor written notice thereof, and shall inform the Contractor of the Work found to be incomplete, out of compliance with the Contract Documents, or defective in operation or workmanship, and setting a time in which incomplete or defective work is to be completed. The Contractor shall complete or correct all work so designated prior to requesting a second Substantial Completion Inspection.

14.6.2 If on the basis of the Final Observation, the ODR or the Architect/Engineer determines that the Work is not complete according to the Contract Documents, or that the Work required by the Pre-Final Punchlist had not been performed, the ODR or the Architect/Engineer shall give the Contractor written notice thereof, and shall inform the Contractor what Work was found to be incomplete, out of compliance with the Contract Documents or defective in operation or workmanship, and setting a time in which incomplete or defective work is to be completed. The Contractor shall complete or correct all Work so designated prior to requesting a second Final Observation.

14.6.3 This Agreement contemplates three observations only: the Substantial Completion Observation, the Final Completion Observation, and the Observation of Completed Final Punchlist Items. The cost to the Owner of any and all additional inspections deemed necessary by the ODR or Architect/Engineer because the Work was not ready for one or more of these observations shall be borne by the Contractor, and the Owner may issue a Unilateral Change Order deducting these costs from Final Payment. Upon the Contractor's written request, the Owner shall furnish documentation of all costs so deducted. Work added to the Contract by Change Order after Final Inspection shall not be considered as corrective work for purposes of determining timely completion or assessing the cost of additional observations.

14.7 Phased Completion. Project conditions may warrant, as determined by the ODR, that designated elements or parts of the Work shall or may be completed in phases. Where phased completion is required or specifically agreed to by the parties, the provisions of the Contract Documents concerning Closing Inspections and Early Occupancy shall apply independently to each designated element or part of the project. For all other purposes, unless otherwise agreed by the parties in writing, Substantial Completion of the Work as a whole shall be the date on which the last element or part of the Work to be completed is certified as Substantially Complete, and Final Completion of the Work as a whole shall be the date on which the last element or part of the Work to be completed is certified as Finally Complete.

Article XV - Early Occupancy

15.1 Right of Occupancy. The Owner may occupy or use all or any portion of the Work following Substantial Completion, or at any earlier stage of completion, provided that

such occupancy or use is consented to by any and all insurers of the Work. Should the Owner wish to use or occupy the Work, or part thereof, prior to Substantial Completion, the ODR shall so notify the Contractor in writing. Work performed on the premises by third parties on the Owner's behalf does not constitute occupation or use of the Work by the Owner for purposes of this Article.

15.2 Occupancy of Substantially Completed Work. If the Owner wishes to occupy all or part of the Work that has been Substantially Completed it shall so notify the Contractor and the Architect/Engineer prior to the Substantial Completion Inspection, and the ODR shall annotate the Certificate of Substantial Completion to set out, pursuant to the Contract Documents or the parties' written agreement, the responsibilities of the Owner and the Contractor for maintenance, heat, utilities, operation of permanent equipment, and insurance. The Certificate of Substantial Completion shall be submitted to the Architect/Engineer and Contractor for their written acceptance of the responsibilities assigned to each of them in such Certificate. The accepted Certificate shall not constitute a change in Contract Time which can only be modified by an agreed Change Order.

15.3 Occupancy of Work Prior to Substantial Completion.

15.3.1. Notice and Early Occupancy Proposal. If the Owner determines that substantial hardship will result if it is unable to occupy some portion of the Work prior to Substantial Completion, it shall so inform the Architect/Engineer and the Contractor no less thirty (30) days before the date the Owner wishes to occupy the Work, and designate those portions of the Work to be occupied and the uses to be made of the occupied premises. As soon as practicable, but not less than five (5) working days after receiving this notice, the Contractor shall make the designated portions of the Work available to the Architect/Engineer and the Owner for observation. The Architect/Engineer and the Owner shall observe the Work jointly with the Contractor. As soon as practicable, but not later than the third (3rd) day next following the date of the inspection, the ODR or the Architect/Engineer shall prepare and submit to the Contractor an Early Occupancy Proposal, specifying any Work that must be completed or corrected as well as any operation and maintenance manuals or other documentation necessary for the Work to be occupied by the Owner and used for the purposes designated by the Owner in its notice, and setting out the division of responsibility between the Owner and the Contractor for utilities, security, maintenance, insurance and liability for damage to the Work or damage arising from the condition of the Work. The Early Occupancy Proposal shall also specify whether the area to be occupied must be Substantially Complete before occupation, and shall specify the date for Substantial Completion of the Work to be occupied if other than the date previously specified by the Contract Documents.

15.3.2. Administration as Change Order. The Early Occupancy Proposal shall be administered as an Interim Change Authorization pursuant to the provisions of the Contract Documents, except that the Contractor shall submit a CPE as soon as possible, but not later than the seventh (7th) day next following receipt of the Early Occupancy Proposal. All cost adjustment, including any increased costs of insurance, related to the

Early Occupancy Proposal, shall be stated in the CPE; any such relief not so requested shall be deemed waived. If the Early Occupancy Proposal requires early Substantial Completion, the Contractor shall be entitled to an equitable cost adjustment for acceleration and impact costs, to be submitted pursuant to the provisions of the Contract Documents concerning Type II Changes. If an early completion date is not required, the Contractor shall submit any claim for time extension as a Type I change in the Work and Interim Change Authorization. If by the date designated by the Owner as the proposed date of occupancy, the ODR and Contractor have not reached an agreement concerning adjustment of time or cost, or the division of responsibility for the occupied portions of the Work, the ODR may issue a ULCO.

- 15.3.3. Project Completion Administration with Early Occupancy. Where under the provisions of this Article the Contract Time is modified for any part of the Work due to early occupancy, then the provisions of the Contract Documents regarding additional inspections shall apply. All required documentation shall be furnished by the Contractor to the ODR on or before the date of occupation by the Owner.
- 15.3.4. Nonwaiver of Timely Completion. Early occupancy of any portion of the Work does not waive the Contractor's duty to complete the remaining Work within the Contract Time as specified by the Contract Documents or as subsequently modified by Change Order.

Article XVI - Contract Final Acceptance and Payment

- 16.1 Request for Final Payment. At any time following the completion of all work, including all Substantial Completion punchlist items, cleanup, and the delivery of record documents, the Contractor shall submit a certified Application for Final Payment, including all sums held as retainage, to the Architect/Engineer and the ODR or his designee for their review and approval.
- 16.2 Final Payment Documentation. The Contractor shall submit, prior to or with the Application for Final Payment, final copies of all close out documents, including maintenance and operating instructions, guarantees and warranties, certificates, record documents and all other items required by the Contract Documents. The Contractor shall also submit Consent of Surety to Final Payment, an affidavit that all payrolls, bills for materials and equipment, subcontracted work and other indebtedness connected with the Work, except as specifically noted, have been paid or will be paid or otherwise satisfied within the period of time required by Chapter 2251, Texas Government Code. The Contractor shall furnish documentation establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of claims arising out of the Contract. The Owner is entitled to rely upon this affidavit; the Contractor may not submit a claim on behalf of a subcontractor or vendor if that claim has not been noted as an exception in the affidavit.
- 16.3 Architect/Engineer Approval. The Architect/Engineer shall review a submitted Application for Final Payment promptly but in no event later than ten (10) days after its receipt. Prior to the expiration of this deadline, Architect/Engineer shall either: 1)

return the Application for Final Payment to Contractor with corrections for action and resubmission; 2) accept it, note his approval and send to Owner.

- 16.4 Offsets and Deductions: The Owner may deduct from the Final Payment all sums due from the Contractor for any reason, all deductions authorized by the Contract Documents, and as Liquidated Damages. If the Certificate of Final Completion notes any Work remaining incomplete or defects not remedied, the Owner may deduct the reasonable cost of remedying such deficiencies from the Final Payment. If such deductions are made, the Owner shall identify each deduction made and the reason for each deduction, and furnish the Contractor with an explanation of the deduction and the amount deducted on or by the 21st day after Owner's receipt of an approved or deemed approved Application for Final Payment.
- 16.5 Final Payment Due. Final Payment shall become due and payable by Owner, subject to all allowable offsets and deductions, on the 31st day next following Owner's approval of the Application for Payment. If the Contractor disputes any amount deducted by the Owner, the Contractor shall give notice of the dispute on or before the thirtieth day next following receipt of Final Payment; failure to do so will bar any subsequent claim for payment of amounts deducted.
- 16.6 Effect of Final Payment: Final payment shall constitute a waiver of all claims by the Contractor except those specifically identified in writing and submitted to the ODR prior to the application for Final Payment. Provided, however, that the Contract shall not be deemed fully performed by the Contractor and closed until the expiration of all warranty periods.

Article XVII - Contract Warranty and Guarantee

- 17.1 Contractor's General Warranty and Guarantee. Contractor warrants to the Owner that all Work shall be executed in accordance with the Contract Documents, complete in all parts and in accordance with approved practices and customs, and of the best finish and workmanship. Unless otherwise specified, all materials and equipment incorporated in the Work under the Contract shall be new. The Owner may, at its option, agree in writing to waive any failure of the Work to conform to the Contract Documents, and to accept a reduction in the Contract Price for the cost of repair or diminution in value of the Work by reason of such defect. Absent such a written agreement, however, the Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute and is not waived by any inspection or observation by the Owner, Architect/Engineer or others, by making any progress payment or final payment, by the use or occupancy of the Work or any portion thereof by the Owner, at any time, or by any repair or correction of such defect made by the Owner. The Contractor shall bear the cost of the Architect/Engineer's additional services to visit the site to review non-conforming Work within the warranty period. Such costs shall include, but not be limited to all staff time, related administrative and office time, travel, and related reimbursable expenses. Contractor shall directly and promptly reimburse Owner for the full amount of each Architect/Engineer's invoice until Work is corrected.
- 17.2 Warranty Period. Except as otherwise specified, the Contractor shall repair all defects in materials, equipment, or workmanship appearing within one (1) year from the date of Substantial Completion of the Work as a whole if such date establishes

the beginning of the period of Owner occupancy or use of the Work, otherwise this warranty begins upon Final Completion and acceptance of the Work. Upon receipt of written notice from the Owner of the discovery of any defects, the Contractor shall promptly and at its own cost remedy the defects and replace any property damaged therefrom and shall promptly provide written notice to the Owner indicating action taken to resolve the defect. In case of emergency where delay would cause serious risk of loss or damage to the Owner, or if the Contractor, after notice, fails to proceed promptly and remedy within thirty (30) days or within another period of time which has been agreed to in writing, in compliance with the terms of the warranty and guarantee, the Owner may have the defects corrected and the Contractor and his surety shall be liable for all expenses incurred.

17.3 Separate Warranties. Where a particular piece of equipment or component of the work for which a separate warranty is required under the Contract Documents is placed in continuous service before Substantial Completion, the date of service commencement shall be certified by the Owner and the Warranty Period for that equipment or component shall run from the date so certified. In addition to the Contractor's warranty and duty to repair, as set forth in the Contract Documents, the Contractor expressly assumes all warranty obligations required under the Contract Documents for specific building components, systems and equipment. The Contractor may satisfy any such obligation by obtaining and assigning to the Owner a complying warranty from a manufacturer, supplier, or subcontractor. Where an assigned warranty is tendered and accepted by the Owner which does not fully comply with the requirements of the Contract Documents, the Contractor shall remain liable to the Owner on all elements of the required warranty that are not provided by the assigned warranty.

17.4 Certification of No Asbestos Containing Materials or Work.

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

17.4.2 The Contractor shall provide at Substantial Completion, a notarized certification to the Owner and the Architect/Engineer that no asbestos containing materials or work was provided, installed, furnished or added to the project.

17.4.3 The Contractor shall take whatever measures he deems necessary to ensure that all employees, suppliers, fabricators, materialmen, subcontractors, or their assigns, comply with this requirement.

17.4.4 The Contractor shall ensure compliance with the following act – Texas Asbestos Health Protection Act (TAHPA – 25 TAC 195) from all of his subcontractors and assigns as listed in item 17.4.3 above. All materials used on this Project shall be not certified as Asbestos Containing Building Materials (ACBM).

17.4.4.1 Every subcontractor shall provide a notarized statement that no ACBM has been used, provided, or left on this project.

17.4.4.2 The Contractor shall provide to the extent deemed necessary for compliance by the State, data sheets and/or labels as proof of compliance.

17.4.4.3 The Contractor shall provide a notarized certification that no ACBM's were used.

Article XVIII - Concealed Site Conditions

18.1 The Contractor is responsible for having visited the Site and having ascertained pertinent local conditions such as location, accessibility, and general character of the Site or building, the character and extent of existing Work within and adjacent to the Site, and any other Work being performed thereon at the time of the submission of its proposal. Any failure to do so will not relieve it from responsibility for successfully performing the Work without additional expense to the Owner.

18.2 If, in the performance of the Contract, subsurface, latent, or concealed conditions at the Site are found to be materially different from the information included in the bid documents, or if unknown conditions of an unusual nature are discovered differing materially from the conditions usually inherent in Work of the character shown and specified, the Contractor shall notify the Architect/Engineer and the Owner in writing of such conditions before proceeding with the Work. If necessary, the Architect/Engineer and/or the Owner shall develop a solution and provide it to Contractor. If the solution prompts changes to the Contract Amount and/or Time, the Contract shall be adjusted as provided by the Contract Documents.

18.3 The Owner makes no representations as to the accuracy or completeness of the site information furnished to the Contractor by Owner and does not expressly or implicitly warrant same and is not responsible for any interpretations or conclusions reached by the Contractor with respect thereto. It is Contractor's sole responsibility to verify to its own satisfaction all site information, including but not restricted to topographical data, borings, subsurface information, utilities and easements and to account for all reasonably anticipated costs in their proposal for construction.

Article XIX - Change Orders

19.1 Change Order Defined. A Change Order is a written modification of the Contract between the Owner and the Contractor, signed by the Owner, the Contractor and the Architect/Engineer.

19.2 Effect of Change Order. A Change Order authorizes a change in the Scope of the Work or an adjustment in the Contract Sum or the Contract Time. Work performed under a Change Order is subject to all provisions of the Contract Documents.

19.2.1 Contingency Allowance: The Construction Contingency Allowance is controlled solely by the Owner and is in addition to any cost allowance provided for under the various sections. Expenditures from the Contingency Allowance must be made by Change Order issued by the ODR or the Architect/Engineer and approved by the Owner. Expenditures from the Construction Contingency Allowance do not alter

the total Contract Price. Any unused portion of the Contingency Allowance will be deducted from the final payment.

- 19.3 Modifications for which a Change Order is Required. All changes in the scope of the Work, the Contract Sum, and the Contract Time shall be documented by a Change Order. Change Orders are the exclusive method for modifying the Contract Sum or Contract Time. Neither the Architect/Engineer, the ODR, nor any other party may change the scope of the Work, the Contract Sum, or the Contract Time by any method, expressed or implied, other than a Change Order approved by Owner.
- 19.3.1 Any direction, instruction, interpretation, or determination from the Architect/Engineer or Owner shall not be considered for a Change Order under this clause unless the Contractor gives the Owner written notice within fifteen (15) days requesting a Change Order and stating the date, circumstances, and source of the directive.
- 19.4 Agreed and Unilateral Change Orders. A Change Order may be either an Agreed Change Order or a Unilateral Change Order.
- 19.4.1 Agreed Change Orders. An Agreed Change Order is a Change Order jointly executed by the Owner and the Contractor, in which each agrees to all of the terms of the amendment.
- 19.4.2 Effect of Agreed Change Order. The execution of an Agreed Change Order by the Owner and the Contractor constitutes the full, final and complete settlement of all claims with regard to the modifications contained in the Change Order; provided, however, that an Agreed Change Order may be amended by a written modification signed by the Contractor and the Owner, for the limited purpose of correcting an error in computation.
- 19.4.3 Unilateral Change Order (ULCO). A Unilateral Change Order is a Change Order issued by the Owner without the agreement of the Contractor.
- 19.4.4 Effect of Unilateral Change Order; Conversion to Agreed Change Order. The issuance of a ULCO does not prejudice any of the Contractor's rights to relief otherwise available under the Contract Documents. The Contractor may preserve such rights by submitting to the Owner and the Architect/Engineer a written objection to the ULCO setting forth in detail the reasons for its objections and the contract provisions on which the objection is based within thirty (30) days of receipt of the ULCO. If the Contractor does not submit a written objection within that time, Contractor shall be deemed to have accepted the terms of the ULCO and waived all claims related to the ULCO, and the ULCO shall have the full force and effect of an Agreed Change Order.
- 19.5 Who May Request Change Orders. Change Order Requests may be initiated by the Owner or by the Contractor as provided in the Contract Documents.

19.6 Type I Change Orders. A Type I Change Order adjusts the Contract Sum or Contract Time because of an actual or constructive change in the scope or character of the Work, which originates from the Owner or Architect/Engineer. Type I Change Orders are initiated in one of two ways:

19.6.1 Owner-Initiated Change Order. The Owner, without invalidating the Contract and without approval of the Surety, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions.

19.6.2 Contractor-Initiated Change Order. If the Contractor claims that it will incur additional cost or time because of any written interpretation of the Contract Documents or instruction concerning the execution of the Work, issued by the Owner or the Architect/Engineer, and constituting a constructive change in the scope or character of the Work, the Contractor may request a Change Order pursuant to this Article and, if appropriate, a Time Extension Request as provided by the Contract Documents.

19.6.3 Commencement of Work. The Contractor shall not commence work on a Type I Change Order prior to receipt of a Change Authorization, or an Interim Change Authorization, as set out in the Contract Documents.

19.7 Type II (Claim) Change Orders A Type II Change Order adjusts the Contract Sum or Contract Time because of a change in the conditions of performance of the Work that changes the cost or time required for performance without changing the scope of the Work to be performed under the Contract Documents and which are not otherwise resolved as a Type I Change Order. The Contractor may request a Type II Change Order under the following circumstances only:

- a. The occurrence of excusable delays as designated in the Contract Documents;
- b. Reasonably unanticipated and unknown physical conditions at the Site which the Architect/Engineer addresses by means of changes in the Drawings and Specifications, or unforeseeable conditions at the Site;
- c. The existence of material errors, omissions and imperfections in the design documents which the Architect/Engineer corrects by means of changes in the Drawings and Specifications;
- d. The failure of the Owner or the Architect/Engineer to take timely actions required under the Contract Documents or to provide information required by the Contractor to proceed with the Work;
- e. The failure of the Owner to provide reasonable access to the Site; and
- f. The failure of the Owner to timely provide materials which are to be furnished by the Owner under the Contract Documents.

19.8 Contractor's Risk of Performance. Except as expressly provided in the Contract Documents, the Contractor shall not be entitled to an increase in the Contract Sum

or the Contract Time and shall bear full responsibility for all risks affecting the Contractor's cost of performance.

Article XX - Administration of Change Order Requests

20.1 Requests for Changes.

20.1.1 Time Extension Requests. All relief related to excusable delays shall be governed by the provisions regarding Modification of Contract Time, and any time extension granted shall be made pursuant to that Article. A single Change Order may be issued, adjusting both Contract Time and Contract Sum, where both arise from the same claim.

20.1.2 Requests for Cost Adjustment. All requests for adjustment in the Contract Sum shall be made as follows:

20.1.2.1. Type I Change Orders.

Owner-initiated Changes. When the Owner wishes to order changes in the Work, the ODR or the Architect/Engineer shall submit to the Contractor a Change Order Request (COR), consisting of a description of the request, including such Drawings and Specifications as are reasonably necessary to inform the Contractor of the nature of the change. Within thirty (30) days of receipt of the Owner's COR, the Contractor shall submit a Change Order Proposal Evaluation (CPE) to the ODR and the Architect/Engineer, stating that the proposed change is a no-cost change, or proposing an adjustment in the Contract Sum, as provided under "Pricing Change Order Work." Following resolution of impact of cost or time for the change, the ODR or the Architect/Engineer shall issue and the Contractor shall execute a Change Order documenting the change in scope of the Work. The Owner may process formal Change Orders that accumulate several separate change actions.

Contractor-initiated Changes. When the Contractor considers that any written instruction or interpretation of the Contract Documents issued by the Owner or the Architect/Engineer constitutes a change in the Work affecting the Contract Sum, the Contractor shall so notify the Owner and Architect/Engineer in writing as soon as possible, but not later than fifteen (15) days after receipt of the instruction or interpretation, and shall submit a CPE to the ODR and Architect/Engineer as soon as possible thereafter, but not later than thirty (30) days after issuance of the notice. The Contractor's failure to meet either of these time requirements shall constitute waiver of any and all claims related to such instruction, interpretation, or notice. This CPE shall contain a proposal for an adjustment in the Contract Sum. The CPE shall be accompanied by a copy of the writing containing the

instruction or interpretation, evidence of the date Contractor received the writing and an explanation of how the writing creates the need for a change under terms of the contract.

20.1.2.2 Type II Change Orders.

Notice of Claim. If the Contractor claims that additional cost or time is involved because of the occurrence of one or more of the circumstances allowing a Type II Change Order, the Contractor shall give the ODR and the Architect/Engineer written notice of its intent to submit a claim and shall proceed immediately to document all increased costs or time delays actually incurred as a result. Such notice shall be given as soon as the Contractor becomes aware such circumstances exist, but not later than thirty (30) calendar days after the onset of the circumstance giving rise to the claim. This notice shall identify the circumstances giving rise to the additional cost or time delay, the elements of cost affected, and the claimed contractual basis for entitlement to relief. The Contractor shall certify that the claim is made in good faith and that the supporting data is current, accurate and complete to the best of its knowledge and belief, and that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Owner is liable. Failure to certify a claim will result in a determination that no claim has been filed. Such notices shall be accompanied by sufficient written evidence to document the occurrence of an estimated cost impact, but the full amount of the claim need not be stated at the time the initial claim notice is given to the ODR and the Architect/Engineer. This notice shall include the following additional elements: (1) an analysis of the relevant contract provisions; (2) with description of the facts; and (3) the statement of why the particular facts warrant compensation under the terms of the contract. The Contractor and Owner recognize and agree that it is beneficial to each other to identify factors affecting the Contractor's cost of performance, and to take prompt action to control them. Therefore, it is agreed that the Contractor shall not be entitled to request a Type II cost adjustment unless the required notice is submitted timely, and the Contractor hereby waives all claims for which such notice is not given.

Submission of Claim. Claims for adjustment of the Contract Sum for Type II Change Orders shall be made in the form of a CPE submitted to the ODR and Architect/Engineer no later than thirty (30) calendar days after the cessation of the circumstances giving rise to the claim. The CPE shall set forth the Contractor's proposed cost adjustment, computed pursuant to the Contract Documents, together with the Contractor's documentation of costs incurred. Within thirty (30) days after completion of the work in question, the Contractor

shall submit in writing to the Owner and the Architect/engineer the additional following elements of the claim: (4) supporting cost or pricing data; (5) legal analysis, if appropriate; (6) an expert's opinion, if appropriate; (7) certification; and (8) a formal request for decision. No such claim shall be valid unless these additional elements are so submitted, and the Contractor hereby waives all such invalid claims.

20.1.2.3 Bar to Claims: No claim shall be allowed for an adjustment under this or any other provision of the Contract if asserted after the Owner makes or tenders Final Payment under this Contract.

20.2 Processing Requests for Change.

20.2.1 Response to CPE. As soon as practical allowing for consultant review after receipt of any CPE submitted by the Contractor, the ODR or the Architect/Engineer shall respond either directly to the Contractor in writing or verbally at a project meeting the outcome of which is committed to the written record as to the Owner's response being by either: (1) accepting the Contractor's proposal, (2) rejecting the same, (3) initiating negotiations with the Contractor concerning the proposed cost adjustment, or (4) requesting additional information.

20.2.2 Change Authorization. When agreement has been reached concerning the adjustment of cost, the ODR shall accept the Contractor's CPE, or any subsequently revised CPE issued pursuant to negotiation, by endorsing the CPE "Accepted", with the date, and returning it to the Contractor. A CPE that has been accepted is a Change Authorization (CA). A CA is effective upon receipt and constitutes the Contractor's notice to proceed with the changed work, entitles the Contractor to prepare to submit the adjusted cost of the Work to be incorporated into the approved Schedule of Values after execution of the corresponding Change Order on succeeding Pay Applications, as it is completed.

20.2.2.1 The Owner may, in writing, issue a Notice to Proceed for any portion of the Work in a Change Order for which final adjustment in Contract Sum or Contract Time has not been finalized. The Notice to Proceed letter may have a not-to-exceed cost amount for any or all portions of the Change Order. This amount is not to be exceeded without prior written approval by the Owner.

20.2 Unilateral Change Orders.

20.2.1 For any Type I or Type II change, the Owner may issue a Unilateral Change Order (ULCO), establishing such adjustment of cost or time, if any, as the Owner deems fair and reasonable, under the following circumstances:

1. If the Contractor fails to submit a CPE within the time required for Type I or Type II Change Orders;
2. If negotiations fail to achieve an agreed price;
3. If, in the Owner's judgment based on the Progress Schedule, a failure to authorize the Contractor to proceed with a change in the Work may adversely affect the timely completion of the Work.
4. In addition to the above, the Owner may issue a ULCO on any CPE that remains unresolved ninety (90) days after Substantial Completion of the Project unless otherwise agreed to by the parties or barred by tender of final payment.

20.2.2 A ULCO is effective on receipt by the Contractor. The ULCO obligates the Contractor to perform the Work according to its terms, and authorizes the Contractor to submit the adjusted cost of the Work as allowed in the ULCO on succeeding Pay Applications.

20.2.3 When a ULCO has been issued, it will have the full force and effect of a contract modification. It will be included in schedules, payment estimates, reports and all official records of the Contract. The issuance of a ULCO will not prejudice any of the Contractor's rights to make claims or to appeal disputed matters under other provisions of this Contract.

20.4. Interim Change Authorization. When the Owner determines that an Owner-initiated Type I change in the Work, or a written instruction or interpretation of the Contract Documents for which the Contractor has given notice of its intent to initiate a Type I claim or any other change implementation, must be made promptly in order to prevent damage to the Work in place, to prevent significant delay in the Project Schedule or to maintain safety or for any other reason as determined by the Owner, the Owner may issue an Interim Change Authorization (ICA) directing the Contractor to proceed with changed work before submitting or during the review of a CPE. The ICA shall authorize the Contractor to proceed with the work on the basis of either (1) time and materials or (2) cost not to exceed a specified amount. Upon receipt of an ICA, the Contractor shall proceed immediately to document all increased costs actually incurred as a result of the Work required under the ICA. At any time prior to the completion of the changed Work, the Contractor may submit a CPE containing a lump sum proposal for the cost of the changed Work, which, if accepted, shall be administered as a Type I change; provided, however, that if the Work is completed prior to acceptance by the Owner of the Contractor's CPE, the Contractor's adjustment of the cost shall be limited to the actual cost of the Work. If the ODR or the Architect/Engineer determines that a Contractor-initiated Type I change is without merit, the ODR or the Architect/Engineer shall notify the Contractor to proceed according to the subject written interpretation or instruction. Such a Notice to Proceed shall have the same effect as a ULCO pursuant to these General Conditions, and the Contractor's rights shall be as set forth in these General Conditions.

Article XXI - Pricing Change Order Work

21.1 Lump Sum Cost Proposals. All proposals for an adjustment in Contract Sum shall be made on a lump sum basis as outlined below, setting forth the Contractor's estimated or actual costs attributable to the changed Work only. The proposed lump

sum cost adjustment shall consist of a Base Cost, reflecting the Contractor's actual or estimated cost of performing the changed Work, in the case of a Type I change, or the increased cost of performance in the case of a Type II change. The Base Cost of Type I changes may be marked up to cover the Contractor's profit, general conditions costs, scheduling costs, bonding and insurance costs, and all other costs directly attributable to performance of the change Work. The markup also covers all impact costs on unchanged Work. These lump sum cost provisions also apply to Work performed by or claims submitted by Subcontractors as part of the Contractor's CPE.

21.1.1 Base Cost Computation for Type I Changes. The Base Cost computation includes the following elements only, as relevant:

- a. The total cost of materials and supplies, reflecting all available discounts, itemized by cost and quantity;
- b. The total cost of all labor, including supervision up to the level of Project Superintendent, itemized to show manhours by trade and classification, burdened hourly rates, and total labor cost.
- c. The cost of additional supervision at and above the level of Project Superintendent, itemized by job function, manhours, and multiplied by the Contractor's as-bid burdened unit cost for supervision as set out at Contractor's Proposal;
- d. The reasonable equipment cost calculated for each type of equipment used in performing the changed Work, based on hours of use, and multiplied by the most recent version of the Rental Rate Blue Book for Construction Equipment (published by Primedia Information, Inc.) to yield total cost. Mobilization costs will not be allowed except when the Contractor demonstrates that the need to mobilize a piece of equipment arose solely because of the changed Work.
- e. All transportation costs for delivery and handling of materials, equipment and supplies, and the removal of waste or debris related solely and directly to the change work; and
- f. All storage costs in excess of thirty (30) days for materials and supplies, if necessitated solely by the changed Work.

21.1.2 Markup on Type I Changes.

The amounts the Contractor may add to the pricing of a change for profit and overhead are limited to the following, if applicable:

- a. The mark-up allowed for a staged GMP shall be based on the Construction Phase Fee percentage identified in the Construction Manager Contract; and
- b. On changes involving both additions and deletions, the allowed markup will be allowed only on the net addition.

21.1.3 Unit Prices. Unit prices bid by the Contractor, or subsequently agreed upon, shall include only those cost elements as set out in "Base Cost Computation for Type I Changes" and shall be subject to markup pursuant to "Markup on Type I Changes" as set forth in this Agreement.

- 21.1.3.1 Each unit price bid by the Contractor shall include all costs applicable to the work, including but not limited to mobilization, demobilization, labor, materials, equipment, supervision, delays, overhead at any level, and profit.
- 21.1.3.2 Either party may request an equitable adjustment. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above one hundred and fifteen percent (115%) or below eighty-five percent (85%) of the originally specified quantity. If the quantity variation causes an increase in the time necessary for completion, the Owner, upon receipt of a written request for an extension of time within thirty (30) days from the recognition of the variation or within such further period of time as may be granted by written agreement signed by the Owner, will ascertain the facts and make such adjustment for changing the completion date as in its judgment the findings justify.

21.2 Cost Computation for Type II Changes.

- 21.2.1 Costs and Documentation. For a Type II change, the CPE shall include all information required for notice of a Type II change including but not limited to a reasonably detailed narrative setting forth (1) the nature of the cost impact and its cause, (2) the contractual basis of the Contractor's claim of entitlement to a cost adjustment, (3) description and documentation of steps taken by the Contractor to mitigate the claimed cost impact, and (4) such other information that is necessary to justify its claim. The Contractor hereby waives any such claim for which they cannot document steps taken to mitigate the claimed cost impact. The cost adjustment proposal for a Type II claim shall be based on itemized documented costs actually incurred. If and only if the actual cost claimed cannot be demonstrated with reasonable certainty, the Contractor may utilize mathematical formulas or models to compute the proposed cost adjustment, but no CPE will be valid unless accompanied by documentation showing that the increased costs claimed in fact resulted from the alleged cause and that the increased costs are compensable under terms of the contract.
- 21.2.2 No Markup Authorized. No mark up is authorized on the Base Cost of a Type II claim for costs alleged by either the Contractor or its Subcontractors.
- 21.2.3 Certification. On CPEs for Type II changes, the Contractor shall certify in writing that all information contained in the CPE is true and correct, and that the costs claimed were incurred as a result of the alleged cause, and were reasonably necessary for the performance of the Work. In the case of Subcontractor pass-through claims, the Contractor shall further certify that the claim stated by the Subcontractor constitutes a legitimate claim against the Contractor, that it is not barred by the terms of the subcontract, and whether and to what extent the claim has been paid.

The Contractor may not subsequently modify a claim that has been so certified except for the correction of errors. No Type II CPE shall be considered valid and Contractor waives any claim that is not certified and submitted within the time limits set forth for Type II changes.

- 21.2.4 Cost Computations Under Interim Change Authorizations. Where the Owner issues an ICA authorizing the Contractor to proceed on a time and materials, or a cost not to exceed basis, the Contractor may submit the cost of the Work for payment, as authorized by the ICA, in succeeding Pay Applications once the Contractor has executed the Change Order that includes the particular change action. At any time after receipt of an ICA, the Contractor may submit a CPE proposing a lump sum cost for the changed work, which shall be processed as a Type I change. The method of incorporating approved changes into the parameters of the accepted Schedule of Values must be coordinated and administered in a manner acceptable to the ODR.

Article XXII - Time Allotted for Performance; Construction Schedules

- 22.1 Contract Time. The Contract Time will be measured from the date designated in the Notice to Proceed to the date specified for Substantial Completion by the Contract Documents, including any modification by Change Order. Failure to achieve Substantial Completion within the Contract Time or Final Completion within thirty (30) days following Substantial Completion or as otherwise agreed to in writing will subject the Contractor to Liquidated Damages.
- 22.2 Work Progress Schedule. Within the period set forth in the Submittals, Shop Drawings, and Product Data/Samples Specification Section of the Project Manual, the Contractor shall submit in duplicate to the Owner and the Architect/Engineer, for review and acceptance, a proposed Progress Schedule for the Work. The Progress Schedule shall show the dates for starting and completing the various component activities making up the Work, and the logical relationships between them, and shall be in a format and in sufficient detail to permit the Work to be competently managed and its progress monitored using the Critical Path Method. The Progress Schedule shall take account of the time required for the preparation and review of required Shop Drawings and submittals. If the Submittal Schedule is not fully integrated into the CPM Schedule, or if specifically required elsewhere in the Contract Documents, the Contractor shall also submit a separate Submittal Schedule, correlated with the Progress Schedule, that shows the dates the Contractor intends to make the required submittals.
- 22.2.1 Schedule Requirements. The Progress Schedule should be accurate and reliable representations of the progress of the Work to date, and of the Contractor's actual plans for its completion. The Progress Schedules shall be capable of measuring and forecasting the effect of delaying events on completed and uncompleted activities. Submittal of a schedule, schedule revision or schedule update constitutes the Contractor's representation to the Owner and Architect/Engineer that the Contractor will follow the schedule as submitted in performing all Work not yet completed, and that all progress to date shown on the schedule is accurately depicted.

22.2.2 Schedule Updates. The Progress Schedule and Submittal Schedule (if required) shall be updated periodically to reflect progress to date, and current plans for completing the Work. The form and contents of the updates, and the required update interval, shall be as specified in the Submittals, Shop Drawings, and Product Data/Samples Section. The updated Progress Schedule shall be submitted to the Owner, and the Architect/Engineer for acceptance, and the Owner shall have no duty to make progress payments until the updated Progress Schedule has been timely submitted. The Contractor shall show the anticipated date of completion reflecting all extensions of time granted as of the date of the update. The Contractor may revise the Progress Schedule only with the Owner's concurrence at any time when in the Contractor's judgment it becomes necessary for the management of the Work. The Contractor shall submit any schedule revision to Owner and Architect/Engineer for acceptance before it is implemented.

22.2.3 Effect of Schedule Submittal. Submittal of the Progress Schedule, and successive updates or revisions, is for the information of the Owner and Architect/Engineer, and to permit the coordination of their activities with those of the Contractor. Owner and Architect/Engineer shall accept or reject the submittal of a schedule within the same period allowed for review of other submittals. Acceptance of a schedule, schedule update or revision constitutes the Owner's agreement to coordinate their own activities with the Contractor's activities as shown on the schedule. Acceptance of a Progress Schedule, update or revision does not indicate the approval of the Contractor's proposed sequences and duration. Acceptance of a Progress Schedule update or revision indicating late completion does not constitute the Owner's consent to a late finish, or waive either the Contractor's responsibility for timely completion or the Owner's right to damages for the Contractor's failure to do so. The Contractor's scheduled dates for completion do not constitute a change in terms of the Contract. The completion date(s) can only be modified by Change Order.

22.2.4 Ownership of Float. Unless accepted otherwise by the Owner in writing, the Contractor shall develop its project execution plan to provide 10% total float at the project level, at submission of each Baseline Schedule, as specified. Float time contained in the Progress Schedule is not for the exclusive benefit of the Contractor or the Owner, but may be consumed by either as needed on a first-used basis.

22.2.5 Completion of Work: The Contractor will be held to account for the Work being completed in the time that is stated in the Contract, or any extension thereof.

22.2.5.1 If, in the judgment of the Owner, the work is behind schedule and the rate of placement of work is inadequate to regain scheduled progress so as to ensure timely completion of the entire work or a separable portion thereof, the Contractor, when so informed by the Owner, shall immediately take

action to increase the rate of work placement. This increase shall be accomplished by any one or a combination of the following or other suitable measures:

1. An increase in working forces;
2. An increase in equipment or tools;
3. An increase in hours of work or number of shifts; and
4. Expedite delivery of materials.

22.2.5.2 The Contractor shall, within ten (10) calendar days after being so informed, notify the Owner in writing of the specific measures taken or planned to increase the rate of progress together with an estimate as to when scheduled progress will be regained and an updated Work Progress Schedule illustrating the Contractor's plan for achieving timely completion of the project. Should the plan of action be deemed inadequate by the Owner, the Contractor will take additional steps or make adjustments as necessary to its plan of action until it meets with the Owner's approval. The increased rate of work will continue until scheduled progress is regained. Scheduled progress will be established from the latest revised progress schedule for the job. Timely completion will be understood to be the contract completion date as revised by all time extensions granted at the time acceleration is undertaken. The Contractor shall not be entitled to additional compensation for the additional effort it applies to the work under the terms of this Subsection 22.2.5.

Article XXIII - Modification of the Contract Time

23.1 Delays of and Extension of Time. When a delay defined herein as excusable prevents the Contractor from completing the Work within the Contract Time, the Contractor shall be entitled to an extension of time, as set forth in Subsections 23.1.3 and 23.3.3. The Contract Time shall be extended by the number of calendar days lost by reason of excusable delay, as measured by the Contractor's progress schedule (or current update). All extensions of time shall be given in calendar days. In no event, however, will an extension of time be granted for delays that merely extend the duration of non-critical activities, or which consume only float without delaying the project completion date.

23.1.1 Time Extensions for Weather Days. Weather days are excusable non-compensable delays. In computing non-compensable time extension delays due to inclement weather (precipitation delays), Contractor shall include in its schedule the precipitation shown in the 30-year statistical record of the National Oceanic and Atmospheric Administration (NOAA) for the Comal County and New Braunfels, TX area. If during construction Contractor claims a weather delay, Contractor must demonstrate to Owner that critical construction activities have prevented the Contractor from performing seven (7) continuous hours of critical path Work between

the hours of 7:00 a.m. and 6:00 p.m. Furthermore, Contractor must demonstrate to Owner that critical construction activities have been impacted by precipitation over and above the average precipitation delay days recorded by NOAA in that given month. When weather conditions at the site prevent work from proceeding, the Contractor shall immediately notify the ODR so conditions can be confirmed by the Owner. At the end of each calendar month, the Contractor shall submit to the Owner and Architect/Engineer a list of Weather Days occurring in that month. The Owner and Architect/Engineer shall meet with the Contractor to discuss and resolve any disagreements concerning the number of Weather Days that have directly impacted the Completion Date. Upon Owner and Contractor agreement, any time extension granted will be issued by Change Order. If the Contractor and Owner cannot agree on the amount of time extension, the Owner may issue a ULCO for fair and reasonable time extension. If by the close of the seventh (7th) business day after the Owner's receipt of the Contractor's list, the Contractor and the Owner have not reached an agreement on the total number of Weather Days in the month, and signed a memorandum to that effect, the Owner in its sole discretion shall determine the number of working days it will allow, and the completion time shall be adjusted accordingly. The Owner shall so notify the Contractor in writing by 5:00 p.m. on the next business day. The requirements of §23.2 concerning requests for time extension shall not apply to requests for extensions of time for Weather Days, which are governed by this section alone. The Contractor's sole relief for delay for Weather Days will be a time extension.

23.1.2 Non-Weather Excusable Non-compensable Delay. The Contractor may request an extension of time for unforeseeable delays not within the control of or arising from the fault of either the Contractor or the Owner caused by the following:

- a. Unusual and substantial delay in the delivery of materials, components or equipment to be incorporated into the work;
- b. Strikes and labor disputes (but not the availability of adequately skilled labor, unless such impact is caused solely by the conduct of the Owner);
- c. Physical damage to the work caused by circumstances beyond the control of the Contractor;
- d. War, civil unrest or insurrection; or
- e. Other unforeseeable causes beyond the control of either the Contractor or the Owner.

The Contractor's sole relief for Non-Weather Excusable Non-compensable Delay will be a time extension.

23.1.3 Excusable Compensable Delay. The Contractor may request an equitable adjustment of cost as well as a time extension, issued via change order, for delays caused by the following:

- a. Failure of the Owner or the Architect/Engineer to take timely actions required under the Contract Documents, or to provide information

- required by the Contractor to proceed with the Work in a timely manner;
- b. Detrimental or obstructive actions of separate contractors employed by the Owner;
 - c. Failure of the Owner to provide access to the Site of the Work;
 - d. Failure of the Owner to provide materials which are to be furnished by the Owner under the Contract Documents, consistent with the Progress Schedule;
 - e. Errors, omissions and imperfections in design which the Architect/Engineer corrects by means of changes in the drawings and specifications;
 - f. Unforeseeable physical conditions at the Site which the Architect/Engineer corrects by means of changes to the drawings and specifications; and
 - g. Changes in the work ordered by the Owner or the Architect/Engineer.

23.1.3.1 No Damages for Delay: The Contractor shall have no claim for monetary compensation or damages for delay or hindrances to the work from any cause including without limitation any act or omission of the Owner. The Contractor's only claim for any such delay or hindrance shall be for an extension of time as provided in the Contract Documents.

23.1.4 Suspension of Work for Cause. The Owner may, at any time without prior notice, suspend all or any part of the Work, if, in the Owner's sole discretion, it is considered reasonably necessary to do so to prevent or correct, any condition of the Work, which constitutes an immediate safety hazard, or which may reasonably be expected to impair the integrity, usefulness or longevity of the Work when completed. The Owner shall give the Contractor a written notice of suspension for cause, setting forth the reason for the suspension and identifying the Work to be suspended. Upon receipt of such notice, the Contractor shall immediately stop the Work so identified. As soon as practicable following the issuance of such a notice, the Owner, with the assistance of the Architect/Engineer, shall initiate and complete an investigation of the circumstances giving rise to the suspension, and shall issue a written determination of their cause. The Contractor will not be entitled to an extension of time or compensation for delay resulting from a suspension if the Owner's investigation determines that the cause was within the control of the Contractor. If the cause is determined not to have been within the control of the Contractor, and the suspension prevents the Contractor from completing the Work within the Contract Time, the suspension is an Excusable Compensable Delay and a Time Extension shall be granted through a Change Order. Suspensions of work under this provision shall be no longer than is reasonably necessary to identify and remedy the conditions giving rise to the suspension.

23.1.5 Suspension of Work for Owner's Convenience. Upon seven (7) calendar days' prior written notice to the Contractor, the Owner may at any time without breach of the Contract suspend all or any portion of

the Work for a period of up to thirty (30) days for its own convenience. The Owner shall give the Contractor a written notice of suspension for convenience, which shall set forth the number of days for which the Work, or any portion of it, will be suspended, and the date on which the suspension of Work shall cease. When such a suspension prevents the Contractor from completing the Work within the Contract Time, it is Excusable Delay. A notice of suspension for convenience may be modified by the Owner at any time on seven (7) calendar days' prior written notice to the Contractor. If the Owner suspends the Work for its convenience for more than sixty (60) consecutive calendar days, the Contractor may elect to terminate the contract pursuant to the Contract Documents.

23.1.6 Concurrent Delay. When the completion of the Work is simultaneously delayed by an excusable delay and a delay arising from a cause not designated as excusable under the Contract Documents, the Contractor shall be entitled only to a time extension, and not to compensation, for the period of concurrent delay. When the completion of the Work is simultaneously delayed by an excusable delay and an excusable non-compensable delay, the Contractor shall be entitled to a time extension only, as provided by the Contract Documents.

23.1.7 Except as expressly provided in Subsections 23.1.2 and 23.1.3, the Contractor shall not be entitled to an extension of the Contract Time, and shall bear all responsibility for financial risks which may accrue from various causes of delay in the construction progress.

23.2 Time Extension Requests. If the Contractor believes that the completion of the Work has been delayed by a circumstance designated as excusable under § 23.1.3, other than inclement weather, he shall give the Owner written notice, stating the nature of the delay and the activities potentially affected, within thirty (30) calendar days after the onset of the event or circumstance giving rise to the excusable delay. Such claims should be accompanied by sufficient written evidence to document the delay. In the case of a continuing cause of delay, only one claim is necessary. Claims for extensions of time shall be stated in numbers of whole or half calendar days. All requests for extensions of time not submitted in connection with proposed costs for changed or added work must be made in writing within thirty (30) calendar days after the cessation of the delay. The Contractor and Owner recognize and agree that it is beneficial to each to identify delays and make necessary schedule adjustments promptly, and that a Progress Schedule prepared and updated by the Contractor provides an effective tool for measuring and tracking the impact of delays. Therefore, it is agreed that no extension of time will be granted unless the required notice is submitted timely, the required Work Progress Schedule has been regularly updated and submitted as specified, and the notice includes sufficient documentation. All Changes to the Contract Time made as a result of such claims shall be by Change Order.

23.2.1 No extension of time shall release the Contractor or the Surety furnishing a performance or payment bond from any obligations under the Contract or such a bond. Those obligations shall remain in full force until the

discharge of the Contract.

- 23.2.2 Contents of Time Extension Requests. Each Time Extension Request shall be accompanied by a quantitative demonstration of the impact of the delay on the current Progress Schedule. Time Extension Requests shall include a reasonably detailed narrative setting forth (1) the nature of the delay and its cause, (2) the basis of the Contractor's claim of entitlement to a time extension, (3) documentation of the actual impacts of the claimed delay on the Progress Schedule, and any concurrent delays, (4) description and documentation of steps taken by the Contractor to mitigate the effect of the claimed delay, including, when appropriate, the modification of the Progress Schedule, and (5) such other information that the Contractor, Owner, or Architect/Engineer considers necessary to justify its claim for an extension of time. No time extensions shall be granted for delays that do not affect the Progress Schedule.
- 23.2.3 Owner's Response. The Owner or the Architect/Engineer with the Owner's concurrence shall respond to the Time Extension Request by providing to the Contractor written notice of the number of days granted, if any, and giving its reason if this number differs from the number of days requested by the Contractor. Such an Extension of Time is effective on the date the Architect/Engineer's or Owner's notice is received by the Contractor, but a Change Order reflecting the Extension of Time shall be executed by the parties in accordance with the Contract Documents. The Owner will respond to each properly submitted Time Extension Request within fifteen (15) calendar days following its submittal; if the Owner and Architect/Engineer cannot reasonably make a determination about the Contractor's entitlement to a time extension within that time, the Owner or Architect/Engineer shall so notify the Contractor in writing. Upon written agreement with the Contractor, the Owner shall then have not more than thirty (30) additional calendar days to prepare a final response.
- 23.3 Failure to Complete Work Within the Contract Time. TIME IS OF THE ESSENCE OF THIS CONTRACT. The Contractor's failure to substantially complete the Work within the Contract Time or to achieve final completion as required will cause damage to the Owner. These damages shall be liquidated by agreement of the Contractor and the Owner, as set forth in the Contract Documents.
- 23.3.1 Collection of Liquidated Damages. The Owner shall collect Liquidated Damages due from the Contractor directly or indirectly by reducing the contract sum in the amount of Liquidated Damages stated in the Owner-Contractor Agreement.

Article XXIV - Termination and Suspension of the Contract Prior to Completion

- 24.1 Termination by Owner for Cause. The Owner may, without prejudice to any right or remedy terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon, under the following circumstances:
- a. Persistent or repeated failure or refusal, except during complete or partial

- suspensions of work authorized under the Contract Documents, to supply enough properly skilled workmen or proper materials;
- b. Persistent disregard of laws, ordinances, rules, regulations or orders of any public authority having jurisdiction;
 - c. Persistent failure to prosecute the work in accordance with the Contract Documents, and to insure its completion within the time, or any extension thereof, specified in this contract;
 - d. Failure to remedy defective work condemned by the ODR;
 - e. Failure to pay subcontractors, laborers, materialmen and suppliers pursuant to Texas Government Code Chapter 2251;
 - f. Persistent endangerment, by the Contractor or its Subcontractors or other vendors, of the safety of labor or of the Work itself;
 - g. Failure to supply or maintain statutory bonds, pursuant to the Contract Documents, or the supply or maintain Required insurance, pursuant to the Contract Documents;
 - h. Any other material breach of the Contract; or
 - i. The Contractor becomes insolvent, files for bankruptcy protection, makes a general assignment of its rights and obligations for the benefit of creditors or is, in the Owner's estimation, otherwise financially incapable of performing the Work.

The Owner reserves the right to terminate this Agreement at any time for any of the above listed causes. Failure to exercise the right to terminate this Agreement in any instance or for any proper reason shall not be construed as waiver of the right to do so in any other instance or for any other proper reason.

- 24.1.1 The ODR shall give the Contractor and its Surety thirty (30) days' prior written notice of its intent to terminate for any of the above reasons. If the Contractor or the Surety demonstrates, to the satisfaction of the Owner, that the condition or conditions upon which the notice of termination is based have been removed, corrected, or will not recur, then the Owner shall rescind the notice and the Contract shall continue unmodified, and the Contractor shall not be entitled an extension of time.
- 24.1.2 Should the Contractor or the surety fail to so demonstrate within thirty (30) days following receipt of such notice, or fail to satisfy the Owner that the condition or conditions upon which the notice of termination is based have been removed, corrected, or will not recur, the Owner may arrange for completion of the Work and deduct the cost thereof from the unpaid Contract sum remaining, including the cost of additional Architect/Engineer services and of Owner contract administrative costs made necessary by such default or neglect, in which event no further payment shall then be made by the Owner until all costs of completing the Work shall have been paid. If the unpaid balance of the Contract Sum exceeds the costs of finishing the Work, including compensation for the Architect/Engineer's additional services made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor or his surety shall pay the difference to the Owner. This obligation for payment shall survive the termination of the Contract. The Owner reserves the right, where the Contract is terminated for cause, to take assignment of any and all contracts between the

Contractor and its Subcontractors, vendors and suppliers, and the ODR shall promptly notify the Contractor of the contracts the Owner elects to assume. Upon receipt of such notice, the Contractor shall promptly take all steps necessary to effect such assignment.

24.2 Termination for Convenience of Owner. The Owner reserves the right, without breach, to terminate the Contract prior to, or during the performance of the Work, for any reason. Upon such an occurrence, the following procedures will be adhered to:

- a. The Owner will immediately notify the Architect/Engineer and the Contractor in writing, specifying the reason for and the effective date of contract termination. Such notice shall also contain any instructions necessary for the protection, storage or decommissioning of incomplete work or systems, and for safety.
- b. After receipt of the notice of termination, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due at that point in the Contract:
 1. Stop all work;
 2. Place no further subcontracts or orders for materials or services;
 3. Terminate all subcontracts;
 4. Cancel all materials and equipment orders as applicable; and
 5. Take action that is necessary to protect and preserve all property related to this Contract which is in the possession of the Contractor.
- c. When the Contract is terminated for the Owner's convenience, the Contractor may recover from the Owner payment for all Work executed, including any additional work required pursuant to the notice of termination and reasonable expenses attributable to the Work resulting from such termination.

24.3 Termination by Contractor. If the Work is stopped for a period of ninety (90) days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing any of the Work under a contract with the Contractor, then the Contractor may, upon thirty (30) additional days' written notice to the Owner, terminate the Contract and recover from the Owner payment for all Work executed and reasonable expenses attributable to the Work resulting from such termination. If the cause of the work stoppage is removed prior to the end of the thirty (30) day notice period, the Contractor may not terminate the Contract.

24.4 Settlement on Termination. When the Contract is terminated for any reason, the Contractor shall, at any time prior to 180 days of the effective date of termination, submit a final termination settlement proposal to the Owner based upon recoverable costs as provided under this Article. If the Contractor fails to submit the proposal within the time allowed, the Owner may determine the amount due to the Contractor because of the termination and shall pay the determined amount to the Contractor. All settlements on termination shall be administered as Type II Change Orders.

Article XXV – Miscellaneous

- 25.1 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 Contractor 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.
- 25.2 Incorporation of Responses to Request for Qualifications and Request for Proposal. This Agreement incorporates Contractor's Responses to Request for Qualifications #2016-550 and Request for Proposal #2016-375 for Construction Manager-at-Risk Services for construction of the Comal County Jail and renovation of the Comal County Sheriff's Office building, which is attached hereto and incorporated herein by reference. This document is incorporated in order to provide Owner and Contractor with a complete understanding of the Project, its requirements and the scope of Contractor's services. In the event, however, that conflict of interpretation arises between this Agreement and the proposal, this Agreement shall govern, unless otherwise specifically agreed to between Owner and Contractor in writing.
- 25.3 Federally Funded Projects. If this project is federally funded, the Special Conditions will indicate that fact and will contain any modifications of these General Conditions required as a condition of obtaining federal funding.
- 25.4 Computation of Time. In computing any time period set forth in this Contract, the first day of the period shall not be included, but the last day shall be.
- 25.5 No Waiver of Performance. The failure of either party in any instance to insist on the performance of any of the terms, covenants or conditions of the Contract Documents, or to exercise any of the rights granted thereunder, shall not be construed as waiver of any such term, covenant, condition or right with respect to further performance.
- 25.6 Survival of Obligations. All representations, indemnifications, warranties and guarantees made in accordance with the Contract Documents will survive final payment, completion and acceptance of the Work, as well as termination for any reason. All duties imposed upon the Contractor by reason of termination, including without limitation the duty to assign subcontracts and contracts with vendors and suppliers, shall likewise survive the termination of the Contract.
- 25.7 Governing Law; Venue. This Contract shall be governed by the law of the State of Texas. Exclusive Venue shall lie in a court of competent jurisdiction in Comal County, Texas.
- 25.8 Captions and Headings. The captions and headings used throughout the Uniform General are for ease of reference only and have no effect on the meaning of the terms and conditions set forth herein.

- 25.9 Independent Contractor Status. The Contract Documents create an independent contractor relationship between the Owner and Contractor and neither party's employees or contractors shall be considered employees, contractors, partners or agents of the other party.
- 25.10 No third party beneficiaries. The parties do not intend, nor shall any clause be interpreted to create in any third party, any obligations to, or right of benefit by, such third party under these Contract Documents from either the Owner or Contractor.
- 25.11 Entire Agreement. These Contract Documents supersede in full all prior discussions and agreements (oral and written) between the parties relating to the subject matter hereof and constitute the entire agreement.
- 25.12 Assignment. This Contract may not be assigned by either party without the prior written consent of the other.
- 25.13 Severability. If any provision, sentence, clause or article of this Contract is found to be invalid or unenforceable for any reason, the remaining provisions shall continue in effect as if the invalid or unenforceable provision were not in the Contract. All provisions, sentences, clauses and articles of this Contract are severable for this purpose.
- 25.14 Parties Bound. Execution of this Contract by each party binds the entity represented as well as its employees, agents, successors and assigns to its faithful performance.
- 25.15 No Waiver of Immunity. Owner, its elected officials, officers, directors, employees and agents do not waive any sovereign or governmental immunity available to Owner under Federal or Texas law and do not waive any available defenses or remedies at law under Federal or Texas law. Nothing herein shall be construed as a waiver of sovereign or governmental immunity, defenses, or remedies at law by Owner, its elected officials, officers, directors, employees and agents.
- 25.16 Sales Tax Exemption. Owner qualifies for exemption from State and Local Sales Tax pursuant to the provisions of the Texas Limited Sales Excise and Use Tax Act, Article 20.04, V.T.C.S. The Contractor may claim exemption from payment of applicable sales tax with procedures as prescribed by the Comptroller of Public Accounts.
- 25.17 Governing Body, Binding Authority. Architect acknowledges and understands that the Owner is a political subdivision of the State of Texas, and the governing body for the Owner is the Comal County Commissioners Court. County Representative cannot bind the Owner, without prior approval of the Comal County Commissioners Court or as otherwise authorized by law.
- 25.18 Waiver of Consequential Damages. The Parties agree to waive all claims against each other for any consequential damages that may arise out of or relate to this Agreement. This waiver includes but is not limited to loss of use of the Project, loss

of income or profit, loss of financing, loss of reputation, loss of business or opportunities, loss of bonding capacity, or insolvency. The provisions of this section shall also apply to the termination of this Agreement and shall survive such termination.

- 25.19 Exhibits. Each and every exhibit referred to or otherwise mentioned in this Agreement is attached to this Agreement and is and shall be construed to be made a part of this Agreement by such reference or other mention at each point at which such reference or other mention occurs, in the same manner and with the same effect as if each exhibit were set forth in full and at length every time it is referred to or otherwise mentioned.
- 25.20 Defined Terms. Capitalized terms used in this Agreement shall have the meanings ascribed to them at the point where first defined, irrespective of where their use occurs, with the same effect as if the definitions of such terms were set forth in full and at length every time such terms are used.
- 25.21 Pronouns. Wherever appropriate in this Agreement, personal pronouns shall be deemed to include the other genders and the singular to include the plural.
- 25.19 Non-Waiver. Failure by either party to complain of any action, non-action or default of the other party shall not constitute a waiver of any aggrieved party's rights hereunder. Waiver by either party of any right arising from any default of the other party shall not constitute a waiver of any other right arising from a subsequent default of the same obligation or for any other default, past, present or future.
- 25.20 Rights Cumulative. All rights, remedies, powers and privileges conferred under this Agreement on the parties shall be cumulative of and in addition to, but not restrictive of or in lieu of, those conferred by law.