STANDARD FORM OF AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER WHERE THE CONSTRUCTION MANAGER IS ALSO THE CONSTRUCTOR

AGREEMENT

made to be effective as of the 1st day of January in the year of 2010

BETWEEN the Owner:	Tom Green County, Texas, a political subdivision of the State of Texas, acting by and through the County Judge of Tom Green County, Texas, duly authorized by resolution and approval of the Commissioners Court of Tom Green County, Texas 122 West Harris San Angelo, Texas 76903
and the Construction Manager:	Templeton Construction Co., Inc. 521 West Beauregard P.O. Box 3405 San Angelo, Texas 76902

and is binding the date of execution by the parties. Said Agreement pertains to the Project which is generally described as follows:

> Conversion of the Wal-Mart property located at 3020 North Bryant Boulevard, San Angelo, Tom Green County, Texas, to County offices which shall include Community Supervision and Corrections Department, Justice of the Peace Courtroom and offices, and a community room.

The Architect is:	Burns Architecture, Inc. 213 N. Rupert Street Fort Worth, Texas 76107

The Owner and Construction manager agree as set forth below.

ARTICLE 1
GENERAL PROVISIONS

1.1 RELATIONSHIP OF PARTIES

The Construction Manager accepts the relationship of trust and confidence established with the owner by this Agreement, and covenants with the Owner to furnish the Construction Manager's reasonable skill and judgment and to cooperate with the Architect in furthering the interests of the

Owner. The Construction Manager shall furnish construction administration and management services and use the Construction Manager's best efforts to perform the project in an expeditious and economical manner consistent with the interests of the Owner. The Owner shall endeavor to promote harmony and cooperation among the Owner, Architect, Construction Manager and other persons or entities employed by the Owner for the Project.

1.2 GENERAL CONDITIONS

For the Construction Phase, the General Conditions of the Contract shall be the 1997 Edition of AIA Document A201, General Conditions of the Contract for Construction, which is incorporated herein by reference. For the Preconstruction Phase, or in the event that the Preconstruction and Construction Phases proceed concurrently, AIA Document A201 shall apply to the Preconstruction Phase only as specifically provided in this Agreement. The term "Contractor" as used in AIA Document A201 shall mean the Construction Manager.

ARTICLE 2
CONSTRUCTION MANAGER'S RESPONSIBILITIES

2.0 General Provisions

2.0.01 The Construction Manager shall perform the services described in this Article. The services to be provided under Paragraphs 2.1 and 2.2 constitute the Preconstruction Phase services. If the Owner and Construction Manager agree, after consultation with the Architect, the Construction Phase may commence before the Preconstruction Phase is completed, in which case both phases shall proceed concurrently. The Construction Manager shall perform the duties of and shall hold the rights of a Construction Manager-At-Risk as set forth in Section 271.118 of the Texas Local Government Code.

2.0.02 The Construction Manager shall, in collaboration with the Owner, the Owner's legal counsel, and the Architect, assist with compliance by all parties with Texas Local Government Code Section 271.118 and other statutory provisions regarding the expansion and renovation of the Tom Green County Library .

2.0.03 Construction Manager covenants that all the Work shall be performed in a good and workmanlike manner and that all Materials furnished and used in connection therewith shall be new and subject to approval by Architect, except as otherwise expressly provided for in the Drawings and Specifications. Construction Manager shall cause all Materials and other parts of the Work to be readily available as and when required or needed for or in connection with the construction, furnishing, and equipping of the Project.

2.0.04 Construction Manager shall provide competent supervision of all phases of the Work and shall cause the Work to be performed in accordance with the Drawings and Specifications and all things indicated or implied therefrom. Prior to commencement of construction, Construction

Manager shall prepare and submit for Owner's approval the Progress Schedules for the Work. These schedules shall indicate the dates for the starting and completion of the various stages of construction and shall be revised as required by the conditions of the Work, subject to the Owner's approval.

2.0.05 Construction Manager shall prepare or cause to be prepared, as part of the Work, all shop drawings and other submittals not made a part of the Drawings and Specifications which are required. Construction Manager will also provide and be responsible for all general conditions of the Work such as hoists, safety equipment, portable toilets, etc., the cost of rental for which shall be part of construction cost. The Construction Manager may delegate safety responsibilities for the Project to subcontractors and trade contractors; however, such delegation shall not relieve the Construction Manager of any of its duties or liabilities to the Owner under this Agreement. Unless expressly provided herein to the contrary, subcontractors, trade creditors, trade contractors, and suppliers shall not be third party beneficiaries of the rights or benefits of the Owner created in this Agreement.

2.1 PRECONSTRUCTION PHASE

2.1.1 PRELIMINARY EVALUATION

The Construction Manager shall provide a preliminary evaluation of the Owner's program and Project budget requirements, each in terms of the other.

2.1.2 CONSULTATION

The Construction Manager with the Architect shall jointly schedule and attend regular meetings with the Owner and Architect. The Construction Manager shall consult with the Owner and Architect regarding site use and improvements, and the selection of materials, building systems and equipment. The Construction Manager shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost including estimates of alternative designs or materials, preliminary budgets and possible economies.

2.1.3 PRELIMINARY PROJECT SCHEDULE

When Project requirements described in Subparagraph 3.1.1 have been sufficiently identified, the Construction Manager shall prepare, and periodically update, a preliminary Project schedule for the Architect's review and the Owner's approval. The Construction Manager shall obtain the Architect's approval of the portion of the preliminary Project schedule relating to the performance of the Architect's services. The Construction Manager shall coordinate and integrate the preliminary Project schedule with the services and activities of the Owner, Architect and Construction Manager. As design proceeds, the preliminary Project schedule shall be updated to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of a Guaranteed Maximum Price proposal, preparation and processing of shop drawings and

samples, delivery of materials or equipment requiring long-lead time procurement, Owner's occupancy requirements showing portions of the Project having occupancy priority, and proposed date of Substantial Completion. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations to the Owner and Architect.

2.1.4 PHASED CONSTRUCTION

The Construction Manager shall make recommendations to the Owner and Architect regarding the phased issuance of Drawings and Specifications to facilitate phased construction of the Work, if such phased construction is appropriate for the Project, taking into consideration such factors as economies, time of performance, availability of labor and materials, and provisions for temporary facilities.

2.1.5 PRELIMINARY COST ESTIMATES

2.1.5.1 When the Owner has sufficiently identified the Project requirements and the Architect has prepared other basis design criteria, the Construction Manager shall prepare, for the review of the Architect and approval of the Owner, a preliminary cost estimate utilizing area, volume or similar conceptual estimating techniques.

2.1.5.2 When Schematic Design Documents have been prepared by the Architect and approved by the Owner, the Construction Manager shall prepare for the review of the Architect and approval of the Owner, a more detailed estimate with supporting data. During the preparation of the Design Development Documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect and Construction Manager.

2.1.5.3 When Design Development Documents have been prepared by the Architect and approved by the Owner, the Construction Manager shall prepare a detailed estimate with supporting data for review by the Architect and approval by the Owner. During the preparation of the Construction Documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect and Construction Manager.

2.1.5.4 If any estimate submitted to the Owner exceeds previously approved estimates or the Owner's budget, the Construction Manager shall make appropriate recommendations to the Owner and Architect.

2.1.6 SUBCONTRACTORS, TRADE CONTRACTORS AND SUPPLIERS

The Construction Manager shall seek to develop subcontractor interest in the Project, subcontractors trade contractors and suppliers shall be selected in the manner provided in Section 271.118 (h), (i) and (j) of the Texas Local Government Code. The Construction Manager shall furnish to the Owner and Architect for their information a list of possible subcontractors and trade contractors, including

suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Architect will promptly reply in writing to the Construction Manager if the Architect or Owner know of any objection to such subcontractor, trade contractor or supplier. The receipt of such list shall not require the Owner or Architect to investigate the qualifications of proposed subcontractors, trade contractors or suppliers, nor shall it waive the right of the Owner or Architect later to object to or reject any proposed subcontractor, trade contractor or supplier.

2.1.7 LONG-LEAD TIME ITEMS

The Construction Manager shall recommend to the Owner and Architect a schedule for procurement of long-lead time items which will constitute part of the Work as required to meet the Project schedule. If such long-lead time items are procured by the Owner, they shall be procured on terms and conditions acceptable to the Construction Manager. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, all contracts for such items shall be assigned by the Owner to the Construction Manager, who shall accept responsibility for such items as if procured by the Construction Manager. The Construction Manager shall expedite the delivery of long-lead time items.

2.1.8 EXTENT OF RESPONSIBILITY

The Construction Manager does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The recommendations and advice of the Construction Manager concerning design alternatives shall be subject to the review and approval of the Owner and the Owner's professional consultants. It is not the Construction Manager's responsibility to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if the Construction Manager recognizes that portions of the Drawings and Specifications are at variance therewith, the Construction Manager shall promptly notify the Architect and Owner in writing.

2.1.9 EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

The Construction Manager shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs.

2.2 GUARANTEED MAXIMUM PRICE PROPOSAL AND CONTRACT TIME

2.2.1 When the Drawings and Specifications are sufficiently complete, and after the bids and responses of the subcontractors and trade contractors have been reviewed and evaluated by the Construction Manager and the Construction Manager has made its recommendations to the Owner of the bids and responses to be accepted, the Construction Manager shall propose a Guaranteed Maximum Price, which shall be the sum of the estimated Cost of the Work and the Construction

Manager's Fee.

2.2.2 As the Drawings and Specifications may not be finished at the time the Guaranteed Maximum Price proposal is prepared, the Construction Manager shall provide in the Guaranteed Maximum Price for further development of the Drawings and Specifications by the Architect that is consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

2.2.3 The estimated Cost of the Work shall include the Construction Manager's contingency, a sum established by the Construction Manager for the Construction Manager's exclusive use to cover costs arising under Subparagraph 2.2.2 and other costs which are properly reimbursable as Cost of the Work but not the basis for a Change Order. The contingency shall be included in the Guaranteed Maximum Price. Any unused portion of the contingency shall be retained by the Owner.

2.2.4 BASIS OF GUARANTEED MAXIMUM PRICE

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

.1 A list of the Drawings and Specifications, including all addenda thereto and the Conditions of the Contract, which were used in preparation of the Guaranteed Maximum Price proposal.

.2 A list of allowances and a statement of their basis.

.3 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal to supplement the information contained in the Drawings and Specifications.

.4 The proposed Guaranteed Maximum Price, including a statement of the estimated cost organized by trade categories, allowances, contingency, and other items and the fee that comprise the Guaranteed Maximum Price.

.5 The Date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based, and a schedule of the Construction Documents issuance dates upon which the date of Substantial Completion is based.

2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal and the written statement of its basis. In the event that the Owner or Architect discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis or both.

2.2.6 Unless the Owner accepts the Guaranteed Maximum Price proposal in writing on or before the date specified in the proposal for such acceptance and so notifies the Construction Manager, the Guaranteed Maximum Price proposal shall not be effective without written acceptance by the Construction Manager.

2.2.7 Prior to the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work, except as the Owner may specifically authorize in writing.

2.2.8 Upon acceptance by the Owner of the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price and its basis shall be set forth in Amendment No. 1. The Guaranteed Maximum Price shall be subject to additions and deductions by a change in the Work as provided in the Contract Documents and the date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

2.2.9 The Owner shall authorize and cause the Architect to revise the Drawings and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in Amendment No. 1. Such revised Drawings and Specifications shall be furnished to the Construction Manager in accordance with schedules agreed to by the Owner, Architect and Construction Manager. The Construction Manager shall promptly notify the Architect and Owner if such revised Drawings and Specifications are inconsistent with the agreed-upon assumptions and clarifications.

2.2.10 The Guaranteed Maximum Price shall include in the Cost of the Work only those taxes which are enacted at the time the Guaranteed Maximum Price is established. The Project is exempt from state sales taxes on material incorporated in the Project. Construction Manager will accept exemption certificates from the Owner and, where required, will require trade contractors and subcontractors to segregate materials and labor costs.

2.3 CONSTRUCTION PHASE

2.3.1 GENERAL

2.3.1.1 The Construction Phase shall commence on the earlier of:

(1) the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, or

(2) the Owner's first authorization to the Construction Manager to:

(a) award a subcontract, or

(b) undertake construction Work with the Construction Manager's own forces,

or

(c) issue a purchase order for materials or equipment required for the Work.

2.3.2 BIDDING AND ADMINISTRATION

2.3.2.1 The Construction Manager shall publicly advertise, as prescribed for a governmental entity under Section 271.025 of the Texas Local Government Code, and receive bids or proposals from trade contractors, subcontractors or suppliers for the performance of all major elements of the Work other than the minor work that may be included in the general conditions. The Construction Manager may seek to perform portions of the work itself if the Construction Manager submits its bid or proposal for those portions of the work in the same manner as all other trade contractors, subcontractors, or suppliers and if the Owner determines that the Construction Manager's bid of proposal provides the "best value", as that term is used in Section 271.118(h) of the Texas Local Government Code, for the Owner.

2.3.2.2 The Construction Manager and the Owner or its representatives shall review all trade contractor, subcontractor, or supplier bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process to a person not employed by the Construction Manager, Architect, Engineer, if applicable, or Owner. All bids or proposals shall be made public after the award of the contract or not later than the seventh day after the date of final selection of bids or proposals, whichever is later.

2.3.2.3 If the Construction Manager reviews, evaluates, and recommends to the Owner a bid or proposal from a trade contractor, subcontractor, or supplier, but the Owner requires another bid or proposal to be accepted, the Owner shall compensate the Construction Manager by a change in compensation, time and/or Guaranteed Maximum Price for any additional cost and risk that the Construction Manager may incur because of the Owner's requirement that another bid or proposal be accepted.

2.3.2.4 If a selected trade contractor, subcontractor, or supplier defaults in the performance of its work or fails to execute a subcontract after being selected in accordance with subparagraphs 2.3.2.1 through 2.3.2.3 above, the Construction Manager, may, without advertising, fulfill the contract requirements itself or select a replacement trade contractor, subcontractor, or supplier to fulfill the contract requirements.

2.3.2.5 The Construction Manager shall enter into contracts with subcontractors, materials suppliers and trade contractors which are selected on the basis of best value to the Owner. The Construction Manager shall enter into a separate contract or an amendment to this contract with respect to any portions of the Work which the Construction Manager was awarded and which will be performed by the Construction Manager's staff or employees. The Construction Manager shall perform those portions of the Work that are not contracted with sub-contractors, materials suppliers or trade contractors.

2.3.2.6 The Construction Phase shall commence on the earlier of: (i) the Owner's issuance of a Notice to Proceed, or (ii) the Owner's authorization to Construction Manager to award a contract, undertake Work with the Construction Manager's own forces, or (iii) issue a purchase order for materials or equipment required for the Work.

2.3.2.7 Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform to the payment provisions of Subparagraphs 7.1.8 and 7.1.9 and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner.

2.3.2.8 The Construction Manager shall schedule and conduct meetings at which the Owner, Architect, Construction Manager and appropriate subcontractors can discuss the status of the Work. The Construction Manager shall prepare and promptly distribute meeting minutes.

2.3.2.9 Promptly after the Owner's acceptance of the Guaranteed Maximum Price proposal, the Construction manager shall prepare a schedule in accordance with Paragraph 3.10 of AIA document A201, including the Owner's occupancy requirements.

2.3.2.10 The Construction Manager shall provide at least monthly written reports to the Owner and Architect on the progress of the entire Work. The Construction Manager shall maintain a daily log containing a record of weather, subcontractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as the Owner may reasonably require. The log shall be available to the Owner and Architect.

2.3.2.11 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect at regular intervals.

2.4 PROFESSIONAL SERVICES

The Construction Manager shall not be required to provide professional services which constitute the practice of architecture or engineering, unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Construction Manager has specifically agreed in writing to provide such services. In such event, the Construction Manager shall cause such services to be performed by appropriately licensed professionals.

2.5 UNSAFE MATERIALS

In addition to the provisions of Paragraph 10.3 AIA Document A201, if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered but not created on the site by the Construction Manager, the Construction Manager shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing. The Owner, Construction Manager and

Architect shall then proceed in the same manner described in Subparagraph 10.3.2 of AIA Document A201. The Owner shall be responsible for obtaining the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Construction Manager and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Construction Manager and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Construction Manager and Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Construction Manager or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Construction Manager and Architect have no reasonable objection.

2.6 INDEMNIFICATION

2.6.1 CONSTRUCTION MANAGER AGREES TO AND SHALL INDEMNIFY AND HOLD HARMLESS OWNER (ITS OFFICERS, ELECTED OFFICIALS, EMPLOYEES, AGENTS AND REPRESENTATIVES), FROM AND AGAINST ALL CLAIMS, SUITS AND LIABILITY OF EVERY KIND (INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEYS FEES) ON ACCOUNT OF BODILY INJURY, DEATH, OR DAMAGE TO PROPERTY ARISING IN FAVOR OF CONSTRUCTION MANAGER, OR CONSTRUCTION MANAGER'S EMPLOYEES, AGENTS AND REPRESENTATIVES IN CONNECTION WITH, ARISING OUT OF, OR INCIDENTAL TO THE ACTIVITIES OF CONSTRUCTION MANAGER (ITS EMPLOYEES, AGENTS AND REPRESENTATIVES) OR ANY CONTRACTORS, SUBCONTRACTORS, OR SUPPLIERS (AND THEIR EMPLOYEES, AGENTS AND REPRESENTATIVES) HEREUNDER, OR THE PERFORMANCE OR NONPERFORMANCE OF THIS CONTRACT BY CONSTRUCTION MANAGER EXCEPT TO THE EXTENT SUCH CLAIMS, SUITS, OR LIABILITY ARE CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE (OR OTHER FAULT) OF OWNER.

2.6.2 CONSTRUCTION MANAGER FURTHER AGREES TO AND SHALL INDEMNIFY AND HOLD HARMLESS OWNER (ITS OFFICERS, ELECTED OFFICIALS, EMPLOYEES, AGENTS AND REPRESENTATIVES), FROM AND AGAINST ALL OTHER ("OTHER" MEANING THOSE CLAIMS NOT ADDRESSED IN THE PRECEDING PARAGRAPH) CLAIMS, SUITS, AND LIABILITY OF EVERY KIND (INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEYS FEES) ON ACCOUNT OF LOSS, BODILY INJURY, DEATH, OR DAMAGE TO PROPERTY TO THE EXTENT CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR OTHER FAULT OF THE CONSTRUCTION MANAGER (ITS EMPLOYEES, AGENTS OR REPRESENTATIVES) IN CONNECTION WITH, ARISING OUT OF, OR INCIDENTAL TO, THE ACTIVITIES OF CONSTRUCTION MANAGER (ITS EMPLOYEES, AGENTS AND REPRESENTATIVES) HEREUNDER OR THE PERFORMANCE OR NONPERFORMANCE OF HIS SERVICES UNDER THIS AGREEMENT.

THE INDEMNITIES GIVEN IN THIS PARAGRAPH 2.6.1 AND 2.6.2 ARE NOT INTENDED TO PROTECT OWNER FROM OWNER'S OWN NEGLIGENCE OR OTHER FAULT.

2.6.3 THE CONSTRUCTION MANAGER SHALL CAUSE ALL CONTRACTORS, SUBCONTRACTORS, TRADE CONTRACTORS, AND SUPPLIERS TO AGREE TO INDEMNIFY THE OWNER, CONSTRUCTION MANAGER, CONTRACTORS, SUBCONTRACTORS, TRADE CONTRACTORS AND SUPPLIERS AND HOLD THEM HARMLESS FROM ALL CLAIMS FOR BODILY INJURY AND PROPERTY DAMAGE THAT MAY ARISE FROM THAT CONTRACTORS', SUBCONTRACTORS', TRADE CONTRACTORS', AND SUPPLIERS' OPERATIONS. SUCH PROVISIONS SHALL BE IN A FORM APPROVED BY THE CONSTRUCTION MANAGER AND OWNER.

2.7 WAGE REQUIREMENTS

2.7.1 Pursuant to Chapter 2258, Texas Government Code, all contractors and any subcontractor involved in the construction of a public work project shall pay not less than the prevailing rates as per diem wages in the locality at the time of construction to all laborers, workmen and mechanics employed by them in the execution of this contract. Construction Manager shall assure that these requirements are met for the Project and shall insure that every contract or subcontract relating to the Work requires, on behalf of Owner, that the prevailing wage rates be paid. To facilitate this compliance, the Construction Manager will conduct a survey of the wages received by classes of workers employed on projects of a character similar to the work in Tom Green County, Texas, and the prevailing rate of per diem wages as a sum certain expressed in dollars and cents; shall present the survey results regarding prevailing per diem to the Owner for its final determination; and shall specify in (a) the call for bids or proposals required under Paragraph 2.3.2.1 and (b) in the contractors with subcontractors and trade contractors the wage rates determined under this Paragraph 2.7.1.

2.7.2 Any contractor or subcontractor who violates these provisions shall pay to the Owner the sum of $60.00 for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rate stipulated in the scale of prevailing wages applicable to this Project.

ARTICLE 3
OWNER'S RESPONSIBILITIES

3.1 INFORMATION AND SERVICES

3.1.1 The Owner shall provide full information in a timely manner regarding the requirements of the Project, including a program which sets forth the Owner's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

3.1.2 The Owner, upon written request from the Construction Manager, shall furnish evidence of

Project financing prior to the start of the Construction Phase and from time to time thereafter as the Construction Manager may request. Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Work.

3.1.3 The Owner shall establish and update an overall budget for the Project, based on consultation with the Construction Manager and Architect, which shall include contingencies for changes in the Work and other costs which are the responsibility of the Owner.

3.1.4 STRUCTURAL AND ENVIRONMENTAL TESTS, SURVEYS AND REPORTS

3.1.4.1 Throughout the entire Project, Owner shall provide or contract for, independently of the Construction Manager, the testing of construction materials engineering, and the verification of testing services necessary for the acceptance of the Project by the Owner. The Owner shall select these services in accordance with Section 2254.004 of the Texas Government Code. To the greatest extent allowed by applicable law, (a) the Construction Manager shall participate with the Owner in the selection of persons who will provide such testing and verification services, and (b) the Owner will not retain or use the services of any such persons if the Construction Manager presents reasonable objections to such retention or use. In the event that (a) Construction Manager reasonably and in good faith relies upon "testing of construction materials engineering", "verification of testing services necessary for the acceptance of the Project by the Owner", or any other testing or inspection provided by the Owner under this Clause 3.1.4.1 (hereinafter collectively "Owner Provided Testing and Inspection"), (b) any Owner Provided Testing and Inspection is faulty or erroneous, and (c) the Construction Manager is required to perform additional Work as the results of its reliance upon such erroneous or faulty Owner Provided Testing and Inspection, then a Change Order shall be prepared and signed in accordance with the terms of paragraph 7.2 of AIA document A201.

3.1.4.2 In the Preconstruction Phase, the Owner shall furnish the following with reasonable promptness and at the Owner's expense, and the Construction Manager shall be entitled to rely upon the accuracy of any such information, reports, surveys, drawings and tests described in Clauses 3.1.4.1 through 3.1.4.4, except to the extent that the Construction Manager knows of any inaccuracy.

3.1.4.2.1 Reports, surveys, drawings and tests concerning the conditions of the site which are required by law.

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

3.1.4.2.3 The services of geotechnical engineers when such services are required by the Construction Manager. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.

3.1.4.2.4 Structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports which are required by law.

3.1.4.2.5 The services of other consultants when such services are reasonable required by the scope of the Project and are requested by the Construction Manager.

3.2 OWNER'S DESIGNATED REPRESENTATIVE

3.2.1 The Owner shall designate a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. This representative shall have the authority to make decisions on behalf of the Owner concerning estimates and schedules, construction budgets, and changes in the Work, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager.

3.2.2 The Owner designates Michael D. Brown or his designee as a representative who shall be fully acquainted with the Project and has authority to:

(1) Approve changes in the Project not to exceed $10,000.00 per change order and only if the change order does not extend the date of substantial completion of any contract by more than ten (10) days;

(2) Render decisions promptly consistent with the Project Schedule; and

(3) Furnish information expeditiously as requested by the Construction Manager.

3.3 ARCHITECT

The Owner shall retain an Architect to provide the Basic Services, including normal structural, mechanical and electrical engineering services, other than cost estimating services, described in the edition of AIA Document B141 current as of the date of this Agreement. The Owner shall authorize and cause the Architect to provide those Additional Services described in AIA document B141 requested by the Construction Manager which must necessarily be provided by the Architect for the Preconstruction and Construction Phases of the Work. Such services shall be provided in accordance with time schedules agreed to by the Owner, Architect and Construction Manager. Upon request of the Construction Manager, the Owner shall furnish to the Construction Manager a copy of the

Owner's Agreement with the Architect, from which compensation provisions may be deleted.

3.4 LEGAL REQUIREMENTS

The Owner shall determine and advise the Architect and Construction Manager of any special legal requirements relating specifically to the Project which differ from those generally applicable to construction in the jurisdiction of the Project. The Owner shall furnish such legal services as are necessary to provide the information and services required under paragraph 3.1.

ARTICLE 4
COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

The Owner shall compensate and make payments to the Construction Manager for Preconstruction Phase services as follows:

4.1 COMPENSATION

4.1.1 For the services described in paragraphs 2.1 and 2.2 the Construction Manager's compensation shall be a fee based upon the amount of Preconstruction Phase services required and necessary for the Project at the hourly rate of $100.00.

4.1.2 Compensation for Preconstruction Phase services shall be equitably adjusted if such services extend beyond that originally contemplated or the scope of services is significantly modified.

4.2 PAYMENTS

4.2.1 Payments for Preconstruction Phase services shall be made following the presentation of the Construction Manager's invoice therefor, certification to the Owner by the Architect that such services have been fully and timely performed, and approval by the Owner.

4.2.2 Payments are due and payable thirty (30) days from the date (a) the Construction Manager's invoice is presented to the Owner or the Architect; (b) the date the Owner receives the goods under this Agreement; or (c) the date the performance of the services under this Agreement are performed, whichever occurs later. Amounts unpaid after the date on which payment is due shall bear interest at the rate of six percent (6%) per annum.

ARTICLE 5
COMPENSATION FOR CONSTRUCTION PHASE SERVICES

The Owner shall compensate the Construction Manager for the Construction Phase services as follows:

5.1 COMPENSATION

5.1.1 For the Construction Manager's performance of the Work as described in Paragraph 2.3, the Owner shall pay the Construction Manager in current funds the Contract Sum consisting of the Cost of the Work as defined in Article 6 and the Construction Manager's Fee determined five percent (5%) of the actual Cost of Work incurred by the Construction Manager under Paragraph 2.3 - Construction Phase.

5.2 GUARANTEED MAXIMUM PRICE

5.2.1 The sum of the Cost of the Work and the Construction Manager's Fee are guaranteed by the Construction Manager not to exceed the amount to be provided in Amendment No. 1, as per Paragraph 2.2, subject to additions and deductions by changes in the Work as provided in the Contract Documents. Such maximum sum as adjusted by approved changes in the Work is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

5.3 CHANGES IN THE WORK

5.3.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of Amendment No. 1 may be determined by any of the methods listed in Subparagraph 7.3.3 of AIA Document A201.

5.3.2 In calculating adjustments to subcontracts (except those awarded with the owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Clause 7.3.3.3.3 of AIA Document A201 and the terms "costs" and "a reasonable allowance for overhead and profit" as used in Subparagraph 7.3.6 of AIA Document A201 shall have the meanings assigned to them in that document and shall not be modified by this Article 5. Adjustments to subcontracts or contracts with trade contractors awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

5.3.3 In calculating adjustments to the Contract, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201 shall mean the Cost of the Work as defined in Article 6 of this Agreement and the terms "and a reasonable allowance for overhead and profit" shall mean the Construction Manager's Fee as defined in Subparagraph 5.1.1 of this Agreement.

5.3.4 If no specific provisions is made in Subparagraph 5.1.1 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Subparagraph 5.1.1 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the basis of the fee established for the original Work.

ARTICLE 6
COST OF THE WORK FOR CONSTRUCTION PHASE

6.1 COSTS TO BE REIMBURSED

6.1.1 The term "Cost of the Work" shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than those customarily paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 6.

6.1.2 LABOR COSTS

.1 Wages of construction workers directly employed by the Construction Manager in the proper performance of the Work.

.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's agreement. The Construction Manager's Project Manager shall not be stationed on site, but the wages and salaries of the Project Manager attributable to the Project shall be included in the Cost of the Work.

.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessment and benefits required by law or collective bargaining agreements, and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided that such costs are based on wages and salaries included in the Cost of the Work under Clauses 6.1.2.1 through 6.1.2.3.

6.1.3 SUBCONTRACT AND TRADE CONTRACTOR COSTS

Payments made by the Construction Manager to Subcontractors and Trade Contractors in accordance with the requirements of the subcontracts and trade contractor contracts.

6.1.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

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

.2 Costs of materials described in the preceding Clause 6.1.4.1 in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to the Owner at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager; amounts realized, if any, from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

6.1.5 COSTS

.1 Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site and fully consumed in the performance of the Work; and cost less salvage value on such items if not fully consumed, whether sold to others or retained by the Construction Manager. Cost for items previously used by the Construction Manager shall mean fair market value.

.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site, whether rented from the Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval.

.3 Costs of removal of debris from the site.

.4 Reproduction costs, costs of telegrams, facsimile transmissions and long-distance telephone calls, postage and express delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

.5 That portion of the reasonable travel and subsistence expenses of the Construction Manager's personnel incurred while traveling in discharge of duties connected with the Work.

6.1.6 MISCELLANEOUS COSTS

.1 That portion directly attributable to this Contract of premiums for insurance and bonds.

(If charges for self insurance are to be included, specify the basis of reimbursement.)

.2 Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which the Construction Manager is liable.

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

.4 Fees of testing laboratories for tests required by the Contract Documents, except those related to nonconforming Work other than that for which payment is permitted by Clause 6.1.8.2.

.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent or other intellectual property rights arising from such requirement by the Contract Documents; payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent; provided, however, that such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or the Guaranteed Maximum Price and provided that such royalties, fees anc costs are not excluded by the last sentence of Subparagraph 3.17.1 of AIA Document A201 or other provisions of the Contract Documents.

.6 Data processing costs related to the Work.

.7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility to the Owner set forth in this Agreement.

.8 Legal, mediation and arbitration costs, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager in the performance of the Work and with the Owner's written permission, which permission shall not be unreasonably withheld.

.9 Expenses incurred in accordance with the Construction Manager's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, in case it is necessary to relocate such personnel from distant locations.

6.1.7 OTHER COSTS

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

6.1.8 EMERGENCIES AND REPAIRS TO DAMAGED OR NONCONFORMING WORK

The Cost of the Work shall also include costs described in Subparagraph 6.1.1 which are incurred by the Construction Manager:

.1 In taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Paragraph 10.2 of AIA Document A201.

.2 In repairing or correcting damaged or nonconforming Work executed by the Construction Manager or the Construction Manager's Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence or failure to fulfill a specific responsibility to the Owner set forth in this Agreement of the Construction Manager or the Construction Manager's foremen, engineers or superintendents, or other supervisory, administrative or managerial personnel of the Construction Manager, or the failure of the Construction Manager's personnel to supervise adequately the Work of the Subcontractors or suppliers, and only to the extent that the cost of repair or correction is not recoverable by the Construction Manager from insurance, Subcontractors or suppliers.

6.1.9 The costs described in Subparagraphs 6.1.1 through 6.1.8 shall be included in the Cost of the Work notwithstanding any provision of AIA Document A201 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Paragraph 6.2.

6.2 COSTS NOT TO BE REIMBURSED

6.2.1 The Cost of the Work shall not include:

.1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Clauses 6.1.2.2 and 6.1.2.3.

.2 Expenses of the Construction Manager's principal office and offices other than the site office except as specifically provided in Paragraph 6.1.

.3 Overhead and general expenses, except as may be expressly included in Paragraph 6.1.

.4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.

.5 Rental costs of machinery and equipment, except as specifically provided in Subparagraph 6.1.5.2.

.6 Except as provided in Clause 6.1.8.2, costs due to the negligence of the Construction Manager or to the failure of the Construction Manager to fulfill a specific responsibility to the Owner set forth in this Agreement.

.7 Costs incurred in the performance of Preconstruction Phase Services.

.8 Except as provided in Clause 6.1.7.1, any cost not specifically and expressly described in paragraph 6.1.

.9 Costs which would cause the Guaranteed Maximum Price to be exceeded.

6.3 DISCOUNTS, REBATES AND REFUNDS

6.3.1 All refunds and amounts received from sales of surplus materials and equipment shall accrue to the benefit of the Owner.

6.3.2 Amounts which accrue to the Owner in accordance with the provisions of Subparagraph 6.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.

6.4 ACCOUNTING RECORDS

6.4.1 The Construction Manager shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's accountants shall be afforded access to the Construction Manager's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Project, and the Construction Manager shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 7
CONSTRUCTION PHASE

7.1 PROGRESS PAYMENTS

7.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents.

7.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

7.1.3 Provided an Application for Payment is received by the Architect not later than the 10th day of a month, the Owner shall make payment to the Construction Manager not later than the 10th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than 30 days after the Architect receives the Application for Payment.

7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed (1) progress payments already received by the Construction Manager; less (2) that portion of those payments attributable to the Construction Manager's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

7.1.5 Each Application for Payment shall be based upon the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule values shall allocate the entire Guaranteed Maximum Price among the various portions of the work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless object to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

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

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

.1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included as provided in Subparagraph 7.3.8 of AIA Document A201, even though the Guaranteed Maximum Price has not yet been adjusted by Change Order.

.2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing.

.3 Add the Construction Manager's fee, less retainage of five percent (5%). The Construction Manager's Fee shall be computed upon the Cost of the Work described

in the two preceding Clauses at the rate stated in Subparagraph 5.1.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Subparagraph, shall be an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in the two preceding Clauses bears to a reasonable estimate of the probable Cost of the Work upon its completion.

.4 Subtract the aggregate of previous payments made by the Owner.

.5 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Subparagraph 7.1.4 to the substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's accountants in such documentation.

.6 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Paragraph 9.5 of the AIA Document A201.

7.1.8 Except with the Owner's prior approval, payments to Subcontractors shall be subject to retention of not less than five percent (5%). The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments and retention for subcontractors.

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

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

7.1.11 In each Request for Payment, Construction Manager shall certify that such Request for Payment represents a fair estimate of cost reimbursable to Construction Manager under the terms of Article 5 or Article 6.

7.1.12 The Construction Manager warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Construction Manager further warrants that upon submittal of an Application for Payment, all Work for which payments have been received form the Owner shall be free and clear of liens, claims, security interest or other encumbrances in favor of the Construction Manager or any other person or entity whatsoever.

7.1.13 The Construction Manager shall within seven (7) days following receipt of payment from the Owner pay all bills for labor and materials performed and furnished by others in connection with the construction, furnishing and equipping of the improvements and the performance of the Work, and shall, if requested, provide the Owner with evidence of such payment. Construction Manager's failure to make payments within such time shall constitute a material breach of this contract. Construction Manager shall include a provision in each of its subcontracts imposing the same payment obligations on its subcontractors and trade contractors as are applicable to the Construction Manager hereunder, and if the Owner so requests, shall provide copies of such subcontractor or trade contractor payments to the Owner. If the Construction Manager has failed to make payments promptly to the Construction Manager's subcontractors or for material or labor used in the Work for which the Owner has made payment to the Construction Manager, the Owner shall be entitled to withhold payment to the Construction Manager in part or in whole to the extent necessary to protect the Owner.

7.2 FINAL PAYMENT

7.2.1 Final payment shall be made by the Owner to the Construction manager when (1) the Contract has been fully performed by the Construction Manager except for the Construction Manager's responsibility to correct nonconforming work, as provided in Subparagraph 12.2.2 of AIA Document A201, and to satisfy other requirements, if any, which necessarily survive final payment; (2) a final Application for Payment and a final accounting for the Cost of the Work have been submitted by the Construction Manager and reviewed by the Owner's accountants or auditor; and (3) a final Certificate for Payment has then been issued by the Architect; such final payment shall be made by the Owner not more than 30 days after the issuance of the Architect's Final Certificate for Payment.

7.2.2 The amount of the final payment shall be calculated as follows:

.1 Take the sum of the Cost of the Work substantiated by the Construction Manager's final accounting and the Construction Manager's Fee; but not more than the Guaranteed Maximum Price.

.2 Subtract amounts, if any, for which the Architect withholds, in whole or in part, a final Certificate for Payment as provided in Subparagraph 9.5.1 of AIA Document A201 or other provisions of the Contract Documents.

.3 Subtract the aggregate of previous payments made by the Owner.

If the aggregate of previous payments made by the Owner exceeds the amount due the Construction Manager, the Construction Manager shall reimburse the difference to the Owner.

7.2.3 The Owner's accountants or auditor will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's accountants or

auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Subparagraph 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's accountants, or auditor, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Subparagraph 9.5.1 of AIA Document A201. The time periods stated in this paragraph 7.2 supersede those stated in subparagraph 9.4.1 of AIA document A201.

7.2.4 Notwithstanding anything to the contrary herein, the Owner shall only hold such sums following Substantial Completion as are deemed reasonably necessary to protect the Owner from the consequences of defective work, incomplete work, notice of unpaid claims from subcontractors, trade contractors and suppliers and/or the requirements of Texas law. If in the event an audit conducted by the Owner reveals that sums have been improperly paid to the Construction Manager, such sums shall be immediately returned and/or repaid to the Owner by the Construction Manager within ten (10) days of the demand by Owner.

7.2.5 If the Owner's accountants or auditor report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to proceed in accordance with Article 9 without a further decision of the Architect. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

7.2.6 If subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Paragraph 6.1 and not excluded by paragraph 6.2 (1) to correct nonconforming Work, or (2) arising from the resolution of disputes, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee, if any, related thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

7.2.7 When all of the Work is completed and is ready for a final inspection, the Construction Manager shall notify the Owner and the Architect thereof in writing. Thereupon, the Architect will make final inspection of the Work and, if the Work is complete in full accordance with this Contract, the Architect will promptly issue a final Certificate for Payment certifying to the Owner that the Project is complete and the Construction Manager is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. A Final Requisition for the Disbursement of Project Costs accompanied by the Architect's Certificate and Affidavit and Waivers of Lien required of the Construction Manager under paragraph 7.2.7 below shall accompany the Final Application for Payment. If the Architect is unable to issue its Final Certificate for Payment and is required to repeat its final inspection of the Work, the Construction Manager shall bear the cost of such repeat final inspection(s) which cost may be deducted by the Owner from the Construction Manager's final payment.

7.2.8 The Construction Manager shall not be entitled to final payment unless and until it submits to the Architect (a) its affidavit that the payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the Owner, or the Owners property might be responsible for, have been fully paid or otherwise satisfied; (b) releases and waivers of liens (excluding retainage) from all Subcontractors of the Construction Manager and of any and all other parties required by the Architect or the Owner; and (c) consent of Surety, if any, to final payment. If any third party fails or refuses to provide a release of claims or waiver of lien as required by Owner, the Construction Manager shall furnish a bond satisfactory to the Owner to discharge any such lien or indemnify the Owner from liability.

7.2.9 Acceptance of final payment shall constitute a waiver of all claims against the Owner by the Construction Manager except for those claims previously made in writing against the Owner by the Construction Manager, pending at the time of final payment, and identified in writing by the Construction Manager as unsettled at the time of its request for final payment.

7.3 LIEN PRIORITIES

7.3.1 The Construction Manager shall keep Owner and Owner's property free from all mechanic's and materialman's liens and all other liens and claims, legal or equitable, arising out of the Work hereunder. In the event any such lien or claim is timely filed by any one claiming by, through or under Construction Manager, the Construction Manager shall discharge the same within a reasonable time.

7.3.2 Construction Manager does hereby subordinate any and all liens, rights and interest (whether choate or inchoate and including, without limitation, all mechanic's and materialman's liens under the applicable laws of the State of Texas, whether contractual, statutory or constitutional) owned, claimed or held, or to be owned, claimed or held by Construction Manager in and to any part of the Work or the Project on which the work is performed, to the lien securing payment of sums now or hereafter borrowed by Owner, its successors or assigns, in connection with the development, design, and/or sums now or hereafter borrowed by Owner, its successors or assigns, in connection with the development, design, and/or construction of the Project. Construction Manager shall execute such further and additional evidence of the subordination of liens, rights and interests as Owner, Owner's lenders, or any ground Lessee may require. The subordination of Construction Manager's lien is made in consideration of and as an inducement to the execution and delivery of this Agreement, and shall be applicable despite any dispute between the parties to, or any default by Owner under this Agreement or otherwise.

7.3.3 Construction Manager shall include in every contract or subcontract relating to the work to which it is a party or in which it represents Owner, and in each and every lower tier subcontract, provisions (i) that the person or entity doing the work, performing labor or furnishing materials pursuant to a subcontract agrees to subordinate any mechanic's or materialman's lien or any other claim against any part of the Work or the property in which the Work is performed or materials furnished under the Contract Documents or such subcontracts, to the lien securing payment of sums

now or hereafter borrowed by Owner, its successors and assigns, in connection with the development, design and/or construction of the Project and to all liens and rights, (ii) that the required subordinations are made in consideration of and as an inducement to the execution and delivery of the Contract Documents and the subcontract in which it appears, and shall be applicable despite any dispute between or among Owner, Construction Manager, any trade contractor or subcontractor, or any default by Owner, Construction Manager, or any trade contractor or subcontractor, and (iii) that the Owner, its successors and assigns, and lenders are express third party beneficiaries who have supplied consideration for such subordinations.

7.4 TIME OF COMPLETION AND LIQUIDATED DAMAGES

7.4.1 It is understood and mutually agreed by and between the Construction Manager and Owner that the date of beginning and the time for completion of the Work are essential conditions of this Agreement. The Construction Manager agrees that the Work will be prosecuted regularly and diligently at such rate of progress as will insure full completion thereof within the time frame set forth in Amendment No. 1.

7.4.2 Construction Manager agrees that the Contract Time, i.e. the period for Substantial Completion of the Work shall be determined and agreed upon simultaneously with the agreement as to the Guaranteed Maximum Price as provided in Paragraph 2.2. The Contract Time includes the number of days that Work is anticipated to be delayed due to inclement weather and/or unworkable conditions.

7.4.3 For the purposes of this Agreement, a calendar day constitutes twenty-four (24) hours of time and is any one of seven days of a week, including Saturday, Sunday, and Holidays, regardless of whether a "working day" or not, weather conditions, or any condition or situation which may delay construction.

7.4.4 The Contract Time may be extended as provided in Paragraphs 4.3.7 and 8.3.1 of AIA Document A201.

7.4.5 The basis for completion under this paragraph 7.4 will be Substantial Completion as defined in AIA Document A201.

7.4.6 If, after execution of the Certificate of Substantial Completion, the Construction Manager fails to fully complete items found incomplete or deficient during a final inspection within thirty (30) calendar days or fails to provide specified Project close-out documents within thirty (30) calendar days, then the remaining retainage - including allowances for incomplete work - will not be disbursed until all such defective items are remedied and all close-out data is received.

7.4.7 Liquidated Damages. If the Construction Manager shall neglect, fail or refuse to affect Substantial Completion of the Project within the Contract time or any proper extension thereof granted by the Owner, then the Construction Manager does hereby agree to pay the Owner the sum

of $250.00 per day, not as a penalty but as liquidated delay damages for each and every calendar day following the Contract Time or proper extension thereof that Substantial Completion of the Project has not been achieved. Owner and Construction Manager agree and stipulate that it is difficult to fix the actual delay damage sustained by the Owner in this scenario. However, the said amount is fixed and agreed upon by Construction Manager and the Owner as the amount of delay damages which the Owner would sustain in such a case. The parties agree that liquidated delay damages specified herein shall be the sole measure of delay damages if and in the event Substantial Completion is not achieved as required by this Agreement.

ARTICLE 8
INSURANCE AND BONDS

8.1 INSURANCE REQUIRED OF THE CONSTRUCTION MANAGER

During both phases of the Project, the Construction Manager shall purchase and maintain insurance as set forth in Paragraph 11.1 of AIA Document A201. Such insurance shall be written for not less than the following limits as set forth below:

8.1.1 The Construction Manager must provide the Owner with certificates of insurance prior to beginning work on the Project. Each certificate of insurance must include the Project name. The certificates are to be approved by Owner and Architect before work commences. The certificates of coverage must be signed by a person authorized by the insurer to bind coverage on its behalf. The certificates must contain enough detail to allow the Owner to confirm that the following requirements have been fulfilled by the Owner's insurance coverage. Owner reserves the right to require complete, certified copies of insurance policies at any time. Construction Manager shall name the Owner and Architect as additional insureds on the Commercial General Liability, Commercial Automobile Liability, and Commercial Umbrella Liability policies and such insurance shall be primary to any other insurance. Approval of the certificates or policies by the Owner does not relieve the Construction Manager of its duty of indemnification.

If the coverage period shown on the current certificate of coverage ends during the duration of the Project, the Construction Manager shall, prior to the end of the coverage period, provide a new certificate of coverage showing extension of the coverage.

8.1.2 The required limits of insurance coverage may be satisfied by any combination of primary, excess, or umbrella liability insurance coverage, provided the primary policy complies with the requirements detailed below and the excess/umbrella policies are written on a "following form" basis. The Construction Manager may maintain reasonable deductibles, subject to approval by the Owner. The required limits of insurance do not establish a limit on the Construction Manager's liability.

8.1.2.1 Commercial General Liability insurance at minimum limits: $1,000,000.00 combined single limit per occurrence for bodily injury, personal injury, and property damage.

The general aggregate limit shall apply separately to this Project or shall be equal to or greater than $2,000,000.00. Coverage must be written on an occurrence form of policy and must include coverage for premise liability, products liability, completed operations, explosion, collapse, independent contractors liability, fire legal liability ($50,000 limit), underground property damage and no-fault medical payments $5,000 per person). Coverage for products/completed operations must be maintained for at least two (2) years after the Work is completed. Contractual liability must be maintained with respect to the Construction Manager's obligations in this agreement.

The General Liability insurance shall cover liability arising out of the activities performed by or on behalf of the Construction Manager or the contractors, subcontractors, and trade contractors including damage to work completed by contractors, subcontractors, and trade contractors or caused by the work or completed work of the contractors, subcontractors and trade contractors.

8.1.2.2 Workers' compensation insurance at statutory limits, including Employers Liability at minimum limits of $500,000 bodily injury by accident, $500,000 by disease, aggregate. Additional requirements are provided in Paragraph 8.1.5

8.1.2.3 Commercial Automobile Liability insurance at minimum combined single limits of $1,000,000 per accident, as respects all owned, non-owned, and hired vehicles.

8.1.2.4 The Construction Manager shall provide the Owner with a certificate reflecting Commercial Umbrella coverage. The Commercial Umbrella shall have minimum limits of $5,000,000.00 combined single limit per occurrence for bodily injury, personal injury and property damage.

8.1.3 Each required insurance policy shall:

1. Waive all rights of subrogation against the Owner for losses arising from Work performed by the Construction Manager for the Owner;

2. Require the insured to immediately notify the Owner of any material change in the insurance coverage;

3. Provide the Owner with 30 days notice of cancellation, non-renewal, or termination of insurance by return receipt mail (10 days as respects non-payment of premium);

4. Be written by an insurer that is licensed to do business in Texas, classified by the Texas Department of Insurance as an "admitted" insurer, and maintains and A.M. Best rating of A/VII or better throughout the Project until the Owner has accepted the work;

5. Be written on forms that have been filed and approved by the Texas Department of Insurance;

6. Be primary insurance as respects Owner, its officers, elected officials, employees, agents and representatives. Any insurance maintained by Owner will be in excess of Construction Manager's insurance and will not contribute to it;

7. Apply separate to each insured against whom a claim is made or suit brought, except with respect to the limits of the insurer's liability;

8. Be maintained from the time Work commences until services are completed and accepted by Owner; and,

9. Must not contain any special limitations on the scope of coverage provided to the Owner, its officers, elected officials, employees, agents and representatives.

8.1.4 The Construction Manager shall include all contractors, subcontractors and trade contractors as insureds under its policies or furnish Owner separate certificates for each contractor, subcontractor and trade contractor. All coverage required of contractors, subcontractors and trade contractors shall be subject to all of the insurance requirements detailed above except each contractor, subcontractor and trade contractor's general aggregate limit on Commercial General Liability shall be not less than $1,000,000.00. The requirements of the Commercial Umbrella coverage do not apply to the contractors, subcontractors and trade contractors.

8.1.5 State Mandated Workers' Compensation Insurance Requirements

8.1.5.1 Definitions (applicable to Paragraph 8.1.5)

a. Certificate of Coverage ("certificate") - A copy of a certificate of insurance or a certificate of authority to self-insure issued by the Texas Department of Insurance Division of Workers' Compensation (Workers' Compensation) showing statutory workers' compensation insurance coverage for the persons or entities' employees, executives, officers, partners and proprietors providing services on the Project, for the duration of the Project.

b. Duration of the Project - Includes the time from the beginning of the Work on the Project until the Construction Manager's work on the Project has been completed and accepted by Owner.

c. Persons providing services on the Project ("subcontractor" in 406.096 of the Texas Labor Code). Includes all persons or entities performing all or part of the services the Construction Manager had undertaken to perform on the subject, regardless of whether the person contracted directly with the

Construction Manager and regardless that person has employees. This includes, without limitation, independent contractors, subcontractors, sub-contractors, motor carriers, owner-operators, employees, executives, officers, partners and proprietors of any such entity, trade contractors, or employees of any entity which furnishes persons to provide services on the Project.

d. Services - Include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to the Project.

8.1.5.2 The Construction Manager shall provide workers' compensation insurance coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meet the statutory requirements of the Texas Labor Code (401.011 (44)) for all employees of the Construction Manager providing services on the Project, for the duration of the Project.

8.1.5.3 The Construction Manager must provide a certificate of coverage to Owner prior to execution of this Agreement.

8.1.5.4 If the coverage period shown on the Construction Manager's current certificate of coverage ends during the duration of the Project, the Construction Manager must, prior to the end of the coverage period, file a new certificate of coverage with Owner showing that coverage has been extended.

8.1.5.5 The Construction Manager shall obtain from each person providing services on the Project, and provide to Owner:

a. A certificate of coverage, prior to that person beginning Work on the Project, so Owner will have on file certificates of coverage showing coverage for all persons providing services on the project; and,

b. No later than seven days after receipt by the Construction Manager, a new certificate showing extension of the coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.

8.1.5.6 The Construction Manager shall retain all required certificates of coverage for the duration of the Project and for three years thereafter.

8.1.5.7 The Construction Manager shall notify Owner in writing by certified mail or personal delivery, within 10 days after the Construction Manager knew or should have known, of any change that materially affects the provision of the coverage of any person providing services on the Project.

8.1.5.8 The Construction Manager shall post on the Project site a notice, in the text, form and manner prescribed by the Workers' Compensation, 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.

8.1.5.9 The Construction Manager shall contractually require each person with whom it contracts to provide services on the Project, to:

a. Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meet the statutory requirements of the Texas Labor Code [401.01 (44)] for all employees of the Contractors, Subcontractors and Trade Contractors providing services on the Project, for the duration of the Project;

b. Provide to the Construction Manager, 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.

c. Provide the Construction Manager, prior to the end of the coverage period, a new certificate of coverage showing extension of the coverage, if the coverage period shown on the current certificate of coverage ends during the Duration of the Project.

d. Obtain from each other person with whom it contracts, and provide to the Owner:

(i) A certificate of coverage, prior to the other person beginning work on the project;

(ii) A new certificate of coverage showing extension of the coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;

(iii) Retain all required certificates of coverage on file for the duration of the Project and for three years thereafter;

(iv) Notify Owner in writing by certified mail or personal delivery, within 10 days after the Construction Manager knew or should have known, of any change that materially affects the provision of the coverage of any person providing services on the Project; and,

(v) Contractually require each person with whom it contracts to perform

as required by clauses (i) - (iv) of this subparagraph, with certificates of coverage, to be provided to the person for whom they are providing services.

e. The Construction Manager's failure to comply with any of the provisions of Paragraph 8.1.5 is a breach of contract by the Construction Manager which entitles Owner to declare this Agreement void if the Construction Manager does not remedy the breach within ten (10) days after notice of breach from Owner.

8.2 INSURANCE REQUIRED OF THE OWNER

8.2.1 The Owner shall be responsible for purchasing and maintaining his own liability insurance and, at its option, may purchase and maintain such insurance as will protect it against claims which may arise from operations under this Agreement.

8.2.2 The Owner shall purchase and maintain such boiler and machinery insurance as may be required or necessary. This insurance shall include the interests of the Owner, the Construction Manager, contractors and their subcontractors in the Work.

8.2.3 The Owner shall purchase and maintain Builders Risk Insurance with limits that are at all times sufficient to cover the value of the exposure. The policy should be written to cover the interests of the Owner, the Construction Manager, subcontractors, trade contractors, and all subcontractors. Further, the policy shall:

1. Stipulate that the insurer will not seek recovery, through subrogation or otherwise, against any insured (even if their negligence causes a covered loss), regardless of the extent of the insured's insurable interest.

2. Be written on an "all-risk" basis, and shall provide coverage for fire, extended coverage and physical loss or damage including theft, vandalism, malicious mischief, collapse, sewer backup, seepage, hydrostatic testing, pneumatic testing, mechanical testing and normal settling.

3. Apply to foundations, falsework, temporary buildings, and debris removal including demolition occasioned by enforcement of applicable legal requirements.

4. Provide coverage for consequential damage ensuing from faulty workmanship, material, construction, or design (resulting damage only, not cost of making good the workmanship).

5. Be maintained until the Owner has accepted the Project as completed or until no one other than the Owner has an insurable interest in the Project.

6. Cover portions of property stored off-site (after written approval of the Owner) at the value established by the Owner and portions of the work in transit.

8.3 PERFORMANCE BOND AND PAYMENT BOND

8.3.1 Construction Manager shall furnish bonds in accordance with Chapter 2253 of the Texas Government Code. The Performance and Payment Bonds required by this Article may be in one or separate instruments in accordance with local law. Surety companies must be licensed to do business in the State of Texas. All Payment and Performance Bonds provided by Construction Manager or any subcontractor shall comply with the requirements of Article 7.19-1 of the Texas Insurance code. The amount of each bond provide by Construction Manager shall be equal to One Hundred Percent (100%) of the Guaranteed Maximum Price. The Construction Manager has provided or will provide a bid bond or other financial security acceptable to the Owner so that the required Performance and Payment bonds will be delivered when a Guaranteed Maximum Price is established through Amendment Number 1.

8.3.2 All bonds will be reviewed by the Architect for compliance with the Contract Documents prior to execution of the contract. In the event that the Architect has any questions concerning the sufficiency of the bonds, the bonds will be referred to the Owner or the Owner's representative for review and decision.

8.3.3 All bonds shall be originals. The Construction Manager shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the Power-of-Attorney. The name, address, and telephone number of a contact person for the bonding company shall be provided.

8.3.4 Upon the request in writing of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under this Agreement, the Construction Manager shall promptly furnish a copy of the bonds or shall permit a copy to be made.

8.3.5 Bonds shall be signed by an agent resident in the State of Texas and the date of the bond shall be the date of the execution of this Agreement. If at any time during the continuance of this Agreement the surety of the Construction Manager's bonds becomes insolvent, Owner shall have the right to require additional and sufficient sureties which the Construction Manager shall furnish to the satisfaction of the Owner within thirty (30) days after notice to do so. In default thereof, the Construction Manager may be suspended and all payment or money due to the Construction Manager withheld.

8.3.6 The Construction Manager shall deliver the required bonds to the Owner at least three days before the commencement of any work at the project site.

ARTICLE 9
MISCELLANEOUS PROVISIONS

9.1 DISPUTE RESOLUTION FOR THE PRECONSTRUCTION PHASE

9.1.1 Claims, disputes or other matters in question between the parties to this Agreement which arise prior to the commencement of the Construction Phase or which relate solely to the Preconstruction Phase services of the Construction Manager or to the Owner's obligations to the Construction Manager during the Preconstruction Phase, shall be resolved by mediation or by arbitration.

9.2 ARBITRATION

9.2 As concluded by the parties to this Agreement on the advice of their counsel, and as evidenced by the signatures of the parties, it is agreed that all questions as to rights and obligations arising under the terms of this Agreement are subject to arbitration and such arbitration shall be governed by the provisions of the Texas Civil Practice and Remedies Code, §171.001 et seq.

9.2.1 If a dispute should arise under this Agreement, either party may within twenty (20) days make a demand for arbitration by filing a demand in writing with the other.

9.2.2 The parties to this Agreement may agree on one arbitrator, but in the event that they cannot so agree, there shall be three arbitrators, one named in writing by each of the parties within twenty (20) days after demand for arbitration is made, and a third to be chosen by the two so named within twenty (20) days after their designation as an arbitrator. Should either party fail to timely join in the appointment of the arbitrators, the arbitrators shall be appointed in accordance with the provisions of Chapter 171 of the Texas Civil Practice and Remedies Code.

9.2.3 All arbitration hearings conducted under the terms of this Agreement, and all judicial proceedings to enforce any of the provisions of this agreement, shall take place in Tom Green County, Texas. The hearing before the arbitrators of the matter to be arbitrated shall be at the time and place selected by the arbitrators within said County. Notice of hearing shall be given and the hearing conducted in accordance with the provisions of the Texas Civil Practice and Remedies Code. At the hearing, any relevant evidence may be presented by either party, and the formal rules of evidence applicable to judicial proceedings shall not govern. Evidence may be admitted or excluded in the sole discretion of the arbitrators. The arbitrators shall hear and determine the matter and shall execute and acknowledge their award in writing and deliver a copy thereof to each of the parties by registered or certified mail.

9.2.4 If there is only one arbitrator, his or her decision shall be binding and conclusive on the parties. If there are three arbitrators, the decision of any two shall be binding and conclusive. A judgment confirming the award of the arbitrators may be rendered by any court having jurisdiction; or such court may vacate, modify, or correct the award in accordance with the provisions of Chapter 171 of

the Texas Civil Practice and Remedies Code.

9.2.5 If the arbitrators selected pursuant to Paragraph 9.2.2 above shall fail to render a written decision within twenty (20) days of the date of hearing, they shall be discharged, and three new arbitrators shall be appointed and shall proceed in the same manner, and the process shall be repeated until a decision is finally reached by two of the three arbitrators selected.

9.2.6 The costs and expenses of arbitration, including the fees of the arbitrators, shall be borne by the losing party or in such proportions as the arbitrators shall determine.

9.2.7 Unless otherwise agreed in writing, the Construction Manager shall continue to carry out his duties and responsibilities under this Agreement during any arbitration proceedings, and the Owner shall continue to make payments in accordance with this Agreement.

9.3 OTHER PROVISIONS

9.3.1 Unless otherwise noted, the terms used in this Agreement shall have the same meaning as those in the 1997 Edition of AIA Documents A201, General Conditions of the Contract for Construction.

9.3.2 EXTENT OF CONTRACT

This Contract, which includes this Agreement and the other documents incorporated herein by reference, represents the entire and integrated agreement between the Owner and Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Construction Manager. If anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

9.3.3 OWNERSHIP AND USE OF DOCUMENTS

The Drawings, Specifications and other documents prepared by the Architect, and copies thereof furnished to the Construction Manager, are for use solely with respect to this Project. They are not to be used by the Construction Manager, subcontractors, sub-subcontractors, trade contractors or suppliers on other projects, or for additions to this Project outside the scope of the Work, without the specific written consent of the Owner and Architect. The Construction Manager, subcontractors, sub-subcontractors, trade contractors and suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect appropriate to and for use in the execution of their Work under the Contract Documents.

9.3.4 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located.

9.3.5 ASSIGNMENT

The Owner and Construction Manager respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Neither party to the contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

9.3.6 VENUE

Venue shall be in Tom Green County, Texas.

9.3.7 WARRANTY

The Construction Manager agrees to continue to serve as the point of contact for warranty purposes for a period of time not less than two (2) years following the date of Substantial Completion. This service will be at no additional fee. The Construction Manager's duties during this period will be to serve as the Owner's representative in contacting the appropriate contractors, subcontractors, trade contractors or suppliers for their warranty obligations and taking such steps as necessary to ensure that the warranty obligations are complied with.

9.3.8 AMENDMENT

This Agreement, representing the entire Agreement between the parties may be amended or supplemented by mutual agreement of the parties hereto in writing. The amendment or supplementation shall be in writing attached and incorporated in this Agreement.

9.3.9 INVALID, ILLEGAL OR UNENFORCEABLE PROVISIONS

In the event that any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

9.3.10 NOTICE

Any notice, demand, or request required by or made pursuant to this Agreement shall be deemed properly made if made in writing and delivered by hand-delivery, facsimile and confirmed by first-class mail, postage prepaid, or deposited in the United States mail, postage prepaid, addressed to the respective representative and to the respective address as set forth below. The notice shall be effective on the date of receipt, unless notice is received on a Saturday, Sunday, or legal holiday, it

shall be deemed received on the next business day.

IF TO COUNTY:

Name:	Honorable Michael D. Brown
Title:	County Judge
Address:	122 West Harris
	San Angelo, Texas 76903
Telephone:	325/653-3318
Facsimile:	325/659-3258

IF TO CONSTRUCTION MANAGER:

Name:	Gary McClure
Title:	President
Address:	521 West Beauregard
	P.O. Box 3405
	San Angelo, Texas 76902
Telephone:	325/653-6904
Facsimile:	325/658-2472

9.3.11 RELATIONSHIP OF PARTIES

9.3.11.1 Construction Manager undertakes performance of the Work as an independent contractor. Nothing herein shall create a relationship of employer and employee, joint venture, or partnership between the Owner and Construction Manager, its agents, representatives, employees, engineers, consultants, contractors or subcontractors, for any purpose whatsoever. Nothing herein shall create a relationship of principal and agent between Owner and Construction Manager, its agents, employees, representatives, engineers, consultants, contractors or subcontractors. Neither party shall have the authority to bind nor obligate the other in any manner as a result of the relationship created hereby.

9.3.11.2 Owner shall not have the right to control the manner(s) or prescribe the method(s) by which Construction Manager performs the Work. Construction Manager shall be wholly responsible for the construction manager services. Construction Manager is entirely and solely responsible for its acts and the acts of its agents, employees, representatives, engineers, consultants, contractors and subcontractors engaged in the performance of the Work.

9.3.11.3 Construction Manager's personnel shall be and remain solely the employees of Construction Manager, and at no time or in any manner shall Construction Manager's personnel, employees, agents, representatives, engineers, consultants, contractors or subcontractors be considered as or deemed to be employees of Owner.

9.3.12 FINANCIAL INTEREST PROHIBITED

Construction Manager covenants and represents that Construction Manager, its officers, employees, agents, engineers, consultants, contractors and subcontractors will have no financial interest, direct or indirect, in the purchase or sale of any product, materials or equipment that will be recommended or required for the construction of the Project.

9.3.13 TIME IS OF THE ESSENCE

Construction Manager understands and agrees that time is of the essence.

ARTICLE 10
TERMINATION OR SUSPENSION

10.1 TERMINATION PRIOR TO ESTABLISHING GUARANTEED MAXIMUM PRICE

10.1.1 Prior to execution by both parties of Amendment No. 1 establishing the Guaranteed Maximum Price, the Owner may terminate this Contract at any time without cause, and the Construction Manager may terminate this Contract for any of the reasons described in Subparagraph 14.1.1 of AIA Document A201.

10.1.2 If the Owner or Construction Manager terminates this Contract pursuant to this paragraph 10.1 prior to commencement of the Construction Phase, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of notice of termination; provided, however, that the compensation for such services shall not exceed the compensation set forth in Subparagraph 4.1.1.

10.1.3 If the Owner or Construction Manager terminates this Contract pursuant to this paragraph 10.1 after commencement of the Construction Phase, the Construction Manager shall, in addition to the compensation provided in Subparagraph 10.1.2, be paid an amount calculated as follows:

.1 Take the Cost of the Work incurred by the Construction Manager.

.2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Paragraph 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that paragraph, an amount which bears the same ratio to that fixed-sum Fee as the Cost of Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion.

.3 Subtract the aggregate of previous payments made by the Owner on account of the Construction Phase.

The Owner shall also pay the Construction Manager fair compensation, either by (a) purchase or

rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Clause 10.1.3.1 and (b) reimburse the Construction Manager for reasonable cancellation expenses which were not reasonably avoidable by the Construction Manager and which were actually incurred by the Construction Manager. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

Subcontracts, purchase orders and rental agreements entered into by the Construction Manager with the Owner's written approval prior to the execution of Amendment No. 1 shall contain provisions permitting assignment to the Owner as described above. If the Owner accepts such assignment, the Owner shall reimburse or indemnify the Construction Manager with respect to all costs arising under the subcontract, purchase order or rental agreement except those which would not have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner elects not to accept the assignment of any subcontract, purchase order or rental agreement which would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager shall terminate such subcontract, purchase order or rental agreement and the Owner shall pay the Construction Manager the costs necessarily incurred by the Construction Manager by reason of such termination.

10.2 TERMINATION SUBSEQUENT TO ESTABLISHING GUARANTEED MAXIMUM PRICE

Subsequent to execution by both parties of Amendment No. 1, the contract may be terminated as provided in Article 14 of AIA Document A201.

10.2.1 In the event of such termination by the Owner, the amount payable to the Construction Manager pursuant to Subparagraph 14.1.2 of AIA Document A201 shall not exceed the amount the Construction Manager would have been entitled to receive pursuant to Subparagraphs 10.1.2 and 10.1.3 of this Agreement.

10.2.2 In the event of such termination by the Construction Manager, the amount to be paid to the Construction Manager under Subparagraph 14.1.2 of AIA Document A201 shall not exceed the amount the Construction Manager would be entitled to receive under Subparagraphs 10.1.2 or 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, including a reasonable estimate of the Cost of the Work for Work not actually completed.

10.3 SUSPENSION

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201; in such case, the Guaranteed Maximum Price, if established, shall be increased as provided in Subparagraph 14.3.2 of AIA Document A201 except that the term "cost of performance of the contract" in that Subparagraph shall be understood to mean the Cost of the Work and the term "profit" shall be understood to mean the Construction Manager's Fee as described in Subparagraphs 5.1.1 and 5.3.4 of this Agreement.

ARTICLE 11
OTHER CONDITIONS AND SERVICES

This Agreement entered into to be effective as of the day and year first written above.

OWNER

TOM GREEN COUNTY, TEXAS

By:_____
The Honorable Michael D. Brown
Tom Green County Judge, in his
official capacity and not individually

Date: May 11, 2010

CONSTRUCTION MANAGER

TEMPLETON CONSTRUCTION CO., INC.

By:_____
Gary McClure, President

Date: May 5, 2010

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