

CONSTRUCTION MANAGEMENT-AT-RISK AGREEMENT

This Construction Management-at-Risk Agreement (“Agreement”) is entered into effective as of XXXXX (the “Effective Date”), by and between City of South Padre Island, hereinafter referred to as “Owner,” and XXXXXXXX hereinafter also called “Construction Manager” (also hereinafter referred to as “Party” individually or “Parties” collectively).

ARTICLE I **PROJECT**

1.01 Owner intends to construct an addition and renovations to the South Padre Island Convention Center (the “Project”) for which Owner intends to achieve Substantial Completion (as defined in Owner’s Standard Uniform General and Supplementary Conditions) for all Stages of construction (as defined below) on or before XXXXXXXX. The Contract Time and the date by which Substantial Completion should be achieved will be established when and if Owner accepts Construction Manager’s Guaranteed Maximum Price proposal.

1.02 Liquidated Damages For each consecutive calendar day after the completion period set forth in a Guaranteed Maximum Price Proposal executed by the Parties that any Work, including the correction of deficiencies found during the final testing and inspection, is not completed, the amount of One Thousand Dollars (\$3,000) per day/ per project will be deducted from the money due or becomes due the Construction Manager, not as a penalty but as liquidated damages representing the parties’ estimate at the time of contract execution of the damages which the Owner will sustain for late completion.

ARTICLE II **DEFINITIONS**

2.01 Certain Definitions:

- (a) Contract Documents: This Agreement, including Owner’s Standard Uniform General and Supplementary Conditions, Special Conditions, Specifications, all Addenda issued prior to the Effective Date, the Program, the Project Manuals developed for the construction of the Project or a portion thereof, all documents required thereunder, and the Drawings and Specifications developed by the Design Consultant(s). The Contract Documents form the Contract between Owner and Construction Manager. Construction Manager shall perform all of its services and construct the Work (as defined below) pursuant to the entire Contract Documents. Duties and obligations of Construction Manager which are described in this Agreement may be expanded or further defined by additional provisions of any of the Contract Documents. “Construction Manager” shall be substituted for

- “Contractor” or “General Contractor” in Owner’s Standard Uniform General and Supplementary Conditions and Specifications.
- (b) Construction Cost Limitation: The cost limit for construction which must not be exceeded as a result of the design of the Design Consultant and which may be stipulated in a contract with a Design Consultant.
 - (c) Construction Phase: The implementation and execution of the construction work required by the Contract Documents. The construction of the Project may be divided into different stages each with different dates for implementation and completion (referred to as a “Stage”).
 - (d) Cost of the Work is defined in Article VIII.
 - (e) Day: The calendar day unless otherwise specifically designated.
 - (f) Design Consultant: Licensed professionals, or firms employing such licensed professionals, engaged by Owner as independent consultants for design of all or a portion of the Project Improvements and to prepare drawings and specifications for the construction of the Project (the “Drawings and Specifications”). More than one such professional or firm may be employed by Owner. (All such professionals or firms, regardless of number, may be referred to in the singular herein.)
 - (g) Final Completion: As defined by Owner’s Standard Uniform and Supplementary General Conditions.
 - (h) General Conditions Work: Refer to Exhibit H for a complete list of approved general condition items. These approved items shall be reflected in the General Conditions lump sum cost shown as a line item in the Guaranteed Maximum Price Proposal and the schedule of values/cost breakdown. Items not shown on Exhibit H will not be accepted as a general condition cost and will be part of the Pre-construction Phase Fee, Construction Phase Fee or Cost of Work.
 - (i) Pre-construction Phase: The programming, schematic design, design development, construction documents, and bidding phases.
 - (j) Preliminary Project Cost (“PPC”): The total estimated cost of all project development, including design, construction, and other associated costs, which is established prior to the commencement of design.
 - (k) Project Construction Budget (“PCB”): The budget established for the site preparation and construction of all the Project Improvements and facilities relating to and being a part of the Project, which includes the Construction Cost Limitation and other costs specified by Owner.
 - (l) Project Improvements: All Project facilities requiring construction, including all preparatory matters prior to construction, such as site preparation.
 - (m) Project Manager: Shall mean Broaddus & Associates and its agents.
 - (n) Project Team: The Owner, Project Manager, Construction Manager, Design Consultant(s), any separate contractors employed by Owner, and other consultants employed for the purpose of programming, design, and construction of the Project. The constitution of the Project Team may vary at different phases of the Project. The Project Team will be designated, and may be modified from time to time by Owner.

- (o) Standards and Standard Specifications: The construction and design requirements and standards as specified by Owner which are hereby incorporated by reference.
- (p) Subcontractors: All trade contractors, separate contractors, subcontractors, and any material men entering into contracts (“Subcontracts”) with the Construction Manager and Subcontractor for the performance of the Work. The relationship between the Construction Manager and the Subcontractors shall be that of a general contractor to its subcontractors unless otherwise approved in advance in writing by Owner, or except when Owner enters into a separate contract directly with a Subcontractor, which shall not be authorized unless in writing.
- (q) Substantial Completion (date of): As defined by Owner’s Standard Uniform General and Supplementary General Conditions.
- (r) Total Project Cost (“TPC”): The total budget established for the Project by the Board of Trustees of Owner at the end of the design development phase (subject to subsequent modification by Owner), which includes but is not limited to professional services costs, Construction Manager’s costs, the costs of the General Conditions items.
- (s) Work: The provision of all services, labor, materials, supplies, and equipment which are required or reasonably inferable to complete the Project in strict accordance with the requirements of the Contract Documents (as such may be modified or amended). The term “reasonably inferable” takes into consideration the understanding of the parties hereto that not every detail will be shown in the Contract Documents. The Construction Manager shall not be entitled to an increase in the Guaranteed Maximum Price (as described in section 5.01(g)) due to the absence of any detail or specification the Contractor may require or for any construction which may be found necessary as the Work progresses in order to complete the construction of the Project. If an item or system is either shown or specified, all material and equipment required for the proper installation of such item or system and needed to make a complete operating installation shall be provided whether or not detailed or specified, omitting only such parts as are specifically excepted by the Owner. Notwithstanding the above, the Contractor shall not be responsible for design, except incidental designing/detailing as required by the Specifications for shop drawing purposes.

ARTICLE III
DESIGNATION OF CONSTRUCTION MANAGER AND DUTIES

3.01 The Owner hereby designates and appoints the Construction Manager and authorizes the Construction Manager to so act in connection with the scope of work and services set forth and described in this Agreement.

3.02 Notwithstanding anything to the contrary contained in this Agreement, Owner and Construction Manager agree and acknowledge that Owner is entering into this Agreement in reliance on Construction Manager’s special and unique abilities with respect to performing its obligations hereunder, and Construction Manager’s special and unique abilities with respect to

construction management. The Construction Manager accepts the relationship of trust and confidence established between it and the Owner by this Agreement. Construction Manager covenants with Owner to use its best efforts, skill, judgment, and abilities to perform the services hereunder and to further the interests of Owner in accordance with Owner's requirements and procedures, in accordance with the highest standards of Construction Manager's profession or business and in compliance with all applicable national, federal, state, municipal, laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction. Construction Manager warrants, represents, covenants, and agrees that there are no obligations, commitments, or impediments of any kind that will limit or prevent performance of the services required hereunder.

3.03 Warranties and Representations. The Construction Manager warrants, represents, covenants, and agrees that all of the services to be performed by the Construction Manager under or pursuant to this Agreement shall be of the standard and quality which prevail among similar businesses and organizations of superior knowledge and skill engaged in providing similar services in major United States urban areas under the same or similar circumstances and involving a project such as the Project.

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

3.05 The Construction Manager warrants, represents, covenants, and agrees that all persons connected with the Construction Manager directly in charge of its services are duly registered and/or licensed under the laws, rules and regulations of any authority having jurisdiction, if so required by such laws, rules and regulations.

3.06 The Construction Manager warrants, represents, covenants, and agrees to call to Owner's attention anything of any nature in any drawings, specifications, plans, sketches, instructions, information, requirements, procedures, and other data supplied to the Construction Manager (by the Owner or any other party) which it regards in its opinion as unsuitable, improper, or inaccurate in connection with the purposes for which such document or data is furnished. Nothing shall excuse or detract from the Construction Manager's responsibilities or obligations hereunder in a case where such document or data is furnished unless the Construction Manager advises Owner in writing that in its opinion such document or data and any requests made therein for action are unsuitable, improper, or inaccurate and Owner confirms in writing that it wishes the Construction Manager to proceed in accordance with the data as originally given.

3.07 The Construction Manager warrants, represents, covenants, and agrees to furnish efficient business administration and superintendence and perform its services hereunder or pursuant to this Agreement in the best way and in the most expeditious and economical manner consistent with the interests of Owner.

3.08 The Construction Manager warrants, represents, covenants, and agrees that it shall, at its own cost, make good any defects in the Preconstruction Phase Services as soon as the Construction Manager becomes aware of such defects or is notified of such defects. Should the Construction Manager refuse or neglect to make good such defects within a reasonable time after receiving notice requesting such remedial work, then the Owner shall be entitled to make good such defective services at the expense of the Construction Manager. This commitment by Construction Manager is in addition to, and not in substitution for, any other remedy for defective Services which the Owner may have at law or in equity. Construction Manager's obligations with respect to Construction Phase Services are set forth in Owner's Standard Uniform General and Supplementary Conditions and elsewhere as may be noted.

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

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

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

ARTICLE IV
CONSTRUCTION MANAGER'S PERSONNEL AND SUBCONTRACTORS

4.01 The Construction Manager's personnel, and the Construction Manager's associated subconsultants, to be employed in the Project, are identified in Exhibit A. The personnel and entities identified in Exhibit A shall not be changed except with the Owner's prior written agreement, which shall not be unreasonably withheld.

4.02 All subcontracts shall be awarded in accordance with the applicable provisions of this Agreement. Owner reserves the right to require all potential subcontractors to answer questionnaires and to submit certain information, including financial information and references. Construction Manager shall notify Owner in advance in writing of the identities of all Subcontractors with which it intends to subcontract. Construction Manager shall not subcontract with any Subcontractor to which Owner has a reasonable objection. Such notice shall be given sufficiently in advance to permit Owner adequate time for review without delay to the Project, and allowing time for Construction Manager to make substitute selections, but in no event shall such notice be given less than twenty (20) days before the intended subcontract date. Construction Manager shall not be required to subcontract with any Subcontractor to which it has reasonable objection. If Construction Manager intends to submit a proposal for subcontract work, it shall notify Owner in writing prior to soliciting proposals from potential subcontractors. When Construction Manager's Subcontractors for constructing the Work have been identified, they shall not be changed without Owner's prior written approval, which shall not be unreasonably withheld. Construction Manager shall not incur any Subcontract costs prior to issuance by Owner of a Notice to Proceed for such Work.

ARTICLE V
CONSTRUCTION MANAGER'S SERVICES:
PART 1: PRECONSTRUCTION PHASE SERVICES

5.01 In implementation of the responsibilities and duties of the Construction Manager as set forth herein, the Construction Manager shall perform, in accordance with the Schedule (as defined in Section 5.01(b)), the following Preconstruction Phase Services:

- (a) General Coordination.
 - (1) Participate as a member of the Project Team in the development of-the Project Facility Program if such program has not been developed prior to the Effective Date of this Agreement.
 - (2) Attend regular meetings with other members of the Project Team during the development of the design of the Project to advise them on site usage and site improvements, selection of materials, building systems and equipment, and methods of delivery of materials, systems, and equipment. The Construction Manager's Pre-construction Phase Services team shall attend project team meetings with the Owner, the Owner's representatives, and the Project Architect and design architect for two or three day

workshop sessions in South Padre Island, Texas at approximately one month intervals throughout the duration of the pre-construction phase with the occurrence of shorter but more frequent project team meetings increasing prior to the Owner's acceptance of the GMP.

- (3) Provide recommendations and information to the other members of the Project Team on: construction feasibility; availability of materials and labor; time requirements for installation and construction; assignment of responsibilities for safety precautions and programs, temporary Project facilities; equipment, materials and services for common use of the Construction Manager and Owner's separate contractors, if any; cost factors, including costs of alternative materials or designs, preliminary budgets, and possible cost savings; methods of verification for determining that the requirements and assignment of responsibilities are included in the proposed Contract Documents, and any other matters necessary to accomplish the Project in accordance with the Schedule (as defined below) and Project Construction Budget.
- (4) At Owner's request, attend public meetings and hearings concerning the development and schedule of the Project.
- (5) Implement and conduct a Constructability Implementation Program as set forth in Exhibit E hereto, which is hereby incorporated herein by reference. Whenever the term "value engineering" is used in conjunction with this Agreement or the Project, it has its commonly accepted meaning within the construction industry and does not imply the practice of professional engineering without a license. If any value engineering activities constitute the professional practice of engineering, then such activities shall be performed by an engineer licensed in Texas.
- (6) Develop and update a "Constructability Review" report which is a report resulting from frequent communication with the Project Team and which will outline items that in the Construction Manager's opinion may cause problems in the way the Project is to be constructed and which will review the overall coordination of specifications and drawings, details and discrepancies that if left unattended may result in Change Orders or claims once Project construction commences. Constructability recommendations and documentation shall be in conformance with mutually agreed upon format.
- (7) Creation and continuous updating using the project management software ***Owner In Site*** access will be provided by Project manager for all decision tracking and document tracking.
- (8) Attend and participate in Owner's "Partnering" Program for all phases of the Project.
- (9) General Coordination Coordinate and manage the construction and demolition of one or more full-scale architectural design mock-ups at the project site based on plans and specifications provided by the Project Architect in collaboration with the design Architect.

(b) Scheduling.

- (1) Develop a critical path Project schedule (“Schedule”) for the other Project Team members’ review and the Owner’s approval, that coordinates and integrates the Construction Manager’s services, the Design Consultant’s design, the work of other consultants and suppliers, and the Owner’s activities with the anticipated construction schedules for other contractors.
- (2) Update the Schedule as is reasonably required but at least monthly to incorporate an updated, detailed listing for all activities of the Project, including, without limitation:
 - a) commencement, milestone and completion dates for Facility Program Phase, Schematic Design Phase, Design Development Phase, Construction Documents Phase, Bidding/Proposals Phase, construction phasing and Project Stages;
 - b) times of commencement and completion for each Subcontractor;
 - c) required activity sequences and durations;
 - d) contract document packages, completion dates, Owner contract document package review periods, Project building permits acquisition time requirements, construction contract bid dates;
 - e) processing of shop drawings and samples;
 - f) a recommended schedule for the Owner’s direct purchase of materials and equipment requiring long lead time procurement, delivery dates of products requiring long lead time procurement, and methods to expedite and coordinate delivery of long lead time procurements including coordination of the Schedule with the early preparation of relevant portions of the Contract Documents by the Design Consultant.

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

- (3) Provide the necessary critical path schedule control with a goal to attain the Substantial Completion of the Project on or before the date set forth hereinabove, so that the Owner can occupy and utilize the entire Project facilities on such date; and
- (4) Create and maintain the Schedule using the latest available version of the *Primavera* software program (the license and training for which shall be at Construction Manager’s sole expense).
- (5) Additional Detailed Schedule Activities. The Construction Manager may also include in the Schedule additional activities which may be Owner-managed work under separate contracts including: equipment, furniture and furnishings, telephones, project security, property protection and life-safety systems, integration with central campus monitoring systems, information and instructional technology data-transmission systems, and computer technology systems.

(6) All schedules shall be uploaded and maintained on *Owner In Site* project management software, access will be provided by the owner project manager

(c) Budget and Cost Consultation.

- (1) Obtain from Owner all Project service, materials and property costs and expenses not known directly by the Construction Manager, such costs to include, without limitation, Owner's personnel costs, force account labor, if any, and special consultants.
- (2) Prepare and update a Project budget during the schematic design phase, design development phase, and construction documents phase at thirty percent (30%), sixty percent (60%) and ninety five percent (95%) completion (for each Stage), for written approval by the Owner, such budget to include estimating, updating and reporting of all Project costs including, without limitation, construction, regardless of whether such costs are included in Owner's CCL or TPC. The design development phase and construction documents phase estimates shall be detailed estimates derived from cost quantity surveys. Such cost quantity surveys shall be based upon unit prices for labor, materials, and overhead and profit.
- (3) Provide, throughout the duration of the Project, updates of ongoing cost and budget impact, and provide continuous cost consultation services. Prepare and be responsible for all procurement and construction cost estimates. Advise the other members of the Project Team immediately if at any time the Construction Manager has knowledge or belief that the previously established CCL, TPC, or Schedule will not be met, and make recommendations to the Project Team for corrective action.
- (4) At the completion of the Construction Contract Documents (for any Stage of the Project), update and refine a comparison of actual and projected costs to the Project Construction Budget, and in the event such actual and projected costs exceed the original Project Construction Budget, develop and implement reasonable strategies to be approved by the Owner to reduce the costs projected to be incurred during all phases of the Project.

(d) Coordination of Design and Construction Contract Documents.

- (1) Review all plans, specifications, and other design documents during the schematic design phase, design development phase, and construction documents phase, and advise Owner on site use, foundations, systems, materials, equipment, construction feasibility, availability of labor and materials, procurement time requirements, installation and construction, relative costs, and provide recommendations to Owner without assuming Design Consultants' professional responsibility.
- (2) Coordinate the incorporation of the Owner's Programming Design Guidelines and Standard Specifications and procedures, including, without

limitation, Site Construction Guidelines, all of which are hereby incorporated by reference, into the Construction Contract Documents, and use of the Owner's format as directed by the Owner.

- (3) Assist in development of any Special Conditions of the Construction Contract Documents, which shall be approved in writing by the Owner at Owner's sole option and discretion.
- (4) At specified times required by the Owner, review the drawings and Project Manual as they are being prepared, advise Owner of any error, inconsistency or omission discovered, and recommend alternative solutions whenever the design affects construction feasibility, budget, risks, or schedules (without assuming the Design Consultants' professional responsibility).
- (5) Prepare a constructability review report based on Exhibit E and mutually agreed upon format, a copy of which has been provided to Construction Manager at the time or times indicated therein.
- (6) Coordinate with the Owner to ensure that the Construction Contract Documents comply with all applicable laws and Owner policies regarding procurement.
- (7) Consult with Owner and Design Consultant to determine what materials, equipment, component systems, and construction types should be included in the Contract Documents; suggest reasonable adjustments in the scope of the Project; and suggest alternate bids in the Construction Documents to adjust the Construction Cost to the Guaranteed Maximum Price (as defined herein).

(e) Construction Planning.

- (1) Identify for and recommend to the Owner the need for purchase of items requiring extended delivery times ("long lead items"), and expedite the procurement of such items to ensure their delivery by the required dates. Participate with Design Consultant, as requested by Owner and subject to Owner's prior approval, in the preparation of performance specifications and requests for technical proposals for the procurement and installation of systems, components, and for the procurement of long lead time equipment and materials. If requested by Owner, and subject to Owner's prior approval, issue requests for technical proposals to qualified sources and receive proposals and assist in their evaluation.
- (2) Make recommendations to the other members of the Project Team regarding the division of Contract Documents and Project Manual to facilitate the bidding and awarding of construction contracts, to allow for phased or staged construction, or multiple separate contracts, and to take into consideration such factors as time of performance, type and scope of work, availability of labor and materials, overlapping trade jurisdictions, provisions for temporary facilities, comparisons of factory and on-site

production costs, shipping costs, code restrictions, the Owner's goals for Local Participation, if any, and other constraints.

- (3) Review the Drawings and the Project Manual with the other members of the Project Team to eliminate areas of conflict and overlap in the work to be performed by the various Subcontractors or Owner's separate contractors.
- (4) Schedule and conduct pre-bid conferences with interested bidders, subcontractors, material suppliers, and equipment suppliers, and record minutes of same.
- (5) Coordinate and develop with Design Consultant bid packages and work scope descriptions for each separate bid category that represent the entirety of the scope of the Work for each phase and stage of the Project.
- (6) In accordance with *Texas Government Code* section 2267.254-2267.256 , Construction Manager shall publicly advertise and solicit either competitive bids or competitive sealed proposals from trade contractors or subcontractors for the performance of all major elements of the work other than the minor work that may be included in General Conditions. Construction Manager may seek to perform portions of the work itself if Construction Manager submits its bid or proposal for those portions of the work in the same manner as all other trade contractors or subcontractors and if Owner determines that Construction Manager's bid proposal provides the best value for Owner. Owner's determination in such matters is final. If Construction Manager intends to submit a proposal for such work, it shall notify Owner in writing prior to soliciting proposals. Criteria for determination of best value shall be provided by Owner. Construction Manager and Owner shall receive and open all trade contractor or subcontractor bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process. All bids and proposals shall be made public within seven (7) days after the date of final selection. If Construction Manager reviews, evaluates, and recommends to Owner a bid or proposal from a trade contractor or subcontractor, but Owner requires a bid or proposal from another trade contractor or subcontractor to be accepted, then, pursuant to the terms of the Contract, Owner shall compensate Construction Manager by a change in price, time, or Guaranteed Maximum Price for any additional cost and risk, which has been demonstrated to Owner's satisfaction and as required by the Contract, which Construction Manager may incur because of Owner's requirement that another trade contractor or subcontractor bid or proposal be accepted.
- (7) Assist the Owner, the appropriate separate Owner's contractor, the appropriate Design Consultant or other consultant, in obtaining all applicable risk management, code, and regulatory agency reviews and approvals for the Project or any portion thereof including, without limitation, the Texas Department of Licensing and Regulation, the fire

department providing fire protection, and Factory Mutual Engineering, a wholly owned subsidiary of the Factory Mutual System.

- (8) Advise Owner of any tests to be performed, and assist Owner in selecting testing laboratories and consultants, without assuming direct responsibility for the work of such laboratories and consultants.
- (9) Review the Contract Documents to ensure that they contain adequate provision for all temporary facilities necessary to enable the Subcontractors to perform their work, and provisions for all of the job site facilities necessary to manage, inspect, and supervise construction of the Work.
- (10) In accordance with Owner's Standard Uniform General and Supplementary Conditions, initiate, maintain, and supervise all safety precautions and programs in connection with the Work. Construction Manager shall provide recommendations and information to Owner and Design Consultant with respect to the assignment of responsibilities for safety precautions and programs, temporary Project facilities, and equipment, materials, and services for common use of the Subcontractors. Verify that such assignments with respect to the Subcontractors are included in the Contract Documents.
- (11) Provide an analysis of the types and quantities of labor required for the Project and review the appropriate categories of labor required for critical phases or Stages. Make recommendations for actions which will minimize adverse effects of labor shortages.

(f) Guaranteed Maximum Price.

- (1) At the conclusion of the Design Development phase, or such other time as the Parties may agree upon when the Drawings and Specifications are sufficiently complete, Construction Manager shall submit a Guaranteed Maximum Price proposal to Owner in the form attached hereto as Exhibit C which shall also state a Contract Time and date of Substantial Completion upon which the proposal is based. If Owner accepts the proposal, both parties shall sign the proposal and the Guaranteed Maximum Price, Contract Time and date of Substantial Completion therein shall become part of the Contract. Based on particular Project requirements and the development of the Project design, Owner, at its sole option and discretion, may specify a different format than that contained at Exhibit C, which is provided as an example only.
- (2) Owner, at its sole option and discretion may reject the Guaranteed Maximum Price proposal, attempt to renegotiate the proposal with Construction Manager (with the right to cease negotiations at any time and reject the proposal), or increase the Project Construction Budget. Construction Manager shall not withdraw its Guaranteed Maximum Price proposal for ninety (90) days.

- (3) The Guaranteed Maximum Price proposal must be prepared in the format specified by Owner which shall require a breakdown of estimated costs organized by trade, allowances, contingencies, Construction Manager's Construction Phase Fee, and other approved items as defined in Attachment 1 to Exhibit C (Guidelines for the Preparation of the GMP).
- (4) The Guaranteed Maximum Price proposal must include a written statement describing how it was derived and prepared, which shall include, at a minimum, Drawings and Specifications, addenda, Owner's Standard Uniform General and Supplementary Conditions, allowances, all clarifications and assumptions made by the Construction Manager due to the incompleteness of the Drawings and Specifications, and assumptions as to when Contract Documents will be issued. This information shall be fully described in Attachment 1 to Exhibit C.
- (5) In formulating the Guaranteed Maximum Price proposal, Construction Manager shall allow for the continued development and completion of the Drawings and Specifications which are reasonably inferable, except for material changes in scope, and the Guaranteed Maximum Price proposal shall include a Construction Manager's contingency to allow for costs arising out of such development and completion which do not qualify for a change order. Amounts attributable to clarifications, assumptions, and further development and completion of the Drawings and Specifications shall be specified in an itemized breakdown as part of the proposal.
- (6) In formulating the Guaranteed Maximum Price proposal, include an Owner provided Construction Contingency Allowance in the amount of \$500,000 per Pricing and Delivery schedule. Indicate this specified amount under Guaranteed Maximum Price, Exhibit C, Item 6, and under Attachment 1 to Exhibit C, Tab 3, Description of Work, Allowance Schedule.

ARTICLE VI
CONSTRUCTION MANAGER'S SERVICES:
PART 2: CONSTRUCTION PHASE SERVICES

6.01 The Construction Phase shall be deemed to commence upon the earlier of (i) the date specified in a Notice to Proceed issued by Owner after approval by Owner of a Guaranteed Maximum Price for the Work or portion of the Work specified in such Notice to Proceed, (ii) the issuance of a purchase order by Construction Manager for materials or equipment for the Project after prior written authorization by Owner, or (iii) award of a Subcontract in accordance with the requirements of this Contract and after prior written authorization by Owner. Preconstruction Phase Services may overlap Construction Phase Services. In implementation of the responsibilities and duties of the Construction Manager for the Construction Phase, the Construction Manager shall provide the following services:

(NOTE : ALL Project Correspondence including but not limited too, Shop drawings, Meeting notes, RFI's, ASI's and Change Orders must be managed through the Project Management Software *Owner In Site*. Access to the site will be provided by the owner)

(a) Project Control.

- (1) Construction Manager shall construct the Work in strict accordance with the Contract Documents within the time required by the Schedule approved by Owner and as required by Owner's Standard Uniform General and Supplementary General Conditions and Specifications. Construction Manager shall award and enter into, as a general contractor, all Subcontracts necessary and appropriate to provide all labor and materials for the construction of the Project. Construction Manager shall self-perform only General Conditions Work and other Work which has been awarded to Construction Manager in accordance with the requirements of *Texas Government Code* section 2267 Subchapter F and this Contract. Owner reserves the right to perform Work related to the Project and to award separate contracts for Work related to the Project.
- (2) Monitor the Work of the Subcontractors as required and coordinate such Work with the activities and responsibilities of the Project Team with a goal to attain completion of the Project at a cost not to exceed the Project Construction Budget and Guaranteed Maximum Price, and to attain Substantial Completion by the date set forth in Exhibit C herein when executed.
- (3) Attend Owner's Project progress meetings scheduled by Owner no less often than once per month, and fully advise the Project Team at such meetings as to Project status.
- (4) Schedule, direct and attend regular meetings with other members of the Project Team during the construction of the Project to discuss jointly such matters as procedures, progress, problems and scheduling. Prior to each

meeting, the Construction Manager shall prepare and distribute to the other Project Team members a written agenda for the meeting. Prepare and distribute at each Project Team meeting a memorandum setting forth the list of critical activities which require immediate action and the date(s) by when the activity must be completed, and record and distribute the minutes of each meeting.

- (5) As provided in Exhibit A, maintain a competent, full-time staff at the Project site to coordinate and provide general direction over the Work and progress of the Subcontractors on the Project.
- (6) As provided in Exhibit A, establish on-site organization of personnel and clearly defined lines of authority in order to effectuate the overall plans of the Project Team. At a minimum, Construction Manager's site personnel shall include a project manager, project superintendent, assistant superintendent, project engineer, and appropriate administrative support personnel.
- (7) In consultation with Owner, establish procedures for coordination among the Project Team, Subcontractors, separate contractors, Design Consultants, and other consultants with respect to all aspects of the construction of the Project, and implement such procedures.
- (8) Expedite and coordinate delivery and installation of Owner-procured material and equipment.
- (9) Construction Manager shall supervise and direct the Work and shall be solely responsible for construction means, methods, techniques, sequences, and procedures for the Work.
- (10) In accordance with Owner's Standard Uniform General and Supplementary Conditions, provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and all other facilities and services necessary for the proper execution and completion of the Work in strict accordance with the requirements of the Contract Documents.
- (11) Obtain building permits and special permits for permanent improvements as required by law or the Contract Documents. Assist Owner or Design Consultant in obtaining all approvals required from authorities having jurisdiction over the Project.
- (12) Inspect the Work of Subcontractors to ensure conformance with the Contract Documents.

(b) Scheduling.

- (1) Perform Project scheduling in compliance with Article XXIII of Owner's Standard Uniform General and Supplementary Conditions entitled "Time Allotted for Performance; Construction Schedules" if included therein;
- (2) otherwise provide regular monitoring, updating, and reissuing of the all Project Schedules as construction progresses, including, without limitation,

master project schedules, detailed construction schedules, submittal schedules, inspection schedules, and occupancy schedules;

(3) Identify potential and actual variances between scheduled and probable completion dates, review the schedules for Work not started or incomplete and recommend to the Owner adjustments in the schedules to conform with the probable completion dates and provide summary reports to the Owner of each schedule update and document all changes in construction schedules

(4) Incorporate activities of the Subcontractors and other parties affecting the progress of the Work, including, without limitation, activity sequences and durations, allocation of labor and materials, processing of shop drawings, data, and samples, delivery of long lead time items;

(5) Include Owner's occupancy requirements and occupancy priorities;

(6) Evaluate Subcontractor's personnel and equipment, and availability of supplies and materials, with respect to each Subcontractor's ability to meet the Schedule;

(7) Recommend action to Owner when any Subcontract requirements are not met, or appear unlikely to be met.

(c) Cost Control.

(1) Maintain cost accounting records in good form on expenditures and materials, or for any other expenditures requiring accounting records; and afford the Owner access to these records and preserve them for a period of four (4) years after final payment is made by the Owner to the Construction Manager.

(2) Prepare and administer, and provide to Owner, Subcontractors' schedule of values, Subcontractors' sworn statements and waivers of lien as required, contract and disbursement summaries, change order listings and change orders, and budget cost summary reports as required by Owner.

(3) Promptly identify all variances between estimated costs and actual costs, and report such variances to the Project Team along with recommendations for action, but in any event, no more than two (2) business days after acquiring such information.

(d) Change Orders. Develop and implement a system acceptable to the Owner for the preparation, review and processing of Change Orders, change order requests, and requests for information, in accordance with Owner's Standard Uniform General and Supplementary Conditions and Specifications.

(e) Wage Rates. Owner encourages use of minimum wage rates in accordance with Owner's Standard Uniform General and Supplementary Conditions.

(f) Special Consultants. Assist the Owner in selecting and retaining professional services not otherwise described in this Agreement for the Project, and coordinate

these services at the owner's request in order to meet the Schedule, without, however, assuming direct responsibility for the work of these consultants.

- (g) Documents, Shop Drawings, and Submissions. (NOTE : ALL Project Correspondence including but not limited too, Shop drawings, Meeting notes, RFI's, ASI's and Change Orders must be managed through the Project Management Software *Owner In Site*. Access to the site will be provided by the owner)
- (1) The Design Consultant shall be the interpreter of the design intent of the Construction Contract Documents, subject to the terms and conditions of the agreement between the Design Consultant and the Owner, provided, however, the Construction Manager shall request such interpretations from the Design Consultant, with Owner consent, from time to time in order to facilitate the Construction Manager's accomplishment of its duties under this Agreement. The Owner's consent may be provided to the Construction Manager at the beginning of Part 1 Services and does not have to be requested on an item by item basis.
 - (2) In collaboration with the other members of the Project Team, the Construction Manager shall establish and implement procedures for expediting the processing and Design Consultants' approval of shop drawings and other submissions, and in accordance with Specifications, as applicable. Receive from the Subcontractors, and review, all shop drawings and other submissions for conformance with the Contract Documents. Coordinate shop drawings and other submissions with the Contract Documents and other related documents prior to transmitting them to other members of the Project Team.
 - (3) The Construction Manager shall record the progress of the Project, submit written progress reports to the other members of the Project Team, including information on the Subcontractor's Work and the percentage of completion, and keep a daily log of Project construction activities available to the other members of the Project Team in accordance with Owner's Standard Uniform General and Supplementary Conditions; the job superintendent, shall maintain a daily log of construction activities and observations, which daily logs shall be submitted to the Owner no less frequently than weekly for the immediately preceding week.
 - (4) The Construction Manager shall maintain at the Project site and make available to Owner updated records of subcontracts, drawings, examples, purchases, materials, equipment, maintenance and operating manuals and instructions, and other construction related documents, including all changes and revisions, a directory of personnel, Project correspondence, inspection procedures (as prepared by others), testing laboratory procedures (as prepared by others), contract changes, time extensions, progress payment data, final acceptance procedures, instructions from

- Owner; and shall obtain data from Subcontractors and maintain a current set of record drawings and project manual.
- (5) Coordinate and facilitate the creation of record and as-built drawings, and the procurement of warranties and guarantees.
 - (6) Provide Owner with complete, unaltered copies of all Subcontracts, and all amendments thereto.
 - (7) Submit to Owner all documents substantiating payments to qualifying HUB's, if any, in a format designated by Owner.
 - (8) The Construction Manager shall coordinate efforts to include the Owner's Project Architect in the preparation, development and review of the Construction Manager's GMP Proposal which will include the qualifications, clarifications, assumptions, exclusions, value engineering and all other requirements identified within *Attachment 1 to Exhibit C (Guidelines for the Preparation of the GMP)*. Following Owner approval of the GMP Proposal, the Construction Manager shall monitor the development of the Construction Documents to confirm that, when complete, the documents reflect the appropriate detail describing all qualifications, assumptions, exclusions and value engineering issues contained in the GMP Proposal. The Construction Manager and the Project Architect shall jointly provide a monthly status report stating the progress of the incorporation of the GMP qualifications, clarifications, assumptions, exclusions, value engineering and all other provisions, identified in *Attachment 1 To Exhibit C*, into the Construction Documents.
- (h) Safety. Construction Manager is solely responsible for all safety precautions and programs in connection with the Work. Construction Manager shall review the safety programs developed by each of the Subcontractors and prepare and submit to Owner a comprehensive safety program which complies with all applicable requirements of the Occupational Safety and Health Act of 1970 and all other applicable state, local, or federal laws or regulations. Construction Manager shall ensure compliance by the Subcontractors with their contractual safety requirements.
- (i) Bonds. The security bond, in the amount of 5% of the Construction Cost Limitation, and Payment and Performance Bonds on a form prescribed by Owner in the form attached hereto as Exhibit F, shall be supplied within ten (10) days of contract execution in accordance with Owner's Standard Uniform and Supplementary General Conditions. The surety for a security bond shall meet the same requirements as set forth for payment and performance bonds. If the construction price is not known, then the payment and performance bonds shall be based on Owner's Construction Cost Limitation, and revised when the construction price is established. When the Guaranteed Maximum Price is established, the payment and performance bonds shall be revised to reflect any changes from estimated costs, or shall be issued concurrently with the execution of the Guaranteed Maximum Price proposal if a security bond was previously issued.

If construction is phased or staged with different Guaranteed Maximum Prices established at different times, then the penal sum of the bonds shall be increased based on the cumulative total value of all Guaranteed Maximum Prices in effect. The Construction Manager shall deliver to the Owner a fully executed Security Bond within 10 days after the execution of the Agreement, in the amount of 5% of the sum of the CCL. The bond form will be provided by the Owner. Refer to Article XIV Item 14.03 for the amount of the CCL, and to Exhibit F for the Security Bond form.

ARTICLE VII
PAYMENTS TO THE CONSTRUCTION MANAGER

7.01 For Preconstruction Phase Services:

- (a) In full consideration of Construction Manager's Services during the Preconstruction Phase of this Agreement, Owner will pay to Construction Manager for the following project:

1. Additions and Renovations to the South Padre Island Convention Center

The Preconstruction Phase Fee which is a stipulated sum of _____ Dollars (\$_____) including reimbursable expenses payable proportionately for each project on a monthly basis based on the actual work expended by the Construction Manager.

- (b) To receive payment, Construction Manager shall send monthly invoices to Owner.

- (b) Additional Services:

- (1) From time to time Owner may request that Construction Manager perform services in addition to those Services required or reasonably inferable herein (such services in addition are hereinafter called "Additional Services"). Each time that Construction Manager is requested to perform services which Construction Manager deems to be Additional Services, and prior to performing such Additional Services, Construction Manager shall complete and forward to Owner for acceptance by Owner an Additional Services Requisition in the form of Exhibit D attached hereto, which shall describe in detail the nature or scope of the Additional Services, the basis upon which Construction Manager has determined that the requested services are Additional Services, and which shall set forth the maximum amount of fees and reimbursable expenses for which Construction Manager is prepared to perform such Additional Services, together with a proposed schedule for the performances of such Additional Services. Construction Manager shall proceed only after written

acceptance by Owner of the Additional Services Requisition and written approval from Owner to proceed.

- (2) If Owner concludes that all or part of the services described in the Additional Services Requisition are Services already required to be performed by Construction Manager pursuant to this Agreement or are reasonably inferable therefrom, then Owner shall notify Construction Manager of Owner's determination and Owner and Construction Manager shall attempt, in good faith, to resolve by negotiation their differences. If within seven (7) business days Owner and Construction Manager are unable to resolve their differences, then Construction Manager shall nevertheless perform the services requested by Owner as if the services were Services required to be performed pursuant to this Agreement, without prejudice, however, to Construction Manager's right to pursue a claim for compensation for such disputed services.
- (3) Upon acceptance by Owner, each Additional Services Requisition and the services performed by Construction Manager pursuant to such Additional Services Requisition shall become part of this Agreement and shall be subject to all the terms and conditions of this Agreement, as fully and completely as though the same had been included in this Agreement as a required Service at the original execution of this Agreement.

- (c) Construction Manager shall not be entitled to any increase in the Preconstruction Phase Fee because of Schedule extensions or delays, or changes in the scope of the proposed Project, unless such extensions, delays, or changes are material and significant, as determined by Owner at its reasonable discretion.

7.02 Construction Phase

- (a) Owner shall compensate Construction Manager for Construction Phase services on the basis of the sum of the Cost of the Work as defined herein plus the Construction Manager's Construction Phase Fee (such sum is referred to as the "Contract Sum") as set forth below. The Contract Sum shall not exceed the Guaranteed Maximum Price set forth in Exhibit C hereto, subject to changes authorized by the terms and conditions of the Contract Documents. Any cost which is not authorized by the terms and conditions of the Contract Documents, but which would cause the Guaranteed Maximum Price to be exceeded shall be paid by Construction Manager without reimbursement by Owner. In the event that the Contractor is required to pay or bear the burden of any new federal, state, or local tax, or of any rate increase of an existing tax (except a tax on income) with respect to its forces and/or its performance of the Work (not including the forces and Work performed by Subcontractors) as a result of any statute, court decision, written ruling, or regulation taking effect after the effective date of this Agreement, the Guaranteed Maximum Price shall be increased by the amount of the new tax or tax increase.

- (b) The Owner has afforded the Construction Manager with unrestricted access to the existing improvements and conditions on the site and has given the Construction Manager the opportunity to thoroughly investigate the existing conditions, which the Construction Manager represents it has done. The results of Construction Manager's investigation have been taken into account in establishing the Guaranteed Maximum Price of the Work. Construction Manager shall not be entitled to a claim for an adjustment in time or price under Owner's Standard Uniform General and Supplementary Conditions for conditions which Construction Manager discovered or ought to have discovered in Construction Manager's investigation. Before proceeding with the Work, the Construction Manager shall review the Drawings and Specifications and notify the Design Consultant and Owner of any errors, omissions or discrepancies in the Drawings and Specifications it discovers with respect to the existing conditions. The Construction Manager shall not proceed with the Work, if any defect, defined as any error, omission, conflict, inconsistency or lack of clarity, is known or should be known by Construction Manager to exist in the Drawings or Specifications or other Contract Documents, and if Construction Manager nevertheless proceeds to perform the work then Construction Manager shall be responsible for all foreseeable resulting cost, including the cost of redoing or remedying the Work and time delays resulting therefrom unless and to the extent such costs result from design or concealed conditions. Upon discovering a defect in the Drawings or Specifications, the Construction Manager shall immediately submit a written request for an explanation or decision to the Design Consultant and the Owner.
- (c) If the actual Cost of the Work plus Construction Manager's Construction Phase Fee is less than the Guaranteed Maximum Price, then the entire savings shall be returned to the Owner and a final adjustment made to the contract amount. For items in the Contract Documents and on Exhibit C hereto which are noted as "Allowances", 100% of any savings shall be the Owner's. The Cost of the Work included in the Allowances shall be determined in accordance with Owner's Standard Uniform General and Supplementary Conditions except that any claim by the Contractor for an adjustment to the Guaranteed Maximum Price based on the cost for Allowance work shall be made within a reasonable time after the issuance of the Drawings and Specifications for the Allowance items. Any increase to Allowance amounts based upon estimates by the Contractor, which increases exceed such Allowance amounts, shall not result in any increase to the Contractor's Fee.
- (d) If the actual final General Conditions cost is less than the amount shown in Exhibit C – Guaranteed Maximum Price Proposal, then the entire savings shall be returned to the Owner and a final adjustment made to the contract amount. The Owner shall be entitled to one hundred percent (100%) of any unexpended contingencies or allowances or of the savings resulting from any design or construction changes reducing the scope of the Work.

- (e) In full consideration of Construction Manager's services during the Construction Phase of this Agreement, Owner shall pay Construction Manager a Construction Phase Fee of \$1,000,000 total per Pricing and Delivery schedule previously submitted
- (f) If the Guaranteed Maximum Price increases from the amount originally set forth in Exhibit C hereto, then Construction Manager shall be entitled to an equitable increase in the Construction Manager's Construction Phase Fee which shall be limited to a 15% mark up as defined in Article XXII of the Owner's Standard Uniform General and Supplementary Conditions.
- (g) In Owner's Standard Uniform General and Supplementary Conditions, references to adjustments in "cost" or "costs" refer to Costs of the Work as defined hereinbelow, and references to Construction Manager's "overhead" and "profit" refer to Construction Manager's Construction Phase Fee.
- (h) The Construction Manager's Fee shall cover the Construction Manager's profit, general overhead and the following costs and expenses:

All expenses in connection with maintaining and operating Construction Manager's main office and any branch or field offices, including (except as otherwise provided hereinafter):

- (1) Salaries of Construction Manager's officers, project manager(s), estimators and schedulers not directly assigned to the project.
- (2) Salaries of persons employed in the main or branch offices of the Construction Manager whose time is devoted to the general conduct of the Construction Manager's business, such as office managers, stenographers, plan clerks, file clerks, and draftsmen.
- (3) Overhead or general expenses of any kind except those specifically included herein.
- (4) Services and expenses of the estimating, personnel, accounting, budget control, audit and management information systems (other than pre-construction services) relating to accounting in Construction Manager's office and even if at the site, except as specifically identified herein.
- (5) Interest on the Construction Manager's capital or on money borrowed by the Construction Manager, including the capital employed by the Construction Manager in the performance of the Work.
- (6) Amounts required to be paid by Construction Manager for Federal and/or State income and franchise taxes.
- (7) Legal, accounting, or other similar professional services provided by or to Construction Manager, in regard to disputes, arbitrations, litigations or other such proceedings with Subcontractors, with municipal authorities, with the Owner, the Design Consultants or any other person or entity relating to the Project or otherwise.

- (8) Purchase or lease of vehicles and related maintenance costs, radios/communication equipment, jobsite computer and electronic equipment and specialized telephone systems (including cellular/digital phones).
- (i) In addition to the payment procedures described in Owner's Standard Uniform General and Supplementary Conditions, Specifications, Contractor shall submit with each application for payment all receipts, invoices with check vouchers or other evidence of payment, petty cash account information, payrolls, and any and all other evidence which Owner or Design Consultant shall deem necessary to support the amount requested. The Construction Manager's Construction Phase Fee shall be shown as a separate line item on the schedule of values. In determining the percentage of completion, Construction Manager shall use the lesser of the percentage of the Work actually completed for each classification on the schedule of values, or the percentage of the Guaranteed Maximum Price allocable to that item which has been actually incurred and demonstrated as an expense by the Construction Manager. If the Construction Manager's Construction Phase Fee is a fixed fee then the amount requested for such fee shall be in the same proportion to the total fee as the amount requested for the Cost of the Work relative to the total Cost of the Work used in deriving the then current Guaranteed Maximum Price. Retainage as specified in Owner's Standard Uniform General and Supplementary Conditions will be applied to the entire amount requested including the Cost of the Work and the Construction Manager's Construction Phase Fee. Each schedule of values submitted shall maintain the originally established value for each work classification line item or subcontractor, and shall contain any revisions to costs or cost estimates for each such classification or subcontractor. The format and tracking method of the original schedule of values and of all updates thereto shall be subject to the approval of Owner and Design Consultant. If at any time, the amount shown on the schedule of values exceeds the Guaranteed Maximum Price allocable to that classification or subcontractor, then the amount payable to Construction Manager by Owner shall be reduced by the amount of such excess. At all times, the estimated cost of performing the uncompleted and unpaid portion of the Work (including Construction Manager's overhead and profit) shall not exceed the unpaid balance of the Guaranteed Maximum Price (less retainage on Work previously completed). Payments to Subcontractors included in an application for payment shall not exceed the percentage of Work allocable to that Subcontractor for each respective schedule of values classification which has been actually completed.

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

7.04 Construction Manager's Request for Final Payment shall not be made until all Work is completed and all requirements of the Contract Documents have been satisfied including, without limitation: delivery to Owner of a complete release of all liens and claims arising out of the Work; written consent of surety to release of final payment; and an affidavit that, to the best of Construction Manager's information, knowledge and belief, the release includes and covers all materials and services over which Construction Manager has control and for which a lien could be filed and that all known debts and claims arising from the Project have been satisfied.

7.05 In addition to the procedures contained in Owner's Standard Uniform General and Supplementary General Conditions, Owner shall have no obligation to make final payment until a final accounting of the Cost of the Work has been submitted by Construction Manager and has been verified by Owner or Owner's representatives. The aggregate total of payments to Construction Manager shall not exceed the total of the actual Cost of the Work as verified by Owner or Owner's representative from Construction Manager's final accounting plus the applicable Construction Manager's Construction Phase Fee, as certified for payment in accordance with the Contract, but in no event more than the Guaranteed Maximum Price. If payments made to Construction Manager exceed that which is due and owing pursuant to this Article, then Construction Manager shall promptly refund such excess to Owner.

7.06 Any provision hereof to the contrary notwithstanding, Owner shall not be obligated to make any payment (whether a progress payment or final payment) to Construction Manager hereunder if any one or more of the following conditions precedent exist:

- (a) Construction Manager is in breach or default under this Agreement;
- (b) Any part of such payment is attributable to services which are not performed in accordance with this Agreement; provided, however, such payment shall be made as to the part thereof attributable to services which were performed in accordance with this Agreement;
- (c) Construction Manager has failed to make payments promptly to consultants or other third parties used in connection with the services for which Owner has made payment to Construction Manager; or
- (d) If Owner, in its good faith judgment, determines that the portion of the compensation then remaining unpaid will not be sufficient to complete the services in accordance with this Agreement, no additional payments will be due Construction Manager hereunder unless and until Construction Manager, at Construction Manager's sole cost, performs a sufficient portion of the remaining services so that such portion of the compensation then remaining unpaid is determined by Owner to be sufficient to so complete the then remaining services.
- (e) Nothing contained herein shall require the Owner to pay the Construction Manager an aggregate amount exceeding the Guaranteed Maximum Price or to make payment if in the Owner's belief the cost to complete the Work would

exceed the Guaranteed Maximum Price less previous payments to Construction Manager.

7.07 No partial payment made hereunder shall be, or shall be construed to be, final acceptance or approval of that part of the services to which such partial payment relates, or a release of Construction Manager of any of Construction Manager's obligations hereunder or liabilities with respect to such services.

7.08 Construction Manager shall promptly pay all bills validly due and owing for labor and material performed and furnished by others in connection with the performance of the Preconstruction Phase Services and the construction of the Work.

7.09 Owner shall have the right to verify and audit the details set forth in Construction Manager's billings, certificates, accountings, cost data, and statements, either before or after payment hereof, by (1) inspecting the books and records of Construction Manager during normal business hours; (2) examining any reports with respect to this Project; (3) interviewing Construction Manager's business employees; (4) visiting the Project site; and (5) other reasonable action.

7.10 The acceptance by Construction Manager or Construction Manager's successors of final payment under this Agreement, shall constitute a full and complete release of Owner from any and all claims, demands, and causes of action whatsoever which Construction Manager or Construction Manager's successors have or may have against Owner under the provisions of this Agreement except those previously made in writing and identified by Construction Manager as unsettled at the time of the final request for payment.

ARTICLE VIII **COST OF THE WORK**

8.01 The term Cost of the Work means costs which the Construction Manager must necessarily incur to properly perform the Work in strict compliance with the Contract Documents. Cost of the Work includes only the items set forth in this Article.

(a) Labor and Administrative:

- (1) Reasonable and customary wages paid to construction workers directly employed by Construction Manager who perform the construction of the Work.
- (2) Reasonable and customary wages or salaries of Construction Manager's supervisory and administrative personnel who are identified on Exhibit A but only when stationed full-time at the site with the Owner's prior consent. The salaries of Construction Manager at Risk "project manager's" salary, when directly associated with the project, shall be included in the General Conditions Costs.

- (3) Costs paid or incurred by Construction Manager for labor costs arising out of taxes, insurance, and benefits which are (i) required by law, (ii) required by collective bargaining agreements, (iii), or otherwise customary, so long as such costs are based on wages and salaries which are properly included in the Cost of the Work as defined herein.
 - (4) Reasonable and customary travel expenses of Construction Manager's personnel incurred directly and solely in support of the Project and approved in advance in writing by Owner.
 - (5) Costs of long-distance telephone calls, telegrams, postage, package delivery and courier service, telephone service, and reasonable and customary petty cash expenses of Construction Manager's jobsite office, incurred directly and solely in support of the Work, and all incurred at the site.
- (b) Materials, Equipment, Tools, Rentals:
- (1) Costs of materials and equipment to be incorporated (or incorporated) into the Work, including transportation charges, and a reasonable and customary allowance for waste and spoilage. Owner shall be entitled to take possession of excess materials not incorporated into the Work, or at Owner's option, Construction Manager shall sell such materials and deduct the gross proceeds from the Cost of the Work. Payment for stored materials is subject to Owner's Standard Uniform General and Supplementary General Conditions.
 - (2) Costs of materials, supplies, temporary facilities, equipment, and hand tools except for those customarily owned by construction workers, all provided at the site by Construction Manager, if such items are fully consumed in the construction of the Work, and Owner approves such purchase in advance in writing. Cost for used items shall be based on fair market value and may include costs of transportation, installation, minor maintenance costs, and removal. If the item is not fully consumed, then the cost shall be based on cost of the item minus its fair market salvage value.
 - (3) Rental charges for temporary facilities, equipment, and hand tools except for those customarily owned by construction workers, all provided at the site by Construction Manager, and may include transportation, installation, and minor maintenance costs, and removal, all so long as Owner has approved such items and the rental rates in advance in writing. If tools, machinery or construction equipment are rented from the Construction Manager, the amount of such rental, the rate of such rentals, including the freight and delivery cost thereon and all operating expenses except labor, shall be determined by application of "Contractor's Equipment Cost Guide," latest edition published by the AGC, approved by the Owner before commitments are made and shall in no event be higher than the prevailing competitive rates paid in the locality for similar

equipment. In no event shall the aggregate rental cost to Owner exceed the purchase price and maintenance cost of the item. In the event equipment can be purchased for an amount comparable to the aggregate rental cost of said equipment, Construction Manager shall purchase such equipment and turn it over to Owner upon final completion of the Work, or, at Owner's option, credit to the Owner with the amount of the fair market resale value.

- (4) Site debris removal and disposal costs in accordance with all applicable laws and regulations.
- (c) Subcontracts: Payments made to Subcontractors by Construction Manager for the construction of the Work in accordance with the Contract Documents and the requirements of the subcontracts with such Subcontractors.
- (d) Other costs:
 - (1) Governmental sales and use taxes directly attributable to the Work. Owner is a political subdivision of the State of Texas and Construction Manager shall avail itself of all exemptions which may exist for such taxes based on Owner's status.
 - (2) Permit and inspection fees, except that Owner is typically exempt from such fees.
 - (3) Premiums for insurance and bonds to the extent directly attributable to this Contract.
 - (4) Testing fees pursuant to the terms and conditions of Owner's Standard Uniform General and Supplementary Conditions.
 - (5) Intellectual property royalties and licenses for items specifically required by the Contract Documents which are, or will be, incorporated into the Work.
 - (6) Forfeited deposits, but only if such deposit has been forfeited in the absence of any fault or negligence of Construction Manager.
 - (7) Other costs approved in advance in writing by Owner at Owner's sole option and discretion.

8.0.2 Costs Not Included in the Cost of the Work

The following shall not be included in the Cost of Work to be paid by Owner:

- (a) Costs including, but not limited to, the failure to perform of any Subcontractor or the bankruptcy or insolvency of any Subcontractor.
- (b) Legal and administrative costs to review and negotiate these Contract Documents.
- (c) Travel and subsistence expense of Construction Manager, its officers or employees incurred while traveling between the Project and Construction

Manager's principal or branch offices, and travel in the metropolitan area of the Project.

- (d) Fines, penalties, sanctions or impositions assessed or imposed by any governmental body, instrumentality or tribunal arising from the fault of Construction Manager.
- (e) Costs incurred by Construction Manager resulting from the failure of Construction Manager or its Subcontractors to coordinate their work with that of Owner and its contractors, if any, after agreeing to the schedules therefore, or failure of Construction Manager to comply with directives of Owner not in conflict with said schedules.
- (f) Costs resulting from the failure of Construction Manager or any Subcontractor to procure and maintain insurance as and to the extent required by the Contract Documents.
- (g) Any and all personnel costs, including, without limitation, wages, salaries, and benefits, except for personnel based at the site office and only as specifically provided herein.
- (h) Any and all overhead expense, or office expense at any location, except site office expense to the extent specifically included herein.
- (i) Costs related to Construction Manager's indemnification obligations.
- (j) The cost of capital, including, without limitation, interest on capital, regardless of whether it is related to the Project.
- (k) Any cost arising out of the fault or negligence of Construction Manager, its Subcontractors, or any person or entity for whom they may be liable, including, without limitation, costs related to defective, rejected, or nonconforming work, materials or equipment, and damage to persons or property.
- (l) Liquidated or actual damages imposed by Owner for failure of Construction Manager to complete the Work within the Contract Time.
- (m) Any and all costs not specifically authorized herein, including, without limitation, any cost which would cause the Guaranteed Maximum Price to be exceeded.

8.0.3 Discounts, Rebates And Refunds

The Cost of the Work to be paid by Owner shall be credited with the following items:

- (a) Proceeds of the sale of all tools, surplus materials, construction equipment, and temporary structures which have been charged to the Work other than by way of rental, and remaining after completion, whether such sale is made to the Owner,

the Construction Manager, or to some other party; and any such sale, if made to others than the Owner, shall be at fair market price. Upon completion of the Work or when no longer required, all tools, construction equipment and materials purchased for the Work shall be sold and the Construction Manager shall use its best efforts to obtain the highest price in respect of such sales.

- (b) If Owner makes funds available to Construction Manager, discounts earned by the Construction Manager through advance or prompt payments. The Construction Manager shall obtain all possible trade and time discounts on bills for material furnished, and shall pay said bills within the highest discount periods. The Construction Manager shall purchase materials for this Project in such quantities as will provide the most advantageous prices to the Owner.
- (c) Reasonable market value as approved by the Owner at the time of removal of all materials, tools, and equipment actually purchased for the work and upon completion of the work retained by the Construction Manager.
- (d) Rebates, discounts, or commissions allowed to and collected by the Construction Manager from suppliers of materials or from subcontractors, together with all other refunds, returns, or credits received for return of materials, or on bond premiums, or insurance and sales taxes.
- (e) Construction Manager shall reimburse Owner for deposits made by Owner and not returned to Owner due to the fault of the Construction Manager. Should Construction Manager not promptly so reimburse Owner upon demand, Owner shall be entitled to recover said amount from Construction Manager, including, but not limited to, by deducting the amount from payments due the Construction Manager.

ARTICLE IX

OWNER'S RESPONSIBILITIES

9.01 The Owner shall be fully acquainted with the Project and shall facilitate and coordinate the Owner's Project issues with the Construction Manager. Upon request, the Owner will furnish in writing the authorization of each representative of the Owner to represent it in connection with the Project. The Authority of the Project Manager and the Architect to represent and bind the Owner are set out in Exhibit I.

9.02 The Owner shall cooperate in providing information to the other members of the Project Team regarding its requirements for the Project.

9.03 Owner shall furnish for the site of the Project any necessary surveys describing the physical characteristics, soil reports and subsurface investigations, known legal limitations, utility locations, and the legal description, to the extent such items may be required by agreements between Owner and Design Consultant or other consultants. Owner shall inform all

special consultants retained by the Owner that they shall coordinate their services through the Construction Manager. Owner shall provide special testing and inspection services to the extent required by *Texas Government Code* , as amended.

9.04 If the Owner has actual knowledge of any fault or defect in the Project or non-conformance with the Drawings and Project Manual, Owner shall give prompt written notice thereof to the Construction Manager.

ARTICLE X **INDEMNITY**

10.01 TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE CONSTRUCTION MANAGER AND ITS AGENTS, PARTNERS, EMPLOYEES, AND CONSULTANTS (COLLECTIVELY “INDEMNITORS”) SHALL AND DO AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY OWNER, AND HOLD HARMLESS THE OWNER AND ITS OFFICERS, TRUSTEES, EMPLOYEES AND AGENTS (COLLECTIVELY “INDEMNITEES”) FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS AND EXPENSES, INCLUDING ATTORNEY FEES, OF ANY NATURE, KIND, OR DESCRIPTION (COLLECTIVELY “LIABILITIES”) OF ANY PERSON OR ENTITY WHOMSOEVER ARISING OUT OF, CAUSED BY, OR RESULTING FROM THE PERFORMANCE OF THE SERVICES OR ANY PART THEREOF WHICH ARE CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT OR OMISSION OF THE CONSTRUCTION MANAGER, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY IT OR ANYONE FOR WHOSE ACTS IT MAY BE LIABLE EVEN IF IT IS CAUSED IN PART BY THE NEGLIGENCE OR OMISSION OF ANY INDEMNITEE, SO LONG AS IT IS NOT CAUSED BY THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE. IN THE EVENT MORE THAN ONE OF THE INDEMNITORS ARE CONNECTED WITH AN ACCIDENT OR OCCURRENCE COVERED BY THIS INDEMNIFICATION, THEN EACH OF SUCH INDEMNITORS SHALL BE JOINTLY AND SEVERALLY RESPONSIBLE TO THE INDEMNITEES FOR INDEMNIFICATION AND THE ULTIMATE RESPONSIBILITY AMONG SUCH INDEMNITORS FOR THE LOSS AND EXPENSE OF ANY SUCH INDEMNIFICATION SHALL BE SETTLED BY SEPARATE PROCEEDINGS AND WITHOUT JEOPARDY TO ANY INDEMNITEE. THE PROVISIONS OF THIS ARTICLE SHALL NOT BE CONSTRUED TO ELIMINATE OR REDUCE ANY OTHER INDEMNIFICATION OR RIGHT WHICH OWNER OR ANY OF THE INDEMNITEES HAS BY LAW.

10.02 CONSTRUCTION MANAGER SHALL PROTECT AND INDEMNIFY THE OWNER FROM AND AGAINST ALL CLAIMS, DAMAGES, JUDGMENTS AND LOSS ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY UNITED STATES PATENT, OR COPYRIGHT, ARISING BY OR OUT OF ANY OF THE WORK PERFORMED HEREUNDER OR THE USE BY CONSTRUCTION MANAGER, OR BY OWNER AT THE DIRECTION OF CONSTRUCTION MANAGER, OF ANY ARTICLE OR MATERIAL, PROVIDED THAT UPON BECOMING AWARE OF A SUIT OR THREAT OF SUIT FOR PATENT OR COPYRIGHT INFRINGEMENT, OWNER SHALL PROMPTLY NOTIFY

CONSTRUCTION MANAGER AND CONSTRUCTION MANAGER SHALL BE GIVEN FULL OPPORTUNITY TO NEGOTIATE A SETTLEMENT. CONSTRUCTION MANAGER DOES NOT WARRANT AGAINST INFRINGEMENT BY REASON OF OWNER'S OR DESIGN CONSULTANT'S DESIGN OF ARTICLES OR THE USE THEREOF IN COMBINATION WITH OTHER MATERIALS OR IN THE OPERATION OF ANY PROCESS. IN THE EVENT OF LITIGATION, OWNER AGREES TO COOPERATE REASONABLY WITH CONSTRUCTION MANAGER AND PARTIES SHALL BE ENTITLED, IN CONNECTION WITH ANY SUCH LITIGATION, TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

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

ARTICLE XI

CONSTRUCTION MANAGER'S INSURANCE

11.01 The Construction Manager shall not commence work under the Agreement until it has obtained all required insurance and until such insurance has been reviewed and approved in writing by the Owner. Approval of the insurance by the Owner shall not relieve nor decrease the liability of the Construction Manager hereunder. Prior to commencing any of the Preconstruction Services, Construction Manager shall provide evidence as required by this Article that coverages for Employer's Liability, Workers' Compensation, Comprehensive General Liability, Comprehensive Automobile Liability and Owner's and Contractor's Protective as set forth in Owner's Standard Uniform General and Supplementary Conditions are in full force and effect. Prior to commencing any construction work, Builder's Risk as set forth in Owner's Standard Uniform General and Supplementary Conditions and paid for by Construction Manager shall be in full force and effect and shall be increased as necessary for each separate bid package, phase, or Stage of construction prior to the commencement of construction for that package, phase, or Stage.

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

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

11.04 The Owner shall be entitled, upon request, and without expense, to receive copies of the policies and all endorsements thereto and may make any reasonable requests for deletion, or revision or modification of particular policy terms, conditions, limitations, or exclusions, except

where policy provisions are established by law or regulation binding upon either of the Parties or the underwriter of any of such policies. Actual losses not covered by insurance as required by this Article shall be paid by the Construction Manager.

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

ARTICLE XII **TERMINATION**

12.01 In addition to the termination procedures set forth in Owner's Uniform Standard General , Owner may terminate the Contract at the following times:

- (a) At the conclusion of the Schematic Design Phase.
- (b) At the conclusion of the Design Development Phase.
- (c) At the conclusion of the Construction Documents Phase.
- (d) If any Guaranteed Maximum Price proposal from Construction Manager is not accepted by Owner.
- (e) During the Preconstruction Services phase, if Construction Manager is in default or breach under this Agreement and does not cure such default or breach within fourteen (14) days after written notice from Owner specifying the nature of the default.
- (f) Prior to the commencement of construction, Owner may terminate for convenience upon fourteen (14) days' written notice to Construction Manager.

If the Contract is terminated under subparagraphs 12.01(a), (b), (c), (d) or (f), then Construction Manager shall be compensated for the Preconstruction Phase Services which it has completed in accordance with this Agreement prior to the date of termination as provided hereunder. No termination expenses will be paid to Construction Manager. The date of the conclusion of the Schematic Design Phase, Design Development Phase, and Construction Documents Phase is determined by the date of Owner's acceptance of the respective submittals from the Design Consultant.

12.02 A termination under this Contract above shall not relieve Construction Manager or any of its employees of liability for violations of this Agreement, any act or omission, or negligence of Construction Manager.

12.03 As of the date of termination of this Contract, Construction Manager shall furnish to Owner all statements, accounts, reports and other materials as are required hereunder or as have been prepared by Construction Manager in connection with Construction Manager's responsibilities hereunder. Owner shall have the right to use the ideas and designs therein contained for the completion of the services described by this Agreement, and for completion of the Project, or otherwise. All drawings, plans, specifications, renderings and models, etc., prepared by the Design Consultant are the property of Owner or Design Consultant, as set forth in the terms and conditions of the agreement between Owner and the Design Consultant. They are not to be used by any person or entity other than Owner on other projects unless expressly authorized by Owner.

ARTICLE XIII
MISCELLANEOUS PROVISIONS

13.01 Exhibits. All exhibits hereto are hereby incorporated herein by reference for all purposes.

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

13.03 Certifications.

- (a) Sales Tax Certification. "Under Section 2155.004, Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."

13.04 Entire Agreement; Modifications; Conflicts. This Agreement supersedes all prior agreements, written or oral, between Construction Manager and Owner and shall constitute the entire Agreement and understanding between the parties with respect to the subject matter hereof. This Agreement and each of its provisions shall be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by Owner and Construction Manager. If there is a conflict between this Agreement and Owner's Standard Uniform General and Supplementary General Conditions, then the provision which provides the greatest benefit to Owner shall govern.

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

13.06 Governing Law. This Agreement and all of the rights and obligations of the parties hereto and all of the terms and conditions hereof shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas.

13.07 Waivers. No delay or omission by either of the parties hereto in exercising any right or power accruing upon the non-compliance or failure of performance by the other party hereto of any

of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions or agreements hereof to be performed by the other party hereto shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

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

13.09 Appointment. Owner hereby expressly reserves the right from time to time to designate by notice to Construction Manager one or more representatives to act partially or wholly for Owner in connection with the performance of Owner's obligations hereunder. Construction Manager shall act only upon instructions from such representatives unless otherwise specifically notified to the contrary.

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

13.11 Notices. All notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Agreement shall be in writing and shall be deemed to have been duly given or served when delivered by hand delivery or when deposited in the U.S. mail by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

If to Owner: **Joni Clarke**
 City Manager
 City of South Padre Island
 4601 Padre Blvd.
 South Padre Island, Texas 78597

With Copies to: Mrs. Diana Bravo Gonzalez, AIA
 Broaddus & Associates
 Project Manager
 1100 E Jasmine Ave., Suite 102
 McAllen, Texas 78501

or to such other person or address as may be given in writing by either party to the other in accordance with the aforesaid.

13.12 Severability. In case any provision hereof shall, for any reason, be held invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision

hereof, and this Agreement shall be construed as if such invalid or unenforceable provision had not been included herein.

13.13 Enforcement. It is acknowledged and agreed that Construction Manager's services to Owner are unique, which gives Construction Manager a peculiar value to Owner and for the loss of which Owner cannot be reasonably or adequately compensated in damages; accordingly, Construction Manager acknowledges and agrees that a breach by Construction Manager of the provisions hereof will cause Owner irreparable injury and damage. Construction Manager, therefore, expressly agrees that Owner shall be entitled to injunctive and/or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Agreement, but only if Owner is not in breach of this Agreement.

13.14 Independent Contractor. Construction Manager recognizes that it is engaged as an independent contractor and acknowledges that Owner will have no responsibility to provide transportation, insurance or other fringe benefits normally associated with employee status. Construction Manager, in accordance with its status as an independent contractor, covenants and agrees that it shall conduct itself consistent with such status, that it will neither hold itself out as nor claim to be an officer, partner, employee or agent of Owner by reason hereof, and that it will not by reason hereof make any claim, demand or application to or for any right or privilege applicable to an officer, partner, employee or agent of Owner, including, but not limited to, unemployment insurance benefits, social security coverage or retirement benefits. Construction Manager hereby agrees to make its own arrangements for any of such benefits as it may desire and agrees that it is responsible for all income taxes required by applicable law.

13.15 The following exhibits are hereby incorporated by reference for all purposes as if fully set forth herein:

- | | | |
|---------|---|---|
| Exhibit | A | Staff/Personnel |
| Exhibit | B | (Not Used) |
| Exhibit | C | GMP Proposal |
| | | Attachment 1 to Exhibit C Guidelines for the Preparation of the GMP |
| Exhibit | D | Additional Services Requisition |
| Exhibit | E | Constructability Program Guidelines and Implementation Guidelines |
| Exhibit | F | Security Bond form |
| Exhibit | G | Additional Contract Documents/Specification Sections |
| | | 1. Uniform General Conditions and Supplementary General Conditions |
| | | 2. Special Conditions with Attachments |
| | | Attachment "B" – Weather Data |
| | | Attachment "C" – Project sign Layout |
| | | Attachment "D" – Year 2000 Performance Warranty |
| | | 3. Project Scheduling Section 01153 |
| | | 4. Project Administration Section 01210 |

| | | | |
|---------|---|--|---------------|
| | | 5. Project Commissioning | Section 01650 |
| | | 6. Project Close Out | Section 01705 |
| | | 7. Storm Water Management | Section 02060 |
| | | 8. Carpet | Section 09680 |
| | | 9. Cast Bronze Dedicatory Plaque | Section 10403 |
| Exhibit | H | Approved General Conditions Line Items | |
| Exhibit | I | Authority of Project Manager and Architect to Represent and Bind the Owner | |

ARTICLE XIV
OTHER CONDITIONS OR SERVICES

14.1 Certification of No Asbestos Containing Materials or Work

- (a) The Contractor shall provide a certification statement, included with each materials submittal, stating that no asbestos containing materials or work is included within the scope of the proposed submittal.
- (b) The Contractor shall provide at Substantial Completion, a notarized certification to the Owner and the Architect that no asbestos containing materials or work was provided, installed, furnished or added to the project.
- (c) The Contractor shall take whatever measures he deems necessary to insure that all employees, suppliers, fabricators, materialmen, subcontractors, or their assigns, comply with this requirement.
- (d) The Contractor shall insure compliance with the following act – Asbestos Hazard Emergency Response Act (AHERA – 40 CFR 763-99 (7)) from all of his subcontractors and assigns as listed in item C above. All materials used on this project shall be certified as non-Asbestos Containing Building Materials (ACBM).
 - 1. Every subcontractor shall provide a notarized statement that no ACBM has been used, provided, or left on this project.
 - 2. The Contractor shall provide to the extent deemed necessary for compliance by the State, data sheets and/or labels as proof of compliance.

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

14.2 All the requirements contained within Request for Proposals issued in connection with this Project shall become a part of this.

14.3 The Construction Cost Limitation (CCL) for the Project shall be :

\$25,240,000

The CCL shall include the Cost of Work, Construction Contingency Allowance , Design Contingency Allowance and Contractors Fee and shall not include the PreConstruction Phase Fee.

IN WITNESS WHEREOF, intending to be bound, the Parties have entered into this Agreement as of the Effective Date.

ATTEST:
(Seal)

Contractor Constructors, Inc

By: _____
(original signature)

By: _____
(original signature)

(name typed)
Corporate Secretary

XXXX
President

City Council
CITY OF SOUTH PADRE ISLAND

Name: Joni Clarke
Title: City Manager

By: _____

EXHIBIT A
PERSONNEL, STAFF, SUBCONSULTANTS AND DUTIES
HOURLY RATES (if applicable under 7.01(a))

(To be completed by Construction Manager and returned with executed Agreement)

EXHIBIT B

(Not used)

EXHIBIT C
GUARANTEED MAXIMUM PRICE PROPOSAL

We hereby submit to the City of South Padre Island D("SPI") pursuant to the provisions of Article V of the Construction Management At-Risk Agreement by and between SPI and [specify component] _____ and [specify Construction Manager] dated _____, _____ (the "Agreement"), a Guaranteed Maximum Price for the

Project, _____project number, (as defined in the Agreement) based on the Contract Documents (as defined by the Agreement) developed for the Project, as follows:

1. A not-to exceed amount for the reimbursable Cost of the Work provided by the Agreement:

Provide detailed breakdown by project element, phase, stage, schedule of values, separate subcontract, or as otherwise specified by Owner for this Project.

\$ _____

2. A not-to-exceed amount for General Conditions items provided by Construction Manager pursuant to the Agreement
(provide detailed breakdown by project element, phase, stage, schedule of values, separate subcontract, or as otherwise specified by Owner for this Project)

\$ _____

3. A total, not-to-exceed amount for contingencies for design completion, assumptions and clarifications, bidding, and price escalation:

(provide detailed breakdown as required by Agreement or as specified by Owner)

\$ _____

4. Total of Construction Manager's Construction Phase Fees pursuant to the Agreement \$ _____

5. A construction contingency allowance the Owner will provide. This is a lump sum amount from which changes are to be paid in accordance with the Uniform General Conditions and the Supplementary General Conditions. Any unused amount will be deducted from the Guaranteed Maximum Price by Change Order. \$ _____

6. TOTAL OF 1 THROUGH 5 \$ _____
This figure shall be the Guaranteed Maximum Price (GMP) which we hereby guarantee to the Owner. Attached is a breakdown showing the dollar amount allocated to each bidding package; all of which totals the GMP amount.

Corporations/LLC's: Attest:

Corporate Secretary

or:

Other business forms: Witness:

Seal:

[insert name of Construction Manager]

By: _____

Name: _____ (print or type)

Title: _____

Date of Signature: _____

Accepted and Agreed

City of South Padre Island

By: _____
(original signature)

Name:

Title:

ATTACHMENT 1 TO EXHIBIT C

GUIDELINES FOR THE PREPARATION OF GUARANTEED MAXIMUM PRICE PROPOSAL TO BE ATTACHED TO EXHIBIT C, GUARANTEED MAXIMUM PRICE PROPOSAL OF THE CM – RISK AGREEMENT.

The Guaranteed Maximum Price proposal is developed at the phase specified in the Construction Manager-at-Risk Agreement.

The GMP proposal should be bound and entitled, “Guaranteed Maximum Price Proposals for (*name of project, project number*)” and must include a date on the cover. Proposal pages must be numbered. Bound inside the proposal, in the order indicated, should be:

- transmittal letter, including confirmation of project team
- table of contents

Tab 1 GMP Summary – (brief general summary of scope of work, alternates, etc.)

Tab 2 List of documents (project manual(s), drawings by sheet number & date)

Tab 3 Description of Work

- Specification listing – provide a detailed listing of specifications by division and section, which describes exclusions, substitutions, modifications, etc. If no changes are proposed for a particular section, insert “as per specifications”
- Qualifications and Assumptions – a summary of all qualifications and assumptions included in the specification listing
- Exclusions – a summary of all exclusions included in the specification listing, plus any exclusions not related to the specifications
- Value Engineering recommendations – if applicable
- Allowance Schedule – if applicable
- Contingency Breakdown
- Add/Deduct Alternate Schedule – if applicable (a description of alternates with accompanying breakdown of GMP cost)

Tab 4 Guaranteed Maximum Price Proposal Cost Breakdown:

- Exhibit C - Guaranteed Maximum Price Proposal (form as attached to the Agreement).
- The Construction Manager shall provide a detailed initial Total Project Construction

Cost estimate using standard estimating industry practices, utilizing the Construction Specifications Institute (CSI) Master-Format, with additional cost breakdown as required by the Project Manager.

- The Construction Manager shall provide an initial GMP proposal line item cost breakdown for all anticipated bid package strategies {BPS} included in Exhibit C, Item No. 1, Cost of Work, including all self-perform work not associated with General Conditions. The breakdown shall be shown on the Standard Schedule of Values Format – Part I (shown below).
- The Construction Manager shall provide a cost breakdown, including unit prices, for all items included in Exhibit C, Item No.2, General Conditions, as defined by Exhibit I, contained within the Agreement.

| Standard Schedule of Values Format – Part I | | | |
|--|--------------------------|--|--------------------------------------|
| A | B | C | D |
| CSI Section | Work Breakdown Structure | CSI Description of Work / Subcontractor Name / Specification Section | Initial GMP Proposal Line Item Value |
| General Conditions (Breakdown per Exhibit I) | | | \$ - |
| Cost of Work | | | |
| | | Division 1 - Not included in Exhibit I | \$ - |
| | | Division 2 - Sitework | \$ - |
| | | Division 3 - Concrete | \$ - |
| | | Division 4 - Masonry | \$ - |
| | | Division 5 - Metals | \$ - |
| | | Division 6 - Woods & Plastics | \$ - |
| | | Division 7 - Thermal & Moisture Protection | \$ - |
| | | Division 8 - Doors & Windows | \$ - |
| | | Division 9 - Finishes | \$ - |
| | | Division 10 - Specialties | \$ - |
| | | Division 11 - Equipment | \$ - |
| | | Division 12 - Furnishings | \$ - |
| | | Division 13 - Special Construction | \$ - |
| | | Division 14 - Conveying Systems | \$ - |
| | | Division 15 - Mechanical | \$ - |
| | | Division 16 - Electrical | \$ - |
| CM / D-B Design Contingency | | | \$ - |
| CM / D-B Construction Phase Fee | | | \$ - |
| Owner's Construction Contingency | | | \$ - |
| Owner's Cash Allowance (If Applicable) | | | \$ - |
| Part II Services (GMP) Total | | | \$ - |

Tab 5 Master Project Schedule

- This schedule shall be a computer generated CPM Schedule developed in *Primavera Project Planner* or *SureTrak Project Manager* software. It shall be presented in bar chart form and contain detailed activities for all events and milestones included in Part I I Construction Phase Services, including permitting and the development of trade packages.
- Additionally, the schedule shall include detailed, logic driven activities for all Part II, Construction Phase activities scheduled to commence during the first 90 days following acceptance of the GMP.
- The remainder of the construction activities, those commencing after the first 90 days, shall be included in this schedule but may be summarized by trade and may have longer durations than the “detailed” activities mentioned above.
- All paths in the schedule must lead to a milestone activity for Substantial Completion. This milestone shall be logic driven and shall indicate completion within approximately 90% of the contract construction period. (Total Float shall be no less than 10% of the project duration.)
- This Summary Level Schedule shall comply with the requirements of Specification ___00153, including subparagraphs and shall form the basis for the “Detail” schedule, submittal of which is required within 21 days following Notice to Proceed with Part II Services.
- The Summary Level Schedule shall be provided in hard copy form in the notebook and also in a USB format attached in the notebook.

EXHIBIT D
ADDITIONAL SERVICES REQUISITION

Requisition Number _____

Project Number: _____

Project Name: _____

Date: _____

To: PM _____

City Manager _____

Central File (original)

(Contractor)

Gentlemen:

Please refer to the Agreement dated _____, 20 between _____ (“Owner”) and the undersigned (“Construction Manager”) as amended to the date hereof (such agreement as so modified and amended being hereafter called the “Agreement”) pursuant to which Construction Manager is to perform certain services. The terms which are defined in the Agreement shall have the same meanings when used in this letter.

1. Owner has requested the performance of the services described below which Construction Manager deems to be Additional Services.

(Description of Services.)

2. Construction Manager agrees to perform the Additional Services described above subject to and in accordance with the terms and provisions of the Agreement for a fee which will be determined in accordance with the Agreement but which will not exceed _____ Dollars (\$ _____) and for reimbursement of expenses in accordance with the Agreement incurred solely in connection with the performance of such Additional Services, but which reimbursement for expenses will not exceed _____ Dollars (\$ _____).

3. Construction Manager will perform the services in accordance with any schedule attached hereto (attach schedule if applicable), but in any event not later than _____ (_____) days after Construction Manager is authorized to proceed.

If the foregoing is acceptable to you, please so execute by signing the enclosed copy of this letter at the space provided for this purpose and by inserting the date upon which Construction Manager is authorized to commence performance of the Additional Services described in Paragraph 1 above.

Sincerely yours,

CONSTRUCTION MANAGER

By: _____

Name: _____

Title: _____

Accepted this _____ day of _____, 20 __.
Construction Manager is authorized to commence performance of the Additional Services on _____, 20 __

OWNER

By: _____

Name: _____

Title: _____

PART I: PRECONSTRUCTION PHASE SERVICES

ORIGINAL CONTRACT AMOUNT (\$ _____)

PREVIOUS ADDITIONS (\$ _____)

PREVIOUS DEDUCTIONS (\$ _____)

NET BALANCE CONTRACT AMOUNT (\$ _____)

THIS (Addition) (Deduction): (\$ _____)

ADJUSTED CONTRACT AMOUNT (\$ _____)

- Xc: Contractor
- Project Manager
- City Manager
- Central File

EXHIBIT E

CONSTRUCTABILITY IMPLEMENTATION PROGRAM

0.0 PROGRAM OBJECTIVES

- Implement a rigorous constructability program.
- Identify and document project cost and schedule savings (targeted costs are 5% of construction costs).

1.0 PROGRAM IMPLEMENTATION

1.1 Project Team Meeting with Constructability Advisor

(Initial meeting)

1.1.1 Constructability Implementation

- Identify preliminary constructability priorities and special challenges or concerns.

1.2 Schematic Design Phase

(On-going tasks during Schematic Design Phase and for final review of Schematic Design Documents)

1.2.1 Constructability Advisor

- Attend project team meetings, review documents, and develop constructability recommendations and documentation.
- Provide construction cost estimates to coincide with the Project Architect's submissions. The Project Architect and Constructability Consultant shall consult and resolve any differences in their respective construction cost estimates.

1.2.2 Project Team and Constructability Advisor

- Review constructability recommendations, documentation and construction cost estimates for acceptance.

1.3 Design Development Phase

(On-going tasks during Design Development Phase and for final review of Design Development Documents)

1.3.1 Constructability Advisor

- Provide Cost Quantity Surveys to coincide with the Project Architect's submissions. The Project Architect and Construction Manager at Risk (CM-R) shall consult and resolve any differences in their respective Cost Quantity Surveys.

1.3.2 Project Team and CM-R

- Review constructability recommendations, documentation and Cost Quantity Surveys for acceptance.

1.4 Construction Documents Phase

(On-going tasks during Construction Documents Phase and for final review of Construction Documents)

1.4.1 Constructability Advisor

- Attend project team meetings, review documents, and develop constructability recommendations and documentation.
- Provide Cost Quantity Surveys to coincide with the Project Architect's submissions. The Project Architect and Constructability Consultant shall consult and resolve any differences in their respective Cost Quantity Surveys.

1.4.2 Project Team and Constructability Advisor

- Review constructability recommendations, documentation and Cost Quantity Surveys for acceptance.

EXHIBIT F
(IF REQUIRED)
SECURITY BOND

Surety Bond No. _____

STATE OF TEXAS §

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF _____ §

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

Whereas the Principal has executed a contract, with Obligee for the use and benefit of _____, _____, dated _____, _____ (the "Contract"), for _____, Project No. _____, (the "Project").

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

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

(SEAL)

Principal

ATTEST:

By: _____

By: _____

(Typed Name and Title)

(Typed Name and Title)

(SEAL)

Surety

ATTEST:

By: _____

By: _____

(Typed Name and Title)

(Typed Name and Title)

EXHIBIT G

ADDITIONAL CONTRACT DOCUMENTS/SPECIFICATION SECTIONS

1. Uniform General Conditions and Supplementary General Conditions
 2. Special Conditions with Attachments
Attachment "A" – Prevailing Wage Rate Determination CAMERON COUNTY
Attachment "B" – Weather Data
Attachment "C" – Project Sign Layout
 3. Project Scheduling - XXXX
 4. Project Administration- XXXX
 5. Project Commissioning- XXXX
 6. Project Close Out - XXXX
 7. Storm Water Management XXX
 8. Cast Bronze Dedicatory Plaque - XXXX
- .

EXHIBIT H

APPROVED GENERAL CONDITIONS LINE ITEMS

Project Management

| | |
|-----------------------------|----------------------------|
| Superintendent | Safety Manager |
| CPM Scheduler | Project Manager |
| Project Executive | Field/Office Engineer |
| Field Office Support Staff | Project Engineer/Expeditor |
| Assistant Superintendent(s) | |

- * Project Manager/Superintendent bonuses/incentives/rewards shall NOT be included in the General Conditions GMP proposal, but may be included in the Construction Phase Fee.

Bonds and Insurance

| | |
|-----------------------------|---------------------------------|
| Builder's Risk Insurance | General Liability Insurance |
| Payment & Performance Bonds | Other General Project Insurance |

Temporary Utilities

| | |
|---|---|
| Dumpsters | Temporary Toilets |
| Monthly Water Costs | Monthly Electrical Costs |
| Temporary Fire Protection | Street Rental & Barricades |
| Fencing & Covered Walkways | Monthly Telephone Installation Costs |
| Temporary Water Distribution & Meters | Temporary Telephone System Installation |
| Temporary Electrical Distribution & Meters | |
| Site Erosion Control (BMPs) & Project Entrance(s) | |

Field Offices & Construction Supplies

| | |
|---|-------------------------------------|
| Partnering Costs | First Aid Supplies |
| Job Photos/Videos | Reference Manuals |
| Reproduction Services | Monthly Office Supplies |
| Project Specific Signage | Postage/Special Shipping |
| Remote Parking Expenses | Project/As-Built Drawings |
| Security System/Watchman | Move-In/Out & Office Setup |
| Mobilization & Demobilization | Drinking Water & Accessories |
| Safety Material and Equipment | Employee Identification System |
| Small Tools and Storage Trailers | Office Clean-Up/Janitorial Services |
| Monthly Office Trailer Rental Costs | |
| Project Cleaning at Substantial Completion & Final Acceptance | |

- * All items listed above, are subject to requests for additional information or breakdown.

Items NOT TO BE INCLUDED in the General Conditions GMP line item, but shall be included in the CM/DB Contractor's Construction Phase Fee if required for contract.

- Purchase/Lease of Vehicles and Maintenance Costs
- Purchase/Rental of Radios/Communication Equipment
- Purchase/Rental of Jobsite Computer & Electronic Equipment
- Purchase/Rental of Specialized Telephone Systems (including cellular/digital phones)

EXHIBIT I

Authority of Project Manager and Architect to Represent and Bind the Owner

The authority and power of the Project Manager to represent and bind the Owner come from the contract between the Project Manager and the Owner. The following is a list of powers, duties, and responsibilities of the Project Manager, the list is intended for illustration purposes only and not as an exclusive list.

The Project Manager is to mobilize office staff, implement communication systems, secure offices and other expenses.

During all Phases of Program Execution Plan the Project Manager shall:

1. Serve as a single point of contact for the Owner.
2. Coordinate overall schedule with key milestones, referred to as Master Project Schedule (MPS).
3. Provide cost and schedule control systems.
4. Lead partnering and team building activities to build the project team.
5. Brief the governing board and executive sponsors at regular intervals and as required.
6. Conduct meeting of the key project participants on regular intervals and as required.
7. Provide customer interfacing to resolve issues, provide guidance and insight, and to address concerns, if applicable.
8. Execute and oversee quality assurance program in order to protect interest of Owner.
9. Assist with review of potential design team(s) and negotiate with the selected firms and assist in A-E contract preparation and review
10. Conduct meetings with staff to identify detailed programming needs such as communication systems, special equipment and furniture needs and provide data to architects.
11. Develop and design facilities standards and design guidelines.
12. Establish an index of terms for master filing of all projects and assist in centralized filing system for program.

During the Schematic Design Phase the Project Manager shall:

1. Conduct partnering and kickoff meeting with Owner and Architect and/or Engineer firms
2. Communicate all pre-project planning information to Architects and/or Engineers
3. Conduct weekly or bi-weekly design meetings between Owner and Architect.
4. Conduct review of schedule. Conduct schedule optimization session(s) and Project Definition Rating Index evaluations.
5. Submit to the Owner a Statement of Probable Construction Cost based on current area, volume of other unit costs.
6. Conduct reviews of cost estimate & take action to keep cost under control. Provide an ongoing Constructability Program, complete with documented cost savings and value-added impacts.
7. Coordinate, review, evaluate and recommend approval of all schematic design documents submitted by architects and consultant engineers for compliance with Owner's design guidelines, space program needs and performance specifications per campus.

During the Design Development Phase the Project Manager shall:

1. Continue weekly or bi-weekly meetings between Owner & Architect to review and evaluate design documents for compliance with guidelines.
2. Develop a schedule for Design Development stage. Conduct Schedule Optimization session and Project Definition Rating index evaluations.

3. Advise Owner of any adjustments to preliminary Statement of Probable Construction Cost.
4. Conduct more detailed cost estimates, including independent estimate at end of Design Development and provide Owner with a detailed report.
5. Coordinate, review, evaluate and recommend approval of all design development documents submitted by architects and consultant engineers for compliance with SPI's design guidelines, detailed program needs and performance specifications per campus

During the Construction Documents Phase the Project Manager shall:

1. Continue bi-weekly design review meetings either on site or through video conferencing.
2. Conduct weekly project management meetings with Owner to update on progress, financial status, construction issues and use of project contingencies.
3. Advise Owner on any adjustment to previous Statements of Probable Construction Cost.
4. Coordinate with government entities for permit, building permit reviews, and other approvals.
5. Coordinate, review, evaluate and recommend approval of all construction documents submitted by architects and consultant engineers for compliance with SPI's design guidelines, detailed program needs and performance specifications per campus before procurement of contractor.

During Contractor Procurement Phase the Project Manager shall:

1. Review standard construction contract for billing, procurement, timelines, change orders, applications for payment and all processes required.
2. Assist Owner with contractor selection criteria and review of contractor qualifications and capability to perform scope of work and comply with schedule, programming guidelines and specifications.
3. Assist Owner with negotiating with Contractors; re-bid or re-negotiate Project if lowest bid or proposal is greater than Project budget after selection of contractor by Owner.
4. After selection of contractor by Owner, assist Architect with transmitting standard procurement requirements to contractors and subcontractors.
5. Review information submitted by contractor to include insurance, employee pay scales, material suppliers, subcontractors list, bonds, and financing.

During Construction Phase the Project Manager shall:

1. Serve as the Owner's Point of Contact during construction.
2. Conduct Partnering sessions at the beginning of each Project. Conduct periodic update sessions.
3. Conduct construction update meetings at construction sites on a scheduled and as-needed basis.
4. Review required documents/outlines from contractor including Quality Control Plan, Safety Plan, Environmental Compliance Plan, Minority Contracting plan(if required), and Texas Architectural Barriers Plan and report to Architect and Owner
5. Review Contractor cost control plan with Architect and Owner
6. Evaluate requests for proposed Change Orders and Construction Change Proposals and make recommendations.
7. Conduct site visits and inspections as determined by Consultant to review work in place and report in a standard format to Owner with reference to SPI facilities standards/specifications, schedules and budgets, and to advise Owner regarding work that has been completed in accordance with the plans and specifications

8. Assist Owner in contracting with Independent Testing Firms. Review testing program results.
9. Administer Construction Contract and General Conditions & act as Owner's representative. Act as conduit between Architect and Contractor. Review compliance with all plans, specifications and required terms and conditions and report to Owner on status.
10. Stay up-to-date on submittals. Obtain Owner approvals needed.
11. Monitor Requests For Information and A-E responsiveness
12. Review Contractor's Building Commissioning and Turnover Plan.
13. Evaluate payment applications and make recommendations on approval of requests for progress payments.
14. Perform final inspections and review punch list work.

During the Commissioning/Turnover Phase the Project Manager shall:

1. Plan for furnishing procurement and building turnover
2. Review the results of the HVAC Test and Balance for compliance with construction contract requirements.
3. Oversee turnover of all certification documentation and submittals to proper agencies on behalf of Owner.
4. Coordinating training of facility maintenance staff for familiarization with all systems.

During the Warranty/Occupancy Phase the Project Manager shall:

1. Review all contractual and warranty obligations for compliance including the issuance of all documents such as operations and maintenance manuals.
2. Generate and deliver tickler file of all warranty deadlines for each project.
3. Coordinate closing reviews of warranty items after a 30 day and 6 month period.

During the Schematic Design Phase the Architect shall:

1. Review approved program furnished by consultant to ascertain requirements of Project and arrive at mutual understanding and provide preliminary evaluation of program, budget and schedule requirements.
2. Prepare schematic design documents

During the Design Development Phase the Architect shall:

1. Prepare Design Development Documents addressing architectural, structural, mechanical and electrical systems, materials and other appropriate elements.

During the Construction Documents Phase the Architect shall:

1. Prepare Construction Documents consisting of drawings and specs detailing construction requirements suitable for construction contractor use, and to document the constructed facility (modification to be detailed by the general contractor.)
2. Coordinate Mylar film reproducible drawings including significant changes during construction based on marked-up prints, drawings and other data.
3. Assist Owner in filing documents for governmental approval by preparing and submitting permit requests, etc..
4. Prepare necessary bidding information, bidding conditions of contractor and owner's standard Owner/Contractor Contract for review and approval by owner.

During the Contractor Procurement Phase the Architect shall:

1. Provide Owner with necessary modifications to construction documents for Project if lowest bid or proposal is greater than Project budget.

During the Construction Phase the Architect shall:

1. Generate proposed Change Orders and Construction Change Directives; order minor changes.
2. Make visits to the site for compliance with (not exhaustive or continuous on-site inspections). Inform Owner of work progress; notify Owner of defects, reject non-conforming work.
3. Review inspection or testing of the Work – fabricated, installed or to be completed and report results to owner.
4. Approve or reject submittals from the Contractor.
5. Respond to Requests for Information from the contractor and advise the Owner
6. Determine amounts owed to the Contractor based on site observations & Contractor's Applications for Payment & issue Certificates for Payment.
7. Perform final inspections and generate punch list.
8. Conduct inspections to determine the dates of Substantial and Final Completion, issue Final Certificate of Payment, submit to the Owner upon Final Completion a letter that work has been completed in total in accordance with Contract Documents, to the best of his knowledge.

During the Commissioning/Turnover Phase the Architect shall:

1. Receive from Contractor and forward to Owner all completed HVAC test and balance reports.
2. Verify that all certification inspections are executed and documentation is provided to the Owner.

During the Warranty/Occupancy Phase the Architect shall:

1. Receive and forward to the Owner written warranties and related documents required by Contract Documents.