



**AGREEMENT
BETWEEN OWNER
AND
CONSTRUCTIONMANAGER-AT-RISK**

This Agreement is made as of _____, 20____ (the "Effective Date"), by and between

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

and **Construction Manager:** _____

_____, _____

for the **Project:** _____

Architect: _____

_____, _____

Owner's Designated Representative or Project Manager: _____

_____, _____

TABLE OF CONTENTS

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

The Owner and the Construction Manager agree as follows:

This Construction Management-at-Risk Agreement (hereinafter called "Agreement") is entered into effective as of the latest date of the signatories indicated at the conclusion of this document and all attachments (the "Effective Date"), by and between Williamson County, a political subdivision of the State of Texas (hereinafter called the "Owner") and _____, a _____ (hereinafter called "Construction Manager").

WHEREAS, the Owner desires to retain a Construction Manager for the _____ (hereinafter called the "Project"),

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

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

GENERAL PROVISIONS

§ 1.1 The Contract Documents

The Contract Documents consist of this Agreement, the Uniform General Conditions for Williamson County ("General Conditions"), the Supplementary or other Conditions, if any, the Drawings, Specifications, Addenda issued prior to the Effective Date of this Agreement, other documents listed in this Agreement, and Modifications issued after the execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2. The Contract represents the entire and integrated agreement between the

Parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. To the extent of any direct conflict or inconsistency between any of the Contract Documents, the Construction Manager shall immediately notify Owner and seek clarification from the Owner and the Architect.

§ 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and shall cooperate with Owner and Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests.

§ 1.3 General Conditions

The term "Contractor" as used herein or in the Uniform General Conditions for Williamson County shall mean the Construction Manager.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

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

§ 2.1 Preconstruction Phase

§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner's program, design criteria, schedule, and construction budget requirements, each in terms of the other.

§ 2.1.2 Consultation

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. Frequent meetings are anticipated prior to the Owner's acceptance of the GMP and during the completion of the Contract Documents. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations in writing consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 2.1.3 PRELIMINARY PROJECT SCHEDULE

§ 2.1.3.1 When Project requirements described in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare, and periodically update, a preliminary Project schedule for review and approval by the Owner and Architect. The Construction Manager shall coordinate and integrate the preliminary Project schedule with the services and activities of the Owner, the Architect, and Construction Manager. As the design proceeds, the preliminary Project schedule shall be updated by Construction Manager to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of a Guaranteed Maximum Price proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, Owner's occupancy requirements, showing portions of the Project having occupancy priority, and the proposed date of Substantial Completion. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall make recommendations to the Owner and Architect in writing.

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

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

§ 2.1.4 Phased Construction

The Construction Manager shall provide recommendations in writing with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

§ 2.1.5 Preliminary Cost Estimates

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

§ 2.1.5.2 As the Drawings, Specifications, and other Contract Documents are developed, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action in writing.

§ 2.1.6 Subcontractors and Suppliers

The Construction Manager shall develop bidders' interest in the Project.

§ 2.1.7 The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction as required to meet the Project schedule. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items, if any, to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 2.1.8 Extent of Responsibility

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction

Manager shall promptly report to the Architect and Owner any questions or suspected nonconformity discovered by the Construction Manager as a request for information in such form as the Owner or Architect may require.

§ 2.1.9 Notices and Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities for inclusion in the Contract Documents.

§ 2.2 Guaranteed Maximum Price Proposal and Contract Time

§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee.

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

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

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based.

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a Construction Contingency to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order. The Guaranteed Maximum Price proposal shall also include an Owner's Contingency, which amount shall be developed in consultation with the Owner.

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

§ 2.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Proposal amending this Agreement. The Guaranteed Maximum Price Proposal shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

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

§ 2.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work, if applicable.

§ 2.3 Construction Phase

§ 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of the General Conditions, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed with the Construction Phase, whichever occurs earlier.

§ 2.3.1.3 The Construction Manager shall fully execute the Work described in the Contract Documents and reasonably inferable to provide the results intended by the Contract Documents except to the extent specifically indicated in the Contract Documents to be the responsibility of others. The Construction Manager shall render, diligently and competently in accordance with the highest standards used in the profession, all of Construction Manager's services which shall be necessary or advisable for the expeditious, economical, and satisfactory completion of the Project.

§ 2.3.1.4 The Construction Manager shall furnish only skilled and properly trained staff for the performance of the Work. Key members of the Construction Manager's staff shall not be changed without the written consent of the Owner, unless such person becomes unable to perform any required duties due to death, disability, or termination of employment with the Construction Manager. During the performance of the Work, the Construction Manager shall keep a competent superintendent at the Project site while active construction is underway, fully authorized to act on behalf of the Construction Manager, unless such requirement is expressly waived by Owner. Similarly, the Construction Manager shall keep a competent Project Manager at the Project site while active construction is underway, fully authorized to act on behalf of the Construction Manager, unless such requirement is expressly waived by Owner. Written notice from the Owner or the Architect to the Construction Manager's Designated Representative or its Project Manager in connection with defective Work, or instruction for performance, shall be considered notice of such issues to the Construction Manager.

§ 2.3.2 Administration

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager in accordance with the Contract Documents including without limitation, the requirements of Section 2269.255 and 2269.256 of the Texas Government Code. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Owner as required by the Contract Documents.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to established criteria and the requirements of the

Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may request that a Change Order in accordance with Section 5.2.1.1 of the General Conditions.

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, the Uniform General Conditions for Williamson County, the laws of the State of Texas including, without limitation, the Texas Local Government Code, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner.

§ 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a “related party” according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

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

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Proposal, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with the Contract Documents.

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information requested or required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

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

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

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

§ 3.1.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect.

§ 3.1.3 The Owner will secure the services of surveyors, soils engineers, existing facility surveys, testing and balancing, environmental surveys or other special consultants to develop such additional information as may be necessary for the design or construction of the Project. The Owner shall arrange and pay for materials, structural, mechanical, chemical and other laboratory tests as required by the Contract Documents.

§ 3.1.4 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other

information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. The term "Owner" means the Owner or the Owner's Designated Representative.

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

§ 3.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in the agreement between the Owner and Architect.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

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

§ 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2, Owner shall compensate Construction Manager either a lump sum amount described in § 4.1.2.1 below, or as described in § 4.1.2.2 below:

- .1 The Owner shall pay Construction Manager the lump sum amount of \$ [REDACTED] for pre-construction services.
- .2 The Owner shall pay Construction Manager the actual Direct Personnel Expense costs incurred by Construction Manager in performing Preconstruction Phase services requested by Owner, and as described in § 4.1.3 below, which compensation shall not exceed the sum of \$ [REDACTED], unless approved in advance and in writing by Owner.

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

§ 4.2 Payments

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

§ 4.2.2 Payments are due and payable in the time provided in §7.1.3 below. Amounts unpaid after the date on which payment is due shall bear interest at the annual rate of one percent (1.0%) above Prime Rate as published by the Wall Street Journal.

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

§ 5.1.1 The Construction Manager's Fee:

Construction Manager's Fee shall be _____ percent (____%) of that portion of the Cost of the Work that is incurred by Construction Manager.

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

For changes in the Work, the Construction Manager's Fee shall not be adjusted and shall remain equal to _____ percent (____%) of the Cost of the Work directly attributable to any such change that is incurred or paid by the Construction Manager during performance of the Work.

§ 5.1.3 A Subcontractor's overhead and profit for increases in the cost of its portion of the Work shall not exceed 10%.

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed the standard rate paid for the same or similar equipment in Williamson County, Texas.

§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner. The Guaranteed Maximum Price is subject to adjustment for (i) scope changes, as described in Paragraph 5.3, and (ii) Change Orders, authorized in accordance with the requirements of the Contract Documents. The difference, as of the date of final completion, between (i) the total aggregate sum of the Cost of the Work plus the Contractor's Fee and (ii) the Guaranteed Maximum Price upon final completion of the Work (such difference referred to as the "Savings") shall inure to the benefit of the Owner. Except for Construction Manager's Fee stated above, Construction Manager shall not be entitled to any compensation from the Savings, unused contingency, or otherwise.

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

§ 5.2.3 Although the Contract Sum is based upon the Cost of the Work plus the Fee subject to a Guaranteed Maximum Price, as may be adjusted, the Owner agrees to make progress payments to the Construction Manager on a percentage of completion according to a Schedule of Values provided in Article 7 of this Agreement.

§ 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of the General Conditions. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of the General Conditions.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of the General Conditions and the term "costs" as used in Section 7.3.7 of the General Conditions shall have the meanings assigned to them in the General Conditions and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with

the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of this Agreement, unless the Owner has furnished the Construction Manager with prior written approval of the form and substance of a subcontract, in which case such adjustment shall be calculated in accordance with the terms and conditions of that subcontract.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of General Conditions shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

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

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

§ 6.2 Labor Costs

§ 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 6.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.

(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

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

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

§ 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner's prior approval.

§ 6.3 Subcontract Costs

Amounts properly billed by Subcontractors for Work which has been approved by the Construction Manager and the Owner and which otherwise satisfies all requirements of the subcontracts and the Contract Documents. Except for preservation of the Construction Manager's right to make receipt of payment from the Owner a condition precedent to the Construction Manager's obligation to pay subcontractors, vendors, and other contractees of the Construction Manager, subcontractors, and other agreements otherwise shall conform to all applicable payment provisions of Texas law and this Agreement, and shall not be awarded on the basis of cost plus fee without the Owner's written consent.

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

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

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

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

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

§ 6.5.2 Rental charges and repair assessments for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

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

§ 6.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, and telephone service at the site which are related to the Work.

§ 6.5.5 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

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

§ 6.6 Miscellaneous Costs

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

§ 6.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable; provided, however, Owner is a body corporate and politic under the laws of the State of Texas and claims exemption from sales and use taxes under Texas Tax Code Ann. § 151.309, as amended, and the services and materials subject hereof are being secured for use by Owner. Exemption certificates will be provided to Construction Manager upon request. As a precondition to the Owner reimbursing Construction Manager for allowable sales and use taxes, Construction Manager must, on its own, first attempt to use such tax exemption certificates in order to assert the exemption. In the event Construction Manager efforts to use the tax exemption certificate is unsuccessful and provided that under the laws of the State of Texas an exemption from sales and use taxes is allowed, Owner will reimburse Construction Manager for such sales and use taxes upon Construction Manager providing sufficient and satisfactory documentation to the Williamson County Auditor.

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

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

§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of the General Conditions or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 6.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.

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

§ 6.6.8 Subject to the Owner's prior approval, expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work.

§ 6.7 Other Costs and Emergencies

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

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of the General Conditions.

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

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

§ 6.8 Costs Not To Be Reimbursed

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

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a

- specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .8 Costs for services incurred during the Preconstruction Phase.

§ 6.9 Discounts, Rebates and Refunds

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

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

§ 6.10 Related Party Transactions

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

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

§ 6.11 Accounting Records

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner’s auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager’s records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor’s proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

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

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

§ 7.1.3 Provided that an Application for Payment is received by the Owner and the Architect not later than the 1st day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the 30th day after the Owner's auditor receives the Certificate for Payment issued by the Architect. If an Application for Payment is received by the Owner or the Architect after the 1st day of the month, payment shall be made by the Owner not later than thirty-one (31) days after the Owner's auditor receives the Certificate for Payment issued by the Architect.

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment. In addition to other required items, if requested by Owner, each Application for Payment shall be accompanied by the following, all in a form and substance satisfactory to the Owner and in compliance with applicable statutes of the State of Texas:

- (i) With each Application for Payment: a current Sworn Statement from the Contractor setting forth all Subcontractors and all material suppliers with whom the Contractor has subcontracted, the amount of each such subcontract, the amount requested for any Subcontractor or material supplier in the Application for Payment, and the amount to be paid to the Contractor from such progress payment (as required by **Texas Property Code §53.085 (Bills-Paid Affidavit)**);
- (ii) With each Application for Payment: a duly executed **Conditional Waiver and Release on Progress Payment** from the Contractor and Subcontractors establishing receipt of payment or satisfaction of the payment requested by the Contractor in the current Application for Payment (as required by **Texas Property Code §53.284**).
- (iii) Commencing with the second Application for Payment submitted by the Contractor, a duly executed **Unconditional Waiver and Release on Progress Payment** from Contractor and all Subcontractors, material suppliers and, where appropriate, lower tier subcontractors that have billed more than \$5,000 on a single application of payment, establishing receipt of payment or satisfaction of payment of all amounts requested on behalf of such entities and disbursed prior to submittal by the Contractor of the current Application for Payment;
- (iv) With the Final Application for Payment: Contractor shall submit a **Conditional Waiver and Release on Final Payment** as required by **Texas Property Code 53.284**. Upon receipt of final payment, Contractor shall submit an **Unconditional Waiver and Release on Final Payment** as required by **Texas Property Code 53.284**; and
- (v) Such other information, documentation, and materials as the Owner, or the title insurer may require in order to ensure that Owner's property is free of lien claims. Such other documents may include, without limitation, original copies of lien releases suitable for filing with the Williamson County Clerk in the county where the Project is located.

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

§ 7.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the percentage of that portion of the Work which Construction Manager has actually been completed.

§ 7.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment

shall be computed as follows:

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

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

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

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Owner and the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager. Review or approval of Construction Manager's Applications for Payment by Owner or the Architect shall not constitute a representation that either the Owner or the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted by Construction Manager; made exhaustive or continuous inspections of the Work; or whether Construction Manager has properly paid its Subcontractors, suppliers, laborers, equipment providers or others how provided labor or materials to the Project. Such examinations, audits and verifications, if required by the Owner, the Contract Documents, or applicable law, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 7.2 Final Payment

§ 7.2.1 Final payment shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of the General Conditions, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect; and
- .4 the requirements of Section 9.10 of the General Conditions have been satisfied.

The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as otherwise provided in the Contract Documents or by applicable law.

§ 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Owner by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the General Conditions. The time periods stated in this Section supersede those stated in Section 9.4.1 of the General Conditions. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of the General Conditions. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and bonds as set forth below, in the Contract Documents, or as required by law.

§ 8.1 Upon execution of this Agreement, Construction Manager shall provide a security bond in the amount of 5% of the Owner's budget, as specified in the Request for Qualifications/Request for Proposals. The surety for a security bond shall meet the same requirements as set forth for payment and performance bonds.

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

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

- .1 Pre-Construction Phase: Employer's Liability, Workers' Compensation, Comprehensive General Liability and Comprehensive Automobile Liability in the amounts as set forth in the Request for Qualifications/Request for Proposal, attached as an Exhibit, in the Uniform General Conditions, or as otherwise specified or required by the County;
- .2 Construction Phase: In addition to the coverages required during the Pre-Construction Phase, Builder's Risk and Owner's Protective Liability in the amounts as set forth in the Request for Qualifications/Request for Proposal, attached as an Exhibit, in the Uniform General Conditions, or as otherwise specified or required by the County;
- .3 Prior to commencing any construction work, Construction Manager shall provide evidence of Builder's Risk coverage as set forth in the Request for Qualifications/Request for Proposal, attached as an Exhibit, in the Uniform General Conditions, or as otherwise

specified or required by the County, which coverage shall remain in full force and effect throughout the term of the Project and shall be increased as necessary for each separate bid package, phase, change order, or Stage of construction prior to the commencement of construction for that package, phase, or Stage; and

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

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

§ 8.5 The Owner reserves the right to review the insurance requirements set forth in this Section 8 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.

§ 8.6 The Owner shall be entitled, upon request, and without expense, to receive complete copies of the policies with all endorsements and may make any reasonable requests for deletion, or revision or modification of particular policy terms, conditions, limitations, or exclusions, except where policy provisions are established by law or regulation binding upon the Parties or the underwriter of any of such policies. Damages caused by the Construction Manager failing to purchase and maintain the insurance required by the Contract Documents shall be paid by the Construction Manager.

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

ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and the Uniform General Conditions for Williamson County.

§ 9.2 Except as otherwise specifically set forth herein, the Owner and Construction Manager shall work together in good faith to resolve any controversy, dispute or claim between them which arises out of or relates to the Agreement Between Owner and Construction Manager, whether stated in tort, contract, statute, claim for benefits, bad faith, professional liability or otherwise ("Claim"). If the parties are unable to resolve the Claim within thirty (30) days following the date in which one party sent written notice of the Claim to the other party, and if a party wishes to pursue the Claim, such Claim shall be addressed through non-binding mediation. A single mediator engaged in the practice of law, who is knowledgeable about subject matter of the Agreement between Owner and Construction Manager. Any mediation under the Agreement between Owner and Construction Manager shall be conducted in Williamson County, Texas. The mediator's fees shall be borne equally between the parties. Such non-binding mediation is a condition precedent to seeking redress in a court of competent jurisdiction. This provision shall survive the termination of the Agreement.

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Proposal, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in the Uniform General Conditions for Williamson County.

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

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Proposal, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in the Uniform General Conditions for Williamson County.

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of the General Conditions shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of the General Conditions shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if

the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

§ 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of the General Conditions. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of the General Conditions, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 of this Agreement.

ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in the Uniform General Conditions for Williamson County.

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

§ 11.3 Governing Law

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

§ 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. The Construction Manager shall not assign this Agreement without the written consent of the Owner. If Construction Manager attempts to make an assignment without Owner's consent, Construction Manager shall nevertheless remain legally responsible for all obligations under this Contract.

§ 11.5 Other provisions:

§11.5.1 The Construction Manager represents and warrants the following to the Owner (in addition to any other representations and warranties contained in the Contract Documents), as an inducement to the Owner to execute this Agreement, which representations and warranties shall survive the execution and delivery of this Agreement, any termination of this Agreement, and the final completion of the Work:

- (i) that it and its Subcontractors are financially solvent, able to pay all debts as they mature, and possessed of sufficient working capital to complete the Work and perform all obligations hereunder;
- (ii) that it is able to furnish the tools, materials, supplies, equipment, and labor required to complete the Work and perform its obligations hereunder;
- (iii) that it is authorized to do business in the State of Texas and properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over it and over the Work and the project;
- (iv) that its execution of this Agreement and its performance thereof is within its duly authorized powers;
- (v) that its duly authorized representative has visited the site of the Project, familiarized himself with the local and special conditions under which the Work is to be performed, and correlated its observations with the requirements of the Contract Documents; and
- (vi) that it possesses a high level of experience and expertise in the business administration, construction, construction management, and superintendence of projects of the size, complexity, and nature of this particular Project, and it will perform the Work with the care, skill, and diligence of such a contractor.

§11.5.2 LIQUIDATED DAMAGES. The Construction Manager acknowledges and recognizes that the Owner is entitled to full and beneficial occupancy and use of the completed Work following expiration of the Contract Time and that the Owner has entered into, or will enter into, binding agreements upon the Construction Manager's achieving Substantial Completion of the Work within the Contract Time. The Construction Manager further acknowledges and agrees that if the Construction Manager fails to complete substantially or cause the Substantial Completion of any portion of the Work within the Contract Time, the Owner will sustain extensive damages and serious loss as a result of such failure. The exact amount of such damages will be extremely difficult to ascertain. Therefore, the Owner and the Contractor agree as set forth below:

§11.5.2.1 Subject to the other terms and conditions herein, if Substantial Completion is not achieved by the date specified above or by such date to which the contract time may be extended, the Contract Sum shall be reduced by one thousand dollars (\$1,000.00) per day as liquidated damages and not as a penalty, until the date of Substantial Completion. Force majeure shall apply relative to both rain/snow delays (acts of nature) and/or supply delays over which Construction Manager has no control, and such force majeure delays shall not be subject to such reduction of the Contract Sum.

§11.5.2.2 The Owner may deduct liquidated damages described herein from any unpaid amounts then or thereafter due the Construction Manager under this Agreement. Any liquidated damages not so deducted from any unpaid amounts due the Construction Manager shall be payable by the Construction Manager to the Owner at the demand of the Owner, together with the interest from the date of the demand at a rate equal to the prime interest rate as published by the Wall Street Journal on the first business day after such amounts are demanded.

§11.5.3 Notwithstanding anything to the contrary in this Agreement, if the Owner is unable to recover any portion of liquidated damages in accordance with the terms and conditions herein because it is found to be unenforceable or invalid as a penalty or otherwise, then, the Owner shall be entitled to recover from the Contractor all of the Owner's actual damages in connection with the failure by the Construction Manager to achieve Substantial Completion of the Work within the Contract Time, including, without limitation, direct, indirect, or consequential damages.

ARTICLE 12 SCOPE OF THE AGREEMENT

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

§ 12.2 The following documents comprise the Agreement:

- .1 This Agreement between Owner and Construction Manager-at-Risk;
- .2 Uniform General Conditions for Williamson County;
- .3 Other documents:
 - Exhibit A – Guaranteed Maximum Price Proposal, if executed by Owner
 - Exhibit B – Insurance & Bond Requirements listed in the Contract Documents

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

WILLIAMSON COUNTY, TEXAS



By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: Williamson County Judge

Title: _____

ATTEST:

ATTEST:

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____