



## Travis County Commissioners Court Agenda Request

**Meeting Date:** October 22, 2013

**Prepared By/Phone Number:** Richard Villareal/512-854-4881, Marvin Brice, CPPB/512-854-9765, Purchasing

**Elected/Appointed Official/Dept. Head:** Cyd Grimes, C.P.M., CPPO

**Commissioners Court Sponsor:** Judge Biscoe

**Agenda Language:** Consider and take appropriate action on request to issue Request for Proposal (RFP) No. P1309-005-RV, for Construction Manager at Risk (CMAR) Services for the new 416 West 11<sup>th</sup> Street Office Building and Parking Structure.

- **Purchasing Recommendation and Comments:** Purchasing concurs with department and recommends approval of requested action. This procurement action meets the compliance requirements as outlined by the statutes.

The Court elected to use the Construction Manager at Risk (CMAR) project delivery method for the design and construction of the 416 West 11<sup>th</sup> Street Office Building and Parking Structure. The first step in the process was to hire an Architectural/Engineering firm to complete the design. On September 17, 2013, the Court authorized the Purchasing Agent to commence negotiations with Page Southerland Page (PSP) for the required A/E services, after they were selected as the highest ranked respondent firm through RFQ No. Q1306-014-RV.

On October 1, 2013, the Court reviewed and approved issuance of RFQ No. Q1309-004-RV to solicit qualifications of Construction Management firms for the project. RFQ No. Q1309-004-RV was issued on October 2, 2013, with a proposal submission deadline of October 23, 2013. Respondents to the RFQ will then be shortlisted to approximately three to five firms from which to solicit pricing via subject Request for Proposal (RFP).

Facilities Management Department and Purchasing are requesting the Court to authorize issuance of RFP No. P1309-005-RV as the next step of the procurement process to hire a CMAR. The RFP is attached for the Court's review and approval.

AGENDA REQUEST DEADLINE: All agenda requests and supporting materials must be submitted as a pdf to [agenda@co.travis.tx.us](mailto:agenda@co.travis.tx.us) by Tuesdays at 5:00 p.m. for the next week's meeting.

The final step of the procurement process will be to negotiate a contract with the selected CMAR.

**REQUIRED ACTION**

**Approved** \_\_\_\_\_

**Disapproved** \_\_\_\_\_

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**Samuel T. Biscoe**  
**County Judge**

**Date**

## **FACILITIES MANAGEMENT DEPARTMENT**

**Roger A. El Khoury, M.S., P.E., Director**



1010 Lavaca Street, Suite 400 • P.O. Box 1748, Austin, Texas 78767 • Phone: (512) 854-9661 • Fax: (512) 854-9226

### **MEMORANDUM**

**Project No: 416-01-14C-3N**

**File: 703**

**TO:** Cyd Grimes, CPM, Purchasing Agent

**FROM:** Roger A. El Khoury, M.S., P.E., Director

**DATE:** October 2, 2013

**SUBJECT:** 416 W. 11<sup>th</sup> St. Office Building and Parking Structure  
Construction Manager at Risk (CMAR) Procurement  
Request to Issue RFP #P1309-005-RV for CMAR

A handwritten signature in blue ink, reading "Roger El Khoury", is positioned to the right of the "FROM:" line.

The Facilities Management Department (FMD) and the County Attorney's Office have reviewed and approved the RFP for the requested CMAR services for the new 416 W. 11<sup>th</sup> St. Office Building and Parking Structure. FMD requests Purchasing Office assistance with obtaining Commissioners Court approval for issuance of the RFP for the subject project. Following Court approval, the RFP can be issued in accordance with the Procurement Schedule: after the Evaluation Team finalizes the short list of RFQ Respondents.

The FY2014 project funds, including the CMAR Pre-Construction Services fee, will be requested as a Reimbursement Resolution in October prior to requesting Commissioner Court approval of the CMAR contract award. Award of the CMAR contract is anticipated to occur in December 2013.

When we were last in Court on October 1, 2013 to receive approval for issuance of the CMAR's RFQ, the Court requested that we return to obtain Court approval for the RFP document. We would appreciate your assistance with posting this item for Court approval at the October 15, 2013 Voting Session. If you have any questions or need additional information, please call me at extension 44579.

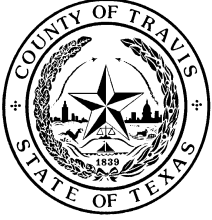
### **COPY:**

Leslie Browder, County Executive, PBO

Tenley Aldredge, Assistant County Attorney

Ken Gaede, AIA, Senior Project Manager

Richard Villareal, Purchasing Agent Assistant, Purchasing Office



# TRAVIS COUNTY PURCHASING OFFICE

*Cyd V. Grimes, C.P.M., CPPO Purchasing Agent*

700 Lavaca Street • Suite 800 • Austin, Texas 78701 • (512) 854-9700 • Fax (512) 854-9185

November 6, 2013

Dear Proposers:

You are invited to submit your proposal in accordance with the requirements in this **REQUEST FOR PROPOSAL (RFP) # P1309-005-RV, Construction Manager at Risk for the New 416 West 11<sup>th</sup> Street Office Building and Parking Structure.**

Proposals must be submitted with an **ORIGINAL (MARKED "ORIGINAL") AND FIVE (5) COPIES** to the Travis County Purchasing Agent, 700 Lavaca Street, Suite 800, Austin Texas 78701, no later than **2:00 P.M. CST ON WEDNESDAY, November 13, 2013.**

Any questions concerning this Request for Proposal should be directed to Richard Villareal, Purchasing Agent Assistant IV, at [richard.villareal@co.travis.tx.us](mailto:richard.villareal@co.travis.tx.us)

**NOTE: During this procurement process, potential respondents ARE NOT to contact Travis County program employees regarding this solicitation. Any such contact may result in disqualification of the proposal.**

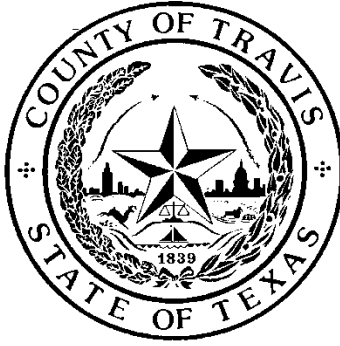
All proposals shall be submitted to the Travis County Purchasing Agent in a sealed envelope marked:

**REQUEST FOR PROPOSAL  
RFP # P1309-005-RV  
Construction Manager at Risk for the New 416 West 11<sup>th</sup> Street Office  
Building and Parking Structure  
DO NOT OPEN IN MAILROOM**

Your consideration of this Request for Proposal is appreciated.

Sincerely,

Cyd V. Grimes, C.P.M., CPPO  
Purchasing Agent



## **Request for Proposal**

for

**CONSTRUCTION MANAGER AT RISK FOR THE NEW  
416 WEST 11<sup>TH</sup> STREET OFFICE BUILDING  
AND PARKING STRUCTURE  
AUSTIN, TEXAS**

**COUNTY OF TRAVIS  
STATE OF TEXAS  
Austin, Texas**

**RFP # P1309-005-RV**

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## **SECTION 00210 - PREVAILING WAGE RATE DETERMINATION SITE CONSTRUCTION & BUILDING CONSTRUCTION CRAFTS**

### **NOTICE**

The Travis County Commissioners Court has adopted the prevailing wage rates for Travis County as determined by the United States Department of Labor in accordance with the Davis –Bacon Act and its subsequent amendments. The prevailing wage rates for this project are those rates set forth for Travis County in the U.S. Department of Labor General Decisions for:

#### **(1) Building Construction Projects and**

#### **(2) Highway Construction Projects.**

**Bidders may obtain copies of the U.S. Department of Labor General Decisions referenced above by contacting the Travis County Purchasing Office or by accessing the following website:**

**<http://www.access.gpo.gov/davisbacon/tx.html>**

This determination of prevailing wages shall not be construed to prohibit the payment of more than the rate named. Under no condition shall any laborer, workman, or mechanic employed on this job be paid less than the minimum wage scale.

The Contractor shall comply with all applicable state and federal laws, including, but not limited to, laws concerned with labor, equal employment opportunity, safety, and minimum wage. The Contractor shall post the applicable Prevailing Wage Rate Determination in a prominent, easily accessible place at the work site. To ensure that the Contractor, and/or subcontractors are paying the posted specified rates (including fringe benefits when applicable) to all classifications of workmen, mechanics, and laborers, the County reserves the right to perform "spot labor interviews" and examine Contractor payroll information.

Pursuant to Chapter 2258 of the Texas Government Code:

1. A worker employed on a public work by or on behalf of the County shall be paid:
  - (a) not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed; and
  - (b) not less than the general prevailing rate of per diem wages for legal holiday and overtime work. NOTE: This Paragraph Number 1 does not apply to maintenance work.
2. A worker is employed on a public work for the purposes of Paragraph Number 1 if the worker is employed by a contractor or subcontractor in the execution of a contract for the public work with the County or any officer or department of the County
3. The contractor who is awarded a contract by the County or a subcontractor of the contractor shall pay not less than the rates (plus fringe benefits when applicable) as listed in the U.S. Department of Labor General Decisions referenced above to a worker employed by the contractor to work on the project.
4. A contractor or subcontractor who violates this section shall pay to the County \$60.00 for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates set forth in the U.S. Department of Labor General Decisions referenced above. The County shall use any money collected pursuant to this section to offset the cost incurred in the administration of the requirements of Chapter 2258.
5. The County will take notice of complaints of all violations of this chapter committed in the execution of the contract and withhold money forfeited or required to be withheld under Chapter 2258 from the payments to the contractor under the contract, except that the County may not withhold money from other than the final payment without a determination by the County that there is good cause to believe that the contractor has violated this chapter.

# IMPORTANT INFORMATION



YOU CAN DIRECT ANY WAGE DISPUTES OR QUESTIONS TO:

TRAVIS COUNTY PURCHASING OFFICE  
700 LAVACA STREET, SUITE 800  
AUSTIN, TEXAS 78701  
512-854-9700

***Pursuant to Section 2258.023(a) of the Government Code, "The contractor who is awarded a contract by a public body or a subcontractor of the contractor shall pay not less than the rates determined under Section 2258.022 to a worker employed by it in the execution of the contract."***

# INFORMACION IMPORTANTE



**TU PUEDES DISCUTIR O PREGUNTAR DE TU SALARIO DIRECTAMENTE CON:**

**OFICINA DE COMPRAS DE TRAVIS COUNTY  
700 LAVACA STREET, SUITE 800  
AUSTIN, TEXAS 78701  
512-854-9700**

***De acuerdo con la seccion 2258.023(a) delCodigo del Gobierno, “El contratista al que le fue adjudicado un contrato por el Gobierno, o su subcontratista, debaran pagar a un trabajador contratado, no menos que las tarifas determinadas bajo la seccion 2258.022, para la ejecucion del contrato.”***

## SECTION 00220 - WORKERS' COMPENSATION INSURANCE COVERAGE

### NOTICE TO ALL BIDDERS

The Texas Workers' Compensation Commission ("TWCC") has adopted Rule 110.110 effective with all bids advertised after September 1, 1994 and this does affect your bid on this project.

The TWCC has stated that it is aware that statutory requirements for workers' compensation insurance coverage are not being met. Rule 110.110 is designed to achieve compliance from both contractors and governmental entities. This affects both the County and the Contractor on this project.

Providing false or misleading certificates of coverage, failing to provide or maintain required coverage, or failing to report any change that materially affects the coverage may subject the Contractor(s) or other persons providing services on this project to legal penalties. This affects your subcontractors.

Therefore, the attached is provided in accordance with the requirements applicable to governmental entities. Please read carefully and prepare your bid in full compliance to TWCC Rule 110.110. Failure to provide the required certificates upon submission of a bid could result in your bid being declared non-responsive.

According to TWCC, "This rule does not create any duty or burden on anyone which the law does not establish." Therefore, the County should not experience any increase in cost because of the need to comply with the Texas Workers' Compensation laws.

Cyd V. Grimes, C.P.M., CPPO  
County Purchasing Agent

Additional questions may be addressed to the Texas Workers' Compensation Commission, 7551 Metro Center Drive, Austin, Texas 78744-1609, (512) 804-4000.

## **TWCC RULE 110.110 WORKERS' COMPENSATION INSURANCE COVERAGE**

**A. Definitions:**

1. "Certificate of Coverage" - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the TWCC, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, OR TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on the project, and valid for the duration of the project.
2. "Duration of the Project" - Includes the time from commencement of the Contractor's work on the project until completion and acceptance of such work by the governmental entity.
3. "Persons/employees providing services on the project" and/or "Subcontractor" (as used in Section 406.096 of the Texas Labor Code) - Includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees.

This term includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling or delivering equipment or materials, or providing labor transportation, or other service related to the project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

- B. The Contractor shall provide coverage, based on proper reporting of classification code and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of the Texas Labor Code, Section 401.011 (44) for all employees of the Contractor providing services on the project, for the Duration of the Project.
- C. The Contractor must provide a Certificate of Coverage to the governmental entity prior to being awarded the contract.
- D. If the coverage period shown on the Contractor's current Certificate of Coverage ends during the Duration of the Project, the Contractor must, prior to the end of the coverage period, file a new Certificate of Coverage with the governmental entity showing that coverage has been extended.
- E. The Contractor shall obtain from each person providing services on the project, and provide to the governmental entity:
  1. A Certificate of Coverage, prior to that person beginning work on the project, so the governmental entity will have on file Certificates of Coverage showing coverage for all persons providing services on the project; and
  2. No later than seven (7) calendar days after receipt by the Contractor, a new Certificate of Coverage showing extension of coverage, if the coverage period shown on the current certificate ends during the Duration of the Project.
- F. The Contractor shall retain all required Certificates of Coverage for the Duration of the Project and for one (1) year thereafter.

- G. The Contractor shall notify the governmental entity in writing by certified mail or personal delivery, within ten (10) calendar days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
- H. The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the TWCC, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- I. The Contractor shall contractually require each person with whom it contracts to provide services on a project, to:
1. Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011 (44) for all of its employees providing services on the project, for the Duration of the Project:
  2. Provide to the Contractor, prior to that person beginning work on the project, a Certificate of Coverage showing that coverage is being provided for all employees of the person providing services on the project, for the Duration of the Project:
  3. Provide the Contractor, prior to the end of the coverage period, a new Certificate of Coverage showing extension of coverage, if the coverage period shown on the current Certificate of Coverage ends during the Duration of the Project:
  4. Obtain from each other person with whom it contracts, and provide to the Contractor:
    - 4.1 A Certificate of Coverage, prior to the other person beginning work on the project;
    - 4.2 A new Certificate of Coverage showing an extension of coverage, if the coverage period shown on the current certificate ends during the Duration of the Project;
  5. Retain all required Certificates of Coverage on file for the Duration of the Project and for one (1) year thereafter;
  6. Notify the governmental entity in writing by certified mail or personal delivery, within ten (10) calendar days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
  7. Contractually require each person with whom it contracts, to perform as required by paragraphs I.1.- I-7., with the Certificates of Coverage to be provided to the person for whom they are providing services.
- J. By signing this contract or providing or causing to be provided a Certificate of Coverage, the Contractor is representing to the governmental entity that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the Duration of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier (or, in the case of self-insured persons or entities, with the TWCC's Division of Self-Insurance Regulation). Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- K. The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the governmental entity to declare the contract void if the Contractor does not remedy the breach with ten (10) calendar days after receipt of notice of breach from the governmental entity.

**SECTION 00230**  
**CONFLICT OF INTEREST QUESTIONNAIRE**

If required under Chapter 176 Texas Local Government Code, Contractor shall file a completed Conflict of Interest Questionnaire in accordance with the requirements of that Chapter. Within the applicable, authorized time period prescribed in Chapter 176, Contractor shall file the completed Conflict of Interest Questionnaire with the Travis County Clerk, Recording Division, 5501 Airport Blvd., Austin, Texas 78751. Contractor shall file an updated, completed questionnaire with the Travis County Clerk not later than the seventh (7th) business day after the date of an event that would make a statement in the questionnaire incomplete or inaccurate. The Contractor should note that the law requires that the County provide access to a filed Questionnaire on the official Travis County Internet website. However, the law does not require that the County release information which is excepted from disclosure under the Texas Public Information Act. As between County and Contractor, Contractor shall be solely responsible for the preparation of its Conflict of Interest Questionnaire, the accuracy and completeness of the content contained therein and ensuring compliance with all applicable requirements of Chapter 176, Local Government Code.

DRAFT

## SECTION 00240 – FORFEITURE OF CONTRACT

Contractor shall forfeit all benefits of the Contract and County shall retain all performance by Contractor and recover all consideration or the value of all consideration paid to Contractor pursuant to this Contract if:

Contractor was doing business at the time of executing the Contract or had done business during the 365-day period immediately prior to the date on which Contractor executed the Contract with one or more Key Contracting Person listed in Exhibit A to Attachment 1 (Ethics Affidavit) if Contractor has not disclosed the name of the Key Contracting Person in the space provided in Exhibit A;

-or-

Contractor does business with any Key Contracting Person after the date on which Contractor executes the Contract and prior to full performance of the Contract and fails to disclose the name of that Key Contracting Person in writing to each member of the Commissioners Court, the Purchasing Agent, and to the County Clerk within ten (10) days after commencing business with that Key Contracting Person.

### Definition of “was doing/does business”:

- (i) “Was doing business” and “does business” mean:
  - (ii) paying or receiving in any calendar year any money or valuable thing which is worth more than \$250 in the aggregate in exchange for personal services or for the purchase of any property or property interest, either real or personal, either legal or equitable; or
  - (iii) loaning or receiving a loan of money; or goods or otherwise creating or having in existence any legal obligation or debt with a value of more than \$250 in the aggregate in a calendar year;
- but does not include
  - (iv) any retail transaction for goods or services sold to a Key Contracting Person at a posted, published, or marked price available to the public,
  - (v) any financial services product sold to a Key Contracting Person for personal, family or household purposes in accordance with pricing guidelines applicable to similarly situated individuals with similar risks as determined by Contractor in the ordinary course of its business; and
  - (vi) a transaction for a financial service or insurance coverage made on behalf of Contractor if Contractor is a national or multinational corporation by an agent, employee or other representative of Contractor who does not know and is not in a position that he or she should have known about the Contract.

**ATTACHMENT 1- ETHICS AFFIDAVIT**

STATE OF TEXAS  
COUNTY OF TRAVIS

**ETHICS AFFIDAVIT**

Date: \_\_\_\_\_

Name of Affiant: \_\_\_\_\_

Title of Affiant: \_\_\_\_\_

Business Name of Contractor: \_\_\_\_\_

County of Contractor: \_\_\_\_\_

Affiant on oath swears that the following statements are true:

1. Affiant is authorized by Contractor to make this Affidavit for Contractor.
2. Affiant is fully aware of the facts stated in this Affidavit.
3. Affiant can read the English language.
4. Contractor has received the list of Key Contracting Persons associated with this Contract which is attached to this Affidavit as Exhibit "A".
5. Affiant has personally read Exhibit "A" to this Affidavit.
6. Affiant has no knowledge of any Key Contracting Person on Exhibit "A" with whom Contractor is doing business or has done business during the 365 calendar day period immediately before the date of this Affidavit whose name is not disclosed below.

\_\_\_\_\_  
Signature of Affiant

\_\_\_\_\_  
Address

SUBSCRIBED AND SWORN TO before me by \_\_\_\_\_ on \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

\_\_\_\_\_  
Typed or printed name of notary

My commission  
expires: \_\_\_\_\_

Contractor acknowledges that Contractor is doing business or has done business during the 365 calendar day period immediately prior to the date on which this Contract is made/entered with the following Key Contracting Persons and warrants that these are the only such Key Contracting Persons:

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If no one is listed above, Contractor warrants that Contractor is not doing business and has not done business during the 365 calendar day period immediately prior to the date on which this Contract is made/entered with any Key Contracting Person.

WARRANT

**EXHIBIT A to Attachment 1**  
**LIST OF KEY CONTRACTING PERSONS**  
**September 13, 2013**

**CURRENT**

<b>Position Held</b>	<b>Name of Individual Holding Office/Position</b>	<b>Name of Business Individual is Associated</b>
County Judge .....	Samuel T. Biscoe	
County Judge (Spouse) .....	Donalyn Thompson-Biscoe	MHMR
Executive Assistant .....	Cheryl Brown	
Executive Assistant .....	Melissa Velasquez	
Executive Assistant .....	Josie Z. Zavala	
Executive Assistant .....	David Salazar*	
Commissioner, Precinct 1 .....	Ron Davis	
Commissioner, Precinct 1 (Spouse) .....	Annie Davis	Sehon Hospital
Executive Assistant .....	Deone Wilhite	
Executive Assistant .....	Felicitas Chavez	
Commissioner, Precinct 2 .....	Bruce Todd*	
Commissioner, Precinct 2 (Spouse) .....	Elizabeth Christian	Consultant
Executive Assistant .....	Sara Krause*	
Executive Assistant .....	Joe Hon	
Executive Assistant .....	Peter Einhorn	
Commissioner, Precinct 3 .....	Gerald Daugherty*	
Commissioner, Precinct 3 (Spouse) .....	Charyl Daugherty	Consultant
Executive Assistant .....	Bob Moore*	
Executive Assistant .....	Martin Zamzow*	
Executive Assistant .....	Barbara Smith*	
Commissioner, Precinct 4 .....	Margaret Gomez	
Executive Assistant .....	Edith Moreida	
Executive Assistant .....	Norma Guerra	
County Treasurer .....	Dolores Ortega-Carter	
County Auditor .....	Nicki Riley*	
County Executive, Administrative .....	Vacant	
County Executive, Budget & Planning .....	Leslie Browder	
County Executive, Emergency Services .....	Danny Hobby	
County Executive, Health/Human Services .....	Sherri E. Fleming	
County Executive, TNR .....	Steven M. Manilla, P.E.*	
County Executive, Criminal Justice Planning .....	Roger Jefferies	
Director, Facilities Management .....	Roger El Khoury, M.S., P.E.	
Interim Chief Information Officer .....	Tanya Acevedo	
Director, Records Mgmt & Communications .....	Steven Broberg	
Travis County Attorney .....	David Escamilla	
First Assistant County Attorney .....	Steve Capelle	
Executive Assistant, Civil Division .....	James Collins	
Director, Land Use Division .....	Tom Nuckols	
Attorney, Land Use Division .....	Julie Joe	
Attorney, Land Use Division .....	Christopher Gilmore	
Director, Transactions Division .....	John Hille	
Attorney, Transactions Division .....	Elizabeth Winn	
Attorney, Transactions Division .....	Daniel Bradford	
Attorney, Transactions Division .....	Mary Etta Gerhardt	
Attorney, Transactions Division .....	Barbara Wilson	
Attorney, Transactions Division .....	Jim Connolly	
Attorney, Transactions Division .....	Tenley Aldredge	
Director, Health Services Division .....	Beth Devery	
Attorney, Health Services Division .....	Prema Gregerson	
Purchasing Agent .....	Cyd Grimes, C.P.M., CPPO	
Assistant Purchasing Agent .....	Marvin Brice, CPPB	
Assistant Purchasing Agent .....	Bonnie Floyd, CPPO, CPPB, CTPM	

Purchasing Agent Assistant IV .....C.W. Bruner, CTP  
 Purchasing Agent Assistant IV .....Lee Perry  
 Purchasing Agent Assistant IV .....Jason Walker  
 Purchasing Agent Assistant IV .....Richard Villareal  
 Purchasing Agent Assistant IV .....Patrick Strittmatter  
 Purchasing Agent Assistant IV .....Lori Clyde, CPPB, CPPO  
 Purchasing Agent Assistant IV .....Scott Wilson, CPPB  
 Purchasing Agent Assistant IV .....Jorge Talavera, CPPO, CPPB  
 Purchasing Agent Assistant IV .....Loren Breland, CPPB  
 Purchasing Agent Assistant IV .....John E. Pena, CTPM  
 Purchasing Agent Assistant IV .....Rosalinda Garcia  
 Purchasing Agent Assistant IV .....Angel Gomez\*  
 Purchasing Agent Assistant III .....Shannon Pleasant, CTPM  
 Purchasing Agent Assistant III .....David Walch  
 Purchasing Agent Assistant III .....Michael Long, CPPB  
 Purchasing Agent Assistant III .....Jesse Herrera, CTP, CTPM, CTCM  
 Purchasing Agent Assistant III .....Sydney Cedar\*  
 Purchasing Agent Assistant III .....Ruena Victorino\*  
 Purchasing Agent Assistant III .....L. Wade Laursen  
 Purchasing Agent Assistant II .....Sam Francis  
 HUB Coordinator .....Sylvia Lopez  
 HUB Specialist .....Betty Chapa  
 HUB Specialist .....Jerome Guerrero  
 Purchasing Business Analyst .....Scott Worthington  
 Purchasing Business Analyst .....Jennifer Francis  
 Facilities Management .....Ken Gaede, AIA  
 Facilities Management .....Jim Barr, AIA, LEED AP  
 Facilities Management .....Richard Avery, AIA, LEED AP

**FORMER EMPLOYEES**

Position Held	Name of Individual Holding Office/Position	Date of Expiration
Purchasing Agent Assistant II	Jayne Rybak, CTP	12/14/13
Commissioner, Precinct 3	Karen Huber	01/01/14
Executive Assistant	Garry Brown	01/01/14
Executive Assistant	Julie Wheeler	01/01/14
Executive Assistant	Jacob Cottingham	01/01/14
Commissioner, Precinct 2	Sarah Eckhardt	05/31/14
Purchasing Agent Assistant III	Nancy Barchus, CPPB	06/28/14

\* - Identifies employees who have been in that position less than a year.

## SELECTION CRITERIA FOR PROPOSAL PHASE

Those firms that were short-listed, based on the review of the RFQ submittals, have been sent this Request for Proposal. The same firms will be invited to participate in interviews with the County's Evaluation Committee. Following the receipt of proposals and subsequent interviews, the County will rank the RFP respondents based on who is determined to offer the best value to the County. The final ranking of the short-listed firms that are providing proposals will be based on the following criteria:

Interview: 40 points

Proposal; 60 points

Total score: 100 points

### SECTION 00300 CMAR's PROPOSAL

(On CMAR Letterhead)

Cyd Grimes  
Purchasing Agent  
Travis County Purchasing Office  
700 Lavaca, Suite 800  
Austin, Texas 78701

November 6, 2013

Dear Ms. Grimes,

We propose to provide Construction Manager at Risk services for the New 416 West 11<sup>th</sup> Street Office Building and Parking Structure (the "Project"). Our proposed General Conditions cost for the Project is \$\_\_\_\_\_ (See attached Exhibit A).

Our proposed percentage fee (Overhead and Profit) for the Project is \_\_\_\_\_%.

Our proposed percentage for CMAR Contingency upon determining the GMP is \_\_\_\_\_%.

We acknowledge and agree that all Buy-Out savings will transfer into the CMAR Contingency.

We also acknowledge and agree that all transfers out of CMAR Contingency must be approved by Owner.

Lastly, we acknowledge and agree that any and all unused CMAR Contingency will be retained by Owner upon Final Completion.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

## CERTIFICATE OF SECRETARY

I CERTIFY that:

I am the duly qualified and acting Secretary of \_\_\_\_\_, a duly organized and existing

corporation of the State of \_\_\_\_\_  
[Name of State]

The following is a true copy of a Resolution duly adopted by the Board of Directors of such corporation in a meeting legally held on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and entered in the minutes of such meeting in the minute book of the Corporation.

RESOLVED, that this corporation enter and that \_\_\_\_\_ [Insert Name of Person Executing Contract], the \_\_\_\_\_ [Position With Corporation] of this corporation, is authorized and directed to execute on behalf of and as the act of this corporation the Contract for the Travis County \_\_\_\_\_ together with all associated documents. The Secretary is directed to attach a copy of the Contract Documents to the minutes of this meeting and to make them a part of the corporate records.

The above Resolution is in conformity with the Articles of Incorporation and the Bylaws of the Corporation has never been modified or repealed and is now in full force and effect.

Date \_\_\_\_\_

Secretary \_\_\_\_\_

President \_\_\_\_\_

## PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That we, \_\_\_\_\_ as Principal (the "Principal"), and the other undersigned as Surety, are held and firmly bound to Travis County, Texas in the penal sum of \_\_\_\_\_ Dollars (\$ TBD ), lawful money of the United States, well and truly to be paid to Travis County, Texas, and we bind ourselves, our heirs, successors, executors, and administrators, jointly and severally, firmly by this document.

Whereas, the above bound Principal has entered into a contract with Travis County, Texas, for the purpose of \_\_\_\_\_, which is attached to this performance bond, and whereas, pursuant to TEX. GOV'T CODE ANN., Ch. 2253 Principal is required before commencing the work provided for in that contract to execute a bond in the amount of that contract,

The condition of this obligation is that if the above bound Principal, his or its heirs, successors, executors, and administrators shall well and faithfully do and perform each and every obligation required in the contract, in accordance with the Plans, Specifications, and Contract Documents, including warranties as provided for in the attached Contract, then this obligation shall be null and void; otherwise it is to remain in full force and effect.

Witness our hands this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Principal

Surety

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

\*Note: If signed by an officer of the Surety Company, there must be on file a certified extract from the By-laws showing that this person has authority to sign such obligations. If signed by an Attorney-in-Fact, we must have a copy of the Power of Attorney for our files.

Surety Company Notice of Claim Information:

Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Physical Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Bond Number: \_\_\_\_\_

## PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS:

That we, \_\_\_\_\_ as Principal (the "Principal"), and the other undersigned as Surety, are held and firmly bound to Travis County, Texas in the penal sum of \_\_\_\_\_ Dollars (\$ TBD ), lawful money of the United States, well and truly to be paid to Travis County, Texas, and we bind ourselves, our heirs, successors, executors, and administrators, jointly and severally, firmly by this document.

Whereas, the above bound Principal has entered into a Contract with Travis County, Texas, for the purpose of \_\_\_\_\_, which is attached to this Payment Bond, and whereas, pursuant to TEX. GOV'T CODE ANN., Ch. 2253 Principal is required before commencing the work provided for in that Contract to execute a Bond in the amount of that Contract solely for the protection of all claimants supplying labor and materials as defined by law, in the prosecution of the work provided for in that Contract, for the use of each such claimant.

The condition of this obligation is that if the above bound Principal, his or its heirs, successors, executors, and administrators shall well and faithfully make payments to each and every claimant as defined by law, supplying labor and materials as defined by law, in the prosecution of the work provided for in the attached Contract, then this obligation shall be null and void; otherwise it is to remain in full force and effect.

Witness our hands this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Principal

Surety

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

\*Note: If signed by an officer of the Surety Company, there must be on file a certified extract from the By-laws showing that this person has authority to sign such obligation. If signed by an Attorney-in-Fact, we must have a copy of the Power of Attorney for our files.

Surety Company Notice of Claim Information:

Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Physical Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Bond Number: \_\_\_\_\_

**SAFETY RECORD QUESTIONNAIRE**  
**(must be submitted with executed Contract)**

The Travis County Commissioners Court desires to avail itself of the benefits of Chapter 2269 of the Texas Government Code, and thereby consider the safety records of potential contractors prior to awarding bids on County contracts. Pursuant to Chapter 2269 of the Texas Government Code, Travis County has adopted the following written definition and criteria for accurately determining the safety record of a bidder prior to awarding bids on County contracts.

The definition and criteria for determining the safety record of a bidder for this consideration shall be:

If the bidder in response to the questions in this Questionnaire reveals more than two (2) cases in which final orders have been entered by the Occupational Safety and Health Review Commission (OSHRC) against the bidder for serious violations of OSHA regulations within the past three (3) years, County will, at its discretion, determine whether to disqualify the bidder.

If the bidder in response to the questions in this Questionnaire reveals more than one (1) case in which bidder has received a citation from an environmental protection agency for violations within the past five (5) years, County will, at its discretion, determine whether to disqualify the bidder. Environmental Protection Agencies include the U.S. Army Corps of Engineer (USACOE), the U.S. Fish and Wildlife Service (USFWS), the Environmental Protection Agency (EPA), the Texas Commission on Environmental Quality (TCEQ), and its past associated agency: the Texas Natural Resource Conservation Commission (TNRCC), the Texas Department of Health, the Texas Parks and Wildlife Department (TPWD), the Structural Pest Control Board (SPCB), agencies of local governments responsible for enforcing environmental protection laws or regulations, and similar regulatory agencies of other states of the United States. Citations include notice of violation, notice of enforcement, suspension/revocations of state or federal licenses or registrations, fines assessed pending criminal complaints, indictments, or convictions, administrative orders, draft orders, final orders, judicial final judgments. Notice of Violations and Notice of Enforcement received from TCEQ shall include those classified as major violations and moderate violations under TCEQ's regulations for documentation of Compliance History, 30TAC, Chapter 60.2 (c) (1) and (2).

If the bidder in response to the questions in this Questionnaire reveals that the bidder has been convicted of a criminal offense within the past ten (10) years which resulted in serious bodily harm or death, County will determine whether to disqualify the bidder.

In order to obtain proper information from bidders so that Travis County may consider the safety records of potential contractors prior to awarding bids on County contracts, Travis County requires that bidders answer the following three (3) questions and submit them with their bids:

**QUESTION ONE**

Has the bidder, or the firm, corporation, partnership, or institution represented by the bidder, or anyone acting for such firm, corporation, partnership or institution, received citations for violations of OSHA within the past three (3) years?

YES \_\_\_\_\_ NO \_\_\_\_\_

If the bidder has indicated YES for question number one above, the bidder must provide to Travis County, with its bid submission, the following information with respect to each such citation:

Date of offense, location of establishment inspected, category of offense, final disposition of offense, if any, and penalty assessed.

**QUESTION TWO**

Has the bidder, or the firm, corporation, partnership, or institution represented by the bidder, or anyone acting for such

firm, corporation, partnership or institution, received citations for violations of environmental protection laws or regulations with the past five years? Citations include notice of violation, notice of enforcement, suspension/revocations of state or federal licenses, or registrations, fines assessed pending criminal complaints, indictments, or convictions, administrative orders, draft orders, final orders, judicial final judgments. Notice of Violations and Notice of Enforcement received from TCEQ shall include those classified as major violations and moderate violations under TCEQ's regulations for documentation of Compliance History, 30TAC, Chapter 60.2 (c) (1) and (2).

YES \_\_\_\_\_ NO \_\_\_\_\_

If the bidder has indicated YES for question number two above, the bidder must provide to Travis County, with its bid submission, the following information with respect to each such conviction:

Date of offense, location where offense occurred, type of offense, final disposition of offense, if any, and penalty assessed.

**QUESTION THREE**

Has the bidder, or the firm, corporation, partnership, or institution represented by bidder, or anyone acting for such firm, corporation, partnership, or institution, ever been convicted, within the past ten (10) years, of a criminal offense which resulted in serious bodily injury or death?

YES \_\_\_\_\_ NO \_\_\_\_\_

If the bidder has indicated YES for question number three above, the bidder must provide to Travis County, with its bid submission, the following information with respect to each such conviction:

Date of offense, location where offense occurred, type of offense, final disposition of offense, in any, and penalty assessed.

**ACKNOWLEDGEMENT**

THE STATE OF TEXAS  
COUNTY OF TRAVIS

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

## SECTION 00400 - HUB PROGRAM REQUIREMENTS

It is the policy of Travis County that HUBs will have the maximum opportunity to participate in the performance of County contracts and subcontracts. The Travis County HUB Program goals for HUB contractor and subcontractor participation in the Construction category is an Overall 13.7% Minority-Owned Business Enterprise (MBE) goal and an Overall 13.8% Women-Owned Business Enterprise (WBE) goal (*Sub-goals: 1.7% African-American, 9.7% Hispanic, 2.3% Native/Asian-American*). The program strongly encourages prime contractors to initiate a “Good Faith Effort” to provide subcontracting opportunities to Certified HUBs.

To be considered as a “Certified HUB” the contractor must have officially been certified as a HUB, M/WBE, or a Disadvantaged Business Enterprise (DBE) by either the State of Texas, the City of Austin, or the Texas Unified Certification Program, and hold a current certification at the time the subcontract is entered into.

A “Subcontractor,” for the purpose of this section, is defined as any contractor/vendor who provides supplies, materials and/or services to a second contractor/vendor if the supplies/materials/services are used in fulfillment of the second contractor’s/vendor’s contractual obligations with the County.

The OWNER is interested in obtaining information on the CMAR’s philosophy and approach to the outreach and inclusion of local small businesses and execution of the Work.

Include historical information on how the CMAR has been successful in this area on similarly scoped projects.

Include discussion of strategies the CMAR has been successful in complying with minority and women owned/historically underutilized/small business programs, requirements and processes.

For specific contract requirements see Agreement Section 21.22

**SECTION - 00500  
AGREEMENT FOR CONSTRUCTION SERVICES  
CONTRACT NO. 13K01309RV**

**AGREEMENT BETWEEN**

**Travis County, Texas**

**AND**

**(CMAR),**

This Agreement is effective as of \_\_\_\_\_, 2013 (the "Effective Date"), by and between Travis County, a political subdivision of the State of Texas ("**Owner**" or "County") and (**CMAR**), Construction Manager at Risk (General Contractor ("**CMAR**"), collectively known as the "**Parties**," for the: **Construction of the New 416 West 11<sup>th</sup> Street Office Building and Parking Structure, Austin, Texas** (the "Project").

The parties acknowledge and agree that Page Southerland Page, LLP will serve as the Architect/Engineer (hereafter "**A/E**").

**OWNER**/County will be referred to as if singular in number and masculine in gender. The term "**OWNER**" means the Travis County Commissioners Court, the Travis County Purchasing Agent, the Director of the Travis County Facilities Management Department (the "Director"), or authorized representative of the Director. References to **OWNER** implies the Director, or his authorized representative, where applicable and appropriate. **CMAR** agrees to take direction from the Director and maintain a positive and professional working relationship with the Director. All communications to and from the **CMAR** on the Project shall be through the Director.

**OWNER** intends to construct the Project at 416 W. 11th Street, Austin, Texas, within a construction cost limitation of Twenty-nine Million Three Hundred Thousand dollars (\$29,300,000). This sum is referred to as the Amount Available for the Construction Contract ("AACC"), which is further defined in paragraph 2.1.

**OWNER** and **CMAR** agree as follows:

**ARTICLE 1  
SCOPE OF WORK**

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

**ARTICLE 2  
DEFINITIONS**

The terms, words and phrases used in this Agreement have the meanings provided in the General Conditions for Travis County Building Construction Agreements and as follows.

- 2.1 "**Amount Available for the Construction Contract**" or "**AACC**" means the maximum monetary amount budgeted by **OWNER** for all Construction Phase services, materials, labor and other work required of **CMAR** for completion of the Work in accordance with this Agreement. The AACC includes, without limitation, the General Conditions Costs, the Cost of the Work, the Construction Phase Fee and **CMAR's** Contingency. The AACC may be adjusted by the parties for changes in the scope of the Project before or after acceptance of the Guaranteed Maximum Price Proposal. The AACC does not include **OWNER's** Construction Contingency.

- 2.2 **“Contract Documents”** means this Agreement and the following documents: (i) all exhibits and attachments listed, contained or referenced in this Agreement, specifically including the CMAR’s Proposal, Terms and Conditions stated in Request for Proposal (“RFP”) #P110231RV and any Addenda or Amendments to the RFP, General Conditions for Travis County Building Agreements (the “General Conditions”) and **OWNER’s General Requirements** Specifications; (ii) the Drawings, Specifications, details and other documents developed by **A/E** or **OWNER’s** other consultants, if any, and accepted by **OWNER** which describe the Project; (iii) all Addenda issued prior to the Effective Date of this Agreement; (iv) the Guaranteed Maximum Price Proposal when accepted by **OWNER** and executed by the Parties; (v) all Change Orders issued after the Effective Date of this Agreement; and (vi) the HUB Subcontracting plan submitted by **CMAR**. These Contract Documents form the entire and integrated contract between **OWNER** and **CMAR** and supersede all prior negotiations, representations or agreements, written or oral.
- 2.3 **“Construction Phase Fee”** means the percentage (%) amount set forth in the CMAR Proposal.
- 2.4 **“Construction Phase Services”** means the coordination, implementation and execution of the Work required by this Agreement, which are further defined in Article 7.
- 2.5 **“Cost of the Work”** means those costs described in Article 10.2.
- 2.6 **“Direct Construction Cost”** has the meaning set forth in Article 10.
- 2.7 **“Estimated Construction Cost”** or **“ECC”** means the amount calculated by **CMAR** for the total cost of all elements of the Work based on this Agreement available at the time(s) that the ECC is prepared. The ECC will be based on current market rates with as-proposed overhead and profit and will include and consider, without limitation, all alternates, allowances and contingencies, designed and specified by **A/E** and the cost of labor and materials necessary. The ECC will include all the cost elements included in the AACC, as defined above, and will represent **CMAR’s** best current estimate of the Guaranteed Maximum Price it will propose for the Project based on the information then available. The ECC will not include **A/E’s** Fees, or any other costs that are the direct responsibility of **OWNER**.
- 2.8 **“Guaranteed Maximum Price”** or **“GMP”** means the amount proposed by **CMAR** and accepted by **OWNER** as the maximum cost to **OWNER** for construction of the Project in accordance with this Agreement. The GMP includes **CMAR’s** Construction Phase Fee, the General Conditions Cost, the Cost of the Work, and **CMAR’s** Contingency amount, as set forth in the GMP proposal.
- 2.9 **“General Conditions Cost”** means costs incurred and minor work performed by **CMAR** without the need for competitive bids/proposals as allowed under Texas Government Code Chapter 2269. The maximum allowable General Conditions Cost payable to **CMAR** during the Construction Phase of the Project is set forth in Exhibit “A” and the allowable General Conditions items are further described and limited by Section 10.1 of this Agreement.
- 2.10 **“Monthly Salary Rate”** means the amount agreed to by **OWNER** that can be used on Applications for Payment throughout the Construction Phase to account for the monthly salary and employer contributions costs (payroll burden) of **CMAR’s** salaried personnel assigned to the Project. A Monthly Salary Rate must be established for each salaried person and must be approved in writing by **OWNER** in advance of any Application for Payment for that person. The Monthly Salary Rate is for convenience only and any payments made for **CMAR’s** personnel are subject to audit to determine the actual cost of the wages and allowable employer contributions incurred by **CMAR** for services performed.
- 2.11 **“Pre-Construction Phase Services”** means the participation, documentation and execution of **CMAR’s** Pre-Construction Phase deliverables as required by this Agreement and further defined in Article 5. Due to the constraints of the Work Project Schedule, these Pre-Construction Phase Services are limited in nature and duration, and are established as a lump sum – paid on a percentage complete basis.
- 2.12 **“A/E”** refers to the professional firm employed by **OWNER** as architect/engineer of record for the Project and its consultants.

- 2.13 **"Project Team"** means **OWNER, CMAR, A/E** and consultants, any separate contractors employed by **OWNER**, and others employed for the purpose of programming, design, and construction of the Project. The members of the Project Team will be designated in writing by **OWNER** and may be modified from time to time in writing by **OWNER**.
- 2.14 **"Subcontractor"** means a person or entity who has an agreement with **CMAR** to perform any portion of the Work. The term Subcontractor does not include **A/E** or any person or entity hired directly by **OWNER**.
- 2.15 **"Work"** means the provision of all services, labor, materials, supplies, and equipment that are required of **CMAR** to complete the Project in strict accordance with the requirements of this Agreement. Work includes, but is not limited to, the Construction Phase Services, additional work required by Change Orders, and any other work reasonably inferable from this Agreement. The term "reasonably inferable" takes into consideration the understanding of the parties that some details necessary for completion of the Work may not be shown on the Drawings or included in the Specifications, but they are a requirement of the Work if they are a usual and customary component of the Work or otherwise necessary for complete installation and operation of the Work. This standard of "reasonably inferable" is heightened due to the involvement of the **CMAR** in Pre-Construction Phase Services; it is anticipated that the **CMAR** has superior knowledge by virtue of its participation in Pre-Construction Phase Services.
- 2.16 **"Work Progress Schedule" or "WPS"** has the meaning given in Section 5.3.1.

### ARTICLE 3 CMAR'S GENERAL RESPONSIBILITIES

- 3.1 **CMAR** shall perform all services specifically allocated to it by the Contract Documents as well as those services reasonably inferable from the Construction Documents as necessary for completion of the Work and the Project. **CMAR** agrees to perform these services using its best efforts, skills, judgments and abilities.
- 3.2 **CMAR** shall cooperate with A/E and endeavor to further the interests of **OWNER** and the Project. **CMAR** shall furnish Limited Pre-Construction Phase Services and Construction Phase Services and complete the Project in an expeditious and economical manner consistent with the interests of **OWNER** and in accordance with the Work Project Schedule.
- 3.3 **CMAR** shall designate a representative authorized to act on **CMAR's** behalf with respect to the Project.
- 3.4 **CMAR** shall establish procedures for communication and coordination among the Project Team, Subcontractors, separate contractors, and others with respect to all aspects of the construction of the Project, and implement such procedures.
- 3.5 **CMAR** shall establish and maintain a numbering and tracking system for all Project records, including changes, requests for information, submittals, and supplementary instructions and shall provide updated records at each **OWNER** meeting and when requested.
- 3.6 **CMAR** shall identify to **OWNER** the employees and other personnel that it will assign to the Project and provide the Monthly Salary Rate for each of them. **CMAR** shall also identify any consultants that will be performing services for the Project. After execution of this Agreement by **OWNER**, **CMAR** shall not remove or replace the persons or entities assigned to the Project except with **OWNER's** written consent, which consent will not be unreasonably withheld. **CMAR** shall not assign to the Project or contract with any person or entity to which **OWNER** has a reasonable objection. **CMAR** shall promptly update the list of persons and consultants if they change during the course of the Project.

### ARTICLE 4 OWNER'S RESPONSIBILITIES

- 4.1 **OWNER** has designated an Architect/Engineer for the Project.

- 4.2 **OWNER** will provide the AACC and general schedule for the Project. The AACC provided by **OWNER** will be established with due consideration for separate contingencies for changes in the Project during construction, and for other Project costs that are the responsibility of **OWNER**. The general schedule will set forth **OWNER's** plan for milestone dates and completion of the Project.
- 4.3 The Director, or his authorized representative, is authorized to act on **OWNER's** behalf with respect to the Project, including final determination of fees and costs earned by **CMAR** and equitable back charges against **CMAR**. The Director shall examine the documents submitted by **CMAR** and shall render decisions on behalf of **OWNER**. The Director shall have all the responsibilities and authorities allocated to him/her in the General Conditions.
- 4.4 **OWNER**, at its sole cost, will secure the services of environmental surveys or other special consultants to develop such additional information as may be necessary for the design or construction of the Project.
- 4.5 **OWNER** shall arrange and pay for materials, structural, mechanical, chemical and other laboratory tests as required of the **OWNER** by the Construction Documents except as provided in the General Conditions.
- 4.6 **OWNER** shall furnish all legal, accounting, auditing and insurance counseling services for itself and its own purposes as may be necessary for the Project.
- 4.7 **OWNER** shall furnish required information and services and shall render approvals and decisions as expeditiously as is consistent with reasonable skill and care and the orderly progress of **CMAR's** services and of the Work.
- 4.8 **OWNER** may designate one or more construction inspectors who shall be given access to the Work as requested or needed. The provision of inspection services by **OWNER** shall not reduce or lessen **CMAR's** responsibility for the Project. **CMAR** is fully and solely responsible for constructing the Project in strict accordance with this Agreement.
- 4.9 With respect to defective Work, **OWNER** shall have the rights set out in this Agreement as well as the rights and remedies set out in the General Conditions.
- 4.10 **OWNER** shall provide the Contract Documents in digital copy format to **CMAR** for its use in, preparing a GMP proposal, obtaining bids/proposals for the work and constructing the Project. **OWNER** shall also make available to **CMAR** any supplemental Contract Documents such as addenda, equipment procurement packages, RFI responses and change order documentation. **CMAR** shall be responsible for preparing copies of these documents needed for its use and that of any of its consultants or subcontractors for performing reviews, preparing cost estimates and a GMP proposal, obtaining bids/proposals for the work and constructing the Project as set forth in this Agreement. **CMAR** shall also be responsible for maintaining a register of document distribution, and distributing documents to its consultants, subcontractors, bidders, proposers and plan rooms.

## ARTICLE 5 PRE-CONSTRUCTION PHASE SERVICES

**CMAR** shall perform the following Pre-Construction Phase Services:

### 5.1 General Coordination

- 5.1.1 **CMAR's** Pre-construction Phase Services team shall attend weekly Project Team meetings with **OWNER**, **OWNER** representatives, and **A/E** at regularly scheduled intervals throughout the Pre-Construction Phase. Frequent Project Team meetings are anticipated prior to **OWNER** acceptance of the GMP.
- 5.1.2 Review and understand the standards and requirements in **OWNER's** Specifications and perform all services in accordance with those standards and requirements.

- 5.1.3 Visit the site and inspect the existing facilities, systems and conditions to ensure an accurate understanding of the existing conditions as required.
- 5.1.4 Provide recommendations and information to the Project Team on: site usage, equipment and construction feasibility; selection and availability of materials and labor; time requirements for installation and construction; assignment of responsibilities for safety precautions and programs; temporary Project facilities; equipment, materials and services for common use of **CMAR** and **OWNER's** separate contractors, if any; cost factors, including costs of alternative materials or designs, preliminary budgets, and possible cost savings; recognizing and tracking the resolution of conflicts in the proposed Drawings and Specifications; methods of delivery of materials, systems, and equipment; and any other matters necessary to accomplish the Project in accordance with the Work Progress Schedule (as described in detail below) and the AACC.
- 5.1.5 Assist **OWNER** in selecting and directing the services of environmental surveys or other special consultants hired by **OWNER** to develop additional information for the construction of the Project.

## 5.2 Constructability Program

- 5.2.1 Implement and conduct a constructability program to identify and document Project cost and schedule savings opportunities. The constructability program shall follow accepted industry practices and be approved by **OWNER**. 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 or architecture without a license. If any value engineering activities constitute the professional practice of engineering or architecture, then such activities shall be performed by an engineer or architect licensed in Texas.
- 5.2.2 Provide and implement a system for tracking questions, resolutions, decisions, directions and other information matters that arise during the development of the Drawings and Specifications for the Project. The decision tracking system shall be in a format approved by **OWNER** and updated weekly during the Pre-Construction Phase.

## 5.3 Scheduling

- 5.3.1 Develop a Work Progress Schedule ("WPS") for Project Team review and **OWNER's** approval that coordinates and integrates activities on the Project, including **CMAR's** services, **A/E's** services, the work of other consultants and suppliers, and **OWNER's** activities with the anticipated construction schedules for other contractors. The WPS must identify all major milestones through Project Final Completion. The WPS shall be created and maintained in accordance with **OWNER's** Specifications using **OWNER** specified format and software.
- 5.3.2 Update the WPS throughout the Pre-Construction and Construction Phases as described in the General Conditions, **OWNER's** requirements and Specifications.
- 5.3.3 The WPS shall include other detailed schedule activities as directed by **OWNER** including, but not limited to, **OWNER** managed work under separate contracts.
- 5.3.4 The WPS will become an attachment to this Agreement and incorporated into this Agreement for all purposes through modification of this Agreement in accordance with Article 12 of the General Conditions.

## 5.4 Budget and Cost Consultation

- 5.4.1 Prepare and update all procurement progress and construction cost estimates and distribute them to the Project Team.

- 5.4.3 Provide continuous cost consultation services throughout the duration of the Project, including identification and tracking of decisions that affect the scope or quality of the Project and providing ongoing updates of their cost and budget impact.
- 5.4.4 Promptly identify all variances between estimated costs and actual costs during the Construction Phase, and promptly report such variances to the Project Team along with recommendations for action, but in any event no more than two (2) business days after acquiring such information.

## 5.5 Coordination of Design and Construction Contract Documents

- 5.5.1 Review all Drawings, Specifications, and other Construction Documents as they are developed by **A/E** during the construction documents design phases of the Project.
- 5.5.2 Consult with **OWNER** and **A/E** on the selection of materials used on the Project. Advise **OWNER** on site use, construction feasibility, availability of labor and materials, procurement time requirements, and construction coordination.
- 5.5.3 Advise **OWNER** of any error, inconsistency or omission discovered in the Drawings, Specifications, and other Construction Documents.
- 5.5.4 Advise **OWNER** on reasonable adjustments in the Project scope, quality or other options for keeping the Project cost within the AACC.
- 5.5.5 Review the Construction Documents for compliance with all applicable laws, rules and regulations, the Contract Documents, and **OWNER** requirements.

## 5.6 Construction Planning and Subcontractor Buyout Strategy

- 5.6.1 Identify equipment or material requiring extended delivery times and advise **OWNER** on expedited procurement of those items. Advise **OWNER** and **A/E** on the preparation of performance specifications and requests for technical proposals for the procurement and installation of systems and components and for the procurement of long lead items. If requested by **OWNER**, and subject to **OWNER's** prior written approval, issue requests for technical proposals to qualified sources and receive proposals and assist in their evaluation.
- 5.6.2 Make recommendations to the Project Team regarding organization of the Construction Documents to facilitate the bidding and awarding of construction subcontracts in a manner that promotes the interests of the Project and **OWNER**. These recommendations may include, but are not limited to multiple separate contracts. The recommendations shall take into consideration such factors as time of performance, type and scope of work, availability of labor and materials, overlapping trade jurisdictions, provisions for temporary facilities, comparisons of factory and on-site production costs, shipping costs, code restrictions, **OWNER's** goals for HUB subcontractor participation, and other constraints.
- 5.6.3 Review the Construction Documents with 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.
- 5.6.4 Develop a bid/proposal package strategy that addresses the entire scope of each phase and stage of the Project. In developing the bid/proposal package strategy, **CMAR** shall identify all bid/proposal packages on which **CMAR** intends to submit a self-performance bid/proposal. The bid/proposal package strategy shall be reviewed with **OWNER** on a regular basis and revised throughout the buyout of the Project so as to best promote the interests of the Project and **OWNER**.
- 5.6.5 Assist **OWNER**, **A/E**, **OWNER's** other consultants, and **OWNER's** separate contractors in obtaining all applicable risk management, code, and regulatory agency reviews and approvals for the Project including, without limitation, the

City of Austin, Travis County Risk Manager, Travis County Fire Marshal, the local fire department, and **OWNER's** insurance provider.

- 5.6.6 Recommend to **OWNER** and **A/E** any Quality Assurance tests to be performed, and assist **OWNER** in selecting testing laboratories and consultants, without assuming direct responsibility for the performance of such laboratories and consultants.
- 5.6.7 Review the Construction Documents to ensure that they contain adequate provision for job site areas required for construction, all temporary facilities necessary for performance of the Work, and provisions for all of the job site facilities necessary to manage, inspect, and supervise construction of the Project.
- 5.6.8 Provide an analysis of the types and quantities of labor required for the Project and review the appropriate categories of labor required for critical phases or stages. Make recommendations that minimize the adverse effects of labor shortages.
- 5.6.9 **CMAR** will invite the local small business community to at least one networking event, the purpose of which is to enhance the good faith efforts towards HUB participation and expose the HUB contractor community to potential opportunities. The **CMAR** will provide Project information and details as well as answer any questions or concerns voiced by the attendees. A list of attendees will be provided to Travis County HUB staff.

## 5.7 Obtaining Bids/Proposals for the Project

- 5.7.1 In accordance with *Texas Government Code Chapter 2269*, publicly advertise and solicit at least three (3) competitive lump sum bids/proposals from trade contractors or subcontractors for the performance of all major elements of the Project other than the minor work that may be included in General Conditions. Criteria for determining the bid/proposal that provides the best value to **OWNER** shall be established by the Project Team and included in the request for bids/proposals. **CMAR** shall notify **OWNER** in advance in writing of the date it will receive the bids/proposals. **CMAR** shall include the WPS in the solicitation to trade contractors or subcontractors.
- 5.7.2 Schedule and conduct pre-bid conferences with interested bidders/proposers, Subcontractors, material suppliers, and equipment suppliers, and record minutes of the conferences.
- 5.7.3 Together with **OWNER**, review all trade contractor or Subcontractor bids/proposals in a manner that does not disclose the contents of any bid/proposal to persons outside of the Project Team during the selection process. Based on the selection criteria included in the request for proposals, **CMAR** shall recommend to **OWNER** the bid/proposal that provides the best value for the Project. Upon **OWNER's** written concurrence in the recommendation, **CMAR** may negotiate with the apparent best value bidder/proposer.
- 5.7.4 All subcontracts must be on a lump sum basis unless other payment terms are approved in writing and in advance by **OWNER**, and shall contain or incorporate by reference the terms and conditions of the CMAR agreement as they may apply. Upon **OWNER's** concurrence in the final terms of the subcontract, **CMAR** shall enter into a written subcontract for the subcontract work and provide a copy to **OWNER**. All bids/proposals shall be publicly available after award of the subcontract or within seven (7) days after the date of final selection, whichever is later.
- 5.7.5 If **CMAR** reviews, evaluates, and recommends to **OWNER** a bid/proposal from a trade contractor or subcontractor, but **OWNER** requires another bid/proposal to be accepted, **OWNER** shall compensate **CMAR** by a change in price, time, or Guaranteed Maximum Price for any additional cost and risk **CMAR** incurs because of **OWNER's** requirement that the other bid/proposal be accepted. Such compensation shall fully discharge the **OWNER's** duties to the **CMAR** regarding any substituted trade contractor or subcontractor.

5.7.6 **CMAR** may seek to self-perform portions of the Project identified for self-performance in the bid/proposal strategy. **CMAR** must submit a lump-sum bid/proposal for the self-performance work in the same manner as all other trade contractors or Subcontractors. However, **CMAR** bid/proposal must be sealed and submitted to **OWNER** not less than twenty four (24) hours before the submission date for all other trade contractors or Subcontractors. **OWNER** will, at its sole discretion, determine whether **CMAR's** bid/proposal provides the best value for **OWNER**, and its determination shall be final. **CMAR** must perform approved self-performance work in accordance with the same terms and conditions as its other Subcontractors. For payment purposes, **CMAR** shall account for self-performance work in the same manner as it does all other subcontract costs.

5.7.7 **CMAR** shall identify every Subcontractor it intends to use on the Project, including Subcontractors used for self-performed work, to **OWNER** in writing and deliver to **OWNER** the HUB Subcontracting Participation Declaration Form at least ten (10) days before entering into any subcontract. **CMAR** shall not use any Subcontractor to which **OWNER** has a reasonable objection. **CMAR** shall not be required to subcontract with any Subcontractor to which it has reasonable objection. Following **OWNER's** acceptance of a Subcontractor, that Subcontractor shall not be changed without **OWNER's** written consent, which shall not be unreasonably withheld. If **OWNER** has reasonable objection to any Subcontractor, **CMAR** shall submit a substitute to whom **OWNER** has no reasonable objection. The GMP shall be increased or decreased by the properly documented difference in cost occasioned by such substitution and an appropriate amendment shall be issued. However, no increase in the GMP shall be allowed for such substitution if **CMAR** has not acted promptly and responsively in submitting names as required by the Contract Documents. **CMAR** shall request approval from **OWNER** for any substitution for any Subcontractor, person, or entity previously selected and shall not commence with substitution unless **OWNER** does not make a timely and reasonable objection to such substitution.

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

## 5.8 Safety

5.8.1 In accordance with the General Conditions, **CMAR** is responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Project. The safety program shall comply with all applicable requirements of the Occupational Safety and Health Act of 1970 and all other applicable federal, state and local laws and regulations without limitation.

5.8.2 **CMAR** shall provide recommendations and information to **OWNER** and **A/E** regarding the assignment of responsibilities for safety precautions and programs, temporary Project facilities, and equipment, materials, and services for common use of the Subcontractors. **CMAR** shall verify that appropriate safety provisions are included in the Construction Documents.

## ARTICLE 6 GUARANTEED MAXIMUM PRICE PROPOSAL

6.1 When the parties agree that the design of the Project is sufficiently developed and documented to allow detailed pricing of its construction, **CMAR** shall prepare and submit a Guaranteed Maximum Price Proposal to **OWNER**. The GMP Proposal must be prepared in accordance with the guidelines and delivered in the format specified by **OWNER**. **OWNER**, at its sole option and discretion, may specify different requirements for the GMP Proposal. **CMAR** shall not withdraw its Guaranteed Maximum Price Proposal for ninety (90) days following submission to **OWNER**.

6.2 In developing the GMP Proposal, **CMAR** shall coordinate efforts with **OWNER** and **A/E** to identify qualifications, clarifications, assumptions, exclusions, value engineering and any other factors relevant to establishment of a GMP. **CMAR** shall review development of the GMP Proposal with **OWNER** on an ongoing basis to address clarifications of scope and pricing,

administration and distribution of contingencies, schedule, assumptions, exclusions, and other matters relevant to the establishment of a GMP.

- 6.3 The GMP Proposal must include a written description of how it was derived that specifically identifies the clarifications and assumptions made by **CMAR** in the GMP and the monetary amounts attributable to them. The GMP Proposal must include, without limitation, a breakdown of **CMAR's** General Conditions Costs and Construction Costs organized by trade and CSI Division; contingency amounts; the Construction Phase Fee; and the proposed Contract Time, including dates for Notice to Proceed, Substantial Completion and Final Completion.
- 6.4 The Guaranteed Maximum Price Proposal must allow for reasonably expected changes and refinements in the Drawings and Specifications through completion of the Construction Documents, except for material changes in scope.
- 6.5 The GMP Proposal may include **CMAR's** Contingency amount that is reflective of the risk inherent in the state of completion of the Construction Documents at the time the GMP Proposal is submitted.
- 6.6 Included with its GMP Proposal, **CMAR** shall provide three complete, bound sets of the drawings, specifications, plans, sketches, instructions, requirements, materials, equipment specifications and other information or documents that fully describe the Project as developed at the time of the GMP Proposal and that are relevant to the establishment of the GMP. The bound supporting documents shall be referenced in and incorporated into the GMP Proposal.
- 6.7 The GMP Proposal and all supporting documents must identify and completely describe all items, assumptions, costs, contingencies, schedules and other matters necessary and relevant for proper execution and completion of the Work and for establishment of the GMP. The GMP Proposal and the supporting documents are complementary and, in the event of an irreconcilable conflict between or among them, the interpretation that provides for the higher quality or quantity of material and/or workmanship shall prevail over all other interpretations.
- 6.8 In submitting the GMP Proposal, **CMAR** represents that it will provide every item, system or element of performance that is identified, shown or specified in the GMP Proposal or the supporting documents, along with all necessary or ancillary materials and equipment for their complete operating installation, unless specifically excepted by **OWNER**. Upon **OWNER's** written acceptance of the GMP Proposal, **CMAR** shall not be entitled to any increase in the GMP due to the continued refinement of the Construction Documents or the absence or addition of any detail or specification that may be required in order to complete the construction of the Project as described in and reasonably inferable from the GMP Proposal or the supporting documents used to establish the GMP.
- 6.9 The GMP Proposal will become an attachment to this Agreement and incorporated into this Agreement for all purposes through modification of this Agreement in accordance with Article 12 of the General Conditions. Any proposed deviation from the terms and conditions of this Agreement must be clearly and conspicuously identified to **OWNER** in writing and specifically accepted in writing by **OWNER**. In the event of a conflict between any term of the GMP Proposal that was not clearly and conspicuously identified and approved by **OWNER** and the terms of this Agreement and its attachments, the terms of this Agreement and its attachments will control.
- 6.10 **OWNER** may accept or reject the Guaranteed Maximum Price Proposal or attempt to negotiate its terms with **CMAR**. Upon acceptance by **OWNER** of the GMP Proposal in writing, both parties shall execute the GMP Proposal which shall become part of this Agreement. If **OWNER** rejects the GMP Proposal or the parties are unable or unwilling to agree on a GMP, **OWNER** may terminate this Agreement.
- 6.11 **CMAR** shall be entitled to an equitable adjustment of the GMP if it is required to pay or bear the burden of any new federal, state, or local tax, or any rate increase of an existing tax, except taxes on income, adopted through statute, court decision, written ruling, or regulation taking effect after acceptance of the GMP Proposal. This equitable adjustment does not apply to tax increases borne solely by Subcontractors.

- 6.12 **CMAR** shall document the actual Cost of the Project at buyout as compared to the Guaranteed Maximum Price Proposal and shall report this information to **OWNER** monthly and with **CMAR's** recommendation for selection of a bid/proposal for each subcontracting package.

## ARTICLE 7

### CONSTRUCTION PHASE SERVICES

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

- 7.1 Construct the Work in strict accordance with this Agreement and as required by the General Conditions, Supplementary Conditions, Special Conditions and **OWNER's** Specifications within the time required by the Work Progress Schedule approved by **OWNER**.
- 7.2 Organize and maintain a competent, full-time staff at the Project site with clearly defined lines of authority and communication as necessary to coordinate construction activities, monitor and direct progress of the Work, and further the goals of the Project Team.
- 7.3 Designate in writing a representative who is responsible for the day-to-day management of the Construction Phase Services. The designated representative shall be **OWNER's** primary contact during the Construction Phase and shall be available as required for the benefit of the Project and **OWNER**. The designated representative shall be authorized to act on behalf of and bind **CMAR** in all matters related to Construction Phase Services including, but not limited to, execution of Change Orders and Applications for Payment.
- 7.4 Attend regularly scheduled Project progress meetings and fully advise the Project Team of the Project status including schedule, costs, quality and changes.
- 7.5 In addition to attending regularly scheduled Project progress meetings, **CMAR** shall schedule, direct and attend interim progress meetings (i.e., commissioning meetings, coordination meetings, pre-installation meetings) with other members of the Project Team as required to maintain Project progress. **CMAR** shall record and distribute the minutes of each meeting, both regular progress meetings as well as interim progress meetings, to each Project Team member. The minutes must identify critical activities that require action and the dates by which each activity must be completed.
- 7.6 Coordinate delivery and installation of **OWNER**-procured material and equipment.
- 7.7 In accordance with **OWNER's** General Conditions, provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation, and all other facilities and services necessary for the proper execution and completion of the Work in strict accordance with the requirements of the Construction Documents.
- 7.8 Assist **OWNER** or **A/E** in obtaining all approvals required from authorities having jurisdiction over the Project.
- 7.9 Coordinate, monitor and inspect the work of Subcontractors to ensure conformance with the Construction Documents.
- 7.10 Be responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work. **CMAR** shall keep **OWNER** informed of the progress and quality of the Work.

- 7.11 **CMAR** shall promptly correct any defective Work at **CMAR's** sole expense, in compliance with the General Conditions, unless **OWNER** specifically agrees to accept the Work in writing.
- 7.12 Warrant that the materials and equipment provided for the Project will be of good quality and new unless otherwise required or permitted by the Construction Documents; that the construction will be free from faults and defects; and that the construction will conform with the requirements of the Construction Documents. **CMAR** shall be responsible for correcting all items that do not comply with the Construction Documents at its sole expense without cost to **OWNER**.
- 7.13 In accordance with the General Conditions provisions regarding record documents and **OWNER's** Project Closeout Procedures, **CMAR** shall maintain and deliver the required documents that describe changes or deviations from the Construction Documents that occurred during construction and that reflect the actual "record drawings" of the completed Work.

## ARTICLE 8 CONSTRUCTION PHASE FEE

**CMAR's** Construction Phase Fee is the maximum amount payable to **CMAR** for overhead and profit incurred in the performance of the Work that is not specifically identified as being eligible for reimbursement by **OWNER** elsewhere in this Agreement. References in the General Conditions to **CMAR's** "overhead" and "profit" mean **CMAR's** Construction Phase Fee. The Construction Phase Fee includes, but is not limited to, the following items:

- 8.1 All profit, profit expectations and costs associated with profit-sharing plans such as personnel bonuses, incentives, and rewards; company stock options; or any other like expenses of **CMAR**.
- 8.2 Salaries of **CMAR's** officers, project manager(s), estimators, schedulers and all other employees not stationed at the Project site and performing services directly related to the Project.
- 8.3 Any and all overhead, labor or general expenses of any kind unless specifically allowed under the General Conditions. These costs include, but are not limited to, costs for the purchase, lease, rental of or allowance for vehicles and their maintenance, radios/communication equipment, jobsite computers and other business equipment, and specialized telephone systems, including cellular/digital phones; trade or professional association dues; cost for relocation of any of **CMAR's** personnel; and travel, per diem and subsistence expense of **CMAR**, its officers or employees except as specifically allowed under the General Conditions or specifically delineated elsewhere in the Contract Documents.
- 8.4 Any financial costs incurred by **CMAR**, including the cost of capital or interest on capital, regardless of whether it is related to the Project, and costs associated with construction warranty reserves.
- 8.5 Any legal, accounting, professional or other similar costs incurred by **CMAR**, including costs incurred in connection with the prosecution or defense any dispute, mediation, arbitration, litigation or other such proceeding related to or arising from the Project.
- 8.6 Any Federal and/or State income and franchise taxes paid by **CMAR**. Any fines, penalties, sanctions or other levies assessed by any governmental body against **CMAR**.
- 8.7 Any cost arising out of a breach of this Agreement or the fault, failure or negligence of **CMAR**, its Subcontractors, or any person or entity for whom they may be liable. These costs include, without limitation: costs to remedy defective, rejected, or nonconforming Work, materials or equipment; costs due to failure to coordinate the Work or meet WPS milestones; costs arising from **CMAR's** contractual indemnification obligations; liquidated or actual damages imposed by **OWNER** for failure to complete the Work within the Contract Time; costs due to the bankruptcy or insolvency of any Subcontractor; and damage or losses to persons or property.
- 8.8 The cost of any and all insurance deductibles payable by **CMAR** and costs due to the failure of **CMAR** or any Subcontractor to procure and maintain insurance as and to the extent required by this Agreement.

8.9 Any and all costs that would cause the Guaranteed Maximum Price to be exceeded.

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

## ARTICLE 9 PAYMENTS

**CMAR** shall comply with all requirements and procedures set forth in Article 9 ("Payments and Completion") of the General Conditions.

### 9.1 General Requirements

- 9.1.1 Each Schedule of Values submitted with an Application for Payment shall include the originally established value for each Work classification line item or subcontract and shall identify any revisions to the costs or cost estimates for each work classification or subcontract. The format and tracking method of the original Schedule of Values and of all updates shall be subject to approval by **OWNER**. At all times, the estimated cost of performing the uncompleted and unpaid portion of the Work, including **CMAR's** overhead and profit, shall not exceed the unpaid balance of the GMP less the retainage held by **OWNER** on Work previously completed.
- 9.1.2 Retainage, as specified in the General Conditions, will be withheld from the entire amount approved in an Application for Payment, including the Cost of the Work, General Conditions, and **CMAR's** Construction Phase Fee.
- 9.1.3 **OWNER** is a political subdivision of the State of Texas and materials and services utilized in the construction of the Project may be exempted from state and local taxes. **CMAR** is responsible for taking full advantage of all tax exemptions applicable to the Project. **OWNER** will deduct from the Applications for Payment and from the Request for Final Payment any taxes paid for materials or services that were entitled to tax exemption, as specified in the GMP Proposal.
- 9.1.4 This Agreement is subject to the assessment of liquidated damages against **CMAR**. Amounts assessed as liquidated damages, and other amounts to which **OWNER** is entitled by way of setoff or recovery, may be deducted from any moneys due **CMAR**.
- 9.1.5 **OWNER** shall have the right to withhold from payments due **CMAR** such sums as are necessary to protect **OWNER** against any loss or damage which may result from negligence by **CMAR** or any Subcontractor or failure of **CMAR** or any Subcontractor to perform their obligations under this Agreement.
- 9.1.6 Notwithstanding any other contractual provision to the contrary, **OWNER** shall not be obligated to make any payment to **CMAR** for any reason enumerated in Article 9 of the General Conditions and under any of the following circumstances:
- 9.1.6.1 **CMAR** fails to perform the Work in accordance with the Contract Documents or is otherwise in material breach or default under this Agreement;
- 9.1.6.2 The payment request includes services that are not performed in accordance with the Construction Documents; provided, however, **OWNER** shall pay for those services performed in accordance with the Construction Documents;
- 9.1.6.3 The payment request has insufficient documentation to support the amount of payment requested for Project costs; provided, however, **OWNER** shall pay for allowable Project costs for which there is sufficient documentation;

- 9.1.6.4 **CMAR** is in violation of the Prevailing Wage requirements or has failed to make payments promptly to Subcontractors or other third parties used in connection with any services or materials for which **OWNER** has made payment to **CMAR**;
- 9.1.6.5 If **OWNER**, in its good faith judgment, determines that the unpaid balance of the GMP is not sufficient to complete the Work in accordance with the Construction Documents;
- 9.1.6.6 **CMAR** has failed to complete the Work in accordance with the Work Progress Schedule requirements or if **OWNER**, in its good faith judgment, determines that the remaining Work will not be completed within the agreed timeframe;
- 9.1.6.7 **CMAR** is insolvent, makes a general assignment for the benefit of its creditors or otherwise seeks protection under the laws and regulations of the bankruptcy courts; or
- 9.1.6.8 **CMAR** fails to obtain, maintain or renew insurance coverage as required by this Agreement.
- 9.1.6.9 No partial payment made by **OWNER** will constitute, or be construed to constitute, final acceptance or approval of the work to which the partial payment relates or of the documentation provided in support of the partial payment. No partial payment made by **OWNER** will constitute, or be construed to constitute, a release of **CMAR** from any of its obligations or liabilities with respect to the Project.
- 9.1.6.10 **OWNER** shall have the right to verify and audit the details of **CMAR's** billings, certificates, accountings, cost data, and statements, either before or after payment, by (1) inspecting the books and records of **CMAR** during normal business hours; (2) examining any reports with respect to the Project; (3) interviewing **CMAR's** employees; (4) visiting the Project site; and (5) any other reasonable action. **CMAR's** records must be kept on the basis of generally accepted accounting principles.

## 9.2 Construction Phase Payments

- 9.2.1 Payments for Construction Phase Services will be made as provided for in the General Conditions and **OWNER's** General Requirements Specifications. All payment requests must be submitted on an Application for Payment with a Schedule of Values approved by **OWNER** and include all required attachments identifying payments to Historically Underutilized Businesses and to all Subcontractors. Payment for approved Change Orders will be made as part of **CMAR's** Application for Payment. Failure to comply with **OWNER's** monthly HUB reporting requirements described in Article 21 may cause rejection of the application by **OWNER** and its return to **CMAR**.
- 9.2.1.1 **CMAR's** Construction Phase Fee must be shown as a separate line item on the Schedule of Values. Payment of **CMAR's** Construction Phase Fee will be made with each Application for Payment in the same proportion as the percentage completion of the Cost of the Work of the Project.
- 9.2.1.2 For General Conditions Costs, **CMAR's** Application for Payment must include complete copies of all receipts, invoices with check vouchers or other evidence of payment, payrolls, and any and all other evidence which **OWNER** or its designated representatives shall deem necessary to support the amount requested. This information is subject to audit and payment for these costs is dependent on **OWNER's** receipt of accurate and complete records of all transactions. **OWNER** may reduce the amount requested for General Conditions Costs in any Application for Payment if **OWNER**, in its good faith judgment, determines that the unpaid balance of the General Conditions line item in the Schedule of Values is not sufficient to fund necessary General Conditions Costs for the remainder of the Project.
- 9.2.1.3 Pay requests for Subcontractor work included in an Application for Payment must not exceed the percentage of Work allocated to that Subcontractor for each respective Schedule of Values work classification which has been actually completed and must not exceed the total value of the subcontract

amount. Payment to Subcontractors must comply with the requirements of Article 9 of the General Conditions.

9.2.1.4 Final Payment will be made in accordance with the provisions of Article 9 of the General Conditions.

9.2.1.5 **OWNER** shall have no obligation to make Final Payment until a complete and final accounting of all the allowable costs has been submitted by **CMAR** and has been audited and verified by **OWNER** or **OWNER's** representatives.

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

9.2.1.7 The acceptance by **CMAR** or **CMAR's** successors of Final Payment under this Agreement, will constitute a full and complete release of **OWNER** from any and all claims, demands, and causes of action whatsoever that **CMAR**, its Subcontractors, suppliers and consultants or any of their successors or assigns have or may have against **OWNER** arising from the Project or any provision(s) of this Agreement except for those previously made in writing and identified by **CMAR** as unsettled at the time of the Request for Final Payment.

## ARTICLE 10 DIRECT CONSTRUCTION COST

Direct Construction Cost means the sum of the amounts that **CMAR** actually and necessarily incurs constructing the Project in strict compliance with the Construction Documents. Direct Construction Cost includes only the cost categories set forth in this Article and does not include the Construction Phase Fees unless specifically noted. References in the General Conditions to adjustments in "cost" or "costs" mean the Direct Construction Cost.

### General Conditions Costs

10.1 **CMAR** is entitled to receive payment for the actual cost of the allowable General Conditions items incurred after receipt of a Notice to Proceed with Construction from **OWNER** through Substantial Completion of the Project, plus 30 calendar days. **CMAR** is not entitled to reimbursement for General Conditions Costs incurred before receipt of the Notice to Proceed. General Conditions Costs incurred after Substantial Completion, plus 30 calendar days, must be approved in advance by **OWNER**.

Allowable General Conditions items are identified below and by the attached Exhibit A. These items must be included in the General Conditions cost amount shown as a line item in the Guaranteed Maximum Price Proposal and as detailed on the Schedule of Values. Items not specifically included below or in Exhibit A will not be allowed as General Condition Costs.

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

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

- 10.1.3 Costs of materials, supplies, temporary facilities, equipment, and hand tools (except those customarily owned by construction workers), supplied to the Project site by **CMAR**, if such items are fully consumed in the construction of the Work and are included in the list of allowable General Condition Line Items. Cost for used items shall be based on fair market value and may include transportation, installation, and minor maintenance costs, and removal costs. If an item is not fully consumed in the construction of the Work, its cost will be based on actual cost of the item less its fair market salvage value.
- 10.1.4 Rental charges for temporary facilities, equipment, and hand tools (except those customarily owned by construction workers), supplied to the Project site by **CMAR**, provided they are included in the list of allowable General Condition Line Items and **OWNER** has approved the rentals and the rental rates in advance and in writing. Rental rates may include transportation, installation, and minor maintenance costs, and removal costs. For tools, machinery or construction equipment rented directly from **CMAR**, the rental rate, including freight and delivery costs and all operating expenses except labor, shall be approved in advance by **OWNER** and shall be in accordance with the "Rental Rate Blue Book for Construction Mobilization Costs" published by Primedia, latest edition, but no higher than the prevailing competitive rates for rental of similar equipment in the Project vicinity.
- 10.1.5 The aggregate rental cost of any item charged to **OWNER** must not exceed eighty percent (80%) of the purchase price and maintenance cost of the item. If the anticipated aggregate rental cost for an item of equipment exceeds eighty percent (80%) of the purchase and maintenance price, **CMAR** shall purchase the equipment and turn it over to **OWNER** upon Final Completion of the Work or, at **OWNER**'s option, credit **OWNER** with the fair market resale value of the item.
- 10.1.6 Permit and inspection fees that are not subject to exemption.
- 10.1.7 Premiums for insurance and bonds to the extent directly attributable to this Project.
- 10.1.8 Governmental sales and use taxes directly attributable to the General Conditions Items that are not subject to exemption. Taxes paid on materials or services that were entitled to tax exemption will not be reimbursed by **OWNER** as Direct Construction Costs.

## 10.2 Cost of the Work

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

- 10.2.1 Costs of materials and equipment purchased directly by **CMAR** and incorporated into or consumed in the performance of the Work, including transportation charges, and a reasonable and customary allowance for waste and spoilage. Payment for stored materials is subject to the General Conditions and **OWNER**'s General Requirements Specifications.
- 10.2.2 Costs of site debris removal and disposal in accordance with all applicable laws and regulations if not otherwise specifically provided for under the General Conditions Costs.
- 10.2.3 Payments made to Subcontractors and their vendors or suppliers by **CMAR** for the subcontract work in accordance with the Construction Documents and the requirements of the subcontracts with the Subcontractors, vendors or suppliers.
- 10.2.4 Payments earned by **CMAR** for self-performed subcontract work, other than General Conditions work, in accordance with the Construction Documents and the terms of this Agreement and approved by **OWNER**.
- 10.2.5 Testing fees borne by **CMAR** pursuant to the General Conditions.

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

### 10.3 CMAR'S Contingency

- 10.3.1 The Guaranteed Maximum Price Proposal may include **CMAR's** Contingency amount to be used to fund increases in the Direct Construction Cost of the Project identified through the refinement, development and completion of the Construction Documents or procurement of the Work.
- 10.3.2 Any re-allocation of funds from **CMAR's** Contingency to cover increases in the Direct Construction Cost must be approved by **OWNER** in advance and in writing, such approval not to be unreasonably withheld. In written requests to use **CMAR's** Contingency, **CMAR** shall provide detailed documentation of the scope of work affected and the bases for any increases in costs.
- 10.3.3 **CMAR's** Contingency is specifically not to be used for **CMAR** rework, unforeseen conditions, cost increases caused by lack of coordination or communication with **A/E** or trade Subcontractors, or to correct errors or omissions in the Construction Documents.
- 10.3.4 As the buyout of the Work progresses, **CMAR's** Contingency amount will be reduced by mutual agreement of **OWNER** and **CMAR**. Any balance in **CMAR's** Contingency fund remaining at the end of the buyout will be returned to **OWNER** as savings.

## ARTICLE 11 CONTRACT SAVINGS, ALLOWANCES, REBATES & REFUNDS

- 11.1 If the allowable, final, verified, audited amount of the General Conditions Costs, Cost of the Work, and **CMAR's** Contingency is less than the amount established for each of those categories in the originally approved Guaranteed Maximum Price Proposal, the entire difference shall be credited to **OWNER** as savings, and the final GMP shall be adjusted accordingly. When buyout of the Project is at least 90% complete, **OWNER** may recognize any savings achieved to that point by issuing a deductive change order for the saved amount.
- 11.2 **OWNER** will be entitled to deduct amounts for the following items from any Application for Payment or from the Request for Final Payment submitted by **CMAR**:
- 11.2.1 The fair market value of all tools, surplus materials, construction equipment, and temporary structures that were charged to the Work (other than rental items) but were not consumed during construction or retained by **OWNER**. Upon completion of the Work or when no longer required, **CMAR** shall either credit **OWNER** for the fair market value (as approved by **OWNER**) for all surplus tools, construction equipment and materials retained by **CMAR** or, at **OWNER's** option, use commercially reasonable efforts to sell the surplus tools, construction equipment and materials for the highest available price and credit the proceeds to **OWNER's** account.
- 11.2.2 Discounts earned by **CMAR** through advance or prompt payments funded by **OWNER**. **CMAR** shall obtain all possible trade and time discounts on bills for material furnished, and shall pay bills within the highest discount periods. **CMAR** shall purchase materials for the Project in quantities that provide the most advantageous prices to **OWNER**.
- 11.2.3 Rebates, discounts, or commissions obtained by **CMAR** from material suppliers or Subcontractors, together with all other refunds, returns, or credits received for materials, bond premiums, insurance and sales taxes.
- 11.2.4 Deposits made by **OWNER** and forfeited due to the fault of **CMAR**.

- 11.2.5 Balances remaining on any Allowances, **CMAR's** Contingency, or any other identified contract savings. **OWNER** shall be entitled to recover any net savings realized between the GMP and the buyout price for subcontracting work once the buyout is complete. During the buyout **CMAR** may use savings from one procurement effort to offset overages in other procurement efforts, so long as the total Cost of Work proposed in the GMP does not increase.
- 11.3 **OWNER** shall be entitled to recognize and recover 100% of any savings identified by cost review or audit at any time, before or after Final Payment.

## ARTICLE 12 OWNERSHIP AND USE OF DOCUMENTS

- 12.1 Drawings, specifications and other documents prepared by **A/E**, its consultants, or other consultants retained by **OWNER** for the Project that describe the Work to be executed by **CMAR** are and will remain the property of the **OWNER** whether the Project for which they are made is constructed or not. **CMAR** shall be permitted to retain one record set of the Construction Documents. ~~**CMAR** and its Subcontractors are authorized to reproduce and use portions of the Construction Documents as necessary and appropriate for the execution of the Work. **CMAR** and its Subcontractors shall not use the Construction Documents on any other projects.~~
- 12.2 Submission or distribution of the Construction Documents to meet official regulatory requirements or for other purposes in connection with the Project will not diminish **OWNER's** or other author's rights.
- 12.3 The **CMAR** will be furnished electronic copies of the Drawings and Specifications. Complete or partial sets of the Drawings and Specifications may be purchased at reproduction cost.

## ARTICLE 13 TIME

- 13.1 **TIME LIMITS STATED ARE OF THE ESSENCE OF THIS AGREEMENT AND THE OTHER CONTRACT DOCUMENTS.**
- 13.2 Unless otherwise approved, **OWNER** and **CMAR** shall perform their respective obligations under this Agreement as expeditiously as is consistent with reasonable skill and care and the orderly progress of the Work.
- 13.3 Prior to commencement of the Construction Phase Services and concurrently with submission of the Guaranteed Maximum Price Proposal, **CMAR** shall submit an up-to-date WPS for the performance of Construction Phase Services as specified. The WPS shall include reasonable periods of time for **OWNER's** and **A/E's** review and approval of shop drawings and submissions and for the approval of other authorities having jurisdiction over the Project.
- 13.4 **CMAR** shall achieve Substantial Completion of the Work and Final Completion of the Work, as such terms are defined in the General Conditions, on or before the dates agreed to in the GMP Proposal, subject to time extensions granted by Change Order.
- 13.5 THE TIMES SET FORTH FOR COMPLETION OF THE WORK IN THE NOTICE TO PROCEED AND THE GMP PROPOSAL ARE ESSENTIAL ELEMENTS OF THIS AGREEMENT.
- 13.6 The Construction Phase will be deemed to commence on the date specified in a written Notice to Proceed issued by **OWNER** after approval of the Guaranteed Maximum Price Proposal.

## ARTICLE 14 TERMINATION OF AGREEMENT

14.1 The rights of the Parties' to terminate this Agreement are as set forth in Article 14 of the General Conditions.

14.2 In addition, this Agreement may be terminated:

14.2.1 during the Pre-Construction Phase by either party upon fifteen (15) days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination and the breach is not cured or a plan to cure the breach acceptable to the non-breaching party is not established within the fifteen (15) day period;

14.2.2 by **OWNER** during the Pre-Construction Phase upon at least three (3) business days written notice to **CMAR** in the event that the Project is to be temporarily or permanently abandoned; and

14.2.3 by **OWNER** at the GMP Proposal stage upon at least three (3) business days written notice to **CMAR** in the event that the parties are unable or unwilling to agree on a GMP Proposal.

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

14.4 Termination of this Agreement will not relieve **CMAR** or any of its employees, subcontractors, or consultants of liability for violations of this Agreement or for any act or omission, or negligence, of **CMAR** related to the Project. In the event of a termination, **CMAR** expressly acknowledges the right of **OWNER** to employ a substitute Construction Manager at Risk to complete the services under this Agreement.

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

## ARTICLE 15 PRE-EXISTING CONDITIONS & DESIGN ERRORS AND OMISSIONS

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

15.2 **CMAR** acknowledges that as part of its Pre-Construction Phase Services it shall participate in the review of the Construction Documents. **CMAR**'s participation in the design process will be instrumental in preparing its Guaranteed Maximum Price Proposal for the Work. Before submitting its Guaranteed Maximum Price Proposal, the **CMAR** shall review the drawings, specifications and other Construction Documents and notify **OWNER** of any errors, omissions or discrepancies in the documents of which it is aware, and report such findings in accordance with Article 4 of the General Conditions. **CMAR** shall not make or be entitled to any claim for any adjustment to the Contract Time or the GMP for errors or omissions in the Construction Documents that **CMAR** discovered or, in the exercise of reasonable care, should have discovered in **CMAR**'s Pre-Construction Phase design review process that **CMAR** did not bring to the attention of **OWNER** and A/E in a timely manner.

## ARTICLE 16 BONDS AND INSURANCE

- 16.1 Upon execution of this Agreement, **CMAR** shall provide a security bond on the form provided by **OWNER** in the amount of 5% of the AACC. The surety for a security bond shall meet the same requirements as set forth for payment and performance bonds.
- 16.2 Upon acceptance by **OWNER** of a Guaranteed Maximum Price Proposal, **CMAR** shall provide performance and payment bonds on forms prescribed by **OWNER** and in accordance with the requirements set forth in the Contract Documents. The penal sum of the payment and performance bonds must be equal to the GMP. If construction is phased or staged with different Guaranteed Maximum Prices established at different times, the penal sum of the bonds must be increased at the start of each stage or phase based on the cumulative total value of all Guaranteed Maximum Prices in effect.
- 16.3 **CMAR** shall not commence work under this Agreement until it has obtained all required insurance and until evidence of the required insurance has been reviewed and approved by **OWNER**. **OWNER**'s review of the insurance will not relieve nor decrease the liability of the **CMAR**. Prior to commencing any work under this Agreement, **CMAR** shall provide evidence of all insurance coverages described in Article 11 of the General Conditions.
- 16.4 The cost of premiums for any additional insurance coverage desired by **CMAR** in excess of that required by this Agreement, the General Conditions or the other Contract Documents will be borne solely by **CMAR** out of its fees and not included in the GMP Proposal as a Direct Construction Cost.

#### ARTICLE 17 DISPUTE RESOLUTION

- 17.1 DISPUTES AND APPEALS. The Purchasing Agent acts as the County representative in the issuance and administration of this Agreement in relation to disputes. Any document, notice, or correspondence not issued by or to the Purchasing Agent in relation to disputes is void unless otherwise stated in this Agreement. If the **CMAR** does not agree with any document, notice, or correspondence issued by the Purchasing Agent, or other authorized County person, the **CMAR** must submit a written notice to the Purchasing Agent within ten (10) calendar days after receipt of the document, notice, or correspondence outlining the exact point of disagreement in detail. If the matter is not resolved to the **CMAR**'s satisfaction, the **CMAR** may submit a written Notice of Appeal to the Commissioners Court, through the Purchasing Agent if the Notice is submitted within ten (10) calendar days after receipt of the unsatisfactory reply. The **CMAR** then has the right to be heard by Commissioners Court.
- 17.2 When mediation is acceptable to both parties in resolving a dispute arising under this Agreement, the parties agree to use a mutually agreed upon mediator, or person appointed by a court of competent jurisdiction for mediation as described in the Tex. Civ. Prac. And Rem. Code, 154.023. Unless both parties are satisfied with the result of the mediation, the mediation will not constitute a final and binding resolution of the dispute. All communications within the scope of the mediation must remain confidential as described in Tex. Civ. Prac. And Rem. Code 154.073, unless both parties agree, in writing, to waive the confidentiality.

#### ARTICLE 18 INDEMNITY

- 18.1 SEE ARTICLE 4 OF THE GENERAL CONDITIONS FOR **CMAR**'S INDEMNIFICATION OBLIGATIONS.
- 18.2 The indemnities contained in this Agreement, including the indemnities set forth in Article 4 of the General Conditions, will survive the termination of this Agreement for any reason whatsoever.

#### ARTICLE 19 SPECIAL WARRANTIES

- 19.1 Notwithstanding anything to the contrary contained in this Agreement, **OWNER** and **CMAR** agree and acknowledge **OWNER** is entering into this Agreement in reliance on **CMAR's** represented expertise and ability to provide construction management services. **CMAR** agrees to use its best efforts, skill, judgment, and abilities to perform its obligations and to further the interests of **OWNER** in accordance with **OWNER's** requirements and procedures.
- 19.2 **CMAR** represents, and agrees that it will perform its services in accordance with the usual and customary standards of **CMAR's** profession or business and in compliance with all applicable national, federal, state, municipal, laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction over the Project. **CMAR** agrees to bear the full cost of correcting **CMAR's** negligent or improper work and services, those of its consultants and subcontractors, and any harm caused by the negligent or improper work or services.
- 19.3 **CMAR's** duties will not be diminished by any approval by **OWNER** nor shall **CMAR** be released from any liability by any approval by **OWNER**, it being understood that **OWNER** is ultimately relying upon **CMAR's** skill and knowledge in performing the services required hereunder.
- 19.4 **CMAR** represents and agrees that all persons connected with **CMAR** directly in charge of its services are duly registered and/or licensed under the laws, rules and regulations of any authority having jurisdiction over the Project if such registration and/or license is required.
- 19.5 **CMAR** represents and agrees to advise **OWNER** of anything of any nature in any drawings, specifications, plans, sketches, instructions, information, requirements, procedures, and other data supplied to **CMAR** (by **OWNER** or any other party) that is, in its opinion, unsuitable, improper, or inaccurate for the purposes for which the document or data is furnished.
- 19.6 **CMAR** represents and agrees to perform its services under this Agreement in an expeditious and economical manner consistent with good business practices and the interests of **OWNER**.
- 19.7 **CMAR** represents and agrees that there are no obligations, commitments, or impediments of any kind that will limit or prevent performance of its obligations under this Agreement.
- 19.8 **CMAR** represents and agrees that the individual executing this Agreement on behalf of **CMAR** has been duly authorized to act for and to bind **CMAR** to its terms.
- 19.9 Except for the obligation of **OWNER** to pay **CMAR** certain fees, costs, and expenses pursuant to the terms of this Agreement, **OWNER** shall have no liability to **CMAR** or to anyone claiming through or under **CMAR** by reason of the execution or performance of this Agreement. Notwithstanding any obligation or liability of **OWNER** to **CMAR**, no present or future affiliate of **OWNER** or any agent, officer, or employee of **OWNER**, or anyone claiming under **OWNER** has or shall have any personal liability to **CMAR** or to anyone claiming through or under **CMAR** by reason of the execution or performance of this Agreement.

## ARTICLE 20

### CERTIFICATION OF NO ASBESTOS CONTAINING MATERIALS OR WORK

- 20.1 **CMAR** 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.
- 20.2 **CMAR** shall ensure that Texas Department of Health licensed individuals, consultants or companies are used for any required asbestos work including asbestos inspection, asbestos abatement plans/specifications, asbestos abatement, asbestos project management and third-party asbestos monitoring.
- 20.3 **CMAR** shall provide at Substantial Completion, a notarized affidavit to **OWNER** and **A/E** stating that no asbestos containing materials or work was provided, installed, furnished or added to the Project.

- 20.4 **CMAR** shall take whatever measures is deemed necessary to insure that all employees, suppliers, fabricators, materialmen, subcontractors, or their assigns, comply with this requirement.
- 20.5 All materials used on this Project shall be certified as non-Asbestos Containing Building Materials (ACBM). **CMAR** shall insure compliance with the following acts from all of its subcontractors and assigns:
- 20.5.1 Asbestos Hazard Emergency Response Act and the Regulations promulgated under the Act (AHERA—40 CFR 763, Subpart E);
- 20.5.2 National Emission Standards for Hazardous Air Pollutants (NESHAP— EPA 40 CFR 61, Subpart M, National Emission Standard for Asbestos);
- 20.5.3 Texas Asbestos Health Protection Rules (TAHPR—Tex. Admin. Code Title 25, Part 1, Ch. 295, Subchapter C, Asbestos Health Protection)
- 20.6 Every subcontractor shall provide a notarized statement that no ACBM has been used, provided, or left on this Project.
- 20.7 **CMAR** shall provide, in hard copy and electronic form, all necessary material safety data sheets (MSDS) of all products used in the construction of the Project to the Texas Department of Health licensed inspector or **A/E** who will compile the information from the MSDS and, finding no asbestos in any of the product, make a certification statement.
- 20.8 At Final Completion **CMAR** shall provide a notarized certification statement per TAC Title 25 Part 1, Ch. 295.34(c)(1) that no ACBM was used during construction of the Project.

## ARTICLE 21 MISCELLANEOUS PROVISIONS

- 21.1 Assignment. Neither party may assign any of the rights or duties created by this Agreement without the prior written approval of the other party. It is acknowledged by **CMAR** that no officer, agent, employee or representative of **OWNER** has any authority to assign any part of this Agreement unless expressly granted that authority by the Travis County Commissioners Court.
- 21.2 Antitrust. **CMAR**, by virtue of signing the contract, assigns to **OWNER** any and all claims for overcharges associated with the contract which arise under the antitrust laws of the United States, 15 U.S.C.A., Section 1, et seq. (1973).
- 21.3 Discrimination. **CMAR** warrants that upon execution of a contract with **OWNER**, **CMAR** will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of age, religion, race, color, sex, handicap, or national origin and will submit reports as **OWNER** may require to assure compliance.
- 21.4 Certification of Eligibility. This provision applies if the anticipated contract exceeds \$100,000. **CMAR** certifies that at the time of execution of this Agreement, it is not on the federal government's list of suspended, ineligible or debarred contractors and that **CMAR** has not been placed on this list between the time of its Proposal submission and the time of execution of this Agreement. If **CMAR** is placed on this list during the term of this Agreement, **CMAR** shall notify the Travis County Purchasing Agent. False certification or failure to notify may result in termination of this Agreement for default.
- 21.5 Solicitation Prohibition. **CMAR** represents and warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an understanding for a commission, percentage, brokerage, or contingent fee, excepting bonafide employees and established commercial selling agencies maintained by **CMAR** to secure business. If **CMAR** breaches this warranty, then **OWNER** shall have the right to terminate this Agreement without liability or in its discretion to deduct from the amount due to **CMAR** from **OWNER**, or otherwise recover, the full amount of commission, percentage, brokerage, or contingent fee.

- 21.6 Gratuities. **OWNER** may terminate this Agreement if it is found that **CMAR** offered or gave gratuities to any employee of **OWNER** with the intent to influence the purchasing process in any manner, either before or after the award of this Agreement. The Travis County Commissioners Court shall determine if **CMAR** used gratuities to influence the process. If so determined and **OWNER** terminates this Agreement, **OWNER** shall be entitled to (i) pursue the same remedies against **CMAR** as it could pursue if this Agreement were breached by **CMAR**, and (ii) collect exemplary damages in an amount determined by the Travis County Commissioners Court which shall be not less than three nor more than ten times the amount given to any officer or employee of **OWNER**. The rights and remedies in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law.
- 21.7 Entire Agreement; Modifications. This Agreement supersedes all prior agreements, written or oral, between **CMAR** and **OWNER** and shall constitute the entire Agreement and understanding between the parties with respect to the Project. This Agreement and each of its provisions shall be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by **CMAR** and **OWNER**. Modifications to this Agreement will be processed in accordance with Article 12 of the General Conditions. **CMAR** EXPRESSLY ACKNOWLEDGES THAT NO OFFICER, AGENT, REPRESENTATIVE OR EMPLOYEE OF TRAVIS COUNTY HAS ANY AUTHORITY, EITHER EXPRESS OR IMPLIED, TO MODIFY OR AMEND THE TERMS OF THIS AGREEMENT UNLESS THE TRAVIS COUNTY COMMISSIONERS COURT HAS EXPRESSLY GRANTED THAT SPECIFIC AUTHORITY.
- 21.8 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.
- 21.9 Governing Law and Venue. This Agreement is construed under and in accordance with the laws of the State of Texas, and is performable in Travis County, Texas.
- 21.10 Waivers. The waiver of a breach of any term or condition of this Agreement is not a waiver of a subsequent breach of that term or condition, or a breach or subsequent breach of any other term or condition. No official, agent, employee, or representative of **OWNER** may waive any breach of any term or condition of this Agreement unless expressly granted that specific authority by the Travis County Commissioners Court. All rights of **OWNER** under this Agreement are specifically reserved and any payment, act or omission shall not impair or prejudice any remedy or right to **OWNER** under it. Any right or remedy in this Agreement shall not preclude the exercise of any other right or remedy under this Agreement or under any law, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies.
- 21.11 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective permitted assigns and successors.
- 21.12 Records Availability and Retention. **CMAR** agrees to maintain appropriate accounting records of costs, expenses, and payrolls of employees working on the Project, for a period of four (4) years after final payment for completed services and all other pending matters concerning this Agreement have been closed. **CMAR** further agrees that **OWNER** or its duly authorized representatives shall have access to any and all books, documents, papers and records of **CMAR**, which are directly pertinent to the services to be performed under this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
- 21.13 Severability. Should any term or provision of this Agreement be held invalid or unenforceable in any respect, the remaining terms and provisions will not be affected and this Agreement shall be construed as if the invalid or unenforceable term or provision had never been included.
- 21.14 Illegal Dumping. **CMAR** shall ensure that it and all of its Subcontractors and assigns prevent illegal dumping of litter in accordance with Title 5, *Texas Health and Safety Code*, Chapter 365.
- 21.15 Notices. All notices, consents, approvals, demands, requests or other communications relied on by the parties must be in writing. Written notice will be deemed to have been given when delivered in person to the designated representative of **CMAR** or **OWNER** for whom it is intended; or sent by U. S. Mail to the last known business address of the designated representative; or transmitted by fax machine to the last known business fax number of the designated representative. Mail notices are deemed effective upon receipt or on the third business day after the date of mailing, whichever is sooner. Fax

notices are deemed effective the next business day after faxing. Such notices of claims or disputes or other legal notices required by this Agreement must be sent to the following persons at the indicated locations:

If to **OWNER**: Roger El Khoury, M.S., P.E., Director  
Travis County Facilities Management Department  
P.O. Box 1748  
Austin, TX 78767

With copy to: Cyd Grimes, C.P.M., CPPO (or successor)  
Travis County Purchasing Agent  
P.O. Box 1748  
Austin, TX 78767

If to **CMAR**:

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

- 21.16 Funding Out. If at any time during the performance of this Agreement the Travis County Commissioners Court (i) fails to provide funding for this Agreement or during the following fiscal year of Travis County, Texas, (ii) does not adopt a budget for expenditures, or (iii) is able only to partially fund the expenditures required by this Agreement, then **OWNER** may, upon giving **CMAR** written notice of such failure to fund and termination, terminate this Agreement, or a part thereof, without any further liability, effective thirty (30) days after **OWNER** notifies **CMAR** in writing of such failure to fund and termination. **OWNER** shall pay **CMAR** for any portion of the Work completed up to the effective date. **CMAR** shall have no recourse as to sums beyond those for any portion of the Work performed up to the effective date, including without limitation any recovery for lost profits anticipated to be made hereunder.
- 21.17 Texas Public Information Act. Notwithstanding any provision in this Agreement and/or the Contract Documents to the contrary, disclosure of any information obtained by **OWNER** or any of its officials, employees, agents or representatives in connection with this Agreement shall be subject to the provisions of the Texas Public Information Act and all legal authorities relating thereto, including but not limited to opinions, decisions and letter rulings issued by the State Attorney General's Office.
- 21.18 Rights Cumulative. The rights and remedies herein granted to **OWNER** in the event of default are cumulative and the exercise thereof shall be without prejudice to the enforcement of any other right or remedy authorized by law or in the Contract Documents.
- 21.19 Interest on Overdue Payments. Accrual and payment of interest on overdue payments shall be governed by Chapter 2251 of the Texas Government Code.
- 21.20 Disbursements to Persons with Outstanding Debt. In accordance with Section 154.045 of the Local Government Code, if notice of indebtedness has been filed with the County Auditor or County Treasurer evidencing the indebtedness of **CMAR** to the State, the County or a salary fund, a warrant may not be drawn on a County fund in favor of **CMAR**, or an agent or assignee of **CMAR** until:
- (i) the County Treasurer notifies Proposer in writing that the debt is outstanding; and
  - (ii) the debt is paid.

"Debt" includes delinquent taxes, fines, fees, and indebtedness arising from written agreements with **OWNER**. **OWNER** may apply any funds **OWNER** owes **CMAR** to the outstanding balance of debt for which notice is made under this section, if the notice includes a statement that the amount owed by **OWNER** to **CMAR** may be applied to reduce the outstanding debt.

21.21 Tax Identification Number. **CMAR** shall provide **OWNER** with an Internal Revenue Form W-9, Request For Taxpayer Identification Number and Certification, that is completed in compliance with the Internal Revenue Code, its rules and regulations, before any contract funds are payable.

21.22 Historically Underutilized Businesses (HUB) Program Reporting Requirements.

HUB Program Requirements.

In consideration of award of this Agreement to **CMAR**, there are certain requirements the **CMAR** will be requested to fulfill as they relate to the utilization of HUBs. In fulfilling these requirements, the HUB SUBCONTRACTING PARTICIPATION DECLARATION FORM (EXHIBIT B) should be completed and returned at least ten (10) days before entering into any subcontract. **CMAR** agrees to maintain a Subcontractor relationship with any HUB Subcontractors identified on the HISTORICALLY UNDERUTILIZED BUSINESS (HUB) DECLARATION Form. **CMAR** will make good faith efforts to meet or exceed the HUB participation goals in the Construction category for an overall 13.7% for Minority-Owned Business Enterprises (MBE) and an Overall 13.8% for Woman-Owned Business Enterprises (WBE). (*Sub-goals: 1.7% African-American, 9.7% Hispanic-American, 2.39% Native/Asian-American*) of the GMP. Additional information, along with completion instructions for these forms, is found in Section 2 of Exhibit B.

21.22.1 HUB SUBCONTRACTOR FORM COMPLETION INSTRUCTIONS

- A. Please type or print all required information required in the appropriate SECTION(S) of this Form. **FAILURE TO COMPLETE THE APPLICABLE PART(S) OF THIS FORM MAY RESULT IN YOUR BID OR PROPOSAL BEING DISQUALIFIED.**
- B. By completing this form and listing the Certified HUB Subcontractors, the **CMAR** indicates that he has contacted the listed HUBs and the authorized representatives agree as to price, terms and conditions, and scope of the proposed subcontract. Should this contract be awarded to your company you agree to subcontract with the listed HUBs for the price and at the terms, conditions, and scope as disclosed.
- C. Any additional efforts that were made by the **CMAR** should be documented and available upon request, as supporting documentation to this form. Completion of this form will aid in determining the level of effort that was put forth by the **CMAR** in soliciting HUB Subcontractors to participate on this contract.
- D. **CMAR** may go beyond the good faith efforts listed when soliciting HUB subcontractors.

21.22.2 If after disclosure of Certified HUB Subcontractors, and before or during performance of any subsequent subcontract, it becomes necessary to terminate or reduce a Subcontractor's contract, the Contractor is required to:

- A Complete the HUB Subcontractor/Subconsultant Change Form (EXHIBIT C) and submit to the HUB staff.
- B Make a good faith effort to substitute another Certified HUB Subcontractor, and if unable to, provide evidence why you could not.
- C Obtain pre-approval from the Travis County Purchasing Agent/or the HUB Coordinator of all changes involving Certified HUB Subcontractors. Modifications to the HUB Subcontracting Participation Declaration are permitted only after award of the bid and solely with the prior written approval of the Purchasing Office.

21.22.3 Subcontractor Tracking Software System.

The Travis County Purchasing Office implemented an electronic reporting system (Vendor Tracking System) to eliminate standard forms, and streamline the current manual process of tracking payments to all first-tier subcontractors/subconsultants by performing all such tracking procedures electronically.

The selected **CMAR** shall be responsible for the use of the system, and require all subcontractors/subconsultants to be responsible for system reporting.

Training and additional information regarding the use of this system will be provided to the **CMAR** by Travis County Purchasing Office HUB Staff after contract award, but prior to commencement of contract performance.

If you have any questions regarding this system or difficulty in locating Certified HUB Subcontractors contact the Travis County HUB staff at (512) 854-9700 for assistance.

21.23 List of Exhibits

The following exhibits are fully incorporated into this Agreement by reference:

- Ex. A General Conditions Costs
- Ex. B HUB Sub Declaration Form / Good Faith Effort Form
- Ex. C Subcontractor Change Form

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

**OWNER**

By: \_\_\_\_\_  
(original signature)

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
(original signature)

Date: \_\_\_\_\_

**CMAR**

By: \_\_\_\_\_  
(original signature)

Date: \_\_\_\_\_

Exhibit A – General Conditions Costs

				Unit Price	Total
<b>DIVISION 1</b>	<b>GENERAL REQUIREMENTS</b>				
<b>01 3000</b>	<b>Administrative Requirements</b>				
	Preconstruction Services		ls		
	Project Manager		wk		
	Superintendent		wk		
	Assistant Superintendent		wk		
	Field Office Assistant		wk		
	Safety Manager		wk		
	HUB Coordinator		wk		
	Labor Burden		ls		
	Other				
	Subtotal				
<b>01500</b>	<b>CONSTRUCTION TEMP. FACILITIES</b>				
	Temporary Office within limits of construction (no office trailer allowed on		ls		
	Telephone Installation		ls		
	CMR Fee		mo		
	Cellular monthly service		mo		
	Chemical Toilet Rental		mo		
	Drinking Water		mo		
	Chairs, File Cabinets, desk, plan table,		ls		
	Computer, Fax, printer		ls		
	Technical support		ls		
	Office supplies		mo		
	Reprographics		ls		
	Construction Supplies, materials, small tools		ls		
	Deliveries and postage		mo		
	Dumpsters should be in Cost of Work		XXX		
	Temp. Construction and Weather Protection		mo		
	Cleaning / Housekeeping		mo		
	Survey Cost		ls		
	Street Cleaning		ea		
	Final Cleaning		ls		
	Safety Equipment		ls		
	Warranties		ls		
	Other				
	Subtotal				
	<b>TOTAL DIVISION 1: GENERAL REQUIREMENTS</b>			<b>Grand Total</b>	

## Exhibit B– HUB Program Subcontracting Declaration

**Exhibit B**

**Travis County Government**  
**Assigned Contract #:** \_\_\_\_\_  
*(For County Office Use Only)*

**HISTORICALLY UNDERUTILIZED BUSINESS (HUB) PROGRAM SUBCONTRACTING DECLARATION**

The HUB Program policies and Minority and Woman-Owned Business **subcontracting goals** shall be applicable to the eligible procurement dollars spent in the areas of Construction, Commodities, Services, and Professional Services.

<input type="checkbox"/> <b>COMMODITIES</b>	<b>Overall MBE Goal:</b> 3.5%	<b>Sub-goals:</b> 0.3% African-American 2.5% Hispanic 0.7% Asian/Native-American	<b>Overall WBE Goal:</b> 6.2%
<input checked="" type="checkbox"/> <b>CONSTRUCTION</b>	<b>Overall MBE Goal:</b> 13.7%	<b>Sub-goals:</b> 1.7% African-American 9.7% Hispanic 2.3% Asian/Native-American	<b>Overall WBE Goal:</b> 13.8%
<input type="checkbox"/> <b>SERVICES</b>	<b>Overall MBE Goal:</b> 14.1%	<b>Sub-goals:</b> 2.5% African-American 9.9% Hispanic 1.7% Asian/Native-American	<b>Overall WBE Goal:</b> 15.0%
<input type="checkbox"/> <b>PROFESSIONAL SERVICES</b>	<b>Overall MBE Goal:</b> 15.8%	<b>Sub-goals:</b> 1.9% African-American 9.0% Hispanic 4.9% Asian/Native-American	<b>Overall WBE Goal:</b> 15.8%

**SECTION 1 BIDDER AND SOLICITATION INFORMATION**

Bidder Company Name:		State of Texas VID#:	
Address:	City:	State:	Zip Code:
Contact:	Phone No.:	Fax No.:	E-mail:
Project Name:	Total Bid Amount:	Solicitation #:	
Is your company a certified HUB? <input type="checkbox"/> Yes <input type="checkbox"/> No	Indicate Gender & Ethnicity:		
Certifying Agency (Check all applicable):	<input type="checkbox"/> State of Texas (HUB)	<input type="checkbox"/> City of Austin (M/WBE)	<input type="checkbox"/> Texas Unified Certification Program (TUCP) (DBE)

**Definitions:**

*HUB – Historically Underutilized Business • M/WBE – Minority/Women-Owned Business Enterprise • DBE – Disadvantage Business Enterprise*

The policy of the Travis County Purchasing Office is to ensure a "Good Faith Effort" (GFE) is made to assist certified HUB vendors and contractors in receiving contracts in accordance with the HUB Program policies and the Minority and Woman-owned Business (M/WBE) goals adopted by the Travis County Commissioners Court. Travis County encourages all Bidders to register as a County vendor through the County's online vendor registration.

*\*Prime Contractors who are awarded contracts with the County are required to make a "Good Faith Effort" to subcontract with HUBs. This includes professional services associated with the projects.*

**SECTION 2 SUBCONTRACTING INTENTIONS**

Percentage to be subcontracted to Certified HUBs:

Total MBE Dollars:	Total MBE Percentage:	Total WBE Dollars:	Total WBE Percentage:
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Check the box that applies to the Bidder:

- ☐ We are able to fulfill all subcontracting opportunities with our own resources. If circumstances necessitate the use of any subs, I agree to seek the timely authorization by the County and adhere to the submission of any required documentation. (Complete Sections 5, 6 and 8)
- ☐ We plan to subcontract some or most of the opportunities of this project and meet or exceed the set goals. (Complete Sections 3, 4, 6 and 8)
- ☐ We plan to utilize subcontractors on this project, but will not meet the set goals. (Complete Sections 3, 4, 5, 6 and 8)

**SECTION 3 DISCLOSURE OF CERTIFIED HUB SUBCONTRACTORS**

(Duplicate as necessary)

Travis County exercises the right to verify subcontractors listed on this project. It is the County's practice to consider ethnicity before gender when distinguishing HUB certifications and calculating goal achievement.

*Note: To be considered "certified" with the State of Texas, City of Austin or the Texas Unified Certification Program, please attach a current and valid certificate. Sub-goals are included to assist you in diversifying your subcontractors.*

Sub Company Name:		State of Texas VID#:	
Address:	City:	State:	Zip Code:
Contact:	Phone No.:	Fax No.:	E-mail:
Subcontract Amount:	Percentage:	Description of Work:	
Is your company a certified HUB? <input type="checkbox"/> Yes <input type="checkbox"/> No	Indicate Gender & Ethnicity:		
Certifying Agency (Check all applicable):	<input type="checkbox"/> State of Texas (HUB)	<input type="checkbox"/> City of Austin (M/WBE)	<input type="checkbox"/> Texas Unified Certification Program (TUCP) (DBE)

Sub Company Name:		State of Texas VID#:	
Address:	City:	State:	Zip Code:
Contact:	Phone No.:	Fax No.:	E-mail:
Subcontract Amount:	Percentage:	Description of Work:	
Is your company a certified HUB? <input type="checkbox"/> Yes <input type="checkbox"/> No	Indicate Gender & Ethnicity:		
Certifying Agency (Check all applicable):	<input type="checkbox"/> State of Texas (HUB)	<input type="checkbox"/> City of Austin (M/WBE)	<input type="checkbox"/> Texas Unified Certification Program (TUCP) (DBE)

Sub Company Name:		State of Texas VID#:	
Address:	City:	State:	Zip Code:
Contact:	Phone No.:	Fax No.:	E-mail:
Subcontract Amount:	Percentage:	Description of Work:	
Is your company a certified HUB? <input type="checkbox"/> Yes <input type="checkbox"/> No	Indicate Gender & Ethnicity:		
Certifying Agency (Check all applicable):	<input type="checkbox"/> State of Texas (HUB)	<input type="checkbox"/> City of Austin (M/WBE)	<input type="checkbox"/> Texas Unified Certification Program (TUCP) (DBE)

Sub Company Name:		State of Texas VID#:	
Address:	City:	State:	Zip Code:
Contact:	Phone No.:	Fax No.:	E-mail:
Subcontract Amount:	Percentage:	Description of Work:	
Is your company a certified HUB? <input type="checkbox"/> Yes <input type="checkbox"/> No	Indicate Gender & Ethnicity:		
Certifying Agency (Check all applicable):	<input type="checkbox"/> State of Texas (HUB)	<input type="checkbox"/> City of Austin (M/WBE)	<input type="checkbox"/> Texas Unified Certification Program (TUCP) (DBE)

<b>SECTION 4 DISCLOSURE OF NON-HUB SUBCONTRACTORS</b>				(Duplicate as necessary)
Travis County exercises the right to verify subcontractors listed on this project.				
Sub Company Name:			State of Texas VID#:	
Address:	City:	State:	Zip Code:	
Contact:	Phone No.:	Fax No.:	E-mail:	
Subcontract Amount:	Percentage:	Description of Work:		
Sub Company Name:			State of Texas VID#:	
Address:	City:	State:	Zip Code:	
Contact:	Phone No.:	Fax No.:	E-mail:	
Subcontract Amount:	Percentage:	Description of Work:		
Sub Company Name:			State of Texas VID#:	
Address:	City:	State:	Zip Code:	
Contact:	Phone No.:	Fax No.:	E-mail:	
Subcontract Amount:	Percentage:	Description of Work:		
Sub Company Name:			State of Texas VID#:	
Address:	City:	State:	Zip Code:	
Contact:	Phone No.:	Fax No.:	E-mail:	
Subcontract Amount:	Percentage:	Description of Work:		

<b>SECTION 5 NON-COMPLIANT FOR MEETING SET HUB GOALS CHECKLIST</b>	
If you were unable to meet the set goals for this project, select the box by the response(s) that best fits your situation.	
<input type="checkbox"/> All subs to be utilized are "Non-HUBs."	<input type="checkbox"/> HUBs solicited did not respond.
<input type="checkbox"/> HUBs solicited were not competitive.	<input type="checkbox"/> HUBs were unavailable for the following trade(s):

<b>SECTION 6 DETERMINATION OF "GOOD FAITH EFFORT" (GFE) CHECKLIST</b>
The following checklist shall be completed by the Bidder and returned with the response. This list contains the minimum efforts that should be put forth by the Bidder when attempting to achieve or exceed the HUB goals. The Bidder may go beyond the efforts listed below. If additional information is needed, the Bidder will be contacted by the HUB Program Staff. Select the box that describes your efforts.
<input type="checkbox"/> Divide the contract work into the smallest feasible portions to allow for maximum HUB Subcontractor participation, consistent with standard and prudent industry practices.
<input type="checkbox"/> Notify HUBs of work that the prime contractor plans to subcontract, allowing sufficient time for effective participation? The HUB Program encourages that three or more HUBs be notified per scope of work and given no less than five working days to respond. (The notification should contain adequate information about the project i.e. plans, specifications, and scope of work; Bonding and insurance requirements of the HUB subcontractor; and a point of contact within the Bidders organization.)
<input type="checkbox"/> If a bid was requested from a HUB and then rejected, was a written rejection notice detailing the reasons why they were not selected issued? If yes, provide a copy of the rejection letter.
<input type="checkbox"/> Provide notices of opportunities to minority or women trade organizations or development centers to assist in identifying potential HUBs by disseminating the information to their members/participants? If yes, attach correspondence.
<input type="checkbox"/> Bidder has (0) zero HUB participation. Provide an explanation

<b>SECTION 7 RESOURCES</b>			
<b>TRADE ASSOCIATIONS</b>	<b>PHONE (512)</b>	<b>FAX</b>	<b>E-mail/website</b>
Asian Construction Trade	926-5400	926-5410	<a href="http://www.acta-austin.com">www.acta-austin.com</a>
Austin Black Contractors	467-6894	467-9808	<a href="http://www.abcatx.com">www.abcatx.com</a>
Austin Metropolitan United Black Contractors	784-1891	255-1451	<a href="mailto:unism@sbcglobal.net">unism@sbcglobal.net</a>
Natl. Assoc. of Women in Construction	476-5534	476-8337	
US Hispanic Cont. Assoc. de Austin	922-0507	374-1421	<a href="http://www.ushca-austin.com">www.ushca-austin.com</a>
<b>CERTIFYING AGENCIES TRAVIS COUNTY RECOGNIZES</b>	<b>CERTIFYING AGENCIES VENDOR DATABASE WEBSITES</b>		
State of Texas Centralized Master Bidders List	<a href="http://www.cpa.state.tx.us/business.html">www.cpa.state.tx.us/business.html</a>		CMBL includes certified HUBs.
City of Austin Minority Vendor Database	<a href="http://www.austintexas.gov/department/small-and-minority-business">www.austintexas.gov/department/small-and-minority-business</a>		Certified Vendors Directory
Texas Unified Certification Program	<a href="http://www.dot.state.tx.us/business">www.dot.state.tx.us/business</a>		TUCP DBE Directory

<b>SECTION 8 AFFIRMATION</b>	
<p>As evidenced by my signature below, I certify that all the information provided is correct to the best of my knowledge. I am an authorized representative of the Bidder listed in SECTION 1, and that the information and supporting documentation submitted with HUB Forms are correct and true to the best of my knowledge.</p> <p>Bidder understands and agrees that, if awarded any portion of the solicitation:</p> <ul style="list-style-type: none"> <li>The Bidder must either utilize Travis County HUB Programs Vendor Tracking System (VTS) to report payments to sub-contractors on a monthly basis or submit monthly Payment Reports as requested by the HUB Program Coordinator.</li> <li>The Bidder must seek pre-approval from the HUB Program Coordinator prior to making any modifications to their HUB Sub-contracting Plan. The Bidder must complete a HUB Subcontractor/Subconsultant Change Form obtained from the HUB Program Staff. Return form via fax to 512-854-9185 or email <a href="mailto:hubstaff@co.travis.tx.us">hubstaff@co.travis.tx.us</a>.</li> <li>Travis County HUB Program Staff will perform a Good Faith Effort (GFE) Review, documenting the efforts put forth by the Bidder.</li> </ul>	
Name and Title:	Date:
E-mail Address:	Signature:
Provide contact information for the individual in your office who will handle invoicing for this project:	
Name and Title:	E-mail Address:
Phone No.:	Fax No.:
Please be reminded that Travis County is not party to your agreement executed with the subcontractors and subconsultants.	

**SECTION 00700  
GENERAL CONDITIONS**

**GENERAL CONDITIONS  
FOR  
TRAVIS COUNTY  
BUILDING AGREEMENTS**

**ARTICLE 1**

**1.1 CONTRACTUAL RELATIONSHIP**

- 1.1.1 The Agreement shall not be construed to create any contractual relationship of any kind between the Architect/Engineer and the CMAR. Nothing contained in the Agreement shall create any contractual relationship between the Owner or the Architect/Engineer and any Subcontractor or Sub-subcontractor, as those terms are defined herein.

**1.2 EXECUTION, CORRELATION, AND INTENT**

- 1.2.2 By executing the Agreement, the CMAR represents that he has visited the site, familiarized himself with the local conditions under which the Work is to be performed, and correlated his observations with the requirements of the Agreement.
- 1.2.3 The intent of the Agreement is to include all items necessary for the proper execution and completion of the Work. Work not covered in the Agreement shall be required if it is consistent therewith and is reasonably inferable as being necessary to produce the intended results. Words and abbreviations which have well-known technical or trade meanings are used in the Agreement in accordance with such recognized meanings.
- 1.2.4 The interrelation of the Specifications, the Drawings and the schedules (excluding the Work Progress Schedule) is as follows: the Specifications determine the nature and setting of the materials; the Drawings establish the quantities, dimensions and details of the materials and Work; and the schedules give the locations. Should the drawings disagree with another requirement, or with one another, or with the Specifications, the better quality or greater quantity of work or materials shall be performed or furnished. Figures given on the Drawings govern small scale drawings.
- 1.2.5 The organization of the Specifications into divisions, sections and articles, and the arrangement of the Drawings shall not control the CMAR in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.
- 1.2.6 Where any section of General Conditions is modified or deleted, or any paragraph, subparagraph or clause thereof is modified or deleted, unaltered provisions of that section, paragraph, subparagraph or clause remain in full force and effect.

**ARTICLE 2**

**ARCHITECT/ENGINEER**

**2.1 DEFINITION**

Architect/Engineer (or "A/E") is a person registered as an architect pursuant to Chapter 1051, Tex. Occ. Code, or a person defined as an engineer pursuant to Chapter 1001, Tex. Occ. Code. The term Architect/Engineer, as used in these General Conditions, shall include Architects, Engineers, or person having both skills. The term is used for ease of reference and does not imply skills which may not apply to the professional utilized in this Project. The definition of Architect/Engineer shall also include those consultants registered as a landscape architect

pursuant to Chapter 1051, Tex. Occ. Code, registered as a professional engineer pursuant to Chapter 1001, Tex. Occ. Code, and other firms employed to provide professional architectural or engineering services and having overall responsibility for the design of a project or a significant portion thereof. The Architect/Engineer is referred to throughout the Contract Documents as if singular in number and masculine in gender.

## 2.2 ADMINISTRATION OF THE AGREEMENT

- 2.2.1 The administration of the Agreement shall commence with the award of the Agreement, and shall terminate upon receipt of all closeout documentation and deliverables and certification of final payment of the Agreement by the County. The contracting plan will be based on a single CMAR (the "CMAR").
- 2.2.2 The Architect/Engineer will administer the Agreement as hereinafter described. The Architect/Engineer will be the Owner's representative during the Project on matters related to the intent and interpretation of the Contract Documents. The Architect/Engineer will advise and consult with the Owner. The Architect/Engineer will have authority to act on behalf of the Owner only to the extent provided in the Agreement.
- 2.2.3 The Architect/Engineer shall pay all fees associated with the Plan Review and site development permit to ensure that the Building Permit, as defined herein, is ready for CMAR at the beginning of the Project.
- 2.2.4 The Architect/Engineer will visit the site at intervals appropriate to the stage of construction to familiarize himself with the progress and quality of the Work and to determine if the Work is proceeding in accordance with the Contract Documents. However, the Architect/Engineer will not be required to make continuous on-site inspections to check the quality or quantity of the Work. On the basis of his on-site observations as an architect/engineer, he will keep the Owner informed of the progress of the Work, and will endeavor to guard the Owner against defects and deficiencies in the Work.
- 2.2.5 Neither the Architect/Engineer nor the Owner will be responsible for and will not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work. Neither the Architect/Engineer nor the Owner will be responsible for or have control or charge over the acts or omissions of the CMAR, Subcontractors, or any of their agents or employees, or any other person performing any of the Work or failure of any of the aforementioned to carry out the Construction Work in accordance with the Agreement Documents.
- 2.2.6 The Architect/Engineer and the Owner shall at all times have access to the Work wherever it is in preparation or progress. The CMAR shall provide facilities for such access so the Architect/Engineer and the Owner may perform their respective functions under the Agreement.
- 2.2.7 Based on the Architect/Engineer's observations and an evaluation of the CMAR's Applications for Payment, as defined herein, the Architect/Engineer may, upon the Owner's request, advise the Owner on the amounts owing to the CMAR.
- 2.2.8 The Architect/Engineer shall render interpretations necessary for the proper execution or progress of the Construction Work with reasonable promptness upon receipt of a written request from the Owner or the CMAR. He shall render written decisions, within a reasonable time but no greater than five (5) calendar days after receipt of Requests for Information (RFI's) and no more than ten (10) calendar days after receipt of submittals. The Architect/Engineer shall notify the County immediately if more time is required for reasonable cause. The County shall review the cause for the extension, and if it is justified, issue a time extension. Interpretations and decisions of the Architect/Engineer shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in written and/or graphic form. In his capacity as interpreter, he will endeavor to secure faithful performance by the CMAR.

- 2.2.9 The Architect/Engineer shall have the authority, with the concurrence of the County, to reject Work that does not conform to the Agreement Documents. When, in the Architect/Engineer's reasonable opinion, it is necessary or advisable in order to implement the intent of the Agreement Documents, the Architect/Engineer shall, with the County's prior approval, have authority to require special inspection or testing of the Construction Work in accordance with the provisions of the Agreement Documents, whether or not such Construction Work be then fabricated, installed or completed.
- 2.2.10 However, neither the Architect/Engineer's nor the Owner's authority to act under this subparagraph 2.2., nor any decision made by them in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the Architect/Engineer or the Owner to the CMAR, any Subcontractor, any of their agents or employees, or any other person performing any of the Work.
- 2.2.11 The Architect/Engineer and the Owner will review and approve or take other appropriate action upon CMAR's submittals, such as Shop Drawings, Product Data and Samples, as defined in Section 01300, but only for conformance with the design concept of the Work and with the information given in the Agreement. Such action shall be taken in accordance with the Submittal Schedule. The Architect/Engineer shall notify the County immediately of any potential delays in meeting the response time. The Architect/Engineer's approval of a specific item shall not indicate approval of any assembly of which the item is a component. Approval of a specific item by either the Architect/Engineer or the Owner shall not indicate approval of an assembly of which the item is a component. The Owner has the option to delegate review of any submittal to the Architect/Engineer as sole reviewer. Generally, all color selections must have Owner approval.
- 2.2.12 The Architect/Engineer shall prepare Change Orders, as defined herein, in accordance with Article 12, and will have authority to order minor changes in the Work provided such changes do not require an adjustment of the Contract Sum or the Substantial Completion Date.
- 2.2.13 In accordance with paragraph 9.8, upon receipt from the CMAR of a request for a Substantial Completion inspection with a list of items to be completed or corrected, the Architect/Engineer and Owner will perform an inspection. As a result of this inspection, the Architect/Engineer will prepare a punch list of the items needing correction. Upon determination by the County that the Construction Work has been substantially completed, the Architect/Engineer will issue a Certificate of Substantial Completion.
- 2.2.14 After the CMAR completes the required corrections, and notifies the Architect/Engineer, then the Owner will accompany the Architect/Engineer and the CMAR on the final inspection to ensure that the Construction Work has been completed in accordance with the Contract Documents and to the satisfaction of the Owner and the Architect/Engineer. Architect/Engineer will notify the Owner in writing that the Construction Work has been performed according to the Agreement Documents.
- 2.2.15 In accordance with paragraph 9.9, the Architect/Engineer shall receive from the CMAR and inspect all warranties, guarantees, bonds, O&M manuals and similar required material to make sure that all such materials are received and satisfy the requirements of the Agreement Documents. The Architect/Engineer will send to the Owner for review these close-out documents, and will issue a final Certificate for Payment upon compliance with the requirements of paragraph 9.9.
- 2.2.18 In case of the termination of the employment of the Architect/Engineer, the Owner shall appoint an architect/engineer, against whom the CMAR makes no reasonable objection, whose status under the Agreement shall be that of the former Architect/Engineer.

### **ARTICLE 3**

#### **THE OWNER**

##### **3.1 DEFINITION**

The Owner is the County of Travis and shall be referred to as if singular in number and masculine

in gender. The term Owner means the Travis County Commissioners Court, the Director of the Travis County Facilities Management Department (the "Director"), or authorized representative of the Director.

### **3.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

- 3.2.1 Unless otherwise provided in the Contract Documents, the Owner will furnish all surveys describing the physical characteristics, legal limitations, and utility locations for the site of the Project, and a legal description of the site.
- 3.2.2 Except as provided in subparagraph 4.7.1, or unless otherwise provided in the Contract Documents, the Owner shall secure and pay for necessary rights of way and easements required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.
- 3.2.3 Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in the orderly progress of the Work.
- 3.2.4 The Owner shall forward all instructions to the CMAR in writing. No communication or direction from the Owner shall be interpreted as a change to the Agreement unless provided in writing and processed as a Change Order in accordance with Article 12, Changes in Work.
- 3.2.5 The Owner shall approve and monitor the Work Progress Schedule.
- 3.2.6 The Owner shall observe the construction work for quality assurance, notify the CMAR in writing of defective work, and maintain a log of such deficiencies. This activity does not relieve the Architect/Engineer of his responsibility for construction observations as noted in subparagraph 2.2.4. The Owner's right to accept defective work is described in the Agreement and in Article 13.
- 3.2.7 The Owner shall maintain a log of outstanding issues until they are closed.
- 3.2.8 The foregoing are in addition to other duties and responsibilities of the Owner set forth in the Agreement and in these General Conditions.

### **3.3 OWNER'S RIGHT TO STOP THE WORK**

If the CMAR fails to correct defective work as required by Article 13 or persistently fails to carry out the Work in accordance with the Agreement, the Owner may, in writing, order the CMAR to stop the Work, or any portion thereof, until the cause for such order has been eliminated. However, this right of the Owner to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the CMAR or any other person or entity, except to the extent required by subparagraph 6.1.3.

### **3.4 OWNER'S RIGHT TO CARRY OUT THE WORK**

If the CMAR defaults or neglects to carry out the Work in accordance with the Agreement and fails within seven (7) days after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, after seven (7) days following receipt by the CMAR of any additional written notice and without prejudice to any other remedy he may have, make good such deficiencies. In such case an appropriate Change Order shall be issued deducting from the payments then or thereafter due the CMAR the cost of correcting such deficiencies, including compensation, if any, for the Architect/Engineer's additional services made necessary by such default, negligence, or failure. If the payments then or thereafter due the CMAR are not sufficient to cover such amount, the CMAR shall pay the difference to the Owner within thirty (30) days after receipt of written demand.

## **ARTICLE 4** **CMAR**

#### 4.1 DEFINITION

The CMAR is the person or entity identified as such in the Agreement and shall be referred to as if singular in number and masculine in gender. The term CMAR means the CMAR or his authorized representative.

#### 4.2 REVIEW OF CONTRACT DOCUMENTS

4.2.1 The CMAR shall exercise due diligence in carefully studying the Contract Documents and shall report to the Architect/Engineer and the Owner, in a timely manner, any error, inconsistency or omission he may discover. This obligation includes the CMAR's Pre-Construction Phase Services described in Article 5 and Article 15 of the Agreement. The report should be in the form of a Request for Information (RFI). For purposes of this paragraph 4.2, the RFI shall be considered "timely" if it is provided as soon as practicable but in no event later than 10 days after the CMAR's discovery of the error, inconsistency or omission. ~~The CMAR shall perform no portion of the Work at any time without the necessary part of the Agreement or, where required, approved Shop Drawings, Product Data, or Samples for such portion of the Work.~~

4.2.2 If the CMAR observes that any of the Contract Documents are at variance with applicable laws, statutes, building codes, or regulations in any respect, he shall promptly notify the Architect/Engineer and the Owner in writing. Any necessary changes shall be accomplished by appropriate modification, as described in the Agreement.

#### 4.3 SUPERVISION AND CONSTRUCTION PROCEDURES

4.3.1 The CMAR shall supervise and direct the Work, using his best skill and attention. He shall be solely responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work.

4.3.2 The CMAR shall be responsible to the Owner for the acts and omissions of his employees, Subcontractors and their agents and employees, and other persons performing any of the Work under a contract with the CMAR.

4.3.3 The CMAR shall not be relieved from his obligations to perform the Work either by the activities or duties of the Architect/Engineer in his administration of the Agreement, or by inspections, tests, or approvals required or performed under Article 7 by persons other than the CMAR.

4.3.4 In the execution of the Agreement, the CMAR must comply with all applicable state and federal laws, including but not limited to laws concerned with labor, equal employment opportunity, safety and minimum wages. The CMAR shall make himself familiar with and at all times shall observe and comply with all federal, state and local laws, ordinances and regulations which in any manner affect the conduct of the Work, and shall indemnify, save and hold harmless the Owner and its official representatives against any claim arising from violation of any such law, ordinance or regulation by himself or by his Subcontractor or his employees.

#### 4.4 LABOR AND MATERIALS

4.4.1 Unless otherwise provided in the Agreement, the CMAR shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

4.4.2 The CMAR shall at all times observe and conduct himself with strict discipline and shall enforce such strict discipline and good order among his employees. The CMAR shall not employ to perform the Work any unfit person or anyone not skilled in the task assigned to him. The CMAR and all workers employed by him shall have such skill and experience as will enable them to properly perform the duties assigned them. If, in the opinion of the Owner, the CMAR, or any person employed by the CMAR or a Subcontractor, does not perform the Work in a proper and skillful manner, or is

disrespectful, intemperate, disorderly, or otherwise objectionable, such person shall at the written request of the Owner be forthwith removed from the Project. If the person so removed is employed by the CMAR or a Subcontractor, such person shall be discharged and shall not be employed again on any portion of the Work without the written consent of the Owner. If the person so removed is the CMAR himself, the Owner may treat the incident giving rise to such removal as a breach of contract and may enforce any and all remedies for default provided herein. The CMAR shall furnish such suitable machinery, equipment, and construction forces as may be necessary, in the opinion of the Owner, for the proper prosecution of the Work. Failure to do so may cause the Owner to withhold all payments which have or may become due or the Owner may suspend the Work until his requests are complied with.

- 4.4.3 The risk of loss of the materials and equipment shall not pass to the Owner until final payment takes place. Title transfers to the Owner upon interim construction payments for such materials and equipment.

4.4.4 **Storage of Materials**

- 4.4.4.1 CMAR shall store materials to preserve their quality and fitness for the Work. When considered necessary by the Architect/Engineer or the Owner, the materials must be placed on wooden platforms or other hard, clean surfaces and not on the ground. The materials must be placed under cover when so directed. Stored materials shall be located so as to facilitate prompt inspection, and offsite storage shall be in an approved, bonded warehouse.

- 4.4.4.2 When approved by the Architect/Engineer, selected materials or products may be pretested and approved for use, provided they are stored in an area meeting the requirements set forth by the Architect/Engineer.

4.5 **WARRANTY**

The CMAR represents and warrants to the Owner and the Architect/Engineer that all materials and equipment furnished under this Agreement will be new unless otherwise specified, and that the Work will be of good quality, free from faults and defects, and in conformance with the Agreement. Any portion of the Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Owner, the CMAR shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The CMAR further represents and warrants to the Owner that all items delivered and all services rendered will conform to the Agreement Documents, and will be of merchantable quality, good workmanship, and free from defects. The CMAR further agrees to provide copies of applicable warranties or guaranties to the Architect/Engineer, who shall forward to the Owner upon completion. Copies will be provided within ten (10) days after the Certificate of Substantial Completion is issued. Return of merchandise under warranty shall be at the CMAR's expense.

4.6 **TAXES**

The CMAR shall comply with the provisions set forth in the Agreement regarding all sales, consumer, use, and other similar taxes for the Work or portions thereof.

4.7 **PERMITS, FEES, AND NOTICES**

- 4.7.1 The CMAR shall cooperate with applicable city or other governmental officials at all times where their jurisdiction prevails. The CMAR shall secure and pay for the building permit (as applicable) and for all permits, permanent utilities and governmental fees, licenses, and inspections necessary for the proper execution and completion of the Work which are legally required at the time the Bids are received. The Architect/Engineer will pay for TDLR review and inspection fees, site plan review and permit fees, and building permit review fees.

- 4.7.2 The CMAR shall give all notices and comply with all laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on the performance of the Work. The parties acknowledge that some of the ordinances, rules, regulations or orders of some public authorities may not be enforceable

against a County project.

4.7.3 If the CMAR observes that any of the Contract Documents are at variance with applicable laws, statutes, building codes, and regulations in any respect, he shall promptly notify the Architect/Engineer and Owner in writing, and any necessary changes shall be accomplished by appropriate modification, as described in the Agreement.

4.7.4 If the CMAR performs any Work when he knows or should know it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Architect/Engineer and the Owner, he shall assume full responsibility and shall bear all costs attributable thereto.

#### 4.8 ALLOWANCES

4.8.1 The CMAR shall include in the GMP all allowances stated in the Agreement Documents. Items covered by these allowances shall be supplied for such amounts and by such persons as the Owner may direct, but the CMAR will not be required to employ persons against whom he makes a reasonable objection.

4.8.2 Unless otherwise provided in the Agreement:

- A. these allowances shall cover the cost to the CMAR, less any applicable trade discount, of the materials and equipment required by the allowance delivered at the site, and all applicable taxes.
- B. the CMAR's costs for unloading and handling on the site, labor, installation costs, and other expenses contemplated for the original allowance shall be included in the GMP and not in the allowance; and
- C. whenever the costs are more than or less than the allowance, the GMP shall be adjusted accordingly by Change Order, as defined in the Agreement, the amount of which will recognize changes, if any, in handling costs on the site, labor, installation costs, overhead, profit, and other expenses.

#### 4.9 SUPERINTENDENT

The CMAR shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during the progress of the Work. The superintendent shall be satisfactory to the Owner and shall not be changed without written approval of the Owner. The superintendent shall represent the CMAR and all communications given to or by the superintendent shall be as binding as if given to or by the CMAR. Important communications shall be confirmed in writing.

#### 4.10 CMAR'S WORK PROGRESS SCHEDULE

The CMAR shall prepare and submit for the Owner's approval and Architect/Engineer's information a fully developed Work Progress Schedule ("WPS"), as such term is defined in the Agreement. The WPS shall relate to the entire Project as the Contract Documents require, and shall provide for expeditious and practicable execution of the Work. The WPS shall be in a format approved by the Owner and shall show the critical path through the project. The WPS shall directly relate to the Schedule of Values in a line-by-line manner. The CMAR shall adhere to the WPS. Should the CMAR depart more than seven (7) days from this schedule for the projected Substantial Completion Date, then CMAR shall deliver a plan to the Owner as to how CMAR shall reform his practices to return to the original WPS; or should the Owner allow, deliver a new WPS. The WPS shall be updated by the CMAR on a monthly basis (preceding each application for payment) and shall separately note any changes in logic and duration made since the previous update. Each update shall be submitted in electronic format as well as paper copy.

#### 4.11 DOCUMENTS AND SAMPLES

The CMAR shall maintain at the site for the Owner one record copy of the Plans and Specifications and any amendments related thereto or to other parts of the Agreement, in good order and marked currently to record all changes made during construction, and approved Shop Drawings, Product Data, and Samples. These shall be available to the Architect/Engineer and the Owner and shall be delivered to the Architect/ Engineer for the Owner upon completion of the Work.

#### **4.12 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES**

- 4.12.1 "Shop Drawings" shall mean drawings, diagrams, schedules, and other data specifically prepared for the Work by the CMAR or any Subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.
- 4.12.2 "Product Data" shall mean illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the CMAR to illustrate a material, product, or system for some portion of the Work.
- 4.12.3 "Samples" shall mean physical examples which illustrate materials, equipment or workmanship, and establish standards by which the Work will be judged.
- 4.12.4 The CMAR shall review, approve and submit, in accordance with Section 01300, so as to cause no delay in the Work or in the Work of the Owner or any separate CMAR, all Shop Drawings, Product Data, and Samples required by the Agreement.
- 4.12.5 By approving and submitting Shop Drawings, Product Data, and Samples, the CMAR represents that he has determined and verified all materials, field measurements, and field construction criteria related thereto, or will do so, and that he has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Agreement.
- 4.12.6 The CMAR shall not be relieved of responsibility for any deviation from the requirements of the Agreement by the Architect/Engineer's or the Owner's approval of Shop Drawings, Product Data, or Samples under subparagraph 2.2.10 unless the CMAR has specifically informed the Owner in writing of such deviation at the time of submission and the Owner has given written approval to the specific deviation. The CMAR shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data, or Samples by the Architect/Engineer's or the Owner's approval thereof.
- 4.12.7 No portion of the Work requiring submission of a Shop Drawing, Product Data, or Sample shall be commenced until the submittal has been approved by the Architect/Engineer and the Owner as provided in subparagraph 2.2. All such portions of the Work shall be in accordance with approved submittals.

#### **4.13 USE OF SITE**

The CMAR shall confine operations at the site to areas permitted by law, ordinances, permits, and the Agreement and shall not unreasonably encumber the site with any materials or equipment. If the Owner contemplates more than one contractor being on the Owner's property, then the CMAR shall respect the sites designated for work by other contractors.

#### **4.14 CUTTING AND PATCHING OF WORK**

- 4.14.1 The CMAR shall be responsible for all cutting, fitting, or patching that may be required to complete the Work or to make its several parts fit together properly.
- 4.14.2 The CMAR shall not damage or endanger any portion of the Work or the work of the Owner or the work of any contractors by cutting, patching or otherwise altering any work, or by excavation. The CMAR shall not cut or otherwise alter the work of the Owner or any other contractor except with the written consent of the Owner and of such other contractor. The CMAR shall not unreasonably withhold from the Owner or any other contractor his consent to cutting or otherwise altering the

Work.

**4.15 CLEANING UP**

- 4.15.1 The CMAR at all times shall keep the worksite free from accumulation of waste materials or rubbish caused by his operations. At the completion of the Work he shall remove all his waste materials and rubbish from and about the Project as well as all his tools, construction equipment, machinery, and surplus materials.
- 4.15.2 If the CMAR fails to clean up at the completion of the Work, the Owner may do so as provided in paragraph 3.4 and the cost thereof shall be charged to the CMAR.

**4.16 COMMUNICATIONS**

The CMAR shall forward all communications to the Owner with information copy to the Architect/Engineer. ~~Requests for technical information may be forwarded directly to the Architect/Engineer with information copy to the Owner.~~ The CMAR shall advise the Architect/Engineer and the Owner of coordination needs with other contractors on the Owner's property.

**4.17 ROYALTIES AND PATENTS; INTELLECTUAL PROPERTY INDEMNIFICATION**

- 4.17.1 The CMAR shall pay all royalties and license fees. If the CMAR has reason to believe that the design, process, or product specified is an infringement of a patent or other proprietary or intellectual property right of any third party, he shall be responsible for such loss unless he promptly gives such information to the Owner in writing. The CMAR warrants that all applicable patents, copyrights or other proprietary or intellectual property rights of any third party which may exist on items that will be supplied under the Agreement have been adhered to and further warrants that the Owner shall not be liable for any infringement of those rights. Warranties granted the Owner shall apply for the duration of this Agreement or for the life of equipment or supplies purchased, whichever is longer. The Owner must not extend use of the granted exclusive rights to any party other than the Owner's employees or those persons with whom the Owner has established a relationship aimed at furthering the public interest, and then only for official public uses. The Owner will not knowingly or intentionally violate any applicable patent, license, copyright or other proprietary or intellectual property right of any third party.
- 4.17.2 **CMAR SHALL PROTECT, DEFEND AND INDEMNIFY OWNER FROM AND AGAINST ALL CLAIMS, DAMAGES, JUDGMENTS AND LOSSES ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY UNITED STATES PATENT, COPYRIGHT, TRADE SECRET OR OTHER PROPRIETARY OR INTELLECTUAL PROPERTY RIGHT THAT ARISE OUT OF ANY OF THE WORK PERFORMED BY CMAR OR THE USE BY CMAR, OR BY OWNER AT THE DIRECTION OF CMAR, OF ANY ARTICLE OR MATERIAL. UPON BECOMING AWARE OF A SUIT OR THREAT OF SUIT FOR PATENT OR COPYRIGHT INFRINGEMENT, OWNER SHALL PROMPTLY NOTIFY CMAR AND CMAR SHALL BE GIVEN FULL OPPORTUNITY TO NEGOTIATE A SETTLEMENT. CMAR DOES NOT WARRANT AGAINST INFRINGEMENT BY REASON OF OWNER'S OR A/E'S DESIGN OF ARTICLES OR THEIR USE IN COMBINATION WITH OTHER MATERIALS OR IN THE OPERATION OF ANY PROCESS. IN THE EVENT OF LITIGATION, OWNER AGREES TO COOPERATE REASONABLY WITH CMAR AND PARTIES SHALL BE ENTITLED, IN CONNECTION WITH ANY SUCH LITIGATION, TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.**

**4.18 GENERAL INDEMNIFICATION**

- 4.18.1 **TO THE FULLEST EXTENT PERMITTED BY LAW, THE CMAR SHALL INDEMNIFY AND HOLD HARMLESS THE OWNER AND ITS OFFICIALS, AGENTS AND EMPLOYEES FROM**

**AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, CAUSES OF ACTION, SUITS, JUDGMENTS, EXPENSES, AND LIABILITY OF ANY KIND INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, ARISING OUT OF OR RESULTING FROM THE PERFORMANCE OF THE WORK, OR PROVISION OF GOODS BY CMAR UNDER THIS AGREEMENT, PROVIDED THAT ANY SUCH CLAIM, DAMAGE, LOSS, CAUSE OF ACTION, SUIT, JUDGMENT OR EXPENSE (1) IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE, OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY, INCLUDING THE LOSS OF USE RESULTING THEREFROM, AND (2) IS CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT OR OMISSION OF THE CMAR, ANY SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT THE INJURY, DEATH, DAMAGE CLAIM, LOSS, OR EXPENSE IS CAUSED IN PART BY A PARTY INDEMNIFIED HEREUNDER. SUCH OBLIGATION SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR OTHERWISE REDUCE ANY OTHER RIGHT OR OBLIGATION OR INDEMNITY WHICH WOULD OTHERWISE EXIST AS TO ANY PARTY OR PERSON DESCRIBED IN THIS PARAGRAPH.**

- 4.18.2 In any and all claims against the Owner or any of their agents or employees by any employee of the CMAR, any Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph 4.18 shall not be limited in any way by any limitation in the amount or type of damages, compensation or benefits payable by or for the CMAR or any Subcontractor under workers' or workmen's compensation acts, disability benefits acts, or other employee benefit acts.

**4.19 RESPONSIBILITY FOR DAMAGE CLAIMS**

- 4.19.1 IN ADDITION, THE CMAR AGREES TO INDEMNIFY, SAVE, AND HOLD HARMLESS THE OWNER, ITS AGENTS AND EMPLOYEES FROM ALL SUITS, ATTORNEYS' FEES, ACTION OR CLAIMS AND FROM ALL LIABILITY AND DAMAGES FOR ANY AND ALL INJURIES, DEATH OR DAMAGES SUSTAINED BY ANY PERSON OR PROPERTY IN CONSEQUENCE OF ANY NEGLIGENCE, ERROR OR OMISSION IN THE PERFORMANCE OF THE AGREEMENT BY THE CMAR AND FROM ANY CLAIMS OR AMOUNTS ARISING OR RECOVERED UNDER THE WORKERS' COMPENSATION LAWS, THE TEXAS CIVIL PRACTICE & REMEDIES CODE SECTION 101.002, ET SEQ. (TEXAS TORT CLAIMS ACT) OR ANY OTHER LAWS WHETHER HE IS WHOLLY OR PARTIALLY AT FAULT. HE SHALL FURTHER SO INDEMNIFY AND BE RESPONSIBLE FOR ANY AND ALL INJURIES, DEATH OR DAMAGES SUSTAINED BY ANY PERSON OR LIABILITY OR DAMAGES TO PROPERTY OF ANY CHARACTER OCCURRING OR RESULTING FROM ANY ACT, OMISSION, NEGLECT OR MISCONDUCT ON HIS PART IN THE MANNER OR METHOD OF EXECUTING THE WORK; OR FROM FAILURE TO PROPERLY EXECUTE THE WORK; OR FROM DEFECTIVE WORK OR MATERIALS.

- 4.19.2 The CMAR shall not be released from these responsibilities until all claims have been settled and suitable evidence to that effect furnished to the Commissioners' Court.

- 4.19.3 The CMAR's attention is directed to the fact that all hidden utilities and installations as may be shown on the plans have been taken from the best available information. The Owner makes no representations that information provided is complete or accurate. There may be other utilities or installations. The CMAR shall proceed with appropriate caution and shall save and hold harmless the Owner from any and all suits or claims resulting from damage by his operations to any pipeline or underground installation.

**4.20 WAGE RATES**

- 4.20.1 The CMAR is required to pay not less than the wage scale of the various classes of labor as shown on the "Prevailing Wage Schedule" provided by the Owner. The specified wage rates are minimum rates only, and the Owner will not consider any claims for additional compensation made by the CMAR because of payment by the CMAR of any wage rates in excess of the applicable minimum rate

contained in the Prevailing Wage Schedule.

- 4.29.2 Pursuant to the provisions of Chapter 2258, Texas Government Code, the CMAR shall forfeit as a penalty to the Owner, sixty dollars (\$60.00) for each laborer, workman or mechanic employed, for each calendar day, or portion thereof, if such laborer, workman or mechanic is paid less than the said stipulated minimum rates for any work done under the Agreement, by him, or by any Subcontractor under him. The CMAR and each Subcontractor shall keep, or cause to be kept, an accurate record showing the names and occupations of all laborers, workmen and mechanics paid less than the said stipulated minimum rates for any work done under the Agreement, by him, or by any Subcontractor under him. The CMAR and each Subcontractor shall keep, or cause to be kept, accurate records showing the names and occupations of all laborers, workmen and mechanics employed in connection with the Work, and showing also the actual per diem wages paid to such workers, which record shall be open at all reasonable hours for the inspection by the Owner. In the event of any such wage rate violation, the penalty shall be in addition to the proper restitution of wages. The restitution may become a condition of future payment by the Owner.

- 4.20.3 Certain public works require under the minimum wage schedule to list not only "Building Construction" wage rates but also "Incidental Paving and Utilities" wage rates. The CMAR's attention is called to the fact that all classes of work within the area of the building shall be paid "Building Construction" wage rates. A set of the applicable labor rates for public works projects is set forth in the front end of the RFP.

4.21 **CLAIMS FOR DAMAGES**

Should the CMAR suffer injury or damage to person or property because of any act or omission of the Owner or of any of his employees, agents, or others for whose acts he is legally liable, the claim shall be made in writing to the Owner within ten (10) calendar days after the first observance of such injury or damage.

4.22 **INDEPENDENT CONTRACTOR**

The Parties expressly acknowledge and agree that CMAR is an independent contractor, operating solely in that capacity, and assumes all of the rights, obligations and liabilities applicable to him as an independent contractor. No employee of CMAR shall be considered an employee of COUNTY, or gain any rights against COUNTY pursuant to the COUNTY'S personnel policies. Both parties expressly acknowledge and agree that none of CMAR'S employees have a contractual relationship with the COUNTY.

**ARTICLE 5**

**SUBCONTRACTORS**

5.1 **DEFINITION**

- 5.1.1 "Subcontractor" is defined in Article 2 of the Agreement.

- 5.1.2 A "Sub-subcontractor" means a person or entity who has a direct or indirect contract with a Subcontractor or another Sub-subcontractor to perform any of the Work. The term Sub-subcontractor is referred to as if singular in number and masculine in gender and means a Sub-subcontractor or an authorized representative thereof.

5.2 **AWARD OF SUBCONTRACT AND OTHER CONTRACTS FOR PORTIONS OF THE WORK**

- 5.2.1 The CMAR's identification of, Owner's objection to, and proposed substitution of Subcontractors shall comply with Article 5 of the Agreement.

### 5.3 SUBCONTRACTUAL RELATIONS

By an appropriate written agreement, the CMAR shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the CMAR by the terms of the Agreement, and to assume toward the CMAR all the obligations and responsibilities which the CMAR, by the Agreement, assumes toward the Owner and the Architect/Engineer. The agreement shall preserve and protect the rights of the Owner and the Architect/Engineer under the Agreement with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice the Owner's nor the Architect/Engineer's rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the CMAR-Subcontractor agreement, the benefit of all rights, remedies, and redress against the CMAR that the CMAR, by the Agreement, has against the Owner. Where appropriate, the CMAR shall require each Subcontractor to enter into similar agreements with his Sub-subcontractors. The CMAR shall make available to each proposed Subcontractor, prior to the execution of the subcontract, a copy of the Agreement to which the Subcontractor will be bound by this paragraph 5.3, and identify to the Subcontractor any terms and conditions of the proposed subcontract which may be at variance with the Agreement. Each Subcontractor shall similarly make copies of such documents available to his Sub-subcontractors.

## **ARTICLE 6**

### **WORK BY THE OWNER OR BY SEPARATE CONTRACTORS**

#### **6.1 THE OWNER'S RIGHT TO PERFORM WORK AND TO AWARD SEPARATE CONTRACTS**

- 6.1.1 The Owner reserves the right to perform work related to the Project with his own forces, and award separate contracts in connection with other portions of the Project.
- 6.1.2 When separate contracts are awarded for different portions of the Project or other work on the site, the term Contractor in the Agreement in each case shall mean the Contractor who executes such separate Agreement for Construction Services.
- 6.1.3 The CMAR shall coordinate the Work with other contractors and with the Owner and the Owner's labor crews.

#### **6.2 MUTUAL RESPONSIBILITY**

- 6.2.1 The CMAR shall afford the Owner and other contractor's reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall connect and coordinate his Work with theirs as required by the Agreement.
- 6.2.2 If any part of the Work depends for proper execution or results upon the work of the Owner or any other contractor, the CMAR shall, prior to proceeding with the Work, promptly report to the Architect/Engineer any apparent discrepancies or defects in such other work that render it unsuitable for such proper execution and results. Failure of the CMAR so to report shall constitute an acceptance of the Owner's or separate contractors' work as fit and proper to receive his Work.
- 6.2.3 CMAR may share responsibility for defective work not reported, yet known by CMAR to be deficient.
- 6.2.4 Should the CMAR wrongfully cause damage to the Work or property of the Owner, or to other work on the site, the CMAR shall promptly remedy such damage as provided in subparagraph 10.2.5.
- 6.2.5 Should the CMAR wrongfully cause damage to the Work or property of any other contractor, the CMAR shall upon due notice promptly attempt to settle with such other contractor by agreement,

or otherwise to resolve the dispute. If such separate contractor sues or initiates a proceeding against the Owner on account of any damage alleged to have been caused by the CMAR, the Owner shall notify the CMAR who shall defend such proceedings at the CMAR's expense. If any judgment or award against the Owner arises therefrom the CMAR shall pay or satisfy it and shall reimburse the Owner for all attorneys' fees and court or other costs which the Owner has incurred. The Owner shall have the right to select counsel for any such defense.

### 6.3 THE OWNER'S RIGHT TO CLEAN UP

If a dispute arises between the CMAR and other contractors as to their responsibility for daily and other periodic cleaning up as required by paragraph 4.15, the Owner may clean up and charge the cost thereof to the contractors the Owner determines responsible therefor.

## ARTICLE 7

### TESTING

- 7.1 If the Agreement, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any portion of the Work to be inspected, tested, or approved, the CMAR shall give the Owner and Architect/Engineer timely notice of its readiness so the Owner and Architect/Engineer may observe such inspection, testing, or approval. The CMAR shall bear all costs of such inspections, tests, or approvals required by public authorities. Unless otherwise provided, the Owner shall bear all costs of other inspections, tests, or approvals. The CMAR acknowledges and agrees that Loc. Gov't Code § 271.118 requires that the Owner must provide or contract for, independently of the CMAR, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the facility by the Owner. The Owner shall select those services in accordance with Section 2254.004, Gov't Code.
- 7.2 If the Architect/Engineer determines that any portion of the Work requires special inspection, testing, or approval which paragraph 7.1 does not include, he will, upon written authorization from the Owner, instruct the CMAR to order such special inspection, testing or approval, and the CMAR shall give notice as provided in paragraph 7.1. The Owner shall bear the costs of such tests, and an appropriate amendment shall be issued.
- 7.3 If any special inspection or testing reveals a failure of the Work to comply with the requirements of the Agreement, the CMAR shall bear all costs thereof and of any subsequent testing, including compensation for the Owner and Architect/Engineer's additional services made necessary by such failure.
- 7.4 Required certificates of inspection, testing or approval shall be requested by the CMAR and promptly delivered by him to the Architect/Engineer. After reviewing the certificates of inspection, the Architect/Engineer will forward the certificates to the Owner with approvals or recommendations as appropriate.
- 7.5 If the Architect/Engineer is to observe the inspections, tests, or approval required by the Agreement, he will do so promptly and, where practicable, at the source of supply.
- 7.6 The Architect/Engineer may require materials to be inspected, tested and approved before being incorporated in the Work. Any of the Work in which such materials are used without prior required test and approval or written permission of the Architect/Engineer may be ordered removed and replaced at the CMAR's expense. The selection of the method of testing shall be designated by the Owner. When requested, the CMAR shall furnish a complete written statement of the origin, composition, and/or manufacture of any or all materials that are to be used in the Work. The Owner may contract with an independent testing laboratory to perform field testing. Where the CMAR notifies the Owner of scheduled Work requiring sampling and testing and the CMAR cancels the Work for any reason whatsoever after the laboratory personnel have departed

their office for the project site, the testing laboratory shall bill the Owner for their time and travel expenses and the Owner shall deduct said charges from amounts due the CMAR.

## 7.7 PLANT INSPECTION

If the volume of the Work, Progress Schedule, and other considerations warrant, the Architect/Engineer may undertake the inspection of materials at the source. It is understood, however, that no obligation is assumed to inspect materials in that manner.

Plant inspection will be undertaken only upon condition that:

- (a) The cooperation and assistance of the CMAR and the producer with whom he has contracted for materials is assured.
- (b) The representative of the Architect/Engineer shall have full entry at all times to such parts of the plant as may concern the manufacture or production of the materials ordered.
- (c) Where inspection requirements are such that it is necessary to use scales, measures and/or other equipment which may be required by the Architect/Engineer for the control of production and use of materials, the CMAR shall be responsible for furnishing and calibrating such equipment.
- (d) In those cases where inspection of any item is requested for periods other than daylight hours, it shall be provided under the following conditions:
  - (1) Continuous production of materials for the Owner's use is necessary due to the production volume being handled by the plant.
  - (2) The lighting provided by the plant is approved by the Architect/Engineer to be adequate to allow satisfactory inspection of the material being produced.
- (e) Materials produced under the Owner's inspections will be for the Owner's use only unless released in writing by the Architect/Engineer.

## 7.8 PRETESTED MATERIALS

Subject to conditions established in a written agreement between a supplier and the Architect/Engineer, pretested and approved materials may be incorporated into the Work.

## 7.9 SOURCES OF SUPPLY AND QUALITY OF MATERIALS

- 7.9.1 The Architect/Engineer shall approve the source of supply of each of the materials before delivery is started. At his option, the Architect/Engineer may sample and test materials to determine compliance with the Agreement Documents before delivery is started. If it is found after testing that sources of supply previously approved do not produce uniform and satisfactory products, or if the product from any source proves unacceptable at any time, the CMAR shall furnish materials from other approved sources. Only materials conforming to the requirements of the Agreement Documents and approved by the Architect/Engineer shall be used in the Work. All materials being used are subject to inspection or test at any time during their preparation or use. Any material which has been tested and accepted at the source of supply may be subjected to a check test after delivery and all materials which, when retested, do not meet the requirements of the Specifications, will be rejected. No material which after approval has in any way become unfit for use shall be used in the Work.

If, for any reason, the CMAR selects a material which is approved for use by the Architect/Engineer by sampling and testing or other means, and then decides to change to a different material requiring additional sampling and testing for approval, the expense for such sampling and testing may be deducted from any monies due or to become due to the CMAR.

- 7.9.2 Where reference is made to the test procedures, ASTM, AASHTO or bulletins for the quality of materials or sampling and testing, the latest standard, tentative standard or bulletin issued prior to the date of the Bid shall govern.
- 7.9.3 If it is the normal trade practice for manufacturers to provide warranties or guaranties for the materials and equipment provided herein, the CMAR shall turn over and/or pass through the guarantees and warranties over to the Architect/Engineer. The scope and extent of such warranties or guarantees will not be a factor in selecting the successful Bidder.

## **ARTICLE 8**

### **TIME**

#### **8.1 DEFINITIONS**

- 8.1.1 Unless otherwise provided, the "Contract Time" is the period of time allotted in the Contract Documents for Substantial Completion of the Work as defined in subparagraph 8.1.3, including authorized adjustments thereof.
- 8.1.2 The "Date of Commencement" of the Work is the date established in the Notice to Proceed. If there is no Notice to Proceed, it shall be the date of the Agreement or such other date as may be established therein.
- 8.1.3 The date of "Substantial Completion" of the Work or designated portion thereof is the date approved by the Owner and certified by the Architect/Engineer when construction is sufficiently complete, in accordance with the Contract Documents, so the Owner can occupy or utilize the Work or designated portion thereof for the use for which it is intended. A Certificate of Occupancy or Temporary Certificate of Occupancy, issued by the governing authority, is required for Substantial Completion unless waived by the Owner.
- 8.1.4 The word "day" as used in the Contract Documents shall mean a calendar day.

#### **8.2 PROGRESS AND COMPLETION**

- 8.2.1 Time is of the essence in the performance of the Agreement.
- 8.2.2 The CMAR shall begin the Work on the Date of Commencement. The CMAR shall carry the Work forward expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

#### **8.3 DELAYS AND EXTENSIONS OF TIME**

- 8.3.1 When a delay defined herein as excusable prevents the CMAR from completing the work within the Contract Time, the CMAR shall be entitled to an extension of time, and in certain instances to compensation for the direct cost of delay, as set forth in 8.3.1.3. The Contract Time shall be extended by the number of calendar days lost by reason of excusable delay, as measured by the CMAR's Work Progress Schedule (or current update). All extensions of time shall be given in calendar days. In no event will an extension of time be granted for delays that merely extend the duration of non-critical activities, or which consume only float without delaying the Project completion date.

8.3.1.1 Time Extensions for weather days shall be granted in accordance with Section 018000.

8.3.1.2 Non-Weather Excusable Non-compensable Delay. The CMAR shall be entitled only to an extension of time for unforeseen delays not within the control of or arising from the fault of either the CMAR or the Owner caused by the following:

- a. Strikes and labor disputes that cause unusual delay to the Work onsite or to the delivery of materials or equipment to be incorporated into the Work;

- b. Physical damage to the work caused by circumstances beyond the control of the CMAR;
- c. War, acts or threats of terrorism, civil unrest, or insurrection;
- d. Other unforeseeable causes beyond the control of either the CMAR or the Owner.

8.3.1.3 Excusable Compensable Delay. The CMAR shall be entitled to an equitable adjustment of cost as well as a time extension for delays caused by the following:

- a. Failure of the Owner or the Architect/Engineer to take timely actions as required under the Contract Documents, or to provide information required by the Contract Documents and necessary for the CMAR to proceed with the Work in a timely manner;
- b. Detrimental or obstructive actions of separate contractors employed by the Owner;
- c. Failure of the Owner to provide access to the Work site as provided in this Agreement;
- d. ~~Failure of the Owner to provide materials which are to be furnished by the Owner, as required under the Contract Documents, consistent with the Work Progress Schedule;~~
- e. Errors or omissions in design which the Architect/Engineer corrects by means of Change Order(s);
- f. Unanticipated physical conditions at the Site which the Architect/Engineer corrects by means of Change Order(s);
- g. Owner requested Change Orders;
- h. Suspensions for cause under 8.3.1.4 which are determined not to have been within the control of the CMAR; or
- i. Suspensions for convenience under 8.3.1.5 which prevents the CMAR from completing the Work within the Contract Time.

The CMAR's compensation in the event of such delays, items 8.3.1.3.a – i above, shall be the cost of extended general conditions for the period of delay. Extended general conditions costs incurred solely as a result of the delay shall be determined pursuant to Article 12.

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

8.3.1.5 Suspension of Work for Owner's Convenience. Upon seven (7) Construction days' prior written notice to the CMAR, the Owner may at any time without breach of the Agreement suspend all or any portion of the Work for a period of up to thirty (30) days for its own convenience. The Owner shall give the CMAR a written notice of suspension for convenience, which shall set forth the number of days for which the Work, or any portion of it, will be suspended, and the date on which the suspension of Work shall cease. When such a suspension prevents the CMAR from completing the Work within the

Contract Time, it is Excusable Compensable Delay. A notice of suspension for convenience may be modified by the Owner at any time on seven (7) calendar days' prior written notice to the CMAR. If the Owner suspends the Work for its convenience for more than sixty (60) consecutive calendar days, the CMAR may elect to terminate the Agreement pursuant to the provisions of Article 14.

8.3.1.6 Concurrent Delay. When the completion of the Work is simultaneously delayed by more than one of the categories described under 8.3.1, the CMAR will be entitled to a time extension only for the period of concurrent delay determined to be excusable and will be entitled to compensation only for the period of concurrent delay determined to be excusable and compensable.

8.3.1.7 Except as expressly provided under 8.3.1, the CMAR shall not be entitled to an extension of the Contract Time, and shall bear all responsibility for financial risks which may accrue from various causes of delay in the construction progress.

8.3.2 Any request for extension of time shall be made in writing to the Owner not more than five (5) business days after the commencement of the delay; otherwise, it shall be waived. Such request shall state the nature of the delay, activities potentially affected, and shall be accompanied by sufficient written evidence to document the delay. In the case of a continuing delay only one (1) request is necessary. The CMAR shall provide an estimate of the probable effect of such delay on the progress of the Work. A conference shall be held between the CMAR and Owner within five (5) business days of the commencement of the delay to establish a proposed new Work Progress Schedule for the Work.

8.3.2.1 Contents of Time Extension Requests. Each time extension request shall be accompanied by a quantitative demonstration of the impact of the delay on Project completion time, based on the current Work Progress Schedule. Time extension requests shall include a reasonably detailed narrative setting forth (1) the nature of the delay and its cause, (2) the basis of the CMAR's proposed entitlement to a time extension, (3) documentation of the actual impacts of the delay, and any concurrent delays, (4) description and documentation of steps taken by the CMAR to mitigate the effect of the delay, including, when appropriate, the modification of the Work Progress Schedule, and (5) such other information that the CMAR considers necessary to justify its request for an extension of time. No time extensions shall be granted for delays that do not affect the Project completion time.

8.3.2.2 Owner's Response. The Owner shall respond to the time extension request by providing to the CMAR written notice of the number of days granted, and giving its reason if this number differs from the number of days requested by the CMAR. A Change Order reflecting the extension of time shall be executed by the parties in accordance with Article 12 and the extension of time is effective on the date the Change Order is approved.

8.3.3 All changes to the Contract Time or GMP made as a result of such requests shall be by Change Order, as provided under Article 12.

#### 8.4 **FAILURE TO COMPLETE WORK ON TIME**

8.4.1 The Contract Time for the completion of the Work is an essential element of the Agreement. The CMAR's failure to complete the Work within such time will cause damage to the Owner.

8.4.2 Should the CMAR fail to complete the Work within the Contract Time, including all officially approved extensions thereto, the Owner shall collect from the CMAR or deduct from any funds owed him the amount named as liquidated damages in the Contract Documents.

It is agreed that the County's actual damages would be extremely difficult, impractical, or impossible to calculate and, therefore, the amount of liquidated damages, as set forth in the GMP Proposal is agreed to be a reasonable estimate of the County's actual damages and will be retained as liquidated damages and not as a penalty. Liquidated damages will be in the amount

of \$2,000 for each day past the date established for Substantial Completion of the CMAR's Work on the Project.

- 8.4.3 After the Substantial Completion inspection by the Owner, the CMAR will be allowed sixty (60) days within which to correct all deficiencies listed in the inspection Punch List, unless extended by mutual agreement. Failure of the CMAR to complete such corrections within the stipulated time will be reported to the CMAR's surety for correction. In the event there is no surety, the Owner may initiate action to complete corrective work out of the remaining Agreement funds in accordance with paragraph 3.4 and 14.1.

## 8.5 **FORCE MAJEURE**

If the performance by either party of any of its obligations under the Agreement is interrupted or delayed due to an act of God or the common enemy or as the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not a party to the Agreement, then it shall be excused from performance for such period of time as is reasonably necessary to remedy the effects thereof.

## **ARTICLE 9 PAYMENTS AND COMPLETION**

### 9.1 **GMP (Guaranteed Maximum Price)**

- 9.1.1 The GMP is defined and described in the Agreement between Travis County, Texas and CMAR and, including authorized adjustments thereto, is the total amount payable by Owner to the CMAR for the performance of the Work under the Contract Documents.

- 9.1.2 The Project will be bid out to subcontractors at or near the 100% Construction Document Phase. The CMAR will include a CMAR Contingency in its GMP equal to a percentage of the Cost of the Work. The exact percentage will be the percentage proposed by the CMAR in the CMAR's RFP response. All buy-out savings post-GMP will be transferred into the CMAR Contingency. All transfers out of the CMAR Contingency to cover any Project cost will require Owner approval, which will not be unreasonably withheld. At Final Completion any and all unused CMAR Contingency funds will be kept by the Owner.

### 9.2 **SCHEDULE OF VALUES**

- 9.2.1 Before the first Application for Payment, as defined herein, the CMAR shall submit to the Architect/Engineer a schedule of values allocated to the various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Owner or the Architect/Engineer may require. This schedule, unless objected to by the Owner or the Architect/Engineer, shall be used only as a basis for the CMAR's Applications for Payment.

### 9.3 **APPLICATIONS FOR PAYMENT**

- 9.3.1 At least five (5) days before the date for each progress payment established in the Agreement, the CMAR shall submit to Owner an itemized "Application for Payment", dated and substantiated, as the Owner may require, reflecting retainage as provided elsewhere in the Contract Documents.
- 9.3.2 Payments may be made on account of materials or equipment not incorporated in the Work but delivered and suitably stored at the site. If approved in advance by the Owner, payments may similarly be made for materials or equipment suitably stored at some other location agreed upon in writing. Payments for materials or equipment stored on or off the site shall be conditioned upon submission by the CMAR of bills of sale or such other procedures satisfactory to the Owner to establish the Owner's title to such materials or equipment or otherwise protect the Owner's interest, including applicable insurance and transportation to the site for those materials and equipment stored off the site.

- 9.3.3 The CMAR warrants that title to all Work, materials, and equipment covered by an Application for Payment will pass to the Owner either by incorporation in the construction or upon the receipt of payment by the CMAR, whichever occurs first, free and clear of all liens, claims, security interests, or encumbrances, hereinafter referred to in this Article 9 as "liens"; and that no Work, materials, or equipment covered by an Application for Payment will have been acquired in the CMAR's behalf, or by any other person performing Work at the site or furnishing materials and equipment for the Project. Rather, the purchase shall be in the Owner's behalf.

#### 9.4 CERTIFICATES FOR PAYMENT

- 9.4.1 Owner will, within five (5) days after the receipt of the CMAR's Application for Payment, either certify his approval and forward the Application for Payment, with a copy to the CMAR, for such amount as the OWNER determines is properly due, or notify the CMAR in writing his reasons for withholding a Certificate for Payment as provided in subparagraph 9.6.1.
- 9.4.2 The issuance of a Certificate for Payment will constitute a representation by Owner, based on his observations at the site as provided in the Contract Documents and the data comprising the Application for Payment, that the Work has progressed to the point indicated, that the quality of the Work is in accordance with the Contract Documents, and that the CMAR is entitled to payment in the amount certified. This certification is subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion of the Work, and to any specific qualifications stated in the Certificate for Payment. However, by issuing a Certificate for Payment, Owner shall not thereby be deemed to represent that he had made continuous on-site inspections to check the quality or quantity of the Work or that he has made any examination to ascertain how or for what purpose the CMAR has used the monies previously paid on account of the GMP.

#### 9.5 PROGRESS PAYMENTS

- 9.5.1 After Owner has received the Application for Payment, the Owner shall make payment within thirty (30) days. Objections to payment shall be for any incurred breach of the Contract Documents by the CMAR, including, but not limited to, the specific grounds for withholding payment set forth in subparagraph 9.6.1. The Owner shall retain not less than five percent (5%) of each payment until final completion and acceptance of all Work covered by the Agreement unless the retainage amount is reduced following Substantial Completion subject to paragraph 9.8.2.
- 9.5.2 The CMAR shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the CMAR on account of such Subcontractor's work, the amount of which said Subcontractor is entitled, reflecting the percentage actually retained, from payments to the CMAR on account of such Subcontractor's work. The CMAR shall, by an appropriate agreement with each Subcontractor, require each Subcontractor to make payments to his Sub-subcontractors in similar manner. All payments to Subcontractors and Sub-subcontractors shall be made within ten (10) days of receipt of payment for work claimed in an Application for Payment that Subcontractor or Sub-subcontractor performed. Such Application for Payments shall designate the dollar amount of work which Subcontractor or Sub-subcontractor provided to allow for the Owner's tracking of Historically Underutilized Business (HUB) requirements.
- 9.5.3 The Owner may, on request and at his discretion, furnish to any Subcontractor, if practicable, information regarding the percentage of completion or the amounts applied for by the CMAR and the action taken thereon by the Architect/Engineer and the Owner on account of work done by such Subcontractor.
- 9.5.4 Neither the Owner nor the Architect/Engineer shall have any obligations to pay or to see to the payment of any monies to any Subcontractor except as may otherwise be required by law.

- 9.5.5 No Certificate for Payment, nor any Progress Payment, nor any partial or entire use or occupancy of the Project by the Owner, shall constitute an acceptance of any Work not in accordance with the Contract Documents.

## 9.6 PAYMENTS WITHHELD

- 9.6.1 Owner may decline to certify payment and may withhold his Certificate for Payment in whole or in part, to the extent reasonably necessary, if in his opinion he is unable to make representations to the Owner as provided in subparagraph 9.4.2. In such situations, Owner will notify the CMAR as provided in subparagraph 9.4.1. If the CMAR and Owner cannot agree on a revised amount, Owner will promptly issue a Certificate for Payment for the amount for which he is able to make such representations to the Owner. Owner may also decline to certify payment or, because of subsequently discovered evidence or subsequent observations, he may nullify the whole or any part of any Certificate for Payment previously issued, to such extent as may be necessary in his opinion to protect the Owner from loss because of:

1. defective Work not remedied;
2. third party claims filed or reasonable evidence indicating probable filing of such claims;
3. failure of the CMAR to make payments properly to Subcontractors or for labor, materials, or equipment;
4. reasonable evidence that the Work cannot be completed for the unpaid balance of the GMP;
5. damage to the Owner or another Contractor;
6. reasonable evidence that the Work will not be completed within the Contract Time;
7. failure to carry out the Work in accordance with the Contract Documents; or
8. failure of the CMAR to correct any serious violation (as determined the Travis County Project Safety Manager) of OSHA standards or non-compliance with Article 10 - Protection of Persons and Property.

- 9.6.2 When the above grounds in subparagraph 9.6.1 are removed, payment shall be made for amounts withheld because of them.

## 9.7 FAILURE OF PAYMENT

- 9.7.1 If the Owner does not issue a Certificate for Payment, through no fault of the CMAR, within seven (7) days after receipt of the CMAR's Application for Payment, or if the Owner does not pay the CMAR within thirty-seven (37) days of receipt of the Application for Payment, then the CMAR may, upon ten (10) additional days' written notice to the Owner, commencing upon Owner's receipt of such notice, stop the Work until payment of the amount owing has been received.

The GMP shall be increased by the amount of the CMAR's reasonable costs of shut-down, delay, and start-up, which shall all be effected by appropriate Change Order in accordance with paragraph 12.3.

## 9.8 SUBSTANTIAL COMPLETION

- 9.8.1 When the CMAR considers that the Work, or a designated portion thereof which is acceptable to the Owner, is substantially complete as defined in subparagraph 8.1.3, the CMAR shall prepare for submission to the Owner and the Architect/Engineer a list of items to be completed or corrected. The failure to include any items on such list does not alter the responsibility of the CMAR to complete all Work in accordance with the Contract Documents. When the Owner and the Architect/Engineer, on the basis of an inspection, determine that the Work or designated

portion thereof is substantially complete, the Architect/Engineer will then prepare a "Certificate of Substantial Completion" which shall show the date of Substantial Completion established by the Owner, shall state the responsibilities of the Owner and the CMAR for security, maintenance, heat, utilities, damage to the Work, and insurance, and the time within which the CMAR shall complete the items listed therein. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the CMAR and Owner for their written acceptance of the responsibilities assigned to them in such Certificate of Substantial Completion.

- 9.8.2 Upon Substantial Completion of the Work or designated portion thereof and upon application by the CMAR and certification by the Architect/Engineer, the Owner shall make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof, as provided in the Contract Documents or shall notify the CMAR in writing of any objections to payment within the time provided in the Contract Documents for payment. Objections to payment shall be for any uncured breach of the Contract Document by the CMAR, including, but not limited to, the specific grounds for withholding payment set forth in paragraph 9.6.1.

## 9.9 FINAL COMPLETION AND FINAL PAYMENT

- 9.9.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect/Engineer will promptly make such inspection and, when he finds the Work acceptable under the Contract Documents and the Agreement fully performed, he will promptly issue a final Certificate for Payment stating that on the basis of his observations, and inspections the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance found to be due the CMAR, and noted in said final Certificate for Payment is due and payable. The Architect/Engineer's final Certificate for Payment will constitute a further representation that the conditions precedent to the Contractors being entitled to final payment as set forth in subparagraph 9.9.2 have been fulfilled.
- 9.9.2 Neither the final payment nor the remaining retained percentage shall become due until the CMAR submits to the Architect/Engineer (1) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or his property might in any way be responsible, have been paid or otherwise satisfied, (2) consent of surety, if any, to final payment, and (3) if required by the Owner, another date establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens arising out of the Agreement, to the extent and in such form as may be designated by the Owner. If any Subcontractor refuses to furnish a release or waiver required by the Owner, the CMAR may furnish a bond satisfactory to the Owner to indemnify Owner against any such lien. If any such lien remains unsatisfied after all payments are made, the CMAR shall refund to the Owner all monies that the latter may be compelled to pay in discharging such lien, including costs and reasonable attorneys' fees.
- 9.9.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the CMAR or by the issuance of Change Orders affecting final completion, and the Architect/Engineer so confirms, the Owner shall, upon application by the CMAR and certification by the Architect/Engineer, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than the retainage stipulated in the Contract Documents, and if bonds have been furnished as provided in paragraph 9.9.2, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the CMAR to the Architect/Engineer prior to certification of such payment. Such payment shall be made under the terms and conditions governing final payment.
- 9.9.4 The acceptance of final payment shall constitute a waiver and release of all claims as set forth in Article 9 of the Agreement.

## **ARTICLE 10**

### **PROTECTION OF PERSONS AND PROPERTY**

#### **10.1 SAFETY REGULATIONS**

10.1.1 It shall be the duty and responsibility of the CMAR to be familiar with and comply with all requirements of Public Law 91-596, 29 U.S.C. Secs. 651 et seq., the Occupational Safety and Health Act of 1970. (OSHA) and all amendments thereto, and to strictly enforce and comply with all of the provisions of the Act.

10.1.2 The CMAR shall have a copy of the current applicable OSHA safety and health regulations on site.

10.1.3 CMAR shall be responsible for any fines, penalties or charges by any regulatory body by reason of any violation of safety or health regulations by the CMAR or Sub-contractor.

#### **10.2 SAFETY OF PERSONS AND PROPERTY**

The Provisions of this Article 10 shall be referred to collectively as the "Safety Program".

10.2.1 The CMAR shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury, or loss to:

1. all employees on the Work and all other persons who may be affected thereby;
2. all the Work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody, or control of the CMAR or any of his Subcontractors or Sub-subcontractors; and
3. other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

10.2.2 The CMAR shall give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority or authority having jurisdiction bearing on the safety of persons or property for their protection from damage, injury, or loss.

10.2.3 The CMAR shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent utilities.

10.2.4 When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the Work, the CMAR shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.

10.2.5 The CMAR shall promptly remedy all damage or loss to any property referred to in paragraph 6.2.4 and clauses 10.2.1.2 and 10.2.1.3 caused in whole or in part by the CMAR, any Subcontractor, any Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable and for which the CMAR is responsible under clauses 10.2.1.2 and 10.2.1.3, except damage or loss attributable to the acts or omissions of the Owner or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the CMAR. The foregoing obligations of the CMAR are in addition to his obligations under paragraph 4.18.

10.2.6 The CMAR shall designate a responsible member of his organization at the site whose duty shall be the prevention of accidents.

10.2.7 The CMAR shall not load or permit any part of the Work to be loaded so as to endanger the safety of the CMAR or the work.

### 10.3 **EMERGENCIES**

10.3.1 In any emergency affecting the safety of persons or property, the CMAR shall act, at his discretion, to prevent threatened damage, injury, or loss. Any additional compensation or extension of time claimed by the CMAR on account of emergency work shall be determined as provided in Article 12 Changes in Work.

### 10.4 **CMAR DUTIES FOR SAFETY PROGRAM**

10.4.1 The CMAR shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. This requirement applies continuously and is not limited to normal working hours.

10.4.2 Temporary items such as, but not limited to; scaffolding, staging, lifting, and hoisting devices, barricades, and safety and construction procedures necessary for completion of the Project shall be the responsibility of the CMAR and his sub-contractors and shall comply with all applicable codes and regulations. It shall not be the responsibility of the Owner, Project Safety Manager, as defined herein, or their representatives to determine if the CMAR, a sub-contractor or their representatives are in compliance with the aforementioned regulations.

### 10.5 **SAFETY PLANNING**

10.5.1 The effectiveness of the Safety Program depends upon the active participation and sincere cooperation of all Contractors' employees and the coordination of their efforts in carrying out the following basic responsibilities. It shall be the responsibility of all Contractors to:

1. Properly plan all work to eliminate personal injury, property damage, and the loss of productive efforts.
2. Establish and maintain a system for early detection and correction of unsafe practices and conditions.
3. Provide adequate protection for adjacent public and private properties and to ensure the safety of the public at all times.
4. Establish and conduct safety education programs designed to gain, stimulate and maintain the interest and active participation of all employees through:
  - A. Safety meetings and communication.
  - B. Investigation of accidents/incidents that have caused or could cause injuries and damage to determine the cause and the taking of necessary corrective actions.
  - C. Use of proper work procedures, personal protective equipment and mechanical guards.
  - D. Safety instruction for individual employees and safety training programs.
  - E. Maintenance of records of accidents, incidents and losses and development of injury/losses experience summaries.

### 10.6 **ADMINISTRATION AND ORGANIZATION**

10.6.1 Travis County will designate an Owner's representative to act as the "Project Safety Manager". The Project Safety Manager will:

1. Interpret regulations and Agreement requirements as they apply to the safety and health of persons on the Work site.
2. Perform regular inspections of the Work areas to monitor and enforce Contractor compliance with the Safety Program.
3. Stop any unsafe work practices in progress.
4. Report all accidents immediately to Owner and the Travis County Risk Manager.
5. Identify hazards and their mitigation.
6. Attend all meetings that can impact safety.
7. Be a resource for safety and health to all entities involved in the construction Project.

10.6.2 All Contractors and Sub-contractors working on the Project shall designate an experienced and competent onsite "Safety Representative".

1. The name of the onsite Safety Representative will be provided to the Owner and the Project Safety Manager prior to the CMAR or Sub-contractor starting Work at the job site.
2. The Safety Representative shall have successfully completed the 10-hour minimum OSHA construction safety-training course prior to commencement of the Work.
3. The CMAR shall submit a copy of its training certificates, issued by the training organization, as evidence of completion of the aforementioned safety training courses to the Owner and the Project Safety Manager prior to commencement of the Work.
4. The Safety Representative shall be responsible for implementing the Safety Program, ensuring that job site safety requirements and procedures are being accomplished, conducting safety inspections of Work being performed, conducting weekly safety meetings with craft employees and submitting reports as identified in the Contract Documents.
5. The Safety Representative shall have the authority to correct unsafe acts or conditions.
6. The Safety Representative shall be responsible for a continuing survey of its operations, to ensure that the probable causes of injury or accident are controlled and that operating equipment, tools and facilities are used, inspected and maintained as required by applicable safety and health regulations.
7. The Safety Representative shall make frequent and regular inspections of the job site. Unsafe acts and/or conditions noted during inspections shall be corrected immediately.

10.6.3 CMAR Construction Safety Responsibilities

1. All Contractors, Subcontractors and Sub-subcontractors working on this Project shall comply with this Safety Program and shall be responsible for its implementation and for providing the means and methods required for compliance.
2. The CMAR shall furnish all information concerning safety of his operation on the Project as may be reasonably required by Owner or the Project Safety Manager.
3. The CMAR shall develop, present, ensure attendance and successful completion of each Contractor and Sub-contractor worker in a Site Specific Safety Orientation prior to their deployment on the jobsite and start of Work. The training will include topics specific to the scope of Work including:
  - Procedures for emergency evacuation

- Hazardous material used on the job site.
  - Proper work attire
  - Personal protective equipment
  - Reporting injuries and accidents
  - Stopping/restarting work in an imminently hazardous situation
4. The CMAR shall instruct each employee on the job site in the recognition and avoidance of unsafe acts and/or conditions applicable to the Work environment to control or eliminate injury or illness. The CMAR shall enforce the Project and statutory safety rules with its employees.
  5. The CMAR is responsible for notifying Owner of any hazardous chemicals or substances that are brought or caused to have been brought on the job site. The CMAR is responsible for the legal storage, use and disposal of waste of any hazardous chemicals or substances.
  6. The CMAR shall provide Owner with a copy of CMAR's "Hazard Communication Program" and the "Material Safety Data Sheet(s)" (MSDS) for the chemical(s) or substance(s) intended for use on the site. A bookcase, centrally located, will be dedicated for this information. The CMAR is responsible for keeping this information current.
  7. The CMAR and any subcontractors so notified shall make all reasonable efforts to correct unsafe conditions or acts. Satisfactory corrective action shall be taken within the specified abatement time. If the Sub-contractor refuses to correct unsafe or unhealthy conditions or acts, or eliminate fire hazards, Owner may take steps in accordance with the Agreement.
  8. The CMAR shall require each of his Subcontractors (all tiers), vendors and suppliers to abide by the Project safety and health requirements.
  9. The CMAR shall not load or permit any part of the Work to be loaded so as to endanger the safety of the CMAR or the Work.
  10. The CMAR shall provide to Owner and Project Safety Manager an emergency on-call phone number, suitable to contact the CMAR's representative 24 hours a day, seven days a week, during the duration of the Agreement and Work.
  11. Tool Box Training – The CMAR and Subcontractors will hold weekly safety training in their work area with their entire crew.

#### **10.7 STOPPING AND RESTARTING WORK**

- 10.7.1 The Owner shall have the right to stop Work whenever safety violations are observed which could imminently jeopardize the well-being of personnel and equipment. The expense of any such Work stoppage and resultant standby time shall be charged to the CMAR and deducted from the next Application for Payment.
- 10.7.2 Work that has been stopped for safety reasons can only be restarted when the full corrective action have been implemented and the hazardous conditions or actions no longer exist. The decision to restart the Work will be made with the concurrence of Owner, the Project Safety Manager, the CMAR and his affected Sub-contractor(s) and will be documented in writing.

#### **10.8 SPECIFIC SAFETY REQUIREMENTS**

##### **10.8.1 Fall Protection**

1. At no time shall any employee be exposed to the potential of a fall of six (6) feet or more without using required fall protection. Each employee on a walking/working surface six (6) feet or more above lower levels shall be protected from falling by the use of a guardrail system, a safety net system, or a personal fall arrest system.

2. The CMAR shall prepare a "Fall Protection Program", which means a detailed written description of how the CMAR and his Subcontractors will comply with the six (6) foot fall protection requirements for the protection of all employees throughout all phases of the Work. The Fall Protection Program shall be submitted to the Project Safety Manager for review and acceptance prior to the commencement of Work. The Fall Protection Program shall be maintained on site and be available upon request.

#### 10.8.2 Drug and Alcohol Testing

1. Employee impairment is prohibited - No employee will use unlawful drugs or report for work or will work impaired by any substance, lawful or unlawful.
2. All CMAR and Sub-contractor employees are required to report to work in proper condition to perform their assigned duties. As a necessary part of the overall commitment to maintaining a safe and productive Work environment, the possession, use, manufacture, distribution, dispensation, or presence of any controlled substance or alcohol will be prohibited on all Travis County construction sites.
3. All employees of the CMAR and any Subcontractors will be required to be tested for substance abuse. Results of all post-accident and reasonable suspicion tests will be provided to Owner and the Project Safety Manager.
4. Post-accident test.
  - A. CMAR and Sub-contractor employees involved in accidents or incidents will be required to be tested for substance abuse.
  - B. The costs for this testing will be the responsibility of the CMAR, Subcontractor, or as set forth in their contracts with Travis County.
  - C. Specimen collection for drug testing and the alcohol test will be completed within four (4) hours of the accident.
  - D. Employees who produce a confirmed positive test will be permanently prohibited from working on any Travis County construction site permanently.
5. Reasonable suspicion test.
  - A. Where reasonable suspicion exists that an employee of the CMAR or any Subcontractor exhibits signs of substance abuse as detected by trained and knowledgeable supervision, the employee will be required to be tested for substance abuse.
  - B. The costs for this testing will be the responsibility of the CMAR, Subcontractor, or as set forth in their contracts with Travis County.
  - C. Specimen collection for drug testing and alcohol testing will be completed within four (4) hours of the accident.
  - D. Employees who produce a confirmed positive test will be permanently prohibited from working on any Travis County construction site permanently.
6. Reporting Testing Results
  - A. Confidentiality - All test results will be treated as medically confidential.
  - B. All test results will be maintained in a secure file maintained by Owner or the Project Safety Manager.

- C. Acceptable documentation in lieu of actual test results, shall include a memorandum on the employer's letterhead stating:
  - The employee's full name,
  - The employee's social security number,
  - The drug test date, an indication that drug results were negative, and
  - the name of laboratory in which the tests were performed.

#### 10.8.3 Fire Protection

1. The CMAR is responsible for the development of the following programs and procedures:
  - A. a fire protection and prevention program,
  - B. a flame/spark/hot work permit procedure, and
  - C. a flammable/combustible liquid storage/dispensing procedure

These programs and procedures are to conform to OSHA and NFPA standards and must be submitted to the Project Safety Manager for review and acceptance prior to the commencement of Work.

2. The CMAR shall be responsible for fire protection in his work and operational areas, including offices, tool rooms, and storage area 24 hours per day, seven days per week through the duration of the Agreement. Approved firefighting equipment, in adequate quantities must be provided and maintained by the CMAR and the Contractors employees must be trained in the usage of such equipment.
3. Fire protection equipment will be made available during all phases of construction.

#### 10.8.4 Tobacco-Free Work Site

1. Travis County employees, contractors, sub-contractors, clients, invitees, and visitors may not use tobacco products on any Travis County property, indoors or outdoors, including parking lots, vehicles (private and County-owned or leased), and garages.
2. Tobacco is not allowed at any worksite occupied by County employees or contractors, regardless of property ownership.
3. Tobacco products include, but are not limited to, cigarettes, cigars, chewing tobacco, snuff, pipe tobacco, and any product that appears to be a tobacco product, such as an electronic or water vapor cigarette.
4. The CMAR shall be responsible for enforcing the tobacco-free policy described in this section and ensuring compliance by his employees, subcontractors, sub-subcontractors, and other persons under the CMAR's control or supervision. The CMAR shall post appropriate signage communicating this policy in all work and operational areas of the Project site.

10.8.5 All lifting and rigging procedures will be submitted to the Project Safety Manager for review and acceptance prior to lifting and erecting materials and/or equipment.

10.8.6 The CMAR shall immediately report all accidents and incidents relating to construction activity to the Owner and the Project Safety Manager. The primary responsibility for the accident/incident investigation lies with the CMAR. However, each Contractor is expected to cooperate to the fullest extent in the Owner's investigation of all accidents and incidents.

#### 10.8.7 Personnel Clothing

1. Shirts shall be worn at all times. Sleeveless shirts and tank tops are not permitted.

2. Long pants are required.
3. Hard leather work shoes/boots are required. Tennis type shoes, sandals, docksiders, hush puppies, steel-toed sneakers or bare feet are prohibited. Additional foot protection shall be worn for certain operations such as, operating tamping equipment or jackhammers and where employees handle or carry heavy tools, objects, etc. Contractors are urged to recommend safety shoes to be worn by all employees.

#### 10.8.8 Personnel Protective Equipment

1. CMAR is responsible for determining, training in use, providing and requiring the use of appropriate personal protective equipment in all operations where there is an exposure to hazardous conditions. There will be specific job site requirements established by Owner and the Project Safety Manager. All records shall be maintained at a location accessible to the Owner and the Project Safety Manager.
2. Approved hard hats meeting specifications contained in American National Standards Institute (ANSI), Z16.89.1-1916.81 and/or Z16.89.2-1971 are required in the construction area at all times. CMAR's personnel must wear hard hats clearly marked with employee name, and company logo.
3. Safety glasses with attached side shields meeting ANSI Z87.1-1989 are required in construction areas at all times.

#### 10.8.9 As required by OSHA, the CMAR shall designate all "Competent Persons" in writing to the Owner and Project Safety Manager prior to such any work requiring their participation. Their qualifications for such designation as a Competent Person will be submitted with their designation. Competent persons are required for areas that shall include but may not be limited to:

1. Scaffolding
2. Excavation and Trenching
3. Fall Protection
4. Rigging Equipment
5. Cranes and Hoists
6. Aerial Lift Procedures
7. Sling and Wire Rope Inspection
8. Demolition
9. Fire Protection
10. Ionizing Radiation
11. Assured Grounding Conductor Program

#### 10.8.10 First Aid

1. The CMAR shall have at least one onsite employee trained in first aid at all times, and that employee shall be able to administer first aid when needed.
2. The CMAR shall ensure that first aid supplies approved by the CMAR's consulting physician shall be easily accessible onsite when required.

#### 10.8.11 The CMAR is responsible for maintaining a copy of "Contractor's Hazard Communication Program" and "Material Safety Data Sheet(s)" on site for the CMAR's own reference and employee training.

#### 10.8.12 The use of explosives is strictly prohibited unless authorized in writing by the Owner and any other governing entities having jurisdiction in the locality of the Project. When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the

Work, the CMAR shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.

#### 10.8.13 Critical Lifts

1. Critical lifts are determined by any one of the following conditions:
  - A. Individual loads weighing 30 tons or more
  - B. Lifts requiring more than one crane to handle a common load
  - C. Load exceeds eighty-five percent (85%) of the crane capability as shown on the applicable crane manufacturer's load charts for the configuration to be used.
  - D. Items specially classified due to physical dimensions, susceptibility to internal damage and schedule impact.
  - E. Parts, components, assemblies, or lifting operations designated as such because the effect of dropping, upset, or collision of items could:
    1. Cause significant delay
    2. Cause undetectable damage resulting in future operational or safety problems
    3. Result in significant release of radioactivity or other undesirable condition
    4. Present a potentially unacceptable risk of personal injury or property damage.
2. Critical lifts require a written rigging plan for handling operations, approved by the CMAR's superintendent, CMAR's Safety Representative, the Owner, and the Project Safety Manager prior to lift.

#### 10.8.14 Environmental

1. The CMAR shall notify the Owner of any hazardous waste it will generate during performance of the Work. The CMAR has the direct responsibility for maintaining proper storage of these wastes while on site and will verify to the Owner in writing that the wastes have been disposed of in a legal manner.
2. The CMAR shall keep the site, free from accumulation of water, no matter what source or cause. The CMAR shall dispose of water in such manner as will not endanger public health or cause damage or expense to Owner's or adjacent property. The CMAR shall comply with requirements of any public agencies having jurisdiction. If sewers and streets are allowed to be used for drainage or disposal of water during construction, the CMAR shall maintain and leave these satisfactorily clean upon completion of Work.
3. CMAR shall not pour, bury, burn, nor in any way dispose of a chemical on the job site without the permission of the Owner.
4. CMAR shall, at its expense, provide suitable facilities to prevent the introduction of any substances or materials into any stream, lake or other body of water which may pollute the water or constitute substances or materials deleterious to fish and wildlife.
5. CMAR shall perform the Work as not to discharge into the atmosphere from any source whatever, smoke, dust, or other air contaminants in violation of the laws, rules and regulations of the governmental entities having jurisdiction.

### **ARTICLE 11**

## **INSURANCE**

### **11.1 CMAR'S/SUB-CONTRACTOR'S LIABILITY INSURANCE**

11.1.1 The CMAR shall purchase and maintain liability insurance, and shall likewise ensure that all of his Subcontractors and their Sub-subcontractors purchase and maintain such insurance, as will protect them from claims set forth below which may arise out of or result from the CMAR's operations under the Agreement, whether such operations are carried out by the CMAR, by any Subcontractor or by anyone directly or indirectly employed by any of the, or by anyone for whose acts any of them may be liable:

1. claims under workers' compensation laws, disability benefits, and other similar employee benefit acts;
2. ~~claims for damages because of bodily injury, occupational sickness or disease, or death of an employee;~~
3. ~~claims for damages because of bodily injury sickness or disease or death of any person other than an employee;~~
4. ~~claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment or failure to offer employment, of such person by the CMAR, or (2) by any other person;~~
5. ~~claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; and~~
6. ~~claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle.~~

11.1.2 The insurance required by subparagraph 11.1.1 shall include contractual liability insurance applicable to the CMAR's obligations under paragraph 4.18.

### **11.2 OWNER'S LIABILITY INSURANCE**

11.2.1 The CMAR shall purchase and maintain an Owner's Protective Liability policy as will protect the Owner and his employees, agents, officers, elected officials, and consultants against claims which may arise from operations of the CMAR, his Subcontractors and their Sub-contractors and/or premises which are the subject of the Agreement unless equivalent coverage is provided by Contractor's Commercial or Comprehensive General Liability policy.

### **11.3 PROPERTY INSURANCE**

11.3.1 The Owner may purchase and maintain property insurance upon the entire Work at the site to the full insurable value thereof. This insurance shall include the interests of the Owner, the CMAR, Subcontractors, and Sub-subcontractors of the Work and shall insure against the perils of fire and extended coverage and shall include "all risk" insurance for physical loss or damage including, without duplication of coverage, theft, vandalism, and malicious mischief.

11.3.2 The Owner may purchase and maintain such boiler and machinery insurance as may be required by the Contract Documents or by law. This insurance shall include the interest of the Owner, the CMAR, Subcontractors, and Sub-subcontractors of the Work.

11.3.3 Any loss insured under subparagraphs 11.3.1 and 11.3.2 is to be adjusted with the Owner and made payable to the Owner as trustee for the insureds, as their interests may appear. The CMAR shall pay each Subcontractor a just share of any insurance monies received by the

CMAR, and by appropriate agreement shall require such Subcontractor to make payments to his Sub-subcontractors in similar manner.

11.3.4 The Owner may purchase insurance for risks other than those described in subparagraphs 11.3.1 and 11.3.2 in the Contract Documents.

11.3.5 The Owner as trustee shall deposit in a separate account any insurance proceeds so received, and he shall distribute it in accordance with such agreement as the parties in interest may reach.

11.3.6 The Owner as trustee shall have power to adjust and settle any loss with the insurers.

11.3.7 If the Owner finds it necessary to occupy or use a portion or portions of the Work prior to substantial completion thereof, such occupancy or use shall not commence prior to a time mutually agreed to by the Owner and CMAR and to which the insurance company or companies providing the property insurance have consented by endorsement to the policy or policies. This insurance shall not be canceled or lapsed on account of such partial occupancy or use. Consent of the CMAR and of the insurance company or companies to such occupancy or use shall not be unreasonably withheld.

11.3.8 The CMAR shall be responsible for paying to repair any such losses as enumerated in Article 10 to the extent that such losses are not covered by the Owner's insurance, including all policy deductibles.

#### 11.4 **INSURANCE SCHEDULES**

11.4.1 The CMAR shall not commence Work under the Agreement until he has obtained all the insurance required hereunder and certificates of such insurance have been filed with and reviewed by the Owner. Acceptance of the insurance certificates by the Owner shall not relieve or decrease the liability of the CMAR. Owner shall be named as an additional insured on the policies. CMAR shall not change or modify the insurance coverage without prior notice to the Owner.

11.4.2 Unless otherwise provided for in the Contract Documents, the CMAR shall provide and maintain, until the Work covered in the Agreement is completed and accepted by the Owner, the minimum insurance coverages in the following schedule.

The minimum required limits may be achieved by purchasing an excess liability policy so long as such policy provides coverages at least as broad as the primary insurance.

##### 11.4.3 1. Worker's Compensation and Employer's Liability Insurance

- a. Worker's Compensation Insurance shall be as required by law and shall include an "all states" or "universal" endorsement.
- b. Employer's Liability Insurance shall be written for not less than \$500,000 per occurrence.

##### 2. Commercial General and Automobile Liability Insurance

###### a. Minimum Limits:

Per Occurrence \$1,000,000

Aggregate \$1,000,000

- b. The following coverages must be specifically insured and certified with no internal sublimits. A separate aggregate limit is acceptable for the Products/Completed Operations hazard:

- 1) Independent Contractors Contingent Liability or Owners Protective Liability
  - 2) Products/Completed Operations Liability
  - 3) Contractual Liability
  - 4) "X, C, U" Hazard Liability (if applicable)
  - 5) Personal Injury Liability including claims related to employment
  - 6) Broad Form Property Damage Liability, or deletion of the "Care, Custody, and Control" exclusion
  - 7) Owned, Hired and Non-Owned Automobile Liability
  - 8) Waiver of Defense of Municipal Liability Immunity
3. Builders Risk Insurance
- 1) Completed value form in an amount equal to the GMP plus Architect fees on a replacement cost basis.
  - 2) The policy shall name as insureds The Owner, CMAR, and all subcontractors on an equal basis.
  - 3) The policy shall be written on an "All Risk" form, to include at least the perils of Fire, Lightening and extended coverage theft, vandalism, malicious mischief, and collapse
- 11.4.4 This furnishing of the required insurance coverages, as may be modified by special Conditions, is one of the CMAR's initial requirements of the Agreement that must be performed before a Notice to Proceed can be issued, and if not provided within 15 calendar days after receipt of the Notice of Award, may result in forfeiture of the CMAR's Bid Security. All insurance policies shall be open to inspection by the Owner, and copies of policies shall be submitted to the Owner upon written request.
- 11.4.5 The contractual liability is to be written on a blanket basis for all written or oral contracts, or specifically endorsed to acknowledge the contractual relationship between the insured and the Travis County.
- 11.4.6 All certificates of insurance shall provide that the insurance company shall give the County an affirmative statement, with no qualifications, that thirty (30) days prior written notice will be given to the County in the event of policy cancellation, non-renewal or material reduction in coverage provided under the policy, including impairment of any aggregate limits less than \$1,000,000.
- 11.4.7 A waiver of subrogation in favor of Travis County will be endorsed to all policies. Travis County will be named as an additional insured where the County's interest may appear.
- 11.4.8 Insurance shall be procured from a reputable insurance company having an AM Best rating of A+5 or better.

## **ARTICLE 12**

### **CHANGES IN WORK**

#### **12.1 CHANGE ORDERS**

- 12.1.1 A "Change Order" is a written modification to the Agreement signed by the Owner, the Architect/Engineer, and the CMAR issued after award of the Agreement authorizing a change in

the Work and an adjustment, if any, in the GMP or the Contract Time. The GMP and the Contract Time may be changed only by Change Order. A Change Order signed by the CMAR indicates his agreement therewith, including the adjustment in the GMP or the Contract Time.

12.1.2 Routine changes in the Agreement shall be formally initiated by the Architect/Engineer by means of a "Change Proposal Request" form detailing requirements of the proposed change. The CMAR shall prepare a Change Proposal ("CP") based on the CPR form. This action may be preceded by communications between the CMAR, Architect/Engineer, and Owner concerning the need for and nature of the change, but such communications shall not constitute a basis for beginning the proposed Work by the CMAR. Except for emergency conditions defined in subparagraph 12.1.10 or for conditions described in subparagraph 12.2.3, approval of the CMAR's Change Proposal by the Architect/Engineer and Owner will be required for authorization to proceed with the Work being changed. Without prior approval the CMAR may be required to remove Work so installed.

12.1.3 The cost or credit to the Owner resulting from change in the Work shall be determined in one or more of the following ways:

1. by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
2. by unit prices stated in the Contract Documents or subsequently agreed upon; or
3. by a cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee. (The CMAR shall keep and present, in such form as the Architect/Engineer or the Owner may prescribe, an itemized accounting together with appropriate supporting data for inclusion in a Change Order.)

12.1.4 All proposed costs for Change Order Work must be supported by an itemized accounting of material, equipment, and associated itemized installation costs in sufficient detail to permit analysis by the Architect/Engineer and Owner using current estimating guides and/or prices. Photocopies of Subcontractor and significant vendor proposals supporting the CMAR's Change Proposal shall be furnished unless specifically waived by the Owner. The CMAR shall provide written response to a Change Proposal Request within ten (10) days of receipt, unless otherwise specified in the Supplementary Conditions.

12.1.5 Unless otherwise provided in the Contract Documents, the "Change Order Base Cost" shall be limited to the following:

- a. The total cost of materials and supplies, reflecting all available discounts, itemized by cost and quantity;
- b. The total cost of all labor, including the cost of additional supervision, itemized to show man-hours by trade and classification and burdened hourly rates (which include social security tax, unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance);
- c. The rental value of equipment and machinery calculated for each type of equipment used in performing the changed Work, based on hours of use. Unless otherwise specified, prices for use of machinery and equipment shall be determined by using 80 percent of the latest schedule of "Equipment Ownership Expense" adopted by Associated General Contractors of America. Mobilization costs will not be allowed except when the CMAR demonstrates that the need to mobilize a piece of equipment arose solely because of the changed Work;
- d. All transportation costs for delivery and handling of materials, equipment, and supplies, and the removal of waste or debris;
- e. All storage costs in excess of thirty (30) days for materials and supplies, if necessitated solely by the changed Work;

- f. Sales taxes are not to be included in charges for materials that are tangible personal property incorporated into the Project or completely consumed at the job site and services required by or integral to the performance of the Agreement, as provided in Texas Tax Code Section 151.311. Sales taxes are allowed on all other charges, including the cost of labor, overhead and materials, which do not become part of the finished Project or are not completely consumed at the jobsite. Such taxable charges shall be separated from non-taxable charges.
- 12.1.6 The amounts that the CMAR or a Subcontractor adds to the Change Order Base Cost for overhead and profit will also be considered by the Owner before approval is given. The amounts established hereinafter are the maximums that are acceptable to the Owner without a full and complete justification acceptable to the Owner.
- a. To the total of the Change Order Base Cost, the CMAR will be allowed to add a percentage as noted below to cover overhead and profit combined. Overhead shall be considered to include ~~insurance other than mentioned above, office supervisors and assistants, use of small tools, incidental job burdens and general home office expense, and no separate allowance will be made therefor except as allowed under Article 8.~~ Allowable percentages for overhead and profit on changes will be applied consistent with the GMP proposal.
  - b. [Intentionally deleted.]
  - c. On changes involving both additions and deletions, percentages for overhead and profit will be allowed only on the net addition.
  - d. The amount of credit to be allowed by the CMAR to the Owner for any deletion or change which results in a net decrease in the GMP will be the amount of the actual net cost.
- 12.1.7 When an Excusable Compensable Delay, as defined under 8.3.1.3, occurs, the CMAR shall be entitled to an extension of time and to compensation for the cost of extended general conditions related to the delay, as set forth below:
1. The CMAR shall notify the Owner of a request for an extension of time as described under 8.3.2. The CMAR and Owner recognize and agree that it is beneficial to each other to identify factors affecting the CMAR's cost of performance, and to take prompt action to control them. Therefore, it is agreed that the CMAR shall not be entitled to request a cost adjustment for extended general conditions unless the required notice is submitted timely.
  2. The cost adjustment proposal shall be based on itemized documented costs actually incurred. If and only if the actual cost claimed cannot be demonstrated with reasonable certainty, the CMAR may utilize industry-recognized mathematical formulas or models to compute the proposed cost adjustment.
  3. No markup is authorized on the Change Order Base Cost of extended general conditions.
- 12.1.8 No payments can be made on such work until the final amount is agreed and the Change Order approved.
- 12.1.9 The execution of a Change Order by the Owner and the CMAR constitutes the full, final and complete settlement of all claims with regard to the modifications contained in the Change Order for foreseeable impacts on the GMP or the Contract Time.
- 12.1.10 Emergency changes to save life or property may be initiated by the CMAR alone with the claimed cost of such Work to be fully documented as to necessity and detail of the reported costs in accordance with subparagraph 12.1.5.

## 12.2 CONSTRUCTION CHANGE DIRECTIVE

12.2.1 A Construction Change Directive, (a "CCD"), is a written order prepared by the PM and signed by the Owner and Architect/Engineer, directing a change in the Work and stating a proposed basis for adjustment, if any, in the GMP or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Agreement, order changes in the Work within the general scope of the Agreement consisting of additions, deletions or other revisions, the GMP, and the Contract Time being adjusted accordingly. All such changes in the Work shall be performed under the applicable conditions of the Contract Documents.

12.2.2 A Construction Change Directive shall be used if one of the following circumstances applies:

1. If the CMAR fails to provide a written Change Proposal within 10 days of receiving a Change Proposal Request or fails or refuses to execute an agreed Change Order within the time required to prevent a delay to the Work Progress Schedule;
2. If negotiations fail to achieve an agreed price; or
3. If, in the Owner's judgment based on the Work Progress Schedule, a failure to authorize the CMAR to proceed with a Change Order under the normal process may adversely affect the timely completion of the Work.

12.2.3 Any unexpected circumstances which necessitates an immediate change in order to prevent damage to the Work in place, to avoid a delay in the Work Progress Schedule, or to maintain safety shall be expedited by verbal communication and authorization between the CMAR, Architect/Engineer and Owner with written Construction Change Directive following as soon as may be practical. Should consultation with all other interested parties be precluded by events, the Owner may act alone. A limiting not-to-exceed estimate of cost will be requested prior to authorizing Work to proceed. Should a cost estimate be impractical for any reason, the Owner may authorize the use of detailed cost records of such Work to establish and confirm the actual costs for documentation in a formal Change Order.

12.2.4 If the Construction Change Directive provides for an adjustment to the GMP, the basis and method for determining the cost or credit to the Owner shall be in accordance with either subparagraph 12.1.3 or as described below.

12.2.5 If the CMAR does not respond promptly or disagrees with the method for adjustment of the GMP, the CMAR shall be paid "Actual Field Cost" plus overhead and profit. "Actual Field Cost" is calculated to include the same costs as outlined in 12.1.5, also known as the Change Order Base Cost. Overhead and profit is determined in accordance with subparagraph 12.1.6. The Owner may direct the form in which accounts of Actual Field Cost shall be kept and records of those accounts shall be made available to the Owner. When CMAR's field office must be maintained solely on account of such extra work; then the cost to maintain and operate the same shall be included in Actual Field Cost.

12.2.6 When Actual Field Cost is used to determine the cost of the Construction Change Directive, the CMAR's representative and the County inspector shall compare records of Work done for the CCD at the end of each day. Copies of these records will be made upon suitable forms approved for this purpose by the Owner and signed by both the Owner's and the CMAR's representatives, one copy being forwarded to the Owner and one to the CMAR. All claims for work performed for the CCD shall be submitted to the Architect/Engineer by the CMAR upon certified statements to which shall be attached certified copies of invoices covering the cost of, and the freight charges on, all materials used in such Work. Such statements shall be filed not later than the tenth day of the month following that in which the work was actually performed. The statements shall separate charges in accordance with subparagraph 12.1.5.

12.2.7 When the Owner and CMAR agree on the adjustments to the GMP and Contract Time, such agreement shall be recorded by preparation and execution of an appropriate Change Order in accordance with 12.1.

### 12.3 CONCEALED CONDITIONS

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

12.3.2 If, in the performance of the Agreement, subsurface, latent or concealed conditions at the site are found to be materially different from the information included in the Contract Documents, or if unknown conditions of an unusual nature are discovered differing materially from the conditions usually inherent in Work of the character shown and specified, the CMAR shall notify Owner in writing of such conditions before proceeding with the Work. If necessary, the Owner shall develop a solution and provide it to CMAR. If the solution prompts changes to the GMP and/or Time, the Agreement shall be adjusted under Article 12 hereof.

#### 12.4 **CLAIMS FOR ADDITIONAL COST**

12.4.1 If the CMAR wishes to make a claim for an increase in the GMP, he shall give the Architect/Engineer written notice thereof within ten (10) days after the occurrence of the event giving rise to such claim. This notice shall be given by the CMAR before proceeding with the Work, except in an emergency endangering life or property in which case the CMAR shall proceed in accordance with paragraph 10.3. No such claims shall be valid unless so made. Any change in the GMP resulting from such claim shall be authorized by Change Order.

12.4.2 If the CMAR claims that additional cost is involved because of, but not limited to, (1) any written interpretation (2) any order by the Owner to stop the Work pursuant to paragraph 3.3 where the CMAR was not at fault, or (3) failure of payment by the Owner pursuant to paragraph 9.7, the CMAR shall make such claim as provided in subparagraph 12.4.1.

### **ARTICLE 13**

#### **UNCOVERING AND CORRECTION OF WORK**

##### 13.1 **UNCOVERING OF WORK**

13.1.1 If any portion of the Work should be covered contrary to the request of the Architect/Engineer or the Owner or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Architect/Engineer or the Owner, be uncovered for their observation and shall be replaced at the CMAR's expense.

##### 13.2 **CORRECTION OF WORK**

13.2.1 The CMAR shall promptly correct all Work rejected by the Architect/Engineer or the Owner as defective or as failing to conform to the Contract Documents whether observed before or after Substantial Completion and whether or not fabricated, installed, or completed. The CMAR shall bear all costs of correcting such rejected Work, including any and all additional costs incurred by the Owner as a result thereof.

13.2.2 If any of the Work is found to be defective or not in accordance with the Contract Documents, the CMAR shall correct it promptly after receipt of a written notice from the Owner to do so unless the Owner has previously given the CMAR a written acceptance of such condition. This obligation shall survive termination of the Agreement. The Owner shall give such notice within ten (10) days after discovery of the condition.

- 13.2.3 The CMAR shall remove from the site all portions of the Work which are defective or non-conforming and which have not been corrected under these General Conditions and under the Agreement, unless removal is waived in writing by the Owner.
- 13.2.4 If the CMAR fails to correct defective or non-conforming Work as provided in these General Conditions and in the Agreement, the Owner may correct it in accordance with Paragraph 3.4.
- 13.2.5 If the CMAR does not proceed with the corrections of such defective non-conforming Work within a reasonable time fixed by written notice from the Architect/Engineer or the Owner, the Owner may remove it and may store the materials or equipment at the expense of the CMAR. If the CMAR does not pay the cost of such removal and storage within ten (10) days thereafter, the Owner may upon ten (10) additional days' written notice sell such work at auction or at private sale and shall account for the net proceeds therefor, after deducting all costs that should have been borne by the CMAR, including compensation for the Architect/Engineer's additional services made necessary thereby. If such proceeds of sale do not cover all costs which the CMAR should have borne, the difference shall be charged to the CMAR and an appropriate Change Order shall be issued. If the payments then or thereafter due the CMAR are not sufficient to cover such amount, the CMAR shall pay the difference to the Owner.
- 13.2.6 The CMAR shall bear all costs of making good all Work of the Owner or separate contractors destroyed or damaged by such correction or removal.
- 13.2.7 Nothing contained in this Paragraph 13.2 shall be construed to establish a period of limitation with respect to any other obligation which the CMAR might have under the Contract Documents, including Paragraph 4.5 hereof. The establishment of the specific obligation of the CMAR to correct the Work has no relationship to his obligation to comply with the Contract Documents, nor to proceedings which may be commenced to establish the CMAR's liability with respect to his obligations other than specifically to correct the Work.
- 13.3 **ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK**
- 13.3.1 If the Owner prefers to accept defective or nonconforming Work, he may do so instead of requiring its removal and correction, in which case a Change Order will be issued to reflect a reduction in the GMP where appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## **ARTICLE 14**

### **TERMINATION OF THE AGREEMENT**

#### **14.1 TERMINATION BY THE OWNER**

- 14.1.1 If the CMAR is adjudged a bankrupt, or if he makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of his insolvency, or if he persistently or repeatedly refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or if he fails to make prompt payment to Subcontractors or for materials or labor, or persistently disregards laws, ordinances, rules, regulations or order of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a provision of the Contract Documents, then the Owner may, without prejudice to any right or remedy and after giving the CMAR and his surety, if any, seven (7) days' written notice, terminate the employment of the CMAR and take possession of the site and all materials, equipment, tools, construction equipment, and machinery thereon owned by the CMAR and may finish the Work by whatever method he may deem expedient. In such case the CMAR shall not be entitled to receive any further payment until the Work is finished.
- 14.1.2 If the unpaid balance of the GMP exceeds the cost of finishing the Work, including compensation for the Architect/Engineer's additional services made necessary thereby, such excess shall be

paid to the CMAR. If such costs exceed the unpaid balance, the CMAR shall pay the difference to the Owner. The amount to be paid to the CMAR or to the Owner, as the case may be, shall be certified by the Architect/Engineer, upon application, in the manner provided in paragraph 9.4, and this obligation for payment shall survive the termination of the Agreement.

#### 14.2 TERMINATION FOR DEFAULT

Failure by either party in performing any of its provisions shall be a breach of contract, in which case, either party may require corrective action within ten (10) days after date of receipt of written notice citing the exact nature of the breach. Failure to take corrective action or failure to provide a satisfactory written reply excusing failure within the prescribed ten (10) days shall be a default. The defaulting party shall be given a twenty (20) day period within which to show cause why the Agreement should not be terminated for default. Commissioners Court may take whatever action as its interest may appear, resulting from the notice. All notices shall be issued by the Purchasing Agent or the Owner's legal representative only and all replies shall be made in writing to the Purchasing Agent at the address provided herein. Notices issued by or to anyone other than the Purchasing Agent or Owner's legal representative shall be void, and shall be considered as not having been issued or received. The defaulting party shall be liable for actual damages as stipulated in this Agreement. Liquidated damages, if specified in the Agreement, may also apply. The Owner may enforce the performance of this Agreement in any manner allowed by law in the event of breach or default, and may contract with another party with or without solicitation of bids or further notification to the CMAR. As a minimum, the CMAR shall be required to pay any difference in the cost of securing the products or services covered by this Agreement, or compensate for any loss or damage the Owner derived if it is necessary to contract with another source because of his default, plus reasonable administrative costs and attorneys fees. If termination for default occurs, Owner and its officials, agents and representatives shall not be liable for loss of any profits anticipated to be made.

#### 14.3 TERMINATION FOR CONVENIENCE

The Owner may terminate this Agreement upon thirty (30) days written notice if the Commissioners Court finds that termination serves the public interest, or results from any law, ordinance, regulation, or court order if termination is not authorized for any other reason. The Owner may not terminate the Agreement under this paragraph if it intends to award a contract for similar requirements to another Contractor within six months of termination. If the Owner terminates this Agreement under this paragraph, it must pay the CMAR the cost directly attributable to Work done or supplies obtained in preparation for compliance with this Agreement prior to termination. The Owner is not required to pay costs that are recoverable in the normal course of doing the business in which the CMAR is engaged or costs which can be recouped by selling the Work done or supplies obtained. If the Owner pays for supplies or materials, these supplies and materials become the property of the Owner and the CMAR must deliver them to the place designated by the Purchasing Agent. The Owner is not liable for any loss of profits caused by this termination.

### ARTICLE 15

#### **OTHER CONDITIONS OR SERVICES**

- 15.1 Notwithstanding anything herein to the contrary, the CMAR shall perform all services and responsibilities required of the CMAR by these General Conditions for Travis County Building Agreements using at least that standard of care which a reasonably prudent contractor in Travis County, Texas would use under the same or similar circumstances. Nothing in these General Conditions for Travis County Building Agreements shall be construed to relieve the CMAR of this duty.
- 15.2 Any oral representations or modifications concerning these General Conditions for Travis County Building Agreements shall be of no force or effect, excepting a subsequent modification in writing, signed by the party to be charged. NO OFFICIAL, AGENT, EMPLOYEE, OR REPRESENTATIVE OF THE OWNER MAY MODIFY OR AMEND THESE GENERAL

CONDITIONS FOR TRAVIS COUNTY BUILDING AGREEMENTS, EXCEPT PURSUANT TO  
EXPRESS AUTHORITY GRANTED BY THE TRAVIS COUNTY COMMISSIONERS COURT.

END OF GENERAL CONDITIONS

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## SECTION 01010

### SUMMARY OF WORK

#### TRAVIS COUNTY DISTRICT ATTORNEY OFFICE BUILDING

##### 1.0 THE PROJECT

- 1.1 In November 2011, Travis County purchased the 0.5 acre property located at 416 W. 11<sup>th</sup> Street, at the northwest corner of San Antonio and 11<sup>th</sup> streets in downtown Austin, Texas. The Project is the development of this site as a seven-story, 130,000 GSF office building with a three-level, underground, 70,000 GSF 140-space parking structure for a combined total Project area of 200,000 GSF. The Project is intended to serve the space needs through 2035 of the District Attorney's Office and two associated Grand Jury suites, along with appropriate building amenity spaces, including ground floor retail space which could be a food service. The building structure and envelope will be designed for an extended life of 75 years. In accordance with the Travis County "Green Building Policy", this Project will seek LEED Silver certification at a minimum. The Project must be sensitive to the historic urban neighborhood. The Project should be a recognizable component of the multi-building County justice campus which is anchored by the historic Heman Marion Sweatt Travis County Courthouse across the street. The site improvements must incorporate streetscape elements which are compatible and coordinated with the City of Austin "Great Streets" planning for 11<sup>th</sup> and San Antonio Streets. The Project scope also includes a secure staff access tunnel to connect this building with the Criminal Justice Center across 11<sup>th</sup> Street.
- 1.2 The Architecture/Engineering ("A/E") team, engaged under separate contract with the County, will be responsible for the architectural and engineering services for the Project. The Project delivery method will be Construction Manager at Risk. The Construction Manager at Risk ("CMAR") will be contracted during the early design phase in order to provide advisory input during the design phase concerning Project constructability, cost and related issues. At the end of the design phase, the CMAR will negotiate the Guaranteed Maximum Price ("GMP") for the construction of the Project. During the construction phase, the CMAR will act as the general contractor, with all construction subcontractors contracted to and directly supervised by the CMAR. The Travis County Facilities Management Department ("FMD") is the Project Manager for this Project and the County point-of-contact for the A/E and the CMAR, whose work FMD will oversee and support on behalf of the County's interests. For purposes of this assignment, certain references to "County" may refer to the Facilities Management Department as applicable.

##### 1.0 PROGRAM SUMMARY

###### 1.1 Office building – 130,000 GSF, seven-stories

- 1.1.1 Large shared conference room (Building Amenity) – 900 NSF
- 1.1.2 Ground floor retail suite – area to be determined during schematic design.
- 1.1.3 District Attorney Suite(s) – approximately 90,800 NOSF total office suites with staff and support spaces, organized according to operational units, including private offices, open offices, conference and other types of meeting and team work rooms, media room, copy/print rooms, law library, file rooms, storage rooms for evidence, supplies, and equipment, server room, reception and waiting areas and staff break rooms.
- 1.1.4 Grand Jury Suites – 3,800 NOSF total, organized into two suites which will accommodate four Grand Juries including Grand Jury rooms, conference rooms, reception, coffee bar and restroom; with separation from District Attorney suites.
- 1.1.5 Primary circulation, vertical circulation and services spaces

- 1.2 Parking structure – underground, 140 spaces, 70,000 GSF.
- 1.3 Underground tunnel – crossing under W. 11th Street to connect the new District Attorney Office Building with the existing Criminal Justice Center Complex (CJC) (which includes the Gault Building) on the south side of W. 11<sup>th</sup> St. The CJC is a secure County facility. The security of the CJC is managed and monitored by the Travis County Sheriff's Office (TCSO). All work performed and workers performing work in the CJC will be subject to the security requirements of the TCSO.

## 2.0 PROJECT GOALS

- 2.1 Sustainability & Energy Efficiency: Comply with the Travis County Green Building Policy. The Project is seeking LEED Silver certification for New Construction at a minimum. Utilize "best practices" to achieve the highest practical level of energy efficiency. Design to provide natural lighting to the greatest number of occupants. Utilize regionally sourced and rapidly renewable material resources as much as possible.
- 2.2 Health, Safety & Security: Comply with local, state and national codes for site and building design, fire and life safety, accessibility and health. Select materials and designs that promote healthy environments and minimize exposure to mold and hazardous elements, excessive noise, uncomfortable temperatures and high humidity levels. In addition to compliance with ADA and Texas Accessibility Standards, address the ergonomic and accessibility needs of children and the elderly. Incorporate security features and systems in coordination with the adopted County security plan for the Project.
- 2.3 Quality, Compatibility & Functionality: Balance goals to achieve high quality of appearance, performance, reliability, durability, maintainability, and sustainability, with careful consideration of initial cost versus life-cycle cost. Select durable and functionally suitable materials and equipment.
- 2.4 Maintainability: Material and equipment selections should consider County maintenance and repair methods and policies. Design for ease of maintenance, availability of repair parts and labor, cost effectiveness, dependability and vendor and manufacturer warranty service and support.
- 2.5 Specific design goals: The Project will be designed to meet the County's Project Requirements: the "Owners Project Requirements" or "OPR" which will be developed by the Consultant during the Pre-Design Phase.
  - 2.5.1 Project design must meet the DMU-CURE zoning requirements as described in City of Austin Zoning Case C14-2012-0103. To accommodate the sloping site conditions and meet the 6.5 FAR requirement, it is expected that half of lowest office floor will be designed below grade. The Project design must also accommodate the zoning height limit of 100 ft. and comply with the more restrictive height limitations of the Capital View Corridors as they impact various portions of the site.
  - 2.5.2 Security requirements for both the office building and parking structure are important and will require careful analysis beginning in Pre-Design and throughout the Design Phases.
- 3.0 Utilize high quality materials that are aesthetically compatible with the existing building and reflect the regional character of Travis County. Materials and furnishings should be durable, cleanable and resist aging.
- 4.0 Incorporate state-of-art media technology as needed for large conference rooms.
- 5.0 Lighting designs will include general and decorative lighting, interior and exterior, responsive to safety issues, applicable regulations, and the urban context.

- 6.0 Projected Schedule: This proposed Project schedule is subject to negotiation with the selected Consultant. These time frames are consecutive and include County reviews, approvals and associated activities.

9 Months - Pre-Design Phase and Design Phases (which includes overlapping CMAR Procurement Phase)

19 Months - Construction Phase (NTP to Substantial Completion)

2 Months - Transition Phase (from Substantial to Final Completion)

10 Months - Warranty Phase (to one year anniversary of Substantial Completion)

As needed - LEED Certification Phase (to completion of certification)

END OF SECTION 01010

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## PROJECT SCHEDULE

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## PROJECT INFORMATION

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