



PROGRESO INDEPENDENT SCHOOL DISTRICT

"A College and Career Readiness District"

P.O. Box 610

Progreso, TX 78579

Phone: (956) 565-3002 Fax: (956) 565-2128

REQUEST FOR QUALIFICATIONS

FOR

CONSTRUCTION MANAGEMENT SERVICES

Submission Deadline: May 19, 2022

@ 4:00 p.m.

The district is accepting Request for Qualification in support of the PISD 2022 Construction Bond Program. Projects under this program includes but not limited to construction of New Elementary Gym, HVAC improvements, Roof repairs, Football stadium up improvements.

The Construction Manager responsibilities will include but not limited to Design Development, Construction documents phase, Prepare detailed cost estimates, procurement phase, construction phase, and project close-out phase.

Responses shall include the information request in the sequence and format prescribed. In addition to and separate from the requested information, submitting organizations may provide supplementary materials further describing their capabilities and experience.

The District shall receive, and read aloud the name of the firms submitting a statement of qualifications, The district will review and rank all firms base on the selected criteria. Firms reputation, Experience, warranty work, project experience team experience, Service fee.

For Further Information Contact:

Progreso ISD Purchasing Dept.

Attn: Juan Hernandez

600 N Business FM 1015

PO BOX 610

Progreso, TX 78579

956-565-3002

Purchasing@progresoedu.net



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Section 1 INSTRUCTIONS

1. **PROPOSAL SUBMISSION:** To be considered, the proposal must be prepared in the manner and detail specified in this proposal.
 - a) Proposals should be prepared in such a way as to provide a straightforward, concise delineation of capabilities to satisfy the requirements of the RFQ, extensive binding, colored displays, promotional materials, etc., are not necessary or desired. Emphasis should be concentrated on conformance and clarity of content.
 - b) **NUMBER OF COPIES:** One original, and two (2) copies and one (1) electronic copy saved to a flash drive of the entire proposal must be submitted. The original must be marked "ORIGINAL". Each copy may be placed in a three ring binder or securely bound in an alternate fashion. Failure to provide the required number of copies may result in the offer being declared non-responsive.
 - c) Proposals will be received until 4:00PM, local time by May 19, 2022 at: Progreso Central Office, 600 N. FM 1015 / PO BOX 610, Progreso, TX 78579. There will not be a public opening of this RFQ.
 - d) Proposals may be hand carried or mailed in a sealed envelope/package clearly marked with the offering company's name, return address, and the opening date and time.
 - e) Submissions that are sent via facsimile or e-mail will not be considered.
 - f) PROPOSAL submissions received late, unsigned, or in locations other than as stated in this solicitation will be returned without consideration.
 - g) The Progreso Independent School District will not be bound to accept the lowest or any Proposal and reserves the right to accept or reject in whole or in part, any and all Proposals, to negotiate portions thereof, and to waive any informality.
 - h) All costs incurred in the preparation and submission of the RFQ response shall be borne solely by the Vendor. Where Vendors may be required to perform a presentation, give demonstrations, and provide samples and/or technical literature, or participate in any interview process as related to this solicitation, all costs shall be borne by the Vendor
 - i) Any Proposals submitted in response to this Request for Proposal will become irrevocable upon the closing time and remain open for acceptance for ninety (90) days from the closing date whether or not another RFQ has been accepted.
 - j) Submission of a Proposal shall be construed to mean that the Vendor agrees to carry out all of the conditions set forth in this document. Any proposed variation from the specifications, terms and conditions shall be clearly identified. Each exception must be clearly defined and referenced to the proper section and paragraph in this Solicitation. If no changes are indicated, the District shall expect to receive the service(s) exactly as specified. Any exception shall include, at a minimum, the Proposer's proposed substitute language and opinion as to why the suggested substitution will provide equivalent or better service and performance. Objections we consider excessive or affecting vital terms may reduce or eliminate your prospects for award.
 - k) The Solicitation Forms provided must be used. Failure to follow these instructions may cause a Proposal to be determined as non-responsive and the Proposal rejected.
 - l) Submittals that address only part of the requirements contained in this solicitation will not be considered.



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2. **RFQ CLARIFICATION** - Questions regarding this RFQ should be directed to the person specified on the cover sheet. Answers citing the question, will be distributed simultaneously to all known prospective offerors via Progresoedu.net / Purchasing@progresoedu.net Oral answers provided by PISD or its agents shall not be binding. No modification or amendment to this Request for Proposal shall be valid unless it is set forth in writing -- via a signed addendum or amendment from the District Purchasing Office.
3. **Bidder Responsibility** - We expect you to be thoroughly familiar with all specifications and requirements of this RFQ. Your failure or omission to examine any relevant form, article, site or document will not relieve you, as a contractor, from any obligation regarding this RFQ. By submitting a Response, you are presumed to concur with all terms, conditions and specifications of this RFQ.
4. **PROPOSAL SIGNATURE** – The proposal must be signed by an individual who is authorized to bind the responding firm contractually. The signature should indicate the title or position that the individual holds in the firm. Firms who sign their contracts with the name of the firm must provide the name of the corporate officer for signature validation by the District. An unsigned proposal shall be rejected.
5. **AWARD** – The District reserves the right to select any offer it deems the best value, regardless of price. PISD will award to the contractor who presents the greatest value, in our view, to PISD from the standpoint of suitability to purpose, quality, service, previous experience, price, ability to deliver, or for any other reason deemed by the District to be in the best interest of PISD. Thus, the result will not be determined by price alone but upon the applicable criteria as listed under **EVALUATION CRITERIA**.
6. **PRECEDENCE** - In the event of contradictions or conflicts between the provisions of the documents comprising the Contract, they will be resolved by giving precedence in the following order:
 - a) the provisions of the Contract (as it may be modified);
 - b) the provisions of the RFQ(as it may be amended).
 - c) the provisions of the Contractors Response (as it may be clarified);
7. **CONTRACT PERIOD** - The District intends to award a multi-year contract over a proposed 2022 Bond Construction period. It is anticipated that this should be completed by the August 31, 2025. If necessary, the contract may be extended on an annual basis. Such extension(s) will be subject to same terms, conditions, favorable prices, and by mutual agreement of both parties.
8. **PROPOSAL PREPARATION** - This RFQ shall not, in any manner, be construed to be an obligation on the District to enter into a contract or result in any claim for reimbursement of cost for any efforts expended in responding to the RFQ or in anticipation of any contract.
9. **ISSUING OFFICER** – Direct all inquiries regarding this RFQ to the contact person named below; do not contact other District staff. Information provided by other than the below contact should be considered invalid, and proposals which are submitted in accordance with such information may be declared non-responsive. The issuing officer and mailing address to send Proposal, and other correspondence concerning the RFQ is:

Juan Hernandez
PISD Finance Director
PO Box 610
Progreso, TX 78579
956-565-3002
Purchasing@Progresoedu.net



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SECTION 2 - SCOPE OF WORK

1. **OVERVIEW:** The Progreso Independent School District (PISD) hereby requests firms to submit their proposals for Construction and Program Management Services in support of the proposed PISD 2022 Bond Construction program. The aim of this solicitation is to obtain services which will help ensure that the 2022 Bond construction program is executed on-time and within budget. Additionally, it shall be the responsibility of the Construction Manager to keep the District informed of any issues and/or concerns the owner should be aware of. The Form of Agreement shall be the CMAA Document A-1. (Note: The District will substantially modify most standard documents including the above CMAA document) The proposed \$10 Million dollar bond includes but not limited to the following;

A new Elementary School Gym, and Renovations and Additions. Renovations to existing facilities with various needs may include but not limited to; Roof Improvements, asbestos abatement, Stadium improvements and building interior and exterior upgrades, HVAC, plumbing, electrical service, power, lighting, communication, safety, site work, etc.

2. **GENERAL INFORMATION:** The Progreso ISD is located south of Weslaco, TX and serves the cities of Progreso, Progreso Lakes, Weslaco, Donna, Mercedes, and Santa Maria. The District is finalizing the closure of a very successful 2022 \$10 Million Bond Construction program. The successful construction management firm shall work as part of an integrated team consisting of District Staff, and Construction firms. A work area located in the Central Office Area will be available for Construction Management staff.
3. **MINIMUM QUALIFICATIONS:** Proposers will be deemed non-responsible and rejected without any further evaluation if they do not meet the following mandatory qualifications:
 - a) The Proposer must have 5 years experience providing Construction and Project Management services.
 - b) The Proposer must have worked on at least three comparable education projects
4. **PREFERRED QUALIFICATIONS:** The Proposer may be evaluated higher if they meet the following qualifications:
 - a) The Proposer shall have 10 years' experience providing Construction and Project Management Services.
 - b) The Proposer must have worked on at least six comparable education projects
 - c) Addition points will be awarded to companies with staff Engineers and/or Architects.

5. SCOPE OF SERVICES:

Service shall include but not limited to the following services:

a) Cost Estimating/Cost Control Services:

- i) Contractor must possess a thorough knowledge of current market conditions/ pricing within the RGV market area as well as in- house capabilities to prepare detailed cost estimates, utilizing the standard CSI-16 Division format. Specific types of estimates may include:



- (1) Cost estimates of construction documents at the Schematic Design, Design Development, and Construction Documents phase.
 - (2) Additive and Deductive Alternates for the Client
 - (3) Change order pricing estimates for review of contractor proposed change pricing and negotiation of final cost.
- ii) Constructability Reviews and Value Engineering of construction documents and associated cost savings utilizing "Best Practices" to identify alternative cost saving solutions during design. These services may be used throughout to aid in maintaining cost control.

b) Procurement Phase:

- i) Bidding Strategies: Contractor will develop bidding strategies that reflect market conditions with respect to other ongoing work, material and labor availability and other competitive market forces to avoid paying premiums on work. Contractor will contact local contractors in an effort to generate interest and competition.
- ii) Bid Evaluation; evaluating proposals to ensure the "Best Value" is received.
- iii) Reconciliation/ Post Bidding: As required, evaluate the differences between the Final Cost Estimate and the responsive bidder's pricing to identify/clarify reasons for "excessive" variations and solutions.

c) Construction Phase:

- i) Construction Manager: Provide a qualified, experienced person capable of providing exemplary representation and responsible for ALL coordination of contractor[s], A-E's, vendors, district staff and/or governmental agencies.
- ii) Project Controls: Provide an on-site Project Controls person to manage ALL project correspondence, document control functions, program meetings, submittals, requests for information, proposal requests, job progress documentation, pay request review/verification, continuous schedule review, coordination and updates.
- iii) Inspectors: Provide qualified on-site inspector(s), as required, to perform Quality Control Inspection duties to ensure conformance with plans and specifications of all constructed work.
- iv) Provide monthly board reports and schedule updates.
- v) "Work-Arounds" – Conflict Resolution
 - (1) "Work-Arounds": Identify with contractor potential future problem areas and collectively develop appropriate work-arounds" to avoid schedule interruptions and/or costly delays.
 - (2) Conflict Resolution: Provide assistance, when requested, to appropriately resolve any conflicts that may arise between all parties executing a project on the program.



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- (3) Change Order Review and Pricing: Provide price review/validation, potential cost reduction options, evaluation of appropriateness, and coordination with design on proposed changes, determination of responsibilities for changed conditions, coordination conflict, and schedule impact evaluation.
- d) **Project Close-Out Phase:** Review of the project to ensure orderly and timely completion, including development and completion of punch-lists; monitoring of start-up, training and warranty periods; timely submission of as-built drawings and O&M manuals, resolution of outstanding issues; review and analysis of claims or disputed issues.
- e) **Master Program Schedule (MPS):** Develop a MPS which schedules and tracks all Program Projects/Elements to include but not be limited to:
- i) Design Phase:
 - Schedule should coordinate review of deliverables for each project undergoing design at various stages (SD, DD, and CD's) in a manner that allows the owners to affect proper internal review, comment and approval.
 - Resource Loading: MPS should provide cost loading detail as necessary to provide monthly cash flow projections as required for financial management.
 - External Reviews: MPS should account for any external reviews required by governing authorities for approvals, permits, etc.
 - ii) Procurement Phase:
 - MPS should take into account bidding strategies which reflect and coordinate invitations for bids for all projects "within" the program to interest potential bidders and avoid market saturation.
 - Specialized procurements/installations outside of the general contractor's purview must be accounted for with respect to lead times and coordinated with actual construction.
 - Procurement and installation of both owner and contractor furnished equipment must be reflected in MPS for all projects within the program.
 - iii) Construction Phase:
 - Integrate contractor approved construction schedule into overall MPS to identify any unforeseen conflicts between program projects that require resolution.
 - Specialized equipment, owner and contractor provided equipment; furniture and furnishings must be included in construction phase.
 - Governing authority's inspections and approvals must be identified at appropriate times on the schedule.
 - iv) Start-up: Personnel acquisition training and start-up must be coordinated between the various projects in the MPS.
- f) Other: Firms submitting proposals in response to this request should also include specific examples of innovative actions they have recommended and had accepted that brought quantifiable "added value" to projects they have directed. Value added is defined as improvements to schedule, cost reductions, cost avoidance or improved functionality.



SECTION 3 - EVALUATION CRITERIA AND SUBMITTAL REQUIREMENTS

1) **EVALUATION:** The following will be considered in making the selection:

- *Qualifying background and experience of firm and personnel*
- *Capacity to Perform*
- *Past performance and service*
- *Client References*
- *Cost Proposal*

- a) Each proposal submitted in response to this RFQ shall focus on the above criteria. The Evaluation shall also consider those factors listed in TEC 44.031 (b) listed elsewhere in this solicitation. Proposals will be evaluated equally and fairly; no preference will be given to any Proposer based solely on previous experience with the District or to an incumbent thereof. The District reserves the right to make additional inquiries and may request the submission of additional information.

2) **GENERAL SUBMITTAL REQUIREMENTS:**

- a) **PROPOSAL FORMAT:** Each proposal should be prepared simply and economically. Responses shall be in the same order as the requirements listed below and in the following section.
- b) **PROPOSAL CONTENT:** The Proposer must include the following items, or the proposal may be deemed non-responsive and rejected without any further evaluation (unless otherwise indicated herein):
- i) All forms contained or listed in Section 5 in this RFQ, fully completed:
 - ii) A copy of Proposer's latest audited, reviewed, or compiled financial statements (balance sheet, income statement, statement of cash flows, footnotes) prepared by an independent certified public accountant. If your company is not required by federal, state and local law, financial institutions, or company management to have audited, reviewed, or compiled financial statements prepared by an independent certified public accountant, you may submit an internally generated balance sheet and income statement instead.
 - iii) Evidence showing that the Proposer meets each of the Minimum Qualifications listed in the Scope of Work of this RFQ. (See next section for more detail.)
 - iv) Firms shall submit a sample of a proposed contract for services. (CMAA Document A-1)
 - v) A complete response to each of the items in the next section, which are specific to the evaluation criteria. (See next section for more detail.)

3) **SUBMITTAL REQUIREMENTS SPECIFIC TO EVALUATION CRITERIA:** Submit a complete response to each of the following items. List them in the order below, following your submission to the above:

Please address each section in your proposal submission and divide each section, of your proposal, with identifying tabs.

An offeror who submits a proposal, which does not address each of the sections specified below, will be deemed non-responsive, and the proposal submission deemed incomplete.



Section 1: Proposal Certification Letter

Letter shall include complete address, phone numbers, the name of contact person(s) during this proposal process include a brief statement of interest, availability, and intent to perform services; general qualifications for selection. **The letter must be signed by an authorized agent of the firm.**

Section 2: Offeror Information Questionnaire

Offeror's responses to Questionnaire.

Section 3: Background & Experience – Provide a narrative containing the following information:

- a) Qualifying background, experience, education, capabilities, and accomplishments of the key management team members who would be assigned to this project. Include brief resumes of these personnel.
- b) Individuals should have a minimum of five (5) years' experience in required discipline, and should have served as project manager/construction manager on similar projects on a minimum of three previous occasions.
- c) List educational facilities on which your firm performed management services in the last five (5) years and the name and phone number of the owner's representative.
- d) Firm size, current workload and ability to perform based on current projects.
- e) Ability of proposed staff to work with the following;
 - Autodesk (or similar) Constructware Collaborative Project Management Suite
 - Word documents in Microsoft Word
 - Spreadsheets in Microsoft Excel
 - Schedules in Microsoft Project

Section 4: References

Provide at least three (3) references for which the firm has provided similar services. Include entity name, contact person, address, telephone and fax numbers who may be contacted for verification.

Section 5: Cost Proposal

This section shall include pricing on an hourly rate for key project staff in a table format: 1) key project personnel, 2) their titles, 3) include the exact bill-out rate of each person in dollars per hour who may work on the project. Include 3 years (expected term), plus an optional fourth year.

State Maximum Construction Fee in percentage per project.

Section 6: Firm's Organization Chart and Approach to Scope of Work

Provide chart designating specific individuals and consultants proposed to be assigned to the District's projects. Also provide in concise narrative form, your understanding of the District's needs, goals and objectives as they relate to the Bond Construction projects, and your overall approach to accomplishing the project. Give an overview on your proposed vision, ideas and methodology. Describe your proposed approach to the project.

Section 7: Additional Information

This section shall include any additional information the offeror deems will assist in better describing the firm and its ability which may assist us in our review of your proposal.



- 4) **SHORTLISTING:** The District may shortlist the Proposers based upon responses to the above items. If necessary, the District will conduct interviews/demonstrations. The District will notify each Proposer on the shortlist, if such presentation is required. These presentations will provide an opportunity for the Proposers to respond to questions posed by the evaluators and to clarify their proposals through exhibition and discussion. The District will not reimburse oral presentation costs of any Proposer.
- 5) **SELECTION:** Upon the completion of the selection process, the District shall notify the firms of the selection. Firms shall submit all cost or fee information using the Fee/Cost Proposal forms provided with this RFQ. At the District's discretion, it may directly negotiate with the best qualified firm on final scope, fee/compensation or award without further discussion. The District reserves the right to make an award without discussion. Therefore, the proposal should be submitted initially on the most favorable terms that the firm or individual may propose.

6) INSURANCE

The Vendor shall, without limiting its obligations or liabilities and at its own expense, provide and maintain and continuously carry insurances with insurers licensed in the State of Texas and in forms and amounts acceptable to the Progreso Independent School District:

- a) Insurance shall be underwritten by a company rated not less than A- in the Best's latest published guide.
- b) Automobile Liability Insurance coverage is for all owned, non-owned and hired vehicles.
- c) No deletions/exclusions from standard coverage form allowed without written consent of the SCUC Independent School District.

i. Insurance required

| | |
|------------------------|--|
| Workers Compensation - | Statutory Limits |
| Employers Liability - | \$500,000 @ accident |
| | \$500,000 policy limit |
| | \$500,000 @ employee |
| General Liability | \$300,000 <i>per occurrence</i> |
| | \$600,000 <i>general aggregate/\$600,000 products/completed operations aggregate</i> |
| Automobile Liability - | Owned/Non-owned/Hired vehicles |
| Bodily injury - | \$100,000 @ person/\$300,000 @ accident |
| Property damage - | \$100,000 |
| | or \$300,000 Combined Single Limit |

PISD is listed as an additional insured on all but the Workers' Compensation. Additional insured coverage is provided for both premises operations and products completed operation.

The successful contractor shall provide to the Progreso Independent School District, a Certificate of Insurance evidencing the required insurances are in force and effect and that all coverages shall provide for 30 days prior written notice to be given to the Progreso Independent School District in the event of cancellation or material changes. With the prior consent of the Progreso Independent School District, should any portion of the Services performed be sub-contracted, the Vendor will ensure that each sub-Vendor also maintains during the course of this Agreement insurance coverages which are in like form and with limits as those to be carried by the Vendor.

The contractor shall agree to waive all **rights** of subrogation against the district, its officials, employees and volunteers for losses arising from work performed by contractor for the district.



SECTION 4 - GENERAL TERMS AND CONDITIONS

- 1) **Evaluation of Proposals** Proposal evaluation will be done based on the information provided by the Offeror. It is very important that the Offeror provide all required information as part of their Proposal. Failure to provide necessary information and documentation could result in the Proposal being rejected.
- 2) **EVALUATION CRITERIA** The Proposals will be evaluated at the sole and absolute discretion of the Progreso Independent School District and its designees. The District shall consider the following criteria.
 - (1) the purchase price;
 - (2) the reputation of the vendor and of the vendor's goods or services;
 - (3) the quality of the vendor's goods or services;
 - (4) the extent to which the goods or services meet the district's needs;
 - (5) the vendor's past relationship with the district;
 - (6) the impact on the ability of the district to comply with laws and rules relating to historically underutilized businesses;
 - (7) the total long-term cost to the district to acquire the vendor's goods or services; [and]
 - (8) for a contract for goods and services, other than goods and services related to telecommunications and information services, building construction and maintenance, or instructional materials, whether the vendor or the vendor's ultimate parent company or majority owner:
 - (a) has its principal place of business in this state; or
 - (b) employs at least 500 persons in this state; and
 - (9) any other relevant factor specifically listed in the request for bids or proposals.
- 3) **APPLICABILITY** – These conditions are applicable and form a part of the contract documents in each supply and/or service contract and are a part of the terms of each purchase order for items of equipment and/or service included in the specifications and solicitation forms issued herewith. Any resulting contract shall include this solicitation, and Proposal received.
- 4) **PROPOSAL RESPONSE**. Unless otherwise specified, Offerors are required to submit an executed original of the Proposal. Proposal response must contain:
 1. Signed; Proposal Form
 2. Proposal Pricing
 3. References
 4. Felony Conviction Notice Form
 5. Conflict of Interest Form. Local Government Code Chapter 176 imposes disclosure / reporting obligations on vendors. Please complete and return Conflict of Interest Questionnaire Form CIQ. See http://www.ethics.state.tx.us/whatsnew/conflict_forms.htm for information and to download a copy of Form CIQ.
 6. Any additional documents required by the Solicitation.
- 5) **THOSE WHO DO NOT PROPOSE** are requested to notify the PISD Finance Department in writing if they wish to receive future Proposals. Failure to do so may result in their being deleted from our prospective Bidders list.
- 6) **DISCLOSURES** - By signing this Proposal, a Vendor affirms that he/she has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with the Proposal submitted.



- 7) **FUNDING OUT CLAUSE. MULTI-YEAR ACQUISITION;** Any contract for the acquisition, including lease, of real or personal property is a commitment of the District's current revenue only:
1. The District retains the continuing right to terminate the contract at the expiration of each budget period during the term of the contract.
 2. It is the District's intent to execute a contract for the longest period providing the lowest total cost to the district. Any resultant contract is conditioned on a best efforts attempt by the District to obtain and appropriate funds for payment of the contract.
- 8) **CONTRACTS FOR PURCHASE** will be put into effect by means of a purchase order(s) executed by the Superintendent or designee after contract award.
- (1) Any additional agreements/contracts to be signed by PISD shall be included with the Proposal.
 - (2) Prices for all goods and/or services shall be negotiated to a firm amount for the duration of this contract or as agreed to in terms of time frame.
- 9) **ASSIGNMENTS AND SUBCONTRACTING:** No part of this agreement may be assigned or subcontracted without the prior written consent of the PISD Finance Director. Payment can only be made to the Contractor named in this agreement.
- 10) **PUBLIC RECORD:** All Proposals become the property of the District. As a governmental entity the Public Information Act, formerly known as the Open Records Act, applies to this solicitation. Accepted Proposals and any subsequent award become public records. Proprietary material must be clearly marked as such. Pricing and service elements of the successful bid will not be considered proprietary information.
- 11) **CHANGES:** Any resulting Contract shall not be modified, altered, or changed except by mutual consent confirmed in writing by an authorized representative of each party to the Contract. The Superintendent or designee shall administer this contract on behalf of the District. The Vendor agrees to waive all claims for adjustment in regard to any services performed without prior receipt of an appropriate written Change Order. The PISD Finance Department shall review, approve and process all changes.
- 12) **INDEMNITY:** Vendor shall indemnify and hold harmless the PISD and its Board of Trustees, officers, agents, employees from all suits, actions, losses, damages, claims or liability of any character, type or description, including but not limited to, all expenses of litigation, court cost, penalties, and attorney's fees the PISD incurs defending any action, suit, or claim from any source whatsoever and any of any kind or nature arising directly or indirectly on the part of vendor, its agents, servants, employees, contractors, and supplies, out of the operation under this agreement.
- 13) **INDEPENDENT CONTRACTOR:** The parties intend that the Contractor, in performing the specified services, will act as an independent contractor and must have control of the work and the manner in which it is performed. The Contractor will be free to contract for similar services to be performed for other employers while Contractor is under contract with District. The Contractor is not to be considered an agent or employee of District and is not entitled to participate in any pension plans, bonus, stock, or similar benefits that District provides for its employees. The District and Contractor agree that the Contractor is not covered under any District insurance policy, including but not limited to the District's liability, property and casualty, or workers' compensation insurance policies. The District shall not deduct Federal Income Taxes, FICA (Social Security) or any other taxes required to be deducted by an employer, as this is the responsibility of the Contractor.
- 14) **TERMINATION:** Any resulting contract may be terminated by the District at any time with or without cause and without penalty to the District. In the event of termination by the District prior to completion of the contract, compensation shall be prorated on the services actually performed, and the Contractor shall only be entitled to receive compensation for satisfactory work completed up to the date of termination.
- 15) **CANCELLATION:** Buyer shall have the right to cancel for default all or any part of the undelivered portion of this



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order if Seller breaches any of the terms hereof including warranties of Seller or if the Seller becomes insolvent or commits acts of bankruptcy. Such right of cancellation is in addition to and not in lieu of any other remedies which Buyer may have in law or equity.

- 16) NON-PERFORMANCE:** Whenever, in the opinion of the District, the work is neglected by the Contractor, the District may request to have the Contractor bring additional labor, materials, and supplies into the work. If the Contractor fails to correct the unsatisfactory condition(s) within five (5) working days, the Contractor shall be advised of so in writing. The District shall have no obligation to give the Contractor more than two (2) notices of unsatisfactory performance during the contract period; and, should the Contractor again fail to perform the services pursuant to the contract, the District may declare the contract in default, terminate the contract, and contract with another.
- a. In the event of default by Contractor, the District shall be liable only for payment of those services performed and accepted prior to the date of termination.
- 17) Changes to proposal:** The District retains the right to negotiate changes in a proposal by any offeror, and to reject any or all Proposals if none of the submissions are responsive to its needs.
- 18) Changes in requirements:** Should the District, at any time during the progress of said work, request any alterations, deviations, additions, or omissions from the said agreement, specifications, or plans, it shall be at liberty to do so. And the same shall in no way affect or make void the agreement, but will be added to or deducted from the amount of said agreement price as the case may be, by a fair and reasonable valuation subject to the mutual agreement of both parties.
- 19) Unrestricted quantities:** The District is not limited to purchase all or any of its requirements from any contract resulting from this solicitation/award.
- 20) Dismissal of unsatisfactory employees:** If any person employed by the Contractor or any subcontractor fails or refuses to carry out the directions of the District representative, or is, in the opinion of the District representative, incompetent, unfaithful, intemperate, or disorderly; or uses threatening or abusive language to any person at the facility; or if otherwise unsatisfactory, he/she shall be removed from the work immediately, and shall not again be employed on the work except upon consent of the District representative.
- 21) Venue:** This Agreement shall be governed by the law of the State of Texas without regard to the choice-of-law rules of any jurisdiction. Venue shall be in Hidalgo County, Texas. No provision of this Agreement shall waive any immunity or defense. No provision of this Agreement is a consent to suit.
- 22) Notice:** Any notice required by or permitted under this Agreement must be made in writing. Any notice required by this Agreement will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this Agreement. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein.
- 23) Criminal Background Check:** All Contractors, who have a contract for services, have continuing duties related to the contract and have direct contact with students must certify to the district that it has received all criminal history information on covered employees pursuant to Texas Education Code Chapter 22, Subchapter C prior to performing the services for the District. This is an all or nothing test. If all three criteria are met then the criminal history review is mandatory. The cost of the review shall be paid by Contractor. Covered employees with disqualifying criminal histories are prohibited from serving at a school district. The Contractor selected may also be required to provide a list of personnel who will be assigned to do the work. When requested this information must be furnished within twenty-four (24) hours, and shall apply to any new personnel due to employee turnover.
- a. The District reserves the right to review the personal background and conduct security clearances on the Contractor's assigned personnel. The Contractor shall certify that all employees assigned to work under the contract have successfully passed a criminal background check, prior to assignment. The Contractor shall



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"A College and Career Readiness District"

P.O. Box 610

Progreso, TX 78579

Phone: (956) 565-3002 Fax: (956) 565-2128

cooperate with the District authorities and shall comply with all regulations in effect during the contract period.

- b. Upon the request of the District, the successful bidder maybe required to provide the names of all persons who may be assigned to do the work on the contract for the purpose of completing a criminal background check. The following information shall be provided with each name to the District: date of birth, Texas driver's license number, and current address.
- c. Any person or persons not acceptable to the District shall be prohibited from working on the contract.

24) Invoicing: Send the original invoices to:**Attention: Accounts Payable,**

- Progreso ISD
 - PO BOX 610
 - Progreso, TX 78579
- a) Each invoice shall contain a minimum of the following information: invoice number and date; remittance address; "bill to" and "ship to" addresses; contract Purchase Order number (PO#); quantities; item descriptions, unit prices and extensions; fees; and an invoice total.
 - b) For payment purposes, the contractor shall obtain PO # from the District for each separate order/invoicing. These are individually numbered for control purposes, and each separate order/invoicing will require a unique PO# to be issued to the Contractor by the District. If the PO# does not appear on the contractor's invoice, payment may be delayed.

25) DEFINITIONS

We intend to express our expectations clearly, and they are to be legally interpreted in our favor. Certain words are used throughout this document

- a) "Proponent" "Vendor" "Bidder" "Offeror" means responder to the Request for Proposal and the individual, partnership, and sole proprietorship or Corporation executing the Contract and shall include any agent, employee, officer, director, supplier or sub-contractor of the Vendor pursuant to the Contract.
- b) "PISD" "Progreso Independent School District", "District", the Board of Trustees, its students, employees and agents.
- c) "Solicitation", used to describe a Request for Proposal, Request for Competitive Sealed Proposal, Request for Bids or other solicitation document.
- d) "PO" or "Purchase Order" "Agreement" "Contract" means a document that will be issued by the Progreso Independent School District to formalize the agreement with the successful Proponent.
- e) "Shall" "must" "will" "mandatory" means a requirement that must be met for the submission to receive consideration.
- f) "Service", "Services", "Work" shall mean the products/services supplied to the Progreso Independent School District in accordance with the specifications, terms and conditions stated in this Request for Proposal.
- g) "Supplier" - A business entity engaged in the business of providing contract supplies/services.
- h) "Bidder" - A business entity submitting a Response to this RFQ. Suppliers which may express interest in this RFP, but which do not submit a Response, have no obligations with respect to the bid requirements.
- i) "Contractor" - The Offeror(s) whose Response to this RFQ is evaluated as meeting the needs of PISD. Contractor(s) will be selected for award, and will enter into a contract(s) for provision of the services described in the RFQ.
- j) "Subcontractor" - A company that enters into a business relationship with the Contractor. The Contractor may seek to place employees of the Subcontractor for the services described in the RFQ.



- k) "Contractor's Employee" - All persons who can be offered to provide the services described in the RFQ. All employees of the Contractor and the Subcontractor must be covered by the insurance programs normally provided to persons employed by a company (ex: Worker's Comp, etc.).
- l) "Response" - The written, signed and sealed document submitted according to the RFQ instructions. Response does not include any verbal or documentary interaction you may have with us apart from submittal of a formal response. Verbal interactions will not be binding on PISD or Contractor(s) with respect to requirements stated within this RFQ or resulting contractual obligations

SECTION 5 - REQUIRED FORMS

FORMS INCLUDED IN THIS SOLICITATION DOCUMENT

- (1) RFQ Certification Page
- (2) Cost Proposal Form
- (3) Vendor Information Questionnaire
- (4) Exceptions to this Solicitation
- (5) Felony Conviction Notice
- (6) Conflict of Interest Questionnaire CIQ Form
- (7) Sample Form of Contract

FORMS THAT CAN BE DOWNLOADED FROM THE INTERNET*

- (1) Conflict of Interest Form CIQ_

http://www.ethics.state.tx.us/whatsnew/conflict_forms.htm

*Download solicitations, addenda and other forms at: Progresoedu.net



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RFQ CERTIFICATION FORM

Failure to complete this form shall result in your Proposal being deemed non-responsive and rejected without further evaluation.

We, _____,
(Company Name)

of, _____, _____,
(Business Address) (Zip Code)

The undersigned, having fully and carefully read and examined the Request for Proposal (RFQ) Documents, Enclosures and Addenda, hereby offers to Progreso Independent School District a Proposal for Construction and Project Management Services in accordance with the solicitation documents, and addenda at the place, price and in a manner set out therein and certifies the following;

- Represents that to the best of its knowledge it is not indebted to the Progreso Independent School District. Indebtedness to the District shall be basis for the non-award and/or cancellation of any award.
- Certifies that no suspension or debarment is in place that would preclude receiving a federally funded contract.
- The undersigned affirms that they are duly authorized to execute this contract, to fully comply with the terms and conditions of this Request for Qualifications, including all forms and attachments included herein, that this company, corporation, firm, partnership or individual has not prepared this Proposal in collusion with any other Bidder, and that the contents of this Proposal as to prices, terms or conditions of said Proposal have not been communicated by the undersigned nor by any employee or agent to any other person engaged in this type of business prior to the official opening of this solicitation.

ADDENDA ACKNOWLEDGEMENT

Acknowledgement is hereby made of receipt of the following addenda to this RFQ document:

Addendum No.(s) _____

Signatures: Signed and submitted by:

(Signature of person authorized to sign)

(Print name of person authorized to sign)

Name of person to contact regarding this Proposal: _____

Title: _____

Telephone #: _____

FAX: _____

E-Mail: _____

Include a brief statement of interest, availability, and intent to perform services below or attach a new sheet.



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PRICE SHEET/COST PROPOSAL:

Failure to provide this form shall result in your Proposal being deemed non-responsive and rejected without further evaluation.

The hourly rates includes direct labor, general and administrative overhead, profit margin, ordinary and CAD computer time, ordinary software costs, office supplies, ordinary surveying supplies and equipment, routine reproduction costs, local communication charges, facsimile charges and travel costs within Hidalgo County. This shall be the total cost for services.

Hourly Rates for key staff (3 pages max): Please submit fee proposal in table format below

Rate Sheet

| Title/Position | Year 1 Rate | Year 2 Rate | Year 3 Rate | Optional Year 4 |
|----------------|-------------|-------------|-------------|-----------------|
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CONTRACTOR INFORMATION QUESTIONNAIRE

The work to be accomplished under this Contract requires technical expertise. The District specifically reserves the right to reject any proposals for which the offeror fails to demonstrate the ability to provide the service required in a responsible manner. Briefly describe your firm's qualifications to provide the service specified in this RFQ. Be sure to include: founding date (month and year) and brief history of firm; facility/office location, current number of employees (full-time and part-time); special certifications acquired for the work; and key services offered. List your representative to be assigned to PISD. Use additional sheets if necessary.

1. Name of Offeror/Company:
2. Permanent main office address:
3. When organized
4. If a corporation, when/where incorporated
5. How many years have you been engaged in this type of service under your present company/trade name?
6. Staff proposed: List names, qualifications and years of experience for each staff member proposed for our district.
7. Educational Facility Experience: List:
 - (a) Educational facilities on which your firm performed contract/program management services in the last five (5) years and the name and phone number of the owner's representative
 - (b) All projects of any type currently in progress and the name and phone number of the owner's representative.
8. Have you ever failed to complete a project and/or defaulted on a contract? If so specify when, where and with whom.
9. List the names and qualifications of staff proposed for our District and what is the length of time they have been with your company?
10. How does your leadership create a sustainable organization?



REFERENCES:

List references (minimum of three) where you have similar contracts in place. Special attention should be given to references from similar institutions as PISD. List district name, contact person, address, phone number, fax number, email address, and completion date for each reference.

A. Name: _____

Contact: _____

Address: _____

Phone: _____

Fax: _____

Email: _____

Dates of Contract: _____

B. Name: _____

Contact: _____

Address: _____

Phone: _____

Fax: _____

Email: _____

Dates of Contract: _____

C. Name: _____

Contact: _____

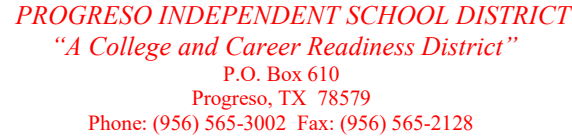
Address: _____

Phone: _____

Fax: _____

Email: _____

Dates of Contract: _____



Each exception must be clearly defined and referenced to the proper paragraph in this Solicitation.

[illegible]



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FELONY CONVICTION NOTICE

State of Texas Legislative Senate Bill No. 1, Section 44.034, Notification of Criminal History, Subsection (a), states "a person or business entity that enters into a contract with a school district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony".

Subsection (b) states "a school district may terminate a contract with a person or business entity if the district determines that the person or business entity failed to give notice as required by Subsection (a) or misrepresented the conduct resulting in the conviction. The district must compensate the person or business entity for services performed before the termination of the contract".

THIS NOTICE IS NOT REQUIRED OF A PUBLICLY-HELD CORPORATION (Sign under ITEM A)

I, the undersigned agent for the firm named below, certify that the information concerning notification of felony convictions has been reviewed by me and the following information furnished is true to the best of my knowledge.

VENDOR'S NAME: _____

AUTHORIZED COMPANY OFFICIAL'S NAME: _____

A. My firm is a **publicly-held corporation**, therefore, this reporting requirement is not applicable.

Signature of Company Official: _____

B. My firm is not owned nor operated by anyone who has been convicted of a felony.

Signature of Company Official: _____

C. My firm is owned or operated by the following individual(s) who has/have been convicted of a felony.

Name of Felon(s): _____
(Attach additional sheet if necessary.)

Details of Conviction(s): _____
(Attach additional sheet if necessary.)

Signature of Company Official: _____



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THE CONSTRUCTION MANAGEMENT ASSOCIATION OF AMERICA, INC.

CMAA Document A-1 (2005 Edition)

Standard Form of Agreement Between
OWNER AND CONSTRUCTION MANAGER
(Construction Manager as Owner's Agent)

CONSULTATION WITH AN ATTORNEY IS RECOMMENDED WHENEVER THIS DOCUMENT IS USED.
AGREEMENT

Made this _____ day of _____ in the year of Two Thousand and

BETWEEN The Owner:

SAMPLE

and the Construction Manager, (hereinafter, referred to as the "CM");

For services in connection with the Project known as:

hereinafter called the "Project," as further described in Article 2:

The Owner and CM, in consideration of their mutual covenants herein agree as set forth below:

Copyright Construction Management Association of America, Inc., 2005. All rights reserved. Reproduction or translation of any part of this Document without the permission of the copyright owner is unlawful.

Owner will require "on-call" professional construction management services be available to supplement the District's in-house Program management staff to execute the Program in a timely, orderly and cost effective manner. It is mutually recognized the nature of the relationships that exists between the groups identified below, is such that care must be taken to ensure requested services performed provide the desired continuity within and between phases, and is necessary to provide a proper level of quality assurance for the Program.

In recognition of the foregoing, both parties mutually agree that individual work orders for specific services will be issued for projects identified by the Owner (See listing of possible projects in Article 2.2). The CM will review the specific services requested and prepare/submit a man hour cost estimate to the Owner for review, adjustment, approval and written authorization prior to proceeding. Specific groupings of proposed services are as follows:

1. Group No.1 Pre-Design Phase Services: Outlined in Article 3.2
2. Group No.2 Design Phase Services: Outlined in Article 3.3
3. Group No.3 Procurement Phase Services: Outlined in Article 3.4
4. Group No.4 Construction Phase Services: Outlined in Article 3.5
5. Group No.5 Post-Construction Phases Services: Outlined In Articles 3.6
6. Group NO.6 Additional Services: To be identified and discussed on an as needed basis.

SAMPLE

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SAMPLE

ARTICLE 1
RELATIONSHIP OF THE PARTIES

1.1 Owner and Construction Manager

1.1.1 Relationship: The CM shall be the Owner's principal agent in providing the CM's services described in this Agreement. The CM and the Owner shall perform as stated in this Agreement.

1.1.2 Standard of Care: The CM covenants with the Owner to furnish its services hereunder properly, in accordance with the standards of its profession, and in accordance with federal, state and local laws and regulations specifically applicable to the performance of the services hereunder which are in effect on the date of this Agreement first written above.

1.2 Owner and Designer

1.2.1 Owner-Designer Agreement: The Owner shall enter into a separate agreement, the "Owner-Designer Agreement," with one or more Designers to provide for the design of the Project and certain design-related services during the Construction Phase of the Project. The Project is defined in Article 2 of this Agreement.

1.2.2 Changes: The Owner shall not modify the Agreement between the Owner and Designer in any way that is prejudicial to the CM.

1.3 Owner and Contractors

1.3.1 Construction Contract: The Owner shall enter into a separate contract with one or more Contractors for the construction of the Project (hereinafter referred to as the "Contract"). The Contractor shall perform the Work, which shall consist of furnishing all labor, materials, tools, equipment, supplies, services, supervision, and perform all operations as required by the Contract Documents.

1.3.2 Form of Contract: Intentionally deleted

1.4 Relationship of the CM to Other Project Participants

1.4.1 Working Relationship: In providing the CM's services described in this Agreement, the CM shall endeavor to maintain, on behalf of the Owner, a working relationship with the Contractor and Designer.

1.4.2 Limitations: Nothing in this Agreement shall be construed to mean that the CM assumes any of the responsibilities or duties of the Contractor or the Designer. The Contractor will be solely responsible for construction means, methods, techniques, sequences and procedures used in the construction of the Project and for the safety of its personnel, property, and its operations and for performing in accordance with the contract between the Owner and Contractor. The Designer is solely responsible for the design requirements and design criteria of the Project and shall perform in accordance with the Agreement between the Designer and the Owner. The CM's services shall be rendered compatibly and in cooperation with the services provided by the Designer under the Agreement between the Designer and the Owner. It is intended that the services of the Designer and the CM be competitive or duplicative, but rather complementary.

ARTICLE 2
PROJECT DEFINITION

2.1 The term "Project", when used in this Agreement, shall be defined as all work to be furnished or provided in accordance with the Contract Documents prepared by the Designer.

2.2 The Project name and location is as follows:

2.3 The Project is intended for use as: **Not Applicable**

2.4 The term "Contract Documents" means the construction documents described in the agreement between the Owner and Contractor.

ARTICLE 3 BASIC SERVICES

3.1 CM's Basic Services

3.1.1 Basic Services: The CM shall perform the Basic Services described in this Article **as a list of services that will be authorized by owner prior to performing service**. It is not required that the services be performed in the order in which they are described.

3.2 Pre-Design Phase

3.2.1 Project Management

3.2.1.1 Construction Management Plan: The CM shall prepare a Construction Management Plan for the Project and shall make recommendations to the plan throughout the duration of the Project, as may be appropriate. In preparing the Construction Management Plan, the CM shall consider the Owner's schedule, budget and general design requirements for the Project. The CM shall then develop various alternatives for the scheduling and management of the Project and shall make recommendations to the Owner. The Construction Management Plan shall be presented to the Owner for acceptance.

3.2.1.2 Designer Selection: The CM shall assist the Owner in the selection of a Designer by developing lists of potential firms, developing criteria for selection, preparing and transmitting the requests for proposal, assisting in conducting interviews, evaluating candidates and making recommendations.

3.2.1.3 Designer Contract Preparation: The CM shall assist the Owner in review and preparation of the Agreement between the Owner and Designer.

3.2.1.4 Designer Orientation: The CM shall conduct, or assist the Owner in conducting, a Designer orientation session during which the Designer shall receive information regarding the Project scope, schedule, budget, and administrative requirements.

3.2.2 Time Management

3.2.2.1 Master Schedule: In accordance with the Construction Management Plan, the CM shall prepare a Master Schedule for the project. The Master Schedule shall include the proposed starting and finishing dates for each major project activity. The CM shall submit the Master Schedule to the Owner for acceptance.

3.2.2.2 Design Phase Milestone Schedule: After the Owner accepts the Master Schedule the CM shall prepare the Milestone Schedule for the Design Phase, which shall be used for judging progress during the Design Phase.

3.2.3 Cost Management

3.2.3.1 Construction Market Survey: The CM shall conduct a Construction Market Survey to provide current information regarding the general availability of local construction services, labor, material and equipment costs and the economic factors related to the construction of the Project. A report of the Construction Market Survey shall be provided to the Owner and Designer.

3.2.3.2 Project and Construction Budget: Based on the Construction Management Plan and the Construction Market Survey, the CM shall prepare a Project and Construction Budget based on the separate divisions of the Work required for the Project and shall identify contingencies for design and

construction. The CM shall review the budget with the Owner and Designer and the CM shall submit the Project and Construction Budget to the Owner for acceptance. The Project and Construction Budget shall be revised by the CM as directed by the Owner.

3.2.3.3 Preliminary Estimate and Budget Analysis: The CM shall analyze and report to the Owner and the Designer the estimated cost of various design and construction alternatives, including CM's assumptions in preparing its analysis, a variance analysis between budget and preliminary estimate, and recommendations for any adjustments to the budget. As a part of the cost analysis, the CM shall consider costs related to efficiency, usable life, maintenance, energy and operation.

3.2.4 Management Information System (MIS)

3.2.4.1 Establishing the Project MIS: The CM shall develop a MIS in order to establish communication between the Owner, CM, Designer, Contractor and other parties involved with the Project. In developing the MIS, the CM shall interview the Owner's key personnel, the Designer and others in order to determine the type of information for reporting, the reporting format and the desired frequency for distribution of the various reports.

3.2.4.2 Design Phase Procedure: The MIS shall include procedures for reporting, communications and administration during the Design Phase.

3.3 Design Phase

3.3.1 Project Management

3.3.1.1 Revisions to the Construction Management Plan: During the Design Phase the CM shall make recommendations to the Owner regarding revisions to the Construction Management Plan. The Construction Management Plan shall include a description of the various bid packages recommended for the Project. Revisions approved by the Owner shall be incorporated into the Construction Management Plan.

3.3.1.2 Project Conference: At the start of the Design Phase, the CM shall conduct a Project Conference attended by the

Designer, the Owner and others as necessary. During the Project Conference the CM shall review the Construction Management Plan, the Master Schedule, Design Phase Milestone Schedule, the Project and Construction Budget and the MIS.

3.3.1.3 Design Phase Information: The CM shall monitor the Designer's compliance with the Construction Management Plan and the MIS, and the CM shall coordinate and expedite the flow of information between the Owner, Designer and others as necessary.

3.3.1.4 Progress Meetings: The CM shall conduct periodic progress meetings attended by the Owner, Designer and others. Such meetings shall serve as a forum for the exchange of information concerning the Project and the review of design progress. The CM shall prepare and distribute minutes of these meetings to the Owner, Designer and others as necessary.

3.3.1.5 Review of Design Documents: The CM shall review the design documents and make recommendations to the Owner and Designer as to constructability, scheduling, and construction; as to clarity, consistency, and coordination of documentation among Contractors; and as to the separation of the Project into contracts for various categories of the Work. In addition, the CM shall give to the Designer all data of which it or the Owner is aware concerning patents or copyrights for inclusion in Contract Documents. The recommendations resulting from such review shall be provided to the Owner and Designer in writing or as notations on the design documents. In making reviews and recommendations as to design documentation or design matters the CM shall not be responsible for providing nor will the CM have control over the Project design, design requirements, design criteria or the substance or contents of the design documents. By performing the reviews and making recommendations described herein, the CM shall not be deemed to be acting in a manner so as to assume responsibility or liability, in whole or in part, for any aspect of the project design, design requirements, design criteria or the substance or contents of the design documents. The CM's actions in making such reviews and recommendations as provided herein are to be advisory only to the Owner and to the Designer.

3.3.1.6 Owner's Design Reviews: The CM shall expedite the Owner's design reviews by compiling and conveying the Owner's review comments to the Designer.

3.3.1.7 Approvals by Regulatory Agencies: The CM shall coordinate transmittal of documents to regulatory agencies for review and shall advise the Owner of potential problems resulting from such reviews and suggested solutions regarding completion of such reviews.

3.3.1.8 Other Contract Conditions: The CM shall assist the Owner to prepare the Supplemental Conditions of the Construction Contract and separate General Conditions for materials or equipment procurement contracts to meet the specific requirements of the Project, and shall provide these to the Designer for inclusion in the Contract Documents.

3.3.1.9 Project Funding: The CM shall assist the Owner in preparing documents concerning the Project and Construction Budget for use in obtaining or reporting on Project funding. The documents shall be prepared in a format approved by the Owner.

3.3.2 Time Management

3.3.2.1 Revisions to the Master Schedule: While performing the services provided in Paragraphs 3.3.1.1, 3.3.1.2 and as necessary during the Design Phase, the CM shall recommend revisions to the Master Schedule. The Owner shall issue, as needed, change orders to the appropriate parties to implement the Master Schedule revisions.

3.3.2.2 Monitoring the Design Phase Milestone Schedule: While performing the services provided in Paragraphs 3.3.1.3 and 3.3.1.4, the CM shall monitor compliance with the Design Phase Milestone Schedule.

3.3.2.3 Pre-Bid Construction Schedules: Prior to transmitting Contract Documents to bidders, the CM shall prepare a Pre-Bid Construction Schedule for each part of the Project and make the schedule available to the bidders during the Procurement Phase.

3.3.3 Cost Management

3.3.3.1 Cost Control: The CM shall prepare an estimate of the construction cost for each submittal of design drawings

and specifications from the Designer. This estimate shall include a contingency acceptable to the Owner, CM and the Designer for construction costs appropriate for the type and location of the Project and the extent to which the design has progressed. The Owner recognizes that the CM will perform in accordance with the standard of care established in this Agreement and that the CM has no control over the costs of labor, materials, equipment or services furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market prices. Accordingly, the CM does not represent or guarantee that proposals, bids or actual construction costs will not vary from budget figures included in the Construction Management Plan as amended from time to time. If the budget figure is exceeded, the Owner will give written consent to increasing the budget, or authorize negotiations or rebidding of the Project within a reasonable time, or cooperate with the CM and Designer to revise the Project's general scope, extent or character in keeping with the Project's design requirements and sound design practices, or modify the design requirements appropriately. Instead of the foregoing, the Owner may abandon the Project and terminate this Agreement in accordance with Article 10.

The estimate for each submittal shall be accompanied by a report to the Owner and Designer identifying variances from the Project and Construction Budget. The CM shall facilitate decisions by the Owner and Designer when changes to the design are required to remain within the Project and Construction Budget.

3.3.3.2 Project and Construction Budget Revision: The CM shall make recommendations to the Owner concerning revisions to the Project and Construction Budget that may result from design changes.

3.3.3.3 Value Engineering Studies: The CM shall provide value engineering recommendations to the Owner and Designer on major construction components, including cost evaluations of alternative materials and systems.

3.3.4 Management Information Systems (MIS)

3.3.4.1 Schedule Reports: In conjunction with the services provided by Paragraph 3.3.2.2, the CM shall prepare and distribute schedule maintenance reports that shall compare actual progress with scheduled progress for the Design Phase and the overall Project and shall make recommendations to the Owner for corrective action

3.3.4.2 Project Cost Reports: The CM shall prepare and distribute Project cost reports that shall indicate actual or estimated costs compared to the Project and Construction Budget and shall make recommendations to the Owner for corrective action.

3.3.4.3 Cash Flow Report: The CM shall periodically prepare and distribute a cash flow report.

3.3.4.4 Design Phase Change Report: The CM shall prepare and distribute Design Phase change reports that shall list all Owner-approved changes as of the date of the report and shall state the effect of the changes on the Project and Construction Budget and the Master Schedule.

3.4 Procurement Phase

3.4.1 Project Management

3.4.1.1 Prequalifying Bidders: The CM shall assist the Owner in developing lists of possible bidders and in prequalifying bidders. This service shall include preparation and distribution of questionnaires; receiving and analyzing completed questionnaires; interviewing possible bidders, bonding agents and financial institutions; and preparing recommendations for the Owner. The CM shall prepare a list of bidders for each bid package and transmit to the Owner for approval.

3.4.1.2 Bidder's Interest Campaign: The CM shall conduct a telephone and correspondence campaign to attempt to increase interest among qualified bidders.

3.4.1.3 Notices and Advertisements: The CM shall assist the Owner in preparing and placing notices and advertisements to solicit bids for the Project.

3.4.1.4 Delivery of Bid Documents: The CM shall expedite the delivery of Bid Documents to the bidders. The CM shall

obtain the documents from the Designer and arrange for printing, binding, wrapping and delivery to the bidders. The CM shall maintain a list of bidders receiving Bid Documents.

3.4.1.5 Pre-Bid Conference: In conjunction with the Owner and Designer, the CM shall conduct pre-bid conferences. These conferences shall be forums for the Owner, CM and Designer to explain the Project requirements to the bidders, including information concerning schedule requirements, time and cost control requirements, access requirements, contractor interfaces, the Owner's administrative requirements and technical information.

3.4.1.6 Information to Bidders: The CM shall develop and coordinate procedures to provide answers to bidder's questions. All answers shall be in the form of addenda.

3.4.1.7 Addenda: The CM shall receive from the Designer a copy of all addenda. The CM shall review addenda for constructibility, for effect on the Project and Construction Budget, scheduling and time of construction, and for consistency with the related provisions as documented in the Bid Documents. The CM shall distribute a copy of all addenda to each bidder receiving Bid Documents.

3.4.1.8 Bid Opening and Recommendations: The CM shall assist the Owner in the bid opening and shall evaluate the bids for responsiveness and price. The CM shall make recommendations to the Owner concerning the acceptance or rejection of bids.

3.4.1.9 Post-Bid Conference: The CM shall conduct a post-bid conference to review Contract award procedures, schedules, Project staffing and other pertinent issues.

3.4.1.10 Construction Contracts: The CM shall assist the Owner in the assembly, delivery and execution of the Contract Documents. The CM shall issue to the Contractor on behalf of the Owner the Notice of Award and the Notice to Proceed.

3.4.2 Time Management

3.4.2.1 Pre-Bid Construction Schedule: The CM shall emphasize to the bidders their responsibilities regarding the Pre-Bid Construction Schedule specified in the Instructions to Bidders or the Contract Documents.

3.4.2.2 Master Schedule: The CM shall recommend to the Owner any appropriate revisions to the Master Schedule. Following acceptance by the Owner of such revisions, the CM shall provide a copy of the Master Schedule to the Designer and to the bidders.

3.4.3 Cost Management

3.4.3.1 Estimates for Addenda: The CM shall prepare an estimate of costs for all Addenda and shall submit a copy of the estimate to the Designer and to the Owner for approval.

3.4.3.2 Analyzing Bids: Upon receipt of the bids, the CM shall evaluate the bids, including alternate bid prices and unit prices, and shall make a recommendation to the Owner regarding the award of the Construction Contract.

3.4.4 Management Information System (MIS)

3.4.4.1 Schedule Maintenance Reports: The CM shall prepare and distribute schedule maintenance reports during the Procurement Phase. The reports shall compare the actual bid and award dates to scheduled bid and award dates and shall summarize the progress of the project.

3.4.4.2 Project Cost Reports: The CM shall prepare and distribute project cost reports during the Procurement Phase. The reports shall compare actual contract award prices for the Project with those contemplated by the Project and Construction Budget.

3.4.4.3 Cash Flow Reports: The CM shall prepare and distribute cash flow reports during the Procurement Phase. The reports shall be based on actual contract award prices and estimated other construction costs for the duration of the Project.

3.5 Construction Phase

3.5.1 Project Management

3.5.1.1 Pre-Construction Conference: In consultation with the Owner and Designer, the CM shall conduct a Pre-Construction Conference during which the CM shall review the Project reporting procedures and other requirements for performance of the Work..

3.5.1.2 Permits, Bonds and Insurance: The CM shall verify that the Contractor has provided evidence that required permits, bonds, and insurance have been obtained. Such action by the CM shall not relieve the Contractor of its responsibility to comply with the provisions of the Contract Documents.

3.5.1.3 On-Site Management and Construction Phase Communication Procedures: The CM shall provide and maintain a management team on the Project site to provide contract administration as an agent of the Owner, and the CM shall establish and implement coordination and communication procedures among the CM, Owner, Designer and Contractor.

3.5.1.4 Contract Administration Procedures: The CM shall establish and implement procedures for reviewing and processing requests for clarifications and interpretations of the Contract Documents; shop drawings, samples and other submittals; contract schedule adjustments; change order proposals; written proposals for substitutions; payment applications; and the maintenance of logs. As the Owner's representative at the construction site, the CM shall be the party to whom all such information shall be submitted.

3.5.1.5 Review of Requests for Information, Shop Drawings, Samples, and Other Submittals: The CM shall examine the Contractor's requests for information, shop drawings, samples, and other submittals, and Designer's reply or other action concerning them, to determine the anticipated effect on compliance with the Project requirements, the Project and Construction Budget, and the Master Schedule. The CM shall forward to the Designer for review, approval or rejection, as appropriate, the request for clarification or interpretation, shop drawing, sample, or other submittal, along with the CM's comments. The CM's comments shall not relate to design considerations, but rather to matters of cost, scheduling and time of construction, and clarity, consistency, and coordination in documentation. The CM shall receive from the Designer and transmit to the Contractor, all information so received from the Designer.

3.5.1.6 Project Site Meetings: Periodically the CM shall conduct meetings at the Project site with each Contractor, and the CM shall conduct coordination meetings with the Contractor, the Owner and the Designer. The CM shall

prepare and distribute minutes to all attendees, the Owner and Designer.

3.5.1.7 Coordination of Other Independent Consultants:

Technical inspection and testing provided by others shall be coordinated by the CM. The CM shall receive a copy of all inspection and testing reports and shall provide a copy of such reports to the Designer. The CM shall not be responsible for providing, nor shall the CM control, the actual performance of technical inspection and testing. The CM is performing a coordination function only and the CM is not acting in a manner so as to assume responsibility or liability, in whole or in part, for all or any part of such inspection and testing.

3.5.1.8 Minor Variations in the Work: Intentionally deleted.

3.5.1.9 Change Orders: The CM shall establish and implement a change order control system. All changes to the Contract between the Owner and Contractor shall be only by change orders executed by the Owner.

3.5.1.9.1 All proposed Owner-initiated changes shall be described in detail by the CM in a request for a proposal issued to the Contractor. The request shall be accompanied by drawings and specifications prepared by the Designer. In response to the request for a proposal, the Contractor shall submit to the CM for evaluation detailed information concerning the price and time adjustments, if any, as may be necessary to perform the proposed change order Work. The CM shall review the Contractor's proposal, shall discuss the proposed change order with the Contractor, and endeavor to determine the Contractor's basis for the price and time proposed to perform the changed Work.

3.5.1.9.2 The CM shall review the contents of all Contractor requested changes to the Contract time or price, endeavor to determine the cause of the request, and assemble and evaluate information concerning the request. The CM shall provide to the Designer a copy of each change request, and the CM shall in its evaluations of the Contractor's request consider the Designer's comments regarding the proposed changes.

3.5.1.9.3 The CM shall make recommendations to the Owner regarding all proposed change orders. At the Owner's

direction, the CM shall prepare and issue to the Contractor appropriate change order documents. The CM shall provide to the Designer copies of all approved change orders.

3.5.1.10 Subsurface and Physical Conditions: Whenever the Contractor notifies the CM that a surface or subsurface condition at or contiguous to the site is encountered that differs from what the Contractor is entitled to rely upon or from what is indicated or referred to in the Contract Documents, or that may require a change in the Contract Documents, the CM shall notify the Designer. The CM shall receive from the Designer and transmit to the Contractor all information necessary to specify any design changes required to be responsive to the differing or changed condition and, if necessary, shall prepare a change order as indicated in Paragraph 3.5.1.9.

3.5.1.11 Quality Review: The CM shall establish and implement a program to monitor the quality of the Work. The purpose of the program shall be to assist in guarding the Owner against Work by the Contractor that does not conform to the requirements of the Contract Documents. The CM shall notify the Owner and transmit to the Owner and Contractor a notice of nonconforming Work when it is the opinion of the CM, Owner, or Designer that such Work does not conform to the requirements of the Contract Documents. Except for minor variations as described in Paragraph 3.5.1.8, the CM is not authorized to change, revoke, alter, enlarge, relax or release any requirements of the Contract Documents or to approve or accept any portion of the Work not conforming with the requirements of the Contract Documents. Communication between the CM and Contractor with regard to quality review shall not in any way be construed as binding the CM or Owner or releasing the Contractor from performing in accordance with the terms of the Contract Documents. The CM will not be responsible for, nor does the CM control, the means, methods, techniques, sequences and procedures of construction for the Project. It is understood that the CM's action in providing quality review under this Agreement is a service of the CM for the sole benefit of the Owner and by performing as provided herein, the CM is not acting in a manner so as to assume responsibility of liability, in whole or in part, for all or any part of the construction for the Project. No action taken by the CM shall relieve the Contractor from its obligation to perform the Work in strict conformity with the

requirements of the Contract Documents, and in strict conformity with all other applicable laws, rules and regulations.

3.5.1.12 Contractor's Safety Program: The CM shall require each Contractor that will perform Work at the site to prepare and submit to the CM for general review a safety program, as required by the Contract Documents. The CM shall review each safety program to determine that the programs of the various Contractors performing Work at the site, as submitted, provide for coordination among the Contractors of their respective programs. The CM shall not be responsible for any Contractor's implementation of or compliance with its safety programs, or for initiating, maintaining, monitoring or supervising the implementation of such programs or the procedures and precautions associated therewith, or for the coordination of any of the above with the other Contractors performing the Work at the site. The CM shall not be responsible for the adequacy or completeness of any Contractor's safety programs, procedures or precautions.

3.5.1.13 Disputes Between Contractor and Owner: The CM shall render to the Owner in writing within a reasonable time decisions concerning disputes between the Contractor and the Owner relating to acceptability of the Work, or the interpretation of the requirements of the Contract Documents pertaining to the furnishing and performing of the Work.

3.5.1.14 Operation and Maintenance Materials: The CM shall receive from the Contractor operation and maintenance manuals, warranties and guarantees for materials and equipment installed in the Project. The CM shall deliver this information to the Owner and shall provide a copy of the information to the Designer.

3.5.1.15 Substantial Completion: The CM shall determine when the Project and the Contractor's Work is substantially complete. In consultation with the Designer, the CM shall, prior to issuing a certificate of substantial completion, prepare a list of incomplete Work or Work which does not conform to the requirements of the Contract Documents. This list shall be attached to the certificate of substantial completion.

3.5.1.16 Final Completion: In consultation with the Designer, the CM shall determine when the Project and the Contractor's Work is finally completed, shall issue a certificate of final

completion and shall provide to the Owner a written recommendation regarding payment to the Contractor.

3.5.2 Time Management

3.5.2.1 Master Schedule: The CM shall adjust and update the Master Schedule and distribute copies to the Owner and Designer. All adjustments to the Master Schedule shall be made for the benefit of the Project.

3.5.2.2 Contractor's Construction Schedule: The CM shall review the Contractor's Construction Schedule and shall verify that the schedule is prepared in accordance with the requirements of the Contract Documents and that it establishes completion dates that comply with the requirements of the Master Schedule.

3.5.2.3 Construction Schedule Report: The CM shall, on a monthly basis, review the progress of construction of the Contractor, shall evaluate the percentage complete of each construction activity as indicated in the Contractor's Construction Schedule and shall review such percentages with the Contractor. The evaluation shall serve as data for the periodic Construction Schedule report that shall be prepared and distributed to the Contractor, Owner and Designer by the CM. The report shall indicate the actual progress compared to scheduled progress and shall serve as the basis for the progress payments to the Contractor. The CM shall advise and make recommendations to the Owner concerning the alternative courses of action that the Owner may take in its efforts to achieve Contract compliance by the Contractor.

3.5.2.4 Effect of Change Orders on the Schedule: Prior to the issuance of a change order, the CM shall determine and advise the Owner as to the effect on the Master Schedule of the change. The CM shall verify that activities and adjustments of time, if any, required by approved change orders have been incorporated into the Contractor's Construction Schedule.

3.5.2.5 Recovery Schedules: The CM may require the Contractor to prepare and submit a recovery schedule as specified in the Contract Documents.

3.5.3 Cost Management

3.5.3.1 Schedule of Values (Each Contract): The CM shall, in participation with the Contractor, determine a schedule of values for the construction Contract. The schedule of values shall be the basis for the allocation of the Contract price to the activities shown on the Contractor's Construction Schedule.

3.5.3.2 Allocation of Cost to the Contractor's Construction Schedule: The Contractor's Construction Schedule shall have the total Contract price allocated by the Contractor among the Contractor's scheduled activities so that each of the Contractor's activities shall be allocated a price and the sum of the prices of the activities shall equal the total Contract price. The CM shall review the Contract price allocations and verify that such allocations are made in accordance with the requirements of the Contract Documents. Progress payments to the Contractor shall be based on the Contractor's percentage of completion of the scheduled activities as set out in the Construction Schedule reports and the Contractor's compliance with the requirements of the Contract Documents.

3.5.3.3 Effect of Change Orders on Cost: The CM shall advise the Owner as to the effect on the Project and Construction Budget of all proposed and approved change orders.

3.5.3.4 Cost Records: In instances when a lump sum or unit price is not determined prior to the Owner's authorization to the Contractor to perform change order Work, the CM shall request from the Contractor records of the cost of payroll, materials and equipment incurred and the amount of payments to each subcontractor by the Contractor in performing the Work.

3.5.3.5 Trade-off Studies: The CM shall provide trade-off studies for various minor construction components. The results of these studies shall be in report form and distributed to the Owner and Designer.

3.5.3.6 Progress Payments: The CM shall review the payment applications submitted by the Contractor and determine whether the amount requested reflects the progress of the Contractor's Work. The CM shall make appropriate adjustments to each payment application and shall prepare and forward to the Owner a progress payment report. The report shall state the total Contract price,

payments to date, current payment requested, retainage and actual amounts owed for the current period. Included in this report shall be a Certificate of Payment that shall be signed by the CM and delivered to the Owner.

3.5.4 Management Information System (MIS)

3.5.4.1 Schedule Maintenance Reports: The CM shall prepare and distribute schedule maintenance reports during the Construction Phase. The reports shall compare the projected completion dates to scheduled completion dates of each separate contract and to the Master Schedule for the Project.

3.5.4.2 Project Cost Reports: The CM shall prepare and distribute Project cost reports during the Construction Phase. The reports shall compare actual Project costs to the Project and Construction Budget.

3.5.4.3 Project and Construction Budget Revisions: The CM shall make recommendations to the Owner concerning changes that may result in revisions to the Project and Construction Budget. Copies of the recommendations shall be provided to the Designer.

3.5.4.4 Cash Flow Reports: The CM shall periodically prepare and distribute cash flow reports during the construction phase. The reports shall compare actual cash flow to planned cash flow.

3.5.4.5 Progress Payment Reports (Each Contract): The CM shall prepare and distribute the Progress Payment reports. The reports shall state the total Contract price, payment to date, current payment requested, retainage, and amounts owed for the period. A portion of this report shall be a recommendation of payment that shall be signed by the CM and delivered to the Owner for use by the Owner in making payments to the Contractor.

3.5.4.6 Change Order Reports: The CM shall periodically during the construction phase prepare and distribute change order reports. The report shall list all Owner-approved change orders by number, a brief description of the change order work, the cost established in the change order and percent of completion of the change order work. The report

shall also include similar information for potential change orders of which the CM may be aware.

3.6 Post-Construction Phase

3.6.1 Project Management

3.6.1.1 Record Documents: The CM shall coordinate and expedite submittals of information from the Contractor to the Designer for preparation of record drawings and specifications, and shall coordinate and expedite the transmittal of such record documents to the Owner.

3.6.1.2 Operation and Maintenance Materials and Certificates: Prior to the final completion of the Project, the CM shall compile manufacturers' operations and maintenance manuals, warranties and guarantees, and certificates, and index and bind such documents in an organized manner. This information shall then be provided to the Owner.

3.6.1.3 Occupancy Permit: The CM shall assist the Owner in obtaining an occupancy permit by coordinating final testing, preparing and submitting documentation to governmental agencies, and accompanying governmental officials during inspections of the Project.

3.6.2 Time Management

3.6.2.1 Occupancy Plan: The CM shall prepare an occupancy plan that shall include a schedule for location for furniture, equipment and the Owner's personnel. This schedule shall be provided to the Owner.

3.6.3 Cost Management

3.6.3.1 Change Orders: The CM shall continue during the post-construction phase to provide services related to change orders as specified in Paragraph 3.5.3.3.

3.6.4 Management Information Systems (MIS)

3.6.4.1 Close Out Reports: At the conclusion of the Project, the CM shall prepare and deliver to the Owner final Project accounting and close out reports.

3.6.4.2 MIS Reports for Occupancy: The CM shall prepare and distribute reports associated with the occupancy plan.

ARTICLE 4

ADDITIONAL SERVICES

The Services listed in this Article are available as

Additional Services

4.1 At the request of the Owner, the CM shall perform Additional Services and the CM shall be compensated for same as provided in Article 8 of this Agreement. The CM shall be obligated to perform Additional Services only after the Owner and CM have executed a written amendment to this Agreement providing for performance of such services. Additional Services may include, but are not limited to:

4.1.1 Services during the design or construction phases related to investigation, appraisal or evaluation of surface or subsurface conditions at or contiguous to the site or other existing conditions, facilities, or equipment that differs from what is indicated in the Contract Documents, or determination of the accuracy of existing drawings or other information furnished by the Owner;

4.1.2 Services related to the procurement, storage, maintenance and installation of the Owner-furnished equipment, materials, supplies and furnishings;

4.1.3 Services related to determination of space needs;

4.1.4 Preparation of space programs;

4.1.5 Services related to building site investigations and analysis;

4.1.6 Services related to tenant or rental spaces;

4.1.7 Preparation of a Project financial feasibility study;

4.1.8 Preparation of financial, accounting or MIS reports not provided under Basic Services;

4.1.9 Performance of technical inspection and testing;

4.1.10 Preparation of an operations and maintenance manual;

4.1.11 Services related to recruiting and training of maintenance personnel;

4.1.12 Services provided in respect of a dispute between the Owner and the Contractor after the CM has rendered its decision thereon in accordance with Paragraph 3.5.1.13;

4.1.13 Performing warranty inspections during the warranty period of the Project;

4.1.14 Consultation regarding replacement of Work or property damaged by fire or other cause during construction and furnishing services in connection with the replacement of such;

4.1.15 Service made necessary by the default of the Contractor;

4.1.16 Preparation for and serving as a witness in connection with any public or private hearing or arbitration, mediation or legal proceeding;

4.1.17 Assisting the Owner in public relations activities, including preparing information for and attending public meetings; and

4.1.18 Assisting the Owner with procurement and preparation of contracts in connection with the occupancy of the Project, and providing personnel to oversee the location of furniture and equipment;

4.1.19 Services related to the initial operation of any equipment such as start-up, testing, adjusting and balancing.

4.1.20 Any other services not otherwise included in this Agreement.

ARTICLE 5
DURATION OF THE CONSTRUCTION
MANAGER'S SERVICES

5.1 The commencement date for the CM's Basic Services shall be the date of the execution of this Agreement.

5.2 The initial contract period shall be 365 consecutive calendar days from the commencement date.

5.3 The Owner may terminate this Agreement with or without cause upon written notice to the CM.

ARTICLE 6
CHANGES IN THE CONSTRUCTION
MANAGER'S BASIC SERVICES
AND COMPENSATION

6.1 Owner Changes

6.1.1 The Owner, without terminating this Agreement, may make changes in the CM's Basic Services specified in Article 3 of this Agreement. The CM shall promptly notify the Owner of changes that increase or decrease the CM's compensation or the duration of the CM's Basic Services or both.

6.1.2 If the scope or the duration of the CM's Basic Services is changed, the CM's compensation shall be adjusted equitably. A written proposal indicating the change in compensation for a change in the scope or duration of Basic Services shall be provided by the CM to the Owner within thirty (30) days of the occurrence of the event giving rise to such request. The amount of the change in compensation to be paid shall be determined on the basis of the CM's cost and a customary and reasonable adjustment in the CM's Fixed Fee, Lump Sum, or multipliers and rates consistent with the provisions of Article 8.

6.2 Authorization

6.2.1 Changes in CM's Basic Services and entitlement to additional compensation or a change in duration of this Agreement shall be made by a written amendment to this Agreement executed by the Owner and the CM. The amendment shall be executed by the Owner and CM prior to the CM performing the services required by the amendment.

6.2.2 The CM shall proceed to perform the services required by the amendment only after receiving written notice from the Owner directing the CM to proceed.

6.3 Invoices for Additional Compensation

6.3.1 The CM shall submit invoices for additional compensation with its invoice for Basic Services and payment shall be made pursuant to the provisions of Article 8 of this Agreement.

ARTICLE 7 OWNER'S RESPONSIBILITIES

7.1 The Owner shall provide to the CM complete information regarding the Owner's knowledge of and requirements for the Project. The Owner shall be responsible for the accuracy and completeness of all reports, data, and other information furnished pursuant to this Paragraph 7.1.

7.2 The Owner shall be responsible for the presence at the site of any asbestos, PCB's, petroleum, hazardous materials and radioactive materials, and the consequences of such presence.

7.3 The Owner shall examine information submitted by the CM and shall render decisions pertaining thereto promptly.

7.4.7.4

7.5.7.5

7.6 If the Owner observes or otherwise becomes aware of any fault or defect in the Project or CM's services or any Work that does not comply with the requirements of the Contract Documents, the Owner shall give prompt written notice thereof to the CM.

7.7 The Owner shall furnish required information and approvals and perform its responsibilities and activities in a timely manner after receipt of written notice from the CM to facilitate orderly progress of the Work in cooperation with the CM consistent with this Agreement and in accordance with the planning and scheduling requirements and budgetary restraints of the Project as determined by the CM.

7.8 The Owner shall retain a Designer whose services, duties and responsibilities shall be described in a written agreement between the Owner and Designer.

7.9 The Owner shall approve the Project and construction budget and any subsequent revisions as provided in Paragraph 3.2.3.2 of this Agreement.

7.10

7.11 At the request of the CM, sufficient copies of the Contract Documents shall be furnished by the Owner at the Owner's expense.

7.12 The Owner shall in a timely manner secure, submit and obtain all necessary approvals, easements, assessments, permits and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

7.13

7.14

7.15 The Owner shall send to the CM and shall require the Designer to send to the CM copies of all notices and communications sent to or received by the Owner or the Designer relating to the Project.

7.16 The Owner shall designate, in writing, an officer, employee or other authorized representatives to act in the Owner's behalf with respect to the project.

7.17 The Owner shall make payments to the Contractor as recommended by the CM on the basis of the Contractor's applications for payment.

7.18 In the case of the termination of the Designer's services, the Owner shall appoint a new Designer whose responsibilities with respect to the Project and status under the new Agreement with the Owner shall be similar to that of the Designer under the Owner-Designer Agreement and the Contract Documents.

**ARTICLE 8
COMPENSATION FOR CM SERVICES
AND PAYMENT**

8.1 Compensation Basis

8.1.1 The CM shall receive compensation for its services in accordance with Paragraph 8.4 (Fixed Billable Rates).

full all amounts due for services, expenses and charges, including accrued interest.

8.4 Fixed Billable Rates

8.4.1 Compensation for Basic Services: The Owner shall compensate the CM for performing Basic Services described in Article 3 on the basis of fixed billable rates in accordance with the terms and conditions of this Agreement and specifically as follows: On a project by project basis, utilizing Attachments A, B and C

8.4.1.1 The cost of employees working on the Project, in an amount which equals the billable rates of the employees as established in Paragraphs 8.4.1.1.1 and 8.4.1.1.2, multiplied by the hours for each such employee. These billable hourly rates are inclusive of all profit (fee), general administrative overhead costs, and personnel expense for each employee. Personnel expense includes the base hourly wage, payroll taxes, employee benefits and Workers' Compensation insurance. The specified rates shall remain constant for a twelve (12) month period following the date of this Agreement. Thereafter, the rates established in the referenced paragraphs shall be adjusted by a _____% escalation factor for each successive twelve (12) month period. See Attachment A

8.4.1.1.1 Employees assigned to the Project and working at the construction site, or employees for which the Owner

provides all office facilities and services, the following hourly rates: See Attachment A

8.4.1.1.2 Employees assigned to the Project and working in the CM's administrative office, the following hourly rates: See Attachment A

8.4.1.2 Independent engineers, architects and other consultants employed by the CM and performing services related to the Project, a multiplier of (1.0) times the amount of the invoice for such services.

8.4.2 Direct Expenses: In addition to the compensation for Basic and Additional Services stated herein, the CM shall be reimbursed for its direct expenses incurred in providing Basic and Additional Services. Direct expenses for those actual expenditures made by the CM, its principals, employees, independent engineers, architects and other consultants in the interest of the Project, including, without limitation:

8.4.2.1 Long distance telephone calls, telegrams and fees paid for securing approval of authorities having jurisdiction over the over the Project;

8.4.2.2 Handling, shipping, mailing and reproduction of materials and documents;

8.4.2.3 Transportation and living expenses when traveling in connection with the Project; , except travel to and from the Project sites;

8.4.2.4

8.4.2.5

8.4.2.6 ;

8.4.2.7

8.4.2.8

8.4.2.9

8.4.2.10

8.4.2.11 Gross receipts taxes, sales or use taxes, service taxes and other similar taxes required to be paid as a result of this Agreement;

8.4.2.12 Field office expenses, including the cost of office rentals, telephones, utilities, furniture, equipment and supplies; and

8.4.2.13 Premium time work but only upon prior written approval of the Owner.

8.4.3 CM's Account Records: Records of the CM's personnel expense, independent engineers', architects' and other consultants' fees and direct expenses pertaining to the Project shall be maintained on the basis of generally accepted account practices and shall be available for inspection by the Owner or the Owner's representative at mutually convenient times for a period of two (2) years after completion of the construction phase Basic Services.

8.4.4 Payments: Payments to the CM shall be made monthly, not later than fifteen (15) days after receipt of the CM's invoice by the Owner, as follows:

8.4.4.1 Payment of the fixed hourly rate for employees shall be in amounts equal to the actual hours spent during the

billing period on the Project multiplied by the rates stated in Paragraphs 8.4.1.1.1 and 8.4.1.1.2;

8.4.4.2 Payment of independent engineers', architects' and other consultants' services shall be in amounts equal to the invoice in receipt by the CM for the billing period times the multiplier stated in Paragraph 8.4.1.2;

8.4.4.3 Reimbursement for direct expense shall be in amounts equal to expenditures made during the billing period and during previous billing periods not yet invoiced;

8.4.4.4 No deductions shall be made from the CM's compensation due to any claim by the Owner, Contractor or others not a party to this Agreement or due to any liquidated damages, retainage or other sums withheld from payments to the Contractor or others not a party to this Agreement

8.4.4.5 Payments due the CM that are unpaid for more than thirty (30) days from the date of receipt by the Owner of the CM's invoice shall bear interest in accordance with the Texas Prompt Pay Act, Texas Government Code Chapter 2251.

8.4.5 Compensation for Additional Services: The CM shall be compensated and payments shall be made for performing Additional Services in an amount and on terms mutually agreeable between the Owner and the CM.

ARTICLE 9

INSURANCE AND MUTUAL INDEMNITY

9.1 Construction Manager's Liability Insurance

9.1.1 General Liability: The CM shall procure and maintain insurance for protection from claims under Worker's Compensation Acts, from claims for damages because of bodily injury including personal injury, sickness or disease or death of any or all employees or of any person other than such employees, and from claims or damages because of injury to or destruction of property including loss of use resulting therefrom.

9.1.2 Commercial General Liability Insurance may be obtained under a single policy for the full limits required or by

a combination of underlying policies with the balance provided by an excess or umbrella policy.

9.1.3 The foregoing policies shall contain a provision that coverages afforded under the policies shall not be cancelled or expire until at least thirty (30) days written notice has been given to the Owner and shall include either a liability endorsement covering this Agreement or an endorsement making the Owner an additional insured under the policies. Certificates of insurance showing such coverages to be in force shall be filed with the Owner prior to commencement of the CM's services.

9.1.4 Professional Liability: The CM shall procure and maintain professional liability insurance for protection from claims arising out of the performance of professional services caused by a negligent error, omission or act for which the insured is legally liable; such liability insurance will provide for coverage in such amounts, with such deductible provisions and for such period of time as required by the Owner and are commercially available. Certificates indicating that such insurance is in effect shall be delivered to the Owner. The CM shall also cause the independent engineers, architects and other consultants retained by the CM for the Project to procure and maintain professional liability insurance coverage, for at least such amounts, deductibles, and periods as determined by the Owner.

9.2 Owner's Insurance

9.2.1 The Owner shall be responsible for purchasing and maintaining its own liability insurance, and at the Owner's option, may purchase and maintain such additional insurance to protect the Owner against claims losses, or damages that may arise from the Project.

9.2.29.2.2

9.3 Notices and Recovery

9.3.1 The Owner and CM each shall provide the other with copies of all policies thus obtained for the Project. Each party shall provide the other thirty (30) days written notice of cancellation, non-renewal or endorsement reducing or restricting coverage.

9.4 Waiver of Subrogation

9.4.1

9.5 Indemnity

9.5.1 To the fullest extent permitted by law, the CM shall indemnify and hold harmless the Owner, its employees, agents, officers, directors and partners from and against any and all damages arising from bodily injury or property damage and reasonable attorneys' fees incurred by the Owner caused by the negligent act, error or omission of the CM, or the CM's consultants, or any other party for whom the CM is legally liable, in performance of services under this Agreement. The CM shall procure and maintain insurance as required by and set forth in this Agreement.

9.5.29.5.2

9.5.39.5.3

9.5.4

10 TERMINATION AND SUSPENSION

10.1 Termination

10.1.1 This Agreement may be terminated by the Owner for convenience after seven (7) days written notice to the CM.

10.1.2 This Agreement may be terminated by either party hereto upon seven (7) days written notice should the other party fail substantially to perform in accordance with the terms hereof through no fault of the terminating party or if the Project in whole or substantial part is stopped for a period of sixty (60) days under an order of any court or other public authority having jurisdiction or as result of an act of government.

10.1.3 In the event of termination under Paragraph 10.1.1, the CM shall be paid its compensation for services performed to the date of termination and services of engineers, architects and consultants then due.

10.1.3.1

10.1.3.2

10.1.4

10.2 Suspension

10.2.1 The Owner may, in writing, order the CM to suspend all or any part of the CM's services for the Project for the convenience of the Owner or for stoppage beyond the control of the Owner or the CM. If the performance of all or any part of the services for the Project is so suspended, an adjustment in the CM's compensation shall be made for the increase, if any, in the cost of the CM's performance of this Agreement caused by such suspension and this Agreement shall be modified in writing accordingly.

10.2.2

10.2.3 Persons assigned by the CM to another project during such suspension periods and not available to return to the Project upon cessation of the suspension shall be replaced.

10.2.4 If the Project is suspended by the Owner for more than three (3) months, the CM shall be paid compensation for services performed prior to receipt of written notice from the Owner of the suspension. If the Project is to be resumed after being suspended for more than six (6) months, the CM shall have the option of requiring that its compensation, including rates and fees, be renegotiated, that payments required hereunder shall have been made by the Owner, and that adjustments to this Agreement related to the suspension have been made by written amendment to this Agreement. Subject to the provisions of this Agreement relating to termination, a suspension of the Project does not void this Agreement.

ARTICLE 11 DISPUTE RESOLUTION

11.1 The Owner and the CM shall submit all unresolved claims, counterclaims, disputes, controversies, and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("disputes"), to mediation prior to either party initiating litigation against the

other, unless delay in initiating or prosecuting a proceeding in a judicial forum would prejudice the Owner or the CM. The Owner and the CM shall agree in writing as to the identity of the mediator and the rules and procedures of the mediation. If the Owner and CM cannot agree, the dispute shall be submitted to mediation under the then current Construction Industry Mediation Rules of the American Arbitration Association.

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11.7 Unless otherwise agreed in writing, the CM shall continue to carry out its responsibilities under this Agreement during any dispute, and the Owner shall continue to make payments in accordance with this Agreement.

ARTICLE 12 ADDITIONAL PROVISIONS

12.1 Confidentiality

12.1.1 The CM will keep all information concerning the Project confidential, except for communications incident to completion of the Project between the CM, Designer, and Contractor, and their independent professional engineers, architects and other consultants and subcontractors, and except for publicity approved by the Owner and communications in connection with filings with governmental bodies having jurisdiction over the design or construction of the Project.

12.2 Limitation and Assignment

12.2.1 The Owner and the CM each binds itself, its successors, assigns and legal representatives to the terms of this Agreement.

12.2.2 Neither the Owner nor the CM shall assign or transfer its interest in this Agreement without the written consent of the other, except that the CM may, without approval of the Owner, assign accounts receivable to a commercial bank for securing loans.

12.3 Governing Law

12.3.1 This Agreement shall, unless otherwise provided, be governed by the law of the state where the Project is located. Venue shall be in Guadalupe County, Texas. No provision of this Agreement is a waiver or any immunity or defense. No provision of this Agreement is a consent to suit.

12.4 Extent of Agreement

12.4.1 This Agreement constitutes the entire agreement between the parties and incorporates all prior agreements and understandings in connection with the subject matter hereof. This Agreement may be amended only by a written amendment signed by the Owner and CM. Nothing contained in this Agreement is intended to benefit any person or party. In addition, it is expressly agreed that neither the Designer, the Contractor, its subcontractors and suppliers, and other contractors or consultants of the Owner or CM, nor any other person or party providing any part of the design services or Work are intended beneficiaries of this Agreement.

12.5 Severability

12.5.1 If any portion of this Agreement is held as a matter of law to be unenforceable, the remainder of this Agreement shall be enforceable without such portion.

12.6 Meaning of Terms

12.6.1 References made in the singular shall include the plural and the masculine shall include the feminine or the neuter.

12.6.2

12.7 Notices

12.7.1 Whenever any provision of the Contract Documents requires the giving of written notice, it shall be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended or if delivered or sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

To the Owner:

To the CM:

(Remainder of Page intentionally left blank.)

CMAA Document A-1 (2005 Edition)

IN WITNESS WHEREOF, the parties have duly executed this Contract as of the date set forth on page 1 hereof.

ATTEST:

OWNER

Witness: _____

By: _____

Title: _____

CONSTRUCTION MANAGER

Witness: _____

By: _____

Title: _____

SAMPLE