

AGENDA ITEM 38

Consider approving Construction Management Agreement with Landmark for an addition to the Williamson County Courts Annex.

Ed Lee stated that County Attorney Gene Taylor has approved the contract with Landmark for the courts addition. Mr. Lee stated that there were several points that need to be clarified. He stated that the contract has a guaranteed maximum price, but there is no language stating what will happen if the maximum price is exceeded. He stated that there is a letter from Mark Schultz of Landmark that they received earlier in the year stating that Landmark will be responsible for any cost overruns beyond the maximum price. Commissioner Limmer asked that the letter be attached to the contract as an exhibit. Mr. Lee also noted that the general conditions are not listed in the contract. He said that a list of the general conditions needs to be attached to the contract as an exhibit, and that the contract needs to state that the general conditions amount is part of the guaranteed amount. Chuck Lamb, Landmark's Project Manager for the courts addition, stated that Landmark will provide a breakdown of the general conditions line items and incorporate them as part of the attachment to the contract.

Moved: **Commissioner Limmer**

Seconded: **Commissioner Heiligenstein**

Motion: To approve the Construction Management Agreement with Landmark for the addition to the Williamson County Courts Annex, contingent on approval by Broaddus & Associates and with the exhibits regarding the maximum price and general conditions attached to the contract.

Vote: **5 - 0**

< Attachment >

**WILLIAMSON COUNTY COURTS ANNEX
CONSTRUCTION MANAGEMENT AGREEMENT**

This Construction Management Agreement ("Agreement") is entered into effective as of October 24, 2002 (the "Effective Date"), by and between Williamson County Texas, a governmental entity, hereinafter referred to as "Owner," and Landmark Organization, LP hereinafter also called "Construction Manager" and "Construction Manager Agent" (also hereinafter referred to as "Party" individually or "Parties" collectively).

WITNESSETH

WHEREAS, the Owner desires to have designed and constructed an addition to the Williamson County Courts Annex in Georgetown, Williamson County, Texas, in one or more design and bid/proposal packages; and

WHEREAS, the Owner solicited qualifications for Construction Management Services in connection with the proposed construction of the addition to the Williamson County Courts Annex, hereinafter called the "Project"; and

WHEREAS, the purpose of this Agreement is to secure the professional Construction Management Services of the Construction Manager in the design, preconstruction, and construction phases of the Project; and

WHEREAS, by execution hereof Landmark Organization, LP shall be the Construction Manager Agent for the Project and as such Landmark Organization, LP understands that as the Construction Manager Agent, subject to the terms and conditions of this Agreement, it shall have primary management responsibility for the Project and will be responsible for the coordination of all Project matters.

NOW, THEREFORE, the Owner and the Construction Manager, in consideration of the terms, covenants and conditions herein contained, do hereby contract and agree as follows:

**ARTICLE I
AGREEMENT TERMS**

1.01 Definitions for purposes of this Agreement:

Architect/Engineer. Licensed professionals, or firms employing such licensed professionals, engaged by Owner as independent consultants for design for all or a portion of the Project Improvements. More than one such professional or firm may be employed by Owner. (All such professionals or firms, regardless of number, may be referred to in the singular herein.)

Change Order. A change in the scope of the required construction work, approved in writing by the Owner, prior to implementing any such change, which may result in a modification to the Project Schedule and/or cost of the Work.

Construction Contract Documents. The Construction Contracts, including this Agreement, the Owner's Standard Uniform General and Supplementary Terms and Conditions (See Attachment "F"), and special conditions developed for the construction of the Project Improvements or a portion thereof, all documents required thereunder, and the the Architect/Engineer's plans, drawings dated August 26, 2002 and specifications dated August 27, 2002.

Construction Contracts. A contract between the Owner and a contractor independent of the Owner for the Contractor's performance to the Owner of services or provision of materials relating to the construction of a portion of Project Improvements which services and/or provision of materials shall be an individual bid/proposal package. The Construction Manager Agent shall review and approve the recommended scope of the work (performance of services and provision of materials) to be included in each separate Construction Contract, and bid/proposal package and submit to Owner for approval, prior to advertisement for bids or proposals. Construction Contract is deemed to include for purposes herein any procurement contract between Owner and a vendor or supplier.

Construction Contractors. Independent contractors performing work pursuant to Construction Contracts. A single Construction Contractor may be referred to herein as a "General Contractor" and shall be determined in accordance with all state and local competitive procurement requirements. (More than one such Contractor may be employed by Owner. Regardless of number, all such Contractors may be referred to in the singular herein). "Construction Contractor" is deemed to include, for purposes herein, any vendor or supplier under contract with Owner.

Construction Cost. The Construction Cost shall be the total cost to the Owner of all elements of the Project designed or specified by the Architect/Engineer for which the Construction Manager has responsibility hereunder. The Construction Cost shall include the cost at current market rates of all labor and materials furnished by the Owner or its Construction Contractors and equipment designed, specified, selected or specially provided by the Architect/Engineer, plus a reasonable allowance for the Contractors' overhead and profit. Construction Cost for purposes of determining Construction Manager's compensation hereunder does not include the compensation of the Architect/Engineer or their personnel, consultants or subcontractors.

Construction Cost Fixed Limits.

- (a) The agreement between the Landmark Organization and Williamson County, dated July 5, 2002, is incorporated as part of this agreement as "Attachment I".

- (b) The fixed limit of Construction Cost for the Project, including all fees and compensation for Construction Manager is NINE MILLION NINE HUNDRED SIXTY-EIGHT THOUSAND THREE HUNDRED NINETY-TWO DOLLARS (\$9,968,392.00), (but excluding design/engineering fees, costs for renovation of the existing building, costs for upgrades to HVAC for the Annex addition, costs for the additional Roof Support System, and Preconstruction Project Management fees) must not be exceeded as a result of the design of the Architect/Engineer as defined by the Architect/Engineer's plans, drawings dated August 26, 2002 and specifications dated August 27, 2002.
- (c) The estimate for HVAC upgrades for the Annex addition is \$320,000.00.
- (d) The estimate for renovation of the existing building is \$713,249.00. excluding HVAC upgrades.
- (e) The estimate for the additional roof support system compared to the June 3, 2002 drawings is \$18,500.00.
- (f) The cost limit for Preconstruction Project Management fees, is ONE HUNDRED THOUSAND DOLLARS (\$100,000.00).
- (g) The cost limit, including markup, for the total of Construction Manager's Direct Personnel expenses plus Reimbursable Expenses and General Conditions is SIX HUNDRED SIXTY -FOUR THOUSAND NINE HUNDRED TWENTY-TWO DOLLARS (\$664,922.00), as included in NINE MILLION NINE HUNDRED SIXTY-EIGHT THOUSAND THREE HUNDRED NINETY-TWO DOLLARS (\$9,968,392.00), set out in Section 1.01(a).
- (h) The estimate for the Construction Manager's General Conditions, included as part of Construction Manager's Direct Personnel expenses plus Reimbursable Expenses shown above, is \$617,208.00. The items to be included in General Conditions are listed on "Attachment J".

Construction Phase. The implementation and execution of the construction work required by the Construction Contract Documents.

Construction Team. The Construction Manager, the Architect/Engineer, the Construction Contractor(s), the Owner, and any and all consultants engaged by Owner.

Day. A calendar day unless otherwise specifically designated.

Final Completion. As defined by Owner's Standard Uniform and Supplementary General Conditions attached as Attachment 'F' hereto and referred to herein for all purposes.

When referring to the Work of the Project, all those parts of the Project that the Construction Contractors are to perform in completing the entire Project.

ARTICLE II

DESIGNATION OF CONSTRUCTION MANAGER AND DUTIES

2.01 The Owner, hereby designates and appoints the Construction Manager and authorizes the Construction Manager to so act in connection with the scope of work and services set forth and described in this Agreement (the "Services").

2.02 In general, the Construction Manager shall have primary construction management responsibility for the Project and more specifically shall coordinate all construction Project matters with a goal to attain the completion of the Project on time and within budget.

2.03 Notwithstanding anything to the contrary contained in this Agreement, Owner and Construction Manager agree and acknowledge that Owner is entering into this Agreement in reliance on Construction Manager's abilities with respect to performing the Services, and Construction Manager's abilities with respect to construction management, including, without limitation, leadership and coordination of all of the Owner's other independent contractors for the Project, including Construction Contractors, if any, as approved in writing by Owner prior to designation, architects, engineers, surveyors, testing laboratories, trade contractors, and special consultants. The Construction Manager accepts the relationship of trust and confidence established between it and the Owner by this Agreement. Construction Manager is Agent for Owner and covenants with Owner to use its best efforts, skill, judgment, and abilities to further the interests of Owner in accordance with Owner's requirements and procedures, and to perform the Services in accordance with the standards of Construction Manager's profession or business and in compliance with all applicable national, federal, state, municipal, laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction. Construction Manager represents, to the best of its knowledge and belief, and covenants and agrees that there are no obligations, commitments, contracts, or impediments of any kind that will limit or prevent performance of the Services. This Agreement is executed near completion of bid/proposal award negotiation phase, but prior to the advertisement of bids/proposals for Construction Contractors. Any description of services, including Preconstruction Project Management services, provided during prior phases are assumed to have already been provided by Construction Manager Agent and are included in the \$100,000.00 Preconstruction Project Management fee, which is fully earned once Construction Contractors have been selected by Owner.

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

2.05 The Construction Manager covenants and agrees that all persons connected with the Construction Manager directly in charge of the Services are duly registered and/or licensed under the laws, rules and regulations of any authority having jurisdiction, to the extent required by such laws, rules and regulations.

2.06 The Construction Manager covenants and agrees to call to Owner's attention any design errors or omissions in the plans, drawings and specifications prepared by the Architect/Engineer that Construction Manager may discover; however, any review by the Construction Manager is made in the Construction Manager's capacity as a construction manager and not as a licensed design professional, regardless of the registration or license held by one or more of Construction Manager's personnel. The Construction Manager is not required to ascertain that the Construction Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, but any nonconformity discovered by or made known to Construction Manager shall be reported promptly to the Owner. Construction Manager shall be responsible for including all Work necessary to complete the Project as shown in the Construction Contract Documents in the collective bid/proposal packages.

2.07 The Construction Manager covenants and agrees to furnish efficient business administration and superintendence and perform the Services in the most expeditious and economical manner consistent with the interests of Owner

2.08 Construction Manager warrants, represents, and agrees that if:

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

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

2.11 The fixed limit of Construction Cost for the Project is guaranteed by the Construction Manager not to exceed NINE MILLION NINE HUNDRED SIXTY-EIGHT THOUSAND THREE HUNDRED NINETY-TWO DOLLARS (\$9,968,392.00), subject to additions and deductions by changes in the Work as provided by the Construction Contract Documents.

ARTICLE III
NATURE AND SCOPE OF WORK

3.01 The Construction Manager shall provide sufficient organization, personnel and management to carry out the requirements of this Agreement in an expeditious and economical manner reasonably consistent with the previously stated interests of the Owner. Consistent with the foregoing, the Construction Manager shall control its means and methods of performing the required Construction Management Services hereunder and shall oversee the performance of the Construction Contractors so as to provide for a completed Project in accordance with the Architect/Engineer's drawings, plans dated August 26, 2002, and specifications dated August 27, 2002. The Construction Manager's personnel, and the Construction Manager's associated subconsultants, to be employed in the Project, to the extent currently known, are identified in Attachment 'A'. In the event that the Construction Manager determines that one or more of its personnel or subconsultants should be replaced, the Construction Manager shall promptly notify the Owner of such replacement (prior to such replacement if reasonably feasible) and shall replace such personnel or subconsultants with a person or persons of equal or greater ability and qualifications.

ARTICLE IV
CONSTRUCTION MANAGER'S SERVICES:
PART 1: COORDINATION, SCHEDULING, BUDGETING, PLANNING

4.01 In implementation of the responsibilities and duties of the Construction Manager as set forth herein, the Construction Manager shall perform the following Construction Management Services:

(a) General Coordination.

- (1) Participate as a member of the Construction Team to confirm program need;
- (2) Attend regular meetings with other members of the Construction Team during the development of the design to advise them on site use and improvements, selection of materials, building systems and equipment and methods of delivery of materials, systems, and equipment. Prior to each meeting, the Construction Manager shall prepare and distribute to the other Construction Team members a written agenda for the meeting;
- (3) Prepare and distribute at each Construction Team meeting as part of the

agenda, a list of activities which require immediate action and the date(s) by when the activity must be completed, and record and distribute the minutes of each meeting;

- (4) Provide recommendations and information to the other members of the Construction Team on: construction feasibility; availability of materials and labor; time requirements for installation and construction; assignment of responsibilities for safety precautions and programs, temporary Project facilities; equipment, materials and services for common use of Construction Contractors; factors related to cost, including costs of alternative designs or materials, preliminary budgets, and possible economies; methods of verification for determining that the requirements and assignment of responsibilities are included in the proposed Construction Contracts, and any other matters necessary to accomplish the Project in accordance with the Project Schedule and Project Construction Budget;
- (5) At Owner's request, attend public meetings and hearings concerning the development of the Project as may be reasonably required to obtain necessary approvals;
- (6) Provide value engineering recommendations to the other members of the Construction Team after schematic design phase is complete; and
- (7) Provide an ongoing "Constructability Review" as a result of frequent communications with the Construction Team and report any items that in the Construction Manager's opinion may cause problems in the way the Project is to be constructed and review the overall coordination of specifications and drawings, details and discrepancies that if left unattended may result in Change Orders or claims once the Project is bid; and
- (8) Create and continuously update a decision tracking system in accordance with the Owner approved 'ProLog' format attached hereto as Attachment 'G'.

(b) Scheduling.

- (1) Develop a Project Schedule in accordance with the Owner approved 'SureTrak' format attached hereto as Attachment 'E', for the other Construction Team members' review and the Owner's use, that coordinates and integrates the Construction Manager's services, the Architect/Engineer's design, the work of other consultants and suppliers, and the Owner's activities with the anticipated construction schedules for other contractors, which includes the date for "groundbreaking" as approved by the Owner;
- (2) Update the Project Schedule as is reasonably required but at least monthly to

incorporate an updated, detailed listing for all activities of the Project, including: required activity sequences and durations; Construction Contract packages, completion dates, Owner Construction Contract package review periods; Project building permits acquisition time requirements; Construction Contract bid/proposal dates; processing of shop drawings and samples; a recommended schedule for the Owner's purchase of materials and equipment requiring long lead time procurement, and delivery dates of products requiring long lead time procurement; and -

- (3) Provide the necessary critical path schedule control with a goal to attain the Substantial Completion of the Project, including remodeling of the existing County Courts Annex within eighteen (18) months following issuance of a Notice to Proceed, so that the Owner can occupy and utilize the entire Project facilities on such date.

(c) Budgets

- (1) Obtain from Owner the Project Construction Budget ("PCB") at the end of the design development phase;
- (2) Update the PCB, as necessary, at the end of the construction documents phase for written approval by the Owner, such budget to include updating and reporting of all anticipated construction costs;
- (3) Advise the other members of the Construction Team immediately if at any time the Construction Manager has knowledge or belief that the previously established PCB will not be met, and make recommendations to the Construction Team for corrective action; and
- (4) Identify and establish the cost of each Construction Contractor package to be used for evaluation of the bids or proposals by the Construction Manager and Owner and recommend the successful contractor to the Owner who shall make the final decision as to the identity of the successful Construction Contractor.

(d) Coordination of Construction Contract Documents.

- (1) Assist the Owner in preparing Construction Contracts which incorporate all the Owner's requested scope items and procedures, including, without limitation, Georgetown, Texas, Site Construction Guidelines, all of which are hereby incorporated by reference, into the Construction Contract Documents provided, however, that nothing herein shall require Construction Manager to perform legal services or to provide or furnish legal advice to the Owner;

- (2) Develop any Special Conditions of the Construction Contract Documents, which shall be approved in writing by the Owner at Owner's sole option and discretion;
 - (3) At specified times required by the Owner, review the drawings and Project specifications as they are being prepared, advise Owner of any error, inconsistency or omission discovered, and recommend alternative solutions whenever design details affect construction feasibility budget risks or schedules; and
 - (4) Assist the Owner in preparing Construction Contracts that comply with all applicable State of Texas and Williamson County procurement requirements provided, however, that nothing herein shall require Construction Manager to perform legal services or to provide or furnish legal advice to the Owner.
- (e) Construction Planning.
- (1) Identify for and recommend to the Owner the need for purchase of items requiring extended delivery times ("long lead items"), and recommend ways to expedite the procurement of such items for delivery by the required dates;
 - (2) Make recommendations to the other members of the Construction Team regarding the division of Construction Contract drawings and Project specifications to facilitate the solicitation and awarding of Construction Contracts, to allow for phased construction and to take into consideration such factors as time of performance, availability of labor, overlapping trade jurisdictions, and provisions for temporary facilities;
 - (3) Review the drawings and the Project specifications with the other members of the Construction Team to eliminate areas of conflict, gaps and overlap in the Work to be performed by the various Construction Contractors;
 - (4) Develop Construction Contractor interest in the Project and assist the Owner in accordance with local and statutory requirements, in taking competitive bids or proposals on the Work of the various Construction Contractors; schedule and conduct pre-bid conferences, and after review and analysis of the bids or proposals with the Owner and Architect/Engineer(s) make a recommendation to the Owner for contract awards, which awards shall be made by the Owner;
 - (5) ~~Subsequent~~ Subsequent to the Owner's award of the Construction Contracts obtain information/documents (as described in the Project specifications) from the Construction Contractors necessary for Owner's execution of the Construction Contracts and if such information or documents are not available, the Construction Manager shall recommend the appropriate course

of action to the Owner with respect to any such Construction Contractor which cannot provide the information/documents;

- (6) Assist the Owner, the appropriate Construction Contractor, the appropriate Architect/Engineer or consultant, in obtaining all applicable risk management, code, and regulatory agency reviews and approvals for the Project or any portion thereof including, without limitation, the Texas Department of Licensing and Regulation, the City Fire Department, and Factory Mutual Engineering, a wholly owned subsidiary of the Factory Mutual System;
 - (7) Advise Owner in conjunction with Architect/Engineer of any tests to be performed.
- (f) Furniture, Fixtures and Equipment. Coordinate the Owner's relocation and purchase and installation of furniture, fixtures and equipment with the Owner and Owner's Construction Contractors as may be required to meet the Project Schedule.

ARTICLE V
CONSTRUCTION MANAGER'S SERVICES:
PART 2: PROJECT CONTROL, CONSTRUCTION

5.01 In implementation of the responsibilities and duties of the Construction Manager herein, the Construction Manager will also provide the following Construction Management Services:

- (a) Project Control.
 - (1) Monitor the Work of the Construction Contractors as required and coordinate such Work with the activities and responsibilities of the Construction Team with a goal to attain completion of the Project Improvements at a cost not to exceed the Project Construction Budget and to attain Substantial Completion within eighteen (18) months following the issuance of a Notice to Proceed;
 - (2) As provided in Attachment 'A', maintain a competent staff to coordinate and provide general direction over the Work and progress of the Construction Contractors on the Project;
 - (3) As provided in Attachment 'A', establish organization of personnel and clearly defined lines of authority in order to implement the overall plans of the Construction Team;

- (4) Establish procedures for coordination among the Construction Team, Construction Contractors and consultants with respect to all aspects of the Project, and implement such procedures;
- (5) Schedule and conduct weekly progress meetings, or as required, at which time Construction Contractors, consultants and the Construction Team can discuss jointly such matters as procedures, progress, problems and scheduling;
- (6) Provide regular monitoring of the Project Schedule as construction progresses; identify potential and actual Construction Contract variances between scheduled and probable completion dates, review the Construction Contract schedules for Work not started or incomplete and recommend to the Owner and Construction Contractors adjustments to their schedules to conform with the probable Construction Contract completion dates and provide monthly reports to the Owner of each Construction Contract schedule and document all changes in Construction Contract schedules;
- (7) Determine the adequacy of the Construction Contractors' personnel and equipment, and the availability of materials and supplies to meet the Construction Contractors' schedules in relation to the Project Schedule; and
- (8) Advise the Owner of any default by a Construction Contractor and the projected consequences of such default and make recommendations to the Owner regarding corrective action to replace the Construction Contractor in default and implement remedial action, as approved by the Owner, required to meet the Project Schedule and Project Construction Budget.

(b) Cost Control.

- (1) Develop and monitor an effective system of Project costs control, and provide regular reports to the other members of the Construction Team; identify variances between actual and budgeted or estimated costs and advise the other members of the Construction Team whenever projected costs exceed, or could be reasonably anticipated to exceed, budgets or estimates; revise and refine the initially approved PCB with the assistance of the other members of the Construction Team; present the revised PCB to the Owner for approval; incorporate the Owner-approved changes; and develop cash flow reports and forecasts and provide same to Owner as projected; and
- (2) ~~≡~~ Maintain cost accounting records in good form on expenditures and materials, or for any other expenditures requiring accounting records; and afford the Owner access to these records and preserve them for a period of two (2) years after final payment is made by the Owner to the Construction Manager.

- (c) Change Orders. Develop and implement a system in accordance with the Owner approved 'ProLog' format attached hereto as Attachment 'H', for the preparation, review and processing of Change Orders system and recommend necessary or desirable Change Orders to the other members of the Construction Team for its review and recommendation for Owner's approval and assist in negotiating Change Orders prior to submittal of same to the Owner for final approval.
- (d) Construction Contractors.
 - (1) Develop and implement a written procedure acceptable to the Owner for the review, approval and processing of pay requests by Construction Contractors;
 - (2) Maintain strict enforcement of all Construction Contracts including retention of retainage amounts provided, however, that nothing herein shall require Construction Manager to perform legal services or to provide or furnish legal advice to the Owner; and
 - (3) Make recommendations in writing to the Owner regarding Construction Contract default or Construction Contract modifications provided, however, that nothing herein shall require Construction Manager to perform legal services or to provide or furnish legal advice to the Owner. Construction Manager shall not be responsible for any Construction Contractor's failure to carry out the Work in accordance with the respective Construction Contract. Construction Manager shall be responsible for oversight of all Construction Contractors' performance in accordance with the respective Construction Contract.
- (e) Wage Rates. Assist Owner in maintaining strict enforcement of applicable State of Texas prevailing wage laws. Cooperate with Owner in monitoring the submission to the Owner of payroll records by the various Construction Contractors when requested.
- (f) Permits. Participate with Owner to assist the Architect/Engineer in obtaining all required building permits and special permits for permanent improvements, which does not include those permits normally required to be obtained by the various Construction Contractors, such as permits for inspection, temporary facilities, etc.
- (g) Special Consultants. Assist the Owner in selecting and retaining professional services not otherwise described in this Agreement for the Project, and coordinate these services at the Owner's request in order to meet the Project Schedule, without, however, assuming direct responsibility for, having control over, or being in charge of the work of these consultants.

(h) Review of Work and Safety.

(1) Construction Manager Agent shall determine in general that the Work of each Construction Contractor is being performed in accordance with the requirements of the Construction Contract Documents and endeavor to guard the Owner against defects and deficiencies in the Work. Notwithstanding the foregoing, the Construction Manager shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, or procedures in connection with the Work of each of the Construction Contractors or for the acts or omission of the Construction Contractors or their agents or employees, or any other persons performing portions of the Work not directly employed by the Construction Manager; and

(2) Develop the safety standards to be included in the Construction Contracts, and adequately inform the Construction Contractors to coordinate safety programs with the other Construction Contractors in their work area. In the event the Construction Manager becomes aware of any violation of safety related practices and procedures by the Construction Contractors, the Construction Manager shall be responsible for advising the Owner of such violations, but the Construction Manager shall not be responsible for compliance with such safety-related practices by the Construction Contractors.

(i) Document Interpretation. The Architect/Engineer shall be the interpreter of the design intent of the Construction Contract Documents, subject to the terms and conditions of the agreement between the Architect/Engineer and the Owner, provided, however, the Construction Manager shall request such interpretations from the Architect/Engineer, with Owner consent, from time to time in order to facilitate the Construction Manager's accomplishment of its duties under this Agreement. Construction Manager Agent is leader of the construction team.

(j) Shop Drawings and Submissions. In collaboration with the other members of the Construction Team, the Construction Manager shall establish and implement procedures for expediting the processing and Architect/Engineers' approval of shop drawings and other submissions.

(k) Reports and Project Site Documents.

(1) The Construction Manager shall record the progress of the Project, submit monthly progress reports to the other members of the Construction Team, including information on the Construction Contractors' Work and the percentage of completion, and keep a daily log of Project construction activities available to the other members of the Construction Team; and a designated member of the Construction Manager's site personnel, whose job function involves or includes observation of Project construction, shall maintain a daily log of construction activities and observations which daily

logs will be submitted to the Owner upon Substantial Completion; and

- (2) The Construction Manager shall maintain at the Project site, updated records of contracts, drawings, examples, purchases, materials, equipment, maintenance and operating manuals and instructions, and other construction related documents, including all changes and revisions; obtain data from Construction Contractors and maintain a current updated set of record drawings and Project specifications.
- (l) As-Built Drawings. The Construction Manager shall monitor the Construction Contractors' production of as-built construction records and shall monitor the production of final, as-built mylar record Project drawings by the Architect/Engineer for delivery to the Owner as may be required.
- (m) Substantial Completion of Work by Construction Contractors. Upon notification by a Construction Contractor, the appropriate members of the Construction Team (at a minimum, the Construction Contractor giving such notice, the Architect/Engineer or consultant responsible for the design of the Work which is the subject of the notice, the Construction Manager, and the Owner) shall make a walk-through inspection in order to determine whether there is Substantial Completion of said Construction Contractor's Work. A list of unacceptable items shall be prepared by the Construction Manager and presented to the Construction Contractor for resolution.
- (n) Substantial Completion of Project. Upon notification by the Construction Manager, the appropriate members of the Construction Team (Owner, Construction Manager, Construction Contractor, Architect/Engineer) shall make a walk-through inspection in order to determine whether there is Substantial Completion of all Construction Contractors' Work, subject to the Owner's Standard Uniform General and Supplementary Conditions. Lists of unacceptable items shall be prepared by the Construction Manager Agent and presented to the Construction Contractors for resolution subject to the Owner's Standard Uniform General and Supplementary Conditions.
- (o) Start-Up. With the Owner's operations' personnel in attendance at a time and date acceptable to all necessary parties, the Construction Manager shall coordinate and supervise the inspection of utilities, operations' systems and equipment for readiness, and assist Owner in start-up and testing of such utilities, systems and equipment by the appropriate Construction Contractor.
- (p) Final Completion. After receiving Owner's consent, the Construction Manager shall establish the date of final completion for the Project and provide written notice to the other members of the Construction Team that the Project is ready for final inspection and walk-through; secure and transmit to the Owner, after final walk-through and final acceptance by the Owner, required guarantees, affidavits, releases, bonds and waivers; and, after final walk-through and final acceptance by the Owner, turn over

to the Owner all keys, manuals, record drawings and surplus materials and supplies.

- (q) Warranty. The Construction Manager shall collect and deliver to the Owner, in hard-back binders, all written warranties or guarantees specified in the Construction Contract Documents, prior to final completion. The Construction Manager shall assist and represent the Owner through the one-year warranty period on matters involving malfunctions, defects or deficiencies of the Project. The Construction Manager shall communicate with the Construction Contractors as necessary to correct all malfunctions, defects, and deficiencies in a timely manner and to reduce inconvenience to the Owner during this period. The scope of assistance shall include, but not be limited to, the following:

- (1) notify the Construction Contractor of malfunctions, defects, and deficiencies in workmanship or materials when discovered and request corrective actions;
- (2) prepare correspondence and other written data as necessary to document, clarify, and resolve discrepancies;
- (3) meet with the Construction Contractors at the Project site or other local places when requested by the Owner; and
- (4) take reasonable steps to pursue correction of malfunctions, defects, and deficiencies, provided however, only the Owner will exercise any of its legal remedies.

The Construction Manager shall also perform a thorough warranty review of the Project shortly before the one year anniversary of the date of Substantial Completion. As a result of this review, the Construction Manager shall prepare a list of items needing correction. The Construction Manager shall submit the list to the Owner for information, and to the appropriate Construction Contractor for resolution and then actively pursue resolution of the items on the corrective action list.

- (r) General Conditions. The Construction Manager shall furnish during the course of construction of the Project such general conditions (onsite equipment, consumable materials and supplies, and related services for the overall administration and the shared work of the Construction Contractors at the Project site). See "Attachment J".

ARTICLE VI

PROJECT SCHEDULE

6.01 The services to be provided under this Agreement shall be in general accordance with the outline time schedule attached hereto as Attachment 'E'. A detailed Project Schedule, as further defined by Section 4.01(b), that shows when various Preconstruction Phase and Construction Phase activities occur including the specific dates on which parts of the Project shall reach Substantial

Completion and the specific dates when the Work defined in each Construction Contract shall reach Substantial Completion, shall be provided by the Construction Manager no later than one (1) after the Notice to Proceed.

ARTICLE VII
PAYMENTS TO THE CONSTRUCTION MANAGER

7.01 In full consideration of Construction Manager's Services during the term of this Agreement and of Owner's rights hereunder, Owner shall compensate Construction Manager as follows:

- (a) Basic Services. For Construction Manager's Services as described in Articles IV and V hereof, and of Owner's rights hereunder ("Basic Services"), Construction Manager's compensation shall be payable as follows:
Construction Manager's compensation shall be the sum of Two and Three-Fourths percent (2.75%) of the actual Construction Cost (which sum includes the sum of the Direct Personnel Expenses for the Construction Manager's personnel performing such Basic Services calculated as provided by Section 7.03, and includes the Reimbursable Expenses, General Conditions calculated per Section 7.04 as incurred by Construction Manager in connection with such Basic Services).

(b) Additional Services. For Additional Services as described in Section 7.11, unless the Parties agree in writing on a different method of computing compensation prior to performing the Additional Services, Construction Manager's compensation shall be computed as follows: the sum of the Direct Personnel Expense for the Construction Manager's personnel performing such Additional Services on a time-spent basis, together with those Reimbursable Expenses incurred by Construction Manager in connection therewith. Direct Personnel Expense for those personnel with job positions or classifications identified in the Construction Manager's Direct Personnel Expense Schedule, attached hereto as Attachment "B" and incorporated fully herein (the "DPE Schedule"), shall be computed based upon those hourly rates reflected therein. In the event personnel with job positions or classifications not listed in the attached Schedule are used on the Project, the Direct Personnel Expense for such personnel shall mean one and one-tenths (1.10) times the actual hourly compensation of such personnel (for salaried employees, the hourly compensation shall be based upon a 40 hour work week and 48 weeks per year) directly engaged on the Project and performing the Additional Services. The multiplier referred to herein is designed to cover all employee benefits and related employer expense. Construction Manager's employees shall mean anyone employed by the Construction Manager including, but not limited to, architects, engineers, job captains, analysts, inspectors, and technical specialists who are directly performing the Additional Services. In the event that Construction Manager is required to perform Basic Services beyond the time for completion as originally set forth in Article VI above in connection with an approved Change Order that modifies the Project Schedule, unless the Parties agree to another basis for compensation, Construction Manager shall be entitled to recover such applicable Direct Personnel Expense and Reimbursable Expenses attributable to and incurred during such additional period of time, together with a sum equal to ten percent (10%) thereof for indirect overhead and profit.

7.02 To receive payment, Construction Manager shall send monthly invoices to Owner. The monthly invoices shall include the Construction Manager's prorated fee for Basic Services (which fee includes any Direct Personnel Expense for Basic Services calculated per Section 7.03 and includes any Reimbursable Expenses calculated per Section 7.04 as incurred by Construction Manager in connection with such Basic Services) plus the Construction Manager's fee for all Additional Services for such period, if any, calculated per Section 7.01(b).

7.03 Subject to the limitations herein, the hourly rates as set forth in the attached DPE Schedule are inclusive of all employee benefits and related employer expense. The hourly rates reflected in the attached DPE Schedule may be adjusted annually in accordance with the usual and customary salaries of the Construction Management profession in the Williamson County, Texas area.

7.04 Subject to the limitations herein, the following expenses of Construction Manager, incurred solely and directly in support of the Project, will be reimbursed ("Reimbursable Expenses"):

- (a) Actual out-of-pocket coach class travel and other expenses previously approved by

Owner for travel outside the Central Texas area and incurred solely in connection with Construction Manager's performance of its services hereunder; provided, however, that the cost of travel between Construction Manager's offices and Owner's local offices or the Project shall not be reimbursed;

- (b) Reproductions, printing, binding, collating and handling of reports, drawings and specifications or other Project-related work product, required for use by Construction Manager;
- (c) Shipping or mailing of all reports, drawings, specifications, and other items or documents in connection with the Project; and
- (d) Fees paid to Consultants hired in accordance with prior written approval from Owner.

Owner shall pay a mark-up of ten percent (10%) of said Reimbursable Expenses. Construction Manager shall submit receipts for all Reimbursable Expenses along with any reimbursement request.

7.05 Owner shall have the right to verify the details set forth in Construction Manager's billings, certificates, and statements, either before or within thirty (30) days after payment therefor by: (a) inspecting time cards, invoices and back-up documentation for Reimbursable Expenses, and the books and records of Construction Manager relating to the Project and maintained at the Project during normal business hours; (b) examining any reports with respect to this Project; (c) interviewing Construction Manager's business employees; (d) visiting the Project site; and (e) other reasonable action.

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

7.07 Payments to the Construction Manager are due and payable within thirty (30) days from the date of delivery of the Construction Manager's completed invoice to the Owner's designated representative, which is currently Broaddus & Associates. Amounts unpaid thirty (30) days after such date of delivery shall bear interest at twelve percent (12%) per annum, compounded annually.

7.08 Any provision hereof to the contrary notwithstanding, Owner shall have the right to withhold from the Construction Manager, and not be obligated to make, such payments (whether a

progress payment or final payment) or portions thereof, due to Construction Manager hereunder, but only to the extent reasonably necessary to protect the Owner from uninsured loss due to the following:

- (a) Construction Manager is in material breach or default under this Agreement;
- (b) Services that are performed by Construction Manager in significant and substantial deviation from this Agreement; provided, however, such payments shall be made as to the part thereof attributable to Services which were performed in accordance with this Agreement; or
- (c) Construction Manager has failed to make payments promptly to subconsultants or other third parties which are then due and owing for services performed in connection Construction Manager's obligations hereunder and for which Owner has made payment to Construction Manager.

If the amount to be withheld by Owner from Construction Manager pursuant to this Section exceeds the total amount otherwise due to the Construction Manager hereunder, the Construction Manager agrees to pay to the Owner the full amount of such excess remaining due to Owner following resolution of all related disputes pursuant to Section 13.16.

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

7.10 Construction Manager shall promptly pay all bills which are due and owing for labor and material performed and furnished by others to or through Construction Manager in connection with the performance of Construction Manager's obligations hereunder.

7.11 Additional Services:

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

Requisition and written approval from Owner to proceed.

- (b) If Owner concludes that all or part of the services described in the Additional Services Requisition are Services already required to be performed by Construction Manager pursuant to this Agreement or are reasonably inferable therefrom, then Owner shall notify Construction Manager of Owner's determination and Owner and Construction Manager shall attempt, in good faith, to resolve by negotiation their differences. If within five (5) business days Owner and Construction Manager are unable to resolve their differences, then Construction Manager shall nevertheless perform the services requested by Owner as if the services were Services required to be performed pursuant to this Agreement, without prejudice, however, to Construction Manager's right to pursue a claim for compensation for such disputed services.
- (c) Upon acceptance by Owner, each Additional Services Requisition and the services performed by Construction Manager pursuant to such Additional Services Requisition shall become part of this Agreement and shall be subject to all the terms and conditions of this Agreement, as fully and completely as though the same had been included in this Agreement as a required Service at the original execution of this Agreement.
- (d) Additional Services include:
 - (i) services related to investigation, appraisals or valuations of existing conditions, facilities or equipment, or verifying the accuracy of existing drawings or other Owner-furnished information;
 - (ii) services for leasing tenant or rental space, except as such may relate to planning and coordinating moves of Owner's personnel and equipment to, from, and within Georgetown, Texas, during the course of the Project;
 - (iii) services for consultation on replacement of work damaged by fire or other cause, not directly attributable to the Construction Manager, occurring during construction, and furnishing services for the replacement of such work;
 - (iv) services to obtain or train maintenance personnel or the negotiation of maintenance service contracts; and
 - (v) any other service not otherwise included or specified in this Agreement, or reasonably inferable therefrom.

ARTICLE VIII
OWNER'S RESPONSIBILITIES

8.01 The Owner shall be acquainted with the Project and shall facilitate and coordinate the Owner's Project issues with the Construction Manager. Upon request, the Owner will furnish in writing the authorization of each representative of the Owner to represent it in connection with the Project.

8.02 The Owner shall cooperate in providing information to the other members of the Construction Team regarding its requirements for the Project. Within a reasonable time after receipt of written notification from the Construction Manager, the Owner shall address the Project issues raised by the Construction Team.

8.03 Owner shall furnish for the site of the Project any necessary surveys describing the physical characteristics, soil reports and subsurface investigations, known legal limitations, utility locations, and the legal description, to the extent such items may be required by agreements between Owner and Architect/Engineer or other consultants. Owner shall inform all special consultants retained by the Owner that they shall coordinate their services through the Construction Manager.

8.04 Owner shall pay for all appropriate Project related approval, inspection and plan review fees, easements, permits, assessments and charges routinely required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

8.05 Construction Manager shall not be responsible for action taken by Architect/Engineer. Owner shall furnish the Construction Manager, without charge, all copies of the Architect/Engineer's drawings and specifications reasonably necessary for the execution of the Work.

8.06 Construction Manager shall be entitled to rely upon the accuracy and completeness of the services, information, surveys and reports identified in Sections 8.02 through 8.04 herein and said services, information, surveys and reports shall be furnished to the other members of the Construction Team at their request, with reasonable promptness, at the Owner's expense.

8.07 If the Owner becomes aware of any fault or defect in the Project or non-conformance with the Architect/Engineers' drawings and Project specifications, or agrees to any change in the Architect/Engineers' professional agreement, Owner shall give prompt written notice thereof to the Construction Manager.

8.08 Owner shall be responsible for the detection, presence, handling, removal, encapsulation, transportation, and disposal of any hazardous material including, without limitation, asbestos or asbestos-related products, polychlorinated biphenyl (PCB) or other toxic substances as may be legally required in connection with the Project, and **OWNER SHALL INDEMNIFY AND HOLD CONSTRUCTION MANAGER HARMLESS FROM ANY LOSS, DAMAGE, CAUSE OF ACTION, CLAIM, OR EXPENSE (INCLUDING REASONABLE AND NECESSARY ATTORNEYS' FEES AND DEFENSE COSTS) INCURRED BY CONSTRUCTION**

MANAGER AND RESULTING FROM OR IN ANY WAY CONNECTED WITH THE DETECTION, PRESENCE, HANDLING, REMOVAL, ENCAPSULATION, TRANSPORTATION, OR DISPOSAL OF ANY HAZARDOUS MATERIAL INCLUDING WITHOUT LIMITATION ASBESTOS, ASBESTOS-RELATED PRODUCTS, PCBS OR OTHER TOXIC SUBSTANCES AT THE PROJECT.

8.09 Owner shall furnish all legal, accounting and insurance counseling services as may be necessary at any time for the Project, including without limitation, auditing services the Owner may require to verify the Contractors' Applications for Payment or to ascertain how or for what purposes the Contractors have used the money paid by or on behalf of the Owner, and legal services the Owner may require in preparing any contractual documents or legal instruments or in obtaining other required legal services for the Project. This shall not relieve Construction Manager Agent from responsibility of approving each Contractors' Application for Payment.

ARTICLE IX CHANGES IN THE PROJECT

9.01 The Owner may order changes in the Project within the general scope of this Agreement consisting of additions, deletions or other revisions.

9.02 Notwithstanding Section 9.01, changes in the Project that are generally within the scope of work defined herein shall not result in an increase in the Construction Manager's compensation as provided for in Article VII hereof.

9.03 The Construction Manager shall give written notice to the Owner of any incident or occurrence that requires a change to the Project and/or any Construction Contract, or will result in a delay to the Project, within a reasonable time, but in no event later than ten (10) days after the Construction Manager becomes aware of such incident or occurrence, unless such incident or occurrence is deemed to be an emergency by the Construction Manager, in which case the Owner shall be notified immediately by the Construction Manager.

ARTICLE X INDEMNITY

10.01 TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE CONSTRUCTION MANAGER AND ITS AGENTS, PARTNERS, EMPLOYEES, AND CONSULTANTS (COLLECTIVELY "INDEMNITORS") SHALL AND DO AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY OWNER, AND HOLD HARMLESS THE OWNER, ITS AFFILIATED ENTERPRISES, REPRESENTATIVES OF THE OWNER, AND THEIR RESPECTIVE OFFICERS, COMMISSIONERS, DIRECTORS, PARTNERS, EMPLOYEES AND AGENTS (COLLECTIVELY "INDEMNITEES") FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS AND EXPENSES,

INCLUDING ATTORNEY FEES, OF ANY NATURE, KIND, OR DESCRIPTION (COLLECTIVELY "LIABILITIES") OF ANY PERSON OR ENTITY WHOMSOEVER ARISING OUT OF, CAUSED BY, OR RESULTING FROM THE PERFORMANCE OF THE SERVICES OR ANY PART THEREOF BUT ONLY TO THE EXTENT CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT OR OMISSION OF THE CONSTRUCTION MANAGER, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY IT OR ANYONE FOR WHOSE ACTS IT MAY BE LIABLE EVEN IF IT IS CAUSED IN PART BY THE NEGLIGENCE OR OMISSION OF ANY INDEMNITEE. IN THE EVENT MORE THAN ONE OF THE INDEMNITORS ARE CONNECTED WITH AN ACCIDENT OR OCCURRENCE COVERED BY THIS INDEMNIFICATION, THEN EACH OF SUCH INDEMNITORS SHALL BE JOINTLY AND SEVERALLY RESPONSIBLE TO THE INDEMNITEES FOR INDEMNIFICATION AND THE ULTIMATE RESPONSIBILITY AMONG SUCH INDEMNITORS FOR THE LOSS AND EXPENSE OF ANY SUCH INDEMNIFICATION SHALL BE SETTLED BY SEPARATE PROCEEDINGS AND WITHOUT JEOPARDY TO ANY INDEMNITEE. THE PROVISIONS OF THIS ARTICLE SHALL NOT BE CONSTRUED TO ELIMINATE OR REDUCE ANY OTHER INDEMNIFICATION OR RIGHT WHICH OWNER OR ANY OF THE INDEMNITEES HAS BY LAW.

10.02 CONSTRUCTION MANAGER SHALL PROTECT AND INDEMNIFY THE OWNER FROM AND AGAINST ALL CLAIMS, DAMAGES, JUDGMENTS AND LOSS ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY UNITED STATES PATENT, OR COPYRIGHT, ARISING BY OR OUT OF ANY OF THE WORK PERFORMED HEREUNDER BY OR THROUGH CONSTRUCTION MANAGER OR THE USE BY CONSTRUCTION MANAGER OF ANY ARTICLE OR MATERIAL, PROVIDED THAT UPON BECOMING AWARE OF A SUIT OR THREAT OF SUIT FOR PATENT OR COPYRIGHT INFRINGEMENT, OWNER SHALL PROMPTLY NOTIFY CONSTRUCTION MANAGER AND CONSTRUCTION MANAGER SHALL BE GIVEN FULL OPPORTUNITY TO NEGOTIATE A SETTLEMENT. CONSTRUCTION MANAGER DOES NOT WARRANT, PROTECT, OR INDEMNIFY AGAINST INFRINGEMENT BY REASON OF OWNER'S DESIGN OF ARTICLES OR THE USE THEREOF IN COMBINATION WITH OTHER MATERIALS OR IN THE OPERATION OF ANY PROCESS OR ARISING FROM THE WORK PERFORMED BY OWNER OR ITS CONSTRUCTION CONTRACTORS OR ARISING FROM THE PLANS, DRAWINGS, SPECIFICATIONS, OR OTHER DOCUMENTS PREPARED BY THE OWNER OR ARCHITECT/ENGINEER(S). IN THE EVENT OF LITIGATION, OWNER AGREES TO COOPERATE REASONABLY WITH CONSTRUCTION MANAGER AND PARTIES SHALL BE ENTITLED, IN CONNECTION WITH ANY SUCH LITIGATION, TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

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

ARTICLE XI
CONSTRUCTION MANAGER'S LIABILITY INSURANCE

11.01 The Construction Manager shall purchase and maintain insurance for the following types of coverage and in the following amounts with coverage beginning August 27, 2002, and remaining in effect for the duration of the Agreement, which shall include the construction and warranty periods, in order to protect the Owner from the claims which may arise out of or result from the Construction Manager's operations, management and/or administration under the Agreement. The Construction Manager shall furnish Certificates of Insurance along with copies of policy declaration pages and all policy endorsements as evidence thereof:

- (a) Statutory Workers' Compensation limits and minimum \$500,000 Employers' Liability Insurance;
- (b) Commercial General Liability Insurance with a minimum \$1,000,000 combined Single Limit to include contractual Liability coverage; and
- (c) Automobile Liability Insurance for all owned, non-owned and hired vehicles with a minimum \$1,000,000 Combined Single Limit.

11.02 The Construction Manager shall ensure that all provisions of Section 11.01 shall be underwritten by applicable policies.

11.03 The Construction Manager shall not commence work under the Agreement until it has obtained all required insurance and until such insurance has been reviewed and approved in writing by the Owner. Approval of the insurance by the Owner shall not relieve nor decrease the liability of the Construction Manager hereunder.

11.04 All insurance shall be written by a company licensed to do business in the State of Texas at the time the policy is issued. All insurance coverages shall be on an occurrence basis.

11.05 The Construction Manager shall produce an endorsement which:

- (a) for each effected policy, other than the statutory Workers' Compensation, names Williamson County, Texas, as an additional named insured; and
- (b) for each effected policy, unconditionally obligates the insurance company to provide written notice to Williamson County, Texas, c/o County Judge, John C. Doerfler, 710 Main Street, County Courthouse 2nd Floor, Georgetown, TX 78626, of any and all changes or cancellations to the policy thirty (30) days prior to the change or cancellation, as evidenced by a receipt of such notification by the Owner.

Furthermore, any "other" insurance clause shall not apply to the Owner where the Owner is an additional insured shown on the policy. The Parties agree that the policies required in this Agreement, covering both the Owner and Construction Manager, shall be considered primary

coverage, as applicable.

11.06 The Construction Manager shall not cause or allow any of its insurance to be canceled nor permit any insurance to lapse during the term of the Agreement or as required in the Agreement.

11.07 If the Construction Manager is underwritten on a "claims-made" basis, the "Retroactive Date" (as shall be defined in the insurance policy) shall be prior to or coincident with August 27, 2002, and the Certificate of Insurance shall state that coverage is "claims-made" and also the Retroactive Date. The Construction Manager shall maintain coverage for the duration of the Agreement and for two years following the completion of the work under the Agreement. The Construction Manager shall provide the Owner annually a Certificate of Insurance as evidence of such insurance. It is further agreed that the Construction Manager shall provide the Owner a thirty (30) day notice of any reduction of the total aggregate coverage available, any advance of the "Retroactive Date," cancellation and/or renewal of the insurance coverage. The Construction Manager also agrees to invoke the "tail option" at request of the Owner, and the Extended Reporting Period ("ERP") as defined in the insurance policy. The premium for the "tail option" shall be paid by the Construction Manager.

11.08 The Owner reserves the right to review the insurance requirements set forth in this Article during the effective period of the Agreement and to make reasonable adjustments to the insurance coverages and their limits, at Owner's expense, when deemed necessary and prudent by the Owner based upon changes in statutory law, court decisions, or the claims history of the industry as well as the Construction Manager, to the extent such additional limits or coverage is reasonably available to Construction Manager.

11.09 The Owner shall be provided, without expense, copies of the policies and all endorsements thereto and may make any reasonable requests for deletion, or revision or modification of particular policy terms, conditions, limitations, or exclusions, except where policy provisions are established by law or regulation binding upon either of the Parties or the underwriter of any of such policies.

ARTICLE XII **TERMINATION**

12.01 In the event of substantial failure by a Party hereunder to perform in accordance with the terms hereof, the other Party may terminate this Agreement upon fifteen (15) days' written notice (the termination shall not be effective if the failure is fully cured prior to the end of the fifteen (15) day period), provided that said failure is through no fault of the terminating Party. If the failure is not susceptible to cure within fifteen (15) days, then the termination shall not be effective for such reasonable additional period as may be necessary to effect a cure, provided that the Party receiving the notice immediately proceeds to pursue a cure, and continuously and diligently pursues such cure, but, in no event shall the total period for effecting such cure exceed sixty (60) days. If the Construction Manager is adjudged as bankrupt, or if it makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, then Owner may terminate this Agreement upon fifteen (15) days' written notice (the termination shall not be effective if the failure

is fully cured prior to the end of the fifteen (15) day period).

12.02 Owner may, without cause, terminate this Agreement at any time upon giving forty-five (45) days' advance notice to Construction Manager. Upon termination pursuant to this paragraph, Construction Manager shall be entitled to payment of such amount as shall compensate Construction Manager for the services satisfactorily performed from the time of the last payment date to the effective date of termination in accordance with this Agreement and all Termination Expenses as defined hereinbelow, provided Construction Manager shall have delivered to Owner such statements, accounts, reports and other materials as required by Section 12.04 below and all reports, documents and other materials prepared by Construction Manager prior to termination. Except with regard to the Termination Expenses, Owner shall not be required to reimburse Construction Manager for any services performed or expenses incurred after the effective date of Construction Manager's termination. Termination Expenses are those costs directly attributable to termination for which the Construction Manager is not otherwise compensated, including but not limited to: (a) non-cancellable or non-refundable rental charges, premium expense, or other similar charges for the period following termination; and (b) pre-payment penalties or re-stock charges actually incurred in connection with the cancellation or return of equipment or materials.

12.03 A termination under Sections 12.01 and 12.02 of this Agreement above shall not relieve Construction Manager or any of its employees of liability for violations of this Agreement, any act or omission, or negligence of Construction Manager, and the provisions of Article XI, 7.05, Sections 12.07, 14.07, and 14.10 shall survive the termination of this Agreement. In the event of a termination under Sections 12.01 and 12.02 above, Construction Manager hereby consents to employment by Owner of a substitute Construction Manager to complete the services under this Agreement, with the substitute Construction Manager having all rights and privileges of the original Construction Manager of the Project.

12.04 As of the effective date of termination of this Agreement, Construction Manager shall furnish to Owner all statements, accounts, reports and other materials as are required hereunder or as have been prepared by Construction Manager in connection with Construction Manager's responsibilities hereunder. Upon payment of all sums due Construction Manager hereunder, Owner shall have the right to use the ideas and designs therein contained for the completion of the services described by this Agreement, and for completion of the Project, or otherwise. As between Construction Manager and Owner, all drawings, plans, specifications, renderings and models, etc., prepared by the Architect/Engineer are not to be used by any person or entity other than Owner on other projects unless expressly authorized by Owner.

ARTICLE XIII

MISCELLANEOUS PROVISIONS

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

13.02 Family Code Child Support Certification. By signing this Agreement, the undersigned certifies as follows: "Under Section 231.006, *Texas Family Code*, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."

13.03 Entire Agreement; Modifications. This Agreement supersedes all prior agreements, written or oral, between Construction Manager and Owner and shall constitute the entire Agreement and understanding between the Parties with respect to the subject matter hereof. This Agreement and each of its provisions shall be binding upon the Parties and may not be waived, modified, amended or altered except by a writing signed by Owner and Construction Manager.

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

13.05 Waivers. No delay or omission by either of the Parties hereto in exercising any right or power accruing upon the non-compliance or failure of performance by the other Party hereto of any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the Parties hereto of any of the covenants, conditions or agreements hereof to be performed by the other Party hereto shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

13.06 Proprietary Interests.

- (a) Construction Manager agrees that, upon payment by Owner to Construction Manager as required hereunder, Owner shall have the right or license to use, in connection with the completion or repair or renovation of the improvements made a part of the Project, all reports, studies, plans, models, drawings, specifications, and any other information or data of any type relating to its activities hereunder, whether or not any of the same is accepted or rejected by Owner. All information owned, possessed or used by Owner which is communicated to, learned, developed or otherwise acquired by Construction Manager in the performance of consulting services for Owner, which is not generally known to the public, shall be confidential and Construction Manager shall not, beginning on the date of first association or communication between Owner and Construction Manager and continuing through the term of this Agreement and any time thereafter, disclose, communicate or divulge, or permit disclosure, communication or divulgence, to another or use for Construction Manager's own benefit or the benefit of another, any such confidential information, unless required by law. Except when defined as part of the Work, Construction Manager shall not make any press releases, public statements, or advertisement referring to the Project or the engagement of Construction Manager as an independent contractor of Owner in connection with the Project, or release any information relative to the Project for publications, advertisement or any other purpose without the prior written approval of Owner. Construction Manager shall

obtain assurances similar to those contained in this Subsection from persons, contractors, and subcontractors retained by Construction Manager. Construction Manager acknowledges and agrees that a breach by Construction Manager of the provisions hereof will cause Owner irreparable injury and damage. Construction Manager, therefore, expressly agrees that Owner shall be entitled to injunctive and/or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Agreement.

- (b) The Drawings, Specifications, and other design documents prepared by the Architect/Engineer, and copies thereof furnished to the Construction Manager, are for use solely with regard to this Project. The Construction Manager is granted a limited license to use and reproduce applicable portions of the Drawings, Specifications, and other design documents prepared by the Architect/Engineer appropriate to and for use in the performance of the Construction Manager's services under this Agreement.

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

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

13.09 Records. Records of Construction Manager's Reimbursable Expenses pertaining to the Project and payments shall be available to Owner or its authorized representative during business hours and shall be retained for two years after final Payment or abandonment of the Project, unless Owner otherwise consents in writing to reduce such period for Construction Manager to retain such records.

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

If to Owner:

John C. Doerfler
County Judge, Williamson County
710 Main Street
County Courthouse, 2nd Floor
Georgetown, Texas 78626

With Copies to: Eugene D. Taylor
Williamson County Attorney
405 MLK, Box 7
Georgetown, Texas 78626

If to Construction Manager: Landmark Organization, LP
1700 Rio Grande
Austin, Texas 78701
Attention: Curtis Cline

with a copy thereof sent to the same address
to the attention of: Bert Collins and Chuck Lamb

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

13.11 Severability. In case any provision hereof shall, for any reason, be held invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid or unenforceable provision had not been included herein.

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

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

13.14 Applicable Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS AND COURT DECISIONS OF THE STATE OF TEXAS.

13.15 Duplicate Originals. This Agreement may be executed in multiple counterparts as if such signatures were contained on one writing.

13.16 Dispute Resolution. All claims, disputes or other matters in question between the Parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be subject to and decided in accordance with the Dispute Resolution Rules set forth in Attachment "D" to this Agreement and incorporated fully herein.

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

OWNER
WILLIAMSON COUNTY, TEXAS

By: John C. Deaffer 10-28-02

Name: John C. Deaffer

Title: County Judge

CONSTRUCTION MANAGER
LANDMARK ORGANIZATION, LP

By: Curtis Cline

Name: CURTIS CLINE

Title: PRESIDENT 10/28/02

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ATTACHMENT A

CONSTRUCTION MANAGER'S ORGANIZATION CHART

Job Position or Classification	Description of Services	List of Personnel	Full Time On Site Personnel
President	Direct oversight and management of all Company projects.	Curtis Cline	
VP Operations	Direct oversight and management of the construction management team and liaison to Owner	Bert Collins	
Project Manager	Owners agent for overall management of the design and construction process, scheduling, commissioning, reporting and turnover	Chuck Lamb	X
Estimator	Prepare schematic, design development and construction documents estimates for Owners review	Bob Gallup	
Project Engineer	Implement and coordinate all reporting, submittals, and scheduling procedures for the project team	To be determined	X
Project Superintendent/ On-site Owner's Representative	As Owners agent, provide daily coordination assessment and quality control review of all field operations, constructability review of plans, and oversee the punchout and closeout phase of the project	Bill Wilson	X

ATTACHMENT "B"
DIRECT PERSONNEL EXPENSE SCHEDULE

Compensation for services rendered for personnel shall be in accordance with the applicable Direct Personnel Expense billing schedules noted below. All billing rates stated below are subject to change as provided in the Agreement. Owner shall be provided, upon Owner's written request, a current list of names of all employees performing services in the following job positions or under the following job classifications for the Project.

Job Position or Classification	Billing Rate	
<u>VP Operations</u>	\$	<u>115</u> per hour
<u>Project Manager</u>	\$	<u>80</u> per hour
<u>Estimator</u>	\$	<u>80</u> per hour
<u>Administrative Assistant</u>	\$	<u>N/A</u> per hour
<u>Project Superintendent</u>	\$	<u>80</u> per hour
<u>Project Engineer</u>	\$	<u>45</u> per hour

ATTACHMENT "C"
ADDITIONAL SERVICES REQUISITION

_____, 200_

Re:

Gentlemen:

Please refer to the Agreement dated _____, 2001 between Williamson County, Texas ("Owner") and the undersigned ("Construction Manager") as amended to the date hereof (such agreement as so modified and amended being hereafter called the "Agreement") pursuant to which Construction Manager is to perform certain services. The terms which are defined in the Agreement shall have the same meanings when used in this letter.

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

(Description of Services.)

2. Construction Manager agrees to perform the Additional Services described above subject to and in accordance with the terms and provisions of the Agreement for a fee which will be determined in accordance with the Agreement but which will not exceed _____ Dollars (\$_____) and for reimbursement of expenses in accordance with the Agreement incurred solely in connection with the performance of such Additional Services, but which reimbursement for expenses will not exceed _____ Dollars (\$_____).
3. Construction Manager will perform the services in accordance with any schedule attached hereto (attach schedule if applicable), but in any event not later than _____ (_____) days after Construction Manager is authorized to proceed.

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

Sincerely yours,

CONSTRUCTION MANAGER

By:

Name:

Title:

Accepted this _____ day of _____, 200_. Construction Manager is authorized to commence performance of the Additional Services on _____, 200_.

OWNER

By:

Name:

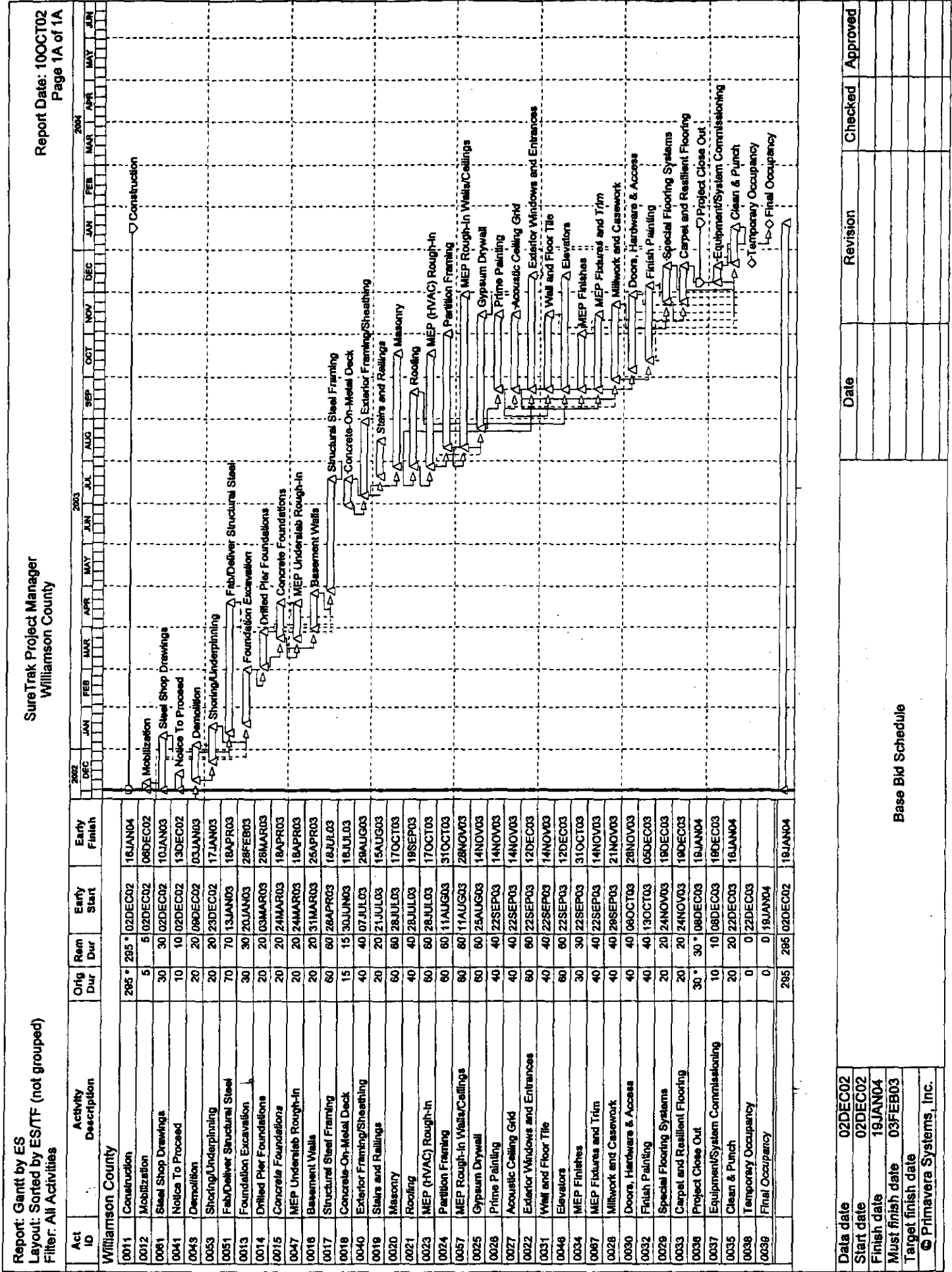
Title:

ATTACHMENT "D"
DISPUTE RESOLUTION RULES

1. The Parties to the Agreement to which these Dispute Resolution Rules ("these Rules") are attached and made a part thereof do hereby acknowledge that it is in their respective interests to resolve their disputes promptly and expeditiously. To that end, the Parties do hereby agree that the dispute resolution procedures set out below shall be the sole and exclusive remedy for resolution of their differences in the event such differences shall arise on the Project.
2. **Settlement Conference.** In the event that a dispute or controversy arises which cannot be resolved at the Project level, either Party shall have the right to notify the other that it has elected to implement the procedures set out herein. Within five (5) days (the term "days" as used herein shall mean calendar days) after delivery of such notice, a representative of each Party who is authorized to act to resolve such dispute for such Party shall meet at a mutually agreed time and place and shall attempt, with diligence and good faith, to resolve and settle such dispute or controversy. Should it become apparent at such meeting that a prompt and satisfactory resolution is unlikely or if a mutual resolution or settlement is not obtained within ten (10) days after such meeting, either Party may then initiate non-binding mediation in accordance with the procedures set out below.
3. **Non-binding Mediation.** Any Party to a dispute or claim who has executed an agreement subject to these Rules may initiate mediation by furnishing a written request for mediation to the other Parties to the dispute or claim. Such mediation shall be subject to and shall proceed as follows:
 - a. The Parties to such dispute or controversy shall mutually agree to select a Mediator who is impartial, has experience in construction dispute mediation, and is knowledgeable regarding the design and construction of major multi-disciplined public projects. The Mediator does not have the authority to impose a settlement upon the Parties, but will attempt to help the Parties reach a satisfactory resolution of their dispute.
 - b. In the event that the Parties cannot agree upon a Mediator, a Party may apply to a court of competent jurisdiction in Williamson County, Texas, for the appointment of a mediator subject to the provisions of Chapter 154 of the Texas Civil Practices and Remedies Code (the "Texas ADR Statutes"). Once a Mediator has been appointed, all Parties to the dispute or claim shall participate in such mediation in good faith.
 - c. The Parties shall provide written submissions to the Mediator as the Mediator shall determine. Each mediation session shall be held in the Georgetown, Texas metropolitan area at a convenient location agreeable to the Mediator and the Parties, as the Mediator shall determine. The mediation shall be conducted within thirty (30) days of the written request for mediation, unless otherwise agreed by the Parties and the Mediator.
 - d. Mediations shall be subject to and governed by the Texas ADR Statutes. Without limiting the foregoing, confidential information disclosed to the Mediator by the Parties or by witnesses in the course of mediation shall not be divulged by the Mediator. The Mediator shall not divulge any such information or testify in regard to the mediation in any arbitration or other adversarial proceeding.

- e. The mediation shall be terminated: (i) by the execution of a settlement agreement by the Parties; or (ii) by a written declaration of the Mediator to the effect that further efforts of mediation are no longer worthwhile; or (iii) by a written declaration of any Party to the effect that the mediation proceedings are terminated.
- f. The mediator's fees shall be equally shared by the Parties.
- g. Should mediation fail to resolve the controversy, litigation must be filed in the District Courts of Williamson County, Texas.

ATTACHMENT "E"
OUTLINE PROJECT SCHEDULE



RECORDERS MEMORANDUM
All or parts of the text on this page was not
clearly legible for satisfactory recordation.

ATTACHMENT "F"
OWNER'S UNIFORM GENERAL AND SUPPLEMENTARY
TERMS AND CONDITIONS

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Article I - General Contract Definitions

Unless the context clearly requires another meaning, the following terms shall have the meaning assigned herein:

- 1.1 *Architect/Engineer* (See Section 1.01 of the Agreement).
 - 1.2 *Change Order* (See Section 1.01 of the Agreement).
 - 1.3 *Construction Contract Documents* (See Section 1.01 of the Agreement).
 - 1.4 *Contract Sum* means the total compensation payable to the Construction Manager for completion of its Services in accordance with the Construction Contract Documents and as subsequently adjusted by Change Order.
 - 1.5 *Contract Time* means the period between Notice to Proceed and the date scheduled for Substantial Completion in the Construction Contract Documents, as may be amended by Change Order.
 - 1.6 *Date of Commencement* means the date designated in the Notice to Proceed that Construction Manager shall commence the Work.
 - 1.7 *Drawings* mean the work product of the Architect/Engineer dated August 26, 2002, which depict the location and quantity of elements of the Work.
 - 1.8 *Final Completion* means the date established by the Owner in writing in a certificate when the Agreement is fully performed according to the Construction Contract Documents and is acceptable to Owner.
 - 1.9 *Owner* means Williamson County, Texas acting through any duly authorized representative.
 - 1.10 *Owner's Designated Representative (ODR)* means the individual appointed or assigned by the Owner to be its on-site representative during the Project, to exercise certain power on behalf of the Owner and to undertake certain contract administration activities as specifically outlined in the Agreement.
 - 1.11 *Project* (See Section 1.01 of the Agreement).
 - 1.12 *Site* means the geographical area at the location where the Work is to be performed.
 - 1.13 *Specifications* means the Architect/Engineer's work product dated August 27, 2002, which establishes the quality of the products and processes to be used to produce the Work.
 - 1.14 *Substantial Completion* means the date jointly certified by the Construction Manager, Owner, and Architect/Engineer when the Work or a designated portion thereof, is so sufficiently complete, in accordance with the Contract Documents, as to be functionally operational in all its components and fit for the use for which it is intended.
 - 1.15 *Work* (See Section 1.01 of the Agreement).
 - 1.16 *Substantial Completion Inspection* means an inspection conducted to determine that the Project,
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or a portion thereof, is Substantially Complete as defined herein, and usable for its intended purposes. The Substantial Completion Inspection results in a Pre-Final Punchlist.

- 1.17 *Final Inspection* means an inspection conducted to determine that all deficiencies listed on the PreFinal Punchlist or subsequently have been corrected and that, depending on the outcome of the Final Inspection, it may be appropriate to make final payment.
- 1.18 The terms "*bid*", "*bidder*", or similar terms used in this document also mean "*proposal*", "*proposer*", or "*respondent*" as appropriate for the type of project for which these General Conditions are used.

Article II - General Laws Governing Construction

- 2.1 **Compliance with Laws.** The Construction Manager shall cooperate with city or other governmental officials at all times where their jurisdiction applies.
- 2.2 **State Sales and Use Taxes.** The Owner qualifies for exemption from State and Local Sales and Use Taxes pursuant to the provisions of Chapter 151, Texas Tax Code. The Construction Manager may claim exemption from payment of applicable State taxes by complying with such procedures as may be prescribed by the State Comptroller of Public Accounts.
- 2.3 **Antitrust Claims.** The Construction Manager hereby assigns to the Owner any and all claims for overcharges associated with this Contract which arise under the antitrust laws of the United States, 15 U.S.C.A. Sec. 1 et seq.
- 2.4 **Environmental Regulations.** At all times, Construction Manager shall conduct its activities in compliance with applicable laws and regulations and other requirements of the Agreement relating to the environment, and its protection. Owner and Construction Manager are jointly responsible for obtaining and maintaining permits related to stormwater run-off. Construction Manager covenants to conduct its Services consistent with stormwater run-off permit conditions. Construction Manager shall be responsible for any hazardous materials brought to the site by Construction Manager or anyone else for whom Construction Manager is responsible. No hazardous materials shall be incorporated into the Work by the Construction Manager without prior approval of Owner.
- 2.5 **Antiquities.** Construction Manager shall take precaution to avoid disturbing primitive records and antiquities of archaeological, paleontological or historical significance. No objects of this nature shall knowingly be disturbed by the Construction Manager without written permission of Owner and the Texas Historical Commission. When such objects are uncovered unexpectedly, the Construction Manager shall stop all Work in close proximity and notify the Owner and the Texas Historical Commission of their presence and shall not disturb them until written permission and permit to do so is granted. All primitive rights and antiquities, as defined in Chapter 191, Texas Natural Resource Code, discovered on the Owner's property shall remain property of State of Texas, the Texas Historical Commission. If it is determined by Owner, in consultation with the Texas Historical Commission that exploration or excavation of primitive records or antiquities on Project Site is necessary to avoid loss, Construction Manager shall cooperate in salvage work attendant to preservation. If the Work stoppage or salvage work causes an increase in the Construction Manager's cost of, or time required for, performance of the Work,
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Construction Manager may file with the Owner a claim pursuant to the Construction Contract Documents.

- 2.9 Franchise Tax Status: The Construction Manager agrees to execute and provide to the Owner a Certification of Franchise Tax Payment, on a form approved by the Owner.
- 2.10 Taxpayer and Vendor Account Information: The Construction Manager agrees to execute and provide to the Owner a Taxpayer and Vendor Account Information form as obtained from the Texas Comptroller of Public Accounts stating that the Construction Manager is in "Good Standing" and not on "Vendor Hold".

Article IV - Drawings and Specifications

- 4.1 Ownership of Drawings and Specifications. All Drawings, Specifications and copies thereof furnished by the Architect/Engineer are, and shall remain, his property. They are not to be used on any other project by the Construction Manager and, with the exception of one contract set, are to be returned to the Architect/Engineer, upon request, following completion of the Work.
- 4.2 Interrelation of Documents. The Drawings depict the location and quantity of elements of the work. The Specifications indicate quality. All documents are intended to be complimentary to produce the Work.
- 4.4 Resolution of Conflicts in Documents.
- 4.4.1 In the event of conflict between or among Drawings and Specifications, the better quality or greatest quantity Specifications shall prevail. In the event of conflict among provisions of Specifications, using the CSI format, what is called for in the division of the predominant discipline will govern inconsistent provisions found elsewhere.
- 4.4.2. In the event of conflict among the Drawings, the large scale Drawings prevail over the small scale Drawings.

Article VII - General Responsibilities of Owner and Construction Manager

- 7.1 Owner's General Responsibilities.
- 7.1.1 The Owner is the entity identified as such in the Agreement and is referred to throughout the Construction Contract Documents as if singular in number.
- 7.1.2 Owner's Designated Representative. Prior to the start of construction, Owner shall designate in writing the Owner's Designated Representative (ODR), who shall have express authority to act and bind the Owner to the extent and for the purposes described in the Construction Contract Documents, including responsibilities for general administration of the Agreement. Unless otherwise specifically provided for, the ODR is the single point of contact between the Owner and Construction Manager. Notice to the ODR, unless otherwise noted, constitutes notice to the Owner under the Contract.
- 7.1.3 The Owner shall furnish all surveys describing the physical characteristics, legal description and limitations, site utility locations and other information under the
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Owner's control to the Construction Manager. Necessary actions of the Owner, including processing of payments to the Construction Manager, shall be accomplished with reasonable promptness. The Owner shall pay for all routine testing of materials agreed by the Owner and the Architect/Engineer to be required by the Construction Contract Documents, except when for retesting of materials failing the initial test is required, in which instance the cost of reinspection will be paid for by the applicable Construction Contractor.

7.1.4 Owner supplied materials and information. Information, equipment or services under the Owner's control shall be furnished by the Owner to the Construction Manager with reasonable promptness to avoid delay in orderly progress of the Work.

7.1.5 Availability of Lands. Owner shall furnish, as indicated in the Construction Contract Documents, all required rights to use the lands upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands which are designated for use by Construction Contractors and/or Construction Manager. Owner shall identify any encumbrances or restrictions specifically related to use of lands so furnished with which Construction Manager will have to comply. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by Owner, unless otherwise provided in the Contract Documents. If Owner fails to furnish these lands, rights of way or easements in a timely manner, Construction Manager may make a claim pursuant to the Construction Contract Documents.

7.1.6 The foregoing listing is in addition to the specific duties and authority of Owner and the ODR found in other Articles of the Agreement.

7.2 Limitation on Owner's and ODR's Duties. Owner and ODR will not supervise, direct, control or have authority over or be responsible for Construction Manager's performance of its Services. Owner and ODR are not responsible for any failure of Construction Manager to comply with laws and regulations applicable to performing its Services. Owner and ODR are not responsible for the failure of Construction Manager to perform its Services in accordance with the Construction Contract Documents. Owner and ODR are not responsible for the acts or omissions of Construction Manager, or of any Construction Contractor, any supplier, or of any other person or organization performing or furnishing any of the Work.

7.3 Role of Architect/Engineer.

7.3.1 In General. Unless otherwise provided for in the Construction Contract Documents, the Architect/Engineer will perform the duties of the Architect/Engineer as described in this Agreement during construction and until final payment, including advising the ODR on matters where assistance is needed. The assignment of any authority, duties or responsibilities to the Architect/Engineer under the Construction Contract Documents, or under any agreement between Owner and Architect/Engineer, or any performance thereof by Architect/Engineer is for the exclusive benefit of Owner and not for the benefit of Construction Manager, any Construction Contractors, suppliers or their respective employees or sureties.

7.3.2 The Architect/Engineer has the authority to act on behalf of the Owner to the extent provided for in the Construction Contract Documents, unless otherwise modified by written instrument which will be furnished to the Construction

Manager. The Architect/Engineer will advise and consult with the Owner, and the Owner's instructions to the Construction Manager will generally be issued through the Architect/Engineer, except that the Owner reserves the right on occasions, as deemed appropriate by the Owner, to issue instructions directly to the Construction Manager through the ODR.

7.3.2.1. All written communications between the Owner, Construction Manager, and the Architect/Engineer concerned with the construction of the Project shall be furnished to the ODR, the Architect/Engineer, and the Construction Manager by the party originating the communication.

7.3.2.2. All oral directives to the Construction Manager shall be given through the ODR and promptly confirmed in writing.

7.3.3 All instructions affecting the Contract Sum, Contract Time or contract interpretation, shall be confirmed expeditiously in writing with copies furnished to the Architect/Engineer, the ODR and the Construction Manager by the party issuing the instruction. No instruction affecting the Architect/Engineer's design liability shall be issued without the Architect/Engineer's prior written consent.

7.3.4 The Owner and the Architect/Engineer with the Owner's consent shall have the authority to recommend to Owner to reject work performed by a Construction Contractor which, in the opinion of the Owner or the Architect/Engineer, does not meet the requirements of the Construction Contract Documents. Architect/Engineer shall communicate with the ODR upon discovery of non-compliant Work and shall provide a recommendation upon request for review by the ODR. The ODR shall order in writing such Work removed and replaced in accordance with the applicable Construction Contract(s).

7.3.5 Visits of Site. Architect/Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Architect/Engineer deems necessary or as provided in Architect/Engineer's contract with Owner, in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Construction Contractors' executed Work. Based on information obtained during such visits and observations, Architect/Engineer will determine, in general, if the Work is proceeding in accordance with the Construction Contract Documents. Architect/Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work, unless otherwise noted. The Architect/Engineer's efforts will be directed toward providing the Owner a greater degree of confidence that the completed Work will conform generally to the Construction Contract Documents. On the basis of such visits and on-site observations, Architect/Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work. Architect/Engineer visits and on-site observations are subject to all the limitations on Architect/Engineer's authority and responsibility set forth in § 7.4.

7.3.6 **Clarifications and Interpretations.** Architect/Engineer may determine that written clarifications or interpretations of the requirements of the Construction Contract Documents (in the form of drawings or otherwise) are necessary. Such written clarifications or interpretations will be consistent with the intent of and reasonably inferable from the Construction Contract Documents, will be issued with reasonable promptness to the Construction Manager and the applicable Construction Contractor(s) by Architect/Engineer and will be binding on Owner and applicable Construction Contractor(s). If Owner or Construction Manager believes that a written clarification or interpretation justifies an adjustment in the Construction Cost, Contract Sum or the Contract Time, Owner and Construction Manager may make a claim therefore as provided in the Construction Contract Documents.

7.3.7 The duties listed above are in addition to other duties, responsibilities and actions to be undertaken by Architect/Engineer as specified in the Construction Contract Documents.

7.4 **Limitations on Architect/Engineer Authority.** Architect/Engineer will not supervise, direct, control or have authority over or be responsible for any Construction Contractor's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto. Architect/Engineer is not responsible for any failure of and Construction Contractor to comply with laws and regulations applicable to the furnishing or performing the Work. Architect/Engineer is not responsible for any Construction Contractor's failure to perform or furnish the Work in accordance with the Construction Contract Documents. Architect/Engineer is not responsible for the acts or omissions of any Construction Contractor, or of any Subcontractor, any supplier, or of any other person or organization performing or furnishing any of the Work.

Article VIII - Additional Construction Manager Responsibilities when the Owner Awards Separate Contracts

8.1 **Separate Contracts.** The Owner reserves the right to award other contracts in connection with other portions of the Project under these or similar contract conditions. The Owner reserves the right to perform operations related to the Project with Owner's own forces. Each separate contractor shall undertake to indemnify the Owner.

8.1.1 This Construction Manager shall afford the Owner, the Architect/Engineer, the separate contractors and Owner's own forces, as necessary, with the reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work.

8.1.2 The Owner reserves the right to make essential installations which are pertinent to the early occupancy of the Project. Within this right the Owner may let other contracts or may do such work with its own labor forces and materials. The Construction Manager shall not commit any act which will interfere with the performance of work by any separate contractor or supplier, or by Owner's employees. The Construction Manager shall cooperate to the end that the Owner may realize complete functioning of the Project on the day of Substantial Completion.

Article XII - Inspection of the Project During Construction

- 12.1 Construction Manager Quality Control. Construction Manager is responsible for determining in general that the Work of each Construction Contractor is being performed in accordance with the requirements of the respective Construction Contracts and as set forth in the Construction Contract Documents, endeavoring to guard the Owner against defects and deficiencies in the Work.
- 12.2 Owner Quality Assurance. The Owner and the Architect/Engineer will make periodic visits to the site to familiarize themselves with the progress and quality of the Work, conduct inspections and tests and to determine if the Work is proceeding in accordance with the Construction Contract Documents. The Construction Manager shall provide sufficient, safe and proper facilities at all reasonable times for observation and/or inspection of the Work by the authorized representatives of the Owner.
- 12.3. Condemnation and Removal of Defective Work. The ODR, the Architect/Engineer, and the Construction Manager have the authority to reject and condemn Work, which does not meet the requirements of the applicable Construction Contract(s) and to order such Work removed and replaced in accordance with the respective Construction Contract(s)..

Article XIV - Closing Inspections

- 14.1 Substantial Completion Inspection. When the Construction Manager considers each Construction Contractor's Work or designated part thereof Substantially Complete, the Construction Manager shall notify the ODR and the Architect/Engineer in writing that the Work will be ready for Substantial Completion Inspection on a date certain.
- 14.1.1 Prior to the Substantial Completion Inspection, the Construction Manager shall furnish to the Owner a copy of the As-Built blueline prints. The Substantial Completion Inspection will be jointly conducted by the Architect/Engineer, the Owner, and the Construction Manager.
- 14.1.2 On the date indicated by Construction Manager, or as soon thereafter as is practicable, the ODR, the Architect/Engineer, and the Construction Manager shall inspect the Work and if the ODR and the Architect/Engineer determine that the Work is Substantially Complete a Certificate of Substantial Completion shall be issued by the ODR for certification by the Owner, Architect/Engineer and Construction Manager, *fixing the date of Substantial Completion*. The Architect/Engineer will provide with this certificate a list of items to be completed prior to Final Inspection (the Pre-Final Punchlist). This list may include additional items not included on the Construction Manager's list, which are deemed necessary by the Architect/Engineer or by the Owner to correct or complete prior to Final Inspection.
- 14.2 Final Inspection The applicable Construction Contractor(s) shall fully complete the list of items listed on the Pre-Final Punchlist prior to Final Inspection. Unless otherwise agreed in writing by the parties, the applicable Construction Contractor(s) shall complete this Work within thirty (30) days of the certified date of Substantial Completion. When the applicable Construction Contractor(s) have completed the Prefinal Punchlist, the Construction Manager shall give written notice to the ODR and Architect/Engineer that the Work will be ready for Final Inspection on a date certain. This notice shall be accompanied by a copy of the Construction Manager's updated Punchlist indicating resolution of all items. On this date, or as soon thereafter as is practicable, the ODR, the Architect/Engineer and the Construction Manager shall inspect the Work and the

Architect/Engineer shall submit to the Construction Manager a list of items which the Owner and the Architect/Engineer have determined to require correction or completion by the applicable Construction Contractors before the Work will be accepted by the Owner (the Final Punchlist).

- 14.3 The applicable Construction Contractor(s) shall correct or complete all items on the Final Punchlist before Acceptance and Final Payment. Unless otherwise agreed in writing by the parties, the applicable Construction Contractor(s) shall complete this Work within seven (7) days of receiving the Final Punchlist. Upon completion of the Final Punchlist, the Construction Manager shall notify the Architect/Engineer and ODR in writing stating the disposition of each punchlist item, and the Architect/Engineer and Owner shall promptly inspect the completed items. When the Final Punchlist has been completed, and the Agreement is fully performed according to the Construction Contract Documents, and is acceptable to the Owner, the ODR shall issue a certificate fixing the date of Final Completion. Final Completion of all Work shall be a condition precedent to each Construction Contractor's right to receive Final Payment.
- 14.4 Annotation. Any Certificate issued under this Article may be annotated to indicate that it is not applicable to specified portions of the Work, or that it is subject to any limitation as determined by the Owner.
- 14.5 Purpose of Inspection. Inspection by the Owner and Architect/Engineer is for the purpose of determining the completion of the Work, and does not relieve any Construction Contractor of its overall responsibility for completing its Work in a good and workmanlike fashion, in compliance with the Construction Contract Documents. Failure of the Owner or Architect/Engineer to identify Work that is not in compliance with the applicable Construction Contract, or which is defective in operation or workmanship, or acceptance of the Work with punchlist items left incomplete, does not constitute a waiver of such a defect or of the Owner's rights under the Construction Contract Documents or relieve the Construction Contractor of its warranties contained in its Construction Contract

Article XV - Early Occupancy

- 15.1 Right of Occupancy. The Owner may occupy or use all or any portion of the Work following Substantial Completion, or at any earlier stage of completion, provided that such occupancy or use is consented to by any and all insurers of the Work. Should the Owner wish to use or occupy the Work, or part thereof, prior to Final Completion, the ODR shall so notify the Construction Manager and applicable Construction Contractor(s) in writing. Work performed on the premises by third parties on the Owner's behalf does not constitute occupation or use of the Work by the Owner for purposes of this Article.
- 15.2 Occupancy of Substantially Completed Work. If the Owner wishes to occupy all or part of the Work that has been Substantially Completed it shall so notify the Construction Manager, the applicable Construction Contractor(s), and the Architect/Engineer prior to the Substantial Completion Inspection, and the ODR shall annotate the Certificate of Substantial Completion to set out, pursuant to the parties' written agreement, the responsibilities of the Owner and the Construction Manager and the applicable Construction Contractor(s) for maintenance, heat, utilities, operation of permanent equipment, and insurance. The Certificate of Substantial Completion shall be submitted to the Architect/Engineer, applicable Construction Contractor(s), and Construction Manager for their written acceptance of the responsibilities assigned to each of them in such Certificate. The accepted Certificate shall not constitute a change in Contract Time unless so stated.
- 15.3 Occupancy of Work Prior to Substantial Completion.
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- 15.3.1. Notice and Early Occupancy Proposal. If the Owner determines that substantial hardship will result if it is unable to occupy some portion of the Work prior to Substantial Completion, it shall so inform the Architect/Engineer and the Construction Manager and applicable Construction Contractor(s) no less than thirty (30) days before the date the Owner wishes to occupy the Work, and designate those portions of the Work to be occupied and the uses to be made of the occupied premises. As soon as practicable, but not less than five (5) working days after receiving this notice, the Construction Manager and the applicable Construction Contractor(s) shall make the designated portions of the Work available to the Architect/Engineer and the Owner for observation. The Architect/Engineer and the Owner shall observe the Work jointly with the Construction Manager. As soon as practicable, but not later than the third (3rd) day next following the date of the inspection, the ODR or the Architect/Engineer shall prepare and submit to the Construction Manager and the applicable Construction Contractor(s) an Early Occupancy Proposal, specifying any Work that must be completed or corrected as well as any operation and maintenance manuals or other documentation necessary for the Work to be occupied by the Owner and used for the purposes designated by the Owner in its notice, and setting out the division of responsibility between the Owner, the applicable Construction Contractor(s), and the Construction Manager for utilities, security, maintenance, insurance and liability for damage to the Work or damage arising from the condition of the Work. The Early Occupancy Proposal shall also specify whether the area to be occupied must be Substantially Complete before occupation, and shall specify the date for Substantial Completion of the Work to be occupied if other than the date previously specified by the Construction Contract Documents.
- 15.3.2. Administration as Change Order. The Early Occupancy Proposal shall be administered as a Change Order. All cost adjustment, including any increased costs of insurance, related to the Early Occupancy Proposal, shall be stated in the Change Order; any such relief not so requested shall be deemed waived. If the Early Occupancy Proposal requires early Substantial Completion, the Construction Manager and applicable Construction Contractor(s) shall be entitled to an equitable cost adjustment for acceleration and impact costs. If an early completion date is not required, the Construction Manager and applicable Construction Contractor(s) shall submit any claim for time extension pursuant to the Construction Contract Documents.
- 15.3.3. Project Completion Administration with Early Occupancy. All required documentation shall be furnished by the applicable Construction Contractor(s) and Construction Manager to the ODR on or before the date of occupation by the Owner.
- 15.3.4. Nonwaiver of Timely Completion. Early occupancy of any portion of the Work does not waive the applicable Construction Contractors' duty to complete the remaining Work within the Contract Time as specified by the Construction Contract Documents or as subsequently modified by Change Order.

Article. XVI - Final Acceptance and Payment

- 16.1 Request for Final Payment. At any time following the completion of all Work, including all Substantial Completion punch list items, cleanup, and the delivery of record documents, the Construction Manager shall submit a certified Application for Final Payment to the ODR for his
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review and approval.

Article XIX - Concealed Site Conditions

- 19.1 If, in the performance of the Agreement, subsurface, latent or concealed conditions at the Site are found by the Construction Manager to be materially different from the information included in the bid documents, or if unknown conditions of an unusual nature are discovered by the Construction Manager differing materially from the conditions usually inherent in Work of the character shown and specified, the Construction Manager shall notify the Architect/Engineer and the Owner in writing of such conditions before the Construction Contactor(s) proceed with the Work. If necessary, the Architect/Engineer and/or the Owner shall develop a solution and provide it to Construction Manager. If the solution prompts changes to the Contract Sum and/or Time, the Contract shall be adjusted pursuant to the Construction Contract Documents.

Article XXIII - Time Allotted for Performance; Construction Schedules

- 23.1 Contract Time. The Contract Time will be measured from the date designated in the Notice to Proceed to the date specified for Substantial Completion by the Construction Contract Documents, including any modification by Change Order.
- 23.2 Project Schedule. Within the period and as set forth in the Agreement, the Construction Manager shall submit to the Owner and the Architect/Engineer, for review and acceptance, a Project Schedule.

Article XXV - Termination

- 25.1 Termination by Construction Manager. If the Work is stopped for a period of ninety (90) days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Construction Manager or its agents or employees, then the Construction Manager may, upon thirty (30) additional days' written notice to the Owner, terminate the Agreement and recover from the Owner payment for all Work executed and for any provable loss and reasonable expenses attributable to the Work resulting from such termination. If the cause of the work stoppage is removed prior to the end of the thirty (30) day notice period, the Construction Manager may not terminate the Agreement.

Article XXVII – Miscellaneous

- 27.1 Federally Funded Projects. If this Project is federally funded, these General Conditions will indicate that fact and will contain any modifications required as a condition of obtaining federal funding.
- 27.2 Computation of Time. In computing any time period set forth in this Agreement, the first day of the period shall not be included, but the last day shall be.
- 27.3 Survival of Obligations. All representations, indemnifications, warranties and guarantees made in accordance with the Construction Contract Documents will survive final payment, completion and acceptance of the Work, as well as termination for any reason. All duties imposed upon the
-

Construction Manager by reason of termination, including without limitation the duty to assign subcontracts and contracts with vendors and suppliers, shall likewise survive the termination of the Agreement.

- 27.4 No third party beneficiaries. The parties do not intend, nor shall any clause be interpreted to create in any third party, any obligations to, or right of benefit by, such third party under these *Contract Documents* from either the Owner or Construction Manager.

ATTCHMENT "G"
DECISION TRACKING SYSTEM FORMAT

APPLICATION AND CERTIFICATION FOR PAYMENT

AIA DOCUMENT G702

PAGE ONE OF ONE

PAGES

TO OWNER:

PROJECT:

APPLICATION NO: 000000

Distribution to:

OWNER

ARCHITECT

CONTRACTOR

FROM CONTRACTOR:

VIA ARCHITECT: Durrant Architects

PERIOD TO:

PROJECT NOS:

CONTRACT FOR:

CONTRACT DATE:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703, is attached.

1. ORIGINAL CONTRACT SUM	\$	0.00
2. Net change by Change Orders	\$	0.00
3. CONTRACT SUM TO DATE (Line 1 + 2)	\$	0.00
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$	0.00

5. RETAINAGE:

a. 5 % of Completed Work (Column D + E on G703)	\$	0.00
b. % of Stored Material (Column F on G703)	\$	0.00

Total Retainage (Lines 5a + 5b or

Total in Column I of G703)

6. TOTAL EARNED LESS RETAINAGE (Line 4 Less Line 5 Total)	\$	0.00
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	\$	0
8. CURRENT PAYMENT DUE	\$	0.00
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	\$	0.00

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$0.00	\$0.00
Total approved this Month	\$0.00	\$0.00
TOTALS	\$0.00	\$0.00
NET CHANGES by Change Order	\$0.00	

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due. CONTRACTOR: Landmark Organization, Inc.

By: _____ Date: _____

State of: Texas County of: Travis

Subscribed and sworn to before me this day of

Notary Public:

My Commission expires:

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising the application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$ 0.00

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.) ARCHITECT: Durrant Architects

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

AIA DOCUMENT G703 (Instructions on reverse side)

PAGE OF PAGES

APPLICATION NO.:

APPLICATION DATE:

PERIOD TO:

ARCHITECT'S PROJECT NO.:

[illegible]

AIA DOCUMENT G703 • CONTINUATION SHEET FOR G702 • 1992 EDITION • AIA® • ©1992 • THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK AVENUE, N.W., WASHINGTON, D.C. 20006-5292 • WARNING: Unlicensed photocopying violates U.S. copyright laws and will subject the violator to legal prosecution.

G703-1992

CAUTION: You should use an original AIA document which has this caution printed in red. An original assures that changes will not be obscured as may occur when documents are reproduced.



Landmark
Organization, L.P.

GM/CL: _____
CONTRACT NO.: _____
COST CODE NO.: _____
FED I.D. OR SS#: _____

SUBCONTRACT

This Agreement, made and entered into this _____ day of _____, 2000 by and between _____, doing business as a _____, with its principal office at _____, hereinafter called the Subcontractor, and LANDMARK ORGANIZATION, L.P. hereinafter called the Contractor, witnesseth:

That the Subcontractor and the Contractor in consideration of the terms, covenants and conditions hereby agree as follows:

SECTION 1. The Subcontractor agrees to furnish and install _____ as described in Section 3, below, for the _____ located at _____ for the _____ hereinafter called the Owner at _____

in accordance with all terms, covenants and conditions of the general contract between the Owner and the Contractor.

SECTION 2. The provisions set forth on Exhibit A, Exhibit B, Exhibit C and Additional Provisions of Subcontract attached hereto, are hereby incorporated into and made a part of this agreement.

SECTION 3. The Subcontractor and the Contractor agree that the materials to be furnished and scope of the work to be performed by the Subcontractor for the project described above, in accordance with the Contract Documents (which consist of this Subcontract, the General Contract between Owner and Contractor, and the other documents attached hereto as Exhibit A, Exhibit B and Exhibit C) are:

Provide all labor, supervision, material and equipment necessary to complete the furnishing and installation of all _____ as shown on Project Drawings and Specifications prepared by _____ all in strict accordance with construction documents, and as more specifically described in _____ listed on attached Exhibit "A". All work shall be done in accordance with all governing codes, including compliance with all Federal and State Labor Laws, and the progress schedule as determined by the Contractor.

Without limiting the generality implied above, the following items of work are specifically included as part of the scope of work under this subcontract: Division No. _____

Exclusions:

SECTION 4. The Subcontractor agrees: To keep himself thoroughly informed as to the progress of the job; to begin work within seven days after notification by the Contractor; to prosecute the work continuously and uninterruptedly with all possible speed; and to complete the entire work covered by this subcontract within a period of time determined in accordance with Paragraph 18 of the Additional Provisions of subcontract after the work covered hereby is commenced. The Subcontractor, however, shall not be held responsible for any delays caused by neglect, delay or default of the Contractor, the Owner, or any other Subcontractor.

If in default of completion within the elapsed time herein specified, the Subcontractor shall pay to the Contractor, as liquidated damages, and not as a penalty, a sum to be determined in accordance with Paragraph 18 of the Additional Provisions for each calendar day's delay in completion of the subcontract, it being agreed between the parties hereto that it would be impracticable or extremely difficult to fix the actual damage.

SECTION 5. IN CONSIDERATION WHEREOF and for the full and faithful performance of his work, the Contractor agrees to pay the Subcontractor the sum of not to exceed _____

(\$_____.00) (which includes all applicable tariffs, surcharges, and taxes to fully complete execution of work) in current funds, subject to additions and deductions for changes as may be agreed upon in writing signed by both parties provided that no payments are to be made unless the Subcontractor's rate of progress, work done and material furnished are satisfactory to the Contractor and has herein agreed upon. The Subcontractor shall submit to the Contractor's Field Office on or before the twentieth day of each month, requisition for payment, in duplicate covering the value of work completed to the satisfaction of the Owner during that month. If said requisitions are not delivered by the Subcontractor as above noted payment may be withheld for 30 days additional. Payments are to be made as follows:

PAYMENT TO THE SUBCONTRACTOR SHALL BE CONDITIONED ON PAYMENT TO THE GENERAL CONTRACTOR BY THE OWNER. RETAINAGE OF 10% WILL BE WITHHELD FROM ALL PROGRESS PAYMENTS. ALL PAYMENTS TO SUBCONTRACTOR WILL BE MADE WITHIN THREE (3) DAYS OF GENERAL CONTRACTORS RECEIPT OF NEGOTIABLE FUNDS PROVIDED SUBCONTRACTOR HAS COMPLIED WITH ALL TERMS AND CONDITIONS OF THIS CONTRACT INCLUDING PROVIDING ANY RELEASE OR WAIVER REQUESTED BY CONTRACTOR.

SECTION 6. Notwithstanding anything contained herein to the contrary, Contractor may, without cause, terminate this Agreement at any time upon written notice to Subcontractor. In the event Contractor gives Subcontractor such notice, Subcontractor shall withdraw its employees and equipment from the worksite on the effective date of the termination as specified in said notice (which effective date shall not be less than two (2) working days after the date of the notice) regardless of any claim Subcontractor may or may not have against Contractor. The Subcontractor's failure to do so shall entitle Contractor to bring an action for damages, including attorney's fees, and/or to bring an action for injunctive relief. If there has been a termination of Contractor's contract with the Owner, the Subcontractor shall be paid the amount due from the Owner for its work, as provided in the Contract Documents, after payment therefor by the Owner to Contractor. If Contractor's contract has not been terminated, Subcontractor shall be paid the reasonable value of work performed by Subcontractor prior to termination plus reasonable direct close-out costs, but in no event shall Subcontractor be entitled to unabsorbed overhead, anticipatory profits or damages for any termination under this clause except as expressly provided by this paragraph. Upon receipt of payments provided for above, the parties hereto shall have no further obligation to each other except for Subcontractor's obligations to perform corrective and/or warranty work relating to work actually performed by Subcontractor or any of its sub-subcontractors prior to the termination, and to indemnify and defend Contractor as provided for in this Agreement.

The Subcontractor agrees that in the event of a dispute as to any amount owed under the terms of this contract that the contractor, at the contractor's option may place a sum equal to the disputed amount in escrow with an attorney of the contractor's choice while the parties attempt to resolve the dispute through legal action or any other manner of alternative dispute resolution such as mediation or arbitration: provided further, that if the contractor places the disputed sums in escrow within thirty days after a written demand for the disputed sums is received, or if no written demand is received, then before any final decision is rendered as a result of the legal actions referred to above, the parties expressly agree that the placement of the disputed sums in escrow constitutes a sufficient tender under applicable statutes and further, the subcontractor voluntarily, knowingly, and intelligently waives the right to seek to recover any attorney's fees provided for by any applicable State of _____ statutes if the disputed sums are placed in escrow as provided herein.

IN WITNESS WHEREOF, the parties hereto have executed this agreement for themselves, their heirs, executors, successors, administrators, and assigns, on the day and year first written above.

LANDMARK ORGANIZATION, L.P.
CONTRACTOR
BY _____

SUBCONTRACTOR
BY _____

TITLE _____

TITLE _____

DATE _____

DATE _____
Contact Name and Phone Number _____



DATE RECEIVED: _____

SUBCONTRACTOR'S/PURCHASE CONTRACT APPLICATION FOR PAYMENT
Accepted only with AIA G703 Breakdown/Invoices Attached

PROJECT NAME: _____
SUBCONTRACTOR: _____
ADDRESS: _____

JOINT CHECKS: 1) _____
2) _____

Application will be returned unless all items are completed.

1. Project No.: _____

2. Subcontractor No.: _____

3. Cost Code: _____

4. Division Manager Approval: _____

5. Project Manager Approval: _____

6. Superintendent Approval: _____

7. Joint Check Invoices Attached: yes _____ no _____

ACCOUNTING REC'D:

Application Period _____ to _____ Application No.: _____

	SUBCONTRACTOR	PROJ. MGR.	ACCOUNTING
1. Original Subcontract Amount	\$		
2. Approved Change Orders _____ thru _____	\$		
3. Current Subcontract Sum (Column C Total)	\$		
4. Previous Net Payments	\$		
5. Unpaid Balance on Subcontractor	\$		
6. Work this Period (Col. E Total)	\$		
7. Stored Materials This Period (Col. F Total)	\$		
8. Total Work in Place (Col. G Total)	<div>_____ %</div> \$		
9. Total Gross Previous Applications (Col. D)	\$		
10. Total Gross Amount This Application (8 - 9)	\$		
11. 10% Retainage (10% of Line 10)	\$		
12. Net Pmt Requested This Application (10-11)	\$		
13. Total Retainage to Date (Col. I Total)	\$		

Subcontractor Signature

Date

Title

FOR ACCOUNTING USE ONLY:

APPROVED BY:		APPROVAL:	INSURANCE RECEIVED:	
DATE APPROVED:			P & P BOND RECEIVED:	
GROSS AMOUNT:			WAIVER RECEIVED:	
RETAINAGE:			EXECUTED CONTRACT RECIEVED:	
NET TO PAY THIS CHECK:			EXECUTED CHANGE ORDER RECEIVED:	

Page 1

Application date:

Period to:

Project:

[illegible]



Landmark
Organization, Inc.

BC/CC: _____
CONTRACT NO.: _____
COST CODE NO.: _____
FED I.D. OR SS#: _____

PURCHASE CONTRACT

VENDOR NAME _____
VENDOR ADDRESS _____
VENDOR PHONE _____

PROJECT NAME _____
PROJECT LOCATION _____

THIS AGREEMENT made this ____ day of _____ 19 __, by and between the above named Vendor (herein called "Vendor"), and, LANDMARK ORGANIZATION, INC. (herein called "Contractor"), who agree as follows:

1. SCOPE OF WORK.

a) Vendor agrees to furnish and/or fabricate all of the following materials and/or equipment listed below for the project described above, in accordance with the Contract Documents (which consist of this Purchase Contract, the General Contract between Owner and Contractor and the other documents shown on Exhibit A, attached hereto and made a part hereof):

- 1.
- 2.
- 3.

All materials and/or equipment shall be shipped FOB _____ via _____.

b) The work is specified in SECTION/DIVISION (S) _____ of the project manual and any other sections of said manual referred to therein.

2. COST.

a) The total cost of all work hereunder is \$ _____. Contractor reserves the right to modify the Scope of Work and related cost by written Change Order in accordance with any Alternates and/or modifications to Vendor's Scope of Work.

b) Subject project is _____ Tax Exempt or _____ Subject to sales tax. All invoices shall show taxes, if applicable, separately.

3. PAYMENT.

a) Contractor shall make payments to Vendor as follows: Payment to the Subcontractor shall be conditioned on payment to the General Contractor by the Owner. All payments to Subcontractor will be made within three (3) days of General Contractor's receipt of negotiable funds provided Subcontractor has complied with all terms and conditions of this contract.

b) RETENTION. Contractor shall retain ____ % until _____ after completion and acceptance of WORK.

4. BOND.

Vendor shall/shall not, at the time of execution of this Purchase Contract, provide Contractor a bond or bonds guaranteeing complete performance under this Purchase Contract and the payment of all indebtedness incurred, with coverage equal to the total cost of the Work as shown above, provided by a surety satisfactory to Contractor. The bond premium shall/shall not be paid by Contractor.

5. CONTRACT DOCUMENTS.

Vendor shall be bound to Contractor by the terms of the Contract Documents and shall assume toward Contractor all the obligations and responsibilities that Contractor assumes toward the Owner under the Contract Documents, to the extent applicable to this Purchase Contract. The Contract Documents are hereby incorporated in this Purchase Contract and made a part hereof to the extent applicable, and shall be made available to Vendor in Contractor's office for review upon request. In the event of any conflict between the Provisions of the Purchase Contract and the provisions of the other Contract Documents, this Purchase Contract shall govern.

6. LIENS AND CLAIMS.

Vendor shall promptly pay all costs and expenses incurred in the performance of this Purchase Contract as they become due and shall furnish satisfactory evidence and verification of payment as requested by Contractor. Vendor shall indemnify and hold harmless Contractor, the Owner and the Property upon which the Work is being performed from liens and claims of workmen, mechanics and/or materialmen arising from performance of the Work covered by this Purchase Contract. Prior to making any payment to Vendor, Contractor may require Vendor to deliver written waivers or releases from Vendor and from all suppliers or subcontractors of Vendor of all

rights to assert any liens or claims against the Project, the Owner or the Contractor.

7. **ADDITIONAL PROVISIONS.** The additional provisions of the Purchase Contract are hereby incorporated into and made a part hereof for all purposes.
8. **ENTIRE AGREEMENT.** This Purchase Contract, including the additional provisions and all Exhibits attached hereto, if any, constitute the entire agreement between the parties and supersede all prior proposals, quotations and other communications.

CONTRACTOR:

LANDMARK ORGANIZATION, INC.

By _____

Title _____

Date _____

VENDOR:

By _____

Title _____

Date _____

**UNCONDITIONAL WAIVER
AND RELEASE ON PROGRESS PAYMENT**

Project: WILLIAMSON COUNTY JUSTICE CENTER EXPANSION

The undersigned has been paid and has received a progress payment in the sum of \$ _____ for all labor, services, equipment and material furnished to the jobsite on the job located in Williamson County, Texas, And Does Hereby Release Any Mechanic's Lien, any state or federal statutory bond right, any private bond right, any claim for payment and any rights under similar ordinance, rule or statute related to claim or payment rights for persons in the undersigned's position that the undersigned has on the above referenced project to the following extent. This release covers a progress payment for all labor, services, equipment or materials furnished to the jobsite through _____, 2002 only and does not cover any retention pending, modifications and changes or items furnished after that date.

The undersigned warrants that he either has already paid or will use the monies he receives from this progress payment to promptly pay in full all of his laborers, subcontractors, materialmen and suppliers from all work, materials, equipment for services provided for or to the above referenced project up to the date of this waiver:

DATE: _____

COMPANY NAME:

Landmark Organization, LP

BY: _____

TITLE: _____

NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL-RELEASE FORM.

Request for Information

Summary Log. RFIs not Closed with an Importance of High or Urgent

RFI #	Subject	Date Created	Date Req'd	Date Resp	Author Co	Answer Co	Importance	Discipline	Category
-------	---------	--------------	------------	-----------	-----------	-----------	------------	------------	----------

Submittal Packages

Detailed Package Tracking Log

Author Company Contact Author Package # Trade Importance

Items Number Rev Description Resp Company Due Rec'd +/- Returned Sch'd Del Actual Del Status Closed

Reviewers

Package Notes Reviewer's General Comments

LANDMARK ORGANIZATION, L.P.
1700 RIO GRANDE
AUSTIN, TEXAS 78701

BC/CC: _____

CHANGE ORDER

To CONTRACT NO.: _____ DATED: _____ DATE OF THIS CHANGE ORDER: _____

TO: _____	ORIGINAL CONTRACT AMOUNT	\$ _____ .00
_____	PREVIOUS CHANGE ORDERS	\$ _____ .00
_____	PREVIOUS CONTRACT AMOUNT	\$ _____ .00
_____	ADD for this C.O.	\$ _____ .00
JOB: _____	DEDUCT for this C.O.	\$ _____ .00
	NEW CONTRACT AMOUNT	\$ _____ .00

It being desirable to modify the work done under the above Contract in accordance with instructions, Plans and/or Specifications enumerated below, it is necessary and in the best interests of the Parties to the above named Contract to modify said Contract in certain particulars as follows:

TOTAL CHANGE THIS CHANGE ORDER:

ADD/DEDUCT

\$.00

REF: Owner Change Order No. N/A Dated: _____ BMCR No.: _____ Dated: _____
Subcontractor quotations dated: _____
Cost Code: _____

It is further understood and agreed that all terms and conditions of said Contract, as it may heretofore have been modified, shall be and remain the same.

ACCEPTED:

ACCEPTED:

LANDMARK ORGANIZATION, L.P.

BY: _____

BY: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

ATTCHMENT "H"
CHANGE ORDER FORMAT

Change Order Request

Detailed (with Breakdown of PCOs), Grouped by Each Number

Date:

To:

From:

Description	Category	Status
-------------	----------	--------

Reference	Required By	Days Req	Amt Req
-----------	-------------	----------	---------

Notes

PCO No	Date	Reference	Amt Prop	Days Req	Category	Reason
--------	------	-----------	----------	----------	----------	--------

Description	Notes
-------------	-------

Item No	Item Description	Amt Prop	Reference
---------	------------------	----------	-----------

Approved By:

Signature

Name

Date

Change Order Request

Detailed Log by Number

Date:

Company: Attention: Category: POCO: Reference:

Electronic Company: Contact: Required: Completed: NTP: Executed: Days Req: App Days:

Proposed

Approved

PCO: Date: Description: UOM: Qty: Unit Price: Total: Qty: Unit Price: Total:

Totals:

ATTACHMENT "I"
LETTER AGREEMENT BETWEEN LANDMARK ORGANIZATION AND
WILLIAMSON COUNTY

July 5, 2002

The Honorable John Doerfler
County Judge, Williamson County
710 Main Street, 2nd Floor
Georgetown, TX 78626

RE: Williamson County Justice Center Courts Addition

Dear Judge Doerfler:

I appreciate the time that both you and Commissioner Limmer extended me on Monday, July 1, 2002, to address your concerns over the budgetary issues and contract status on the above referenced project. On behalf of Landmark Organization, I would like to personally apologize for our staff's lack of communication and the effect this failure to communicate has had on getting this project started.

In order to expedite the construction of the Courts Addition and substantially mitigate the County's financial risks, Landmark Organization will commit to the following:

1. Landmark will meet the original October 26, 2001 budget of \$9,968,392.00, which does not include Design/Engineering fees, the renovation of the existing building, HVAC upgrades and Preconstruction Project Management Costs.
2. Landmark will assume full financial responsibility for all cost overruns above the proposed construction budget while the County retains the right to receive 100% of the cost savings recognized under said budget.
3. Landmark will honor the original proposed Construction Management Fee of two and three-quarters percent (2.75%) of the actual cost, not to include Owner provided insurance costs or unused contingency costs.
4. Landmark will cap the allowable reimbursement for Preconstruction Project Management costs to a maximum of \$100,000.00.
5. Landmark will agree to perform the HVAC upgrades requested by the County subsequent to October 26, 2001 proposal for a "Not To Exceed" amount as approved by the County and the County's Construction Consultant.
6. Landmark will agree to complete the construction renovation of the existing Courts Building for an allowance amount or a "Not To Exceed" amount as approved by the County and the County's Construction Consultant.
7. Compensation to Landmark for "Direct Personnel Expense" (reference article 7.03), "Reimbursable Expenses" (reference article 7.04), and "General Conditions" (reference article 5.01R, attachment E) shall be billed in accordance with the terms of the proposed

1700 Rio Grande • Austin, TX 78701
512 / 652 - 4000
fax 512 / 652 - 4001
www.landmarkorg.com

RECORDERS MEMORANDUM

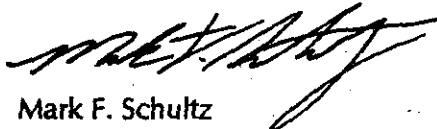
All or parts of the text on this page was not
clearly legible for satisfactory reproduction

Construction Management Agreement but shall not exceed the aggregate amount of \$664,922, including any markups.

8. In no event shall any fees or compensation earned by Landmark cause the cost of the addition to exceed \$9,968,392.00, exclusive of Design/Engineering fees, Preconstruction Project Management, HVAC upgrades, and the renovation costs.
9. The Architectural and Engineering Plans and Specifications dated June 3, 2002 will define the Scope of Work.
10. Landmark agrees to immediately execute a Construction Management Contract in accordance with the terms delineated in the above items 1 through 9.

Landmark Organization stands ready to immediately proceed with the required bidding and construction of this project following our receipt of the Construction Management Contract and the Notice To Proceed from the County. Again, thank you for your involvement in this process and please contact me if you should have any questions or require further clarification regarding this proposal.

Sincerely,
LANDMARK ORGANIZATION, L.P.



Mark F. Schultz
President

MFS/ss

CC: Commisioner Limmer, Williamson County
Ed Lee, Broaddus & Associates
Jim Broaddus, Broaddus & Associates
Bert Collins, Landmark Organization
Paul Bare, Landmark Organization
Project File

ATTCHMENT "J"
ITEMS INCLUDED IN GENERAL CONDITIONS

STAFF

Project Manager
Superintendent
Project Engineer

FIELD ENGINEERING

Survey Costs

FIELD EQUIPMENT AND SUPPLIES

Office Trailer
Temporary Utilities
Telephone
Miscellaneous Office Supplies
Postage
Office Equipment

SITE REQUIREMENTS

Temporary Building Heat
Job Sign
Temporary Toilets
Temporary Fence
Water and Ice
First Aid Supplies
Safety Supplies
Fire Protection

TEMPORAY PROTECTION

Temporary Enclosures
Temporary Partitions
Temporary Roof Protection
Landscape Protection
Barricades

CLEANUP

Dumpsters
Daily Job Cleanup
Final Cleanup
Trailer Cleanup

GENERAL

Small Tools
Equipment Rental
Temporary Storage Trailers

MISCELLANEOUS

Job Photographs
Additional Drawings

AGENDA ITEM 39

Discuss and take appropriate action on jail/courthouse annex expansion.

Ed Lee stated that a few days were lost to rain, but that the parking garage project is generally on schedule. They are working on getting the elevator installed by the end of the month. He also mentioned that the architect's fees on the annex renovations are going to be 10% of the project, rather than the old fee amount of 7.5%. The contract needs to be updated to show the renovation budget to be \$622,013 in order to properly calculate the fees for the architect.

Moved: **Commissioner Limmer**

Seconded: **Judge Doerfler**

Motion: To update the renovation budget to be \$622,013.

Vote: 5 - 0

AGENDA ITEM 40

Consider approving change order for Keystone Construction for Brushy Creek Regional Trail.

No action was taken on this agenda item, which was tabled until further notice.

AGENDA ITEM 41

Discuss and take appropriate action on park advisory committee.

No action was taken on this agenda item.

AGENDA ITEM 42

Discuss and take appropriate action on hiring a Parks Director.

Commissioner Boatright stated that the members of the committee who interviewed the applicants for the Director's job have recommended Jim Rodgers for the position. Mr. Rodgers has been the Parks Director for the City of Cedar Park for 5 years and was the Parks Supervisor for the City of Austin for 27 years.

Moved: **Commissioner Boatright**

Seconded: **Judge Doerfler**

Motion: To hire Jim Rodgers as Parks Director for Williamson County.

Vote: 5 - 0

AGENDA ITEM 43

Consider declaring an emergency and approving a budget amendment to acknowledge additional expenditures for County Attorney:

0100-0475-001100	Co. Atty. Salary	23,646.48
0100-0475-004999	Co. Atty. Miscellaneous	27,203.52

No action was taken on this agenda item.

AGENDA ITEM 44

Consider declaring an emergency and approving a budget amendment to acknowledge additional revenue for County Attorney:

0100-0000-335601	Co. Atty. Supplement	50,850.00
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No action was taken on this agenda item.

COMMISSIONERS' COURT ADJOURNED TO EXECUTIVE SESSION AT 11:02 A.M. ON TUESDAY, OCTOBER 15, 2002.

AGENDA ITEM 45

Discuss real estate (EXECUTIVE SESSION as per VTCA Govt. Code sec. 551.071 consultation with attorney.)

No Action was taken in Executive Session.