



FILED this 17<sup>th</sup> day of Dec 20 13  
9:15 AM  
CAROL HOLCOMB  
COUNTY CLERK, CALDWELL COUNTY, TEXAS  
By Allison Femy Deputy

**Notice of Meeting**  
**Commissioners Court of Caldwell County, Texas**

***Notice is hereby given that a special meeting of the Caldwell County Commissioners Court will be held on the 20<sup>th</sup> day of December 2013 at 9:00 A.M. in the Commissioners Courtroom located at 1403 Blackjack Street, Lockhart, Texas at which time the following subjects will be discussed, considered, passed or adopted, to wit:***

Note: Commissioners Court Meeting packets are prepared several days prior to each meeting. This information is reviewed and studied by the Court members, eliminating lengthy discussions to gain a basic understanding. Timely action and short discussion on agenda items does not reflect lack of thought or analysis on the part of the Court.

Start times for regular agenda items are tentative; some items may be held earlier or later than the scheduled time.

For the convenience and comfort of members of the public and Caldwell County officials and employees, the Commissioners Court may take a recess from 10:30-10:45 a.m. and from noon to 1:30 p.m.

**Agenda**

**Call Meeting to order.**

**2013.12.20.01 Discussion/Action** to adopt survey of local wages to determine prevailing wage rates for certain classes of workers in Caldwell County pursuant to section 2258.022 of the Texas Government Code. **Cost:** None; **Speaker:** Judge Bonn; **Backup:** 1.

**2013.12.20.02 PUBLIC HEARING at 9:45 A.M.** on creation of County Energy Transportation Reinvestment Zone under section 222.1071 of the Texas Transportation Code Zone and on its benefits to the county and to property in the proposed zone. At the hearing an interested person may speak.

**2013.12.20.03 Discussion/Action** to approve project manager contract with Less Reddin d.b.a. LongLife Projects for the Caldwell County Judicial Center. **Speaker:** judge Bonn; **Cost:** TBD

**2013.12.20.04 Discussion/Action** to approve contract manager at risk contract with Braum & Butler for the Caldwell County Judicial Center. **Speaker;** Judge Bonn; **Cost** TBD

**2013.12.20.05 Adjournment**

As authorized by the Texas Government Code, the Commissioners' Court of Caldwell, County, Texas reserves the right to adjourn into Executive Session at any time during the course of this meeting to discuss any of the matters listed above as they may relate to Texas Government Code Section 551.071(1) (Consultation with Attorney about pending or contemplated litigation or settlement offers);

Texas Government Code Section 551.071(2) (Consultation with Attorney when the Attorney's obligations under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas conflicts with Chapter 551 of the Texas Government Code);

Texas Government Code Section 551.072 (Deliberations About Real Property); Texas Government Code Section 551.073 (Deliberations about Gifts and Donations); Texas Government Code Section 551.074 (Personnel Matters); Texas Government Code Section 551.0745 (Deliberations about a County Advisory Body); Texas Government Code Section 551.076 (Deliberations about Security Devices); and Texas Government Code Section 551.087 (Economic Development Negotiations).

In the event that the Court adjourns into Executive Session, unless otherwise specified on the agenda, the Court will announce any other parties who are authorized to be present during the deliberations in Executive Session and will announce under what section of the Texas Government Code the Commissioner's Court is using as it's authority to enter into an Executive Session. The meeting facility is wheelchair accessible and accessible parking spaces are available. Request for accommodations or interpretive services must be made 48 hours prior to this meeting. Please contact the County Judge's office at 512-398-1808 for further information.

**2013.12.20.01 Discussion/Action** to adopt survey of local wages to determine prevailing wage rates for certain classes of workers in Caldwell County pursuant to section 2258.022 of the Texas Government Code. **Cost:** None; **Speaker:** Judge Bonn; **Backup:** 1.

Caldwell County Prevailing Wage Survey	12/16/2013
Wage Category	Prevailing Wage
Bricklayer <sup>1</sup>	14.46
Carpenters <sup>1</sup>	10.85
Carpet Installers <sup>2</sup>	14.22
Tile and Marble Setters <sup>2</sup>	14.61
Cement Masons and Concrete Finishers <sup>1</sup>	9.32
Terrazzo Workers and Finishers <sup>2</sup>	14.28
Common Laborer <sup>1</sup>	7.25
Power equipment operators: front end loader <sup>1</sup>	9.60
Drywall Hanger <sup>1</sup>	11.04
Painter <sup>1</sup>	9.00
Electricians <sup>3</sup>	19.87
Glaziers <sup>1</sup>	12.83
Painters, Construction and Maintenance	14.82
Pipelayers <sup>3</sup>	13.03
Plumbers, Pipefitters, and Steamfitters <sup>3</sup>	18.31
Plasterers and Stucco Masons <sup>3</sup>	16.46
Roofers <sup>2</sup>	13.14
Sheet Metal Workers <sup>3</sup>	15.08
Structural Iron and Steel Workers <sup>3</sup>	17.36
Helpers--Brickmasons, Blockmasons, Stonemasons <sup>2</sup>	11.19
Helpers--Carpenters <sup>3</sup>	13.43
Helpers--Electricians <sup>3</sup>	13.84
Helpers--Pipelayers, Plumbers, Pipefitters <sup>3</sup>	13.15
Fence Erectors <sup>2</sup>	10.88
Telecommunications Equipment Installers and Repair <sup>3</sup>	18.75
Security and Fire Alarm Systems Installers <sup>3</sup>	22.01
Heating, Air Conditioning, and Refrigeration Mechanical <sup>3</sup>	19.06
Maintenance and Repair Workers, General	15.07
Structural Metal Fabricators and Fitters	16.53
Welders, Cutters, Solderers, and Brazers	17.95
Welding, Soldering <sup>3</sup>	14.00
Cabinetmakers and Bench Carpenters <sup>3</sup>	13.24
Crane and Tower Operators <sup>3</sup>	16.90

Note<sup>1</sup> - Source Davis Bacon Decision no. TX130076 6/21/2013

Note<sup>2</sup> - Source Texaswages.com statewide rate

note<sup>3</sup> - Source Texaswages.com Rural Capitol Area- Median Rate

**2013.12.20.02      PUBLIC HEARING at 9:45 A.M.** on creation of County Energy Transportation Reinvestment Zone under section 222.1071 of the Texas Transportation Code Zone and on its benefits to the county and to property in the proposed zone. At the hearing an interested person may speak.



November 26, 2013

The Honorable Tom Bonn  
Caldwell County Judge  
110 S. Main St., Fl. 2  
Lockhart, Texas 78644-2701

Dear Judge Bonn:

As you know, with the increase in oil and gas production, the 83rd Legislature included a \$225 million supplemental appropriation in House Bill 1025 (HB 1025) to help repair or improve county roads in areas affected by energy-sector activities. This funding will enable affected counties to apply for and obtain grants through the Texas Department of Transportation (TxDOT). Senate Bill 1747 (SB 1747) outlines the requirements for counties to be eligible for funding authorized under HB 1025. The Texas Transportation Commission has adopted rules in order for TxDOT to administer the program.

As outlined in SB 1747 and TxDOT rules, grant funding will be distributed to each county according to the following formula: 20% according to weight tolerance permits, 20% according to oil and gas production taxes, 50% according to well completions, and 10% according to volume of oil and gas waste injected. The methodology and data used to develop the allocations under the formula were determined by the Texas Department of Motor Vehicles, the Texas Comptroller of Public Accounts, and the Railroad Commission of Texas respectively.

The estimated allocations for each county in the state, assuming all 254 counties will be eligible and apply, are provided as part of the NOTICE OF REQUEST FOR APPLICATIONS FOR COUNTY TRANSPORTATION INFRASTRUCTURE FUND GRANT PROGRAM included with this letter. Actual grant awards may vary from the estimate. Accordingly, it is estimated that Caldwell County is eligible for a minimum grant award of: \$983,603.00. The total grant award to your county will not be known until the application period closes and all applications are reviewed by TxDOT. TxDOT will then provide a written notice to each applicant that states the amount of the grant awarded. TxDOT will begin accepting online applications on Friday, February 7, 2014. The application period will end Friday, February 14, 2014.

OUR GOALS

MAINTAIN A SAFE SYSTEM • ADDRESS CONGESTION • CONNECT TEXAS COMMUNITIES • BEST IN CLASS STATE AGENCY

*An Equal Opportunity Employer*

If you need additional information please contact Trent Thomas, Deputy Director in our State Legislative Affairs Office, at (512) 463-6397 or via e-mail at Trent.Thomas@txdot.gov.

Sincerely,

A handwritten signature in cursive script that reads "Phil Wilson".

Phil Wilson  
Executive Director

cc: Texas Transportation Commission  
John A. Barton, P.E., Deputy Executive Director, TxDOT  
Trent Thomas, State Legislative Affairs, TxDOT

ENCLOSURES:

1. NOTICE OF REQUEST FOR APPLICATIONS FOR COUNTY TRANSPORTATION INFRASTRUCTURE FUND GRANT PROGRAM;
2. Estimated allocation for each county in the state (estimate assumes all 254 counties will be eligible and apply); and
3. List of economically disadvantaged counties.

# NOTIFICATION

\*\*\*\*\*  
**NOTICE OF REQUEST FOR APPLICATIONS FOR COUNTY TRANSPORTATION  
INFRASTRUCTURE FUND GRANT PROGRAM**  
\*\*\*\*\*

On November 21, 2013, by minute order No. 113766, the Texas Transportation Commission (commission) adopted rules, codified as Title 43 Texas Administrative Code §§15.180 – 15.197 (rules), that prescribe the policies and procedures governing the Texas Department of Transportation's (TxDOT) implementation of the county transportation infrastructure fund grant program (program) under Transportation Code, Chapter 256, Subchapter C. Pursuant to the program, TxDOT will administer a grant program using the transportation infrastructure fund and provide **funding to eligible counties for transportation infrastructure projects located in areas of the state affected by increased oil and gas production.**

On November 21, 2013, by minute order No. 113773, the commission specified the first period of time in fiscal year 2014 for submission of grant applications for the program, and the total amount of grant money available for the designated period.

This NOTICE OF REQUEST FOR APPLICATIONS is being sent to the county judge of each county in the state pursuant to the rules and commission minute order. **Applications are required to be submitted online at <http://www.txdot.gov/government/funding/county-fund.html>.** The program application, a copy of this notice, and all other information for the program is also available on the above website. The following information and enclosures are provided to each county:

**APPLICATION PERIOD:** February 7, 2014 - February 14, 2014.

*Any application submitted before February 7, 2014, will be deemed received by TxDOT on February 7, 2014 for purposes of TxDOT's review timeline under the applicable statute and rules.*

*NO application will be accepted after February 14, 2014.*

**ESTIMATED GRANT FUNDS AVAILABLE:** \$224,500,000

**ENCLOSURES:**

1. Estimated allocation for each county in the state.  
*Estimate assumes all 254 counties will be eligible and apply; actual grant awards may vary from the estimate.*
2. List of "economically disadvantaged counties."  
*Determined pursuant to Transportation Code, § 222.053.*

# ESTIMATED ALLOCATION BY COUNTY

County	Estimated Allocation by County	County	Estimated Allocation by County	County	Estimated Allocation by County
Anderson County	\$ 314,577	Donley County	\$ 132,575	Kaufman County	\$ 235,883
Andrews County	\$ 8,728,649	Duval County	\$ 820,573	Kendall County	\$ 124,237
Angelina County	\$ 210,065	Eastland County	\$ 256,273	Kenedy County	\$ 314,484
Aransas County	\$ 241,934	Ector County	\$ 7,174,311	Kent County	\$ 853,584
Archer County	\$ 875,951	Edwards County	\$ 210,897	Kerr County	\$ 121,221
Armstrong County	\$ 134,887	El Paso County	\$ 93,474	Kimble County	\$ 104,751
Atascosa County	\$ 1,948,702	Ellis County	\$ 270,314	King County	\$ 297,387
Austin County	\$ 386,895	Erath County	\$ 212,917	Kinney County	\$ 125,305
Bailey County	\$ 123,360	Falls County	\$ 182,807	Kleberg County	\$ 533,525
Bandera County	\$ 131,517	Fannin County	\$ 174,601	Knox County	\$ 168,572
Bastrop County	\$ 238,704	Fayette County	\$ 682,928	La Salle County	\$ 5,961,191
Baylor County	\$ 198,542	Fisher County	\$ 539,165	Lamar County	\$ 135,122
Bee County	\$ 755,175	Floyd County	\$ 120,273	Lamb County	\$ 188,817
Bell County	\$ 170,085	Foard County	\$ 151,394	Lampasas County	\$ 139,839
Bexar County	\$ 473,626	Fort Bend County	\$ 775,699	Lavaca County	\$ 881,662
Blanco County	\$ 129,281	Franklin County	\$ 303,770	Lee County	\$ 355,297
Borden County	\$ 727,682	Freestone County	\$ 697,849	Leon County	\$ 658,848
Bosque County	\$ 191,289	Frio County	\$ 1,088,389	Liberty County	\$ 680,183
Bowie County	\$ 136,568	Gaines County	\$ 3,762,350	Limestone County	\$ 431,109
Brazoria County	\$ 1,025,828	Galveston County	\$ 355,132	Lipscomb County	\$ 1,217,557
Brazos County	\$ 573,625	Garza County	\$ 590,912	Live Oak County	\$ 2,228,522
Brewster County	\$ 94,138	Gillespie County	\$ 115,082	Llano County	\$ 109,721
Briscoe County	\$ 110,154	Glasscock County	\$ 5,635,320	Loving County	\$ 1,536,088
Brooks County	\$ 464,458	Goliad County	\$ 440,518	Lubbock County	\$ 342,190
Brown County	\$ 303,323	Gonzales County	\$ 3,782,191	Lynn County	\$ 261,265
Burleson County	\$ 365,446	Gray County	\$ 298,624	Madison County	\$ 807,778
Burnet County	\$ 136,452	Grayson County	\$ 439,497	Marion County	\$ 211,075
Caldwell County	\$ 983,603	Gregg County	\$ 1,024,358	Martin County	\$ 6,659,794
Calhoun County	\$ 294,100	Grimes County	\$ 366,946	Mason County	\$ 106,927
Callahan County	\$ 222,768	Guadalupe County	\$ 1,458,275	Matagorda County	\$ 460,441
Cameron County	\$ 208,344	Hale County	\$ 274,609	Maverick County	\$ 396,593
Camp County	\$ 149,708	Hall County	\$ 110,979	McCulloch County	\$ 132,373
Carson County	\$ 361,803	Hamilton County	\$ 135,266	McLennan County	\$ 194,440
Cass County	\$ 182,726	Hansford County	\$ 225,449	McMullen County	\$ 4,283,398
Castro County	\$ 134,626	Hardeman County	\$ 203,586	Medina County	\$ 565,837
Chambers County	\$ 771,491	Hardin County	\$ 738,775	Menard County	\$ 167,967
Cherokee County	\$ 370,167	Harris County	\$ 751,717	Midland County	\$ 5,527,928
Childress County	\$ 124,217	Harrison County	\$ 910,535	Milam County	\$ 2,070,110
Clay County	\$ 352,505	Hartley County	\$ 215,860	Mills County	\$ 112,337
Cochran County	\$ 537,008	Haskell County	\$ 292,971	Mitchell County	\$ 1,381,430
Coke County	\$ 511,107	Hays County	\$ 174,425	Montague County	\$ 2,435,735
Coleman County	\$ 412,862	Hemphill County	\$ 1,905,341	Montgomery County	\$ 688,702
Collin County	\$ 223,119	Henderson County	\$ 286,847	Moore County	\$ 547,303
Collingsworth	\$ 146,687	Hidalgo County	\$ 796,051	Morris County	\$ 118,029
Colorado County	\$ 370,206	Hill County	\$ 250,315	Motley County	\$ 118,479
Comal County	\$ 192,727	Hockley County	\$ 1,881,204	Nacogdoches	\$ 464,657
Comanche County	\$ 153,183	Hood County	\$ 645,386	Navarro County	\$ 314,036
Concho County	\$ 215,310	Hopkins County	\$ 174,670	Newton County	\$ 290,481
Cooke County	\$ 1,259,387	Houston County	\$ 698,808	Nolan County	\$ 675,321
Coryell County	\$ 134,223	Howard County	\$ 3,545,385	Nueces County	\$ 565,047
Cottle County	\$ 130,931	Hudspeth County	\$ 92,407	Ochiltree County	\$ 1,176,219
Crane County	\$ 2,685,999	Hunt County	\$ 168,235	Oldham County	\$ 329,907
Crockett County	\$ 1,893,656	Hutchinson County	\$ 314,090	Orange County	\$ 408,078
Crosby County	\$ 705,630	Irion County	\$ 2,279,790	Palo Pinto County	\$ 558,005
Culberson County	\$ 573,302	Jack County	\$ 1,266,152	Panola County	\$ 1,892,852
Dallam County	\$ 140,413	Jackson County	\$ 589,989	Parker County	\$ 1,270,036
Dallas County	\$ 277,663	Jasper County	\$ 279,653	Parmer County	\$ 130,262
Dawson County	\$ 1,003,409	Jeff Davis County	\$ 101,871	Pecos County	\$ 1,837,962
Deaf Smith County	\$ 148,525	Jefferson County	\$ 1,013,521	Polk County	\$ 448,157
Delta County	\$ 120,774	Jim Hogg County	\$ 290,515	Potter County	\$ 206,752
Denton County	\$ 1,076,298	Jim Wells County	\$ 414,071	Presidio County	\$ 92,360
DeWitt County	\$ 4,559,074	Johnson County	\$ 1,184,679	Rains County	\$ 141,303
Dickens County	\$ 178,022	Jones County	\$ 433,839	Randall County	\$ 150,327
Dimmit County	\$ 6,273,935	Karnes County	\$ 7,163,454	Reagan County	\$ 3,254,795



## ESTIMATED ALLOCATION BY COUNTY

County	Estimated Allocation by County
Real County	\$ 111,346
Red River County	\$ 163,515
Reeves County	\$ 2,681,959
Refugio County	\$ 1,287,908
Roberts County	\$ 990,668
Robertson County	\$ 711,317
Rockwall County	\$ 174,947
Runnels County	\$ 335,664
Rusk County	\$ 1,153,314
Sabine County	\$ 145,156
San Augustine	\$ 431,679
San Jacinto County	\$ 291,048
San Patricio County	\$ 650,875
San Saba County	\$ 106,946
Schleicher County	\$ 435,121
Scurry County	\$ 1,867,324
Shackelford County	\$ 618,558
Shelby County	\$ 514,975
Sherman County	\$ 248,572
Smith County	\$ 438,300
Somervell County	\$ 232,054
Starr County	\$ 802,356
Stephens County	\$ 1,335,678
Sterling County	\$ 634,077
Stonewall County	\$ 524,238
Sutton County	\$ 267,515
Swisher County	\$ 136,912
Tarrant County	\$ 2,445,810
Taylor County	\$ 311,696
Terrell County	\$ 169,491
Terry County	\$ 746,156
Throckmorton County	\$ 437,100
Titus County	\$ 311,042
Tom Green County	\$ 400,728
Travis County	\$ 182,489
Trinity County	\$ 162,124
Tyler County	\$ 401,661
Upshur County	\$ 630,889
Upton County	\$ 5,382,987
Uvalde County	\$ 202,982
Val Verde County	\$ 131,188
Van Zandt County	\$ 279,644
Victoria County	\$ 619,724
Walker County	\$ 231,844
Waller County	\$ 335,289
Ward County	\$ 3,857,626
Washington County	\$ 283,203
Webb County	\$ 5,152,306
Wharton County	\$ 898,201
Wheeler County	\$ 3,402,160
Wichita County	\$ 1,114,267
Wilbarger County	\$ 484,305
Willacy County	\$ 333,980
Williamson County	\$ 171,354
Wilson County	\$ 832,865
Winkler County	\$ 1,260,429
Wise County	\$ 2,177,665
Wood County	\$ 680,367
Yoakum County	\$ 2,765,550
Young County	\$ 577,529
Zapata County	\$ 509,243
Zavala County	\$ 886,210

# EXHIBIT A

## Economically Disadvantaged Counties FY 2014

FY 2014 Eligible Counties	
Anderson	Lamar
Angelina	Leon
Atascosa	Liberty
Bastrop	Madison
Bee	Marion
Bosque	Matagorda
Bowie	Maverick
Brooks	McLennan
Caldwell	Medina
Calhoun	Milam
Cameron	Mitchell
Camp	Morris
Cass	Navarro
Cherokee	Newton
Concho	Presidio
Crosby	Rains
Dawson	Red River
Delta	Reeves
Dickens	Runnels
Duval	Sabine
El Paso	San Augustine
Ellis	San Jacinto
Falls	San Saba
Fannin	Shelby
Floyd	Starr
Grayson	Titus
Grimes	Trinity
Hall	Tyler
Henderson	Uvalde
Hidalgo	Val Verde
Hill	Walker
Houston	Waller
Hunt	Webb
Jasper	Wharton
Johnson	Willacy
Jones	Wood
Karnes	Zapata
Kaufman	Zavala
Kinney	

**2013.12.20.03** Discussion/Action to approve project manager contract with Less Reddin d.b.a. LongLife Projects for the Caldwell County Judicial Center. Speaker: judge Bonn; Cost: TBD

# **LongLifeProjects**

**Les Reddin Technical Consultant**

**Les Reddin DBA LonglifeProjects  
31106 La Quinta Drive  
Georgetown, Texas  
78628  
Cell  
512-844-2133  
Email  
[longlifeprojects@gmail.co](mailto:longlifeprojects@gmail.co)**

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**Proposal to Caldwell County Judges and Commissioners**

**Program Management /Project Management  
For  
Caldwell County Judicial and Service Center**

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Version 0.0  
12.9.2013

Presented by:  
Les Reddin DBA LongLifeProjects

Submitted to Mack Harrison  
Assistant Criminal District Attorney  
Caldwell County Judicial Center  
201 E. San Antonio Street, P.O. Box 869  
Lockhart, Texas  
78644  
Phone 512-398-1811 ext. 311  
Cell 512-376-3613  
Email  
[mack.harrison@co.caldwell.tx.us](mailto:mack.harrison@co.caldwell.tx.us)

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## Overview

***This proposal is in response to a request for as requested by the Judges and commissioners after approval of qualifications in the commissioners meeting on 12/9/2013.***

***Les Reddin was authorized to start on 12/9/2013 by the commissioner's and the county judge during the meeting in the discussion after approved. This contract will expire on 12/30/2014 if not before this date.***

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✓ **Program Manager for the 12 month long construction project as reported to LongLifeProjects by the commissioners and judge.**

Analysis and recommendations as the County's (owner's) Representative to manage and report on project scope changes, schedule changes and cost changes and report to the commissioners and judges through 2 reporting persons as determined by the commissioners and the Judges.

Specifics are:

- Report to Judge Bonn and Commissioner Munoz on all findings, and developments
- Establish a clear line of communication to the architect and the general contractor and provide meetings to establish goals and progress and weekly expected reports.
- Create monitor and report on schedules, authorized payments, changes directed by the owner, and changes for unforeseen issues
- House all construction meeting minutes and notes and deliver to the architect for inclusion in the documentation deliverable at the end of the project
- Establish close out process and provide a process to clearly direct final pay and all retention payments to the general contractor
- Review and approve on the owners behalf all submittals documents and discrepancies items submitted by the architect, and the general contractor and report to the appropriate county personnel
- Advise the judges and commissioners on best processes, and practices as related to construction methods and items considered as soft cost issues which the owner is responsible for
- Assist in the development of a sustainable process to keep the building fully functional after it is delivered. Either through current resources or outsourced contract.

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## Estimation of hours and days

***It is expected that, if there is county owned data, this estimate can be significantly reduced. However, if data is not available for immediate review and must be collected, this will impact the timeline and the cost for the client. This estimate is based on all project supporting documents being provided by the assigned architect and the awarded general contractor.***

***Also it is further understood that all contracts to the assigned architect and awarded general contractor are negotiated, approved and will also be made available to the P/M Les Reddin DBA LonglifeProjects.***

***Go to next page***

Service	Cost per day	Estimated Days
Program Manager	\$600	152 Total \$91,200
And	\$600	20 Total \$12,000
Project Manager		Grand total \$103,200
Request estimate		
<p>The estimated cost for this service for Program/Project Manager is <b><u>\$91,200</u></b></p> <p>This is based on 2 days per week on site and in the county and 1 day of office work per week. Office work will consist of reports, scanning documents to the drop box account that longlifeprojects will share with the architect and the general contractors superintendent and project manager, and preparing for meetings with agenda driven communications and to the commissioners meetings as set forth in the interview process. Hours per day are expected to be 12 to 16 hours depending on each construction phase.</p> <p>Additional days for specific scheduled events are estimated to be no more than 20 additional days for a total of 172 days. And at cost not to exceed <b><u>\$103,200</u></b> for the project.</p> <p>Extreme Effort will be made to hold and justify any additional days over the 152 day level. Normal factors such as weather will not be included in this day count. Only items at the will of the owners and specific construction milestone events will count and be reported. Work on county holidays will count in this extra day count if specific milestones are to be met.</p> <p>Les Reddin DBA LonglifeProjects is a single owned and operated business and has no other employees</p> <p>Proffessional Liability is not required for program management as they do not design or construct and are working as the owner's representative. And therefore fall under the owner's legal responsibility although not an owner's employee should an architect or contractor issue arise.</p>		
Negotiated estimate	Client name	Final agreement date
152 days plus day count above 152 not to exceed 20 days @ \$600 per day	Caldwell County Judicial and Service Center	12/9/2013
Total Cost not to exceed \$103,200		

Sign and date \_\_\_\_\_

Go to next page

**Owner will:**

Pay monthly as is the normal county check cycle. See direct payment comments below

**Disclaimer**

***Neither LongLifeProjects or Les Reddin will liable for design and constructability, or the actual construction of projects created as a result of this Agreement or any subsequent planning and programming by the firm or organization assigning work to LongLifeProjects.***

Direct payment for monthly invoices is expected. LongLifeProjects is set up for wired payments to save the county processing fees and banking issues if agreed and approved after the first invoice is paid.

# **LongLifeProjects**

**Les Reddin Technical Consultant**

**Les Reddin DBA LonglifeProjects  
31106 La Quinta Drive  
Georgetown, Texas  
78628  
Cell  
512-844-2133  
Email  
[longlifeprojects@gmail.co](mailto:longlifeprojects@gmail.com)**

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**Proposal to Caldwell County Judges and Commissioners**

**Program Management /Project Management  
For  
Caldwell County Judicial and Service Center**

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**Version 0.0  
12.9.2013**

**Presented by:  
Les Reddin DBA LongLifeProjects**

**Submitted to Mack Harrison  
Assistant Criminal District Attorney  
Caldwell County Judicial Center  
201 E. San Antonio Street, P.O. Box 869  
Lockhart, Texas  
78644  
Phone 512-398-1811 ext. 311  
Cell 512-376-3613  
Email  
[mack.harrison@co.caldwell.tx.us](mailto:mack.harrison@co.caldwell.tx.us)**



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## Overview

***This proposal is in response to a request for as requested by the Judges and commissioners after approval of qualifications in the commissioners meeting on 12/9/2013.***

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---

✓ **Program Manager for the 12 month long construction project as reported to LongLifeProjects by the commissioners and judge.**

Analysis and recommendations as the County's (owner's) Representative to manage and report on project scope changes, schedule changes and cost changes and report to the commissioners and judges through 2 reporting persons as determined by the commissioners and the Judges.

Specifics are:

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- Review and approve on the owners behalf all submittals documents and discrepancies items submitted by the architect, and the general contractor and report to the appropriate county personnel
- Advise the judges and commissioners on best processes, and practices as related to construction methods and items considered as soft cost issues which the owner is responsible for
- Assist in the development of a sustainable process to keep the building fully functional after it is delivered. Either through current resources or outsourced contract.

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## Estimation of hours and days

***It is expected that, if there is county owned data, this estimate can be significantly reduced. However, if data is not available for immediate review and must be collected, this will impact the timeline and the cost for the client. This estimate is based on all project supporting documents being provided by the assigned architect and the awarded general contractor.***

***Also it is further understood that all contracts to the assigned architect and awarded general contractor are negotiated, approved and will also be made available to the P/M Les Reddin DBA LonglifeProjects.***

***Go to next page***

Service	Cost per day	Estimated Days
Program Manager	\$600	152 Total \$91,200
And	\$600	20 Total \$12,000
Project Manager		Grand total \$103,200
Request estimate		
<p>The estimated cost for this service for Program/Project Manager is <b><u>\$91,200</u></b></p> <p>This is based on 2 days per week on site and in the county and 1 day of office work per week. Office work will consist of reports, scanning documents to the drop box account that longlifeprojects will share with the architect and the general contractors superintendent and project manager, and preparing for meetings with agenda driven communications and to the commissioners meetings as set forth in the interview process. Hours per day are expected to be 12 to 16 hours depending on each construction phase.</p> <p>Additional days for specific scheduled events are estimated to be no more than 20 additional days for a total of 172 days. And at cost not to exceed <b><u>\$103,200</u></b> for the project.</p> <p>Extreme Effort will be made to hold and justify any additional days over the 152 day level. Normal factors such as weather will not be included in this day count. Only items at the will of the owners and specific construction milestone events will count and be reported. Work on county holidays will count in this extra day count if specific milestones are to be met.</p> <p>Les Reddin DBA LonglifeProjects is a single owned and operated business and has no other employees</p> <p>Proffessional Liability is not required for program management as they do not design or construct and are working as the owner's representative. And therefore fall under the owner's legal responsibility although not an owner's employee should an architect or contractor issue arise.</p>		
Negotiated estimate	Client name	Final agreement date
152 days plus day count above 152 not to exceed 20 days @ \$600 per day  Total Cost not to exceed  \$103,200	Caldwell County Judicial and Service Center	12/9/2013

Sign and date \_\_\_\_\_

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**Owner will:**

Pay monthly as is the normal county check cycle. See direct payment comments below

**Disclaimer**

***Neither LongLifeProjects or Les Reddin will liable for design and constructability, or the actual construction of projects created as a result of this Agreement or any subsequent planning and programming by the firm or organization assigning work to LongLifeProjects.***

Direct payment for monthly invoices is expected. LongLifeProjects is set up for wired payments to save the county processing fees and banking issues if agreed and approved after the first invoice is paid.

COUNTY OF CALDWELL

§

STATE OF TEXAS

§

§

**CALDWELL COUNTY JUDICIAL AND SERVICE CENTER PROJECT  
PROGRAM MANAGER CONTRACT**

Caldwell County (the "County"), a political subdivision of the State of Texas, and Les Reddin d.b.a. LongLifeProjects (the "Program Manager"), collectively the "parties," hereby agree to the following Contract:

1. **Program Manager Services:** The Program Manager will serve as the County's designated representative to the Architect and Construction Manager-at-Risk for the Caldwell County Judicial and Service Center project (the "Project") and provide professional services in the completion of this Project as follows:
  - a. **Scope of Work:** The Program Manager will perform professional services as program manager for the Project, as detailed in the Proposal to Caldwell County Judges and Commissioners—Program Management/Project Management For Caldwell County Judicial and Service Center, dated December 9, 2013, which is incorporated into this Contract as Exhibit 1.
  - b. **Contract Sum:** The County will pay the Program Manager for the performance of the services as detailed in Exhibit 1 the sum of **Six Hundred Dollars (\$600)** per day; total cost not to exceed **One Hundred and Three Thousand, Two Hundred Dollars (\$103,200)**.
  - c. **Invoices:** The Program Manager will submit itemized invoices for services to the County Auditor on a monthly basis by the fifth day of the month following the month in which the services were performed. The County will pay such timely submitted invoices on or before the fifteenth day of the month following the month in which the services were performed.
  - d. **Controlling Provisions:** In the event of any conflict between provisions in Exhibit 1 and provisions in this Contract, provisions in this Contract will control.
  - e. **Modification:** This Contract may not be altered, amended, or modified except in writing signed by each party to the Contract. The parties acknowledge that any such alteration, amendment, or modification must be approved by the Caldwell County Commissioners Court.
  - f. **Term:** This Contract is effective December 9, 2013 and will terminate on December 30, 2014. The County may terminate this Contract earlier if the County provides written acknowledgement that the Project is completed to the County's satisfaction.

2. **General Responsibilities:** In addition to the Scope of Work as described in Paragraph 1.a. above, the Program Manager will comply with the following:
  - a. The Program Manager will work with the County and the County's other contractors and will act on the Owner's behalf to ensure timely completion of the Project.
  - b. The Program Manager will perform all services specifically allocated to it by this agreement as well as those services reasonably inferable from this agreement as necessary for completion of the Project. The Program Manager will perform these services using its best efforts, skills, judgments and abilities, in at least a good and workmanlike manner.
  - c. The Program Manager will cooperate with the Construction Manager-at-Risk and the Architect to complete the Project. The Program Manager will endeavor to further the interests of the County and the Project. The Program Manager will furnish services and oversee the Project in an expeditious and economical manner consistent with the interests of the County and in accordance with the Project schedule.
3. **Time:** Time is of the essence of this Agreement. The Program Manager will work with the County and the County's contractors to ensure the Project is completed according to its timetable.
4. **Vendor Contract Addendum:** The Program Manager will comply with all provisions of the Caldwell County Vendor Contract Addendum, which is incorporated into this Contract as Exhibit 2, except that the Program Manager need not comply with paragraph 4 of Exhibit 2.
5. **Capital Projects Policy:** The County and the Program Manager will comply with Section 6.2 and Section 6.3 of the Caldwell County Capital Projects Policy, which is incorporated into this Contract as Exhibit 3. The County will exempt the Program Manager from the remaining provisions of Exhibit 3. The Program Manager will have the authority to act on the County's behalf with respect to the Project, provided such action does not modify the Project's Guaranteed Maximum Price. Any decision that would modify the Project's Guaranteed Maximum Price will require a change order approved by the Caldwell County Commissioners Court.
6. **Independent Contractor:** The Program Manager will not be considered an employee of the County, but will occupy the status of independent contractor with the County. The Program Manager will perform its tasks and duties consistent with such status, and will make no claim or demand for any right or privilege applicable to an officer or employee of the County, including, but not limited to, worker's compensation, disability benefits, accident or health insurance, unemployment insurance, social security, or retirement membership.
7. **Special Warranties:** The Program Manager will use its best efforts, skill, judgment, and abilities to perform its obligations and to further the interests of the County in accordance with the County's requirements and procedures. The Program Manager

will perform its services in accordance with the highest standards of the Program 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 over the Project. The parties understand that the County is ultimately relying upon the Program Manager's skill and knowledge in performing the services required herein. The Program Manager will use its best efforts to facilitate communication between the County and the County's other contractors so that the County may make informed decisions regarding the Project.

8. **Bonds:** The Program Manager will provide any performance and payment bonds required by state law.

FOR THE COUNTY:

FOR THE PROGRAM MANAGER:

\_\_\_\_\_  
County Judge,  
Caldwell County, Texas

\_\_\_\_\_  
Les Reddin,  
LongLifeProjects d.b.a. Les Reddin

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

# **EXHIBIT 1**

## **EXHIBIT 2**



## **EXHIBIT 3**

**2013.12.20.04** Discussion/Action to approve contract manager at risk contract with Braum & Butler for the Caldwell County Judicial Center. Speaker; Judge Bonn; Cost TBD



**AGREEMENT  
BETWEEN CALDWELL COUNTY AND CONTRACTOR  
FOR FUTURE JUDICIAL CENTER**

This Agreement is made as of December \_\_\_\_\_, 2013 (the "Effective Date"), by and between The Owner: Caldwell County, a political subdivision of the State of Texas (herein "The County" or "Owner") c/o Caldwell County Commissioners Court, 110 S. Main Street, Lockhart, Texas 78644, and Construction Manager at Risk **Braun & Butler Construction, Inc.** for Renovations of the Future Judicial Center (formerly the local Wal-Mart) located at 1703 S. Colorado, Lockhart, Texas (the "Project").

The Owner and the Construction Manager at Risk agree as follows:

**Article 1  
SCOPE OF WORK**

1.1 The Construction Manager at Risk acknowledges and agrees it has a responsibility to act in the best interests of the County in the performance of the contract, and has overall responsibility for and shall provide complete Pre-Construction Phase Services and Construction Phase Services and furnish all materials, equipment, tools and labor as necessary or reasonably inferable to complete the Project, or any phase of the Project, in accordance with the Owner's requirements and the terms of this Agreement.

**Article 2  
CONTRACT DOCUMENTS**

- 2.1 The Contract Documents consist of:
- o This Agreement and all Exhibits attached hereto;
  - o All Addenda issued prior to the Effective Date of this Agreement, and any supplements or modifications to this Agreement to which the parties may agree in writing subsequent to the date hereof;
  - o All Change Orders issued after the Effective Date of this Agreement;
  - o The Schedules, developed by the Construction Manager at Risk and accepted by Owner;
  - o The Drawings, Specifications and other documents developed or prepared by Owner's independent consultants ("Drawings and Specifications"), if any;
  - o The Guaranteed Maximum Price Proposal when accepted by the Owner and executed by Owner and Construction Manager at Risk.
- 2.2 The Contract Documents form the entire and integrated Contract between Owner and Construction Manager at Risk and supersede all prior negotiations, representations or agreements, written or oral, prior to the date of this Agreement.
- 2.3 The term "Construction Manager at Risk" shall be interchangeable with the terms "Construction Manager", "Contractor" and "General Contractor" or other similar terms as appropriate in the Contract Documents.

**Article 3  
DEFINITIONS**

The terms, words and phrases used in the Contract Documents shall have the meanings given in the Uniform General Conditions and as follows:

- 3.1 "Application for Payment" means the document prepared by the Contractor and submitted to the Owner or Owner's Representative showing the Contractor's entitlement to progress payments, the requirements of which are more fully described in Article 10 of the Uniform General Conditions.
- 3.2 "Construction Contingency Allowance" means an amount

allocated by and controlled by the Construction Manager which is included as a line item within the GMP and is further described in Section 13.8.

3.3 "Construction Cost Limitation", or CCL, means the Owner's established upper cost limit, or construction budget, for the Project. CCL includes, without limitation, all costs for construction administration, general conditions, cost of work, contingency, and Pre-Construction Phase fees and Construction Phase fees for the Construction Manager at Risk and all of his vendors, suppliers, and subcontractors. The CCL also includes all construction contingencies. The CCL serves as the Construction Manager at Risk's initial Guaranteed Maximum Price (GMP) for the Project. The CCL may be adjusted by the parties for changes in the scope of the Project before or after acceptance of the Guaranteed Maximum Price Proposal. The CCL does not include Owner's Construction Contingency. The Construction Manager at Risk is obligated to meet all contract conditions while constructing the project within the CCL.

3.4 "Construction Documents" means, collectively, the Uniform General Conditions and Specifications, the Drawings and Specifications, details, Change Orders and other documents prepared by the Owner's consultants that describe the scope and quality of the Project or a Work Package, as applicable, and the materials, supplies, equipment, systems and other elements that are required for construction of the Project that are accepted by the Owner.

3.5 "Construction Manager at Risk" means the legal entity that executes the Agreement to provide preconstruction and construction services for the Project.

3.6 "Construction Phase Fee" shall have the meaning set forth in Article 14 herein.

3.7 "Construction Phase Services" means the coordination, implementation and execution of the Work required by the Contract Documents.

3.8 "Cost of Work" shall have the meaning set forth in Article 13 herein.

3.9 "Guaranteed Maximum Price" (GMP) means the amount proposed by the Construction Manager and accepted by the Owner as the maximum cost to the Owner for construction of the Work in accordance with the Contract Documents, which may be increased or decreased in accordance with the provisions of the Contract Documents. The GMP includes Construction Manager at Risk's Construction Phase Fee, Construction Manager at Risk's General Conditions, the Cost of the Work and the Construction Contingency Allowance.

3.10 "General Conditions"

3.10.1 "Uniform General Conditions" means the additional contract provisions described in section 3.22. Where the Uniform General Conditions differ from the contract, the more stringent provisions govern unless otherwise determined by the Owner.

3.10.2 "Construction Manager at Risk's General Conditions" are Contractor's allowable costs for managing the construction in the field.

3.11 "Monthly Salary Rate" means the amount agreed to by the Owner that can be used on Applications for Payment throughout the Construction Phase to account for the services of Construction Manager's



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BETWEEN CALDWELL COUNTY AND CONTRACTOR  
FOR  
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salaried personnel assigned to the Project. A Monthly Salary Rate must be established for each salaried person and must be approved in writing by the Owner in advance of any Application for Payment for that person. The Monthly Salary Rate is for convenience only and any payments made for Construction Manager's personnel are subject to audit to determine the actual cost of the wages and allowable employer contributions incurred by the Construction Manager for services performed for the Project.

3.12 "Owner", "the "County", "Court" means the Caldwell County Commissioners Court.

3.13 "Owner's Designated Representative" or "ODR" shall have the meaning set forth in Section 8.2 herein.

3.14 "Pre-Construction Phase Fee" shall mean the lump sum amount set forth in Article 14.

3.15 "Pre-Construction Phase Services" means the participation, documentation and execution of the Construction Manager's Pre-Construction Phase deliverables as required by the Contract Documents.

3.16 "Project Schedule" shall mean a schedule for the completion of the Work or a Work Package, as the case may be, submitted by Construction Manager and approved by Owner in accordance with the terms and conditions of any of the multiple GMPs attached hereto and made a part hereof.

3.17 "Project Team" means the Owner, Owner's Designated Representative, Construction Manager, and Owner's consultants, any separate contractors employed by Owner, and other consultants employed for the purpose of programming, design, and construction of the Project. The members of the Project Team will be designated by Owner and may be modified from time to time by Owner.

3.18 "Schedule of Values" shall mean a detailed breakdown of the cost for each classification line item, materials, labor or subcontract for the various portions of the Work supported by such data as is necessary to substantiate its accuracy as the Owner may require.

3.19 "Subcontractor" means a person or entity that has an agreement with the Construction Manager at Risk to perform any portion of the Work.

3.20 "Substantial Completion" of the Work or "Substantially Complete" means that point in which the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents to enable the Owner to use the Project or the agreed, defined portion of the Project, for its intended use, and (i) only minor punch list items or similar minor corrective work remains to be completed; and (ii) a temporary (or partial) certificate of use and occupancy (if issued and required by local governmental authorities) and any other permits or approvals necessary to allow use and occupancy of the Project or the agreed, defined portion thereof, have been issued; and (iii) the Owner's Designated Representative has certified that the Project or the agreed, defined portion thereof, is substantially complete. This date shall be confirmed by a Certificate of Substantial Completion signed by the Owner and Construction Manager.

3.21 "Time of Completion" means with respect to each Work Package, collectively the dates of Substantial Completion and Final Completion as specified in the Project Schedule.

3.22 "Uniform General Conditions" means the Texas Facilities Commissions' Uniform General Conditions, edition 2010 as is available at [http://www.tfc.state.tx.us/divisions/facilities/prog/construct/formsindex/07C%20-%20UGC\\_2010.pdf](http://www.tfc.state.tx.us/divisions/facilities/prog/construct/formsindex/07C%20-%20UGC_2010.pdf).

3.23 "Work" means the provision of all services, labor, materials, supplies, and equipment which are required or reasonably inferable to complete the Project in strict accordance with the requirements of the Contract Documents. Work includes, but is not limited to the Construction Services, and any Additional Services and other services required. The term "reasonably inferable" takes into consideration the understanding of

the parties hereto that not every detail will be shown on the Drawings and included in the Specifications.

3.24 "Work Package" means each separate and distinct portion of the Work which is to be designed and/or constructed by the Owner's consultants, Owner's Designated Representative, the Construction Manager, and/or its Subcontractors or their agents and employees pursuant to the terms and provisions of the Contract Documents. At the time the pricing is complete for a particular Work Package and a Change Order is issued modifying the GMP, to the extent necessary, such Work Package as contemplated by Owner and Construction Manager will be described in more detail in such Change Order and as provided in Article 11 of Exhibit B.

**Article 4  
CONSTRUCTION MANAGER AT RISK  
PRE-CONSTRUCTION PHASE SERVICES**

The Pre-Construction Phase shall be deemed to have commenced on November 1, 2012 and shall continue through completion of the Guaranteed Maximum Price Proposal and procurement of all major Subcontractor agreements for all Work or Work Packages, if applicable. Construction Manager at Risk is not entitled to reimbursement for any costs incurred for Pre-Construction Phase Services performed before the Effective Date of this Agreement. Pre-Construction Phase Services may overlap with Construction Phase Services.

**4.1 GENERAL RESPONSIBILITIES**

4.1.1 Construction Manager shall perform all services specifically allocated to it by the Contract Documents as well as those services reasonably inferable from the Construction Documents as necessary for completion of the Work and the Project. Construction Manager agrees to perform these services using its best efforts, skills, judgments and abilities, in at least a good and workmanlike manner.

4.1.2 Construction Manager shall cooperate with the Owner's Designated Representative and endeavor to further the interests of the Owner and the Project. Construction Manager shall furnish Pre-Construction Phase Services and Construction Phase Services and complete the Project (and each Work Package) in an expeditious and economical manner consistent with the interests of the Owner and in accordance with the Project Schedule.

4.1.3 Construction Manager shall designate a representative authorized to act on the Construction Manager's behalf with respect to the Project.

4.1.4 Construction Manager shall establish procedures for communication and coordination among the Project Team, Subcontractors, separate contractors, and others with respect to all aspects of the construction of the Project, and implement such procedures. Construction Manager and the Project Team shall share documents including submittal tracking, RFI tracking, meeting minutes, photographs, and daily reports.

4.1.5 Construction Manager shall establish and maintain a numbering and tracking system for all Project records, including changes, requests for information, submittals, and supplementary instructions and shall provide updated records at each Owner's meeting and when requested.

4.1.6 If the Owner elects to "fast-track" or develop the Project in multiple stages or Work Packages, Construction Manager shall organize and perform its services as appropriate to each stage or Work Package. Each Work Package will have a unique schedule for completion and a specific GMP and/or Construction Cost Limitation, at Owner's discretion.



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FOR  
FUTURE JUDICIAL CENTER**

4.1.7 Construction Manager shall identify to the Owner the employees and other personnel that it will assign to the Project and provide the Monthly Salary Rate for each of them. Construction Manager shall also identify any consultants that will be performing services for the Project. After execution of this Agreement by the Owner, Construction Manager shall not remove or replace the persons or entities assigned to the Project except with the Owner's written consent, which consent shall not be unreasonably withheld. Construction Manager shall not assign to the Project or contract with any person or entity to which Owner has a reasonable objection. Construction Manager shall promptly update Owner in writing with the list of persons and consultants if they change during the course of the Project.

#### 4.2 GENERAL COORDINATION

4.2.1 The Construction Manager's Pre-Construction Phase Services team shall attend Project Team meetings at regularly scheduled intervals throughout the Pre-Construction Phase. Frequent Project Team meetings are anticipated prior to the Owner's acceptance of the GMP.

4.2.2 Construction Manager shall visit the site and inspect the existing facilities, systems and conditions to insure an accurate understanding of the existing conditions as required.

4.2.3 Construction Manager shall provide recommendations and information to the Project Team on: building systems, equipment and construction feasibility; selection and availability of materials and labor; time requirements for installation and construction; assignment of responsibilities for safety precautions and programs; temporary Project facilities, if any; equipment, materials and services for common use of the Construction Manager and Owner's separate contractors, if any; cost factors, including costs of alternative materials or designs, preliminary budgets, and possible cost savings; recognizing and tracking the resolution of conflicts in the proposed Drawings and Specifications; methods of delivery of materials, systems, and equipment; and any other matters necessary to accomplish the Project in accordance with the Project Schedule and the CCL.

4.2.4 Construction Manager shall assist the Owner in selecting and directing the services of existing facility surveys or other special consultants hired by the Owner to develop additional information for the design or construction of the Project.

4.2.5 At Owner's request, Construction Manager shall attend public meetings and hearings concerning the development and schedule of the Project.

#### 4.3 CONSTRUCTABILITY PROGRAM

4.3.1 Construction Manager shall implement and conduct a constructability program to identify and document Project cost and schedule savings opportunities. The constructability program shall follow accepted industry practices. Whenever the term "value engineering" is used in conjunction with this Agreement or the Project, it has its commonly accepted meaning within the construction industry and does not imply the practice of professional engineering without a license. If any value engineering activities constitute the professional practice of engineering, then such activities shall be performed by an engineer licensed in Texas.

4.3.2 Construction Manager shall prepare a "Constructability Report" identifying items that, in the Construction Manager's opinion, may negatively impact construction of the Project. The Constructability Report shall address the overall coordination of the Drawings and Specifications, and shall identify discrepancies that may generate Change Orders or claims once Project construction commences. The Constructability Report shall be due within seven days of the Effective Date of this Agreement.

4.3.3 Construction Manager shall implement a system for tracking questions, resolutions, decisions, directions and other information matters that arise during the development of the Drawings and Specifications for the Project. The decision tracking system shall be in a

format approved in writing by the Owner and updated at least monthly during the Pre-Construction Phase.

#### 4.4 SCHEDULING

4.4.1 Construction Manager shall develop a critical path method schedule ("CPM Schedule") for Project Team review and the Owner's approval, that coordinates and integrates activities on the Project, including the Construction Manager's services, the work of other consultants and suppliers, and the Owner's activities including, but not limited to, Commissioners Court approval meetings, occupant relocations, etc., with the anticipated construction schedules for other contractors. The CPM Schedule must identify all major milestones through Project Final Completion. The CPM Schedule shall be created and maintained in accordance with the Owner's Specifications using format and software approved by Owner's Designated Representative.

4.4.2 Construction Manager shall update the CPM Schedule throughout the Pre-Construction and Construction Phases but at least monthly to incorporate an updated, detailed listing for all activities of the Project, including, without limitation:

4.4.2.1 Commencement, milestone and completion dates for each phase of construction, including all Work Packages;

4.4.2.2 Times of commencement and completion for each Subcontractor and an actual versus estimated percent completion for each phase and Work Package;

4.4.2.3 Required activity sequences and durations;

4.4.2.4 Contract Document packages, completion dates, Owner Contract Document package review periods, Project building permits acquisition time requirements, construction contract bid dates; and

4.4.2.5 Processing of shop drawings and samples.

4.4.3 The CPM Schedule shall include other detailed schedule activities as directed by the Owner including, but not limited to, Owner-managed work under separate contracts such as project security and property protection.

#### 4.5 CONSTRUCTION COST ESTIMATES

4.5.1 The Construction Manager at Risk shall prepare and provide detailed Construction Cost Estimates of the Construction Project in a form acceptable to the Owner and distribute to the Project Team throughout the duration of the Project. The Construction Manager at Risk shall provide updated Construction Cost Estimates (CCE) as often as requested by the Owner. The Construction Cost Estimates shall affirm the construction cost of the Project to the Owner in writing.

4.5.2 Construction Manager shall provide continuous cost consultation services throughout the duration of the Project, including identification and tracking of decisions that affect the scope or quality of the Project and providing ongoing updates of their cost and budget impact. Construction Manager shall advise the Project Team immediately if the Construction Manager has reason to believe that the most current Construction Cost Estimate for the Project or any Work Package will exceed the Construction Cost Limitation (CCL) or not meet Schedule requirements and recommend reasonable strategies for bringing the Project or Work Package, as applicable, in line with the CCL and the Schedule.

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



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FOR  
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4.5.4 At any time prior to acceptance of a GMP Proposal, should any CCE exceed or fall outside the approved CCL, the Owner and Construction Manager shall negotiate changes to the Work Package or Project requirements or the CCL as required. After acceptance of a GMP Proposal, Owner shall have no obligation to negotiate hereunder.

**4.6 COORDINATION OF CONSTRUCTION DOCUMENTS**

4.6.1 Construction Manager shall review all Drawings and Specifications, and other Construction Documents developed by the Owner's consultants.

4.6.2 Construction Manager shall consult with the Project Team on the selection of materials, equipment, component systems, and types of construction used on the Project and advise the Project Team on site use, construction feasibility, availability of labor and materials, procurement time requirements, and construction coordination.

4.6.3 Construction Manager shall advise the Project Team of any error, inconsistency or omission discovered in the Drawings and Specifications, and other Construction Documents, and recommend alternative solutions whenever the design affects construction feasibility, budget, risks, or schedules (without assuming the Owner's consultant's professional responsibility).

4.6.4 Construction Manager shall advise Owner on reasonable adjustments in the Project scope, quality or other options for keeping the Project or Work Package cost within the CCL.

4.6.5 Construction Manager shall review the Construction Documents for compliance with all applicable laws, rules and regulations.

**4.7 CONSTRUCTION PLANNING AND BID PACKAGE STRATEGY**

4.7.1 Construction Manager shall identify equipment or material requiring extended delivery times and advise Owner on expedited procurement of those items; advise the Project Team on the preparation of performance specifications and requests for technical proposals for the procurement and installation of systems and components and for the procurement of long lead items. If requested by Owner, and subject to Owner's prior written approval, Construction Manager shall issue requests for technical proposals to qualified sources and receive proposals and assist in their evaluation.

4.7.2 Construction Manager shall make recommendations to the Project Team regarding organization of the Construction Documents to facilitate the bidding and awarding of construction subcontracts in a manner that promotes the interests of the Project and the Owner. These recommendations may include, but are not limited to, phased or staged construction or multiple separate contracts. The recommendations shall take into consideration such factors as time of performance, type and scope of work, availability of labor and materials, overlapping trade jurisdictions, provisions for temporary facilities, comparisons of factory and on-site production costs, shipping costs, code restrictions and other constraints.

4.7.3 Construction Manager shall review the Construction Documents with the Project Team to eliminate areas of conflict and overlap in the work to be performed by the various Subcontractors or Owner's separate contractors.

4.7.4 Construction Manager shall develop a bid/proposal package strategy in coordination with the Owner's Designated Representative that addresses the entire scope of Work for each Work Package, phase or stage of the Project. In developing the bid/proposal package strategy, the Construction Manager shall identify all bid/proposal packages on which the Construction Manager intends to submit a self-performance bid/proposal. The bid/proposal package strategy shall be reviewed with the Owner on a regular basis and revised throughout the buyout of the Project so as to best promote the interests of the Project and the Owner.

4.7.5 Construction Manager shall assist the Owner, Owner's other consultants, and the Owner's separate contractors in obtaining all applicable risk management, code, and regulatory agency reviews and approvals for the Project including, without limitation, City of Lockhart, the Texas Department of Licensing and Regulation, Texas Commission on Jail Standards, the State Fire Marshal, the local fire department, and the Owner's insurance provider.

4.7.6 Construction Manager shall advise Owner of any tests to be performed, and assist Owner in selecting testing laboratories and consultants, without assuming direct responsibility for the work of such laboratories and consultants.

4.7.7 Construction Manager shall review the Construction Documents to ensure that they contain adequate provision for all temporary facilities necessary for performance of the Work, and provisions for all of the job site facilities necessary to manage, inspect, and supervise construction of the Work.

4.7.8 Construction Manager shall provide an analysis of the types and quantities of labor required for the Project and review the appropriate categories of labor required for Work Packages, critical phases or stages and make recommendations that minimize adverse effects of labor shortages.

4.7.9 In accordance with Uniform General Conditions, Construction Manager is responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Construction Manager shall provide recommendations and information to Owner and Owner's Designated Representative with respect to the assignment of responsibilities for safety precautions and programs, temporary Project facilities (if any), and equipment, materials, and services for common use of the Subcontractors and verify that such assignments with respect to the Subcontractors is included in the Contract Documents.

**4.8 OBTAINING BIDS/PROPOSALS FOR THE WORK**

4.8.1 Construction Manager shall publicly advertise and solicit competitive lump sum bids/proposals from trade contractors or Subcontractors for the performance of all major elements of the Work other than the minor Work that may be included in General Conditions. Criteria for determining the bid/proposal that provides the best value to the Owner shall be established by the Project Team and included in the request for bids/proposals. The Construction Manager shall notify the Owner in advance in writing of the date it will receive the bids/proposals.

4.8.2 Construction Manager shall schedule and conduct pre-bid conferences with interested bidders/proposers, Subcontractors, material suppliers, and equipment suppliers, and record minutes of the conferences.

4.8.3 Construction Manager and Owner shall review all trade contractor or Subcontractor bids/proposals in a manner that does not disclose the contents of any bid/proposal to persons outside of the Project Team during the selection process. Based on the selection criteria included in the request for proposals, Construction Manager shall recommend to the Owner the bid/proposal that provides the best value for the Work Package or Project. Upon Owner's concurrence in the recommendation, Construction Manager may negotiate the terms of the subcontract with the apparent best value bidder/proposer.

4.8.4 All subcontracts must be on a lump sum basis unless other payment terms are approved in writing and in advance by the Owner's Designated Representative and Owner. Upon Owner's concurrence in the final terms of the subcontract, Construction Manager shall enter into a written subcontract for the subcontract work and promptly provide a copy to the Owner. All bids/proposals shall be publicly available after award of the subcontract or within seven (7) days after the date of final selection, whichever is later.

4.8.5 If Construction Manager reviews, evaluates, and recommends to Owner a bid/proposal from a reputable trade contractor or subcontractor, but Owner requires another bid/proposal to be accepted, Owner shall



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compensate Construction Manager by a change in price, time, or Guaranteed Maximum Price for any additional cost and risk that Construction Manager incurs because of Owner's requirement that the other bid/proposal be accepted.

4.8.6 Construction Manager may seek to self-perform portions of the Work identified for self-performance in the bid/proposal strategy. The Construction Manager must submit a bid/proposal for the self-performance work in the same manner as all other trade contractors or Subcontractors. A minimum of 3 other bids must be obtained on potential self-perform packages. The Owner will determine whether the Construction Manager's bid/proposal provides the best value for Owner, which determination is final. Construction Manager must perform approved self-performance work in accordance with the same terms and conditions as its other Subcontractors. For payment purposes, the Construction Manager shall account for self-performance work in the same manner as it does all other subcontract costs.

4.8.7 Construction Manager shall identify every Subcontractor it intends to use on the Project, including Subcontractors used for self-performed work, to the Owner in writing at least ten (10) days before entering into any subcontract. Construction Manager shall not use any Subcontractor to which Owner has a reasonable objection. Further, Construction Manager shall disclose to the Owner any ownership interest or affiliation between the Construction Manager and any Subcontractor prior to entering into a subcontract, and Owner shall have the right, in its sole discretion, to reject any such Subcontractor. Construction Manager shall not be required to subcontract with any Subcontractor to which it has reasonable objection. Following Owner acceptance of a Subcontractor, that Subcontractor shall not be changed without Owner's written consent, which shall not be unreasonably withheld.

4.8.8 If a selected trade contractor or subcontractor fails to execute a subcontract after being selected in accordance with this section or defaults in the performance of its work, the Construction Manager may, in consultation with the Owner and without further advertising, fulfill the subcontract requirements by selecting a replacement trade contractor or subcontractor, or self perform the work, assuming the Construction Manager performs the work for an amount not to exceed the original price and under the same terms as was offered by the originally selected trade contractor or subcontractor.

**4.9 SAFETY**

4.9.1 In accordance with Owner's Uniform General Conditions, Construction Manager is responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. The safety program shall comply with all applicable requirements of the Occupational Safety and Health Act of 1970 and all other applicable federal, state and local laws and regulations.

4.9.2 Construction Manager shall provide recommendations and information to the Project Team regarding the assignment of responsibilities for safety precautions and programs, temporary Project facilities, and equipment, materials, and services for common use of the Subcontractors. Construction Manager shall verify that appropriate safety provisions are included in the Construction Documents.

**Article 5  
GUARANTEED MAXIMUM PRICE FOR  
CONSTRUCTION SERVICES**

5.1 When the Owner and Construction Manager agree that the Project has been sufficiently developed and documented to allow detailed pricing of its construction, the Construction Manager at Risk shall prepare

and submit a Guaranteed Maximum Price (GMP). The GMP must be prepared and delivered in the format specified by Owner and include, without limitation, the Construction Manager at Risk's General Conditions originally submitted in the RFP response, estimated Costs of Work organized by trade; allowance amounts by item; contingency amounts; the Construction Phase Fee originally submitted in the RFP response, a Contract Time and date of Substantial Completion and other items as required by the Owner. The form shall be attached to the contract as an Exhibit D.

5.2 Construction Manager shall not withdraw its Guaranteed Maximum Price Proposal for the Project or the applicable Work Package(s) for ninety (90) days following submission to the Owner, subject to changes in the Guaranteed Maximum Price Proposal for the Project based on the development of a new Work Package during such time period. During such ninety (90) day period, should the GMP Proposal be unacceptable, the Owner reserves the right to request from other firms competitive sealed proposals with respect to the Project or the applicable Work Package(s) and at the expiration of such ninety (90) day period (or sooner), the Owner may hire such other firm to perform the Construction Phase Services, or balance thereof, in which case the Owner may terminate this Agreement, or the Owner may accept Construction Manager's GMP Proposal and the Construction Manager shall perform the Work covered by such GMP Proposal in accordance with its terms and the terms hereof.

5.3 The GMP Proposal must include a written statement describing how it was derived and prepared. At a minimum, the GMP Proposal must specifically identify the Drawings, Specifications and other construction documents relied on, the addenda incorporated, any exceptions to the Owner's Uniform General Conditions or to the terms of this Agreement, the allowances, and all clarifications and assumptions made by the Construction Manager at Risk.

5.4 In formulating the Guaranteed Maximum Price Proposal, Construction Manager at Risk shall include a contingency "Construction Contingency Allowance" to allow for additional costs of the Work arising out of such development and completion, as well as bidding variations and price escalations which do not qualify for a change order. Amounts attributable to clarifications, assumptions, and further development and completion of the Drawings and Specifications shall be specified in an itemized breakdown as part of the GMP. Wherever in the GMP the Owner's consultants have not developed a full design or specifications to fully describe a building item or system, Construction Manager at Risk shall develop performance based specifications that will be included in the GMP.

5.5 Before final acceptance of the GMP by the Owner, Construction Manager at Risk shall submit for Owner's approval, the number of copies requested by the Owner, complete, bound sets of the drawings, specifications, plans, sketches, instructions, requirements, materials, equipment specifications and other information or documents required so as to fully and completely describe the Project as developed at the time of the GMP.

5.6 The GMP Proposal and the GMP Contract Documents are intended to address all items, costs, contingencies, schedules and other matters necessary and relevant for proper execution and completion of the Work for the Guaranteed Maximum Price. The Construction Manager at Risk shall provide a fully functional and operational facility as intended in the GMP. The GMP Proposal and the GMP Contract Documents are complementary and what is required by one shall be binding as if required by all. If there is an irreconcilable conflict between or among the various documents that make up the GMP Proposal and the GMP Contract Documents, the interpretation that provides for the higher quality of material and/or workmanship shall prevail over all other interpretations.

5.7 The GMP Proposal shall adopt and incorporate all of the terms and conditions of this Agreement and all other documents that comprise the Contract between the Owner and the Construction Manager at Risk. Any



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exceptions to or modifications of such terms and conditions proposed by the Construction Manager at Risk in the GMP Proposal shall not be effective unless they are expressly stated and conspicuously identified in Exhibit K and are specifically accepted and approved by the Owner.

5.8 Following Owner acceptance of the GMP Proposal, Construction Manager at Risk shall continue to monitor any changes to the Construction Documents so that, when complete, the documents incorporate and address all qualifications, assumptions, clarifications, exclusions and value engineering issues contained in the GMP Proposal. The Construction Manager at Risk shall provide to Owner monthly status reports on the progress of incorporation of all such qualifications, assumptions, clarifications, exclusions, value engineering issues and all other matters relevant to the GMP Proposal.

5.9 All contingencies are to be used as mutually agreed upon between the Owner and Construction Manager at Risk. The Construction Manager at Risk shall notify the Owner in writing prior to expending any contingency monies with an explanation as to why use of such funds is warranted. The Construction Manager at Risk will document all contingency expenditures on a contingency expenditure form attached to each monthly billing statement for review by the Owner's Designated Representative and the Architect, who will allow reasonable expenditures.

5.10 As the Cost of Work buyout progresses for those Construction Contingency Allowance items specifically identified in the GMP Proposal, the Construction Contingency Allowance amount shall be reduced by mutual agreement of Owner and Construction Manager at Risk with the deductions returned to the Owner as savings. Any Contingency remaining at the end of the Project shall be returned to the Owner by deductive Change Order.

**Article 6  
CONSTRUCTION MANAGER AT RISK  
CONSTRUCTION SERVICES**

6.1 The Construction Phase shall be deemed to commence upon the earlier of (i) the date specified in a Notice to Proceed issued by Owner after approval of the Guaranteed Maximum Price Proposal specified in such Notice to Proceed.

6.2 Construction Manager at Risk shall designate in writing a representative who is responsible for the day-to-day management of the Construction Services. The designated representative shall be the Owner's primary contact during the construction phase and shall be available as required for the benefit of the Project and the Owner. The designated representative shall be authorized to act on behalf of and bind the Construction Manager at Risk in all matters related to Construction Services including, but not limited to, execution of Change Orders, Applications for Payment and Additional Service Requisitions. The designated representative shall not be changed without advance written approval from the Owner.

6.3 Construction Manager shall attend Owner's regularly scheduled Project progress meetings and fully advise the Project Team of the Project status including schedule, costs, quality and changes. Prior to each meeting, the Construction Manager shall provide the Owner written agenda items for the meeting. Construction Manager shall record and distribute the minutes of each meeting to each Project Team member. The minutes shall identify critical activities that require action and the dates by which each activity must be completed.

6.4 Unless otherwise provided for in the Contract, Construction Manager at Risk shall provide or cause to be provided, and shall pay for all

labor, materials, equipment, tools, construction equipment and machinery, transportation and other facilities and services necessary or reasonably inferable for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated into the Work.

6.5 The Construction Manager at Risk shall be responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work. The Construction Manager at Risk shall keep the Owner informed of the progress and quality of the Work.

6.6 The Construction Manager at Risk warrants to the Owner that the materials and equipment provided under the Contract will be of good quality and new unless otherwise required or permitted by the Contract, that the construction will be free from faults and defects and that the construction will conform to the requirements of the Contract. The Construction Manager at Risk shall be responsible for correcting Work that does not comply with the Contract Documents.

6.7 Construction Manager shall obtain building permits, special permits, licenses, waivers, variances, etc. for permanent improvements as required by law or the Construction Documents. With the assistance of the Owner and Owner's Designated Representative, obtain all approvals required from authorities having jurisdiction over the Project.

6.8 Construction Manager shall coordinate, monitor and inspect the Work of Subcontractors to ensure conformance with the Construction Documents.

6.9 In accordance with the Uniform General Conditions regarding record documents, the Construction Manager shall maintain and deliver the required documents that describe changes or deviations from the Construction Documents that occurred during construction and that reflect the actual "As Built" conditions of the completed Work.

6.10 Construction Manager shall complete any Pre-Construction Phase Services relating to Work Packages that are not complete or that have not commenced as of the commencement of the Construction Phase Services.

6.11 Construction Manager shall provide complete startup of the building systems of the Project per manufacturers' recommendations and the Contract Documents. Construction Manager shall document and certify that all building systems are fully functioning as intended under the Construction Documents and manufacturers recommendations as a condition of Substantial Completion.

6.12 The Construction Manager at Risk's Construction Services and obligations are further described in the Uniform General Conditions and other Contract documents.

**Article 7  
INTENTIONALLY DELETED**

**Article 8  
OWNER'S RESPONSIBILITIES**

8.1 The Owner will provide a preliminary project budget and schedule for the Project. The budget will include the Construction Cost Limitation, contingencies for changes in the Work during construction, and other costs which are the responsibility of the Owner. The schedule will set forth the Owner's plan for milestone dates and completion of the Project.





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8.2 The Owner will designate an Owner representative with authority to act in the Owner's behalf with respect to the Project. The Owner's Designated Representative (ODR) shall examine the documents submitted by the Construction Manager at Risk and shall render decisions pertaining thereto.

8.3 The Owner, at Owner's cost, will secure the services of special consultants to develop such additional information as may be necessary for the design of the project. The Construction Manager at Risk shall provide the Owner with parameters for inclusion in the Owner's instructions to such providers.

8.4 The Owner shall furnish all legal, accounting, auditing and insurance counseling services for itself as may be necessary for the Project.

8.5 The Owner shall furnish required information and services and shall render approvals and decisions as expeditiously as is consistent with reasonable skill and care and the orderly progress of the Construction Manager at Risk's services and of the Work.

8.6 Owner shall have the right to reject any defective Work on the Project. Should Construction Manager refuse or neglect to correct any such Work within a reasonable time after notice, Owner may have the Work corrected and recover all expenses incurred from Construction Manager on demand.

8.7 The Owner may designate one or more Construction Inspectors of its own who shall be given access to the Work as requested or needed. The provision of such Inspectors by Owner shall not reduce or lessen in any respect Construction Manager at Risk's responsibilities for the Work. Construction Manager at Risk shall remain fully and solely responsible for the specifications and other contract documents furnished or provided by Construction Manager at Risk, and for constructing the Project in strict accordance with the Contract Documents.

8.8 The Owner will except the Construction Manager at Risk from the requirements of the Caldwell County Capital Projects Policy. The parties acknowledge this Agreement supersedes the Caldwell County Capital Projects Policy.

**Article 9  
INTENTIONALLY DELETED**

**Article 10  
TIME**

10.1 Time limits stated in the Contract Documents are of the essence of this Agreement.

10.2 Prior to commencement of the Construction Phase Services and concurrently with the submission of the Guaranteed Maximum Price, the Construction Manager at Risk shall submit for the Owner's approval a detailed CPM schedule for the performance of the Construction Phase Services as specified. The Construction Phase Schedule shall include reasonable periods of time for the Owner's and Owner's Designated Representative's review and approval of shop drawings and submissions and for approval of authorities having jurisdiction over the Project.

10.3 Upon acceptance of a Guaranteed Maximum Price Proposal by the Owner, the Construction Phase Schedule shall not be modified except for good cause as approved by the Owner at the Owner's sole option and discretion. The Construction Manager at Risk shall provide the Owner with detailed and accurate monthly invoices which also include the following items:

10.3.1 A copy of the original schedule with marked up changes showing original activities and modified ones (as applicable).

10.3.2 Schedule changes (if any).

10.3.3 Schedule update – progress accomplished thus far.

10.3.4 Next month activities and milestones.

10.3.5 Any time savings or delays experienced thus far and an explanation as to why.

10.3.6 A plan on how the Construction Manager at Risk intends to recover from any delays.

10.3.7 Status of buy-outs against the GMP and technical submittals and shop drawings.

10.3.8 Any safety incidents recorded for the period covered in the report.

**Article 11  
PAYMENTS**

11.1 Payments for Pre-Construction Phase Services shall be made after GMP Acceptance. Where multiple GMPs are contemplated, Pre-Construction Phase Service Costs shall be proportionally allocated and payments shall be made after each GMP is accepted. Payments for Construction Phase Services shall be made as provided for in the Uniform General Conditions and the Project Specifications.

11.2 All payment requests shall be submitted on approved forms with a Schedule of Values approved by the Owner. Billings shall accurately and completely detail Subcontractor payment requests and payments.

11.3 Payment for approved Additional Services and Reimbursable Expenses shall be made monthly upon presentation of the Construction Manager at Risk's statement of services rendered or expenses incurred.

11.4 With each application for payment, Construction Manager at Risk shall submit all receipts, invoices with check vouchers or other evidence of payment, petty cash account information, payrolls, and any and all other evidence which Owner or its designated representatives shall deem necessary to support the amount requested. This requirement normally will be waived unless payment is for pre-approved Time and Material work, or if the Owner exercises its right to audit per Section 11.18.

11.5 The Construction Manager at Risk's Construction Services Fee shall be shown as a separate line item on the schedule of values. In determining the percentage of completion, Construction Manager at Risk shall use the lesser of the total percentage of the Work actually completed for each classification on the schedule of values, or the percentage of the Guaranteed Maximum Price allocable to that item which has been actually incurred and demonstrated as an expense by the Construction Manager at Risk. The amount requested for such fee shall be in the same proportion to the total fee as the amount requested for the Cost of the Work relative to the total Cost of the Work used in deriving the then current Guaranteed Maximum Price.

11.6 Retainage as specified in the Uniform General Conditions will be applied to the entire amount requested including the Cost of the Work and the Construction Manager at Risk's Construction Phase Fee. Retainage will not be withheld from payments for Pre-Construction Phase Services.

11.7 Each schedule of values submitted shall maintain the originally established value for each work classification line item or subcontractor, and shall contain any revisions to costs or cost estimates for each such classification or subcontractor. The format and tracking method of the original schedule of values and of all updates thereto shall be subject to the approval of Owner. The Owner may require that payment applications be submitted electronically. If at any time, the amount shown on the schedule of values exceeds the Guaranteed Maximum Price allocable to that classification or subcontractor, then the amount payable to Construction



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Manager at Risk by Owner shall be reduced by the amount of such excess. At all times, the estimated cost of performing the uncompleted and unpaid portion of the Work (including Construction Manager at Risk's fee) shall not exceed the unpaid balance of the Guaranteed Maximum Price (less retainage on Work previously completed).

11.8 Payments to Subcontractors included in an application for payment shall not exceed the percentage of Work allocable to that Subcontractor for each respective schedule of values classification which has been actually completed.

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

11.10 Owner is a governmental entity and materials and services utilized in the construction of the Project shall be exempted from state and local taxes. Construction Manager is responsible for taking full advantage of all tax exemptions applicable to the Project. Owner will deduct from the Applications for Payment and from the Application for Final Payment any taxes paid for materials or services that were entitled to tax exemption.

11.11 Construction Manager at Risk's request for final payment shall not be made until Construction Manager at Risk delivers to Owner a complete release of all liens and/or bond claims arising out of this Agreement and an affidavit that, to the best of Construction Manager at Risk's information or knowledge, the release includes and covers all materials and services over which Construction Manager at Risk has control and for which a lien and/or bond claim could be filed. Alternatively, Construction Manager at Risk may furnish a bond satisfactory to Owner to indemnify Owner against any lien. If any lien remains unsatisfied after all payments are made, Construction Manager at Risk shall refund to Owner all moneys Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees, and Owner shall have all remedies at law and in equity.

11.12 Construction Manager's Application for Final Payment shall not be made until all Work is completed and all requirements of the Contract Documents have been satisfied including (1) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (2) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, and (3) consent of surety, if any, to final payment (using the AIA Document G707, April 1970 edition, or in such form otherwise reasonably satisfactory to Owner, (4) an all bills paid affidavit is furnished to Owner which conforms to the provisions of Sec. 53.085 of the Texas Property Code and which certifies that (x) all bills have been paid, except as to those bills to be paid fully from the funds paid for final payment and (y) to the best of Construction Manager information, knowledge and belief, all known debts and claims arising from the Project have been satisfied, and (5) a release of the Construction Manager's constitutional and statutory mechanic's lien or any other claim for payment, conditioned only upon the collection of funds paid to Construction Manager for final payment. Additionally, Construction Manager shall, as a condition precedent to final payment, deliver or furnish to Owner: (1) such documentation and assignments with regard to warranties as required by this Agreement; (2) such drawings and record documents as required by this Agreement or as otherwise required by the Contract Documents; (3) operations and maintenance manuals, records, instructions, and data, including the information required by this Agreement; (4) keys, access cards, and any other items for access to and security of the premises; (5) spare parts, overages, and maintenance materials; (6) such other close-out submittals or documentation required by the Contract Documents; (7) and a duly executed Affidavit of Completion in form ready for filing in the Real

Property Records of the county in which the Project is located, signifying that the Work under the Contract is complete under the applicable mechanic's lien laws. As a further material term of this Agreement (which hereby survives final payment), Construction Manager shall furnish to Owner within thirty (30) days after final payment, an unconditional bills paid affidavit and waiver/release of lien from each of its Subcontractors and suppliers who were to be paid from the final payment. If any Subcontractor or supplier refuses to furnish such a waiver/release, or in the event that a claim for payment or lien has been asserted by a Subcontractor or supplier furnishing Work to the Project, upon Owner's request, Construction Manager shall furnish a surety bond reasonably acceptable to Owner to release such claim against Owner and lien, if any, and otherwise fully comply with the provisions of Section 53.171 through 53.174 of the Texas Property Code. If Construction Manager fails to furnish such waiver/release or such lien release bond as required herein, Owner is hereby authorized to take such action, as it deems reasonably necessary to protect itself from such claim or lien and to recover from Construction Manager such costs reasonably incurred. If any lien is asserted against Owner after all payments are made, Construction Manager shall reimburse Owner for all damages and costs Owner may incur in discharging such lien, including all costs or court and reasonable attorneys' fees, and Owner shall retain all other remedies available to it at law and in equity.

11.13 Owner shall have no obligation to make final payment until a final accounting of the Cost of the Work has been submitted by Construction Manager at Risk and has been verified by Owner or Owner's representatives. The aggregate total of payments to Construction Manager at Risk shall not exceed the total of the actual Cost of the Work as verified by Owner or Owner's representative from Construction Manager at Risk's final accounting plus the applicable Construction Manager at Risk's Construction Fee, as certified for payment in accordance with the Contract. In no event shall the aggregate sum of Construction payments to the Construction Manager at Risk exceed the Guaranteed Maximum Price. If payments made to Construction Manager at Risk exceed that which is due and owing, then Construction Manager at Risk shall promptly refund such excess to Owner.

11.14 Notwithstanding any other contractual provision to the contrary, Owner shall not be obligated to make any payment to the extent necessary to protect the Owner from loss (whether a progress payment or final payment) to Construction Manager at Risk under any of the following circumstances if the making of such payment would be materially prejudicial to the Owner:

11.14.1 Construction Manager at Risk is in breach or default under this Agreement;

11.14.2 Any part of such payment is attributable to services which are not performed in accordance with this Agreement; provided, however, such payment shall be made as to the part thereof attributable to services which were performed in accordance with this Agreement;

11.14.3 The payment request has insufficient documentation to support the amount of payment requested for Project costs; provided, however, Owner shall pay for allowable Project costs for which there is sufficient documentation;

11.14.4 Construction Manager is in violation of the applicable laws, the payment request does not include bills paid affidavits from all suppliers and Subcontractors providing materials or services during the period prior to the date of the request, or has failed to make payments promptly to consultants or other third parties used in connection with any services for which Owner has made payment to Construction Manager at Risk;

11.14.5 Construction Manager is insolvent, makes a general assignment for the benefit of its creditors or otherwise seeks protection under the laws and regulations of the bankruptcy courts;

11.14.6 Construction Manager fails to obtain, maintain or renew



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insurance coverage as required by the Agreement;

11.14.7 If Owner, in its good faith judgment, determines that the portion of the compensation then remaining unpaid will not be sufficient to complete the services in accordance with this Agreement; or

11.14.8 Construction Manager at Risk has persistently failed to meet schedule requirements.

11.15 Nothing contained herein shall require the Owner to pay the Construction Manager at Risk an aggregate amount for Construction Services that exceeds the Guaranteed Maximum Price or to make any payment if, in the Owner's belief, the cost to complete the Work would exceed the Guaranteed Maximum Price less previous payments to Construction Manager at Risk.

11.16 No partial payment made hereunder shall constitute, or be construed to constitute, final acceptance or approval of that part of the services to which such partial payment relates, or a release of Construction Manager at Risk from any of its obligations hereunder or liabilities with respect to such services.

11.17 Construction Manager at Risk shall promptly pay all bills for labor and material performed and furnished by others in connection with the performance of the services.

11.18 Owner shall have the right to verify and audit the details set forth in Construction Manager at Risk's billings, certificates, accountings, cost data, and statements, either before or after payment, by (1) inspecting the books and records of Construction Manager at Risk during normal business hours; (2) examining any reports with respect to this Project; (3) interviewing Construction Manager at Risk's business employees; (4) visiting the Project site; and (5) other reasonable action. Construction Manager at Risk's records shall be kept on the basis of generally accepted accounting principles. Each party will be responsible for its own costs if the Owner conducts an audit.

11.19 This Agreement is subject to the assessment of liquidated damages against Construction Manager. Amounts assessed as liquidated damages, and other amounts to which Owner is entitled by way of setoff or recovery, may be deducted from any moneys due Construction Manager.

11.20 The acceptance by Construction Manager at Risk 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 at Risk or Construction Manager at Risk'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 at Risk as unsettled at the time of the final request for payment.

**Article 12  
INTENTIONALLY DELETED**

**Article 13  
COST OF THE WORK**

13.1 The term "Cost of the Work" means costs which the Construction Manager at Risk actually and necessarily incurs constructing the Work in strict compliance with the Contract Documents. Cost of the Work includes the cost of Construction Manager at Risk's General Conditions for the Work and the cost of the work itself. The costs associated with Pre-Construction Phase and Construction Phase fees are not included in the Cost of the Work.

13.2 References in the Uniform General Conditions relating to adjustments in "cost" or "costs" refer to adjustments to the Cost of the Work.

13.3 Construction Manager is entitled to receive payment for the actual cost of the allowable cost of the Work items incurred after receipt of Owner's written authorization to commence the Construction Phase Work through Final Completion of the Project. Construction Manager is not entitled to reimbursement for Cost of the Work costs incurred before receipt of Owner's written authorization.

13.4 Cost of the Work includes:

13.4.1 Costs of materials and equipment purchased directly by the Construction Manager and incorporated into or consumed in the performance of the Work, including transportation charges, and a reasonable and customary allowance for waste and spoilage. Payment for stored materials is subject to the Uniform General Conditions;

13.4.2 Costs of site debris removal and disposal in accordance with all applicable laws and regulations if not otherwise included in General Conditions Cost;

13.4.3 Payments made to Subcontractors and their vendors or suppliers by Construction Manager for the subcontract work in accordance with the Construction Documents and the requirements of the subcontracts with the Subcontractors, vendors or suppliers;

13.4.4 Payments earned by Construction Manager for self-performed subcontract Work, other than Work covered under General Conditions Cost, in accordance with the Construction Documents and the terms of this Agreement and approved by the Owner; and

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

**13.5 CONSTRUCTION MANAGER GENERAL CONDITIONS**

13.5.1 Construction Manager is entitled to receive payment for the actual cost of the allowable General Conditions items incurred after receipt of the first Notice to Proceed from the Owner with construction of the Work through Substantial Completion of the Project plus thirty (30) calendar days. Construction Manager is not entitled to reimbursement for General Conditions Costs incurred before receipt of the first Notice to Proceed. General Conditions Costs incurred after Substantial Completion must be approved in advance by the Owner in writing.

13.5.2 Allowable General Conditions items are identified by attached Exhibit C. These items shall be included in the Construction Manager at Risk's General Conditions (sometimes referred to as "General Conditions Costs") amount shown as a line item in the Guaranteed Maximum Price Proposal and as detailed on the Schedule of Values.

**13.6 COSTS NOT INCLUDED IN THE COST OF WORK OR GENERAL CONDITIONS COST**

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

13.6.1 Costs including, but not limited to, costs arising from failure to perform of any Subcontractor or the bankruptcy or insolvency of any Subcontractor, except that the contingency allowance may cover increases in cost of work due to changes in subcontractors;

13.6.2 Legal and administrative costs to review and negotiate these Contract Documents;

13.6.3 Travel and subsistence expense of Construction Manager at Risk, its officers or employees incurred while traveling between the Project and Construction Manager at Risk's principal or branch offices, and travel in the metropolitan area of the Project, except as allowed by the General Conditions;



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13.6.4 Fines, penalties, sanctions or impositions assessed or imposed by any governmental body, instrumentality or tribunal arising from the fault of Construction Manager at Risk;

13.6.5 Costs incurred by Construction Manager at Risk resulting from the failure of Construction Manager at Risk to coordinate its work with that of Owner and its contractors, if any, after agreeing to the schedules therefore, or failure of Construction Manager at Risk to comply with directives of Owner not in conflict with said schedules;

13.6.6 Costs resulting from the failure of Construction Manager at Risk to procure and maintain insurance as and to the extent required by the Contract Documents;

13.6.7 Any and all personnel costs, including, without limitation, wages, salaries, and benefits, except for personnel based at the site office and the Project Manager assigned to this Project and only as specifically provided herein;

13.6.8 Any and all overhead expense or office expense at any location, except site office expense to the extent specifically included herein;

13.6.9 Costs related to Construction Manager at Risk's indemnification obligations under the Contract;

13.6.10 The cost of capital, including, without limitation, interest on capital, regardless of whether it is related to the Project;

13.6.11 Any cost arising out of a breach of this Contract or the fault or negligence of Construction Manager at Risk, its Subcontractors, or any person or entity for whom they may be liable, including, without limitation, costs related to defective, rejected, or nonconforming work, materials or equipment, damage to persons or property;

13.6.12 Liquidated damages imposed by Owner for failure of Construction Manager at Risk to complete the Work within the Contract Time; and

13.6.13 Any and all costs not specifically authorized herein, including, without limitation, any cost which would cause the Guaranteed Maximum Price to be exceeded.

**13.7 DISCOUNTS, REBATES AND REFUNDS**

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

13.7.1 All tools and excess materials purchased with proceeds from this contract shall be inventoried and surrendered to the Owner upon final completion of the project;

13.7.2 If Owner makes funds available to Construction Manager at Risk, discounts earned by the Construction Manager at Risk through advance or prompt payments. The Construction Manager at Risk shall obtain all possible trade and time discounts on bills for material furnished, and shall pay said bills within the highest discount periods. The Construction Manager at Risk shall purchase materials for this Project in such quantities as will provide the most advantageous prices to the Owner;

13.7.3 Rebates, discounts, or commissions allowed to and collected by the Construction Manager at Risk from suppliers of materials or from subcontractors, together with all other refunds, returns, or credits received for return of materials, or on bond premiums, or insurance and sales taxes; and

13.7.4 Construction Manager at Risk shall reimburse Owner for deposits made by Owner and not returned to Owner due to the fault of the Construction Manager at Risk. Should Construction Manager at Risk not promptly so reimburse Owner upon demand, Owner shall be entitled to recover said amount from Construction Manager at Risk, including, but not limited to, by deducting the amount from payments due the Construction Manager at Risk.

**13.8 CONSTRUCTION CONTINGENCY ALLOWANCE**

13.8.1 The Guaranteed Maximum Price Proposal shall include a Construction Contingency Allowance amount to be used to fund increases in the Cost of Work of the Project identified through the refinement, development and completion of the Construction Documents or procurement of the Work. The Construction Manager shall establish the Construction Contingency Allowance based upon its assessment of the risk to the GMP from such elements as unforeseen conditions, market uncertainty, conflicts in the documents, site logistics, and the complexity of the Project. Construction Manager shall illustrate this contingency in the GMP Schedule of Values. All non-scope changes to the Project are to be paid from this line item unless otherwise noted herein. All buyout savings on trade packages will be added to this amount. All buyout shortfalls will be subtracted from this amount.

13.8.2 Any re-allocation of funds from the Construction Contingency Allowance to cover increases in the Cost of Work will be documented by Change Order approved by the Construction Manager, Owner's Designated Representative and Owner. Such approval by these parties will not be unreasonably withheld and will indicate that the cost of the Work is reasonable and the adjustment has been properly documented. In written Change Orders to use the Construction Contingency Allowance, the Construction Manager shall provide detailed documentation of the scope of Work affected and the bases for any increases in costs. The Construction Manager at Risk will document all contingency expenditures on a contingency expenditure form attached to each monthly billing statement for review by the Owner's Designated Representative and the Architect, who will allow reasonable expenditures.

13.8.3 Upon completion of bidding of the final trade package or one (1) month after the acceptance of each GMP, whichever comes first, if the Construction Contingency Allowance exceeds three percent (3%) of the GMP, the excess shall be released to the Owner by Change Order. Any residual Construction Contingency Allowance shall be released to the Owner by Change Order at Substantial Completion or before by mutual agreement of the parties. If, at any time, the Construction Contingency Allowance is exhausted, the Construction Manager will cover additional contingency costs from the Construction Phase Fee.

**Article 14  
CONSTRUCTION MANAGER AT RISK'S FEE**

**14.1 PRE-CONSTRUCTION PHASE FEE**

14.1.1 The Pre-Construction Phase Fee is the total compensation payable to the Construction Manager for the performance of Pre-Construction Phase Services, except for Additional Pre-Construction Phase Services approved in advance and in writing by the Owner.

14.1.2 Except as specifically allowed in Sections 14.1.3, the Construction Manager shall not be entitled to any increase in the Pre-Construction Phase Fee for any costs, expenses, liabilities or other obligations arising from the performance of Pre-Construction Phase Services.

14.1.3 If the scope of the Project is changed materially, the Pre-Construction Phase Fee shall be equitably adjusted. There shall be no adjustments in the Pre-Construction Phase Fee following acceptance of the GMP Proposal.

**14.2 CONSTRUCTION PHASE FEE**

14.2.1 Construction Manager's "Construction Phase Fee" is the maximum amount payable to the Construction Manager for any cost or profit expectation incurred in the performance of the Work that is not specifically identified as being eligible for reimbursement by the Owner elsewhere in the Agreement. References in the Uniform General Conditions to Construction Manager's "overhead" and "profit" mean the Construction Manager's Construction Phase Fee. The Construction Phase Fee includes, but is not limited to, the following items.



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14.2.2 All profit, profit expectations and costs associated with profit sharing plans such as personnel bonuses, incentives, and rewards; company stock options; or any other like expenses of the Construction Manager.

14.2.3 Salaries of Construction Manager's officers, project manager(s), estimators, schedulers and all other employees not performing services directly related to the Project.

14.2.4 Any and all overhead, labor or general expenses of any kind unless specifically allowed under General Conditions Cost. These costs include, but are not limited to: costs for the purchase, lease, rental, allowance or maintenance of vehicles, radios/communication equipment, jobsite computers, copiers and other business equipment, specialized telephone systems and cellular/digital phones; trade or professional association dues; costs for hiring and/or relocation of any of the Construction Manager's personnel; and travel, per diem and subsistence expense of Construction Manager, its officers or employees except as specifically allowed under General Conditions Cost.

14.2.5 Any financial costs incurred by the Construction Manager including the cost of capital or interest on capital, regardless of whether it is related to the Project, and costs associated with construction warranty reserves.

14.2.6 Any legal, accounting, professional or other similar costs incurred by the Construction Manager, including costs incurred in connection with the prosecution or defense any dispute, mediation, arbitration, litigation or other such proceeding related to or arising from the Project.

14.2.7 Any Federal and/or State income and franchise taxes paid by Construction Manager. Any fines, penalties, sanctions or other levies assessed by any governmental body against Construction Manager.

14.2.8 Any cost arising out of a breach of this Agreement or the fault, failure or negligence of Construction Manager, its Subcontractors, or any person or entity for whom they may be liable. These costs include, without limitation: costs to remedy defective, rejected, or nonconforming work, materials or equipment; costs due to failure to coordinate the Work or meet CPM Schedule milestones; costs arising from Construction Manager's contractual indemnification obligations; liquidated or actual damages imposed by Owner for failure to complete the Work or Work Package within the Time of Completion; costs due to the bankruptcy or insolvency of any Subcontractor; and damage or losses to persons or property.

14.2.9 The cost of any and all insurance deductibles payable by the Construction Manager and costs due to the failure of Construction Manager or any Subcontractor to procure and maintain insurance as and to the extent required by the Contract Documents.

14.2.10 Any and all costs that would cause the Guaranteed Maximum Price for the Work or any Work Package, as applicable, minus the amounts allocated in the GMP for the Construction Contingency Allowance, to be exceeded.

14.2.11 Any and all costs not specifically identified as an element of the Cost of Work.

**Article 15  
CONTRACT SAVINGS**

15.1 If the allowable, final, verified, audited amount of the General Conditions Cost, Cost of the Work, and Construction Contingency Allowance is less than the amount established for each of those categories in the originally approved Guaranteed Maximum Price Proposal, the entire difference shall be credited to the Owner as savings and the final contract amount shall be adjusted accordingly. Owner shall be entitled to retain

100% of the balance of any unused allowance amount.

15.2 Owner shall be entitled to recover any savings realized between the Guaranteed Maximum Price and the buyout price for subcontracting Work, provided however, that Construction Manager may use such savings to offset other buyout packages that exceed the amounts identified in the initial Guaranteed Maximum Price, so long as the total Cost of Work proposed in the Guaranteed Maximum Price does not increase.

15.3 Owner shall be entitled to recognize and recover 100% of any savings identified by cost review or audit at any time, before or after final payment.

**Article 16  
PRE-EXISTING CONDITIONS, DESIGN ERRORS,  
AND OMISSIONS**

16.1 The Construction Manager at Risk acknowledges that it was afforded unrestricted access to the existing improvements and conditions on the Project site and it has thoroughly investigated those conditions. The results of Construction Manager at Risk's investigation have been taken into account in establishing the Guaranteed Maximum Price of the Work. Therefore, Construction Manager at Risk shall not make or be entitled to any claim for any adjustment to the Contract Time or the Contract Sum for Pre-Construction Phase Services or for Construction Phase Services arising from Project conditions that Construction Manager at Risk discovered or, in the exercise of reasonable care, should have discovered in Construction Manager at Risk's investigation. The Construction Manager at Risk shall not be liable for existing environmental conditions including but not limited to environmental impact issues not revealed by Geotechnical Investigation. All environmental remediation shall be by the Owner.

16.1.1 Construction Manager at Risk is responsible for informing the owner of any error, omission, conflict, inconsistency, or lack of clarity the Construction Manager at Risk becomes aware of in the Construction Documents. Before submitting its Guaranteed Maximum Price Proposal, the Construction Manager shall review the drawings, specifications and other Construction Documents and notify the Owner of any errors, omissions or discrepancies in the documents of which it is aware. Construction Manager shall not make or be entitled to any claim for any adjustment to the Time of Completion or the Contract Sum for errors or omissions in the Construction Documents that Construction Manager discovered or, in the exercise of reasonable care, should have discovered in Construction Manager's Pre-Construction Phase design review process that Construction Manager did not bring to the attention of the Owner and the Owner's Designated Representative in a timely manner.

**Article 17  
BONDS AND INSURANCE**

17.1 Within ten (10) days of acceptance by the Owner of a Guaranteed Maximum Price Proposal, Construction Manager at Risk shall provide performance and payment bonds on forms prescribed by Owner, in accordance with the requirements set forth in the Uniform General Conditions. The penal sum of the payment and performance bonds shall be equal to the Guaranteed Maximum Price. When a Guaranteed Maximum Price is established, Construction Manager at Risk shall provide revised performance and payment bonds in the amount of the GMP. If construction is phased or staged with different Guaranteed Maximum Prices established at different times, the penal sum of the bonds shall be increased at the start of each stage or phase based on the cumulative total value of all Guaranteed Maximum Prices in effect.

17.2 A Certificate of Insurance indicating the expiration date of the



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Construction Manager at Risk's general liability insurance is required. No policy providing such insurance shall be cancelled without thirty (30) days prior written notice to the Owner.

17.3 Construction Manager shall not commence Work under the Agreement until it has obtained all required insurance and until evidence of the required insurance has been reviewed and approved by the Owner. Owner's review of the insurance shall not relieve nor decrease the liability of the Construction Manager. Prior to commencing any work under the Agreement, the following insurance coverage shall be provided by the Construction Manager at Risk:

17.3.1 Pre-Construction Phase Services: Construction Manager at Risk shall provide coverage for Employer's Liability, Workers' Compensation, Comprehensive General Liability, and Comprehensive Automobile Liability, as set forth in Section 17.10 and the Uniform General Conditions.

17.3.2 Construction Phase: In addition to the coverage required for the Pre-Construction Phase Services, Construction Manager at Risk shall provide Owner's and Contractor's Protective Liability, General Liability Umbrella and Builders Risk Insurance as set forth in Section 17.10 and the Uniform General Conditions of the contract.

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

17.5 Construction Manager at Risk shall develop the GMP including the cost of all premiums for insurance coverage required by the Agreement, Uniform General Conditions, or the Contract Documents. The GMP should not include the cost of premiums for any additional insurance coverage desired by the Construction Manager at Risk for the Project. No mark-up shall apply to Insurance premiums.

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

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

17.8 Owner shall be entitled, upon request, and without expense, to receive complete copies of the policies with all endorsements and may make any reasonable requests for deletion, or revision or modification of particular policy terms, conditions, limitations, or exclusions, except where policy provisions are established by law or regulation binding upon the parties to this Agreement or the underwriter of any of such policies. Damages caused by the Construction Manager and not covered by insurance shall be paid by the Construction Manager.

17.9 During construction, the Owner has the option to audit the Construction Manager at Risk's insurance costs.

17.9.1 If the audit indicates that actual insurance costs are less than the costs included by the Construction Manager at Risk then Construction Manager at Risk shall issue a deductive Change Order to the Owner.

17.10 Notwithstanding Exhibit B, Contractor shall purchase and maintain the insurance (with a minimum "Best" rating of "A-V") described below to cover the Work and all obligations under the Contract Documents and the Agreement, whether the Work and such obligations are required to be performed or furnished by Contractor, any Subcontractor, any Supplier, or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of

them may be liable:

17.10.1 Workers' Compensation insurance to cover full liability under the workers' compensation laws of Texas and the state of hire, including coverage for the benefits provided under the United States Longshoremen and Harbor Worker's Act and under the Jones Act, if applicable. Such coverage shall also include an "all-states" endorsement.

17.10.2 Employer's Liability insurance with limits of \$500,000 per accident for Bodily Injury by accident; \$500,000 per employee for Bodily Injury by disease; and \$500,000 policy limit for Bodily Injury by disease.

17.10.3 General Liability insurance with coverage written at least as broad as that of the standard Commercial General Liability insurance policy ("Occurrence Form"), including, but not limited to, hazards of operations (including explosion, collapse, and underground coverage), independent contractors, contractor's protective liability, products and completed operations, and personal injury liability with the contractual exclusion deleted. The insurance required shall be written for not less than the following limits of liability: \$1,000,000 per occurrence and in the general aggregate per Project for bodily injury and property damage; \$1,000,000 per occurrence and \$1,000,000 in the aggregate for products and completed operations; and \$1,000,000 per occurrence and \$1,000,000 in the aggregate for personal injury and advertisers liability. The policy shall include contractual liability coverage in the amounts of (i) \$1,000,000 each occurrence and \$1,000,000 aggregate for Bodily Injury and (ii) \$1,000,000 each occurrence and \$1,000,000 annual aggregate for Property Damage. The policy shall include Personal Injury: \$1,000,000 annual aggregate

17.10.4 Automobile Liability insurance covering all owned, non-owned, and hired vehicles. Such insurance shall be written at least as broad as that of the Standard Comprehensive Automobile Liability policy and shall be written for not less than \$1,000,000 per occurrence for bodily injury and property damage. If transporting hazardous materials, the policy shall include endorsement MCS90.

17.10.5 Environmental Impairment and/or Pollution Liability Insurance for bodily injury, property damage and environmental clean-up arising from the handling, removal, storage, testing, transportation and disposal of hazardous materials of pollutants. If Contractor uses vehicles to transport hazardous materials, wastes, or substances, such insurance shall apply to accidents during transportation. Coverage shall be provided with limits of liability no less than \$1,000,000 per claim/ \$1,000,000 in the aggregate. Such insurance shall be maintained for two (2) years following the start of the Work by the Contractor.

17.10.6 Professional Liability Insurance coverage for liabilities arising out of the Work being provided hereunder with limits of liability of not less than \$1,000,000.

17.10.7 Excess or Umbrella Liability insurance with coverage written at least as broad as those of the primary policies required by subparagraphs 17.10.2, 17.10.3, and 17.10.4 above and written for not less than \$1,000,000 per occurrence. If an aggregate limit applies to this coverage, it shall be on a "per project" basis.

17.10.8 The Contractor shall purchase and maintain Builders Risk Insurance for the full cost and duration of the construction.



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**Article 18  
DISPUTE RESOLUTION**

18.1 All disputes to which the Owner is a party that arise from this Agreement or the Project shall be resolved pursuant to the terms set forth in Exhibit "B" Caldwell County Vendor Contract Addendum, Section 1.

**Article 19  
PROJECT TERMINATION AND SUSPENSION**

19.1 This Agreement may be terminated during the Pre-Construction Phase by either party upon fifteen (15) days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination, and breach is not cured or an acceptable plan to cure the breach is not established within the fifteen (15) day period.

19.2 This Agreement may be terminated by the Owner for Owner's convenience pursuant to Article 14 of the Uniform General Conditions.

19.3 If the Owner elects not to accept a GMP Proposal or the parties are unable or unwilling to agree on a GMP for the Project or any Work Package within ninety (90) days after submission by the Construction Manager of such GMP Proposal in accordance with Section 5.2, the Owner may terminate this Agreement effective immediately upon written notice to Construction Manager.

19.4 In the event of termination pursuant to Section 19.3 or in the event of termination that is otherwise not the fault of the Construction Manager, the Construction Manager shall be entitled to compensation for all services performed to the termination date provided, however, Construction Manager has delivered to Owner such statements, accounts, reports and other materials as required together with all reports, documents and other materials prepared by Construction Manager prior to termination. Upon such payment, Owner shall have no further obligation to the Construction Manager.

19.5 Termination of this Agreement shall not relieve Construction Manager or any of its employees, subcontractors, or consultants of liability for violations of this Agreement or for any act or omission, or negligence of Construction Manager related to the Project. In the event of a termination, Construction Manager hereby consents to employment by Owner of a substitute construction manager to complete the services under this Agreement.

19.6 In the event of termination, Owner shall have the right to use any documents or other materials prepared for the Project and the ideas and designs they contain for the completion of the services described by this Agreement, for completion of the Project, or for any other purpose, provided Owner paid for the preconstruction services under which the documents or other materials were created.

19.7 If the Project is suspended or abandoned in whole or in part for more than ninety (90) consecutive days during the Pre-Construction Phase, the Construction Manager shall be compensated for all services performed prior to receipt of written notice from the Owner of such suspension or abandonment. If the Project is resumed after being suspended for more than ninety (90) consecutive days, the Construction Manager's compensation for Pre-Construction Services shall be equitably adjusted if, in the Owner's reasonable opinion, such adjustment is warranted. If the Project is resumed after being suspended for less than ninety (90) consecutive days, the Construction Manager's compensation for Pre-Construction Services shall not be adjusted.

**Article 20  
INDEMNITY**

20.1 Refer to Exhibit "B" Caldwell County Vendor Contract Addendum, Section 6.

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

20.4 The indemnities contained herein shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable by any indemnitor under workers' or workers' compensation acts, disability benefit acts or other employee benefit acts.

**Article 21  
SPECIAL WARRANTIES**

21.1 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 represented expertise and ability to provide construction management services. Construction Manager agrees to use its best efforts, skill, judgment, and abilities to perform its obligations and to further the interests of Owner in accordance with Owner's requirements and procedures.

21.2 Construction Manager represents, and agrees that it will perform its services in accordance with the highest standards of Construction Manager's profession or business and in compliance with all applicable national, federal, state, municipal, laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction over the Project. Construction Manager agrees to bear the full cost of correcting Construction Manager's negligent or improper work and services, those of its consultants, and any harm caused by the negligent or improper work or services.

21.3 Construction Manager's duties shall not be diminished by any approval by Owner nor shall the Construction Manager be released from any liability by any approval by Owner, it being understood that the Owner is ultimately relying upon the Construction Manager's skill and knowledge in performing the services required hereunder.

21.4 Construction Manager represents and agrees that all persons connected with the Construction Manager directly in charge of its services are duly registered and/or licensed under the laws, rules and regulations of any authority having jurisdiction over the Project if registration is required.

21.5 Construction Manager represents and agrees to advise Owner of anything of any nature in any drawings, specifications, plans, sketches, instructions, information, requirements, procedures, and other data supplied to the Construction Manager (by the Owner or any other party) that is, in its opinion, unsuitable, improper, or inaccurate for the purposes for which the document or data is furnished.

21.6 Construction Manager represents and agrees to perform its services under this Agreement in an expeditious and economical manner consistent with good business practices and the interests of Owner.

21.7 The Construction Manager at Risk shall provide to the extent deemed necessary for compliance by the State, data sheets and/or labels as proof of compliance.





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21.8 The Construction Manager at Risk shall provide a notarized certification that no ACBM's were used.

**Article 22  
MISCELLANEOUS PROVISIONS**

22.1 Assignment. Neither the Construction Manager, nor the Owner, shall voluntarily or involuntarily, directly, or indirectly, transfer, assign, hypothecate, pledge, or otherwise dispose of all or any portion of its interest in this Agreement to any third party without the prior written consent of the other party, which consent may be withheld in such party's sole discretion; provided however, that the Owner shall have the right to assign its interest in the Agreement without the necessity of receiving the Construction Manager's consent in conjunction with (i) Owner's transfer to any parent, subsidiary, or affiliated corporation of Owner (collectively, "Owner Affiliate"), or (ii) an internal restructuring of Owner. Any attempt to transfer, assign, hypothecate, pledge, or otherwise dispose of a party's interest in the Agreement without the required consent shall be void. In the event of a transfer to an Owner Affiliate, the Construction Manager agrees to release the Owner from liability for any of the Owner's executory obligations under this Agreement, and in the event of the Owner's sale or lease of the Project to a party other than an Owner's Affiliate, Owner shall be released from the Owner's executory obligations under this Agreement only if the Construction Manager, in its reasonable discretion, approves the financial capability of the assignee. Except as provided herein, no permitted assignment hereunder shall relieve the assignor from any of its liabilities, responsibilities, or obligations imposed upon assignee as if it were the original party to this Agreement; furthermore, the assignor shall provide the other party to this Agreement with reasonably satisfactory evidence of compliance with the foregoing. Subject to the above provisions, this Agreement shall be binding upon and inure to the parties hereto, and their respective successors and/or assigns.

22.2 GAAP. All Project records of expenses including, but not limited to those pertaining to Additional Pre-Construction Phase Services and services performed on the basis of a Worker Wage Rate or Monthly Salary Rate, shall be kept on the basis of generally accepted accounting principles and in accordance with cost accounting standards promulgated by the Federal Office of Management and Budget Cost Accounting Standards Board and shall be available for audit by the Owner or the Owner's authorized representative on reasonable notice.

22.3 Standards of Practice and Compliance with Laws. Construction Manager shall: (i) conduct all activities in compliance with applicable laws and regulations; (ii) promote the highest standards of business ethics and integrity; (iii) maintain the confidentiality of Owner information and protect confidential and proprietary information about employees and the organization; (iv) conduct activities and relationships with others so as to avoid conflicts of interest, in appearance and fact; (v) conduct business transactions with suppliers, contractors, vendors, and other third parties at arm's length and free from offers or solicitation of gifts and favors, or other improper inducements; and (vi) exercise responsible stewardship to preserve and protect Owner's assets by making productive and effective use of Owner's resources. Construction Manager's failure to comply with this Section shall be deemed a material breach of this Agreement.

22.4 Franchise Tax Certification Construction Manager certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the *Texas Tax Code* or that it is exempt from the payment of such taxes.

22.5 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 Project. This Agreement and each of its provisions shall be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by Construction Manager and Owner.

22.6 Compliance with Texas Government Code Chapter 2258 (Prevailing Wage Rates). Construction Manager agrees to comply with the requirements set forth in Texas Government Code chapter 2258 and to require all subcontractors to utilize the prevailing wage rates for Caldwell County as determined by Owner under Texas Government Code chapter 2258 when paying any non-salaried employee on this project. Certified payrolls will be required to be submitted by each subcontractor with their month payment applications and the Construction Manager will make such reports available to the County for inspection and audit. Any fines or penalties arising out of non-compliance with the aforementioned statute will be the responsibility of the Construction Manager, which may seek reimbursement for any such fines or penalties from the offending subcontractor.

22.7 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.

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

22.9 Waivers. No delay or omission by either party in exercising any right or power arising from non-compliance or failure of performance by the other party with any of the provisions of this Agreement shall impair or constitute a waiver of any such right or power. A waiver by either party of any covenant or condition of this Agreement shall not be construed as a waiver of any subsequent breach of that or of any other covenant or condition of the Agreement.

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

22.11 Appointment. Owner hereby expressly reserves the right from time to time to designate by notice to Construction Manager a representative(s) to act partially or wholly for Owner in connection with the performance of Owner's obligations. Construction Manager shall act only upon instructions from the designated representative(s) unless otherwise specifically notified to the contrary.

22.12 Records. Construction Manager shall comply with the following requirements:

22.12.1 Construction Manager shall maintain all of its records relating to the Contract Documents, including but not limited to all subcontracts and purchase orders and all of its Applications for Payment and supporting documentation required under the Contract Documents, for a period of not less than four (4) years following completion or termination of the Agreement.

22.12.2 Within four (4) years following completion or termination of the Agreement, Construction Manager agrees to provide access (at reasonable times and place during normal business hours) to Owner or such other persons as authorized or directed by Owner to all books, documents and records required hereunder to be retained by the Contractor relating to this Agreement and to cooperate and assist during any internal compliance review, investigation, monitoring protocol and/or audit of Owner.

22.12.3 Construction Manager is obliged to notify Owner of any violation of any applicable law or regulation immediately after Construction Manager, its employees, or agents become aware of it. Such notification can be given through any of the following methods by contacting the person indicated in the Notice Section of this Agreement or by contacting Owner's Designated Representative.





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22.13 Notices. All notices, consents, approvals, demands, requests or other communications relied on by the parties shall be in writing. Written notice shall be deemed to have been given when delivered in person to the designated representative of the Construction Manager or Owner for whom it is intended; or sent by U.S. Mail to the last known business address of the designated representative. Mail notices are deemed effective upon receipt or on the third business day after the date of mailing, whichever is sooner.

22.14 Severability. Should any term or provision of this Agreement be held invalid or unenforceable in any respect, the remaining terms and provisions shall not be affected and this Agreement shall be construed as if the invalid or unenforceable term or provision had never been included.

22.15 Illegal Dumping. The Construction Manager shall ensure that it and all of its Subcontractors and assigns prevent illegal dumping of litter in accordance with Title 5, *Texas Health and Safety Code*, Chapter 365.

22.16 By signature hereon, Construction Manager certifies that no

member of the Caldwell County Commissioners Court has a financial interest, directly or indirectly, in the transaction that is the subject of this Agreement.

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



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**Article 23  
COMPENSATION**

23.1 **The Construction Cost Limitation (CCL) for the project is \$7,453,661.00.** The total compensation payable to the Construction Manager at Risk for all services, materials, labor and other work provided for the Project, including the Pre-Construction Services Fee, the Construction Services Fee and the Cost of the Work cannot exceed the Construction Cost Limitation.

23.2 FOR PART I PRE-CONSTRUCTION PHASE (BASIC) SERVICES, Owner shall pay the Construction Manager at Risk a Pre-Construction Services Fee as detailed in Exhibit C. If the scope of the Project or description of the Pre-Construction Services is changed materially, the compensation for Pre-Construction Services shall be equitably adjusted.

23.3 FOR PART II BASIC CONSTRUCTION SERVICES Owner shall pay Construction Manager at Risk a Construction Services Fixed Fee as detailed in Exhibit C.

23.4 SUMMARY OF COMPENSATION. See Exhibit C.

**OTHER TERMS AND CONDITIONS**

23.5 **TIME OF COMPLETION.** The Construction Phase shall be deemed to commence upon the earlier of (i) the date specified in a Notice to Proceed issued by Owner after approval of the Guaranteed Maximum Price Proposal specified in such Notice to Proceed, (ii) the issuance of a purchase order by Construction Manager at Risk for materials or equipment for the Project after prior written authorization by Owner, or (iii) award of a Subcontract in accordance with the requirements of this Contract after prior written authorization by Owner. The Construction Manager at Risk shall substantially complete the LEC Immediate Needs within Three Hundred Sixty-Five (365) Calendar Days of the Owner's Notice to Proceed for the Work. This Substantial Completion Date for LEC Immediate Needs is subject to adjustment by time extensions granted by Change Order. The time set forth for completion of the work is an essential element of the Contract. In computing change order requests for delays due to inclement weather (precipitation delays) contractor shall include in his schedule the precipitation shown in the 30-year statistical record of the National Oceanic and Atmospheric Administration (NOAA) for the Caldwell County area. If during construction Contractor claims a weather delay, he must demonstrate

to owner that his critical construction activities have been impacted by precipitation over and above the average values recorded by the National Oceanic and Atmospheric Administration in that given month.

23.6 **LIQUIDATED DAMAGES.** For each consecutive calendar day after the date of Substantial Completion set forth in Section 23.5 that the Work or any Work Package is not substantially completed, the Owner may deduct the amount of One Thousand Dollars and Zero Cents, \$1000.00, from any money due or that becomes due the Construction Manager, not as a penalty but as liquidated damages representing the parties' estimate as of the Effective Date and cost of the damages that the Owner will sustain for late completion.

23.7 The parties stipulate and agree that calculating Owner's actual damages for late completion of the Project or any Work Package would be impractical, unduly burdensome, and cause unnecessary delay and that the amount of daily liquidated damages set forth is reasonable.



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23.7 NOTICES. Notices required by this Agreement shall be sent to the following persons at the indicated locations. A party shall not change the person or the address for notices without prior written approval of the other part

<p>If to Owner: County Judge Tom Bonn Caldwell County Courthouse, 2<sup>nd</sup> Floor 110 S Main Street Lockhart, TX 78644</p> <p>With copy to:</p>	<p>If to Construction Manager at Risk:</p> <p>With copy to:</p>
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23.8 EXHIBITS. The following exhibits are incorporated by reference as part of this Agreement and the Contract:

Exhibit A	Personnel Titles and Roles (to be provided by Contractor)
Exhibit B	Caldwell County Vendors Addendum
Exhibit C	GMP Budget Details
Exhibit D	Guaranteed Maximum Price Submission Form (to be provided by Owner's representative)
Exhibit E	Sub-consultants and Subcontractors List (to be provided by Contractor at buyout)
Exhibit F	Project Overall Schedule (to be provided by Contractor at Notice to Proceed)
Exhibit G	Payment and Performance Bonds
Exhibit H	Caldwell County Construction Manager at Risk Conceptual Program Budget
Exhibit I	Caldwell County Prevailing Wage Rates
Exhibit J	RFP No. 2021-101 Proposal by Contractor (Herein referred to "Proposal")
Exhibit K	Exceptions

23.9 Upon execution below, the Owner authorizes the Contractor to perform **Part I Pre-Construction Services** only, for the sum of \_\_\_\_\_ Further authorization of services shall occur after execution of Guaranteed Maximum Price Proposal satisfactory to the Owner per this Contract.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

Owner, Caldwell County

Construction Manager at Risk

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

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

County Judge Tom Bonn  
Caldwell County, Texas

Notary-  
The instrument was acknowledged before me

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

on: \_\_\_\_\_

by: \_\_\_\_\_

\_\_\_\_\_  
Caldwell County Clerk

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

State of: \_\_\_\_\_

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

Expires: \_\_\_\_\_

## CALDWELL COUNTY VENDOR CONTRACT ADDENDUM

Caldwell County (the "County"), a political subdivision of the State of Texas, and Braun & Butler Construction, Inc. ("Vendor"), collectively the "parties," hereby agree to incorporate the following addendum into the attached agreement for Construction Manager-at-Risk services, collectively the "Contract":

1. **Governing Law and Venue:** The Contract is subject to the laws and jurisdiction of the State of Texas. The parties agree that exclusive venue and jurisdiction for any legal action under the Contract will lie in the district courts of Caldwell County, Texas.
2. **County Obligation:** Nothing in the Contract may impose on the County any obligation which is contrary to, or exceeds the requirements of, any ordinances, statutes, rules, or regulations of any applicable local municipality, the County, the State of Texas, or the United States.
3. **Vendor Compliance:** In performing the Contract, Vendor must comply with all applicable ordinances, statutes, rules, and regulations of any applicable local municipality, the County, the State of Texas, and the United States.
4. **Insurance:** Vendor must maintain commercial general liability insurance coverage, including contractual liability insurance coverage, in the amount of five hundred thousand dollars (\$500,000) per occurrence, with a general aggregate of one million dollars (\$1,000,000), for the duration of the Contract.
  - a. Before performing under the Contract, Vendor must deliver a certificate of insurance acceptable to the County. Vendor agrees that if it performs under the Contract without providing such a certificate, the County will withhold any payments under the Contract until Vendor delivers the certificate.
  - b. Vendor must endorse the policy or policies providing commercial general liability, as required above, to name the County, its officials, department heads, employees, and assigns as additional insured with respect to operations performed by or for the Vendor in performance of the Contract. Such policy must contain an endorsement that the "other insurance" clause will not apply to the County, its officials, department heads, employees, and assigns.
  - c. Vendor must require any subcontractor performing under the Contract to carry insurance of the types and within limits of liability as the County deems appropriate and adequate. If a subcontractor is unable to furnish insurance required under the Contract, Vendor must endorse the subcontractor as an additional insured and deliver a certificate of insurance evidencing the subcontractor's insurance coverage.
5. **Workers compensation:** Vendor must provide and maintain for the duration of the Contract workers' compensation insurance in compliance with the Texas Workers Compensation Act, Title 5, Subtitle A, Texas Labor Code, for all its employees assigned to perform under the Contract. In the event Vendor elects to subcontract any services, Vendor must require each subcontractor to provide workers' compensation insurance for all its employees unless such employees are afforded protection by Vendor.
6. **Indemnification:** Vendor must defend, indemnify, and hold harmless the County, its officers, and its employees from and against all claims, actions, suits, demands, proceedings, costs, damages, and liabilities, including without limitation attorney fees and court costs, arising out of, connected with, or resulting from any acts or omissions of the Vendor or any official, agent, employee, subcontractor, or supplier of the Vendor in the execution or performance of the Contract.
7. **Alteration, Amendment or Modification:** The Contract may not be altered, amended, or modified except in writing signed by each party to the Contract. No official, agent, employee, or representative of either party has the authority to alter, amend, or modify the terms of the Contract, except in accordance with express written authority as may be respectively granted by the County or the Vendor.
8. **Assignment:** Vendor may not assign, in whole or in part, any interest it may have in the Contract without the prior written consent of the County.
9. **Severability:** If any provision of the Contract is found to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability will not affect the remaining provisions of the Contract.
10. **Breach:** The failure of either party to comply with the terms and conditions of the Contract will constitute a breach of this Contract. Either party will be entitled to any and all rights and remedies allowed under Texas law for any breach of the Contract by the other party.
11. **Non-Waiver:** The waiver by either party of a breach of the Contract will not constitute a continuing waiver of such breach or of a subsequent breach of the same or a different provision. Nothing in the Contract is intended by either party to constitute a waiver of any immunity from suit or liability to which it is entitled under applicable law.
12. **Non-Defined Terms:** If not specifically defined in the Contract, words and phrases used in the Contract will have their ordinary meaning as defined by common usage.
13. **Controlling Provisions:** In the event of any conflict between provisions in the attached agreement and provisions in this addendum, provisions in this addendum will control.
14. **Third Parties:** The Contract is not intended to confer any rights on any third party, and it will not be construed as conferring any rights on any third party.
15. **Entire Contract:** The attached agreement and this addendum constitute the entire Contract between the County and Vendor. No other agreement, statement, or promise relating to the subject matter of the Contract which is not contained in the Contract or incorporated by reference in the Contract will be valid or binding.

FOR THE COUNTY: \_\_\_\_\_  
County Judge

DATE: \_\_\_\_\_

FOR VENDOR: \_\_\_\_\_  
Authorized Representative

DATE: \_\_\_\_\_





## **CALDWELL COUNTY CAPITAL PROJECTS POLICY**

**1.0 APPLICABILITY:** This policy applies to the following capital projects:

- 1.1 Any capital project estimated to cost \$10,000 or more at the time it is brought before the Caldwell County Commissioners Court.
- 1.2 Any change order to a capital project previously approved under this policy.
- 1.3 Any change order that would cause the cost of a previously approved capital project costing less than \$10,000 to increase to \$10,000 or more.

**2.0 COMPLIANCE:**

- 2.1 Caldwell County elected officials, Caldwell County employees, bidders on an applicable project, and parties to a contract for an applicable project must follow the procedures set forth in this policy.
- 2.2 This policy must be incorporated by reference into any Caldwell County contract for an applicable project.

**3.0 APPROVAL:** The approval procedure for an applicable project is as follows:

- 3.1 The County Maintenance Supervisor will prepare the project specifications to present to the Commissioners Court.
- 3.2 Upon review of the project specifications, the Commissioners Court may, at a public meeting, approve the project specifications and approve seeking bids, proposals, or responses for the project as appropriate.
- 3.3 Once the Commissioners Court has approved the project specifications, no elected official or employee may change the project specifications unless the Commissioners Court first approves the change.

**4.0 BIDDING:** Upon Commissioners Court approval of any applicable project, the County Auditor will be responsible for providing a formal Request for bids, proposals or responses as appropriate, obtaining project proposals, estimates, and qualifications, and answering questions from potential vendors as follows:

- 4.1 The County Auditor will refer to the project specifications approved by the Commissioners Court and will consult with the County Maintenance Supervisor to draft a formal Request for bids, proposals, or responses as appropriate.
- 4.2 The County Auditor will post the completed Request on the Caldwell County website.
- 4.3 The County Auditor will place notices soliciting sealed bids, proposals, or responses to the Request in the local newspapers, on the county website, and at the county courthouse for at least two weeks before the deadline for receiving bids, proposals, or responses. The notices must include the following information:
- 4.3.1 A reference to the specific Request and a statement that the Request can be found on the Caldwell County website.
  - 4.3.2 A one-sentence description of the project.
  - 4.3.3 The time and place the bids, proposals or responses will be received and the time and place the bids, proposals or responses will be opened.
  - 4.3.4 A telephone number and email address for bidders seeking additional information. Bidders are not allowed to contact any other county employee or elected official regarding the Request and project.
- 4.4 County employees and elected officials are not allowed to make any changes to the Request once notices have been posted. Bidders are not allowed to respond to or agree to any change in the Request that has not been approved by the Commissioners Court.
- 4.5 At any time after the bids, proposals or responses to the Request have been opened, the Commissioners Court may award the project based on criteria allowed by law. The Commissioners Court reserves the right to reject any bid, proposal, or response for any reason allowed by law.

## **5.0 CONTRACT:**

- 5.1 Once the Commissioners Court has awarded the project to a contractor, the county's legal counsel will draft a contract for the project based on the winning bid, proposal, or response.
- 5.2 The County Maintenance Supervisor will not allow a contractor to begin work on the project until the contract has been approved by the Commissioners Court and signed by the county and the contractor.

5.3 The County Auditor will not approve payment or partial payment for any contract that has not been approved by the Commissioners Court and signed by the county and the contractor.

**6.0 PERFORMANCE:**

6.1 The County Maintenance Supervisor will observe the contractor's performance to ensure work on the project is performed according to the contract.

6.2 County employees and elected officials will not request any change order unless the Commissioners Court has previously approved the change order at a public meeting.

6.3 Contractors will not agree to any change order or proceed with work on any change order that has not been approved by the Commissioners Court at a public meeting.

**7.0 PAYMENT:** The county will make payments or partial payments according to the terms of the contract; subject to the following conditions:

7.1 The County Maintenance Supervisor will monitor the work on the project at each stage of a progress billing or partial billing. The County Auditor will not approve any progress payment or partial payment on the project unless the County Maintenance Supervisor has confirmed the work on the project has been performed according to the scope of the contract.

7.2 The county will not make final payment on the project until the County Maintenance Supervisor and the County Auditor conduct a final inspection of the project to confirm the work on the project has been performed according to the scope of the contract.

**ADOPTED** by the Caldwell County Commissioners Court on this the 9<sup>th</sup> day of December, 2013.

\_\_\_\_\_  
Tom Bonn, Caldwell County Judge

ATTEST:

\_\_\_\_\_  
Carol Holcomb County Clerk



## CALDWELL COUNTY VENDOR CONTRACT ADDENDUM

Caldwell County (the "County"), a political subdivision of the State of Texas, and **Les Reddin d.b.a. LongLifeProjects** ("Vendor"), collectively the "parties," hereby agree to incorporate the following addendum into the attached agreement for program manager services for the Caldwell County Judicial and Service Center, collectively the "Contract":

1. **Governing Law and Venue:** The Contract is subject to the laws and jurisdiction of the State of Texas. The parties agree that exclusive venue and jurisdiction for any legal action under the Contract will lie in the district courts of Caldwell County, Texas.
2. **County Obligation:** Nothing in the Contract may impose on the County any obligation which is contrary to, or exceeds the requirements of, any ordinances, statutes, rules, or regulations of any applicable local municipality, the County, the State of Texas, or the United States.
3. **Vendor Compliance:** In performing the Contract, Vendor must comply with all applicable ordinances, statutes, rules, and regulations of any applicable local municipality, the County, the State of Texas, and the United States.
4. **Insurance:** Vendor must maintain commercial general liability insurance coverage, including contractual liability insurance coverage, in the amount of five hundred thousand dollars (\$500,000) per occurrence, with a general aggregate of one million dollars (\$1,000,000), for the duration of the Contract.
  - a. Before performing under the Contract, Vendor must deliver a certificate of insurance acceptable to the County. Vendor agrees that if it performs under the Contract without providing such a certificate, the County will withhold any payments under the Contract until Vendor delivers the certificate.
  - b. Vendor must endorse the policy or policies providing commercial general liability, as required above, to name the County, its officials, department heads, employees, and assigns as additional insured with respect to operations performed by or for the Vendor in performance of the Contract. Such policy must contain an endorsement that the "other insurance" clause will not apply to the County, its officials, department heads, employees, and assigns.
  - c. Vendor must require any subcontractor performing under the Contract to carry insurance of the types and within limits of liability as the County deems appropriate and adequate. If a subcontractor is unable to furnish insurance required under the Contract, Vendor must endorse the subcontractor as an additional insured and deliver a certificate of insurance evidencing the subcontractor's insurance coverage.
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6. **Indemnification:** Vendor must defend, indemnify, and hold harmless the County, its officers, and its employees from and against all claims, actions, suits, demands, proceedings, costs, damages, and liabilities, including without limitation attorney fees and court costs, arising out of, connected with, or resulting from any acts or omissions of the Vendor or any official, agent, employee, subcontractor, or supplier of the Vendor in the execution or performance of the Contract.
7. **Alteration, Amendment or Modification:** The Contract may not be altered, amended, or modified except in writing signed by each party to the Contract. No official, agent, employee, or representative of either party has the authority to alter, amend, or modify the terms of the Contract, except in accordance with express written authority as may be respectively granted by the County or the Vendor.
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9. **Severability:** If any provision of the Contract is found to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability will not affect the remaining provisions of the Contract.
10. **Breach:** The failure of either party to comply with the terms and conditions of the Contract will constitute a breach of this Contract. Either party will be entitled to any and all rights and remedies allowed under Texas law for any breach of the Contract by the other party.
11. **Non-Waiver:** The waiver by either party of a breach of the Contract will not constitute a continuing waiver of such breach or of a subsequent breach of the same or a different provision. Nothing in the Contract is intended by either party to constitute a waiver of any immunity from suit or liability to which it is entitled under applicable law.
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FOR THE COUNTY: \_\_\_\_\_  
County Judge Tom Bonn

DATE: \_\_\_\_\_

FOR VENDOR: \_\_\_\_\_  
Les Reddin

DATE: \_\_\_\_\_