

AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER

AGREEMENT made as of the 16th day of October, in the year 2009.

BETWEEN the Owner: Evansville Redevelopment Commission
1 NW Martin Luther King Jr. Blvd.
Evansville, IN 47708

and the Construction Manager: Hunt Construction Group, Inc.
P.O. Box 128
Indianapolis, IN 46206-0128

for the following Project: Evansville Arena

The Architect is: Populous, Inc.
300 Wyandotte, Suite 300
Kansas City, MO 64105

The Owner and Construction Manager agree as set forth below.

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 0 DEFINITIONS.....	1
ARTICLE 1 GENERAL PROVISIONS.....	4
1.1 Program.....	4
1.2 Budget.....	5
1.3 Schedule	5
1.4 Deviations From Project Parameters.....	6
1.5 Construction Manager's Services	7
1.6 Operations Team	8
1.7 Authorized Representatives	8
1.8 Relationship to Architect's Services	8
1.9 No Discrimination.....	9
1.10 Construction Manager's Affirmative Action Plan	10
1.11 MBE/WBE Goals.....	10
1.12 Boundary Coordination	13
1.13 Communications Between Parties	13
1.14 Site Visit	13
1.15 Security Programs	13
1.16 Fast Track	13
1.17 Time.....	14
1.18 Building Information Modeling.....	14
1.19 Sustainable Design.....	14
ARTICLE 2 CONSTRUCTION MANAGER'S BASIC SERVICES	15
2.1 Overview	15
2.1.1 Included Basic Services	15
2.1.2 Items Excluded from Basic Services.....	15
2.2 Pre-Construction Phase.....	16
2.2.1 Duration	16
2.2.2 Review of Design Documents	16
2.2.3 Updates/Estimates of Building Costs.....	18
2.2.4 Construction Documents.....	19
2.2.5 Temporary Project Facilities.....	20
2.2.6 Safety Program	20
2.2.7 Document Issue/Bid Packages.....	20
2.2.8 Milestone Construction Schedule	21
2.2.9 Assistance Re Other Professional Services.....	21
2.2.10 Labor Analysis.....	22
2.2.11 Bidder Interest; Bid Packages; Pre-Bid Conferences.....	22
2.2.12 Bid Review	23
2.2.13 Permits.....	25

2.3	Construction Phase - Administration of The Construction Contracts.....	25
2.3.1	Duration	25
2.3.2	Contract Administration	25
2.3.3	Administration and Management.....	26
2.3.4	Job Meetings	27
2.3.5	Schedules from Contractors.....	27
2.3.6	Coordination of Contractors.....	29
2.3.7	Building Costs	29
2.3.8	Cash Flow Reports.....	29
2.3.9	Accounting Records.....	29
2.3.10	Processing of Progress Payments.....	29
2.3.11	Certification of Pay Applications.....	30
2.3.12	Safety	31
2.3.13	Observation of Contractors' Work	32
2.3.14	Contractors' Performance	33
2.3.15	Limitations on Construction Manager's Review of Contractor's Work.....	33
2.3.16	Requests for Information (.....	33
2.3.17	Change Orders and Classification of Changes	34
2.3.18	Change Order Log.....	35
2.3.19	Review of Claims	35
2.3.20	Contractor's Insurance	36
2.3.21	Shop Drawings and Submittals.....	36
2.3.22	Progress Reports.....	37
2.3.23	On Site Record Copy	38
2.3.24	Storage of Owner Purchased Material.....	39
2.3.25	Observation, Start-up and Training.....	40
2.3.26	Substantial Completion/Punch Lists	40
2.3.27	Warranties, Keys, etc.....	41
2.3.28	Final Project Application for Payment.....	41
2.3.29	No Change in Construction Manager's Duties without Consent.....	41
2.3.30	Building Tours and Early Occupancy.....	41
2.4	Post Construction Phase.....	43
2.4.1	Term	43
2.4.2	Enforcement of Warranty Rights	43
2.4.3	Post Completion Inspections	43
ARTICLE 3	ADDITIONAL SERVICES	44
3.1	Notice/Approval.....	44
3.2	Waiver	44
3.3	Additional Services	44
3.4	Payment.....	45
3.5	Additional Services Log.....	45
ARTICLE 4	OWNER'S RESPONSIBILITIES.....	45
4.1	Provide Information	45

4.2	Project Parameters	45
4.3	Proof of Financial Arrangements	46
4.4	Owner's Representatives.....	46
4.5	Architect.....	47
4.6	Approvals	47
4.7	Project Site	48
4.8	Owner's Technical Advisors	48
4.9	Other Services.....	48
4.10	Services at Owner's Expense	48
4.11	Owner's Notice.....	49
4.12	Owner's Separate Contracts.....	49
4.13	Conformance to Schedule	49
4.14	Job-Site Parking	49
ARTICLE 5 CONSTRUCTION COST.....		50
5.1	Definition.....	50
5.1.1	Items Included	50
5.1.2	Items Not Included	50
5.2	Best Judgment Estimates	50
5.3	Management of Budget	51
5.4	Bid Packages	51
5.5	Construction Manager's Responsibilities.....	52
ARTICLE 6 OWNERSHIP OF DOCUMENTS.....		52
ARTICLE 7 HAZARDOUS MATERIALS.....		53
7.1	Surveys	53
7.2	Limitations on Construction Manager's Responsibilities	54
7.3	Project	54
7.4	Scheduling of Abatement Procedures and Other Work on the Project	54
7.5	Extension of Time/Adjustment to Compensation.....	55
7.6	Indemnity	55
ARTICLE 8 DISPUTE RESOLUTION		55
8.1	In General	55
8.2	Private Judge	56
8.3	Third Party Claims	57
8.4	Attorneys' Fees	57
8.5	Operations Team	58
ARTICLE 9 TERMINATION, SUSPENSION OR ABANDONMENT		58
9.1	Termination for Cause	58
9.2	Termination for Convenience	59
9.3	Suspension of Project	59
9.4	Abandonment of Project	61

9.5	Construction Manager's Rights to Suspend Services.....	61
9.6	Termination Expenses	61
ARTICLE 10 INSURANCE		61
10.1	Construction Manager's Insurance.....	61
10.1.1	Worker's Compensation	61
10.1.2	General Liability.....	62
10.1.3	Valuable Records.....	62
10.1.4	Automobile.....	62
10.1.5	Umbrella Policy.....	62
10.1.6	Miscellaneous.....	63
10.1.7	Claims Made.....	64
10.2	Owner's Insurance	64
10.2.1	Liability Insurance.....	64
10.2.2	Property Insurance	64
10.2.3	Partial Occupancy or Use.....	65
10.2.4	Boiler and Machinery Insurance.....	65
10.2.5	Loss Adjustment.....	65
10.2.6	Evidence of Insurance	65
10.2.7	Waiver of Subrogation	65
10.2.8	Loss of Use Insurance	65
10.2.9	Other Property Insurance.....	66
10.2.10	Pollution Coverage.....	66
ARTICLE 11 CONSTRUCTION MANAGER'S COMPENSATION.....		67
11.1	Generally	67
11.2	Construction Manager's Fees	67
11.2.1	Base Fee.....	68
11.2.2	Incentive Fee	68
11.3	Staffing Costs	69
11.3.1	Authorized Personnel	69
11.3.2	Calculation and Billing.....	69
11.3.3	Annual Adjustment to Billing Rates.....	70
11.3.4	Staffing Costs Cap/Savings Allocation	70
11.4	Reimbursable Expenses.....	71
11.4.4	Reimbursable Expense Budget	75
11.5	Adjustment to Construction Manager's Fees, Staffing Costs Cap and Reimbursable Expense Budget	76
11.6	Payments on Account of Basic Services	76
11.7	Payments on Account of Additional Services and Reimbursable Expenses	76
11.8	Construction Manager's Payment to Operations Team	77
11.9	Payments Withheld.....	77
11.10	Appropriation of Funds	77
ARTICLE 12 OTHER PROVISIONS.....		78

12.1	Governing Law	78
12.2	Terms Used in Contract Documents.....	78
12.3	Audit Rights	78
12.4	Statute of Limitations	78
12.5	Agreement Binding on Successors and Assignees.....	78
12.6	Integrated Contract.....	79
12.7	No Third Party Benefit.....	79
12.8	Project Reference.....	79
12.9	Invalid Provisions	79
12.10	Indemnification.....	79
12.11	Limitation on Consequential Damages.....	80
12.12	Public Disclosure.....	80
12.13	No Undisclosed Interests	80
12.14	Compliance with Laws	80
12.15	Acceptance of Final Payment as Release of Claims	80
12.16	Independent Contractor.....	81
12.17	Non-Waiver	81
12.18	No Lien	81
12.19	Force Majeure.....	81
12.20	Captions and Headings	81
12.21	Notice.....	81
12.22	Construction.....	82
12.23	Authorization	83
EXHIBIT A	PROJECT PROGRAM.....	1
EXHIBIT B	PROJECT BUDGET	1
EXHIBIT C	PROJECT SCHEDULE.....	1
EXHIBIT D	OPERATIONS TEAM.....	1
EXHIBIT D-1	STAFFING COSTS HOURLY RATES	1
EXHIBIT E-1	OWNER MANAGED FF&E	1
EXHIBIT E-2	C/M MANAGED FF&E	1
EXHIBIT F	INCENTIVE FEE CRITERIA	1

ARTICLE 0

DEFINITIONS

The defined terms in this Agreement shall have the meanings as set forth below. If a term is not specifically defined in this Article, but is defined in the General Conditions, it shall have the meaning as set forth therein. Should there be any conflict between the terms as defined in this Agreement and those contained in the General Conditions or other Contract Documents, the definitions as contained in this Agreement shall take precedence and control as between the Owner and Construction Manager

0.1 "Affiliated Project Costs" has the meaning set forth in Section 5.1 of this Agreement.

0.2 "Architect" means Populous, Inc., as designated in the preamble to this Agreement.

0.3 "Basic Services" shall mean all Services to be provided by the Construction Manager pursuant to this Agreement, individually or by members of its Operations Team, except for Additional Services which are provided pursuant to Article 3 to the extent approved by the Owner in writing.

0.4 "Bid Package" means a segment of the Work to be performed under a Construction Contract which is bid, awarded or otherwise procured in accordance with Indiana's Public Bidding and/or Public Procurement Laws.

0.5 "Budget" has the meaning set forth in Section 1.2 and in Exhibit B to this Agreement.

0.6 "Building Costs" has the meaning set forth in Section 5.1 of this Agreement.

0.7 "Construction Contract" means a contract between the Owner and a Contractor with respect to some portion of the Work, which has been bid, awarded or otherwise procured in accordance with Indiana's Public Bidding and/or Public Procurement Laws.

0.8 "Construction Cost" has the meaning as set forth in Section 5.1 of this Agreement.

0.9 "Construction Documents" mean the Plans, Specifications, Addenda and other design documents prepared by the Architect and as approved by the Owner, which sets forth in detail the requirements for construction of the Project, including detail as to the quality level of materials and systems to be incorporated into the Project, in a form sufficient to allow for competitive bidding/procurement under Indiana law and construction of the Work.

0.10 "Construction Manager" means Hunt Construction Group, Inc., as designated in the preamble to this Agreement.

0.11 "Construction Manager's Fees" has the meaning set forth in Section 11.2 of this Agreement, as said amounts are to be adjusted pursuant to the express terms of this Agreement.

0.12 "Consultant" means any person or entity who contracts with the Architect to assist in providing design services for the Project.

0.13 "Contract Documents" form the contract for construction as between the Owner and the Contractors and include the Construction Contract, the Exhibits thereto, other documents listed in the Construction Contract and expressly incorporated by reference into the Contract Documents, Conditions of the Contract (General, Supplementary and other Conditions), Construction Documents hereafter developed by the Architect and approved by the Owner and Modifications issued after execution of the Construction Contract.

0.14 "Contractor(s)" means any person or entity to whom the Owner awards a Construction Contract to perform Work associated with the Project.

0.15 "Design Development Documents" mean Plans, sections and elevations, typical construction details, equipment layouts and other design documents prepared by the Architect and as approved by the Owner, which illustrate and describe the refinement of the design of the Project and establish the scope, relationships, forms, size and appearance of the Project, including Specifications that identify major materials and systems and their required performance and quality levels.

0.16 "Document Issue" means Construction Documents as issued by the Architect for a portion of the Work to be performed as a Bid Package or to be divided into multiple Bid Packages.

0.17 "Feasibility Study" means the review and analysis of the Project previously performed by the Architect, Construction Manager and Owner, pursuant to Professional Services Agreements dated October 10, 2008, in which the Program, Budget and Schedule were developed and analyzed, both individually and in conjunction with one another, and thereafter approved by the Owner.

0.18 "FF&E" means furniture, fixtures and equipment that are to be procured for and installed in the Project in accordance with the Program and the Construction Documents, currently including the "Owner Managed FF&E" items listed on Exhibit E-1 and the "C/M Managed FF&E" items listed on Exhibit E-2.

0.19 "Modification" means a written amendment to this Agreement signed by both parties, a written authorization for Additional Services to be performed by Construction Manager signed by the Owner and, with respect to Construction Contracts, a Change Order, Construction Change Directive or a written order for a minor change in the Work issued by the Architect and approved by the Owner.

0.20 "Operations Team" has the meaning set forth in Section 1.6 and in Exhibit D to this Agreement.

0.21 "Owner means the Evansville Redevelopment Commission, as designated in the preamble to this Agreement.

0.22 "Owner's Contingency" has the meaning as set forth in Section 5.1 of this Agreement.

0.23 "Plans" or "Drawings" mean the graphic or pictorial portions of the Construction Documents as issued by the Architect and/or its Consultants, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

0.24 "Program" has the meaning set forth in Section 1.1 and in Exhibit A to this Agreement.

0.25 "Project" means the development, design and construction of a new, state of the art multi-purpose arena and related improvements, consistent with and subject to the general parameters and requirements set forth in the Program and Budget, to be utilized for hosting and viewing basketball and hockey games, other compatible sporting events, concerts, conventions and other public events. The Project shall include land acquisition, required demolition, infrastructure improvements, all Work associated with the new arena, site work, FF&E and all other reasonable and necessary improvements including, but not limited to, those identified in the Program.

0.26 "Schedule" has the meaning set forth in Section 1.3 and in Exhibit C to this Agreement.

0.27 "Schematic Design Documents" means the outline specifications and other documents prepared by the Architect and as approved by the Owner, which illustrates the scale and relationship of Project components for basic design disciplines.

0.28 "Services" means all services to be provided by the Construction Manager and its Operations Team under the terms of this Agreement, including the Basic Services as set forth in this Agreement and Additional Services to the extent approved and authorized by the Owner as set forth in Article 3.

0.29 "Specifications" are that portion of the Construction Documents as issued by the Architect and/or its Consultants, consisting of the written descriptions and/or requirements for materials, equipment, construction systems, standards and workmanship specifically required for the Work and performance of related services and consistent with the Plans or Drawings.

0.30 "Standard of Care" shall mean that standard of professional care, skill, diligence and quality that prevail among competent entities regularly engaged in the business of construction management on projects which are of similar size, scale and nature to the current Project.

0.31 "Substantial Completion" is the stage in the progress of the Work when the Work, or a designated portion thereof, is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy and utilize the Work, or the designated portion thereof, for its

intended use. To the extent inspections and/or approvals are required by local building, fire officials or other public authorities and/or the issuance of a Certificate of Occupancy is required in order for the Owner to occupy and fully utilize the Work for its intended use, then such inspections, approvals or Certificates shall be a condition precedent to Substantial Completion of the Project.

0.32 “Work” means the construction and services to be provided under Construction Contracts for which the Construction Manager is to provide contract administration Services per this Agreement, including all labor, materials, equipment, tools, construction equipment and machinery, water, heat, electricity and other utilities, transportation and other facilities and services provided, or to be provided, by such Contractors in order to fulfill their obligations to the Owner, as required by the Contract Documents, with respect to the Project. The definition of “Work” as it applies to this Agreement, shall not include contracts relating to the work or services excluded from the Construction Manager’s Basic Services in Section 2.1.2 or contracts awarded by the Owner to separate contractors in accordance with Section 4.12.

ARTICLE 1

GENERAL PROVISIONS

1.1 Program. It is the intent of the parties to proceed with the development, design and construction of a new, state of the art multi-purpose arena, consistent with the general parameters and requirements set forth in the program description attached hereto as Exhibit A (“Program”). The Program was prepared by the Architect during the Feasibility Study, in consultation with the Construction Manager and the Owner, based upon the collective background and experience of the Architect and Construction Manager related to projects of this type, nature and size and upon interviews with and/or information received from appropriate representatives of the Owner and other parties that will be major tenants or users of the Project. It is understood and acknowledged that the Program attached hereto identifies and delineates only the general design goals, space needs and functional requirements for the Project, with the more detailed and specific requirements for the Project to be developed and approved during Schematic Design and, once approved by the Owner, then incorporated into Design Development and Construction Documents. Accordingly, all references in this Agreement to “Program” shall include not only the general parameters and requirements specifically set forth in Exhibit A, but also the more detailed designs and requirements hereafter identified for the Project which are: (i) consistent with and reasonably inferable from the general parameters and requirements set forth in Exhibit A and (ii) typical of arena projects of similar type, nature and size. Based upon its participation in the Feasibility Study and its review of the Program, the Construction Manager believes that the Program is consistent with the Budget and Schedule and is feasible as to constructability, labor and material availability, procurement and installation, special requirements and relationships, special equipment and systems and site requirements/constraints. The Program, as hereby approved by the Owner, establishes the general criteria and parameters for the Project and shall be the information against which Schematic Design Documents, as developed, will be measured. Once approved by the Owner, the Schematic Design Documents shall establish the more detailed criteria and parameters which shall thereafter constitute the Program for the Project and shall be the information against which Design Development Documents shall be measured. After the Design Development Documents have been

approved by the Owner, they shall establish the Program criteria and parameters against which the Construction Documents shall be measured. The Construction Manager shall continually monitor the Work and Services being provided and shall keep all parties apprised of the programmatic requirements, schedule timelines and budget constraints, in terms of their conformance with the Program, Schedule and Budget. If in its review of any design documents the Construction Manager discovers or suspects that there has or may have been a deviation from the then current Program requirements, the Construction Manager shall promptly advise the Owner and Architect in writing. There shall be no deviation from the Program as it is developed through the various design phases, without the prior written consent of the Owner.

1.2 Budget. The budget approved by the Owner for all Construction Costs, including the Owner's Contingency, is attached hereto as Exhibit B ("Budget"). The Budget originally was established in consultation with the Construction Manager and Architect and in reliance upon information developed during the Feasibility Study, as thereafter updated by the mutual agreement of the parties prior to it being attached to this Agreement, and includes estimates of Building Costs prepared by the Construction Manager. The Construction Manager believes, to the best of its knowledge and based upon its diligent review during the Feasibility Study, that the Budget is sufficient and reasonable and is consistent with the Program and Schedule. The Construction Manager shall, over the course of the Pre-Construction and Construction Phases, update and provide greater detail with respect to the Budget, including developing specific estimates of and cost allocations for individual Bid Packages and other Work items, consistent with the overall cost limitation set forth on Exhibit B. The Construction Manager shall provide its updated cost estimates to the Architect for its review and comment and to the Owner for its approval. The Construction Manager shall continually review and analyze the updated cost estimates to determine whether they are consistent with the Budget, Program and Schedule. Although the Construction Manager does not guarantee the Budget or any cost estimates provided by it, the Construction Manager shall manage the Project consistent with the Budget, refine Building Costs estimates and cash flow analyses and shall continually analyze the Work and Services provided to keep all parties involved with the Project apprised of the budgetary constraints and their compliance with the Budget. When necessary to maintain compliance with the Budget and as set forth in this Agreement the Construction Manager shall, as Basic Services and without increase to Construction Manager's Fees or to the Staffing Costs Cap, provide value engineering services, recommend possible bid alternates, identify and evaluate post award options or otherwise identify possible cost savings options for the Owner's review and consideration. There shall be no deviation from the Budget without the prior written consent of the Owner.

1.3 Schedule. Time is of the essence and the design and construction of the Project shall proceed so as to achieve Substantial Completion of the Project in accordance with the schedule approved by the Owner and attached hereto as Exhibit C ("Schedule"). The Schedule was developed by the Construction Manager and the Architect, in consultation with the Owner, during the Feasibility Study and as thereafter updated prior to the execution of this Agreement. The Construction Manager believes, to the best of its knowledge and based upon its diligent review during the Feasibility Study, that the Schedule is reasonable and, absent delays or events that justify an enlargement of the Contract Time, is attainable and is consistent with the Program and the Budget. The Construction Manager accepts all portions of the Schedule relating to its Services, agrees to provide its Services within the time limits established by the Schedule (as said time limits

may be adjusted per this Agreement) and shall provide recommendations, decisions and information in a timely manner which are critical to maintaining all parties' compliance with the Schedule. Although the Construction Manager does not guarantee the Schedule, the Construction Manager shall continually analyze the Work and services being provided by the Architect, Contractors and others involved with the Project and keep them apprised of the current and future scheduling requirements for purposes of coordinating their Work and services and their compliance with the Schedule. The Construction Manager shall periodically update and provide further detail on the Schedule as set forth in this Agreement. In providing such updates and further detail, the Construction Manager shall:

- (a) consult with the Architect as to the schedule for design services and coordinate and integrate the Architect's services with the Construction Manager's Services, the Owner's responsibilities, the advertising, bidding and awarding of the various Bid Packages and the critical Milestone Dates for the Project construction schedule;
- (b) identify critical and long lead-time items and implement procedures to coordinate the procurement of these items consistent with the Schedule;
- (c) consider weather conditions which reasonably can be anticipated from the National Weather Service ten-year weather events for Evansville, Indiana during the Construction Phase; and
- (d) evaluate, monitor and manage, in accordance with this Agreement, the various design, bidding and construction activities and sequences to be performed for the proper execution of the Work.

The Construction Manager shall keep the Owner fully apprised of all updates and reviews of the Schedule and there shall be no change to or deviation from the Schedule that would extend Substantial Completion of the Project, without the Owner's prior written consent, except for circumstances beyond the control of the Construction Manager and then only to the extent expressly provided for in this Agreement or the Contract Documents. While the Construction Manager shall not be liable for any failure of the Architect, Contractors or others involved with the Project to perform their Work or services in conformance with the Schedule, if the Construction Manager observes or suspects that any of those parties have or may deviate from the Schedule, the Construction Manager shall promptly advise the Owner and the involved party and shall also indicate what action the Construction Manager recommends to avoid, correct or minimize such deviation.

1.4 Deviations From Project Parameters. If, during the course of the Project, the Construction Manager discovers or has reason to believe that there has been or may be a deviation from the Program, Budget and/or Schedule, or if in the Construction Manager's opinion it is in the Owner's best interest to revise the Program, Budget and/or Schedule then the Construction Manager shall promptly advise the Owner and Architect, in writing, and shall:

- (a) endeavor to re-establish conformance with the Program, Budget and/or Schedule, without additional costs to the Owner, including providing additional manpower or other Services by the Construction Manager, if such deviation is caused by or the result of an error or omission of the Construction Manager or its Operations Team;
- (b) advise and, on Owner's behalf, direct any person or entity which has deviated from the Program, Budget and/or Schedule, without the Owner's approval, to take such action as is required of them under their agreement with the Owner to re-establish compliance with that Project parameter and, should they fail to do so, recommend to the Owner and Architect remedial actions to be taken against the person or entity responsible for such deviation;
- (c) consult with the Owner, Architect, Contractors and others involved with the Project to identify and recommend, as necessary, other options available to avoid or minimize any adverse impact to the Program, Budget and/or Schedule and implement such options as approved by the Owner in writing; and/or
- (d) advise the Owner and Architect in writing when the Construction Manager believes that revisions to the Program, Budget and/or Schedule are necessary, or are in the best interest of the Project and/or the Owner, including: the facts and circumstances on which the Construction Manager's belief is based; a description of the revisions being recommended; and identification of other available options to avoid or minimize the impact of such revisions and, thereafter, in conjunction with the Architect, Contractors or others involved with the Project, implement such revisions to the extent approved by the Owner, in advance and in writing.

1.5 Construction Manager's Services. The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner that it and its Operations Team shall use its best efforts, skill, judgment and abilities in providing Services under this Agreement to further the Owner's interest, consistent with the Program, Budget, Schedule and the quality of workmanship and materials specified in the Contract Documents. The Construction Manager represents that it has prior experience in constructing and/or managing the construction of multipurpose arenas of similar scope, size and nature to the current Project. The Construction Manager represents that all Services to be provided by the Construction Manager and members of its Operations Team, including formulation of opinions and recommendations to the Owner, shall be consistent with the Standard of Care.

1.5.1 The Services as provided by the Construction Manager with respect to the Project shall conform to all applicable federal, state and local laws, rules, regulations and codes. Provided, however, in the event of a change in any applicable federal, state or local law, rule, regulation or code taking effect after the execution of this Agreement, the Construction Manager shall be entitled to a Modification equitably adjusting the

compensation and/or the time of performance for the Services required pursuant to this Agreement, but only to the extent such change materially increases the Construction Manager's time or cost of performance of such Services.

1.5.2 The Construction Manager acknowledges that the Owner is relying upon the Construction Manager's skill and knowledge to provide its Services in accordance with the Standard of Care and in conformance with the laws, rules, regulations and codes applicable to the Project. Accordingly, the Construction Manager's duties and responsibilities under this Agreement shall not in any way be diminished by reason of any approval by the Owner of Services or Work relating to the Project, nor shall the Construction Manager be released from any such liability by reason of such approval by the Owner.

1.6 Operations Team. The Construction Manager shall provide sufficient organization, personnel and management to expeditiously and economically perform the Services required of it by this Agreement. The Construction Manager's employees, its subcontractors, consultants or other representatives who will render Services for the Project, including their respective areas of responsibility, are listed on Exhibit D and shall comprise the Construction Manager's operations team for the Project ("Operations Team"). The Owner and Construction Manager shall have the right to make mutually agreeable changes to the Operations Team which are believed to be in the best interest of the Project. In the event that any member of the Operations Team fails to provide or perform Services in a satisfactory manner and as required by the terms of this Agreement, the Construction Manager shall, upon its own decision or at the written request of the Owner, promptly replace that member of the Operations Team with another acceptable to the Owner. Construction Manager shall not make any change to its Operations Team without the prior written consent of the Owner, except for replacing individuals on the Operations Team should they no longer be employed by the Construction Manager or by its subcontractors, consultants or other representatives. With respect to any proposed change in the Operations Team, the Construction Manager shall submit to the Owner for approval, which approval shall not be unreasonably withheld, a detailed written recommendation which shall include the background, experience and qualifications of any proposed additional or replacement personnel.

1.7 Authorized Representatives. The authorized representatives of the Construction Manager ("Authorized Representatives") who have authority to make decisions on behalf of and to bind the Construction Manager are as follows:

Mike Fratianni
Rick DeJean
Dan Shumaker
Joe Eckhart

At least one of the Construction Manager's Authorized Representatives, as set forth above, shall be available for consultation regarding the Project on a 24 hour basis should the need arise.

1.8 Relationship to Architect's Services. The Construction Manager's Services shall be coordinated and provided in conjunction with the services of the Architect. The Construction

Manager shall not be relieved of its responsibilities to the Owner as enumerated in this Agreement, nor shall such responsibilities be modified or diminished, as a result of the Owner having retained the services of an Architect. With respect to the Architect's services, the Construction Manager, shall:

1.8.1 confer with the Architect to schedule and coordinate the Architect's services with the Services being provided by the Construction Manager and with the Work and services provided by others involved in the Project;

1.8.2 review, evaluate and report to the Owner regarding the Architect's performance of its services during the Project;

1.8.3 review the Architect's drawings and specifications during preparation and provide to the Architect and the Owner its recommendations regarding constructability, value engineering, construction processes, scheduling and cost estimating; and

1.8.4 provide continuous, timely and coordinated input and consultation with the Architect as required by this Agreement during all phases of the Project.

The Construction Manager shall not be responsible or liable for the design of the Project or for managing or coordinating design functions among the Architect and its Consultants, since these services are solely the Architect's responsibility. However, if the Construction Manager knows, or in the discharge of its obligations to the Owner under this Agreement reasonably should have known, that the Architect has made or is making design errors and/or omissions, has failed or is failing to provide its services in a proper or timely manner or has proceeded or is proceeding in a manner with which the Construction Manager disagrees or objects, then the Construction Manager shall promptly advise the Owner and Architect in writing. The Construction Manager's responsibility to provide such notice runs solely to the Owner and not to the benefit of the Architect. The Construction Manager's failure to discover defects or deficiencies of the Architect shall in no manner excuse, relieve or otherwise discharge the obligations which the Architect owes to the Owner, nor shall such be deemed an acceptance by the Owner of improper or defective services performed by the Architect.

1.9 No Discrimination. During the course of the Project the Construction Manager, members of its Operation Team, their agents and employees, and anyone else with whom the Construction Manager contracts with respect to this Project, shall:

1.9.1 not discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, sex, religion, color, national origin, ancestry, age, handicap, disabled veteran status and/or Vietnam era veteran status;

1.9.2 comply with existing laws of the State of Indiana and United States regarding prohibition of discrimination in employment practices; and

1.9.3 agree that the provisions of I.C. 5-16-6-1, as applicable to Contractors, are incorporated herein by reference and, by the parties' agreement, are made applicable to the Construction Manager.

It is agreed and acknowledged that the breach of these provisions by the Construction Manager may be regarded as a material breach of this Agreement.

1.10 Construction Manager's Affirmative Action Plan. During the course of the Project, the Construction Manager, members of its Operations Team, their agents and employees, and anyone else with whom the Construction Manager contracts with respect to the Project, shall:

1.10.1 comply with all applicable Federal, State and Local laws, rules and regulations pertaining to affirmative action requirements and non-compliance proceedings, including rules, regulations and ordinances as adopted by the Owner and/or by the City of Evansville;

1.10.2 strongly encourage the utilization of minority owned businesses ("MBE's"), women owned businesses ("WBE's") and other small disadvantage businesses, including undertaking good faith efforts to meet or exceed the MBE and WBE goals as described in Section 1.11 below;

1.10.3 strongly encourage substantial involvement of persons, corporations or other entities whose principal place of business is located within the City of Evansville and/or the State of Indiana; and

1.10.4 confirm that they have formulated and will adhere to their own Affirmative Action Policy.

1.11 MBE/WBE Goals. It is a goal of the Owner and Construction Manager to promote the utilization of MBE's and WBE's during and as part of the Project, in an effort to meet or exceed the participation goals applicable to this Project of 14% participation of MBE's and 7% participation by WBE's. The Construction Manager shall develop a written plan ("Plan") which, upon review and approval by the Owner, shall be included in the Contract Documents as part of each Bid Package for the Project. The Plan shall require each bidder to identify, as part of its bid, the MBE and WBE businesses that would perform Work should the bid be accepted, a description of the Work which each would perform and the dollar amount of the Work which each would perform. The Construction Manager, as part of the Plan, shall actively promote the meaningful participation of MBE and WBE businesses, both as part of its Operations Team and in the performance of the Work by the Contractors. The Construction Manager agrees that with respect to all Services provided under this Agreement, the MBE participation shall be at least 14% and the WBE participation shall be at least 7%.

1.11.1 Before and during the Pre-Construction and Bidding Phases of the Project and subject to the public construction and public procurement laws applicable to the Project, the Construction Manager shall actively promote the meaningful participation of MBE's and WBE's in the Project by, among other things:

-
- (a) informing interested bidders of the Plan, including the MBE and WBE goals and procedures applicable to the Project;
 - (b) organizing and conducting pre-bid meetings to inform MBE's and WBE's of contracting opportunities and encouraging all potential bidders to attend such meetings;
 - (c) advertising with respect to contracting opportunities in general circulation, trade and minority-focused media;
 - (d) providing written notice of contracting opportunities to known MBE's and WBE's in sufficient time to allow them to participate;
 - (e) encouraging all potential bidders to contact and/or follow-up with MBE's and WBE's interested in participation;
 - (f) developing criteria for dividing Bid Packages into economically feasible units to facilitate MBE and WBE participation;
 - (g) providing adequate information about Plans, Specifications and/or other contracting requirements to facilitate MBE and WBE participation;
 - (h) encouraging all potential bidders to confer in good faith with interested MBE/WBE's, with no MBE/WBE to be rejected as unqualified without sound reason;
 - (i) providing information to MBE/WBE's regarding bonding and insurance;
 - (j) utilizing the services of available minority organizations, contractor's groups, state and local offices, etc., that have knowledge of available MBE/WBE's or the means to locate such MBE/WBE's;
 - (k) drafting of the bid documents in a form to disclose the status of MBE/WBE goal achievement as of the bid date and to provide notice that failure to attain the goal or to demonstrate good faith efforts to achieve the goal may constitute grounds for rejection of the bid;
 - (l) evaluating for each Bid Package the extent of MBE/WBE participation by the apparent low bidder, whether the proposed entities have been appropriately certified as MBE/WBE's, whether the apparent low bidder achieved the goals applicable to the Project and, if not, the extent of good faith efforts made by such bidder to

encourage the utilization of MBE/WBE's and whether there are valid reasons for the bidder's inability to achieve the stated goals; and

- (m) advising the Owner for each Bid Package whether, in the Construction Manager's opinion, the apparent low bidder has achieved the stated MBE/WBE goals or demonstrated good faith efforts to achieve the goals and include this consideration in the Construction Manager's overall recommendation as to whom the contract should be awarded.

1.11.2 During the Construction Phase of the Project, the Construction Manager shall, among other things:

- (a) obtain a schedule from each Contractor summarizing all Subcontractor and supplier utilization, including MBE/WBE participation;
- (b) obtain from each Contractor copies of MBE/WBE subcontracts, purchase orders, requisitions, etc.;
- (c) obtain any additional documentation deemed necessary to demonstrate the good faith efforts of each Contractor to achieve and maximize MBE/WBE participation goal levels;
- (d) verify that each MBE/WBE as listed by each Contractor is appropriately certified as either an MBE or WBE entity;
- (e) determine the scope of Work assigned to each MBE/WBE;
- (f) calculate the percentage of participation for each MBE/WBE;
- (g) determine the percentage of completion of MBE/WBE scope of Work to date;
- (h) evaluate the impact of Change Orders on MBE/WBE utilization;
- (i) periodically, and at the specific request of the Owner, conduct reviews to verify:
 - the progress payments made to MBE/WBE's;
 - method of accounting for MBE/WBE participation; and
 - workforce utilization; and

- (j) provide written reports to the Owner, on at least a monthly basis, as to the MBE/WBE participation for each Contractor and for the Project as a whole.

1.12 Boundary Coordination. The Construction Manager shall consult and cooperate with the Architect and Owner as to boundary coordination issues applicable to the Project, which coordination shall specifically address:

1.12.1 the proper interfacing and/or interconnecting of the Project boundaries and elevations with and to other surrounding improvements;

1.12.2 efficient planning and coordination with respect to streets, utilities and other infrastructure which are located on and/or are surrounding the Project;

1.12.3 proper and efficient means of ingress to and egress from the Project; and

1.12.4 communications with surrounding businesses, neighborhood groups and adjacent property owners regarding the Project, including discussion of the type and schedule of activities that could require the closure of traffic lanes, sidewalks or other construction activities that could affect the area surrounding the Project.

1.13 Communications Between Parties. The Owner and Construction Manager shall, in the best interest of the Project, promptly communicate with each other as to the current status, recent developments and the anticipated schedule for the Project.

1.14 Site Visit. The Construction Manager represents that it has visited the site where the Project is to be constructed and has thoroughly familiarized itself with the local conditions under which the Services required hereunder are to be performed. The Construction Manager, in entering into this Agreement, has considered the conditions at the site based upon the Construction Manager's background and experience in the construction industry and agrees to correlate its observations of same with the requirements of this Agreement.

1.15 Security Programs. Construction Manager shall cooperate with and assist the Owner and Architect in developing and implementing security procedures, devices and restrictions with respect to the Project scope, Contract Documents, site access and such other matters as the Owner may reasonably request.

1.16 Fast Track. The Project will proceed on a fast track basis, with different portions of the Work to be designed, bid and performed in a phased sequence consistent with the Schedule. The Construction Manager recognizes and agrees that its Services as to portions of the Work will overlap in certain respects. The Construction Manager shall consult and confer with the Architect as to the phasing of the different Document Issues and Bid Packages and shall make recommendations to the Owner as to the number of Document Issues and Bid Packages, their schedule and scope. The Construction Manager, Architect and Contractors shall also confer and cooperate with one another during both design and construction, so as to promote the timely completion of the Work within Budget and consistent with the quality, workmanship and value

specified in the Contract Documents. The Construction Manager shall review all Document Issues, based on information then available, to determine if they are generally complete, coordinated and properly interfaced, both within and between Document Issues and Bid Packages. The Construction Manager, without assuming any design responsibility of the Architect, shall promptly inform the Architect and Owner in writing of any deficiencies in such Document Issues that the Construction Manager discovers. Recognizing the fast track nature of the Project, the parties acknowledge that as subsequent Document Issues are completed, certain revisions or additions may be required to prior Document Issues in order to fully and properly complete, coordinate and interface the overall design for the Project. The Construction Manager and members of its Operations Team shall confer with the Architect and Contractors as to revisions or additions that may be required to prior Document Issues, including incorporating Plans, Specifications or other design documents into prior Bid Packages as necessary to properly coordinate and interface the various phases of design and construction and to address and resolve potential conflicts or inconsistencies that may be discovered as a result of fast-track construction. So long as the coordination efforts required for this Project are generally consistent with those encountered on other fast track projects of similar nature, scope and size, the Construction Manager shall participate in those efforts as a Basic Service and without increase to the Construction Manager's Fees or to the Staffing Costs Cap.

1.17 Time. Time is of the essence of this Agreement, including achieving Substantial Completion as set forth in this Agreement. The Construction Manager's Services shall be performed in a manner to promote and facilitate timely completion of the Project and as expeditiously as is consistent with skill and care required to maintain the orderly progress of the Work.

1.18 Building Information Modeling. During the Design Development phase and after consultation with the Construction Manager, the Architect will prepare and submit to the Construction Manager and to the Owner, for their review, comment and approval, recommended procedures and protocol as to the adoption, implementation and utilization of Building Information Modeling ("BIM") with respect to the Project. Once the BIM procedures and protocol have been reviewed and approved, the Owner, Construction Manager and Architect shall confirm their agreement, in writing, and the parties shall, thereafter, adhere to such procedures and protocol and, as appropriate, incorporate them into the Contract Documents. Provided, however, to the extent such procedures and protocol cause an increase to the Construction Cost or Reimbursable Expenses, there shall be an equitable adjustment to the Budget.

1.19 Sustainable Design. It is the objective of the Owner that the Project be designed and constructed in a manner endeavoring to attain a "Silver" certification under the Leadership in Energy and Environmental Design ("LEED") program administered by the U.S. Green Building Council. The Architect will, therefore, identify for the Owner sustainable design options that could be incorporated into the Project in order to attain such certification and the Construction Manager shall also advise the Owner of sustainable options which it believes may be available and practical and which have not previously been identified by the Architect. The options to be considered shall include, but not be limited to, design approaches, proposed materials, building practices and available alternatives with respect to the energy sources, and the mechanical, electrical and plumbing systems to serve the Project. The Construction Manager shall confer with the Architect

and Owner as to the potential benefits of such options in reducing the environmental impact, energy consumption and operational and maintenance expenses of the Project and also the costs associated with implementing such options as part of the original design and construction of the Project. To the extent the Owner approves sustainable design options, the Construction Manager shall monitor the implementation of such options and report to the Owner thereon, consistent with the terms and conditions of this Agreement.

ARTICLE 2

CONSTRUCTION MANAGER'S BASIC SERVICES

2.1 Overview.

2.1.1 Included Basic Services. The Construction Manager's Basic Services with respect to the Project, as enumerated in this Agreement, shall be provided during the Pre-Construction, Construction and Post-Construction Phases of the Project. The Construction Manager in providing its Services pursuant to this Agreement, individually or through its Operations Team, shall utilize its skill, judgment, abilities and best efforts to promote and facilitate the Contractors' and other Project participants' timely and proper completion of the Project in a manner consistent with the Program, Budget, Schedule and the quality of workmanship and materials specified in the Contract Documents. The Construction Manager shall be responsible for and liable to the Owner for all acts, omissions, negligence or breaches of contract of or by the Construction Manager, its Operations Team, their agents and employees and any other persons or entities providing Services on the Project on behalf of the Construction Manager. The Construction Manager shall be responsible to manage, coordinate and oversee the Services provided by its employees and members of its Operations Team, including such management and coordination necessary to provide for proper, complete and timely Services as required by this Agreement.

2.1.2 Items Excluded from Basic Services. Notwithstanding anything in this Agreement to the contrary, except for the obligations set forth in the last sentence to this Section, the Construction Manager's Basic Services to be provided per this Agreement, do not include the following:

- (a) administration, management or any other Services related to contracts for the demolition or environmental remediation of buildings and other structures located on the Project site (the Construction Manager's Basic Services shall include administration of Construction Contracts by which the Remediation Plan is implemented as to identified surface and subsurface conditions (consistent with Section 7.1) and administration of Construction Contracts for the demolition of surface parking lots, other general site preparation and required excavation);

- (b) administration, management or any other Services related to contracts for infrastructure improvements or other work related to the Project that is performed by or for contractors retained by entities other than the Owner; or
- (c) administration, management or any other Services related to contracts for the Owner Managed FF&E as listed on Exhibit E-1 to this Agreement.

With respect to the above listed items, the Construction Manager's Basic Services shall be limited to: (i) the obligations set forth in Section 4.12 as to Owner's separate contracts; (ii) conferring with Owner, Architect, Owner's separate contractors or other entities who perform any of the excluded work or services noted above, to address the coordination, timing and interfacing of those activities with the Work on the Project that is being managed by the Construction Manager; and (iii) providing the Owner with notice if the Construction Manager believes or suspects that such activities are not being scheduled or performed so as to coordinate and interface with the Work being managed by the Construction Manager.

2.2 Pre-Construction Phase

2.2.1 Duration. The Pre-Construction Phase shall be deemed to have commenced as of the date the Construction Manager first renders Services in accordance with this Agreement and will conclude upon the award of the final Construction Contract. The Pre-Construction Phase includes the Schematic Design phase, Design Development phase, Construction Document phase and the bidding and awarding of the Construction Contracts.

2.2.2 Review of Design Documents. The Construction Manager shall review and comment on the design documents, suggest value engineering or other cost savings options and provide such other Services as set forth below, although in doing so the Construction Manager shall not have taken on design responsibility but shall provide such Services as the Construction Manager in accordance with the terms and conditions of this Agreement:

- (a) expeditiously review the Architect's design documents during their development, including Schematic Design, Design Development and Construction Documents, for adherence to the Program, Budget and Schedule and shall advise the Architect and Owner as to issues of constructability, proposed site use and improvements, selection of materials, building systems and equipment, and methods of Project delivery;
- (b) provide recommendations as to the relative feasibility of construction means and methods, availability of materials and labor, time requirements for procurement, installation and construction and other factors related to Building Costs including, but not limited to, value engineering, bid alternates and preliminary budgets and estimates;

- (c) in making value engineering proposals the Construction Manager shall endeavor to achieve the Owner's design objectives, as to functional performance and aesthetic goals, consistent with the Budget and Schedule and shall provide the following based on available information:
- detailed description of the specific changes that would occur to the Project upon adoption of the value engineering proposal;
 - list of the potential design documents and/or Bid Packages that would be affected by the proposed change;
 - impact of the proposal on the Program, Budget and Schedule for the Project; and
 - deadlines or schedules by which a decision needs to be made in order to obtain the anticipated cost savings and to incorporate the change into the Project in an orderly manner;
- (d) in conjunction with the Architect, maintain on a current basis during the Project a log of design changes, including for each change: (a) a description of the change; (b) who initiated the change; (c) when the change was initiated; (d) the reason for the change; and (e) the impact of the change on the Program, Budget and/or Schedule;
- (e) schedule technical review sessions with the Architect and Owner to discuss design ideas, value engineering options, constructability, development of Plans and Specifications, adherence to the Program, Budget and Schedule and other matters relevant to the design of the Project, which meetings shall be held when requested by the Owner or Architect or when the Construction Manager believes such meetings are necessary to promote the interests of the Project;
- (f) schedule design presentations by the Architect to the Owner to occur every two weeks, unless the Owner agrees otherwise, during the period in which the Architect is preparing Schematic Design, Design Development and Construction Documents;
- (g) attend all technical review sessions, design presentations and other meetings scheduled with the Architect and/or Owner to discuss the design, consult with the Owner as to pending topics and provide its recommendations to and assist the Owner in rendering decisions in a timely manner to maintain compliance with the Program, Budget and Schedule;

- (h) develop and implement a system for continuous Budget control, including component budget estimates suitable for evaluating costs as the design for the Project develops;
- (i) provide trade-off studies and value engineering analyses of the evolving design for the Project, as necessary to maintain compliance with the Budget, reporting to the Owner its recommendations with respect thereto;
- (j) on an ongoing basis and utilizing the Construction Manager's experience, carefully review the Architect's design documents for the Project (as a construction manager and not a designer) and report to the Owner and the Architect any problems discovered including, but not limited to, design gaps, scope expansion, design defects or deficiencies, etc;
- (k) monitor development of the design documents as compared to the Program, Budget and Schedule and report any deviations to the Architect and Owner;
- (l) recognize that the Owner has only a limited period of time after submittal by the Architect to review, comment on and/or approve Schematic Design, Design Development and Construction Documents for the Project and, therefore, proceed with Construction Manager's review and furnish to the Owner its written recommendations as to whether such design documents should be approved in sufficient time for the Owner to timely provide its comments on and/or approval of the various design documents to the Architect; and
- (m) recommend to the Owner a design peer review or other appropriate analysis if Construction Manager has a concern that a portion of the design is unsound, incomplete or contrary to applicable laws, rules, regulations or codes.

2.2.3 Updates/Estimates of Building Costs. During the Schematic Design, Design Development and Construction Document phases for the Project, the Construction Manager shall periodically update and provide further detail as to its estimates of Building Costs for the Project and shall promptly deliver such updates and detail to both the Architect and the Owner.

- (a) The Construction Manager's estimates of Building Costs shall specifically identify the estimated cost for each Document Issue and Bid Package for the Project and the Construction Manager's recommendation as to the appropriate contingency for each Document Issue and Bid Package.

- (b) The Construction Manager shall monitor the Budget as a whole and shall consider not only the estimated Building Costs, but also the other components of the Budget.

The Construction Manager shall deliver single item, special component, partial system, individual study, order of magnitude and value engineering estimates upon Owner's request throughout the Project. Estimates shall specifically be prepared with respect to any significant changes in such design documents. Estimates shall also be delivered to the Owner no later than fourteen (14) calendar days after the Architect delivers for the Owner's approval any Schematic Design Documents and no later than twenty-eight (28) days after the Architect delivers for the Owner's approval any Design Development Documents or Construction Documents. The Owner shall have seven (7) days following receipt of the Construction Manager's estimate to review, comment on and consider approval of the applicable design documents in light of such estimate. The Construction Manager shall also promptly review Construction Cost estimates prepared by the Architect and Construction Cost estimates prepared by an independent cost consultant, if retained by the Owner. The Construction Manager shall meet and cooperate with representatives of the Architect and the independent cost consultant in order to compare the various estimates prepared for the Project and attempt to reconcile any differences which exist between such estimates. The Construction Manager shall consult with the Architect, the independent cost consultant and Owner should any questions, disagreements or objections be raised as to the estimates. If it appears from the Construction Manager's Building Cost estimates or the Owner's Construction Cost estimates that the Budget or any component thereof will be exceeded, then the Construction Manager shall proceed in accordance with Section 1.4.

2.2.4 Construction Documents. With respect to Construction Documents as developed by the Architect for each Document Issue applicable to the Project, the Construction Manager shall promptly:

- (a) review each Document Issue in accordance with Section 2.2.2;
- (b) as to each Document Issue, advise the Owner, in writing, whether it believes the Construction Documents prepared by the Architect are consistent with the Program, Budget and Schedule;
- (c) develop and deliver to the Owner and Architect updated estimates of Building Costs for the Document Issue, including allocating such estimate to the specific Bid Packages that will be developed from the Document Issue;
- (d) recommend to the Owner, verbally and in writing, whether to approve the Construction Documents for bidding purposes;
- (e) suggest bid alternates which may be used, if necessary, to bring Document Issue within the applicable portion of the Budget and,

with the Owner's approval, include such bid alternates in the bid documents; and

- (f) suggest post award options that may be of benefit to the Project and, with the Owner's approval, include such post award options in the bid documents.

If the Construction Manager believes that the Construction Documents are inconsistent with the Program, Budget and/or Schedule, then the Construction Manager shall proceed in accordance with Section 1.4.

2.2.5 Temporary Project Facilities. The Construction Manager shall provide to the Owner and Architect a comparative cost analysis and its recommendations regarding the assignment of responsibility to specific Contractors for providing temporary Project facilities, equipment, materials and services for common use of the Contractors and, once approved, verify that such requirements are included in both the bid documents and Contract Documents.

2.2.6 Safety Program. Without assuming the direct safety obligations and responsibilities of the individual Contractors, the Construction Manager shall: (a) develop a comprehensive safety program applicable to the Project; and (b) include the safety program requirements and allocations of responsibility applicable to the individual Contractors in the bid documents and Contract Documents.

2.2.7 Document Issue/Bid Packages. The Architect shall, as part of its Basic Services, prepare Construction Documents for no more than nine (9) Document Issues and shall deliver such Construction Documents in accordance with the Schedule. The Construction Manager shall confer with the Architect and make recommendation, for the Owner's written approval, as to the specific number of Document Issues within that range that best promotes the interests of the Owner and the Project. The Construction Manager shall also recommend for the Architect's review and comment and the Owner's written approval, whether multiple Bid Packages should be developed out of one or more of the Document Issues and, if so, specifically identifying the scope of Work to be included in each Bid Packages. If the Owner, upon receipt and consideration of the Construction Manager's recommendation, directs that the number of Document Issues or Bid Packages be reduced, the Construction Manager shall proceed as directed by the Owner without additional costs. In considering and making its recommendation as to the Bid Packages, the Construction Manager shall:

2.2.7.1 in the interests of the Owner and Project divide the Work into the number of separate Bid Packages which is most appropriate to enhance competitive bidding, to maintain and enhance the Schedule, to obtain available cost savings and efficiencies and to promote and facilitate MBE/WBE participation;

2.2.7.2 review the Construction Documents and make recommendations as required to provide that: (a) the Work of the Contractors is coordinated, (b) all

requirements for the Work have been assigned to the appropriate Bid Package in an effort to eliminate or minimize omissions or duplications in the Project scope, (c) the likelihood of jurisdictional disputes have been minimized, (d) proper coordination has been provided for the phasing, sequencing and interfacing of Work, both within and among Bid Packages, and (e) the Project can be completed in an orderly and timely fashion; and

2.2.7.3 upon approval by the Owner of Construction Documents for each Document Issue, obtain the Construction Documents from the Architect, duplicate them for bidding purposes and, thereafter, retain the original documents at either the printer's office or the job site as appropriate.

2.2.8 Milestone Construction Schedule. Prior to the bidding of each Bid Package the Construction Manager shall:

2.2.8.1 prepare milestone construction dates applicable to that Bid Package ("Bid Package Milestones") which are consistent with the Schedule and which provide: (a) dates for commencement and completion required for each Contractor; (b) milestone dates critical to the interfacing of the various Contractors, both within and between Bid Packages, in order for all Work on the Project to proceed in accordance with the Schedule; (c) procurement of long lead time items; and (d) the occupancy requirements of the Owner and portions of the Project having occupancy priority;

2.2.8.2 submit the Bid Package Milestones to the Owner and Architect for review and, once approved by the Owner, the Bid Package Milestones shall not be extended, except as provided in the Contract Documents and upon the written agreement of the Owner;

2.2.8.3 include the applicable portions of the Bid Package Milestones approved by the Owner with each Bid Package; and

2.2.8.4 proceed in accordance with Section 1.4 if the Construction Manager determines that there has been or likely will be deviations from the Bid Package Milestones which will impact the Schedule.

2.2.9 Assistance Re Other Professional Services. If requested by the Owner the Construction Manager as Basic Services shall:

2.2.9.1 assist the Owner in selecting, retaining and coordinating the professional services of testing laboratories required for the Project;

2.2.9.2 recommend to the Owner other professional services which the Construction Manager believes necessary, or which will further the Owner's interests with respect to the Project, and assist in selecting, retaining and

coordinating the services of such professionals when requested and approved by the Owner; and

2.2.9.3 coordinate, administer and schedule such professional services in furtherance of the Owner's interest and the Project.

2.2.10 Labor Analysis. The Construction Manager shall provide an analysis of the types and quantities of labor required for the Project, review the availability of appropriate categories of labor required for critical phases and make recommendations for minimizing adverse effects of labor shortages.

2.2.11 Bidder Interest; Bid Packages; Pre-Bid Conferences. The Construction Manager shall:

- (a) make recommendations, consistent with the applicable public construction and/or public procurement laws of the State of Indiana, as to qualification criteria applicable to each Bid Package, including ability, capacity, integrity, character, reputation, competence and experience;
- (b) develop and include in Bid Packages requirements to promote schedule, cost and quality control during construction;
- (c) develop bidders' interest in the Project and establish bidding schedules;
- (d) with the cooperation of the Owner and Architect, prepare, assemble, reproduce, issue, advertise and distribute the Bid Packages and other Contract Documents necessary for bidding the various phases of the Work for the Project in accordance with public construction and/or public procurement laws of the State of Indiana, with the Bid Packages to include, but not be limited to, the following:
 - (i) Advertisement for bids;
 - (ii) Instructions to bidders;
 - (iii) Project Labor Agreement;
 - (iv) Common wage information;
 - (v) Equal Opportunity and MBE/WBE Plan;
 - (vi) Monthly Employment Utilization Reports;
 - (vii) Insurance requirements;

- (viii) Soils Report (if applicable to the Work being bid);
 - (ix) Subcontractor/Supplier List;
 - (x) Contractor Safety Information;
 - (xi) Escrow Agreement Form;
 - (xii) Bid forms;
 - (xiii) Form of Construction Contract;
 - (xiv) Form of General and Supplementary Conditions;
 - (xv) Bid Package Milestones applicable to the Bid Package and other schedule requirements;
 - (xvi) Applicable Drawings and Specifications;
 - (xvii) Bid Alternates and Post Award options; and
 - (xviii) Description of site use plan (including notice that Contractors will be responsible to locate and pay for required parking outside of the Site);
- (e) assist the Architect with regard to questions from potential bidders and with the issuance of Addenda; and
 - (f) schedule and conduct pre-bid conferences and, with the assistance of the Architect or its consultants, familiarize bidders with the bidding documents, management techniques to be employed, phasing, sequencing, scheduling and interfacing of the Work and any special systems, materials or methods to be employed on the Project.

2.2.12 Bid Review. The Construction Manager acknowledges that the procurement process for the Project is subject to Indiana's Public Construction Law, I.C. 36-1-12 and/or Indiana's Public Procurement Law, I.C. 5-22, as applicable. The Construction Manager shall:

- (a) deliver to the Owner at least twenty-four (24) hours prior to the opening of bids or proposals a written summary of the most current approved estimate of Building Costs and the contingency applicable

to the current Bid Package, so that the bids or proposals, once opened, can be reviewed in conjunction with the estimate and the overall impact on Budget can be determined;

- (b) receive and analyze all bids or proposals submitted, including conferring with the Owner as to:
 - whether the bid or proposal conforms in all material respects to the applicable Contract Documents and complies specifically with the invitation to bid, the instructions to bidders and all applicable statutes, ordinances, resolutions or rules pertaining to the award of a public contract; and
 - the ability and capacity of the bidder to perform the Work, the integrity, character and reputation of the bidder and the competence and experience of the bidder;
- (c) analyze the bidding/procurement process and any proposed award of a Construction Contract in light of the Project Labor Agreement;
- (d) analyze the bidding/procurement process and any proposed award of a Construction Contract in light of the MBE/WBE goals for the Project;
- (e) with the assistance of the Architect and its Consultants, schedule and conduct pre-award conferences;
- (f) make recommendations to the Owner as to any bids or proposals which the Construction Manager believes should be rejected, including identification of the reasons for such recommendations, and make recommendations with respect to the award of Construction Contracts for each Bid Package;
- (g) prepare the Construction Contracts on behalf of the Owner and advise the Owner as to the acceptability of Subcontractors and material suppliers proposed by Contractors;
- (h) review the Contractors' schedules of values, bond forms, certificates of insurance, proposed Work schedules and provide to the Owner comments and recommendations with respect thereto; and

- (i) assist the Owner in obtaining timely execution of Construction Contracts, consistent with and following the Owner's award of such Construction Contracts.

2.2.13 Permits. With respect to the Project, the Construction Manager shall:

- (a) in conjunction with the Architect, prepare all applications and filings necessary for the Owner to obtain building permits and other construction related permits required for the Project, except for permits to be obtained directly by the various Contractors per the Contract Documents;
- (b) verify that the Owner has paid applicable building permit fees and assessments;
- (c) with the assistance of the Architect and Owner, prepare all application documents required to be filed by the Owner to obtain other construction related approvals of governmental authorities having jurisdiction of the Project; and
- (d) at the Owner's request, attend all governmental, regulatory or administrative meetings or hearings relating to the Project and any regularly scheduled and/or special meeting of the Owner held during the course of the Project.

2.3 Construction Phase - Administration of The Construction Contracts

2.3.1 Duration. The Construction Phase for the Project will commence with the award of the initial Construction Contract and concludes upon Substantial Completion of the Project.

2.3.2 Contract Administration. The Construction Manager, in cooperation with the Architect, shall provide the contract administration Services as set forth in this Agreement for all Construction Contracts awarded with respect to the Project. The administration of the Construction Contracts and other Services provided by the Construction Manager during the Construction Phase are rendered solely for the benefit of the Owner and not for the benefit of the Contractors, the Architect, or other parties performing Work or services with respect to the Project. The Construction Manager's acts or omissions shall in no manner relieve or otherwise discharge the obligations which the Contractors owe to the Owner, nor shall they be deemed an acceptance by the Owner of performance by the Contractors not in conformance with the Contract Documents. The key representatives of the Construction Manager and its Operations Team who will provide Services for the Project on a full time basis during the Construction Phase are identified on Exhibit D, including a general description of their responsibilities and identification of whether they will be located on-site during the Project. Other members of the Operation Team shall, as part of the Construction Manager's Basic Services, devote their time to the

Project at intervals appropriate to the stage of construction and to their individual areas of responsibility and expertise.

2.3.3 Administration and Management. With respect to the Project, the Construction Manager, in furtherance of the Owner's interest, shall:

- (a) provide administration, management and related Services necessary to coordinate and schedule the activities and responsibilities of the Contractors, Architect, Construction Manager, Owner, Owner's consultants and others providing services, labor, materials and/or equipment with respect to the Project;
- (b) provide administration, management and related Services necessary for the Construction Manager to comply with its obligations under the Project Labor Agreement and to assist the Owner in fulfilling its requirements and responsibilities under the Project Labor Agreement;
- (c) provide administration, management and related Services necessary to promote compliance with the MBE/WBE goals applicable to the Project;
- (d) manage the Project in accordance with the Budget, the latest approved estimates of Building Costs, the Schedule, the Program and the Contract Documents;
- (e) guard the Owner against defects or deficiencies in the Work;
- (f) submit to the Owner for its approval, a site use plan for construction operations at the Site, allocating space for storage, staging, lay-down and assembly areas, equipment and material delivery, parking (to the extent such is available on the Site and designating who is authorized to use that parking), temporary facilities, etc. and, upon approval by the Owner, verify that such requirements and assignment of responsibilities are included in the Contract Documents;
- (g) schedule, coordinate and monitor the individuals and entities seeking access to the Site in order to perform Work, to deliver materials or equipment or for any other reason;
- (h) implement and enforce procedures to control the access to and the activities performed on the Site;

- (i) maintain daily records which reflect the Contractors or entities on the Site and the activities performed, as well as other individuals entering the site;
- (j) designate the members of the Operations Team who have the authority to make decisions on behalf of the Construction Manager and who are authorized to interface with the Owner, Contractors and the Architect on a daily basis;
- (k) in conjunction with the Architect and Contractors, prepare look-ahead schedules on a two week, monthly and quarterly basis which identify the anticipated Work scheduled for that period in order to keep all involved parties apprised of the scheduling requirements for purposes of coordinating their Work and services in a timely manner; and
- (l) designate on a weekly basis a representative of the Operations Team who is knowledgeable regarding the Project and who will be available for consultation that week on a 24-hour basis should the need arise.

2.3.4 Job Meetings. With respect to the Project, the Construction Manager shall:

- (a) schedule and conduct weekly meetings to discuss such matters as safety procedures, progress, scheduling, work issues and other matters relevant to the current and anticipated Work, with the meetings to be held more often if the Construction Manager determines that this would be in the best interest of the Project and/or the Owner, or if the Owner so requests;
- (b) present during the meeting a two week forecast of the anticipated Work scheduled for that period and apprise all involved parties of the scheduling requirements for purposes of coordinating their Work or services in a timely manner;
- (c) arrange for such meetings to be attended by all parties then involved or about to be involved with the Work or who have a responsibility for any matter to be discussed; and
- (d) prepare and promptly distribute minutes of such meetings to the Owner, Architect and Contractors and any other person or entity which attended the meeting.

2.3.5 Schedules from Contractors. The Construction Manager shall:

- (a) include in all Bid Packages written notification and requirements that the Work of the successful bidder shall adhere to the Bid Package Milestones applicable to that Construction Contract and shall be properly coordinated and interfaced with the Work being performed by other Contractors on-site;
- (b) include in all Bid Packages the requirement that each successful bidder submit, within a time period set by Construction Manager, a detailed Construction Schedule (utilizing Critical Path Method analysis and a program approved by the Construction Manager) for the bidders' Work which conforms to the Bid Package Milestones applicable to that Construction Contract;
- (c) review the detailed schedule provided by each Contractor to confirm that it is consistent with the Bid Package Milestones applicable to that Construction Contract and properly coordinates and interfaces with the Work being performed by other Contractors;
- (d) promptly notify the Contractor if the Contractor's detailed Construction Schedule is inadequate or defective and assist the Contractor in making necessary supplements or amendments to its schedule;
- (e) develop and maintain a Master Construction Schedule (utilizing Critical Path Method analysis) which incorporates the detailed Construction Schedules as received from all Contractors and which conforms to the Schedule, with the Master Construction Schedule to be periodically updated by the Construction Manager, made available for review by the Owner and distributed by the Construction Manager to the Architect, Contractors and others providing Work or services on the Project, so that they can provide their Work and/or services in conformance therewith;
- (f) include in the Construction Contracts a requirement that the Contractor provide periodic updates of its Construction Schedule in the format specified in 2.3.5(b);
- (g) update the Master Construction Schedule by utilizing and incorporating the additional detail as provided by existing Contractors or upon the award of new Construction Contracts for subsequent Bid Packages; and
- (h) the Construction Manager shall adhere to the then current Master Construction Schedule in providing its Services under this Agreement.

2.3.6 Coordination of Contractors. With respect to the Project, the Construction Manager shall monitor and manage the coordination, phasing, sequencing and interfacing of the Contractors, so as to achieve completion of the Project as a whole in an orderly and timely fashion.

2.3.7 Building Costs. With respect to the Project, the Construction Manager shall:

- (a) continually track, manage and report to the Owner on a monthly basis as to the approved estimates of Building Costs;
- (b) compare actual costs for Work in progress and estimates for uncompleted Work with the approved estimates of Building Costs;
- (c) monitor and report as to costs for each Bid Package and for the Project as a whole; and
- (d) on a current basis, revise and refine the estimates of Building Costs to incorporate changes approved by the Owner.

If during the Construction Phase the Construction Manager determines or has reason to believe that the Budget or the approved estimate of Building Costs for any Bid Package has been or may be exceeded, then the Construction Manager shall proceed in accordance with Section 1.4.

2.3.8 Cash Flow Reports. The Construction Manager shall provide monthly, or more frequently if requested by the Owner, cash flow reports and forecasts for the Project and advise the Owner and Architect as to variances between actual costs and the previously approved budgets or estimates of such costs.

2.3.9 Accounting Records. The Construction Manager shall maintain accounting records to accurately track and record Work authorized to be performed pursuant to unit costs, on a time and material basis and for other Work requiring specialized accounting records.

2.3.10 Processing of Progress Payments. The Construction Manager shall review the itemized applications for payment submitted by the Contractors each month for the Work completed in the prior month, including a review of such applications in light of the Schedule of Values for each Contractor as approved by the Owner. The form of each application shall be consistent with the current requirements of the Indiana State Board of Accounts, legal requirements of a public board in the State of Indiana and any internal payment procedures adopted by the Owner. The applications for payment shall be notarized and shall include a certification by each Contractor as set forth on AIA Document G702/CMA, or in a form substantially similar thereto, and shall be accompanied by appropriate lien waiver(s). Subject to relevant provisions of the General Conditions, the

schedule for the submission and processing of monthly applications for payment shall be as follows:

- (a) The period covered by each application for payment starts on the first day of the month and ends on the last day of the month;
- (b) Contractor shall submit on the first business day of each month a "pencil copy" of its application for payment as to Work performed in the prior month for review by and with the Construction Manager and Architect;
- (c) Contractor shall submit on the 7th day of each month a fully completed application for payment for the Work performed in the preceding month;
- (d) Construction Manager will assemble all Contractors' applications for payment into a "Project Application for Payment" and provide the Architect a copy by the 14th day of the month;
- (e) Construction Manager and Architect will complete their review and certifications and report to the Owner their recommendation as to the amounts which are due and owing and which should be paid to the Contractors by the 21st day of the month; and
- (f) Owner shall pay the approved portion of each Contractor's application for payment in accordance with the terms and conditions of the applicable Construction Contract and the Contract Documents.

The Construction Manager shall provide cost monitoring and control applicable to the Project through the review of Applications for Payment.

2.3.11 Certification of Pay Applications. The Construction Manager shall review and certify the amounts due the respective Contractors. The Construction Manager's certification for payment shall constitute a representation to the Owner, based on the Construction Manager's observations at the site as provided in Section 2.3.13, the data comprising the Contractors' Applications for Payment and other information then in possession of the Construction Manager, that to the best of the Construction Manager's knowledge, information and belief the Work has progressed to the point indicated, that the quality of the Work is in accordance with the Contract Documents, that the Contractors' Applications for Payment have been submitted in proper form with all required information and that the Contractors are entitled to payment in the amounts certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the Construction Manager. Moreover, the Construction Manager's representations as set

forth herein are given solely to and are for the benefit of the Owner. Such representations by, or other actions of, the Construction Manager are not for the benefit of the Contractors or other parties performing the Work. Such representations shall in no manner excuse, relieve or discharge the obligations which the Contractors or other parties owe to the Owner, nor shall such representations be deemed an acceptance by the Owner of Work which is later determined to be incomplete, defective or otherwise not in conformance with the Contract Documents.

2.3.12 Safety. With respect to the Project, the Construction Manager shall:

- (a) review the safety programs of each Contractor and monitor the implementation of those programs for compliance with the safety program contained in the Contract Documents, for compliance with applicable federal, state and local rules, codes, regulations and statutes applicable to safety measures (including OSHA and IOSHA) and for coordination with the safety programs of the other various Contractors. Each individual Contractor shall, however, remain the controlling employer responsible for the safety programs and precautions applicable to its own Work and the activities of others in areas designated to be controlled by such Contractor. The Construction Manager's responsibilities for review, monitoring and coordination of the Contractors' safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractors, Subcontractors, their agents or employees or any other persons performing portions of the Work and not directly employed by the Construction Manager;
- (b) routinely inspect the Project to determine if: (a) the Contractors have erected and/or implemented appropriate safety procedures and warnings to guard against injury to construction workers or others who may visit the Project site; and (b) the Contractors have implemented appropriate security measures as to their Work;
- (c) immediately notify the involved Contractor if the Construction Manager observes any construction activity or practice which it believes to be in violation of the safety program as set forth in the Contract Documents, OSHA, IOSHA or other applicable safety standards and order that the Contractor take all appropriate steps to correct the violation, but any failure of the Construction Manager to observe and/or provide the notice as required herein shall not relieve the Contractors of their safety obligations as the controlling employer;
- (d) if any Contractor fails to promptly correct any improper construction activity or practice or fails to coordinate its safety program with those of other Contractors, the Construction Manager shall notify the

Owner and Architect, in writing, and shall set forth therein the corrective action which it recommends;

- (e) report to the Owner, verbally and in writing, regarding any injury or accident occurring at the site within twenty-four (24) hours, or within a shorter period of time if required by law, and immediately report to the Owner any accident or occurrence on the Project which has caused death, serious injury or significant damage to the Project;
- (f) be directly responsible for the safety requirements and programs applicable to Services performed by the Construction Manager's own employees, other members of its Operations Team and other parties with whom it has contracted to perform Services relating to the Project; and
- (g) coordinate the Construction Manager's own safety program with that of the Contractors.

The Owner does not possess expertise as to construction related safety matters and programs and, therefore, the Owner does not assume any duty to the Construction Manager, Contractors, Architect or others involved with the Project as to applicable safety standards or procedures with respect to the Services provided by the Construction Manager (or by members of its Operations Team) or the Work or services provided by the Contractors, Architect or others involved with the Project. The Owner's personnel, employees and representatives, when on the Project site, shall conform to and observe all requirements of the Project Safety Program applicable to visitors to the Project.

2.3.13 Observation of Contractors' Work. In order to protect the Owner's interest, Construction Manager shall, through its employees and other representatives of its Operations Team as assigned to the Project Site, observe the Work for conformance with the Contract Documents. The Construction Manager's observation of the Work shall supplement, but not replace or reduce or be replaced or reduced by, the duties of the Architect with respect to observation of the Work. The Construction Manager shall determine in general that the Work of each Contractor is being performed in accordance with the requirements of the Contract Documents and shall endeavor to guard the Owner against defects and deficiencies in the Work. If the Construction Manager believes that certain Work does not conform to the requirements of the Contract Documents it shall immediately advise the Contractor, Architect and Owner, in writing, explaining why it believes that the Work fails to conform. The Construction Manager shall also have authority, after notice to and approval of the Owner, to require additional inspection or testing of the Work to determine whether or not such Work is fabricated, installed or completed in accordance with the requirements of the Contract Documents. After consultation with the Architect and Owner, the Construction Manager may also reject Work which does not conform to the Contract Documents. The Construction Manager's responsibility as set forth in this Section runs solely to the Owner and not for the benefit of the Contractors or other parties performing the Work. The Construction Manager's acts or

omissions in this regard shall in no manner excuse, relieve or discharge the obligations which the Contractors or other parties owe to the Owner, nor shall such acts or omissions of the Construction Manager be deemed an acceptance by the Owner of Work which is later determined to be incomplete, defective or otherwise not in conformance with the Contract Documents.

2.3.14 Contractors' Performance. The Construction Manager will schedule and coordinate the activities of the Contractors in accordance with the Master Construction Schedule, shall endeavor to obtain satisfactory performance from each of the Contractors and shall recommend courses of action to the Owner, including withholding of payments to the Contractor if justified under the Contract Documents when, despite the Construction Manager's diligent efforts, it believes that a Contractor is not fulfilling the requirements of its Construction Contract.

2.3.15 Limitations on Construction Manager's Review of Contractor's Work. With respect to each Contractor's Work on the Project, the Construction Manager shall not have control over or charge of or be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work of each of the Contractors, since these are the Contractor's responsibilities. The Construction Manager shall not be responsible to the Owner for a Contractor's failure to carry out its Work in accordance with the Contract Documents, unless the Contractor's failure is caused by the Construction Manager's error, omission, negligence or breach of contract or the Construction Manager knew, or in the discharge of its obligations to the Owner under this Agreement reasonably should have known, of defects, deficiencies or deviations in the Work of a Contractor and failed to promptly notify the Contractor, Owner and Architect. In the event that Construction Manager fails to provide notice as required herein, the Construction Manager shall be responsible to the extent the Owner's rights and/or remedies as against the involved Contractors (or their sureties) are prejudiced by the omitted or delayed notice and the damages could have been avoided had timely notice been provided.

2.3.16 Requests for Information ("RFI"). The Construction Manager shall transmit to the Architect written requests from Contractors for information and/or interpretations regarding the meaning and intent of the Contract Documents and shall assist in the resolution of questions that may arise. Before transmitting any RFI to the Architect, the Construction Manager first shall review the RFI with the Contractor to determine if the RFI can be resolved without involvement of the Architect and, if so, the Construction Manager shall provide the Architect a copy of the response given to the Contractor's RFI. If it is necessary to send an RFI to the Architect, the Construction Manager shall review the RFI to determine that the information requested is clearly described and specifies the time within which the RFI must be answered in order to avoid any delays or additional cost. The Construction Manager shall maintain on a current basis an RFI log which shall include for each RFI the following information: who initiated the RFI; a summary of the questions or matters in issue; the date the RFI was delivered to the Construction Manager and/or the Architect; the date the Construction Manager and/or Architect responded; a summary of the response; and a description as to the impact on scope, time and costs.

2.3.17 Change Orders and Classification of Changes. The Construction Manager shall review requests for changes and submit its recommendations to the Architect and Owner regarding the proposed changes, including an explanation as to the need for the change and an evaluation of the proposed pricing. As to the changes approved by the Owner, the Construction Manager shall negotiate Contractors' change proposals in the best interest of the Owner and Project. To the extent an agreement is reached with all involved parties as to the scope of the change and the cost and time impacts, if any, the Construction Manager shall prepare a Change Order to be signed and issued in accordance with the General Conditions. If such an agreement cannot be reached, the Construction Manager shall consult with the Owner regarding the necessity of the change and, upon approval by the Owner, shall prepare a Construction Change Directive to be signed and issued in accordance with the General Conditions directing the Contractor to proceed with the change in the Work. Change Orders and Construction Change Directives prepared by the Construction Manager shall incorporate all applicable Drawings, Specifications and other design documents prepared by the Architect to fully describe the changes to the Contract Documents and Construction Contracts. The Construction Manager also shall identify and recommend possible changes which it believes are necessary or in the best interest of the Project and Owner. Each Change Order and Constructive Change Directive, regardless of whether the change involves financial or scheduling consideration, technical matters or a combination thereof, shall be assigned by the Construction Manager to one of the following "Change Categories":

Owner Initiated Change – A revision to the scope or schedule of the Work requested by the Owner.

Coordinating Change Order – A change required to complete, coordinate and properly interface the Work, including changes which arise due to the fast track nature of the Project, but only to the extent the number and scope of such changes fall within the normal and customary range consistent with the Standard of Care applicable to fast track Change Orders on projects of similar nature, scope and size.

Contractor Error or Omissions – A change required due to defects or deficiencies in the Work due to the fault or neglect of a Contractor (with the Construction Manager to identify the Contractor at fault, if known).

Design Error or Omission – A change required due to an error or omission in the architectural/engineering services provided for the Project (with the Construction Manager to identify the Architect or its Consultant at fault, if known.)

C/M Error or Omission – A change required due to an error or omission of the Construction Manager or a member of its Operations Team.

Unforeseen Condition – A change required due to a condition that could not have been reasonably anticipated and which qualifies as an Unforeseen Condition, as defined in the General Conditions.

Code Requirement – A change required due to the enactment of or amendment to a federal, state or local statute, rule, regulation, ordinance or code after approval of the Contract Documents.

Excusable Delay – A change required due to a delay to the Project which justifies a time extension under the Contract Documents.

Schedule Coordination – A change required to address or resolve schedule coordination issues or to otherwise facilitate and promote the orderly progress of the Work consistent with the Schedule.

Miscellaneous – A change required due to an event or circumstance not covered by the categories set forth above.

The Construction Manager shall initially assign each Change Order or Construction Change Directive to what it deems to be the appropriate category as specified herein and shall notify the Owner, Architect and affected Contractors of its recommendation, in writing. The Construction Manager's recommendation shall be subject to review, including formal dispute resolution under Article 8 if necessary.

2.3.18 Change Order Log. During the Construction Phase, the Construction Manager shall maintain on a current basis a Change Order Log which shall include the following information for each Change Order and Construction Change Directive: who initiated the Change Order or Construction Change Directive; when was it initiated; the date it was signed; and the impact of the change on the Program, Budget and/or Schedule. The Construction Manager shall monthly, or more frequently if requested by the Owner, provide a written report in a form acceptable to the Owner which shall summarize the total projected cost and schedule impact of all Change Orders and Construction Charge Directives to date and all proposals for Change Orders which are then known or are being considered.

2.3.19 Review of Claims. The Construction Manager shall review, evaluate and document claims asserted by the Contractors, the Architect or others involved with the Project. The Construction Manager shall promptly advise the Owner as to its review and evaluation of claims, shall expend its best efforts to resolve such claims in a manner

satisfactory to the Owner and, failing to do so, shall thereafter assist the Owner in seeking prompt resolution of all such claims. Claim documentation in the Construction Manager's possession shall be available to the Owner at all times during regular business hours.

2.3.20 Contractor's Insurance. The Construction Manager shall consult with the Owner and its insurance consultants as to the types and limits of coverages which the Contractors should be required to procure and maintain. The Construction Manager shall include in the Contract Documents and Bid Packages provisions identifying and requiring the coverages and limits approved by the Owner and shall require that each Contractor provide certificates of insurance evidencing that the Contractor has in place the insurance coverages and limits as required by the Contract Documents. The Contract Documents shall require that the Construction Manager, Architect, Owner, Project Director, City of Evansville and their respective elected and appointed officials, agents, officers, board members, directors and employees, shall be added as an additional insureds to the Contractor's general liability, auto and umbrella policies and that the coverage granted to additional insureds shall be primary and without contribution. Before a Contractor is allowed to proceed with its Work, the Construction Manager shall obtain the Contractor's certificates of insurance and review them for compliance with the requirements of the Contract Documents. In the event that a Contractor's insurance does not comply with the requirements of the Contract Documents, the Construction Manager shall immediately notify the Contractor, in writing, and shall not allow the Contractor to perform its Work until the insurance requirements of the Contract Documents are fully satisfied. If the Contractor fails to promptly comply with the insurance requirements after receiving notice from the Construction Manager, the Construction Manager shall notify the Owner and Architect, in writing, and shall set forth therein the remedial action which it recommends as to such Contractor.

2.3.21 Shop Drawings and Submittals. With respect to shop drawings, product data, samples and other submittals for the Project (hereinafter collectively "Submittals"), the Construction Manager shall:

- (a) in cooperation with the Architect, establish and implement, prior to the commencement of construction, schedules and procedures for expediting the review and processing of Submittals;
- (b) review all Submittals, track their progress as they proceed through the agreed procedures and advise the Owner if delays or deviations are encountered;
- (c) require and confirm that Contractors, whose Work must interface with other Contractors, have conferred and coordinated with the other Contractors and that all Submittals properly reflect necessary coordination and indicate field conditions and other matters affecting design intent;

- (d) make note of any proposed deviations from the Contract Documents which are identified in the Submittals or otherwise observed by the Construction Manager;
- (e) notify, in writing, any Contractor whose Submittals are not in an acceptable form or whose Submittals have not been tendered on a timely basis in compliance with the Project Construction Schedule;
- (f) notify Contractors of problems to be corrected and/or the time deadlines applicable to the Submittals and endeavor to obtain the Contractor's compliance;
- (g) notify the Owner and Architect, in writing, if after exercising due diligence the Construction Manager cannot obtain the Contractor's compliance as to the Submittal schedules and/or procedures and make recommendation as to what remedial action should be taken as against the Contractor;
- (h) upon completion of the Construction Manager's review as set forth above, transmit to the Architect, in a manner calculated to avoid delay, all Submittals found by the Construction Manager to be in proper form;
- (i) notify the Owner and Architect, in writing, of any delay by the Architect in reviewing and processing Submittals; and
- (j) maintain a log identifying the date on which Submittals are received, returned and the dates on which the Construction Manager, Architect and/or Contractors take subsequent action thereon, including a description of the action taken.

Nothing contained in this Article 2.3.20 shall relieve the Architect from its services with respect to the review of Submittals, nor shall the Construction Manager be required to perform any of the contractual services of the Architect.

2.3.22 Progress Reports. The Construction Manager shall:

- (a) observe, assess and record the progress of the Project and provide monthly written progress reports to the Owner and Architect, including information as to each Contractor's Work, the Project as a whole, percentages of completion and recommendations as to any corrective action deemed necessary or appropriate;
- (b) keep a daily log containing:

- (i) a record of weather at the site, including temperature readings, the time and duration of all significant weather events and the impact of such events on the Work of individual Contractors and the Project as a whole;
 - (ii) a description of each Contractor's Work on the Site, number of workers, identification of equipment on-site, Work accomplished, materials or equipment delivered, problems encountered, and other similar relevant data as the Owner may require; and
 - (iii) MBE/WBE workforce utilization statistics;
- (c) take progress photographs and/or video tapes on a routine basis, recommending the appropriate format and quantity, to be approved by the Owner, to visually record:
 - (i) the Work being performed;
 - (ii) the general progress of the Project;
 - (iii) significant events with respect to the Work of individual Contractors or the Project as a whole;
 - (iv) defective or damaged Work; and
 - (v) such other items as the Owner may request or the Construction Manager recommends be visually documented.

2.3.23 On Site Record Copy. The Construction Manager shall:

- (a) maintain at the Site one record copy of all Contract Documents, Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record changes and modifications made during construction, along with approved Submittals;
- (b) require the Contractors to maintain on a current basis accurate as-built drawings as to their Work and periodically spot check such drawings to ensure the Contractors' compliance;

- (c) maintain records, in duplicate, of principal building layout lines, elevations of the bottom of footings, floor levels and key site elevations certified by a qualified surveyor or professional engineer;
- (d) at the conclusion of the Work, deliver to the Architect the Construction Manager's as-built drawings and the as-built drawings of the Contractors, marked to record all changes and modifications made during construction, which drawings shall be returned to the Construction Manager when the Architect has completed the final Record Drawings;
- (e) review for accuracy and completeness the Record Drawings prepared by the Architect and when found to be in proper form see that they are delivered to the Owner;
- (f) require Contractors to maintain and deliver to the Construction Manager for transmittal to the Owner at the completion of the Work, in a format acceptable to the Owner, all equipment information, applicable handbooks, maintenance and operating manuals and instructions and other related documents;
- (g) maintain a current roster of companies who have or are working on the Project, with names and telephone numbers of key personnel, and deliver this list to the Owner upon completion of the Project; and
- (h) maintain all reports, estimates, meeting minutes, logs, progress photographs, sketches, recordings, computer data, accounting records, cost data, Construction Contracts, purchase orders and other information, whether generated by or on behalf of the Construction Manager or received by the Construction Manager from the Owner, Architect, Contractors or other parties involved with the Project, during the course of the Project and for a period of six (6) years following Substantial Completion. Said documents shall be available for review, inspection and copying by the Owner during regular business hours. As part of Project close-out, the Construction Manager shall offer to provide the Owner with a copy of all the Construction Manager's files relating to the Project, including the costs to provide such information in either hard copy or electronic format. The Construction Manager shall proceed to provide such information if requested by the Owner.

2.3.24 Storage of Owner Purchased Material. The Construction Manager shall arrange for the delivery, storage, protection and security of Owner-purchased materials, systems, fixtures, furnishings and equipment that are a part of the Project, until such items are incorporated into the Project.

2.3.25 Observation, Start-up and Training. The Construction Manager shall notify and invite the Owner's operating and maintenance personnel to observe construction activities, such as concrete pours containing piping and conduits, systems layout and configuration and installation of equipment, when the Owner so requests or when, in the Construction Manager's opinion, such observation may benefit future operation or maintenance. In conjunction with the Architect and its commissioning consultant, after giving notice to the Owner's operating personnel, the Construction Manager shall schedule, coordinate and observe the commissioning activities as required by the Contract Documents, including final testing, calibration, balancing and start-up of utilities, operational systems and equipment, as well as the operation and maintenance training to be provided to the appropriate employees of the Owner or to the employees of the entity retained by the Owner who will operate the facility. The commissioning procedure shall also include a simulated loss of power to the Project ("Emergency Back-Up Test") to ensure that all emergency systems successfully activate and operate in all areas of the Project. The Construction Manager shall report to the Owner and Architect any observed deficiencies and/or deviations from the Contract Documents.

2.3.26 Substantial Completion/Punch Lists. When the Construction Manager considers a Contractor's Work or a portion of the Project to be Substantially Complete, as defined in the Contract Documents, the Construction Manager shall direct the involved Contractor(s) to prepare a list of all items that still need to be completed. The Construction Manager shall review the lists submitted by the Contractors and if the Construction Manager still believes that the Contractor's Work or a portion of the Project is Substantially Complete, the Construction Manager shall so advise the Owner and Architect and shall deliver to the Architect the Contractor(s) list of items still to be completed, as Construction Manager may supplement and modify that list. If the Architect finds such Work to be Substantially Complete, the Construction Manager and the Architect both shall compare the list of items still to be completed, as developed by the Contractor(s) and modified by Construction Manager, with the actual condition of the Work and shall prepare and deliver to the Owner and involved Contractor(s) a Punch List of incomplete and unsatisfactory items and a schedule for their completion. The Construction Manager, Architect and Owner shall agree on a database on which all Punch Lists for the Project will be prepared, updated and maintained to enhance the parties' access to punch list information. The Construction Manager shall assist the Architect in conducting inspections to determine whether the Contractor's Work or the designated portion of the Project is Substantially Complete, shall assist the Owner in its review of such areas, shall incorporate into the Punch List the input of the Architect and Owner as to additional items of incomplete and unsatisfactory Work discovered during their inspections or reviews, shall provide an estimate of the cost and time to complete each of the Contractor's punch list Work, shall manage the Work of the Contractors to address the incomplete and unsatisfactory items and shall periodically report to the Architect and Owner as to the progress of the Contractors in resolving those items. When the Construction Manager and the Architect both consider the Project as a whole to be Substantially Complete, as defined in the Contract Documents, the Construction Manager, in conjunction with the Architect, shall prepare and deliver to the Owner a Certificate of Substantial completion signed by the Architect and the Construction Manager, a Close Out Punch List of incomplete and unsatisfactory items and a schedule for their

completion. The Construction Manager shall also assist the Architect in conducting inspections to determine whether the Project as a whole is substantially complete, shall assist the Owner in its review of the Project and shall incorporate into the Close Out Punch List the input of the Architect and Owner as to incomplete and unsatisfactory items of Work. The Construction Manager shall also manage the Work of the Contractors to address the incomplete and unsatisfactory items identified on the Close Out Punch Lists and shall periodically report to the Owner and Architect as to the Contractor's progress. When the Construction Manager determines that the Work is ready for final inspection and the issuance of a final Certificate of Payment, the Construction Manager shall so advise the Owner and Architect and shall coordinate and assist the Architect in conducting final inspections.

2.3.27 Warranties, Keys, etc. The Construction Manager shall obtain from the Contractors and review with the Architect warranties and similar submittals required by the Contract Documents and, when found to be in proper form, shall deliver such to the Owner, along with all keys, manuals, record drawings and material and equipment which comprise the attic/maintenance stock for the Project. If despite the diligent efforts of the Construction Manager, a Contractor fails or refuses to deliver warranties and/or other submittals required at the close-out of that Contractor's Work or the Project as a whole, the Construction Manager shall give written notice to the Owner and Architect, along with its recommendation as to what remedial action should be taken as against that Contractor.

2.3.28 Final Project Application for Payment. When the Construction Manager believes that all requirements of the Contract Documents have been properly completed, it will compile a final application for payment with its certification and deliver that to the Architect for its review and certification and to the Owner for its review and approval. The Construction Manager's recommendations as to Substantial Completion and its certification of a final application for payment shall constitute a representation by the Construction Manager to the Owner that, based upon the fulfillment of the Construction Manager's responsibilities in accordance with this Agreement and to the best of the Construction Manager's knowledge, information and belief, the Work has been Substantially or Finally Completed, as the case may be, in accordance with the Contract Documents.

2.3.29 No Change in Construction Manager's Duties without Consent. No restriction, modification or extension of the duties, responsibilities and limitations of authority of the Construction Manager as set forth in this Agreement or in the Contract Documents shall be permitted, except by written agreement signed by both the Owner and Construction Manager and with notice provided to the Architect. The duties, responsibilities and limitation of authority of the Construction Manager as set forth in the Contract Documents shall be consistent with, and shall not exceed, the terms of this Agreement, except to the extent any such deviation is expressly approved by both Construction Manager and the Owner in writing.

2.3.30 Building Tours and Early Occupancy. The Owner may have access to the Work during construction to conduct tours and to market the facility and may elect to have early access to and early occupancy of portions of the Project. Additionally, the Owner

may utilize the Project for events during the time Contractors are completing punchlist items and the building systems are being commissioned. Such early access, early occupancy and event utilization shall be subject to the following limitations, restrictions and requirements:

- (a) The Owner may conduct tours of the Project during construction for the purpose of public relations, marketing of the facility, fund raising and related activities. Such tours shall be:
 - (i) conducted at such times and in such areas of the Project as Construction Manager may reasonably determine, taking into account safety and impact on construction activities;
 - (ii) conducted by representatives of the Owner after providing prior notice to the Construction Manager and in full compliance with Project safety rules and regulations applicable to visitors to the Project, with such tours to be accompanied by a representative of Construction Manager upon request of the Owner or at the direction of the Construction Manager; and
 - (iii) Conducted only to the extent permitted by applicable insurance companies and provided the Construction Manager is named as an additional insured on applicable policies covering such activities.
- (b) The Owner may occupy designated portions of the Project prior to the date of Substantial Completion of the Project as a whole, for limited activities. Such early occupancy shall be:
 - (i) communicated to and coordinated with the Construction Manager and Architect;
 - (ii) permitted only after the Construction Manager and Architect have prepared a punch list for the area to be occupied, which has been reviewed and approved by the Owner;
 - (iii) permitted only when the area is safe for occupancy and when allowed by applicable statutes, rules, regulations and codes; and

- (iv) permitted only when the Owner has procured appropriate insurance providing coverage for its occupancy, including naming the Construction Manager as additional insured.

2.4 Post Construction Phase

2.4.1 Term. The Post Construction Phase with respect to the Project will commence as of Substantial Completion for the Project as a whole and shall expire one year thereafter.

2.4.2 Enforcement of Warranty Rights. During the Post Construction Phase the Construction Manager shall manage and enforce, on the Owner's behalf, the completion or correction of all outstanding punch list items by the Contractors (in accordance with Section 2.3.26) and all warranty rights, correction of Work or other claims with respect to the Project as against Contractors and/or suppliers of materials, systems and/or FF&E. The Construction Manager, in conjunction with the Architect, shall schedule and attend with the applicable Contractors and/or suppliers such inspections as are necessary to address punch lists/warranty items, operational concerns and to determine if the Work and MEP Systems are properly installed and operating. The Construction Manager shall provide the Owner with prior notice of such inspections and a written report following such inspections. Except as otherwise required in Section 2.4.3, the Construction Manager's Basic Services shall terminate at the end of the Post Construction Phase, regardless whether the Owner may have further rights and claims under extended warranties which exceed the Post Construction Phase.

2.4.3 Post Completion Inspections. The Construction Manager shall schedule, notify the Owner, attend and thereafter provide a written report to the Owner regarding the following three inspections to be performed by the Architect and Construction Manager with respect to the HVAC, mechanical, electrical, plumbing and other MEP Systems:

- (a) An inspection to be conducted at the end of the first full heating season following Substantial Completion of the Project;
- (b) An inspection to be conducted at the end of the first full air conditioning season following Substantial Completion of the Project; and
- (c) A warranty inspection of the entire Project to be commenced approximately eleven (11) months following Substantial Completion of the entire Project, with a written report to be delivered to the Owner at least fifteen (15) days before the first anniversary date of Substantial Completion of the entire Project.

ARTICLE 3

ADDITIONAL SERVICES

3.1 Notice/Approval. Additional Services involve activities beyond the Basic Services enumerated in this Agreement which require the Construction Manager to incur actual increases to its Staffing Costs and/or Reimbursable Expenses beyond those being provided as Basic Services. The Construction Manager shall provide and the Owner shall be obligated to pay for Additional Services only if: (a) the Construction Manager gives prior written notice to the Owner that it believes certain activities, if performed by the Construction Manager, would constitute Additional Services and identifies the anticipated cost to be incurred; (b) the Construction Manager identifies in the written notice who requested the Additional Services or why the Construction Manager believes that providing the Additional Services will be in the best interest of the Owner and/or the Project; and (c) the Owner, in writing, authorizes and directs that the Additional Services be provided.

3.2 Waiver. Failure of the Construction Manager to provide the prior written notice and to obtain the Owner's prior written approval, as required by Section 3.1, shall constitute a waiver of any claim by the Construction Manager to seek an increase to the Construction Manager's Fees as a result of providing such services or to recover Staffing Costs or Reimbursable Expenses applicable to such services, except in an emergency situation where immediate action is required by the Construction Manager in order to prevent personal injury, property damage or other loss.

3.3 Additional Services. Upon providing the notice and obtaining the Owner's approval as required by Section 3.1, the Construction Manager shall perform and the Owner shall pay for the following as Additional Services:

3.3.1 Services which are required because of significant changes approved by the Owner to the Program (including the size, quality or complexity of the Project), to material changes to the Budget or Schedule or to material changes to the method of bidding and contracting for construction, unless such changes are required to correct the negligence of or breach of contract by the Construction Manager;

3.3.2 Providing consultation concerning replacement of significant portions of the Work damaged by fire or other casualty events during construction and furnishing services required in connection with the replacement of such Work;

3.3.3 Services which are required as a result of a default by or termination of a Contractor or Architect;

3.3.4 Providing services relative to future facilities, systems and equipment not contemplated by the Program; and

3.3.5 Any other Additional Service to the extent approved in advance and in writing by the Owner.

3.4 Payment. If the Owner's approval is obtained, as required by Section 3.1, any adjustment to the Construction Manager's Fees, Staffing Costs Cap or Reimbursable Expense Budget for providing the Additional Services will be included in the Owner's written approval authorizing the Additional Services. Adjustments to the Staffing Costs Cap or Reimbursable Expense Budget shall be limited to those which are directly attributable to the Additional Services and which are not otherwise paid for by Owner. Any disputes regarding payment will be resolved in accordance with Article 8.

3.5 Additional Services Log. As part of its Basic Services, the Construction Manager shall maintain on a current basis an Additional Services Authorization (ASA) Log which shall include the following: the date on which the Construction Manager provided its written notice of Additional Services; a summary description of the Additional Services being considered; and the date on which the Owner responds, including a summary of the Owner's response.

ARTICLE 4

OWNER'S RESPONSIBILITIES

4.1 Provide Information. The Owner shall:

4.1.1 promptly notify the Construction Manager of any decision by or development involving the Owner which impacts the Program, Budget and/or the Schedule;

4.1.2 consult with the Construction Manager throughout the Project;

4.1.3 promptly consider and respond to the advice and recommendations of the Construction Manager relating to its management and coordination of the design and construction of the Project and promptly provide all information reasonably necessary for the Construction Manager to provide its Services under this Agreement;

4.1.4 promptly advise the Construction Manager as to direct communication which the Owner may have with the Architect, the Contractors or others involved with the Project, to the extent that such communications relate to or affect the Services provided or to be provided by the Construction Manager per this Agreement; and

4.1.5 inform the Construction Manager of any other developments which materially affect the Project.

4.2 Project Parameters. The Owner has approved the Program attached hereto as Exhibit A, the Budget attached hereto as Exhibit B and the Schedule attached hereto as Exhibit C, based upon consultation with the Construction Manager and Architect and in reliance upon information developed during the Feasibility Study.

4.3 Proof of Financial Arrangements. If requested by the Construction Manager, the Owner shall furnish evidence that financial arrangements have been made to fulfill the Owner's obligations under this Agreement.

4.4 Owner's Representatives. The Owner shall perform its obligations and provide approvals, information and decisions required by this Agreement in a timely manner and in accordance with the Schedule. John J. Kish, President of John J. Kish and Associates, Inc., shall serve as the Owner's "Project Director" with respect to the Project. The Project Director shall keep apprised of the status of the Project, shall timely communicate decisions and information required of the Owner under this Agreement to avoid unreasonable delay or disruption in the progress of the Construction Manager's Services and shall consult with, keep advised and receive direction from all other appropriate representatives of the Owner regarding the design, construction and status of the Project. The Owner shall have authority from time to time during the Project to designate other consultants, technical advisors and staff members to assist, advise and coordinate the various responsibilities and decisions to be rendered or provided by the Owner. The scope of services to be provided by such consultants, advisors and staff will be communicated to the Construction Manager and Architect. The designation of the Project Director and other advisors, staff members and consultants shall in no manner relieve the Construction Manager of its duties and responsibilities under the terms of this Agreement.

4.4.1 Change Orders and Construction Change Directives which have been considered and are being recommended by the Construction Manager and the Architect shall be submitted for review to the Project Director, who has been granted power and authority to authorize Change Orders and Construction Change Directives on behalf of the Owner, if he approves of the change submitted, subject to the following limitations:

- (a) In any calendar month the authority of the Project Director shall be limited to approving Change Orders and Construction Change Directives which, considered collectively, do not exceed the express authority granted the Project Director by the Owner. The Owner shall provide the Construction Manager written notice of the Project Director's authority under this Section, once that authority has been established by the Owner.
- (b) The Project Director shall have no authority to approve Change Orders or Construction Change Directives which would extend the date of Substantial Completion for the Project.

4.4.2 Change Orders and Construction Change Directives which have been considered and are being recommended by the Construction Manager, the Architect and the Project Director, but which exceed the authority of the Project Director as set forth in Section 4.4.1 above, shall be submitted to the Owner's Construction Committee, which has been granted power and authority to authorize Change Orders and Construction Change Directives on behalf of the Owner if the Construction Committee approves of the change submitted. Approval of a majority of the members of the Construction

Committee shall be necessary to authorize such Change Orders or Construction Change Directives, subject to the following limitations:

- (a) In any one calendar month the authority of the Construction Committee shall be limited to approving Change Orders and Construction Change Directives which, considered collectively, do not exceed the express authority granted the Construction Committee by the Owner. The Owner shall provide the Construction Manager written notice of the Construction Committee's authority under this Section, once that authority has been established by the Owner.
- (b) The Construction Committee shall have no authority to approve Change Orders or Construction Change Directives which would extend the date of Substantial Completion for the Project.

4.4.3 Change Orders and Construction Change Directives which have been considered and are being recommended by the Construction Manager, the Architect, the Project Director and the Construction Committee, but which exceed the authority of the Construction Committee as set forth in Section 4.4.2 above, shall be submitted for approval to Evansville's Redevelopment Commission at a duly called meeting.

4.4.4 Owner may hereinafter modify the authority of the Project Director and/or Construction Committee, which modification shall become binding as to the Construction Manager upon the Owner delivering to the Construction Manager written notice of the modification.

4.5 **Architect.** The Owner shall retain the Architect. The Architect's duties and responsibilities shall be as described in the Agreement Between Owner and Architect, a copy of which will be provided to the Construction Manager. That Agreement between Owner and Architect shall not expand the Services required of Construction Manager or increase Construction Manager's liability without Construction Manager's express written consent. In addition, the terms and conditions of the Agreement Between Owner and Architect shall not be materially modified without notice to the Construction Manager. The Construction Manager shall not be responsible for errors, omissions, actions taken by or inaction on the part of the Architect. However, if the Construction Manager becomes aware of any act or omission of the Architect with which the Construction Manager disagrees or questions, then the Construction Manager shall immediately notify the Owner and Architect, in writing, of its disagreement or question. The Owner's retention of the Architect (and the services to be provided by the Architect to the Owner) shall in no manner reduce or diminish the duties and obligations of the Construction Manager as set forth in this Agreement.

4.6 **Approvals.** Except for building permits and other fees which are the responsibility of the Contractors or the Construction Manager under the Contract Documents, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for the Project.

4.7 Project Site. Portions of the Project site are currently owned by the City of Evansville and the additional parcels which will make up the remainder of the Project site will be procured by the City of Evansville, by and through the Evansville Redevelopment Commission. Upon final acquisition of the Project site, the Owner will make the Project site available to the Construction Manager in accordance with the Project parameters and the Owner hereby confirms that it has authority from the City of Evansville to grant such access and to authorize the construction of the Project upon the Project Site. Pursuant to its contract with the Owner, the Architect shall prepare a land survey of the Project site designated by the Owner which will include a legal description and will provide, as applicable: grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning and deed restrictions; boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; available information concerning services and location of public utility lines, above and below grade, including inverts and depths; and known information regarding the existence and location of private utilities and improvements. Upon Owner's receipt of the survey from the Architect, a copy shall be promptly delivered to the Construction Manager.

4.8 Owner's Technical Advisors. The Construction Manager shall advise the Owner as to material and equipment testing and other services which the Construction Manager recommends as necessary and appropriate for the Project, or as required by law or by the Contract Documents. The Owner, after consulting with its other advisors, shall retain or authorize the retention of such services as the Owner determines is reasonable and consistent with the requirements of the Project. The Construction Manager shall consult with the Architect and Owner as to entities qualified to provide such services and the Owner shall retain approval over the final selection of such technical advisors. Pursuant to its contract with the Owner, the Architect shall obtain an Environmental Phase I and Phase II, shall conduct an environmental survey, shall prepare an environmental remediation plan, as necessary, and shall conduct a geotechnical investigation of the selected Project site. Upon Owner's receipt of such information from the Architect, copies shall be promptly delivered to the Construction Manager. The Owner's retention of such consultants and the services which they provide for the Project shall in no manner diminish or reduce the duties and obligations of the Construction Manager as set forth in this Agreement.

4.9 Other Services. The Owner shall furnish all legal, accounting and insurance counseling services as may be necessary for the Project, including auditing services the Owner may require to verify Applications for Payment or to ascertain how or for what purposes the money paid by or on behalf of the Owner with respect to this Project has been used. The Owner shall not, however, have any obligation to provide legal or other services for the benefit of the Construction Manager, or any third party, as a result of claims or disputes arising out of or relating to alleged wrongful or negligent acts or omissions of the Construction Manager or such third parties. The duties and obligations of the Construction Manager as set forth in this Agreement shall in no manner be reduced or diminished by the Owner's retention of one or more of the consultants referenced in this Section.

4.10 Services at Owner's Expense. The services, information and reports required by Sections 4.5 through 4.9 shall be furnished at the Owner's expense, and the Construction Manager shall be entitled to rely upon the accuracy and completeness thereof, unless the Construction

Manager knows, or in the discharge of its obligations to the Owner under this Agreement reasonably should have known, of any inaccuracy or incompleteness therein or if such inaccuracy or incompleteness is the result of the Construction Manager's negligence, error, omission or breach of contract. If the Construction Manager observes or becomes aware of any fault or defect in the services, information and reports furnished by the Owner, the Construction Manager shall give prompt written notice thereof to the Owner.

4.11 Owner's Notice. Prompt written notice shall be given by the Owner to the Construction Manager and Architect if the Owner becomes aware of any fault or defect in the Services provided by the Construction Manager, in the Project or any non-conformance with the Contract Documents applicable to the Project. The Owner's responsibility is, however, limited to promptly providing notice if the Owner actually discovers and recognizes any fault or defect. This Section does not impose any obligation or duty on the Owner to review the Project, Contract Documents or the Services provided by the Construction Manager or others for the specific purpose of discovering faults or defects.

4.12 Owner's Separate Contracts. The Owner reserves the right to perform construction and operations related to the Project with the Owner's own forces and to award contracts in connection with the Project in addition to the Construction Contracts for which the Construction Manager is to provide contract administration services per this Agreement. The Owner shall, however, provide the Construction Manager prior notice of any construction or operations to be performed by the Owner's own forces and/or any additional contracts to be awarded in connection with the Project. When the Owner performs construction or operations related to the Project with the Owner's own forces or through the award of separate contracts, the Owner agrees that such work shall be deemed to be subject to the same general obligations and rules applicable to the Project and shall have the same rights as the Contractors performing Work for which the Construction Manager is providing administrative Services per this Agreement. The Construction Manager shall consult with and advise the Owner as to how such additional work and/or contracts should be scheduled and coordinated so as to avoid or minimize interference with the Work and activities being performed on the Project as managed by the Construction Manager. The Construction Manager shall confer and cooperate with the Owner and such other contractors in order to promote the timely completion of the Project as a whole, within budget and consistent with the quality, workmanship and value as specified in the Contract Documents, including affording the Owner's own forces or its other contractors reasonable opportunity for the delivery, storage and installation of their materials and equipment and performance of their activities.

4.13 Conformance to Schedule. Information or services under the Owner's control shall be furnished by the Owner promptly and in accordance with the Schedule to avoid delay in the orderly progress of the Construction Manager's Services and the progress of the Work. The Construction Manager shall, however, provide the Owner reasonable time periods within which the Owner must perform its functions in order to avoid adverse impact to the Schedule.

4.14 Job-Site Parking. During the Construction and Post Construction Phases of the Project the Owner shall provide to the Construction Manager, without charge, fifteen (15) parking spaces in the public parking lot located behind the municipal office building.

ARTICLE 5

CONSTRUCTION COST

5.1 Definition

5.1.1 Items Included. Consistent with the Budget, the Construction Cost for the Project as defined herein shall be the total cost or estimated cost to the Owner of all elements of the Project designed or specified by the Architect including: (i) the cost of labor, materials, equipment, services and other Work required under Construction Contracts to physically construct the permanent improvements that make up the Project, including the cost of infrastructure and site improvements for which the Owner is responsible and which are performed by Contractors retained by the Owner, the cost of the C/M Managed FF&E items listed on Exhibit E-2 and the costs of general condition items expended on behalf of the Project and as approved by the Owner ("collectively Building Costs"); and (ii) demolition and remediation costs for buildings and other structures or conditions located on the Project site and the cost of the Owner Managed FF&E items listed on Exhibit E-1 ("collectively Affiliated Project Costs"). The term "Construction Cost" as used in this Agreement shall include both Building Costs and Affiliated Project Costs. Considering the recommendations of the Construction Manager and Architect, the Owner shall also establish as part of the Construction Cost a reasonable allowance for contingencies for market conditions at the time of bidding and for changes in the Work during construction ("Owner Contingency"). The Owner shall have sole and absolute discretion over the use of the Owner's Contingency and there shall be no expenditure of such funds without the Owner's prior written approval.

5.1.2 Items Not Included. Construction Cost does not include: the cost of permits or other fees, labor and materials furnished by the Owner; the compensation of the Architect, its Consultants or other members of its Design Team; the compensation of the Construction Manager, its subcontractors or other members of its Operations Team; the compensation of the Owner's technical advisors or other Owner retained consultants; land acquisition or financing costs related to the Project; or other costs which are the responsibility of the Owner as provided in Article 4.

5.2 Best Judgment Estimates The Construction Manager's evaluation of the Budget, its preliminary estimates of Building Costs prepared during the Feasibility Study and the detailed estimates of Building Costs which hereafter will be prepared by the Construction Manager in accordance with this Agreement, represent the Construction Manager's best judgment as a person or entity familiar with the construction industry in general and projects of this nature in particular. It is recognized, however, that neither the Construction Manager nor the Owner have control over the cost of labor, materials or equipment, Contractors' methods of determining bid prices or competitive bidding, market or negotiating conditions. Accordingly, the Construction Manager cannot and does not warrant or represent that bids or negotiated prices will not vary from the Budget, estimates of Building Costs or other cost estimates or evaluation prepared by the Construction Manager.

5.3 Management of Budget. The Budget attached hereto as Exhibit B is based upon and is consistent with the estimates of Building Costs prepared by the Construction Manager prior to execution of this Agreement.

5.3.1 The Budget, including the Owner's Contingency, shall be allocated by the Construction Manager among the various Bid Packages now contemplated for the Project for review and comment by the Architect and Owner and approval by the Owner. If it is later determined that the Project is to be broken down into further Bid Packages, the Construction Manager shall reallocate the Budget, including the Owner's Contingency, over all the Bid Packages then anticipated, for review by the Architect and approval by the Owner. The Construction Manager shall consult with the Architect and the Owner should any questions, objections or disagreements be raised as to the reallocation.

5.3.2 The Budget, including Owner's Contingency, whether for the Project as a whole or for individual Bid Packages, shall be adjusted only upon the written approval of the Owner. The Owner shall have sole and absolute discretion over the expenditure of the Owner's Contingency, or any portion thereof, which expenditure shall require the written authorization of the Owner.

5.3.3 When necessary to bring the Building Costs for any Bid Package and/or for the Project as a whole into compliance with the Budget, the Construction Manager shall, as a Basic Service and without increase to the Construction Manager's Fees or the Staffing Costs Cap, identify potential value engineering, bid alternates or other cost savings options, confer with the Architect and Owner regarding the same and, upon written approval by the Owner, work with the Architect to make reasonable adjustments in the scope of the various Bid Packages, to incorporate value engineering, bid alternates or other cost savings options to the extent so approved by the Owner and/or to implement Change Orders or Construction Change Directives as approved by the Owner to achieve cost savings.

5.4 Bid Packages. If the portion of the Budget allocated to any Bid Package (not including the Owner's Contingency allocated to that Bid Package) is exceeded by either a cost estimate hereafter prepared for that Bid Package, or the lowest responsive and responsible bid or preferred proposal received by the Owner for that Bid Package, the Owner may:

5.4.1 authorize use of the Owner's Contingency, or a portion thereof, and give written approval, if applicable, to proceed with the award of contract(s) in accordance with the lowest responsive and responsible bid or lowest preferred proposal received;

5.4.2 request a value engineering analysis be undertaken as to possible revisions to the Work covered by the Bid Package, as may be required to bring the Bid Package into compliance with the Budget including, if applicable, the rebidding or requote of the Bid Package within a reasonable period of time;

5.4.3 if the Project is abandoned, terminate in accordance with Section 9.4;

5.4.4 request a value engineering analysis be undertaken as to possible revisions to the Work covered by other Bid Package(s) to achieve cost savings, including a reallocation of such cost savings between Bid Packages; and/or

5.4.5 reallocate the Budget and/or Owner's Contingency between the various Bid Packages for the Project.

5.5 Construction Manager's Responsibilities. In the event the Owner decides to proceed under Sections 5.4.2 or 5.4.4, the Construction Manager shall, as a Basic Service and without increase to the Construction Manager's Fees or the Staffing Costs Cap, participate in the process with the Architect to identify and recommend possible value engineering, bid alternates or other cost savings options that might bring the Project and/or Bid Package(s) within budget, incorporate into the bidding/proposal documents any value engineering, bid alternates or other costs savings options approved by the Owner and then proceed with the process to obtain new bids/proposals. In the event the Owner decides to proceed under Section 5.4.5, the Construction Manager shall, as a Basic Service and without increase to the Construction Manager's Fees or the Staffing Costs Cap, reallocate the Budget as approved by the Owner.

ARTICLE 6

OWNERSHIP OF DOCUMENTS

6.1 All Contract Documents, estimates, schedules, reports and other records/documents prepared by the Construction Manager in connection with the Project, or any portion thereof, constitute documents prepared for hire and shall become the property of the Owner upon payment of the compensation due hereunder, including the transfer of all of its rights, title, copyrights, trademarks, licenses, intellectual property rights and all other tangible and intangible property interests. In the event any such record/document, or any portion thereof, is not deemed to be made on a "work for hire" basis, the Construction Manager irrevocably assigns all right, title and interest, including copyright and intellectual property rights, if any, in said records/documents to the Owner and the Construction Manager agrees to execute such additional documents as may hereafter be reasonably requested by the Owner to further evidence such assignment to and/or ownership by the Owner; provided, however, nothing herein shall require Construction Manager to transfer to the Owner the Construction Manager's interest in any proprietary programs, systems or standard form documents. Construction Manager agrees that its contracts with all the members of its Operations Team will contain language that transfers, convey or assigns to the Owner ownership of all Contract Documents, estimates, schedules, reports or other record/documents created by such members of the Operations Team with respect to the Project on the same terms and conditions as set forth above. The Construction Manager may retain in its files copies of the records/documents which it receives or produces with respect to the Project. The Construction Manager shall not, however, make such records/documents available to a third party (unless required by law or the terms of this Agreement or the Contract Documents) nor use the records/documents on an unrelated Project, unless the Owner approves such disclosure in advance and in writing.

6.1.1 The ownership of the Plans, Specifications and other documents prepared by the Architect, including the intellectual property rights associated therewith, are as specified in the Agreement Between the Owner and Architect. The Construction Manager shall not own or claim a copyright or other interest in the Plans, Specifications and other documents prepared by the Architect. All copies of design documents for Project, except the Construction Manager's record set, shall be returned or suitably accounted for, at the request of the Owner, upon completion of the Project.

6.1.2 The Plans, Specifications and other documents prepared by the Architect and copies thereof furnished to the Construction Manager are for use solely with respect to the Project. They are not to be used by the Construction Manager on other projects without the specific written consent of the Owner and the Architect. The Construction Manager is granted a limited license to use and reproduce applicable portions of the Plans, Specifications and other documents prepared by the Architect appropriate to and for use in the performance of the Construction Manager's Services under this Agreement. Submittal or distribution to meet official regulatory requirements or for other approved purposes in connection with the Project, is not to be construed as publication in derogation of the Owner's or Architect's copyright or other reserved rights.

6.1.3 During the performance of the Construction Manager's Services, the Construction Manager shall be responsible for any loss or damage to documents relating to the Project while they are in the Construction Manager's possession, but only to the extent such loss or damage is caused by the fault or neglect of the Construction Manager and not covered by the property insurance to be procured pursuant to Section 10.2.2, with such loss or damage to be restored at the Construction Manager's expense.

6.1.4 The Owner shall be allowed unrestricted access to all documents in the possession of the Construction Manager or its Operations Team which relate to or arise out of this Agreement and/or the Project that are not subject to attorney-client privilege and, at the sole discretion of the Owner, other persons, entities and governmental agencies involved in the Project may have access to such documents. All documents prepared by the Construction Manager pursuant to this Agreement shall be made in reproducible form.

6.1.5 The Construction Manager shall keep all Project proprietary, financial, security or otherwise confidential information confidential in accordance with the terms of this Agreement.

ARTICLE 7

HAZARDOUS MATERIALS

7.1 **Surveys.** To the extent that environmental surveys and/or abatement is required as part of developing the Project, the Construction Manager shall confer with the Owner, the Architect and its environmental Consultant as to the scope of such services required and how best to undertake and complete such services. With respect to the demolition and/or environmental

remediation of existing building(s) or other improvements located on the Project site, the Construction Manager shall only be required to provide the Services as set forth in Section 2.1.2. However, to the extent the environmental surveys identify underground storage tanks, buried transformers, asbestos, PCB's or other potentially hazardous substances or materials in the subsurface or surface ground conditions at the Project site, the Construction Manager shall provide, as a Basic Service and in accordance with this Agreement, Pre-Construction and Construction Phase Services for the Construction Contracts by which the remediation plan developed by the Architect or its environmental Consultant ("Remediation Plan") will be implemented as to such identified surface or subsurface conditions.

7.2 Limitations on Construction Manager's Responsibilities. This Agreement does not require the Construction Manager to perform and Construction Manager shall not perform services directly involved in the handling, abatement, replacement or removal of asbestos, PCB or any other toxic or hazardous material. If such substances or materials are present and require abatement, the Owner shall retain and pay for Contractors who are qualified and, when required, licensed to direct, supervise and perform the abatement and removal procedures, with the Construction Manager only providing Services required by Section 7.1 above in regards to Construction Contracts issued by Owner to implement the Remediation Plan.

7.3 Project. If at any time the Construction Manager suspects, is notified of or knowingly encounters on or about the Project site, the presence of asbestos, PCB or any other toxic or hazardous material that was not identified in and/or is not being addressed as part of a known and existing condition pursuant to the Remediation Plan, the Construction Manager shall:

7.3.1 immediately advise the Owner and Architect and order that the Work in the affected area, if any, be stopped, while allowing Work in all unaffected areas to proceed and recommending to Owner all available steps that should be taken by Owner and the Contractors to avoid or minimize any adverse impact on the Schedule, Budget and/or Program;

7.3.2 give the Owner and the Architect immediate written notice that the Work has been stopped, including a detailed description of the area or areas of the Site affected; and

7.3.3 to the extent the Program, Budget or Schedule is affected, proceed in accordance with the provisions of Section 1.4.

7.4 Scheduling of Abatement Procedures and Other Work on the Project. The Construction Manager's sole responsibility with respect to environmental remediation or abatement activities relating to the Project is set forth in Section 7.1 above. Unless otherwise prohibited by law, Construction Manager shall schedule and coordinate progress of other Work on the Site by the Contractors where such Work is not prevented or hampered by the testing, abatement or removal procedures associated with the Remediation Plan. Construction Manager, on behalf of the Owner, shall endeavor to require all Contractors involved with the Project to comply with all applicable laws relating to hazardous materials or known hazardous waste and all restrictions applicable to the areas undergoing abatement.

7.5 Extension of Time/Adjustment to Compensation. If the Project is delayed by the testing, abatement or removal of any hazardous waste or materials, the Owner agrees that the time for completion of the Work shall be extended for a period equal to the actual delay caused to the critical path of the Schedule by such testing, abatement or removal procedures, and that the Construction Manager shall receive an equitable increase to the Construction Manager's Reimbursable Expenses to the extent of additional costs actually incurred as a result of such delay.

7.6 Indemnity. Owner agrees to defend, indemnify and hold harmless the Construction Manager from all claims, lawsuits, expenses or damages arising from or related to the exposure, handling, use, treatment, purchase, sale, storage or disposal of asbestos, asbestos products, PCB's or other toxic or hazardous materials, in any of their various forms as defined by the Environmental Protection Agency, unless such claim, lawsuit, expense or damage arose from the negligent act or omission of Construction Manager or breach of Construction Manager's obligations under this Agreement. The Construction Manager shall make its personnel and members of its Operations Team available as necessary for the defense of any such claims or lawsuits arising out of or related to hazardous materials, and the cost thereof shall be an Additional Service, to the extent such claim or lawsuit does not arise out of the negligent act or omission of the Construction Manager or its Operations Team or breach of the Construction Manager's obligations under this Agreement. It is further agreed that the Owner's indemnity obligation shall not arise if the Construction Manager failed to comply with the requirements of Section 7.3. The obligations of Owner under this Section 7.6 shall survive the termination or expiration of this Agreement.

ARTICLE 8

DISPUTE RESOLUTION

8.1 In General. Claims, disputes or other matters in question ("Claims") arising out of or relating to the Project, the Work, the Services, this Agreement or breach thereof, shall be subject to and decided by a Private Judge pursuant to Ind. Code 33-38-10, Indiana's Alternative Dispute Resolution Rule 6 and Section 8.2 of this Agreement. The exclusive venue for the filing and resolution of all Claims shall be the Circuit or Superior Courts of Vanderburgh County, State of Indiana. Notice of Claims must be made by either party within twenty-one (21) days after the occurrence of the event giving rise to such Claim or within twenty-one (21) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be made by written notice submitted to the other party, although in the case of a continuing delay only one claim is necessary. Claims that are timely asserted may be reserved in writing by mutual agreement of the parties. If a Claim is reserved, the dispute procedures as described in this Article 8 shall be held in abeyance until a written notice from one of the parties requesting that the dispute procedure be activated. Upon written request of either party, a Claim shall be subject to mediation as a condition precedent to the Claim being heard and resolved by a Private Judge. Unless the parties mutually agree otherwise, mediation shall proceed in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Requests for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The request for mediation may be made concurrently with the filing of

litigation, but in such event it is the parties intent that mediation proceed in advance of litigation and, once a Private Judge is selected in accordance with the procedures set forth in Section 8.2 below, any party may request that the Private Judge temporarily stay the litigation for a reasonable period of time (not to exceed 90 days) to allow the mediation to be scheduled and heard.

8.1.1 Except as otherwise agreed in writing or as provided in this Agreement, the Construction Manager shall proceed diligently with the performance of the Services required by this Agreement pending final resolution of a Claim and the Owner shall continue to make payment in accordance with the Agreement, including payment of any undisputed amounts associated with the pending Claim.

8.1.2 If the Construction Manager makes a Claim for an increase in the costs of Services, written notice as provided herein shall be given before proceeding to execute the Services in question. However, prior notice is not required for Services relating to an emergency endangering life or property.

8.1.3 If Construction Manager makes a Claim for an increase in the time specified for the performance of its Services, written notice as provided herein shall be given, including the Construction Manager's estimate of both the impact on the Schedule and any potential costs which may be encountered with respect to the Construction Manager's Services, the services of the Architect and/or the Work of the Contractors.

8.2 Private Judge. The parties hereto waive all rights to trial by jury and agree that a Private Judge will hear and decide all claims, disputes or other matters in question arising out of or relating to the Project, the Work, the Services, this Agreement or the breach thereof. Such action shall be filed in the Vanderburgh County, Indiana, Circuit/Superior Court, which shall be the exclusive venue for litigating Claims (other than Third-Party Claims as defined in Section 8.3 below), and the parties agree to promptly file, pursuant to Rule 6.1 of the Indiana Alternative Dispute Resolution Rules, a written petition assigning the Claim to the Private Judge, with the obligation to file the written petition to be subject to judicial enforcement should any party refuse or delay in signing such petition. The procedure which shall govern litigation heard by the Private Judge, and any appeal therefrom, shall be in accordance with the provisions of Ind. Code 33-38-10, Indiana's Alternative Dispute Resolution Rule 6, Indiana Rules of Trial Procedure and Indiana Rules of Appellate Procedure.

8.2.1 If all the parties who are involved with the Claim mutually agree to select a Private Judge from the most current list of Private Judges as then maintained by the Indiana Division of State Court Administration and that Judge is willing to serve, then that individual will be appointed to serve as Private Judge. In the event that such parties cannot mutually agree on the selection, the Private Judge shall be selected through a striking process as follows:

- (a) The parties who are involved with the Claim shall participate in the striking process of the Private Judges;

- (b) The order of striking shall be determined by a blind draw to be conducted by the Owner, after providing notice to the parties who are involved with the Claim and such parties shall be permitted to observe and monitor the blind draw;
- (c) Once the order of striking is established, the parties who are involved with the Claim shall proceed with the striking process until only one Private Judge remains on the list;
- (d) In the event that a Private Judge so selected does not agree to serve, then the Private Judge whose name was stricken immediately before shall be selected and this procedure shall be repeated, if necessary, until a Private Judge who agrees to serve is selected; and
- (e) To the extent any parties are thereafter added to the proceeding, they shall be bound by the selection of the Private Judge that has already been made.

8.2.2 The compensation and expenses of the Private Judge shall be shared equally by the parties involved in the proceedings.

8.3 Third Party Claims. The provisions of this Article 8 and their substantial equivalent contained in other agreements relating to the Project, are referred to collectively as the "Dispute Resolution Provisions." In the event a person who is not bound by the Dispute Resolution Provisions sues a person who is bound by the Dispute Resolution Provisions on a Claim arising out of or relating to the Project then, for purposes of that suit only (referred to for purposes of this Section 8.3 as a "Third-Party Claim"), any and all claims between or among the parties bound by the Dispute Resolution Provisions (including claims for indemnity or contribution) that arise out of and specifically relate to the Third Party Claim, shall be resolved in the State or Federal Court having jurisdiction over the Third-Party Claim. In such event and for purposes of the Third Party Claim only, the provisions of this Article 8 shall be suspended. In all other cases, the provisions of this Article 8 shall remain in full force and effect.

8.4 Attorneys' Fees. In the event that the Claim is actually submitted to and resolved by litigation before the Private Judge, the unsuccessful party shall pay costs and expenses, including reasonable attorneys fees, incurred by the prevailing party in such reasonable amount as may be determined by the Private Judge in accordance with the following formula:

- (a) If plaintiff or counter-plaintiff obtains a complete or partial award or judgment, that party shall also be entitled to recover the same portion of its costs, expenses and reasonable

attorneys' fees as the ratio of the award or judgment bears to the total amount sought by plaintiff in the proceeding; and

- (b) If defendant or counter-defendant obtains a complete judgment in its favor, that party shall then be entitled to recover all its costs, expenses and reasonable attorneys' fees.

8.5 Operations Team. The Construction Manager shall include in the contracts with the members of its Operations Team, and others retained to provide Services for the Project, provisions that bind such persons or entities to the Dispute Resolution Procedures of this Article 8. Any such person or entity may be joined or added as a party to any Dispute Resolution Procedure between Construction Manager and Owner, subject to and to the extent permitted by the applicable trial rules governing consolidation or joinder.

ARTICLE 9

TERMINATION, SUSPENSION OR ABANDONMENT

9.1 Termination for Cause. This Agreement may be terminated by either party upon not less than fifteen (15) days written notice should the other party materially breach its obligations to perform in accordance with the terms of this Agreement, through no fault of the party initiating the termination. Termination for cause under this provision shall not be allowed if the failure to perform is cured within such fifteen (15) day period or, within such period, the defaulting party commences and, thereafter, continuously proceeds with all reasonable action to cure the failure to perform in a reasonable period of time; provided however, this extension beyond fifteen (15) days shall not apply to monetary defaults.

9.1.1 The Owner's failure to make timely payment to the Construction Manager under the terms of this Agreement shall constitute a material breach of this Agreement.

9.1.2 The following shall constitute a material breach of this Agreement by the Construction Manager; (a) the Construction Manager is adjudged bankrupt, makes a general assignment for the benefit of its creditors or a receiver is appointed for the Construction Manager on account of its financial condition; (b) the Construction Manager persistently or repeatedly refuses to assign enough of its employees or members of its Operations Team as necessary to timely and properly discharge its obligations under the terms of this Agreement; (c) the Construction Manager fails to make payment to its employees or, upon receipt of payment from the Owner, fails to make timely payment to its Operations Team or other parties for whom it is responsible with respect to Services they have provided to the Project; (d) the Construction Manager persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction; or (e) the Construction Manager otherwise materially breaches this Agreement. When the Owner terminates the Construction Manager for cause, the Owner may take possession of the Construction Manager's site office and all Contract Documents, materials, equipment, tools and machinery in the possession of the Construction Manager as procured for the

Project and finish the Services of the Construction Manager by whatever reasonable means the Owner may deem expedient. When the Owner terminates the Construction Manager for cause, the Construction Manager shall not be entitled to receive further payment until the Project is complete. All costs and damages incurred by the Owner resulting from the Construction Manager's breach may be assessed against any amounts that the Owner would otherwise owe to the Construction Manager and if such costs or damages exceed such unpaid balance then due the Construction Manager, the Construction Manager shall pay the difference to the Owner.

9.2 Termination for Convenience. The Owner also shall have the right to terminate this Agreement by written notice and without the Construction Manager being at fault, for any reason or for the Owner's own convenience. Such termination shall be effective in the manner specified in the notice and without prejudice to any claims which either party may have against the other. Upon receipt of a notice of termination, the Construction Manager shall immediately discontinue providing Services, in accordance with the terms of the notice, and shall thereafter do only what may be reasonably necessary to preserve and protect its work product, to recommend what action should be taken to preserve and protect the Work then in place and to oversee the Contractors actions to so preserve and protect the Work to the extent approved by the Owner. In the event of termination for convenience, the Construction Manager shall be compensated for the portion of its Fee earned prior to termination, Reimbursable Expenses then due and all termination expenses as defined in Paragraph 9.6. Except to the extent provided in Section 9.6, the Construction Manager shall not, however, be entitled to compensation for contemplated Services not performed or for the recovery of any overhead or profit attributable to the Services not performed. The Owner shall have the right, in its sole and absolute discretion, to convert a termination for cause, whether or not challenged by the Construction Manager, to a termination for convenience.

9.3 Suspension of Project. The Owner shall have the right, upon ten (10) days written notice, to suspend the Project and/or the Construction Manager's Services to be provided under this Agreement.

9.3.1 Upon receipt of notice to suspend its Services, the Construction Manager shall promptly discontinue providing its Services and shall only take such reasonable steps as are necessary to preserve and protect its work product and to direct the Contractors to protect their Work already in place or in progress.

9.3.2 In the event of such suspension, the Construction Manager shall be compensated for the proportion of its Fees earned prior to suspension and the Reimbursable Expenses then due. Subject to the Staffing Costs Cap and the Reimbursable Expense Budget, as adjusted in accordance with Section 9.3.5, the Construction Manager shall be compensated for the expenses necessarily incurred to suspend its Services and, as directed by the Owner in writing, to maintain its Operations Team, or a portion thereof (provided, however, if the suspension exceeds thirty (30) days, any such direction to maintain its Operations Team, or a portion thereof, is subject to Construction Manager's consent), to preserve and protect its work product and to perform any other Services during the suspension period specifically requested by the Owner.

9.3.3 The Owner, upon fifteen (15) days prior written notice, may order the resumption of the Project and/or the Construction Manager's Services to be provided under this Agreement. Subject to the Staffing Costs Cap and Reimbursable Expense Budget, as adjusted in accordance with Section 9.3.5, the Construction Manager shall be compensated for the expenses necessarily incurred to remobilize and to reactivate its files and activities in order to proceed with the Services previously suspended.

9.3.4 The Construction Manager shall make reasonable efforts to use the same Operations Team after the suspension, as had been assigned to the Project prior to the suspension. In the event certain individuals cannot reasonably be reassigned to the Project, the Construction Manager shall provide for replacement personnel with comparable background, experience and qualifications.

9.3.5 The Staffing Costs Cap and the Reimbursable Expense Budget shall be increased by the amount of incremental Staffing Costs and Reimbursable Expenses actually incurred by the Construction Manager as a direct result of the suspension of the Project by the Owner under this Section 9.3, to the extent the Construction Manager or its Operations Team is not at fault for the suspension. The Construction Manager shall promptly provide the Owner written notice of any adjustment it seeks to the Staffing Costs Cap or Reimbursable Expense Budget as a result of the Project being suspended under this Section 9.3 and, in no event, shall such notice be delivered later than five (5) business days after the Owner's direction to resume Work. If the total cumulative number of days added to the critical path of the schedule for the Project as a result of all suspensions directed by the Owner under this Section 9.3, and for which the Construction Manager is not at fault, is two (2) months or less, there shall be no adjustment to the Construction Manager's Base Fee. If the total cumulative number of days added to the critical path of the schedule for the Project as a result of all suspensions directed by the Owner under this Section 9.3, and for which the Construction Manager is not at fault, exceeds two (2) months, the Construction Manager may request an equitable adjustment to its Base Fee for review and consideration by the Owner. Any requested adjustment to the Base Fee shall be conditioned upon Construction Manager having given the Owner written notice of such request for adjustment, including the grounds therefore, prior to the Construction Manager resuming its Services under this Agreement. Failure of the Construction Manager to provide written notice as required by this Section, shall constitute a waiver of all claims by the Construction Manager to seek any such adjustment to the Base Fee, except in an emergency situation where immediate action is required by the Construction Manager in order to prevent personal injury, property damage or other loss. If the Project is suspended by the Owner for a total cumulative period of time that exceeds twelve (12) months, the Construction Manager may terminate this Agreement by giving at least twenty (20) days prior written notice to the Owner. Dates related to the Incentive Fee established in Section 11.2.2 and Exhibit F, shall be extended by the total cumulative number of days added to the critical path of the schedule for the Project as a result of all suspensions directed by the Owner under this Section 9.3 and for which the Construction Manager is not at fault.

9.4 Abandonment of Project. This Agreement may be terminated by the Owner upon not less than fifteen (15) days written notice to the Construction Manager in the event that the Project is permanently abandoned. In the event of such termination, the Construction Manager shall be compensated for the portion of its Fee earned prior to termination, Reimbursable Expenses then due and all termination expenses as defined in Section 9.6. The Construction Manager shall not, however, be entitled to compensation for contemplated Services not performed or for the recovery of any portion of overhead or profit attributable to the Services not performed.

9.5 Construction Manager's Rights to Suspend Services. If the Owner, without the Construction Manager being at fault, fails to make payment when due the Construction Manager for the Services and/or Reimbursable Expenses incurred, the Construction Manager may, after giving fifteen (15) days written notice to the Owner, suspend performance of Services under this Agreement. Unless payment in full is received by the Construction Manager within fifteen (15) days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of Services without the Construction Manager being at fault, the Construction Manager shall have no liability to the Owner for delay or damage caused to the Owner because of such suspension of Services. However, if it is ultimately determined that the Owner was entitled to withhold payment of the entire amount it was withholding from the Construction Manager under the terms of this Agreement, then the Construction Manager shall be responsible for delay or damages sustained by the Owner as a result of such improper suspension of Services.

9.6 Termination Expenses. Termination Expenses are those costs directly attributable to termination of this Agreement or abandonment of the Project for which the Construction Manager is not otherwise compensated which arise out of commitments for which the Construction Manager obligated itself in performing its Services under this Agreement prior to the Owner's notice of termination or abandonment, which commitments cannot be cancelled without additional cost after the notice of termination is given and which commitments will ultimately have to be paid by the Construction Manager. Termination Expenses shall not include the Staffing Costs of the Construction Manager's employees or employees of its Operation Team, except for Services provided by the Construction Manager after the notice of termination at the express request and direction of the Owner. All materials, equipment or other physical items ordered by the Construction Manager for the Project, the costs of which are reimbursed by the Owner, shall be conveyed and delivered to the Owner upon the Owner's payment therefore.

ARTICLE 10

INSURANCE

10.1 Construction Manager's Insurance. The Construction Manager shall procure and maintain during the course of the Project the insurance coverages and limits as set forth below.

10.1.1 Worker's Compensation. The Construction Manager shall purchase and maintain a policy or policies of insurance covering any and all claims under workers compensation, disability benefits and any other similar employee benefit acts with limits that meet or exceed "Statutory" requirements for workers compensation and minimum

limits covering employers liability of \$500,000 bodily injury by accident each accident, \$500,000 bodily injury by disease policy limit, and \$500,000 bodily injury by disease each employee.

10.1.2 General Liability. The Construction Manager shall purchase and maintain a policy or policies of commercial general liability insurance against bodily injury or property damage with minimum liability limits of:

General Aggregate	\$2,000,000/Per Project
Products/Completed Operations Aggregate	\$2,000,000/Per Project
Personal Injury and Advertising Injury	\$1,000,000
Each Occurrence Limit	\$1,000,000
Fire Damage (Any One Fire)	\$ 50,000
Medical Expense (Any One Person)	\$ 5,000

on account of bodily injury or death or destruction of property, whether real, personal or mixed. Coverage of this policy or policies shall include contractual coverage for liability assumed by the Construction Manager in this Agreement and Broad Form Property Damage. Form to be used shall be CG 00 01 12/04 edition. Products/Completed Operations coverage shall be maintained for five (5) years past Substantial Completion of the Project.

10.1.3 Valuable Records. The Construction Manager shall carry insurance for Damage to or Destruction of Valuable Papers and Records, including loss of use resulting therefrom, in an amount sufficient to cover the cost of replacement of documents for the Project.

10.1.4 Automobile. The Construction Manager shall purchase and maintain automobile liability and property damage insurance covering the use by the Construction Manager in connection with the Project of all owned, non-owned and hired vehicles with minimum liability limits of:

Bodily Injury/Property Damage	
Combined Single Limit	
(Each Accident)	\$1,000,000
Medical Payment (Each Person)	\$ 5,000
Uninsured Motorist (Each Accident)	\$1,000,000
Underinsured Motorist (Each Accident)	\$1,000,000

on account of bodily injury to or death and for all damages arising out of any injury to or destruction of property, whether real, personal or mixed.

10.1.5 Umbrella Policy. The Construction Manager shall purchase and maintain a separate Umbrella policy written in excess of the primary general liability, employer's liability and auto policies, with a General Aggregate limit of \$25,000,000, and Each Occurrence limit of \$25,000,000. If commercially available, the Umbrella policy shall be endorsed to be primary and noncontributory with respect to any Owner maintained general

liability, Umbrella or Excess insurance. This endorsement shall provide that exhaustion of limits will be vertical (from Construction Manager's GL policy limits required under Section 10.1.2 above through the Umbrella limits required by this Section 10.1.5) rather than horizontal (requiring Owner's GL policy to be exhausted before Construction Manager's Umbrella policy limits activate).

10.1.6 Miscellaneous. All required insurance shall be procured from insurance companies authorized to do business in the State of Indiana, having an A.M. Best Rating of A-IX, or better, and shall be satisfactory in form and coverage to the Owner. The insurance policies required of the Construction Manager as set forth above, must provide the following forms and endorsements to the required policies. A Certificate or Certificates of Insurance must be submitted to the Owner (either on the Accord 25 or AIA G705 form) evidencing that the required coverages and limits are in effect and confirming compliance with the requested endorsements. The Accord Certificate of Insurance form provides limited space to indicate compliance with the endorsements requested below and, therefore, the Construction Manager's agent/broker or insurance companies shall, as necessary, attach addendums to the Accord Certificate of Insurance form to confirm compliance with the requirements set forth herein:

1. The Commercial General Liability, Automobile Liability and Umbrella Policies must be endorsed to **add Owner, Project Director, City of Evansville and their respective elected and appointed officials, officers, board members, directors and employees as additional insureds.** The Insurance Services Offices (ISO) CG 2010 10 01 and CG 2037 or an equivalent endorsement form is to be used on the Commercial General Liability Policy **providing additional insured status for completed operations.**
2. The Commercial General Liability Policy must be endorsed to provide that the **General Aggregate applies separately to each project.** ISO Endorsement CG 2503 per project endorsement or its equivalent is to be used to satisfy this requirement.
3. The Commercial General Liability, Automobile Liability, and Workers Compensation Policies must be endorsed to provide a **Waiver of Subrogation endorsement, where they are commercially available, in favor of the Owner, Project Director, City of Evansville and their respective elected and appointed officials, officers, board members, directors and employees.**
4. All insurance policies provided by the Construction Manager, except for Workers Compensation, shall be endorsed to provide **primary and non-contributing coverage on Owner's Project.**
5. The Commercial General Liability, Automobile Liability and Workers Compensation policies must be endorsed to provide **thirty (30) days notice**

to Owner of cancellation, lapse of coverage or reduction in limits or coverage.

10.1.7 Claims Made. If insurance as required by Sections 10.1.2, 10.1.4 and 10.1.5 is provided on a "claims made" type of coverage, the Construction Manager shall keep such coverage in effect during the Project and for a period of at least five (5) years after Substantial Completion of the Project and if the "claims made" coverage is terminated during that five (5) year period, "tail" coverage shall be obtained for the remainder of the period, provided such coverage is available on the market at commercially reasonable rates.

10.2 Owner's Insurance.

10.2.1 Liability Insurance. The Owner shall be responsible for purchasing and maintaining its own workers compensation, employer liability and liability insurance and, at its option, may purchase and maintain such other insurance as it deems appropriate. All such policies must be endorsed to provide a **Waiver of Subrogation endorsement, where they are commercially available, in favor of Construction Manager and its Operations Team.**

10.2.2 Property Insurance. The Owner shall purchase and maintain "builder's risk" property insurance upon the entire Project for the full cost of replacement. This insurance shall include interests of and name as insureds the Owner, Construction Manager, Architect, Contractors and suppliers to the extent of their services or work performed on or materials supplied to the Project. Such insurance shall provide "All Risk" coverage and shall include coverage for theft, vandalism, terrorism, malicious mischief, property in transit, on-site and off-site storage, collapse, flood, windstorm, earthquake, earth movement or subsidence, and testing, with a deductible amount not to exceed \$100,000. The policy shall also include coverage for Construction Manager's, Architect's and Contractors' extra expense (in an amount of at least \$5,000,000), expediting expense (in an amount of at least \$5,000,000), other soft costs and delays in completion at such limits and terms deemed reasonable by the Owner after conferring with the Construction Manager. The Owner shall increase limits of coverage, if necessary, to reflect the cost of subsequent contract modifications and cost of materials supplied or installed by others. The deductible shall be allocated to the party or parties responsible for the loss, based upon their comparative fault, however the exposure of the Construction Manager, and the separate exposure of any Contractor, under the deductible shall be limited to \$25,000 per occurrence and \$50,000 in the aggregate, with the Owner being responsible for any loss falling within the deductible above these amounts. The Owner shall provide the form of the proposed Builder's Risk policy to the Construction Manager before the policy is finally procured, to allow the Construction Manager to confirm that the policy requirements set forth above have been satisfied. The Owner shall also confer with the Construction Manager and give due consideration to other suggestions or comments that the Construction Manager may have related to the Builder's Risk policy and the Owner shall, thereafter, determine if any further revisions to the proposed policy are appropriate.

10.2.3 Partial Occupancy or Use. If the Owner finds it necessary to occupy or use a portion of the Project prior to Substantial Completion, such occupancy or use shall not commence prior to a time mutually agreed to by the Owner, Architect and Construction Manager and to which the property insurer has consented. This insurance shall not be canceled or allowed to lapse on account of such occupancy or use. Consent of the Construction Manager and Architect to such occupancy or use shall not be unreasonably withheld.

10.2.4 Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance, if applicable to the Project. This insurance shall include the interests of the Owner and the Construction Manager.

10.2.5 Loss Adjustment. Any insured loss under the builder's risk policy shall be adjusted with, and made payable to, the Owner for the benefit of all who qualify for coverage under the policy, as their interests may appear. Upon the occurrence of an insured loss, monies received will be deposited in a separate account established by the Owner and the Owner shall make distribution in accordance with the agreement of the parties in interest or, if such an agreement cannot be reached, in accordance with the order of the Private Judge.

10.2.6 Evidence of Insurance. A full and complete copy of the policy and Certificates of Insurance showing the builder's risk coverage to be in force shall be delivered to the Construction Manager prior to the commencement of construction.

10.2.7 Waiver of Subrogation. The Owner and the Construction Manager waive all rights against each other and against the Architect, Contractors, Operations Team, Consultants and others involved with the Project for damages caused by fire or other perils to the extent they are to be covered by the builder's risk property insurance to be obtained by Owner pursuant to Section 10.2.2 or other property insurance applicable to the Project, except such rights as they may have to the proceeds of such insurance. The Construction Manager shall require similar waivers, written where legally required, from the other members of its Operations Team. The Owner shall require similar waivers, written where legally required, from the Architect, its consultants, the Contractors and others with whom the Owner contracts with respect to the Project. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

10.2.8 Loss of Use Insurance. The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Construction Manager for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

10.2.9 Other Property Insurance. If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 10.2.8 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

10.2.10 Pollution Coverage. The Owner shall purchase and maintain a Contractors Pollution Liability ("CPL") Wrap policy, specific to the Project, with minimum limits of \$5,000,000. This policy shall name as additional insureds all Contractors who perform Work on the Project (except for Contractors which the Owner elects not to include in the CPL Wrap, if any, in which case such Contractors shall be required to provide their own CPL coverage, consistent with Section 7.7.5(A) of the standard form of Contractor's Agreement for the Project), including their Subcontractors and Sub-subcontractors, the Construction Manager and members of its Operation Team and the Evansville Redevelopment Authority, City of Evansville, Project Director and their respective elected and appointed officials, officers, board members, directors and employees.

The policy shall provide coverage for:

- a. Bodily injury, sickness or disease sustained by any person, including death;
- b. Property damage including physical injury to or destruction of tangible property, including the resulting loss of use thereof, clean up costs and the loss of tangible property that has not been physically injured or destroyed including diminution of value and Natural Resources damage;
- c. Defense costs including costs, charges and expenses incurred in the investigation, adjustment or defense of claims;
- d. Contractual liability coverage, e.g. coverage for liability assumed under a written contract or agreement.
- e. The full scope of the operations as performed by the named or additional insureds on the Project;
- f. The policy must provide coverage for claims arising from owned and non-owned disposal sites utilized in the performance of this Contract;
- g. This coverage can be provided on either claims made or occurrence based policy form; and

- h. The policy must insure contractual liability, add the parties designated above as additional insureds and be primary and non-contributory.

The policy may not contain separate restrictions for:

- a. Insured versus insured actions. However, exclusions for claims made between insureds within the same economic family are acceptable;
- b. For completed operations in any coverage part of the policy for either the named insured or the additional insured certificate holder;
- c. Damage to property that cannot be used or is less useful because of the operations of the insured (Most Impaired Property exclusions are not acceptable); or
- d. Work performed by Subcontractors.

Completed Operations coverage shall be maintained through the purchase of renewal policies to protect the named insured and additional insureds for at least two (2) years after Substantial Completion of the Work.

Once all due diligence relating to the environmental survey is complete, Owner and Construction Manager shall confer regarding the Owner's possible procurement of a site specific Pollution Liability Policy ("PLL") applicable to the Project. The Owner shall give due consideration to the Construction Manager's suggestions and comments regarding this insurance and, considering the availability and cost of such insurance, the Owner shall, thereafter, determine whether or not to procure such insurance and, if procured, the limits of coverage to be obtained.

ARTICLE 11

CONSTRUCTION MANAGER'S COMPENSATION

11.1 Generally. In consideration for the Basic Services to be provided by the Construction Manager pursuant to this Agreement, the Owner shall pay the Construction Manager certain Fees (as set forth in Section 11.2 below), Staffing Costs (as set forth in Section 11.3 below) and Reimbursable Expenses (as set forth in Section 11.4 below).

11.2 Construction Manager's Fees. The Owner shall, in consideration of the Basic Services, pay the Construction Manager the Construction Manager's Fees, which includes the: (i) Base Fee (in accordance with Section 11.2.1); and (ii) depending upon the Owner's evaluation of the Services rendered by the Construction Manager (in accordance with Section 11.2.2), the Owner shall pay the portion or all of the Incentive Fee to the extent earned by the Construction Manager.

11.2.1 Base Fee. Subject only to adjustment as set forth in Section 11.5 or for Additional Services authorized pursuant to the terms of Article 3, the Owner shall pay the Construction Manager a stipulated Base Fee of Two Million Three Hundred Ten Thousand Dollars (\$2,310,000). The Base Fee shall be paid by the Owner to the Construction Manager as follows:

Pre-Construction Phase. One Hundred and Fifty Thousand Dollars (\$150,000) of the Base Fee shall be paid for Pre-Construction Phase Services. This amount shall be paid within thirty (30) days following both Parties' execution of this Agreement. This amount is separate from and in addition to the Forty-Five Thousand Dollars (\$45,000) which has already been paid by the Owner for the Pre-Construction Phase Services rendered by the Construction Manager during the Feasibility Study (the "Feasibility Study Payment"). The Feasibility Study Payment is not included in the Base Fee.

Construction Phase. Two Million Eighty Five Thousand Dollars (\$2,085,000) of the Base Fee shall be paid for Construction Phase Services. This amount shall be paid in Twenty Three (23) consecutive monthly installments of Ninety Thousand Six Hundred Fifty Two and 17/100 Dollars (\$90,652.17) each, beginning with the first Application for Payment submitted by the Construction Manager following the award of the initial Construction Contract.

Post Construction Phase. Seventy Five Thousand Dollars (\$75,000) of the Base Fee shall be paid for Post Construction Phase Services. This amount shall be paid in twelve (12) consecutive monthly installments of Six Thousand Two Hundred Fifty Dollars (\$6,250) each, beginning with the first Application for Payment submitted by the Construction Manager after the Certificate of Substantial Completion for the Project as a whole has been issued.

The numbers of months over which the Construction and Post Construction Phase portions of the Base Fee have been allocated for payment, as set forth above, are calculated in accordance with the anticipated durations for each of those Phases based upon the Schedule. To the extent the Schedule for the Construction or Post Construction Phases, or the portions of the Base Fee for those Phases, are hereafter adjusted pursuant to the terms of the Agreement, then the monthly payment amount for the affected Phase shall be recalculated, so that the unpaid portion of the Base Fee for that Phase (including adjustments to the Base Fee made pursuant to this Agreement, if any) shall be paid in equal installments over the remaining duration for that Phase (as the Schedule may have been adjusted).

11.2.2 Incentive Fee. In addition to the Construction Manager's Base Fee (as set forth in Section 11.2.1), the Construction Manager may earn an Incentive Fee of up to, but not to exceed, Four Hundred Seventy Eight Thousand Dollars (\$478,000), if the Construction Manager meets certain performance objectives. The determination of whether the Incentive Fee, or some portion thereof, is to be paid by the Owner to the Construction Manager, shall be based upon the Owner's review and evaluation of the actual performance of the Services rendered by the Construction Manager per this Agreement, consistent with

the categories and evaluation standards set forth on Exhibit F attached hereto. Such review and evaluation shall be completed and Construction Manager shall be advised of the Owner's determination within thirty (30) days following each of the evaluation dates listed in Exhibit "F", and the Construction Manager shall include the approved portion, if any, of the Incentive Fee in its next progress payment.

11.3 Staffing Costs. Staffing Costs are in addition to the Construction Manager's Fees and Reimbursable Expenses and, subject to the descriptions and limitations set forth below, cover the labor costs for the time actually expended by the Construction Manager's supervisory and administrative personnel (whether its own employees or employees of its Operations Team) on behalf of the Project.

11.3.1 Authorized Personnel. The Construction Manager's supervisory and administrative personnel approved by the Owner to render Services for the Project for which Staffing Costs are to be paid, are identified on Exhibit D. The hourly billing rate for all individuals listed on Exhibit D, for which Staffing Costs are to be paid, shall be calculated as follows:

Salaried Employees: Divide the current W-2 annual salary for that individual by 2080 and, to cover all associated labor costs (excluding overhead and profit), multiply the quotient by one hundred forty nine percent (149%); or

Hourly Employees: Use the current W-2 hourly wage rate for that individual and, to cover all associated labor costs (excluding overhead and profit), multiply that rate by one hundred forty nine percent (149%); or

Temporary Agency Employees: Apply the then applicable current agency rate (which rate shall include all applicable agency multipliers, but shall not include overhead or profit mark-up by the Construction Manager), as approved by the Owner, such approval not to be unreasonably withheld.

The Construction Manager shall, upon request, provide information to the Owner to verify the salary or hourly wage rates for the individuals being charged as Staffing Costs. Should the Construction Manager propose to utilize other individuals to render supervisory or administrative Services for the Project (for which Staffing Costs will be sought), it shall provide the Owner with the names, qualifications and hourly billing rates (as calculated above and subject to the Owner's verification) of such individuals for the Owner's review and approval, which approval shall not be unreasonably withheld.

11.3.2 Calculation and Billing. Staffing Costs shall be calculated by multiplying: (i) the time actually expended by the Construction Manager's approved supervisory and administrative personnel exclusively for the Project; by (ii) the hourly billing rate for such personnel (as calculated in accordance with Section 11.3.1). The hourly billing rates calculated in accordance with Section 11.3.1 shall apply both to straight time and overtime work. To the extent that hourly billing rates apply to salaried employees, the staffing costs for the time actually expended by such individuals on behalf of the Project in any one work

week, shall not exceed forty (40) hours, except to the extent Construction Manager reasonably determines that significant excess hours are required of any such individual during the six (6) month period prior to the scheduled opening of the Project, the Construction Manager in fact pays the applicable employee for excess hours during this period and the Owner, after consulting with the Construction Manager, agrees that the excess hours for which payment is made can be charged as a Staffing Cost. Salary and wage information shall be subject to audit by the Owner, to confirm the proper calculation of the hourly billing rates in accordance with Section 11.3.1. The Construction Manager shall also implement and adhere to time keeping procedures whereby the supervisory and administrative personnel (whose time is billed as Staffing Costs) accurately track the time which they devote exclusively to the Project, as compared to time they devote to other projects or other employment responsibilities. Such time records shall also be subject to review and audit by the Owner.

11.3.3 Annual Adjustment to Billing Rates. The Construction Manager reserves the right to adjust the hourly billing rates for its supervisory and administrative personnel on an annual basis (as of July 1 each year, commencing in 2010), to account for actual changes in compensation for such individuals. Accordingly, effective as of July 1 each year the hourly billing rates for those individuals whose time is billed as Staffing Costs will be recalculated by the Construction Manager, based on the then current salary or wage rate of such personnel and in accordance with Section 11.3.1, and submitted to the Owner for review. It is agreed, however, that the hourly billing rate for any individual whose Staffing Costs are billed to the Project shall not increase by more than four percent (4%) in any one year, unless such increase is approved by the Owner, which approval shall not be unreasonably withheld.

11.3.4 Staffing Costs Cap/Savings Allocation. Construction Manager agrees that the total Staffing Costs to be paid by the Owner under the terms of this Agreement shall not exceed three million dollars (\$3,000,000), unless that agreed limit is adjusted pursuant to the terms of Section 11.5 or for Additional Services authorized pursuant to the terms of Article 3. The \$3,000,000 limit includes: (i) the payment of Staffing Costs for all individuals whose time may be billed under this Section 11.3, as such individuals are currently identified on Exhibit D or hereafter added to Exhibit D with the Owner's written approval (said approval not to be unreasonably withheld); and (ii) anticipated annual increases to the hourly billing rates in accordance with Section 11.3.3. Accordingly, the limit shall not be adjusted due to individuals being added to Exhibit D or due to changes in compensation for the Construction Manager's administrative or supervisory personnel. The limit, including any adjustment made pursuant to Section 11.5 and in accordance with the requirements for Additional Services under Article 3, shall be referred to as the "Staffing Costs Cap." Construction Manager shall bear all Staffing Costs which exceed the Staffing Costs Cap, without claim or demand against the Owner. Should the final total of the Construction Manager's Staffing Costs billed to the Project ultimately be less than the Staffing Costs Cap, the Owner and Construction Manager shall share in the savings (being the difference between the Staffing Costs Cap and the final total of the Construction Manager's actual Staffing Costs) as follows:

- (i) For any savings up to and including \$500,000, the Owner shall receive eighty percent (80%) of the savings and the Construction Manager shall receive twenty percent (20%) of the savings; and
- (ii) The Owner shall receive all savings in excess of \$500,000.

11.4 Reimbursable Expenses. Reimbursable Expenses are in addition to the Construction Manager's Fees and Staffing Costs and include certain direct expenses, or the applicable portion thereof, necessarily incurred by the Construction Manager or members of its Operations Team in order to provide the Services for the Project as required by this Agreement. Except as otherwise approved by the Owner, in advance and in writing, Reimbursable Expenses shall include only the items set forth in Section 11.4.1. Reimbursable Expenses shall be billed and paid at the rates and pursuant to the terms as set forth in this Agreement, however, if the rates or terms for a Reimbursable Expense are not specifically authorized by this Agreement, then such Reimbursable Expense shall be paid at the actual costs incurred by the Construction Manager, at rates not higher than those generally paid at the place of the Project, and without additional mark-up for overhead or profit by Construction Manager or by members of its Operations Team.

11.4.1 The Reimbursable Expenses which the Owner shall pay to the Construction Manager are limited to the following:

- (a) Job-Site Office – The cost incurred by the Construction Manager, to rent, equip and maintain its Job-Site Office, with the location and terms of the rental agreement to be subject to the Owner's prior written approval. Job-Site Office costs and expenses shall include the following:
 - (i) Fair market rental value of the Job-Site Office, fitout and maintenance of the Job-Site Office, as well as other costs incurred to satisfy the lease of the Job-Site Office;
 - (ii) The cost to purchase or lease computers, telephones, copiers, desks, chairs and other office equipment and furniture necessary to equip the Job-Site Office for the Construction Manager's use (to the extent such items are purchased, the title or salvage value thereof shall revert to the Owner at the conclusion of the Project and the Construction Manager shall deliver and account for such items at that time);
 - (iii) The cost of property insurance procured by the Construction Manager to cover the contents of the Job-Site Office, or as otherwise required by the lease;

- (iv) The cost of electrical, gas, telephone and other utility charges applicable to the Job-Site Office, to the extent such utilities are not provided as part of the lease;
- (v) The cost to provide internet access at the Job-Site Office;
- (vi) The cost of office supplies required for the Job-Site Office and;
- (vii) Janitorial services applicable to the Job-Site Office.

To cover the above referenced costs of the Job-Site Office, the Owner shall pay to the Construction Manager Sixteen Thousand Seven Hundred Thirty Eight Dollars (\$16,738.00) per month during the term of the lease for the Job-Site Office.

(b) Travel – To include the following:

- (i) Temporary lodging, meals and mileage reimbursement for representatives of the Construction Manager and members of its Operations Team to travel between Evansville and their home office in rendering Services under this Agreement, with mileage to be charged at the mileage reimbursement rate approved by the federal government at the time of travel between Evansville and the applicable home office. If representatives of the Construction Manager or members of its Operations Team elect to fly between Evansville and their home office, Owner shall reimburse the cost of airfare or the automobile mileage reimbursement had the trip occurred by automobile, whichever is less; and
- (ii) Out of town travel, meals and temporary lodging for representatives of the Construction Manager or members of its Operations Team, other than travel between Evansville and their home office, as reasonably necessary to provide Services under this Agreement and approved in advance and in writing by the Owner, which approval shall not be unreasonably withheld.

The total costs for the travel items set forth above shall not exceed Ninety Thousand Dollars (\$90,000.00), unless the Owner agrees, in writing, to increase this amount in accordance with Section 11.4.4.

- (c) Reproduction – The costs to reproduce and copy the plans, specifications and other documents to be included in the various

bid packages, the cost to reproduce shop drawings or other submittals as part of the submittal review process, the cost to reproduce as-built and/or record drawings and other miscellaneous copying necessary for the Construction Manager to provide its Services under this Agreement or as otherwise required for the Project. The reimbursable expenses for reproduction and copying shall be billed and paid at the actual costs incurred by the Construction Manager, with the total of such costs for the Project not to exceed Three Hundred Forty Three Thousand Dollars (\$343,000), unless the Owner agrees, in writing, to increase this amount in accordance with Section 11.4.4.

- (d) Relocation Costs – The actual cost and expense to relocate employees of the Construction Manager to Evansville or to cover their temporary living expenses in order to provide full time Services for the Project. The total of such costs shall not exceed One Hundred Eighty Four Thousand Dollars (\$184,000.00), unless the Owner agrees, in writing, to increase this amount in accordance with Section 11.4.4.
- (e) Miscellaneous Costs – The actual costs incurred by the Construction Manager to provide the following items as reasonably required to render its Services under this Agreement:
 - (i) Costs for pick-up trucks and other vehicles to the extent they are assigned to and actually utilized for the Project by personnel of the Construction Manager and its Operations Team, including fuel, oil and maintenance charges;
 - (ii) Costs to provide cell phones (including applicable calling charges) to the on-site representatives of the Construction Manager and its Operations Team;
 - (iii) Permits, licenses and fees paid by the Construction Manager for securing approval of authorities having jurisdiction over the Project;
 - (iv) Special testing which the Construction Manager is obligated to procure for the Project;
 - (v) Postage, courier/express deliveries, electronic or facsimile transmissions and handling of Drawings, Specifications and other documents;
 - (vi) Project photos and videos;

- (vii) Premiums for any bonds or insurance required to be maintained by the Construction Manager with respect to the Project that would not otherwise be carried by the Construction Manager and, with respect to the premiums for insurance and bonds normally carried by the Construction Manager, the portion of the premium costs properly allocated to the Project (based on the proportion that this Project bears to all ongoing projects of the Construction Manager);
- (viii) Sales, consumer or use tax imposed by any governmental authority on the Construction Manager with respect to the Project and for which the Construction Manager is not exempt;
- (ix) Legal expenses incurred on behalf of the Project and in furtherance of the Owner's interest, but only to the extent approved by the Owner in advance and in writing;
- (x) The costs for publishing notice of the various bid packages;
- (xi) Construction Manager drug screen cost, worker safety incentives, ceremonies and jobsite signs; and
- (xii) Any other reasonable expense not already set forth in Section 11.4.1 above, not covered by Section 11.3 and not precluded by Section 11.4.3 below, which is required for the proper execution of the Construction Manager's Services, but only to the extent approved in advance and in writing by the Owner.

The total costs for the miscellaneous items set forth above shall not exceed Two Hundred Sixty Four Thousand Nine Hundred Fifty Dollars (\$264,950.00), unless the Owner agrees, in writing, to increase this amount in accordance with Section 11.4.4.

11.4.2 Reimbursable Expenses which are subject to the Owner's prior written approval shall require the Construction Manager to: (a) provide prior written notice to the Owner explaining why it is in the best interest of the Owner and/or the Project for the Reimbursable Expense to be incurred; and (b) the Owner must approve payment of the Reimbursable Expense, in advance and in writing. Failure of the Construction Manager to provide the prior written notice and/or to obtain the Owner's prior written approval shall constitute a waiver of any claim by the Construction Manager to recover Reimbursable Expenses for such items.

11.4.3 Reimbursable Expenses shall not include:

- (a) Expenses incurred by the Construction Manager to provide Additional Services, unless approved in advance and in writing by the Owner;
- (b) Any labor costs incurred by the Construction Manager (which costs are paid in accordance with and subject to the Staffing Costs provisions of Section 11.3);
- (c) Expenses of the Construction Manager's principal office and offices other than the Project Site Office, including any overhead or other general expenses related thereto;
- (d) Overhead and general expenses relating to the Project beyond those expressly included in Section 11.4.1;
- (e) The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Services rendered per this Agreement;
- (f) Rental costs of machinery and equipment, except as expressly provided in Section 11.4.1;
- (g) Costs due to the fault or negligence of the Construction Manager, its employees, members of its Operations Team or other persons or entities with whom the Construction Manager has contracted with respect to the Project, except for casualty events that are to be covered by Project property insurance and except as specifically provided in Section 11.4.1; and
- (h) Any cost not specifically and expressly described as a Reimbursable Expense in Section 11.4.1, or otherwise approved by the Owner in advance and in writing.

11.4.4 Reimbursable Expense Budget. The Construction Manager shall during the course of the Work periodically review with the Owner the Reimbursable Expenses incurred to date and a projection of the Reimbursable Expenses yet to be incurred to complete the Project. If, based on such review, it appears that the total cost for any category of Reimbursable Expenses may exceed the applicable budget set forth in Section 11.4.1 ("Reimbursable Expense Budget"), the Construction Manager and Owner will cooperate with one another in an effort to bring such expenditures back within budget. The Owner shall have no obligation to pay Reimbursable Expenses in excess of the Reimbursable Expense Budget, unless the Owner after receipt of a written request and notice from the Construction Manager in accordance with Section 11.5 agrees, in writing, to increase the Reimbursable Expense Budget, which approval shall not be unreasonably withheld to the extent the increase is not due to the fault or neglect of the Construction Manager or its Operations Team and the increase is necessary for the Construction Manager to render its

Services under this Agreement. To the extent the increase in Reimbursable Expenses is not due to the fault or neglect of the Construction Manager or its Operations Team, the Construction Manager shall have no obligation to perform Services that would require it to incur any Reimbursable Expenses in excess of the Reimbursable Expense Budget, unless the Owner agrees, in writing, to increase the Reimbursable Expense Budget.

11.5 Adjustment to Construction Manager's Fees, Staffing Costs Cap and Reimbursable Expense Budget. The Construction Manager's Base Fee, Staffing Costs Cap and Reimbursable Expense Budget are subject to increase: (i) based on material changes to the scope, nature, size, quality or scheduling of the Work, to the extent such change is not due to the fault or neglect of Construction Manager or its Operations Team; or (ii) to the extent such increase is otherwise authorized by the express terms of this Agreement; provided, however, Construction Manager's right to any increase under (i) or (ii) above is conditioned upon Construction Manager having given Owner prior written notice of such claim, including the grounds therefore, except in the case of an emergency as noted below. Failure of the Construction Manager to provide the prior written notice shall constitute a waiver of any claim by the Construction Manager to seek any such increase, except in an emergency situation where immediate action is required by the Construction Manager in order to prevent personal injury, property damage or other loss. Impacts to the Budget resulting from price escalation, other similar bidding factors which cause bids or proposals to exceed then current estimates of Building Costs (as compared to changes in the Work) or schedule delays or deviations for which the Construction Manager is responsible, will not be grounds to support an increase to the Construction Manager's Base Fee, Staffing Costs Cap or the Reimbursable Expense Budget.

11.6 Payments on Account of Basic Services. Payments for Basic Services shall be made monthly and shall include the Construction Manager's Fees, Staffing Costs and Reimbursable Expenses to which the Construction Manager is then entitled. The form of the Application for Payment to be submitted by the Construction Manager and the time in which they are submitted shall be consistent with the current payment procedures established by the Indiana State Board of Accounts, the procedures required of a public board in the State of Indiana and the internal payment procedures adopted by the Owner. If the Construction Manager's Application for Payment is submitted on or before the 21st day of the month, the approved portion thereof shall be paid on or before the 10th day of the following month. If submitted after the 21st day of the month, the approved portion thereof shall be paid within thirty (30) days of receipt. The Construction Manager's Application for Payment shall be notarized and supported by such data substantiating the Construction Manager's right to payment as the Owner may require. If the Owner disagrees with the amount requested in the Construction Manager Application for Payment, it shall provide to the Construction Manager a written explanation of its disagreement and shall timely pay all amounts that are not in question or in dispute.

11.7 Payments on Account of Additional Services and Reimbursable Expenses. Payments on account of Additional Services approved by the Owner, in writing, shall be made monthly upon presentation and processing of the Construction Manager's Application for Payment, which Applications shall include a statement of the Additional Services rendered or expenses incurred. The amount to be paid for Additional Services shall be in accordance with the Owner's written authorization to provide the Additional Services.

11.8 Construction Manager's Payment to Operations Team . The Construction Manager shall pay its subcontractors, consultants or other persons or entities which are part of its Operations Team within ten (10) days of the Construction Manager's receipt from the Owner of any progress payment that includes billings for Services rendered by such members of the Operations Team. Construction Manager shall not withhold from any such person or entity amounts billed by the Construction Manager and paid by the Owner for the Services rendered by such person or entity, without the written consent of the Owner.

11.9 Payments Withheld. No deductions shall be made from the Construction Manager's compensation on account of liquidated damages or other sums withheld from payments to Contractors, or on account of the cost of changes in the Work.

11.10 Appropriation of Funds. As of the execution of this Agreement, the Owner has access to \$2,500,000 specifically appropriated for the Services to be rendered by the Construction Manager pursuant to this Agreement. The Construction Manager is hereby authorized and directed to proceed with its Services up to that amount. The Owner expects, on or before March 31, 2010, to have authorized and appropriated the remaining funds necessary to fully cover the Construction Manager's Fees, Staffing Costs and Reimbursable Expenses as set forth in this Article 11. Based on the Construction Manager's cash flow projections, the current appropriation of \$2,500,000 should not be fully exhausted as of March 31, 2010. The Owner shall provide the Construction Manager written notice when additional funds have been appropriated, including confirmation that the Construction Manager is then authorized to proceed with its Services (in accordance with the terms and conditions of this Agreement) beyond the \$2,500,000 appropriation set forth above. If the Owner does not confirm, in writing, the appropriation of the remaining funds on or before March 31, 2010, the Construction Manager may suspend performance of its Services until the required written confirmation is received by the Construction Manager and, if such a suspension occurs, the Construction Manager shall not be obligated to recommence performance of its Services until Construction Manager has received a Change Order to cover the direct increased cost and/or time incurred by the Construction Manager as a result of the suspension. The Construction Manager shall only be obligated to render Services under this Agreement to the extent the Owner has, in writing, confirmed that the funds to cover the payment for such Services have been duly appropriated and are available to the Owner. The Owner shall only be obligated to pay for Services to the extent it has given written notice that funds are then appropriated and available for payment under this Agreement. The Owner shall be responsible for all delays which may occur as a result of the Construction Manager not being able to perform the Services in accordance with the Schedule due to the Construction Manager not being authorized to fully proceed with the Services because of insufficient funds being available to pay for such Services.

ARTICLE 12

OTHER PROVISIONS

12.1 Governing Law. This Agreement shall be governed by the law of the State of Indiana.

12.2 Terms Used in Contract Documents. Terms of this Agreement shall have the same meaning as those in the General Conditions of the Contract for Construction (AIA Document A-201/CMA, 1992 Ed.) as revised for the Project, unless otherwise expressly defined herein. All Contract Documents, as revised for this Project, shall be construed in accordance with one another, but if any term or condition contained in another Contract Document is in conflict with or would limit or restrict the duties and obligations of the Owner or Construction Manager as set forth in this Agreement, then the terms and conditions of this Agreement shall take precedence and control as between the Owner and the Construction Manager. In addition, to the extent Owner makes or otherwise consents to any changes to the General Conditions of the Construction Contract or any other Contract Document, and such change would increase Construction Manager's risk or liability under the Contract Documents, Construction Manager shall not be bound by such change nor shall it be enforced against Construction Manager, unless Construction Manager has expressly consented to such change in writing.

12.3 Audit Rights. The Owner shall have the right to inspect and/or audit all books, records and accounts of the Construction Manager applicable to the Project at any time during the Project and for a period of two (2) years following Substantial Completion of the Project. If the audit reveals a discrepancy between the amounts actually paid by the Owner to the Construction Manager and what should have been paid, the amount of the overpayment will promptly be returned by the Construction Manager or the amount of the underpayment will promptly be made by the Owner. In no event may any stipulated fee or other fixed amount agreed upon between Owner and Construction Manager be subject to adjustment as a result of any such inspection or audit. The cost of the audit will be borne solely by the Owner, unless an overpayment is established. In the event of an overpayment, the Construction Manager, in addition to repaying the overpayment, also shall be responsible for the audit costs, but not to exceed the lesser of: (a) the actual audit cost incurred; or (b) an amount equal to the overpayment as established by the audit. Any disagreement between the parties as to the findings of an audit conducted pursuant to this Section 12.3 shall be subject to dispute resolution in accordance with this Agreement.

12.4 Statute of Limitations. The Indiana Statute of Limitations as interpreted by the Courts of the State of Indiana shall apply to all claims, disputes or other matters in question arising out of or relating to the Work, the Project, this Agreement or any breach thereof.

12.5 Agreement Binding on Successors and Assignees. The Owner and Construction Manager respectively bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns, and legal representatives of such other party with respect to all covenants of this Agreement. Neither Owner nor Construction Manager shall assign this Agreement without the written consent of the other. Notwithstanding the above, the Evansville Redevelopment Commission shall have the right to

assign this Agreement, in whole or in part, to another governmental entity affiliated with the City of Evansville, Indiana, should ownership of the Project be transferred to such governmental entity or should the Evansville Redevelopment Commission and such governmental entity become co-owners of the Project. In that event, the Evansville Redevelopment Commission shall provide the Construction Manager with written notice identifying the assignee and describing the extent of such assignment, with the assignee assuming the rights, duties and obligations of the Owner under this Agreement to the extent of such assignment and subject to all the terms and conditions of this Agreement. Provided, however: (i) any partial assignment shall not release Evansville Redevelopment Commission of its duties and obligations under this Agreement; and (ii) in the event of a complete assignment, the Evansville Redevelopment Commission shall remain liable under this Agreement for matters that arise after such assignment only until the assignee provides evidence reasonably acceptable to Construction Manager that assignee has assumed the entire Agreement and is capable of satisfying all of the Owner's obligations under this Agreement, including all financial obligations.

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

12.7 No Third Party Benefit. By executing this Agreement, the parties do not bestow, nor do they intend to bestow, any rights, privileges or interest in favor of any persons or entities who are not signatories to this Agreement and nothing contained in this Agreement shall be construed to create a contractual relationship with (express, implied, third party beneficiary or otherwise) or a cause of action in favor of any persons or entities who are not signatories to this Agreement.

12.8 Project Reference. The Construction Manager shall have the right to include representations of the Project, including photographs of the exterior and interior, among the Construction Manager's promotional materials. The Construction Manager's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Construction Manager, in writing, of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide credit to the Construction Manager on the construction sign and in the promotional materials for the Project.

12.9 Invalid Provisions. If any part of this Agreement is later found to be contrary to, prohibited by or invalid under applicable laws, rules or regulations, that provision shall not apply and shall be omitted to the extent so contrary, prohibited or invalid, but the remainder of this Agreement shall not be invalidated and shall be given full force and effect insofar as possible.

12.10 Indemnification. Subject only to restrictions or limitations expressly set forth in other terms of this Agreement, the Construction Manager shall, to the fullest extent permitted by law, defend, indemnify and hold harmless the Owner, the Project Director, the City of Evansville and their respective elected and appointed officials, officers, board members, directors and employees, from claims, threats of claims, suits, actions, damages and costs of every type and description, including reasonable attorney fees, to the extent caused by any negligent act or

omission of or breach of this Agreement by the Construction Manager, its employees, members of its Operations Team or their employees, regardless of whether or not it is caused in part by a party indemnified hereunder. In claims against any person or entity indemnified under this Section by an employee of the Construction Manager, a member of its Operations Team or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Construction Manager, or by or for the member of its Operations Team, under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts. Such indemnity shall also not be limited by reason of the procurement of any insurance coverage as required by this Agreement, other Contract Documents or by law. Neither the Owner's final acceptance of the Work nor the making of any payment shall release the Construction Manager from its obligations under this Section.

12.11 Limitation on Consequential Damages. Notwithstanding anything in this Agreement or the other Contract Documents to the contrary, the parties expressly acknowledge and agree that the cumulative liability which either party may owe to the other for any and all consequential and other indirect damages arising out of or relating to the Project, this Agreement or the breach thereof, shall be capped at an amount not to exceed \$1,500,000; provided, however, this cap shall not be effective as to any consequential or other indirect damages which are covered and paid by available insurance or which are incurred due to the willful misconduct or gross negligence of the party against whom consequential damages are sought.

12.12 Public Disclosure. The Construction Manager shall not make any public disclosure, press release or public presentation containing information relating to the Project, without the prior written consent of the Owner. The Construction Manager is, however, permitted to include a description of its involvement with the Project in its promotional materials and to discuss such involvement with potential clients as part of its promotional efforts.

12.13 No Undisclosed Interests. The Construction Manager and its affiliates, shall have no interest, direct or indirect, in any other contract relating to the Project, express or implied/written or oral, nor shall any payment or benefit be received by them in connection with the Project other than as provided in this Agreement, unless such interest is fully disclosed to and approved by the Owner, in advance and in writing.

12.14 Compliance with Laws. Subject to the terms of Section 1.5.1 of this Agreement, the Construction Manager hereby agrees to comply with all applicable Federal, State and Local laws, rules, codes, ordinances, regulations and orders.

12.15 Acceptance of Final Payment as Release of Claims. The acceptance by the Construction Manager of final payment under this Agreement shall operate as a release to the Owner of all liability to the Construction Manager for all things done or furnished in connection with the Project and/or for every act and neglect of the Owner and those serving on behalf of the Owner relating to or arising out of the Services, the Work, the Project or this Agreement, except for claims asserted in writing to be unresolved at the time final payment is requested by the Construction Manager. Provided, however, this waiver shall not preclude the Construction Manager from raising any defense to any claim asserted against the Construction Manager or its Operations

Team members by the Owner or others. No payment by the Owner, final or otherwise, shall operate to release the Construction Manager from any obligations under this Agreement or the Contract Documents. It is, however, recognized that the Construction Manager shall have no responsibility for the acts or omissions of others which occur after the Construction Manager's Services terminate pursuant to the terms of this Agreement.

12.16 Independent Contractor. The Construction Manager shall be an independent contractor in its performance of the Services required by the Contract. It shall have neither the power nor the authority to bind or create liability for the Owner by its intentional or negligent acts.

12.17 Non-Waiver. It is agreed and acknowledged that no action or failure to act by the Owner or Construction Manager shall constitute a waiver of any right or duty afforded either of them under this Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereof, except as may be specifically agreed in writing.

12.18 No Lien. The Construction Manager acknowledges that the Services and Work are to proceed as a No-Lien Project in accordance with the laws of the State of Indiana regarding public projects. The Construction Manager, for itself, its Operations Team and for all who claim through the Construction Manager, acknowledges and agrees that no lien shall be asserted against or attach to the real estate on which the Project is to be performed or to any improvement now existing or to be constructed thereon. The Construction Manager shall provide written notice to its Operations Team and to any other parties with whom the Construction Manager contracts with respect to Services provided pursuant to this Agreement, that this is a public project against which mechanics liens cannot be filed. To the extent the Owner is in compliance with its payment obligations under this Agreement, Construction Manager shall defend, indemnify and hold the Owner and City harmless for all costs and expenses, including attorneys fees, should an attempt to assert such a lien be made on its behalf, by members of its Operation Team or by any other entity for whom the Construction Manager has contracted with or made purchases from with respect to the Services to be provided hereunder.

12.19 Force Majeure. Excluding a party's obligation to pay, in the event that either party is unable to perform any of its obligations under this Agreement because of natural disasters, actions or decrees of governmental bodies, states of emergencies or other events beyond the reasonable control of the party so affected ("Force Majeure Event"), that party shall provide immediate written notice of the Force Majeure Event to the other party and shall do everything commercially reasonably possible to resume performance. Upon receipt of such notice, all obligations that cannot be performed as a result of the Force Majeure Event shall be suspended until the Force Majeure Event has been abated or otherwise resolved.

12.20 Captions and Headings. The captions and headings of the Articles and Sections of this Agreement are included for purposes of convenient reference only and shall not affect the construction or interpretation of this Agreement.

12.21 Notice. All notices required under this Agreement shall be made in writing and shall be served by personal delivery, prepaid registered or certified mail, overnight delivery and/or

facsimile transmission, with such notices to be deemed effective upon delivery, addressed to the respective parties as follows:

As to the Owner:

Tom Barnett
Executive Director
Department of Metropolitan Development
1 N.W. Martin Luther King Jr. Blvd., Room 306
Evansville, IN 47708-1869
Fax: (812) 436-7809

Copies to:

John J. Kish
Project Director
1 N.W. Martin Luther King Jr. Blvd., Room 306
Evansville, IN 47708-1869
Fax: (812) 436-7809

and

David L. Jones
Jones and Wallace
P.O. Box 1065
Evansville, IN 47706
Fax: (812) 483-1276

As to the Construction Manager:

Richard R. DeJean
Hunt Construction Group, Inc.
2450 South Tibbs Avenue
P.O. Box 128
Indianapolis, IN 46206-0128
Fax: (317) 227-7825

Copy to:

Jose Pienknagura, Esq.
Vice President and General Counsel
Hunt Construction Group, Inc.
6720 North Scottsdale Road, Suite 300
Scottsdale, AZ 85253
Fax: (480) 368-4745

12.22 Construction. This Agreement shall be given a reasonable construction so that the intention of the parties can be carried out. The Owner and Construction Manager have each had the opportunity to review this Agreement in consultation with their legal counsel and to discuss and agree to the terms contained herein. Ambiguities that arise with respect to this Agreement, if any, shall not be resolved by construing such ambiguity against one of the parties as the author of this Agreement.

12.23 Authorization. The Owner and Construction Manager each covenant, warrant and represent that: (a) the individual executing this Agreement on its behalf is duly authorized to execute and deliver this Agreement on behalf of the party for whom they sign; (b) this Agreement is binding upon such party; and (c) the execution and delivery of this Agreement will not result in any breach of, or constitute a default under, any agreement, contract or other instrument to which it is a party or by which it may be bound.

This Agreement entered into as of the day and year first written above.

OWNER:

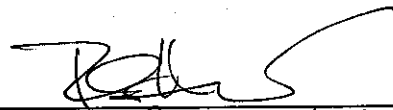
**EVANSVILLE REDEVELOPMENT
COMMISSION**



Printed Name Thomas Barnett
Printed Title Executive Director, DMD

CONSTRUCTION MANAGER:

HUNT CONSTRUCTION GROUP, INC.



Printed Name Robert G. Hunt
Printed Title Chairman - CEO

EXHIBIT A

**PROJECT PROGRAM
EVANSVILLE ARENA**

Conceptual Program produced by HOK Sport (n/k/a Populous, Inc.) during the Feasibility Study of the Project, as such Program has been updated in accordance with the Schematic Design Documents developed by the Architect and as finally approved by the Owner, consistent with the procedure set forth in Section 1.1 of the Agreement.

EXHIBIT B

**PROJECT BUDGET FOR CONSTRUCTION COSTS
EVANSVILLE ARENA**

A BUILDING COSTS

CM Managed Sewer Relocation/Site Improvements	\$ 1,000,000	
Arena Building Costs	\$ 90,000,000	
CM Managed FF&E (N-T-E)	<u>\$ 5,000,000</u>	
Subtotal Building Costs		\$ 96,000,000

B AFFILIATED PROJECT COSTS

Demolition and Remediation	TBD	
Owner Managed FF&E	<u>TBD</u>	
Subtotal Affiliated Project Costs		\$ -

C OWNER CONTINGENCY

Owner Contingency	TBD	<u>TBD</u>
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TOTAL BUDGET FOR CONSTRUCTION COSTS

\$ 96,000,000

EXHIBIT C

PROJECT SCHEDULE EVANSVILLE ARENA

	<u>Description</u>	<u>Date</u>
A	<u>SITE ACQUISITION, DEMOLITION & ABATEMENT</u>	
	City Parking Lot available for test piles work	09/01/09
	City Parking Lot available for sewer work	10/07/09
	City Parking Lot and Park available for Excavation and Foundations	11/15/09
	Lopp Building demolition & backfill complete	10/15/09
	Executive Inn demolition & backfill complete - Lowrise portion	11/15/09
	Executive Inn demolition & backfill complete - NW Tower portion	12/15/09
	Main Street Buildings demolition/backfill complete	12/31/09
	Partial MLK and 6th St. Vacancies	10/07/09
	Locust Street Water and Gas relocation/abandonment complete	11/15/09
	Locust Street Sewer Relocation complete	12/01/09
	Locust Street AT&T duct run abandonment complete	12/31/09
	Alley AT&T duct run abandonment complete	11/30/09
	Alley Power relocation/abandonment complete	11/30/09
B	<u>DESIGN DELIVERABLES</u>	
	Bid Package No. 1 - Locust Street Sewer Relocation	09/01/09
	Bid Package No. 2 - Site Prep, Deep Utilities, Excavation & Backfill, Piles, Caps & Grade Beams	09/04/09
	Bid Package No. 3 - Elevators & Escalators	10/05/09
	Bid Package No. 4 - Superstructure, Enclosure & Food Service	11/10/09
	Bid Package No. 5 - Interior Construction, Finishes, Ice Floor and MEP	01/07/10
	Bid Package No. 6 - Landscape, Hardscape and Scoreboards	02/09/10
	Bid Package No. 7 - FF&E	02/23/10
C	<u>CONSTRUCTION</u>	
	Begin Site Fence Installation in city R.O.W.	10/07/09
	Begin Locust Street Sewer Relocation	10/15/09
	Complete Locust Street Sewer Relocation Work	12/01/09
	Begin Excavation and Foundations	11/15/09
	Substantial Completion	10/01/11
	Event Ready	11/01/11

EXHIBIT D

**OPERATIONS TEAM
EVANSVILLE ARENA**

No.	Position	Name	Staffing Cost or In Fee
Senior Management			
1	Executive Vice President	Ken Johnson	In Fee
2	Vice President	Rick DeJean	In Fee
3	Contract Manager	Dan Shumaker	Staffing Cost
Project Support			
1	Vice President - Legal & Risk Management	Jose Pienknagura	In Fee
2	Vice President - Safety & Labor Relations	Bill Mott	In Fee
3	Director of Estimating	Steve Maki	In Fee (Precon Only)
4	Design Development Manager	John Galbreath	In Fee (Precon Only)
5	MEP Design Development Manager	Ron Graham	In Fee (Precon Only)
6	Diversity Program Manager	Bill Edwards	In Fee
7	Regional Safety Director	K.Turner/R. Tominello	Staffing Cost
8	Scheduling Manager	Brad Morris	Staffing Cost
9	Special Systems CM	Dominic Miranda	Staffing Cost

Full Time On- Site Employees			
1	Project Manager	Joe Eckhart	Staffing Cost
2	Project Engineer	Mike Decker	Staffing Cost
3	Project Engineer	TBD	Staffing Cost
4	MEP Coordinator	TBD	Staffing Cost
5	Assistant Project Engineer / MEP	TBD	Staffing Cost
6	General Superintendent	Larry Dabb	Staffing Cost
7	Asst Superintendent / Safety	TBD	Staffing Cost
8	Accountant	TBD	Staffing Cost
9	Assistant Project Engineer	TBD	Staffing Cost
10	Assistant Project Engineer	TBD	Staffing Cost
11	MWBE Coordinator / Clerical	TBD	Staffing Cost
12	Document Control Clerk	TBD	Staffing Cost
13	Intern	TBD	Staffing Cost

EXHIBIT E-1

**OWNER MANAGED FF&E
EVANSVILLE ARENA**

TBD

EXHIBIT E-2

**CM MANAGED FF&E
EVANSVILLE ARENA**

**\$5,000,000 not-to-exceed Budget with specific list of items
TBD**

EXHIBIT F

INCENTIVE FEE CRITERIA EVANSVILLE ARENA

Item	Description	Potential Fee Amount	Maximum Fee per Category	Evaluation Date
1	SCHEDULE - Achieve Substantial Completion on or before October 1, 2011 to earn an incentive fee of \$175,000. If formal Substantial Completion Certificate is not received on or before October 1, 2011, but the Owner's operational and maintenance personnel are provided reasonable advance access to prepare the facility and systems to host a public event and the Owner still is able to hold its first event on or before November 1, 2011, earn a reduced incentive fee of \$125,000.	\$ 175,000	\$ 175,000	Substantial Completion
2	SAFETY - If the cumulative Lost Workday Incident Rate is 10% or more below the published OSHA national average Lost Workday Incident Rate calculated on the following dates, the Construction Manager shall earn the corresponding incentive fee:		\$ 50,000	
		\$ 10,000		03/01/10
		\$ 10,000		07/01/10
		\$ 10,000		12/01/10
		\$ 10,000		04/01/11
		\$ 10,000		10/01/11
3	M/WBE - If a combined M/WBE level of participation is achieved which falls within one of the categories set forth below, considering both the Construction Manager's Services and the Work performed under Construction Contracts (assuming all firms certified by the State of Indiana count towards the goal, not just Local firms) the Construction Manager shall earn the incentive fee corresponding to that category:		\$ 76,500	Substantial Completion
	21% or greater	\$ 76,500		
	between 20% and 20.99%	\$ 68,850		
	between 19% and 19.99%	\$ 61,200		
	between 18% and 18.99%	\$ 53,550		
	between 17% and 17.99%	\$ 45,900		
	between 16% and 16.99%	\$ 38,250		
	between 15% and 15.99%	\$ 30,600		
	between 14% and 14.99%	\$ 22,950		
	between 13% and 13.99%	\$ 15,300		
	between 12% and 12.99%	\$ 7,650		

EXHIBIT F

**INCENTIVE FEE CRITERIA
EVANSVILLE ARENA**

Item	Description	Potential Fee Amount	Maximum Fee per Category	Evaluation Date
4	<p>BUDGET - The Owner's Budget for Building Costs is \$96,000,000 and the Owner intends to carry a 3% contingency during construction for reasonably anticipated change orders (not including Owner directed scope changes).</p> <p>Bidding Incentive - If the total of all Construction Contracts in the amounts originally awarded by the Owner for Work which falls within the definition of Building Costs (not including changes in scope by the Owner after execution of this Agreement and before the bidding/award of such contracts), equals or is less than \$96,000,000, the Construction Manager will earn an incentive fee of \$50,000.</p> <p>Construction Incentive - If the total of the final payments made at completion of the Project on all Construction Contracts which fall within the definition of Building Costs (not including changes in scope by the Owner after the award of Construction Contracts) equals or is less than 103% of the total of those same Construction Contracts as originally awarded by the Owner, the Construction Manager will earn an incentive fee of \$50,000.</p>	<p>\$ 50,000</p> <p>\$ 50,000</p>	\$ 100,000	<p>After award of last Construction Contract</p> <p>Final Completion</p>
5	<p>LOCAL MARKET STIMULATION - The Construction Manager shall advise local contractors and suppliers of the Project and encourage their participation in the bidding and procurement process. Except for scope of Work for which a minimum of two local responsible bidders is not available, if 75% or more of the bid packages have at least two responsible local firms submit responsive bids, the Construction Manager will earn an incentive fee of \$76,500. For purposes of this evaluation, local firms means contractors or suppliers having offices in Vanderburgh County, Indiana.</p>	\$ 76,500	\$ 76,500	After award of last Construction Contract
TOTAL INCENTIVE FEE			\$ 478,000	