



September 27, 2006

The Honorable Doug Formon  
Mayor  
City of Jonesboro  
PO Box 1845  
Jonesboro, AR 72403

RE: Agreement for Construction Management Services of the Installation of Landfill Gas (LFG) Extraction System and Final Cover System for the City of Jonesboro Landfill Facility  
FTN No. P4470-06-02-R1

Dear Mayor Formon:

FTN Associates, Ltd. (FTN) appreciates the opportunity to submit the following Agreement to provide construction management services related to the installation of an LFG extraction system and a final cover system at the City of Jonesboro (the City) Landfill facility located at Strawfloor Road in Jonesboro, AR (the Project).

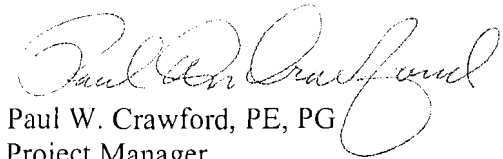
Our services will generally consist of management of the construction of the LFG extraction system for the areas with Class 1 wastes and installation of the final cover system for the City's Class 4 Landfill, all as set forth in the Agreement attached to this letter. We will also furnish such Additional Services as you may request. Any Additional Services will be charged on the basis of time and materials in accordance with the attached Fee Schedule.

A number of sections in the Agreement dealing with procurement of a project designer and the actual design of the project have been struck through as these services have been completed or are under a separate contract with the City. Any reference to the Designer in subsequent sections of the contract will indicate FTN Associates, Ltd. since we were the project designer.

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September 27, 2006  
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Thank you very much for the opportunity to present this proposal. Please do not hesitate to call me or Mark S. Koch, REM at (501) 225-7779 if you have any questions relating to this proposal or additional services offered by FTN.

Respectfully submitted,  
FTN ASSOCIATES, LTD.

  
Paul W. Crawford, PE, PG  
Project Manager

PWC/bls

Attachments

C:\PROGRAM FILES\QUALCOMM\EUDORA\ATTACH\CM CONTRACT.DOC

Accepted this \_\_\_\_\_ day  
of \_\_\_\_\_, 2006

By \_\_\_\_\_  
Authorized Representative  
City of Jonesboro







CMAA Document A-1

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

**2005 EDITION**

This document is to be used in connection with the Standard Form of Contract Between Owner and Contractor (CMAA Document A-2), the General Conditions of the Construction Contract (CMAA Document A-3), and the Standard Form of Agreement Between Owner and Designer (CMAA Document A-4), all being 2005 editions.

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

AGREEMENT

Made this \_\_\_\_\_ day of \_\_\_\_\_ in the year of Two Thousand and six.

BETWEEN The Owner: The City of Jonesboro

and the Construction Manager, (hereinafter, referred to as the "CM"): FTN Associates, Ltd.

For services in connection with the Project known as: City of Jonesboro Strawfloor Road Landfill Gas Collection and Control System and Class 4 Landfill Final Cover System Project.

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

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

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Construction Management Association of America, 7918 Jones Branch Drive, Suite 540 McLean, Virginia 22102

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**ARTICLE 1**  
**RELATIONSHIP OF THE PARTIES**

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1.1 Owner and Construction Manager

1.1.1 Relationship: The CM shall be the Owner's principal agent in providing the CM's services described in this Agreement. The CM and the Owner shall perform as stated in this Agreement. Nothing in this Agreement shall be construed to mean that the CM is a fiduciary of the Owner.

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

1.2 Owner and Designer

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

1.2.2 Changes: The Owner shall not modify the Agreement between the Owner and Designer in any way that is prejudicial to the CM. If the Owner terminates the Designer's services, a substitute acceptable to the CM shall be appointed.

1.3 Owner and Contractors

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

1.3.2 Form of Contract: Unless otherwise specified, the form of Contract between the Owner and Contractor shall be the CMAA Standard Form of Contract Between Owner and Contractor, CMAA Document A-2 (2005 Edition). The General Conditions for the Project shall be the CMAA General Conditions of the Construction Contract Between Owner and Contractor, CMAA Document A-3 (2005 Edition).

1.4 Relationship of the CM to Other Project Participants

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

1.4.2 Limitations: Nothing in this Agreement shall be construed to mean that the CM assumes any of the responsibilities or duties of the Contractor or the Designer. The Contractor will be solely responsible for construction means, methods, techniques, sequences and procedures used in the construction of the Project and for the safety of its personnel, property, and its operations and for performing in accordance with the contract between the Owner and Contractor. The Designer is solely responsible for the design requirements and design criteria of the Project and shall perform in accordance with the Agreement between the Designer and the Owner. The CM's services shall be rendered compatibly and in cooperation with the services provided by the Designer under the Agreement between the Owner and Designer. It is not intended that the services of the Designer and the CM be competitive or duplicative, but rather complementary. The CM will be entitled to rely upon the Designer for the proper performance of services undertaken by the Designer pursuant to the Agreement between Owner and the Designer.

**ARTICLE 2**  
**PROJECT DEFINITION**

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

2.2 The Project name and location is as follows:

City of Jonesboro Strawfloor Road Landfill  
Landfill Gas Collection and Control System and Class 4  
Landfill Final Cover System Project

City of Jonesboro Strawfloor Road Landfill  
1624 Strawfloor Road  
Jonesboro, AR 72401

2.3 The Project is intended for use as:

Closure of an existing Class 4 Landfill and installation of  
landfill gas collection and control system to control offsite gas  
migration from previously disposed municipal solid waste  
areas.

2.4 The term "Contract Documents" means the Instruction to Bidders, the Contract, the General Conditions and any Supplemental Conditions furnished to the Contractor, the drawings and specifications furnished to the Contractor and all exhibits thereto, addenda, bulletins and change orders issued in accordance with the General Conditions to any of the above, and all other documents specified in Exhibit B of the Standard Form of Contract Between Owner and Contractor, CMAA Document A-2, 2005 edition.

### ARTICLE 3 BASIC SERVICES

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#### 3.1 CM's Basic Services

3.1.1 Basic Services: The CM shall perform the Basic Services described in this Article. It is not required that the services be performed in the order in which they are described.

#### 3.2 Pre-Design Phase

##### 3.2.1 Project Management

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

~~for the Project. The CM shall then develop various alternatives for the scheduling and management of the Project and shall make recommendations to the Owner. The Construction Management Plan shall be presented to the Owner for acceptance.~~

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

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

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

##### 3.2.2 Time Management

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

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

##### 3.2.3 Cost Management

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

## CMAA Document A-1 (2005 Edition)

~~3.2.3.2 Project and Construction Budget: Based on the Construction Management Plan and the Construction Market Survey, the CM shall prepare a Project and Construction Budget based on the separate divisions of the Work required for the Project and shall identify contingencies for design and construction. The CM shall review the budget with the Owner and Designer and the CM shall submit the Project and Construction Budget to the Owner for acceptance. The Project and Construction Budget shall be revised by the CM as directed by the Owner.~~

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

### ~~3.2.4 Management Information System (MIS)~~

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

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

## ~~3.3 Design Phase~~

### ~~3.3.1 Project Management~~

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

~~approved by the Owner shall be incorporated into the Construction Management Plan.~~

~~3.3.1.2 Project Conference: At the start of the Design Phase, the CM shall conduct a Project Conference attended by the Designer, the Owner and others as necessary. During the Project Conference the CM shall review the Construction Management Plan, the Master Schedule, Design Phase Milestone Schedule, the Project and Construction Budget and the MIS.~~

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

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

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

## CMAA Document A-1 (2005 Edition)

~~substance or contents of the design documents. The CM's actions in making such reviews and recommendations as provided herein are to be advisory only to the Owner and to the Designer.~~

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

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

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

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

### ~~3.3.2 Time Management~~

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

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

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

### ~~3.3.3 Cost Management~~

~~3.3.3.1 Cost Control: The CM shall prepare an estimate of the construction cost for each submittal of design drawings and specifications from the Designer. This estimate shall include a contingency acceptable to the Owner, CM and the Designer for construction costs appropriate for the type and location of the Project and the extent to which the design has progressed. The Owner recognizes that the CM will perform in accordance with the standard of care established in this Agreement and that the CM has no control over the costs of labor, materials, equipment or services furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market prices. Accordingly, the CM does not represent or guarantee that proposals, bids or actual construction costs will not vary from budget figures included in the Construction Management Plan as amended from time to time. If the budget figure is exceeded, the Owner will give written consent to increasing the budget, or authorize negotiations or rebidding of the Project within a reasonable time, or cooperate with the CM and Designer to revise the Project's general scope, extent or character in keeping with the Project's design requirements and sound design practices, or modify the design requirements appropriately. Instead of the foregoing, the Owner may abandon the Project and terminate this Agreement in accordance with Article 10. The estimate for each submittal shall be accompanied by a report to the Owner and Designer identifying variances from the Project and Construction Budget. The CM shall facilitate decisions by the Owner and Designer when changes to the design are required to remain within the Project and Construction Budget.~~

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

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



## CMAA Document A-1 (2005 Edition)

### ~~3.3.4 Management Information Systems (MIS)~~

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

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

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

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

### 3.4 Procurement Phase

#### 3.4.1 Project Management

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

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

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

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

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

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

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

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

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

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

#### 3.4.2 Time Management

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

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

#### 3.4.3 Cost Management

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

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

#### 3.4.4 Management Information System (MIS)

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

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

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

### 3.5 Construction Phase

#### 3.5.1 Project Management

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

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

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

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

3.5.1.5 Review of Requests for Information, Shop Drawings, Samples, and Other Submittals: The CM shall examine the Contractor's requests for information, shop drawings, samples, and other submittals, and Designer's reply or other action concerning them, to determine the anticipated effect on compliance with the Project requirements, the Project and Construction Budget, and the Master Schedule. The CM shall forward to the Designer for review, approval or rejection, as appropriate, the request for clarification or interpretation, shop drawing, sample, or other submittal, along with the CM's comments. The CM's comments shall not relate to design

considerations, but rather to matters of cost, scheduling and time of construction, and clarity, consistency, and coordination in documentation. The CM shall receive from the Designer and transmit to the Contractor, all information so received from the Designer.

**3.5.1.6 Project Site Meetings:** Periodically the CM shall conduct meetings at the Project site with each Contractor, and the CM shall conduct coordination meetings with the Contractor, the Owner and the Designer. The CM shall prepare and distribute minutes to all attendees, the Owner and Designer.

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

**3.5.1.8 Minor Variations in the Work:** The CM may authorize minor variations in the Work from the requirements of the Contract Documents that do not involve an adjustment in the Contract price or time and which are consistent with the overall intent of the Contract Documents. The CM shall provide to the Designer copies of such authorizations.

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

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

proposed change order with the Contractor, and endeavor to determine the Contractor's basis for the price and time proposed to perform the changed Work.

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

**3.5.1.9.3** The CM shall make recommendations to the Owner regarding all proposed change orders. At the Owner's direction, the CM shall prepare and issue to the Contractor appropriate change order documents. The CM shall provide to the Designer copies of all approved change orders.

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

**3.5.1.11 Quality Review:** The CM shall establish and implement a program to monitor the quality of the Work. The purpose of the program shall be to assist in guarding the Owner against Work by the Contractor that does not conform to the requirements of the Contract Documents. The CM shall reject any portion of the Work and transmit to the Owner and Contractor a notice of nonconforming Work when it is the opinion of the CM, Owner, or Designer that such Work does not conform to the requirements of the Contract Documents. Except for minor variations as described in Paragraph 3.5.1.8, the CM is not authorized to change, revoke, alter, enlarge, relax or release any requirements of the Contract Documents or to approve or accept any portion of the Work not

conforming with the requirements of the Contract Documents. Communication between the CM and Contractor with regard to quality review shall not in any way be construed as binding the CM or Owner or releasing the Contractor from performing in accordance with the terms of the Contract Documents. The CM will not be responsible for, nor does the CM control, the means, methods, techniques, sequences and procedures of construction for the Project. It is understood that the CM's action in providing quality review under this Agreement is a service of the CM for the sole benefit of the Owner and by performing as provided herein, the CM is not acting in a manner so as to assume responsibility of liability, in whole or in part, for all or any part of the construction for the Project. No action taken by the CM shall relieve the Contractor from its obligation to perform the Work in strict conformity with the requirements of the Contract Documents, and in strict conformity with all other applicable laws, rules and regulations.

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

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

3.5.1.14 Operation and Maintenance Materials: The CM shall receive from the Contractor operation and maintenance manuals, warranties and guarantees for materials and

equipment installed in the Project. The CM shall deliver this information to the Owner and shall provide a copy of the information to the Designer.

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

3.5.1.16 Final Completion: In consultation with the Designer, the CM shall determine when the Project and the Contractor's Work is finally completed, shall issue a certificate of final completion and shall provide to the Owner a written recommendation regarding payment to the Contractor.

### 3.5.2 Time Management

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

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

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

may take in its efforts to achieve Contract compliance by the Contractor.

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

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

### 3.5.3 Cost Management

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

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

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

3.5.3.4 Cost Records: In instances when a lump sum or unit price is not determined prior to the Owner's authorization to the Contractor to perform change order Work, the CM shall request from the Contractor records of the cost of payroll,

materials and equipment incurred and the amount of payments to each subcontractor by the Contractor in performing the Work.

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

3.5.3.6 Progress Payments: The CM shall review the payment applications submitted by the Contractor and determine whether the amount requested reflects the progress of the Contractor's Work. The CM shall make appropriate adjustments to each payment application and shall prepare and forward to the Owner a progress payment report. The report shall state the total Contract price, payments to date, current payment requested, retainage and actual amounts owed for the current period. Included in this report shall be a Certificate of Payment that shall be signed by the CM and delivered to the Owner.

### 3.5.4 Management Information System (MIS)

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

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

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

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

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

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

3.6 Post-Construction Phase

3.6.1 Project Management

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

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

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

3.6.2 Time Management

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

3.6.3 Cost Management

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

3.6.4 Management Information Systems (MIS)

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

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

**ARTICLE 4**  
**ADDITIONAL SERVICES**

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

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

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

~~4.1.3 Services related to determination of space needs;~~

~~4.1.4 Preparation of space programs;~~

4.1.5 Services related to building site investigations and analysis;

~~4.1.6 Services related to tenant or rental spaces;~~

~~4.1.7 Preparation of a Project financial feasibility study;~~

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

4.1.9 Performance of technical inspection and testing;

4.1.10 Preparation of an operations and maintenance manual;

~~4.1.11 Services related to recruiting and training of maintenance personnel;~~

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

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

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

4.1.15 Service made necessary by the default of the Contractor;

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

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

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

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

4.1.20 Any other services not otherwise included in this Agreement.

#### ARTICLE 5

#### DURATION OF THE CONSTRUCTION MANAGER'S SERVICES

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

5.2 The duration of the CM's Basic Services under this Agreement shall be from the commencement date until the completion of the project (estimated duration of three months).

5.3 The duration of the CM's Basic Services may be changed only as specified in Article 6.

#### ARTICLE 6

#### CHANGES IN THE CONSTRUCTION MANAGER'S BASIC SERVICES AND COMPENSATION

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##### 6.1 Owner Changes

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

6.1.2 If the scope or the duration of the CM's Basic Services is changed, the CM's compensation shall be adjusted equitably. A written proposal indicating the change in compensation for a change in the scope or duration of Basic Services shall be provided by the CM to the Owner within thirty (30) days of the occurrence of the event giving rise to such request. The amount of the change in compensation to be paid shall be determined on the basis of the CM's cost and

a customary and reasonable adjustment in the CM's Fixed Fee, Lump Sum, or multipliers and rates consistent with the provisions of Article 8.

#### 6.2 Authorization

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

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

#### 6.3 Invoices for Additional Compensation

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

### ARTICLE 7 OWNER'S RESPONSIBILITIES

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7.1 The Owner shall provide to the CM complete information regarding the Owner's knowledge of and requirements for the Project. The Owner shall be responsible for the accuracy and completeness of all reports, data, and other information furnished pursuant to this Paragraph 7.1. The CM may use and rely on the information furnished by the Owner in performing services under this Agreement, and on the reports, data, and other information furnished by the Owner to the Designer.

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

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

7.4 The Owner shall furnish legal, accounting and insurance counseling services as may be necessary for the Project.

7.5 The Owner shall furnish insurance for the Project as specified in Article 9.

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

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

7.8 The Owner shall retain a Designer whose services, duties and responsibilities shall be described in a written agreement between the Owner and Designer. The services, duties, and responsibilities of the Designer set out in the agreement between the Owner and Designer shall be compatible and consistent with this Agreement and the Contract Documents. The Owner shall, in its agreement with the Designer, require that the Designer perform its services in cooperation with the CM, consistent with this Agreement and in accordance with the planning, scheduling and budgetary requirements of the Project as determined by the Owner and documented by the CM. The terms and conditions of the agreement between the Owner and the Designer shall not be changed or waived without written consent of the CM, whose consent shall not be unreasonably withheld.

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

7.10 The Owner shall cause any and all agreements between the Owner and others to be compatible and consistent with this Agreement. Each of the agreements shall include waiver of subrogation and shall expressly recognize the CM as the Owner's agent in providing the CM's Basic and Additional Services specified in this Agreement.



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

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

7.13 The Owner shall furnish evidence satisfactory to the CM that sufficient funds are available and committed for the entire cost of the Project. Unless such reasonable evidence is furnished, the CM is not required to commence the CM's services and may, if such evidence is not presented within a reasonable time, suspend the services specified in this Agreement upon fifteen (15) days written notice to the Owner. In such event, the CM shall be compensated in the manner provided in Paragraph 10.2.

7.14 The Owner, its representatives and consultants shall communicate with the Contractor only through the CM.

7.15 The Owner shall send to the CM and shall require the Designer to send to the CM copies of all notices and communications sent to or received by the Owner or the Designer relating to the Project. During the construction phase of the Project, the Owner shall require that the Contractor submits all notices and communications relating to the Project directly to the CM.

7.16 The Owner shall designate, in writing, an officer, employee or other authorized representatives to act in the Owner's behalf with respect to the project. This representative shall have the authority to approve changes in the scope of the Project and shall be available during working hours and as often as may be required to render decisions and to furnish information in a timely manner.

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

7.18 In the case of the termination of the Designer's services, the Owner shall appoint a new Designer who shall

be acceptable to the CM and whose responsibilities with respect to the Project and status under the new Agreement with the Owner shall be similar to that of the Designer under the Owner-Designer Agreement and the Contract Documents.

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

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8.1 Compensation Basis

8.1.1 The CM shall receive compensation for its services in accordance with ~~Paragraph 8.2 (Cost Plus Fixed Fee)~~, Paragraph 8.3 (Lump Sum) ~~or 8.4 (Fixed Billable Rates)~~.

~~8.2 Cost Plus Fixed Fee~~

~~8.2.1 Compensation for Basis Services: The Owner shall compensate the CM for performing the Basic Services described in Article 3 on the basis of the CM's cost plus a fixed fee in accordance with the terms and conditions of this Agreement and specifically as follows:~~

~~8.2.1.1 A Fixed Fee of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_);~~

~~8.2.1.2 The cost of employees working on the Project, other than principals, in an amount which equals the multipliers established in Paragraphs 8.2.1.2.1 and 8.2.1.2.2, multiplied by the personnel expense for each such employee. Personnel expense for an employee shall be \_\_\_\_\_ times the base hourly wage. Personnel expense includes the base hourly wage, payroll taxes, employee benefits and Workers' Compensation insurance. The cost of the CM's principals shall be paid at the rate specified in Paragraph 8.2.1.3. The specified multipliers and rates shall remain constant for a twelve (12) month period following the date of this Agreement. Thereafter, the multipliers established in the referenced paragraphs shall be adjusted by the CM if the CM's personnel cost or expense changes;~~

~~8.2.1.2.1 Employees assigned to the Project and working at the construction site of employees for which the Owner provides all office facilities and services, excluding the project~~

~~manager and assistant project managers, a multiplier of \_\_\_\_\_ (\_\_\_\_\_);~~

~~8.2.1.2.2 Employees assigned to the Project and working in the CM's administrative office, including the project manager and assistant project managers, a multiplier of \_\_\_\_\_ (\_\_\_\_\_);~~

~~8.2.1.3 Principals of the CM who participate in the Project, a fixed rate of \_\_\_\_\_ dollars (\$\_\_\_\_\_) per hour. The principals to be compensated according to these terms are: \_\_\_\_\_~~

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~~and;~~

~~8.2.1.4 Independent engineers, architects and other consultants employed by the CM and performing services related to the Project, a multiplier of (\_\_\_\_\_) times the amount of the invoice for such services.~~

~~8.2.2 Direct Expenses: In addition to the compensation for Basic and Additional Services stated herein, the CM shall be reimbursed for its direct expenses for Basic and Additional Services. Direct expenses are those actual expenditures made by the CM, its principals, employees, independent engineers, architects and other consultants in the interest of the Project, including, without limitation:~~

~~8.2.2.1 Long distance telephone calls, telegrams and fees paid for securing approval of authorities having jurisdiction over the Project;~~

~~8.2.2.2 Handling, shipping, mailing and reproduction of materials and documents;~~

~~8.2.2.3 Transportation and living expenses when traveling in connection with the Project;~~

~~8.2.2.4 Computer equipment rental or service fees;~~

~~8.2.2.5 Computer software purchased;~~

~~8.2.2.6 Electronic data processing service and rental of electronic data processing equipment;~~

~~8.2.2.7 Word processing equipment rental;~~

~~8.2.2.8 Premiums for insurance beyond the limits normally carried by the CM that are required by the terms of this Agreement;~~

~~8.2.2.9 Relocation of employees and their families.~~

~~8.2.2.10 Temporary living expenses of employees who are not relocated, but assigned to the Project;~~

~~8.2.2.11 Gross receipts taxes, sales or use taxes, service taxes and other similar taxes required to be paid as a result of this Agreement;~~

~~8.2.2.12 Field office expenses including the cost of office rentals, telephones, utilities, furniture, equipment and supplies; and~~

~~8.2.2.13 The cost of premium time.~~

~~8.2.2.14 Legal cost reasonably and properly incurred by the CM in connection with the performance of its duties under this Agreement.~~

~~8.2.3 CM's Accounting Records: Records of the CM's personnel expense, independent engineers', architects' and other consultants' fees and direct expenses pertaining to the Project shall be maintained on the basis of generally accepted accounting practices and shall be available for inspection by the Owner or the Owner's representative at mutually convenient times for a period of two years after completion of the CM's Basic Services.~~

~~8.2.4 Payment: Payments to the CM shall be made monthly, not later than fifteen (15) days after presentation of the CM's invoice to the Owner, as follows:~~

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~~8.2.4.1 Payment of the Fixed Fee as indicated in Paragraph 8.2.1.1 shall be in amounts prorated equally over the duration of the CM's Basic Services. The duration shall be as set out in Article 5;~~

~~8.2.4.2 Payment of personnel expense and the fixed hourly rate for principals shall be in amounts equal to the actual hours spent during the billing period on the Project multiplied by the rates and multipliers stated in Paragraphs 8.2.1.2, 8.2.1.2.1, 8.2.1.2.2 and 8.2.1.3;~~

~~8.2.4.3 Payment of independent engineer, architect and other consultant services shall be in amounts equal to the invoice in receipt by the CM for the billing period times the multiplier stated in Paragraph 8.2.1.4;~~

~~8.2.4.4 Reimbursement for direct expenses shall be in amount equal to expenditures made during the billing period and during previous billing periods not yet invoiced;~~

~~8.2.4.5 No deductions shall be made from the CM's compensation due to any claim by the Owner, Contractor or others not a party to this Agreement or due to any liquidated damages, retainage or other sums withheld from payments to the Contractor or others not a party to this Agreement; and~~

~~8.2.4.6 Payments due the CM that are unpaid for more than thirty (30) days from the date of the CM's invoice shall bear interest at the annual rate of \_\_\_\_\_% from the due date, compounded monthly. In addition, since timely payment is an essential condition of this Agreement, the CM may, after giving seven (7) days written notice to the Owner, suspend services under this Agreement until the CM has been paid in full all amounts due for services, expenses and charges, including accrued interest.~~

~~8.2.5 Compensation for Additional Services: The CM shall be compensated and payments shall be made for performing Additional Services in the same amount and manner as provided in Article 8 for Basic Services. There shall be an increase in the fixed fee set out in Paragraph 8.2.1.1 in an amount, which is mutually agreeable between the Owner and CM.~~

8.3 Lump Sum

8.3.1 Compensation for Basic Services: The Owner shall compensate the CM for performing Basic Services described in Article 3, a total Lump Sum in the amount of ninety-five thousand dollars (\$ **95,000** ), which amount shall be paid in four monthly installments as follows:

Installment No.	Installment Due Date	Installment Amount
1	30 days after submittal	\$25,000
2	30 days after submittal	\$25,000
3	30 days after submittal	\$25,000
4	30 days after submittal	\$20,000

8.3.2 Direct Expenses: The cost of direct expenses incurred shall be included in the Lump Sum.

8.3.3 Payments: Payments shall be made monthly, not later than thirty (30) days after receipt of the CM's invoice by the Owner.

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

8.3.3.2 Payments due the CM that are unpaid for more than thirty (30) days from the date of the CM's invoice shall bear interest at the annual rate of 6% from the due date, compounded monthly. In addition, since timely payment is an essential condition of this Agreement, the CM may, after giving seven (7) days written notice to the Owner, suspend services under this Agreement until the CM has been paid in full all amounts due for services, expenses and charges, including accrued interest.

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

8.4 Fixed Billable Rates

~~8.4.1 Compensation for Basic Services: The Owner shall compensate the CM for performing Basic Services described in Article 3 on the basis of fixed billable rates in accordance with the terms and conditions of this Agreement and specifically as follows:~~

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

~~8.4.1.1.1 Employees assigned to the Project and working at the construction site, or employees for which the Owner provides all office facilities and services, the following hourly rates:~~

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

~~8.4.1.2 Independent engineers, architects and other consultants employed by the CM and performing services related to the Project, a multiplier of~~

~~\_\_\_\_\_ )  
times the amount of the invoice for such services.~~

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

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

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

~~8.4.2.3 Transportation and living expenses when traveling in connection with the Project;~~

~~8.4.2.4 Computer equipment rental or service fees;~~

~~8.4.2.5 Computer software purchased;~~

~~8.4.2.6 Electronic data processing service and rental of electronic data processing equipment;~~

~~8.4.2.7 Word processing equipment rental;~~

~~8.4.2.8 Premiums for insurance beyond the limits normally carried by the CM that are required by the terms of this Agreement;~~

~~8.4.2.9 Relocation of employees and families;~~

~~8.4.2.10 Temporary living expenses of employees who are not relocated, but assigned to the Project;~~

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

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

~~8.4.2.13 Premium time work.~~

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

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

~~8.4.4.1 Payment of the fixed hourly rate for employees shall be in amounts equal to the actual hours spent during the billing period on the Project multiplied by the rates stated in Paragraphs 8.4.1.1.1 and 8.4.1.1.2;~~

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

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

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

~~8.4.4.5 Payments due the CM that are unpaid for more than thirty (30) days from the date of receipt by the Owner of the CM's invoice shall bear interest at the annual rate of \_\_\_\_\_% from the due date, compounded monthly. In addition, since timely payment is an essential condition of this Agreement, the CM may, after giving seven (7) days written notice to the Owner, suspend services under this Agreement until the CM has been paid in full all amounts due for services, expenses and charges, including accrued interest.~~

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

## ARTICLE 9

### INSURANCE AND MUTUAL INDEMNITY

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#### 9.1 Construction Manager's Liability Insurance

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

9.1.2 Commercial General Liability Insurance may be obtained under a single policy for the full limits required or by a combination of underlying policies with the balance provided by an excess or umbrella policy.

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

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

and other consultants retained by the CM for the Project to procure and maintain professional liability insurance coverage, for at least such amounts, deductibles, and periods as determined by the Owner.

## 9.2 Owner's Insurance

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

9.2.2 The CM, as agent of the Owner, shall be named as an additional insured in any insurance policy obtained by the Owner and the Contractor for the Project.

## 9.3 Notices and Recovery

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

## 9.4 Waiver of Subrogation

9.4.1 The Owner and the CM waive all rights against each other and against the Contractor, Designer, and other consultants, subcontractors, suppliers, agents and employees of the other for damages during construction covered by any property insurance as set forth in the Contract Documents. The Owner and the CM shall each require appropriate similar waivers from their contractors, designers, and other consultants, subcontractors, suppliers, agents and employees.

## 9.5 Indemnity

9.5.1 To the fullest extent permitted by law, the CM shall indemnify and hold harmless the Owner, its employees, agents, officers, directors and partners from and against any and all damages arising from bodily injury or property damage and reasonable attorneys' fees incurred by the Owner caused solely by the negligent act, error or omission of the CM, or the CM's consultants, or any other party for whom the CM is

legally liable, in performance of services under this Agreement. The CM shall procure and maintain insurance as required by and set forth in this Agreement. ~~Notwithstanding, any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of the CM and the CM's consultants and the officers, directors, partners, employees, and agents of any of them, to the Owner and anyone claiming by, through or under the Owner, for any and all claims, losses, costs or damages whatsoever arising out of, resulting from or in any way related to the Project or this Agreement from any cause or causes, including but limited to the negligence, professional errors or omissions, strict liability or breach of contract or warranty (express or implied) of the CM or the CM's consultants and the officers, directors, partners, employees, and agents of any of them, (hereafter "the Owner's claims"), shall not exceed the total insurance proceeds paid on behalf of or to the CM by the CM's insurers in settlement or satisfaction of the Owner's claims under the terms and conditions of the CM's insurance policies applicable thereto.~~

9.5.2 The Owner shall cause the Designer to indemnify and hold harmless the Owner, its employees, agents and representatives to the same extent and in the same manner that CM has provided indemnification for the Designer under Paragraph 9.5.1.

9.5.3 The Owner hereby indemnifies and holds harmless the CM and its employees, agents and representatives from and against any and all claims, demands, suits and damages for bodily injury and property damage for which the Owner is liable that arise out of or result from negligent acts or omissions of the Owner, its employees, agents, representatives, independent contractors, suppliers, the Contractor and the Designer.

9.5.4 The Owner shall cause the Contractor to indemnify and hold harmless the CM from and against any and all claims, demands, suits, damages, including consequential damages and damages resulting from personal injury or property damage, costs, and expenses and fees that are asserted against the CM and that arise out of or result from negligent acts or omissions by the Contractor, its employees, agents and representatives in performing the Work.

**ARTICLE 10**  
**TERMINATION AND SUSPENSION**

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10.1 Termination

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

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

10.1.3 In the event of termination under Paragraph 10.1.1, the CM shall be paid its compensation for services performed to the date of termination, services of engineers, architects and consultants then due and all termination expenses. Termination expenses are defined as those expenses arising prior, during and subsequent to termination that are directly attributable to the termination, plus an amount computed as a percentage of the total compensation earned at the time of termination computed as follows:

10.1.3.1 Twenty (20) percent if the termination occurs during the Pre-Design Phase, Design Phase or Procurement Phase; or

10.1.3.2 Ten (10) percent if the termination occurs during the Construction Phase or Post-Construction Phase.

10.1.4 In the event of termination under Paragraph 10.1.2, the CM shall be paid its compensation for services performed to the date of termination, services of professional consultants then due and all termination expenses. No amount computed as provided in Paragraphs 10.1.3.1 and 10.1.3.2 shall be paid in addition if the termination is due to the CM's failure to substantially perform in accordance with the terms of this Agreement.

10.2 Suspension

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

10.2.2 In the event the CM's services for the Project are suspended, the Owner shall reimburse the CM for all of the costs of its construction site staff, assigned Project home office staff and other costs as provided for by this Agreement for the first thirty (30) days of such suspension. The CM shall reduce the size of its project staff for the remainder of the suspension period as directed by the Owner and, during such period, the Owner shall reimburse the CM for all of the costs of its reduced staff. Upon cessation of the suspension, the CM shall restore the construction site staff and home office staff to its former size.

10.2.3 Persons assigned by the CM to another project during such suspension periods and not available to return to the Project upon cessation of the suspension shall be replaced. The Owner shall reimburse the CM for costs incurred for relocation of previous staff persons returning to the Project or for new persons assigned to the Project.

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

**ARTICLE 11**  
**DISPUTE RESOLUTION**

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11.1 The Owner and the CM shall submit all unresolved claims, counterclaims, disputes, controversies, and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("disputes"), to mediation prior to either party initiating against the other a demand for arbitration pursuant to Paragraph 11.2 below, unless delay in initiating or prosecuting a proceeding in an arbitration or judicial forum would prejudice the Owner or the CM. The Owner and the CM shall agree in writing as to the identity of the mediator and the rules and procedures of the mediation. If the Owner and CM cannot, agree, the dispute shall be submitted to mediation under the then current Construction Industry Mediation Rules of the American Arbitration Association.

11.2 All disputes that the Owner and CM are unable to resolve by mediation as aforesaid shall be decided by arbitration, subject to the limitations provided herein. The agreement to arbitrate, and any other agreement or consent to arbitrate entered into in accordance herewith shall be specifically enforceable under the prevailing law of any court having jurisdiction. The Owner and the CM shall agree in writing as to the identity of the arbitrator(s) and the rules and procedures of the arbitration. If the Owner and the CM do not so agree, then the Owner and the CM shall submit the dispute to arbitration under the then current Construction Industry Rules of the American Arbitration Association.

11.3 Notice of demand for arbitration must be filed in writing with the other party to this Agreement and with the arbitrator(s). The demand must be made within a reasonable time after the dispute has arisen, but not prior to or during the pendency of the mediation as agreed in Paragraph 11.1. In no event may the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such dispute in question would be barred by the applicable statute of limitations or of repose.

11.4 No arbitration arising out of, or relating to, this Agreement may include, by consolidation, joinder or in any other manner, any person or entity who is not a party to this

Agreement unless both parties agree otherwise in writing. No consent to arbitration in respect of a specifically described dispute will constitute consent to arbitrate any other dispute which is not specifically described in such consent or which is with any party not specifically described therein.

11.5 All demands for arbitration and answering statements thereto which include any monetary claim must contain a statement that the total sum or value in controversy as alleged by the party making such demand or answering statement is not more than **\$200,000** (exclusive of interest and costs). The arbitrators will not have jurisdiction, power or authority to consider, or make findings (except in denial of their own jurisdiction) concerning any claim, counterclaim, dispute or other matter in question where the amount in controversy of any such claim, counterclaim, dispute or matter is more than **\$200,000** (exclusive of interest and costs), or to render a monetary award in response thereto against any party which totals more than **\$200,000** (exclusive of interest and costs).

11.6 The award rendered by the arbitrator(s) will be final, judgment may be entered upon it in any court having jurisdiction thereof, and the award will not be subject to modification or appeal. In any judicial proceeding to enforce this Agreement to arbitrate, the only issues to be determined shall be those set forth in 9 U.S.C. Section 4 Federal Arbitration Act, and such issues shall be determined by the Court without a jury. All other issues, such as, but not limited to, arbitrability, prerequisites to arbitration, compliance with contractual time limits, applicability of indemnity clauses, clauses limiting damages and statutes of limitations shall be for the arbitrator(s), whose decision thereon shall be final and binding. There shall be no interlocutory appeal of an order compelling arbitration.

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



**ARTICLE 12**  
**ADDITIONAL PROVISIONS**

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12.1 Confidentiality

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

12.2 Limitation and Assignment

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

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

12.3 Governing Law

12.3.1 This Agreement shall, unless otherwise provided, be governed by the law of the state where the Project is located.

12.4 Extent of Agreement

12.4.1 This Agreement constitutes the entire agreement between the parties and incorporates all prior agreements and understandings in connection with the subject matter hereof. This Agreement may be amended only by a written amendment signed by the Owner and CM. Nothing contained in this Agreement is intended to benefit any person or party, other than the Designer, but for Designer only under the circumstances as specifically defined herein. In addition, it is expressly agreed that neither the Contractor, its subcontractors and suppliers, any other contractors or

consultants of the Owner or CM, nor any other person or party providing any part of the design services or Work are intended beneficiaries of this Agreement.

12.5 Severability

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

12.6 Meaning of Terms

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

12.6.2 The meaning of terms used herein shall be consistent with the definitions expressed in the CMAA Standard Form Agreements, Contracts and General Conditions.

12.7 Notices

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

To the Owner:  
Honorable Doug Formon  
515 West Washington Avenue  
Jonesboro, AR 72401

To the CM:  
Paul Crawford, PE, PG  
FTN Associates, Ltd.  
3 Innwood Circle  
Little Rock, AR 72211

(Remainder of Page intentionally left blank.)

CMAA Document A-1 (2005 Edition)

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

ATTEST:

OWNER

Witness: \_\_\_\_\_

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

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

CONSTRUCTION MANAGER

Witness: \_\_\_\_\_

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

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

**Existing Client Rates**  
**2006 Fee Schedule<sup>1</sup> - FTN Associates, Ltd.**

<u>Labor Category</u>	<u>Hourly Rate</u>
Professional 7	\$ 139.00
Professional 6	124.00
Professional 5	110.00
Professional 4	101.00
Professional 3	90.00
Professional 2	80.00
Professional 1	70.00
Technician 4	72.00
Technician 3	61.00
Technician 2	54.00
Technician 1	39.00
Word Processing	47.00

Direct Expenses

All direct project expenses will be invoiced at cost plus 10 percent. Direct project expenses include such items as travel, meals, lodging, shipping, supplies, consultants, subcontractors, etc. Vehicle mileage will be charged at standard IRS rates.

A charge of 2 percent is applied to the total labor amount to cover communication charges and computer expenses associated with computer applications, data storage and backup.

Should back-up data be requested for reimbursable expenses, it will be provided for an administrative fee.

Payment Terms

Unless other arrangements are made in writing invoicing will be monthly for services completed. Payment is due in full within 30 days of invoice. A service charge of 12 percent per month will be charged on all balances over 30 days.

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<sup>1</sup>Effective January 1, 2006 - December 31, 2006