

Waste Management of California, Riverside County, Edom Hill Transfer Station

REQUEST FOR QUALIFICATION: CONVERSION TECHNOLOGIES

RESPONSE DUE ON OR BEFORE 5:00 P.M. PDST, June 6, 2003

1.0 INTRODUCTION

Waste Management of California (WMC) is requesting information and quotation for the construction and operation of an Organics Conversion Facility to be located adjacent to the Edom Hill Transfer Station or at an alternative facility. This request is part of a contract obligation from the County Waste Management Department to WMC the owner and operator of the transfer station. The project, when selected will be built and operated by the qualified vendor (or WMC). Size, type and location of the Conversion Facility are undefined. Transfer station is to be located at 70-100 Cathedral City, Ca. 92260. While it is not mandatory that the conversion unit be located adjacent to the facility up to twelve acres are available at no cost to vendor.

The RFQ will be reviewed and analyzed by WMC and/or a qualified consultant and presented in summary analysis to CVAG and the county Waste Management Department, WMD. CVAG and WMD will participate in review of all completed submittals. This RFQ is not limited or targeted to any particular technology and minimally will include biomass, anaerobic digestion, ethanol production, gasification and MSW power production.

The intent of this RFQ is to find the leading conversion technologies for the Coachella Valley for the years to come. Potential vendors should realize that their RFQ submittal should be structured so reviewers can conduct analysis based on the following nine requirements and the response to the Qualifications Review Form. If a technology provider makes a submittal that is substantially deficient in the following technology requirements categories they will be eliminated from the program.

Technology Requirements:

1. Provide operation principles.
2. Provide Material Selection Parameters.
3. Detail Technology, Development, and Research.
4. Provide enough technical detail that reviewers can differentiate the technical efficiencies.
5. Vendors will be technically ranked, without enough detail submitters will be eliminated.

6. Provide enough information to show that technology is ready and capable of operating at projected capacity.
7. Provide Facility Sighting Requirements
8. List or detail Institutional Arrangements needed.
9. Demonstrate why their technology is preferred.

Technology Requirements, screening parameters and “qualifications review form” are included as part of this document.

2.0 PURPOSE

The purpose of this RFQ is to solicit and select a technology that will assist Waste Management of California (WMC), county Waste Management Department (WMD), and The Coachella Valley Association of Governments (CVAG) in determining the application of such technologies in the region. Information submitted by entities responding to this request will be evaluated using screening parameters (Attachment 2); answers to questions (section 4), and the Qualifications Review Form (Attachment 4), those technologies meeting the minimum requirements will receive further consideration.

For purposes of this request, solid waste conversion technologies are defined as:

“The processing, through non-combustion thermal means, chemical means, or biological means of mixed municipal solid waste from which recyclable materials have been substantially diverted and/or removed to produce electricity, alternative fuels, chemicals, or other products that meet quality standards for use in the marketplace, with minimum amount of residuals remaining after processing.”

Technologies that do not fall within this definition will not receive further consideration in this process.

3.0 INSTRUCTIONS FOR SUBMITTAL OF RESPONSES

Due Date: June 6, 2003, 5:00pm PDST

Copies of each submittal should be received by Waste Management **no later than 5:00 p.m. Pacific Daylight Savings Time on June 6, 2003.** Responses may be submitted via standard or overnight mail, electronic mail, or by hand in accordance with the time and date noted. **Six copies are requested unless an electronic version is sent. Electronic copies should be sent as a PDF (s). Fax copies are not acceptable.** Responses should be addressed to:

Frank Orlett, District Manager
Waste Management of the Desert
41-575 Eclectic Street
Palm Desert CA.92260
forlett@wm.com

Response Requirements

All responses received by WMC should include completed responses to questions contained in Section 4, the details expressed in the “Qualifications Review Form” (Attachment 4), and a list of exceptions, to the contract form in Attachment 5 of this RFQ. Attachment 5 contains WMC standard design build contract form; successful vendor will use a contract similar to this document.

Contact for Information

All questions regarding this RFQ should be directed to:

Mr. Gary R. Hater
Senior Director Bioreactor/BioSite Technology
Waste Management Program Office
2956 Montana Ave.
Cincinnati, OH 45211
ghater@wm.com
(513) 389 7370 +19
Fax (513) 389 7374

Questions will be accepted via electronic mail, standard or overnight mail, or fax and will be answered to the best of the reviewers ability with in 5 business days. Email correspondence is preferred and will receive the fastest response.

Response Preparation

Response preparation costs will not be reimbursed under this RFQ. All responses, and the contents therein, will become the property of Waste Management of California. Response should be no more than three pages per question, supporting material should be put into appendices.

Commitment

The RFQ process does not commit Waste Management of California (WMC) and The Coachella Valley Association of Governments (CVAG), or the County WMD to issue any subsequent Request for Quotation or to pay any costs incurred in preparation of a response to this RFQ. Failure to respond to this RFQ format precludes the technology from being considered.

4.0 QUESTIONNAIRE

Please provide completed responses to the following:

Question 1:

Name of Firm: _____
Name of Technology: _____
Principal Contact Person: _____
Address: _____
City: _____ State: _____ Zip: _____
Country: _____
Telephone No.: _____ Fax: _____
E-mail Address: _____

Question 2:

Is your technology capable of processing a minimum of 100,000 tons per year of mixed municipal solid waste? (*A characterization of the applicable mixed municipal solid waste stream in Riverside County is provided in Attachment 3.*) If not, what types of waste is your technology capable of processing and what are the minimum and maximum amounts (tons per year) that are required? **Will your technology divert greater than 60% to 75% of the separated material from the transfer station including residue from the technology. The selected project's diverted material must qualify for diversion credits under existing regulatory requirements in California. Proof or a description of how the technology qualifies would be helpful.**

Question 3:

Is your technology modular and/or flexible in its design? If so, please describe the technology's ability to adapt to and accommodate/accept waste that exceeds the initial facility design parameters. What are the turn down limits? Provide an equipment list as part of this answer.

Question 4:

Is your technology capable of operating for a minimum of 20 years? If so, please describe the basis of your conclusions.

Question 5:

If 100,000 tons of mixed municipal solid waste were delivered to a facility that utilized your technology, what are the minimum and maximum amounts of residual waste (waste to be landfilled) that would result after processing? Please describe the nature of the residual waste (i.e., material type, toxicity, density, etc.). Will the technology qualify for diversion under current California law?

Question 6:

Does your technology require input of feedstock (materials or waste) that is not typically found in mixed municipal solid waste streams? If so, please describe the feedstock(s).

Question 7:

If 100,000 tons of mixed municipal solid waste were delivered to a facility that utilized your technology, please estimate, using a range if desired, the facility's 1) total capital cost (excluding the cost of land) and 2) annual operating and maintenance costs.

Question 8:

If 100,000 tons of mixed municipal solid waste were delivered to a facility that utilized your technology, please describe all of the end products that would be produced (i.e., electricity, alternative fuels, chemicals, etc.).

Question 9:

Based on your answer for question 8 above, please describe the probable, identifiable or existing end markets for all of the products that your technology would produce. Please provide estimated annual revenues for each product.

Question 10:

Describe and provide up to three user sites of the submitted technology that may be contacted for reference. Include the name of the facility, contact, phone number, email address and street address, date of operation.

Question 11:

Is the technology provided in this RFQ protected by any intellectual properties and does the offerer have the right to use this technology. Secondly are there territory limits for additional facilities.

Question 12:

Provide labor requirements for the facility, including the various job classifications.

Question 13:

What is the five year projection of financial results of the program's operations including documentation of the key assumptions underlying the projections and the support for those assumptions, giving full effect to the savings or costs to existing services, excel spreadsheet is the preferred format for this answer. Included in this estimate should be the cost of supplying the county with monthly environmental data and semi annual reports summarizing the plant performance. Assume that reporting will be reduced after three years.

Question 14:

Is the technology vendor willing to expand the technology if a contract is offered by one or more user agencies or WM locations? Does the offerer have territory limitations?

Question 15: List key technologists and their affiliation, i.e.: employee, consultant. Resumes are acceptable for this answer.

Question 16:

The conversion technology company must provide "program publicity, community education, and marketing" briefly describe how these items will be accomplished.

Attachment 1

Edom Hill Transfer Station Draft Guiding Principles for Conversion Technologies Investigation

The following principles will guide the activities throughout its duration.

- I. To be consistent with the highest and best use philosophy contained in the California Integrated Waste Management Act of 1989 the ALTERNATIVE (S) shall not replace or hinder existing and successful recycling programs or green waste mulching/composting activities.
- II. The ALTERNATIVE (S) shall be viewed as an integral component of the local solid waste system and should target the MSW waste-stream that is destined for landfill.
- III. The initial ALTERNATIVE (S) throughput/capacity criterion will be based on the Edom Hill Transfer Station, yet shall be flexible to allow for the inclusion of additional waste-streams.
- IV. The selection of appropriate technologies will be based, in part, on their proven/demonstrated or likely ability to process waste-streams of similar scale and composition as detailed in Attachment 3.
- V. Waste Management of California (WMC) and The Coachella Valley Association of Governments (CVAG) and the county WMD will determine/select the most appropriate, feasible technology(s).
- VI. All interested parties shall be included in the analysis and those identified as primary sources of feedstock must be in agreement with the technology that is ultimately selected by Waste Management of California (WMC) and The Coachella Valley Association of Governments (CVAG) and the county WMD.
- VII. The ALTERNATIVE (S) should be sited in Riverside County and shall be centrally located such that it does not necessitate the development of an impractical or burdensome transfer infrastructure for contributing jurisdictions.
- VIII. Jurisdictions participating in the ALTERNATIVE (S) will retain their authority to set rates to meet their respective community goals.

Attachment 2

Waste Management of California (WMC) Draft Screening Parameters for Conversion Technologies Investigation

The technology screening parameters will be applied to all potential technologies. Those technologies that meet the parameter requirements will be considered as potentially feasible in Riverside and will receive further consideration through a numerical ranking process.

1. The ALTERNATIVE (S) must be capable of processing a minimum of approximately 100,000 tons per year of MSW and should be flexible to accommodate additional jurisdictions that may wish to participate in the future. **The technology must divert greater than 60% of the selected throughput material from the transfer station, 75% is preferred. Diversion calculation must meet California definitions.**
2. Waste will be delivered to the transfer station by local collection vehicles. WM uses typical residential and commercial collection vehicles. WM also uses roll off boxes for its commercial and industrial customers. A second independent collection company will also use the transfer station. It uses standard equipment similar to that used by WM.

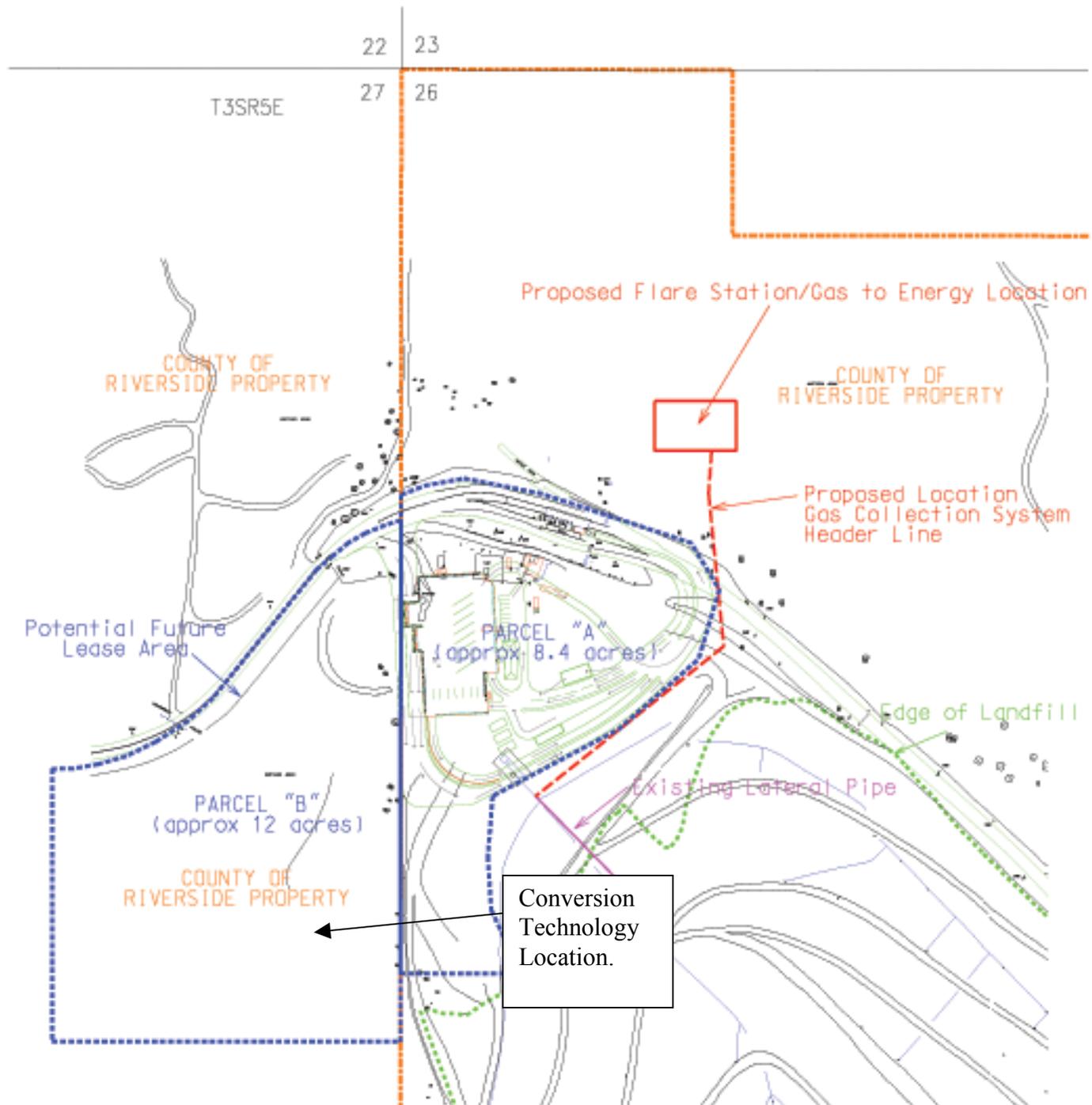
It will be the responsibility of the vendor to identify waste deliveries destined for the diversion to their facility. Once at the transfer station waste will be transferred to the conversion facility by truck or conveyor. The vendor should provide a waste-handling plan for waste receipt and disposal of unused waste and residual material.

2. The ALTERNATIVE (S) shall be capable of operating for a minimum of 20 years.
3. The amount of residual waste (i.e., material that must be landfilled) produced by the ALTERNATIVE (S) shall not exceed 25% (in volume or weight) of the total amount of material (MSW) delivered.
4. The ALTERNATIVE (S) shall be compatible with each participating jurisdiction's integrated solid waste system and shall not impede or impair existing or planned recycling programs.
5. The cost of the ALTERNATIVE (S) should be detailed. A detailed cost analysis is required, minimally discuss capital, operating cost and potential sales. The

ALTERNATIVE (S) must produce end products that have probable, identifiable or existing markets.

6. Technology must be permissible under current regulations as presented.
7. The ALTERNATIVE (S) must produce end products that have probable, identifiable or existing markets.
8. Technology must be permissible under current regulations as presented.
9. See plot plan below:

Waste Management Department Land to be Leased to Waste Management of The Desert for Development of a Refuse Transfer Station



The County (or its designated agent) reserves the right of access for ingress and egress at all times across the leased property for maintenance of its landfill and any other purpose it chooses for use of it's remaining property.



Attachment 3

Coachella Valley Solid Waste Characterization Estimates

The following tables are extracted from a solid waste analysis report produced in 1997 by Economics, Inc. and ECO Analysis. In some tables percentages do not sum to 100 because only recyclable waste is represented, results are from the following study “Coachella Valley Solid Waste Characterization Study, June 30,1997, submitted to the Riverside County Waste Resources Management District by Economics, Inc. and EcoAnalysis”.

Table 3-1A

Overall Weighed Residential and Generator Samples

WASTE CATEGORY	MEAN	LOWER CL	UPPPER CL
Agricultural crop residues	0.0	0.0	0.0
Clear glass bottles and containers	1.6	1.1	2.1
Colored glass bottles and containers	1.3	1.0	1.6
Colored ledger paper	0.3	0.0	0.5
Computer paper	0.6	0.0	1.2
Ferrous metals	2.8	0.6	4.9
Film plastic	2.3	1.7	2.9
Flat glass	0.1	0.0	0.8
Flattened coated corrugated cardboard	.01	0.0	0.2
Flattened corrugated cardboard	6.5	4.9	8.2
Food	16.8	14.1	19.8
Furniture and mattresses	0.0	0.0	0.0
HDPE plastic	1.1	0.8	1.3
Household hazardous	0.5	0.2	0.9
Inerts	3.2	1.0	5.2
Manures	0.0	0.0	0.0
Mixed paper	8.6	7.0	10.1
Mixed residue	0.0	0.0	0.0
Newspaper	4.3	2.6	6.1
Non-ferrous metals	0.6	0.5	0.7
Office paper	3.8	2.3	5.2
Other plastic	1.7	1.1	2.2
PET plastic	0.4	0.3	0.6
Pallets	1.8	0.7	3.0
Remainder/composite plastic	2.9	1.8	3.9
Remainder/composite glass	0.3	.01	0.5
Remainder/composite inorganic	0.3	0.0	1.2
Remainder/composite metals	3.1	1.8	4.4
Remainder/composite organic	3.9	2.4	5.3
Remainder/composite paper	7.1	5.5	8.8

Special waste	0.3	0.0	1.2
Textiles	1.5	0.7	2.3
Tires	0.0	0.0	0.1
Unflattened coated corrugated cardboard	0.0	0.0	0.3
Unflattened corrugated cardboard	5.6	3.8	7.5
White goods	0.0	0.0	0.0
Wood	3.1	1.4	4.7
Yard/landscape	13.4	10.8	16.1

Table 3-1B

Overall Weighed Residential and Generator Samples Percentage and tonnage percentages do not sum to 100 because only recyclable waste is represented

WASTE CATEGORY	MEAN	LOWER CL	UPPPER CL
Computer paper	0.6	0.1	1.1
Flattened corrugated cardboard	5.9	4.3	7.6
Food wastes	13.0	11.2	14.9
Glass	2.6	2.1	3.1
High grade paper	4.3	3.2	5.3
Metal	3.0	2.0	4.0
Mixed paper	11.2	9.7	12.7
Newspaper	3.9	2.9	4.9
Other paper	6.9	5.7	8.1
Other plastics	8.5	7.0	9.7
Plastic containers	1.9	1.4	2.3
Unflattened corrugated cardboard	12.3	9.6	14.5
Wood	3.2	2.0	4.4
Yard/landscape wastes	12.2	10.4	13.9
Total	89.5		

Table 3-2

Overall Residential Samples Percentage And Tonnage

WASTE CATEGORY	MEAN	LOWER CL	UPPPER CL
Agricultural crop residues	0.0	0.0	0.0
Clear glass bottles and containers	2.2	1.8	2.6
Colored glass bottles and containers	2.2	1.5	3.0
Colored ledger paper	0.1	0.0	0.1
Computer paper	0.0	0.0	0.0
Ferrous metals	2.2	1.8	2.6
Film plastic	2.3	1.9	2.8
Flat glass	0.0	0.0	0.1
Flattened coated corrugated cardboard	0.1	0.0	0.1
Flattened corrugated cardboard	5.2	3.5	6.9
Food	19.3	17.1	21.6
Furniture and mattresses	0.0	0.0	0.0
HDPE plastic	1.3	1.1	1.5
Household hazardous	0.5	0.1	0.9
Inerts	2.0	0.8	3.1
Manures	0.0	0.0	0.1
Mixed paper	9.3	8.2	10.5
Mixed residue	0.0	0.0	0.0
Newspaper	5.5	4.1	6.8
Non-ferrous metals	0.9	0.7	1.1
Office paper	0.9	0.3	1.4
Other plastic	1.7	1.4	2.0
PET plastic	0.6	0.5	0.7
Pallets	0.0	0.0	0.0
Remainder/composite plastic	2.5	2.0	3.1
Remainder/composite glass	0.4	0.2	0.6
Remainder/composite inorganic	0.1	0.0	0.2
Remainder/composite metals	1.2	0.5	2.1
Remainder/composite organic	5.8	4.6	7.2
Remainder/composite paper	5.7	4.9	6.6
Special waste	0.1	0.0	0.2
Textiles	2.0	1.4	2.7
Tires	0.0	0.0	0.0
Unflattened coated corrugated cardboard	0.0	0.0	0.0
Unflattened corrugated cardboard	2.1	1.4	2.8
White goods	0.0	0.0	0.0
Wood	1.7	0.9	2.5
Yard/landscape	22.1	18.3	26.1
Total	100.0		

Table 3-4

Overall Commercial Generator Samples Percentage and tonnage. Percentages do not sum to 100 because only recyclable waste is represented.

WASTE CATEGORY	MEAN	LOWER CL	UPPPER CL
Computer paper	1.0	0.5	1.5
Flattened corrugated cardboard	6.4	4.7	7.9
Food wastes	8.5	6.9	10.6
Glass	1.0	0.5	1.5
High grade paper	6.7	5.7	7.7
Metal	2.9	2.0	4.0
Mixed paper	12.6	11.0	14.2
Newspaper	2.7	1.7	3.7
Other paper	7.8	6.7	9.0
Other plastics	9.9	8.5	11.2
Plastic containers	1.9	1.4	2.3
Unflattened corrugated cardboard	19.5	17.2	22.0
Wood	4.3	2.9	5.7
Yard/landscape wastes	5.1	3.7	7.1
Total	90.3		

Table 1-1**1996 Coachella Valley Tonnages by Jurisdiction**

JURISDICTION	TONNAGE	PERCENTAGE
Cathedral City	41,185	13%
Coachella	15,088	5%
Dessert Hot Springs	13,345	4%
Indian Wells	10,795	3%
Indio	46,357	14%
La Quinta	21,995	7%
Palm Desert	58,103	18%
Palm Springs	67,272	21%
Rancho Mirage	21,213	6%
Unincorporated Area	30,686	9%
Totals	326,039 tons	100%

Table 1-2**1996 Coachella Valley Tonnages by Category Type**

Jurisdiction	Commercial	%	Residential	%	Total
Cathedral City	24,711	60%	16,474	40%	41,185
Coachella	7,242	48%	7,846	52%	15,088
Dessert Hot Springs	5,071	38%	8,274	62%	13,345
Indian Wells	8,312	77%	2,483	23%	10,795
Indio	24,569	53%	21,788	47%	46,357
La Quinta	12,317	56%	9,678	44%	21,995
Palm Desert	38,348	66%	19,755	34%	58,103
Palm Springs	37,672	56%	29,600	44%	67,272
Rancho Mirage	14,425	68%	6,788	32%	21,213
Unincorporated Area	18,412	60%	12,274	40%	30,686
Totals	191,079 tons	N/A	134,960 tons	N/A	326.039 tons

SOURCE OF% SPLITS: Tonnage Tracking Design; Economics Database

Attachment 4

Edom Hill Transfer Station, Conversion Technology

QUALIFICATIONS REVIEW FORM

1.0

Name of Firm: _____
 Name of Technology: _____
 Principal Contact Person: _____
 Address: _____
 City: _____ State: _____ Zip: _____
 Country: _____
 Telephone No.: _____ Fax: _____
 E-mail Address: _____

2.0 Technology Proposed: Please mark the appropriate boxes that apply, (X).

- Technology is operating at a lab or pilot scale.
- Technology is operating full scale and can be viewed by WM and / or CVAG.
- Full scale Technology is in place but not yet operational.
- Technology is operating in a scale between 10 and 50 tons per day feed stock.
- Technology is operating at a scale between 51 and 100 tons per day feedstock.
- Technology is operating at a scale > 100 tons per day feedstock.
- Technology is patent protected and rights are owned by bidder.
- Efficiencies of energy production are documented.
- Water balance is documented.
- Air Emissions are documented.
- Residuals are documented as a percentage of the waste stream.

3.0 Utility and Power Requirements:

Estimated total connected horse power is for the process quoted, _____.

Horse Power per ton of waste processed, _____.

Daily water usage; _____ gpd.

4.0 Engineering Capabilities:

Does the engineering firm supporting the quoted technology have a master services agreement with WMI? (WMC) () yes () no

Name of engineering firm and lead contact:

5.0 Permitting History:

Technology provider has permitted a facility in the state of California previously. () yes () no

Engineering support has successfully permitted facilities in California. () yes () no

6.0 Diversion Accounting:

Technology Provider will clearly comply with the State of California diversion mandates and discussions in this offer use the California definition(s).

() yes () no

7.0 Financial:

Offerer can and is willing to obtain a performance bond that may cover the following areas:

Cost per ton processed. () yes () no

Yield per ton. () yes () no

Engineering cost. () yes () no

Cost of facility. () yes () no

9.0 Litigation:

Does offerer have any pending litigation: () yes () no

Does offerer have any lawsuits that may affect its ability to perform this offer? If yes please attach a summary statement.

9.0 Process detail:

The incoming solid waste stream is 100,000 tons per year of mixed residual waste. Since “conversion technology” is a relatively new commercial process it may be decided to phase in the technology by using a modular design. Using as reference Attachment 3, please complete the following table:

Table 1: Modular Scale up analysis.

Tons per year received at Edom Hill Transfer Station	Tons Utilized in proposed process	Estimated Capital Cost (+/- 10%)
250,000		
150,000		
100,000		

This RFQ is open to all non-incineration conversion technologies. As such, WMC and CVAG and the county WMD require detail on the projected products produced. Please complete the following marketable products table. If technology provider’s products are not listed please fill in the empty rows at the bottom of the chart:

Table 2: Marketable Products Table.

Produces Produced	Energy Value/ other	Yield per ton Input
Methane	BTU / scfm	Scfm
Gases other	BTU/ scfm	Scfm
Ethanol	BTU/ gal.	Gal./ ton
Alcohol other	BTU/ gal.	Gal./ton
Electricity	\$ / KW	KW hrs/ton
Compost	\$ / Ton	Lbs./ton
Daily cover	\$ / Ton	Lbs./ton
Other		
Other		

10.0 Technical Contact:

For purposes of further discussion, who is the technical point of contact in reference to the above questions?

_____ **Signature**

_____ **Company**

_____ **Title**

_____ **Date**

Attachment 5
DESIGN-BUILD AGREEMENT
BETWEEN OWNER
AND CONSTRUCTION MANAGER

AGREEMENT MADE AS OF THE _____, 2003

BY AND BETWEEN

THE OWNER: _____, a _____ corporation

WITH AN OFFICE AT: _____

AND

THE CONSTRUCTION MANAGER: _____

WITH AN OFFICE AT: _____

FOR THE FOLLOWING PROJECT: The Project consists of the following facility:

Design and Construction of the following:

The Project is defined in the following documents:

- 1.) The _____ **[IDENTIFY PROPOSAL]** _____, including the qualifications to the contract dated _____, and is included as a part of this Design-Build Agreement at **Attachment B** and **Attachment C** respectively. The Project Budget as outlined in the above scope of work is _____ (\$ _____) and is included as part of this Design-Build Agreement as **Attachment D**.
- 3.) Schedule of Insurance is identified as **Attachment E**. The Certificate of Insurance will follow and be so attached.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owner and the Construction Manager agree as follows:

1. PERFORMANCE OF WORK AND EXTENT OF AGREEMENT

1.1 DEFINITIONS. For purposes of this Agreement, the following terms shall have the following meanings:

1.1.1 “Additional Services” shall have the meaning given it in Section 7.1.

1.1.2 “Allowances” shall mean the estimated price of certain items of work or material that have not been defined sufficiently to determine actual costs.

1.1.3 “Applicable Law” shall mean (a) all applicable federal, state and local statutes, laws, requirements, decrees, ordinances and codes (including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 and the Clean Air Act of 1990), whether now in force or which may in the future be promulgated, of all governmental authorities, including any federal, state and local governments or any departments, bureaus or agencies thereof having jurisdiction over the Project and/or the Work and (b) all other applicable rules, regulations, interpretations and orders of any commissions, boards, agencies or other legislative, executive, judicial or other governmental bodies or officers having jurisdiction to regulate or supervise the Project and/or the Work.

1.1.4 “Approvals” shall mean all consents, permits, rights of way, filings, orders or other approvals necessary in connection with the Work, design, construction, ownership and operation of the Project. The term Approval is intended to be broad and not restrictive and sufficient to cover all governmental consents and approvals, building and construction permits, environmental permits, zoning changes or variances, affecting or necessary for the Work, design, construction, ownership and operation of the Project contemplated herein.

1.1.5 “Approved Cost Estimate” shall mean the Cost Estimate or, if lower, the revised Cost Estimate approved by the Owner in the Construction Documents pursuant to Section 2.4 hereof.

1.1.6 “Approved Project Schedule” shall mean the Project Schedule approved by the Owner in the Construction Documents pursuant to Section 2.4 hereof.

1.1.7 “Certificate of Substantial Completion” shall mean that certificate, executed by the Owner and the Construction Manager, certifying that the Project, or a designated portion thereof, has attained Substantial Completion.

1.1.8 “Change Order” shall have the meaning given it in Section 13.

1.1.9 “Construction Documents” shall mean those documents delivered to the Owner pursuant to Section 2.4, which documents shall be based on the approved Design Development Documents and Schematic Design Documents, including any approved revisions in the Preliminary Project Schedule and/or Preliminary Cost Estimate, and shall consist of drawings and specifications setting forth in detail the requirements for construction of the

Project, as well as a detailed construction schedule indicating the dates for the start and completion the Construction Milestones.

1.1.10 “Construction Manager” shall mean _____.

1.1.11 “Construction Manager’s Fee” shall have the meaning given it in Section 12.3.2.

1.1.12 “Construction Milestone” shall mean the various stages of the construction of the Project identified by the Construction Manager and set forth in the Construction Documents.

1.1.13 “Construction Phase” shall mean the final portion of the Work that follows the Design Phase and Pre-Construction Phase consisting of the services set forth in Article 4 of this Agreement.

1.1.14 “Contract Documents” shall mean this Agreement, any modifications to this Agreement effected by Change Order or written amendment executed by Owner and Construction Manager, the Schematic Design Documents, the Design Development Documents, the Construction Documents, and all drawings, plans and specifications for the Project prepared pursuant to this Agreement.

1.1.15 “Contingency Amount” shall have the meaning given it in Section 3.2.

1.1.16 “Cost of the Work” shall have the meaning given it in Section 12.3.1.

1.1.17 “Date of Substantial Completion” shall mean the date set forth in the Construction Documents and the Guaranteed Maximum Price proposal, as approved by the Owner, when the Project shall be sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Project or designated portion thereof for the use for which it is intended.

1.1.18 “Design Development Documents” shall mean those documents delivered to the Owner pursuant to Section 2.3, consisting of drawings, outline specifications and other documents to fix and describe the size and character of the Project as to architectural, civil, structural, mechanical and electrical systems, and such other elements as may be appropriate to meet the Owner’s needs and interests as identified in the approved Schematic Design Documents.

1.1.19 “Design Phase” shall mean the initial portion of the Work consisting of the services set forth in Article 2 of this Agreement.

1.1.20 “Effective Date” shall mean the effective date of this Agreement as set forth on the initial page hereof.

1.1.21 “Excusable Event” shall mean (i) the act or failure to act of a regulatory agency having jurisdiction over the Project (other than as a result of the act or omission to act of the Construction Manager or its employees, subcontractors or agents); (ii) fire or other casualty

(other than as a result of the act or omission to act of the Construction Manager or its employees, subcontractors or agents); (iii) labor shortage, labor dispute, strike or lock-out (other than as a result of the acts or omission to act of the Construction Manager or its employees, subcontractors, or agents) that makes continuation of the Work impracticable; (iv) unusually severe conditions not reasonably foreseeable in the regional area of the Project, such as prolonged excessive rain materially exceeding seasonal variation, hurricane or tornado, or similar act of God such as earthquake or flood; and (v) a court imposed injunction with respect to the Work, provided that such injunction is not imposed as a result of the acts or omissions to act of the Construction Manager or its employees, subcontractors, or agents.

1.1.22 “Guaranteed Maximum Price” shall have the meaning given it in Section 3.1 of this Agreement.

1.1.23 “Hazardous Materials” shall mean materials containing substances defined as hazardous substances under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 USC 9601 et. seq., in quantities that are subject to regulation or enforcement action under CERCLA or other applicable environmental laws, including the Clean Air Act, 42 U.S.C. Sections 7401 et seq., the Clean Water Act (Federal Water Pollution Control Act), 33 U.S.C. Sections 1251 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901, et seq.; and any state statutes and other laws relating to hazardous substances or pollution that apply to and govern the Project.

1.1.24 “Owner” shall mean _____, a _____ corporation.

1.1.25 “Owner’s Representative” shall mean _____, or any replacement named by the Owner.

1.1.26 “Pre-Construction Phase” shall mean the portion of the Work conducted after the Design Phase and before the Construction Phase consisting of the services set forth in Article 2 of this Agreement.

1.1.27 “Project” shall mean the facility to be designed and built under this Agreement, as described on the initial page hereof, and the design and construction thereof.

1.1.28 “Prudent Work Practices” means the design and construction practices, methods, and acts (including but not limited to practices, methods, and acts engaged in or approved by a significant portion of design and construction industries) that at a particular time, in the exercise of reasonable judgment in light of the facts known or that should have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with Applicable Law, Approvals, reliability, safety, environmental protection, economy, and expedition.

1.1.29 “Schematic Design Documents” shall mean those documents delivered by the Construction Manager to the Owner pursuant to Section 2.2, which documents shall be based on the Owner’s needs, interests and other relevant information identified in the preliminary evaluation, consisting of drawings, outline specifications and other documents illustrating the scale and relationship of the Project components.

1.1.30 "Substantial Completion" shall mean that time, as evidenced by the execution of a Certificate of Substantial Completion by both the Owner and the Construction Manager, when construction is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Project or designated portion thereof for the use for which it is intended and any governmental authorities with jurisdiction over the Project have issued such certificates of occupancy or similar permits so that the Project may be lawfully occupied or used.

1.1.31 "Target Price" shall have the meaning given it in Section 3.2 of this Agreement.

1.1.3.2 "Work" shall mean all of the services required to be performed under and in accordance with the Contract Documents to complete the Project and is comprised of the Design Phase, the Pre-Construction Phase and the Construction Phase and such Additional Services as may be authorized by the Owner.

1.2 PERFORMANCE OF WORK; PERSONNEL. The Construction Manager accepts the relationship of trust and confidence established by this Agreement, and agrees to: retain the services of licensed design professionals, which professionals may include an architect and/or an engineer (hereinafter "Designer") to perform the Design Phase; furnish, either itself or through approved subcontractors, the construction services set forth herein; provide efficient administration; and complete the Work in accordance with Prudent Work Practices and in a manner consistent with the interests of the Owner. The Construction Manager shall provide and make available, either itself or through the Designer or other subcontractors, all such labor, and professional, supervisory, and managerial personnel as are required to perform the Work. The Construction Manager shall carry out and shall ensure that its subcontractors carry out all personnel changes reasonably requested by the Owner within a reasonable time period following such request.

1.3 COOPERATION. In its use and scheduling of the Project site and of the Work, the Construction Manager shall give all reasonable cooperation to the Owner and the Owner's separate contractors who may be undertaking parts of the Work for any reason or who may be performing work on other parts of the Project.

1.4 THE CONTRACT DOCUMENTS AND EXTENT OF AGREEMENT. The Contract Documents shall together form a single, unified contract which represents the entire and integrated agreement between the Owner and Construction Manager, and supersedes prior negotiations, representations or agreements, both written and oral. When drawings and specifications prepared under Section 2.2 and 2.3 are complete, they shall be incorporated into this Agreement by means of an amendment hereto. If construction commences prior to execution of such amendment, the Owner's written notice to proceed with the construction Phase shall list the Contract Documents that are then applicable to such part of the Work that is authorized to proceed.

2. DESIGN AND PRE-CONSTRUCTION PHASE SERVICES

2.1 PRELIMINARY EVALUATION. Upon commencement of this Agreement, the Construction Manager shall conduct a preliminary evaluation of the Owner's needs, interests and other relevant information pertaining to the Project, including the Project budget and the Project

completion requirements. Within 0 days of the Effective Date, the Construction Manager shall transmit to Owner the following:

2.1.1 PRELIMINARY PROJECT SCHEDULE. The Construction Manager shall prepare and transmit to Owner for approval a preliminary schedule for performance and completion of the Work (the "Project Schedule"). The Project Schedule shall show the activities of the Owner, the Construction Manager, the Designer and the Construction Manager's subcontractors and consultants, and the timing for the same, as needed to meet the Owner's Project completion requirements. The Construction Manager shall update the Project Schedule biweekly or more often as appropriate to reflect any deviations in the schedule. The level of detail for each schedule update shall reflect the information then available. If an update indicates that a previously approved schedule will not be met, the Construction Manager shall recommend to the Owner corrective action for meeting the Project Schedule; *provided, however*, that in no event shall any change in the Project Schedule or subsequently amended schedule relieve the Construction Manager of its obligations to meet the Date of Substantial Completion or any Construction Milestone unless expressly agreed to in writing by the Owner.

2.1.2 PRELIMINARY COST ESTIMATE. The Construction Manager shall prepare and transmit to Owner for approval a preliminary cost estimate (the "Cost Estimate"). The Cost Estimate shall include a list and description of all Hazardous Materials that the Construction Manger anticipates using for the Project, and the cost of such Hazardous Material, including the cost of safety equipment and measures to be used therewith. If the Cost Estimate exceeds the Project budget identified in the preliminary evaluation, the Construction Manager shall make appropriate recommendations to the Owner relating to modifications in the budget and/or the Project.

2.2 SCHEMATIC DESIGN DOCUMENTS. Within __ days of the Effective Date, the Construction Manager shall prepare and transmit to Owner for approval Schematic Design Documents. If necessary, the Construction Manager shall update the Project Schedule and the Cost Estimate based on the Schematic Design Documents. The Schematic Design Documents shall incorporate the original or revised Project Schedule and Cost Estimate and one set of the draft Schematic Design Documents shall be transmitted to the Owner for review. Following Owner's review, the Owner and the Construction Manager shall meet to discuss comments of and/or revisions proposed by the Owner. Such meeting may be cancelled at Owner's election. The Construction Manager shall revise the Schematic Design Documents and/or the Project Schedule and Cost Estimate in accordance with Owner's comments and shall transmit one set of the complete Schematic Design Documents to Owner for further review and/or approval. If the revised Schematic Design Documents do not adequately reflect the Owner's comments and/or revisions, or the Owner has additional reasonable comments and/or revisions, the Owner and the Construction Manger shall again meet to discuss comments of and/or revisions proposed by the Owner. This process shall continue until the Schematic Design Documents have been approved in writing by the Owner; *provided, however*, that the Owner shall use its best efforts to communicate its comments and/or revisions to the Schematic Design Documents in a constructive manner and not unreasonably or intentionally delay the approval process.

2.3 DESIGN DEVELOPMENT DOCUMENTS. Within __ days after Owner gives written approval of the Schematic Design Documents, including the Cost Estimate and Project

Schedule, as adjusted and approved pursuant to Section 2.2, the Construction Manager shall submit to the Owner for review and approval Design Development Documents. If necessary based on the Design Development Documents, the Construction Manager shall update the Project Schedule and Cost Estimate included in the Schematic Design Documents. The Design Development Documents shall incorporate the original or revised Project Schedule and Cost Estimate and one set of the draft Design Development Documents shall be transmitted to the Owner for review. Following Owner's review, the Owner and the Construction Manager shall meet to discuss comments of and/or revisions proposed by the Owner. Such meeting may be cancelled at Owner's election. The Construction Manager shall revise the Design Development Documents and/or the Project Schedule and Cost Estimate in accordance with Owner's comments and shall transmit one set of the complete Documents to Owner for further review and/or approval. If the revised Design Development Documents do not adequately reflect the Owner's comments and/or revisions, or the Owner has additional reasonable comments and/or revisions, the Owner and the Construction Manager shall again meet to discuss comments of and/or revisions proposed by the Owner. This process shall continue until the Design Development Documents have been approved in writing by the Owner; *provided, however*, that the Owner shall use its best efforts to communicate its comments and/or revisions to the Design Development Documents in a constructive manner and not unreasonably or intentionally delay the approval process.

2.4 PRE-CONSTRUCTION PHASE SERVICES. Within ___ days after Owner gives written approval of the Design Development Documents, including the Cost Estimate and Project Schedule, as adjusted and approved pursuant to Section 2.3, the Construction Manager shall submit to the Owner for review and approval Construction Documents. If necessary based on the Construction Documents, the Construction Manager shall update the Project Schedule and Cost Estimate included in the Design Development Documents. The Construction Documents shall incorporate the original or revised Project Schedule and Cost Estimate, and shall be complete, consistent, complementary, cooperative and adequately drafted to provide for a complete project and comply with the highest standards in the industry. The Construction Documents shall include, among other things a list and description of (i) all Hazardous Materials that the Construction Manager anticipates using for the Project, and the cost of such Hazardous Material, including the cost of safety equipment and measures to be used therewith, and (ii) all independent third party inspections that may be required and testing services to be used during the Construction Phase as required by Applicable Law and/or Prudent Work Practices or as mutually agreed by the parties. The Construction Manager shall deliver one set of the draft Construction Documents to the Owner for review. Following Owner's review, the Owner and the Construction Manager shall meet to discuss comments of and/or revisions proposed by the Owner. Such meeting may be cancelled at Owner's election. The Construction Manager shall revise the Construction Documents and/or the Project Schedule and Cost Estimate in accordance with Owner's comments and shall transmit one set of the complete Construction Documents to Owner for further review and/or approval. If the revised Construction Documents do not adequately reflect the Owner's comments and/or revisions, or the Owner has additional reasonable comments and/or revisions, the Owner and the Construction Manager shall again meet to discuss comments of and/or revisions proposed by the Owner. This process shall continue until the Construction Documents have been approved in writing by the Owner; *provided, however*, that the Owner shall use its best efforts to communicate its comments and/or revisions to the Construction Documents in a constructive manner and not unreasonably or intentionally

delay the approval process. Upon final approval of the Construction Documents by the Owner, the Construction Manager shall transmit ____ () sets of the complete Construction Documents to Owner. Additionally, all drawings available on CADD shall be provided by the Construction Manager to the Owner on CD-Rom or other mutually agreed upon media.

3. GUARANTEED MAXIMUM PRICE

3.1 PRICE PROPOSAL. Within __ days of Owner's written approval of the Construction Documents or earlier if the Construction Manager determines that the documents prepared under Article 2 are sufficiently complete, the Construction Manager shall transmit to Owner for review and approval a proposal guaranteeing the maximum price to the Owner for all costs of the Project, including the Cost of the Work and the Construction Manager's Fee (the "Guaranteed Maximum Price"). The Guaranteed Maximum Price shall be subject to adjustment for Change Orders as provided in Article 13. In the event that the Guaranteed Maximum Price exceeds the Approved Cost Estimate, then all costs incurred by the Construction Manager and Designer in redesign or alterations to the documents delivered under Article 2 in order to bring the Guaranteed Maximum Price within the Approved Cost Estimate shall be borne by the Construction Manager and shall not be included in any invoice or request for payment to the Owner, even in the event the Owner elects to proceed with the Project as set forth below. In the event the Construction Manager cannot bring the Guaranteed Maximum Price within the Approved Cost Estimate, the Owner shall have the option, in its sole discretion, (i) to terminate this Agreement and the retention of the Construction Manger, and the Construction Manager shall receive an equitable portion of fees and expenses incurred by the Construction Manager in the Design and Pre-Construction Phase, which amount shall not exceed the amount set forth in Section 12.2 hereof, or (ii) to approve the Guaranteed Maximum Price and have the Construction Manger proceed with the Project.

3.2 CONTENTS OF PROPOSAL. The Guaranteed Maximum Price proposal shall set forth the not-to-exceed price for the Cost of the Work and Construction Manager's Fee and shall include a statement of the basis of the Guaranteed Maximum Price, including a description and/or list of (i) the drawings and specifications, including addenda thereto, if any, (ii) Allowances, (iii) any Hazardous Material to be used by the Construction Manager in the Project and the safety measures that will be used in relation to the Hazardous Material, (iv) assumptions and clarifications, including a statement of any Additional Services that are included, (v) construction schedule, including the Date of Substantial Completion, (vi) alternate prices, including latest date for acceptance by Owner, (vii) unit prices, (viii) taxes which are in force at the time of preparation of the proposal, (ix) independent third party inspections and testing services to be used during the Construction Phase as required by Applicable Law and/or Prudent Work Practices or as mutually agreed by the parties. The Guaranteed Maximum Price proposal shall also incorporate by reference, as a basis for the Guaranteed Maximum Price, the approved Schematic Design Documents, the Design Development Documents and the Construction Documents. The Guaranteed Maximum Price proposal shall include a contingency sum in the amount of ___% to cover unforeseen costs which are properly reimbursable as a Cost of the Work but not the basis for a Change Order (the "Contingency Amount"). The Guaranteed Maximum Price less the Contingency Amount shall be referred to as the "Target Price". If the Guaranteed Maximum Price is adjusted pursuant to this Agreement the Target Price shall be

automatically adjusted so that the difference between the two remains equal to the Contingency Amount.

3.3 REVIEW AND APPROVAL. Within ___ () business days of submittal of the Guaranteed Maximum Price Proposal, or such other time period as agreed upon by the Construction Manager and the Owner, the Construction Manager shall meet with the Owner to review the Guaranteed Maximum Price proposal and its basis, including all bids and estimates of subcontractors and suppliers. If the Owner discovers any inaccuracies or inconsistencies, the Owner shall promptly notify the Construction Manager, who shall make appropriate adjustments to the proposal. The Owner's review shall not relieve the Construction Manager of the responsibilities for any inaccuracies or inconsistencies in the proposal. Upon acceptance of the proposal by the Owner, the Guaranteed Maximum Price and its basis, including the Date of Substantial Completion, shall be set forth in a written amendment to this Agreement and attached hereto as **Attachment F**. One set of the documents forming the basis of the Guaranteed Maximum Price shall be furnished to the Owner.

3.4 EXTENT OF RESPONSIBILITY. The Construction Manager shall exercise Prudent Work Practices in the preparation of documents under Article 2, which documents shall be complete, consistent, complementary, cooperative and adequately drafted to provide for a complete project and comply with the highest standards in the industry; *provided, however*, that the Construction Manager does not warrant or guarantee schedules and estimates prepared prior to acceptance by the Owner of the Guaranteed Maximum Price proposal.

4. CONSTRUCTION PHASE SERVICES

4.1 COMMENCEMENT. Subject to the provisions of Sections 5.1 and 9.4, the Construction Manager shall commence the Construction Phase no later than the commencement date referenced in a written notice to proceed with the Construction Phase of the Work issued by the Owner or no later than thirty (30) days after Owner's written acceptance of the Guaranteed Maximum Price proposal, whichever is earlier.

4.2 SCHEDULE; LIQUIDATED DAMAGES. The Construction Manager shall perform the Work in accordance with the Approved Project Schedule and shall meet all Construction Milestones, subject to the provisions of Section 9.4. On a biweekly basis throughout the Construction Phase, the Construction Manager shall update and transmit to the Owner the Approved Project Schedule showing the progress of the Work completed during the prior two-week period and any deviations in the schedule as may result by the conditions of the Work or events that have occurred regardless of the cause of these conditions or events. The level of detail for each schedule update shall reflect the information then available. If an update indicates that the Approved Project Schedule will not be met, the Construction Manager shall recommend to the Owner corrective action for meeting the Approved Project Schedule; *provided, however*, that in no event shall any change in the Approved Project Schedule or subsequently amended schedule relieve the Construction Manager of its obligations to meet the Date of Substantial Completion or any Construction Milestone unless expressly agreed to in writing by the Owner. If the Construction Manager fails to transmit the updated construction schedule when due as provided herein, the Construction Manager shall pay to the Owner the sum of \$_____ per day for each day past the due date. Except for delay caused by Excusable

Events, the Construction Manager shall pay to Owner the sum of \$_____ per day for each day of delay past each Construction Milestone. In view of the difficulty of establishing the actual damages which might result from such delays, the Parties have stipulated to such stated damages as liquidated damages and not as a penalty.

4.3 PERFORMANCE. The Construction Manager shall provide all construction supervision, labor, materials, tools, construction equipment, computer and other systems and equipment, and subcontracted items necessary for the execution and completion of the Work. Throughout the performance of the Work, the Construction Manager shall give all notices required under and shall fully and faithfully comply with all Applicable Laws and Approvals and shall ensure that the Designer and all subcontractors and subconsultants of the Construction Manager comply with the same.

4.4 WASTE. The Construction Manager shall at all times keep the Project site clean, orderly and free from the accumulation of waste materials or rubbish caused by performance of the Work. At the election of the Owner, the Owner will dispose of such waste materials; the Construction Manager shall coordinate such disposal with the Owner's Representative. In the event the Owner elects not to dispose of such waste materials, the Construction Manger, with the coordination of the Owner's Representative, shall be responsible for removing and disposing of such waste materials and rubbish from the Project. In the event the Owner elects to dispose of the waste materials and rubbish and such disposal was included in the calculation of the Guaranteed Maximum Price, the Guaranteed Maximum Price will be reduced proportionately; in the event the Construction Manager is responsible for disposing of the waste materials and rubbish and such disposal was not included in the calculation of the Guaranteed Maximum Price, the Guaranteed Maximum Price will be increased proportionately. The Construction Manager shall be responsible for keeping all waste materials and rubbish caused by the performance of the Work in one or more locations approved by the Owner and readily accessible to disposal trucks and/or dumpsters and shall be responsible for loading said waste materials and rubbish into the disposal trucks and/or dumpsters. At the completion of the Work, the Construction Manager shall move all waste material and rubbish from and around the Project to the approved location(s) for removal and the Construction Manager shall remove all tools, construction equipment and surplus materials from the Project.

4.5 SAFETY. The Construction Manager shall be solely responsible for the safety and welfare of its employees, agents and authorized persons present at the Project and shall take necessary precautions for the safety of its employees on the Project and shall comply with all Applicable Laws to prevent accidents or injury to persons on, about or near the Project site. The Construction Manager shall erect and properly maintain at all times, as required by the conditions and progress of the Work, necessary safeguards for the protection of workers and the public. The Construction Manager shall review the safety programs of all of its subcontractors, which review shall not relieve such subcontractors of their responsibility for the safety of persons or property in the performance of their services, nor for compliance with all Applicable Laws. Notwithstanding the foregoing, the Construction Manager shall have no responsibility for the elimination or abatement of safety hazards created or otherwise resulting from work carried on by persons or firms directly employed by the Owner as separate construction managers or by the Owner's tenants, and the Owner agrees to cause any such separate construction managers and tenants to abide by and fully adhere to all Applicable Laws and to comply with all reasonable

requests and directions of the Construction Manager for the elimination or abatement of any safety hazards at the Project site.

4.6 RECORDKEEPING, REPORTS. The Construction Manager shall keep such full and detailed accounts as may be necessary for proper financial management under this Agreement. Owner shall be afforded complete access to all the Construction Manager's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, subcontracts, purchase orders and similar data relating to this Agreement upon reasonable request during normal business hours. The Construction Manager shall preserve all such records for a period of three (3) years after final payment under this Agreement, or longer where required by law. The Construction Manager shall make these records available for the Owner's review during normal business hours for a period of three (3) years. The Construction Manager shall develop a reliable system of cost reporting for the Work in a manner consistent with the cost principals contained in this Agreement, which system shall be reasonably compatible with Owner's cost tracing system, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed Change Orders. The cost reports shall identify variances between actual and estimated costs, and shall be transmitted to Owner on a twice-monthly basis.

4.7 UNDERGROUND OBSTRUCTIONS. The Construction Manager and its employees, agents and subcontractors shall exercise Prudent Work Practices in avoiding damage to subsurface utilities, piping, structures and other obstructions ("Subsurface Obstructions") on, under and adjacent to the Project site. Prior to commencement of Work on the Project site, the Construction Manager shall review available maps, diagrams, or other documents designating the location of Subsurface Hazards on, under and adjacent to the Project site, and shall take reasonable and prudent steps to locate Subsurface Obstructions as required for the Project needs, including the use of locator services to identify Subsurface Obstructions. The Owner will provide available plans of the Project, but does not warrant the accuracy or completeness of said plans and the Construction Manager shall be solely responsible for physically locating any Subsurface Obstructions.

5. HAZARDOUS MATERIALS

5.1 USE; APPROVAL. Neither the Construction Manager nor any of its subcontractors or consultants shall use Hazardous Materials in performance of the Work or otherwise bring Hazardous Materials onto the Project site without prior written notice to and consent of the Owner. In the event that it is necessary for the Construction Manager or any of its subcontractors or consultants to use Hazardous Materials at the Project site and such use is approved by the Owner, the Construction Manager shall ensure that all necessary precautions are taken to ensure that such Hazardous Materials are handled in a manner that is in compliance with all Applicable Laws. Any use of Hazardous Materials and accompanying safety personnel and equipment not previously identified in the Construction Documents and/or the Guaranteed Maximum Price proposal, even if such use is approved by the Owner as set forth above, shall be solely at the cost of the Construction Manager and shall not be included as part of the Cost of the Work and shall not operate to increase the Guaranteed Maximum Price.

5.2 DELAY; STOP WORK; MODIFICATION; DEADLINE EXTENSION. If, after the Construction Manager has commenced the Construction Phase, the Construction Manger

encounters Hazardous Materials at the Project site, the Construction Manager shall immediately stop Work in the affected area and report the condition to the Owner in writing. Work shall continue in all areas of the Project site unaffected by Hazardous Materials. Unless the Hazardous Material was deposited or released by the Construction Manager, the Owner shall be responsible for conducting tests in the affected area to determine the nature of the material encountered. If the Hazardous Material was deposited or released by the Construction Manager or its employees, subcontractors or agents, the Construction Manager shall be responsible for such tests. If determined to be Hazardous Materials, the Owner shall, in its discretion, have the Hazardous Materials removed or rendered harmless, as certified by an independent testing laboratory, or modify the scope of the Work to be performed by the Construction Manager hereunder as necessary or appropriate in light of the presence of the Hazardous Materials; *provided, however*, that if the Hazardous Materials were deposited or released by the Construction Manager, all costs of removal shall be at the expense of the Construction Manager and not shall be included as part of the Cost of the Work. If the Owner elects to remove or render harmless the Hazardous Materials, the Construction Manager shall re-commence the Work in the affected area immediately following certification of the same by an independent testing laboratory. If the Construction Manager is delayed in the performance of the Work due to the presence of Hazardous Materials and through no act or omission of the Construction Manager or its employees, subcontractors, agents or consultants, then, upon the mutual written agreement of the Owner and the Construction Manager, the Guaranteed Maximum Price, the Construction Milestones and/or the Date of Substantial Completion, as applicable, shall be adjusted.

5.3 INDEMNITY OF OWNER. To the fullest extent permitted by law, the Construction Manager shall indemnify, defend and hold harmless the Owner and its affiliates, agents, employees and consultants, from and against claims, damages, liabilities, losses and expenses, including but not limited to reasonable attorney's fees, arising out of or resulting from any Hazardous Materials brought to the Site or used during performance of the Work by the Construction Manager, or its employees, subcontractors, agents or consultants.

5.4 INDEMNITY OF CONSTRUCTION MANAGER. To the fullest extent permitted by law, the Owner shall indemnify, defend and hold harmless the Construction Manager and the Designer, and their subcontractors, agents, employees and consultants (collectively, the "Indemnitees"), from and against claims, damages, losses and expenses, including but not limited to reasonable attorney's fees, arising out of or resulting from the presence of Hazardous Materials at the Project site, provided that such claims, damages, losses, liabilities and expenses were not caused in whole or in part by any of the Indemnitees, did not arise from negligence on the part of any of the Indemnitees or did not arise from or in connection with Hazardous Materials used in the performance of the Work or otherwise brought to the Project site by any of the Indemnitees.

6. WARRANTIES

6.1 WARRANTY. The Construction Manager warrants to the Owner that all materials and equipment furnished under this Agreement will be new unless otherwise specified in writing to the Owner, and that all Work will be of good quality, performed in a workmanlike fashion, free from defects, and in conformance with the Contract Documents. In addition to any

guarantees required by the Contract Documents, the Construction Manager guarantees all portions of the Work and materials furnished under this Agreement against defects for a period of two (2) years (the "Warranty Period"). During the Warranty Period, the Construction Manager shall, within seven (7) days from receipt of written notice, repair and/or replace any defects in the Work and any resulting damage to the Project and correct all Work which is not in conformance with the Contract Documents, all at the Construction Manager's sole expense and shall not be considered part of the Cost of the Work. In the event the Construction Manager fails to remedy any defects within seven (7) days from receipt of written notice (or if such defect cannot reasonably be remedied within such time fails to commence such remedy within such time and thereafter diligently to prosecute such remedy to completion), the Owner may have such defects remedied at the Construction Manager's expense. In such event, the Construction Manager shall reimburse the Owner for all costs related to such repairs, including an administrative fee of fifteen percent (15%) of that cost. Nothing in this Section 6.1 or elsewhere in this Agreement shall relieve the Construction Manager from responsibility for latent defects, departures from the Contract Documents, fraud or gross mistakes and damage resulting from any of the above. This warranty excludes remedy for damage or defect caused by abuse, modifications without consent by the Construction Manager, improper or insufficient maintenance or improper operation by the Owner or persons or firms directly employed by the Owner as separate construction managers, and normal wear and tear under normal usage.

6.2 GUARANTEE AGREEMENT. When required by the Contract Documents, guarantees shall be in the form reasonably acceptable to the Owner.

7. ADDITIONAL SERVICES

7.1 DEFINITION. The following shall constitute "Additional Services" which shall be provided by the Construction Manager upon request of the Owner pursuant to a written Change Order in accordance with Article 13:

7.1.1 Services relative to future facilities, systems and equipment which are not intended to be constructed as part of the Project.

7.1.2 Interior design and other similar services required for or in connection with the selection, procurement or installation of furniture, furnishings and related equipment.

7.1.3 Planning tenant or rental spaces.

7.1.4 Preparing and furnishing additional sets of documents to the Owner beyond those required under Article 2.

7.1.5 Out-of-town travel by the Construction Manager in connection with the Project, except between the Construction Manager's office and the Project site, with the Owner's prior written approval, which will not be unreasonably withheld.

7.1.6 Overtime Work requiring higher than normal rates, as ordered by the Owner, except overtime Work necessary to meet the Date of Substantial Completion for reasons other than those set forth in Section 9.4.

7.1.7 Providing renderings, models and mock-ups requested by the Owner beyond those expressly required by the Contract Documents.

7.1.8 Obtaining additional insurance coverage or limits at the request of the Owner, in excess of the limits set forth in this Agreement.

7.2 GUARANTEED MAXIMUM PRICE. Notwithstanding anything to the contrary herein, no work or services that specifically are included in the statement of the basis of the Guaranteed Maximum Price shall be considered Additional Services. However, any services required as a result of Owner making revisions to the documents forming the basis of the Guaranteed Maximum Price after they have been approved by the Owner, and which services are required for causes that are beyond the control of the Construction Manager or the Designer, shall be considered Additional Services.

8. ROYALTIES AND PATENTS

8.1 FEES, INFRINGEMENT. The Construction Manager shall pay all royalties and license fees, defend all suits or claims for infringement of any patent rights and indemnify, defend and save the Owner harmless from and against claims, damages, liabilities, losses and expenses, including but not limited to reasonable attorneys' fees, on account thereof except when a particular design, process or product is unilaterally specified by the Owner independent of any recommendations or advice of the Construction Manager. In the case the Owner makes unilateral specification in the Contract Documents, the Construction Manager shall be responsible for such loss only if it has reason to believe that the design, process or product so specified is an infringement of a patent, and fails to promptly inform the Owner of the same.

9. CONTRACT TIME

9.1 PROGRESS OF WORK. At such time as the Guaranteed Maximum Price is accepted by Owner pursuant to Article 3 hereof, the Date of Substantial Completion of the Work shall be established. The Construction Manager shall commence the Work on the Effective Date, or such earlier date as the Owner may specify in a written notice to proceed, and shall diligently perform the Work in accordance with schedules set forth herein and the Approved Project Schedule, and as necessary to meet the Date of Substantial Completion.

9.2 SUBSTANTIAL COMPLETION. Upon the determination that the Work has been substantially completed, the Construction Manager shall request the final inspection from the Owner's Representative. The Owner shall, by and through the Designer, make the final inspection within ___ () days of its receipt of such request, weather permitting. If it is determined by the Owner that the Work, or a portion thereof, has reached Substantial Completion, the Owner shall provide the Construction Manger with a certificate (the "Certificate of Substantial Completion"), to be executed by both the Owner and the Construction Manager, certifying that the Project, or a portion thereof, has reached Substantial Completion and any governmental authorities with jurisdiction over the Project have issued such certificates of occupancy or similar permits so that the Project may be lawfully occupied or used. The Certificate of Substantial Completion shall establish the responsibilities of the Owner and the Construction Manager for security, maintenance, heat, utilities, damage to the Work and

insurance, and shall include any deficiencies remaining in the Work and set forth a punchlist of such items which must be completed or corrected, and fix the time for their completion and correction. The Certificate of Substantial Completion shall not amend or alter the responsibilities of the Construction Manager and the Owner, unless expressly set forth therein. Warranties called for by this Agreement or the Contract Documents shall commence on the achievement of Substantial Completion of the Work or designated portion thereof.

9.3 FINAL COMPLETION. Upon final completion of the Work, the Construction Manager, with the assistance of the Owner's maintenance personnel, will direct the checkout of utilities and operations of systems and equipment for readiness, and will assist in their initial start-up and testing. In addition, the Construction Manager shall secure required certificates of inspection, testing or approval for the Project and shall collect all written warranties, including third-party warranties, manuals and operating instructions relating to the Project and deliver the same to the Owner. The Construction Manager also shall provide to the Owner record drawings at the completion of the Work, reflecting all modifications and changes from the original drawings and specifications, as well as the exact locations, sizes and kinds of equipment actually installed. Any supplies, tools and equipment paid for by the Owner shall remain the Owner's property after the conclusion of the Work.

9.4 EXCUSABLE DELAY. If the Construction Manager is delayed at any time in the progress of the Work by an act or omission of the Owner or by any separate construction manager employed by the Owner, which act or omission is in violation of the Owner's obligations under this Agreement, or by changes in the Work authorized by Owner under Article 13, or Excusable Event, or as provided in Section 5.1, or by a delay authorized by the Owner pending dispute resolution, then the Date of Substantial Completion and the Guaranteed Maximum Price may be extended and modified by Change Order to account for such delay.

9.5 LIQUIDATED DAMAGES. Should the Construction Manager fail to meet the Date of Substantial Completion, as extended pursuant to Sections 9.4 or Article 13 hereof, Construction Manager shall pay to Owner the sum of \$_____ per day for each day of delay past the Date of Substantial Completion. In view of the difficulty of establishing the actual damages which might result from such delay, the Parties have stipulated to such stated damages as liquidated damages and not as a penalty.

10. OWNER'S RESPONSIBILITIES

10.1 INFORMATION AND SERVICES TO BE FURNISHED BY OWNER. The Owner shall provide the following information and services and shall take the following actions with reasonable promptness at the Owner's expense:

10.1.1 Information relating to the Owner's needs, interests and other relevant information pertaining to the Project, including the Project budget and the Project completion requirements and review and approval of the documents set forth in Article 2.

10.1.2 All information reasonably available to the Owner describing the physical characteristics of the Project site, including existing conditions, test results for air and water pollution, legal limitations, presence of Hazardous Materials, and a legal description, but

excluding soils reports and subsurface investigations, all as required by Applicable Law or as mutually agreed by the parties; *provided, however*, that the Owner shall not be responsible for any errors or omission in such information and the Owner expressly disclaims any and all warranties relating to the accuracy and/or completeness of such information.

10.1.3 Prompt reporting to the Construction Manager of any errors, inconsistencies or omissions that the Owner discovers in the documents prepared under Articles 2 and 3 hereof; *provided* that failure by the Owner to report any such errors, inconsistencies or omissions shall not relieve the Construction Manager of its responsibilities with respect to any such errors, inconsistencies or omissions.

10.1.4 Independent third party inspections and testing services during the Construction Phase as required by Applicable Law or as mutually agreed by the parties. Inspection and testing services during the Construction Phase may be performed through the Construction Manager under separate agreement. It shall in any event be the responsibility of the Construction Manager to determine and advise the owner what independent inspections and testing are required by Applicable Law.

10.1.5 Securing and paying for necessary Approvals, easements, and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities, including legal services required therefor.

10.1.6 Provision of insurance for the Project if obtained as provided in Section 15.6.

10.2 OWNER'S REPRESENTATIVE. The Owner's Representative shall be fully acquainted with the Project and shall have authority to approve documents during the Design and Pre-Construction Phase, make adjustments in the Project budget, the Guaranteed Maximum Price, the Date of Substantial Completion, the Construction Milestone deadlines and Substantial Completion requirements, approve Change Orders, furnish information expeditiously and render decisions promptly so that the Construction Manager is not delayed in the progress of the Work. The Owner shall notify the Construction Manager in writing if the designated Owner's Representative is changed. The authority of the Owner's Representative shall not be modified by the Owner without advance notice in writing to the Construction Manager.

11. SUBCONSULTANTS AND SUBCONTRACTS

11.1 EMPLOYMENT OF SUBCONTRACTORS. All portions of the Work that the Construction Manager does not perform with its own forces shall be performed under subcontracts pursuant to agreements between the Construction Manager and such subcontractors and subconsultants; *provided, however*, that the Construction Manager shall not employ any Designer, subcontractors or subconsultants to perform any part of the Work without the prior written consent of Owner, which consent shall not be unreasonably withheld. The employment of any such Designer, subcontractors or subconsultants shall not diminish the Construction Manager's responsibilities hereunder. Without limiting the generality of the foregoing, the Construction Manager shall be responsible for all acts, omissions, materials and workmanship of any Designer, subcontractors and subconsultants, and shall cause all Designers, subcontractors

and subconsultants to comply with the generally accepted standards of care ordinarily exercised by members of their professions.

11.2 COMPETITIVE BIDDING. It is the intent that all direct Work will be competitively bid to subcontractors unless mutually agreed otherwise by the Owner and Construction Manager. The Construction Manager shall solicit bids only from those subcontractors and suppliers who previously have been approved by the Owner. The Owner may designate specific persons or entities from whom the Construction Manager shall obtain bids; however, the Construction Manager shall not be required to contract with anyone to whom it has reasonable objection. If the Owner requests a subcontractor other than the Construction Manager's recommended low bidder whose bid or proposal was used in establishing the Guaranteed Maximum Price, then the Guaranteed Maximum Price shall be adjusted to reflect the increased cost resulting from the use of that subcontractor.

11.3 SEPARATE CONTRACTORS. The Construction Manager shall not be required to accept assignment of separate contracts let by the Owner except by mutual agreement of the Owner and the Construction Manager. The term subcontractor does not include any separate construction manager employed by the Owner or the separate construction managers' subcontractors.

11.4 APPROVAL OF SUBCONTRACTORS. The identity and prices of all consultants, subconsultants, subcontractors and suppliers shall be subject to review and approval by Owner prior to execution by Construction Manager, and all agreements with such parties shall be made available to Owner for inspection on request.

12. CONSTRUCTION MANAGER'S COMPENSATION

12.1 INITIAL PAYMENT. There shall be no initial payment under this Agreement.

12.2 DESIGN AND PRE-CONSTRUCTION PHASE. The total cost for the Design Phase and Pre-Construction Phase shall be as set forth in the approved Guaranteed Maximum Price proposal, including the costs of the Designer, at a specified hourly billable rate, in a total amount not to exceed _____ (\$_____). The Construction Manager's Fee shall not be applied to any Work performed during the Design Phase or the Pre-Construction Phase. Within thirty (30) days after receipt of an invoice from the Construction Manager, but unless the parties have otherwise specifically agreed to progress payments, no such invoice shall be issued prior to the completion of both the Design Phase and the Pre-Construction Phase, the Owner shall pay for the Design Phase and Pre-Construction Phase Work, except those amounts, if any, that Owner questions, contests or withholds as provided in Section 14.2. Full or partial payment to the Construction Manager shall not be deemed to be evidence of the Construction Manager's satisfactory performance of the Work. If the Owner fails to pay uncontested amounts due for the Design Phase or Pre-Construction Phase, the Construction Manager shall have the right to stop the Work and to receive interest payments in accordance with Section 14.4.

12.3 CONSTRUCTION PHASE. For Work performed during the Construction Phase, the Owner shall compensate the Construction Manager the lesser of (i) the Guaranteed Maximum Price, as the same may be adjusted under Article 13, and (ii) the sum of (a) the actual

Cost of the Work plus (b) the Construction Manager's Fee, as the same may be adjusted under Article 13. In addition, if the sum of the actual Cost of the Work and the Construction Manager's Fee is less than the Target Price, the Owner shall pay to the Construction Manager twenty-five percent (25%) of the difference.

12.3.1 The term "Cost of the Work" shall mean costs necessarily incurred in the Construction Phase of the Project, excluding the costs covered under the Construction Manager's Fee as set forth below. The Cost of the Work shall consist solely of the following:

(a) Architectural, engineering and consulting fees and expenses incurred in the Construction Phase.

(b) Wages of labor directly on the Construction Manager's payroll for the Project (i.e., wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the Project site.)

(c) Cost of Construction Manager's employees stationed at the field office located at the Project site, based on the number and type of employees approved in advance by the Owner and the rates set forth in *Attachment A*.

(d) Cost of personnel who are located in the Construction Manager's main or regularly established branch office for such part of their time as is devoted to the Work, based on rates set forth in *Attachment A*, but excluding costs compensated as part of the Construction Manager's Fee as set forth below; provided, that, the number and type of personnel and the percentage of their time devoted to the Work shall be approved in advance by the Owner. No additional personnel or increases in the percentage of time devoted to the Work shall be compensated unless agreed upon in writing in advance by the Owner.

(e) Reasonable traveling expenses of representatives of the Construction Manager incurred in accordance with the standards set forth in *Attachment A* and in the discharge of duties connected with the Work.

(f) All materials used in the Construction Phase, whether for permanent or temporary use, including cost of inspection, testing, transportation, storage and handling.

(g) Supplies of whatever nature; the allocable portion of the cost of tools and equipment reasonably and necessarily required for the Work so long as such tools and equipment are not customarily owned by construction workers and are provided by the Construction Manager at the Project site, with such allocation made in accordance with reasonable accounting principles; cost of water, power and fuel; cost of telephone service, data processing service, reproduction, express delivery charges, telegrams, postage, blueprints, photographs, field office supplies, stationery, and similar items; cost of surveys, soils and other investigations; cost of protection and altering of public utilities and protection and repairs of adjoining property; rental of property for storage, job office or other purposes; federal, state, municipal or other taxes based upon labor performed, materials furnished or services provided for the Project; fees for permits and licenses required for the Project; cost of insurance in accordance with Section 15 which shall be compensated in total by the payment of one percent

(1%) of the Guaranteed Maximum Price; cost of discharging liens and attorneys fees and expenses arising out of the performance of the Work, provided such costs, fees and expenses are caused by or arise from the negligence of the Owner.

(h) All subcontracts let in connection with the Work (i.e., payments made by the Construction Manager to subcontractors and suppliers in accordance with the requirements of the subcontracts).

(i) Rentals of tools and equipment or parts thereof, including delivery costs, so long as such tools and equipment are not customarily owned by construction workers and are provided by the Construction Manager at the Project site; costs of loading and unloading; cost of installing, dismantling and removal and repairs and replacement made necessary by use on the Work. Rental charges for tools and equipment belonging to the Construction Manager shall be in accordance with a schedule of rentals approved by the Owner and shall not exceed prevailing rates for similar equipment in the area of the Project. If the Owner and the Construction Manager cannot agree on a schedule of rentals, the Owner retains the right to direct the Construction Manager to rent the tools and equipment from another supplier.

(j) Losses, expenses, damages and the cost of corrective work, to the extent not compensated by insurance or otherwise (including settlements made with the approval of the Owner), unless such loss, expense, damage or corrective work is caused in whole or in part by (A) the negligent actions or omissions or willful misconduct of the Construction Manager or its employees, agents, subcontractors or subconsultants, or (B) a breach of this Agreement by the Construction Manager.

12.3.2 The term "Construction Manager's Fee" shall mean _____ percent (____%) of the Cost of the Work, which shall be stated as a lump sum, not-to-exceed amount as set forth in the Guaranteed Maximum Price proposal approved by Owner. The following items are payable from the Construction Manager's Fee:

(a) Salaries or other compensation of the Construction Manager's employees at its main or regularly established branch offices, excluding costs compensated as provided in subsection 12.3.1(d).

(b) General operating expenses or overhead of the Construction Manager's main or regularly established branch offices other than the field office located at the Project, except as are expressly included in Section 12.3.1.

(c) Any part of the Construction Manager's capital expenses, including interest, on the Construction Manager's capital employed for the Project.

13. CHANGES IN THE WORK

13.1 WORK CHANGES BY OWNER. The Owner, without invalidating this Agreement, may order changes in the Work within the general scope of this Agreement consisting of additions, deletions or other revisions, and may order such Additional Services as are itemized in Section 7.1. All such changes in the Work shall be authorized by written Change Order. A Change Order is a written order to the Construction Manager, signed by the Owner or

the Owner's Representative and issued after the execution of this Agreement, authorizing a change in the Work and adjustments in the Guaranteed Maximum Price (clearly separating the amount attributable to the Cost of the Work and the Construction Manager's Fee) and the Date of Substantial Completion, if appropriate. In the event Owner directs a change that omits part of the Work, the Guaranteed Maximum Price, including the Construction Manager's Fee and any applicable unit prices, shall be reduced by an amount commensurate with the costs (including overhead and profit) associated with such omitted parts of the Work, as agreed upon in writing by the parties. In the event that any change should, in the reasonable opinion of the Construction Manager, necessitate an increase in the Guaranteed Maximum Price, the Construction Manager shall notify Owner in writing within five (5) business days after receipt of a Change Order of the reasons for and amounts of any increases in the price (setting forth the amount attributable to the Cost of the Work and the Construction Manager's Fee, the latter of which shall not exceed _____ percent (____%) of the former). If the Construction Manager performs any changes in the Work without a written agreement with Owner reflecting an increase in the Guaranteed Maximum Price and/or a change in the Date of Substantial Completion, the timing of the Construction Milestones and/or the Agreed Project Schedule, then any additional costs or expenses incurred by the Construction Manager to perform the changed Work shall be borne solely by the Construction Manager at no additional cost to Owner and the Construction Manager shall be required to meet Date of Substantial Completion, each of the Construction Milestones and/or the Agreed Project Schedule.

13.2 REQUIRED CHANGES. Notwithstanding the provisions of Section 13.1 hereof, the Owner reserves the right to require alterations, addition to and/or deletions from the Work and the failure of the Owner and the Construction Manager to agree to a change in the Guaranteed Maximum Price and/or a change in the Date of Substantial Completion, the timing of the Construction Milestones and/or the Agreed Project Schedule shall not excuse the Construction Manager from diligently proceeding with the Work as changed, but the Construction Manager shall have the right to seek equitable adjustments pursuant to the dispute resolution provision in Article 17 hereof.

13.3 OTHER CLAIMS FOR ADJUSTMENT. Should concealed below-ground conditions that are not reasonably inferable in the exercise of professional diligence be encountered in the performance of the general scope of this Agreement or should concealed or unknown conditions in an existing structure be materially at variance with the conditions indicated by the Contract Documents or Owner-furnished information, or should unknown and not reasonably foreseeable conditions arise in an existing structure that are of an unusual nature, differing materially from those ordinarily or generally encountered, the Guaranteed Maximum Price and Date of Substantial Completion shall be equitably adjusted by Change Order upon claim by either party, provided that the party requesting an adjustment (the "Requesting Party") gives the other party written notification within fifteen (15) days after the Requesting Party becomes aware of the conditions. If any other unanticipated circumstances occur that could not have been reasonably anticipated by the Construction Manager and that require, in the Construction Manager's reasonable professional opinion, an increase in the Guaranteed Maximum Price or an extension in the Date of Substantial Completion, the Construction Manager shall give notice and make a claim for such adjustment, in writing to Owner, within fifteen (15) days after the occurrence of such circumstances. The written notice and claim shall be given by the Construction Manager before proceeding to execute the additional Work, except

in an emergency endangering life or property, in which case the Construction Manager shall act, in its reasonable discretion, to prevent threatened damage, injury or loss. Any change in the Guaranteed Maximum Price or Date of Substantial Completion resulting from any such claim shall be authorized by Change Order. The Construction Manager shall have no right, claim or entitlement to any change in, and shall be deemed to have waived any right to change, the Guaranteed Maximum Price (including the Construction Manager's Fee) or Date of Substantial Completion in the event the Construction Manager fails to give the Owner the written notice and claim required by this Section within the required fifteen (15)-day time period (although the Owner may, without any obligation and in its sole discretion, consider a written claim from the Construction Manager even if the written claim is not submitted within the time limits required by this Section 13.3 without waiving any requirement to comply with the time limits herein in the future). Without limiting the foregoing, if the Construction Manager performs any additional or changed Work without a written agreement with Owner reflecting a price increase, then it shall be conclusively presumed that no price increase is necessary and any additional costs or expenses incurred by the Construction Manager to perform the additional or changed Work shall be borne solely by the Construction Manager at no additional cost to Owner.

13.4 PASS-THROUGHS. Should there be, after the Guaranteed Maximum Price has been established, any increase in federal, state, municipal or other taxes based upon labor performed, materials furnished or services provided for the Work, or in fees for permits and licenses for the Project, the Construction Manager shall give written notice of the same to the Owner within five (5) business days of learning of the same and the amount of any such increases shall be added to the Guaranteed Maximum Price.

13.5 ALLOWANCES. Whenever the actual cost of an Allowance item is more or less than the amount set forth in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price shall be adjusted up or down, to reflect the actual cost of the item, by Change Order.

13.6 MINOR CHANGES IN THE WORK. The Owner shall have authority to order minor changes in the Work not involving an adjustment in the Guaranteed Maximum Price or an extension of the Date of Substantial Completion and not inconsistent with the intent of the Contract Documents. Such changes may be effected by Change Order and shall be binding on the Owner and the Construction Manager.

13.7 LIQUIDATED DAMAGES. The Construction Manager shall not be allowed, and the Owner shall have no liability for, any adjustments in compensation except as provided in this Article 13. If the Construction Manager fails to provide any notices to the Owner of cost increases, adjustments or pass-throughs as required under Sections 13.1, 13.2 and 13.3 by the dates specified therein, the Construction Manager shall pay to the Owner the sum of \$_____ per day for each day past the date each such notice is due. In view of the difficulty of establishing the actual damages which might result from such delay, the Parties have stipulated to such stated damages as liquidated damages and not as a penalty.

14. PAYMENTS DURING CONSTRUCTION PHASE

14.1 APPLICATION FOR PAYMENT

14.1.1 On the first day of each month after the Construction Phase has commenced, the Construction Manager shall submit to the Owner an Application for Payment consisting of the actual Cost of the Work performed and incurred during the previous month, including the cost of material stored on the Project site or at other locations approved by the Owner, plus a proportionate share of the Construction Manager's Fee (proportionate to the ratio that the monthly Cost of the Work bears to the total Cost of the Work set forth in the Guaranteed Maximum Price proposal). Within twenty-five (25) days after receipt of each monthly Application for Payment, the Owner shall pay the Construction Manager the amount due under the Application for Payment (minus a 10% retention and Damages, as set forth in Section 14.2 hereof), except those amounts, if any, that Owner questions, contests or withholds as provided in Section 14.3. Prior to submission of the next Application for Payment, the Construction Manager shall furnish to the Owner a statement accounting for the disbursement of funds received under the previous Application for Payment and copies of lien releases (in a form approved by the Owner) which shall be provided to the Construction Manager by each subcontractor upon receipt of payment by such subcontractor. The extent of such statement shall be as agreed upon between the Owner and Construction Manager.

14.1.2 The Owner has no obligation to pay or to facilitate the payment to a subcontractor or supplier, except as may otherwise be required by law. The Construction Manager will comply with the prompt payment requirements of the place of the Project. The Owner may at is discretion make payment by "joint check" or other arrangement designed to assure that subcontractors and suppliers are properly paid, and the Construction Manager shall cooperate therewith.

14.2 TEN PERCENT (10%) RETENTION; DAMAGES. Following approval by the Owner's Representative of the Application for Payment, less any questioned or contested amounts, the Owner shall retain as security for fulfillment of this Agreement ten percent (10%) of the approved amount on the Application for Payment. The Owner may retain an additional amount determined in the reasonable discretion of the Owner sufficient to protect the owner from the anticipated or possible consequences of any breach by the Construction Manager of any obligation under this Agreement, including any actual or liquidated damages for delay in meeting the Date of Substantial Completion, any Claims as to which the Construction Manager has an obligation of indemnification (such additional retention, "Damages").

14.3 DISPUTES AND CLAIMS. If any items in any Payment Application submitted by the Construction Manager are disputed by Owner for any reason, including the lack of supporting documentation or suspected defective or negligently performed Work, Owner may temporarily delete the disputed item and pay the remaining amount of the Payment Application. Owner shall also have the right to withhold from payments due the Construction Manager a reasonable amount to resolve claims made against Owner as a result of or in connection with the Construction Manager's or any of its subcontractors' performance of the Work upon presentation of reasonable evidence of the validity of such claims. Owner shall also have the right to set off against amounts due the Construction Manager any amounts owing by the Construction Manager

to Owner. The Owner shall promptly notify the Construction Manager of any dispute over an item or amount in a Payment Application and request clarification or corrective action. If any dispute is settled in the Construction Manager's favor, the Construction Manager shall include the settled amount on a subsequent regularly scheduled Payment Application or on a special invoice for the disputed item only. Owner shall not be deemed to be in breach of this Agreement by reason of withholding any payment pursuant to any provision of this Agreement or Applicable Law. In no event shall any interest be due and payable by Owner to Construction Manager on any sums withheld or retained pursuant to this Section.

14.4 LIENS. The Construction Manager warrants and guarantees that, upon Construction Manager's receipt of payment under each Application for Payment, title to all Work, materials and equipment covered by such Application for Payment, whether incorporated in the Project or not, will pass to the Owner free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to as "Liens." As a condition of payment by Owner, the Construction Manager shall keep the Project free of Liens. In the event Liens are filed by any party other than the Construction Manager relating to the Work, the Construction Manager shall, upon five (5) days' written notice from the Owner, take all necessary steps to remove such Liens, including, without limitation, the posting of a bond to remove the Lien of record. Any costs incurred by the Construction Manager in removing the Lien shall not be a Cost of the Work except as specifically provided in Section 12.3.1(g). If a Lien is filed against Owner, its affiliated companies, their respective officers, directors, employees, subcontractors and/or agents, then Owner may at its option (and without any liability being attributed to Owner) withhold further payment to the Construction Manager under this Agreement and/or avail itself of such other remedies as it may have at law, in equity or pursuant to the terms and conditions of this Agreement and, in such case, but only to the extent of the amounts withheld, the Owner shall be solely responsible for the payment of all costs and expenses regarding the removal and satisfaction of record of all Liens filed. To the fullest extent permitted by law and to the extent of payments made by Owner to Construction Manager, the Construction Manager for itself, its employees, agents and subcontractors, at any tier, waives and releases any and all rights of Liens for payment for Work performed or material provided by Construction Manager, its employees, agents and/or subcontractors, at any tier.

14.5 PAYMENT DEFAULT. If the Owner fails to pay the Construction Manager any undisputed amounts (excluding amounts withheld under Section 14.2) at the time payment becomes due, then the Construction Manager may, after giving Owner at least ten (10) days' written notice, stop the Work until the Construction Manager receives payment of the undisputed amount owing. Payments due but unpaid shall bear interest at (i) the rate the Owner is paying on its construction loan, or (ii) the current Citicorp "prime rate" plus two points, whichever is lower.

14.6 FINAL PAYMENT. Final payment, constituting the unpaid balance of the Cost of the Work, the Construction Manager's Fee and any amount retained pursuant to Section 14.2, shall be due and payable thirty (30) days after the Project has attained Substantial Completion or when the Owner occupies the Project, whichever event first occurs, provided that the Work is then completed and that the Construction Manager has furnished Owner with satisfactory written evidence that there are no unpaid claims for work or materials furnished at the Project site which could constitute the basis for any Liens. If there remain minor items to be completed, the Construction Manager and the Owner shall list such items and the Construction Manager shall

deliver in writing a guarantee to complete such items within a reasonable time thereafter. The Owner may retain a sum equal to one hundred twenty-five percent (125%) of the mutually agreed estimated cost of completing any unfinished items, provided that the unfinished items are listed separately along with the estimated cost of completing each. Thereafter, the Owner shall pay to the Construction Manager monthly the amount retained for incomplete items as each of the items is completed.

14.7 DISCOUNTS. All discounts for prompt payment shall accrue to the Owner to the extent that the cost of the Work is paid directly by the Owner or from a fund made available by the Owner to Construction Manager for such payments. To the extent that the cost of Work is paid with funds of the Construction Manager, all cash discounts shall accrue to the Construction Manager. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Cost of the Work.

14.8 EFFECT OF PAYMENT. Any payment made by Owner hereunder does not relieve Construction Manager of any responsibility or liability for properly performing all Services in accordance with this Agreement, and the degree of professional care, prudence and skill indicated herein. In addition, such payment does not relieve Construction Manager from being subject to all indemnification and/or other terms or conditions of this Agreement. Full or partial payment to the Construction Manager shall not be deemed to be evidence of the Construction Manager's satisfactory performance of the Work.

15. INDEMNITY; INSURANCE; BONDS AND WAIVER OF SUBROGATION

15.1 INDEMNITY BY CONSTRUCTION MANAGER. To the fullest extent permitted by law, the Construction Manager shall be solely responsible for and shall indemnify, defend and hold the Owner, its affiliated companies and their respective officers, directors, employees, agents and/or subcontractors harmless from and against any and all claims, demands, lawsuits, damages, losses, fines, penalties, costs, expenses and other liabilities whatsoever (including, but not limited to, attorneys' fees; professional engineering fees and charges; sampling and testing charges; accounting fees; and other experts' and consultants' fees and charges) (collectively, "Claims") relating in any way to or arising or alleged to arise by reason of or in connection with the Construction Manager's or its employee's, agent's or subcontractor's act or omission (whether or not negligent) in connection with the performance of the Work under this Agreement or occurring on or around the Project (including other lands used by the Construction Manager) and whether before or after final acceptance of the Work. The foregoing obligations of the Construction Manager shall apply, without limitation, to any failure to comply with Applicable Law, any claim of infringement as described in Section 8.1 hereof, and any failure of the Construction Manager to comply with any provision of this Agreement relating to safety or Hazardous Materials.

15.2 OTHER INDEMNITY. The Owner shall cause any other construction manager who may have a contract with the Owner to perform services in the areas where Work will be performed under this Agreement to agree to indemnify, defend and hold harmless the Construction Manager from all Claims for bodily injury and property damage that may arise solely from such other construction manager's operations. Such provisions shall be in a form satisfactory to the Construction Manager.

15.3 CONSTRUCTION MANAGER'S LIABILITY INSURANCE. The Construction Manager shall purchase and maintain throughout the duration of the Work such insurance as will protect it and the Owner from the claims set forth below which may arise out of or result from the Construction Manager's performance of the Work under this Agreement, whether such performance is by itself or by any subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, in at least the following amounts:

15.3.1 Workers' Compensation and Employers' Liability in accordance with Applicable Law.

15.3.2 Commercial General Liability: Bodily injury liability and property damage liability (excluding damage to the Work or Project itself, if insured as provided below) combined in the amount of \$10,000,000 per occurrence.

15.3.3 Comprehensive Automobile Liability: Bodily injury liability and property damage liability combined in the amount of \$10,000,000 per occurrence.

15.3.4 Professional Liability Insurance for all design services performed by the Construction Manager or any parties in privity with the Construction Manager in the amount of \$ _____ per claim. Said insurance will be provided by the Designer.

The foregoing policies shall contain a provision that coverage will not be canceled, modified or not renewed until at least sixty (60) days' prior written notice has been given to the Owner. Except for professional liability insurance, the foregoing policies shall be occurrence-based insurance. Certificates of Insurance showing such coverage to be in force shall be filed with the Owner prior to commencement of the Work and annually thereafter if the Work is continuing. Except for the workers' compensation and professional liability policies, the Owner shall be named as primary additional insured under the foregoing policies of insurance. Each liability policy shall have a contractual liability endorsement or otherwise provide coverage for any liability assumed by the Construction Manager under the indemnification or other provisions of this Agreement Insurance deductibles, if any, shall not exceed the standard deductible amounts for similar insurance policies and shall be absorbed entirely by Construction Manager with no contribution by Owner.

15.4 GUARANTEE BONDS. At the request of the Owner, the Construction Manager shall furnish the Owner with a bond, in the full amount of the Guaranteed Maximum Price, guaranteeing the Construction Manager's faithful performance of this Agreement. The Construction Manger shall also furnish the Owner a bond in the full amount of the Guaranteed Maximum Price, guaranteeing the payment of claims of the Construction Manager, suppliers of materials, services or labor, and others. The required bonds shall be in the form reasonably acceptable to the Owner and shall be issued by sureties reasonably approved by the Owner. The Construction Manager shall be responsible for all bond premiums, costs and incidentals. The Construction Manager acknowledges and agrees that changes in the Work or extensions or changes in the Date of Substantial Completion, the Agreed Project Schedule and/or the setting of Construction Milestones made pursuant to this Agreement shall in no way release the Construction Manager or its surety(ies) from its obligations. Any requirement for notice of any such changes or extensions shall be waived by the surety(ies).

15.5 OWNER'S LIABILITY INSURANCE. The Owner shall be responsible for purchasing and maintaining its own liability insurance and, at its option, may purchase and maintain such insurance as will provide protection against claims which may arise from performance of the Work.

15.6 PROPERTY INSURANCE. At its option, the Owner may purchase and maintain property insurance upon the Project for the full cost of replacement at the time of any loss, including coverage for Work stored at approved off-site locations and Work in transit and such boiler and machinery insurance as may be required or necessary. Such policy, if purchased, will provide coverage for the expense of expediting materials, continuing overhead of the Owner and the Construction Manager, necessary labor expense including overtime, loss of income by the Owner and other exposures determined by mutual agreement of the parties, with separate limits of coverage fixed for each item. If purchased, this insurance shall include as insureds the Construction Manager and its subcontractors and shall insure against loss, including loss of use, from the perils of fire and extended coverage, and shall include "All Risk" insurance for physical loss or damage including, without duplication of coverage, at least theft, vandalism, malicious mischief, transit, collapse, flood and testing and collapse. If purchased, the Owner shall be responsible for any co-insurance penalties or deductibles under such property insurance.

15.6.1 The Owner shall file a copy of all policies purchased under this Section 15.6 with the Construction Manager before an exposure to loss may occur. Copies of any subsequent endorsements will be furnished to the Construction Manager. The Construction Manager will be given thirty (30) days' notice of cancellation, non-renewal, or any endorsements restricting or reducing coverage.

15.6.2 If the Owner does not intend to purchase such property insurance, the Construction Manager shall be informed in writing prior to the commencement of the Construction Phase of the Work. The Construction Manager shall then purchase such insurance which will protect the interests of itself, its subcontractors and the Owner in the Project on the same terms and conditions provided in Section 15.6, the costs of which shall be a Cost of the Work pursuant to Section 12.3.1, and the Guaranteed Maximum Price shall be increased by Change Order. If the Construction Manager is damaged by failure of the Owner to so notify the Construction Manager, the Owner shall bear all reasonable costs properly attributable thereto.

15.6.3 If the Work covers an addition to or is in or adjacent to an existing building, the Construction Manager and its subcontractors and sub-subcontractors shall be named as additional insureds under the Owner's property insurance covering such building and its contents.

15.6.4 If the Owner finds it necessary to occupy or use a portion or portions of the Project prior to Substantial Completion thereof, such occupancy shall not commence prior to a time mutually agreed to by the Owner and the Construction Manager and to which the insurance company or companies providing any property insurance have consented by endorsement to the policy or policies. This insurance shall not be canceled or lapsed on account of such partial occupancy. Consent of the Construction Manager and of the insurance company or companies to such occupancy or use shall not be unreasonably withheld.

15.7 PROPERTY INSURANCE LOSS ADJUSTMENT. Any insured loss shall be adjusted with the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to any applicable mortgagee clause. Upon the occurrence of an insured loss, monies received will be deposited in a separate account and the Owner shall make distribution in accordance with the agreement of the parties in interest, if such an agreement is reached.

15.8 WAIVER OF SUBROGATION. The Owner and Construction Manager waive all rights against each other, and any of their consultants, subcontractors, sub-subcontractors, agents and employees, each of the other, for damages caused by perils covered by insurance provided under this Article 15, except such rights as they may have to the proceeds of such insurance held by the Owner as fiduciary. The Construction Manager shall require similar waivers from all of its subcontractors and sub-subcontractors. The Owner and Construction Manager waive all rights against each other and any of their consultants, subcontractors, sub-subcontractors, agents and employees, each of the other, for loss or damage to any equipment used in connection with the Project which loss is covered by any property insurance. The Construction Manager shall require similar waivers from all of its subcontractors and sub-subcontractors. The Owner waives subrogation against the Construction Manager and the Construction Manager's consultants, subcontractors, sub-subcontractors, agents and employees on all property and consequential loss policies carried by the Owner on adjacent properties. If the policies of insurance referred to in this Article 15 require an endorsement to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed.

16. TERMINATION OF THE AGREEMENT

16.1 TERMINATION BY THE CONSTRUCTION MANAGER. If the Work is stopped for a period of _____ days because (i) of an order of any court or other public authority having jurisdiction for reason other than the act or omission of the Construction Manager or its employees, agents, subcontractors or sub-subcontractors, (ii) of an act of government for reason other than the act or omission of the Construction Manager or its employees, agents, subcontractors or sub-subcontractors, such as a declaration of a national emergency, making required materials unavailable, (iii) the Owner unreasonably delays the Construction Manager in the performance of the Work or fails to make payments thereon in accordance with Article 14 hereof, or (iv) the Owner is guilty of any other substantial breach of this Agreement and fails to remedy such breach following reasonable notice, then the Construction Manager may, upon fifteen (15) days' written notice to the Owner following the failure to cure, terminate this Agreement.

16.2 TERMINATION BY THE OWNER FOR DEFAULT

16.2.1 Events Of Default. The occurrence of any of the following events shall constitute an "Event of Default" hereunder entitling the Owner, at its option and without prejudice to any other rights or remedies, to terminate this Agreement:

(a) The Construction Manager breaches any provision of this Agreement and fails to cure such breach within ten (10) days following notification by the Owner of such breach.

(b) The Construction Manager makes a general assignment for the benefit of its creditors.

(c) The Construction Manager institutes any action under any law relating to bankruptcy wherein it seeks to become a bankrupt, or to be discharged from its debts, or to effect a plan of liquidation, composition, or organization, or it becomes insolvent.

(d) A receiver, assignee, or other liquidating officer is appointed on its behalf and such person is not removed within thirty (30) days.

(e) An involuntary proceeding in bankruptcy is sought against it, and the Construction Manager consents thereto or such proceeding is not terminated within thirty (30) days.

(f) Any substantial portion of the Construction Manager's assets are attached or seized by judicial order and such seizure is not discharged within thirty (30) days.

(g) The Construction Manager fails to provide any insurance certificate or bond required under this Agreement within seven (7) days of receipt of written notification from the Owner that any such certificate has not been provided.

(h) The Construction Manager willfully or persistently disregards any laws, statutes, rules, ordinances, codes, or other legal requirements with respect to the Work or fails to cure any such failure on demand of Owner.

(i) The Construction Manager fails to make prompt payment to its subcontractors.

(j) The Construction Manager fails to provide properly skilled workpersons to perform the Work.

(k) The Construction Manager has knowingly or willfully made false statements or certifications under this Agreement.

(l) In the sole opinion of the Owner's Representative, the Construction Manager fails to supply adequate or proper workers, materials, tools and equipment.

(m) The Construction Manager disregards written instructions from the Owner or the Owner's Representative as applicable pursuant to the terms of this Agreement.

(n) In the sole opinion of the Owner's Representative, the Construction Manager refuses or fails to prosecute the Work with the diligence that assures completion of the Work within the Agreed Project Schedule.

16.2.2 Notice. The Owner shall give the Construction Manager and its sureties written notice when grounds for termination exists due to an Event of Default. Such notice shall set forth the specific nature of the Event of Default and, if applicable, a time for correction. In the event the Construction Manger fails to correct the Event of Default within the set time or, if no time is set, within ___ (__) days after following notification by the Owner of such Event of Default, the Owner may, without prejudice to any other rights or remedies of the Owner, terminate the Construction Manager's right to do the Work.

16.2.3 The Owner's Remedies. Upon termination the Owner may: (1) require the Construction Manager's sureties to complete the Work; or (2) take over the Work and/or employ another contractor to complete the Work. The Owner may use any and all materials, tools, equipment and appliances belonging to the Construction Manager which are on the Project site and needed to complete the Work.

16.2.4 Payment after Termination. If the Owner terminates this Agreement due to an Event of Default by the Construction Manager under this Agreement, the Construction Manager shall not receive any payment before the entire Work is complete and accepted by the Owner's Representative. The Owner may assume and finish the Work or hire another contractor to finish the Work. The Owner will pay the Construction Manager any monies due under this Agreement (less any retention pursuant to Section 14.2 hereof) that remain after deducting for all damages and the full cost of finishing the Work plus ten percent (10%) of said cost. The Construction Manager and/or the Construction Manager's sureties shall be liable to the Owner for all damages and cost plus ten percent (10%) of damage and cost above the Guaranteed Maximum Price.

16.2.5 No Prejudice. Actions pursuant to this Section 16.2 shall not prejudice the Owner's other rights or remedies under the law or this Agreement.

16.3 TERMINATION BY THE OWNER BY ACT OF NATURE OR OFFICIAL ACTION

16.3.1 The Owner may, by fifteen (15) days' prior written notification to Construction Manager, terminate this Agreement at its sole and absolute discretion upon the occurrence of the following events:

- (a) An Excusable Event which continues for sixty (60) days or more.
- (b) Official action of a public authority which materially effects the economics of the Project or hinders or stops the Work on a significant portion of the Project.

16.3.2 Upon termination of this Agreement pursuant to this Section 16.3, the Construction Manager shall be entitled to payment as provided in and as limited by Section 16.4 hereof.

16.4 TERMINATION BY THE OWNER FOR CONVENIENCE

16.4.1 The Owner's Rights. For its convenience, the Owner may by written notification to the Construction Manager stating the extent and date upon which such termination

becomes effective and that portion of the Work to be completed by such date (a “Notice of Termination”), elect to terminate the performance of part or all of the Work. Upon receipt of a Notice of Termination, the Construction Manager shall use its best efforts to take all necessary steps to assure the efficient, proper closeout of that portion of the Work so terminated, including, without limitation, the following steps:

(a) Cause the Work to be stopped to the extent and on the date specified in the Notice of Termination.

(b) Place no further orders or subcontracts for labor, services, equipment, supplies or materials except for completion of that portion of the Work not terminated as directed by the Notice of Termination.

(c) Terminate and settle all orders and subcontracts to the extent necessary to terminate performance of that portion of the Work terminated as directed by the Notice of Termination.

(d) Settle all outstanding liabilities and all claims for all Work terminated under the Notice of Termination to the satisfaction of the Owner’s Representative.

(e) Complete that portion of the Work not terminated.

(f) Protect and preserve property related to this Agreement in the possession of the Construction Manager that the Owner has or may acquire.

(g) Deliver to the Owner all Contract Documents, (including, without limitation, plans, drawings, information and other documents) and all property (including, without limitation, all fabricated or unfabricated parts), including, without limitation, title to such documents and property which, if the terminated Work had been completed, the Construction Manager would be required to account for or deliver to the Owner.

(h) Submit an application for final payment to the Owner’s Representative.

16.4.2 Payment after Termination. In the event of such termination of the Work by the Owner for convenience as provided in this Section 16.4, the Construction Manager shall recover that portion of the Cost of the Work and the Construction Manager’s Fee, not to exceed the Guaranteed Maximum Price for that portion of the Work performed and not terminated by the Notice of Termination plus any retention amount with respect thereto pursuant to Section 14.2 hereof.

16.4.3 Limitations of Liability

UNDER NO CIRCUMSTANCES SHALL OWNER BE LIABLE TO THE CONSTRUCTION MANAGER FOR ANY COMPENSATION IN EXCESS OF THAT EXPRESSLY SET FORTH IN THIS AGREEMENT, LOST PROFITS, LOST OPPORTUNITY, UNRECOVERED START-UP COSTS, PREPARATORY, SETTLEMENT OR DISCONTINUATION COSTS OR DAMAGES, OR

CONSEQUENTIAL OR OTHER INDIRECT DAMAGES (INCLUDING, BUT NOT LIMITED TO, SEVERANCE PAY AND OTHER PERSONNEL COMPENSATION AND COSTS AND ATTORNEYS' FEES) AS A RESULT OF THE OWNERS TERMINATION OF A PORTION OR ALL OF THIS AGREEMENT, WHETHER SUCH TERMINATION IS PURSUANT TO THE PROVISIONS OF SECTIONS 16.2, 16.3 OR 16.4, OR IN CONNECTION WITH ANY CLAIM MADE BY CONSTRUCTION MANGER RELATING TO THIS AGREEMENT.

17. DISPUTE RESOLUTION

17.1 MEDIATION. Unless otherwise mutually agreed to in writing between the parties, all disputes between the parties relating to the interpretation and enforcement of their rights and obligations under this Agreement shall be submitted to mediation in accordance with this Section 17.1. The parties shall use their best efforts for a period of ten (10) business days to resolve the dispute by negotiation. To commence the dispute resolution process, either party may serve written notice on the other party specifically identifying the dispute and requesting that efforts at resolving the dispute begin. The parties shall attempt in good faith to resolve the dispute using their best efforts to reach agreement on the matters in dispute. If the parties are unable to resolve the dispute by negotiation within the time frame set forth above, which time frame may be extended by mutual agreement in writing, mediation shall be initiated upon written request by either party. Within thirty (30) days of such written request, the parties shall jointly select an individual to serve as the mediator of any dispute if willing or able to do so, and a second individual to serve as the backup mediator. If neither of them is willing or able to serve, and/or if the parties cannot agree on a single mediator, then the parties shall, within ten (10) days after written request by either party, request that the American Arbitration Association ("AAA") name three qualified mediators. Within five (5) business days of receipt of the AAA list, each party shall notify the other of a name it wishes to delete from the list. The mediator shall be the individual on the list not so deleted. If any party fails to notify the other of the mediator it intends to delete within the time specified, the other party shall select the mediator from the AAA list. Should both parties delete the same name, Owner shall select the mediator from the remaining two (2) names. The mediator so selected shall not be a person who has previously acted in any capacity for either party and who has at least ten (10) years of experience in the construction industry as a contractor, design professional or attorney. A single mediator, once selected, shall be used for all disputes until unable or unwilling to serve in which event the AAA list selection process shall be repeated.

Unless otherwise agreed, the mediation shall take place in the county in which the Project is located, within thirty (30) days after the written request is delivered to the nonrequesting party, or the mediator is selected, if later. The parties shall submit to the mediator all written, documentary and other evidence and such oral testimony as determined by the mediator to be necessary for a proper resolution of the dispute. The parties shall also meet promptly and shall use good faith efforts to resolve the dispute when and as requested by the mediator. The costs of mediation, including without limitation the mediator(s) fees, shall be paid equally by each party, provided that each party shall bear its own attorney's fees with respect to such mediation.

17.2 NO INTERRUPTION. The pendency of any dispute resolution procedures shall not relieve Construction Manager from its duty to perform under this Agreement or serve to delay or suspend any schedule or deadline under this Agreement.

17.3 LITIGATION. Compliance with the provisions of this Article 17 and participation in the mediation process shall be a condition precedent to the bringing of any lawsuit or other action to enforce any rights or claims under or related to this Agreement, except any action seeking injunctive or other extraordinary equitable relief, but shall not be a condition precedent to the right of Owner to terminate this Agreement.

18. MISCELLANEOUS PROVISIONS

18.1 NON-ASSIGNMENT. Because of the nature of this Agreement, the Construction Manager shall not have any right to assign or transfer this Agreement without the prior written consent of Owner. For purposes of the foregoing, an assignment or transfer requiring consent of the Owner shall include, but not be limited to, any direct or indirect change in control of Construction Manager or transfer of a direct or indirect controlling interest in the Construction Manager, including, without limitation, the transfer or assignment of twenty-five percent (25%) or more of the beneficial ownership of Construction Manager or its parent company to or from a single entity.

18.2 NO AUTHORITY TO CONTRACT. In performing procurement, contracting and other Services for the Owner hereunder, Construction Manager shall, subject to the limitations and other provisions of this Agreement, enter into all contracts and purchase orders in its own name and shall have no authority to enter into contracts or purchase orders as agent or on behalf of the Owner without the express prior written consent of the Owner.

18.3 LIMITATIONS ON AUTHORITY. Notwithstanding any provision in this Agreement to the contrary, the following acts may not be done or taken, or caused to be done or taken, by Construction Manager, or by any agent, representative or subcontractor of Construction Manager, without the prior written consent of the Owner: settling, compromising, assigning, pledging, transferring, releasing, or consenting to do the same, of any claim, suit, debt, demand, or judgment against or due or by the Owner or Construction Manager on behalf of the Owner, submitting any such claim, dispute, or controversy to arbitration or judicial process, or stipulation thereof to a judgment, or consent to do the same.

18.4 GOVERNING LAW, JURISDICTION, VENUE. This Agreement shall be governed by the law of the State of the place of the Project and the charter and ordinances of the City of the place of the Project, where applicable. The parties hereby submit to the jurisdiction of the courts of such State, or in a proper case the United States District Court, having jurisdiction over the place of the Project and agree that the venue for any action shall be the place of the Project.

18.5 *PREVAILING PARTY. In the event the Owner or Construction Manager brings any legal action to enforce or interpret any of the terms and provisions of this Agreement, the prevailing party shall be entitled to recover its costs and expenses of suit, including fees of expert witnesses, and reasonable attorneys' fees, including any incurred in any appeal or in connection with any bankruptcy case or any arbitration.*

18.6 ENTIRE AGREEMENT AND AMENDMENTS. This Agreement and the Contract Documents represent the entire agreement between the parties and supersedes all prior and contemporaneous agreements and understandings, express or implied, oral or written,

regarding the subject matter of this Agreement. This Agreement may not be amended, changed, modified, or altered other than by an agreement in writing signed by both of the parties hereto.

18.7 RELATIONSHIP OF PARTIES. Construction Manager and the agents and employees of Construction Manager in the performance of this Agreement shall act in an independent capacity and not as officers or partners or employees or agents of the Owner.

18.8 SEVERABILITY. Every provision in this Agreement is intended to be severable such that if any term or provision hereof is illegal or invalid for any reason whatsoever, such provision shall be severed from this Agreement and shall not affect the validity of the remainder of this Agreement; provided, however, that in such event the parties will negotiate in good faith an amendment to this Agreement which will as nearly as legally permissible achieve the result intended by the Parties in the term or provision which was determined to be illegal or invalid.

18.9 NON WAIVER. It is understood and agreed that any delay, waiver, or omission by the Owner or Construction Manager to exercise any right or power arising from any breach or default by the Owner or Construction Manager with respect to any of the terms, provisions, or covenants of this Agreement shall not be construed to be a waiver by the Owner or Construction Manager of any subsequent breach or default of the same or other terms, provisions, or covenants on the part of the Owner or Construction Manager.

18.10 NOTICES. Any notice, demand, offer, or other written instrument required or permitted to be given pursuant to this Agreement shall be in writing signed by the Party giving such notice and shall be hand delivered or sent by certified mail, return receipt requested, or overnight courier to the other Party at such address as set forth below:

If delivered to the Owner:
Waste Management
Western Area
7025 N. Scottsdale
Suite 200
Scottsdale, Arizona 85253
ATTN: _____
Facsimile: 480 951 5280

If delivered to Construction Manager:

Each party shall have the right to change the place to which notice shall be sent or delivered by similar notice sent in like manner to the other party. Without limiting any other means by which a party may be able to prove that a notice has been received by the other Party, a notice shall be deemed to be duly received:

18.10.1 if sent by hand, the date when left at the address of the recipient;

18.10.2 if sent by certified mail, the date of the return receipt;

18.10.3 if sent by overnight courier, the date when receipt is acknowledged at the address of the recipient.

18.11 EXECUTION IN COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears hereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as the signatures.

18.12 GUARANTY. _____ (the "Guarantor") hereby unconditionally guarantees full and complete performance by the Construction Manager of any and all of the Construction Manager's obligations, payments, liabilities or responsibilities arising out of this Agreement or any of its attachments. The Guarantor represents that it has a direct financial interest in the Construction Manager and will benefit directly from this Agreement. No waiver of any right of Owner, extension of time, modification of any obligation of the Construction Manager, tolerance, delay, forbearance, or incomplete performance of the Construction Manager shall modify or discharge the Guarantor's obligations under this clause. In the event of any breach of or default under this Agreement by the Construction Manager, Owner may proceed against the Guarantor without proceeding first against or giving notice to the Construction Manager.

(Remainder of page intentionally left blank.)

This Agreement is entered into as of the day and year first written above and includes the attachments listed below.

OWNER:

By: _____
Title: _____

CONSTRUCTION MANAGER:

By: _____
Title: _____