

REQUEST FOR PROPOSALS FOR  
CONSTRUCTION MANAGER AT RISK  
(One-Step Process)

Town of Pecos City  
Baseball Complex  
Construction of Eight (8) new Baseball Fields, Utilities, Various  
Buildings and Associated Site Improvements  
RFP No.: PR18-001



RFP RESPONSES MUST BE RECEIVED ON OR BEFORE:  
July 6, 2018 at 2:00 PM

**Optional Pre-Proposal Conference:** June 27, 2018, at 10:00 AM local time at  
the Town of Pecos City, City Hall, 110 E. 6<sup>th</sup> Street, Pecos, Texas.

NOTE: Proposals must be time stamped at the Pecos City Secretary's office on or before the hour and  
date specified for receipt of proposals.

Prepared By:  
Seth A. Sorensen, P.E.  
Town of Pecos City

## TABLE OF CONTENTS

<b>Section 1 - General Information &amp; Requirements</b>	2.8	Respondent's Jobsite Safety Program for this Project
1.1 General Information		
1.2 Definitions and Special Concerns	2.9	Respondent's Pricing and Delivery Program
1.3 Owner's Objectives		
1.4 Public Information		
1.5 Type of Contract		
1.6 Clarifications and Interpretations		
1.7 Submission of Proposals		
1.8 Point-Of-Contact		
1.9 Inquiries and Interpretations		
1.10 Evaluation of Proposal		
1.11 Schedule		
1.12 Owner's Reservation of Rights		
1.13 Local Business Participation		
1.14 Acceptance of Evaluation Methodology		
1.15 No Reimbursement for Costs		
1.16 Eligible Respondents		
<b>Section 2 – Requirements for Proposal</b>		
2.1 Respondent's Demonstrated Capability and Financial Resources to Perform the Work within the Time and Budget Projected		
2.2 Respondent's Project Organization Chart for this Project		
2.3 Respondent's Estimating and Cost Control Measures for this Project		
2.4 Respondent's Scheduling for this Project		
2.5 Respondent's Quality Control and Commissioning Program for this Project		
2.6 Respondent's Demonstrated Past Performance on Similar Projects		
2.7 Respondent's Warranty Program for this Project		
		<b>Section 3 – Format of Proposals</b>
	3.1	General Instructions
	3.2	Page Size, Binding, Dividers and Tabs
	3.3	Table of Contents
	3.4	Pagination
	3.5	Electronic Media
	3.6	Bonds and Insurance Instructions
	3.7	Bonds and Insurance Requirements
		<b>Section 4 – Specifications for the RFP</b>
	4.1	General
	4.2	Budget Specifications
	4.3	Scope of Work
	4.4	Anticipated Project Schedule
	4.5	Contractor Responsibility
	4.6	Basis of Compensation
		<b>Section 5 – Execution of Offer</b>
		<b>Section 6 – Felony Conviction Notification</b>
		<b>Appendices</b>
	Appendix A	Construction Manager at Risk Agreement and Exhibits

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**SECTION 1 – GENERAL INFORMATION & REQUIREMENTS**

- 1.1.1 **GENERAL INFORMATION:** Town of Pecos City (hereinafter “TOPC”, “Pecos”, “City” or “Owner”) is soliciting proposals (“Proposals”) for selection of a Construction Manager at Risk (“CMAR”) firm for the design and construction of eight new baseball fields, utilities, various buildings and associated site improvements (“Project”), in accordance with the terms, conditions, and requirements set forth in this Request for Proposals.
- 1.1.2 TOPC shall provide a base design and specifications which shall be expanded and modified to meet the needs of City. CMAR may need to secure other professional services to complete this work.
- 1.1.3 Each respondent shall submit its response to the Request for Proposals (“RFP”) in a sealed envelope. This RFP provides the information necessary to prepare and submit Proposals including fee proposals and general conditions prices. The TOPC will rank the Proposals in the order that they provide the “best value” for the TOPC based on the published selection criteria.
- 1.1.4 If Owner deems it necessary, a short list of the “most” qualified respondents will be requested to attend an interview with TOPC to confirm their Proposal and answer additional questions. Owner may choose to interview one, all, or none of the respondents, at its option. Owner will then rank the remaining “most” qualified respondents in order to identify a “best value”.
- 1.1.5 The ranking will result in a recommendation by the selection committee to the TOPC City Council (hereinafter “Council”) of the highest ranked respondent.
- 1.2 **DEFINITIONS AND SPECIAL CONCERNS:**
- 1.2.1 **Construction Manager at Risk:** A “Construction Manager at Risk” is a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for construction, rehabilitation, alteration, or repairs of a facility at the contracted price as a general contractor and provides consultation to TOPC regarding construction during and after the design of the facility.
- 1.2.2 **Trade Contractors and Subcontractors:** A Construction Manager at Risk shall publicly advertise and solicit either competitive bids or competitive sealed proposals from trade contractors or subcontractors for the performance of all major elements of the work that provides the best value for TOPC, other than the minor work that may be included in general conditions. The Construction Manager at Risk may seek to perform portions of the work itself if the Construction Manager at Risk submits its bid or proposal for those portions of the work in the same manner as all other trade contractors or subcontractors and if TOPC determines that the Construction Manager at Risk’s bid proposal provides the best value for Owner. Owner’s determination in such matters is final.

1.2.3 Receipt of Bids or Proposals: The selected Construction Manager at Risk and TOPC shall receive and open all trade contractor or subcontractor bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process. All bids and proposals shall be made public within seven (7) days after the date of final selection and contract award.

1.2.4 Acceptance of Recommendations for Trade Contractors and Subcontractors: If the Construction Manager at Risk reviews, evaluates, and recommends to TOPC a bid or proposal from a trade contractor or subcontractor, but TOPC requires a bid or proposal from another trade contractor or subcontractor to be accepted, then, pursuant to the terms of the Contract, TOPC shall compensate the Construction Manager at Risk by a change in price, time, or guaranteed maximum cost for any additional cost and risk, which has been demonstrated to TOPC's satisfaction and as required by the Contract, that the Construction Manager at Risk may incur because of the owner's requirement that another trade contractor or subcontractor bid or proposal be accepted.

1.3 OWNER'S OBJECTIVES: Owner desires the construction of eight new baseball fields, utilities, various buildings and associated site improvements. These facilities will be located on 70 acres off CR 118 in the southeast quadrant of Pecos, Texas.

Owner will engage a third-party Project Manager to serve as the Owner's Representative on this project and will work with the selected CMAR to develop detailed project plans and specifications for this project. Owner's steering committee for the Project will receive and evaluate RFPs, may interview a short list of highly qualified respondents, and recommend the best-qualified respondent to the TOPC City Council for selection and contract negotiation.

The Construction Cost Limit budget and duration for this project is as follows:

- Cost – \$15.0 million
- Duration: Design – 1 month, Soliciting Bids from Trades – 1 Month, Construction – 15 months

The successful respondent shall provide complete and functional systems, including all controls, connections, modifications, and other required material and labor while protecting all existing TOPC property.

The scope of work for these Projects will be priced and presented to the TOPC City Council for approval with the **Guaranteed Maximum Price** Proposal. The scope of work is further defined in Section 4.3 of this RFP.

1.4 PUBLIC INFORMATION: All information, documentation, and other materials submitted in response to this solicitation are considered non-confidential and/or non-proprietary and are subject to public disclosure under the Texas Public Information Act (*Texas Government Code*, Chapter 552.001, *et seq.*) after the solicitation is completed.

1.4.1 TOPC strictly complies with all statutes, court decisions, and opinions of the Texas Attorney General with respect to disclosure of RFP information.

1.5 TYPE OF CONTRACT: Any contract resulting from this solicitation will be in the form of TOPC's Standard Construction Management at Risk Agreement, a copy of which is attached to this RFP as Appendix A.

1.6 CLARIFICATIONS AND INTERPRETATIONS: Any clarifications or interpretations of this RFP that materially affect or change its requirements will be issued by Owner as an addendum. All such addenda issued by Owner before the Proposals are due are part of the RFP, and respondents shall acknowledge receipt of such and incorporate each addendum into its Proposal.

1.6.1 Respondents shall consider only those clarifications and interpretations that Owner issues by addenda two (2) days prior to the submittal deadline. Interpretations or clarifications in any other form, including oral statements, will not be binding on Owner and should not be relied on in preparing Proposals.

1.7 SUBMISSION OF PROPOSALS:

1.7.1 DEADLINE AND LOCATION: TOPC will receive Proposals until July 6, 2018, up to 2:00 PM local time at the TOPC City Secretary's. Proposals shall be addressed to:

Attn: Seth Sorensen, City Manager  
c/o Town of Pecos City  
110 E. 6th St.  
Pecos, Texas 79772

1.7.2 Non-Mandatory Pre-proposal Conference will be held June 27, 2018, at 10:00 AM local time at the Town of Pecos City, City Hall, at 110 E. 6<sup>th</sup> Street, Pecos, Texas. Attendance is **OPTIONAL**.

1.7.3 If Owner elects to interview any of the respondents, interviews will be held July 18, 2018. Respondents shall be prepared to interview during the date mentioned above; an Interview Structure will be posted with the Short List. Each respondent will have approximately one hour to present its Proposal and answer questions. The meeting will be a private meeting with the selection committee, Project Manager and respondent.

1.7.4 Submit one (1) original and five (5) complete copies of the entire Proposal with one (1) complete consolidated electronic copy of files in PDF format on a flash drive.

1.7.5 Late Proposals will be returned unopened to the respondent.

1.7.6 The Owner will not acknowledge or accept Proposals that are delivered by telephone, facsimile (fax), or electronic mail (e-mail).

1.7.7 Properly submitted Proposals will not be returned to respondents.

1.7.8 Proposal materials shall be enclosed in a sealed envelope (or box or other sealed container) addressed as noted above. The package shall clearly identify the RFP number, the submittal deadline, and the name and return address of the respondent.

1.7.9 Properly submitted Proposals will be opened publicly and the names of the respondents and their respective pricing quotes will be read aloud at 2:30 PM local time on July 6, 2018 at the TOPC City Council Chambers at City Hall.

1.8 POINT-OF-CONTACT:

Any questions or concerns regarding this Request for Proposals shall be directed to:

Seth Sorensen, City Manager  
110 E. 6th St.  
Pecos, Texas 79772  
Phone: 432.445.2421  
Email: ssorensen@pecostx.gov

With a copy to:

Holly Jarocki, Public Works Project Manager  
110 E. 6th St.  
Pecos, Texas 79772  
Email: hjarocki@pecostx.gov

TOPC specifically requests that respondents restrict all contact and questions regarding this RFP to the above-named individuals. Respondents are prohibited from directly or indirectly communicating with Pecos City Council members and are prohibited from contacting TOPC staff members regarding their qualifications or the award of a contract, unless in response to an inquiry from a staff or council member. Any violation will result in immediate disqualification of the respondent from the selection process.

1.9 **INQUIRIES AND INTREPERTATIONS:** Inquiries regarding this RFP must be in written form only and must be received by 5:00 PM local time on June 29, 2018. Inquiries must be emailed. All inquiries must include contact person, address and email address. Responses to inquiries will be posted online only. Inquiries must be submitted to the contacts identified in Section 1.8.

Responses to inquiries which materially interpret or change this RFP will be issued by addendum which can only be viewed at <http://www.ciplist.com>. From this home page select View Projects located in the header>Texas>Pecos. All addenda issued by TOPC prior to the Proposals submission deadline shall be considered part of the RFP, and respondents are required to consider and acknowledge receipt of each addendum in their Proposal.

1.10 **EVALUATION OF PROPOSAL:** The evaluation of the Proposals shall be based on the requirements as described in this RFP. All properly submitted Proposals will be reviewed, evaluated, and ranked by TOPC. The award will be based on a **Best Value Determination**. All competitive bids or proposals received shall be evaluated based on the best value for the City. Best value shall be determined by any relevant criteria specifically listed in the solicitation and by considering all or part of the criteria listed below:

- a. Bid price.
- b. Reputation of the bidder and of bidder's goods and services.
- c. The quality of the bidder's goods or services.
- d. The extent to which the goods or services meet the City's needs.

1.11 **No Ex-Parte Communications during Competitive Bidding Period.** To insure the proper and fair evaluation of a response, the City prohibits ex parte communication (e.g., unsolicited) initiated by the proposed contractor to a City official or employee evaluating or considering the responses prior to the time a formal decision has been made. Questions and other communication from vendors will be permissible until 5:00 pm on the day specified as the deadline for questions. Any communication between responder and the City after the deadline for questions will be initiated by the appropriate City official or employee to obtain information or clarification needed to develop a proper and accurate evaluation of the response. Ex parte communication may be grounds for disqualifying the offending responder from consideration or award of the solicitation then in evaluation, or any future solicitation.

1.12 SCHEDULE:

<u>Item:</u>	<u>On or Before:</u>
Issue RFP	June 20, 2018
Non-Mandatory Pre-Proposal Conference (Optional)	June 27, 2018
Written Inquiries must be received by	June 29, 2018
Responses to inquiries by	July 3, 2018
Proposals Due	July 6, 2018
Short List Firms Selected, if necessary	July 13, 2018
Interviews of Selected Firms, if necessary	July 18, 2018
Council Approval to Negotiate CMAR Contract	July 26, 2018
Negotiate and Finalize Contract	July 27-August 8, 2018
Council Approval of Contract	August 9, 2018

- 1.13 OWNER'S RESERVATION OF RIGHTS: TOPC may evaluate the Proposals based on the anticipated completion of all or any portion of the Project. Owner reserves the right to divide the Project into multiple parts, and to reject any and/or all Proposals and temporarily or permanently abandon the Project. Owner makes no representations, written or oral, that it will enter into any form of agreement with any respondent to this RFP for any project and no such representation is intended or should be construed by the issuance of this RFP.
- 1.14 LOCAL BUSINESS PARTICIPATION: It is the practice of TOPC to encourage local participation and to promote and encourage contracting and subcontracting opportunities for Locally Owned Businesses and labor in all contracts. Accordingly, the Construction Manager at Risk will be required to outline local participation plan and documentation thereof.
- 1.15 ACCEPTANCE OF EVALUATION METHODOLOGY: By submitting its Proposal in response to this RFP, respondent accepts the evaluation process and acknowledges and accepts that determination of the "best value" firm will require subjective judgments by Owner.
- 1.16 NO REIMBURSEMENT FOR COSTS: Respondent acknowledges and accepts that any costs incurred from the respondent's participation in this RFP shall be at the sole risk and responsibility of the respondent.
- 1.17 ELIGIBLE RESPONDENTS: Only individual firms or lawfully formed formal business organizations may submit a Proposal, unless the respondent expressly states in writing in the Proposal that, if awarded a contract, it will lawfully form a formal business organization in a timely manner so as not to delay the Project. Any informal associations will be disqualified. This does not preclude a respondent from engaging consultants by contract. TOPC will contract only with individual firms or formal organizations such as a) joint ventures, b) limited liability corporations, c) partnerships, or d) corporations authorized to do business in the State of Texas.

**SECTION 2 – REQUIREMENTS FOR PROPOSAL**

Respondents shall carefully read the information contained in the following criteria and submit a complete response to all questions in Section 2 formatted as directed in Section 3. Incomplete responses will be considered non-responsive.

The criteria for evaluation of Proposals will be based on the factors summarized below.

2.1	Respondent's Demonstrated Capability and Financial Resources to Perform the Work within the Time and Budget Projected	15%
2.2	Respondent's Project Organization Chart for this Project	3%
2.3	Respondent's Estimating and Cost Control Measures for this Project	18%
2.4	Respondent's Scheduling for this Project	16%
2.5	Respondent's Quality Control and Commissioning Program for this Project	10%
2.6	Respondent's Demonstrated Past Performance on Similar Projects	8%
2.7	Respondent's Warranty Program for this Project	6%
2.8	Respondent's Jobsite Safety Program for this Project	3%
2.9	Respondent's Pricing and Delivery Program	21%
Total		100%

2.1 **CRITERIA ONE: RESPONDENT'S DEMONSTRATED CAPABILITY AND FINANCIAL RESOURCES TO PERFORM THE WORK WITHIN THE TIME AND BUDGET PROJECTED**

- 2.1.1 Each respondent shall provide the legal name of the company and address of the office that would be providing the service.
- 2.1.2 Each respondent shall provide a copy of your company's financial statements for the past three (3) years.
- 2.1.3 Each respondent shall provide copies of Dun & Bradstreet reports, bank and supplier credit references, or other documentation sufficient to demonstrate its financial capability to deliver this project.
- 2.1.4 Is your company currently for sale or involved in any transaction to expand or to become acquired by another business entity? If yes, please explain the impact both in organizational and directional terms.
- 2.1.5 Provide any details of all past or pending litigation or claims filed against your company that would affect your company's performance under a contract with Owner.
- 2.1.6 Is your company currently in default on any loan agreement or financing agreement with any bank, financial institution, or other entity? If yes, specify date(s), details, circumstances, and prospects for resolution.
- 2.1.7 Does any relationship exist whether by family relative, business associate, financial agreement or any other relationship between your company and any TOPC employee? If yes, please explain.
- 2.1.8 A statement certifying that the respondent is not in arrears in payment of any obligations to TOPC or any other governmental entity, including, without limitation, property or sales taxes, fees, or utility charges.

2.2 CRITERIA TWO: RESPONDENT’S PROJECT ORGANIZATION CHART FOR THIS PROJECT.

2.2.1. Provide an organizational chart confirming in graphic form the proposed Project assignments, lines of authority and communication for each member involved in this Project.

2.3 CRITERIA THREE: RESPONDENT’S ESTIMATING AND COST CONTROL MEASURES FOR THIS PROJECT

2.3.1. Describe your project estimating system for developing the Guaranteed Maximum Price (“GMP”) Proposal and how you will monitor and track these costs during the procurement and payment process, including contingencies you will propose in the GMP, and how these contingencies will be managed through the completion of the Project.

2.4 CRITERIA FOUR: RESPONDENT’S SCHEDULING FOR THIS PROJECT

2.4.1 Provide a critical path method (“CPM”) milestone schedule for this Project including material and equipment ordering; staging; protection of TOPC property and operations; demolition; and construction and installation. Identify specific critical processes, phases, milestones, approvals, and procurements anticipated. How does this project compare to or improve the anticipated schedule provided in this RFP?

NOTE: If the schedule includes work after hours or during the weekends for critical services, reference this time in the schedule and account for any additional overtime fees in Section 2.9.

2.5 CRITERIA FIVE: RESPONDENT’S QUALITY CONTROL AND COMMISSIONING PROGRAM FOR THIS PROJECT

2.5.1 Describe how your quality control team will measure the quality of construction and commissioning performed by trade contractors on this Project, and how will you address non-conforming work.

2.6 CRITERIA SIX: RESPONDENT’S DEMONSTRATED PAST PERFORMANCE ON SIMILAR PROJECTS

2.6.1 Each respondent shall provide a list with a maximum of ten (10) projects for which your firm has provided or is providing Construction Manager at Risk services which are most related to TOPC and municipal government projects.

2.6.2 For each of the referenced projects, provide the following information: project name, project type, client(s) name, client type(s); construction cost (original GMP and final construction cost); original scheduled final completion date, actual or estimated final completion date; Owner’s contact person(s) and telephone number(s), and the name(s) and telephone number(s) of the project architect(s) and engineer(s).

2.6.3 List all previous experience and projects your firm has had with TOPC. Provide the experience or project dates, project delivery method utilized, and a brief description of the experience or project.

2.7 CRITERIA SEVEN: RESPONDENT’S WARRANTY PROGRAM FOR THIS PROJECT

2.7.1 Describe how you will measure the quality of service provided to the Owner for this Project and describe your warranty service support philosophy and warranty service implementation plan for this Project.

2.7.2 Provide reference letters from up to three (3) owner representatives for previous completed projects that describe your response to and performance on warranty services AFTER substantial completion.

2.8 CRITERIA EIGHT: RESPONDENT’S JOBSITE SAFETY PROGRAM FOR THIS PROJECT

2.8.1 Describe your jobsite specific safety program for this Project and specific safety policies in which employees must be in compliance, including how your safety program and policies have been implemented in the past on similar projects.

2.8.2 Identify any deaths that have occurred on a project site controlled by your firm, or any subcontractor(s) (at any contractual level), that had a death on your project site? If so, describe how you have revised your program.

2.9 CRITERIA NINE: REPENDENT’S PRICING AND DELIVERY PROPOSAL

2.9.1 Complete the following attached “Pricing and Delivery Proposal” form.

PRICING AND DELIVERY PROPOSAL

Proposal of: \_\_\_\_\_  
*(Respondent's Company Name)*

Project Name: Pecos Baseball Complex, RFP No.: PR18-001

Having carefully examined all the requirements of this RFP, the proposed form of Agreement with Uniform General Conditions, and any attachments to them, the undersigned proposes to furnish Construction Manager at Risk services as required for this Project on the following terms:

2.9.1 ESTABLISHMENT OF THE CONSTRUCTION COST LIMITATION: Owner has established a Construction Cost Limitation (CCL) amount of \$15,000,000.00 for the Baseball Complex which includes the Construction Services Guaranteed Maximum Price Proposal.

2.9.2 RESPONDENT'S PRE-CONSTRUCTION PHASE FEE: Using the CCL identified above, the Respondent shall identify a Pre-Construction Phase Fee, pursuant to the Construction Manager at Risk Agreement:

Respondent's Pre-Construction Phase Fee      \$ \_\_\_\_\_

2.9.3 RESPONDENT'S CONSTRUCTION PHASE FEE: Using the CCL identified above, the Respondent shall identify a Construction Phase Fee, pursuant to the Construction Manager at Risk Agreement:

Respondent's Construction Phase Fee      \$ \_\_\_\_\_

Respondent's Overtime Fee Rate      \$ \_\_\_\_\_

2.9.4 RESPONDENT'S NOT-TO-EXCEED GENERAL CONDITIONS COSTS: The Respondent shall identify a General Conditions not-to-exceed percentage and amount as defined by Article 13, Exhibits B of the Agreement and the Uniform General Conditions for each project.

Respondent's General Conditions Percentage      \_\_\_\_\_ %

Respondent's Estimated General Conditions Amount  
*(percentage times the CCL above)*      \$ \_\_\_\_\_

Respondent's General Conditions Over Time Rate      \$ \_\_\_\_\_

2.9.4.1 Using the not-to-exceed General Conditions costs identified above, the Respondent shall identify all project management, bonds, insurance, field office and office supply costs for the Project as listed below:

<u>Allowable General Condition Line Item Category</u>	<u>Estimated Total Cost</u>
On-Site Project Management Staff      subtotal	\$ _____
Over Time      subtotal	\$ _____
Bonds, Permits and Insurance      subtotal	\$ _____
Field Offices & Office Supplies      subtotal	\$ _____
Equipment Rental/Miscellaneous      subtotal	\$ _____

Estimated On-Site Project Management Staff and Rates

<u>Position</u>	<u>Quantity</u>	<u>Months</u>	<u>Monthly Salary Rate and Over Time Rate</u>
Project Executive	_____	_____	\$ _____
Project Manager	_____	_____	\$ _____
Superintendent(s)	_____	_____	\$ _____
Assistant Superintendent(s)	_____	_____	\$ _____
Project Engineer/Expeditor(s)	_____	_____	\$ _____
Field/Office Engineer(s)	_____	_____	\$ _____
Field Office Support Staff	_____	_____	\$ _____
CPM Scheduler	_____	_____	\$ _____
Safety Coordinator/Assistant(s)	_____	_____	\$ _____

2.9.5 ADDENDA: Receipt is hereby acknowledged of the following addenda to this RFP (initial if applicable).

No. 1 \_\_\_\_\_ No. 2 \_\_\_\_\_ No. 3 \_\_\_\_\_ No. 4 \_\_\_\_\_ No. 5 \_\_\_\_\_ No. 6 \_\_\_\_\_

2.9.6 AWARD OF CONTRACT AND COMMENCEMENT OF SERVICES: The undersigned agrees to execute the Contract after notification that the Respondent has been identified by TOPC as the Respondent with the “best value” Proposal, and to commence services on or before the commencement date stated by TOPC in a Notice to Proceed. Owner reserves the right to accept or reject all Proposals and to waive proposal irregularities. Proposals shall be valid and not withdrawn for a period of ninety (90) days from the date of opening thereof.

2.9.7 Respectfully Submitted and Certified By:

\_\_\_\_\_  
(Respondent's Printed Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Date)

## **SECTION 3 – FORMAT OF PROPOSALS**

### **3.1 GENERAL INSTRUCTIONS:**

- 3.1.1 Proposals shall be prepared **SIMPLY AND ECONOMICALLY**, providing a straightforward, **CONCISE** description of the respondent's ability to meet the requirements of this RFP. Emphasis shall be on the quality, completeness, clarity of content, responsiveness to the requirements, and an understanding of City's needs.
- 3.1.2 Proposals shall be a **MAXIMUM OF THIRTY-FIVE (35) PRINTED PAGES**. The cover, table of contents, divider sheets, Pricing and Delivery Proposal, Execution of Offer, and Felony Conviction Notification do not count as printed pages.
- 3.1.3 Respondents shall carefully read the information contained in this RFP and submit a complete response to all requirements and questions as directed. Incomplete Proposals will be considered non-responsive and subject to rejection.
- 3.1.4 Proposals and any other information submitted by respondents in response to this RFP shall become the property of City.
- 3.1.5 Proposals that are qualified with conditional clauses, alterations, items not called for in the RFP documents, or irregularities of any kind are subject to rejection by TOPC, at its option.
- 3.1.6 The TOPC makes no representations of any kind that an award will be made as a result of this RFP. TOPC reserves the right to accept or reject any or all Proposals, waive any formalities or minor technical inconsistencies, or delete any item/requirements from this RFP when deemed to be in Owner's best interest.
- 3.1.7 Respondent's Proposal shall include a cover, table of contents, divider sheets, and responses to each of the criteria identified in Section 2 of the RFP. Proposals shall consist of answers to questions identified in Section 2 of the RFP. It is not necessary to repeat the question in the Proposals; however, it is essential to reference the question number with the corresponding answer.
- 3.1.8 Each respondent must complete, sign and return the attached Section 5, Execution of Offer, as part of its Proposal. The Execution of Offer must be signed by an officer of the respondent's company authorized to bind the respondent to the statements and representations in the Proposal. Failure to sign and return this form will subject a respondent's Proposal to disqualification.
- 3.1.9 Respondents wishing to submit a "No-Response" are requested to return the first page of the Execution of Offer (ref. Section 5). The returned form should indicate the respondent's name and include the words "No-Response" in the right-hand column.
- 3.1.10 Each respondent must complete, sign and return the attached Section 6, Felony Conviction Notification, as part of its Proposal. The Felony Conviction Notification must be signed by an officer of the respondent's company authorized to bind the respondent to the statements and representations in the Proposal. Failure to sign and return this form will subject a respondent's Proposal to disqualification.

3.1.11 Failure to comply with all requirements contained in this Request for Proposals may result in the rejection of the Proposals.

3.2 PAGE SIZE, BINDING, DIVIDERS AND TABS:

3.2.1 Proposals shall be printed on letter-size (8-1/2" x 11") paper and assembled with spiral-type bindings or staples. 11" x 17" paper may be used, if it is folded and bound into the 8 1/2" x 11" Proposal. DO NOT USE METAL-RING HARD COVER BINDERS.

3.2.2 Additional attachments shall NOT be included with the Proposals. Only the responses provided by the Respondent to the questions identified in Section 2 of this RFP will be used by TOPC for evaluation.

3.2.3 Separate and identify each criteria response to Section 2 of this RFP by use of a divider sheet with an integral tab for ready reference. The last tab should contain a completed and executed copy of the Execution of Offer Letter, a completed and executed copy of the Felony Conviction Notification as well as certifications from the firm's insurance and bonding agents.

3.3 TABLE OF CONTENTS:

3.3.1 Submittals shall include a "Table of Contents" and give page numbers for each part the Proposal.

3.4 PAGINATION:

3.4.1 Number all pages of the submittal sequentially using Arabic numerals (1, 2, 3, etc.) or by section (1-1, 1-2, etc.).

3.5 ELECTRONIC MEDIA:

3.5.1 One electronic media copy of the presentation in Adobe PDF format in either a flash drive or CD form shall be submitted.

3.6 BONDS AND INSURANCE INSTRUCTIONS:

3.6.1 Attach a letter of intent from a bonding agent indicating the respondent's bond ability for the projects.

3.6.2 Attach a sample certificate of insurance or a letter of intent from an insurance company indicating the insurability of the respondent for the described projects.

3.6.3 The surety and insurance companies shall each acknowledge that the firm may be covered for construction of the Baseball Complex with a potential maximum construction cost of \$15,000,000.00.

3.7 BONDS AND INSURANCE REQUIREMENTS:

3.7.1 The Contractor shall procure and maintain the following types of insurance coverage in at least the following amounts (unless the contract specifies different coverage or amounts).

Workers' Compensation:	Statutory
Comprehensive General Liability:	\$1,000,000.00 each occurrence \$1,000,000.00 in the aggregate
Comprehensive Automobile Liability:	(Any auto, hired auto, non-owned auto)
a) Bodily Injury:	\$1,000,000.00 each person \$1,000,000.00 each occurrence
b) Property Damage:	\$1,000,000.00 each occurrence
Owner's and Contractor's Protective:	\$1,000,000.00
Builder's Risk:	Full value of construction costs
General Liability Umbrella Policy:	\$5,000,000.00 each occurrence

3.7.2 The Contractor must meet the following requirements:

Each policy of insurance shall be issued by one or more insurance companies each of which must have an A.M. Best Company financial and performance rating of A-V or better and be qualified and authorized by the laws of the State of Texas to assume the risk covered by such policy.

3.7.3 Contractor shall deliver to TOPC:

3.7.3.1 Certificates evidencing the existence of all required insurance promptly after the execution and delivery of the contract; and

3.7.3.2 Replacement certificates at least thirty (30) days prior to the expiration of any required insurance. If the Contractor fails to pay any of the premiums for the insurance, TOPC shall have the right to make the payments and set off the amount thereof against payments owed to the Contractor; and

3.7.3.3 The insurance certificates must name Owner as an Additional Insured, with the exception of Workers' Compensation, and must provide that the policies will not be canceled until after thirty (30) days' unconditional, unqualified written notice to Owner, giving Owner the right to pay the Premium to maintain coverage; and

3.7.3.4 The insurance certificates must contain a Waiver of Subrogation in favor of the Owner and an additional insured endorsement for General Liability; and

3.7.3.5 The required insurance policies required in this RFP shall be kept in full force and effect for the periods specified below:

3.7.3.5.1 General Liability Insurance, Auto Liability, Builder's Risk, and Owner's and Contractor's Protective shall be kept in force until receipt of final payment by the Contractor; and

3.7.3.5.2 Workers' Compensation Insurance shall be kept in force until the Contractor's obligations have been fully performed, and accepted by Owner in writing; and

- 3.7.3.6 The Contractor shall provide Owner a full and complete copy of any insurance policy promptly upon request by Owner, and without charge to Owner.
- 3.7.4 The Contractor shall meet the following bonding requirements:
  - 3.7.4.1 The Contractor shall provide evidence satisfactory to Owner of bonding capacity in the total estimated maximum amount of the CMAR Contract in the Proposal.
  - 3.7.4.2 The Contractor shall provide a bid bond in the amount of \$5,000 to Owner submitted with the Proposal.
  - 3.7.4.3 The Contractor shall deliver payment and performance bonds to Owner within ten (10) days of execution of the Contractor's Guaranteed Maximum Price proposal ("GMP"). The bonds will be in accordance with the provisions of Chapter 2253, Texas Government Code. The bonds shall be in the amount equal to the value the construction. The bonds shall be executed by a corporate surety or sureties authorized to do business in the State of Texas and acceptable to the Owner. The surety or sureties must have a rating of B+ or higher as registered with the A.M. Best Company Bond Rating Service. If any bond is for more than ten (10) percent of the surety's capital and surplus, the Owner may require certification that the company has reinsured the excess portion with one or more reinsurers authorized, accredited, or trusted to do business in the State. A reinsurer may not reinsure for more than ten (10) percent of its capital and surplus. If a surety upon a bond loses its authority to do business in the State, the Contractor shall within thirty (30) days after such loss furnish a replacement bond at no added cost to the Owner.
  - 3.7.4.4 Each bond shall be accompanied by a valid Power-of-Authority (issued by the surety company and attached, signed and sealed with the corporate embossed seal, to the bond) authorizing the attorney in fact who signs the bond to commit the company to the terms of the bond, and stating any limit in the amount for which the attorney can issue a single bond. Each bond with a penal sum in excess of \$100,000 shall be executed by a corporate surety or sureties listed on the then-current version of U.S. Treasury Department circular 570 and which hold a certificate of authority from the U.S. Secretary of the Treasury as a surety, or obtain reinsurance from a reinsurer authorized as a reinsurer in Texas and which is listed on the then-current U.S. Treasury Department circular 570 and holds a certificate of authority from the U.S. Secretary of the Treasury as a surety or reinsurer.

**SECTION 4 – SPECIFICATIONS FOR THE RFP**

- 4.1 **GENERAL**: TOPC requests Proposals from qualified and experienced firms for the Pecos Baseball Complex meeting the following minimum specifications stated in this Section.
- 4.2 **BUDGET SPECIFICATIONS**: TOPC’s Construction Cost Limitations (“CCL”) for the Baseball Complex is not to exceed \$15.0 million.
- 4.3 **SCOPE OF WORK**:

- 4.3.1 Included in the scope of work requirements are the following phases:
  - 4.3.1.1 Pre-Construction (including, but not limited to design, project scheduling utilizing Critical Path Method scheduling software and detailed estimating services for each phase of design and any value engineering efforts initiated)
  - 4.3.1.2 GMP including presentations to TOPC
  - 4.3.1.3 Bidding/Negotiation/Award of Sub Contracts
  - 4.3.1.4 Permitting, as required
  - 4.3.1.5 Construction Administration/Management
  - 4.3.1.6 Project Closeout/Commissioning
  - 4.3.1.7 Warranty Review

- 4.3.2 The construction scope of work will generally be:
  - 4.3.2.1 All necessary onsite and offsite utilities
  - 4.3.2.2 All civil, structural, architectural, mechanical, electrical, plumbing, IT/AV/Security and landscaping construction required by the plans and specifications
  - 4.3.2.3 Compliance with all codes, rules and regulations as required by the City of Pecos and all Authorities Having Jurisdiction

The Contractor shall provide complete and functional systems, including all controls, connections, and other required material and labor while protecting all affected TOPC property.

- 4.4 **ANTICIPATED PROJECT SCHEDULE**: TOPC’s milestone events for the Projects are as follows:

<u>Milestone</u>	<u>On or Before</u>
CMAR Kick-off Meeting	August 24, 2018
Council Approval of GMP/ Notice to Proceed	October 26, 2018
Mobilization of CMAR	November 12, 2018
Substantial Completion	January 10, 2020
Final Completion	February 7, 2020
Final Closeout	March 6, 2020

- 4.4.1 **CONTRACTOR RESPONSIBILITY**: The Contractor will have the primary responsibility for construction to maintain a staff of properly trained and experienced personnel to ensure satisfactory performance under this Contract;
- 4.4.2 Assign to City a designated single point of contact representative who will be responsible for the coordination and administration of City's main requirements;

- 4.4.3 The Contractor will submit all design elements for permitting to the City before commencing construction; City shall waive all related fees;
  - 4.4.4 The Contractor will submit all necessary submittals to TOPC on the selection and approval of materials, equipment, and component systems used on the project;
  - 4.4.5 Attend meetings with TOPC representatives as required throughout the project;
  - 4.4.6 Provide information and recommendations on building systems, equipment, and construction feasibility; selection and availability of materials and labor; and time requirements for installation and construction;
  - 4.4.7 Implement and maintain a critical path method schedule (“CPM”) schedule, which coordinates and integrates activities, including the construction services, subcontractors and suppliers and Pecos City Council meetings for required approvals;
  - 4.4.8 Provide construction management, administration, quality control, safety and supervision during construction of the project;
  - 4.4.9 Provide all commissioning and Test and Balance reports for all systems;
  - 4.4.10 The Contractor shall supply a signed and sealed set of as-built construction documents in both printed and electronic form for the described projects to Owner at the conclusion of construction; and
  - 4.4.11 The Contractor shall supply product/equipment Operation and Maintenance Manuals for the described project to TOPC at the conclusion of construction.
- 4.5 BASIS OF COMPENSATION: The Contractor will be required to provide a Guaranteed Maximum Price (“GMP”) proposal as a part of its scope of services. Specifically included in this GMP will be the following:
- 4.5.1 All required permitting from federal, state, county, local and any other applicable governing jurisdictions;
  - 4.5.2 General conditions, overhead expenses and profit;
  - 4.5.3 Construction sub-trade packages;
  - 4.5.4 Construction inspection, quality control and quality assurance;
  - 4.5.5 Construction contingencies / allowances;
  - 4.5.6 Complete field “as-built” documentation and final electronic “record” drawings; and
  - 4.5.7 Start-up, commissioning and testing including Test and Balance, and staff training in the use of all systems.

**SECTION 5 – EXECUTION OF OFFER Town of Pecos City**

**THIS SHEET MUST BE COMPLETED, SIGNED, AND RETURNED WITH RESPONDENT'S PROPOSAL. FAILURE TO SIGN AND RETURN THIS SHEET WILL RESULT IN THE REJECTION OF YOUR PROPOSAL.**

1. By signature hereon, the respondent offers and agrees to furnish the products and/or services at the prices quoted and comply with all terms, conditions, requirements set forth per the RFP documents and contained herein.
2. By signature hereon, the respondent affirms that he has not given, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant or TOPC representative in connection with the submitted Proposal. Failure to sign hereon, or signing with a false statement, shall void the submitted Proposal or any resulting contracts, and the respondent shall be removed from all vendor lists of TOPC.
3. By signature hereon, a corporate respondent certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171, Texas Tax Code, or that the corporation is exempt from the payment of such taxes, or that the corporation is an out-of-state corporation that is not subject to the Texas Franchise Tax, whichever is applicable. A false certification shall be deemed a material breach of contract and, at Owner's option, may result in cancellation of any resulting contract or purchase order.
4. By signature hereon, the respondent hereby certifies that neither the respondent nor the firm, corporation, partnership or institution represented by the respondent, or anyone acting for such firm, corporation, or institution has violated the antitrust laws of this state, codified in Section 15.01, et. seq., Texas Business and Commerce Code, or the Federal antitrust laws, nor communicated the contents of the Proposal directly or indirectly to any competitor or any other person engaged in such line of business.
5. By signature hereon, the respondent certifies that all statements and information prepared and submitted in response to this solicitation are current, complete and accurate.
6. By signature hereon, the respondent certifies that the individual signing this document and the documents made part of the RFP is authorized to sign such documents on behalf of the company and to bind the company under any contract that may result from the submission of this Proposal.
7. By signature hereon, the respondent certifies as follows:

“Under Section 231.006, Texas Family Code, the respondent certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.”

“Under Section 2155.004, Texas Government Code, the respondent certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.”

“Under Section 2254.004, *Texas Government Code*, the respondent certifies that each individual or business entity which is an engineer or architect proposed by respondent as a member of its team was selected based on demonstrated competence and qualifications only.”

8. By signature hereon, the respondent certifies that no relationship, whether by relative, business associate, capital funding agreement or by any other such kinship exist between the respondent and an employee of TOPC, or the respondent has not been an employee of TOPC within the immediate twelve (12) months prior to your RFP response. All such disclosures will be subject to administrative review and approval prior to Owner entering into any contract with the respondent.
9. By signature hereon, the respondent affirms that no compensation has been received for participation in the preparation of the specifications for this RFP. (Ref. Section 3.102, Article 601b, V.T.C.S.)
10. The respondent represents and warrants that all articles and services quoted in response to this RFP will meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Law (Public Law 91-596) and its regulations in effect or proposed as of the date of this RFP.
11. By signature hereon, the respondent signifies its compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action.
12. The respondent acknowledges the following addendum:  
Addenda \_\_\_\_\_ through \_\_\_\_\_

Complete the following:

FEI No: \_\_\_\_\_ Charter No: \_\_\_\_\_

If Sole Owner: \_\_\_\_\_ If a Corporation: \_\_\_\_\_  
SS No: \_\_\_\_\_ State of Incorporation: \_\_\_\_\_

Submitted By:

---

(Company Name)

---

(Authorized Signature)

---

(Date)

---

(Printed Name)

---

(Printed Title)

---

Address) \_\_\_\_\_ (Street

---

(County, State, Zip Code)

---

(Telephone Number)

**SECTION 6 – FELONY CONVICTION NOTIFICATION**

**FELONY CONVICTION NOTICE**

*This Notice is Not Required of a Publicly-Held Corporation.*

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I, the undersigned agent for the firm named below, certify that the information concerning notification of felony convictions has been reviewed by me and the following information furnished is true to the best of my knowledge.

Vendor's Name (Printed):

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Authorized Company Official's Name (Printed):

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**\*\*\*\*Sign Only A, B, or C\*\*\*\***

A. My firm is a publicly held corporation; therefore, this reporting requirement is not applicable.

**Signature of Company Official:**

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B. My firm is not owned or operated by anyone who has been convicted of a felony.

**Signature of Company Official:**

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C. My firm is owned or operated by the following individual(s) who has/have been convicted of a felony:

Name of felon(s): \_\_\_\_\_

Details of Conviction(s): \_\_\_\_\_

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**Signature of Company Official:**

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## Non-Collusion Certification

The undersigned affirms that he or she is duly authorized to execute this questionnaire, that this company, corporation, firm, partnership or individual has not prepared this statement of qualifications in collusion with any other person, firm or entity making or considering submitting a statement of qualifications to TOPC for this project, and that contents of this submittal as to terms or conditions of said submittal have not been communicated by the undersigned nor by any employee or agent to any other person engaged in this type of business prior to the official opening of this submittal.

The undersigned further affirms that he or she has had no conversations, correspondence or communication with any TOPC employees or City Council Members regarding this project since the issuance of this RFQ, save and except authorized communication with the Town of Pecos City City Manager

The foregoing is true and correct. Owner, or any authorized representative of (owner), is authorized by the undersigned to contact any firm, institution, or person listed above to obtain relevant information.

Firm: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Phone No: \_\_\_\_\_

Fax No: \_\_\_\_\_

Signature: \_\_\_\_\_

Typed Name: \_\_\_\_\_

Date: \_\_\_\_\_

# CONFLICT OF INTEREST QUESTIONNAIRE

CONFLICT OF INTEREST QUESTIONNAIRE		FORM CIQ
For vendor or other person doing business with local governmental entity		
<p>This questionnaire reflects changes made to the law by H.B. 1481, 80th Leg., Regular Session.</p> <p>This questionnaire is being filed in accordance with Chapter 176, Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person meets requirements under Section 176.006(a).</p> <p>By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.</p> <p>A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.</p>	<b>OFFICE USE ONLY</b> Date Received	
1	Name of person who has a business relationship with local governmental entity.	
2	<input type="checkbox"/> Check this box if you are filing an update to a previously filed questionnaire.  (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)	
3	Name of local government officer with whom filer has employment or business relationship.  _____ Name of Officer  This section (Item 3 including subparts A, B, C & D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.  A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire?  <input type="checkbox"/> Yes <input type="checkbox"/> No  B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?  <input type="checkbox"/> Yes <input type="checkbox"/> No  C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?  <input type="checkbox"/> Yes <input type="checkbox"/> No  D. Describe each employment or business relationship with the local government officer named in this section.	
4	_____ Signature of person doing business with the governmental entity      _____ Date	

**AGREEMENT**  
BETWEEN THE TOWN OF PECOS CITY, TEXAS AND CONTRACTOR  
FOR THE  
**PECOS BASEBALL COMPLEX**

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**SAMPLE CONTRACT**

(List exceptions taken, if any, to the TOPC's proposed contract language.)

This Agreement is made as of \_\_\_\_\_, 20\_\_ (the "Effective Date"), by and between  
The Owner: Town of Pecos City, Texas (herein "TOPC" or "Owner"), and Construction Manager at Risk:  
\_\_\_\_\_ for construction of the Pecos Baseball Complex, located in Reeves County  
Texas, (the "Project").

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

**AGREEMENT**  
BETWEEN THE TOWN OF PECOS CITY, TEXAS AND CONTRACTOR  
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**Article 1**  
**SCOPE OF WORK**

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

**Article 2**  
**CONTRACT DOCUMENTS**

2.1 The Contract Documents consist of:

- This Agreement and all Exhibits attached hereto;
- All Addenda issued prior to the Effective Date of this Agreement, and any supplements or modifications to this Agreement to which the parties may agree in writing subsequent to the date hereof;
- All Change Orders issued after the Effective Date of this Agreement;
- The Schedules, developed by the Construction Manager at Risk and accepted by Owner;
- The Drawings, Specifications and other documents developed or prepared by Owner's independent consultants ("Drawings and Specifications"), if any;
- The Guaranteed Maximum Price Proposal when accepted by the Owner and executed by Owner and Construction Manager at Risk.

2.2 The Contract Documents form the entire and integrated Contract between Owner and Construction Manager at Risk and supersede all prior negotiations, representations or agreements, written or oral, prior to the date of this Agreement.

2.3 The term "Construction Manager at Risk" shall be interchangeable with the terms "Construction Manager", "Contractor" and "General Contractor" or other similar terms as appropriate in the Contract Documents.

**Article 3**  
**DEFINITIONS**

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

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

3.2 "Construction Contingency Allowance" means an amount allocated by and controlled by the Construction Manager which is included as a line item within the GMP and is further described in Section 13.8.

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

3.4 "Construction Documents"

**AGREEMENT**  
BETWEEN THE TOWN OF PECOS CITY, TEXAS AND CONTRACTOR  
FOR THE  
**PECOS BASEBALL COMPLEX**

---

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

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

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

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

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

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

3.10 “General Conditions”

3.10.1 “Uniform General Conditions” means the additional contract provisions as provided in 3.22 below. Where the Uniform General Conditions differ from the contract, the more stringent provisions govern unless otherwise determined by the Owner.

3.10.2 “Construction Manager at Risk’s General Conditions” are Contractor’s allowable costs for

managing the construction in the field.

3.11 “Monthly Salary Rate” means the amount agreed to by the Owner that can be used on Applications for Payment throughout the Construction Phase to account for the services of Construction Manager’s salaried personnel assigned to the Project. A Monthly Salary Rate must be established for each salaried person and must be approved in writing by the Owner in advance of any Application for Payment for that person. The Monthly Salary Rate is for convenience only and any payments made for Construction Manager’s personnel are subject to audit to determine the actual cost of the wages and allowable employer contributions incurred by the Construction Manager for services performed for the Project.

3.12 “Owner”, “TOPC” means the Town of Pecos City.

3.13 “Owner’s Designated Representative” or “ODR” shall have the meaning set forth in Section 8.2 herein.

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

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

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

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

3.18 “Schedule of Values” shall mean a detailed

**AGREEMENT**  
BETWEEN THE TOWN OF PECOS CITY, TEXAS AND CONTRACTOR  
FOR THE  
**PECOS BASEBALL COMPLEX**

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

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

3.20 “Substantial Completion” of the Work or “Substantially Complete” means that point in which the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents to enable the Owner to use the Project or the agreed, defined portion of the Project, for its intended use, and

(i) only minor punch list items or similar minor corrective work remains to be completed; and (ii) a temporary (or partial) certificate of use and occupancy (if issued and required by local governmental authorities) and any other permits or approvals necessary to allow use and occupancy of the Project or the agreed, defined portion thereof, have been issued; and (iii) the Program Manager has certified that the Project or the agreed, defined portion thereof, is substantially complete. This date shall be confirmed by a Certificate of Substantial Completion signed by the Owner and Construction Manager.

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

3.22 “Uniform General Conditions” means the 2007 AIA A-201 General Conditions

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

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

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

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

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

**4.1 GENERAL RESPONSIBILITIES**

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

**AGREEMENT**  
BETWEEN THE TOWN OF PECOS CITY, TEXAS AND CONTRACTOR  
FOR THE  
**PECOS BASEBALL COMPLEX**

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and abilities, in at least a good and workmanlike manner.

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

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

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

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

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

4.1.7 Construction Manager shall identify to the Owner the employees and other personnel that it will assign to the Project and provide the Monthly Salary Rate for each of them.

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

**4.2 GENERAL COORDINATION**

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

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

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

**AGREEMENT**  
**BETWEEN THE TOWN OF PECOS CITY, TEXAS AND CONTRACTOR**  
**FOR THE**  
**PECOS BASEBALL COMPLEX**

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

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

**4.3 CONSTRUCTABILITY PROGRAM**

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

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

4.3.3 Construction Manager shall utilize a web-based project administrative system to implement a system for tracking questions, resolutions, decisions, directions and other information matters that arise during the development of the Drawings and Specifications for the Project. The decision tracking system shall be in a format approved in writing by the

Owner and updated at least monthly during the Pre-Construction Phase.

**4.4 SCHEDULING**

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

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

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

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

4.4.2.3 Required activity sequences and durations;

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

4.4.2.5 Processing of shop drawings and samples.

4.4.3 The CPM Schedule shall include other detailed schedule activities as directed by the Owner including, but not limited to, Owner-managed work

**AGREEMENT**  
**BETWEEN THE TOWN OF PECOS CITY, TEXAS AND CONTRACTOR**  
**FOR THE**  
**PECOS BASEBALL COMPLEX**

---

under separate contracts such as project security and property protection.

**4.5 CONSTRUCTION COST ESTIMATES**

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

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

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

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

negotiate hereunder.

**4.6 COORDINATION OF CONSTRUCTION DOCUMENTS**

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

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

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

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

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

**4.7 CONSTRUCTION PLANNING AND BID PACKAGE STRATEGY**

4.7.1 Construction Manager shall identify equipment or material requiring extended delivery times and advise Owner on expedited procurement of those items; advise the Project Team on the preparation of performance specifications and requests for technical proposals for the procurement and installation of systems and components and for the

**AGREEMENT**  
BETWEEN THE TOWN OF PECOS CITY, TEXAS AND CONTRACTOR  
FOR THE  
**PECOS BASEBALL COMPLEX**

---

procurement of long lead items. If requested by Owner, and subject to Owner's prior written approval, Construction Manager shall issue requests for technical proposals to qualified sources and receive proposals and assist in their evaluation.

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

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

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

4.7.5 Construction Manager shall assist the Owner, Owner's other consultants, and the Owner's separate contractors in obtaining all applicable risk management, code, and

regulatory agency reviews and approvals for the Project including, without limitation, City of Pecos, the Texas Department of Licensing and Regulation, Texas Commission on Jail Standards, the State Fire Marshal, the local fire department, and the Owner's insurance provider.

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

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

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

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

4.8 OBTAINING BIDS/PROPOSALS

**AGREEMENT**  
**BETWEEN THE TOWN OF PECOS CITY, TEXAS AND CONTRACTOR**  
**FOR THE**  
**PECOS BASEBALL COMPLEX**

---

FOR                      THE WORK

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

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

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

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

4.8.5 If Construction Manager reviews, evaluates, and recommends to Owner a bid/proposal from a reputable trade contractor or subcontractor, but Owner requires another bid/proposal to be accepted, Owner shall compensate Construction Manager by a change in price, time, or Guaranteed Maximum Price for any additional cost and risk that Construction Manager incurs because of Owner's requirement that the other bid/proposal be accepted. Construction Manager may seek to self-perform portions of the Work identified for self-performance in the bid/proposal strategy. The Construction Manager must submit a bid/proposal for the self-performance work in the same manner as all other trade contractors or Subcontractors. A minimum of 3 other bids must be obtained on potential self-perform packages. The Owner will determine whether the Construction Manager's bid/proposal provides the best value for Owner, which determination is final. Construction Manager must perform approved self-performance work in accordance with the same terms and conditions as its other Subcontractors. For payment purposes, the Construction Manager shall account for self-performance work in the same manner as it does all other subcontract costs.

4.8.6 Construction Manager shall identify every Subcontractor it intends to use on the Project, including Subcontractors used for self-performed work, to the Owner in writing at least ten (10) days before entering into any subcontract. Construction Manager shall not use any Subcontractor to which Owner has a reasonable objection. Further, Construction Manager shall disclose to the Owner any ownership interest or affiliation between the Construction Manager and any Subcontractor prior to entering into a subcontract, and Owner shall have the right, in its sole discretion, to reject any such Subcontractor. Construction Manager shall not be required to subcontract with any Subcontractor to which it has reasonable objection. Following Owner

**AGREEMENT**  
BETWEEN THE TOWN OF PECOS CITY, TEXAS AND CONTRACTOR  
FOR THE  
**PECOS BASEBALL COMPLEX**

---

acceptance of a Subcontractor, that Subcontractor shall not be changed without Owner's written consent, which shall not be unreasonably withheld.

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

**4.9 SAFETY**

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

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

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

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

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

5.3 The GMP Proposal must include a written statement describing how it was derived and prepared. At a minimum, the GMP Proposal must specifically identify the Drawings,

**AGREEMENT**  
BETWEEN THE TOWN OF PECOS CITY, TEXAS AND CONTRACTOR  
FOR THE  
**PECOS BASEBALL COMPLEX**

---

Specifications and other construction documents relied on, the addenda incorporated, any exceptions to the Owner's Uniform General Conditions or to the terms of this Agreement, the allowances, and all clarifications and assumptions made by the Construction Manager at Risk.

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

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

5.6 The GMP Proposal and the GMP Contract Documents are intended to address all items, assumptions, costs, contingencies, schedules and other matters necessary and relevant for proper execution and completion of the Work for the Guaranteed Maximum Price. The Construction Manager at Risk shall provide a fully functional and operational facility as intended in the GMP. The

GMP Proposal and the GMP Contract Documents are complementary and what is required by one shall be binding as if required by all. If there is an irreconcilable conflict between or among the various documents that make up the GMP Proposal and the GMP Contract Documents, the interpretation that provides for the higher quality of material and/or workmanship shall prevail over all other interpretations.

5.7 The GMP Proposal shall adopt and incorporate all of the terms and conditions of this Agreement and all other documents that comprise the Contract between the Owner and the Construction Manager at Risk. Any exceptions to or modifications of such terms and conditions proposed by the Construction Manager at Risk in the GMP Proposal shall not be effective unless they are expressly stated and conspicuously identified in the GMP Proposal and are specifically accepted and approved by the Owner.

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

5.9 All contingencies are to be used as mutually agreed upon between the Owner and Construction Manager at Risk. The Construction Manager at Risk shall notify the Owner in writing prior to expending any contingency monies with an explanation as to why use of such funds is warranted.

5.10 As the Cost of Work buyout progresses for those Construction Contingency Allowance items specifically identified in the GMP Proposal, the Construction Contingency

**AGREEMENT**  
BETWEEN THE TOWN OF PECOS CITY, TEXAS AND CONTRACTOR  
FOR THE  
**PECOS BASEBALL COMPLEX**

---

Allowance amount shall be reduced by mutual agreement of Owner and Construction Manager at Risk with the deductions returned to the Owner as savings. Any Contingency remaining at the end of the Project shall be returned to the Owner by deductive Change Order.

5.11 Prior to utilization of any Contingency and subject to the Owner's approval, the Construction Manager at Risk shall provide complete documentation, to the Owner's satisfaction, describing in detail the scope of work affected and the associated costs.

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

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

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

6.3 Construction Manager shall attend Owner's regularly scheduled Project progress meetings and fully advise the Project Team of the Project status including schedule, costs, quality and changes. Prior to each meeting, the Construction Manager shall

provide the Owner written agenda items for the meeting. Construction Manager shall record and distribute the minutes of each meeting to each Project Team member. The minutes shall identify critical activities that require action and the dates by which each activity must be completed.

6.4 Unless otherwise provided for in the Contract, Construction Manager at Risk shall provide or cause to be provided, and shall pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation and other facilities and services necessary or reasonably inferable for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated into the Work.

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

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

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

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

**AGREEMENT**  
BETWEEN THE TOWN OF PECOS CITY, TEXAS AND CONTRACTOR  
FOR THE  
**PECOS BASEBALL COMPLEX**

---

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

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

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

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

**Article 7**

**INTENTIONALLY OMITTED**

**Article 8**

**OWNER'S RESPONSIBILITIES**

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

Project Documents.

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

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

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

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

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

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

**AGREEMENT**  
BETWEEN THE TOWN OF PECOS CITY, TEXAS AND CONTRACTOR  
FOR THE  
**PECOS BASEBALL COMPLEX**

---

provided by Construction Manager at Risk, and for constructing the Project in strict accordance with the Contract

**Article 9**  
**INTENTIONALLY OMITTED**

**Article 10**  
**TIME**

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

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

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

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

10.3.2 Schedule changes (if any).

10.3.3 Schedule update – progress accomplished thus far.

10.3.4 Next month activities and milestones.

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

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

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

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

**Article 11**  
**PAYMENTS**

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

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

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

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

11.5 The Construction Manager at Risk's Construction Services Fee shall be shown as a

**AGREEMENT**  
BETWEEN THE TOWN OF PECOS CITY, TEXAS AND CONTRACTOR  
FOR THE  
**PECOS BASEBALL COMPLEX**

---

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

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

11.7 Each schedule of values submitted shall maintain the originally established value for each work classification line item or subcontractor, and shall contain any revisions to costs or cost estimates for each such classification or subcontractor. The format and tracking method of the original schedule of values and of all updates thereto shall be subject to the approval of Owner. The Owner may require that payment applications be submitted electronically. If at any time, the amount shown on the schedule of values exceeds the Guaranteed Maximum Price allocable to that classification or subcontractor, then the amount payable to Construction Manager at Risk by Owner shall be reduced by the amount of such excess. At all times, the estimated cost of performing the uncompleted and unpaid portion of the Work (including Construction Manager at Risk's fee) shall not exceed the unpaid balance of the Guaranteed Maximum Price (less retainage on Work previously completed).

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

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

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

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

11.12 Construction Manager's Application

**AGREEMENT**  
BETWEEN THE TOWN OF PECOS CITY, TEXAS AND CONTRACTOR  
FOR THE  
**PECOS BASEBALL COMPLEX**

---

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

spare parts, overages, and maintenance materials; (6) such other close-out submittals or documentation required by the Contract Documents; (7) and a duly executed Affidavit of Completion in form ready for filing in the Real Property Records of the Owner in which the Project is located, signifying that the Work under the Contract is complete under the applicable mechanic's lien laws. As a further material term of this Agreement (which hereby survives final payment), Construction Manager shall furnish to Owner within thirty (30) days after final payment, an unconditional bills paid affidavit and waiver/release of lien from each of its Subcontractors and suppliers who were to be paid from the final payment. If any Subcontractor or supplier refuses to furnish such a waiver/release, or in the event that a claim for payment or lien has been asserted by a Subcontractor or supplier furnishing Work to the Project, upon Owner's request, Construction Manager shall furnish a surety bond reasonably acceptable to Owner to release such claim against Owner and lien, if any, and otherwise fully comply with the provisions of Section 53.171 through 53.174 of the Texas Property Code. If Construction Manager fails to furnish such waiver/release or such lien release bond as required herein, Owner is hereby authorized to take such action, as it deems reasonably necessary to protect itself from such claim or lien and to recover from Construction Manager such costs reasonably incurred if any lien is asserted against Owner after all payments are made, Construction Manager shall reimburse Owner for all damages and costs Owner may incur in discharging such lien, including all costs or court and reasonable attorneys' fees, and Owner shall retain all other remedies available to it at law and in equity.

11.13 Owner shall have no obligation to make final

**AGREEMENT**  
BETWEEN THE TOWN OF PECOS CITY, TEXAS AND CONTRACTOR  
FOR THE  
**PECOS BASEBALL COMPLEX**

---

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

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

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

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

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

11.14.4 Construction Manager is in violation of the applicable laws, the payment request does not include bills paid affidavits from all suppliers and Subcontractors providing materials or services during the period prior to the date of the

request, or has failed to make payments promptly to consultants or other third parties used in connection with any services for which Owner has made payment to Construction Manager at Risk;

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

11.14.6 Construction Manager fails to obtain, maintain or renew insurance coverage as required by the Agreement;

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

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

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

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

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

11.18 Owner shall have the right to verify and audit the details set forth in Construction Manager at

**AGREEMENT**  
BETWEEN THE TOWN OF PECOS CITY, TEXAS AND CONTRACTOR  
FOR THE  
**PECOS BASEBALL COMPLEX**

---

Risk's billings, certificates, accountings, cost data, and statements, either before or after payment, by (1) inspecting the books and records of Construction Manager at Risk during normal business hours; (2) examining any reports with respect to this Project; (3) interviewing Construction Manager at Risk's business employees; (4) visiting the Project site; and (5) other reasonable action. Construction Manager at Risk's records shall be kept on the basis of generally accepted accounting principles. Any audit shall be done at no additional cost to the Owner.

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

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

**Article 12**  
**INTENTIONALLY OMITTED**

**Article 13**  
**COST OF THE WORK**

13.1 The term "Cost of the Work" means costs which the Construction Manager at Risk actually and necessarily incurs constructing the Work in strict compliance with the Contract Documents. Cost of the Work includes the cost of Construction Manager at Risk's General Conditions for the Work and the cost of the work itself. The costs associated with Pre-Construction Phase and Construction Phase fees

are not included in the Cost of the Work

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

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

13.4 Cost of the Work includes:

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

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

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

13.4.4 Payments earned by Construction Manager for self-performed subcontract Work, other than Work covered under General Conditions Cost, in accordance with the Construction Documents and the terms of this Agreement and approved by the Owner; and Intellectual property royalties and licenses for items specifically required by the Construction Documents which are, or will be, incorporated into the Work.

**AGREEMENT**  
BETWEEN THE TOWN OF PECOS CITY, TEXAS AND CONTRACTOR  
FOR THE  
**PECOS BASEBALL COMPLEX**

---

**13.5 CONSTRUCTION MANAGER  
GENERAL CONDITIONS**

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

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

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

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

13.6.1 Costs including, but not limited to, costs arising from failure to perform of any Subcontractor or the bankruptcy or insolvency of any Subcontractor;

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

13.6.3 Travel and subsistence expense of Construction Manager at Risk, its officers or employees incurred while traveling between the Project and Construction Manager at Risk's principal or branch offices, and travel in the metropolitan area of the Project; Fines, penalties, sanctions or impositions assessed or imposed by any governmental body, instrumentality or tribunal arising from the fault of Construction Manager at Risk;

13.6.4 Costs incurred by Construction Manager

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

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

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

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

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

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

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

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

13.7 Any and all costs not specifically authorized herein, including, without

**AGREEMENT**  
BETWEEN THE TOWN OF PECOS CITY, TEXAS AND CONTRACTOR  
FOR THE  
**PECOS BASEBALL COMPLEX**

---

limitation, any cost which would cause the Guaranteed Maximum Price to be exceeded. DISCOUNTS, REBATES AND REFUNDS

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

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

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

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

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

13.8 CONSTRUCTION CONTINGENCY ALLOWANCE

13.8.1 The Guaranteed Maximum Price Proposal shall include a Construction Contingency Allowance amount to be used to fund increases in the Cost of Work of the Project

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

13.8.2 Any re-allocation of funds from the Construction Contingency Allowance to cover increases in the Cost of Work will be documented by Change Order approved by the Construction Manager, Program Manager and Owner. Such approval by these parties will not be unreasonably withheld and will indicate that the cost of the Work is reasonable and the adjustment has been properly documented. In written Change Orders to use the Construction Contingency Allowance, the Construction Manager shall provide detailed documentation of the scope of Work affected and the bases for any increases in costs.

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

**AGREEMENT**  
BETWEEN THE TOWN OF PECOS CITY, TEXAS AND CONTRACTOR  
FOR THE  
**PECOS BASEBALL COMPLEX**

---

**Article 14**

**CONSTRUCTION MANAGER AT RISK'S FEE**

**14.1 PRE-CONSTRUCTION PHASE FEE**

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

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

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

**14.2 CONSTRUCTION PHASE FEE**

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

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

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

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

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

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

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

14.2.8 Any cost arising out of a breach of this Agreement or the fault, failure or negligence of Construction Manager, its Subcontractors, or any person or entity for whom they may be liable. These costs include, without limitation: costs to remedy defective, rejected, or nonconforming work, materials or equipment; costs due to failure

**AGREEMENT**  
BETWEEN THE TOWN OF PECOS CITY, TEXAS AND CONTRACTOR  
FOR THE  
**PECOS BASEBALL COMPLEX**

---

to coordinate the Work or meet CPM Schedule milestones; costs arising from Construction Manager's contractual indemnification obligations; liquidated or actual damages imposed by Owner for failure to complete the Work or Work Package within the Time of Completion; costs due to the bankruptcy or insolvency of any Subcontractor; and damage or losses to persons or property.

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

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

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

**Article 15**  
**CONTRACT SAVINGS**

15.1 If the allowable, final, verified, audited amount of the General Conditions Cost, Cost of the Work, and Construction Contingency Allowance is less than the amount established for each of those categories in the originally approved Guaranteed Maximum Price Proposal, the entire difference shall be credited to the Owner as savings and the final contract amount shall be adjusted accordingly. Owner shall be entitled to retain 100% of the balance of any unused allowance amount.

15.2 Owner shall be entitled to recover any savings realized between the Guaranteed Maximum Price and the buyout price for subcontracting Work, provided however, that Construction Manager may use such savings to offset other buyout packages that

exceed the amounts identified in the initial Guaranteed Maximum Price, so long as the total Cost of Work proposed in the Guaranteed Maximum Price does not increase.

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

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

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

16.1.1 Construction Manager at Risk is responsible for discovering and correcting any error, omission, conflict, inconsistency or lack of clarity, in the Construction Documents. Before submitting its Guaranteed Maximum Price Proposal, the Construction Manager shall review the drawings, specifications and other Construction Documents and notify the Owner of any errors, omissions or discrepancies in the

**AGREEMENT**  
BETWEEN THE TOWN OF PECOS CITY, TEXAS AND CONTRACTOR  
FOR THE  
**PECOS BASEBALL COMPLEX**

---

documents of which it is aware. Construction Manager shall not make or be entitled to any claim for any adjustment to the Time of Completion or the Contract Sum for errors or omissions in the Construction Documents that Construction Manager discovered or, in the exercise of reasonable care, should have discovered in Construction Manager's Pre-Construction Phase design review process that Construction Manager did not bring to the attention of the Owner and the Program Manager in a timely manner.

**Article 17**  
**BONDS AND INSURANCE**

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

17.2 A Certificate of Insurance indicating the expiration date of the Construction Manager at Risk's general liability insurance is required. No policy providing such insurance shall be cancelled without thirty (30) days prior written notice to the Owner.

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

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

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

17.4 Construction Manager shall include required insurance information in trade packages and indicate on bid/proposal forms the insurance that bidders/proposers are to include in their base proposals. Construction Manager at Risk shall develop the GMP including the cost of all premiums for insurance coverage required by the Agreement, Uniform General Conditions, or the Contract Documents. The GMP should not include the cost of premiums for any additional insurance coverage desired by the Construction Manager at Risk for the Project. No mark-up shall apply to Insurance premiums.

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

**AGREEMENT**  
BETWEEN THE TOWN OF PECOS CITY, TEXAS AND CONTRACTOR  
FOR THE  
**PECOS BASEBALL COMPLEX**

---

of that insurance from the Construction Manager.

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

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

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

17.10 If the audit indicates that actual insurance costs are less than the costs included by the Construction Manager at Risk then Construction Manager at Risk shall issue a deductive Change Order to the Owner. Contractor shall purchase and maintain the insurance (with a minimum "Best" rating of "A-V") described below to cover the Work and all obligations under the Contract Documents and the Agreement, whether the Work and such obligations are required to be performed or furnished by Contractor, any Subcontractor, any Supplier, or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable:

17.10.1 Workers' Compensation insurance to cover

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

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

17.10.3 General Liability insurance with coverage written at least as broad as that of the standard Commercial General Liability insurance policy ("Occurrence Form"), including, but not limited to, hazards of operations (including explosion, collapse, and underground coverage), independent contractors, contractor's protective liability, products and completed operations, and personal injury liability with the contractual exclusion deleted. The insurance required by this subparagraph (c) shall be written for not less than the following limits of liability:

\$1,000,000 per occurrence and in the general aggregate per Project for bodily injury and property damage;

\$1,000,000 per occurrence and \$1,000,000 in the aggregate for products and completed operations; and

\$1,000,000 per occurrence and \$1,000,000 in the aggregate for personal injury and advertisers liability. The policy shall include contractual liability coverage in the amounts of (i) \$1,000,000 each occurrence and

\$1,000,000 aggregate for Bodily Injury and (ii)

\$1,000,000 each occurrence and \$1,000,000 annual aggregate for Property Damage. The policy shall include Personal Injury: \$1,000,000 annual aggregate

17.10.4 Automobile Liability insurance covering all owned, non-owned, and hired vehicles. Such insurance shall be written at least as broad as that of the Standard

**AGREEMENT**  
BETWEEN THE TOWN OF PECOS CITY, TEXAS AND CONTRACTOR  
FOR THE  
**PECOS BASEBALL COMPLEX**

---

Comprehensive Automobile Liability policy and shall be written for not less than \$1,000,000 per occurrence for bodily injury and property damage. If transporting hazardous materials, the policy shall include endorsement MCS90.

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

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

17.10.7 The Contractor shall purchase and maintain insurance (Owner’s/Contractor’s Protective Liability) covering the Owner’s contingent liability for claims which may arise from operations under the Contract, with the following limits:

17.10.7.1 Bodily injury: \$1,000,000 each occurrence; \$1,000,000 aggregate

17.10.7.2 Property damage: \$1,000,000 each occurrence; \$1,000,000 aggregate.

17.10.7.3 Personal injury, with employment exclusion deleted: \$1,000,000 aggregate.

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

**Article 18**  
**DISPUTE RESOLUTION**

18.1 All disputes to which the Owner is a party that arise from this Agreement or the Project shall be adjudicated in Reeves County.

**Article 19**  
**PROJECT TERMINATION AND SUSPENSION**

19.1 This Agreement may be terminated during the Pre-Construction Phase by either party upon fifteen

(15) days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination, and breach is not cured or an acceptable plan to cure the breach is not established within the fifteen (15) day period.

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

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

19.4 In the event of termination pursuant to Section

19.3 or in the event of termination that is otherwise not the fault of the Construction Manager, the Construction Manager shall be entitled to compensation for all services performed to the termination date provided, however, Construction Manager has delivered to Owner such statements, accounts, reports and other materials as required together with all reports, documents and other materials prepared by Construction Manager prior to

**AGREEMENT**  
BETWEEN THE TOWN OF PECOS CITY, TEXAS AND CONTRACTOR  
FOR THE  
**PECOS BASEBALL COMPLEX**

---

termination. Upon such payment, Owner shall have no further obligation to the Construction Manager. Termination of this Agreement shall not relieve Construction Manager or any of its employees, subcontractors, or consultants of liability for violations of this Agreement or for any act or omission, or negligence of Construction Manager related to the Project. In the event of a termination, Construction Manager hereby consents to employment by Owner of a substitute construction manager to complete the services under this Agreement.

19.5 In the event of termination, Owner shall have the right to use any documents or other materials prepared for the Project and the ideas and designs they contain for the completion of the services described by this Agreement, for completion of the Project, or for any other purpose.

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

**Article 20**  
**INDEMNITY**

20.1 Construction Manager shall protect and indemnify the Owner from and against all claims, damages, judgments and loss arising from infringement or alleged infringement of

any United States patent, or copyright, arising by or out of any of the work performed hereunder or the use by Construction Manager, or by Owner at the direction of Construction Manager, of any article or material, provided that upon becoming aware of a suit or threat of suit for patent or copyright infringement, Owner shall promptly notify Construction Manager and Construction Manager shall be given full opportunity to negotiate a settlement. Construction Manager does not warrant against infringement by reason of Owner's or Design Construction Manager's design of articles or the use thereof in combination with other materials or in the operation of any process. In the event of litigation, Owner agrees to cooperate reasonably with Construction Manager and parties shall be entitled, in connection with any such litigation, to be represented by counsel at their own expense.

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

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

**Article 21**  
**SPECIAL WARRANTIES**

21.1 Notwithstanding anything to the contrary contained in this Agreement, Owner and Construction Manager agree and acknowledge that Owner is entering into this Agreement in reliance on Construction Manager's represented expertise and ability to provide construction management services. Construction Manager agrees to use its best efforts, skill, judgment, and abilities to perform its obligations and to further the interests of Owner in

**AGREEMENT**  
BETWEEN THE TOWN OF PECOS CITY, TEXAS AND CONTRACTOR  
FOR THE  
**PECOS BASEBALL COMPLEX**

---

accordance with Owner's requirements and procedures.

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

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

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

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

21.6 Construction Manager represents and agrees to perform its services under this Agreement in an expeditious and economical

manner consistent with good business practices and the interests of Owner.

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

21.8 The Construction Manager at Risk shall provide a notarized certification that no Asbestos Containing Building Materials were used.

**Article 22**

**MISCELLANEOUS PROVISIONS**

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

**AGREEMENT**  
BETWEEN THE TOWN OF PECOS CITY, TEXAS AND CONTRACTOR  
FOR THE  
**PECOS BASEBALL COMPLEX**

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Agreement; furthermore, the assignor shall provide the other party to this Agreement with reasonably satisfactory evidence of compliance with the foregoing. Subject to the above provisions, this Agreement shall be binding upon and inure to the parties hereto, and their respective successors and/or assigns.

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

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

22.4 Franchise Tax Certification Construction Manager certifies that it is not currently

delinquent in the payment of any Franchise Taxes due under Chapter 171 of the *Texas Tax Code* or that it is exempt from the payment of such taxes.

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

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

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

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

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

22.10 Appointment. Owner hereby expressly

**AGREEMENT**  
BETWEEN THE TOWN OF PECOS CITY, TEXAS AND CONTRACTOR  
FOR THE  
**PECOS BASEBALL COMPLEX**

---

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

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

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

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

22.11 Notices. All notices, consents, approvals, demands, requests or other communications

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

22.12 Severability. Should any term or provision of this Agreement be held invalid or unenforceable in any respect, the remaining terms and provisions shall not be affected and this Agreement shall be construed as if the invalid or unenforceable term or provision had never been included..Illegal Dumping. The Construction Manager shall ensure that it and all of its Subcontractors and assigns prevent illegal dumping of litter in accordance with Title 5, *Texas Health and Safety Code*, Chapter 365.

22.13 By signature hereon, Construction Manager certifies that no member of the City Council of the Owner, or its Executive Officers, Directors or senior staff, has a financial interest, directly or indirectly, in the transaction that is the subject of this Agreement.

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

**AGREEMENT**  
 BETWEEN THE TOWN OF PECOS CITY, TEXAS AND CONTRACTOR  
 FOR THE  
**PECOS BASEBALL COMPLEX**

---

**Article 23**  
**COMPENSATION**

23.1 **The Construction Cost Limitation (CCL) for the project** is \$\_\_\_\_\_.00. The total compensation payable to the Construction Manager at Risk for all services, materials, labor and other work provided for the Project, including the Pre-Construction Services Fee, the Construction Services Fee and the Cost of the Work cannot exceed the Construction Cost Limitation.

23.2 **FOR PART I PRE-CONSTRUCTION PHASE (BASIC) SERVICES**, Owner shall pay the Construction Manager at Risk a Pre-Construction Services Fee as follows:

<b>Part I Pre-Construction Services Fees</b>		
	Pre-Construction Services Phase Fee:	\$____.00
	<b>Part I Pre-Construction Services Subtotal:</b>	<b>\$____.00</b>

If the scope of the Project or description of the Pre-Construction Services is changed materially, the compensation for Pre-Construction Services shall be equitably adjusted.

23.3 **FOR PART II BASIC CONSTRUCTION SERVICES** Owner shall pay Construction Manager at Risk a Construction Services Fixed Fee as follows:

<b>Part II Construction Services</b>		
	Construction Manager at Risk Construction Phase Fee:	\$____.00
	Construction Manager at Risk Over Time Fee:	\$____.00
	Construction Manager at Risk General Conditions:	\$____.00
	Construction Manager at Risk General Conditions (Over Time):	\$____.00
	Cost of Work	\$____.00
	<b>Part II Construction Services Subtotal:</b>	<b>\$____.00</b>

**23.4 SUMMARY OF COMPENSATION**

	Part II Construction Services ( <i>less Construction Contingency Allowance</i> )	\$____.00
	Construction Contingency Allowance (3%)	\$____.00
	<b>Construction Cost Limitation</b>	<b>\$____.00</b>

**OTHER TERMS AND CONDITIONS**

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

**AGREEMENT**  
**BETWEEN THE TOWN OF PECOS CITY, TEXAS AND CONTRACTOR**  
**FOR THE**  
**PECOS BASEBALL COMPLEX**

such Notice to Proceed, (ii) the issuance of a purchase order by Construction Manager at Risk for materials or equipment for the Project after prior written authorization by Owner, or (iii) award of a Subcontract in accordance with the requirements of this Contract after prior written authorization by Owner. The Construction Manager at Risk shall substantially complete the Project within five hundred and ten (510) Calendar Days of the Owner’s Notice to Proceed for the Work. This Substantial Completion Date for the Project is subject to adjustment by time extensions granted by Change Order. The time set forth for completion of the work is an essential element of the Contract. In computing change order requests for delays due to inclement weather (precipitation delays) contractor shall include in his schedule the precipitation shown in the 30-year statistical record of the National Oceanic and Atmospheric Administration (NOAA) for the Reeves County area. If during construction Contractor claims a weather delay, he must demonstrate to owner that his critical construction activities have been impacted by precipitation over and above the average values recorded by the National Oceanic and Atmospheric Administration in that given month.

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

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

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

If to Owner: Seth Sorensen, City Manager 110 E. 6 <sup>th</sup> Street Pecos, TX 79772	If to Construction Manager at Risk:
With copy to:	With copy to:

23.8 **EXHIBITS.** The following exhibits are incorporated by reference as part of this Agreement and the

- Contract: Exhibit A Personnel Titles and Roles (to be provided by Contractor)
- Exhibit B Allowable General Conditions
- Exhibit C Guaranteed Maximum Price Submission Form (to be provided by Owner’s representative)
- Exhibit D Sub-consultants and Subcontractors List (to be provided by Contractor at buyout)
- Exhibit E Project Overall Schedule (to be provided by Contractor at Notice to Proceed)
- Exhibit F Payment and Performance Bonds
- Exhibit G RFP No. PR18-001 Proposal by Contractor (Herein referred to “Proposal”)

**AGREEMENT**  
BETWEEN THE TOWN OF PECOS CITY, TEXAS AND CONTRACTOR  
FOR THE  
**PECOS BASEBALL COMPLEX**

---

23.9 Upon execution below, the Owner authorizes the Contractor to perform **Part I Pre-Construction Services** only, for the sum of \$\_\_\_\_.00. Further authorization of services shall occur after execution of Guaranteed Maximum Price Proposal satisfactory to the Owner per this Contract.

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

Owner, Town of Pecos City, Texas

Construction Manager at Risk

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

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

Seth A. Sorensen, City Manager  
Town of Pecos City

**AGREEMENT**  
BETWEEN THE TOWN OF PECOS CITY, TEXAS AND CONTRACTOR  
FOR THE  
**PECOS BASEBALL COMPLEX**

---

**GOVERNMENTAL CONTRACT RIDER**  
**FOR CONTRACTS WITH THE TOWN OF PECOS CITY, TEXAS**

By entering into a contract for goods or services and/or by accepting a purchase order, the contracting party identified below agrees that the below terms and conditions shall govern all agreements with the City unless otherwise agreed to by a specifically executed provision within the contract and if permissible by law. Absent a specifically executed provision, the below terms are BINDING and SUPERSEDE any and all other terms and/or conditions whether oral or written.

**1. Application.** This Governmental Rider applies to, is part of, and takes precedence over any conflicting provision in or attachment to the (Contract) \_\_\_\_\_ and ATTACHMENT 1 TO THE AGREEMENT, (attached hereto) and the \_\_\_\_\_ of \_\_\_\_\_, (Vendor). The Contract involved in this Rider is described as follows:

\_\_\_\_\_

**2. Payment Provisions.** The City's payments under the Contract, including the time of payment and the payment of interest on overdue amounts, are subject to Chapter 2251, Texas Government Code. City reserves the right to modify any amount due to contractor presented by invoice to the city if necessary to conform the amount to the terms of the contract.

**3. Multiyear Contracts.** If the City's City Council does not appropriate funds to make any payment for a fiscal year after the City's fiscal year in which the contract becomes effective and there are no proceeds available for payment from the sale of bonds or other debt instruments, then the Contract automatically terminates at the beginning of the first day of the successive fiscal year. (Section 5, Article XI, Texas Constitution). It is understood and agreed the City shall have the right to terminate the agreement at the end of any City fiscal year if the governing body of the City does not appropriate funds sufficient to continue the contract, as determined by the City's budget for the fiscal year in question. The City may execute such termination by giving contractor a written notice of termination at the end of its then current fiscal year.

**4. Abandonment or Default.** A contractor who abandons or defaults the work on the contract and causes the City to purchase the services elsewhere may be charged for any increased cost of goods, materials and/or services related thereto and shall not be considered disqualified in any re-advertisement of the service and may not be considered in future bids for the same type of work for a period of three years for the same scope of work, goods or services.

**5. Disclosure of Litigation.** Each contractor shall include in its proposal a complete disclosure of any civil or criminal litigation or investigation pending which involves the respondent or which has occurred in the past in which the respondent has been judged guilty or liable by a competent court regardless of whether the Court Order or Judgment is final or on appeal.

**6. Cancellation.** The City reserves the right to cancel the contract without penalty by providing 30 days prior written notice to the contracting party. Termination under this paragraph shall not relieve the contractor of any obligation or liability that has occurred prior to cancellation. **NOTE: This contract is subject to cancellation, without**

**AGREEMENT**  
BETWEEN THE TOWN OF PECOS CITY, TEXAS AND CONTRACTOR  
FOR THE  
**PECOS BASEBALL COMPLEX**

---

**penalty, at any time the City deems the vendor to be non-compliant with contractual obligations.**

- 7. Annual Vendor Performance Review.** The City reserves the right to review the vendor's performance at the end of each twelve month contract period and to cancel all or part of the agreement (without penalty) or continue the contract through the next period.
- 8. Compliance with other laws and certification of eligibility to contract.** Any offer to contract with the City shall be considered an executed certification that the contractor will shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, (as amended during the contracting period) and any orders and decrees of any court or administrative bodies or tribunals in any matter affecting the performance of the resulting agreement, including without limitation, immigration laws, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When requested, the contractor shall furnish the City with satisfactory proof of its compliance within 10 days or any contract with the City is void.
- 9. Compliance with all Codes, Permitting and Licensing Requirements.** The successful contractor shall comply with all national, state and local standards, codes and ordinances as well as any other authorities that have jurisdiction pertaining to equipment and materials used and their application. None of the terms or provisions of the specification shall be construed as waiving any rules, regulations or requirements of these authorities. The successful bidder shall be responsible for obtaining all necessary permits, certificates and/or licenses to fulfill contractual obligations.
- 10. Liability and Indemnity of City.** Any provision of the Contract is void and unenforceable if it: (1) limits or releases either party from liability that would exist by law in the absence of the provision; (2) creates liability for either party that would not exist by law in the absence of the provision; or (3) waives or limits either party's rights, defenses, remedies, or immunities that would exist by law in the absence of the provision. (Section 5, Article XI, Texas Constitution)
- 11. Indemnity and Independent Contractor Status of Contractor.** Contractor shall indemnify, save harmless and defend the City, its officers, agents, and employees from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, attorney's fees and any and all other costs or fees (whether grounded in Constitutional law, Tort, Contract, or Property Law, or raised pursuant to local, state or federal statutory provision), arising out of the performance of the resulting agreement and/or arising out of a willful or negligent act or omission of the contractor, its officers, agents, and employees. It is understood and agreed that the contractor and any employee or sub-contractor of contractor shall not be considered an employee of the City. The contractor shall not be within protection or coverage of the City's workers' compensation insurance, health insurance, liability insurance or any other insurance that the City from time to time may have in force and effect. City specifically reserves the right to reject any and all contractor's employees, representatives or sub-contractors and/or their employees for any cause, should the presence of any such person on City property or their interaction with City employees be found not in the best interest of the City, harassing, or is found to interfere with the effective and efficient operation of the City's workplace.
- 12.** By executing this agreement Contractor certifies that it has read Texas Government Code§ 2258 et seq. (as amended) and agrees to perform this contract under the terms and conditions provided by and in conformity with Texas Government Code § 2258 et seq. (as amended). Contractor agrees that failure to conform performance of

**AGREEMENT**  
BETWEEN THE TOWN OF PECOS CITY, TEXAS AND CONTRACTOR  
FOR THE  
**PECOS BASEBALL COMPLEX**

---

this contract to Texas Government Code § 2258 et seq. (as amended), whether statutorily applicable or not, will constitute a material breach of this agreement.

- 13. Liens.** Contractor agrees to and shall indemnify and save harmless the City against any and all liens and encumbrances for all labor, goods and services which may be provided under the resulting agreement. At the City's request the contractor or subcontractors shall provide a proper release of all liens, or satisfactory evidence of freedom from liens shall be delivered to the City.
- 14. Confidentiality.** Any provision in the Contract that attempts to prevent the City's disclosure of information that is subject to public disclosure under federal or Texas law or regulation, or court or administrative decision or ruling, is invalid. (Chapter 552, Texas Government Code)
- 15. Tax Exemption.** The City is not liable to Vendor for any federal, state, or local taxes for which the City is not liable by law, including state and local sales and use taxes (Section 151.309 and Title 3, Texas Tax Code) and federal excise tax (Subtitle D of the Internal Revenue Code). Accordingly, those taxes may not be added to any item. Texas limited sales tax exemption certificates will be furnished upon request. Vendors shall not charge for said taxes. If billed, the City will remit payment less sales tax.
- 16. Contractual Limitations Period.** Any provision of the Contract that establishes a limitations period that does not run against the City by law or that is shorter than two years is void. (Sections 16.061 and 16.070, Texas Civil Practice and Remedies Code)
- 17. Sovereign Immunity.** Any provision of the Contract that seeks to waive the City's immunity from suit and/or immunity from liability is void unless agreed to by specific acknowledgement of the provision within the contract.
- 18. Governing Law and Venue.** Texas law governs this Contract and any lawsuit on this Contract must be filed in a court that has jurisdiction in Reeves County, Texas.
- 19. Right to Trial by Jury.** Any provision of the Contract that seeks to waive an aggrieved Party's right to trial by jury is void unless agreed to by specific acknowledgement of the provision within the contract.

**TOWN OF PECOS CITY, TEXAS**

By: \_\_\_\_\_ Seth Sorensen, City Manager

Date: \_\_\_\_\_

**CONSTRUCTION MANAGER AT RISK**

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

Date: \_\_\_\_\_

**AGREEMENT**  
**BETWEEN THE TOWN OF PECOS CITY, TEXAS AND CONTRACTOR**  
**FOR THE**  
**PECOS BASEBALL COMPLEX**

<b>Form W-9</b> (Rev. December 2011) Department of the Treasury Internal Revenue Service	<b>Request for Taxpayer          Identification Number and Certification</b>	<b>Give Form to the          requester. Do not          send to the IRS.</b>																											
Print or type See specific instructions on page 2.	Name (as shown on your income tax return)																												
	Business name/disregarded entity name, if different from above																												
	Check appropriate box for federal tax classification: <input type="checkbox"/> Individual/sole proprietor <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ ..... <input type="checkbox"/> Exempt payee <input type="checkbox"/> Other (see instructions) ▶																												
	Address (number, street, and apt. or suite no.)	Requester's name and address (optional)																											
	City, state, and ZIP code																												
Let account number(s) here (optional)																													
<b>Part I Taxpayer Identification Number (TIN)</b> Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see <i>How to get a TIN</i> on page 3. <b>Note.</b> If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.																													
		<table border="1" style="margin: auto;"> <tr><td colspan="9" style="text-align: center;">Social security number</td></tr> <tr><td style="width: 20px;"> </td><td style="width: 20px;"> </td></tr> <tr><td colspan="3">-</td><td colspan="3">-</td><td colspan="3"></td></tr> </table>	Social security number																		-			-					
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<b>Part II Certification</b> Under penalties of perjury, I certify that:																													
1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and 2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and 3. I am a U.S. citizen or other U.S. person (defined below).																													
<b>Certification instructions.</b> You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 4.																													
<b>Sign Here</b>	Signature of U.S. person ▶	Date ▶																											
<b>General Instructions</b> Section references are to the Internal Revenue Code unless otherwise noted.																													
<b>Purpose of Form</b> A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA. Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:																													
1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued). 2. Certify that you are not subject to backup withholding, or 3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.																													
<b>Note.</b> If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9. <b>Definition of a U.S. person.</b> For federal tax purposes, you are considered a U.S. person if you are:																													
<ul style="list-style-type: none"> <li>• An individual who is a U.S. citizen or U.S. resident alien,</li> <li>• A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,</li> <li>• An estate (other than a foreign estate), or</li> <li>• A domestic trust (as defined in Regulations section 301.7701-7).</li> </ul> <b>Special rules for partnerships.</b> Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.																													