

ORDINANCE NO. 91-19 AC CMS

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH JENNINGS & CHURELLA, INC., OF WELLINGTON, OHIO, FOR THE FURNISHING OF CONSTRUCTION MANAGEMENT SERVICES TO THE CITY OF OBERLIN FOR THE CONSTRUCTION OF A STANDBY GENERATOR AND SERVICE BUILDING

BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain, State of Ohio, a majority of all members elected thereto concurring:

SECTION 1. That the City Manager is hereby authorized and directed to enter into a contract with Jennings & Churella, Inc., of Wellington, Ohio, for the furnishing of construction management services for the construction of a standby generator and service building, said contract to be in the amount of 6% of all construction costs, which are not to exceed \$820,000.00, plus reimbursable expenses estimated at \$12,000.00 per month, said contract being attached hereto as "Exhibit A".

SECTION 2. It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of this ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 3. That this ordinance shall take effect at the earliest date allowed by law.

PASSED: 1st Reading - March 18, 1991  
2nd Reading - April 1, 1991 (Amended)  
3rd Reading - April 15, 1991

ATTEST:

  
CLERK OF COUNCIL

  
CHAIRMAN OF COUNCIL

POSTED: April 17, 1991

EFFECTIVE DATE: May 15, 1991

March 6, 1991

City of Oberlin  
85 South Main Street,  
Oberlin, Ohio 44074

Attention: Ms. Deborah Kimble  
City Manager

Subject: Standby Generator and Water Distribution Shop  
Oberlin Water Treatment Plant

Dear Ms. Kimble:

Jennings and Churella Construction Company is pleased to submit this Proposal for project management services in response to your letter dated November 30, 1990 and our meetings at your office and ours at various times since then.

The Project is the Standby Generator and Water Distribution Shop designed by Havens and Emerson which we recently bid. Our bid was \$1,244,000.00 and was competitive with others.

In an effort to get this project back on budget or at an affordable price, \$820,000.00 or less, we will work with you to reduce the Project Scope. More specifically, we will perform the following project or construction management services.

- A. We will work to identify construction cost saving techniques to affect a reduction in the Project costs bringing the Project back into budget.
- B. We will develop the contract documents into bid packages so that all elements of the Project's construction can be bid. Bidding will be controlled by Jennings and Churella with all bids being opened and evaluated with the City.

If the City chooses, all work items or packages shall be performed under separate contract administered by Jennings and Churella, but let directly by the City of Oberlin. Support items and reimbursable items described below shall be provided by Jennings and Churella on a reimbursable basis.

*3-8-91  
reviewed as to  
from - Jim H. A. C.S.*

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Oberlin, Ohio 44074  
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- C. We will develop a construction schedule so that all trades are committed to an expedient construction period. We intend to employ a "fast-track" method of construction allowing for early purchase on long-lead items so that there are no unusual delays or set backs of the project schedule. A construction sequence schedule for economies will be incorporated into the schedule.

- D. We will perform all work set forth in the standard General Conditions. Our reimbursables for General Conditions are:

Wages paid for labor in the direct employ of the Construction Manager in the performance of his work under applicable collective bargaining agreements, or under a salary or wage schedule agreed upon by the Owner and Construction Manager, and included such welfare or other benefits, if any, as may be payable with respect thereto. (Superintendent).

Salaries of the Construction Manager's employees assigned to the City of Oberlin Project when stationed at the field office, or principal office, in whatever capacity employed, employees engaged on the road in expediting the production or transportation of materials and equipment.

Cost of all employee benefits and taxes for such items as unemployment compensation and social security, insofar as such cost is based on wages, salaries, or other remuneration paid to employees of the Construction Manager and included in the Cost of the Project. (Approx. 25%).

Reasonable transportation, traveling, moving, and hotel expenses of the Construction Manager or of his officers or employees incurred in discharge of duties connected with the Project. (Outside State of Ohio).

Cost of all materials, supplies, and equipment incorporated in the project, including costs of transportation and storage thereof.

Payments made by the Construction Manager or Owner to Trade Contractors for their work performed pursuant to contract under this agreement.

Cost, including transportation and maintenance, of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workmen, which are employed or consumed in the performance of the work, and cost less salvage value on such items used but not consumed which remain the property of the Construction Manager.

Cost of all samples and testing by independent testing laboratories selected by the Construction Manager with prior approval by the Owner.

Rental charges of all necessary machinery and equipment, exclusive of hand tools used at the site of the Project, whether rented from the Construction Manager or other, including installation, repairs, replacements, dismantling, removal, costs of lubrication, transportation and delivery costs thereof, at rental charges consistent with those prevailing in the area.

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Cost of the premiums for all insurance which the Construction Manager is required to procure by this agreement or is deemed necessary by the Construction Manager, with the consent of the Owner.

Sales, use, gross receipts or similar taxes related to the project imposed by a governmental authority, and for which the Construction Manager is liable.

Permit fees, licenses, tests, royalties, damages for infringement of patents and costs of defending suits therefore, and deposits lost for causes other than the Construction Manager's negligence. If royalties or losses and damages, including costs of defense, are incurred which arise from a particular design, process, or the Construction Manager has no reason to believe there will be infringement of patents rights, such royalties, losses and damages shall be paid by the Owner.

Losses, expenses or damages to the extent not compensated by insurance or otherwise, (including settlement made with the written approval of the Owner).

The cost of corrective work.

Minor expenses such as telegrams, long-distance telephone calls, telephone service at the site, expressage, and similar petty cash items in connection with the Project.

Cost of removal of all debris.

Cost incurred due to an emergency affecting the safety of persons and property.

Cost of data processing services required.

Legal costs reasonable and properly resulting from prosecution of the Project for the Owner.

All costs directly incurred in the performance of the Project and not included in the Construction Manager's fee.

The City of Oberlin will provide insurance to cover his own Liability and Property Insurance, if required.

We anticipate that our reimbursable costs outlined above shall be Twelve Thousand (\$12,000.00) Dollars per month. The construction duration is expected to be eight months. In any case, our reimbursable charges are included in our guaranteed maximum price (GMP) described below.

Not included in the reimbursable costs are the general operating or overhead expenses of the construction manager's principal office or any overhead or general expenses of any kind such as interest on loans, etc.

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The construction manager shall not incur any reimbursable costs without consent of the City of Oberlin. The construction manager will notify the City when reimbursable costs reach 80% of the reimbursable costs estimate. Reimbursable costs will be so indicated on monthly statements issued to the City of Oberlin.

- E. We shall provide a full-time, on-site, job superintendent selected with your approval from our regularly employed superintendents. Costs for our superintendent are a part of the reimbursable costs stated above.

Jennings and Churella Construction Company shall review and approve shop drawings and other submittals of materials or supplies during the course of the Project. We will meet with designated representatives of the Owner and Consulting Engineer to review the progress of the construction at specified times all with the approval of the Owner. Costs for this are included in the reimbursable costs and are made a part of the GMP.

Jennings and Churella Construction Company shall provide additional services for the Project, when authorized in writing, in addition to those services set forth herein. Such services shall consist of providing any other services not otherwise included in this Proposal or not customarily furnished as part of a construction management agreement.

This offer is good for thirty (30) days from the above date. After entering into an agreement and subject to timely reviews and regular meetings with the City of Oberlin, the Project is proposed to be completed within ten (10) months.

The City of Oberlin shall compensate the construction manager for the services provided in this Proposal, a fee of Six Percent (6%) of the construction costs. The construction costs are defined as all costs of the construction including reimbursable costs paid to the construction manager and costs of all sub-trades and suppliers and materials paid either by the City of Oberlin or the construction manager. This fee and all construction and reimbursable costs are included in the guaranteed maximum price (GMP).

Jennings and Churella Construction Company will enter into a guaranteed maximum price (GMP) contract with the City of Oberlin for Eight Hundred Twenty Thousand (\$820,000.00) Dollars. The contract is contingent upon the understanding that Jennings and Churella and the City of Oberlin all agree to adjustments and changes to the Project and its contract documents to allow for reductions in the construction costs.

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Should you have any questions relating to this Proposal, please contact me.

We have enclosed a Standard A.I.A. Form of Contract for the services as outlined above.

We look forward to again serving The City of Oberlin.

Very truly yours,

JENNINGS AND CHURELLA CONSTRUCTION COMPANY



Richard A. Van Auken, A.I.A.  
President/C.E.O.

RAVA/caj

Enclosure

# THE AMERICAN INSTITUTE OF ARCHITECTS



AIA Document B801

## Standard Form of Agreement Between Owner and Construction Manager

1980 EDITION

*THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH  
AN ATTORNEY IS ENCOURAGED.*

This document is intended to be used in conjunction with  
AIA Documents A101/CM, 1980; B141/CM, 1980; and A201/CM, 1980.

### AGREEMENT

made as of the  
Hundred and Ninety-One

day of

in the year of Nineteen

BETWEEN the Owner:

City of Oberlin  
85 South Main Street  
Oberlin, Ohio 44074

and the Construction Manager:

Jennings and Churella Construction Company  
311 Maple Street, Wellington, Ohio 44090

For the following Project:

*(Include detailed description of Project location and scope.)*

Standby Generator and Water Distribution Plant  
Oberlin Water Treatment Plant  
City of Oberlin  
Oberlin, Ohio

the Architect:

Jennings and Churella Construction Company  
311 Maple Street, Wellington, Ohio 44090

The Owner and the Construction Manager agree as set forth below.

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the copyright laws of the United States and will be subject to legal prosecution.

# TERMS AND CONDITIONS OF AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER

## ARTICLE 1

### CONSTRUCTION MANAGER'S SERVICES AND RESPONSIBILITIES

The Construction Manager covenants with the Owner to further the interests of the Owner by furnishing the Construction Manager's skill and judgment in cooperation with, and in reliance upon, the services of an architect. The Construction Manager agrees to furnish business administration and management services and to perform in an expeditious and economical manner consistent with the interests of the Owner.

#### BASIC SERVICES

The Construction Manager's Basic Services consist of the two Phases described below and any other services included in Article 16 as Basic Services.

#### 1.1 PRECONSTRUCTION PHASE

**1.1.1** Provide preliminary evaluation of the program and Project budget requirements, each in terms of the other. With the Architect's assistance, prepare preliminary estimates of Construction Cost for early schematic designs based on area, volume or other standards. Assist the Owner and the Architect in achieving mutually agreed upon program and Project budget requirements and other design parameters. Provide cost evaluations of alternative materials and systems.

**1.1.2** Review designs during their development. Advise on site use and improvements, selection of materials, building systems and equipment and methods of Project delivery. Provide recommendations on relative feasibility of construction methods, availability of materials and labor, time requirements for procurement, installation and construction, and factors related to cost including, but not limited to, costs of alternative designs or materials, preliminary budgets and possible economies.

**1.1.3** Provide for the Architect's and the Owner's review and acceptance, and periodically update, a Project Schedule that coordinates and integrates the Construction Manager's services, the Architect's services and the Owner's responsibilities with anticipated construction schedules.

**1.1.4** Prepare for the Owner's approval a more detailed estimate of Construction Cost, as defined in Article 3, developed by using estimating techniques which anticipate the various elements of the Project, and based on Schematic Design Documents prepared by the Architect. Update and refine this estimate periodically as the Architect prepares Design Development and Construction Documents. Advise the Owner and the Architect if it appears that the Construction Cost may exceed the Project budget. Make recommendations for corrective action.

**1.1.5** Coordinate Contract Documents by consulting with the Owner and the Architect regarding Drawings and Specifications as they are being prepared, and recommending alternative solutions whenever design details affect construction feasibility, cost or schedules.

**1.1.5.1** Provide recommendations and information to the Owner and the Architect regarding the assignment of re-

sponsibilities for safety precautions and programs; temporary Project facilities; and equipment, materials and services for common use of Contractors. Verify that the requirements and assignment of responsibilities are included in the proposed Contract Documents.

**1.1.5.2** Advise on the separation of the Project into Contracts for various categories of Work. Advise on the method to be used for selecting Contractors and awarding Contracts. If separate Contracts are to be awarded, review the Drawings and Specifications and make recommendations as required to provide that (1) the Work of the separate Contractors is coordinated, (2) all requirements for the Project have been assigned to the appropriate separate Contract, (3) the likelihood of jurisdictional disputes has been minimized, and (4) proper coordination has been provided for phased construction.

**1.1.5.3** Develop a Project Construction Schedule providing for all major elements such as phasing of construction and times of commencement and completion required of each separate Contractor. Provide the Project Construction Schedule for each set of Bidding Documents.

**1.1.5.4** Investigate and recommend a schedule for the Owner's purchase of materials and equipment requiring long lead time procurement, and coordinate the schedule with the early preparation of portions of the Contract Documents by the Architect. Expedite and coordinate delivery of these purchases.

**1.1.6** Provide an analysis of the types and quantities of labor required for the Project and review the availability of appropriate categories of labor required for critical Phases. Make recommendations for actions designed to minimize adverse effects of labor shortages.

**1.1.6.1** Identify or verify applicable requirements for equal employment opportunity programs for inclusion in the proposed Contract Documents.

**1.1.7** Make recommendations for pre-qualification criteria for Bidders and develop Bidders' interest in the Project. Establish bidding schedules. Assist the Architect in issuing Bidding Documents to Bidders. Conduct pre-bid conferences to familiarize Bidders with the Bidding Documents and management techniques and with any special systems, materials or methods. Assist the Architect with the receipt of questions from Bidders, and with the issuance of Addenda.

**1.1.7.1** With the Architect's assistance, receive Bids, prepare bid analyses and make recommendations to the Owner for award of Contracts or rejection of Bids.

**1.1.8** With the Architect's assistance, conduct pre-award conferences with successful Bidders. Assist the Owner in preparing Construction Contracts and advise the Owner on the acceptability of Subcontractors and material suppliers proposed by Contractors.

#### 1.2 CONSTRUCTION PHASE

The Construction Phase will commence with the award of the initial Construction Contract or purchase order and, together with the Construction Manager's obligation to provide Basic Services un-



der this Agreement, will end 30 days after final payment to all Contractors is due.

**1.2.1** Unless otherwise provided in this Agreement and incorporated in the Contract Documents, the Construction Manager, in cooperation with the Architect, shall provide administration of the Contracts for Construction as set forth below and in the 1980 Edition of AIA Document A201/CM, General Conditions of the Contract for Construction, Construction Management Edition.

**1.2.2** Provide administrative, management and related services as required to coordinate Work of the Contractors with each other and with the activities and responsibilities of the Construction Manager, the Owner and the Architect to complete the Project in accordance with the Owner's objectives for cost, time and quality. Provide sufficient organization, personnel and management to carry out the requirements of this Agreement.

**1.2.2.1** Schedule and conduct pre-construction, construction and progress meetings to discuss such matters as procedures, progress, problems and scheduling. Prepare and promptly distribute minutes.

**1.2.2.2** Consistent with the Project Construction Schedule issued with the Bidding Documents, and utilizing the Contractors' Construction Schedules provided by the separate Contractors, update the Project Construction Schedule incorporating the activities of Contractors on the Project, including activity sequences and durations, allocation of labor and materials, processing of Shop Drawings, Product Data and Samples, and delivery of products requiring long lead time procurement. Include the Owner's occupancy requirements showing portions of the Project having occupancy priority. Update and reissue the Project Construction Schedule as required to show current conditions and revisions required by actual experience.

**1.2.2.3** Endeavor to achieve satisfactory performance from each of the Contractors. Recommend courses of action to the Owner when requirements of a Contract are not being fulfilled, and the nonperforming party will not take satisfactory corrective action.

**1.2.3** Revise and refine the approved estimate of Construction Cost, incorporate approved changes as they occur, and develop cash flow reports and forecasts as needed.

**1.2.3.1** Provide regular monitoring of the approved estimate of Construction Cost, showing actual costs for activities in progress and estimates for uncompleted tasks. Identify variances between actual and budgeted or estimated costs, and advise the Owner and the Architect whenever projected costs exceed budgets or estimates.

**1.2.3.2** Maintain cost accounting records on authorized Work performed under unit costs, additional Work performed on the basis of actual costs of labor and materials, or other Work requiring accounting records.

**1.2.3.3** Recommend necessary or desirable changes to the Architect and the Owner, review requests for changes, assist in negotiating Contractors' proposals, submit recommendations to the Architect and the Owner, and if they are accepted, prepare and sign Change Orders for the Architect's signature and the Owner's authorization.

**1.2.3.4** Develop and implement procedures for the review and processing of Applications by Contractors for progress and final payments. Make recommendations to the Architect for certification to the Owner for payment.

**1.2.4** Review the safety programs developed by each of the Contractors as required by their Contract Documents and coordinate the safety programs for the Project.

**1.2.5** Assist in obtaining building permits and special permits for permanent improvements, excluding permits required to be obtained directly by the various Contractors. Verify that the Owner has paid applicable fees and assessments. Assist in obtaining approvals from authorities having jurisdiction over the Project.

**1.2.6** If required, assist the Owner in selecting and retaining the professional services of surveyors, special consultants and testing laboratories. Coordinate their services.

**1.2.7** Determine in general that the Work of each Contractor is being performed in accordance with the requirements of the Contract Documents. Endeavor to guard the Owner against defects and deficiencies in the Work. As appropriate, require special inspection or testing, or make recommendations to the Architect regarding special inspection or testing, of Work not in accordance with the provisions of the Contract Documents whether or not such Work be then fabricated, installed or completed. Subject to review by the Architect, reject Work which does not conform to the requirements of the Contract Documents.

**1.2.7.1** The Construction Manager shall not be responsible for construction means, methods, techniques, sequences and procedures employed by Contractors in the performance of their Contracts, and shall not be responsible for the failure of any Contractor to carry out Work in accordance with the Contract Documents.

**1.2.8** Consult with the Architect and the Owner if any Contractor requests interpretations of the meaning and intent of the Drawings and Specifications, and assist in the resolution of questions which may arise.

**1.2.9** Receive Certificates of Insurance from the Contractors, and forward them to the Owner with a copy to the Architect.

**1.2.10** Receive from the Contractors and review all Shop Drawings, Product Data, Samples and other submittals. Coordinate them with information contained in related documents and transmit to the Architect those recommended for approval. In collaboration with the Architect, establish and implement procedures for expediting the processing and approval of Shop Drawings, Product Data, Samples and other submittals.

**1.2.11** Record the progress of the Project. Submit written progress reports to the Owner and the Architect including information on each Contractor and each Contractor's Work, as well as the entire Project, showing percentages of completion and the number and amounts of Change Orders. Keep a daily log containing a record of weather, Contractors' Work on the site, number of workers, Work accomplished, problems encountered, and other similar relevant data as the Owner may require. Make the log available to the Owner and the Architect.

**1.2.11.1** Maintain at the Project site, on a current basis: a record copy of all Contracts, Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked to record all changes made during construction; Shop Drawings; Product Data; Samples; submittals; purchases; materials; equipment; applicable handbooks; maintenance and operating manuals and instruc-

tions; other related documents and revisions which arise out of the Contracts or Work. Maintain records, in duplicate, of principal building layout lines, elevations of the bottom of footings, floor levels and key site elevations certified by a qualified surveyor or professional engineer. Make all records available to the Owner and the Architect. At the completion of the Project, deliver all such records to the Architect for the Owner.

**1.2.12** Arrange for delivery and storage, protection and security for Owner-purchased materials, systems and equipment which are a part of the Project, until such items are incorporated into the Project.

**1.2.13** With the Architect and the Owner's maintenance personnel, observe the Contractors' checkout of utilities, operational systems and equipment for readiness and assist in their initial start-up and testing.

**1.2.14** When the Construction Manager considers each Contractor's Work or a designated portion thereof substantially complete, the Construction Manager shall prepare for the Architect a list of incomplete or unsatisfactory items and a schedule for their completion. The Construction Manager shall assist the Architect in conducting inspections. After the Architect certifies the Date of Substantial Completion of the Work, the Construction Manager shall coordinate the correction and completion of the Work.

**1.2.15** Assist the Architect in determining when the Project or a designated portion thereof is substantially complete. Prepare for the Architect a summary of the status of the Work of each Contractor, listing changes in the previously issued Certificates of Substantial Completion of the Work and recommending the times within which Contractors shall complete uncompleted items on their Certificate of Substantial Completion of the Work.

**1.2.16** Following the Architect's issuance of a Certificate of Substantial Completion of the Project or designated portion thereof, evaluate the completion of the Work of the Contractors and make recommendations to the Architect when Work is ready for final inspection. Assist the Architect in conducting final inspections. Secure and transmit to the Owner required guarantees, affidavits, releases, bonds and waivers. Deliver all keys, manuals, record drawings and maintenance stocks to the Owner.

**1.2.17** The extent of the duties, responsibilities and limitations of authority of the Construction Manager as a representative of the Owner during construction shall not be modified or extended without the written consent of the Owner, the Contractors, the Architect and the Construction Manager, which consent shall not be unreasonably withheld.

### **1.3 ADDITIONAL SERVICES**

The following Additional Services shall be performed upon authorization in writing from the Owner and shall be paid for as provided in this Agreement.

**1.3.1** Services related to investigations, appraisals or evaluations of existing conditions, facilities or equipment, or verification of the accuracy of existing drawings or other information furnished by the Owner.

**1.3.2** Services related to Owner-furnished furniture, furnishings and equipment which are not a part of the Project.

**1.3.3** Services for tenant or rental spaces.

**1.3.4** Consultation on replacement of Work damaged by fire or other cause during construction, and furnishing services in conjunction with the replacement of such Work.

**1.3.5** Services made necessary by the default of a Contractor.

**1.3.6** Preparing to serve or serving as a witness in connection with any public hearing, arbitration proceeding or legal proceeding.

**1.3.7** Recruiting or training maintenance personnel.

**1.3.8** Inspections of, and services related to, the Project after the end of the Construction Phase.

**1.3.9** Providing any other services not otherwise included in this Agreement.

### **1.4 TIME**

**1.4.1** The Construction Manager shall perform Basic and Additional Services as expeditiously as is consistent with reasonable skill and care and the orderly progress of the Project.

## **ARTICLE 2**

### **THE OWNER'S RESPONSIBILITIES**

**2.1** The Owner shall provide full information regarding the requirements of the Project, including a program, which shall set forth the Owner's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems and site requirements.

**2.2** The Owner shall provide a budget for the Project, based on consultation with the Construction Manager and the Architect, which shall include contingencies for bidding, changes during construction and other costs which are the responsibility of the Owner. The Owner shall, at the request of the Construction Manager, provide a statement of funds available for the Project and their source.

**2.3** The Owner shall designate a representative authorized to act in the Owner's behalf with respect to the Project. The Owner, or such authorized representative, shall examine documents submitted by the Construction Manager and shall render decisions pertaining thereto promptly to avoid unreasonable delay in the progress of the Construction Manager's services.

**2.4** The Owner shall retain an architect whose services, duties and responsibilities are described in the agreement between the Owner and the Architect, AIA Document B141/CM, 1980 Edition. The Terms and Conditions of the Owner-Architect Agreement will be furnished to the Construction Manager, and will not be modified without written consent of the Construction Manager, which consent shall not be unreasonably withheld. Actions taken by the Architect as agent of the Owner shall be the acts of the Owner and the Construction Manager shall not be responsible for them.

**2.5** The Owner shall furnish structural, mechanical, chemical and other laboratory tests, inspections and reports as required by law or the Contract Documents.

**2.6** The Owner shall furnish such legal, accounting and insurance counseling services as may be necessary for the Project, including such auditing services as the Owner may require to verify the Project Applications for Payment

or to ascertain how or for what purposes the Contractors have used the monies paid by or on behalf of the Owner.

2.7 The Owner shall furnish the Construction Manager a sufficient quantity of construction documents.

2.8 The services, information and reports required by Paragraphs 2.1 through 2.7, inclusive, shall be furnished at the Owner's expense, and the Construction Manager shall be entitled to rely upon their accuracy and completeness.

2.9 If the Owner observes or otherwise becomes aware of any fault or defect in the Project, or nonconformance with the Contract Documents, prompt written notice thereof shall be given by the Owner to the Construction Manager and the Architect.

2.10 The Owner reserves the right to perform work related to the Project with the Owner's own forces, and to award contracts in connection with the Project which are not part of the Construction Manager's responsibilities under this Agreement. The Construction Manager shall notify the Owner if any such independent action will in any way compromise the Construction Manager's ability to meet the Construction Manager's responsibilities under this Agreement.

2.11 The Owner shall furnish the required information and services and shall render approvals and decisions as expeditiously as necessary for the orderly progress of the Construction Manager's services and the Work of the Contractors.

### **ARTICLE 3**

#### **CONSTRUCTION COST**

3.1 Construction Cost shall be the total of the final Contract Sums of all of the separate Contracts, actual Reimbursable Costs relating to the Construction Phase as defined in Article 6, and the Construction Manager's compensation.

3.2 Construction Cost does not include the compensation of the Architect and the Architect's consultants, the cost of the land, rights-of-way or other costs which are the responsibility of the Owner as provided in Paragraphs 2.3 through 2.7, inclusive.

3.3 Evaluations of the Owner's Project budget and cost estimates prepared by the Construction Manager represent the Construction Manager's best judgment as a professional familiar with the construction industry. It is recognized, however, that neither the Construction Manager nor the Owner has control over the cost of labor, materials or equipment, over Contractors' methods of determining Bid prices or other competitive bidding or negotiating conditions. Accordingly, the Construction Manager cannot and does not warrant or represent that Bids or negotiated prices will not vary from the Project budget proposed, established or approved by the Owner, or from any cost estimate or evaluation prepared by the Construction Manager.

3.4 No fixed limit of Construction Cost shall be established as a condition of this Agreement by the furnishing, proposal or establishment of a Project budget under Subparagraph 1.1.1 or Paragraph 2.2, or otherwise, unless such fixed limit has been agreed upon in writing and signed by the parties to this Agreement. If such a fixed limit has been established, the Construction Manager shall include contingencies for design, bidding and price escalation, and

shall consult with the Architect to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents, to suggest reasonable adjustments in the scope of the Project, and to suggest alternate Bids in the Construction Documents to adjust the Construction Cost to the fixed limit. Any such fixed limit shall be increased in the amount of any increase in the Contract Sums occurring after the execution of the Contracts for Construction.

3.4.1 If Bids are not received within the time scheduled at the time the fixed limit of Construction Cost was established, due to causes beyond the Construction Manager's control, any fixed limit of Construction Cost established as a condition of this Agreement shall be adjusted to reflect any change in the general level of prices in the construction industry occurring between the originally scheduled date and the date on which Bids are received.

3.4.2 If a fixed limit of Construction Cost (adjusted as provided in Subparagraph 3.4.1) is exceeded by the sum of the lowest figures from bona fide Bids or negotiated proposals plus the Construction Manager's estimate of other elements of Construction Cost for the Project, the Owner shall (1) give written approval of an increase in such fixed limit, (2) authorize rebidding or renegotiation of the Project or portions of the Project within a reasonable time, (3) if the Project is abandoned, terminate in accordance with Paragraph 10.2, or (4) cooperate in revising the scope and quality of the Work as required to reduce the Construction Cost. In the case of item (4), the Construction Manager, without additional compensation, shall cooperate with the Architect as necessary to bring the Construction Cost within the fixed limit.

### **ARTICLE 4**

#### **CONSTRUCTION SUPPORT ACTIVITIES**

4.1 Construction support activities, if provided by the Construction Manager, shall be governed by separate contractual arrangements unless otherwise provided in Article 16.

### **ARTICLE 5**

#### **DIRECT PERSONNEL EXPENSE**

5.1 Direct Personnel Expense is defined as the direct salaries of all of the Construction Manager's personnel engaged on the Project, excluding those whose compensation is included in the fee, and the portion of the cost of their mandatory and customary contributions and benefits related hereto such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions, and similar contributions and benefits.

### **ARTICLE 6**

#### **REIMBURSABLE COSTS**

6.1 The term Reimbursable Costs shall mean costs necessarily incurred in the proper performance of services and paid by the Construction Manager. Such costs shall be at rates not higher than the standard paid in the locality of the Project, except with prior consent of the Owner. Reimbursable Costs and costs not to be reimbursed shall be listed in Article 16.

6.2 Trade discounts, rebates and refunds, and returns from sale of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be secured.

## **ARTICLE 7**

### **PAYMENTS TO THE CONSTRUCTION MANAGER**

#### **7.1 PAYMENTS ON ACCOUNT OF BASIC SERVICES**

7.1.1 An initial payment as set forth in Paragraph 15.1 is the minimum payment under this Agreement.

7.1.2 Subsequent payments for Basic Services shall be made monthly and shall be in proportion to services performed within each Phase of Services, on the basis set forth in Article 15.

7.1.3 If and to the extent that the time initially established for the Construction Phase of the Project is exceeded or extended through no fault of the Construction Manager, compensation for Basic Services required for such extended period of Administration of the Construction Contract shall be computed as set forth in Paragraph 15.3 for Additional Services.

7.1.4 When compensation is based on a percentage of the total of the Contract Sums of all the separate Contracts, and any portions of the Project are deleted or otherwise not constructed, compensation for such portions of the Project shall be payable to the extent services are performed on such portions, in accordance with the schedule set forth in Subparagraph 15.2.1, based on (1) the lowest figures from bona fide Bids or negotiated proposals, or (2) if no such Bids or proposals are received, the most recent estimate of the total of the Contract Sums of all the separate Contracts for such portions of the Project.

#### **7.2 PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES AND REIMBURSABLE COSTS**

7.2.1 Payments on account of the Construction Manager's Additional Services, as defined in Paragraph 1.3, and for Reimbursable Costs, as defined in Article 16, shall be made monthly upon presentation of the Construction Manager's statement of services rendered or costs incurred.

#### **7.3 PAYMENTS WITHHELD**

7.3.1 No deductions shall be made from the Construction Manager's compensation on account of penalty, liquidated damages or other sums withheld from payments to Contractors, or on account of the cost of changes in Work other than those for which the Construction Manager is held legally liable.

#### **7.4 PROJECT SUSPENSION OR ABANDONMENT**

7.4.1 If the Project is suspended or abandoned in whole or in part for more than three months, the Construction Manager shall be compensated for all services performed prior to receipt of written notice from the Owner of such suspension or abandonment, together with Reimbursable Costs then due and all Termination Expenses as defined in Paragraph 10.4. If the Project is resumed after being suspended for more than three months, the Construction Manager's compensation shall be equitably adjusted.

7.4.2 If construction of the Project has started and is stopped by reason of circumstances not the fault of the Construction Manager, the Owner shall reimburse the Construction Manager for the costs of the Construction

Manager's Project-site staff as provided for by this Agreement. The Construction Manager shall reduce the size of the Project-site staff after 30 days' delay, or sooner if feasible, for the remainder of the delay period as directed by the Owner and, during that period, the Owner shall reimburse the Construction Manager for the costs of such staff prior to reduction plus any relocation or employment termination costs. Upon the termination of the stoppage, the Construction Manager shall provide the necessary Project-site staff as soon as practicable.

## **ARTICLE 8**

### **CONSTRUCTION MANAGER'S ACCOUNTING RECORDS**

8.1 Records of Reimbursable Costs and costs pertaining to services performed on the basis of a Multiple of Direct Personnel Expense shall be kept on the basis of generally accepted accounting principles and shall be available to the Owner or the Owner's authorized representative at mutually convenient times.

## **ARTICLE 9**

### **ARBITRATION**

9.1 All claims, disputes and other matters in question between the parties to this Agreement arising out of or relating to this Agreement or the breach thereof, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining unless the parties mutually agree otherwise. No arbitration arising out of or relating to this Agreement shall include, by consolidation, joinder or in any other manner, any additional person not a party to this Agreement except by written consent containing a specific reference to this Agreement and signed by the Construction Manager, the Owner, and any other person sought to be joined. Any consent to arbitration involving an additional person or persons shall not constitute consent to arbitration of any dispute not described therein or with any person not named or described therein. This agreement to arbitrate and any agreement to arbitrate with an additional person or persons duly consented to by the parties to this Agreement shall be specifically enforceable under the prevailing arbitration law.

9.2 Notice of demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association, and a copy shall also be filed with the Architect. The demand shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

9.3 The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

## **ARTICLE 10**

### **TERMINATION OF AGREEMENT**

10.1 This Agreement may be terminated by either party upon seven 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.

10.2 This Agreement may be terminated by the Owner upon at least fourteen days' written notice to the Construction Manager in the event that the Project is permanently abandoned.

10.3 In the event of termination not the fault of the Construction Manager, the Construction Manager shall be compensated for all services performed to the termination date together with Reimbursable Costs then due and all Termination Expenses.

10.4 Termination Expenses are defined as Reimbursable Costs directly attributable to termination for which the Construction Manager is not otherwise compensated.

#### ARTICLE 11

##### MISCELLANEOUS PROVISIONS

11.1 Unless otherwise specified, this Agreement shall be governed by the law in effect at the location of the Project.

11.2 Terms in this Agreement shall have the same meaning as those in the 1980 Edition of AIA Document A201/CM, General Conditions of the Contract for Construction, Construction Management Edition.

11.3 As between the parties to this Agreement: as to all acts or failures to act by either party to this Agreement, any applicable statute of limitations shall commence to run, and any alleged cause of action shall be deemed to have accrued, in any and all events not later than the relevant Date of Substantial Completion of the Project, and as to any acts or failures to act occurring after the relevant Date of Substantial Completion of the Project, not later than the date of issuance of the final Project Certificate for Payment.

11.4 The Owner and the Construction Manager waive all rights against each other, and against the contractors, consultants, agents and employees of the other, for damages covered by any property insurance during construction, as set forth in the 1980 Edition of AIA Document A201/CM, General Conditions of the Contract for Construction, Construction Management Edition. The Owner and the Construction Manager shall each require appropriate similar waivers from their contractors, consultants and agents.

#### ARTICLE 12

##### SUCCESSORS AND ASSIGNS

12.1 The Owner and the Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement, and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the Owner nor the Construction Manager shall assign, sublet or transfer any interest in this Agreement without the written consent of the other.

#### ARTICLE 13

##### EXTENT OF AGREEMENT

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

13.2 Nothing contained herein shall be deemed to create any contractual relationship between the Construction Manager and the Architect or any of the Contractors, Subcontractors or material suppliers on the Project; nor shall anything contained in this Agreement be deemed to give any third party any claim or right of action against the Owner or the Construction Manager which does not otherwise exist without regard to this Agreement.

#### ARTICLE 14

##### INSURANCE

14.1 The Construction Manager shall purchase and maintain insurance for protection from claims under workers' or workmen's compensation acts; claims for damages because of bodily injury, including personal injury, sickness, disease or death of any of the Construction Manager's employees or of any person; from claims for damages because of injury to or destruction of tangible property including loss of use resulting therefrom; and from claims arising out of the performance of this Agreement and caused by negligent acts for which the Construction Manager is legally liable.

**ARTICLE 15**  
**BASIS OF COMPENSATION**

The Owner shall compensate the Construction Manager for the Scope of Services provided, in accordance with Article 7, Payments to the Construction Manager, and the other Terms and Conditions of this Agreement, as follows:

15.1 AN INITIAL PAYMENT of N/A dollars (\$) shall be made upon execution of this Agreement and credited to the Owner's account as follows:

**15.2 BASIC COMPENSATION**

15.2.1 FOR BASIC SERVICES, as described in Paragraphs 1.1 and 1.2, and any other services included in Article 16 as part of Basic Services, Basic Compensation shall be computed as follows:

For Preconstruction Phase Services, compensation shall be:  
*(Here insert basis of compensation, including fixed amounts, multiples or percentages.)*

N/A

For Construction Phase Services, compensation shall be:  
*(Here insert basis of compensation, including fixed amounts, multiples or percentages.)*

**6% plus reimbursables**

**15.3 COMPENSATION FOR ADDITIONAL SERVICES**

15.3.1 FOR ADDITIONAL SERVICES OF THE CONSTRUCTION MANAGER, as described in Paragraph 1.3, and any other services included in Article 16 as Additional Services, compensation shall be computed as follows:  
*(Here insert basis of compensation, including fixed amounts, multiples or percentages.)*

**6% plus reimbursables**

15.4 FOR REIMBURSABLE COSTS, as described in Article 6 and Article 16, the actual costs incurred by the Construction Manager in the interest of the Project.

15.5 Payments due the Construction Manager and unpaid under this Agreement shall bear interest from the date payment is due at the rate entered below, or in the absence thereof, at the legal rate prevailing at the principal place of business of the Construction Manager.  
*(Here insert any rate of interest agreed upon.)*

*(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws, and other regulations at the Owner's and Construction Manager's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Specific legal advice should be obtained with respect to deletion, modification or other requirements such as written disclosures or waivers.)*

15.6 The Owner and the Construction Manager agree in accordance with the Terms and Conditions of this Agreement that: the total construction costs plus reimbursables plus 6% fee will not exceed Eight Hundred Twenty Thousand (\$820,000.00) Dollars.

15.6.1 IF THE SCOPE of the Project or the Construction Manager's Services is changed materially, the amounts of compensation shall be equitably adjusted.

15.6.2 IF THE SERVICES covered by this Agreement have not been completed within ten ( 10 ) months of the date hereof, through no fault of the Construction Manager, the amounts of compensation, rates and multiples set forth herein shall be equitably adjusted.

ARTICLE 16  
**OTHER CONDITIONS OR SERVICES**

*(List Reimbursable Costs and costs not to be reimbursed.)*

See attached sheet "Reimbursable Costs"

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

OWNER

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CONSTRUCTION MANAGER

JENNINGS AND CHURELLA CONSTRUCTION COMPANY

Richard A. Van Auken, President/C.E.O.

#### REIMBURSABLE COSTS

Wages paid for labor in the direct employ of the Construction Manager in the performance of his work under applicable collective bargaining agreements, or under a salary or wage schedule agreed upon by the Owner and Construction Manager, and including such welfare or other benefits, if any, as may be payable with respect thereto.

Salaries of the Construction Manager's employees when stationed at the field office, in whatever capacity employed, employees engaged on the road in expediting the production or transportation of materials and equipment.

Cost of all employee benefits and taxes for such items as unemployment compensation and social security, insofar as such cost is based on wages, salaries or other remuneration paid to employees of the Construction Manager and included in the Cost of the Project under Subparagraphs 16.2.1 and 16.2.2 @ 25%.

Reasonable transportation, traveling, moving, and hotel expenses of the Construction Manager or of his officers or employees incurred in discharge of duties connected with the Project.

Cost of all materials, supplies and equipment incorporated in the Project, including costs of transportation and storage thereof.

Payments made by the Construction Manager or Owner to Trade Contractors for their Work performed pursuant to contract under this Agreement.

Cost, including transportation and maintenance, of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workmen, which are employed or consumed in the performance of the Work, and cost less salvage value on such items used but not consumed which remain the property of the Construction Manager.

Rental charges of all necessary machinery and equipment, exclusive of hand tools, used at the site of the Project, whether rented from the Construction Manager or other, including installation, repairs and replacements, dismantling, removal, costs of lubrication, transportation, and delivery costs thereof, at rental charges consistent with those prevailing in the area.

Cost of the premiums for all insurance which the Construction Manager, is required to procure by this Agreement or is deemed necessary by the Construction Manager.

Sales, use, gross receipts or similar taxes related to the Project imposed by any governmental authority, and for which the Construction Manager is liable.

Permit fees, licenses, tests, royalties, damages for infringement of patents and costs of defending suits therefor, and deposits lost for causes other than the Construction Manager's negligence. If royalties or losses and damages, including costs of defense, are incurred which arise from a particular design, process, or the Construction Manager has no reason to believe there will be infringement of patent rights, such royalties, losses and damages shall be paid by the Owner.

Losses, expenses or damages to the extent not compensated by insurance or otherwise (including settlement made with the written approval of the Owner).

The cost of corrective work.

Minor expenses such as telegrams, long-distance telephone calls, telephone service at the site, and similar petty cash items in connection with the Project.

Cost of removal of all debris.

Cost incurred due to an emergency affecting the safety of persons and property.

Cost of data processing services required.

Legal costs reasonable and properly resulting from prosecution of the Project for the Owner.

All costs directly incurred in the performance of the Project and not included in the Construction Manager's Fee.

(Addition to Article 6) Included in the Construction Manager's Fee:

Salaries of the Construction Manager's employees at the principal office while in direct employ for the Project.

General operating expenses of the Construction Manager's principal office.

Overhead or general expenses of any kind, directly applicable to the Project.

(Addition to Article 14) Insurance:

The Construction Manager shall provide insurance in the sums as specified on the enclosed copy of Certificate of Insurance.

The Owner will provide insurance to cover his own liability and Property Insurance as provided for in Articles 11.2 and 11.3 of AIA Document A201.